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Law Enforcement Action Forum NEWSLETTER



Encounters with the Mentally Ill -- Managing the Process

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Mental illness is “a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.”

Michigan Mental Health Code, PA 258 (1974), 330.1400, (g)

Background

Based on probability alone, there is a very good chance that law enforcement officers will encounter individuals with a mental illness on a relatively frequent basis. The Surgeon General’s Report on Mental Health (1999) said that one in every five people, or about 54 million Americans, experience some type of mental disorder each year, although fewer than 8 million seek treatment. The National Mental Health Association in 2002 projected that 28% to 30% of the U.S. population has a mental health disorder, substance abuse disorder, or both. The Substance Abuse and Mental Health Services Administration in 1997 reported that *serious mental illnesses* affect more than 10 million Americans, nearly half of who have severe and persistent disorders. Finally, for the past 40 years this country has been closing inpatient mental health facilities.

When this change in treatment philosophy first took place, mental health practitioners provided training to law enforcement on techniques to deal with the “consumers” that they might encounter at odd times and in unusual circumstances. The goal was to help officers understand that they needed a different technique to handle these individuals from those they used on the regular bad guys. At that time, the emphasis was on developing a working relationship between law enforcement, mental health providers, and health care facilities in support of this new approach to mental health care. Over time, however, the funding for these programs dwindled, a fate shared by community resources for supporting these individuals. Not surprisingly, the relationships forged when mainstreaming the mentally ill deteriorated as more pressing matters arose and the original participants moved on to other endeavors.

The LEAF Committee, recognizing the need to be responsive to the issue of managing encounters with the mentally ill, is developing a Chapter for the Manual of Law Enforcement Risk Control. Though a policy that provides direction on the procedural issues of dealing with mentally ill subjects is important, the Committee felt that training in how to recognize these individuals and an understanding of the techniques that are successful in maintaining control of the incident are equally, if not more, important. The Committee also felt that one cannot overly emphasize the fact that when officers confront a subject who is in crisis and demonstrating behavior that is life threatening to the officer or others, officers must take what ever action they feel is necessary to protect themselves or another. This may include the use of deadly force.

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The Current Situation

Reports from law enforcement indicate that approximately seven to ten percent of the requests for police assistance involve a subject who meets the definition of a person who is mentally ill. These individuals' mental conditions are often further eroded by substance abuse. For law enforcement, the safety of an officer and the public must take precedence over the potential for controversy or the public's misconceptions about police tactics. There are going to be incidents where officers must use deadly force to protect themselves or others from a life threatening assault by a mentally ill individual. Fortunately, such Incidents are infrequent.

In fact, law enforcement usually comes in contact with subjects suffering mental illness during general patrol or while handling calls for service and most encounters are without incident.

Unfortunately, the routine and successful management of the mentally ill by law enforcement rarely makes headlines.

Over the past few years, law enforcement's handling of some incidents involving mentally ill subjects has generated significant controversy as a result of perceived mishandling. Studies have been commissioned and hearings have taken place. Heightening the controversy, the press has expressed outrage, fed public opinion, and made life fairly miserable for any law enforcement agency involved in an incident involving a mentally ill person. Inevitably civil action follows and the misery continues.

We could fill this newsletter with examples of incidents where tragedy and heartache were the outcome for the victims, their families, the officers involved, their departments, and the Community. But this is unnecessary. Every law enforcement officer has either heard of or experienced incidents involving suicide by police, out of control life-threatening behavior, or bizarre or unusual behavior in a person suffering from mental illness.

The critical issue is law enforcement's response to encounters with the mentally ill because it is that reaction in these situations that forms public opinion on whether police officers have the ability to properly handle them. The public seems to believe that officers ought to be able to handle these

incidents -- though inherently risky -- by talking these individuals down or by shooting them in the leg or arm to disable them. Law enforcement has to be careful not to reinforce this perception by rapidly procuring less lethal weapons as a quick fix. Unfortunately, there are departments that have just reacted without first analyzing the effectiveness and reliability or the risks of deploying or applying these weapons in their working environment. It is almost as if police administrators are caught up in the belief that Less Lethal Weapons are a quick fix to demonstrate they are prepared for the risk in these incidents and can bring them to a successful conclusion. Even with the availability of less lethal weapons, the reality is that tragic incidents in which the mentally ill receive serious injuries or die do and will continue to occur. The encounter between a mentally ill individual and the police is fraught with difficulties, ranging from a lack of training for police officers to the instability and unpredictability of the mentally ill person.

Managing the Situation

As we have seen, the most commonly criticized element of an incident involving a mentally ill person that goes bad is an officer's response. The first place the plaintiff's expert looks to is the training that the officer received. Next the plaintiff's expert looks at the equipment and the overall supervision that the department provided. Often the examination determines that officers are well equipped to handle the regular bad guy he encounters because this person generally responds more rationally than one who is mentally ill. People in crisis are often not rational. Their behavior is not predictable and may not meet an officer's expectations. The officer interprets the lack of compliance with his commands as an escalation of a threatening situation. Things often escalate from there.

Based on the national statistics, there is a significant probability that officers will encounter a mentally ill and intoxicated subject at some time in their career. Therefore, it is important that police administrators understand that they must train their officers to respond appropriately when encountering these types of subjects. The Legal Advisor to LEAF, James DeGrazia of O'Connor, DeGrazia, Tamm, O'Connor PC often points to *Canton v Harris*, 489 US 378; 109SC 1197 (1989), famous footnote 10, on

page 1206. In this footnote the US Supreme Court noted examples as to when liability would be imposed under a policy of deliberate indifference. One such example would be if the city armed its officers with firearms in order to permit them to arrest fleeing felons and then failed to train them on the use of deadly force. This could be said to be “so obvious” that the failure to train could be characterized as “deliberate indifference” to the constitutional rights of a municipality’s inhabitants. Overcoming the perception of “deliberate indifference” can be tough, but training must be adequate based on the usual and recurring situations that municipal employees face.

Given the current mainstreaming of the mentally ill and the lack of safety nets for them, it is possible to argue that managing incidents involving these individuals is a usual and recurring situation for police officers. For this reason, law enforcement departments need to provide training. Many officers do not receive training in this area beyond their academy training. Handling mentally ill subjects who may be intoxicated is at the level of other high-risk activities that the department should be training to regularly. Once the department has provided initial training, it should provide updates at regularly scheduled intervals to keep officers current with changes in the law and in the techniques for handling these incidents, so that, if practical, they can minimize the risk of escalation. The department should document all training, no matter what its form, in the officers’ training files.

Many police departments around the country have come to realize that their officers were not recognizing when an incident involved people who were mentally ill. Furthermore, they found that even if officers did recognize that a situation was different, officers were often unable to make the transition to the techniques that were necessary to control the incident without escalating it. One of the leaders in developing a program to train and equip officers to recognize the symptoms of mental illness and adjust their approach was the City of Memphis, Tennessee. The Memphis model of having Crisis Intervention Teams and the collaboration of community resources has been copied by many Departments around the Country. By cooperating and partnering with available community mental health resources, the Teams were able to reduce injuries to those in crisis and to the responding

officers. They were also successful in using other treatment resources as an alternative to arrest [www.memphispolice.org] and [www.ncjrs.org/pdffiles1/bja/182501.pdf].

Recognizing the need to improve the way the criminal justice system was handling mentally ill subjects, the Council of State Governments developed the Criminal Justice/Mental Health Consensus Project. The Council partnered with practitioner organizations from law enforcement, the courts, corrections, families of the mentally ill, victim rights advocates, and mental health organizations to develop the final Consensus Project Report. The result is a good template that departments can use when developing their plans to approach this issue. It discusses the strategies officers can use to control these incidents and bring them to a successful conclusion. The report identifies the initial call taker as the key to providing the responding officers with as much information as possible so they have some idea of the circumstances of the incident to which they are responding. The Report is available at www.consensusproject.org. It is a very good resource document and worth the time necessary to review it.

The Report advocates using the community-policing concept. Officers should know the subjects that are repetitively in contact with the department. By using problem-oriented policing the officer can make regular contact with an identified subject and can proactively use community mental health resources to intercede before a crisis situation develops. This is a common denominator in all the programs addressing the issue of law enforcement’s management of the mentally ill – the need for collaboration. All community resources must come to the table to identify the strategies that would be successful if officers encounter a mentally ill subject who needs assistance. This reduces the potential for an unmanageable crisis that puts everyone’s safety at risk. The desired outcome is that the subject remains a contributing member of the community rather than becoming a statistic in the criminal justice system.

Of all law enforcement agencies in Michigan, the Sheriff’s Departments and those who maintain municipal lock-ups and jails are most often affected when an officer encounters a mentally ill person who has committed a crime. The Justice Department has reported that mentally ill people make up five

percent of the population but are 16% of the prison and jail population. Because municipalities have promoted calling “911” to get emergency help and the public knows law enforcement is often the only 24-hour resource available, someone is going to call “911” when a person is in crisis and needs help. Currently, because the mentally ill person may pose a threat to public safety or because they have committed a crime, officers often arrest the subject and take them to the designated jail. Unless a person is injured or acting out in a manner that requires medical treatment, law enforcement lodges the individual. Frequently, there are no programs to treat the person in these facilities. This deficiency contributes to the ongoing cycle of temporarily eliminating the public problem but not meeting the subject’s treatment needs. The reality is that, in the long term, the person will eventually be back on the street and the next encounter may very well be more difficult or involve other more serious behavior.

What’s Hot in Michigan

The Michigan Sheriffs’ Association (MSA) has recognized that there is a need across Michigan for an effort to improve the process of managing the mentally ill with whom law enforcement comes in contact. The Sheriffs have long realized that incarceration of a mentally ill person is much less effective and more costly than is treatment. Terrence Jungel, Executive Director of MSA, said that there is a fine balance between incarceration and diversion. He said the theme of the program is “No one should be in jail because they are mentally ill, but just because you are mentally ill doesn’t mean you should not be.”

The goal of the MSA’s program is to collaborate with all the stakeholders, taking a holistic approach to evaluating a mentally ill subject and making sure he or she is fed down the right tributary to service. The Sheriffs in Michigan are taking a leadership role by bringing the resources to the table. Jungel said another goal is to ensure that officers are more aware of their responsibilities and better equipped to access community mental health resources, so they can respond in a compassionate way while maintaining concern for their own safety when encountering a mentally ill individual.

Jungel said a successful program starts with the cops on the street -- no matter what uniform they wear --

being able to identify when the incident involves a subject who is mentally ill. Training, therefore, is critical. Officers will then be ready to implement the skills they have been taught to stabilize the situation. The emphasis remains on officer safety in these situations, and Jungel acknowledges that there are no guarantees that the techniques will work every time. Officers must still be vigilant. There is though a probability that by using the techniques the training will include that the officer will remain safe and successful.

The goal of the MSA’s effort is to provide local communities, criminal justice agencies, and mental health providers with the tools necessary to develop effective partnerships. This will provide an opportunity for mentally ill individuals who come in contact with the police to be directed toward community-based treatment and residential programs rather than being incarcerated. Like other programs, Jungel said the Sheriff’s initiative includes the formation of Crisis Intervention Teams that can respond to the officers in the field to assess the subject and help them to determine the appropriate treatment. He believes the project will also fit nicely with the community policing programs that many departments around the state have adopted.

A group of Sheriffs are currently working with the project to test the model. Jungel said all feedback to this point has been very positive. On May 29th the Association held the first of a four phase training session on the Law Enforcement Mental Health Collaboration Process. The phases include Phase I Assessment, Phase II Community Engagement for Mental Health Issues, Phase III Training and Technical Assistance and Phase IV Evaluation and Follow-up. The Phase II training is scheduled for July 21, 23, 24, and 2003 in various locations around the Michigan. This Phase II is Team Training.

Jungel said anyone who wishes to participate is welcome. Interested parties should contact the Michigan Sheriffs’ Association, 517-485-1013, for further details on this program and the locations of the training.

Conclusion

It is likely that law enforcement officers will deal with a mentally ill person who is a substance abuser

sometime in their careers. Officers handle a vast majority of the contacts with care and compassion and arrive at successful outcome. There are, however, those times when the behavior of the subject is so life threatening that officers are forced to take immediate action to protect their lives and those of others. Though sad, sometimes the outcome is unavoidable. What departments can influence is the outcome of the situation when an officer comes in contact with a mentally ill individual who is acting out due to a crisis but is not acting in a life-threatening manner. With proper training and backed by a community initiative such as the one promoted by the Michigan Sheriffs' Association, officers can have the knowledge and skills necessary to identify that the person is mentally ill and in need of treatment. As these programs are put together officers can rely upon community resources to come to their assistance to access the proper treatment route that may best serve the situation and the subject. By being able to have avenues to divert these subjects to treatment all units of government will have a long-term savings in time and resources because the likelihood of recidivism will decline. Savings will also come in the form of safety for officers who will face less likelihood of injury or litigation.

All law enforcement administrators must work to promote collaboration between law enforcement and the mental health resources. Training in the techniques that are successful in managing incidents involving mentally ill subjects is essential. The addition of Less Lethal Weapons is one aspect of the training that is necessary. The mechanical skills to operate the weapons are just a small part of the big picture. More important than using them is knowing when and why their use is justified. It is also important for officers to know they need a backup plan in case it fails. The March 2003, LEAF Newsletter titled "A Discussion of Less Lethal Weapons: Adopting a Program for Protecting Officers and Subjects" discussed these issues.

Fixing the prevailing approach to handling mentally ill subjects is not going to be easy. Governmental agencies are feeling the pinch of declining budgets. However, departments can address training through cooperative efforts such as the one the Sheriffs are initiating. Training can come in many forms and since the MSA's program is being developed by the local shareholders it can be designed to best fit the

group's specific needs. What is being initiated has a cost benefit to all and appears to be aimed toward success. LEAF encourages all law enforcement executives to contact their local Sheriff and get involved in this important program.

The LEAF Committee of the Michigan Municipal League Liability and Property Pool and Workers' Compensation Fund has formulated Policy that fits most departments' operations. These Policies will appear in the next edition of the Manual for Law Enforcement Risk Control, which is being published on the LEAF Web site. Further information concerning the address and access to the Manual will be coming to eligible Members soon. LEAF continues to develop policies and resource documents designed to help Law Enforcement Executives manage their risk exposure. Do not hesitate to contact the Michigan Municipal League's, Loss Control Services at 800-482-0626, for your risk reduction needs and suggestions.

While compliance to the loss prevention techniques suggested herein may reduce the likelihood of a claim, it will not eliminate all exposure to such claims. Further, as always, our reader's are encouraged to consult with their attorneys for specific legal advice.