

**THE BILL BLACKWOOD
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Assessing the Need for a Fleet Accident Policy for the Nassau Bay Police Department

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ABSTRACT

Research indicates that a written policy for investigation of damage to police department vehicles is a very important issue. Damage to vehicles is a major cost to administrators and sometimes can deplete a police budget. The risk of lawsuits and worker's compensation payments are increased without a policy. Accident review boards and disciplinary action are necessary and should be included in a good policy. The chief of police should have the authority to administer discipline within the department. The cost of developing a good written policy for damage to department vehicles outweighs the risk of no policy.

Introduction

The City of Nassau Bay was incorporated in 1970 with a city manager form of government. The population of Nassau Bay was 5,000 at the time and remains approximately the same today. The first police department consisted of five deputy sheriffs from the Harris County Sheriff's Department contracted to the City of Nassau Bay. In 1975 the city council voted to abandon the contract deputies and form their own police department with six officers. Today's police department consists of a chief of police, two sergeants, 10 officers and five communications personnel. The Nassau Bay Police Department has always been progressive and up to date on all current issues. However, for some reason a policy for accidents involving department vehicles was overlooked.

The purpose of this research is to review the policies and procedures from other agencies and articles of interest to show the need for a written fleet accident policy for the Nassau Bay Police Department when departmental vehicles are involved in accidents. The Nassau Bay Police Department has not experienced a high rate of police vehicle accidents. Recently the chief established an accident review board to decide if an accident was preventable or non preventable. If an accident is determined to be preventable by the accident review board, the chief recommends to the city manager a form of disciplinary action to be taken against the involved employee(s). The latest accident was classified by the accident review board to be preventable. This was the second documented accident for the officer involved. In the first accident the officer was suspended for three days without pay. It was determined that disciplinary action be taken for

the second accident. The chief recommended to the city manager that the patrol officer pay for the damage to the patrol vehicle. The suspension of an officer deprives the community and department of an officer to carry out normal police services. Pay deductions would amount the same discipline without loss of an officer. The city manager did not concur with the chief and assessed a 15-day suspension without pay. The patrol officer appealed the city manager's decision and requested a hearing with his attorney present. The facts of the case were presented. The department's policy and procedure manual was reviewed and found that no provisions existed for disciplinary action for negligent damage to police vehicles only the term city property. The city's policy and procedure manual was reviewed and found that no disciplinary provisions existed for negligent damage to city vehicles by city employees. Yet, sometimes city employees have negligently damaged city vehicles with no penalty and other times suspended from duty. A dual standard exists within the city.

The primary source of information for this research is a review publications and policies from other police departments. The intended outcome of this research is for the Nassau Bay Police Department to adopt a policy for investigating accidents when a department vehicle is involved. If this policy is adopted for all city employees, it would give the city a standard by which to investigate accidents involving city owned vehicles. One policy for all would increase the morale of all city employees as a standard is established for accident investigation. The intended audience of this research is the Nassau Bay city manager and chief of police

Legal and Historical Context

The Nassau Bay Police Department has many policies including a policy on pursuit driving. However, the department does not have a policy on accidents involving department vehicles. The policy manual was written and for some reason no policy exists for damage to department vehicles. The department needs to develop such a policy. "Law enforcement administrators must establish policies and procedures for law enforcement driving operations." (Auten 1989)

The City of Nassau Bay is insured for liability insurance through the Texas Municipal League Risk Pool. The city is responsible for the first five thousand dollars of damage to another person's vehicle or property and fully responsible for the repair to city owned vehicles and any property under five thousand dollars. This deductible will apply if the accident is determined to be the officer at fault. The only exception to this is if an officer has his own liability insurance policy to cover any damages, however this does not relieve the officer from disciplinary action if he is at fault. Any accident involving a city vehicle is a potential a cost to the city.

The Nassau Bay Police Department does not have a written policy or procedure when an officer damages a vehicle. In the past when an officer had an accident involving a police vehicle there was no policy to use as a guideline for disciplinary actions. Often the accident was not reviewed. Even if the accident was reviewed, there was never a penalty assessed upon an officer at fault. In 1988, a new chief of police was hired. The new chief believed that an officer is accountable for preventable damage to department vehicles or property and should pay the cost of repair or replacement. The chief realizes that paying for damages does not prevent accidents, however it

would make an officer more aware of his actions.

Most of the police officers surveyed were not required to pay for damages to their police vehicles when the accident was ruled "officer at fault" (78.8 percent). However, these officers experienced a significantly higher number of on-duty police motor vehicle accidents (95.3 percent). Those officers who were personally financially responsible for damages to their police vehicles were less likely to become involved in an accident. Those officers indicated they were more careful in the operation of their police vehicle because of the policy. Evidently, officers who must pay out of their own pocket for damages ruled "officer at fault" do not tend to mistreat their assigned police vehicle. (Miller 1983)

The department has not experienced a high rate of police vehicle accidents. In response to vehicle accidents the chief established an accident review board to determine if an accident was preventable or non preventable. The accident review board, even though not established by a written policy was the first step toward establishing a policy. If an accident is determined preventable by the accident review board, the chief may recommend to the city manager a form of disciplinary action to be taken against the officer, if any. The city manager may concur with the chief or decide another type of disciplinary action.

The latest accident involving a patrol vehicle was judged preventable by the accident review board. This was the second documented preventable accident involving this officer. In the first, the officer was suspended for three days without pay. The chief decided that disciplinary action should be taken against the officer for the second accident. The chief recommended to the city manager that the patrol officer pay for the damage to the patrol vehicle. "Police motor vehicle repair and replacement due to such accidents constitutes a major strain on the police budget." (Miller 1983) However, the city manager did not concur and assessed a 15-day suspension without pay.

Review of Literature or Practice

Police officers in Nassau Bay are currently assigned to 10 hour shifts. During typical tour of duty each officer drives approximately 50-75 miles. The driving conditions within the city are usually slow but routine. However, there are times when officers must drive under more adverse conditions such as heavy rain, fog, heavy traffic, and darkness. Research shows that officers have one of the highest accident rates among all occupations.

Police officers frequently drive hundreds of miles during one eight-hour shift under demanding circumstances (i.e., inclement weather, high speed pursuits, low speed patrol, heavy traffic areas, etc.). It is no surprise that the incidence of motor vehicle accidents among police officers (1.36) is one of the highest among all occupational groups. (Miller 1983)

Most accidents involving police vehicles in Nassau Bay do not involve another vehicle. The accidents are attributed mostly to operator error. Most damage to police vehicles within the city occur during routine driving conditions, and almost all are preventable. "Research indicates that the collision rate among law enforcement drivers is 2.5 times higher than the rest of the driving population. Most collisions involving police vehicles occur during normal or routine driving conditions, and may be preventable" (Auten 1989).

Police departments are allocated a fixed amount of money for vehicle repairs. Administrators strive to stay within each line item of the budget and may be looked at unfavorably when a budget line item is exceeded. Repairs are taken into consideration in the budget, but who can predict when a vehicle will be damaged or have to be replaced? Preventable accidents are significant drain on a department's budget. "Motor vehicle repair and replacement can be costly due to

motor vehicle crashes. Many times these repair and replacement costs can deplete a department's vehicle budget" (IACP 1991).

Preventable or non preventable officer at fault accidents are a cost to the city as most are under the 5,000 dollar deductible per occurrence. Accidents over the 5,000 dollar deductible are reported to the Texas Municipal League Risk Pool for payment and based on claims an annual policy rate is computed. A good policy for department accidents would increase officer awareness of proper driving habits and reduce the possible cost of increased insurance rates.

"There is a growing pattern of insurance companies across the country dropping law enforcement agency coverage, or significantly raising premiums, due to unfavorable liability assessments" (Rouse 1985).

The city's worker's compensation insurer is also the Texas Municipal League Risk Pool. Any vehicle accident involving injury to an officer is an expense to the city. Long term injury to an officer involved in a preventable or non preventable is an expense to city in the form of worker's compensation benefits. "Each year agencies pay hundreds of dollars in worker's compensation benefits to officers involved in motor vehicle crashes" (IACP 1991).

The Nassau Bay Police Department has 13 sworn officers and accidents involving department vehicles are few, however the potential increase in insurance cost is present. Vehicle accidents also increase the potential cost in worker's compensation to the city. "Department with 10 sworn officers paying over \$110,000 between 1988 and 1991 in worker's compensation, resulting from

crash related injuries" (IACP 1991). For a small department like Nassau Bay the loss of any officer due to injury significantly impacts the department's efficiency to provide the customary level of desired service to the citizens of the community. "A small municipal department lost over 2,080 man-hours in a one year, totaling in excess of \$31,200 in worker's compensation payments." (IACP 1991)

Finally we must consider the cost of litigation. An employee may file litigation against the department, however if a good policy exists the department should prevail. There is a growing number of people in the country who are initiating litigation without a prayer of winning. These people know from experience that insurance companies settle the litigation just to avoid more costly court procedures. "One small municipal department reported paying over \$150,000 for one crash related law suit in 1989" (IACP 1991). When will the department exceed the law of averages involving litigation? To date the city has escaped litigation, but remember nobody can predict when an accident will occur. "Fifty one percent of municipal agencies have had civil cases filed against them" (IACP 1991).

Survey letters were sent to thirty six city police departments with populations between 1500 and 10,000. Sixteen of the thirty six departments responded the results of which are shown below in the chart.

| | |
|-----------------|-------------|
| Policy | 9 or 56.3% |
| No Policy | 7 or 43.8% |
| Discipline | 14 or 87.5% |
| No Discipline | 2 or 12.5% |
| Review Board | 7 or 43.8% |
| No Review Board | 9 or 56.3% |

Discussion of Relevant Issues

The department must have a policy for accidents involving department vehicles. Without a policy the department is at risk in many areas. The most common areas of risks are the possibilities of a lawsuit, employee morale, dollar loss to the city and credibility of the department rules and regulations.

1. The City of Nassau Bay is insured through the Texas Municipal League Risk Pool with a five thousand dollar deductible. This means the city is responsible for the first five thousand dollars of damage to the other person's vehicle or property and fully responsible for the repair of city owned vehicles and any property under the five thousand dollar limit. Any accident involving a vehicle is a cost to the city.

2. All accidents involving a police vehicle whether the officer was at fault or not makes the city at risk of a lawsuit. The trend of the times is that when a city vehicle is involved in an accident large or small a lawsuit is filed. "One small municipal department reported paying over

\$150,000 for one crash related law suit in 1989" (IACP 1991). The other party always believes the city has deep pockets. We must remember the pockets may be deep, but it cost all of us in one form or another. "Local governments should understand how they can be held liable for the actions of law enforcement personnel and other employees and should take steps to manage risks and control losses based on this liability" (Hopper and Summers 1989). A good written policy will mitigate some effects of a lawsuit.

3. The absence of policy effects morale. Without a policy the outcome of being involved in an accident is never the same, therefore effecting morale. The establishment of a good policy allows an officer to know exactly what the rules of the game are and what to expect when they are violated. A good written policy will improve officer morale. "Law enforcement administrators must establish policies and procedures for law enforcement driving operations." (Auten 1989).

4. A city manager form of government in some incidences does not give the chief of police the authority to administer discipline. The city manager may delegate this authority to the chief of police. The city manager of Nassau Bay has not delegated this authority to the chief of police in Nassau Bay. The chief of police may recommend disciplinary action to the city manager. I stated the current situation involving the chief of police's recommendation to the city manager for disciplinary action to be taken when an officer recently damaged a police vehicle. The case has not been disposed of yet one year later. The lack of authority of the chief of police to administer discipline has diminished the creditability of the department rules and regulations.

Creditability is destroyed when rules and regulations are not enforced. "Liability can be imposed on the basis of deficient programs or employee training and supervision or on the basis of the irresponsible failure by local government policy makers to stop or correct" (Hopper and Summers 1989).

The cost of setting up a policy on police vehicle accidents will cost the department only time in man-hours that is already being paid. To have an established policy on police vehicle accidents will identify those individuals who have set a pattern for accidents, thus putting the department at risk of a lawsuit. "Fifty one percent of municipal agencies have had civil cases filed against them" (IACP 1991). The policy may provide for the loss of an officer at 30,000 per year salary, when retention may result in litigation costing much more. "One small municipal department reported paying over \$150,000 for one crash related law suit in 1989" (IACP 1991). Therefore setting up an accident policy is a very cost effective for the department and "Peterson states quite correctly people perform in those areas where they are being measured by their peers" (Rouse 1985).

Conclusions/Recommendations

The purpose of this research is not to make a policy for the Nassau Bay Police Department, but to show the need for a policy when department vehicles are damaged. This research may be applied to any police department in the country that does not have a policy on damage to police vehicles.

If a written policy for review of accidents involving department vehicles is established, it would allow officers to know exactly what to expect when a department vehicle is damaged. It is my

belief that this factor alone would be a positive factor in morale. "To fulfill this responsibility management must provide a plan." (Planek and Fowler 1971) "Law enforcement administrators must establish policies and procedures for law enforcement driving operations." (Auten 1989)

Disciplinary action is intended to modify the unacceptable behavior of an individual. The question is at what point in the process does disciplinary action cease to modify behavior? Therefore, certain criteria should be established to determine when an officer should be dismissed for continued preventable vehicle accidents. Dismissal of the officer will remove the risk of a lawsuit in the future. The decision to fire an officer should be based on his past accident record and what his future behavior may be.

Private industry insurance companies have a risk factor established to determine when not insure a high risk person. The same policy in theory should apply to officers operating police vehicles with certain guidelines as established by the department's particular needs. The establishment of these guidelines alone would place the department at less risk of a lawsuit.

The problem encountered by the Nassau Bay Police Department was no policy existed or guidelines for investigating damage to department vehicles or what disciplinary action to take when the damage is preventable or non preventable. The disciplinary process was challenged when an officer was suspended for 15 days and it was found that no policy existed for damage to police vehicles. To date there has been no ruling on the 15 day suspension. If the department had a policy on police vehicle accidents the issue would be settled and not in limbo.

The research I have presented clearly shows the need for a policy when a police vehicle is damaged due to a preventable or non preventable accident.

My first recommendation is that the city manager delegate the authority to the chief of police to handle disciplinary action within the police department. The city manager should be the person for an officer to appeal the chief's decision. The city manager should not be the person who administers discipline. When an officer appeals disciplinary by the city manager, to the city manager, this is not due process. If the chief was allowed to administer discipline, more credibility is given to rules and regulations. This recommendation would provide a more due process atmosphere.

I recommend the police department write a policy on police vehicle accidents. The cost of writing a policy is very little when compared to the cost of litigation. "One small municipal department reported paying over \$150,000 for one crash related law suit in 1989". (IACP 1991) A policy will allow the department to identify those individuals who are a risk and cut budget costs for vehicle repair or replacement which is very important to a small city with limited resources. Many times these repair and replacement costs can deplete a department's vehicle budget" (IACP 1991) If the department had a written policy the officer who damaged a police vehicle would have been disciplined and not still in limbo today.

The recommendations I made will provide written guidelines when a department vehicle is involved in an accident. The policy will reduce the risk of costly litigation. The policy is a good

form of risk management. The policy if enforced equal will increase the morale of employees. Credibility is restored to the department rules and regulations that govern a department. If a policy is written and put in force the policy should be discussed with supervisors stressing the importance of the policy. Without the cooperation of supervisors who are charged with enforcing policy it will have the same effect as if no policy existed. "At the most basic level, however, the attitude of supervisors and command personnel toward department regulations sets the pace for compliance." (Planek and Fowler 1971) A good written policy for investigation of damage to department vehicles is a "Win - Win" situation for the city and the officer.

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