



Risk Management Solutions



Summer 2022

A Quarterly Newsletter of the AMIC/MWCF Loss Control Division

Reserve Police Officers: What is the Risk?

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Municipal police departments often struggle with providing sufficient personnel to respond to calls for service and meet the other expectations of the community. A shortage of officers has become the norm in today's society, yet communities want and *need* the protection and daily services provided by their police department. In addition, local police departments strive to increase their engagement with the community and are constantly soliciting community participation in the policing process.

One option to address these issues is the creation and operation of a Reserve Police Officer Program. Reserve officers are, quite simply, individuals who volunteer to serve their local municipal police department. The concept of volunteer police officers pre-dates the beginning of our country and the practice continues today. Reserve officers can provide financial, personnel and operational benefits to police departments. This additional help can be a blessing but can also pose liabilities – the key is to *understand* and *minimize* the risks through the proper management of these programs. Each municipality must determine for themselves if reserve officers are a realistic option as factors and considerations will vary locally. Keep in mind Reserve Officer Programs are not for every department, and for every advocate there is one or more critics.

What is the Risk?

While there can be benefits to operating a Reserve Police Officer Program, risk management should also be a consideration. This article focuses on the potential liabilities and other issues that can exist for a municipality. Remember, unlike the use of volunteers for other activities, the reserve officer will utilize a uniform, car, weapon and other public equipment while assisting in law enforcement activities.

One of the greatest potential liabilities is when a municipality allows reserve officers to exceed their limited authority and duties as outlined in state law. Usually, these situations occur because of poor program supervision and management. In some instances, it is the direct result of a department trying to stretch its resources and allow reserve officers to work alone and conduct duties outside of their scope without direct supervision.

Although Alabama law provides civil liability to public volunteers, such as a reserve police officer, there is no question that a municipality is liable for negligent actions committed by their reserve officers. Section 6-5-536(d), Code of Alabama 1975. This includes actions for state torts under Section 11-47-190, Code of Alabama 1975, and claims for civil rights violations brought pursuant to 42 U.S.C. Section 1983.

Alabama law allows a municipality to organize a reserve police force of private citizen volunteers who have no powers of arrest other than those of private citizens. Section 11-43-210, Code of Alabama 1975. As volunteers, reserve police officers serve without pay and assist with some of the tasks ordinarily performed by certified police officers; however, these officers are not an alternative to paid certified officers and are limited in their duties – even though some municipalities have tried.

There have been incidents in Alabama where reserve officers work alone at security details, athletic events, prisoner transports or even on patrol. The justifications range from “we need the help,” “we’re short staffed” to “it’s just a ballgame – what could go wrong?” or “they’re just patrolling; they won’t take any action.” Reserve officers can conduct patrol operations to detect, prevent and suppress crime or enforce traffic laws “provided the reserve law enforcement officer acts at all times under the direct control and supervision of a certified law enforcement officer.” §11-43-210. Reserve officers may also perform traffic direction and control and render crowd control assistance “provided supervisory control will be exercised by a certified law enforcement officer whose span of control would be considered within reasonable limits.”

Reserve officers may *not* fill in for regular officers during on-duty or off-duty assignments. In addition, neither a municipality nor its certified

**RESERVE
POLICE
OFFICERS**



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Sidewalk Safety Programs Reduce Liability Exposure

Stephanie Southerland • Loss Control Representative • AMIC/MWCF

School is out for the summer. Your city streets, parks and walking trails are being utilized the next few months more than other times of the year. The maintenance and repair of sidewalks are matters of concern for all cities, regardless of size or class. Cities often have hundreds of feet or even miles of sidewalks. Your city-owned walking trails are frequently paved and should be viewed in this same manner. They are considered part of the city streets; therefore, cities have a duty to keep sidewalks in a reasonably safe condition. If a city fails to maintain its sidewalks in a reasonable state of repair, it may be responsible for numerous trip/fall incidents resulting in damage claims.

Unsafe Walking Surfaces Pose Liabilities

The American Society of Testing Materials (ASTM) Standard Practice for Safe Walking Surfaces (ASTM F1637-02) has specific requirements for sidewalks including:

Changes in sidewalk levels between 1/4 and 1/2 inch shall be beveled with a slope no greater than 1:2 (rise:run).

Changes in levels greater than 1/2 inch shall be transitioned by means of a ramp or stairway that complies with applicable building codes, regulations, standards, ordinances, or all of these.

Basically, what this means is that sidewalks that are broken or uneven due to tree roots, erosion or vehicle weight pose a liability to your municipality. There have been a number of claims reported nationwide involving battery-powered wheelchairs tipping over due to a significant edge drop on the side of sidewalks. Battery acid burns on disabled people can result in very expensive claims.

Take the time to inspect your sidewalks and make repairs as soon as possible. Use warning signs or barriers to secure the area until it is repaired. Yes, it is expensive to repair and replace sidewalks but keep in mind that Alabama law, like many states, allows municipalities to assess the cost of sidewalk construction and repairs on the abutting landowners. The Code of Alabama, Section 11-48-10 states:

“When council to establish grade of street, alley, sidewalk, etc., to be improved.

Before the passage of the final resolution or ordinance to make any improvement on any street, avenue, alley, or sidewalk, the cost of which or any part thereof is to be assessed to the abutting property, if the grade of such street, avenue, alley, or sidewalk has not been established or if said improvement necessitates a change of grade, the council shall, by ordinance, fix and establish the grade of such street, avenue, alley, or sidewalk about to be improved and also the grade of the curb on each side thereof.” (*Code 1907, §1366; Code 1923, §2181; Acts 1927, No. 639, p. 753; Code 1940, T. 37, §520.*)

There is no single rule or case that dictates whether the condition of a sidewalk is dangerous or unsafe; this is normally determined by a jury based on the circumstances at the time of the injury. The city is not the guarantor of every person using the sidewalks, nor is it responsible for every injury. The law doesn't impose such a standard that the city must maintain perfect sidewalks. The right to recover damages from a city for injuries caused by defective or dangerous sidewalks is derived from the common law of negligence. Therefore, generally speaking, in order to recover damages, the person must establish these facts:

- While using the sidewalk properly and with reasonable care, they suffered injury by a defect;
- The sidewalk was not reasonably safe because of the condition; and
- The city knew or should have known of the condition and failed to take reasonable steps to eliminate it.

A city could be liable for injuries due to a defect if the defect or condition existed long enough that the city should have been aware of the problem through ordinary diligence and failed to guard the public against it. This is one of the reasons that you're asked in your Loss Control Audit if you conduct regular property and facility inspections. These should always be documented and kept on file based on the records retention schedule which can be found at www.sos.alabama.gov/government-records/records-disposition-authority. You can find sample property checklists on our website www.losscontrol.org.

Sidewalk Safety Program

We strongly recommend each municipality to develop and implement a sidewalk safety program to reduce this liability exposure by:

- Establishing a policy that includes the conditions that warrant repair or replacement;
- Instituting a formal inspection program to identify and document problem areas within the network of sidewalks. A system for prioritizing repair and replacement needs should be developed based on the result of the annual inspections; and
- Establishing a repair or replacement procedure that states whether the abutting property owner or the city will repair the sidewalks or if both will share the responsibilities. Generally, the city may offer several options to remedy the costs associated with repairs and replacements.

You may want to consider adopting an ordinance as part of your municipal sidewalk safety policy. The ordinance would require abutting property owners to construct, repair, and maintain public sidewalks. To maintain its effectiveness, the ordinance must be strictly enforced. Sidewalk safety policies and ordinances cannot be used as risk transfer mechanisms by the city.

Success begins by ensuring your city's policy contains the elements outlined above. ■

Reserve Police Officers

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officers have any authority to grant reserve officers additional powers or direct them to act in excess of state law. Keep in mind that any willful, intentional or conscious decision to violate state law, municipal ordinance and/or department policy only increases risk and liability – as well as the size of the check written to resolve a claim.

Properly trained reserve police officers can assist a department with natural disasters or other emergencies as well as special events such as parades or athletic events. They can also assist with bookings, fingerprinting, traffic control and securing crime scenes. The keyword here is *assist* – not perform on their own. According to Alabama Attorney General's Opinion 88-0356, a reserve officer is not authorized to perform routine patrol and enforcement activities but may assist regular officers in their performance of such duties.

In addition, Alabama Attorney General's Opinion 1992-350, states a reserve police officer who is performing or assisting in patrol duties must be physically accompanied by a certified law enforcement officer who maintains direct control and supervision over him at all times. In other words, if the reserve officer is in a patrol car, a certified officer must be in the car with him.

Creating a Reserve Police Officer Program

A municipality that decides to organize a reserve police officer program must do so by ordinance in accordance with §11-43-210. A sample ordinance is available in the *Alabama League of Municipalities Selected Readings* or online at www.losscontrol.org under Reference Documents, by keyword search "Reserve" or resource "PSOP-006". At a minimum, the ordinance should establish the program, along with the qualifications, appointment, duties and limitations of reserve officers.

Secondly, police departments should enact policies and procedures that more specifically define the scope of the reserve officer's authority; a definition of the duties to be performed; activities they can participate in and any restrictions; requirements for number of days worked per month or year; training; and any other guidance as needed. This policy must clearly state that non-APOSTC certified reserve officers cannot work without direct supervision of an APOSTC certified officer as defined in the CODE of Alabama. A sample policy is available at www.losscontrol.org as noted above.

Third, it is strongly recommended that reserve police officers receive training to adequately and appropriately perform their duties and responsibilities. A municipality that fails to provide such training increases their liability in addition to creating a safety hazard to certified officers and the public. The better trained a reserve officer is, the less likely he or she is to negligently perform their assigned duties. It should be noted that failure to train could be the basis for a cause of action against a municipality. At a minimum, municipalities should ensure that reserve officers are proficient in firearms (including initial and annual qualification), driving, the law and department policy and procedures (including use of force). Ideally, reserve officers should receive the same or similar levels of continuing education and training as certified officers. Proper training will help prepare these officers for the varied situations they are likely to encounter while on active duty.

Lastly, municipalities should ensure that their workers compensation insurance carrier covers reserve officers. Otherwise, the municipality may be directly liable to the reserve officer for any injury he or she suffers while on duty. The Municipal Workers Compensation Fund (MWCF) provides separate volunteer coverage for reserve police officers; however, some workers compensation companies do not cover reserves or volunteers.

Conclusion

In conclusion, municipalities considering implementing a Reserve Police Officer Program should weigh the potential benefits against the probable risks and liabilities. If implemented, proper selection, training, supervision and management of reserve officers, along with strict adherence to state law, municipal ordinance and department policy will help reduce a municipality's exposure to risk and liability.

For more information or assistance, please contact the Alabama League of Municipalities Legal Department or your Loss Control Police Safety Consultant at 334-262-2566. ■

Resource List:

Alabama League of Municipalities Selected Readings; Alabama Office of the Attorney General; Code of Alabama 1975

Loss Control Summer Seminars



Guntersville
August 9, 2022

Priceville
August 10, 2022

Foley
August 16, 2022

Montgomery
August 17, 2022

All AMIC and MWCF members are encouraged to increase their understanding of the scope of risk management practices for public entities by attending one of our Loss Control Seminars this summer.

To register for the Summer Seminars, go to www.losscontrol.org. Check the link of your preferred location to register online. **Deadline to register is one week prior to each event.**

Subjects will include:

- Behavioral Risk Management
- Hiring Practices for Law Enforcement
- Safety is Not a Game
- How to Build a Safety Program

CMO Credit Hours: This session is approved for four (4) credit hours in the Basic, Advanced and Emeritus Programs. Only municipal elected officials receive credit hours in the CMO Program.

The cost for the seminar is \$30 per person. Lunch will be provided.

2022 SKIDCAR Schedule

Through an advanced, computer-controlled driver training vehicle known as the SKIDCAR System, trainees learn how to react quickly and safely to a range of hazardous driving conditions. Training is conducted throughout the state at a minimal cost. If you would like to schedule or host a SKIDCAR session in your area, please contact **Donna Wagner** at (334) 386-8125.

July 11 – 15	Andalusia
August 16 – 26	Decatur
Sept. 12 – 23	Anniston
Oct. 10 – 21	Oneonta
Nov. 8 – 18	Scottsboro
Dec. 6 – 16	Adamsville



Register and pay online at www.losscontrol.org!



Loss Control Division

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Summer Safety DVDs

- 5.049 Distractions: Behind the Wheel For Drivers
- 5.053 Landscaping Equipment: Maintenance and Safety
- 5.055 Distracted Driving: At What Cost?
- 7.026 The Facts About Ticks and Lyme Disease
- 7.105 Groundskeeping Safety: Dealing With Bugs and Critters
- 7.106 Groundskeeping Safety: Be a Pro!
- 7.108 Protecting Your Feet: Learning Your ABC's
- 7.111 Back Injury Prevention for Public Entities (TML)
- 7.115 First Aid: Prepared to Help
- 7.116 CPR and AED: The Chain of Survival
- 7.117 Hazards of Cell Phone Usage
- 7.118 Safety Procedures for Lawn Mower Operators
- 7.119 Landscape Power Tool Safety
- 7.120 Hedge Trimmer Safety
- 7.121 Video Guide to Chainsaw Safety
- 7.122 String Trimmer Safety
- 7.123 Boating Safety

Video/DVD requests to Sonya McCarley at: 334-262-2566, smccarley@almonline.org or FAX at 334-262-2809

Need Help Filing Work Comp Claims?

For step-by-step instructions, visit:

www.almwcf.org

Employment Practices Law Hotline

1-800-864-5324

Through a toll-free Employment Practices Law Hotline, members can be in direct contact with an attorney specializing in employment-related issues. When faced with a potential employment situation, the hotline provides a no-cost, 30-minute consultation.

www.losscontrol.org