

NEWSLETTER

International Association of Directors of Law Enforcement Standards and Training
1330 North Manship; Meridian, Idaho 83642-6444
(208) 288-5491; <http://www.iadlest.org>



Volume 24 Number 2

April 2013

Contents	Page
President's Message	2
Annual Conference Announcement	3
Meeting Schedule	4
Special Olympics Auction Items Needed.....	4
Audit Report Posted	4
Welcome New Members	4
POST Directors Changes	4
Justice-Based Policing: Improving Trust	5
LEED Model	6
A model Decertification Law	7
It's 2013: Have You Updated Your Juvenile Standards	7
Assisting Nigeria	9
Vendor Announcements	10
Case Law Review	12
- Georgia Upholds Cell Phone Record Evidence	12
- Terry Stops and De Facto Arrests	14
- Qualified Immunity for Officers in Shooting.....	18
- Seventh Circuit Upholds Exigent Search	22
- Eighth Circuit Upholds Warrantless Search of Motor Vehicle	25
"Sequestered" Training – The Impact	28
The Computer Employment Application (CEA)	29
DHS Awards Envisage Five Year Contract	29
On Line Training With <i>In The Line Of Duty</i>	30
Maine Implements Automated Training Records	31
Supplemental Research Papers.....	31
- DDACTS Hotspot 3 Final: Thibodaux Police Department	
- A Model Decertification Law	

WILLIAM J. MULDOON

President

Nebraska Law Enforcement Training Center
3600 North Academy Road
Grand Island, Nebraska 68801-0403
(308) 385-6030 Ext. 301 Fax: (308) 385-6032
William.Muldoon@nebraska.gov

C. KIM VICKERS

First Vice-President

Texas Commission on Law Enforcement
6330 East Hwy 290, Ste 200
Austin, Texas 78723
(512) 936-7700 Fax: (512) 936-7714
kimv@tcleose.state.tx.us

CHARLES MELVILLE

Treasurer

Department of Criminal Justice Training
521 Lancaster Ave., Funderburk Bldg.
Richmond, Kentucky 40475-3102
(859) 622-6855 Fax: (859) 622-3162
charles.melville@ky.gov

LLOYD HALVORSON

Secretary

Peace Officer Training
Lake Region State College
1801 North College Drive
Devils Lake, North Dakota 58301
lloyd.halvorson@lrsc.edu

RICHARD CLARK

Immediate Past President

Commission on Peace Officers
Standards and Training
5587 Wa Pai Shone Ave.
Carson City, Nevada 89701
(775) 721-4536 Fax: (775) 687-4911
rclark@post.state.nv.us

RUSTY K. GOODPASTER

Second Immediate Past President

Law Enforcement Training Board
P.O. Box 313
Plainfield, Indiana 46168-0313
(317) 839-5191 Fax: (317) 839-9741
rgoodpaster@ilea.in.gov

MICHAEL BECAR

Executive Director, CEO

1330 North Manship Place
Meridian, Idaho 83642
(208) 288-5491 Fax: (208) 888-1358
mikebecar@iadlest.org



June 2 - 5, 2013

PRESIDENT'S MESSAGE

William J. Muldoon, Director, Nebraska Law Enforcement Training Center



It is April already and another year has gone by. In two short months, we will be seeing each other at the Portland, Oregon, IADLEST Conference. If you have not already made your reservations, please do

so soon by linking to our conference website from www.iadlest.org

Our conference is earlier this year, beginning on June 2 with committee meetings during the day and an optional Brewery Tour with Progressive Dinner starting at 6:15 PM. Portland takes pride in its many breweries; and we will tour a few, having a portion of dinner at each stop.

The conference starts in earnest with our Keynote Speaker Michael Nila presenting on Leadership Development at 8:30 AM on Monday, June 3. We will have lunch with our vendors, and the Special Olympics silent auction will open from 11:45 AM to 1:00 PM. Remember to send any Special Olympics items to be auctioned off to Director Eriks Gabliks, Department of Public Safety Standards and Training, 4190 Aumsville Highway SE; Salem, Oregon 97317.

Starting at 1:00 P.M., The afternoon is packed with eight different presentations ranging from training issues, ethics, and effective group facilitation. Roundtable discussions start at 3:30 PM. Conference attendees will have their choice of attending the POST, Legal, or Education discussions. Veterans of our conferences often comment that the roundtables are the greatest source for information that will help them immediately upon their return back from the conference and for making those very important personal connections.

The evening entertainment is the President's Reception on the Portland Spirit Riverboat Cruise. Looking forward to visiting with you all while enjoying the river.

The second day of the conference will start with the Special Olympics Run/Walk at 7:30 AM, followed by Regional Meetings at 8:30. The IADLEST Business meeting will start promptly at 9:45. Lunch with vendors and Silent Auction closing will be at noon. The afternoon has 12 more presentations ranging from military veteran issues, critical incident stress management, to many more training subjects representing what is the latest in police training. They will run from 1:00 to 5:00 PM.

The last day of the conference, Wednesday, is the tour of the Oregon Department of Public Safety in Salem with a Leadership Development training and lunch. We arrive back in Portland by 4:15 PM.

This is our first conference featuring so many prominent presenters and offers something for everyone. On behalf of IADLEST, I offer my sincere appreciation to the Oregon POST for all the conference preparation work along with the Redden Group and all our conference sponsors and vendors.

Looking forward to seeing you all in Portland!

Editorial Note: The IADLEST Newsletter is published quarterly. It is distributed to IADLEST members and other interested persons and agencies involved in the selection and training of law enforcement officers.

The IADLEST is a nonprofit organization comprised of law enforcement training managers and leaders. Its mission is to research and share information, ideas, and innovations that assist in the establishment of effective and defensible standards for the employment and training of law enforcement officers.

All professional training managers and educators are welcome to become members. Additionally, any individual, partnership, foundation, corporation, or other entities involved with the development or training of law enforcement or criminal justice personnel are eligible for membership. Recognizing the obligations and opportunities of international cooperation, the IADLEST extends its membership invitation to professionals in other democratic nations.

Newsletter articles or comments should be sent to IADLEST; 2521Country Club Way; Albion, MI 49224; or pjudge@att.net.

2013 IADLEST CONFERENCE
SUNDAY, JUNE 02, 2013 - WEDNESDAY, JUNE 05, 2013
PORTLAND, OREGON



IADLEST is known for being the catalyst for law enforcement improvement; and each year, the annual conference showcases this commitment by focusing on the most pressing issues for training managers and executives.

This year, the IADLEST Conference will be held in Portland, Oregon. Join fellow Law Enforcement Executives, Training Managers, POST Directors, and Academy Directors for the following highlights:

- * Keynote speaker, Michael Nila, on Blue Courage: a transformational leadership development workshop designed for all levels of the organization, focusing on self-improvement, increased engagement, stress-management, developing resilience, igniting culture change, combating cynicism, and improving overall health and well-being.
- * An afternoon dedicated to three training tracks, covering topics that fall under one of the following categories: enhancing professionalism in law enforcement, increasing officer safety, and reducing training costs and officer liability.
- * Scheduled round-table discussions to exchange ideas and experiences regarding standards, certifications, and course development. Attendees may participate in one of the following round-table discussions: tactical issues, legal issues, educational issues, and/or POST issues.
- * Tour, lunch, and a Leadership Development Course at the Oregon Department of Public Safety Standards and Training in Salem.
- * Social activities, such as the President's Reception on the Portland Spirit riverboat cruise, the Welcome Reception, a hospitality suite, the Special Olympics silent auction, and a Special Olympics Run/Walk.

Refer a **NEW** vendor and receive \$50 at the conference - email ashley@iadlest.org for details

Conference Sponsors

ENVISAGE
TECHNOLOGIES



informa
systems

Conference Vendors: Microception, Inc. • Purdue Pharma LP • Pursuit Training
• Tactical Medical Solutions, Inc. • Wicklander-Zulawski & Associates

MEETING SCHEDULE

The next business meeting is scheduled for Tuesday, June 4, 2013, at the Doubletree by Hilton Hotel; 1000 NE Multnomah Street; Portland, Oregon, in conjunction with the IADLEST Annual Conference.

The IADLEST Fall Business meeting is scheduled for Saturday, October 19, and Sunday, October 20, 2013, in Philadelphia, Pennsylvania, in conjunction with the Annual IACP Conference.

SPECIAL OLYMPICS AUCTION ITEMS NEEDED

A Special Olympics auction will be held June 2-5, 2013, at the IADLEST Annual Conference in Portland, Oregon. IADLEST members are invited to contribute items for sale. In the past, IADLEST members have generously contributed products to the auction - often items that represent their state. One hundred per cent of the proceeds from the sales are given directly to the Special Olympics. You do not need to attend the conference to contribute. You can send to the address below or bring your item(s) with you when come to the conference.

IADLEST Special Olympics Auction
c/o Eriks Gabliskis, Director
Dept. of Public Safety Standards & Training
4190 Aumsville Highway, SE
Salem, Oregon 97317
(503) 378-2332 Fax: (503) 378-3306
eriks.gabliskis@state.or.us

AUDIT REPORT POSTED

The IADLEST Audit Report for the year ending December 31, 2011, has been posted on the IADLEST web page. The audit was conducted by Crandall, Swenson, Gleason, and Wadsworth, CPA, 1110 N. Five Mile Rd., Boise, ID 83713.

In summary, the report states: "In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of International Association of

Directors of Law Enforcement Standards & Training as of December 31, 2011, and the changes in its net assets and its cash flow for the year then ended in conformity with accounting principles generally accepted in the United States of America."

The full report can be found on the IADLEST web page: "Member Services" and then "IADLEST Documents."

WELCOME NEW MEMBERS

The IADLEST is proud and privileged to add the following new members. These professionals complement our Association's already extensive wealth of talent and expertise. We welcome them to the IADLEST.

Julian Anderson, NC Academy, Edneyville, NC
Ronald Barber, Line of Duty, Saint Louis, MO
John Beauchamp, POST, Austin, TX
Derek Borek, State Police, North Scituate, RI
Richard Fink, POST, Phoenix, AZ
Steven Golden, USA MP, Ft. Leonard Wood, MO
James Harpole, Police Dept., Milwaukee, WI
John Helenberg, POST, Austin, TX
Sarah Hieb, POST, Juneau, AK
Ken Janeczek, Parole Board, Natick, MA
Harry Kastrinakis, Springfield PD, South Hadley, MA
Stacy Lenz, POST, Madison, WI
C. Long, Gwinnet County PD, Lawrenceville, GA
Kimberly Mason, Justice Services, Charleston, WV
Victor McCraw, AZ Academy, Phoenix, AZ
Michael Nila, Aurora PD, Aurora, IL
Eric Pederson, Highway Patrol, Bismarck, ND
Stephanie Pederson, POST, Madison, WI
Mark Perkovich, AZ Academy, Phoenix, AZ
Scott Raynes, State Police, North Scituate, RI
Jim Reilly, USA MP, Ft. Leonard Wood, MO
Michael Schiosser, University of IL, Champaign, IL
John Whitmer, POST, Wichita, KS
Joel Whitt, Gwinnett Co. PD, Lawrenceville, GA

CHANGES IN POST DIRECTORS

California: On February 28, 2013, the California Commission on Peace Officer Standards and Training (POST) unanimously approved the appointment of Robert "Bob" A. Stresak as the Executive Director of POST. Bob is the seventh Executive Director since POST was established in 1959. Bob Stresak was appointed as Interim Executive Director in

December 2012. He brings 42 years of California Law Enforcement experience to the position.

Previously, Bob served with the Los Angeles Police Department for 27 years. After retiring in 1997, he was appointed by Governor Wilson to serve as an Assistant Director for the California Youth Authority (CYA). He subsequently conducted administrative investigations for the Office of Inspector General.

Bob joined POST in 1999 where he distinguished himself in a wide variety of increasing leadership responsibilities. Bob holds a Bachelor's Degree from California State University, Los Angeles. He resides in Sacramento.

JUSTICE-BASED POLICING: IMPROVING TRUST AND COMPLIANCE ON THE STREET AND IN THE STATION

*by: Director Sue Rahr and staff, Washington State
Criminal Justice Training Commission*

Introduction: *One of the major initiatives of the Washington State Criminal Justice Training Commission is to influence the culture of policing...to reset how we view our role as peace officers in the context of a healthy democracy. We are moving from a culture of "warriors" to a culture of "guardians." To make this culture change real, we are taking very specific, deliberate steps to change habitual behavior during interactions...in the station and on the street. Our Justice Based Policing training is a critical piece of that culture change.*

One of the main goals of the Washington State Criminal Justice Training Commission is to institutionalize a culture that reflects the principles of procedural justice and legitimacy both on the street and in the station. The strategy for accomplishing this is called Justice-Based Policing. We seek to educate and inspire students at every level of their professional development toward this goal. We are in the process of developing a cadre of trainers from around the state using a newly developed curriculum on Procedural Justice and Police Legitimacy. Trainers will gain the skills and knowledge to create classes tailored to their home agency in order to return to their department and train their peers and leaders,

encouraging the leaders to institutionalize those principles into their organizational culture.

Simultaneously, our Basic Law Enforcement Academy (BLEA) will teach the principles of Procedural Justice and Police Legitimacy as tactical communications tools, using the LEED model. (See the following LEED article). Within BLEA we will integrate these principles into patrol procedures, communication, defensive tactics, and firearms. They will function as a foundational, cultural, and tactical underpinning for primary skills.

Finally, we will integrate principles of procedural justice and legitimacy into all of our supervision and leadership classes, focusing on application and benefits both in the station and on the street.

The total process of integration will take a couple of years. The development of our cadre of trainers began in 2012 and will continue through 2013. The updating of the BLEA, Field Training, and Leadership curriculum will take place during 2013, with full implementation in 2014.

So, why are Procedural Justice and Police Legitimacy (the essential elements of Justice-Based Policing) so important? The government gives police officers the authority to take actions that impact the liberty and property of citizens. Public trust in police determines the degree to which citizens view that authority as legitimate and are *willing* to cooperate with police and assist them in carrying out their mission (legitimacy). Public trust grows and legitimacy improves when officers treat people with respect and exercise their authority in a manner that is perceived as fair and just (procedural justice). In short, public trust is affected more by how people are *treated* than by the *outcomes* of the interaction, such as arrest or citation.

In communities where police have high legitimacy, research has shown that citizens are more likely to obey the law, comply with police orders, and assist in the public safety mission. This reduces the need for physical force to gain compliance, thus reducing the likelihood of injuries and citizen complaints. Police can more effectively keep communities safe when

residents cooperate with police in crime prevention, detection, and apprehension.

Procedural justice and legitimacy are also critical dynamics *inside* the culture of a police organization. By virtue of their rank, police leaders have the authority to take actions that impact the lives and financial well-being of their officers. Trust in police leadership determines the degree to which officers view that authority as legitimate and are willing to cooperate and work with them to achieve the mission of the organization. Officer trust grows and leader legitimacy improves when the leaders treat their officers with respect, and exercise their authority in a manner that is perceived as fair and just. As with public trust, trust within an agency is affected more by how officers are *treated* than by the *outcome* of the leader's actions, such as pay, assignments, or promotions.

There are many positive outcomes of practicing procedural justice within the agency. In police organizations where leaders have high legitimacy, officers are more likely to follow the policies and orders of those leaders and enthusiastically carry out the mission of the organization. Consequently, leaders can more effectively keep their officers safe and out of trouble when these officers follow policies and procedures and stay focused on the mission of the organization. Increased legitimacy can result in fewer incidents of misconduct and discipline.

Above all, as leaders we want our officers to treat people they encounter on the street with respect and exercise their authority in a manner that is fair and just and builds public trust *because it improves their effectiveness and safety*. The bottom line – officers are more likely to treat people with dignity and respect if they are treated that way inside their own organization. Police behavior on the street reflects the culture in the station.

In conclusion, a major goal of the Washington State Criminal Justice Training Commission is to build a culture that supports Justice-Based Policing. To do so, it is critical that we provide procedural justice training that enhances legitimacy at every level of organizations. When the principles of procedural justice are consistently followed in the station and on the street, that cultural change will be achieved.

THE LEED MODEL

The Building Blocks of Justice-Based Policing
*by: Director Sue Rahr and staff - Washington State
Criminal Justice Training Commission*

The current state of law enforcement can probably be best described with this statement: *“People don’t care so much about crime stats; they care about how they are treated”*.

Professor Tom Tyler of Yale University has done extensive work in this area under the rubric of Procedural Justice and Police Legitimacy. He has found that the perception of fairness and justice by those we serve is significantly impacted by the way we address - or fail to address - basic human needs during interactions on the street.

Tyler's work explains why, after three decades of dramatically falling crime rates, improved training, and widely used community policing strategies, the public perception of police has not improved.

Justice-Based Policing is a *strategy to improve the quality and outcome of interactions* between police and citizens while improving officer safety. The LEED model is a tool to guide officers when employing this strategy. Over time and across multiple interactions the use of Justice-Based Policing serves to strengthen community trust and confidence in the police and increase the lawful behavior and future cooperation of citizens.

Justice-Based Policing is not a new idea. It's not a program and it's not complicated. It's the way good cops have always done it.

Rather than adding another layer of training and mandates on top of our current practices, this strategy can be easily and logically *integrated* into all of our interactions by employing four basic principles represented under the **LEED** model:

Listen, Explain with Equity and Dignity (LEED)

- **Listen** - Allow people to give their side of the story give them a voice, and let them

vent. *Listening is the most powerful way to demonstrate respect.*

- **Explain** - Explain what you're doing, what they can do, and what's going to happen.
- **Equity** - Tell them why you are taking action. The reason must be fair and free of bias, and show that their side of the story was considered.
- **Dignity** - Act with dignity, and leave them with their dignity.

By addressing these four basic human needs, officers elevate the quality of the interaction, and people are more likely to see the police as helping rather than controlling...as guardians rather than warriors. The result is improved officer safety and increased community trust.

A MODEL DECERTIFICATION LAW

by: Professor Roger L. Goldman, Saint Louis University - School of Law

(This is an abstract of a scholarly paper published in its entirety as a supplement and attached to this newsletter. 2012; 32 St. Louis U. Pub. L. Rev. 147, 2012; Saint Louis U. Legal Studies Research Paper No. 2013-7)

Despite the over 50-year existence of laws permitting the revocation of a police officer's right to serve in law enforcement for serious misconduct, most scholars have ignored this development. Currently, 44 states have such laws, but they differ greatly in scope. This article suggests the three most important characteristics of an effective decertification law: first, the types of law enforcement officers covered by the law should be wide-ranging, including correctional officers and probation officers, not just police officers and deputy sheriffs and police officers. Second, the range of misconduct that can lead to decertification should not just be limited to criminal convictions but ought to include serious misconduct that doesn't result in criminal charges. Finally, because many departments would prefer to retain their problem officers (often for economic reasons), they do not cooperate with the state agency in reporting and investigating officers who, by law, should be brought to the state licensing agency's attention. The law must have both carrots and sticks to get the local agency's attention.

Refer to the attached supplement entitled *A Model Decertification Law* for the full report.

IT'S 2013: HAVE YOU UPDATED YOUR DEPARTMENTAL JUVENILE STANDARDS?

by: Richard Askew, Officer III, Los Angeles Police Department and Lisa H. Thureau, Exec. Director, Strategies for Youth, Inc.

This is an important question to answer in the affirmative if you are in charge of risk management, standards, juvenile officers, and school resource officers. Departments' standards and their use in both training and disciplining officers, is a key factor in liability decisions.

Departments should treat youth differently because they *are* different. Since 2005, there have been four major U.S. Supreme Court cases addressing juvenile justice issues. Starting with *Roper v. Simmons* (2005), the Court took formal judicial notice of an overwhelming amount of scientific data demonstrating that immaturity is also physical: juvenile brains are growing and only finish growing around age 25. The evidence the Court cited demonstrates that the parts of the brain most central to culpability—competence, intent, and capacity to intend and understand consequences—are the last to grow.

The 2005 decision prohibited the death penalty for people who committed crimes as youth. The Court then ruled two more times on what kind of punishments are constitutional.

In 2010, the Court struck down a statute that permitted life without parole sentences for juveniles convicted of non-homicide crimes in *Graham v. Florida*.

In 2012, in *Miller v. Alabama*, the court struck down state statutes requiring the automatic imposition of life without parole sentences on youth who had been convicted of murder. In both *Graham* and *Miller*, the Court invoked the evidence regarding the transience, mutability, and limitations of the teen brain adopted in the *Roper v. Simmons* case to justify their decisions.

So why should law enforcement worry about department standards because of Supreme Court decisions regarding how youth are punished? There are at least three reasons.

First, the Court has now made clear four times in seven years that it views juveniles as a special class with scientifically established differences in capacity. This is based upon youths' brain structure which affect their capacity and competence. It merits different treatment by the juvenile justice system.

Second, the Court addressed itself directly to police in the fourth U.S. Supreme Court decision in juvenile justice, *J.D.B. v. North Carolina*, decided in June 2011. In this case, the question was when youth would assume they were in custody. The Court held that custody attaches and Miranda rights must be given youth from a juvenile's point of view.

Third, state courts are interpreting and applying the *JDB* decision in challenges to the juvenile's waiver of *Miranda* rights, the youths' ability to comprehend and apply the language of the *Miranda* warnings, as well as law enforcement's treatment of youth during interviews and interrogation.

A cursory review of recent decisions indicates that state courts have begun to apply a "reasonable child" standard to core aspects of police/youth interactions, including when custody attaches, provision of *Miranda*, and the reasonableness of waivers of *Miranda* from youth who are vulnerable (i.e. young, possess language and cognitive disabilities, traumatized, in restraints, given promises of leniency). We predict the next focus of courts will be how interviews and interrogations are conducted.

Recommendations for Police Department Standards: We recommend that police departments would do well to review and update juvenile standards to ensure that their approach is in line with current law and reflects the recognition of the different capacities of juveniles. While an update of all aspects of a department's juvenile standards may be necessary, departments should pay special

attention to both the array of decisions, publicly available research data, highly publicized wrongful juvenile conviction cases, and best practice materials now available to improve key aspects of police youth/interactions, including:

- The wording, process, timing, and recording of juvenile *Miranda* warnings;
- Interviewing and interrogating youth;
- Policy that addresses the federal Juvenile Justice Delinquency Prevention Act including the requirement that directs localities to reduce disproportionate minority contact (DMC); and
- Recognition and appropriate responses to service calls involving youth who may be mentally ill.

Federally mandated state advisory groups are increasingly focusing on the role of police in the racial disparities in the juvenile justice system. Department standards that identify which factors can and cannot be taken into account when interacting with youth is an ounce of prevention that pays off in the long term.

With one out of five youth suffering mental health disorders, and increasing pressure on police to avoid use of force when dealing with mentally ill persons, department standards should direct officers to consider the possibility of mental health problems and the referral of youth to community based clinical resources as an alternative to arrest.

No Need to Reinvent the Wheel: Great Resources for New Standards Exist: The good news is that a lot of the work has been done for you. For instance, the International Association of Chiefs of Police (IACP) Training Key 652 is an outstanding document offering good language for standards as well as best practices—right down to the best wording for a juvenile *Miranda* warning.

The Strategies for Youth website offers several examples of different departments' standards for juveniles. Each example is a bit different in emphasis and scope and provides drafters great language to consider using for their own policies.

Take the Time Now—A Stitch in Time...

Departments that take the time to reconsider their standards find that the simple act of reviewing their juvenile standards provides an important opportunity to take stock of how well their departments are supporting officers to work with youth in their community.

Richard Askew is a 12+ year veteran of the Los Angeles Police Department and a consultant with Strategies for Youth. Lisa Thurau is the Executive Director of Strategies For Youth and assists departments to draft juvenile standards.

ASSISTING NIGERIA

by: J. Russell Sharpe, Maryland Police & Correctional Training Commissions

Government officials from Lagos, Nigeria, requested IADLEST's help in training their law enforcement officers. It is the Lagos state government's hope to one day establish a law enforcement institute. In June 2012, the IADLEST Executive Committee solicited IADLEST membership to identify a qualified instructor to travel to Nigeria and assist.

Among the several qualified individuals who volunteered, James Russell Sharpe was selected. Mr. Sharpe is a staff member with the Maryland Police and Correctional Training Commissions in Sykesville, Maryland. His background included working with the United States' State Department in training foreign corrections and parole/probation officers. He is a Baltimore, Maryland PD Lieutenant retiree, an advanced law enforcement instructor and homeland security coordinator. Mr. Sharpe provided the following chronicle of his Nigerian trip.

On December 8, 2012, I arrived in Lagos, Nigeria after a 22-hour trip that started in Baltimore, Maryland, with a car ride to Dulles International Airport outside of Washington, D.C. I was in Lagos for International Association of Directors of Law Enforcement Standards and Training (IADLEST) to assist the Lagos State government with law enforcement instructor training, or at least that's what I thought at the time.

I was met at Murtala Muhammed International Airport by Abimbola Lamina, who works for the Ministry of Transportation, and Munsu, my driver for the duration of my stay.

My first impression: Nigeria is hot and kind of crowded. From the airport I was driven to my hotel: De Renaissance. It was about 7:45 PM

when I got into my room though my body clock said it was 1:45 in the afternoon. I decided that I would rest all day Sunday, which I did except for about 30 minutes Sunday afternoon, when I had a meeting with my host, Senior Special Assistant to the Governor on Transport Education, Dr. Mariam Masha.

At that meeting I got a clearer picture of what I would be doing for the next eight working days. I would be the featured facilitator at a capacity building workshop on 'Developing Standards and Training' for Law Enforcement officers of the State Government.

The Lagos State government's intent is to establish a law enforcement institute, and Dr. Masha is the lead person on the project. So my focus changed from instructor training to institution building.



L to R: Dr. Mariam Masha, J. Russell Sharpe, and Mr. Babatunde Edu

Attending my workshop were administrators, managers, and supervisors from the Lagos law enforcement agencies: Lagos State Traffic Management Authority (LASTMA); Kick Against Indiscipline (KAI) Brigade, the Law Enforcement Unit Ministry of the Environment; and Neighbourhood Watch, the Lagos State Security outfit.


The workshop was held at the Public Service Staff Development Centre (PSSDC) in Magodo, Lagos. Also in attendance were the General Manager of LASTMA, Mr. Babatunde Edu, and the Director of the Ministry of the Environment, Mr. Toyin Onisaruo, among others.

Over the course of a week, we discussed hiring standards: what does a Lagos law enforcement officer need to know and training objectives; length of training; ongoing in-service training; picking and training staff; training academy administrative needs; record keeping; and training standards. We also delved into subjects such as integrity, public perception, interagency relations, intergovernmental relations, nepotism and cronyism, and the unique problems of Lagos. Yet discussions led back to training and the training academy as the venue to combat the ills and extoll the virtues of law enforcement.

During my ten days, I also interacted with two groups of trainees. These groups are part of a 20 month training cycle after which the training will be evaluated and refined, although that happens with each batch. I addressed both classes, referred to as Batch 5 and Batch 6, and evaluated their group presentations which dealt with real world problems found while in field training and solutions to those problems. The trainees also made recommendations to the State Government for administrative and systemic changes. I was also able to see the areas where the trainees' field experiences took place. The students and the administrators were all excited to have me there.

On late December 19, 2012, I started a 22-hour trip back to Baltimore from Murtala Muhammed International Airport in Lagos. All told, this was one of the best training experiences I have had as a trainer. I think I stimulated some thought and gave the workshop participants suggestions on how to make the Lagos Law Enforcement Institute a reality. It is my hope IADLEST will continue to assist the Lagos State government in building a top flight law enforcement training academy.



 **Using Educational Technologies
to Promote Public Safety**

Paul M. Plaisted
Justice Planning and Management Associates
(207) 621-8600
www.jpmaweb.com
pplaisted@jpmaweb.com

**Nation's Premier Online Training Provider
Contact us for Partnership Options**

JPMA is an IADLEST Member

THE SYSTEMS DESIGN GROUP

Val Lubans, Director
**Consultants to Public Safety Standards Agencies
and Other Public Safety Organizations**
Since 1970

Statewide Multi-Agency
Job Task Analysis Studies
Curriculum Validation-Physical and Medical
Selection Standards and Systems

511 Wildcat Hill Road
Harwinton, CT 06791
e-mail: vallubans@snet.net
Office 860-485-0803 Fax: 860-689-8009

Systems Design Group is a Member of IADLEST

POLICE TECHNICAL

LAW ENFORCEMENT'S BEST SOURCE FOR TECHNICAL TRAINING

Police Technical provides superior quality training in computer applications, online investigations, web-based software, and digital forensics to law enforcement personnel facilitated by expert instructors using proprietary, validated methods of instruction.

Feature courses include:

- Craigslist Investigations
- Social Media Methods
- Excel® for Public Safety
- Cell Phone Investigations

www.policetechnical.com

Police Technical is an IADLEST member



At **no cost**, the Purdue Pharma Law Enforcement Liaison & Education Unit offers **training programs** for law enforcement and healthcare professionals to help **stop prescription drug abuse and diversion**; free **educational materials**, including **drug identification cards**, and placebos for "reverse sting" operations.

Ronald J. D'Ulisse, Senior Director
Law Enforcement Liaison & Education
Purdue Pharma L.P., Stamford, CT 06901-3431
(203) 588-4387 • E-mail: ron.dulisse@pharma.com

Purdue Pharma L.P. is an IADLEST member.

© 2006, Purdue Pharma L.P. C7345 3/06

Public Agency Training Council® "Academy Quality Module Training"

*More than 100 Different Courses.
More than 700 seminars a year.
Our instructors make the difference.*

6100 North Keystone Ave, Suite #245
Indianapolis, IN 46220
phone (800) 365-0119 fax (317) 235-3484
www.patc.com

An IADLEST Member



Wicklander-Zulawski and Associates, Inc.

Wicklander-Zulawski and Associates (WZ) is the recognized leader in training law enforcement professionals on non-confrontational interview and interrogation techniques.

Since 1982, WZ has trained over 100,000 individuals through standard and customized courses including:

- Criminal Interview & Interrogation
- D.O.A: Death Investigations
- Tactical Interview & Interrogation
- Interview & Interrogation Techniques for Child Abuse Cases
- Gang Investigation "Triple I" - Identify, Interview, and Interrogate

Register NOW for an Open Seminar or call to schedule on-site training. Mention this ad and receive 10% off your next WZ seminar.

www.w-z.com or (800) 222-7789

I/O SOLUTIONS

Industrial/Organizational Solutions, Inc.

1127 S. Mannheim Rd., Suite 203
Westchester, IL 60154
(888) 784-1290; www.iosolutions.org

Entrance exams, National Criminal Justice Officer Selection Inventory (NCJOSI), physical ability, and promotional tests. I/O Solutions has worked on statewide projects with several IADLEST members.

I/O Solutions is an IADLEST Member

John E. Reid and Associates, Inc.

250 S. Wacker Dr., Suite 110
Chicago, IL 60606
(312) 876-1600; fax: (312) 876-1743
E-mail: info@reid.com

"John E. Reid and Associates provides training programs on investigation and interrogation techniques, as well as seminars on specialized techniques of the investigation of street crimes. We have also produced a variety of audio and video training programs, as well as several books designed to enhance the investigator's interviewing skills."

John E. Reid and Associates, Inc.
is an IADLEST Member



Scheduling • Registration • Housing
Training • Testing • Compliance

Contact Ari Vidali or Cory Myers
101 W. Kirkwood Avenue, Suite 200
Bloomington, IN 47401
(888) 313-8324
info@envisagenow.com

Envisage Technologies is an IADLEST Member

**SUPREME COURT OF GEORGIA
UPHOLDS CELL PHONE
RECORD EVIDENCE**

by Brian S. Batterton, Attorney

©Legal and Liability Risk Management Institute/ Public Agency Training Council 1-800-365-0119 • www.patc.com

On November 5, 2012, the Supreme Court of Georgia decided *Registe v. State*ⁱ which provides excellent guidance regarding the release of non-content cellular phone records. The facts of *Registe* are as follows:

The record shows that Registe has been indicted for the July 20, 2007, murder of two men who were shot in the head some time after borrowing a car from Lawrence Kidd. The next morning, Kidd told police that the victims were going to meet someone named “Mike,” and Kidd provided Mike's cell phone number. Using this cell number, Detective R. Jackson faxed Cricket Communications, the cell service provider, the following message on July 21, 2007:

The Columbus Police Dept. is currently investigating a double homicide which occurred at approximately 2130 hours on 07-20-07. We have information that the victim last met with the owner of this phone (706-617-3602) which makes him a suspect at this time. Obviously this suspect presents an immediate danger to any law enforcement officer who may come into contact with this person. We are requesting information as to the owner of this phone as well as any calls to and from this number within a two hour period starting at 8:30 pm to 10:30 pm on 07-20-07 EST. Thank you for your cooperation.

Cricket Communications responded on July 22, 2007, with the requested information. Cricket reported that the

account belonged to “Kareem Penn,” an alias of Registe.

After cold calling numbers in the phone records provided by Cricket, the police spoke with Michael Brown, who stated he had picked up Registe at a time shortly after the shootings. Brown named others who had information. Combined, these individuals stated they had seen blood on Registe's clothing, and they named the hotel where Registe spent time. Through persons at the hotel and photo identification by Brown and his acquaintances, “Mike” was identified as Registe, and, on July 22, 2007, an arrest warrant was issued. On July 24, 2007, the Columbus Police executed a search warrant at an apartment linked to Registe where they found a gun and the cell phone assigned to the phone number at issue in this case. Later, on September 19, 2007, Columbus Police acquired a court order for the production of documentary evidence from Cricket Communications, specifically the cell phone records of Kareem Penn from July 10, 2007, to July 25, 2007.ⁱⁱ

Registe filed a motion to suppress the cell phone records that were initially obtained from Cricket Communications. The trial court denied the motion and ultimately, Registe appealed to the Supreme Court of Georgia. The issue on appeal was whether the trial court erred in denying the motion to suppress.

At the outset, the court stated

As an initial matter, telephone billing records are business records owned by the telephone company, not the defendant. As a result, defendants generally lack standing to challenge the release of such records under the Fourth Amendment because they do not have a reasonable expectation of privacy in records belonging to someone else. *Kesler v. State*, 249 Ga.

462, 469 (5) (291 SE2d 497) (1982).ⁱⁱⁱ
[emphasis added]

Thus, the court stated that Registe cannot challenge the government's obtaining and using the cell phone records based upon the *Fourth Amendment*.

As such, Registe challenged the government obtaining and using as evidence the cell phone records based on Georgia law, particularly *O.C.G.A. § 16-11-66.1* which states the following:

(a) A law enforcement officer, a prosecuting attorney, or the Attorney General may require the disclosure of stored wire or electronic communications, as well as transactional records pertaining thereto, to the extent and under the procedures and conditions provided for by the laws of the United States. (b) A provider of electronic communication service or remote computing service shall provide the contents of, and transactional records pertaining to, wire and electronic communications in its possession or reasonably accessible thereto when a requesting law enforcement officer, a prosecuting attorney, or the Attorney General complies with the provisions for access thereto *set forth by the laws of the United States*.^{iv}

Further, the "laws of the United States" to which the above code section refers is *18 U.S.C. § 2701 et seq*, which governs mandatory and voluntary disclosure of electronic communications. Particularly at issue was *18 U.S.C. § 2702(c)(4)* which allows a cell phone provider to voluntarily release non-content records, including subscriber information

[T]o a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency.^v

Registe argued that that, in his case, there were no emergency conditions supporting a release of the

telephone records. However, the court noted that suppression of evidence is not an available remedy under *O.C.G.A. § 16-11-66.1* (violations are punishable by contempt) or *18 U.S.C. § 2702(c)(4)* (which allows for a civil action for violations). However, Registe points to *O.C.G.A. § 16-11-67* which states

No evidence obtained in a manner which violates any of the provisions of this part [regarding wiretapping, eavesdropping, surveillance, and related offenses] shall be admissible in any court of this state except to prove violations of this part.^{vi}

Thus, Registe argued that under *O.C.G.A. § 16-11-67*, the phone records should be inadmissible because no emergency existed at the time the records were obtained by law enforcement. The court, however, disagreed and stated that this code section only applies to mandatory releases of information and the police obtained Registe's records under the provider's voluntary release of information. Thus, the court stated that since Cricket (the provider) voluntarily released the information with good faith belief that a danger existed, the release was appropriate, and the information was obtained lawfully under *18 U.S.C. § 2702(c)(4)* which governs the voluntary release of information; as such, *O.C.G.A. § 16-11-67* does not apply.

As such the Supreme Court of Georgia held

The voluntary release of Registe's cell phone records by Cricket to the police complied with the state and federal statutory provisions cited above and precluded suppression of the evidence. Registe's motion to suppress was properly denied.^{vii}

ⁱ S12A1190, 2012 Ga. LEXIS 862 (November 5, 2012)

ⁱⁱ Id. at 1-3

ⁱⁱⁱ Id. at 3

^{iv} Id. at 4

^v Id. at 5

^{vi} Id.

^{vii} Id. at 7

TERRY STOPS AND DE FACTO ARRESTS

by: Brian S. Batterton, Attorney

©Legal and Liability Risk Management Institute/ Public Agency Training Council 1-800-365-0119 • www.patc.com

On November 7, 2012, the First Circuit Court of Appeals decided the *United States v. Rabbia*¹, which serves as an excellent review of reasonable suspicion, *Terry* stops, and de facto arrests. The facts of *Rabbia*, taken directly from the case, are as follows:

At 11:00 p.m. on September 3, 2008, police detectives Derek Sullivan and Emmett Macken were patrolling an area in downtown Manchester, New Hampshire, they knew to be the site of significant drug trafficking activity. Sullivan and Macken were members of the Manchester Police Department's Street Crime Unit, a plain clothes unit assigned to urban neighborhoods with high rates of criminal activity. A majority of the unit's arrests were related to drug crimes and, in the detectives' experience, the individuals involved in these crimes tended to be armed.

While driving an unmarked vehicle, Sullivan and Macken observed a small group of men gathered in front of 282 Concord Street, a rooming house known to the detectives to be a center of drug activity. One of the men, later determined to be Joshua Lacy, reached into his waistband with his hand concealed by his shirt, which led Macken to suspect that he was carrying a gun. Concerned, the detectives parked their vehicle one block away and got out to conduct surveillance on foot.

After watching the group for a short while, the detectives saw Lacy and another man, later identified as Bryan Bleau, separate from the group and walk to a parking lot behind 282 Concord Street that abutted a busy public alleyway. There, they were joined by a

third man, who remains unidentified. As the three men were conversing, Lacy held out his wallet; and the detectives heard him say to the unidentified man, "I already gave you \$70" and "don't let me down." The unidentified man then left the lot.

Believing that they were observing the beginnings of a drug deal, the detectives continued to watch Lacy and Bleau. After several minutes, a black Honda Civic pulled into the parking lot; and Bleau entered the passenger's side door. The Civic then drove away. When it returned a few minutes later, Bleau emerged from the passenger's side door and retrieved a bag from the trunk. Expecting the bag to contain drugs, the detectives decided to approach Lacy, Bleau, and the driver of the Civic, later identified as Rabbia. Because they were outnumbered three to two, Sullivan and Macken called for backup to detective Paul Thompson, who was nearby.

Without waiting for Thompson, Sullivan and Macken drew their service weapons and approached the trio. Lacy and Bleau were standing in the parking lot. Rabbia was still seated in his car. Because the detectives were wearing civilian clothes, they announced themselves as police officers and displayed their badges. Macken then ordered Lacy and Bleau to lay on the ground and proceeded to pat-frisk and handcuff them. As he was restraining Lacy and Bleau, Macken was joined by Thompson, who began to question Bleau about the contents of the bag he had removed from the Civic.

Meanwhile, Sullivan walked up to the Civic alone with his weapon drawn. He was approximately 30 or 40 feet from Macken and Thompson, who were occupied with Lacy and Bleau. From where he stood, Sullivan could only see Rabbia's upper body and could not

determine if he was armed. Sullivan instructed Rabbia to exit the car. When he complied, Sullivan placed him in handcuffs. As he did so, Sullivan told Rabbia that he was not under arrest, that he was being handcuffed as a safety measure, and that the handcuffs would be removed when other officers arrived. Rabbia indicated that he understood. Sullivan then pat-frisked Rabbia for weapons and found none. During the frisk, Sullivan reiterated that Rabbia had been handcuffed as a precaution and that the handcuffs would be removed when additional officers appeared.

While Rabbia was still in handcuffs, Sullivan heard Thompson say that the bag retrieved from the Civic contained a gun. Shortly thereafter, another officer arrived on the scene and, as promised, Rabbia's handcuffs were removed. In all, he had been handcuffed for approximately five minutes.

After the handcuffs were removed, Sullivan asked Rabbia what he had been doing, without advising him of his constitutional rights pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). When Rabbia responded that he had been giving Bleau a ride home, Sullivan replied that he did not believe him. Rabbia then said that he had picked up Bleau and sold the gun in the bag to him for \$200. Sullivan asked Rabbia to describe the gun, and Rabbia identified the weapon as a shotgun. Sullivan confirmed with Thompson that the bag contained a 12-gauge shotgun and shells.

After a records check revealed that Rabbia and Bleau had previously been convicted of felonies, they were formally arrested for unlawful possession of a firearm and ammunition following a felony conviction. *See 18*

U.S.C. § 922(g)(1). About thirty minutes had elapsed since Sullivan first confronted Rabbia.

Rabbia was then transported to the police station and read his Miranda rights. He waived those rights and gave a more complete description of the gun sale. Rabbia and Bleau had been imprisoned together previously. As they were finishing their sentences and leaving prison, Rabbia told Bleau that he had a gun he wanted to sell. Bleau later contacted Rabbia to purchase the gun, offering to pay \$200. They arranged a meeting place for the sale, which is what led to the events immediately prior to the encounter described above.

At the police station, Rabbia gave written consent to search a room in his mother's apartment, where he claimed to be living. That search was unproductive, but Rabbia's mother informed the detectives that he had in fact been staying with his girlfriend in a different apartment. Rabbia's girlfriend consented to a search of her apartment and, in a drawer containing Rabbia's clothing, the detectives found a box of .45 caliber shells and an empty box of 12-gauge shotgun shells.ⁱⁱ

Rabbia filed a motion to suppress the gun, ammunition, and his statements. The district court denied his motion, and he appealed to the First Circuit Court of Appeals. On appeal he argued (1) that the officers did not possess sufficient reasonable suspicion of criminal activity to detain him, and (2) even if reasonable suspicion was present, the officers' actions amounted to a de facto arrest and his statements that were made prior to *Miranda* warnings should be suppressed.

Thus, the first issue before the court was whether the facts and circumstances surrounding this incident provided the officers with sufficient reasonable suspicion to detain Rabbia. The First

Circuit noted that the rule regarding investigative detentions (aka *Terry* stops) is that

A police officer is permitted to make a brief investigatory stop, commonly known as a Terry stop, based on a reasonable suspicion that criminal activity may be afoot. The officer must have a particularized and objective basis for suspecting the person stopped of criminal activity, rooted firmly in specific and articulable facts.ⁱⁱⁱ [internal citations and quotations omitted] [emphasis added]

The relevant facts pertinent to this issue are as follows: (1) the officers were in an area known for illegal drug activity; (2) the officers observed an apparent commercial transaction at 11:00 p.m. in a parking lot behind a known drug house; (3) the officers heard one man say to another “I already gave you \$70...don’t let me down”; (4) the officer observed one of the men (Bleau) leave and Rabbia drive into the parking lot, pick up another man, and drop him off a few minutes later; and (5) the officer observed Bleau remove a bag from Rabbia’s trunk which appeared to complete the transaction.

The First Circuit then noted that the presence of the suspects in a high-crime area is not alone sufficient to justify a detention. However, it is also not a factor that must be overlooked. Thus, the location plus the other relevant factors can amount to reasonable suspicion sufficient to justify a *Terry* stop. Further, they noted various other federal circuits have held that similar behavior to what the officers observed in Rabbia does amount to sufficient reasonable suspicion of criminal activity.^{iv} Lastly, the court noted that it is not significant that, after the investigation, the officers learned it was a gun deal rather than a drug deal.

Thus, the court held that the officers did have sufficient reasonable suspicion to justify a *Terry* stop (investigative detention) of Rabbia in this case.

The second issue before the court was whether the officers’ display of their firearms and handcuffing and frisking of Rabbia amounted to a de facto arrest that should render any non-*Mirandized* statement inadmissible as a *Fifth Amendment* violation. The First Circuit then stated several rules regarding *Terry* stops and de facto arrests. First, they stated

Because a *Terry* stop allows an individual to be seized on less than probable cause, the extent of that intrusion must be limited. If those limits are exceeded, the stop may evolve into a de facto arrest; and if it does, the suspect is entitled under the *Fifth Amendment to Miranda* warnings before being interrogated.^v [internal citations and quotations omitted] [emphasis added]

Second, the court noted

Where an investigatory stop is justified at its inception, it will generally not morph into a de facto arrest as long as the actions undertaken by the officer[s] following the stop were reasonably responsive to the circumstances justifying the stop in the first place as augmented by information gleaned by the officer[s] during the stop.^{vi} [internal citations and quotations omitted] [emphasis added]

Lastly, the court noted

Whether a *Terry* stop has escalated into a de facto arrest depends on a number of factors, including, inter alia, the location and duration of the stop, the number of police officers present at the scene, the degree of physical restraint placed upon the suspect, and the information conveyed to the suspect. Above all, an inquiring court must bear in mind that it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties.^{vii} [internal

citations and quotations omitted]
[emphasis added]

Rabbia argued that the display of firearms, handcuffing and frisk transformed the *Terry* stop into a de facto arrest. The court then examined the relevant facts that pertain to this issue. The facts are as follows: (1) Rabbia was stopped because it was suspected he was involved in a drug transaction; (2) Rabbia's full body was not visible to the officer as he approached Rabbia; (3) Rabbia could have easily been concealing a weapon in his vehicle and weapons are commonly associated with drug transactions; (4) the officer approached Rabbia with his weapon drawn, handcuffed Rabbia and quickly frisked him; (5) the officer told Rabbia he was not under arrest and would be un-handcuffed when additional back-up officers arrived; (6) upon the arrival of additional back-up, Rabbia was un-handcuffed; and (7) the whole detention prior to formal arrest lasted about 30 minutes.

The First Circuit then addressed whether the gun pointing, handcuffing, and frisking together transformed the stop into a de facto arrest. The court noted

"[T]he intrusiveness of the measures taken . . . is only part of the equation," however. *Pontoo*, 666 F.3d at 30. **When officer safety is a legitimate concern, these prophylactic measures can be employed, even in combination, without exceeding the constitutional limits of a Terry stop.** See *id.* at 30-31; see also *United States v. Mohamed*, 630 F.3d 1, 6-7 (1st Cir. 2010) (observing that "valid concerns for [officers'] safety during the stop" justified use of drawing weapons, surrounding defendant, and using handcuff and pat-frisk during brief detention).^{viii}

The court noted that the relevant facts of this case provided the officer with "a good reason to fear that Rabbia was armed and dangerous," and it was reasonable for the officer to "neutralize the risk of harm by drawing his weapon,

applying handcuffs, and conducting a pat-frisk."^{ix} Further, the court found it significant that the officer told Rabbia he was not under arrest and would be un-handcuffed when back-up arrived and then, did in fact, un-handcuff him when back-up arrived. Lastly, the stop time of 30 minutes prior to arrest was held to be reasonable.

The court then held that the use of guns and handcuffing in this case, "while intrusive, was both proportional to the occasion and brief in duration."^x As such, the stop was not transformed into a de facto arrest and no *Fifth Amendment* violation occurred.

As such, the First Circuit affirmed the denial of the motion to suppress.

ⁱ No. 11-1510, 2012 U.S. App. LEXIS 22912 (1st Cir. Decided November 7, 2012)

ⁱⁱ *Id.* at 2-6

ⁱⁱⁱ *Id.* at 8

^{iv} *Id.* at 9 (A reasonably prudent and experienced police officer would have recognized this behavior as consistent with the consummation of a drug deal. See *United States v. Miller*, 959 F.2d 1535, 1539 (11th Cir. 1992) (describing drug transactions in which "the supplier arrived by car, [the customer] got in the car, the car drove around the block during which time the exchange of drugs for money occurred, and then the car returned to the residence and dropped [the customer] off"); *United States v. Morris*, 223 F. App'x 491, 495 (7th Cir. 2007) (referring to "behavior consistent with drug-dealing, namely entering a car, riding around the block, and then exiting the vehicle"); cf. *United States v. Funches*, 327 F.3d 582, 586 (7th Cir. 2003) ("Experienced agents would recognize the use of an intermediary and the parties moving to a less-visible location before goods are exchanged as common characteristics of drug transactions undertaken to protect the identity of sellers and to avoid detection by authorities.")

^v *Id.* at 12-13

^{vi} *Id.* at 13

^{vii} *Id.* at 14

^{viii} *Id.* at 15-16

^{ix} *Id.* at 16

^x *Id.* at 19



PursuitPolicy.org

**ELEVENTH CIRCUIT UPHOLDS
QUALIFIED IMMUNITY FOR
OFFICERS IN SHOOTING
EMOTIONALLY DISTURBED MAN**

By Brian S. Batterton, Attorney

©Legal and Liability Risk Management Institute/ Public
Agency Training Council 1-800-365-0119 • www.patc.com

One of the most difficult calls for service for law enforcement officers involves emotionally disturbed persons. Officers are faced with the problem of trying to help a person obtain needed assistance while at the same time using force against that person in order to protect themselves. On October 23, 2012, the Eleventh Circuit Court of Appeals decided *Oakes v. Anderson et al.*,¹ which illustrates the problems with this type of incident. The facts of *Oakes*, taken directly from the case, are as follows:

Officer Daniels was dispatched to a shopping center after a 911 call was received, indicating possible trouble between some people in the parking lot. When Daniels arrived at the parking lot, Oakes' girlfriend Karen Maxwell was present, as was Ben Wheeler, whom Maxwell had called to help her with Oakes. Maxwell told Daniels that Oakes had been drinking for three days and had threatened suicide. Oakes had told Maxwell that he wanted to kill himself but could not pull the trigger because he was a "coward."

Maxwell showed Daniels a gun case that she had taken out of Oakes' vehicle; but when Daniels opened the case, he found it to be empty. Daniels, Maxwell, and Wheeler believed that Oakes likely had the gun somewhere in the car.

Oakes was leaning against the car when Daniels first arrived but then moved to the driver's seat of the car, with his legs hanging outside the open door. When Daniels arrived, Oakes became more agitated. The officer offered to take Oakes

anywhere he wanted to go to get help. Daniels, concerned that Oakes had access to a gun in his car, repeatedly asked in a calm voice for Oakes to leave the vehicle. Oakes refused. He had committed no crime: Daniels was attempting to help Oakes because of Oakes' emotional state. He was not under arrest.

Officer Wernecke then arrived at the parking lot as back-up for Daniels. Daniels' efforts to get Oakes to leave his car had yielded no progress. Now both officers talked to Oakes. Around this time, he put his legs inside the car and continued to sit in the driver's seat. He refused to let the officers search his vehicle and continued to refuse to leave the vehicle. The officers were concerned about Oakes's access to a gun in his car, and Oakes became increasingly agitated. About 15 minutes after he had first arrived at the scene, Daniels radioed for a supervisor because Daniels felt that he and Wernecke were at an impasse with Oakes. Sgt. Anderson arrived. He was told that Oakes likely had access to a gun, was depressed and suicidal.

Anderson approached Oakes and asked if the officers could get him help. He also asked Oakes whether he was on medication. Oakes said that he was prescribed depression medication but was not taking it. Anderson repeatedly asked Oakes if he had a weapon. Oakes said he did not have a weapon. When the officers asked again, Oakes would not answer directly, only saying, "What do you mean by a 'weapon'?"

Anderson was concerned that Oakes was sitting on the gun and asked Oakes if he would sit up so the officers could check. Oakes moved very slightly, but the officers could not see whether a gun was in the seat. Anderson repeatedly asked Oakes to step out of the car, just so the

officers could ensure there was no weapon.

About this time, Wernecke activated an audio recording device that he was wearing. Parts of the recording are difficult to understand due to background noise, but Anderson can clearly be heard saying that he is asking Oakes one last time to step out of the car or the officers would have to take him out of the car.

Oakes still refused and stated that the officers "better unsnap." Oakes can be heard on the recording saying, "I ain't going down this way." Anderson again told Oakes to "stand down" so the officers could search the car for safety's sake, to ensure there was no weapon. Oakes again refused to comply.

Anderson, who was standing inside the open driver's door, reached for Oakes' right arm while Daniels reached for Oakes' left arm. Oakes flailed his hands and repelled the officers' hands.

Wheeler, who was now standing on the passenger side of the car, said that Oakes turned and pointed at him with his index and middle fingers. Oakes then reached into the area between the driver's seat and the center console.

Oakes' right hand was not within the officers' view. Fearful that Oakes was reaching for his gun, Anderson shouted "gun, gun, gun" to alert the other officers. Anderson did not actually see any gun. He quickly moved to the outside of the open driver's side door and drew his weapon. Daniels and Wernecke also drew their weapons.

For about 30 seconds, the officers can be heard on the audio recording repeatedly shouting "show your hands!," "Hands up!," "One more time, sir hands up!," and "Let me see your hands now!" Anderson

said he could see Oakes wiggling his right arm, as if his hand was searching for something between the seat and console.

At that point, Anderson saw Oakes jerk his right hand out of the space between the seat and the console and start to move his arm across his body. From this movement, Anderson thought Oakes had grabbed a gun and was pulling it out. Believing Oakes was "fixing to fire," Anderson shot twice and fatally wounded Oakes. Anderson had not actually seen a gun.

Daniels, who had been standing behind Oakes and to the left, said he saw Oakes' shoulders move up and his hands come up, "like he was trying to pull something out." Wernecke, who had been standing at Oakes' left profile, said he saw Oakes' right arm "kind of go up in a jerking motion," but he had not seen the hand actually come out of the hole or move across Oakes' body. None of the officers had seen a gun.

No gun was in Oakes's hand, but a loaded gun was later found between the driver's seat and the center console in the very area that Oakes had reached: Oakes had access to the gun while he was refusing the commands to show his hand.ⁱⁱ

The Oakes estate (the plaintiff) filed suit on his behalf and alleged that the officers used excessive force in violation of the *Fourth Amendment*. The district court found that the officer's actions were objectively reasonable such that no constitutional violation occurred, and the officers were granted qualified immunity. The plaintiff appealed to the Eleventh Circuit Court of Appeals.

The plaintiffs made two contentions on appeal. First, they argued that the officers were unreasonable in shooting Oakes and, as such, it was excessive force under the *Fourth Amendment*.

Second, they argued that the officers used improper or bad tactics and that led to the officer's need to use deadly force on Oakes.

Issue One: Did the officer use excessive force when he shot Oakes?

The Eleventh Circuit first noted two rules regarding excessive force. First, the court stated

[E]xcessive force claims are to be analyzed under the "objective reasonableness" standard set out in *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989).

Under *Graham*, the reasonableness of the force used to effect a seizure "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Id.* at 396, 109 S. Ct. at 1871 (internal quotations omitted). And "the 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397, 109 S. Ct. at 1872.ⁱⁱⁱ [emphasis added]

Second, the court noted that, under *Graham*, they must view the totality of the circumstances when evaluating a use of force. Specifically, the court stated

Graham counsels that the totality of the circumstances must be reviewed: the test of reasonableness "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396, 109 S. Ct. at 1872.^{iv} [emphasis added]

The court then looked at the facts that are relevant to this issue. The relevant facts are as follows: (1) The officers were dealing with an emotionally distraught man who threatened suicide; (2) Oakes likely had a gun in his vehicle, as evidenced by the empty gun case; (3) Oakes repeatedly refused the officer's requests to exit his vehicle; (4) Oakes would not allow the officer's to search his vehicle for the gun; (5) when officers told Oakes they were going to remove him from his car he stated that they "better unsnap" and he "ain't going down this way"; (6) as the officers attempted to remove Oakes from the car, he reached his hand between the driver's seat and center console such that his hand was hidden from view; (7) for about 30 seconds officers shouted for Oakes to show his hands but he refused; and (8) Oakes made a sudden, jerking motion with his right arm (the one at the center console area), and Sergeant Anderson shot him.

The court did note that the officers had slightly different explanations of Oakes' motion with his hand, but all were consistent that he had reached to the seat/center console area and then made a sudden movement. The court explained that any minor discrepancy was explained by the officers' different lines of sight. It was also noted that this area between the front seat and the center console is a common area for firearms to be kept.

The court then sought to apply the relevant facts of the case to the guidelines set forth in *Graham*. At the outset, the court noted that, since the officers were not attempting to arrest Oakes and no crime had been committed, the *Graham* analysis is more difficult than in a typical arrest type of case.

However, when examining the threat posed by Oakes, the court held that the officers acted reasonably in shooting Oakes. Specifically, the court stated

Given that Oakes likely had a gun in the vehicle and was reaching with his hand

into a common place for guns to be hidden, this sudden movement—after Oakes had ignored the officer's commands for almost 30 seconds—was sufficient to create a reasonable fear that Oakes was pulling out a gun and could fire in a split second.^v

Further, the court stated

The "reasonableness" standard makes allowance for the fact that an officer on the scene is "often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." *Graham*, 490 U.S. at 397, 109 S. Ct. at 1872. The situation here escalated rapidly. In a span of only five seconds, Oakes went from merely being stubborn, to fighting off the officers and reaching his hand into an area where he could have had a loaded gun. For 30 seconds after the officers drew their weapons, he completely ignored repeated demands to show his hands, then jerked his arm suddenly. This is "exactly the type of tense, uncertain, and rapidly evolving crisis envisioned by the Supreme Court" when officers "reasonably react to what they perceive as an immediate threat of serious harm to themselves." *Garczynski v. Bradshaw*, 573 F.3d 1158, 1168 (11th Cir. 2009) (*internal quotations omitted*).^{vi} [*emphasis added*]

Thus, the Eleventh Circuit held that Sergeant Anderson acted reasonably to the threat of serious harm posed by Oakes when he fired upon Oakes.

Issue Two: Did the officers make tactical mistakes that escalated the incident to the point of requiring deadly force?

The plaintiffs argued that the officers should have distanced themselves from Oakes and should not have attempted to grab him. They assert that these tactical mistakes led to the officers' need to use deadly force.

In response to the plaintiff's argument, the court first stated

Our task is not to evaluate what the officers could or should have done in hindsight. The sole inquiry is whether the officers' actions, as taken, were objectively reasonable under all the circumstances." *Id.* at 1167.

"Reconsideration will nearly always reveal that something different could have been done if the officer knew the future before it occurred. This is what we mean when we say we refuse to second-guess the officer." *Manuel v. City of Atlanta*, 25 F.3d 990, 997 (11th Cir. 1994) (*quoting Plakas v. Drinski*, 19 F.3d 1143, 1149 (7th Cir. 1994)).^{vii} [*emphasis added*]

Contrary to the plaintiff's argument, the court stated

To counter the risks posed by Oakes, it was both reasonable and appropriate for the officers to ask to search the car and ultimately to remove Oakes from the car to determine whether he had access to a gun.^{viii}

The plaintiffs further asserted that the officers could have used some lesser degree of force, such as pepper spray, to assist in removing Oakes from the vehicle. However, the court replied

As for Plaintiffs' claim that the officers should have used pepper spray rather than a firearm, there "is no precedent in this Circuit (or any other) which says that the Constitution requires law enforcement officers to use all feasible alternatives to avoid a situation where deadly force can justifiably be used." *Manuel*, 25 F.3d at 996 (*quoting Plakas*, 19 F.3d at 1148).^{ix} [*emphasis added*]

The court noted that any claims regarding what the officer "should have done" are arguments made with 20/20 hindsight, which is contrary to

the guidance provided in *Graham*, which states that uses of force should be judged from the perspective of a reasonable police officer on the scene.^x

Lastly, the plaintiffs argued that perhaps Oakes was simply complying with the officers' commands to show his hands when he jerked his hand up from between the seat and the center console. The court answered this assertion by stating

Plaintiffs contend that perhaps Oakes was just complying with the officers' orders to show his hands. But there was a good chance that Oakes was pulling his gun out of the hole and could fire upon the officers in a split second. In a life-or-death situation like this, we think that Anderson "need not have taken that chance and hoped for the best." *Scott v. Harris*, 550 U.S. 372, 385, 127 S. Ct. 1769, 1778, 167 L. Ed. 2d 686 (2007).^{xi}

Thus, the Eleventh Circuit held that the officers acted reasonably regarding their attempt to remove Oakes from the vehicle to check it for a gun and the officer's shooting Oakes when he motioned consistent with pulling a gun from between the seat and center console. As such, the court affirmed the grant of qualified immunity.

ⁱ No. 11-10803, 2012 U.S. App. LEXIS 22028 (11th Cir. Decided October 23, 2012 Unpublished)

ⁱⁱ Id. at 2-6

ⁱⁱⁱ Id. at 7

^{iv} Id. at 8

^v Id. at 9-10, fn 5

^{vi} Id. at 11

^{vii} Id. at 12

^{viii} Id. at 13

^{ix} Id.

^x Id. at 14, fn 6

^{xi} Id. at 14



SEVENTH CIRCUIT UPHOLDS EXIGENT SEARCH OF BACKYARD AFTER GUNSHOTS

by Brian S. Batterton, Attorney

©Legal and Liability Risk Management Institute/ Public Agency Training Council 1-800-365-0119 • www.patc.com

Typically, the yard of a home is considered "curtilage" which means that it is given *Fourth Amendment* protection similar to that of the home itself. On November 6, 2012, the Seventh Circuit Court of Appeals decided the *United States v. Schmidt*, which illustrates that, even when a yard is considered protected curtilage, there may be exceptions to the warrant requirement of the *Fourth Amendment* such that a warrantless search is permissible.

The facts of *Schmidt* are as follows:

On May 30, 2011, at around 10:30 p.m., two Milwaukee police officers responding to a call heard a series of gun-shots in or around the intersection of South 10th Street and West Orchard Street in Milwaukee, Wisconsin. Over a dozen officers arrived in the neighborhood to investigate and interview witnesses, and within an hour some had learned that a person had been shot in the leg near that intersection and was in the hospital. The officers remained in the neighborhood until about 4:00 a.m.

Schmidt lived near the intersection in a duplex at 1420/1422 South 10th Street, which shared a backyard with another duplex whose address was listed as 1424/1426 South 10th Street. The 1420/1422 duplex abuts South 10th Street, while the 1424/1426 duplex is a bit farther back, abutting a back alley running parallel to South 10th Street. The front and back of this two-duplex plot were almost entirely enclosed by chain-link fences with "No Trespassing" signs on them, along with chain-link gates, though a small corner of the yard was blocked by a wooden fence on the South 10th Street side.

At approximately 1:00 a.m., one of the investigating officers approached the two-duplex complex from the back alley. He noticed bullet holes in a car parked on a concrete slab adjacent to the backyard and bullet holes in the 1425/1426 duplex itself.

He also noticed a trail of about nine spent casings on the ground, including five casings right next to the 1424/1426 duplex and one casing within the yard. The chain-link gate on the back alley side was open that night; and the officer, without a warrant, entered the backyard and panned the area with his flashlight. He got to the corner of the yard that was blocked from the South 10th Street side by the wooden fence and saw, amidst some tall grass, a small pile of assorted objects, which included an old bicycle, wood, a blue Tupperware lid, a garden hose, and some trash.

Shining his flashlight towards the corner, the officer saw a glint of metal and approached the pile. Without moving any objects, the officer saw the scope and breech of a firearm, and the blue Tupperware lid covering the stock of the firearm. He initially believed the firearm to be a pellet gun or BB gun because a "large bore rifle with a scope [would] just [be] out of place in the area." The officer then lifted the Tupperware lid, pushed some tall grass aside, and saw that the firearm was a .308 Winchester rifle, which he seized.

The rifle belonged to Schmidt, who was charged with being a felon in possession of a firearm.ⁱ

Schmidt filed a motion to suppress and argued that the gun was seized in violation of the *Fourth Amendment*. The motion was denied and he entered a plea with the right to appeal. He then appealed to the Seventh Circuit Court of Appeals.

On appeal, Schmidt argued that (1) the officer's entered his curtilage in violation of the *Fourth Amendment* when they entered and searched without a warrant, and (2) that even if they entered under a valid exception to the warrant requirement, the search of the pile of debris for the

rifle exceeded the scope of a permissible search because a victim could not have been under the Tupperware lid, where the officer found the rifle.

The Seventh Circuit began its analysis with the assumption that Schmidt's yard at his duplex was curtilage and entitled to *Fourth Amendment* protection. With this in mind, the court then examined the "exigent circumstance" exception to the warrant requirement. The court stated

Warrantless searches of areas entitled to *Fourth Amendment* protection are presumptively unreasonable, but the government may overcome this presumption by demonstrating that, from the perspective of the officer at the scene, a reasonable officer could believe that exigent circumstances existed and that there was no time to obtain a warrant. Exigent circumstances exist, for example, when officers must "'render emergency assistance to an injured [person] or to protect a [person] from imminent injury."ⁱⁱ [internal citations and quotations omitted] [emphasis added]

The Seventh Circuit then examined the facts relevant to the issue of exigent circumstances. First, at the time of the search, gunshots had been heard in the area. Second, bullet holes were observed in a car that was next to the backyard. Third, there were spent shell casings on the ground next to the 1424/1426 duplex. Taken together, the court held that these facts amounted to sufficient exigent circumstance for the officer to enter the backyard to check for wounded victims that needed medical aid. The defendant argued that two hours had passed since the gunshots and that passage of time diminished the exigent circumstances. However, the court answered this argument by stating

If a victim had been shot in the yard, as a reasonable officer could have suspected, that victim would not have become any less wounded after two hours had passed; to the contrary, he would need immediate aid. It would not have made sense for an officer to wait for a warrant when a shooting victim

could have been dying in the yard, and the officer also did not need to know that someone had actually been shot in order to go into the yard.ⁱⁱⁱ

The defendant also argued that the officer did not enter with the intent of looking for victims, but rather with the intent to look for more evidence (in addition to the shell casings and bullet holes). However, to this the court stated

[W]e do not look at the subjective motivations of an officer when examining the objective basis for a finding of exigent circumstances. See *Brigham City v. Stuart*, 547 U.S. 398, 404, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006) ("An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed objectively, justify [the] action.'" (citation omitted)).^{iv} [emphasis added]

As such, the Seventh Circuit held that sufficient exigent circumstance, particularly checking for wounded victims, was present in this case and justified the officer's warrantless entry into Schmidt's backyard.

Schmidt's other argument for suppression of the rifle stems from his allegation that the officer exceeded the permissible scope of the exigent search when he looked under the Tupperware in the debris pile in the backyard because a person could not have been hidden in the pile. The court, however, looked at the seizure of the rifle as falling under the plain view exception to the search warrant requirement. The court stated

A warrantless seizure of an object is justified if: "(1) the officer was lawfully present in the place from where he viewed the item, (2) the item was in plain view, and (3) its incriminating nature was 'immediately apparent. For the incriminating nature to be immediately apparent, the officer must have probable cause to believe that the item is contraband or otherwise linked to

criminal activity.^v [internal citations and quotations omitted] [emphasis added]

The court then reasoned that here, the officer was lawfully present in Schmidt's backyard based on the exigent circumstance exception. Then, the court reasoned that the rifle was in plain view because, before the officer moved anything in the debris pile, he observed the scope and breech of the rifle. Lastly, the incriminating nature of the rifle was immediately apparent to the officer when one also considered the totality of the circumstances, particularly, the bullet holes, spent shell casings and report of shots fired. Thus, even though rifles may be legally possessed, in light of all the circumstances surrounding the incident, the incriminating nature may still be apparent to the officer.^{vi}

Schmidt argued that because the officer testified that he originally had a thought that it was likely a BB gun, the nature of the rifle was not immediately apparent. However, the court stated

We do not think that when something that looks like a gun is in plain view after gunshots had been heard nearby, an officer lacks probable cause to believe that the gun is linked to the gunshots simply because it might end up being a pellet gun or BB gun.^{vii}

Therefore, the court upheld the seizure of the rifle as a lawful search and seizure under the plain view exception to the search warrant requirement, and as such, they affirmed the denial of the motion to suppress.

ⁱ Id at 2-5

ⁱⁱ Id. at 6

ⁱⁱⁱ Id. at 7-8

^{iv} Id. at 8

^v Id. at 10

^{vi} Id. at 11 (See Cellitti, 387 F.3d at 624 [*11] (HN8 "officers may have probable cause to seize an ordinarily innocuous object when the context of an investigation casts that item in a suspicious light"); see, e.g., *United States v. Van Dreel*, 155 F.3d 902, 905 (7th Cir. 1998) ("[a]lthough guns and ammunition may be lawfully possessed, in the context of [the crimes of] bank robbery and hunting out of season, these items assume an incriminating nature").

^{vii} Id. at 12

EIGHTH CIRCUIT UPHOLDS WARRANTLESS SEARCH OF MOTOR HOME

By Brian S. Batterton, Attorney

©Legal and Liability Risk Management Institute/ Public Agency Training Council 1-800-365-0119 • www.patc.com

On November 8, 2012, the Eighth Circuit Court of Appeals decided the *United States v. Coleman*ⁱ, which serves as an excellent review of traffic stop and vehicle search law. The facts of *Coleman* are as follows:

On July 31, 2010, Coleman was driving his motor home on Interstate 80 in Hall County, Nebraska. Nebraska State Patrol Trooper Jason Bauer observed two vehicles with Florida license plates traveling eastbound on Interstate 80 under the posted speed limit. Trooper Bauer began following the vehicles and observed the second vehicle, Coleman's motor home, swerve. The passenger-side tires of the motor home twice crossed over the fog line at the shoulder of the highway. Trooper Bauer stopped Coleman for driving on the shoulder.

Trooper Bauer asked Coleman to sit with him in his patrol car while the officer wrote a warning citation and checked Coleman's license status and criminal history. Trooper Bauer questioned Coleman about his travel plans and whether he had a criminal history, which Coleman denied. The state patrol dispatch was unable to check Coleman's criminal history with only a name and date of birth so Trooper Bauer relayed Coleman's social security number. Dispatch responded, and Trooper Bauer learned Coleman had an extensive criminal history, including drug, robbery, and weapons offenses. Trooper Bauer again asked Coleman if he had ever been arrested, and Coleman again said he had not. When Trooper Bauer questioned Coleman about drug

use, Coleman admitted he used medically prescribed marijuana while in California a few months prior. Trooper Bauer inquired if Coleman had any medical marijuana with him. Coleman replied that he did in the front part of the motor home. Trooper Bauer then placed Coleman in the backseat of his patrol car while he entered the motor home.

Trooper Bauer entered the motor home through the passenger-side door where Coleman had exited the vehicle. Trooper Bauer conducted a sweep of the motor home to ensure it was unoccupied. In a large compartment under the bed, Trooper Bauer located a black weapons-type bag. Trooper Bauer opened the bag and discovered a high-point rifle and ammunition. Trooper Bauer confirmed with dispatch that Coleman was a convicted felon. Trooper Bauer then located marijuana in the front of the motor home.ⁱⁱ

Subsequently, Coleman was indicted for a federal firearms violation. He filed a motion to suppress the firearm which was denied. He then filed an appeal of the denial of his motion to suppress to the Eighth Circuit Court of Appeals. The issues on appeal upon which we will focus are as follows: (1) whether probable cause existed to conduct a traffic stop of Coleman's vehicle; (2) whether reasonable suspicion supported the extension or expansion of the scope of the stop; (3) whether the questioning during the traffic stop was custodial questioning that required *Miranda* warnings; and (4) whether the warrantless search of the motor home was reasonable under the *Fourth Amendment*.

Issue One: Was there probable cause to support the traffic stop?

Regarding this issue, the court stated

A traffic violation, no matter how minor, provides an officer with probable cause to stop the driver. *See United States v. Jones, 275 F.3d 673, 680 (8th Cir. 2001)*. "An officer is justified in stopping a motorist

when the officer 'objectively has a reasonable basis for believing that the driver has breached a traffic law.'" *United States v. Mallari*, 334 F.3d 765, 766-67 (8th Cir. 2003)ⁱⁱⁱ

The trooper testified that he stopped Coleman because he violated a Nebraska statute that prohibits driving on the shoulder of a highway.^{iv} The trooper said that he observed Coleman swerve over the fog line onto the shoulder two times. Coleman argued that that did not violate the statute. The Eighth Circuit disagreed and stated that, while the highest court in Nebraska has not decided this issue, there is sufficient case law to support the stop. Further, the court stated

This Court should not expect state highway patrolmen to interpret the traffic laws with the subtlety and expertise of a criminal defense attorney *United States v. Sanders*, 196 F.3d 910, 913 (8th Cir. 1999).^v

Issue Two: Did reasonable suspicion support the expansion of the scope of the traffic stop?
Regarding issue two, the court first noted

A constitutionally permissible traffic stop can become unlawful, . . . 'if it is prolonged beyond the time reasonably required to complete its purpose.'" *United States v. Peralez*, 526 F.3d 1115, 1119 (8th Cir. 2008) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005)). An officer may detain the occupants of a vehicle while performing routine tasks such as obtaining a driver's license and the vehicle's registration and inquiring about the occupants' destination and purpose. *See id.* "[I]f the officer develops reasonable suspicion that other criminal activity is afoot, the officer may expand the scope of the encounter to address that suspicion." *Id.* at 1120.^{vi}

Coleman argued that when the trooper questioned him about drug use, he

impermissibly expanded the scope of the stop without sufficient reasonable suspicion. The Eighth Circuit, however, disagreed. First, they noted that weaving over the fog line could be indicative of driving under the influence of drugs; as such, the question regarding drug use was related to the reason for the stop. Second, Coleman's dishonesty regarding his criminal history reasonably raised the trooper's suspicion and allowed him to ask questions to clarify Coleman's response. Lastly, the court noted that even if no reasonable suspicion was present, the questions regarding drug use only took a "couple of minutes" and as such were a de minimus extension that did not intrude into Coleman's *Fourth Amendment* rights.^{vii}

As such, reasonable suspicion was present or in the alternative, any extra detention was de minimus and did not violate the *Fourth Amendment*.

Issue Three: Did the trooper's questions to Coleman amount to custodial questioning that required *Miranda* warnings?

To this issue, the court first noted

Although a motorist is technically seized during a traffic stop, *Miranda* warnings "are not required where the motorist is not subjected to the functional equivalent of a formal arrest." *United States v. Morse*, 569 F.3d 882, 884 (8th Cir. 2009); *see also Berkemer v. McCarty*, 468 U.S. 420, 441, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984) (holding *Miranda* warnings were not required where the defendant "failed to demonstrate . . . he was subjected to restraints comparable to those associated with a formal arrest.").^{viii}

In Coleman's case, the court observed that, at the time of the questioning, Coleman was seated in the front seat of the trooper's car, he was not handcuffed, the tone of the questioning was conversational, and nothing the trooper said indicated that the detention was anything other than temporary. The court then held that nothing in these circumstances indicated that Coleman was under arrest or subject to restraints

normally associated with formal arrest. Thus, no *Miranda* warnings were needed.

Issue Four: Was the warrantless search of the motor home reasonable under the *Fourth Amendment*?

To this issue, the court noted two important rules. First, the court noted

Officers may search a vehicle without a warrant if they have probable cause to believe the vehicle contains contraband. *See United States v. Ross*, 456 U.S. 798, 800, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982). This automobile exception applies equally to motor homes. *See California v. Carney*, 471 U.S. 386, 390-94, 105 S. Ct. 2066, 85 L. Ed. 2d 406 (1985).^{ix}

Second, the court noted that

If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *Ross*, 456 U.S. at 825.^x

In Coleman's case, Coleman told the trooper that there was marijuana in his vehicle which provided probable cause for the trooper to search anywhere in the vehicle that could conceal marijuana. This included under the bed and in the bag where the gun was found.

Further, the court also stated that the trooper could justify this search as a protective sweep of the motor home prior to the search. The court stated

Coleman argues the motor home was more like a residence than a vehicle, and as such, the sweep should have been limited to the space within Coleman's immediate control. However, a motor home in transit on a public highway is being used as a vehicle and is therefore subject to a reduced expectation of privacy. *See Carney*, 471 U.S. at 392-93. In the context of a traffic stop, we have repeatedly held "officers may take

such additional steps as are reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop." *Thomas*, 249 F.3d at 729 (quoting *United States v. Doffin*, 791 F.2d 118, 120 (8th Cir. 1986)) (internal quotation marks omitted). The district court found that the space under the bed was large enough to hide a person, and the sweep justifiably could extend to this area for the officer's protection from a possible hidden assailant.^{xi}

Thus, under the protective sweep exception, it was reasonable for the officer to look under the bed where the gun case was found. Then, because the officer knew that Coleman was a convicted felon, when he found the gun case, it was reasonable for him to consider it contraband or evidence of crime.

As such, the court held the search was justified both by probable cause and as a protective sweep.

Therefore, the court upheld the denial of the motion to suppress on these issues.

ⁱ No. 12-1400, 2012 U.S. App. LEXIS 23055 (8th Cir. November 8, 2012)

ⁱⁱ Id. at 1-3

ⁱⁱⁱ Id. at 6

^{iv} Id. (see Neb. Rev. Stat. § 60-6.142)

^v Id. at 7

^{vi} Id. at 9

^{vii} Id. at 10

^{viii} Id. at 11-12

^{ix} Id. at 12-13

^x Id. at 13

^{xi} Id at 13-14



Watch for Motorcycles

“SEQUESTERED” TRAINING – THE IMPACT ON PUBLIC SAFETY

*By Lonny Wilder: Critical Information Network (CiNet) VP
Public Safety Group Law Enforcement Training Network
(LETN)*

In December 2008, the National Bureau of Economic Research tagged December 2007 as the official point of entry for the recession in the United States, making official what most Americans already believed about the state of the economy. The NBER is a private group of leading economists charged with dating the start and end of economic downturns. It typically takes a long time after the start of a recession to make that declaration because of the need to look at final readings of various economic measures.

Now in 2013, the vastly anemic economy has wreaked havoc upon virtually every sector of American enterprise and public service. A so-called “sequester” is officially in play with damaging across-the-board spending cuts potentially dragging the economy back into recession and hurting American families by slashing critical investments in job training, public health, and public safety.

The cuts threaten to make our communities less safe with an increased potential for hiring freezes and job reductions. Primarily, like most everything else, it comes down to funding—or the lack thereof. In the process of budgeting for public safety assets and resources, prioritization dictates a hierarchal pecking order that generally starts with 1) safety; 2) personal protection equipment; 3) vehicles and maintenance; and 4) professional training. In recent years, tax-based funding coffers have been depleted to the lowest levels since the early 1930’s, and thus the funding for our public safety departments and personnel is dwindling.

As a result, not only is the public at risk; but the final analysis points to an unarguable increase in liability and legal risk for our public safety comrades. When funding is reduced and training is last on the list, the opportunity for the regulatory approved processes that our public safety professionals are required to follow will more frequently be called into question in court.

Training is the key to reducing liability risk - and more importantly, ensuring the vital safety of the brave emergency responders that put their own lives on the line day in and day out.

With federal support programs drying up, American communities are looking beyond traditional modalities of training to keep law enforcement, fire, and EMS personnel safe, certified, and better prepared for potential liability exposure.

It is the very organizations that are tasked with insuring public safety and protecting from litigation and the threat of liability that can be true partners in supporting the investment in training. Risk pools, while focused on insuring the risk that public safety personnel contend with, are potentially throwing good money after bad if they insure and offer risk management that doesn’t support the one thing that could lower risk – training.

A better trained public safety professional means less liability. If you can prove in a court of law that procedures, rules and processes were all followed and you can demonstrate that personnel were trained in accordance with regulatory standards, you are in a significantly improved position to avoid a costly decision against your department.

Online training and automated record-keeping of that training is rapidly growing in its acceptance by state regulatory agencies and public safety associations as a cost-effective tool to deliver consistent and up-to-date training to personnel to not only reduce risk and liability, but perhaps even more importantly, ensure the safety of both the public at large and the emergency responder.

According to Marshall “Mike” Smith, one of the nation’s most respected education policymakers and a former senior counselor to the secretary of education, “The studies of more recent online instruction included in a meta-analysis found that, on average, online learning, at the post-secondary level, is not just as good as but more effective than conventional face-to-face instruction.”

The world of eLearning is evolving. Research from leading advisory firm Bersin & Associates clearly shows that, for both eLearning creators and consumers, the lengthy page-turner is out. In its place is a next generation of eLearning, a new world of opportunities that incorporates all types of tools to engage and capture learners. Today's workforce development is powered by short video and audio vignettes; interactive assessments; pre-recorded virtual classroom sessions; scenario-based learning; 3-D simulations and serious games; e-books, articles, abstracts and downloadable materials; and content available on mobile devices.

Political posturing aside, it is clear the "sequester" will further decay the already impacted core requirements of public safety resources. Training always seems to take a back seat to everything else and usually the first consideration when bad things happen. Public safety professionals and those charged with maintaining their safety and the well-being of the communities they serve must approach every day and every shift with the knowledge that the next critical incident or natural and manmade disasters are a function of the notion that "it's not if, but when."

Risk management firms are going to have to step in to the gap in order to deliver the right protection for public safety, and thus public safety can perform in accordance with their state and federal regulations. New methodologies in training and education, like eLearning, are by no means a magic pill to eradicate the toxic effects on America's "sequestered" funding pools – but for public safety, it is most certainly a giant step forward. Cuts in training are a direct threat to the very foundation of emergency response and a safety and liability gamble we can ill afford.

THE COMPUTER EMPLOYMENT APPLICATION (CEA)

by John E. Reid and Associates

The CEA is an innovative software program that utilizes the interviewing skills developed by John E. Reid and Associates. This program is guaranteed to save your department time and

money in the selection of new police officers or individuals applying for a position of trust.

What is the CEA? The Computer Employment Application (CEA) interview is a software program that functions as an interactive application that segues to appropriate lines of questioning and fact gathering dependent on the applicant's response to the initial question.

The CEA is not a static list of generic questions, but is an expert system that interviews applicants just as an experienced interviewer would, specifically responding to the applicant's answers and utilizing the appropriate follow up questions to develop additional information. This built-in expertise encourages and makes it easier for the applicant to provide complete and accurate data and, because of its structure, helps to minimize embellishments or omissions that frequently occur on written application forms.

The CEA interview system uses a personal computer as a first-stage interviewer in the hiring process and interacts with the applicant just as a personal interviewer would. The CEA is web based - with the proper password (provided by the employer) the applicant can access the CEA from anywhere at anytime.

Web based so that the applicant can access the CEA 24 hours a day, 7 days a week from any computer: When using the CEA, applicants make selections from menus or type in responses to questions such as their employment and military history, education and professional training, driving record, illegal drug use, and involvement in criminal activity. As the applicant progresses through the interview, the program automatically stores responses to each question, follows up on these responses with additional questions when more information is needed in a particular area, and provides an opportunity for the applicant to add data or make alterations and corrections when necessary.

After the applicant has completed the CEA, you will know more about them than you ever would have known from the completion of a traditional application or resume. Consequently, you can identify potentially high-risk applicants before your organization spends a lot of time and money on unnecessary screening procedures,

such as criminal records checks, drug testing, background investigations, etc.

Primary Areas of Inquiry - The CEA questions the applicant thoroughly in the following areas of inquiry:

Applicant Personal Information
Education
Employment Activities (Work History)
Military History
Dishonest Conduct
Integrity
Criminal Record
Undetected Crimes
Driving Convictions Last 5 years
Pending Law Enforcement Charges
Use of Drugs Illegally (in compliance with ADA)
Purchase/Sale of Drugs Illegally
Alcohol Use (job related in compliance with ADA)
Certification/Applicant Signature Block

A written report is issued for every applicant detailing the information provided by that individual in all of the areas of inquiry. For more information on the CEA, please contact Richard Phannenstill at 414-281-2590 or cea@reid.com.

**U.S. Department of Homeland Security
Awards Envisage a 5-year IDIQ Contract**

by: Cory Myers, Envisage, Inc.

The U.S. Department of Homeland Security (DHS), Customs and Border Protection (CBP) recently awarded Envisage a competitive five-year indefinite delivery/indefinite quantity (IDIQ) contract to purchase the company's Acadis Readiness Suite. The award, valued at \$9.1 million, tasks Envisage to provide agency-wide training automation and software implementation for all CBP residential law enforcement training academies, sectors, stations, and field offices nationwide.

"This award is a testament to CBP's ongoing leadership in law enforcement training," stated Ari Vidali, Envisage CEO. "With one of the largest and most complex training environments in the world, CBP will be able to standardize all residential training on a single platform."

The award-winning Acadis Readiness Suite is an enterprise software application that automates the management of complex, high-risk, blended training environments and ensures that personnel are trained, equipped and ready. More than 390,000 federal, state and local law enforcement and public safety professionals are tracked with the system nationwide.

**THOUSANDS OF L.E. PROFESSIONALS
TRAINING ONLINE WITH
IN THE LINE OF DUTY**

by: Ron Barber, In the Line of Duty

For nearly 20 years, In the Line of Duty has been --and continues to be-- the only provider of reality-based video training for law enforcement in the world.

It all began when we offered one VHS training program a month to law enforcement agencies on a subscription basis - then, the CD-ROM and DVD.

That all changed dramatically about five years ago when we realized visual training for law enforcement was fast headed online---and digital.

By then, In the Line of Duty had a huge library of video programs, so we decided to make it all available at the touch of a mouse.

It meant that law enforcement officers could have immediate access to our entire library of content---not just one program.

So, if a trainer was teaching virtually any course and he or she wanted to core his or her presentation on, say, pursuit driving or ethics or safe traffic stops, all he or she have to do was visit our learning management system at www.lineofduty.com ---and make his or her selections from hundreds of titles.

For many departments whose budgets have been reduced, being able to teach and train officers with such bountiful online content has been a godsend.

Money saved, manpower spared, travel reduced, efficient use of time, all these ingredients have congealed with In the Line of Duty Online Training.

Please take 5 minutes and review the short video presentation: **LINE OF DUTY VIDEO PROMO**

Then, we invite your calls and contacts with further questions and feedback.

P.S. We have some very nice discounts available for our fellow IADLEST members.

Sincerely and in Officer Safety, Ron Barber, President, In the Line of Duty, Phone: (800)462-5232; E-mail: info@lineofduty.com

**MAINE CRIMINAL JUSTICE ACADEMY
IMPLEMENTS INFORMAONE TO
MANAGE TRAINING RECORDS
THROUGHOUT THE STATE**
By Ann Konzal, Informa Systems, Inc.

Informa Systems, Inc., a law enforcement focused, high tech software company headquartered in San Antonio, Texas, announced that the state of Maine is now managing its training records as well as developing and delivering online learning with the *InformaOne* system, a web-based, unified, flexible training management system.

InformaOne is now used for tracking and reporting all training and certification for law enforcement officers, corrections, emergency dispatchers, and game wardens throughout the state of Maine.

“The challenge for this implementation was the legacy data that had to be imported,” said Mark Connolly, CTO of Informa Systems. “We were very excited with this challenge to make the system work statewide.”

Informa Systems, Inc., adds MCJA to its portfolio of law enforcement client agencies. Among these are Los Angeles Police Department, Austin Police Department, Tarrant County, City of Arlington, and City of Irving. These agencies are now delivering over 5

million online courses to their officers and staff members.

InformaOne delivers a highly automated and secure tracking and reporting system at an affordable cost. Law enforcement professionals and training academies understand the necessity and benefits of full array of training management functionality—including document, course, certification and records and retention management—on one platform. This unified approach yields much greater return on investment (ROI). *InformaOne* makes it possible to consolidate all documents and training records into a single and flexible online repository. For more information, contact us at 888.239.1599, Ext. 755.

DDACTS

*report submitted by Scott Silveril, Ph.D., Chief of Police
Thibodaux PD, Thibodaux, LA*

Data-Driven Approaches to Crime and Traffic Safety (DDACTS) is a law enforcement operational model supported by a partnership among the Department of Transportation's National Highway Traffic Safety Administration and two agencies of the Department of Justice: the Bureau of Justice Assistance and the National Institute of Justice.

DDACTS integrates location-based crime and traffic data to establish effective and efficient methods for deploying law enforcement and other resources. Using geo-mapping to identify areas that have high incidences of crime and crashes, DDACTS uses traffic enforcement strategies that play a dual role in fighting crime and reducing crashes and traffic violations. Drawing on the deterrent of highly visible traffic enforcement and the knowledge that crime often involves the use of motor vehicles, the goal of DDACTS is to reduce the incidence of crime, crashes, and traffic violations across the country.

Recommended Tactics/Strategies for Addressing the Issue: The DDACTS relies on prompt collection and analysis of crash and crime data to provide actionable reports that inform tactical and strategic decisions of a law enforcement agency. Agencies currently participating are: Baltimore County, Maryland Police Department; Lafourche Parish, Louisiana Sheriff's Office; Nashville, Tennessee Police Department; Oakland, California Police Department; Rochester, New York Police Department; St Albans Police Department and Vermont State Police; and Washoe County, Nevada Police Department.

The following is an analytical report on the effectiveness of DDACTS in the Thibodaux Police Department.



52 Weeks
December 19, 2011 to December 9, 2012

DDACTS HOTSPOT 3 FINAL

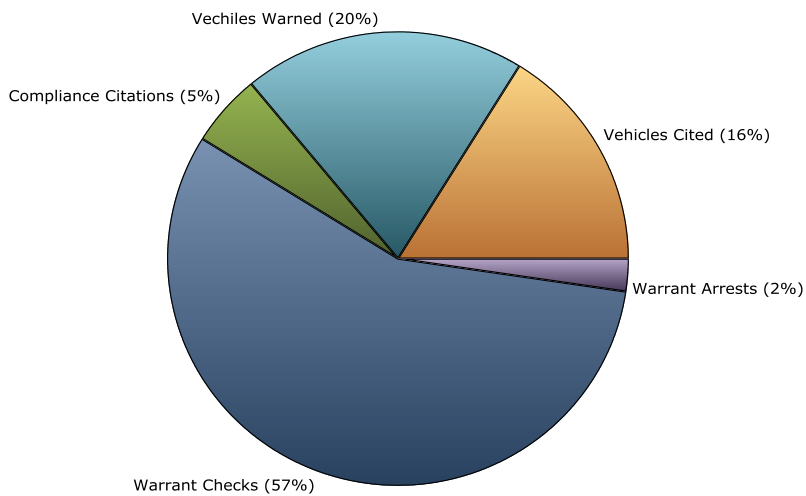
This community effort sustained the DDACTS model in Hotspot 3 for 52 weeks. The implementation afforded successful reductions in both crime and crashes by using a highly visible enforcement philosophy. The community saw a 47% reduction in auto crashes, 64% reduction in burglaries, 56% reduction in thefts and a 46% reduction in property damage.

Top Five CFS Over 52 Weeks

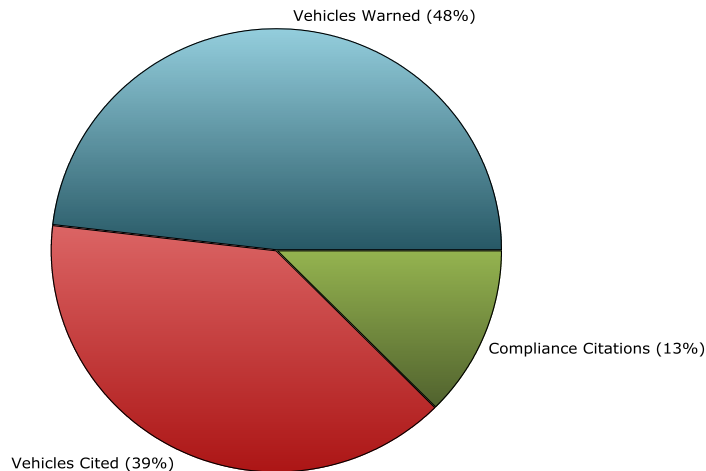
1. Traffic Incident
2. General Complaint
3. Disturbance
4. Lock Job
5. Juvenile Complaint

This community partnership exceeds all expectations. Although the DDACTS strategy is discontinued, monitoring shall continue with re-engagement if the analysis of data dictates further treatment for social harms. It is vital to note there has been no expenditure of overtime monies or additional staffing assigned. Also important is that the reductions in social harms were affected using a high volume of traffic contacts, with only 39% of all interpersonal encounters resulting in a citation.

52 Weeks of Activity

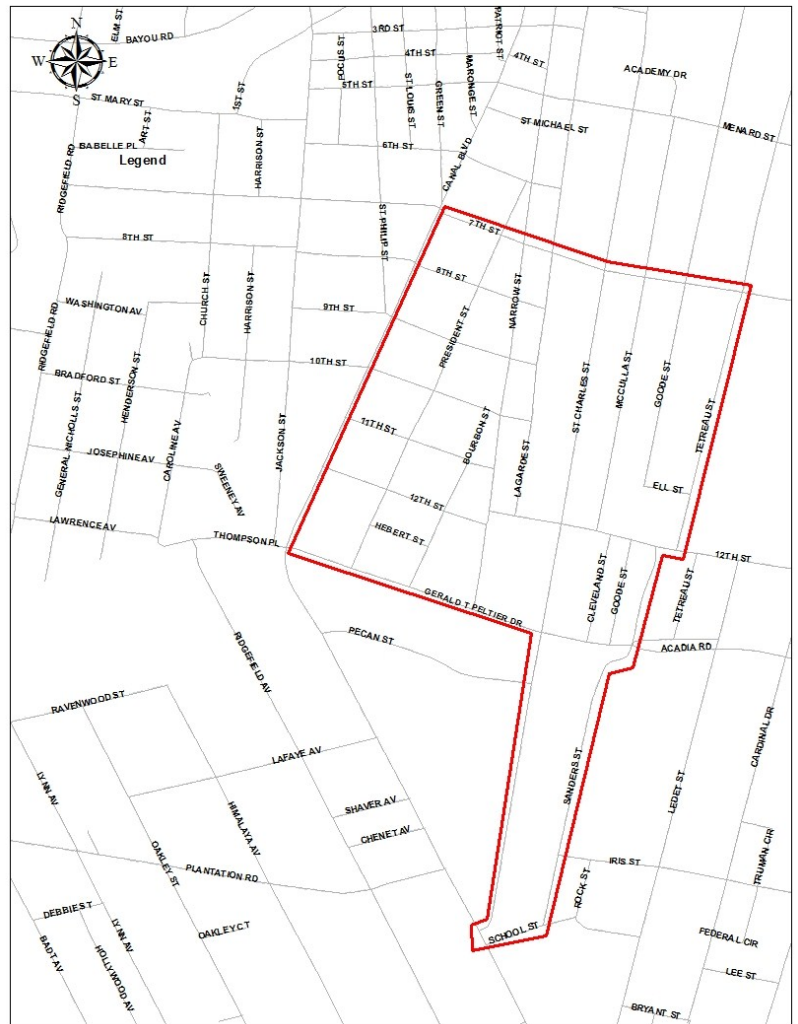


52 Weeks of Traffic Stops

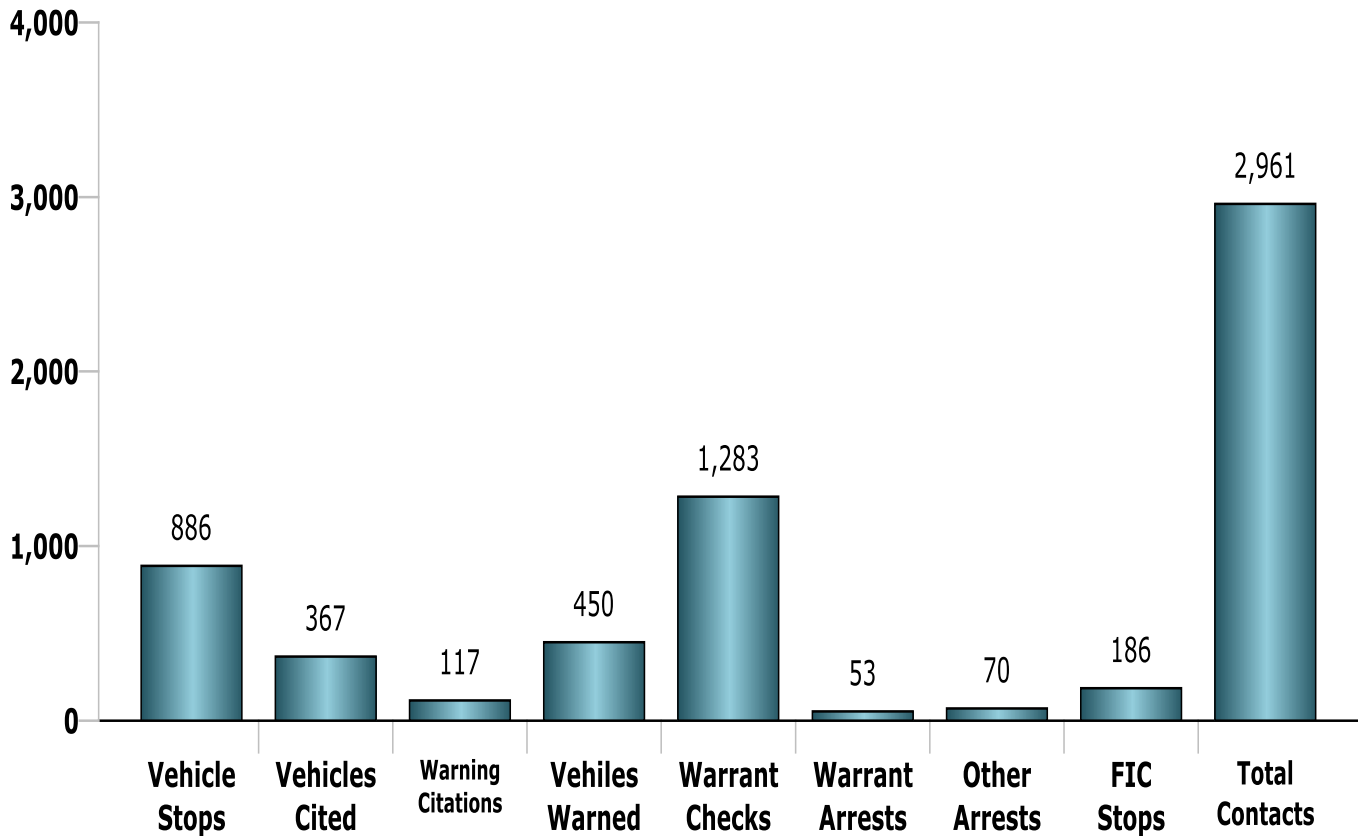


Identifying Hot Spot 3

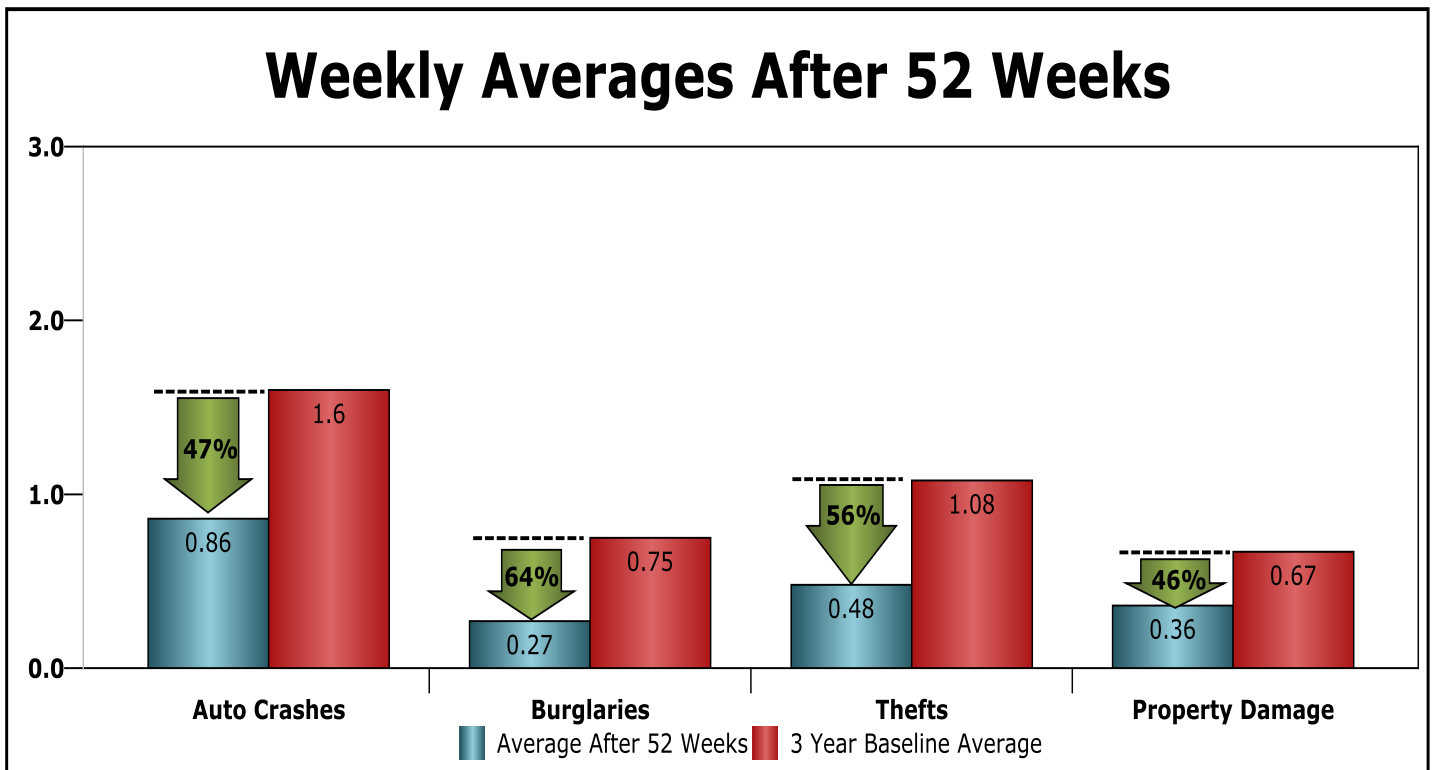
- ◆ Analyzed 3 years of Data
- ◆ 7% of the population
- ◆ 6% of the city area
- ◆ 14% of Property Crime
- ◆ 9% of crashes
- ◆ 9% of all Calls For Service
- ◆ Hot Spot was a historically high crime area



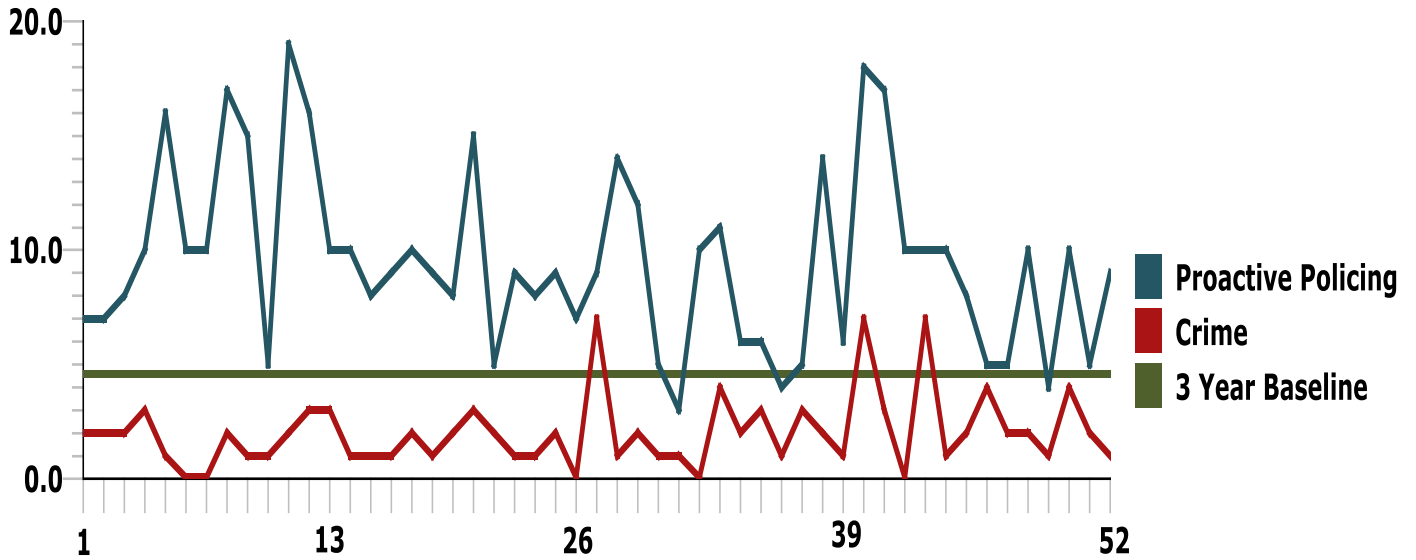
Self-Initiated Activity Over 52 Weeks



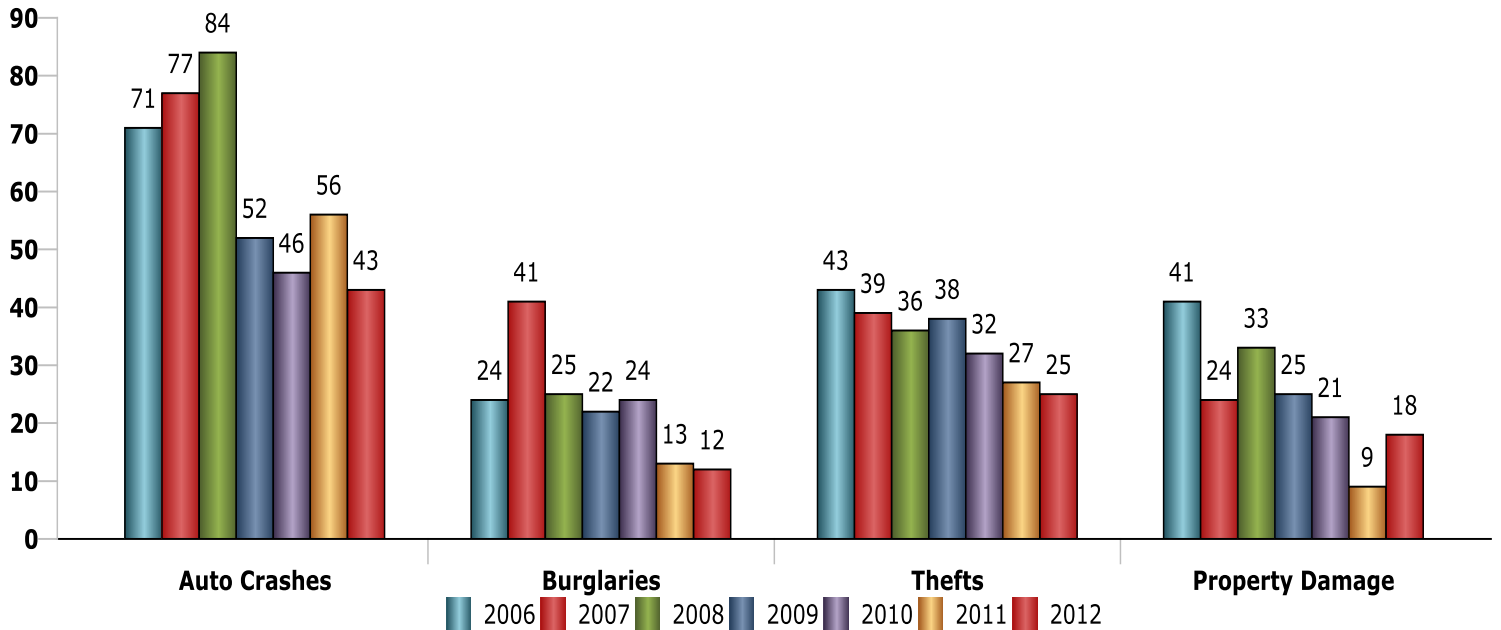
Weekly Averages After 52 Weeks



Pro-active Policing to Crime

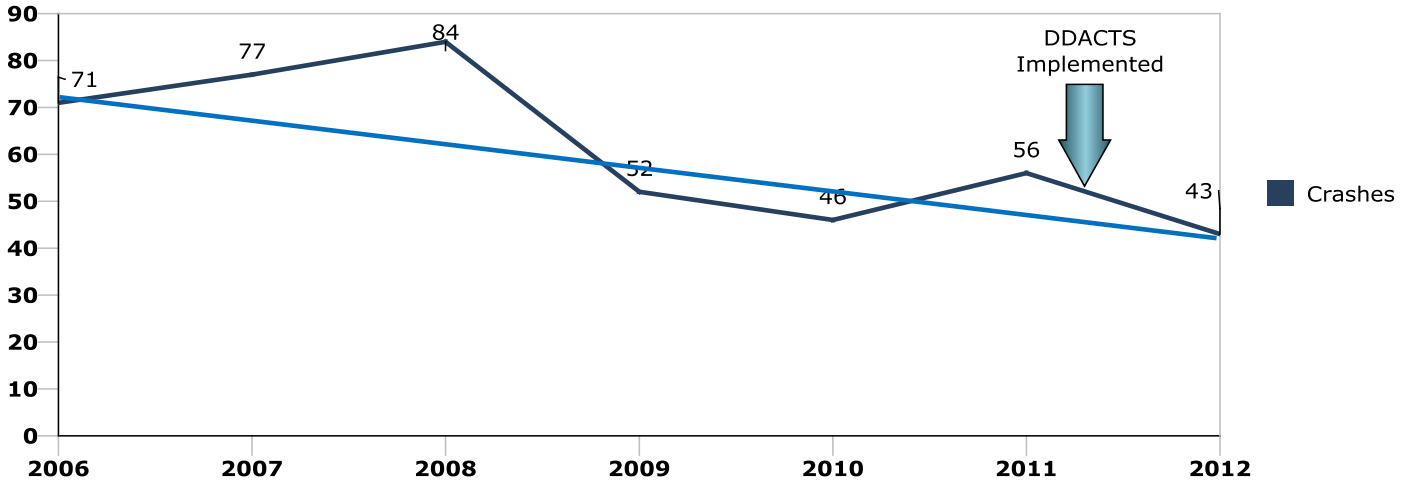


Year to Date Comparison

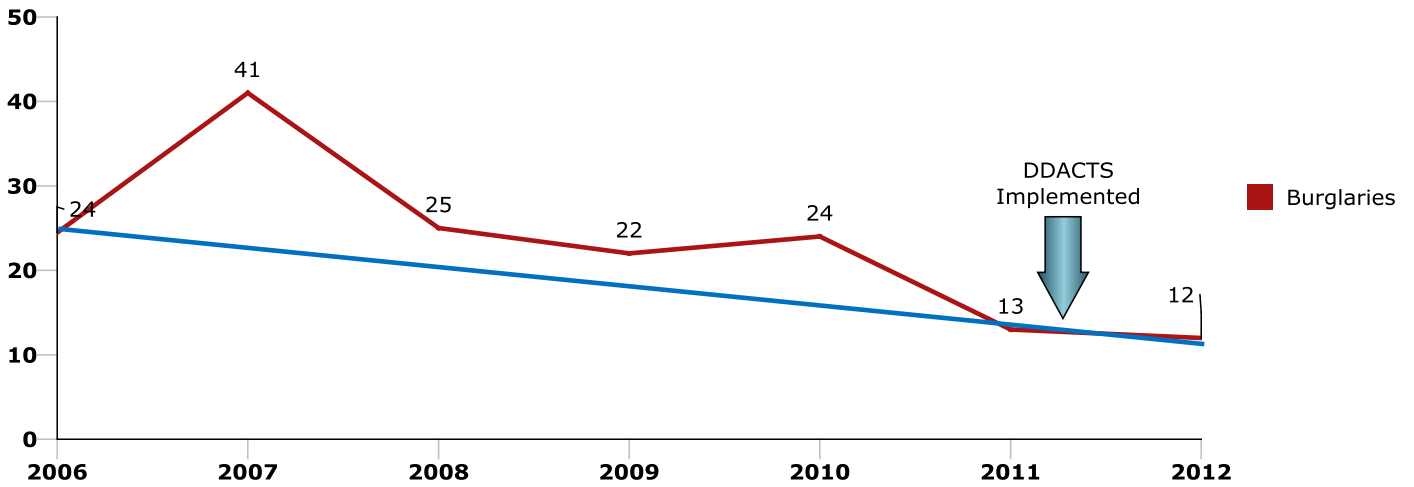


TPD Crime Analyst: Detective Jacob Thibodeaux— jacob@ci.thibodaux.la.us

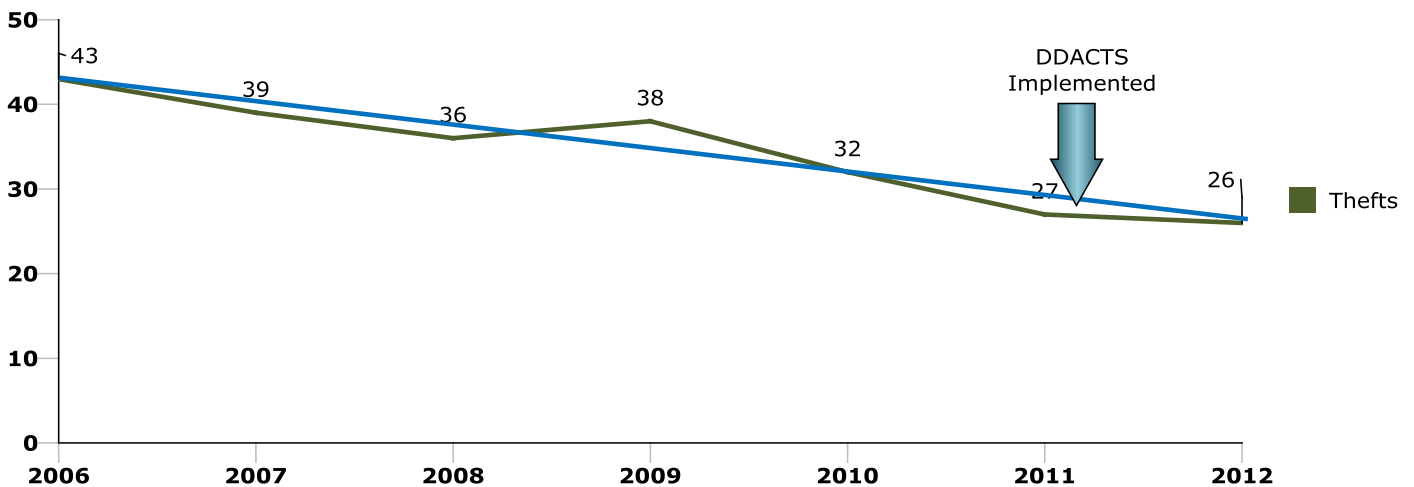
Crashes



Burglaries

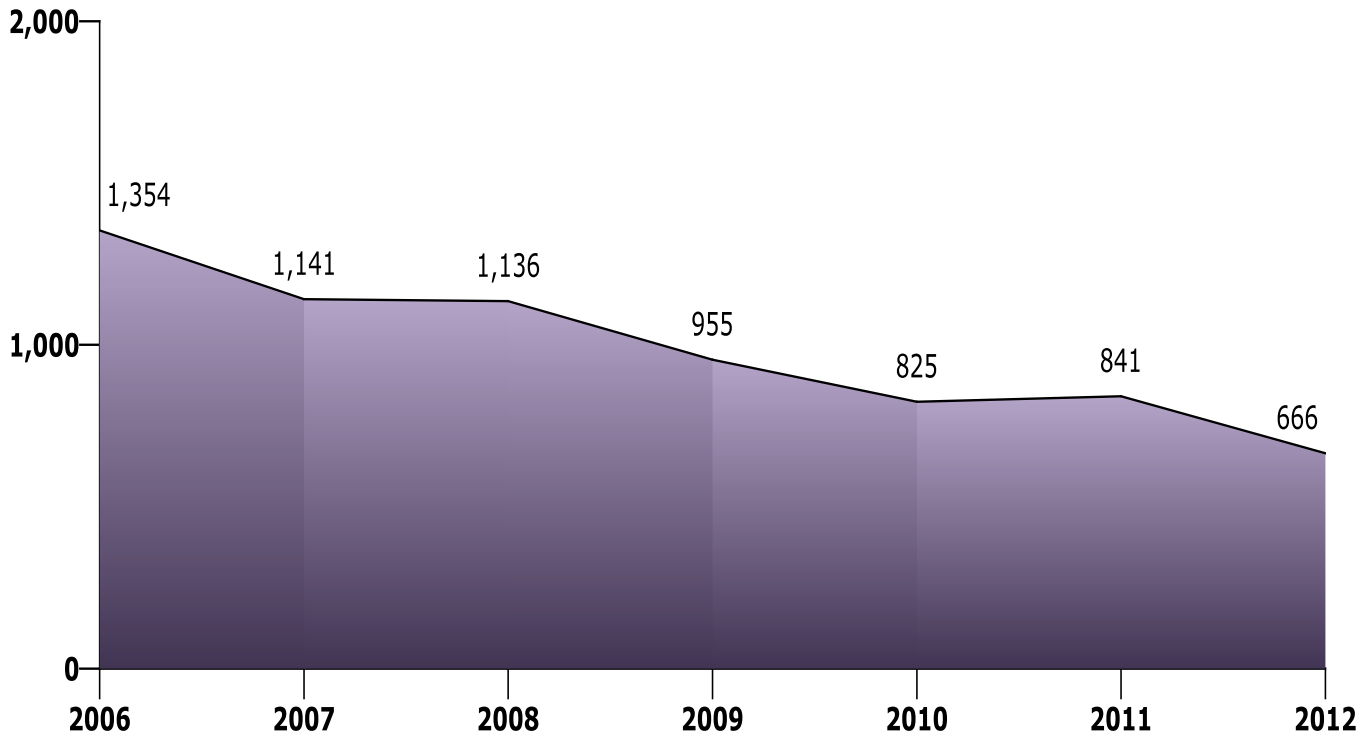


Thefts

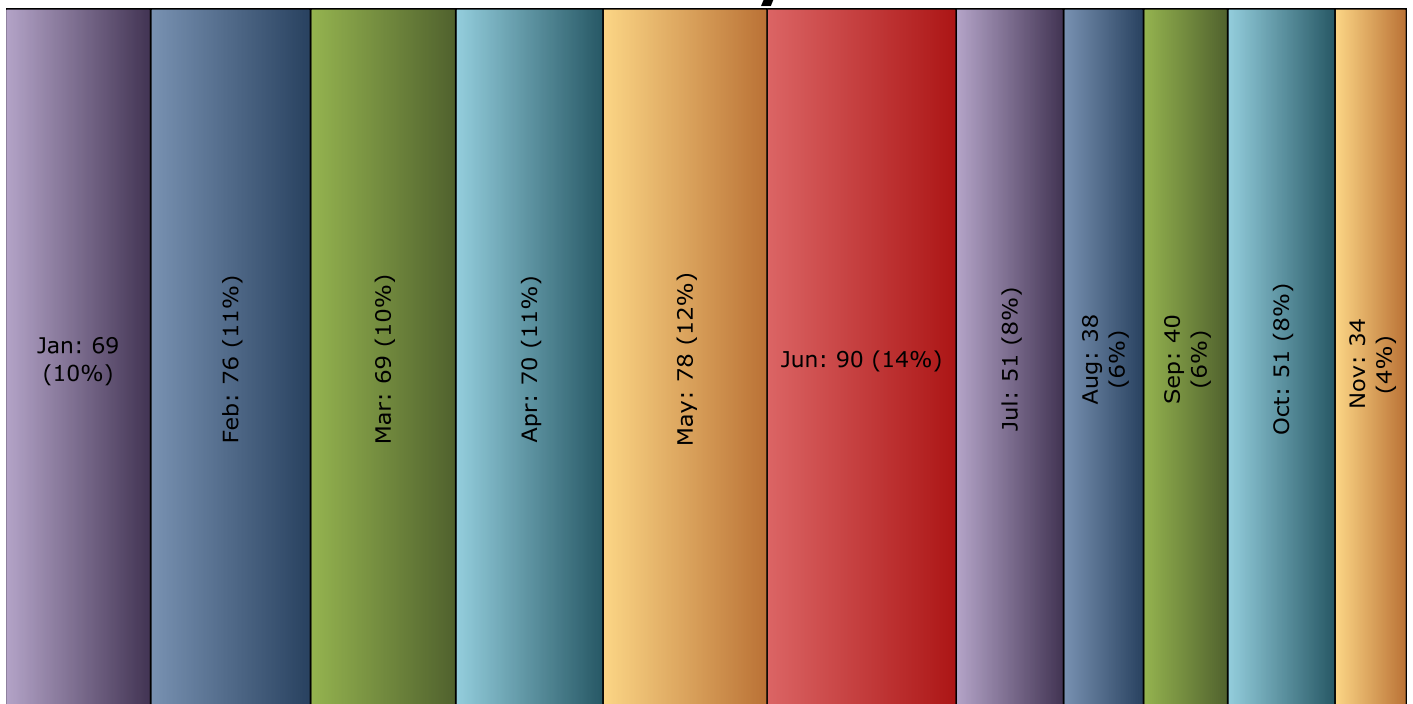


*Trends compared to January 1 to November 30 prior to implementing DDACTS.

CFS January to November

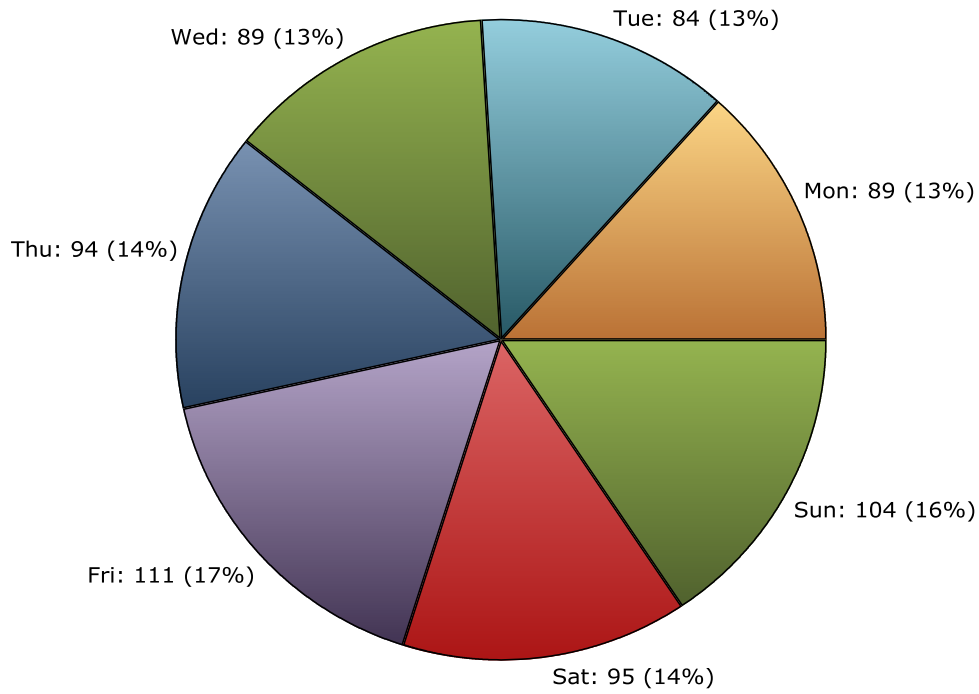


2012 CFS by Month

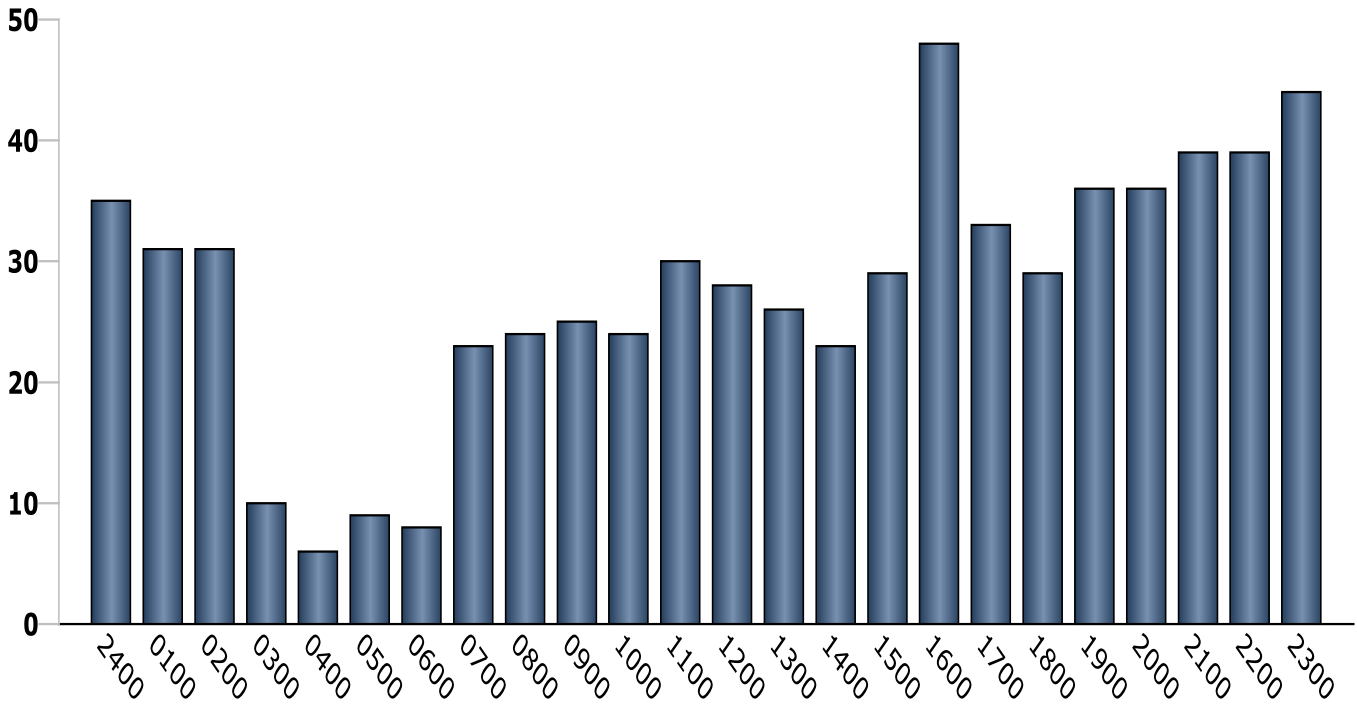


*Percentages represent portions of the total CFS for January to November 2012 equaling 666

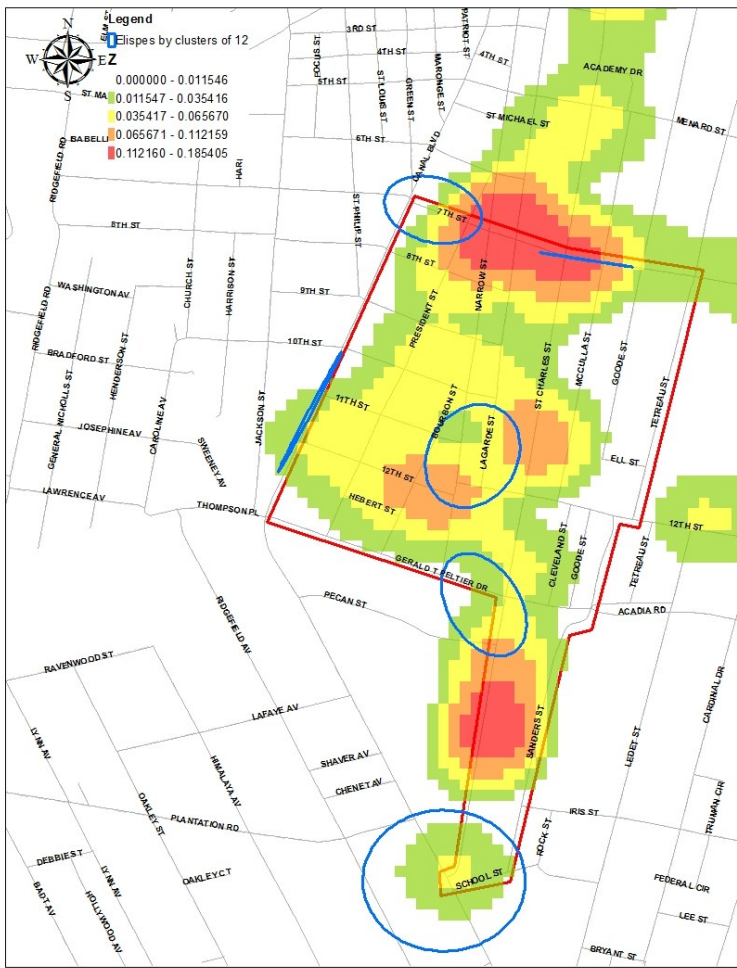
CFS Day of Week



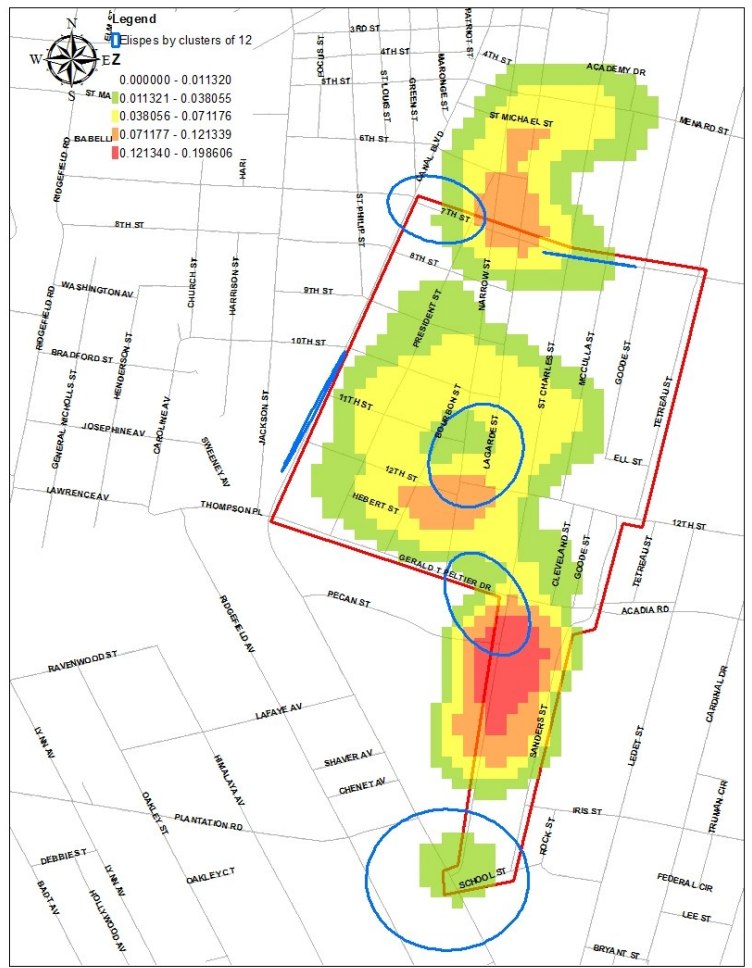
CFS by Time Of Day



Crime



2010



2012

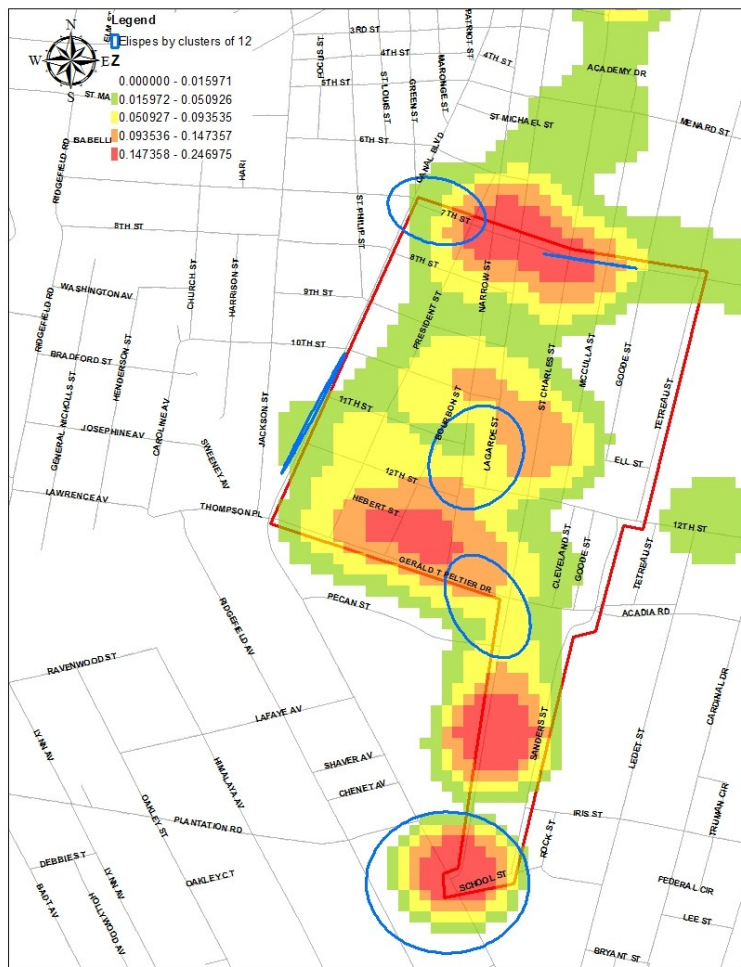
These comparative images represent variances by density in property crime before and after DDACTS implementations. The blue ellipses represent patterns of highest traffic enforcement activities within the hotspot.

For example, the pre-implementation map (2010) demonstrated a cluster of property crimes in the Northwest sector of the hotspot. Officers assigned to DDACTS concentrated self-initiated activities in that sector over the 52 week duration of the operation. As illustrated graphically, a significant reduction was realized in that NW sector. Additionally, a diffusion of benefits was experienced for areas outside, but adjacent to the geo-specific enforcement area.

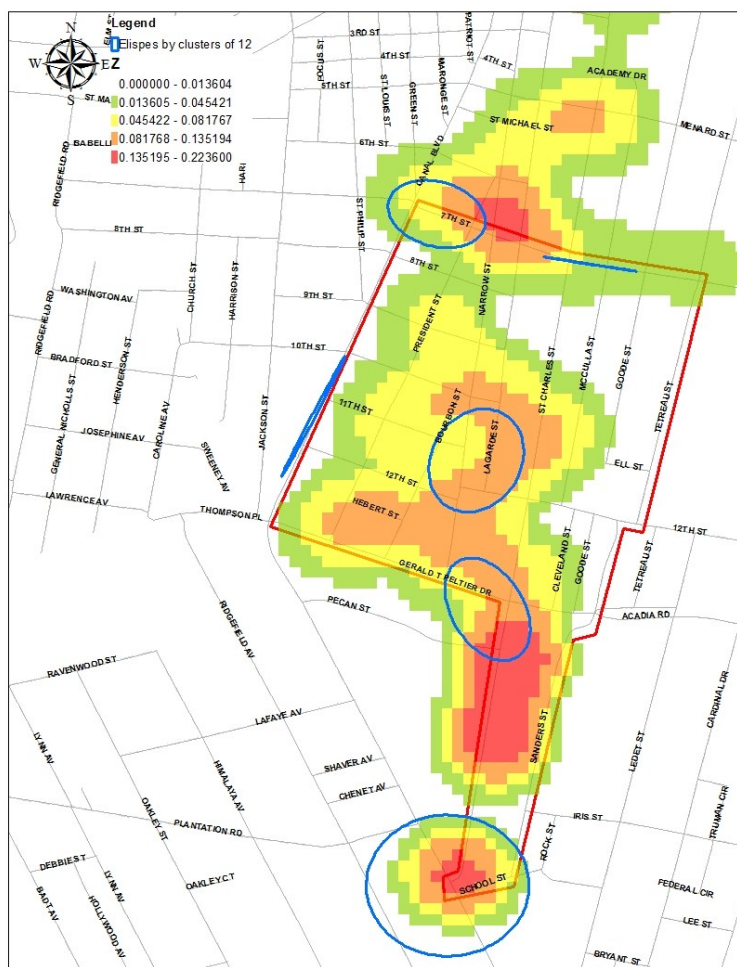
A second example brings attention to the blue ellipse centrally located on the pre and post maps. The two significant clusters of property crimes in 2010 were reduced in 2012, with one eliminated by statistical significance through the application of highly visible traffic enforcement operations.

The reductions of burglaries by 64%, thefts by 56% and criminal damage to property by 46% are associated with the micro-place and micro-time analysis of historical data used to create actionable enforcement activities for officers assigned to the DDACTS hotspot.

Crashes



2010



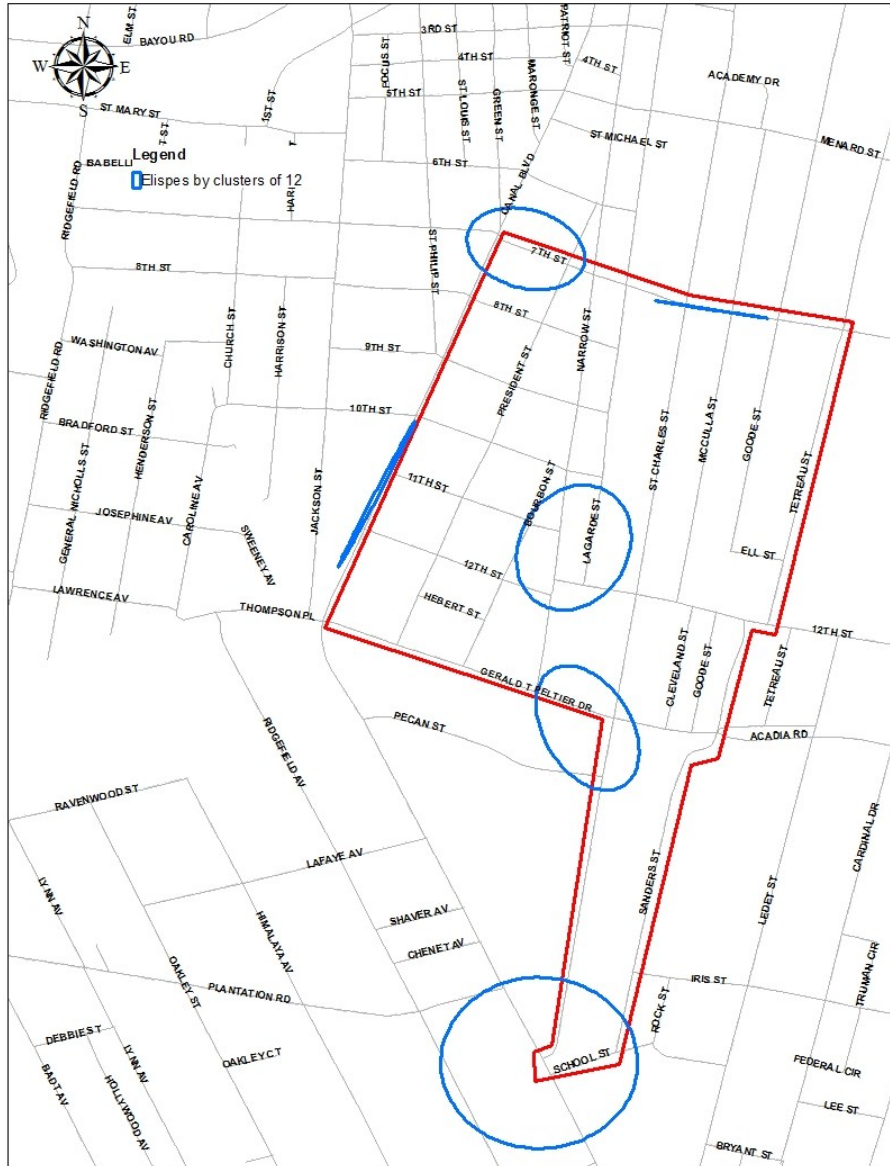
2012

These images represent crashes within the DDACTS hotspot prior to and post implementation of the strategy. The application of highly visible traffic enforcement operations over the course of the 52 week deployment resulted in a 47% reduction in crashes. Although the strategy's cornerstone is founded upon highly visible traffic enforcement, only 39% of encounters resulted in citations.

A primary concern of the Thibodaux Police Department is the point of diminishing returns as it may effect our partners and stakeholders located within the hotspot. Discretion was closely monitored to prevent the unintentional victimization of law-abiding citizens. A consistently high percentage of warnings and compliance citations were afforded during traffic enforcement encounters, yet the area saw significant reductions in social harms affecting both crashes and crimes.

For illustrative purposes the blue ellipses located at the south sector prior to DDACTS experienced a high frequency of crashes. Actionable items developed through the analysis of historical data directed DDACTS officers to that sector during peak hours of occurrence. The result is a significant reduction of traffic crashes at a critical intersection within the city previously having a detrimental affect on a main thoroughfare through the city (Canal Boulevard).

Traffic Stops



This graphic illustrates the pattern of high-frequency traffic enforcement activities initiated by officers during the course of their DDACTS assignments. This demonstrates the value of analysis for creating actionable enforcement items for officers assigned to the hotspot. Although the analysis directed officers into a geographic location consisting of a concise 6% of the city's footprint, the micro-place analysis provided a more concentrated level of specificity within the hotspot.

Focus within the sectors are associated with significant reductions in social harms associated with crashes and property crimes. The relational ellipses as demonstrated in the Property Crimes and Crashes maps show the additional benefits of assigning officers to very definitive locations. The specificity of focus maximizes effectiveness and efficiency, while minimizing the intuitive or bias-based associations one may have with a location are vital to maintaining a cohesive effort between law enforcement and community



SAINT LOUIS UNIVERSITY SCHOOL OF LAW
Legal Studies Research Paper Series

No. 2013-7

A Model Decertification Law

Roger Goldman

32 St. Louis U. Pub. L. Rev. 147

A MODEL DECERTIFICATION LAW

ROGER L. GOLDMAN*

INTRODUCTION

In 1960, New Mexico became the first state to grant authority to revoke the license of a peace officer for serious misconduct.¹ Revocation can prevent officers who were fired from one state department for misconduct from getting rehired by another department.² Today, forty-three other states have joined New Mexico by authorizing a state agency, typically called a Peace Officers Standards and Training Commission (POST),³ to investigate and hold a hearing to determine whether an officer should lose his or her license.⁴

* Callis Family Professor of Law, Saint Louis University School of Law.

1. RAYMOND A. FRANKLIN ET. AL., INT'L ASS'N OF DIRS. OF LAW ENFORCEMENT STANDARDS & TRAINING, 2009 SURVEY OF POST AGENCIES REGARDING CERTIFICATION PRACTICES 22 (2009), available at <https://www.ncjrs.gov/pdffiles1/nij/227927.pdf>.

2. *Id.* at 15–17.

3. Most states have POST websites, however, the information differs among the states. ALA. PEACE OFFICER STANDARDS & TRAINING COMM'N, <http://www.apostc.state.al.us/> (last visited Jan. 10, 2013); DIV. ALASKA ST. TROOPERS, <http://www.dps.state.ak.us/ast> (last visited Jan. 10, 2013); ARIZ. PEACE OFFICER STANDARDS & TRAINING BD., <http://www.azpost.state.az.us> (last visited Jan. 10, 2013); ARK. COMM'N ON LAW ENFORCEMENT STANDARDS & TRAINING, <http://www.clest.org/Pages/default.aspx> (last visited Jan. 10, 2013); CAL. COMM'N ON PEACE OFFICER STANDARDS & TRAINING, <http://www.post.ca.gov> (last visited Jan. 10, 2013); COLO. PEACE OFFICER STANDARDS & TRAINING BD., http://www.coloradoattorneygeneral.gov/departments/criminal_justice/post_board (last visited Jan. 10, 2013); CONN. POLICE OFFICER STANDARDS & TRAINING COUNCIL, <http://www.post.state.ct.us> (last visited Jan. 10, 2013); DEL. ST. POLICE, <http://dsp.delaware.gov> (last visited Jan. 10, 2013); FLA. CRIM. JUSTICE STANDARDS & TRAINING COMM'N, <http://www.fdle.state.fl.us/Content/getdoc/91a75023-5a74-40ef-814d-8e7e5b622d4d/CJSTC-Home-Page.aspx> (last visited Jan. 10, 2013); GA. PEACE OFFICER STANDARDS & TRAINING COUNCIL, <http://www.gapost.org> (last visited Jan. 10, 2013); HAW. PUB. SAFETY DEP'T, <http://hawaii.gov/psd> (last visited Jan. 10, 2013); IDAHO PEACE OFFICER STANDARDS & TRAINING, <http://www.post.idaho.gov> (last visited Jan. 10, 2013); ILL. LAW ENFORCEMENT TRAINING & STANDARDS BD., <http://www.ptb.state.il.us> (last visited Jan. 10, 2013); IND. LAW ENFORCEMENT ACAD., <http://www.in.gov/ilea> (last visited Jan. 10, 2013); IOWA LAW ENFORCEMENT ACAD., <http://www.ileatraining.org> (last visited Jan. 10, 2013); KAN. LAW ENFORCEMENT TRAINING CTR., <http://www.kletc.org> (last visited Jan. 10, 2013); KY. ST. POLICE ACAD., <http://www.kentuckystatepolice.org/academy.htm> (last visited Jan. 10, 2013); LA. PEACE OFFICER STANDARDS & TRAINING COUNCIL, <http://www.lcle.la.gov/programs/post.asp> (last visited Jan. 10, 2013); ME. CRIM. JUSTICE ACAD., <http://www.maine.gov/dps/mcja> (last visited Jan. 10, 2013); MD. POLICE & CORRECTIONS TRAINING COMM'NS, <http://www.dpsscs>.

state.md.us/aboutdpscs/pct (last visited Jan. 10, 2013); MASS. MUN. POLICE TRAINING COMM'N, <http://www.mass.gov/eopss/law-enforce-and-cj/law-enforce/mptc> (last visited Jan. 10, 2013); MICH. COMM'N ON LAW ENFORCEMENT STANDARDS, <http://www.michigan.gov/mcoles> (last visited Jan. 10, 2013); MINN. BD. PEACE OFFICER STANDARDS & TRAINING, <https://dps.mn.gov/entity/post/Pages/default.aspx> (last visited Jan. 10, 2013); MISS. LAW ENFORCEMENT OFFICERS' TRAINING ACAD., <http://www.dps.state.ms.us/highway-patrol/training-academies/mleota/> (last visited Jan. 10, 2013); MO. PEACE OFFICER STANDARDS & TRAINING, <http://dps.mo.gov/dir/programs/post> (last visited Jan. 10, 2013); MONT. PUB. SAFETY OFFICER STANDARDS & TRAINING, <https://doj.mt.gov/post/> (last visited Jan. 10, 2013); NEB. COMM'N ON LAW ENFORCEMENT & CRIM. JUSTICE, <http://www.ncc.state.ne.us> (last visited on Jan. 10, 2013); NEV. COMM'N ON PEACE OFFICER STANDARDS & TRAINING, <http://www.post.state.nv.us> (last visited Jan. 10, 2013); N.H. POLICE STANDARDS & TRAINING COUNCIL, <http://www.pstc.nh.gov/index.htm> (last visited Jan. 10, 2013); N.J. DIVISION OF CRIM. JUSTICE POLICE TRAINING COMM'N, <http://www.state.nj.us/lps/dcj/njptc/home.htm> (last visited Jan. 10, 2013); N.M. DEP'T OF PUB. SAFETY & RECRUITING DIV., <http://www.dps.nm.org/training> (last visited Jan. 10, 2013); N.Y. DIV. OF CRIM. JUST. SERVS. OFFICE OF PUB. SAFETY, <http://www.criminaljustice.ny.gov/ops/> (last visited Jan. 10, 2013); N.C. LAW ENFORCEMENT TRAINING & STANDARDS, <http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards.aspx> (last visited Jan. 10, 2013); N.D. PEACE OFFICER STANDARDS & TRAINING BD., <http://www.post.nd.gov/> (last visited Jan. 10, 2013); OHIO PEACE OFFICER TRAINING COMM'N, <http://www.ohioattorneygeneral.gov/OPOTC> (last visited Jan. 10, 2013); OKLA. COUNCIL ON LAW ENFORCEMENT EDUC. & TRAINING, <http://www.ok.gov/cleet> (last visited Jan. 10, 2013); OR. DEP'T OF PUB. SAFETY STANDARDS & TRAINING, <http://www.oregon.gov/dpsst/Pages/index.aspx> (last visited Jan. 10, 2013); PA. MUN. POLICE OFFICERS' EDUC. & TRAINING COMM'N, <http://www.mpoetc.state.pa.us> (last visited Jan. 10, 2013); R.I. MUN. POLICE TRAINING ACAD., <http://www.rimpa.ri.gov> (last visited Jan. 10, 2013); S.C. CRIM. JUST. ACAD., <http://www.sccja.sc.gov> (last visited Jan. 10, 2013); S.D. LAW ENFORCEMENT OFFICERS STANDARDS & TRAINING COMM'N, <http://dci.sd.gov/LawEnforcementTraining/StandardsandTrainingCommission.aspx> (last visited Jan. 10, 2013); TENN. PEACE OFFICERS STANDARDS & TRAINING COMM'N, <http://www.tn.gov/commerce/let/post> (last visited Jan. 10, 2013); TEX. COMM'N ON LAW ENFORCEMENT OFFICER STANDARDS & EDUC., <http://www.tcleose.state.tx.us> (last visited Jan. 10, 2013); UTAH PEACE OFFICER STANDARDS & TRAINING, <http://publicsafety.utah.gov/post/index.html> (last visited Jan. 10, 2013); VT. CRIM. JUST. TRAINING COUNCIL, <http://vcjtc.vermont.gov> (last visited Jan. 10, 2013); VA. DEP'T OF CRIM. JUSTICE SERVS., <http://www.dcjs.virginia.gov> (last visited Jan. 10, 2013); WASH. ST. CRIM. JUST. TRAINING COMM'N, <https://fortress.wa.gov/cjtc/www> (last visited Jan. 10, 2013); W. VA. LAW ENFORCEMENT PROF. STANDARDS PROGRAM, <http://www.djcs.wv.gov/law-enforcement-professional-standards/Pages/default.aspx> (last visited Jan. 10, 2013); WIS. DEP'T OF JUSTICE TRAINING & STANDARDS BUREAU, <http://www.doj.state.wi.us/dles/tns> (last visited Jan. 10, 2013); WYO. LAW ENFORCEMENT ACAD., <http://wleacademy.com> (last visited Jan. 10, 2013).

4. ALA. CODE § 36-21-45 (2012); ALASKA STAT. § 18.65.240 (2010); ARIZ. REV. STAT. ANN. § 41-1822 (Supp. 2011); ARK. CODE ANN. §§ 12-9-602, 12-9-603 (2009); CAL. GOV'T CODE § 1029 (West Supp. 2012); CAL. PENAL CODE § 13510.1 (West 2012); COLO. REV. STAT. § 24-31-305(2)(a) (2012); CONN. GEN. STAT. § 7-294d (2011); DEL. CODE ANN. tit. 11, § 8404 (Supp. 2010); FLA. STAT. § 943.1395 (2012); GA. CODE ANN. § 35-8-7.1 (2012); IDAHO CODE ANN. § 19-5109 (Supp. 2012); 50 ILL. COMP. STAT. § 705 / 6.1 (2012); IND. CODE §§ 5-2-1-12, 5-2-1-12.5 (2012); IOWA CODE §§ 80B.11, 80B.13 (2011); KAN. STAT. ANN. § 74-5616 (2012); KY. REV. STAT. ANN. §§ 15.391, 15.392 (West Supp. 2012); LA. ADMIN. CODE tit. 22, pt. III, § 4731 (2011); ME. REV. STAT. ANN. tit. 25, § 2806 (2011); MD. CODE ANN., PUB. SAFETY § 3-

The process is similar to the ability of countless other state occupation and licensing boards to revoke the license of professionals within their jurisdiction—lawyers, doctors, accountants, barbers, among others.⁵ This Article proposes the four essential features of an effective decertification law: first, the POST should have jurisdiction over a number of criminal justice occupations; second, the POST must be able to revoke licenses for a broad range of police misconduct; third, the POST must have a combination of benefits and consequences to get police chiefs and sheriffs to report decertifiable conduct; and fourth, there need to be penalties to address the persistent lack of compliance by Police Chiefs who fail to report and investigate misconduct.

The first question a legislator in a state without an effective decertification law would ask is: Why is there a need for such a law? The legislator would likely want to know why a chief or sheriff would be willing to hire an officer previously fired from a department for misconduct and subject the department to a civil suit for wrongful hiring. The answer is that the officer is in possession of a state certificate that indicates he has completed his state-mandated academy training. A chief of a financially strapped department, given the choice of hiring a certified but questionable officer or hiring a brand new recruit, knows if he hires the latter he may have to pay for the recruit's training as well as his salary while the recruit attends the academy. Thus, he has an incentive to ignore the prior misconduct of the certified officer. One police chief justified the hiring of an obviously unfit officer who shot and killed someone while employed by the new department by stating, “[h]e was never found guilty of anything. Our policy here is that if the man comes to us

212 (LexisNexis 2011); MICH. COMP. LAWS ANN. § 28.609b (West 2012); MINN. STAT. §§ 626.8431, 626.8432 (2011); MISS. CODE ANN. § 45-6-7 (2011); MO. REV. STAT. § 590.090 (Supp. 2011); MONT. CODE ANN. § 44-4-403 (2011); NEB. REV. STAT. §§ 81-1403, 81-1404 (Supp. 2011); NEV. REV. STAT. ANN. §§ 289.510, 289.570, 289.580 (West Supp. 2012); N.H. REV. STAT. ANN. § 188-F:26 (2008); N.M. STAT. ANN. § 29-7-4 (2011); N.C. GEN. STAT. ANN. § 17C-6 (West 2011); N.D. CENT. CODE § 12-63-12 (Supp. 2012); OHIO REV. CODE ANN. § 109.77 (West Supp. 2012); 2012 Okla. Sess. Law Serv. 84 (West); OR. REV. STAT. § 181.662 (2011); 53 PA. CONS. STAT. § 2164 (2012); S.C. CODE ANN. § 23-23-80 (Supp. 2011); S.D. CODIFIED LAWS § 23-3-35 (2006); TENN. CODE ANN. § 38-8-104 (2010); TEX. OCC. CODE ANN. §§ 1701.351, 1701.501, 1701.502, 1701.503 (West 2011); UTAH CODE ANN. § 53-6-211 (West 2012); VT. STAT. ANN. tit. 20, § 2355 (2011); VA. CODE ANN. §§ 9.1-102 (2012); WASH. REV. CODE § 43.101.105 (2012); W. VA. CODE §§ 30-29-3, 30-29-5, 30-29-11 (2012); WIS. STAT. § 165.85 (2011); WYO. STAT. ANN. § 9-1-704 (2011).

5. *See, e.g.*, N.Y. JUD. CT. ACTS LAW § 90.2 (McKinney 2002) (granting the Supreme Court the power to disbar attorneys); MO. REV. STAT. § 326.313 (Supp. 2011) (granting the Missouri Board of Accountancy power to revoke licenses from CPA firms); 225 ILL. COMP. STAT. 410 / 4-7 (2012) (granting Illinois Barber Board power to revoke barber licenses).

qualified, we take it from there and make our own judgment.”⁶ Furthermore, an employee fired from a previous department for serious misconduct is not going to get a job with a department that has enough money to attract candidates with spotless records. Thus, the cash-poor department is able to hire him at a discounted rate.

I. A MODEL LAW

A. *What Criminal Justice Officers Should be Subject to Decertification?*

In addition to peace officers (i.e., police officers, deputy sheriffs, and state troopers), some states also have the authority to decertify other types of law enforcement personnel. This includes correctional officers, parole and probation officers, private security officers, communications personnel, juvenile justice officers, campus police, courtroom security officers, and others.⁷ The most common exemptions from coverage are elected sheriffs and some state law enforcement officers.⁸ The trend is to increase the scope of coverage to prevent a decertified police officer from getting a job in another criminal justice occupation. Why should a police officer, decertified for using excessive force against an arrestee, be able to get a job as a correctional officer? To prevent this from happening, state decertification laws should have jurisdiction over a broad range of criminal justice occupations.

B. *What Kinds of Misconduct Should Result in Decertification?*

There are three approaches taken by states in terms of what type of misconduct leads to decertification. In the first category, an officer may be decertified for criminal convictions.⁹

6. Paul Wagman & William Freivogel, *7 of Town's Officers Had Earlier Trouble*, ST. LOUIS POST DISPATCH, Mar. 30, 1980, at 11A.

7. *See, e.g.*, ALASKA STAT. § 18.65.245 (2010) (granting authority to revoke certification of municipal correctional, correctional, probation, or parole officers); OR. REV. STAT. §§ 181.610(16), 181.662 (2011) (granting authority to revoke certification of parole and youth correction officers); 53 PA. CONS. STAT. §§ 2162, 2164 (2012) (granting authority to revoke certification of campus police).

8. *See, e.g.*, DEL. CODE ANN. tit. 11, § 8401(5)(b) (2007) (exempting sheriffs and state security forces from the definition of police officer); TEX. OCC. CODE ANN. § 1701.003(a)(2) (West 2011) (exempting sheriffs holding office before Jan. 1, 1994).

9. ALA. CODE §§ 36-21-45(7), 36-21-46(5) (2001); COLO. REV. STAT. § 24-31-305(2)(a) (2012); IDAHO CODE ANN. § 19-5109(3) (Supp. 2012); 50 ILL. COMP. STAT. § 705 / 6.1(a) (2012); IND. CODE § 5-2-1-12.5 (2012); KAN. STAT. ANN. § 74-5616(c) (2012); KY. REV. STAT. ANN. § 15.391 (West 2010); LA. ADMIN. CODE tit. 22, pt. III, § 4731 (2011); MD. CODE ANN., PUB. SAFETY § 3-212(a) (LexisNexis 2011); MICH. COMP. LAWS ANN. § 28.609b (West 2012); N.D. CENT. CODE § 12-63-12(1) (2012); OHIO REV. CODE ANN. §§ 109.77(E)(4), 109.77(F)(1) (West 2002); 53 PA. CONS. STAT. § 2164(1) (2012); TEX. OCC. CODE ANN. §§ 1701.501,

These states decertify for all felony convictions; with respect to misdemeanors, some specify certain misdemeanors while others decertify for all misdemeanor convictions.¹⁰ This is clearly unacceptable. What other occupation or profession requires a criminal conviction before the license can be revoked? If the local prosecutor is unwilling to prosecute, there is no action the state POST can take. Fortunately, a majority of decertification states have broader authority.¹¹

In the second category are revocations that do not require a criminal conviction, but permit revocation after an administrative hearing—usually before an administrative law judge—determines the officer has engaged in statutorily prohibited conduct.¹² The major variation in the statutory language is between quite general and very specific conduct.¹³ Examples of general language are: commission of any criminal offense, any act committed while on

1701.502, 1701.503 (West 2011); VT. STAT. ANN. tit. 20, § 2355 (2011); VA. CODE ANN. § 15.2-1707 (2008).

10. For example, the state of Colorado allows revocation for a variety of misdemeanors, including harassment and drug possession. COLO. REV. STAT. § 24-31-305(2)(a) (2012).

11. See ALASKA STAT. § 18.65.240 (2010); ARIZ. REV. STAT. ANN. § 41-1822 (Supp. 2011); ARK. CODE ANN. §§ 12-9-602, 12-9-603 (2009); CAL. GOV'T CODE § 1029 (West 2010); CAL. PENAL CODE § 13510.1 (West 2012); CONN. GEN. STAT. § 7-294d (2011); DEL. CODE ANN. tit. 11, § 8404 (Supp. 2010); FLA. STAT. § 943.1395 (2012); GA. CODE ANN. § 35-8-7.1 (2012); IOWA CODE § 80B.13 (2011); KY. REV. STAT. ANN. §§ 15.391, 15.392 (West 2010); ME. REV. STAT. ANN. tit. 25, § 2806 (2011); MINN. STAT. §§ 626.8431, 626.8432 (2011); MISS. CODE ANN. § 45-6-7 (2011); MO. REV. STAT. § 590.090 (Supp. 2011); MONT. CODE ANN. § 44-4-403 (2011); NEB. REV. STAT. ANN. § 81-1403 (LexisNexis Supp. 2011); NEV. REV. STAT. ANN. §§ 289.510, 289.570, 289.580 (LexisNexis Supp. 2012); N.H. REV. STAT. ANN. § 188-F:26 (2008); N.M. STAT. ANN. § 29-7-4 (2011); N.C. GEN. STAT. § 17C-6 (2011); 2012 Okla. Sess. Law Serv. 84 (West); OR. REV. STAT. § 181.662 (2011); S.C. CODE ANN. § 23-23-80 (Supp. 2011); S.D. CODIFIED LAWS § 23-3-35 (Supp. 2012); TENN. CODE ANN. § 38-8-104 (2010 & Supp. 2011); UTAH CODE ANN. § 53-6-211 (West 2012); WASH. REV. CODE § 43.101.105 (2012); W. VA. CODE §§ 30-29-3, 30-29-5, 30-29-11 (2012); WIS. STAT. § 165.85 (2011); WYO. STAT. ANN. § 9-1-704 (2011).

12. ARIZ. REV. STAT. ANN. § 41-1822 (Supp. 2011); FLA. STAT. § 943.1395 (2012); GA. CODE ANN. § 35-8-7.1 (2012); ME. REV. STAT. ANN. tit. 25, § 2806 (2011); MINN. STAT. §§ 626.8431, 626.8432 (2011); MISS. CODE ANN. § 45-6-7 (2011); MO. REV. STAT. § 590.090 (Supp. 2011); MONT. CODE ANN. § 44-4-403 (2011); NEB. REV. STAT. ANN. § 81-1403 (LexisNexis Supp. 2011); N.M. STAT. ANN. § 29-7-4 (2011); 2012 Okla. Sess. Law Serv. 84 (West); S.C. CODE ANN. § 23-23-80 (Supp. 2011); S.D. CODIFIED LAWS § 23-3-35 (Supp. 2012); UTAH CODE ANN. § 53-6-211 (West 2012); W. VA. CODE §§ 30-29-3, 30-29-5, 30-29-11 (2012); WYO. STAT. ANN. § 9-1-704 (2011).

13. For an example of a general misconduct statute, see MO. REV. STAT. § 590.080 (Supp. 2011). For an example of a specific misconduct statute, see CONN. GEN. STAT. § 7-294d(c)(2) (2011).

active duty or under color of law that involves moral turpitude, or engaging in conduct unbecoming a law enforcement officer.¹⁴

Many states use quite specific language. For example, several states permit administrative decertification for the commission of an offense involving sexual conduct, the unjustified use of deadly force in the performance of the duties of a peace officer, or committing an act constituting perjury.¹⁵ It is hard to imagine not decertifying for perjury since that officer's testimony against a criminal defendant could be impeached at trial. The sole ground for administrative revocation in Illinois is perjury—but only perjury by an officer testifying in a murder trial.¹⁶

Which is the better approach—specific or general language? The advantage of using specific language, such as commission of perjury, gives clear notice to the officer of what conduct can result in a loss of license. However, if an officer can be decertified only for specified conduct that means officers who have committed other types of misconduct may continue in law enforcement. Yet, vague language, like “conduct unbecoming,” is problematic.¹⁷ One approach would be to investigate the state's practice for other professions and occupations, and then determine whether the state courts have upheld license revocations under that language. If it is good enough for doctors, it is good enough for police officers. A hybrid approach, combining revocation for specific misconduct with more general language, is probably the best solution.

In addition to revocation for convictions and administrative revocations by the state POST, the third option is to revoke the license when the officer is terminated from the agency or voluntarily leaves the agency in lieu of

14. *See, e.g.*, MO. REV. STAT. § 590.080.1(3) (Supp. 2011) (providing that an officer may be decertified if he or she has “committed any act while on active duty or under color of law that involves moral turpitude”); S.D. CODIFIED LAWS § 23-3-35.3 (2012) (providing for suspension of certification for officers who “have engaged in conduct unbecoming of a law enforcement officer”).

15. *See, e.g.*, UTAH REV. STAT. 53-6-211(1)(f)(2012) (permitting decertification if the peace officer engages in sexual conduct while on duty); N.D. CENT. CODE § 12-63-12(1)(b) (2012) (permitting decertification for the use of unjustified deadly force in the performance of duties as a peace officer); CONN. GEN. STAT. § 7-294d(c)(2)(H) (2011) (permitting decertification for committing perjury).

16. *See, e.g.*, 50 ILL. COMP. STAT. ANN. § 705 / 6.1(h) (West 2010) (providing that a police officer “shall . . . be decertified . . . upon a determination . . . that he or she, while under oath, has knowing and willfully made false statements as to a material fact going to an element of the offense of murder.”).

17. *See, e.g.*, S.D. CODIFIED LAWS § 23-3-35.3 (2012).

termination.¹⁸ That is—unlike the first two approaches where it is the officer’s conduct that triggers revocation—in these states, the action of the local department triggers revocation. For example, the focus is on an officer discharged from a police department for good cause.¹⁹ This is the least desirable approach. Merely because a chief found there was good cause to terminate an officer does not mean the conduct leading to the termination should also require the officer’s license to be revoked. The loss of a license is much more serious than the loss of a job, and good cause is so broad in scope it could mean the officer was fired merely because he did not get along with his chief. Unlike the previous two categories where the state statute defines the misconduct that can result in decertification, the local agency defines what constitutes grounds for termination and the grounds for decertification.²⁰

C. *What Mechanisms Need to be in Place to Insure Participation by Local Departments in Decertification?*

Virtually every state POST relies on local departments to investigate and report de-certifiable conduct.²¹ However, how likely is it that a department would report misconduct by an officer working for that department to the POST? After all, the chief hired an obviously unfit officer in the first place. Additionally, where the officer has left the department, usually resigning under threat of termination, the chief may take the view, “out of sight, out of mind.” That means the officer is likely to resurface at another agency, either inside or outside the state. This is the single biggest roadblock to an effective decertification program around the country. Even states, like Florida, that have been quite successful with decertification—Florida has decertified nearly six thousand officers over the years—have struggled with this issue.²² For

18. See, e.g., WIS. STAT. ANN. §165.85(3)(cm) (West 2011) (providing that the law enforcement standards board may “[d]ecertify law enforcement, tribal law enforcement, jail or juvenile detention officers who terminate employment or are terminated”).

19. See, e.g., WIS. STAT. ANN. §165.85(3)(cm) (West 2011) (decertifying officers who terminate employment or are terminated); S.D. CODIFIED LAWS § 23-3-35(3) (2012) (decertifying officers who have been discharged from employment for cause).

20. See, e.g., WIS. STAT. ANN. §165.85(3)(cm) (West 2011); S.D. CODIFIED LAWS § 23-3-35(3) (2012).

21. See Roger Goldman & Steven Puro, *Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct?*, 45 ST. LOUIS U. L.J. 541, 574 (2001) (citing FLA. STAT. § 943.1395(5) (2012) (providing that “[t]he employing agency must conduct an internal investigation . . . [and] must submit the investigative findings and supporting information and documentation to the commission”).

22. E-mail from Roger Goldman, Callis Family Professor of Law, St. Louis Univ. Sch. of Law, to Glen Hopkins, Standards Bureau Chief, Fla. Dep’t of Law Enforcement (Sept. 24, 2012, 16:31 CST) (on file with author); E-mail from Stacy Lehman, Training & Research Manager, Fla.

example, a recent nine-part series in the Sarasota Herald-Tribune uncovered numerous cases of obviously unfit officers who continued to serve in law enforcement because their misconduct was not reported to the Florida POST.²³ Moreover, then-Missouri Auditor, now United States Senator, Claire McCaskill wrote a report critical of Missouri's POST. The audit focused on small departments that were not cooperating with the state Department of Public Safety, which houses the POST.²⁴

Why is it that some chiefs refuse to comply with POST programs? First, there is a fear of a defamation suit by the officer. However, most states grant qualified immunity to the chief for good faith reporting to the POST of the behavior in question.²⁵ Second, if the officer resigns in lieu of a hearing or prior to termination, chiefs may agree not to report the officer to POST. They reason it is quicker and, at least in the short run, cheaper to let the officer go.²⁶

D. What are Possible Solutions to this Persistent Lack of Compliance by Chiefs to Report and Investigate Misconduct?

Prosecutors have a right to file criminal charges against chiefs and sheriffs, but that is politically unlikely except in the most egregious cases. Chiefs and sheriffs can be decertified by the POST for malfeasance in office.²⁷ The chief's superior, such as the city manager or mayor, may be able to investigate the chief.²⁸ In some states, a state agency has the power to investigate when the local agency does not. However, in many states that would require an increase

Dep't of Law Enforcement, to Roger Goldman, Callis Family Professor of Law, St. Louis Univ. Sch. of Law (Oct. 3, 2012, 16:14 CST) (on file with author).

23. Part one in this series highlights one officer who, despite a record containing forty internal affairs cases—involving use of excessive force, arrests, and accusations involving domestic violence and stalking—was allowed to keep his badge. See Anthony Cormier & Matthew Doig, *Tarnished Badge, Flawed System*, SARASOTA HERALD-TRIB. (Dec. 4, 2011), <http://cops.htcreative.com/>.

24. See CLAIRE MCCASKILL, OFFICE OF THE STATE AUDITOR OF MO., AUDIT OF THE MISSOURI DEPARTMENT OF PUBLIC SAFETY'S POLICE OFFICER STANDARDS AND TRAINING PROGRAM, NO. 2005-10 (2005), available at <http://auditor.mo.gov/press/2005-10.htm> (reporting that the audit revealed 12 percent of law enforcement agencies had not complied with one or more POST related state laws).

25. See, e.g., ARIZ. REV. STAT. ANN. § 41-1829.01.C (2012) (providing that “[c]ivil liability may not be imposed on either a law enforcement agency or the board for providing information specified in subsections A and B of this section if there exists a good faith belief that the information is accurate.”).

26. See Goldman & Puro, *supra* note 21, at 549.

27. See, e.g., IDAHO CODE ANN. § 19-5109(3) (Supp. 2012) (noting that the council can decertify “any officer” who is convicted of any misdemeanor, willfully or otherwise falsifies or omits information to obtain a certified status, or violates any of the standards of conduct as established by the council’s code of ethics).

28. OR. REV. STAT. ANN. §§ 181.610, 181.620, 181.661 (West 2012).

in the POST's staff, and in a time of tightened state budgets it is not realistic. Oregon has an unusual provision that avoids criminal prosecution, but permits the imposition of a civil penalty up to \$1,500 on the police department for non-compliance.²⁹ Perhaps imposing such penalties would be more likely to get the local agency to cooperate. In extreme cases, either an entire department should be decertified, or the specific municipality should be disincorporated as a result of a failing police department.³⁰

II. CONCLUSION

Every state should enact a strong decertification law that takes away the ability of unfit officers to continue in law enforcement. States should treat police professionals the way states treat other professionals. It is inexplicable that in six states, state law authorizes the power to revoke a barber's license for misconduct, but does not authorize the revocation of a police officer's license.³¹ Policing, of all professions and occupations, has the most need for decertification because of the power granted to peace officers to arrest, search, and use deadly force. One of the primary reasons for decertification is gross abuse of the officer's power over citizens. For example, in a study of seven years of decertification in Florida, almost every decertification for mistreatment of citizens involved sexual abuse of female drivers stopped for speeding.³² In those cases the decertified officer either assaulted the driver or agreed not to arrest her if she agreed to have sex with him.³³

There is clearly a need to enact revocation legislation in the six states without that authority as well to broaden the grounds for revocation in the sixteen states that require a criminal conviction. Citizens groups and investigative reporters need to be on the lookout for cases where an officer is fired by one department for serious misconduct, gets rehired by another department, and then is involved in further misconduct at the new department. However, to get legislation approved—either to strengthen existing revocation

29. OR. REV. STAT. § 181.679 (2011).

30. *See, e.g.*, H.R. 1891, 96th Gen. Assemb., 2d Reg. Sess. (Mo. 2012). It should be noted this bill never made it out of the House of Representatives, and, thus, never became law. However, the proposed bill allowed for a city to potentially be disincorporated for failing to provide satisfactory law enforcement. It should be noted the municipality, rather than the police department, would be dissolved.

31. *See infra* notes 3–4 and accompanying text; *see also* HAW. REV. STAT. ANN. § 438-14(a) (LexisNexis 2005); IND. CODE. ANN. § 25-1-11-12 (West 2012); N.J. STAT. ANN. §§ 45:1-1, 45:1-21 (Supp. 2012); N.Y. GEN. BUS. LAW § 441(a) (Supp. 2012); R.I. GEN. LAWS § 5-10-26 (2009), WASH. REV. CODE § 18.16.210(2) (2012).

32. *See* Roger Goldman & Steven Puro, *Decertification of Police: An Alternative to Traditional Remedies for Police Misconduct*, 15 HASTINGS CONST. L.Q. 45, 67–69 (1987).

33. *Id.*

laws or to enact new ones in the states without the power—there needs to be a coalition of groups concerned about the rights and liberties of citizens, police chiefs and sheriffs interested in police professionalism, and prosecutors concerned about the rule of law.