



Gypsy Cops in Ohio—Your Department's Legal Right to Speak Up

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The national problem of “gypsy cops” is not a new one. Toxic officers engage in misconduct in one agency after another over the course of a career and, in the meantime, cost thousands of dollars in lawsuits and inflict damage to agency reputation and morale along the way. These officers leave one agency, where they were widely known to be a serious problem, only to find a new home with another agency where the behavior continues until it is time to move again.

Agencies across Ohio and across the nation are struggling to recruit qualified applicants to serve as law enforcement officers. This presents an opportunity for unqualified men and women to gain employment because agencies need “warm bodies”. This is particularly true when the applicant happens to already be a certified officer.

One of the most significant factors aiding gypsy cops in finding employment in a new agency is the unwillingness of past agency representatives to divulge facts that would disqualify the officer in the eyes of any reasonable background investigator or agency leader. Serious problems—in the form of frequent citizen complaints, disciplinary write-ups and suspensions—are often documented but not shared with new agencies considering hiring these officers.

So, why are agencies failing to cooperate with other departments engaged in background investigations on these officers? One of the most common refrains is that sworn personnel refuse to cooperate based on the advice of the Human Resources department or the agency’s legal counsel. **There is an overwhelming, though often vague, fear that any cooperation whatsoever will result in costly lawsuits filed by the toxic officer in question.**

However, **in the state of Ohio, there is an employer immunity statute that protects agencies from being held liable for communicating past performance issues to a potential employer so long as those statements are truthful and made in good faith.**

The simple purpose of this legal article is to bring to the attention of agency leaders—and those who advise them—that this employer immunity statute is in place in the State of Ohio. This article will briefly explain what this Ohio statute means for law enforcement leaders throughout the state who would like to speak up and put an end to the perpetuation of gypsy cops but are hampered by often-misplaced concerns regarding legal liability.

A Right to Speak Up Under Ohio Law

Employer immunity statutes at the state level vary dramatically. In Ohio, the immunity is fairly straightforward in that truthful statements given in good faith are legally protected.

Under Ohio law:

*(B) An employer who is requested by an employee or a prospective employer of an employee to disclose to a prospective employer of that employee information pertaining to the job performance of that employee for the employer and who discloses the requested information to the prospective employer is **not liable in damages in a civil action to that employee, the prospective employer, or any other person for any harm sustained as a proximate result of making the disclosure or of any information disclosed, unless the plaintiff in a civil action establishes, either or both of the following:***

*(1) By a preponderance of the evidence **that the employer disclosed particular information with the knowledge that it was false, with the deliberate intent to mislead the prospective employer or another person, in bad faith, or with malicious purpose;***

*(2) By a preponderance of the evidence **that the disclosure of particular information by the employer constitutes an unlawful discriminatory practice described in section 4112.02, 4112.021, or 4112.022 of the Revised Code.***^[1]

Knowing Ohio Law and Addressing the Problem of Gypsy Cops

ORC § 4113.71(B) is a statute that agency leaders, city and county attorneys, HR professionals and background investigators should become familiar with as they look to hire officers from outside agencies. Background investigators should consider informing representatives from other agencies about these statutes when inquiries regarding past employment only result in “he worked here from 2009 until 2019, and that’s all I can tell you”. Furthermore, agency leaders should keep these statutes in mind when making the crucial decisions as to whether or not to divulge to a fellow agency the facts illustrating that the officer in question is not fit to serve.

Law enforcement is a high liability profession. Any thoughts of eliminating all liability are misguided. Managing reasonable liability should be the goal rather than eliminating all liability in light of the fact that liability can never be eliminated—especially if law enforcement professionals are actively engaged in

activities which simultaneously serve to improve the safety of the community while increasing the risks that lawsuits (founded or unfounded) may result.

As agency leaders in Ohio consider their options and their ethical obligations when contacted by other departments that are considering hiring toxic officers, they should take time to consider what Ohio state law actually says when it comes to honest, fact-based disclosures of past misconduct and poor performance.

Refusing to cooperate in these background investigations may mean less work and, in some instances, less risk of a baseless lawsuit filed by a toxic officer that once worked for the department. But it may also mean that a bad apple who has no business serving as a law enforcement officer finds a new home, a new badge and a new opportunity to disgrace the profession.

About the Author

Matt Dolan is a licensed attorney who specializes in training and advising public safety agencies in matters of legal liability. His training focuses on helping agency leaders create sound policies and procedures as a proactive means of minimizing their exposure to costly liability. A member of a law enforcement family dating back three generations, he serves as both Director and Public Safety Instructor with Dolan Consulting Group.

His training courses include [*Recruiting and Hiring for Law Enforcement*](#), [*Confronting the Toxic Officer*](#), [*Performance Evaluations for Public Safety*](#), [*Making Discipline Stick®*](#), and [*Supervisor Liability for Public Safety*](#).

[1] ORC § 4113.71(B) (emphasis added)