



michigan municipal league

Law Enforcement Action Forum Newsletter



March 2008 Edition

Volume 15, Issue 1

Yes, Cops Can Practice “Catch and Release” with a Subject They Have Taken Into Custody

By Gene King, LEAF Coordinator



Here is the Scenario

An officer responds to a call about an unfamiliar male who is stumbling down a neighborhood street and acting suspiciously. Arriving at the location, the officer stops at the complainant's home to gather more information. According to her, the individual appears to be sick or intoxicated. He is a white male, 30 to 35 years old wearing a blue ball cap, brown waist-length jacket and blue jeans. He is about six feet tall and skinny. The officer broadcasts the description.

A second officer, dispatched to backup the first, finds the subject sitting on the curb at the end of the block where the complainant lives. Approaching him, the officer asks the man if he is all right. The subject responds that he is and that the officer should leave him alone. The officer responds that he is investigating a complaint about a suspicious person and explains that the subject matches the description of the reported person. The officer then asks the subject if he has any identification. The first officer arrives and asks the subject what he is doing on this street and where he is going.

The subject gets to his feet and stumbles a little. He smells of alcohol, and the officers believe he is

intoxicated. They offer to help the subject by giving him a ride or other assistance. The subject refuses aid. The officers again ask the subject for identification or the subject's name and an address where he lives or is going. The subject tells the officers he lives down the street and loudly and forcefully tells the officers to leave him alone.

Because of the unpredictability of drunks and the subject's agitation, both officers move to defensive positions. The subject reacts to this with several crude and derogatory remarks, and he begins to walk away. The first officer steps in front of the subject, blocking the sidewalk and again asks the subject his name, D.O.B., and address. The subject starts yelling and waving his arms at the officers, telling them to leave him alone. Suddenly, he turns and runs away.

The officers give chase, tackle the subject, handcuff and pat him down, and take his wallet to check his identity. Finding no weapons or contraband, they then put him in the rear of the patrol vehicle. The subject is furious; he curses and threatens the officers because of how they are treating him. The identification in the wallet tells the officers the subject is John Doe Citizen, who lives three blocks away.

A resident of the street, hearing the racket, has looked out and seen the officers chasing the subject. Concerned, he calls dispatch to report the officers need help. You are the officer who shows up to help. You all confab, and the original officers tell you that they are going to lock the subject up for being disorderly. What do you tell them?

Good Question!

Let us look at the circumstances, as we know them:

- A concerned citizen reported a problem.
- The complainant thought that the subject might be sick or intoxicated.
- An officer found a subject matching the description sitting on a curb.
- The officer approached the subject and began asking questions.
- The subject said he lived down the street but otherwise refused to give any information to the officers or comply with their instructions.
- The subject ran, was chased down, and taken into custody.
- The subject is not happy and is cursing and acting out.

Can The Officer Stop Or Approach This Person?

The officers have responded to a situation that appears to be suspicious, and department policy requires them to follow-up to determine if the subject they have found is the person the caller saw. The officers decide to investigate further. After making contact with a subject, if the officer develops a particularized and objective basis for suspecting the particular person of criminal activity, based on specific and articulable facts, he may conduct what is commonly termed a *Terry* stop.

The name is from the Supreme Court case of *Terry v. Ohio*, 392 U.S. 1; 88 S.Ct. 1868; 20 L.Ed.2d 889, 899 (1968). In the *Terry* case, an officer observed some males watching a store, and coming and going in a manner that led the officer to believe that they were casing a place to rob. He watched as all of the men walked away in different directions. He followed one and watched as he and the others gathered for more discussion. Approaching the group, he identified himself as a police officer and began to ask questions. Since he was concerned that the subjects were going to commit a robbery, he also searched them and found a gun on Terry. The U.S. Supreme Court ruled that the stop was justified and the search was for the protection of the officer. The ruling said that when an officer makes a *Terry* Stop the officer must have a reasonable suspicion that the person has committed a crime, is about to commit a crime, or is committing a crime. The **reasonable suspicion has to be more than a "hunch."** **It has to be based upon specific, articulable facts that when put together with the officer's experience or other knowledge justifies an investigatory stop.** The court evaluated the officer's conduct by an objective standard: ***"Would the facts that the officer had at the moment of the seizure warrant a man of reasonable caution to believe the action was appropriate."***

Because situations are often fluid and all do not rise to the level of a *Terry* Stop, the courts, in defining other types of stops, have said that a police officer's duties involve activities other than gathering evidence, enforcing the law, or investigating crime. The Supreme Court has characterized a police officer's job as also encompassing *a community caretaking function*. *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973). As part of an officer's duty to "serve and protect," an officer "may stop and assist an individual whom a reasonable person, given the totality of the circumstances, would believe is in need of help." *Wright v. State*, 7 S.W.3d 148, 252 (Tex. Crim. App. 1999)

Whether a stop is reasonable depends on "a balance between the public interest and the individual's right to personal security free from arbitrary interference by law enforcement." *Maryland v. Wilson*, 519 U.S. 408, 411 (1997). After *Cady v. Dombrowski*, there have been hundreds of cases applying the *community caretaking* rule under its various labels. Most of the cases deal with searches, but all have been subsequent to the establishment of the four basic factors for police action. These factors are true no matter whether the courts have chosen to apply the "caretaking," "exigent circumstances," or the "emergency circumstances" label to the activity.

A Texas Court case, *Wright v. State*, most clearly outlines the four factors. In this case, the court determined that when an officer's primary motivation is community caretaking, it is necessary to determine whether the officer's belief that the defendant needs help is reasonable. In evaluating whether an officer reasonably believes that a person needs help, courts may look to a list of four non-exclusive factors:

- (1) The nature and level of the distress that the individual exhibits;
- (2) The location of the individual;
- (3) Whether the individual was alone and/or had access to assistance other than that which the officer offered; and
- (4) The extent to which the individual, if not assisted, presented a danger to himself or others. *Id.* at 152.

Lacking the facts to support a *Terry* Stop, the courts have established the community caretaking role as legitimate since it is part of an officer's job to serve and protect citizens.

In our John Doe Citizen scenario, the officers discover no criminal activity and, additionally, none of the four caretaking factors apply either. The subject exhibited no distress, was on his own street, had homes all around him with people who were watching what he was doing, and appeared to present no danger to others or himself.

Because there was a complaint of a suspicious person, the officers were justified in stopping the subject to investigate. The subject does not walk away when the officers approach. Since neither officer conducted a pat down initially, we must assume that the subject did not appear to threaten the officers or the officers had no reason to believe he was committing or was about to commit a crime, especially one for which he might be armed. What we have is a subject who appears intoxicated, but, as far as we know, has not violated any law.

Guess My Name

It is reasonable and within an officer's training to ask the subject to identify himself. In *U.S. v Campbell* 486 F.3d 949 (2007), the Sixth Circuit Court of Appeals looked at this issue.

In *Campbell*, a Township police officer in Ohio observed a vehicle traveling in an area that had recently experienced a rash of break-ins and car thefts. The officer watched the vehicle pull into the parking lot of a closed building supply company. The driver, when he exited the vehicle, was talking on his cell phone. The driver (later identified as Campbell) walked down the block and across the street to the parking lot of a closed factory and continued to talk on the telephone. The officer pulled into the factory lot, exited his patrol vehicle, and asked if he could help him. Campbell said he was lost and was asking his girlfriend for directions. Campbell then handed the phone to the officer who found out where the girlfriend was working, got the address from dispatch, and gave it to Campbell. The officer then told Campbell about the burglaries in the area and asked him for his name so the officer could log it. Campbell began to get nervous, threw his arms up, and said he did not want any trouble. The officer repeated the request for identification. Campbell gave the wrong name but correct date of birth. Because the subject's behavior raised the officer's suspicions, he ran the information through dispatch and got no record. Campbell then became even more nervous, and the officer thought he was going to run.

Campbell was acting so suspiciously that the officer called for another officer to assist. Upon the second officer's arrival, the original officer asked Campbell if he could pat him down. Campbell voluntarily put his hands behind his back and did not object. The officer felt a bulge in Campbell's front pocket and asked what it was. Campbell said he did not know, and when the officer asked if he could take it out, Campbell said yes. It was marijuana.

The officers arrested Campbell. They also found money in his other pocket and a gun in the car. At the station, the officers found that New York wanted Campbell on a parole violation. In an evidentiary hearing on Federal Firearms Charges, Campbell said the officer had no right to stop him since the officer had no reasonable suspicion to meet the *Terry* standards. The lower courts agreed and excluded the evidence. The case was appealed.

The Sixth Circuit Court of Appeals referred to *Florida v. Royer*, 460 U.S. 491, 497 (1983), in which the Supreme Court detailed what constituted a consensual encounter:

[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions. Nor would the fact that the officer identifies himself as a police officer, without more, convert the encounter into a seizure requiring some level of objective justification. The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go

on his way. He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds. If there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed.

In short, a consensual encounter does not amount to a seizure and a police officer does not need reasonable suspicion or probable cause before approaching a person to ask questions. **In Michigan, the subject does not have to answer the questions and can walk away and the officer cannot use that action as a reason to arrest.**

The Court went on to say, "A seizure of an individual, on the other hand, occurs when 'under the totality of the circumstances, a reasonable person would have believed that he or she was not free to walk away'. *Id.* at 411. The police officer's subjective intent in detaining an individual is irrelevant so long as that intent is not conveyed to the individual in a way that results in the individual believing that he or she is not free to leave."

In our John Doe Citizen scenario, the subject has refused to identify himself and is acting in a manner that the officers believe is threatening. To them, the situation seems to be escalating. However, because there is no apparent criminal activity associated with the subject, the officers do not have the ability to detain him legally. So far, the subject has not tried to leave, so officers are still able to engage the person and gather information.

Suddenly the subject begins walking down the sidewalk and one of the officers steps in front of him and blocks the way. The officers are now treading on difficult ground. No one touched the subject, ordered him to stand still, or not move. Part of the criteria of a *Terry* Stop is that the subject is not necessarily free to walk away if the officer has reasonable suspicion to believe a crime

has occurred, is occurring, or is about to occur. If this were a *Terry* Stop, the officer could handcuff the subject, pat him down, and place him in the patrol vehicle, or otherwise control him in order to allow the officer to investigate.

In the scenario, there is no crime, so we could view the officer moving to block the free movement of the subject as a seizure. It is important to remember a seizure occurs when the person no longer believes they have free will to leave. The words and gestures that the officers use become crucial. Asking for information but not making furtive gestures or touching him to make him stay, keeps the situation away from a *Terry* Stop.

Can I Chase Them If They Run?

Back to our scenario: the movement of the officers angers the subject, and he begins to curse and call into question their heritage and relationship with their mothers. Not only is his outburst insulting to the officers, but also, to add insult to injury, the subject takes off running. Like a hound to a rabbit, the officers chase him down, pounce on him, and take him into custody.

A dilemma that officers often face is whether, when they pull up to a person or a group of people and one or all run, they can give chase and capture them. The U.S. Supreme Court in *Illinois V. Wardlow*, 528 U.S. 119 (2000) looked at the issue when Sam Wardlow, a middle-aged African-American male, was standing next to a building in Chicago holding an opaque bag. **The neighborhood was in a high crime area where violent crime occurred and narcotics were often sold.** When Wardlow looked up and saw a police car coming in his direction, he took off running. Two of the officers gave chase and caught up with him, stopped him, and conducted a protective pat down search for weapons. Discovering a .38-caliber handgun, the officers arrested Wardlow.

The U.S. Supreme Court ruled that nervous, evasive behavior is another pertinent factor in determining reasonable suspicion, *e.g.*, *United*

States v. Brignoni-Ponce, 422 U.S. 873, 885, 95 S.Ct. 2574, 45 L.Ed.2d 607, (1975), and headlong flight is the consummate act of evasion. In reviewing the propriety of an officer's conduct, courts do not have available empirical studies dealing with inferences from suspicious behavior, and this Court cannot reasonably demand scientific certainty when none exists. **Thus, the reasonable suspicion determination must be based on commonsense judgments and inferences about human behavior.** See *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

The Court went on to say that in *Florida v. Royer*, *supra*, at 498, that an individual, when approached, has a right to ignore the police and go about his business. Unprovoked flight is the exact opposite of "going about one's business." While flight is not necessarily indicative of ongoing criminal activity, ***Terry* recognized that officers can detain individuals to resolve ambiguities in their conduct, 392 U.S., at 30, 88 S.Ct. 1868, and thus accepts the risk that officers may stop innocent people. If they do not learn facts rising to the level of probable cause, an individual must be allowed to go on his way.** In this case, the officers found that Wardlow possessed a handgun and arrested him for violating a state law.

Therefore, the answer to the question "Can I Chase Them If They Run?" is "yes." However, before wasting the energy running, officers must have a basis other than just that the subject ran. Consistently the courts expect officers to be able to define and explain just what it was about the subject's behavior that made them feel they needed further inquiry. It is usually not just one particular thing, but all those details that officers observe that ultimately lead to the reason why they decide to stop, chase, or detain a person.

The *Cortez* court had the following discussion trying to articulate the concept: "Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person. Terms like "articulable reasons" and "founded suspicion" are not self-defining; they fall short of providing clear guidance dispositive of the

myriad factual situations that arise. However, the essence of all that has been written is that the totality of the circumstances – the whole picture – must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.” See, e. g., *Brown v. Texas, supra*, 443 U.S., at 51, 99 S.Ct., at 2640; *United States v. Brignoni-Ponce, supra*, 422 U.S., at 884, 95 S.Ct., at 2581.

Terry also requires this articulation to fully describe each factor that led the officer to conclude that something criminal was afoot. If the subject did nothing but run from a residential street, it is going to be hard to justify chasing them down and pouncing on him!

Now That the Subject Is Hooked and Landed

In our scenario, the officers have tackled the subject, handcuffed him, and patted him down. The officers found no weapons, drugs, or evidence of other crimes that gives them probable cause. However, they have obtained a wallet containing documents that identify the subject as John Doe who lives at an address about a three blocks away. Since they have the subject cuffed and in custody, the officers feel that they certainly must find some charge for an arrest. That means that the only thing left to is arrest the subject for his behavior.

We found from the Wardlow discussion that fleeing alone is not a violation of the law. However, the officers in this scenario have been investigating a suspicious person, who is noncompliant, will not identify himself, and flees. These circumstances and other factors that officers may observe can justify the apprehension and detention of the subject for further investigation. The same factors can lead to a pat down for officer safety before putting him in a secured environment like a patrol vehicle. Let us keep going and see what else the courts have said as we search to see if there is a legitimate charge.

The U.S. Supreme Court Rules “Officers Are Paid To Take Some Verbal Abuse”

In *Houston v. Hill*, 482 U.S. 451, 462, 107 S.Ct. 2502, 2510, 96 L.Ed.2d 398 (1986), the Supreme Court recognized that the ‘fighting words’ doctrine may be limited in the case of communications addressed to properly trained police officers because police officers are expected to exercise greater restraint in their response than the average citizen. The *Houston* Court stated: **[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.... The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.** *Id.* at 462-463, 107 S.Ct. at 2509-11.

In a Sixth Circuit case, *Greene v Barber*, 310 F.3d 899 (2002), the plaintiff, while in the police department lobby, called a lieutenant stupid and drew the correlation between the lieutenant and an orifice facing the back of the body. The Court said that, “standing alone, the fact that Mr. Greene’s remarks were unflattering to Lt. Barber clearly gave Barber no license to abridge Greene’s freedom to speak as he did.” **“[G]overnment officials in general, and officers in particular, may not exercise their authority for personal motives, particularly in response to real or perceived slights to their dignity.”** Bloch, 156 F.3d at 682 (quoting *Duran v. City of Douglas*, 904 F.2d 1372, 1378 9th Cir.1990).

The officer arrested Greene in retaliation for his having engaged in constitutionally protected speech. **The law is well established that “[a]n act taken in retaliation for the exercise of a constitutionally protected right is actionable under § 1983 even if the act, when taken for a different reason, would have been proper.”** (*Gold v. City of Miami*, 121 F. 3d. 1442 11th Cir., 1997)

No, Contempt of Cop Is Not a Criminal Charge

A few months before Mr. Greene's arrest, the U.S. Sixth Circuit ruled on an incident that occurred in July of 1996 when James McCurdy, who had been celebrating the graduation of a nephew from college, was conversing with fellow celebrants on a public street at 5 o'clock in the morning.

"In *McCurdy v. Montgomery County, Ohio*, 240 F.3d 512 (6th Cir.2001), a passing police officer asked the men what was going on. In the exchange that followed, Mr. McCurdy, using four-letter words of Anglo-Saxon origin, made known his unwillingness to produce identification or go back inside his house. He was then arrested. After concluding that the officer had no probable cause to arrest Mr. McCurdy for violating an Ohio statute that prohibits an intoxicated person from "creat[ing] a condition that presents a risk of physical harm."

The Sixth Circuit went on to say that "we find that no reasonable jury could conclude that Officer Cole had probable cause to believe that McCurdy presented a risk of physical harm either to himself, others, or the property of others."

On this issue, Officer Cole testified that:

[W]hen a person is intoxicated to that level, to my training and experience, under law, they essentially become my responsibility once I become in contact with them. If I let that person go, I cannot tell you what is going to happen to them. I can only, unfortunately, speculate what could happen to them. That's why it becomes my responsibility to make sure that one of a million things does not happen to them J.A.

at 151-152; Cole Tr. at 180-181 (emphasis added). Moreover, Officer Cole stated that "[b]y exhibiting his intoxicated nature[,] . . . there was no way that I could tell at that point that [McCurdy] was not there to do damage to the property of another person that lived in the area. That's why he was arrested." J.A. at 148 (emphasis added). Officer Cole additionally asserted that after he approached McCurdy, McCurdy's associates combatively challenged his authority.

Indeed, Officer Cole testified essentially that there were no objective facts to trigger probable cause, as he could only "speculate" on the "one of a million things" that might occur if he did not arrest McCurdy. Moreover, Officer Cole stated plainly that he arrested McCurdy because "there was no way that [he] could tell . . . that [McCurdy] was not there to do damage to the property of another person that lived in the area." J.A. at 148. **When an officer literally has no idea whether a presumptively law-abiding citizen has violated the law, the Fourth Amendment clearly commands that government let the individual be. Indeed, if anything is clear about the Fourth Amendment, it is this: government may deprive its citizens of liberty when, and only when, it has a viable claim that an individual has committed a crime, and that claim is supported empirically by concrete and identifiable facts.** See *Minnesota v. Dickerson*, 508 U.S. 366, 376 (1993); *United States v. Reed*, No. 99-3393, 2000 WL 665398, at *2 (6th Cir. May 23, 2000).

What Do We Charge This Guy With?

We can see in *Greene* that the court feels officers should expect to take "verbal slights of their dignity" without retaliation of arrest. In *McCurdy*, the court clearly stated that officers must not fabricate behavior in order to arrest just because the subject gave the officer a hard time.

In our scenario, there could be charges if the circumstances of the scenario were different and the subject had struggled with the officers after they tackled him. The Michigan Legal Glossary defines Assault, MCL. 750.81 as: "An unlawful act that places another person in reasonable apprehension of receiving an immediate battery. An attempt to commit a battery. The defendant must intend to injure the victim or make the victim reasonably fear being struck. An assault is intentional, not an accident. A Battery is defined as: Intentional, unwanted and forceful/violent touching of another person or something closely connected with that person." This charge is a misdemeanor.

We could ramp up our scenario so that the subject was actually fighting with the officers, throwing punches and kicks designed to injure the officers contrary to MCL 750.81d, assaulting, battering, resisting, obstructing, opposing person performing duty, which is a felony. This charge entails "Knowingly and intentionally obstructing, resisting, opposing, assaulting, beating or wounding a law enforcement officer who is engaged in his lawful acts or attempting to maintain the peace. The defendant's acts must have actually interfered with the officer in carrying out those duties."

With these changes, the reason the officers have contact with the subject is clear. This behavior has given them probable cause to arrest. Most importantly, the issue of identifying the probable cause is no different than articulating the reason for the stop and subsequent investigation. No matter what the situation is, the truth is in the details of how you fit together the bricks and mortar that stand as the building blocks of your case. Either it is there or it is *Greene* and *McCurdy* all over again.

How Long Can I Hold Them?

In our scenario, the officers have held the subject for close to twenty-five minutes since first contact. When it comes to the length of an investigative detention in *United States v. Sharpe*, 470 U.S. 675; 105 S.Ct. 1568; 84 L.Ed.2d 605 (1985), the Supreme Court held that the Fourth Amendment imposes no

rigid time limitations on investigative detentions, and that, given the circumstances, the investigation was conducted in a diligent and reasonable manner. Citing *Florida v. Royer*, 460 U.S. 491; 103 S.Ct. 1319; 75 L.Ed.2d 229 (1983), the court stated, "[a]n investigative detention must be temporary and last no longer than that is necessary to effectuate the purpose of the stop." *Sharpe*, 84 L.Ed.2d at 614.

The reasonableness of the detention is judged on two distinct criteria: (1) whether it was sufficiently limited in time, and (2) whether the law enforcement officials used the least intrusive investigative means reasonably available. *Bennett v. City of Eastpointe*, 410 F.3d 810, 825-26 (6th Cir.2005).

The reasonableness of the detention was reaffirmed in *Williams v. Leatherwood*, No. 06-6322, 2007 U.S. App. Lexis 30056 (6th Cir.) in which the Court determined that a subject being held for 15 minutes was reasonable while the officer investigated a road rage incident involving a gun. Therefore, the length of time that officers hold a suspect is not as relevant as the swiftness and reasonableness of the officer's investigation to resolve his suspicions and determine to arrest or release.

If You Have No Charge, Do Not Make One Up!

As the court stated in *McCurdy*: "When an officer literally has no idea whether a presumptively law-abiding citizen has violated the law, the Fourth Amendment clearly commands that government let the individual be."

Well, Ms. Audrey, What Now?

The officers in our scenario must soon decide on what to do with the suspect handcuffed in the back of the patrol vehicle. I am sure they would wish they could do what I can and call LEAF's Legal Advisor, Audrey Forbush, Plunkett Cooney PC, to see what she thinks of the situation and how the officers should manage it.

Audrey took a deep breath and began to sort through the scenario, first saying that she felt that the situation when the officer made first contact with the subject did not rise to the level of a *Terry* Stop. A citizen of the community independently called 911 to report that a suspicious situation existed in her neighborhood and she was concerned. The complainant did not report criminal activity, and the officers articulated none. The citizen, based on the behavior she observed, told the responding officer that she thought the subject was intoxicated or ill. The description of the man that she gave the officers led them to the subject sitting on the curb.

At this point, Audrey believed there was sufficient information to make contact with the subject to determine what is going on. She said that officers should remember that situations are fluid. Once the officers made contact with the subject and determined that he was intoxicated, and not a victim of a crime, and further that the subject apparently has not and is not engaged currently in a criminal activity nor intends to be, they can ask for information to complete their report. However, if the subject refuses, their options are either to offer assistance or disengage. The subject indicates he lives down the street, is trying to get there, and does not want the officer's help. At this point, the situation evolves into a citizen's contact.

Audrey muses that a viable option for the officers at this point is to release the subject and take a point of observation, watching what the subject does or, at least, monitoring the rest of his trip home.

Even though the officers are acting as community caretakers, Audrey refers to the four criteria in the *Wright* case to determine the reasonableness of assuming the subject needs help:

- 1) The subject was intoxicated but not in a high level of distress,
- 2) Was on a public street, where he said he lived,
- 3) Did not really need assistance evidenced by his ability to run away, and
- 4) Presented no danger to himself, or others.

The Time Has Come. What Is Your Answer?

Now that you have heard the entire story, you ask the other officers what law the subject has broken. After discussing the incident, the officers conclude that the subject has not broken any law and that there is little likelihood that he will commit a crime. They also conclude that the subject is physically capable of taking care of himself and lives close by. The next concern is that the officers physically tackled the subject and held him until they could figure out who he is and the exact nature of the situation. The officers are concerned because they physically restrained the subject and took him into custody.

You ponder the situation and recognize the subject has been obnoxious and rude to the officers, and he should not be able to get away with that. On the other hand, he only became obnoxious when the officers confronted him and stopped him from continuing home.

As you mull over the circumstances, you realize that the only correct option is to explain the circumstances to the subject and release him. As a courtesy, you could offer him a ride home. Clearly, a detailed report is in order!

The LEAF Committee of the Michigan Municipal League Liability and Property Pool and Workers' Compensation Fund has formulated Policy that fits most departments' operations. You can find these policies in the Manual for Law Enforcement Risk Control, which on the MML website. 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 800-482-2726, 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 readers are encouraged to consult with their attorneys for specific legal advice.

To Avoid Problems in Reading These Situations, Audrey Recommends

The following list addresses a number of issues that officers must consider when initiating either a *Terry* Stop or any other citizen contact:

1. Does contact with a citizen result from behavior by the citizen that arouses suspicion on the officer's part or is the contact random? As a situation evolves, if the officers believe that more investigation is necessary, they must be able to articulate each behavior they observed that led to this belief. This is an absolute necessity if they detain the person.
2. Does the officer perceive a threat or danger from the person? If so, then a pat-down search is appropriate. Officer safety is paramount.
3. If officers believe that the subject is a threat to himself or others, or is a flight risk, taking control by handcuffing and detention is appropriate. However, the detention should only be for an amount of time that is reasonable for an officer to determine if a crime has or is taking place.
4. Pat downs are exactly that. Officers cannot reach in pockets or under clothing unless, in the pat down, they feel an object that their experience tells them could be a weapon or contraband. The plain feel doctrine may apply.
5. Officers must describe the specific reasons for their decisions and every action they take in an encounter with a citizen in plain English. If they cannot do this, then they should not make contact. Gut feelings or hunches are not acceptable.
6. Officers must recognize that not everyone will submit to questioning. If subjects walk away or refuse to answer questions, it is not a chargeable offense.
7. Contempt of Cop is not a chargeable offense and leads to many of the civil litigations involving citizen stops.
8. If after doing a reasonable investigation of a person, the officers have no probable cause to arrest subjects, release them and thank them for their cooperation. Answer their questions politely and if they want to complain, follow department policy.
9. Like fishermen who catch fish out of season, police officers can practice catch and release techniques when circumstances point to release as being the better part of valor. In this case, while the person is catching their breath, give a brief explanation of events and a sincere thank you for their cooperation.

LAW ENFORCEMENT ACTION FORUM (LEAF) is a group of Michigan law enforcement executives convened for the purpose of assisting loss control with the development of law enforcement model policy and procedure language for the Manual of Law Enforcement Risk Reduction. Members of the LEAF Committee include chiefs, sheriffs, and public safety directors from agencies of all sizes from around the State.

The LEAF Committee meets several times yearly to exchange information and ideas relating to law enforcement issues and, specifically, to address risk reduction efforts that affect losses from employee accidents and incidents resulting from officers' participation in high-risk police activities.

*Sponsored by the Michigan Municipal League Liability & Property Pool and Workers' Compensation Fund
1675 Green Road, Ann Arbor, MI 48106 ph - 800-653-2483
Contact information: Gene King, leaf@mml.org ph - 800-482-0626 ext. 8036*