



Law Enforcement Labor Services, Inc.

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TO: Members of LELS

FROM: Jim Mortenson, Executive Director

DATE: September 14, 2021

RE: Use of Force Lawsuit – Judge’s Order Dated September 13, 2021

Dear Members:

We are happy to report that Chief Judge Leonardo Castro issued an Order in favor of Law Enforcement Labor Services, Inc., Minnesota Police and Peace Officers Association, Minnesota Sheriffs’ Association and Minnesota Chiefs of Police Association in the lawsuit against Governor Timothy Walz and the State of Minnesota. LELS and the other Law Enforcement Groups sued the Governor and State of Minnesota arguing the new Use of Force Statute, Minn. Stat. §609.066 is unconstitutional.

Minn. Stat. §609.066, subd. 2(a)(1)(i-iii) (2020) requires that the threat of death or great bodily harm must be able to be “articulated with specificity by the law enforcement officer; is reasonably likely to occur absent action by the law enforcement officer; and must be addressed through the use of deadly force without unreasonable delay.” In essence, this would require the officer to testify at trial, thus violating their 5th Amendment rights. Prior to the enactment of this new law, peace officers in the line of duty were authorized to use deadly force “to protect the peace officer or another from **apparent** death or great bodily harm”. Minn. Stat. §609.066, subd. 2(1)(2019).

On August 30, 2021, a hearing was held before Chief Judge Castro. Mark Schneider, LELS General Counsel, argued the case on behalf of LELS and the other Law Enforcement Associations. The State was represented by two Assistant Attorney Generals. At the hearing, the Court heard arguments in support of the LELS/Law Enforcement Association’s Motion for a Temporary Injunction. At that time, the Court also heard arguments for, and in response to, the State’s Motion to Dismiss the lawsuit.

Judge Castro decided in favor of LELS and the Law Enforcement Associations and ordered that the Motion for Temporary Injunctive Relief be granted and that Minn. Stat. §609.066, as amended, with an effective date of March 1, 2021, be temporarily stayed until the Court has an opportunity to make a full decision on the claims of LELS and the Law Enforcement Associations. Not only that, the Court also ordered that the prior Use of Force Statute, as it existed before March 1, 2021, shall remain in force pending the Court’s final decision on LELS/the Law Enforcement

Association's Complaint for Declaratory Relief. The Court has set up a briefing and hearing schedule to be completed within sixty (60) days of the September 13, 2021 Order.

What does the Order mean?

As a practical matter, officers' actions in a Use of Force situation will be analyzed and governed by the "**apparent threat**" statute, case law, department policies, and training consistent with that law. In the event of an officer involved shooting or critical incident, the LDF panel attorneys are aware of the Court's Order and the return of the prior statute and standards until the Court makes a final decision in the lawsuit and dissolves any injunction.

What is next?

The attorneys for LELS, the Law Enforcement Associations, Governor Walz and the State of Minnesota were ordered by the Court to meet and confer to agree to a briefing and hearing schedule before the Court. Judge Castro indicated that an evidentiary hearing is not necessary since the remaining issues are essentially legal and constitutional issues.

When the briefing and hearing schedule is ordered, we will notify you of the hearing date and provide any appropriate updates. However, if you have any questions, please do not hesitate to contact your LELS Business Agent, LELS Executive Director - Jim Mortenson, or LELS General Counsel - Mark Schneider.