

# LAW ENFORCEMENT

## PROPERTY ROOMS

From rock-solid policy to safety and security, well-run property and evidence rooms bring integrity to law enforcement agencies

PAGE 12

### EVIDENCE

Case No. CD2-02-0180 Inventory No. \_\_\_\_\_  
Agency PCPD  
Suspect Pa. Bou Gu  
Victim C. H. Log  
Type of offense CM 2nd  
Description of evidence STEVEN MODEL 62  
22 cm Semi Auto Pistol  
S/N 007829

Date and time of recovery \_\_\_\_\_

Location of recovery Scene

How obtained \_\_\_\_\_

Recovered by Chadman

Reason seized \_\_\_\_\_

☐ Analysis

CHAIN OF CUSTODY

Received from Lois

Date \_\_\_\_\_ Time \_\_\_\_\_

Received from \_\_\_\_\_

Date \_\_\_\_\_ Time \_\_\_\_\_



## Reciprocity Regulation Revised to Consider Years of Experience

The years of service any out-of-state or federally-trained officer could bring to a Kentucky law enforcement agency in a lateral hire now will be considered for reciprocity.

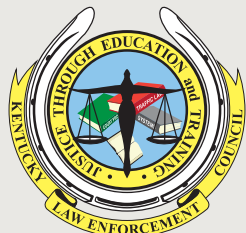
The Office of Kentucky Law Enforcement Council Support (OKLECS) recently proposed to the KLEC that the years of experience these officers have served should be considered to grant reciprocity for the Peace Officer Professional Standards act.

Previously, OKLECS could only compare hours of basic training to Kentucky's standard at the time they were trained. Thanks to the efforts of the Department of Criminal Justice Training and the Justice and Public Safety Cabinet, KRS 15.440 and subsequently 503 KAR 1:140 (10) were revised. The KAR took effect March 9.

A review of KLEC records revealed that since 2012, 399 out-of-state or federally-trained officers applied for POPS reciprocity in Kentucky. Only 31 percent were approved under the then-existing guidelines. After the March 9 KAR change, OKLECS can approve more than 36 percent of those previously denied. This translates to 100 additional out-of-state or federally-trained veteran peace officers qualified to go to work for the commonwealth's municipal, county and state agencies.

OKLECS is working to make contact with these previously-denied applicants and the Kentucky agencies to which they applied to inform them of the revised regulation.

For more information contact the OKLECS at 859-622-6218.



# REAL LIFE NEEDS OF REAL PEACE OFFICERS

Kentucky Law Enforcement Magazine is available online at **klemagazine.com**! All of our exciting content, feature stories, articles and more are available to the entire law enforcement community with just a click on your phone, tablet or computer.

**WWW.KLEMAGAZINE.COM**

MAY/JUNE 2018 | VOL. 17, NO. 2

**MATTHEW G. BEVIN**  
Governor

**JOHN C. TILLEY**  
Justice and Public Safety  
Cabinet Secretary

**MARK FILBURN**  
Commissioner

Kentucky Law Enforcement is published by the Kentucky Justice and Public Safety Cabinet, and is distributed free to the Kentucky law enforcement and criminal justice community. Current and past articles are available online at: [www.klemagazine.com](http://www.klemagazine.com)

STAFF:  
Editor & Public Information Officer | **KELLY FOREMAN**  
Art Director | **KEVIN BRUMFIELD**  
Photographer | **JIM ROBERTSON**  
Public Information Officer | **MICHAEL A. MOORE**

CONTRIBUTORS:  
**ANDREA ESLAMI**  
**SHAWN HERRON**  
**RACHEL LINGENFELTER**  
**EDLINIAE SWEAT**



ADDRESS ALL CORRESPONDENCE TO:  
KLE Staff, Funderburk Building  
521 Lancaster Avenue • Richmond, KY 40475

EMAIL: [DOCJT.KLENN@ky.gov](mailto:DOCJT.KLENN@ky.gov)

This publication is produced as a training and marketing tool for the Kentucky law enforcement community as well as public officials and others involved with law enforcement or the oversight of law enforcement. It includes best practices, professional profiles, technology and law updates of practical application and news-to-use for professionals in the performance of their daily duties.

PRINTED WITH STATE FUNDS



**ON THE COVER:**  
The Pulaski County Sheriff's Office maintains a separate evidence room for weapons storage. Security is tight, as each layer of the evidence and property room requires a passcode and security card to enter. Additionally, the rooms are monitored with video surveillance on a 24/7 basis. (Photo by Jim Robertson)



LIKE US AT  
[facebook.com/klemagazine](https://www.facebook.com/klemagazine)



FOLLOW US AT  
[twitter.com/klemagazine](https://twitter.com/klemagazine)

## CONTENTS

12



## FEATURES

- 6 **School Safety**  
*Building Relationships and Raising Awareness*
- 12 **Chain Reaction**  
*Well-run Property and Evidence Room Brings Integrity to Agency*
- 15 **Safe and Secure**  
*Agencies Shouldn't Skimp on Officer Safety, Evidence Room Security*

## COLUMN

- 4 Justice and Public Safety Cabinet Secretary **JOHN C. TILLEY**  
*Leaders in Law Enforcement Embracing Strategic Approach to Criminal Justice*

6



10



## PROFILES

- 10 **Dream Job**  
*U.S. Attorney for the Eastern District of Kentucky Rob Duncan Brings a Wealth of Experience to the Position*
- 18 **Pride and Policing**  
*Maysville Police Department*

## LEGAL

- 22 **What the Heck?**  
*Officers Should Ensure All Underlying Case Facts are Understood in Any Civil Actions Against Them*

18





# LEADERS IN LAW ENFORCEMENT EMBRACING STRATEGIC APPROACH TO CRIMINAL JUSTICE

**L**awmakers often turn to police for public-safety advice. But has anyone been listening lately? More and more, it's police who are leading the charge to revamp the strategy on criminal justice.

Consider the wisdom of retired Bellevue Police Chief Wayne Turner, who was named Chief of the Year in 2017. He penned a column in January calling for a more sustainable approach to low-level crime.

"We have regressed from a criminal justice system that focuses its attention and resources on the people who are dangerous and violent, to a system clogged with people convicted of low-level, nonviolent offenses, often driven by substance abuse or mental illness," he wrote.



Turner points out that this approach is both costly and bad for public safety.

"It doesn't benefit anyone to lock up the same individuals over and over without meaningful treatment or rehabilitation that will reverse their criminal activity," he said.

Voices from Kentucky State Police are also joining the chorus. KSP representatives testified in February on a bill that would safely lower Kentucky's prison population, and they didn't mince words about the effect of soaring prison costs on KSP.

The bottom line: Corrections is consuming an ever-bigger slice of the public-safety pie, including funds for state police.

I've heard similar frustration from many others – police endure budget cuts year after year while spending on prisons has swelled to more than \$600 million annually. Too often, it's our law enforcement agencies that are paying the price for our high prison population. That's counterproductive to public safety.

Unfortunately, without intervention from the General Assembly, prison costs will only rise; Next year's budget request for corrections is close to \$100 million more than this year.

Our imprisonment rates are among the highest in the nation, due mostly to low-level, drug-related offenses. County beds are already stretched throughout the state, devouring local resources, and multiple projections predict that Kentucky will run out of prison space in 2019.

When that happens, the General Assembly will face three choices, all of which will further strain resources. The state could build new prisons, transfer inmates to other states at extreme cost, or implement mass releases of inmates.

I fear the effects of all three options on law enforcement. How will more spending on corrections impact budgets for KSP, the State Crime Lab, or the Department of Criminal Justice Training? Surely stronger community supervision and drug treatment are better for law enforcement than forced mass releases.

Today, 34 states have found a better way, lowering both their crime and incarceration rates through a strategic overhaul of criminal justice. That's the type of change we are talking about in Kentucky.

It's no wonder that leaders from the law enforcement community are starting to embrace such measures; they reduce crime and preserve resources for those on the front lines. Let's just hope these voices have more chance to be heard over the next year. 🌤️



**BY JOHN C. TILLEY**  
SECRETARY, JUSTICE AND  
PUBLIC SAFETY CABINET



## SLOW DOWN

**Speeding is inevitable when seconds count, but studies have shown that many officers killed in traffic accidents were not responding to calls for service. The faster you drive, the more time you need to react. With all the distractions inside and outside the cruiser, increased, unnecessary speeding can be deadly. Slow down.**



# SCHOOL SAFETY

## BUILDING RELATIONSHIPS AND RAISING AWARENESS

*Written By*  
**KELLY FOREMAN**

*Photography By*  
**JIM ROBERTSON**

**L**iberal or conservative, pro-gun or pro-gun control – there is one thing nearly everyone can agree on. The safety of innocent children must be a priority.

What can be done right now to better protect our children and teachers within Kentucky schools? Department of Criminal Justice Training Patrol Tactics Section Supervisor Shannon West recently sought to answer this question during a Current Leadership Issues for Mid-level Executives class in Barren River.

“It’s supposed to be a safe environment,” West said of schools. “We fought hard in our country for those very freedoms we have so we don’t have to worry about such things (as school shootings). And for the most part – in spite of what you see on the media – instances of these shootings are relatively rare. But it shocks our consciences when people kill kids.”

In the wake of deadly school shootings in Marshall County, Ky. and, just a few weeks later, Parkland, Fla., many community members have sought guidance from the law enforcement community to improve school safety. Even for those communities in which the conversations have not yet begun, West offered advice to start building relationships and raising awareness.

“For some of you, this is stuff you already know,” West said. “All I’m going to do is raise your level of awareness and hopefully make you more deliberate in the way that you go about doing business ... maybe give you a new focus.”

### HARDENING THE TARGET

When it comes to slowing down an active shooter, West emphasized that there is no single tactic that will prevent tragedy. Instead, he encouraged a layered approach that begins simply with locking the doors.

“If you look around – apart from ambushes growing – cops are getting killed doing the same things we have been doing for years,” West said. “When you really break it down and look at what we are failing to do, sometimes it is because we simply fail to follow fundamental tactics. It’s the same with school safety and security. We didn’t lock the door.”

Physical security of any school building must be a priority. Whether it is electronic, locking buzz-in systems or safety films applied to glass windows and doors to reduce shattering, securing the facility might provide the seconds necessary for survival.

“All we’re doing is buying time,” West said. “Time for officers to get there and a response to be made. A chance for [students and teachers] to escape, formulate a plan or maybe to fight.”

For many school systems, a conversation with law enforcement about the cost of implementing these items turns to a lack of funding when budgets are stretched thin.

“Many of these schools can’t afford to buy chairs for the kids,” West said. “They’re not going to want to spend a lot of money on school security. But what is the cost if you don’t do it? That is the way you have to sell this when you’re talking to administrators.”

### BUILDING RELATIONSHIPS

Walking into a school-board meeting and giving directions about what should be done to protect schools is likely to meet resistance if it is the first time administrators have spoken to law enforcement. That’s where relationship building comes in, West said.

“When you’re mentoring, guiding and forming relationships with schools, you have to have enough empathy to understand why parents and school boards might be reluctant to do some of the most fundamental things when we talk about locking down schools,” West said. “It highlights the fact that we live in an evil world where there are men and women who would do harm to our children – and people don’t like that.

“We see it every day,” West continued. “We see some of the most despicable things one human being can do to another. What you forget when you lose empathy is that it is not a reality for these parents and schools. I see a lot of head butting between cops and administrators. Why? Because we come from two completely different worlds in terms of what we deal with.”

Part of this relationship building involves bringing all concerned parties together to communicate, West said. Law enforcement and school administrators can work together with mental-health providers, parents and prosecutors to form multi-disciplinary task forces. Task force members bring to the table their own area of expertise and perspective, and the team ensures accountability and follow through so nobody falls through the cracks, West said.

These multi-disciplinary task forces have been implemented and successful in sexual-abuse cases, West said.

“I would submit to you that years ago, we probably wouldn’t have thought this was needed for sex-abuse cases until it became a real problem,” he said. “This is becoming a real problem, and it’s something we need to consider. These relationships – talking to parents and teachers – that’s where it starts. You have to have a relationship.”

ANTONIO GUILLEM LTD/123RF.COM



DOCJT Patrol Tactics Section Supervisor **SHANNON WEST** presented on school safety and security measures during a recent Current Leadership Issues for Mid-level Executives course in Barren River.



DETECTION AND PREVENTION

There was prior knowledge of mental illness or issues with shooters in up to 80 percent of school shootings, West said. Many indicators were missed or overlooked. Detection and prevention are two areas where West said many communities are missing the mark.

“We have to be disciplined and deliberate in terms of being observant,” he said. “Think about this in terms of knowing what’s going on. The teachers, they are in those classrooms with those kids every day. They know those kids better than their parents, oftentimes. They know the kids’ baseline behavior.”

In terms of behavior analysis, West said there is no specific profile of an active shooter. However, many were perceived as angry, frustrated or expressed emotions prior to the event.

“There is no individual template you can lay over every human being to give us all the answers,” West

said. “It’s about their baseline. You have to know what that is.”

Beyond being observant of these warning signs, West stressed the importance of reporting concerns and sharing potentially-volatile information. School children often know if their friends are making threats or if something is not right with a classmate. If a student notifies a teacher about another kid’s behavior, West said there is nothing that prohibits teachers and administrators from sharing that information with law enforcement or mental-health professionals.

Many people believe HIPAA (Health Insurance Portability and Accountability Act) prevents these conversations from occurring. West and DOCJT Staff Attorney Shawn Herron said that simply isn’t true. Confusion over what information is allowed to be shared leads to failure to report.

“No one wants anything to do with anything that could possibly put them in liability’s way,” West said. “We have to get over that. That inhibits communication, it inhibits notification. If you’re not notified that these kids are having problems, guess what? You’ll get a notification. And it’s the sound of a .223 going off in the hallways.

“We can no longer be so fearful of litigation and all that garbage that we are not talking about these kids who are threatening to kill,” West continued.

Further, once these complaints and notifications are made, West said documenting and disseminating that information is critical to the investigative process. In many cases, an officer’s hands are tied when a complaint doesn’t rise to the level of criminal activity. But these complaints should not be ignored. They should not

only be documented, but shared with concerned parties and evaluated.

“You guys remember down in Florida, how many times did that kid have contact with the police?” West asked. “Thirty-plus times? You know what happens, you get somebody who has made a complaint, he has made some kind of a threat or a veiled threat on Facebook. Or he said something to somebody or he has a gun. What are our limitations there? Often there’s nothing legally we can do. There’s this thing called the constitution. And that constitution is not there when it’s convenient for us, it’s there all the time. It inhibits us from doing certain things, and that’s the way it has to be.

“But I hope you’ve got something written down on a kid you have had contact with 30-plus times,” West continued. “I hope you have some good answers and can lay it out later for CNN.”

SCHOOL RESOURCE OFFICERS

In Kentucky, there are approximately 270 school resource officers in 176 school districts statewide, West said. There still is not one in every district, though. Despite the expense of funding school resource officer positions, West said it is another layer of protection that should be considered.

When funding is available for a position, the individual chosen to serve within the schools is not one that should be made flippantly. The officer’s training, background and attitude all should be taken into consideration. An effective school resource officer should be someone who can communicate well with students and administrators and be empathetic.

A school resource officer who has invested time into relationship building with teachers, parents and administrators can deliver a consistent, professional and tactical school-safety message without trying to shove it down anyone’s throat, West said.

“You have to have good people to do that,” he said. “Not a guy or gal who is looking at Facebook and biding their time to retirement. That is not a good option for our kids. That is not a layer of protection – it is a façade. I don’t think any of us can stand the scrutiny of that.”

Herron also recommended employing a properly-qualified LEOSA (Law Enforcement Officers Safety Act) officer who is able to carry a weapon within the schools. Make sure school administrators understand what options are legally available to them for having trained law enforcement personnel within their schools. This is just another critical part of communicating the message of safety, West said.

“The best way to implement a consistent message is with someone who has a good relationship with you and knows your first name,” West said. “That’s where it’s at. I don’t care if it’s a big or small issue, they need to trust you and know you have a passion for these issues and want to make a change. That’s where it starts.”

Harden the Target:  
Physical Security of Schools

The following measures are suggestions that can be made to school systems to implement layers of protection against school shooters gaining access to the building.

- Control outside access to all points of entry
- Consider metal detectors
- Install electronic locking or “buzz-in” systems to remotely monitor primary entryways
- Install cameras and video-intercom systems
- Lock the doors – exterior and interior
- Install safety and security film on windows and glass doors
- Consider all available forms of emergency communication, from public address intercoms to cell-phone notifications

(INSET) DOCJT Staff Attorney **SHAWN HERRON** offered legal advice regarding school safety issues during Shannon West’s presentation.

(BELOW) Mid-level officers from across the state attended the recent CLIME training in Barren River, which included the presentation about school safety.



(LEFT) Owensboro Police Sgt. **RANDALL FOSTER** offered input on keeping schools safe during the CLIME presentation.



(BELOW) DOCJT Patrol Tactics Section Supervisor **SHANNON WEST** emphasized the importance of relationship building with school administrators, teachers, parents, mental-health providers and any other concerned parties when it comes to effective school safety communication.



# DREAM JOB



## U.S. ATTORNEY FOR THE EASTERN DISTRICT OF KENTUCKY ROB DUNCAN BRINGS A WEALTH OF EXPERIENCE TO THE POSITION

**S**ometimes, dreams do come true. Just ask United States Attorney for the Eastern District of Kentucky Rob Duncan. After graduating in May 2003 from the University of Kentucky College of Law, Duncan has had his eyes set on being an assistant U.S. Attorney (AUSA). After serving for 16 months as a judicial law clerk for the Hon. Henry Wilhoit Jr., a federal judge sitting in Ashland, Duncan jumped at the opportunity to become an AUSA in January 2005. “That was what I hoped my career path would lead me toward,” Duncan said. “Fortunately for me, it happened at a very early point in my career.” After 12 years as an AUSA, Duncan was nominated by President Donald Trump, and on Nov. 9, 2017, he was sworn in as a U.S. Attorney, taking the oath from Chief Judge Karen K. Caldwell of the U.S. District Court for the Eastern District of Kentucky.

As U.S. Attorney, Duncan is the top-ranking federal law enforcement official in the Eastern District of Kentucky, which serves the 67 easternmost counties in the commonwealth, and includes the cities of Lexington, Covington, Frankfort, Ashland, Pikeville, Somerset and London. Going from an AUSA to the head of the agency has required some adjusting, he said. “The role I’m in now is certainly different than when I was a prosecutor,” Duncan said. “At this point, I’m not going to court anymore, although I think I would like to once I get my feet under me a little bit. The AG has told us, particularly those of us who have prosecuted before, there is no reason we can’t get back in the courtroom and litigate some.” But until then, Duncan said he is getting a look at areas of the agency he had not gotten during his time as an AUSA.

“I’m seeing how all the different pieces fit together,” he said. “I don’t have much background in the civil section, so I’m spending a lot of time with those folks getting myself up to speed on civil issues.”

### GOALS AND VISION

Carrying out the goals and objectives of President Trump’s administration – reducing violent crime and reducing access to all drugs, particularly opioids and opiates – are some of Duncan’s goals. Being raised in the eastern Kentucky city of Inez, Duncan said he has seen first-hand the effects of drugs throughout the district. “On the drug side, the biggest threat we have is with opioids and opiates,” he said. “So we need to reduce access to those (drugs) and reduce the number of overdose deaths. We have a role to play on the enforcement side. We’re in law enforcement, and our first and foremost responsibility is to vigorously and fairly enforce the laws.” A key in the drug fight is prevention, Duncan said. “We can do that through education, outreach and getting the message out there that all drugs, in particular, opioids, are dangerous, and addictive, and if they’re misused, they can lead to very bad consequences, including death,” he said.

An outreach program Duncan is proud of is the Heroin Education Action Team (HEAT), which began in 2015 under his predecessor Kerry Harvey. “Since that time, HEAT has reached nearly 15,000 folks, ranging from school kids to civic groups and different organizations,” Duncan said. “We’ll come in and talk to anybody that will have us. “We do it through partnerships with families who have lost loved ones to opioids,” Duncan continued. “They are part of this group and they’re willing to share their stories. We want them to put a human face on addiction. It’s a powerful presentation.”

### EXPERIENCE MATTERS

During his 12-plus years as an AUSA, Duncan prosecuted a wide array of criminal cases, which prepared him for his current role. “I started out in the general criminal units, and worked everything from bank robberies to postal cases,” he said. “I worked a lot with the bureau of prisons on staff assaults, staff corruption cases, inmate violence and I prosecuted a couple murder cases out of the United States Penitentiary Big Sandy in Martin County.” Serving as an AUSA has given Duncan valuable insight into how the process works. “I’m familiar with what it takes to conduct an investigation and prosecution – the demands and sacrifices of our folks to make the cases what they are,” Duncan said. “I’m very appreciative of all the work that goes

into a prosecution and I’m very supportive of not only the folks in my office, but also the law enforcement community in general.” One of the directives issued by President Trump and United States Attorney General Jeff Sessions is, “Back the blue and support law enforcement,” Duncan said. “What is unique about our office is we’ve always had long-standing relationships with local law enforcement and our federal partners,” Duncan said. “Our ability to work together with our federal partners and our state and local partners in a true partnership helps us serve the citizens of the commonwealth.”

### DRUG SCOURGE

From 2011 until 2017, Duncan focused on prosecution of Organized Crime Drug Enforcement Task Force cases, working with federal, state and local law enforcement agencies to disrupt and dismantle complex drug trafficking and money laundering organizations operating in the district and elsewhere. “The drug issue is really the biggest problem I see facing our district,” he said. “Our problems and our priorities mirror what the attorney general and the president have directed what we focus on nationally. That’s not to say we’re not going to continue prosecuting other cases because we are.” In addition to drugs and public corruption, crime against the elderly is something Duncan’s office will take a hard stance on. “(Sessions) has made that a focus on the white collar side,” Duncan said. “We work in partnership with several agencies, including the Kentucky Attorney General’s Office, to get the word out about online scams and other frauds targeting seniors. We are going to continue to do that, and we’re not going to shy away from taking on the tough cases, whether it’s violent crime, drug crime, public corruption or other significant white-collar crime like large-scale fraud cases.” To that end, being a partner, not a dictator, in the fight against the criminal element is paramount, Duncan added. “We’re here to be a resource,” he said. “We want it to be a partnership; we don’t want it being seen as we’re the feds and we’re coming in, and we’re going to dictate how you run your investigation and prosecute your cases. We’re not going to cherry-pick the best cases; we don’t want that at all. We want to be a partnership.” Duncan serves as the 23rd presidentially-appointed U.S. Attorney for the Eastern District of Kentucky, which was created in 1901. 🇺🇸

## At a Glance



U.S. Attorney for the Eastern District of Kentucky  
Robert M. Duncan, Jr.

**EDUCATION:**  
Sheldon Clark High School  
in Inez, Ky. – 1996

Centre College, Danville,  
with Bachelor of  
Arts in English and  
minor in History – 2000

University of Kentucky  
College of Law – 2003

**CAREER:**  
Judicial Law Clerk:  
Sept. 2003 – Jan. 2005

Assistant U.S. Attorney:  
Jan. 2005 – Nov. 2017

U.S. Attorney:  
Nov. 2017 – Present



# CHAIN REACTION

## WELL-RUN PROPERTY AND EVIDENCE ROOM BRINGS INTEGRITY TO AGENCY

**W**hen a crime is committed, evidence is left behind and collected by law enforcement officers. That evidence is then processed and entered into a property and evidence room where it awaits the day when it will be presented in court.

A conviction could hinge on whether the chain of custody was adhered to from the point of collection to the submission and storage at the agency's property and evidence room.

This is a scenario Pikeville Detective Bruce Collins knows all too well, as he sees it from both sides of the coin.

In Pikeville, Collins leads a double life.

On one hand, he investigates crimes that occur within that eastern Kentucky city. On the other hand, Collins is also responsible for every piece of evidence Pikeville police officers collect in his double duty as the property and evidence room custodian.

To do that job effectively, Collins lives by a single focus.

"Whenever you take that evidence, you owe it to the court system, you owe it to yourself, the suspect, the victim ... everyone who is involved, you have to maintain the integrity of that chain of custody," Collins

said. "If I had to describe it in three words, I would say, accountability, efficiency and integrity."

### DOUBLE DUTY

Across the commonwealth, it is not uncommon for smaller agencies to have officers who serve in a dual role when it comes to property and evidence room custodian.

The trick is finding balance, Collins said.

"I keep busy, and I have to arrange my schedule 'just so,'" Collins said.

Having custodians serving in dual roles is the nature of the beast, according to Department of Criminal Justice Training instructors Chad Powell and Shawn Moore. Powell and Moore began teaching the Property and Evidence Room Management course at DOCJT in 2017.

"Most agencies work with a part-time staff in the property room, and that can cause a major liability for the agency," Powell said. "That liability should be taken seriously by the agency and, really, the position should be full-time so the room can stay organized and operate efficiently."

Functioning with a single officer in charge of the property and evidence room is quite a feat, Moore added.

"This is a testimony to the work ethic of Kentucky law enforcement," Moore said. "One of the chief complaints from those part-time custodians is that by the time they get finished with their other duties, they have little or no time to properly focus on and address the property and evidence rooms."

### COMMAND STAFF BUY-IN

In order to facilitate a smooth-operating property and evidence room, Pulaski County Sheriff's Sgt. Glen Bland said the command staff must be on board and understand the needs that come with the position.

"If you go out and talk to any officer, one of the least-loved activities is processing evidence," Bland said. "It's time-consuming, but it's one of the most important aspects of law enforcement. The easier you make it for your deputies, the better it's going to be."

Pikeville Police Capt. Aaron Thompson, who oversees the administrative duties of the agency, said his department realizes the importance of having a well-run property and evidence room.

"We've always known it was important," Thompson said. "We just went through the (Kentucky Association of Chiefs of Police) accreditation process, and the evidence room was an obvious area where we could make improvements. We sunk a lot of time, money and effort to get to where we are today."

Part of that involved sending officers to DOCJT training, and the dividends were almost immediate, Collins said.

"One thing we implemented was a 'trouble locker,'" Collins said. "If we have an item of evidence come in and it's packaged improperly, I now have access to a locker that I set a passcode for. I can place the evidence in that locker and provide only that officer a code to access the locker to make the needed corrections."

The lock Collins uses is a password-combination lock, on which he can reset the code after each use.

"So when he or she comes in on their next shift, they will have an email or text that lets them know they need to check the trouble locker, because there is an item of evidence in there that needs to be corrected," Collins said. "They have a means to do that without having somebody come out and hand (the evidence) to them or pass it along via another officer in the chain of evidence – it limits unneeded personnel in that chain of custody."

### POLICY

Whether it is implementing a trouble locker or sending personnel to training, the key to maintaining a well-run property and evidence room is establishing and following a detailed, agency-specific policy, Collins said.

His assessment was echoed by Moore.

"A well-thought-out policy is needed to outline the various roles associated with a property room and why

those rules are in place," Moore said. "A good policy will be developed in such a way that will allow little-to-no wiggle room when it comes to what is expected from property and evidence room staff, as well as officers logging in evidence and property."

After attending the week-long course in December 2017, Collins and Thompson returned to Pikeville and revamped its evidence room policy based on new ideas they incorporated from the training.

"One of the highlights for me was the idea of weighing drugs," Collins said. "That's something we haven't done in the past."

Weighing drugs taken as evidence is a safeguard for the officer and agency, Collins added.

"An example they provided was an officer's initial count was 140 pills, and they also weighed the pills," he said. "Later on, another count was done and it came out to 138 or 139 pills. When they reweighed them on the scale, the pills weighed the same amount that the officer put down on the form."

The agency's policy should be detailed, and include what Powell calls a right to refusal. This often occurs when evidence is packaged improperly.

The Kentucky State Police lab provides a packaging manual to recruits to offer guidelines for proper packaging, Powell said.

"(The manual) is necessary to ensure the property room does not take improperly-packaged or dangerous material into the property room," he said. "The procedure manual needs to be created by the agency and explains how things are to be completed within the property room."

Most important is adhering to policy.

(OPPOSITE) Pikeville Police Detective **BRUCE COLLINS** retrieved evidence from a locker in the agency's property and evidence processing room.

(BELOW) **COLLINS** and Pikeville Police Capt. **AARON THOMPSON** discuss the ins and outs of the agency's property and evidence rooms.





# SAFE & SECURE

AGENCIES SHOULDN'T SKIMP ON OFFICER SAFETY, EVIDENCE ROOM SECURITY



(RIGHT) Madisonville Police Officer **FALON GRAHAM** inspects evidence during February's Property and Evidence Room Management course.

(BELOW) Department of Criminal Justice Training Instructor **SHAWN MOORE** answers a question from Kentucky State Police Sgt. **STARLING HACKER**, left, and Williamsburg Police Sgt. **BRANDON WHITE** during the Property and Evidence Room Management course.



"Policies should also be departmental common practice," Powell added.

DOCJT has model policies that agencies can review and use, but Moore cautions that what works for one agency might not work for another.

"There are plenty out there to choose from, many of which can be found online or through entities such as the Kentucky League of Cities," he said. "We caution our students against simply taking a policy like that and changing the title and seal to their own and putting it out there to guide their people. Policy and procedures should be agency-specific because the policy of a large

agency, such as Lexington, may not work at the smaller agencies throughout the state.

"As such, we tell our students to take a long and in-depth look at their agency needs, budget and individual concerns when putting together policy and procedures," Moore added.

## THE PURGE

When evidence is logged into a property and evidence room, chances are, custodians will have it for a while, Collins said.

"It's a long process," he said. "Once the court case is adjudicated and a decision is rendered, the commonwealth's attorney files for a motion to destroy the evidence involved."

Each agency policy should have a section devoted to discarding evidence. Agencies cannot destroy evidence until getting the proper notification from the circuit clerk's office, Collins added.

"Some of these cases take several years to get adjudicated, so it can be a long process and you have to maintain the evidence," he said. "So you're going to be storing it for a lengthy amount of time."

Eventually, every case comes to a resolution. When that happens, property and evidence room custodians must go through the process of discarding or purging evidence from the system, Moore said.

"When it comes to purging old evidence, transparency is key," he said. "Transparency starts with proper policy and procedure. The purging of evidence should not occur until a full case review has been done to ensure the items are no longer needed."

Purging could involve destroying evidence or simply returning items to the owner.


"Regardless of the method, transparency through documentation is a must at all stops along the way," he said.

## WHO'S IN CHARGE?

When it comes to the approval and storage of property and evidence, the buck should stop with the custodian. That, too, should be spelled out in policy, Pulaski's Bland said.

"When it comes to that evidence room, really the only ones who should be able to override the custodian is the sheriff or chief – the top administrators," Bland said. "You can't have the patrol supervisor or investigative supervisor meddling in your evidence policies or overruling you. I don't have that here, and I'm blessed."

There are many keys to a well-maintained property and evidence room, Moore said. But it all starts with an agency-specific policy and the custodians who follow the policy to the letter.

"We tell our students that policy tells you what needs to be done and why," he said. "Procedures explain how they need to be done." 

The adage "Safety First" has been tossed around in today's lexicon so often, that for many, they are simply words with little or no meaning.

For law enforcement across the board, safety should be at the forefront of everyone's mind when it comes to handling potentially-deadly evidence, such as fentanyl and carfentanil, and other drug-related paraphernalia.

In Pulaski County, for example, a change in the sheriff office's policy put a halt to field testing, and suspected substances are now sent off to a lab for analysis, Pulaski County Sgt. Glen Bland said.

"If (deputies) are confident they have a charge of first-degree controlled substance, charge the (suspect) with 'drug unspecified' and get it tested at the lab," he said.

That practice is the best practice, Department of Criminal Justice Training Instructor Shawn Moore said. Moore and fellow DOCJT instructor Chad Powell began teaching the Property and Evidence Room Management Course in 2017.

"It is important for officers across the board, not just those serving as property and evidence custodians, to wear impermeable gloves when handling any evidence," Moore said. "This is a best practice that,

though inconvenient, can save lives and keep them from being exposed to not only the dangers of narcotics but also illnesses as well."

The practice of field testing substances is no longer taught, he added.

"The benefits of field testing pale in comparison to the dangers associated with fentanyl and carfentanil exposure," he said.

If officers encounter suspected fentanyl or carfentanil, they should be kept in the container they were found in, Moore said.

"Do not take it out and weigh it or transfer it to another container," he said. "These substances should be double bagged and properly labeled so as to warn others of the potential dangers associated with the contents of the package."

As a safeguard to potential exposure during processing, the Pikeville Police Department has Narcan available to officers in the evidence room, Pikeville Police Detective Bruce Collins said.

In addition to the life-saving drug, Collins said a drug-screen measure was put into place to protect the officers who may come into contact with drugs while performing related evidence room duties.

"Another thing we took from the (DOCJT) course, is the idea of providing a drug screen for evidence

(ABOVE) Pulaski County Sheriff's Sgt. **GLEN BLAND** poses inside an off-site property and evidence storage area designed to house large items such as vehicles.

*Written By*  
**MICHAEL A. MOORE**

*Photography By*  
**JIM ROBERTSON**



personnel,” Collins added. “After you conduct an inventory or perform a destruct order, you may be exposed to some of those substances. If you get called in for a random drug test, it will show up. If we do a drug screen immediately after (the inventory), it protects me (as custodian) down the line.”

In addition to those dangers, Powell said having the basics such as a first-aid kit, Narcan and an eye-wash station should be a part of property and evidence rooms standards.



(RIGHT) The Pulaski County Sheriff Office's property and evidence room also features a sizable room dedicated for firearms.

(BELOW) **BLAND** said a modern digital tracking program helps with property and evidence management and is much more reliable than a hand-written log.



Shortcomings in this area could result in fines from the Occupational Safety and Health Administration or Kentucky Occupational Safety and Health, Moore added.

**EVIDENCE TRACKING**

Aside from officer safety, evidence-room security and tracking are nearly as important.

When he took over in 2012, Collins said he noted several areas he and the department could improve upon.

The most glaring need was a modern tracking system.

“We went from a paper-tracking system to a digital (barcode) evidence-tracking system,” Collins said.

Once officers package the evidence, they enter it into the PMI (Progressive Microtechnology, Inc.) Evidence Tracker software and then place the evidence into a temporary storage locker, Collins said.

Having an automated system streamlines the process, Bland said.

“I’m confident this is a widespread problem throughout the state, but you have evidence that has lingered for decades and it’s still logged in under the old hand-written log that has long since been obsolete, but that evidence was never transferred to the new (automated) system,” Bland said. “That’s what I ran into (in 2015). I had evidence that I really had no idea what was recorded on the evidence itself to understand how long we’ve had it.

“Your evidence room will only be as good as the (tracking) program you have,” Bland continued.

Pikeville uses temporary storage lockers when patrol officers turn in evidence collected in the field.

“We have temporary storage lockers and I’m the only one with a key,” Collins said. “Once they lock it, I am the only one who can get into it.”

Evidence remains in the temporary storage locker until Collins comes in and processes it using the tracking software.

“It shows me how many items have been entered, and I check the locker and inspect it and make sure it is what it is supposed to be and make sure there are no errors (in packaging),” he said.

After everything checks out, Collins will accept the evidence and a barcode is produced. Every piece of evidence for that case will have a barcode.

**SECURITY**

Once a tracking system is in place, security comes into play to ensure the chain of custody is not compromised, Moore said.

“One of the easiest ways to protect the integrity of the evidence and maintain the chain of custody is to limit the number of people with access to the property and evidence room,” he said.

The first and perhaps easiest step is making sure the property and evidence room remains locked and secure.

“In addition to the main door being secure, we teach that firearms, narcotics and money be kept separate from each other and from other items under a second lock,” Moore said. “We bring this up several times during the course because these three things are the most valuable items inside the property and evidence rooms, which makes them the biggest targets for thefts.”

In Pulaski County, the property and evidence intake room requires a code to enter. The primary evidence room requires both a code and a card to gain entry. On top of that, surveillance video monitors the rooms.

“The rooms are video-recorded, and I can sit at my desk – any of our employees in here can do this as well – and watch the room whenever they want just by clicking on an icon (on the computer screen),” Bland said. “We can see what happens and recall it whenever we need to do so.”

The Pikeville Police Department has limited the possibility for an officer to take money from the evidence room altogether, Pikeville Police Capt. Aaron Thompson said.

“One of the things we did to minimize (potential theft) is we no longer store currency of any form,” Thompson said. “If we do a drug seizure, and let’s say we come up with \$2,500 or \$10,000, immediately that money is converted into a cashier’s check and it is taken to city hall and deposited.”

The money stays in the account until the court decides who it belongs to, Thompson added.

“It will either be transferred to us if the court deems it’s ours following the case, or a check is written to whomever it was taken from,” he continued. “This way, we’re taking away an enticement.”

Pulaski County handles currency differently, but it is no less effective, Bland said.

“Money and valuables are stored in cabinets, which are coded and alarmed,” he said.

Security is something that shouldn’t be skimped on, Moore said.

“Since some agencies do not have personnel on site 24 hours a day, alarm systems and video surveillance are a good idea,” he said. “One of the biggest elements of physical security we discuss involves key control. Essentially, you can have the most high-tech locks and security available, but if everybody has access to the keys, then you have nothing. Key access to the property and evidence rooms should be limited to those directly in charge of maintaining the room.”

**AUDITS**

An additional security measure comes from required audits.

Regular audits are much like a medical checkup in that they are designed to prevent problems before they happen, Powell said.

The Drug Enforcement Agency has guidelines that are covered during the DOCJT Property and Evidence Room Management course. Scan this QR code with your smart device or visit [https://www.dea.gov/druginfo/Fentanyl\\_BriefingGuideforFirstResponders\\_June2017.pdf](https://www.dea.gov/druginfo/Fentanyl_BriefingGuideforFirstResponders_June2017.pdf)



“Audits are paramount for reviewing the overall process of the evidence room from start to finish,” Powell said. “Audits review the property-room system only, and should not be used to catch an employee issue – that is done during an inventory. The purpose of the audit is to identify areas of improvement for efficiency.”

Pikeville’s audits are unannounced and the tracking program initiates them.

“Our system is programmed to determine how many pieces of evidence we want to pull out,” Collins said. “So we go item by item to make sure everything is there. Another good thing about evidence tracker is, if you run over the (audit) date when you log in, the system will tell you a random audit is due.”

Audits also provide documentation that the agency is on the up and up, Thompson said.

“We want to have a document that shows our (custodian) is doing the right thing,” he said. “It shows that we have checked our officer ‘X’ number of times, and we’ve never had an issue. It’s all about the integrity of what you’re trying to do. It’s a document that supports the officer and lets everyone know that he or she is doing exactly what they’re supposed to be doing.”

With the exception of money, drugs, firearms and biologicals, Powell said the evidence room contents should be audited on a yearly basis. Items such as firearms and money should be audited on a quarterly basis.

Operating a top-notch property and evidence room is a vastly underrated aspect in law enforcement, Moore said.

“When it comes to property and evidence room management the old adage ‘An ounce of prevention is worth a pound of cure’ can be applied in all areas,” Moore said. “The importance of taking a proactive approach to the various situations and concerns unique to property and evidence room management cannot be overstated. Through new tracking software, safety and security measures, as well as updated policies and procedures may come with some upfront costs and inconvenience — in the end — the headache it can save an agency pales in comparison to the liability that comes with ignoring these areas.

“When you factor in the potential liabilities associated with failing to address these concerns in a proactive manner, and the loss of public confidence that will come from a compromised room versus the upfront cost, the benefit of proactivity becomes clear,” Moore continued. “It’s a lot easier to solve the problems before they become disasters, and that is one of the main points we try to stress in the class.”





# PRIDE & POLICING

## MAYSVILLE POLICE DEPARTMENT

**M**aysville is a community rich with history, character and pride – and the law enforcement officers who police it are no different.

The 22-square miles of Maysville are situated along the Ohio River in northeastern Kentucky. In fact, only 19 of the miles Maysville Police Department is responsible for are on land. The county seat of Mason County, Maysville is home to roughly 9,000 residents.

The unique geography of the city can be a challenge for the 25-officer department, with the community divided into a valley along the river and steep hills overlooking downtown. But facing down challenges are part of the job for this agency.

One of the most significant challenges in Maysville is one echoed around the state – the need for more officers on the road, said Maysville Police Chief Ron Rice. To compensate, many department members – sworn and civilian – juggle multiple responsibilities to ensure Maysville has all the programs and services the agency can provide.

### CHALLENGES AND COMMUNICATION

Pursuing and overcoming challenges is what brought MPD Lt. Mike Palmer into law enforcement 16 years ago with Maysville. The Lexington native served a tour in Iraq with the National Guard and worked in both domestic and international freight before pursuing a career in law enforcement in his early 30s, he said.



*Written By*  
**KELLY FOREMAN**

*Photography By*  
**JIM ROBERTSON**

“Transportation was a challenge, it just wasn’t the challenge I was looking for,” Palmer said. “I was fortunate enough that (former MPD Chief) Van Ingram hired me. I have just accepted every challenge put forth and have been fortunate enough to be successful at it.”

It’s hard to say where you might find Palmer during his shift. The veteran lieutenant serves as the administrative supervisor for the MPD Emergency Response Team, the communications supervisor for the E-911 center and is often providing training to area churches, schools and community groups.

“When I was a detective, the chief then basically said, ‘You’re going to go out and start speaking,’” Palmer recalled. “So I started doing a workplace violence training that now has evolved into active-shooter training.”

The agency’s chaplain, Tony Liess, invited Palmer to speak to community churches and, after the fall 2017 mass shooting of Texas congregation, Rice said many other churches began calling for guidance in maintaining safety within their sanctuaries.

“I expanded it to not focus on just active shooters,” Palmer said. “I want to make sure the church is ready for any type of emergency, like fires or tornados. Maysville has a lot of churches where the congregations are older. So, who is going to get Sally from the front row, who is on a walker? Who is going to get the mentally-challenged individual who doesn’t understand what’s going on? I try to encompass all of that.”

Palmer emphasizes that the training is not intended to intimidate or scare anyone, but that being a small town, tight-knit community does not mean violence or disaster cannot happen in Maysville. Palmer teaches the “run, hide, fight” program created by the city of Houston, Texas, and does his best to give listeners an idea of what to expect in an emergency, he said.

“The three things I touch on are that they have to be aware of their surroundings, at some point, they have to be their own success story, and that they can survive this,” Palmer said.

“When (the community) sees what’s happening in the news, it’s a good feeling to know that they will reach out to the Maysville Police Department and the officers respond in kind,” Rice said of the training. “What’s great is when I get the feedback from people who attended the training. Whether on the street, or at the Rotary Club or wherever, people stop me and say, ‘Hey your guys did a great job, I just want to let you know.’”

While the community training is a challenge Palmer enjoys the bigger challenge in his career, he said, has been assuming supervision of the E-911 center.

“I went from supervising officers to supervising civilians,” Palmer said. “That was one challenge, and two,

I’m almost 50 years old, I’m not a technology person. My kids know more about technology than I do. But I’ve learned, because I let it challenge me to learn.”

The dispatch center has upgraded to an AT&T Airbus 911 system and upgraded the Computer-Aided Dispatch (CAD) system that was roughly 15 years old. Palmer, with the dispatch center’s Terminal Agency Coordinator, David Mefford, have worked together with other dispatchers and communities to ensure a successful transition.

The E-911 center dispatches not only for Maysville Police, but also for Maysville Fire Department, the Mason County Sheriff’s Office, Mason County EMS and seven volunteer fire departments, Palmer said. The center employs eight full-time and two part-time dispatchers.

The dispatch center is housed within the police department, and Mefford said it is not uncommon for officers to stop in and talk about a call with dispatchers.

“We can learn from that,” Mefford said. “It’s an informal debriefing, so to speak. Something they heard or said might be something we may think about asking the next caller. When you’re just standing there talking, you might think, ‘Well, we’re just talking about the call.’ But, in the back of your mind, you are kind of sorting it all out and thinking, ‘OK, I can do this the next time.’”



(OPPOSITE) From left, Maysville Police Chief **RON RICE**, MPD Lt. **JEREMY POE**, MPD Maj. **JARED MUSE** and MPD Lt. **MIKE PALMER**.

(LEFT) Maysville Police Chief **RON RICE** joined MPD in 1996 after he retired from the U.S. Air Force. Rice was promoted to chief in 2010 after working his way through the ranks.

(BELOW) Maysville Police Lt. **MIKE PALMER** serves as the agency’s communications supervisor, administrative supervisor for the Emergency Response Team and also spends time speaking to the community about safety issues.





(ABOVE) Terminal Agency Coordinator **DAVID MEFFORD** has served with the Maysville Police E-911 Center since 1998. As a 24-hour response center, Mefford said callers often don't need emergency services, and while it can be irritating, dispatchers have to remind themselves it is an emergency to the caller or they wouldn't be calling.

(RIGHT) Maysville is famous for being the birthplace of actress/singer Rosemary Clooney. The Russell Theater in Maysville held the world premiere of Clooney's movie, "The Stars Were Singing" in 1953.



Palmer said these interactions between officers and dispatchers allow dispatchers closure after hearing the resolution of an incident that started with the dispatcher answering the phone. It also helps officers get a better understanding of the challenges within the 911 center.

"Some officers will say, 'Well, they didn't give me this or they didn't give me that,'" Palmer said of the dispatchers. "You know what? I can put you in there just as easily and let you try to decipher and get that information. Sometimes it's easy. Sometimes it's not.

"We depend on these dispatchers to get us as much information as possible from somebody in a traumatic situation in a short period of time, then get it back out on the radio," Palmer continued. "I've been guilty on the other side of saying, 'I didn't get this or that.' But if you spend some time looking at the nuts and bolts of it, you'd be really appreciative of what we've got. We have a good crew."

## COMMUNITY SERVICE

While Maysville may have fewer than 10,000 residents, Rice said the daytime population of the community is significantly larger. All of the county schools are inside the city limits, as is the local hospital, several factories and other businesses that bring people into town.

Like many communities, Maysville also is known for a multitude of festivals and activities that often draw large crowds. From Oktoberfest and the Pig Out BBQ festival, to multiple 5K races and the annual Christmas parade, Rice said the agency is always involved to ensure a safe and fun environment.

"You have to go back to the climate of today," Rice said. "Any time you get a large gathering of people, it's considered a soft target. Unfortunately, those are the times we live in. We want people to come to Maysville and have a good time and enjoy themselves. Sometimes when people go to festivals, they get a little too much to drink and alcohol causes some problems. Most of the time they are minor; you can separate people and send them on their way. Very few of them escalate into much bigger things."

The MPD bike patrol is instrumental in safeguarding the different community activities, among others, Rice said. Weather permitting, the bike patrol also works together with the agency's three detectives to provide a stealthier mode of transportation for drug interdiction and other investigations.

"We also have two K-9 officers and both dogs are certified and trained in narcotics detection," Rice said. "Of course, they are also patrol dogs and will assist with the bad guys and are trained in tracking."

Illegal drugs are an issue in Maysville like everywhere else, Rice said, and it is not uncommon to see them come across the bridge from Ohio. From crystal meth to heroin laced with fentanyl, investigators have seen it all.

"Recently, we had our first infant overdose where some folks from Ohio were staying at a local hotel," Rice said. "They dropped some of their heroin and their 2-year-old got it. Initially, when first responders arrived, the child was unresponsive, but they were able to administer naloxone. The great thing is that after being on a naloxone drip for most of that weekend at Children's Hospital in Cincinnati, the child has been discharged and is doing fine."

All Maysville officers carry naloxone, a proactive initiative Rice said the department and local Agency for Substance Abuse Policy board pursued and successfully obtained a grant to purchase the medication and train first responders on its administration.

"We were kind of patting ourselves on the back that we were one of the first to take the lead to go to this training, write a policy carry and use naloxone," Rice

said. "That was done in March 2016 and by April 2016, the officers had their first responders on the scene for a potential overdose."

Maysville also secured a grant for a drug collection unit drop box and houses the only 24-hour unit in Mason County, Rice said, for residents to drop off unwanted, unused or expired medications.

"It hopefully gets them out of the hands of children and teenagers," he said.

## ADOPT-A-SCHOOL

MPD's commitment to the young people in its community extends well beyond its measures to keep them off drugs. It starts with a personal approach that gets officers in all of the community schools on a regular basis, Rice said.

As part of the adopt-a-school program, MPD officers either select or are assigned a school that becomes their responsibility. How they interact with that school is largely up to them, but Rice said they are asked to visit their schools during their shift.



Maysville Police Sgt. **ZACH SUTTON** (left) talks with MPD Detective **T.C. RICE** during a call to a local residence. Sutton has spent 13 years with MPD and serves in multiple roles. Rice has been with MPD since 2001 and has been a detective for the past six years alongside Detective Chris Conley and another undercover detective. Rice and Conley both are Maysville natives, a relationship with the community they agreed has helped in their investigative duties.

## Facts about Maysville Police Department

- The agency has twice been accredited by the Kentucky Association of Chiefs of Police.
- Civilian Robin Hutchison manages MPD's two-story property and evidence room. The agency recently went to a barcode system for evidence organization and processing. "It is so much easier to do everything," Hutchison said. "Just scan a barcode, print off a receipt for it and you're good to go. Checking stuff back in when I go to the lab and pick up evidence, getting it checked back in – everything, it's just nice."
- Maj. Jared Muse, who serves as the agency's assistant chief, is the third generation of his family to serve MPD. Muse's grandfather was chief of the department, his father was a lieutenant, and Muse's older brother also served the agency previously.
- Maysville has three full-time detectives.
- Following the success of the adopt-a-school program, Maysville Police created a spin-off program called adopt-a-block. The program encourages officers to concentrate time on a specific neighborhood and get out of their cruisers to interact with residents.
- Chief Ron Rice said implementing body-worn cameras is on the horizon for the agency. As many agencies have found, Rice said the devices themselves are inexpensive, but he has researched the time and expense of the record storage, maintenance and redactions that can become burdensome.
- Rice hopes to begin a Coffee with a Cop program in the community soon as an additional, agenda-free effort to build relationships and interact with the public.
- MPD has earned a 100 percent rating from the Kentucky League of Cities' safety and liability review.



# WHAT THE HECK?

## OFFICERS SHOULD ENSURE ALL UNDERLYING CASE FACTS ARE UNDERSTOOD IN ANY CIVIL ACTIONS AGAINST THEM

Written By  
**SHAWN HERRON**  
STAFF ATTORNEY

In 1994, the U.S. Supreme Court decided the seminal case of *Heck v. Humphrey*, 512 U.S. 477 (1994). In his case, Roy Heck claimed, after his conviction for voluntary manslaughter, that prosecutors and the police investigator had conducted an, “unlawful, unreasonable, and arbitrary” investigation.

Heck filed suit under 42 U.S.C. §1983. The Federal District Court dismissed the action, finding that a favorable ruling for Heck on his allegations would, “directly implicate the legality” of his underlying conviction.

At the same time, Heck was pursuing an appeal of his criminal conviction, which he subsequently lost. The U.S. Court of Appeals for the Seventh Circuit

affirmed the dismissal of his lawsuit, reasoning that if a plaintiff is challenging the legality of his conviction, he must first exhaust his state remedies (by appeal).

Heck appealed to the U.S. Supreme Court. The Court looked to two separate sources for prisoner litigation, 42 U.S.C. §1983 (the civil rights act) and 28 U.S.C. §2254 (the habeas corpus statute). Both of these laws provide a method under federal law when there is a claim of “unconstitutional treatment” by law enforcement or prosecutors (state officials), but cases brought under 42 U.S.C. §1983 do not require that state remedies, such as appeals, be exhausted prior to bringing a civil action. However, the Court agreed, that may not be true “when establishing the basis for

the damages claim necessarily demonstrates the invalidity of the conviction.”

The Court found the closest type of action to what Heck claimed to be malicious prosecution and with that type of claim, “one element that must be alleged and proved ... is termination of the prior criminal proceeding in favor of the accused.” As such, the Court ruled that in order to move forward in a §1983 case, Heck, “must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question” by a habeas corpus petition.

### FAR-REACHING IMPLICATIONS

Although the *Heck* case was very short for a U.S. Supreme Court decision, it has far-reaching implications for law enforcement officers. In many arrests, allegations of misconduct are made after the fact, and after the individual has either been convicted, taken a plea deal or been dismissed with a stipulation of probable cause.

In *Donovan v. Thames*, 105 F.3d 291 (6th Cir. 2013), officers arrived at Terry Donovan’s home in response to a domestic call. Donovan was ultimately convicted of resisting arrest. While the criminal charges were pending, Donovan filed a lawsuit under 42 U.S.C. §1983, alleging excessive force and unlawful entry. With respect to the force claim, the Court agreed that the, “offense of resisting arrest does not require a finding that the police officers did not use excessive force in effecting the arrest,” and that as such, his lawsuit could move forward on that issue.

In *Mason v. Louisville Police Department*, 8 Fed. Appx. 326 (6th Cir. 2001), Jason Mason pled guilty to numerous charges of assault and related offenses. During an altercation, police broke his arm and Mason claimed excessive force. The Court agreed that since he admitted all of his actions during the plea proceedings, he was prevented from arguing otherwise. He also could not argue that the police were somehow not justified in making a forcible arrest.

Lower courts, both federal and state appellate cases, have fleshed out the *Heck* Doctrine. In *Dunn v. Felty*, 226 S.W.3d 68 (Ky. 2007), Tracey Dunn argued that he had been falsely arrested and imprisoned. Although the lawsuit was filed more than a year after the initial arrest, it was filed within a year of the resolution of the underlying charges (harassment, menacing and resisting arrest). The officer-defendant, Todd Felty, argued that the statute of limitations began at the moment of the arrest, which would have made the subsequent lawsuit time-barred. The Court agreed that was the case, since a favorable termination of the underlying charges is not an element of false imprisonment/arrest.

However, Dunn also brought a claim under malicious prosecution, arguing that does require a favorable ending to the underlying criminal case, and for that claim, the statute of limitations began on the date of the dismissal. He relied on *Shamaeizadeh v. Cunigan*, 182 F.3d 391 (6th Cir. 1999) which suggested that any action “which would impugn an anticipated future conviction” cannot be brought until that conviction occurs and is set aside. The Court agreed that Heck does not end an action in the pre-conviction setting because, it is possible that an anticipated future conviction may never occur due to acquittal or dismissal or a refusal to prosecute. Instead, it remains in the power of the trial court to stay a civil action until the criminal case is completed – and if a conviction occurs which would impugn the civil case, it could be dismissed under *Heck*.

“FOR OFFICERS, THE SIGNIFICANCE OF HECK REVOLVES AROUND ENSURING THAT IN A CIVIL CASE AGAINST THEM, THE FACTS OF THE UNDERLYING CASE IS UNDERSTOOD.

An example of a case in which *Heck* was found not to bar a lawsuit is *Karttunen v. Clark*, 369 Fed. Appx. 705 (6th Cir. 2010). Jeffrey Karttunen was arrested after a struggle, but also argued that the arresting officers used excessive force against him. He pled no contest to a charge of resisting arrest. The Court agreed that based upon the facts, little to no force was justified in the arrest and that a finding in Karttunen’s favor on the force claim did not invalidate his plea of guilty in the resisting arrest. Simply because there is a connection between the two, the crime and the claim, excessive force could have occurred within the context of a lawful arrest.

There are a number of *Heck* cases decided every year in the United States. For officers, the significance of *Heck* revolves around ensuring that in a civil case against them, the facts of the underlying case is understood. In fact, the defense in a *Heck* case starts with the prosecution of the underlying case, with care taken to ensure that a charge connected to a future claim, such as third-degree assault for an excessive force claim, isn’t dismissed without a stipulation of probable cause. This can serve to a great extent as protection in a claim of excessive force or unlawful arrest.

What the defendant says during a plea conversation also is valuable evidence in such claims as well. For officers, it is critical to be aware of how decisions and agreements made in the criminal forum may be useful, or potentially damaging, in any subsequent civil actions, and to ensure that valuable admissions, for example, be formally captured in the criminal proceedings. ■





FUNDERBURK BUILDING  
EASTERN KENTUCKY UNIVERSITY  
521 LANCASTER AVENUE  
RICHMOND, KY 40475-3102

615-010

# Put More On Your Plate!



**KLEMF.org**

**KENTUCKY LAW ENFORCEMENT MEMORIAL FOUNDATION**