

The New York State Chief's Chronicle



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March 2016



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Do you have an interesting law enforcement story or research paper, photographs of member activities or field scenes? Call the Editor: Mark A. Spawn at 323-474-6651 or editor@nychiefs.org

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On the Cover:

In December the Department of Justice (DOJ) announced drastic changes to the Asset Forfeiture Program as a result of two pieces of budget legislation. Equitable sharing was frozen and funds being held by the U.S. Marshals Service were rescinded. While DOJ says that they hope to be able to resume payments in the future, the impact of the loss of forfeited proceeds will have a profound impact on many local agencies.

Do you know that police cannot consider the possession of condoms as evidence in certain prostitution offenses? Are you aware that certain Level 1 sex offenders will be removed from the state registry? Learn more about these stories, and the story of the citizen who helped police to nab a violent serial killer from the Capital District in the 1970's.

Check out our announcements for our upcoming Law Enforcement Expo in Poughkeepsie, our Annual Training Conference in Buffalo, and the release of the 2016 edition of our customized Law Enforcement Handbook.

Photo: pond5/5@Harvepino



Obituary

Chief/Ret. Charles Moyer

Moyer, Charles G. ("Chief", Chuck, Charlie), longtime Phoenix resident and retired Police Chief, passed away peacefully December 16, 2015 at his home in Phoenix, NY. He was 84.

Chuck was born and raised in Phoenix and served the people of the village as Assistant Police Chief for 7 years (1954-1961) and Chief of Police for 27 years (1961-1988). An active member of the Phoenix Fire Department for 62 years, he spent his life in the service of the people of Phoenix and his country. Chuck served in the United States Army as a Military Policeman and was an Eagle Scout.

Chief Moyer was also a member of the New York State Association of Chiefs of Police, where he held the title of Sergeant of Arms for many years. His humor, authority and friendliness guided many young people to grow up to become good, responsible citizens. In his free time, Chuck enjoyed his family and was an avid outdoorsman who loved to hunt and fish.

For the past 25 years he could also be found each August at The NYS Fair greeting friends and fairgoers alike at Gate #1 (or nearby). Charlie never met a joke he didn't like and never missed an opportunity to share a humorous tale or two!

He is survived by his wife of 61 years Maxine Moyer (Lowe) and his four children: Debbie (Ted) Czeck of Fulton, NY; Scott (Dawn) Moyer of Pennellville, NY; Kristine (Adam) Schroeder of Valrico, FL; and Michelle (Mike) Kinabrew of Killeen, TX and 5 grandchildren: CJ, John, Kayleigh, Michael and Kaylee.

The family asks that any donations be made to Enterprise Fire Company #1, 457 Main Street, Phoenix, NY 13135 or to the Phoenix Community and Youth Council "Bridge House Brats" 455 Main Street Phoenix, NY 13135.

A celebration honoring Chuck's life is being planned for Memorial Day Weekend 2016.

New Comer Funeral Home, Syracuse, NY



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President's Report

"On Time" Policing



PRESIDENT'S REPORT

BY ASST. CHIEF STEPHEN CONNER, PRESIDENT

In this issue I would like to shed some light on how the commuter rail systems of the metropolitan New York area are protected. For more than thirty plus years I have worked with the Metropolitan Transportation Authority Police Department (MTA PD) so I can offer firsthand experience on the issues involved with transit police work. Of course, protecting life and property remain top priorities, but in the world of transportation, you must add another obligation - performing your duties while seamlessly moving thousands of people "on time".

The metropolitan New York area hosts the two busiest commuter rail systems in the United States and they are both safe and very reliable means of commuting. The Metropolitan Transportation Authority commuter rail agencies cover over 5,000 square miles and fourteen counties in two states. There are hundreds of stations so just patrolling the geographical area presents a tremendous challenge. Commuter trains operate on scheduled times so when calls for police services occur, the average commuter does not want to know about a train delay because of police activity. So how do we police the system while taking all necessary precautions against violators while trying to keep the system moving? It starts early on in a transit police officer's career. Always being cognizant of timing in conjunction with communications are instilled during field training programs and extends throughout a career whether it is in a patrol function or an investigative role.

The timing and communications issue comes to light right from the onset of a call for service. The majority of calls are initiated from train crews which are communicated to the police department through MTA agency rail dispatchers. In turn police dispatchers are advised of the call for service by the train dispatchers followed by the question, "how long will it take to meet the problem train?" With the vast area covered, there is no way transit police officers will be at every station throughout the system. Reliance on assistance from local police agencies is critical. From the time the call is dispatched to responding police units, the clock begins to tick. For a typical call for service, whether criminal in nature or not, the impact can potentially effect hundreds if not thousands of commuters and employees. Each train operating on the MTA system carries approximately ninety commuters per train car, multiplied by at least eight to twelve train cars, so you do the math on the sheer numbers of persons potentially involved. For the actions of one or two people,

hundreds stand to be impacted.

Patrols consist of stationed-based assignments and Radio Motor Patrol (RMP) patrols so the area of jurisdiction is covered as best practical. The goal is to respond to the call and handle it as expeditiously as possible. One of the challenges is dealing with an uncooperative individual. Simply removing noncompliant persons is not practical until all facts are taken into account in the initial at scene investigation. Oftentimes the involved parties are miles away from home and the train is their means of getting there, so police actions need to be correct. Removing a person from a train and not arresting them places the problem that was once on the MTA system into the local communities and becomes a local law enforcement problem at that point. Nobody wins in that scenario. In cases of medical emergencies when an additional responder, such as EMS is required, you add time to the delay. Those instances become very trying because of the extra time it takes for EMS to respond.

As I have already mentioned with the amount of people who occupy trains on the MTA system, what also needs to be taken into account are those people on other trains operating within the system and people waiting at stations along the way. When train service is interrupted, the entire system is impacted by what is best termed as a "ripple effect". Major terminals in New York City at Penn Station and Grand Central Terminal become shoulder to shoulder crowded because of delays. As a matter of fact, on occasions at New York, Penn Station, the station has been closed for the safety of commuters due to crowding conditions based on an incident fifty miles away! This is the ripple effect. Rail agencies will not send more trains into the system because they simply do not have the space and it is more prudent not to compound the problem by sending people out on trains that are only going to sit between stations. The MTA PD has found it more manageable to deter commuters from entering stations when delays are ongoing and give people other options to get to their destinations. Once on a train there are no options because only in an emergency will a train be evacuated and hardly ever will commuters be evacuated to the track area.

The environmental issues of the rail system also present time challenges because transit officers are trained to enter the track area only after notification to have electrical power addressed. The New York area has either third rail (DC) or catenary power (AC) which can be deadly if not taken into consideration. Train

movement is another issue because trains do not stop quickly and do not necessarily travel in the same direction all of the time. I would recommend to my colleagues and their departments that the track area should never be accessed without the proper rail agency notified of precisely where you are and obtain permission prior to going onto the tracks. I have lost track of the number of times when law enforcement agencies have pursued individuals onto the MTA system and trains had to make emergency stops. Hopefully some of this information can be taken as educational.

Handling incidents on the rail systems will often be managed under a unified command system. The MTA systems run through local law enforcement and other first responder jurisdictions. MTA PD members assume incident command responsibilities and the assets provided at the local level will be optimized when all actions are being monitored from one central/unified location. Incidents such as trains striking pedestrians (which happens a few times a month based on past statistics), grade crossing collisions and derailments all bring upon mass responses from first responders and as the scene is handled, the clock ticks and the system delays build. In dealing with the various agencies that the MTA system runs through, the importance of MTA PD command level interactions with local police chiefs is commonplace. To this end, involvement with local police chiefs associations is imperative so that these issues can be discussed prior to an incident.

The last area I would like to speak on regarding policing the commuter rail system is the concern for potential terrorist plots, which are at the top of the priority list. Our agency has members assigned to various intelligence units throughout

the area which is a great value, but the patrol officers are the backbone of the department. To that end you can never replace the value of our officer's observation skills. Are there things out of place? Is the behavior of an individual or group concerning? Personal interaction to deter people that may want to cause harm to the commuting public cannot be minimized. Officers are equipped with personal radiation detection pagers, commuters are screened randomly upon entering the system and personal bags are randomly checked for trace explosives. Additionally, the MTA PD has the largest canine unit of any transportation police agency in the country. Our canines are all explosives trained and are truly a valuable asset. The number of suspicious or unattended bags that these canine handlers respond to on a daily basis would surprise you. But their ability to respond to the calls for unattended property is critical to the ongoing theme of keeping the transit system moving. If every package left at a platform caused the shutdown of a station until a bomb squad response, then the MTA system could ultimately be labeled as unreliable simply because of the time it would take to address unattended property, which often times is simply a person leaving a bag behind to go to the bathroom or buy a ticket. This tells you that the "See Something, Say Something" and "See Something, Send Something" campaigns do in fact work.

This is just a brief overview of two components of transit policing that are not only unique to the metropolitan New York area, but across the state in an effort to keep our vibrant transit system operating "on time".

Stay Safe!

Chief Ron Boisvert Retires



Chief Ron Boisvert recently retired from the Watervliet Police Department. A lifelong resident of the City of Watervliet, Boisvert joined the police department on July 4, 1992. In 1999, he was detailed to the New York State Police Community Narcotics Enforcement Team (CNET) at the Albany Office for an intensive on-the-job training assignment. He returned to Watervliet PD in February 2000 and was assigned to the Investigations Unit handling general investigations as well as narcotics cases. He was promoted to Sergeant in 2000 and served in that capacity until he was appointed to Chief of Police in 2007. He has been an active member and leader in the Watervliet Little League, Watervliet Pop Warner and the Watervliet High School Dad's Club. Prior to joining the police department he enlisted in the United States Navy in November 1980 where he served two tours of sea duty and two tours of shore duty.

Chief Boisvert and his wife reside in Watervliet where they have raised two children. Ron says that he will continue to work in some capacity, but for now, he wants to spend more time with his wife, travel, and enjoy life with his family.



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Executive Director's Report



EXECUTIVE DIRECTOR'S REPORT

BY MARGARET E. RYAN

A new year often leads to a new resolution list being generated. One of NYSACOP's resolutions is to track pertinent law enforcement legislation to include state and national legislation. In late 2015, the Bipartisan Budget Act of 2015 and the Consolidated Appropriations Act of 2016 suspended equitable sharing payments to state and local law enforcement received as part of the Department of Justice federal asset forfeiture program. Given the success of the program, suspending payments is a disservice to not only law enforcement but to public safety. This DOJ budget cut will have significant impact on law enforcement both at the state and national levels. We will continue to monitor the Department of Treasury asset forfeiture program which, at this time, has not been affected. In March 2016, the DOJ's Asset Forfeiture and Money Laundering Section (AFMLS) will reassess and determine if budget constraints have eased after which payments could resume. AFMLS has advised all state and local law enforcement agencies to continue to submit requests per usual. Although these DOJ requests will not be paid at this time, they will be processed on a first in, first out basis if and when payments resume. Another part of a New Year's resolution is to highlight our zones and the law enforcement agencies that operate in each zone. The tragic events that happen in our world today remind us of the challenges that law enforcement personnel at all levels face on a daily basis. Let's not forget all of the great accomplishments.

NYSACOP divides New York State into ten zones. Zone 10 is comprised of law enforcement agencies in Cattaraugus, Chautauqua, Erie and Niagara counties. During the 1901 inaugural meeting to form NYSACOP, a committee of five was appointed to prepare the constitution and by-laws. Two members from what is now Zone 10, Lockport Chief Charles Molyneux and Buffalo Superintendent William Bull were assigned to the committee. After a motion by Chief Molyneux, it was decided that NYSACOP membership would consist of salaried chiefs of police and superintendents of several incorporated cities and villages in the State¹. During the same era, cities like Jamestown were described as a great industrial center having the greatest commercial production per capita of any city in the US and the police department was "conducted without any political interference."² Today, Third Vice President Chief

David Zack (Cheektowaga) and Zone 10 Representative Chief James Michel (Lackawanna) serve on the NYSACOP Board of Governors. With the implementation of community groups such as the F.A.T.H.E.R.S. organization and MadDads, Cheektowaga stresses police awareness of the minority communities to help youth avoid criminal activity by setting a positive foundation. Just up the road from the metropolitan area of Buffalo lies Niagara Falls. The Niagara Falls Police Department Citizens Engagement Initiative is a resident driven community policing effort focused on improving quality of life for all residents while strengthening police-community relations. From the 81st Annual NYSACOP Training Conference at the Executive Hotel in Buffalo July 19-23, 1981 to holding the NYSACOP Expo at the Erie County Fairgrounds in Hamburg on April 20, 2010, Zone 10 has a great number of accomplishments. The 116th Annual NYSACOP Training Conference will be added to the Zone 10 list of accomplishments when they host members and law enforcement from across the state July 10-13, 2016. As Third Vice President Chief Clyde D. Smith (Jamestown) remarked during his August 23, 1927 introductory remarks at the 27th Annual NYSACOP Convention held in Zone 10 in Jamestown, "Well Chiefs, you probably all remember about a year ago, you were all wondering where... Jamestown was. I see that there are a few of us who have found it, and I hope there will be a lot more before the week is over."³ What does Buffalo and Zone 10 have in store for the 116th gathering?

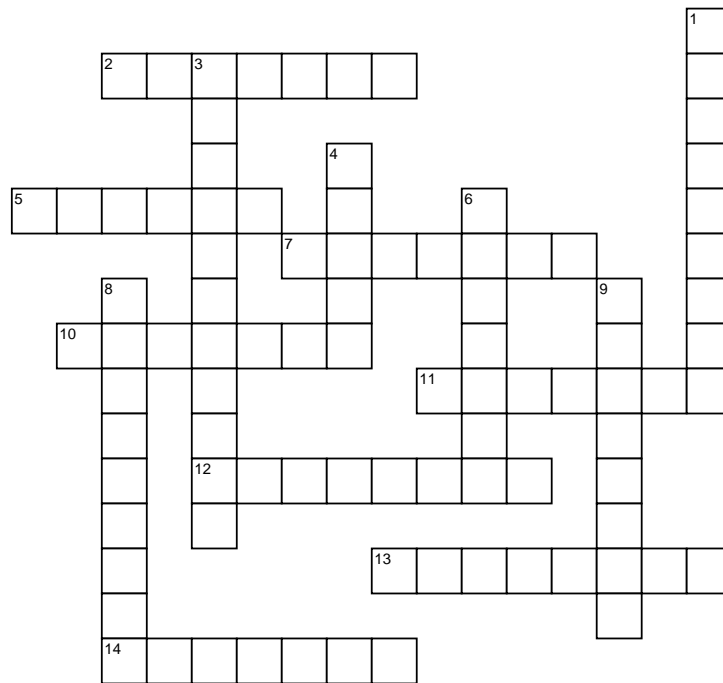
In closing, I remind you that NYSACOP members have access to our monthly electronic newsletter, Member's Forums and news briefs. Make time, as part of your 2016 resolutions, to review and update your NYSACOP personal contact information. Visit the member's area at www.nychiefs.org or contact membership@nychiefs.org, so you don't miss out. Whether your resolution is to break out your running shoes, write a strategic plan, be a mentor, thank someone, travel more, or to stop and smell the roses, don't forget NYSACOP is there with you.

¹ New York State Association of Chiefs of Police 1916 conference publication

² New York State Association of Chiefs of Police Proceedings of Twenty-Seventh Annual Convention; p. 3

³ Ibid, p. 5

Crime in the United States



Uniform Crime Reports; Crime in the United States 2014; fbi.gov

ACROSS

- 2** - In the nation in 2014, 47.4 percent of violent crimes and 20.2 percent of property crimes were _____ by arrest or exceptional means.
- 5** - When considering clearances of violent _____, 64.5 percent of murder offenses, 39.3 percent of rape offenses (legacy definition), 38.5 percent of rape offenses (revised definition), 29.6 percent of robbery offenses, and 56.3 percent of aggravated assault offenses were cleared.
- 7** - Property crimes in 2014 resulted in losses estimated at \$14.3 _____.
- 10** - Larceny-theft accounted for 70.8 percent of all property crimes in 2014. Burglary accounted for 20.9 percent, and motor _____ theft for 8.3 percent.
- 11** - Information collected regarding types of _____ used in violent crime showed that firearms were used in 67.9 percent of the nation's murders, 40.3 percent of robberies, and 22.5 percent of aggravated assaults.

WORD BANK: Arrested, assaults, billion, cleared, crimes, decreased, driving, exceptional, juveniles, property, vehicle, violent, weapons, white.

- 12** - Aggravated _____ accounted for 63.6 percent of violent crimes reported to law enforcement in 2014. Robbery offenses accounted for 28.0 percent of violent crime offenses; rape (legacy definition) accounted for 7.2 percent; and murder accounted for 1.2 percent.
- 13** - More than 73 percent (73.3) of the persons _____ in the nation during 2014 were males. They accounted for 79.8 percent of persons arrested for violent crime and 61.8 percent of persons arrested for property crime.
- 14** - The highest number of arrests were for drug abuse violations (estimated at 1,561,231 arrests), larceny-theft (estimated at 1,238,190), and _____ under the influence (estimated at 1,117,852).

DOWN

- 1** - Nearly 26 percent (25.8) of arson offenses cleared involved _____ (persons under age 18).

- 3** - In 2014, 21.7 percent of arson offenses were cleared by arrest or _____ means.
- 4** - In 2014, 69.4 percent of all persons arrested were _____, 27.8 percent were black, and the remaining 2.8 percent were of other races.
- 6** - Two-year arrest trends show _____ crime arrests declined 0.8 percent in 2014 when compared with 2013 arrests, and property crime arrests decreased 2.7 percent when compared with 2013 arrests. (See Table 36.)
- 8** - Arrests of juveniles for all offenses decreased 8.5 percent in 2014 when compared with the 2013 number; arrests of adults _____ 3.4 percent.
- 9** - Nationwide, law enforcement made an estimated 11,205,833 arrests in 2014. Of these arrests, 498,666 were for violent crimes, and 1,553,980 were for _____ crimes.

Solution on page 10

Counsel's Corner



Penal Law Review: Disorderly Conduct



BY CHIEF MICHAEL D. RANALLI, ESQ.

It would likely be very difficult to find a police officer in New York State who is not familiar with the Penal Law violation of Disorderly Conduct, otherwise known as “DisCon”. Unfortunately, familiarization does not necessarily lead to understanding, and disorderly conduct is a section of law that is typically misunderstood. The section is sometimes be used as a catch-all for behavior that may be disturbing or offensive, but does not fit into any other section of law. This is not, however, an appropriate use of the statute.

The problem with the use of disorderly conduct typically arises in one of two ways. First, the subsections are not interpreted properly and a charge is brought when in fact it does not apply. Second, the objectionable conduct does arguably violate one or more of the sections of law but the officer fails to properly draft the accusatory instrument. Either of these scenarios could lead to the dismissal of the charges. It is not uncommon for a charge of disorderly conduct to also be accompanied by a charge of resisting arrest. A charge of resisting arrest must be preceded by an “authorized arrest”, so if the underlying charge falls, so will the resisting charge. The New York Court of Appeals does not shy away from cases involving disorderly conduct and has issued a series of rulings since 2007 which shall be discussed in this article. First, we need to review the law itself.

DISORDERLY CONDUCT – PENAL LAW §240.20

A person is guilty of disorderly conduct when, with *intent* to cause *public* inconvenience, annoyance or alarm, or *recklessly* creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior; or
2. He makes unreasonable noise; or
3. In a **public place**, he uses abusive or obscene language, or makes an obscene gesture; or
4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
5. He obstructs vehicular or pedestrian traffic; or
6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.
(Emphasis added)

The critical elements that are frequently overlooked by officers are emphasized in the text of the statute. Two culpable mental states potentially apply – *intentional* and *reckless* conduct. A very common problem is in the enforcement of subdivisions (2) and (3)

when there are no members of the public anywhere within sight and/or hearing of the offensive behavior, therefore potentially nullifying either of the culpable mental states.

The first Court of Appeals case to be discussed is *People v. Jones*¹, which dealt with subdivision (5), obstructing pedestrian traffic. The accusatory instrument read in part:

...he [officer] observed defendant along with a number of other individuals standing around at the above location, to wit a public sidewalk, not moving, and that as a result of defendants' [sic] behavior numerous pedestrians in the area had to walk around defendants [sic]...Deponent directed defendant to move and defendant refused and as deponent attempted to stop defendant, defendant did run.²

The defendant was charged with both disorderly conduct and resisting arrest. His attorney immediately sought to dismiss the charges but the motion was denied by the trial court. Jones then pled guilty and filed this appeal. The Court of Appeals dismissed both charges since the underlying information charging disorderly conduct was insufficient as indicated in the following quote from the decision:

Nothing in the information indicates how defendant, when he stood in the middle of a sidewalk at 2:01 a.m., had the intent to or recklessly created a risk of causing “public inconvenience, annoyance or alarm.” The conduct sought to be deterred under the statute is “considerably more serious than the apparently innocent” conduct of defendant here ... Something more than a mere inconvenience of pedestrians is required to support the charge ... Otherwise, any person who happens to stop on a sidewalk-- whether to greet another, to seek directions or simply to regain one's bearings--would be subject to



Photo - pond5/jgroup

prosecution under this statute...Thus, as the information fails to set forth a prima facie case of disorderly conduct under Penal Law §240.20 (5), the accusatory instrument is jurisdictionally defective and must be dismissed.³

As to the charge of resisting arrest, the court dismissed the charge, holding:

Likewise, the People's request that the resisting arrest charge be reinstated must be denied. Penal Law §205.30 provides that "[a] person is guilty of resisting arrest when he intentionally prevents or attempts to prevent a police officer or peace officer from effecting an authorized arrest of himself or another person" (emphasis added). As the information failed to allege sufficient facts to support the underlying disorderly conduct charge, those facts could not be deemed sufficient to allege that the arrest was "authorized" as required under Penal Law §205.30.⁴

As should be clear from the court's reasoning, the factual part of the information failed to show how the behavior of the defendant and his companions was different from otherwise innocent behavior. It is entirely possible the conduct observed by the arresting officer may have in fact been a violation of the subsection, but it was not articulated that way in the information. As the case had already been pled out the only possible outcome was dismissal.

In a case decided after *Jones*, the N.Y. City Criminal Court upheld a §240.20 (5) section accusatory instrument that stated the following:

...on June 18, 2007, at approximately 1:41 a.m., at the corner of West 4th Street and Avenue of the Americas in Manhattan, the arresting officer observed defendant "yelling and screaming and obstructing pedestrian traffic, as follows: standing with at least ten other individuals on the sidewalk such that passersby could not pass defendant and said other individuals on the sidewalk. Defendant's conduct created a public disturbance/inconvenience in that it caused disruption of the normal flow of traffic in that [the officer] observed that at least five passersby had to walk around defendant."⁵

The trial court judge compared this language and that of the *Jones* case and held that this accusatory instrument was clearly distinguishable. This information indicated the defendant was yelling and screaming and along with 10 other people were forcing people to change their path to go around them. The judge further reasoned that this language clearly showed the potential risk that such behavior could cause the required public inconvenience, annoyance or alarm. The accusatory instrument in this case as compared to the one in *Jones* was better drafted and more clearly supported the elements.

While both of these cases discussed above are subdivision (5) cases, the lesson of each is applicable to all of the other subsections. Officers must treat the drafting of such accusatory instruments much the same way as they are telling a story that indicates why the behavior is public and intentionally and/or recklessly causing public inconvenience, annoyance or alarm. It also must explain why the specific behavior being charged is different than other innocent behaviors observed in public. Sometimes it is the most minor offenses that require the longest accusatory instruments.

The next Court of Appeals case to be discussed is *People v. Weaver*⁶, decided in 2011. Weaver was observed by officers yelling and waving his arms at a woman in the parking lot of a hotel. Weaver and the woman had just been married that day, were still in their wedding attire and apparently were having their first domestic dispute as husband and wife. Weaver walked across the street to a mini-mart as the officer pulled up to the wife. After speaking with her for a period of time, the officer began to leave. Weaver then came out of the mini-mart screaming a variety of obscenities at his wife. The officer warned him to stop and he promptly advised the officer to "go f*** herself", etc. in a very loud manner. The officer

called for backup and warned Weaver yet again to stop or he would be arrested for disorderly conduct. A second officer arrived, a third warning given and Weaver continued his tirade of obscenities unabated. The officers attempted to arrest him and he resisted, punching an officer in the face. An electronic control device was deployed on Weaver and he was taken into custody. One officer was injured and Weaver was charged with assault in the second degree, resisting arrest and disorderly conduct.

Weaver argued that while he admittedly did engage in tumultuous behavior [§240.20(1)] and used abusive and obscene language [§240.20(3)], he did not recklessly create a risk of public inconvenience, annoyance or alarm since it was a private discussion. The court reviewed established law, which clearly establishes that the behavior for a charge of disorderly conduct must be a public one and not of an individual nature. Relevant to this issue is "the time and place of the episode under scrutiny; the nature and character

Officers must treat the drafting of such accusatory instruments much the same way as they are telling a story that indicates why the behavior is public and intentionally and/or recklessly causing public inconvenience, annoyance or alarm. It also must explain why the specific behavior being charged is different than other innocent behaviors observed in public.

of the conduct; the number of people in the vicinity; whether they are drawn to the disturbance and, if so, the nature and number of those so attracted; and any other relevant circumstance."⁷ The court found the facts of this case did support a finding that Weaver did recklessly create a risk of public inconvenience, annoyance or alarm. Important to the holding of the case was that both the hotel and mini-mart were open for business all during the incident, and in fact, customers came and went during the incident which occurred in the early morning hours when peace and quiet would be the norm. In addition, Weaver ignored three warnings to calm down. All these factors could lead a jury to conclude his behavior recklessly created a risk of public inconvenience.

In 2013, the Court of Appeals decided another disorderly conduct case entitled *People v. Baker*⁸ whose facts are in contrast to those in *Weaver*. Two officers in Rochester were parked near each other in separate cars on a residential street. While there, one officer observed a woman standing in front of a house videotaping them. The officer then ran the license plate on a vehicle that was parked in the driveway of the house where the woman was

standing. The car was a Cadillac but the registration came back on a Toyota. The officer then approached the woman and asked whose car it was. She responded that it was her grandfather's. The officer got back into his patrol car and a short time later a man, Baker, approached the police car. He leaned in the open passenger side window and asked why the officer ran his registration. The officer responded because he can run registrations if he wants to. Baker then backed away from the car into the street while swearing at the officer and accusing the officer of harassment. The officer then asked Baker, "what did you say", and he repeated the profanity. That officer and the second officer then exited their vehicles and placed Baker under arrest. While this was going on, approximately 10 people congregated on the sidewalk. During the search incident to arrest for disorderly conduct [§240.20(3) "...in a public place, he uses abusive or obscene language..."], Baker was found to be in possession of 25 bags of crack cocaine, leading to an additional charge of possession of a controlled substance. The entire incident had been videotaped and corroborated the officer's testimony.

The drug charges were entirely dependent upon whether the disorderly conduct charge was valid and the arrest based upon probable cause. The court stated "...critical to a charge of disorderly conduct is a finding that defendant's disruptive statements and behavior were of a **public rather than individual dimension.**"⁹ (emphasis added). The requirement of some form of "public harm" is what distinguishes disorderly conduct from more personal statutory prohibitions, like harassment. Referencing earlier precedent,

"...while the risk of public harm or disorder does not have to actually happen, the facts must infer that the defendant intended to create, or recklessly risked the creation, of such a risk."

the court further explained that while the risk of public harm or disorder does not have to actually happen, the facts must infer that the defendant intended to create, or recklessly risked the creation, of such a risk. The court then focused on the facts of this case and found there was insufficient probable cause to support the arrest for disorderly conduct. The incident was brief, with the two statements occurring within 15 seconds. Baker did not menace or intimidate the officer as he was backing away from the police car. Under the circumstances of this incident, the people who had gathered appeared to have done so more out of curiosity. Even though his two brief outbursts were loud, it did not appear likely that they would cause much of a disturbance at dinner time on a busy street. Finally, this involved a verbal exchange between Baker and a police officer ("...a party trained to defuse situations involving angry or emotionally distraught persons..."¹⁰) and the statements were directed specifically at the officer, making it unlikely there was any real threat of public harm. Since the arrest for disorderly conduct was improper, the crack cocaine found incident to arrest should have been suppressed.

There is an additional distinction that should be noted regarding the difference between the facts in this case and those of *Weaver*. In the latter case, the officer on the scene gave three distinct warnings to Weaver advising him to calm down or he would be arrested. By contrast, the officer in this case asked Baker to repeat what he said and Baker obliged the officer. The officer got what he asked for and that would definitely lean toward the encounter being of an individual dimension rather than a public one.

Next is *People v. Johnson*¹¹, decided by the Court of Appeals in 2014. This case deals with §240.20(6) – "He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse." While the charged subsection may be different than the other cases discussed so far, there still is a common theme. Johnson and three other men, who were all allegedly gang members, were standing on a street corner together. The police asked them to move and they refused, leading to Johnson being charged with §240.20(6). There was no evidence presented in the case to indicate whether anyone that may have been trying to enter or exit the store was in any way actually obstructed. These facts did not "satisfy the public harm element of the statute." The Court of Appeals finished the memorandum decision with: "It is understandable that police officers become concerned when people they believe to be gang members and their associates gather in public. It is not disorderly conduct, however, for a small group of people, even people of bad reputation, to stand peaceably on a street corner."¹² Since the arrest was, therefore, without probable cause, the cocaine found on Johnson in a search incident to arrest should have been suppressed.

In the most recent Court of Appeals case, *People v. Gonzalez*¹³, the court continued to follow the reasoning of *Baker* and *Weaver* to what in this case can be considered an extreme. Gonzalez was loudly and angrily yelling obscenities at police officers in a subway station. He was also screaming at persons in the subway to complain about the officers. This behavior forced some of the people in the station to get out of his way¹⁴. Gonzalez was arrested and charged with disorderly conduct and criminal possession of a weapon of an illegal knife that was found on him after he was detained. The First Department Appellate Division found this behavior to at least have been recklessly causing a risk of public inconvenience, annoyance or alarm, as required by the statute. They also ruled the behavior escalated the situation beyond that of an individual interaction with the officers to that of one of a public problem. The Court of Appeals, however, in a brief memorandum decision disagreed and found that there was no record in support of the lower court's determination that the actions of Gonzalez constituted disorderly conduct. Further, since the disorderly conduct charge was invalid, the unlawful possession of a weapon should also be dismissed.

Gonzalez is a difficult case to reconcile based on the described behavior. The situation seems similar to that of *Weaver*, in that his actions would seem to be recklessly creating a risk of public inconvenience. The Court of Appeals, however, seems to be taking the fact Gonzalez's rants were about and directed at the police officers that it remained a personal exchange rather than a public one. It can be understood how this fact can negate the culpable mental state of intent, but not that of recklessness. Interpreting this case with that of *Weaver*, in all likelihood if the officers had warned Gonzalez to stop his behavior and he ignored the warnings, then they would have supported the charge. Unless the facts cited in the Appellate Division case were inconsistent with the record of the hearing court, there is no other way to interpret this case. A conservative interpretation of this ruling would be that if such behavior is directed at and about police officers, a warning to stop the behavior because it is disturbing those of the public in the area would be necessary. ▶

While these are just a few of the numerous cases pertaining to disorderly conduct, they provide a good overview of what the courts are looking for. First, all officers must understand that disorderly conduct is not a catch-all section. Some behaviors are obnoxious and insulting, but do not necessarily rise to the level of an offense. That leads to the next important point for officers to remember - never arrest a person just because they have angered you. While to many officers this may be clear, there are officers who, out of frustration of not knowing how to deal with a situation, act when they should not. If there are no members of the public in the immediate area, then it is not disorderly conduct. When an arrest is made, carefully draft the accusatory to fully describe all the elements of the section being charged. Tell the story of how the person's behavior affected those around him or her. When the circumstances allow, warn the person that if they do not cease their behavior or tone it down, they will be arrested. This will help to establish the necessary culpable mental state and is particularly important when the offensive behavior is directed at a police officer. When warnings are given be sure to draft that fact into the accusatory instrument. Do not ask someone to repeat their behavior and then arrest them when they do. Finally, yelling obscenities in and of itself is not an offense unless there are members of the public to be inconvenienced or alarmed. Disorderly conduct

remains a viable charge when used appropriately. Be aware of these requirements during the incident in question, rather than just when drafting the accusatory instrument.

¹9 N.Y.3d 259 (2007)

²Id, at 261

³Id, at 262-263

⁴Id, at 263

⁵People v. Jackson, 18 Misc.3d 1102(A) (NYC Crim. Ct. 2007). Note: as a lower court case, this does not have statewide precedential value as the Court of Appeals cases do. This is only being cited as an example of how trial courts will analyze such cases.

⁶16 N.Y.3d 123 (2011)

⁷Id, at 128

⁸20 N.Y.3d 354 (2013)

⁹Id, at 359

¹⁰Id, at 363

¹¹22 N.Y.3d 1162 (2014)

¹²Id, at 1164

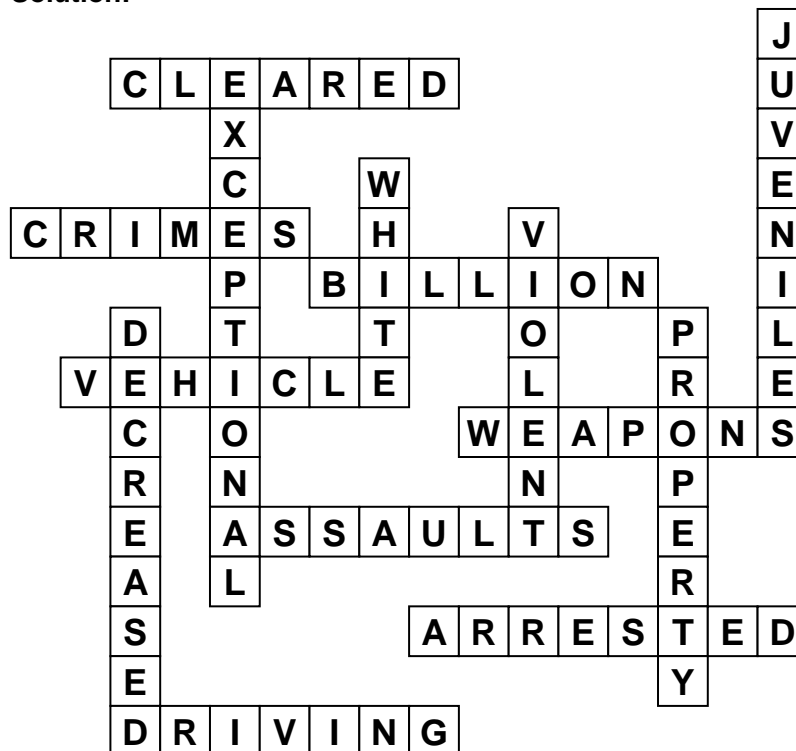
¹³25 N.Y.3d 310 (2015)

¹⁴The description of his behavior was taken from the First Department Appellate Division case, 112 A.D.3d 440 (1st Dept. 2013), that was reversed by the Court of Appeals.

PUZZLE ON PAGE 6

Crime in the United States

Solution:



Feds Halt Sharing in Asset Forfeiture

Impact Significant to Some Local Agencies

BY: MARK A. SPAWN

For more than thirty years, the Asset Forfeiture program has allowed law enforcement to deprive criminals of both the proceeds and tools of crime. On December 21, 2015, the U.S. Department of Justice (DOJ) announced that they were implementing "...cost reduction measures to absorb the combined \$1.2 billion rescission"¹ signed into law on December 18, 2015. The



rescission means that the funds are already gone. According to Deputy Assistant Attorney General Jolene Lauria in correspondence of December 21 she indicated that the Bipartisan Budget Act of 2015 rescinded and permanently cancelled \$746 million from the Asset Forfeiture Funds - \$442 million more

than planned in the President's Budget. She continued, "However, the Consolidated Appropriations Act of 2016 enacts into law an additional rescission of \$458 million."¹

Among the measures taken by DOJ are the suspension of equitable sharing, a freeze on contractor positions, and additional budgetary reductions.¹ DOJ said, "The Department does not take this step lightly. We explored every conceivable option that would have enabled us to preserve some form of meaningful equitable sharing while continuing to operate the Program and meet our other fiscal obligations. Unfortunately, the combined effect of the two reductions totaling \$1.2 billion made that impossible."²

As for the suspension of equitable sharing, DOJ said, "...all equitable sharing payments not executed by the U.S. Marshals Service on or before Monday, December 21, 2015, will be suspended until the financial status of the Asset Forfeiture Fund improves, as determined by the Asset Forfeiture Management Staff."¹

The New York State Association of Chiefs of Police (Association) surveyed its membership about the impact of the deferral of equitable sharing. Respondents were first asked the types of asset forfeiture programs in which they participated. Almost all (97%) of the respondents indicated they participated in federal programs, more than half (55%) participated in state programs, and about one-quarter (24%) participated in other forfeiture programs such as through a prosecutor's office, as part of plea agreements, or under county law. For the agencies using asset forfeiture, most use more than just one type. Respondents were asked to categorize the areas of expenditure for forfeited proceeds. 100% of the respondents involved in asset forfeiture used proceeds for law enforcement equipment. Other categories included:

- Investigations – 76%
- Law enforcement training – 73%
- Law enforcement travel/transportation – 27%
- Drug and gang based education/awareness programs – 21%
- Support of community based programs – 15%

(see chart on page 12 for more details)

How significant is the rescission of payments to localities?

Sixty nine per cent (69%) said the impact was significant to very significant. In many areas where heroin trafficking is a problem, any decreases in funding can have an impact on services. Chief Ernest Masullo (Evans PD) said, "We are a medium sized agency and we rely on the asset forfeiture program to fight drug activity. We recently submitted \$8,600 to the U.S. Marshals." Masullo added that by not receiving this money it will have an adverse impact on their fight against illegal drugs. "We have a big problem with heroin overdoses. Working this type of investigation is expensive. I have two officers assigned to narcotics. In some of these cases you need expensive surveillance equipment", said Masullo. Chief Fred Corey (Chittenango PD) said, "The cuts are significant. Without asset forfeiture we don't have the funds to do things like investigations and training."

Assistant Chief John Catone (Saratoga Springs) noted, "The money that we received over the years has allowed us significantly and proactively to attack the narcotics problem in our area, especially the heavy heroin issue." Catone noted that his department has participated in the Capital Region Drug Task Force since its inception about 20 years ago. He said, "Ultimately, the cost of having one of our narcotics investigators assigned to the task force with

"The money that we received over the years has allowed us significantly and proactively to attack the narcotics problem in our area, especially the heavy heroin issue."

*- Asst. Chief John Catone,
Saratoga Springs PD*

nothing in return will be the end of our participation and probably the end of the task force." Chief William Moore (Lake Placid) echoed the concern for joint operation task forces affected by the rescinded funds saying, "It will impact greatly on our community, not only in investigations, but in equipment we purchase for our department through this program. I foresee investigations staying strictly local and there not being the cooperation between local, state and federal agencies. Local agencies may no longer dedicate officers to regional federal task forces."

Catone remarked about how forfeiture funds allowed them to be progressive when body cameras were gaining momentum. "We were one of the first agencies, if not the first agency, in New York State with body cameras. Without asset forfeiture, we would not have been able to do that." Moore added that his department was able to purchase Tasers and fund training for the new devices. He said, "We probably would not have been able to do that without

forfeited funds.”

The resonant theme with the respondents using asset forfeiture programs is that without the ability to use forfeited criminal proceeds, the cost of continuing of certain programs, the purchase of equipment, and training of officers will fall upon the local jurisdiction. In the years following the economic downturn of 2008, member agencies of the Association have indicated financial distress in their localities. The loss of staffing by attrition and

“It is important to note that, the IACP, nor any of our law enforcement partners, were consulted prior to this announcement, and we have been active in expressing our concerns and disapproval of the process. - IACP”

abolishment has occurred, funding for equipment has been reduced or eliminated, and maintenance issues are common.

The rescission came unexpectedly to the law enforcement community. The International Association of Chiefs of Police (IACP) noted, “It is important to note that, the IACP, nor any of our law enforcement partners, were consulted prior to this announcement, and we have been active in expressing our concerns and disapproval of the process.”³

DOJ said that there is “...a possibility that the Department can resume its sharing on some or all of the deferred payments if there are sufficient funds in the budget.”¹ By deferring equitable sharing payments now, we preserve our ability to resume equitable sharing payments at a later date should the budget picture improve. In other words, if additional receipts in cases without identifiable victims are deposited later in FY 2016, there is a possibility that the Department can resume its sharing on some or all of the deferred payments if there are sufficient funds in the budget.”²

“Asset Forfeiture Management Staff recognizes that reductions to the AFF allocation may represent a severe hardship for federal, state, local, and tribal agencies already facing difficult budgetary constraints.” The DOJ memo to various federal agencies and officers continues, “We will continue to monitor the fiscal health of the Asset Forfeiture Fund and keep you updated in any additional impacts.”¹

DOJ says that state and local agencies should continue to submit DAG-71 forms for ongoing cases. They also said that the rescission and suspension of equitable sharing affects only DOJ cases, not Treasury or Postal Service funds.⁴

The IACP said they are “...authoring a joint letter with multiple

other law enforcement organizations to the Administration, Congressional Leadership, and the Attorney General expressing our profound concern and disapproval of this decision. In addition, the letter also criticizes Congress, the Department of Justice, and the Administration for their failure to consult with law enforcement before taking this drastic step on a program of such critical importance to the law enforcement community.”³

The Association is interested in the impact of the rescission on departments in New York State. If you have not yet taken our online survey, you can access it https://www.surveymonkey.com/r/asset_forf

To share your stories or concerns about the asset forfeiture program, send us an email at apb@nychiefs.org or call our office at 518-355-3371.

¹Memorandum for DOJ Assets Forfeiture Fund Participating Agencies, 12/21/2015

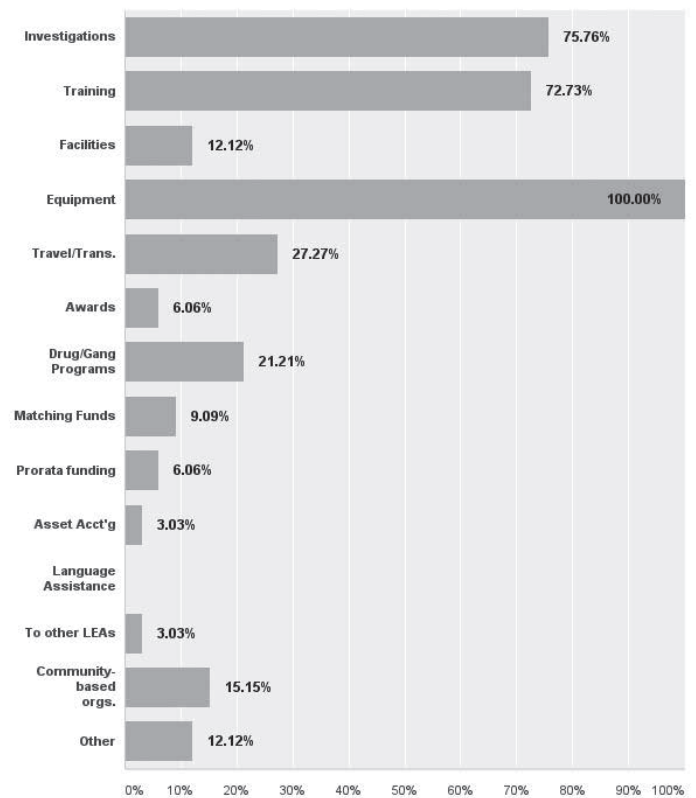
²Equitable Sharing Wire, U.S. Dept. of Justice, 12/21/2015

³Talking Points: Asset Forfeiture, IACP, Dec. 2015

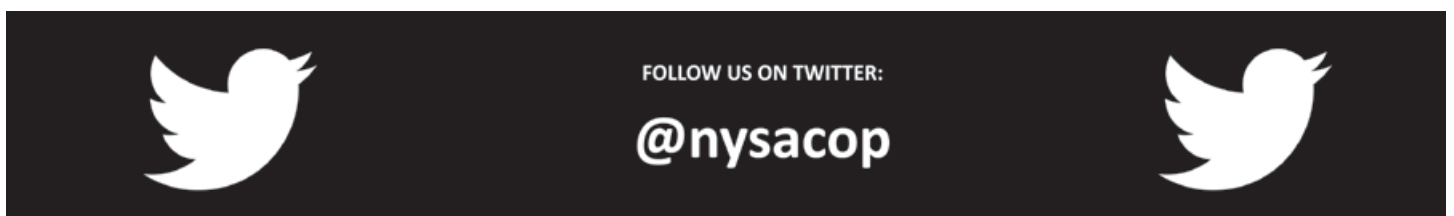
⁴Deferral of Equitable Sharing, U.S. Dept. of Justice, Dec. 2015

Q2 For what purposes does your agency use forfeited proceeds?

Answered: 33 Skipped: 0



NYS Assn. of Chiefs of Police Survey





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Capturing the Boston Marathon Bombers

Free Training in Dutchess County

Law enforcement officers are invited to attend our free training sessions being held at the Expo. Former Chief Edward Deveau of the Watertown, Massachusetts Police Department will talk about the **Boston Marathon Bombings**. During the manhunt for suspects, some of Chief Deveau's officers came under gunfire and improvised explosives. Listen to this dynamic presentation of one of the most horrific acts of terrorism and how the drama unfolded.

Join us at the Expo on Weds., May 4 from 11 AM –12:30 PM at **The Grandview, 176 Rinaldi Blvd., Poughkeepsie, NY 12601** for this riveting account of the Boston Marathon Bombings. On April 15, 2013, at 2:49 PM, an improvised explosive device (IED) detonated near the finish line of the Boston Marathon. Three people died, and more than 260 others needed hospital care, many having lost limbs or suffered horrific wounds. Those explosions began about 100 hours of intense drama that riveted the attention of the nation. The response by emergency medical, emergency management, and law enforcement agencies and by the public at large has now become known colloquially as “Boston Strong.”

Viewed as a whole, the events following the Marathon bombing posed enormous challenges. The response spanned geographic boundaries, levels of government (local, state, and federal), professional disciplines, and the public and private sectors, bringing together in both well-planned and spontaneous ways organizations with widely varying operating norms, procedures, cultures, sources of authority, perspectives, and interests.

Deveau will review the lessons learned in the “no notice” event in Watertown. Beginning with the early morning hours when a few of his officers were confronted with gunfire and improvised



Boston Marathon Memorial, 2013. Photo – pond5/dinhhang

explosive devices. Continuing with the 18 hour manhunt which included thousands of federal, state and local law enforcement officers responding. Chief Deveau will discuss Unified Command, Sheltering in Place, and how decisions were made to place Greater Boston in “lockdown”. There are many lessons to be shared in this presentation—strategy, command, leadership improvisation, and courage under fire. Police officers can pre-register to attend this free training event at <https://www.surveymonkey.com/s/MarathonBombing>.

See page 15 for more details of the Expo and this special training event. Both events are free to attend.



JOIN US AT THE NEXT EXPOSITION



Police, security and corrections personnel—Mark your calendars for this opportunity to talk with manufacturers, distributors and representatives of a variety of products for public safety. Join us at The Grandview in Poughkeepsie, NY on Wednesday, May 4 for our next Exposition. Our Expos typically feature exhibitors of traffic safety equipment, vehicles, license plate readers, wireless/interoperable communications, body worn cameras, tactical supply, firearms, computers and mobile data, CAD, crash report services, weapon and evidence lockers, uniforms and much more!

Exhibitors—Visit our website for details and registration information. If you have other questions or would like a brochure mailed to you send an email to Expo@nychiefs.org

WHERE: The Grandview, 176 Rinaldi Blvd., Poughkeepsie, NY 12601

WHEN: Weds., May 4, 2016 10AM—3PM

SPECIAL TRAINING TRACK: Free training opportunity for law enforcement begins at 11AM —see below



SPECIAL TRAINING TRACK: 11AM—12:30 PM

CHIEF/RET. ED DEVEAU (WATERTOWN, MASS. PD) TALKS ABOUT THE SHOOTOUT WITH THE BOSTON MARATHON BOMBERS

Law enforcement officers are invited to attend a free training session being held at the Expo. Chief/Ret. Edward Deveau of the Watertown, Massachusetts Police Department will talk about the Boston Marathon Bombings of April 15, 2013. During the manhunt for suspects, some of Chief Deveau's officers came under gunfire and improvised explosives. Listen to this dynamic presentation of one of the most horrific acts of terrorism and how the drama unfolded on the streets of Watertown, Massachusetts.

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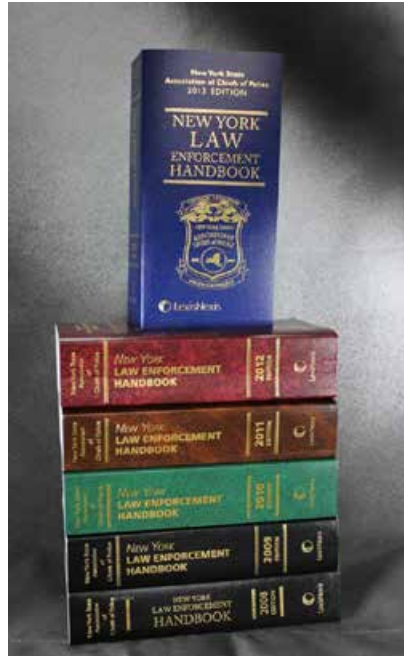
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VER. 01/14/2016

Ignition Interlock Devices



Ignition Interlock Devices in New York State

Have you encountered a driver with an ignition interlock device during a traffic stop? Since 2010 there have been more than 51,000 interlock devices ordered to be installed by the court. But less than 15,000 have actually been installed. Some of those drivers no longer have cars, but some disregard the law. For those interlocks that are installed, there are occasions when persons have tampered with the device, or had another person provide a breath sample to operate the car. This comprehensive video provides an overview of ignition interlock devices, their appearance and design, how they work, how failing tests are recorded, and specific sections of the New York State Vehicle and Traffic Law. The video also covers the Problem Driver Restriction, some of which may contain an ignition interlock device requirement.

Video

The video, *Ignition Interlock Devices in New York State* was produced by the New York State Association of Chiefs of Police (NYSACOP) by a grant from the National Highway Traffic Safety Administration through the Governor's Traffic Safety Committee. You can watch the video on the *APB Podcast* page of the NYSACOP website, on the NYSACOP *YouTube Channel*, or in the *iTunes Store*.

Published by the New York State Association of Chiefs of Police; Funded by the National Highway Traffic Safety Administration by a grant from the Governor's Traffic Safety Committee.

Ver. 12/21/2015

Enforcement Sections

(Refer to applicable section for full text and application of below subsections)

1198(7)(a) Operating rented/leased/loaned vehicle w/out ignition interlock device (IID) [U/M]*

1198(7)(b) Rent, loan or lease vehicle to person required to have IID [U/M]*

1198(7)(b) Failure of person w/ IID restriction failure to notify person renting, loaning or leasing vehicle about IID restriction [U/M]*

1198(9)(a) Request/solicit other person to circumvent IID [A/M]**

1198(9)(b) Charge for person circumventing IID [A/M]**

1198(9)(c) Tamper with or circumvent operable IID [A/M]**

1198(9)(d) Operate out of IID restriction [A/M]**

*[U/M – unclassified misdemeanor]

**[A/M – class A misdemeanor]

The enforcement sections and guide will be published in the 2016 edition of the *New York State Law Enforcement Handbook* and *The Pocket Enforcer*.



Check out the video, *Ignition Interlock Devices in New York State*, on the website of the New York State Association of Chiefs of Police (http://www.nychiefs.org/apb_podcast.php), in the iTunes Store, or on our YouTube Channel. Certified police officers can also access the video in the eJusticeNY portal and receive credit for this roll call training after taking a 15 question test.

Published by the New York State Association of Chiefs of Police; Funded by the National Highway Traffic Safety Administration by a grant from the Governor's Traffic Safety Committee.

Ver. 12/21/2015

Monroe County Chiefs Urge Parole Reforms

Proposal for Parole Violation Crimes and Access to Existing Database

Representatives of Monroe County law enforcement including police chiefs, the district attorney's office, New York State Association of Chiefs of Police (NYSACOP) and New York State Sheriffs' Association and legislators met for a press conference on January 8 at the Gates Town Hall outside of Rochester. Chief Patrick Phelan (Greece PD), President of the Western New York Association of Chiefs of Police and a Zone Representative for NYSACOP said, "Our proposal is to provide all police officers access to information on parolees including the terms and conditions of their parole, and the creation of new penal crimes." Chief Phelan added, "This would give law enforcement the opportunity to arrest offenders in real time and ease the burden on parole officers and provide them more time to dedicate to the supervision of parolees." Phelan noted that a parolee database does not need to be created as it already exists, noting, "it's just a matter of linking databases together."

Three new penal law sections are proposed. Violation of parole in the third degree would be a class A misdemeanor whenever a



parolee violates a condition of their parole. Typical conditions of parole include curfew, maintenance of employment, reporting to a parole officer, attendance of counseling and support services, and drug testing. Violation of parole in the second degree would be a class E felony and would apply whenever a parolee commits a misdemeanor offense. Finally, Violation of parole in the first degree would occur when a parolee commits a felony. The classification of this crime would be one class higher than the felony committed. For any of the proposed crimes, any sentence of incarceration would run consecutively to the sentence for the original

charge for which the subject was on parole.

Chief Phelan said, "Our proposal would also put the prosecution of parole violations into criminal courts, prosecuted by district attorneys rather than in hearings prosecuted by parole officers. Finally, we believe it would give the parole system some credibility and accountability which does not really exist now. Parolees would have a true fear of being arrested for violating parole which would be an incentive not to violate parole."

How to Recognize Signs of Elder Abuse

BY: LEISCHEN STELTER, AMERICAN MILITARY UNIVERSITY

It is estimated that between 1.5 and 2 million older adults are abused every year, however, only 1 in 24 cases are reported. This means that law enforcement is missing or overlooking a lot of cases, said Tim Hardiman, a 23-year veteran of the NYPD. It is imperative that officers know the signs of elder abuse and take the time to investigate suspected cases.

WHAT IS ELDER ABUSE?

Elder abuse is any form of mistreatment that results in harm or loss to an older person, said Joy Solomon, director and managing attorney at The Harry and Jeanette Weinberg Center for Elder Abuse Prevention. Older adults often endure years of abuse and, on average, an older victim suffers for 10 years before coming forward about abuse. This is because the abuse almost always involves a person an elderly person trusts or loves, very similar to cases of domestic violence. In 90 percent of cases, a family member is the abuser.

FORMS OF ELDER ABUSE

Here are some of the more prominent types of abuse:

- Financial exploitation: This is the most common form of elder abuse. Perpetrators often find ways to access an older adult's money and use it without permission. A Metlife



Mature Market Institute study found that \$2.9 billion is stolen from older adults each year in this country as the result of elder abuse. It is also considered exploitative to use an older person's items (like cars, homes, etc.) without permission.

- Physical abuse: Physical abuse can be different for older people than for other demographic groups. For example, it is considered physical abuse for a perpetrator to take away

an older person's cane or walker, rendering them immobile. In other cases, abusers may give an older person excessive medication to keep them drowsy or debilitated.

- Sexual abuse: 18 percent of women who are raped are 60 years of age or older.
- Emotional abuse: Emotional abuse is present in almost every case of abuse and encompasses a wide range of behavior. It can include put-downs, name calling, threats (e.g. abandoning

There is a strong similarity between elder abuse and domestic violence. In both cases, victims are hesitant to press charges or go through with prosecution because they feel dependent on the perpetrator.
- Tim Hardiman, AMU

the victim, putting the victim in a nursing home, physically harming the victim), the silent treatment, treating the victim like a child or even abusing the victim's pet.

- Neglect: Neglect of an older person's basic needs, such as not providing proper hygiene, can be considered abusive if the perpetrator is a paid or court-appointed caregiver, or if a person claims to be a caregiver and then fails to provide care.
- Polyvictimization: Often multiple forms of abuse occur, whether it's multiple incidents or multiple abusers. Similar to other types of crime, once an older person has been abused, they are more likely to be victimized again.

There is a strong similarity between elder abuse and domestic violence. In both cases, victims are hesitant to press charges or go through with prosecution because they feel dependent on the perpetrator, said Hardiman.

TIPS FOR LAW ENFORCEMENT

- When investigating a suspected case of elder abuse, think about what could be used to hurt that person. Do they have bruises or bedsores? Hurting a person may come in different forms. For example, often times older adults have only a few items of value or significance to them—if there are broken items at a scene, ask who they belong to and gauge the potential significance of that item.
- Interview neighbors and people who live near the victim to get a sense of the relationship with the suspected abuser.
- Take a statement immediately from a suspected abuser to lock them into their story.
- Note behavior between the suspect and victim. Comments like: "She's too old" or "She doesn't understand and is confused" could be indicators of an abusive relationship. In cases of abuse, perpetrators often try to convince law enforcement of the senility of older victims in an effort not to let them be heard.
- Note the hygiene and attire of the elderly person. Have they

been cared for properly? Poor hygiene is often a sign of abuse.

- What are their living conditions like? Is there food in the fridge? Does the older person have the appropriate assistive devices (e.g. dentures, hearing aid, glasses)? Are they living in an appropriate location or are they wheelchair bound but living in a fourth-floor walk-up apartment building?

INTERVIEWING AN ELDERLY SUBJECT

When interviewing an elderly person, it is important to take age into consideration. Here are some tips for interviewing an elderly subject:

- First and foremost, make the person feel safe.
- Always interview the older adult alone, no matter what a family member or caregiver tells you. A victim will not speak freely while someone else is present.
- Always assume the victim is credible, even if there is a known or suspected dementia diagnosis. Studies show that older adults with dementia can still accurately recount abuse most of the time. Additionally, an abuser may fabricate cognitive impairment to isolate the victim.
- Clearly identify yourself, using your name and title.
- Make sure the older adult has the assistive devices they need to interact meaningfully (e.g. glasses, hearing aid).
- Speak to the older adult at eye level; do not tower over them.
- Give an older adult time to process the situation.
- Be patient and slow down the interview process.
- Ask one question at a time. Don't ask compound questions.
- Take frequent breaks. Older adults can tire easily.
- Ensure there are no distractions such as a television playing or too many people in the room.
- Provide food and water as needed. Older adults are often chronically dehydrated, which can lead to mental confusion.
- Conduct the interview somewhere where the elderly person feels comfortable, often this means in the home rather than in a police station.
- Pay attention to signs of discomfort. When a victim's body language changes, it is an indicator that a question hit a nerve or they are not telling the truth. If they stop making eye contact, ask for a break and take note that the subject of the question needs to be further investigated.
- Address common fears. Many elderly people are dependent on their caregivers and fear losing them. They also fear being removed from their home and put in a nursing home.
- Provide information about available help and resources.

DON'T FORGET THE RIGHTS OF OLDER ADULTS

Remember that people of all ages have the right to make bad decisions. Older people are adults with decision-making capacity and they have the right to exercise free choice, even if those decisions appear to be harmful, said Solomon. They can refuse services as long as their decision has a sound basis in reality and they fully understand the consequences.

However, if a person's capacity is questionable, it is important for police officers to contact experts to evaluate and determine the person's ability to make sound decisions. Officers can reach out to government adult protective services, medical professionals, geriatric psychiatrists, community agencies, and victim support groups for assistance.

For more information, please visit American Military University's Law Enforcement Resource Guide for Elder Abuse.

Be sure to check out the AMU-NYSACOP partner page at www.amu.apus.edu/partners/le/index.htm. Remember, all officers are eligible for a 5% discount on AMU courses and the scholarship through the Association.

Twenty Years of Sex Offender Registration in New York State

Several Level 1 Offenders Reaching Anniversary Date in 2016

A MESSAGE FROM DCJS EXECUTIVE DEPUTY COMMISSIONER MICHAEL C. GREEN



The 1994 murder of Megan Kanka in New Jersey – a crime committed by a convicted sex offender who lived on the same street as the 7-year-old – prompted a national push for the creation of Sex Offender Registries in every state.

A year later, New York adopted its Sex Offender Registration Act, which created the state's Sex Offender Registry effective January 21, 1996, and gave the state's Division of Criminal Justice Services (DCJS) the responsibility to administer it.

As the 20-year mark since the Registry's creation approaches, (January 21, 2016), Registry staff are working diligently to comply with a provision of the law requiring the removal of Level 1 offenders from the Registry after they have been registered for two decades.

DCJS has notified all arresting agencies, police departments having jurisdiction over offenders' residences and higher education institutions at which offenders either work or live, or they attend, about this requirement. I also wanted to provide some additional background about the law, this requirement and its impact on the Registry, your agencies and the communities you serve.

Level 1 offenders have been deemed by a judge, after a hearing in court, to be at a low risk of re-offense. As a result, the law limits the information available to the public about these offenders: residence location is limited to zip code and other information, such as conviction charge, sentence and a photograph, can be obtained only by calling a toll-free number and providing a specific identifier, such as a birth

date, with the offender's name. The law prohibits information about Level 1 offenders from being posted on the DCJS website.

To comply with the law, these offenders will be removed from the Registry on the day they reach their 20-year registration mark, as opposed to all offenders being removed on the same day. To ensure accuracy, Registry staff will manually review an electronically-generated list of offenders to verify they are eligible for removal.

Under the law, police departments and sheriffs' offices are permitted to notify "entities with vulnerable populations" about registered offenders who live in their jurisdictions. Many of you have opted to use websites or social media to assist you with those efforts. Information about Level 1 offenders who have fulfilled their 20-year registration requirement can no longer be shared via those platforms.

Removal will begin on Jan. 21, 2016, and 1,340 individuals will be removed from the Registry by the end of the year. Also required by law to be removed are offenders whose risk levels have been pending for 20 years, the result of courts not holding risk level hearings. By the end of next year, 19 "pending" offenders also will be removed, with that number decreasing each subsequent year.

As an offender is removed, Registry staff will send a notice to the appropriate arresting agency, police department or sheriff's office having jurisdiction over the offender's residence, and any institution of higher education at which the offender works or lives, or he or she attends.

Law enforcement agencies can access the Sex Offender Registry through the eJusticeNY Integrated Justice Portal (IJPortal) and check the end dates of registration for offenders in your communities.

It is important to note that the statutorily-required removal does not apply to a total of 1,355 Level 1 offenders who have been designated by a court as sexual predators, sexually violent offenders or predicate offenders.

Those Level 1 offenders with a designation – and Level 2 and Level 3 offenders – are required by law to register for life. Keep in mind, however, that the law does allow Level 2 offenders to petition the court to be removed from the Registry after 30 years. Agencies with questions on how to handle sex offender records from those removed from the Registry should consult with their counsel.

All told, the number of offenders due to be removed in 2016 is approximately 3 percent of the nearly 40,000 individuals currently registered. At the same time, new individuals will be required to register, so the Registry will continue its diligent efforts to ensure information is as accurate and complete as possible.

Thank you for the role your agencies play in helping my staff maintain the Registry and the work you do to hold offenders accountable if they don't comply with their obligations under the law.

By working together, we can provide New Yorkers with another source of information to help them keep their families safe. If you have any questions about this statutory requirement or need additional assistance with a matter related to the Registry, please contact the Registry at (518) 417-3385.

Source: NYS DCJS, December 15, 2015

Many of you have opted to use websites or social media to assist you with those efforts. Information about Level 1 offenders who have fulfilled their 20-year registration requirement can no longer be shared via those platforms.

Remembering the Capture of a Serial Killer

A Citizen, His C.B. Radio, and Divine Intervention

BY: MARK A. SPAWN

Curtis Hakes played a pivotal role in the capture of a serial killer back in the 1970's. Working for General Electric at the time, Hakes had an interest in Citizen's Band radios. He posted a note in a swap sheet at GE asking if anyone wanted to trade a Lionel train that he had for a CB radio. Now 63 years old and living in Florida, Hakes remembered, "I traded the train set for a Radio Shack 23 channel CB radio." This would be part of a series of events that would result in the arrest of Lemuel Smith, and the rescue of a young woman he had kidnapped earlier the same day.

Hakes recalled the events in 1977, "I was working third shift on a Friday night. That night I went out to get pizza for me and my wife. On the way back home there was a police car that was pulled into one of the local banks. I turned on my CB radio and heard this announcement of a lady that had been kidnapped – she was a lawyer's secretary and I think she was kidnapped right out of her office at gunpoint." He continued, "I remember them saying she was abducted in her own car. So that night, when I got back home from getting pizza, I prayed for the kidnapped lady."

John Grebert, then a patrol officer with Colonie Police Department, remembered the incident. "Earlier in the day an individual by the name of Lemuel Smith had kidnapped at gunpoint a young woman from an office in Schenectady and had forced her to drive him up to an abandoned home in Saratoga County where he brutally assaulted her." Grebert said that Lemuel Smith had his victim drive the two of them back toward Albany. He also said that when that young woman didn't show up home from work, her parents reported her missing to police. Grebert said, "... one of the things the police did was they gave information on the case to a Citizens Band radio network which began broadcasting information about the missing person and her car."

Hakes said, "I still had this urgency that the Holy Spirit was wanting me. God urged me to go out and look for her. I lived on North Amherst Avenue by the old Toyland on Central Avenue. I went over to the mall and looked behind it and drove through all the back streets and behind the mall, all through there. I went back toward my home and as I was coming back to my driveway, and I heard God in my mind say, you're not done yet, go across Route 5. I went down Route 5 and I pulled to the left and then took the next left on Albany Street – a four way intersection, two way stop. I stopped there, there was nobody around. It was around 11 PM. I sat there and said to myself, 'Well God, which way? What do you want me to do?' Hakes said that he sat at the intersection for 1-2 minutes. He said, "There was no other traffic around me. But then down the road came the yellow Vega and I said, 'yellow Vega!' I pulled behind them and got up close. I verified the license number and then called REACT on CB radio channel 9 and told them what I found." Hakes said that REACT (Radio Emergency Associated Communications Team) was aware of the missing woman because Schenectady police had broadcast it on the CB emergency channel earlier. Hakes said that the REACT operator called Colonie police while he was travelling down Albany Street. He said, "At that point I was backing away so I wouldn't be suspicious. I followed the car all the way to Route 155 and took a left on 155, then followed the car to Route 5, and then to Central Avenue. We ended up going by Colonie Center Mall on Route 5, and past the underpass for I-90.

Hakes continued, "The CB REACT operator told me, 'when you see a police car on your right side back off so they can slide in'. And it happened just about that time by the bridge. We ended up in front of a bowling alley. I pulled behind the police car, and at least 1 or 2 other police cars came from the other direction and blocked off other traffic to block in the car. One of the policemen in the car ahead of me came and asked what was going on. I explained the story that this car was a lady who was abducted and that Schenectady police were looking for it. The officer asked me for my license. He asked me to park in the nearby bowling alley parking lot which I did. I sat there and watched them get him (the suspect) out of the car. They already pulled her (victim) out of the car and took her back to the



Curtis Hakes in the 1970's with his home CB radio gear (Photo: General Electric)

Colonie police car." Hakes said he was grateful that police were there, but was unsure of what would happen next. "My legs were shaking like a leaf – I was overcome", he said. "I feared I might be in trouble. I thought, maybe it was a prank on the CB radio. All of this going through my mind. After a while an officer said to follow him back to the Colonie Police Department. I said, 'but officer you haven't given me back my driver license.' He said 'don't worry, you will get it back when we get to the police station'. I went to the police department where they debriefed me and were asking me questions if I saw them throw anything out the window. I said no. After they finished talking with me I went out and sat in front of the dispatch office. I walked by Lemuel Smith's room – he saw me. The lady who was involved, her door was shut but I could tell that she was in that room, I heard her crying. Her parents had not come yet. The parents came in later and they were in there an hour or two. I stayed there, I didn't know what to do. Pretty soon the three of them, the mother, father and daughter, came out and walked by me as they left the police station building. The mother came back in and gave me a great big hug and said thank you. She said, 'when my daughter went by she pointed you out and said you were the

one who helped the police to stop the car.' They were taking their daughter to the hospital. I waited at the police station awhile longer. I thought something wasn't right, so I went up to the dispatcher and asked if I was free to go. He said 'yes, a long time ago'. I



Lemuel Smith

said, nobody gave me my driver license." The police officer returned Hakes license to him and he then went home. Hakes said, "I got home about 5 AM. My wife didn't know where I had been so I explained to her what was going on." Grebert said, "It's being in the right place at the right time, which, as anyone in law enforcement knows, that's all that makes the difference between someone's life being saved and someone losing their life." Grebert said that while he and his partner felt good about the arrest that night, they did not immediately realize how serious of a criminal they had arrested. Grebert credits Curtis Hakes for saving the young woman's life saying by getting involved. He said, "This woman was probably doomed to a terrible death..."

According to various published reports, Lemuel Smith was convicted in the 1958 abduction and assault of a 25 year old female in Baltimore, Maryland and was sentenced to prison. In May 1969, Smith kidnapped and sexually assaulted a woman. Later the same day he kidnapped and raped a friend of his mother's. In that case, he was also sentenced to prison. In 1976, two persons were murdered at a religious store in Albany, New York. While Albany police were investigating that double homicide, a 24 year old was raped and murdered in her car at Colonie Center Mall. In the summer of 1977, a 30 year old woman was found strangled in Schenectady. A month later, an 18 year old female was kidnapped and raped by Smith. This was the case which would lead Curtis Hakes to go out and search for the missing girl, leading Patrolmen John Grebert and Bill Lockhart to stop the car and take Smith into custody.

In March 1978, Smith confessed to five murders, including one homicide from 20 years earlier. He received sentences of 10-20 years, 25 to life, and 50 to life. Despite being locked up in state prison, his murderous crime spree did not end. In 1981, Smith killed state prison guard Donna Payant. At the time, the crime carried the death penalty but was eventually commuted to another life sentence.

According to the New York State Department of Corrections and Community Supervision, Smith remains incarcerated at Five Points Correctional Facility in Romulus, New York. The video interview of former Colonie police officer John Grebert can be found on the YouTube channel of the New York State Association of Chiefs of Police – search for *Arresting a Serial Killer*.

Condoms Not Evidence

Law Prohibits Consideration as P.C. or Evidence

A recent change to the New York State Criminal Procedure Law (CPL) is aimed at promoting public health by not discouraging safe sex practices by persons engaged in prostitution and other sex trafficking. Section 60.47 of the CPL prohibits police from considering possession of condoms as cause to arrest for certain prostitution and loitering offenses. The law also bars the fact of possession of condoms by a person at any trial, hearing or other prosecution for those same offenses.

Like sterile syringes for injection drug users, the use of condoms by persons involved in sex trafficking is an integral component of a harm reduction strategy. If people fear getting caught with condoms, they may not carry them at all. Some police agencies

have not used the fact of possession of condoms as probable cause, but for those that do, it is important to review policies and procedures to ensure they are in compliance with this law.

You can listen to the podcast from the *APB Podcast* page of the NYSACOP website at www.nychiefs.org, or download for free from the *iTunes Store* – search for "Condoms Not Evidence".



Funded by a grant from the New York State Department of Health AIDS Institute.

Lecomte Retires from Town of Poughkeepsie PD

Captain Paul Lecomte, Jr. recently retired from the Town of Poughkeepsie Police Department after 35 years of service. He joined the department in 1980 where he served as a Patrol Officer, Detective, Patrol Sergeant, Traffic Sergeant, and Patrol Lieutenant. Lecomte served as the Coordinator of the department's Crime Scene Technician Unit since its inception. He is a past member of the Dutchess County Traffic Safety

Board and a past President of the Dutchess County Association of Chiefs of Police. He has been the Commanding Officer of the Detective Division since 2007. He plans on spending more time with his family in retirement.



Capt. Paul Lecomte, Jr.

Commercial Motor Vehicle Training

Awareness Program Provides Tools for Police

When it comes to highway safety, commercial vehicles present challenges to law enforcement. New York State is one of ten states with the highest average of fatal large truck and bus crashes.¹

According to the IACP, “Each year, more than 4,000 people lose their lives in crashes involving at least one large truck or bus, and more than 80,000 people are injured every year in crashes...” involving these vehicles.²

The Commercial Motor Vehicle (CMV) Awareness Training Course was developed as a one-day, data driven enforcement program designed specifically for police officers assigned to routine patrol and other traffic related enforcement assignments. Objectives of the training program include familiarization by officers of the different types of commercial motor vehicles, promote proper enforcement of violations of commercial vehicle laws and regulations, and officer safety considerations around these vehicles. The program was developed in response to both state crash data and national statistics tracked by the Federal Motor Carrier Safety Administration (FMCSA) to address the increase of large truck and bus crashes and fatalities resulting from unsafe driving behaviors. The curriculum was developed and is instructed by certified commercial motor vehicle enforcement officers. The program has been led by the Governor’s Traffic



(GTSC) Assistant Commissioner Chuck DeWeese. “The goal is to increase an officer’s knowledge of commercial motor vehicles and the paperwork associated with the profession so that the officer will have an increased comfort level should the need arise to enforce the Vehicle and Traffic Law for violations which often contribute to motor vehicle crashes.” GTSC has found that the training model used in the CMV training has been tremendously successful by utilizing law enforcement officers with CMV certification, in addition to other CMV experts from non-law enforcement agencies into its instructional staffing. This provides credibility to New York’s program that is in the spotlight at the state and national levels by the FMCSA, NHTSA, and the IACP, and also provides hands-on resources in the classroom at the student’s fingertips. In 2015, GTSC and its Commercial Motor Vehicle Awareness team of instructors were honored to have lead Instructor Officer Robert Copozzi and the Suffolk County Police Department receive the DMV Chair Award in recognition of their outstanding instructional support and resources dedicated to the training program.

The fundamental goal of the training is to provide law enforcement officers with the safety and enforcement information needed to handle crashes and traffic violations involving commercial motor vehicles. The curriculum is subject to an ongoing review through student course evaluations, and takes into consideration questions and exchanges from the classroom. This feedback is continually monitored by the instructional staff for consideration of any needed changes or modifications to address issues from the field.

The CMV program has filled a void in law enforcement training, taking the mystery out of certain aspects of commercial vehicle safety. Lt. Brian Cunningham (Lynbrook PD) said, “Our

It has helped them to become more aware of the laws surrounding commercial motor vehicles and has given them tools that can be put into practical use during patrol.

- Chief Shawn Heubusch

Safety Committee (GTSC) in partnership with the Suffolk County Police Department’s Motor Carrier Safety Section, the New York State Department of Transportation’s Motor Carrier Compliance Bureau, and the New York State Association of Chiefs of Police (NYSACOP).

The goal of this training is not to make law enforcement officers CMV inspectors said Governor’s Traffic Safety Committee

officer attended the course and was so impressed with the course and the professional manner in which it was conducted that we plan on sending additional officers...". Chief Shawn Heubusch (Batavia PD) also lauded the program saying, "The... training being provided by the State has been extremely well received by my officers." Heubusch added, "It has helped them to become more aware of the laws surrounding commercial motor vehicles and has given them tools that can be put into practical use during patrol."

Locations for the regional training programs are determined by data identifying specific counties which are overrepresented in commercial motor vehicle crashes and other factors. The program has gained overwhelming acceptance by the law enforcement community across the state, with registration totals repeatedly exceeding classroom capacities. In addressing this demand, GTSC and its partners have answered the call with eight sponsored individual trainings during the last 16 month period. In total, 380 municipal, county, state, and university law enforcement officers have attended the course. The officers receiving Certificates of Completion for the training represent over 50 individual police departments from approximately 14 counties in New York State.

In 2016, GTSC plans to expand the program in other data-targeted regions of the state. Training announcements are distributed through a variety of networks which include the monthly published NYSACOP eNewsletter, the monthly GTSC Liaison Report posted on the Traffic Programs Page of the NYSACOP website (www.nychiefs.org), DCJS ePages, Regional and County Police Training Academies, and County Traffic Safety Boards. Plans are also under consideration with our National Highway Traffic Safety Administration's Region 2 Headquarters in White Plains, NY to share New York's successful training program with other Region 2 partner states in the months ahead.

¹Commercial Motor Vehicle Traffic Safety Facts; U.S. Dept. of Transportation, Federal Motor Carrier Safety Administration; FARS 2011-2013 Data; Document no. FMCSA-ADO-14-001; Jan. 2015.

²Large Truck and Bus Enforcement Talking Points; U.S. Dept. of Transportation, Federal Motor Carrier Safety Administration; International Association of Chiefs of Police; www.theiacp.org/TrafficSafety



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Nurse-Family Partnership, Afterschool Programs, Conference Invitation

BUDGET DE-BRIEF

Following months of meetings with high-level policymakers, we had hoped to see funding for the four research-based maternal, infant, and early childhood home visiting programs that we support. Unfortunately, two of the programs were flat-funded and the other two were left out of the Executive Budget.

We had also advocated for increased funding for four-year-old Pre-K, in an effort to make that program truly universal. Instead, the Administration proposed \$22M for three-year-old Pre-K. While we are not opposed to this, we would like to see all four-year-olds served in high-quality settings first.

YOUR VOICE NEEDED

New York State continues to ignore the real needs of our youngest children. This year, we are asking you to join us in a much more active way. We will testify at legislative budget hearings, meet with policymakers, send sign-on letters, and submit Op-Eds in an attempt to raise awareness that children do not begin learning in Pre-K... but at or even before birth.

We thank you for your involvement!!

AFTERSCHOOL/SUMMER SURVEY

We received some funding from the national organization, Afterschool Alliance, to survey a handful of members about their experiences with these programs.

A huge shout-out to Syracuse Chief Frank Fowler and Massena Chief Mark LaBrake for taking the time to answer our questions and give us their perspective on the value of high-quality afterschool. We hope to build on this work and will keep you posted as we move forward.

AFTERSCHOOL BUS TOUR

Syracuse Chief Frank L. Fowler also supported Fight Crime: Invest in Kids efforts by speaking about the value of expanded learning time as part of the Afterschool Works: NYS Afterschool

Network's statewide tour of community-school partnerships.

Chief Fowler spoke at H.W. Smith School - a school that has been working closely with National Center for Time and Learning and partners with two community-based organizations

to provide extended learning opportunities for its students. Chief Fowler emphasized that the achievement gap is real and lauded the Syracuse City School District's efforts to provide a real solution linked to closing that gap - expanded learning time and afterschool. Fight Crime: Invest in Kids thanks Chief Fowler!



*Jenn O'Connor
State Director*



Chief Frank Fowler, Syracuse Police Dept.



**DO YOU HAVE
AN INNOVATIVE PROGRAM?**

editor@nychiefs.org

Motor Vehicle Stops

- ✓ Choose a safe location for the stop. (Visible to approaching traffic, Sufficient Roadway/Shoulder Width)
- ✓ Notify communications of the stop. (Location, Plate no., Description, Occupants)
- ✓ Approach on the passenger side. (Generally)



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