Considerations For Suspicious Activity Reporting

Efficient, Effective, and Safe Implementation in a Rural Community

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Abstract

An introduction to considerations for collecting, processing, and sorting Suspicious Activity Reports (SAR) in a small, rural community. We discuss practical, legal, and moral (civil liberties) concerns for implementation of a collection program. We also discuss potential roles for a Volunteers In Police Service (VIPS) program or sheriff's auxiliary as well as neighborhood watches. Although national recommendations are for every community to have a suspicious activity reporting structure, almost no small communities do and there are significant hurdles for efficient, effective, and safe implementation. This working paper accompanies a sub-presentation to our ISIS/Extremism Community Briefing but should also stand alone.

1   Introduction

1.1   Legal

Copyright

1.2   Acknowledgements

Warrant Officer Jimmy Garrett, the Auxiliary's Intelligence and Security Chief (S2), prepared LE-targeted ISIS briefings for the Sheriff's Office and provided text for an early draft. Errors are my own, not his.

1.3 Overview

The Lawrence County Sheriff's Auxiliary is working on assembling recommendations for a county Suspicious Activity Reporting structure. Such a system would require community involvement, including deliberation, participation, and monitoring for efficient, effective, and safe implementation. Despite national recommendations that every jurisdiction have a process. Very few small communities successfully implement systems. There are practical, legal, and moral (civil liberties) considerations to any such system, particularly in small communities. This [draft] working paper is a brief introduction to begin framing that discussion.

One of the purposes of this paper and accompanying talk is to give community members an appreciation of the legal environment local Law Enforcement must work in regarding Suspicious Activity Reporting (especially when conscious of privacy and civil liberties concerns) which dictates certain aspects of whether and how specific reports must be handled.

In Missouri, we have a specific context of the 2008 MIAC scandal which colors the way the community views fusion centers and aggregation of suspicious activity.

What Is Suspicious Activity Reporting?

Definition 1 (Suspicious Activity). "Observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity"

Definition 2 (Suspicious Activity Reporting (SAR)). "Official documentation of observed behavior ..."[1]

Where SAR Fits In

Gathering, Processing, Reporting, Analyzing, and Sharing of Suspicious Activity:

1. ... critical to preventing crimes, including... terrorism.

2. Local law enforcement entities should incorporate the gathering... of terrorism-related suspicious activities and incidents (SAR process) into existing processes and systems used to manage other crime-related information and criminal intelligence.

3. Local law enforcement agencies... are the initial collection points and investigative leads for all suspicious activity data... should not bypass the local law enforcement agency...[2]

The document goes on to say:

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[1]Information Sharing Environment (Ise) Functional Standard (Fs) Suspicious Activity Reporting (Sar) [ISE, 2009, pp 2]

[2]SARSIP, 2008, pp 2-3

4 When an agency receives information concerning another jurisdiction, the information should be provided to that jurisdiction, and it is the decision of the concerned receiving agency whether to share the information with other agencies.

5 A defined process is needed by the originating agency to ensure that suspicious activity reporting is made available to fusion centers and local Joint Terrorism Task Forces (JTTF) in a timely manner.

6 An ongoing emphasis should be placed on defining and communicating trends in terrorism activity, geographically specific threat reporting, dangers to critical infrastructure, and general situational awareness. [SARSIP, 2008]

So, reporting of activity should happen locally first, then get passed either to other relevant jurisdictions or up the reporting chain to the various systems in the Information Sharing Environment (ISE) *if it meets appropriate legal standards* (we will discuss below). Relevant activity also needs to be passed to critical infrastructure and to the community for situational awareness (what we are doing right now with these briefings).

Critically, this should not be a disruptive process. Any system must be integrated into what local Law Enforcement has been doing for years: "...gathering information regarding behaviors and incidents associated with crime and establishing a process whereby information can be shared to detect and prevent criminal activity, including that associated with domestic and international terrorism..."[SARSIP, 2008]

State-Level SAR Not Enough

- MIAC has a reporting form at the state level;

- We (LCSO/LCSA) can access it through various systems;

    - MOSPIN, EGuardian, etc.

- But we do not **get notified** when a local report is submitted;

- Technical/practical difficulties with access;

- We lose local control over civil rights, privacy, policy;

2 Why It Does Not Happen

Small Communities

- Limited resources and staff;

- IT infrastructure and expertise;

- Can end up with **too much** information;

- Difficult to triage/share in timely manner;

- Guidance/recommendations/policy targeted at large urban departments[3];

- Training (LE and community) takes time commitment;

Bryan Roberts, in a Naval Postgraduate School thesis [2012], describes the state of small-community Suspicious Activity Reporting systems and these factors. He focuses primarily on California in his study and recommendations, but his discussion applies well to Missouri, where the large urban areas have dedicated systems and most of the state jurisdictions have none.

The Sheriff's Auxiliary intelligence section has made progress on having volunteers undergo the Missouri Information Analysis Center (MIAC)'s Intelligence Liaison Officer (ILO) training and other applicable training.

Among the significant issues is that incoming reports must be analyzed in a timely manner, to determine whether they contain actionable (legally valid) intelligence, forward them to shared systems as appropriate, and delete records which may not be legally maintained. That requires dedicated resources which small county organizations often cannot afford. As certain aspects of these problems can be handled by volunteers, the existance of the Auxiliary provides additional possibilities. We also have several active neighborhood watches in the county. Even with volunteer support, a robust reporting process will still require long-term commitment by the community.

3 Legal and Civil Liberties Concerns

Civil liberties groups on all sides of the political spectrum have expressed concerns about Suspicious Activity Reporting programs. There are many potential problems if it morphs into a system of monitoring everyday activities of citizens, particularly Constitutionally protected activities involving freedom of speech, religion, and association. Many of these concerns involve the potential interaction with fusion centers. The ACLU has pulished an indepth report discussing many of these issues[German and Stanley, 2008]. More recent guidance has attempted to incorporate procedures for addressing the concerns.

28 CFR

- The legal standard for Suspicious Activity Reporting is in Title 28 of the US Code of Federal Regulations (28 CFR).

- Consistent with Supreme Court rulings, it requires in Part 23 that reports may neither be collected nor maintained unless they are based on Reasonable and Articulable Suspicion (RAS).

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[3]Roberts, 2012

> ...shall collect and maintain criminal intelligence information concerning an individual **only if there is reasonable suspicion** that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity...

Reasonable Suspicion

Definition 3 (Reasonable and Articulable Suspicion).
- Standard of proof less than probable cause;

- More than "inchoate and unparticularized suspicion or 'hunch'"[4];

- Based on "specific and articulable facts", "taken together with rational inferences from those facts"[5];

- Suspicion must be associated with *a specific* individual[6];

The 28 CFR requirements may restrict Law Enforcement from acting on particular reports if the critical nexus to criminal activity cannot be found. Sometimes a coincidence of multiple reports can provide that nexus, but if not, the Sheriff cannot simply search someone's home or take other action *without legal cause*, and the records which do not meet RAS criteria must be purged in a timely fashion. This process requires training and careful, timely judgement as well as feedback from the community.

One of the consistent recommendations for a responsible system is that there should be layers of separation between particular parts of the process, including between community outreach and gathering of suspicion, and between parts of the SAR process and officers responsible for criminal investigation. Again, in smaller communities, this can be difficult to do. Incorporating trained volunteers in the process can provide some of these layers and the necessary oversight while protecting liberties and privacy ("citizen's-in-the-loop law enforcement").

Privacy requirements also often dictate a one-way process for submitting reports, especially reports which have not yet been vetted and potentially purged for failure to meet the RAS standard. In other words, if a neighborhood watch forwards a SAR report to a hyopthetical Sheriff's Office system, members of the watch could not simply browse those reports. The contents of the reports might potentially contain information compromising both the privacy of the subject and potentially revealing to criminals the people who noticed suspicious behavior. Criminals could also analyze SAR information to determine what kind of behavior is being noticed and what is not, or, for instance, that Mrs. Smith does not report suspicions between 10am and 4pm on Sundays because she is likely not at home. Community oversight of the process must occur without compromising the *confidentiality and integrity* of the process.

As any process for implementing a SAR system goes forward, these aspects of protecting the community need to be discussed and *actively* addressed.

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[4]Terry v Ohio [US, 1968]

[5]US, 1968

[6]Ybarra v Illinois[US, 1979]

Appropriate Responses

- Sometimes Law Enforcement is not the appropriate tool;

- Peace Officers vs. Law Enforcement;

- Support, counseling, mental health, other avenues may be available;

- SAR system must address wider community concerns;

- Unnecessary escalation should be avoided;

Just because someone has ill intent does not mean they will (or should be) be arrested. Dependent upon the person's intentions and the steps they have taken there are other responses that may be employed. Not every outburst or threat leads to violence. Sometimes people just need time to allow themselves to work through whatever issue they are facing. Sometimes, they may need counseling and a support network. Others may need more specialized mental health care. These types of determinations, however, are best made by experts. The earlier that you inform someone of your suspicions the more likely law enforcement can turn the situation over to these types of specialists. Our goal is not to fill jails but to prevent violence.

A responsible SAR system has to feed into appropriate responses, which in turn requires a broader community support system. If reports are not handled discreetely, are dealt with in a heavy-handed fashion, or the system becomes a way of slandering and hurting neighbors, community trust suffers and we will not be able to handle the legitimate threats we face as a community.

4 Conclusion

- A robust *community-based* SAR system is critical to dealing with terrorism and other threats;

- There are practical, legal, and moral concerns to creating such a system;

- These concerns must be discussed and actively addressed;

As the Sheriff's Auxiliary moves forward with making recommendations to the Sheriff's Office, we will engage the community to ensure that any resulting system is efficient, effective, safe, and *owned by the community it serves.*

0.9 First partial draft 2016-01-24;

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