




Ohio Attorney General's Law Enforcement Bulletin



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Close Call Reporting: Why it's Important for Officer Safety

Have you been on a call at night and entered a dark building without a flashlight? Have you escorted a prisoner on your gun side? Have you almost been involved in a traffic accident because a civilian didn't stop when your lights and sirens were activated? If you answered yes, you have been involved in a Close Call.

Based on a theory by risk management expert Gordon Graham, for every 300 mistakes, there are 30 mishaps and one serious injury or lawsuit. The goal is to prevent the one serious injury through reports and discussion about the 330 close calls. Close Call reporting not only prevents injury, but can maintain a climate of safety, give law enforcement an open forum to discuss concerns, and raise awareness of issues affecting safety.

The Columbus Police Department was one of the first law enforcement agencies nationwide to implement a procedure for Close Call reporting. "It started as a tool to prevent officers from taking unnecessary risks and to track injuries," said Kenneth Kuebler, deputy chief of police. "A few times a week, a discussion is led at roll call for about 10 minutes to discuss close calls and what could have been done differently. The sessions are non-punitive and used as a learning tool. This is not confession time," said Kuebler.

A description of the Close Call, root cause of the issue, preventative action, solution, and reapplication opportunities are recorded by shift supervisors and shared with the department's risk management staff. "For the precincts participating in the program, there has been a decline of officer-related injury," Kuebler shared.

Due to its success, the Columbus Police Department approached the Ohio Attorney General's Office (AGO) about bringing a Close Call reporting system statewide to assist all law enforcement agencies.

The [Close Call Reporting Database](#) was created to anonymously track incidents and provide quarterly reports for training. While the data are public, no agency or peace officer names are associated with the submission or report. "The only identifying information that is required is an agency ORI for submission, and that is to ensure the person submitting is part of Ohio law enforcement," said James Burke, deputy director of Education and Policy at the Attorney General's Ohio Peace Officer Training Academy (OPOTA).

Reports are published on the AGO website quarterly. The reports are categorized by type – driving, building searches, communications, equipment, firearms, personnel, search & seizure, subject control, physical conditioning, situational awareness/unknown threat, legal, and other. The report gives a description, explanation of the cause, preventative action that could have been taken, and the agency’s solution. The report also provides the names of OPOTA courses available for training relevant to the Close Call.

For example, a Close Call recently [reported](#) involved officers responding to a domestic disturbance call. They found an angry crowd of people threatening each other. One man in the crowd was not subdued quickly enough and a fight broke out in front of the officers, who then had to use force against the man. It was determined that not controlling the instigator soon enough and not requesting back up as quickly as officers could have led to the Close Call. In the future, the agency emphasized the need to call for assistance without feeling that the call is a burden to another unit, as well as immediately taking control of such a scene. OPOTA identified “Lifeline Training: Warrior’s Edge” as a good training course to address this Close Call.

The 2014 Fourth Quarter report provides more than 65 unique Close Call situations that can be used for department training and discussion. “The most important part of Close Call is the discussion at the agency level. That is what prevents the injury,” added Burke.

The goal of Close Call is to prevent the one by talking about the 330. The AGO encourages all of Ohio’s law enforcement to participate in Close Call by submitting incidents to the database and implementing a Close Call policy.

Additional Resources:

[Close Call Reporting Database](#)

[Model Close Call Reporting Policy and Procedure](#)

[Columbus, Ohio Division of Police](#)

[Graham Research Consultants](#)

Search & Seizure of Vehicles (Mistakes of Law and Investigatory Stops): *Heien v. North Carolina*

Question: If you stop someone based on your misinterpretation of the law, is the stop valid?

Quick Answer: Yes, but only if the mistake of law is one a reasonable officer would make.

[Heien v. North Carolina](#), U.S. Supreme Court, North Carolina, Dec. 15, 2014

Facts: While on patrol, Sergeant Matt Darisse observed a stiff and nervous-looking driver. Darisse pulled out and followed the vehicle. After noting a defective right brake light, he stopped the vehicle. Upon approach, Darisse saw that one man, later identified as Nicholas Brady Heien, was lying across the rear seat. Darisse became suspicious during the course of the stop because of the driver’s nervousness and inconsistent answers, and the fact that Heien was laying down the entire time. Darisse asked if there was any contraband in the vehicle. After being told no, he asked if he could search the vehicle. Both the driver

and Heien, who owned the car, gave permission. The vehicle was searched and cocaine was discovered inside a duffle bag. Both the driver and Heien were arrested.

Heien moved to suppress the cocaine arguing Darisse had violated his Fourth Amendment rights by not having a reasonable suspicion to stop the car. The trial court determined Darisse did have reasonable suspicion to pull the vehicle over because the brake light was out. The court of appeals reversed saying that under North Carolina law driving with one brake light was not a violation, and as a result, Darisse did not have a justification for making the stop. The North Carolina Supreme Court disagreed and said that while the court of appeals was correct in the technical reading of the law, Darisse could have reasonably, even if mistakenly, read the vehicle code to require both brake lights be in working order. The case was then appealed to the U.S. Supreme Court.

Importance: Pulling someone over for something that isn't actually illegal is never a good idea, but sometimes a "mistake of law" is excusable. As a peace officer, you're expected to know the law of your jurisdiction, but laws aren't always clear. They can be confusing and contradictory. When that happens, peace officers try to make reasonable interpretations of what the law means. The courts will look at the law and your interpretation of it. If a reasonable officer would have made the same mistake, the courts may choose not to suppress the evidence.

But this doesn't give you a free pass to not learn the law. The statute in this case was confusing, and could be read different ways. When a statute is confusing and the legal issue is not well-settled, a reasonable interpretation of it may survive a constitutional challenge. But if the statute's meaning is easily understood or well-settled, a misapplication of the law can easily lead to suppression.

Keep in mind: The reasonable mistake principle has applied to factual mistakes for many years. For example, a warrantless search of a home is reasonable if officers gain consent from someone who reasonably appears to be the resident, even if that individual has no authority. This case makes clear that the principle also applies to mistakes about the scope of law.

More on Search and Seizure of Vehicles:

Fast cars and slow police computers. While on patrol you notice two occupants of a vehicle look away as they drive past. Determining that this was suspicious, you pull out and follow the car. The car is driving in a 30 m.p.h. zone and you visually estimate its speed to be about 40 m.p.h. Setting your speedometer at 40 m.p.h. you follow the car a quarter of a mile, watching to determine whether the car maintains its speed. The speed is maintained and you pull the driver over. On approach you note the passenger is noticeably intoxicated and barely able to keep her head up. But you do not detect the odor of alcohol, so you suspect drugs are involved. You head back to your cruiser to run the driver's information, but your computer is delayed. While waiting, you call for back up and the canine unit, which arrives before your computer starts working. The canine unit alerts and heroin is found on the passenger. **Was the stop valid?** The court in *West* says yes. First, the use of pacing was appropriate because the officer used the speedometer as the gauging tool, which qualifies as an electric mechanical or digital device to determine the speed of a motor vehicle. Second, even though the stop was admittedly longer than usual, it was only delayed because the police computer was not working. The canine unit arrived prior to the issuance of the traffic ticket and caused no unreasonable delay. [State of Ohio v. West](#), Second Appellate District, Montgomery County, Feb. 6, 2015.

Obstructed Stickers: You receive information from a confidential informant: two suspects are at a residence cooking crack cocaine and will soon be leaving. You head over to the location for surveillance. The suspects get into a vehicle and leave. You begin to follow them and observe the license plate sticker and top portion of the license plate are partially obstructed and the validation sticker is hard to read, so you stop them. **Was the stop proper?** The court in *Young* says yes. The stop on an obstructed sticker was valid. Photographic evidence showed the top portion of the license plate reading “Ohio” and “Birthplace of Aviation” was covered by an eagle emblem on the decorative bracket bordering the license plate. The photos also showed that the bottom half of the county sticker was obscured by that bracket. Because the sticker was obstructed to the point of being unreadable, the stop was proper under the [R.C. 4503.21\(A\)](#). [State of Ohio v. Young](#), Sixth Appellate District, Erie County, Jan. 30, 2015. See also, [State of Ohio v. Bradley](#), Sixth Appellate District, Erie County, Jan. 30, 2015.

Proper Protocol (Search Warrants & State Databases): *State of Ohio v. Myers*

Question: Do you need a warrant to search a State database?

Quick Answer: A warrant is not needed if the statute or code provides a method of access for law enforcement and you comply with those requirements.

[State of Ohio v. Myers](#), Twelfth Appellate District, Clinton County, Jan. 20, 2015

Facts: Detective Dennis Luken of the Greater Warren County Drug Task Force received a request from the Wilmington Police Department to investigate Officer Melissa Myers for prescription drug abuse. As part of Luken’s investigation, he ran a query with the Ohio Automated Rx Reporting System (OARRS), which is an electronic database that stores information on Schedule II – V prescribed drugs. Myers’ OARRS report contained her prescription information, the prescribing doctors, the pharmacies that filled the prescriptions, and the specific type of drugs she was given. Before running the OARRS report, Luken did not obtain a warrant or consent from Myers. Luken transcribed the information from the OARRS report and contacted Myers’ doctors and pharmacies. Several of the doctors indicated that if they had known of the other prescriptions, they would not have prescribed to Myers. Myers was indicted on seven counts of deception to obtain a dangerous drug. She filed a motion to suppress arguing that her information in OARRS was private and Luken violated her rights by not obtaining a warrant or her consent.

Importance: The Fourth Amendment protects against unreasonable searches of an individual when there is a constitutionally protected reasonable expectation of privacy. So, while there is no privacy interest in the data that is collected from pharmacies, there is some interest in its distribution to you as law enforcement and to the public. For law enforcement, information can be gathered from OARRS if certain administrative protocols are followed. Once this happens, the individual’s right to privacy no longer exists. In this case, Myers did not have a reasonable expectation of privacy that her prescription records stored on OARRS would not be disclosed if Luken properly made the request under the statute—and because he did there was no unreasonable search and seizure.

Keep in mind: Disclosure of information in OARRS is governed by [R.C. 4729.80](#). This statute allows law enforcement to obtain the information in OARRS if the person is the subject of an active drug abuse investigation being conducted by the individual’s employer. To obtain the information, law enforcement must submit a request form that includes the active case number and supervisor approval ([OAC 4729-37-](#)

08(B)). Once the OARRS information is received, law enforcement may not disseminate the information unless allowed under statute.

More on Proper Protocol

But isn't a probate judge... a judge? You are involved in an illegal gambling investigation and obtain a search warrant for a business. The warrant is approved and issued by a probate judge. The search is conducted and more than 30 video slot machines are seized. **Is the warrant valid?** The Court in *Brown* says no. Although a judge, a probate judge does not fall under the definition of who may issue a search warrant under Ohio law ([R.C. 2931.01](#)). In this case, the court allowed the evidence because the officers were acting in reasonable, good-faith reliance on the search warrant. But remember—with the issuance of this decision from the Ohio Supreme Court, all law enforcement have been put on notice that probate judges cannot issue search warrants. So in the future, the good-faith reliance argument will be harder to use if you obtain a warrant from a probate judge. [State of Ohio v. Brown](#), Ohio Supreme Court, Stark County, Feb. 18, 2015.

Saying Death Penalty ≠ Coercion: During a murder investigation you interview one of the main suspects. Prior to questioning, you give him *Miranda* and he waives his rights. The suspect initially denies involvement and provides an alibi for his whereabouts at the time of the murder. You continue to talk and a second officer joins you. He mentions the death penalty and how a murder looks different than a “robbery gone bad.” The other officer also mentions that to avoid premeditated murder the suspect would need to corroborate the version of facts stated by a second suspect—that this was a robbery gone wrong. The suspect then admitted to the murder, stating that the victim had pointed a pistol at him and he shot, fearing for his life. He also stated the shooting occurred during a robbery gone wrong. **Was the confession coerced?** The court in *Western* said no. Generally, a correct statement of the law and punishment does not rise to a level of coercion that would render a confession involuntary. False promises about lenient treatment in exchange for a *Miranda* waiver are improper interrogation tactics and may result in the confession being thrown out. For example, in [State v. Petitjean](#), the officers' statement that the defendant would probably get two years of probation if he worked with them was a misstatement of the law that undermined the suspect's ability to have capacity to consent to *Miranda*, making the confession involuntary. In this case, the court determined the detectives did nothing improper by referencing the death penalty or stating a characterization of the difference between murder and a “robbery gone bad.” The detectives also did not promise leniency, and told the suspect that he would be held accountable and the charges would not go away. [State of Ohio v. Western](#), Second Appellate District, Montgomery County, Feb. 20, 2015.

“Armed and Dangerous” in a High Crime Area: While on patrol, you observe an individual walking down a street with no edge lines, sidewalks, curb, shoulder, or crosswalks. The individual crosses the street and you stop him for jaywalking. The stop occurred in a high-crime area, so immediately upon exiting your cruiser you conduct a pat-down of the individual. There was nothing suspicious about the individual's appearance or actions. You ask if he has a weapon, to which he replies that he does. The individual is handcuffed, the weapons are taken, and he is placed in the cruiser. He is charged with carrying a concealed weapon. **Was the pat-down proper?** The court in *Millerton* said no. During a *Terry* stop, it is sometimes considered reasonable for the investigating officer to conduct a “protective search” by patting down the suspect to discover and remove weapons. However, an officer does not have authority to automatically conduct a search of a detainee. In order to conduct a pat-down search for weapons, an officer must have reason to believe that an individual is armed and dangerous. The mere presence in a

high-crime or high-drug area, by itself, is insufficient to justify the stop and frisk of a person, especially when the officer indicates the person did nothing to make the officer worry that the offender would harm him. In this case, there was no reasonable, articulable suspicion to believe that James Millerton was armed and dangerous. [State of Ohio v. Millerton](#), Second Appellate District, Montgomery County, Jan. 9, 2015

Search & Seizure (Preemptive Seizure of Property Without Search Warrant): *State of Ohio v. Welch*

Question: Can you seize property that may contain evidence without a warrant if you fear it will be destroyed or discarded?

Quick Answer: Yes. If you reasonably believe the property may be destroyed, you may preemptively seize the property.

[State of Ohio v. Welch](#), Ninth District Court of Appeals, Summit County, Jan. 28, 2015

Facts: Police received a report that a 12-year-old girl had been sexually assaulted. The victim told police that she thought she had been drugged, had her clothing removed, and that Corey Welch had taken pictures of her undressed. Welch had lived with the victim and her mother for about one week. One of the officers spoke to a detective on the phone and told him about possible pictures on the phone. The detective told the officer to take Welch's phone. The officer did not access the phone. Welch was taken to the police station for questioning and was later arrested. The victim's mother placed Welch's personal items into a duffel bag and told officers she was going to throw them away. Officers went to the home and collected the bag; they did not open it. The next day, the officers secured a warrant for both the phone and duffel bag. Welch moved to suppress the evidence recovered from the phone and duffel bag because the items were taken without a warrant.

Importance: Sometimes there isn't time to obtain a warrant to seize property or evidence that might get destroyed. The officers in this case properly seized the phone and duffel bag due to their fear of destruction of evidence. The court found that to be reasonable. In particular, the phone was directly linked to the alleged crime and in possession of the suspect. And, the duffel bag was going to be thrown out or discarded by the mother. The most important thing that occurred in this case was that the officers obtained a warrant, in a reasonable time period after seizure, before accessing the evidence. It may have been a different ruling by the court if the property had been searched prior to obtaining the warrant. Remember, you are allowed to *preserve* the evidence. However, once preserved, you should get a warrant before you search.

Keep in mind: Welch argued that there were no "exigent circumstances" for seizing the duffel bag. He argued that the mother was told not to throw the bag away and that ended any concern about destruction. Looking at the situation as a whole, just telling the mother to not destroy or discard the evidence in this situation was not enough to ensure the evidence would not be compromised.

More on Search & Seizure

Bad traffic stop = no warrantless entry of residence. You receive information from a confidential informant that two suspects are at a particular residence cooking crack cocaine and will soon be leaving. You head over to the location for surveillance. The suspects leave and are later pulled over on a traffic stop for

obstructed tags. This stop was suppressed in the criminal case because of an impermissible delay involving a K-9 unit. After the arrest, you go back to the home and knock on the door. No one answers, but you hear people inside running water and then someone says, "It's the police." Concerned evidence is being destroyed, you force your way into the home. Inside a woman is shoving suspected crack cocaine down the kitchen sink with a butter knife. You order her to stop, which she does, and then ask to search the home. She says no. A warrant is then obtained to search the home. **Was your warrantless entry justified?** The court in *Bradley* said no. This entire case hinges on whether the initial traffic stop was proper, because without that, there was no probable cause to go back to the house—meaning you had no drugs to tie back to the house. Because law enforcement improperly detained the suspects at the scene to wait for the canine unit, all evidence obtained there and after was tainted by that initial constitutional violation. [State of Ohio v. Bradley](#), Sixth Appellate District, Erie County, Jan. 30, 2015. See also, [State of Ohio v. Young](#), Sixth Appellate District, Erie County, Jan. 30, 2015.

Adjoining Crawlspace and Plain View: Your department received a tip that a shipment of marijuana was expected from Los Angeles into your jurisdiction. One package was identified at the post office and after a warrant was secured, marijuana was discovered inside. A controlled delivery was made to the address and an anticipatory search warrant was executed when the alarm, indicating the package was opened, went off. The suspect was apprehended and arrested. A search warrant was then obtained for the suspect's residence. The warrant was executed and more than 200 pounds of marijuana was found—most in a crawlspace in the basement. Upon further investigation, you notice the crawlspace is connected to the adjoining duplex through a partially covered hole. From the suspect's side of the crawlspace you can clearly see more marijuana in the neighbor's crawlspace. You obtain a search warrant for the adjoining duplex and discover more marijuana. **Were you allowed to look through the hole into the neighboring apartment under the authority of the first search warrant?** The court in *Perry* said yes. The Fourth Amendment does not require law enforcement to disregard evidence readily visible, as it was through the crawlspace. Looking through the crawlspace was not a search but gave probable cause for a search. The search took place after the warrant was properly obtained and executed. [State v. Perry](#), Fifth Appellate District, Richland County, Mar. 2, 2015.