



NYMIR Law Enforcement

NEWSLETTER

SOBRIETY CHECKPOINTS ~ COURT CASE ANALYSIS

If conducted properly, sobriety checkpoints do not constitute an illegal search and seizure. The US Supreme Court has held that the interest in reducing alcohol-impaired driving was sufficient to justify the brief intrusion of a properly conducted sobriety checkpoint.

A brief, suspicionless stop of an automobile, although far less intrusive than a traditional arrest, nonetheless qualifies as a seizure within the meaning of the Fourth Amendment. The New York Court of Appeals has followed the US Supreme Court in determining whether such a seizure is reasonable and thus constitutional. The reasonableness of such a seizure depends on a balance between the public interest and the individual's right to personal security, free from arbitrary interference by law enforcement officers.

Whether these stops are constitutional requires a weighing of:

- (1) *the gravity of the public concerns served by the seizure;*
- (2) *the degree to which the seizure advances the public interest; and*
- (3) *the severity of the interference with individual liberty.*

It is critical that the checkpoint be carried out pursuant to an explicit plan; that is, in accordance with guidelines setting forth procedures governing checkpoint operations, site selection, and publicity (i.e. signs) and conducted in a non-discriminatory manner. The checkpoint program must be clearly aimed at reducing the

(Continued on page 2)

MANAGING RISK FOR NON-RISK MANAGERS

PRACTICAL PERSPECTIVES FOR POLICE PROFESSIONALS

Every time police officers put their body armor on...risk management. The air bags mounted in the steering wheels and dashboards of our patrol cars...risk management. The suction-cupped rubber mats our kids sit on in the bathtub...risk management. The annoying speed bumps we are forced to drive over in parking lots...risk management. Risk management (RM) is easy to recognize and is pervasive in all aspects of our personal and professional lives.

In law enforcement, the management of risk is an expansive and critical aspect, primarily due to the diversity and complexities police work entails. Police officers carry weapons, drive at high speeds, and have the authority under law to deprive others of their precious freedom. At times, police work must be performed under the worst circumstances—dealing with domestic violence, confronting combative offenders, working in a fatigued state or with limited personnel—and often with only seconds to make a critical decision. This unique blend of authority and power combined with the dynamics of police work can create an invasive climate for risk and potential exposure to liability.

While RM is essential to public safety, a working definition specific to law enforcement remains somewhat elusive. Most officers' only formal association with RM occurs when they study the limited academic portions of this subject in preparation for promotional testing. It is commonly regarded as something someone else does. RM is often considered an exclusive characteristic of upper management, the sole responsibility of administration, or an element that is wholly performed by human resources, none of which is true.

DEFINING RISK MANAGEMENT

In a seminar called "Mission Accomplished" presented through The Nonprofit Risk Management Center (NRMC), risk management is defined, in part, as a *discipline for*

(Continued on page 3)

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NYMIR

February 2007

NEWSLETTER

SOBRIETY CHECKPOINTS

continued

immediate hazard posed by the presence of drunk drivers on the roads, and there must be a connection between the imperative highway safety and the law enforcement practice at issue. The primary reason for initiating the suspicionless stop **must not** be to further general crime control.

In *People v. Cabrera*, a recent Queens County case, the court held that the checkpoint operated by the police department did not meet the constitutional requirements. This holding was based upon the testimony of the sole witness, Officer Couloute. Although he was instructed to stop cars in a non-discriminatory manner (every four or five cars) his instructions and the manner in which the stops were performed did not focus on public safety concerns as is required; rather, upon whether each driver's license and registration was in order. The officer did not present any testimony at the hearing as to the actual purpose of the checkpoint. His testimony revealed little or nothing about why this location was chosen, what warnings had been provided to approaching drivers, what instructions he had received from his supervisors and what safety concerns were to be addressed by this checkpoint.

The Court noted that it was entirely possible that the purpose of the checkpoint was to prevent drunk driving in an area that is prone to such activity, which would be an appropriate safety concern. However, the officer who testified did not make any mention of this purpose. As stated above, if the overall purpose of the checkpoint is to further general crime control, such is impermissible and is contravened by the Fourth Amendment.

Accordingly, in order to attempt to avoid a situation such as that in *People v. Cabrera*, it is imperative that an explicit written plan as set forth above be created and communicated to the officers who will be conducting the checkpoint.

Alison M. Wiland, Esq.
Claims Counsel

JUNIOR DRIVERS UPSTATE NY

Nationally in 2004, 59% of persons killed in automobile crashes operated by young drivers were 15 to 20 years old. Over the past few years within New York State, there have been many changes and additions to the vehicle and traffic law concerning this driver status—the *Junior Driver*. This article discusses the Junior Driver in upstate New York. It does not cover the counties of Nassau, Suffolk, Westchester, Rockland, Putnam or the five boroughs of New York City.

As stated by NYS DMV, a person must be at least 16 years old to drive a vehicle in our state. A Junior Driver is a person that has a junior learner's permit or junior driver's license in New York State.

Junior Permit Restrictions:

From 5 a.m. to 9 p.m., a Junior Permit Holder can be driving only while under the immediate supervision of a person who:

- ◆ is 21 years of age or older
- and-
- ◆ has a valid license for the vehicle being operated

From 9 p.m. to 5 a.m., a Junior Permit Holder can be driving only while under the immediate supervision of a person over 21 that has a valid license for the vehicle operated and he/she is the Junior Permit Holder's:

- ◆ Parent
- ◆ Guardian
- ◆ Person "*in loco parentis*"
- ◆ Driver Education Teacher
- or-
- ◆ Driving School Teacher

Limited Junior License Restrictions: (*This is a person who passed his or her road test within the first six months of holding a valid permit*)

From 5 a.m. to 9 p.m., a Limited Junior License holder may only drive alone for:

- ◆ School course or activity
- ◆ Employment

(Continued on page 5)

MANAGING RISK FOR NON-RISK MANAGERS continued

dealing with uncertainty. Nationally recognized risk management expert, Gordon Graham, illustrates in his training that RM is *getting the right thing done the right way the first time while treating everyone involved with the highest level of dignity and respect possible under the circumstances.*

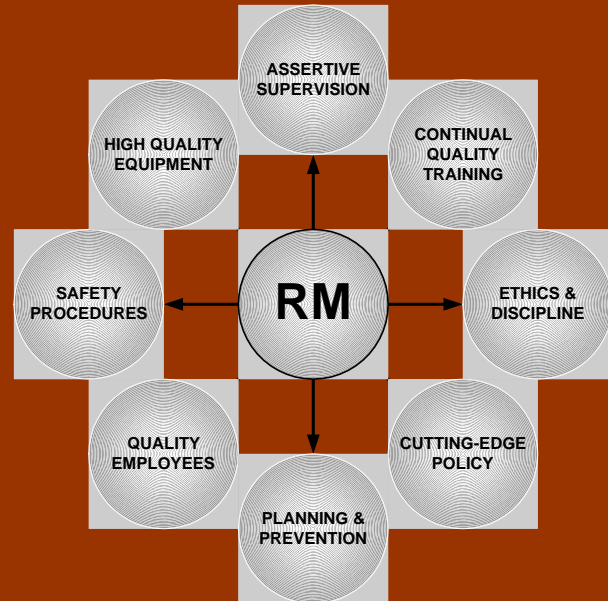
Risk management is any action taken by *any* member of an organization that will eliminate, mitigate, or control risk. It is the process of making and carrying out decisions, processes, policy, training, directives, discipline, supervision, or procedures to stop or reduce the adverse effects of loss to an organization. Risk can be complex—researching and developing new policy and procedures to prevent or control sexual harassment, or it can be simple—tacking down a loose piece of carpet at the top of the stairs.

Risk management is practiced whenever any of the following types of good practices are performed: conducting thorough background investigations to ensure the best officers are hired; retaining appropriate insurance; maintaining a safe work environment; servicing equipment properly to ensure good working order. Risk management can also be conceptual—strongly influenced by ethics, self-control, professionalism, leadership, self-disciplined behavior, or quality customer service. Risk management's foundation is built upon maintaining safety and saving money through loss reduction or elimination and also serves as a protective blanket from civil liability.

RESPONSIBILITY FOR CONTROLLING RISK

Most law enforcement agencies do not have a *formal* in-house risk manager. This function is most often approached through a collaborative effort between management, administration, human resources, an in-house city or external contractual attorney, or professional consultants. So who is responsible for controlling, reducing, or eliminating risk in police work? The answer is simple: everyone in the organization. Police personnel at every level are stakeholders in the organization and as such, are risk managers. They are key, individually and collectively, to their agency's success in controlling loss and liability through risk, negligence, or omission.

Example:



A field-training officer begins to date his/her trainee. From the beginning he/she considers these actions as a conflict of interest—simply not a good idea; however, despite this the dating continues throughout the training.

Looking through the eyes of a risk manager, this scenario is potentially disastrous. Should the trainee fail to pass probation and face termination, the problems facing the agency could range from conduct unbecoming an officer (training officer) to serious allegations of sexual harassment. If *any* member of the organization had recognized the potential risk of this scenario and had taken action to mitigate the problem, effective risk management would have occurred, benefiting the agency substantially. The action taken to confront this risk could have come from a fellow officer, the supervisor, or *any* other party who had knowledge of the situation.

The key is to develop an organizational culture that maintains a strong and collective bias for action. Every member of a police organization should be empowered with the responsibility to act when it comes to managing risk.

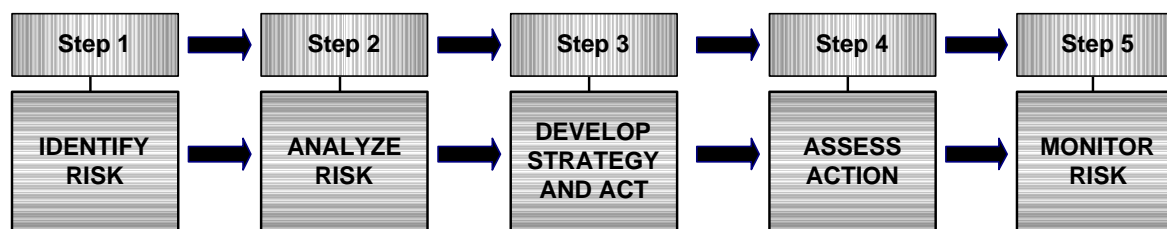
NEWSLETTER

MANAGING RISK FOR NON-RISK MANAGERS *continued*

RISK SOLVING FORMULA

The measures taken to deal with risk can be fairly simple. In most cases where the potential for risk or the identification of a problem has been revealed, most police departments maintain an existing process, procedure, or a specific person or division to solve it or to control it. While risk management formulas vary in complexity and depth, a simple and straightforward formula can be applied effectively and has been found to be highly successful in a majority of situations.

The following self-explanatory model illustrates a simple five-step formula that can be easily applied to most areas of risk. This process is sequential, allows for flexibility, and can be applied under a number of circumstances by anyone with any level of experience.



Example:

A Chief of Police had determined that portions of his/her organization's pursuit policy were obsolete and in need of modification. A committee consisting of members of the command staff, the city attorney, and selected subject matter experts were selected to meet and identify needed changes. The committee found the department's pursuit policy was grossly outdated—lacking in proper terminology, conflicting with other portions of policy, was vague, and tended to be incongruent with current case law and contemporary training (*Step 1 – Identify Risk*).

The areas in need of change were closely examined and clear descriptions of *why* the changes were needed were documented. The policy was contrasted and compared to model policies obtained from the International Association of Chiefs of Police as well as polices utilized by surrounding agencies. Members of the committee consulted with their outside sources and through feedback obtained valuable insight and additional ideas (all of us are smarter than one of us) as to what needed to be improved. (*Step 2 – Analyze Risk*).

The committee reached a consensus regarding all the changes that must be implemented. The findings were reduced to a formal report with detailed recommendations for new policy and a strategy for specific training that should follow its approval and implementation. The report was submitted to and approved by the Chief. The resultant policy, which was once outdated and subject to liability, became cutting-edge, a product worthy to be used as a model for the next agency that opts to enter this process. The policy was disseminated to all employees and training in its content was conducted (*Step 3 – Develop Strategy and Act*).

The Chief of Police directed his Patrol Division Captain to make formal inquiries at staff meetings regarding the policy over the following four months. During this period, information was gathered showing the policy was well received by patrol officers, department trainers, and supervisors. Officers felt the policy vastly clarified what their parameters were while pursuing violators and first-line supervisors were much more comfortable with the added specificity, which clarified when to let pursuits continue and when to stop them. The pursuits that occurred during this time frame were closely examined and it was found that the decisions made by pursuing officers tended to be more responsible, the communication between the dispatcher and the pursuing units was

(Continued on page 5)

MANAGING RISK *continued*

more effective, and the collaboration with outside assisting agencies was more efficient. (*Step 4 – Assess Action*)

One of the agency’s Administrative Lieutenants was assigned to monitor the agency’s pursuits and to investigate any substantial problems. Furthermore, any information regarding police pursuit-related issues was to be collected and recorded in order to potentially benefit future changes in policy or pursuit training (*Step 5 – Monitor Risk*).

CONCLUSION

Risk management—the concept—is important to any police organization; however, if it cannot be made tangible and put into practice, the concept alone has little value. The practice of managing risk is both an individual and team effort and is most effective when all members of an organization realize the importance of and accept the responsibility for organizational and individual safety and loss reduction. Two of the foundational qualities commonly seen in the most successful police officers are their ability to make good decisions and solve problems.

Risk management is making good decisions and solving problems; and through this, police officers and the organizations they serve realize the value and importance of the management of risk by non-risk managers.

Andy Borrello

Andrew Borrello is Lieutenant with the San Gabriel (CA) Police Department, a California P.O.S.T. Master Instructor, consultant, and seminar presenter. He is the book author of “Oral Interview Dynamics” and conducts promotional training seminars and consultation. Lieutenant Borrello welcomes comments at email: promote411@aol.com This article was reprinted with permission from Lieutenant Andy Borrello.

JUNIOR DRIVERS UPSTATE NY

continued

- ◆ Medical Appointment
- or-
- ◆ Daycare for their child or child of immediate family member

From 9 p.m. to 5 a.m., a Limited Junior License holder may only drive alone for:

- ◆ School Course
- ◆ Employment
- or -
- ◆ Medical Appointment

Junior License Restrictions: *(when their learner’s permit and limited-use license, combined, are valid for six months, then DMV will send them a full-use junior license - Class DJ or MJ).*

From 5 a.m. to 9 p.m., a Junior License holder may drive alone.

From 9 p.m. to 5 a.m., a Junior License holder may only drive alone when traveling directly between the:

- ◆ Home
- and -
- Employment
- or -
- ◆ A school course.

In the upstate counties only, instead of an employment certificate, you may carry a letter from your employer. The letter must be dated and signed by your employer, and must show the business name, address, and telephone number where you work. It also must list your name, date of birth, license identification number, job description, and days, hours and location of employment. The address and telephone number at which the employer may be contacted must be included for verification by a magistrate or police officer.



(Continued on page 6)

NEWSLETTER

JUNIOR DRIVERS UPSTATE NY *continued*

When driving alone between your home and a qualifying school course or approved work-study program, you must carry proof of enrollment. This must be a letter, dated and signed by an appropriate school or program official, on the school or program letterhead, and show the address and telephone number of the official for verification by a magistrate or police officer. The letter also must include the date(s), hour(s) and location(s) of the school course or program activity, your name, date of birth, and license identification number.

In the upstate counties (except Westchester, Rockland and Putnam) if you have a Limited Junior License, you may drive alone between your home and a medical appointment for yourself or a member of your immediate family or household, if you carry a written statement to that effect from a licensed medical practitioner. You may also drive without adult supervision to transport your child, or a child of an immediate family member, to and from regularly-scheduled daycare.

Information was obtained by accessing www.nydmv.state.ny.us/broch/c41.htm#jp

Sean D. Crouse

Chief of Police, Village of Port Dickinson

DLIC Status	Time	Restrictions
JUNIOR PERMIT	5 AM to 9 PM	Must drive only under the immediate supervision of: A person who is age 21 or older and has a license valid for the vehicle being driven.
JUNIOR PERMIT	9 PM to 5 AM	Must drive only under the immediate supervision of your 1) Parent, 2) Guardian, 3) Person "in loco parentis", 4) Driver Education Teacher, 5) Driving School Instructor. The person above must be at least age 21 and have a license valid for the vehicle being driven.
LIMITED JUNIOR LICENSE	5 AM to 9 PM	May drive alone for: 1) School course or activity, 2) Employment, 3) Medical appointment, 4) Regularly-scheduled daycare for your child or a child of immediate family member. All other driving must be under the immediate supervision of a person who is at least age 21 and has a license valid for the vehicle being driven.
LIMITED JUNIOR LICENSE	9 PM to 5 AM	May drive alone for: 1) School course, 2) Employment, 3) Medical appointment. All other driving must be under the immediate supervision of your parent, guardian, person "in loco parentis," who is at least age 21 and has a license valid for the vehicle being driven.
JUNIOR LICENSE	5 AM to 9 PM	May drive without being accompanied.
JUNIOR LICENSE	9 PM to 5 AM	May drive alone only when traveling directly between your home and employment or a school course. All other driving must be accompanied by your licensed parent, guardian, or person "in loco parentis."

On the Lighter Side



IQ TEST

There are four questions and a bonus question to this IQ Test. You must answer the questions instantly.

- Question 1:** You are participating in a race. You overtake the second person. What position are you in?
- Question 2:** If you overtake the last person, then you are . . .?
- Question 3:** Very tricky math! Note: This must be done in your head only. Do not use paper and pencil or a calculator. Take 1,000 and add 40 to it. Now add another 1,000. Now add 30. Add another 1,000. Now add 20, Now add another 1,000. Now add 10. What is the total?
- Question 4:** Mary's father has five daughters: 1. Nana, 2. Nene, 3. Nini, 4. Nono. What is the name of the fifth daughter?
-

Answer 1: *If you overtake the second person and you take his place, you are second!*

Answer 2: *If you answered that you are second to last, then you are wrong! Tell me how you can overtake the LAST person?*

Answer 3: *Did you get 5,000? The correct answer is 4,100.*

Answer 4: *Her name is Mary. Read the question again!*

NEWSLETTER

CALLING ALL AUTHORS

As we prepare for another year of putting together the NYMIR Law Enforcement Liability Newsletter, we are making a call for article authors. We have a considerable amount of talent across NYMIR in the many Law Enforcement Agencies we insure and would like to publish your articles in the NYMIR LEL Newsletter.

The articles can be any length and we will gladly assist in getting drafts into final articles (we have a great editor!!). Since we publish the newsletter ourselves, we have considerable flexibility in dealing with the length of articles. Do you have an idea that worked for your Department? Has your Department completed some unique training? Have you done some interesting research or written an article you would like to share? We would be glad to share these as well.

Please contact Brett Carruthers to discuss any articles or article ideas. Brett can be contacted via email at: bcarruthers@wrightrisk.com or by telephone 716.282.4890. We take this opportunity to thank all those who have contributed to this edition of the newsletter as well as those who have worked with us previously. We look forward to seeing you in print in 2007!!!

LOOKING FOR INTEL . . .

NYMIR Risk Management will be making revisions to the Law Enforcement Liability Section of the NYMIR Website. However, we need your help! We want this web section to be useful, informative and a site that you bookmark.

So . . . What can we do to make the materials present more useful? What would you like to see on the website? What is missing? Would you like links to other NYMIR Law Enforcement Liability Subscriber websites?

Please contact me with any and all suggestions by email or telephone. Email: bcarruthers@wrightrisk.com Phone: 716.282.4890 We want to make the website a useful tool and your input is invaluable.



Brett Carruthers, Regional Risk Management Supervisor

We appreciate comments on the newsletter and suggestions for future articles on relevant law enforcement topics. Please feel free to contact us.



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