



New Challenges Facing Law Enforcement

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Law Enforcement Liability – Where We’ve Been

- Over the years, we’ve talked about – and you’ve heard about – the Governmental Immunity Act, federal civil rights laws, and other sources of liability.
 - We were privileged, for many years, to live in a state with great liability protections for public officials and public entities, including law enforcement.
 - We were fortunate that we didn’t have “runaway juries” – Colorado juries were known for a common-sense approach to seeing the real issues in a claim involving police, and for an appreciation of law enforcement.
 - We’ve had legal principles in place that didn’t hold law enforcement officers and other public officials to the standard of being “supreme court justices” – “qualified immunity”.
 - And we’ve been fortunate to have federal judges who generally take a common-sense approach to deciding qualified immunity issues, dismissing cases when warranted.

Where We Are:

Toto, I have a feeling we're not in CO anymore!

- Massive changes are impacting the provision of law enforcement services in CO and elsewhere.
 - **Public sentiment** (and therefore jury sentiment) is changing.
 - **Social forces** (e.g., social media + body-worn cameras) mean “**social inflation**” factor for claims – not just local community sentiment, but national and even international perceptions, can influence the course of a claim.
 - Much riskier to take law enforcement liability claims to trial.
 - Much harder to settle law enforcement liability claims, especially for a reasonable amount.
 - **Legislative agendas** around “police reform” have impacted perceptions of law enforcement and have established **new mandates and new types of claims** in CO – S.B. 217. (*Per NCSL*: “Colorado is the first state to statutorily limit the use of qualified immunity as a defense in law enforcement cases at the state level.”).

What Are Some of These Trends?

- Until a few years ago, CIRSA never had a settlement of a member police liability claim of more than \$1 million. That has changed dramatically.
 - \$1.3 million settlement in 2014 was our biggest ever at the time.
 - A \$4 million settlement in 2017 was our biggest ever at the time.
 - An \$8.75 million settlement in 2020 is now our biggest ever...at this time. Thought to be record-breaking in CO...
 - ...and then Kiowa County broke our record (\$9.5 million)...and Aurora (\$15 million)...and Denver (\$14 million-protest verdict)...and recently, we and others participated in CO's biggest ever LEL settlement - \$19 million.
- Similar “nuclear” verdicts and settlements are occurring nationwide.
- **As settlements and judgments increase, the cost of coverage increases, too.**
- Obviously, the upward trend in settlements and verdicts is unsustainable.

Law Enforcement Liability

- The result of this trend is that many insurers are getting out of the LEL business altogether. Recently, CIRSA has seen some of its long-time liability reinsurers leave the market.
- Other insurers are cutting back on coverage limits and greatly increasing premiums.
 - For example, a large Colorado department recently noted its LEL premium is doubling.
 - Premium increases of as much as 400 percent are being reported elsewhere!
- The bottom line for CIRSA members with police departments:
 - We are projecting a 150 percent increase in the cost of LEL coverage.
 - This increase in LEL will be offset by decreases in the cost of other liability coverages for 2024. There will be decreases in general liability (-9.3%), auto liability (-8.2%), and public officials' E&O (-4%). Thus, the average "blended" increase in the liability portion of member contributions will be 47 percent for members with police departments.
- A CIRSA member without a police department will not be charged for any portion of the law enforcement liability coverage.
- These percentages are for the CIRSA membership as a whole and individual members may see greater or lesser increases.

Law Enforcement Liability

- The magnitude of the LEL increase is necessary to cover (i) the cost of defense and settlements/judgments in CIRSA's retention, (ii) a potential increase in that retention from \$1m to \$2m, and (iii) the likely cost of reinsurance coverage.
- Currently, CIRSA provides \$10 million per claim/occurrence in LEL coverage. We also provide coverage for the up-to-\$25k personal liability that officers face as a result of S.B. 217.
- If you have law enforcement, your LEL insurance cost makes up a significant portion—approximately 60%—of the total cost of your property/liability coverage through CIRSA.
- Going forward, we are implementing ways to accommodate members' desires for both higher AND lower law enforcement liability limits. For 2024, we are offering members several options for LEL (and other liability) limits.
- We expect continued “quota-sharing” by our reinsurers. We will fight to maintain the availability of high LEL limits without per-member or pool aggregates...but it remains to be seen whether high limits without aggregates will continue to be available.

Law Enforcement – Other Challenges

- In addition to the costs of LEL claims and coverage, police are facing a host of other challenges:
 - **Mandates are increasing but the funding isn't.** Local governments are finding that the cost of providing LE services is also increasing. Detailed mandates—e.g., body cams, new reporting requirements, etc.—come with new costs as well as new liability exposures—policing legislation is increasingly being written at a police manual level of detail!
 - **Recruitment and retention are harder than ever.** Social and legal environments are causing career changes, retirements, recruitment and retention challenges.
 - **“Piling on” is affecting agencies and officers.** Police are expected to solve all of the ills of the world in addition to crime-fighting. Homelessness? Opioid abuse? Mental health incidents? You cannot ask “too much” of law enforcement without that pressure causing cracks somewhere. Police are increasingly facing claims based on involvement in non-criminal incidents.
 - **Officer health and wellness.** As a result of all of the above, there is increased officer stress, burnout and attrition; increased risks of mistakes leading to injury to themselves or others, and corresponding negative impacts on officer health and wellness.
- What are you seeing in your police departments?

Law Enforcement – What Can Be Done?

- While CIRSA and its members cannot control the sentiments or claimants, jurors or legislators, there are things that can be done.
- If you see law enforcement as a critically important community service, it **MUST** be treated that way with **prioritization of funding and resources** for recruitment, training, supervision, equipment, staffing, policy development, compensation & benefits, etc.!
 - Some communities have discussed “defunding” their police departments...meanwhile, many other communities have never adequately FUNDED their departments.
 - You “can’t afford” to adequately fund your police department? You can’t afford NOT TO!!
 - Underfunding and/or understaffing your police department disserves EVERYONE: your officers, your municipality, and your citizens.
 - **Is your PD adequately staffed?** And is staffing adequately funded?
 - Has your community identified its priorities for your PD? **Are your policing priorities adequately funded?**
 - In short, if you want your community to provide law enforcement services, you **MUST** make a commitment to funding properly.

Law Enforcement – What Can Be Done?

- In addition to adequate funding, governing bodies and city/town managers can help their agencies via their responsibilities for “civilian oversight.” These can include:
 - Making sure your entity’s **organizational structure** is set up to provide appropriate roles/relationships with the Police Department – not all organizations are!
 - **Appropriate oversight** without micro-managing.
 - Ensuring excellent **lines of communication**.
 - **Building bridges** that serve to alleviate disconnections related to the differing views of law enforcement. What steps might help to create a “bridge”?
 - Community meetings focusing on mutual, joint, and differing concerns about LE issues?
 - Other community input and participation opportunities?
 - Greater transparency? E.g., putting key policies online? Putting out information sooner on high-profile issues/incidents?
 - Ensuring key policies are congruent with community expectations – and helping the community to better understand the why and how of high-risk policies such as use of force?
 - **Others?** What are you doing?

Law Enforcement – What Is CIRSA Doing?

- As you've perhaps seen, there are some calls for insurers to take an active roll in “police reform” via mandated changes in personnel, policies or training.
- CIRSA views itself as a RESOURCE to its members.
- Our approach has always been to make RECOMMENDATIONS, provide RESOURCES, and seek ways to REWARD members for following best practices and offer SUGGESTIONS – carrot, not stick!
 - We also think a carrot, not stick approach is how agencies and their personnel solidify commitment and “buy-in” to excellence in policing.
- That's why the CIRSA Board of Directors has allocated significant funding to initiatives that help provide law enforcement with resources they need to mitigate LEL risks, support officer health and wellness, and help their agencies succeed.

Law Enforcement – What Is CIRSA Doing?

- CIRSA Law Enforcement Resources and Initiatives:
 - SIGMA wellness initiative
 - CORDICO mental wellness app
 - Individual time with Dr. Jamie Brower, a noted police psychologist (and we can make this program available with other psychologists you identify in your own regions)
- Training opportunities through the CIRSA Risk Control Department, including:
 - Active Bystandership for Law Enforcement (ABLE) training
 - Regional Seminars
 - Law Enforcement Roundtables
- CIRSA Law Enforcement Endowment Fund
- Law enforcement policy review via the CIRSA Liability Hotline
- \$25k individual liability coverage for officers
- Risk Control Credits for safety program funding
- See CIRSA's Law Enforcement page (<https://www.cirsa.org/law-enforcement/>) and website (www.cirsa.org) for more information, and please contact us if you have questions.

Summing Up

- CIRSA's insureds include 88% of Colorado's cities and towns, including nearly all CAST members. CIRSA's insureds include more than 150 law enforcement agencies employing more than 4,000 peace officers.
- As a pool insuring—and as members providing—law enforcement services throughout Colorado, it is important we collectively rise to the challenges facing law enforcement.
- At CIRSA, we are always looking for more and better ways to help elevate our members' practices, including through provision of risk control programs and services that are tailored to our members' needs.
- What else do you think we at CIRSA can or should be doing with regard to the challenges facing law enforcement? We value your input!
- THANK YOU for undertaking all of the challenges of local government, and most especially those around law enforcement.

About the Colorado Intergovernmental Risk Sharing Agency (CIRSA)

- Public entity self-insurance pool for property, liability, and workers' compensation coverages.
- Formed by in 1982 by 18 municipalities pursuant to CML study committee recommendations.
- Not an insurance company, but an entity created by intergovernmental agreement of our members.
- Total membership today stands at over 280 member municipalities and affiliated legal entities
- Member-owned, member-governed organization.
- No profit motive – sole motive is to serve our members effectively and responsibly.
- CIRSA Board made up entirely of municipal officials.
- Seek to be continually responsive to the liability-related needs of our membership – coverages and associated risk management services, sample publications, training, and consultation services, as well as specialty services such as home rule charter review.
- We have the largest concentration of liability-related experience and knowledge directly applicable to Colorado municipalities.

Speaker Bios

Tami Tanoue has been CIRSA's Executive Director since August, 2018. Her previous positions with CIRSA include General Counsel/Deputy Executive Director and General Counsel/Claims Manager. She was previously in private practice with the law firm of Griffiths, Tanoue, Light, Harrington & Dawes, where she served CIRSA as its contract General Counsel for 12 years, and was City or Town Attorney for several Colorado municipalities. Prior to that, she was Staff Attorney for the Colorado Municipal League, where she represented the collective interests of Colorado municipalities. Tami is a regular speaker on local government liability topics and has written several publications on liability issues.

Sam Light is Deputy Executive Director/General Counsel for CIRSA. Prior to joining CIRSA in 2018, he was a partner with the Denver law firm of Light | Kelly, P.C., specializing in municipal and other public entity law, insurance law, and defense of public entities and elected officials. Sam has over 25 years of experience serving as general or special counsel to several Colorado cities, towns, self-insurance pools, and other public entities, and he is a frequent speaker on public entity risk issues.

Note: The suggestions in this presentation are those of the authors, who takes full responsibility for them...any resemblance strictly coincidental, etc. This presentation is a training resource only and not legal advice. In the event of any conflict between training tips and the advice of your entity's attorney, the advice of your attorney prevails!

Related Resources

- National Police Funding Database of LEL Settlements: <https://policefundingdatabase.org/explore-the-database/settlements/>.
- *SB20-217 Regional Impacts to Law Enforcement*, NWCCCOG Report: <https://www.cirsa.org/news/sb20-217-impacts-to-law-enforcement/>.
- *The Fight Against Crime in Colorado: Policing, Legislation, and Incarceration*, Common Sense Institute Report: <https://commonsenseinstituteco.org/wp-content/uploads/2023/06/FINAL-CSI-Report-CO-Fight-Against-Crime.pdf>.
- “Police liability market still tough for buyers,” Business Insurance: <https://www.businessinsurance.com/article/20220601/NEWS06/912350160/Police-liability-market-still-tough-for-buyers>.
- “Law enforcement liability concerns rise in changing environment,” Business Insurance: <https://www.businessinsurance.com/article/20230613/NEWS06/912357991/Law-enforcement-liability-concerns-rise-in-changing-environment>.
- “The cost to cover Colorado Springs Police liability insurance doubles,” KKTV: <https://www.kktv.com/2023/03/03/cost-cover-colorado-springs-police-liability-insurance-doubles/>.
- “Why Police Have Been Quitting in Droves in the Last Year,” NY Times: <https://www.nytimes.com/2021/06/24/us/police-resignations-protests-asheville.html>.
- “It’s Not Just a Police Problem, Americans Are Opting Out of Government Jobs,” Marshall Project: <https://www.themarshallproject.org/2023/01/21/police-hiring-government-jobs-decline>.