



# LAW ENFORCEMENT LIABILITY TRENDS: Where Have We Been, Where Are We Going?

Presented by: Tami A. Tanoue, CIRSA Executive Director  
Sam Light, CIRSA Deputy Executive Director/General Counsel  
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# Where We've Been

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- 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:

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## 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 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.”)
  - 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 – and the upward trend is unsustainable

# What are some of these trends?

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- \$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 2021-22 have already seen several highly publicized cases alleging excessive force by CIRSA member (and non-CIRSA member) PDs
- **As settlements and judgments increase, the cost of coverage increases, too**
  - Obviously, the upward trend in coverage costs is also unsustainable
- And local governments are finding that the cost of providing LE services is also increasing independently of the above – **mandates are increasing but the funding isn't**

# What are some of these trends?

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- Law enforcement liability insurance will likely become even less affordable and less available, with more exclusions and lower limits of coverage
  - Reinsurers concerns of uncertainty have impacted rates and capacity (<https://www.businessinsurance.com/article/20220601/NEWS06/912350160/Police-liability-market-still-tough-for-buyers>)
  - One of CIRSA's long-time reinsurance partners pulled way back on participation for 2022 because of law enforcement liability claims (and has left us altogether for 2023)
  - We are partnering with two reinsurers that are familiar and comfortable with pooling, local governments, and law enforcement liability exposures and coverage

# What are some of these trends?

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- At CIRSA, we currently provide \$10 million per claim/occurrence in law enforcement liability coverage
  - We are also providing coverage for the up-to-\$25k personal liability that police officers face as a result of S.B. 217
- Law enforcement liability reinsurance cost makes up a significant portion of the total cost of liability coverage through CIRSA
  - We will fight to hold on to these limits – it remains to be seen whether such high limits of coverage will continue to be available on the market
  - We'll also fight against per-member or pool aggregates that apply to those limits - but stay tuned
- A new member joined CIRSA in 2022 primarily because their LEL coverage had been cancelled, and replacement coverage had low limits and high premiums – harbinger of things to come?
- Going forward, we will be seeking ways to accommodate members' desires for both higher AND lower law enforcement liability limits. For 2024, we will offer members several options for LEL limits

# What are some of these trends?

**POLITICS** • News

## At Colorado's Capitol, prosecutors no longer rule the roost

The seas used to part for law enforcement, but the power is shifting

"I went to the General Assembly intentionally looking to dismantle the criminal justice system that has been unjust," said Leslie Herod, a Denver Democrat and a prolific legislator on this topic. "Efforts made previously were substantially weakened and didn't have the support of even the Democrats. ... We have seen a huge shift."

Denver Post, June 20, 2021

# What are some of these trends?

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- Meanwhile, “it’s hard to be a police officer” (heard at the CML newly elected officials workshop 6-18-21) – always true but even more so today than ever
- Social and legal environments are causing career changes, retirements, recruitment and retention challenges, demoralization
  - PERF survey: Retirements up 45%, resignations up 18%, from April 2020-April 2021 - <https://www.nytimes.com/2021/06/24/us/police-resignations-protests-asheville.html>
  - Decline in police (and government) workforce capacity persists despite recovery elsewhere - <https://www.themarshallproject.org/2023/01/21/police-hiring-government-jobs-decline>
    - Will the lack of capacity create yet more concerns (whether perceived, real, unfounded or not - <https://sentinelcolorado.com/news/metro/in-the-blue-bar-none-dearth-of-aurora-cop-recruits-prompts-city-to-advance-hire-applicants-who-test-poorly/>)
  - The sense of support for police, and their mission to serve and protect, is not as strong as it once was in some communities
  - What are you seeing in your police departments?
- And the job of managing and overseeing police departments – for managers and governing bodies both – is also becoming commensurately more challenging



# What do these changes mean for managers and governing bodies?

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- **#1 In many areas, there is a disconnect between the community's perception of law enforcement, and the entity's own perception of law enforcement. Ignore this disconnect at your peril!**
- Is the governing body potentially a **bridge** between the two?
  - Many communities are seeing a call for greater “civilian oversight” of police departments. City Councils, Boards of Trustees, and Managers/Administrators can be part of that “civilian oversight.”
  - If you choose not to embrace that role, then other forms of “civilian oversight” may be thrust upon you (or you may decide that those other forms are appropriate) – police oversight bodies, “independent monitors,” etc.
  - “Pattern and practice” investigations can end up in a settlement agreement or “consent decree” that’s an imposed form of oversight (e.g., Colorado AG-Aurora consent decree; at this [link](#))
- If you can take – and encourage your elected officials to take – a leading role as this “bridge,” perhaps that oversight can be done more collaboratively than it might otherwise
- Those of you who are managing counties...what are you doing?
  - With separately elected governing body/sheriff, is the “disconnect” more challenging?

# What do these changes mean for managers and governing bodies?

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What steps might help to create a “bridge”?

- More community meetings focusing on mutual, joint, and differing concerns about LE issues?
- Other community input opportunities?
- Citizen Police Academies?
- Greater transparency? E.g., putting key policies online? Putting out information sooner on high-profile issues/incidents?
- Using “department head reports” during meetings for more than “this month’s stats” – community education, interaction?
- Advisory bodies, or bodies with actual oversight powers?
- 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?

# What do these changes mean for managers and governing bodies?

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- **#2: What else can the manager and governing body do?**
  - If you see law enforcement as a critically important community service, it **MUST** be treated that way with the selection of the people who perform that service, and with the prioritization of resources for recruitment, training, supervision, equipment, staffing, policy development, compensation & benefits, etc.!
  - Some communities are discussing “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.
  - In short, if you want your community to provide law enforcement services, you **MUST** make a commitment to funding properly.

# What do these changes mean for managers and governing bodies?

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- **#3: Another phenomenon holding back police departments: “piling on” of service after service, expectation after expectation, without seeing what you’re doing to their workload and their ability to fulfill their fundamental mission**
  - Police are expected to solve all of the ills of the world in addition to crime-fighting. Homelessness? Opioid abuse? The pandemic? Oh, and let’s throw animal control, code enforcement, and traffic enforcement on top of everything else!
  - You cannot ask “too much” of law enforcement without that pressure causing cracks somewhere...officer burnout and attrition, mistakes leading to injury to themselves or to others, erosion of community trust, etc.
  - Is your PD adequately staffed? Example: can a three-member department really be adequately staffed”?
  - It’s critical to prioritize what the community wants your PD to do. The police can’t do everything.

# What do these changes mean for managers and governing bodies?

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- **#4: Considering a “startup” police department? Please consider all of the above and more!!**
  - We’ve seen several “startup” PDs in recent years. The motivations are understandable.
  - But make sure that you hire the best you can to lead your department, and make sure that they know their priorities!
    - Example: Does it really make sense to hire officers and put them on the street BEFORE you have policies and procedures in place?
  - And make sure that you know the true cost of operating a police department.
  - As noted, the insurance cost and availability issues are daunting in themselves.
  - Are there other approaches to providing law enforcement services that offer “economies of scale”? Joint PD between two or more communities? Throwing in with the Sheriff’s Department with an IGA that will give you at least some of what your own PD would offer? (We’ve seen several of these in recent years too.)

# What do these changes mean for managers and governing bodies?

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- **#5: Managers are part of the “civilian oversight” of your police departments!** Exercise that responsibility by:
  - Making sure your entity’s organizational structure is set up to give you an appropriate role/relationship with the PD – not all organizations are!
    - However, there may be statutory (counties), home rule (municipalities), or historical (often in statutory towns) reasons why the structure may not be optimal for this
  - Being actively involved in management/oversight without micro-managing
  - Ensuring excellent lines of communication between and among you, the Chief and the governing body – being a sounding board and providing mentorship
  - Ensuring sound and consistent human resources policies are established and are being followed
    - Providing support on dealing with high-risk HR issues – harassment, discrimination, disciplinary/corrective actions, internal recourse processes
    - Ensuring that internal recourse processes (e.g. internal complaints, discipline, etc.) are generally congruent with those of the rest of the entity (or have justifiable variations)

# What do these changes mean for managers and governing bodies?

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- Ensuring that the Police Department's internal and operating values, philosophies, and approaches are congruent with those of the rest of the entity (or have justifiable variations)
- Setting the tone and expectations for issues such as transparency, ethics, community relationships, etc.
- Ensuring a credible external complaint/resolution process exists and is followed
- Supporting proper funding and resource allocation for excellence in personnel selection, supervision, training, equipment needs, etc.
- What else?

# What else is on the horizon

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- We can expect to see more legislation in coming years – “reform,” “dismantling,” whatever you want to call it, it’s not going away – and prospects for a “pendulum swing” seem slim
- We do not want to go back to a time when local governments were actually closing down operations because insurers were cancelling policies (was anyone here in the early ‘80s?) -- but if it happens, you’re better prepared this time
  - Public entity pools like CIRSA and CAPP/CTSI formed in response to the “insurance crisis” of the late 70s/early 80s, and we’ll be here if it happens again
- We hope that the current wave of anti-police sentiment can be overcome – but it will require work by police departments, managers, governing bodies, and the communities they serve – the efforts of all are essential if the divided is to be bridged
- Oh, and here’s a thing that we hope *isn’t* coming....



# What else is on the horizon



[Subscribe](#)

## How Insurance Companies Can Force Bad Cops Off the Job

In exchange for coverage, insurers can demand that police departments implement new policies and training, and dismiss problem officers.

**RACHEL B. DOYLE** JUNE 10, 2017

## BROOKINGS

[How We Rise](#)

### Why police department insurances are the key to progress on police reform

[Rashawn Ray](#) Friday, June 26, 2020

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ARTICLE

HOW PRIVATE INSURERS REGULATE PUBLIC POLICE

*John Rappaport*

Sections

The Washington Post  
Democracy Dies in Darkness

UNACCOUNTABLE

## Insurers force change on police departments long resistant to it

The high cost of settlements over police misconduct has led insurers to demand police departments overhaul tactics or forgo coverage

U.S. NEWS

## The hidden hand that uses money to reform troubled police departments

Across the nation, insurers have had surprising success "policing the police," ending risky behavior, ousting chiefs, even closing troubled departments.

# Wait, what?

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- As you can see from these headlines, there are some calls for insurers to take an active role in “police reform”
  - One of these articles proposes “shifting civilian payouts for police misconduct away from taxpayer money to police department liability insurance policies”
  - Some people have even proposed that large self-insured PDs be required to purchase insurance instead of being self-insured
  - Wait, what? Isn’t INSURANCE paid for by TAXPAYER MONEY? How would this help??
  - Some of these articles describe situations where insurance coverage was threatened absent changes such as the removal of certain personnel, the imposition of a department-wide “performance improvement plan,” a change in top leadership, or implementation of specific training, supervision, and policy recommendations
  - One recent article (headline from the Washington Post) features pools in other states who are taking active steps to modify behaviors within police departments

# Wait, what?

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- How do you think this would sit with your Chief? To quote one Chief: “I’ll be damned if I let an insurance company run my police department.”
- CIRSA views itself as a RESOURCE to its members. That’s why our Board has funded initiatives like:
  - SIGMA wellness initiative
  - The CORDICO mental wellness app
  - Individual time with Dr. Jamie Brower, a noted police psychologist for those facing stresses
  - Training opportunities through the Risk Control Department’s regional seminars, law enforcement roundtables, Active Bystandership for Law Enforcement (ABLE) training, etc.
  - \$25k individual liability coverage for officers
  - In the past (and we’re reviewing again for the future), funding a portion of your cost of Lexipol police policy manual and training service; and we are happy to allocate time with CIRSA defense attorneys to assist you in writing/revising your PD policies
- 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!

# Summing Up

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- At CIRSA, we prefer the “carrot” and not the “stick”
  - But this is in part dependent on being able to show our reinsurers that the “carrot” approach works
  - We could face a day when reinsurers begin shaking a stick at us...and then we may have to rethink our own approach
- We are always looking for more and better ways to help elevate our members’ practices
- What else do you think we...insurers...managers/administrators...governing bodies...or others can or should be doing with regard to the challenges facing law enforcement?
- THANK YOU for undertaking all of the challenges of local government, and most especially those around law enforcement

# Upcoming CIRSA Law Enforcement Events



## REGIONAL LAW ENFORCEMENT TRAINING

### Active Bystandership for Law Enforcement (ABLE) 8-Hour Core Training Program

Featuring State & National ABLE Instructors, Including Existing CIRSA Members

## CIRSA LAW ENFORCEMENT REGIONAL ROUNDTABLES



FEATURING ERIC M. ZIPORIN or JONATHAN N. EDDY SGR, LLC

CIRSA is excited to announce the 2023 Law Enforcement Regional Roundtables. Eight events will be hosted around the state covering a variety of pertinent law enforcement issues, emerging and current police liability concerns, and other topics requested by law enforcement. Please see the agenda below for more details. These seminars are open to all member police departments and risk control contacts. Please pass this on to other staff who may be interested in attending.

#### AGENDA:

- 8:30 Registration
- 9:00 Entering into Residences: Legal Refresher and Recent Case Law
- Recent Decisions on Qualified Immunity from SCOTUS and the Tenth Circuit

- Mitigating Liability - Common Mistakes that Create Liability and Impact the Defense of the Case
- Supervisory Liability - Claims that can be Asserted Against Law Enforcement Supervisors
- The Litigation Process and how it Affects You

# About the Colorado Intergovernmental Risk Sharing Agency (CIRSA)

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- 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

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**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!