

# Law Enforcement Jurisdictional Issues

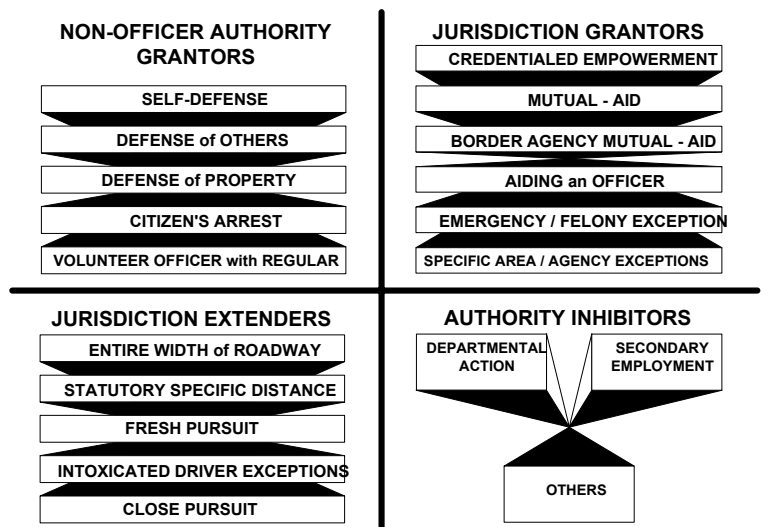
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Simultaneous and/or overlapping jurisdictions, multi-agency task forces, some suspects' increased willingness to flee, modern communications, and the growth of urban and suburban centers has led to an ever-increasing number of incidents involving multi-jurisdictions and/or multiple law enforcement agencies. Investigative and vehicular pursuits crossing numerous jurisdictions and multi-agency critical-incident responses to in-progress crimes are increasingly frequent occurrences.

Additionally, budgetary pressures and the need for maximum utilization of resources has led many administrators to join forces with surrounding communities in the formation of special drug enforcement teams, vehicle theft units, or other task force arrangements. When these types of incidents occur, or when these special "arrangements" are joined, the issues of responsibility, jurisdiction, authority, liability, etc. become very important risk management considerations.

Jurisdiction basically means authority. In other words, within what geographical, or other, area do your law enforcement officers have authority to take action? In addition to primary jurisdiction, authority to act can be created or controlled through numerous (state and federal law defined) mechanisms, including *jurisdiction extenders*, *jurisdiction grantors*, *non-officer authority grantors*, and *authority inhibitors* (see graphic).

These "sources of authority" will be discussed throughout this article. Also, authority can also be categorized based upon type of incident officers are responding to. Some officers have statutorily, or other, limited authority premised upon the type of event giving rise to the officers' response.



**SOURCES of AUTHORITY**

## WHAT ARE THE RISKS?

Many law enforcement agencies have not fully considered the myriad of risk exposures associated with jurisdiction. While jurisdictional issues only arise in about 10% of law enforcement litigations, these exposures should be a major concern to risk managers, government attorneys, and agency operational supervisors. Jurisdiction problems have resulted in catastrophic plaintiff's verdicts, expensive workers' compensation payouts, large overtime outlays, costly equipment replacements, decreased officer morale, negative media attention, and disapproving political repercussions. Consider the following:

Two plainclothes investigators entered a neighboring jurisdiction in search of Mr. Parker. While the officer's knew of the existence of an arrest warrant (for armed robbery), they did not have the warrant with them. The officers went to the home of Betty Parker hoping to interview her and determine the whereabouts of her husband. The officers assumed that Mr. Parker and (Mrs.) Betty Parker did not live together. To the officers' surprise, when they knocked on the door Mr. Parker answered. The bewildered officers did not think they could arrest Mr. Parker because they were outside of their jurisdiction. While in fact they did have legitimate authority by mutual-aid agreement.

The officers tried to contact dispatch by radio for instructions - they were in a communications dead zone. The officers could not call their station because Mrs. Parker's phone had been disconnected.

After talking for a while the officers persuaded Mr. Parker to accompany them back to their jurisdiction to clear up the "misunderstanding." Mr. Parker went into his bedroom, without the officers, to change his clothes. Parker escaped through a bedroom window.

A chase ensued in which Parker stole a car and rear ended the officers' car. The chase eventually ended with one of the officers shooting Parker. Parker was paralyzed.

Parker brought suit under 42 U.S.C. §1983 for several Constitutional rights deprivations. One of Parker's allegations was that the officer's employer was deliberately indifferent to Parker's Constitutional rights by failing to provide adequate training to the officers in the area of jurisdictional arrest authority -- and, it was this deliberate indifference that was the driving force behind Parker's Constitutional rights deprivation. The jury agreed with Parker. The Federal District Court upheld the verdict. The Federal Court of Appeals upheld the appeal. Parker received \$425,046.67.<sup>1</sup>

In managing the risks associated with jurisdiction we are trying to answer the jurisdictional risk exposure questions before they arise, by assuring that your officers, as well you, as their employer, are protected by as many liability shielding mechanisms as possible. In order to do this, you should:

- Train officers in how to make the correct jurisdictional decisions
- Train supervisors to identify jurisdictional problems both before and immediately after an incident
- Eliminate ambiguity and uncertainty in dealing with jurisdictional issues
- Foresee possible jurisdictional issue scenarios - and provide proactive guidance

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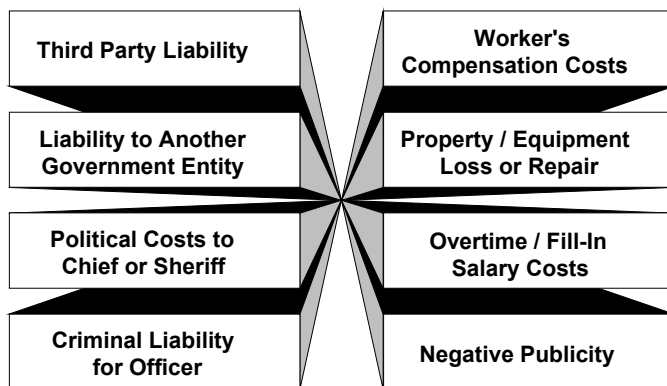
<sup>1</sup> Parker v. District of Columbia, 850 F.2d 708 (D.C. Cir. 1988)

- Minimize the number of litigation defendants by cautiously inhibiting authority
- Minimize defense attorneys' legal fees by avoiding jurisdictional conflicts
- Minimize plaintiffs' jurisdictional arguments - frivolous and otherwise
- Transfer jurisdictional risks when it is appropriate to do so

This article will examine some of the possible jurisdiction dilemmas, and more importantly will provide you with some suggestions on how to reduce your risk.

## JURISDICTION BASICS

### THE RISKS



Jurisdictional issues are usually state law dependent, and most states are different in statutory definitions and in application. Because of these differences it is imperative that you work closely with legal counsel to perform a thorough review of applicable state and federal law (statutory, case law, and state common law) in order to develop a road map from which to chart your course in managing your agencies' jurisdictional risk exposures.

Fundamentally, the risks involved with jurisdictional issues flow from the possible repercussions of NOT having jurisdictional authority. These repercussions can take many forms, as illustrated in the graphic above.

## THE OFFICER'S AUTHORITY TO ACT

The general rule is that an officer only has authority within his/her primary jurisdiction. A city officer usually only has (primary) jurisdiction within the city. A county deputy's authority is normally limited to the county's geographical boundaries. A state officer's authority is limited to the state where the officer is sworn.

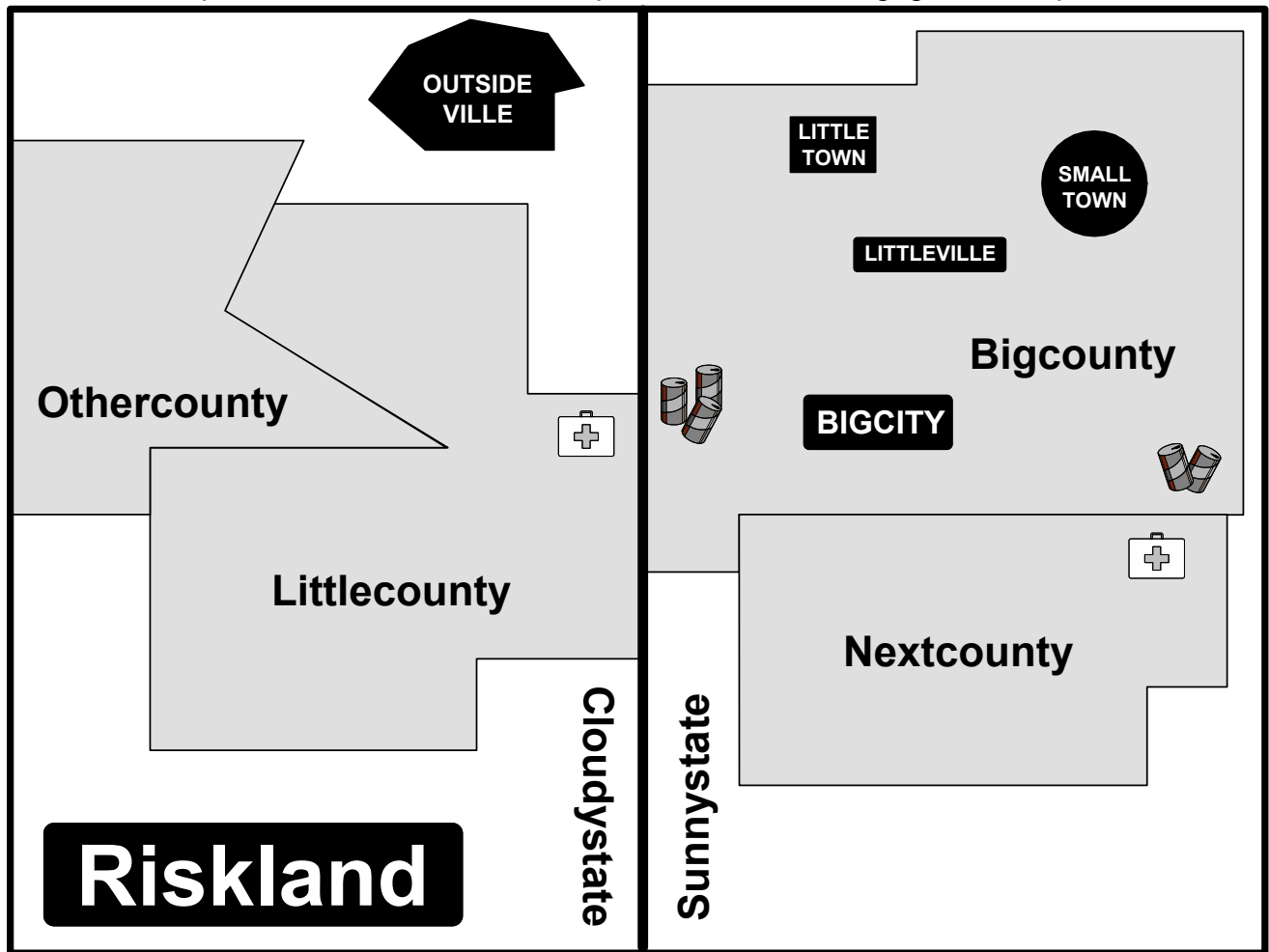
The officer's primary jurisdiction may be "extended" by law. Some common "extenders" (that may or may not apply to your particular jurisdiction) include:

Entire Width of Boundary Roadway - Even though an officer's county only extends to the middle of a border roadway, the officer may enforce the law on the entire width of the roadway, usually the entire roadway right-of-way. This only applies to boundary roadways within the officers' state.

Statutorily Extended Distance - In some states there is statutory authority for an officer to act within a given distance outside of his/her primary county's geographical area.

Fresh Pursuit - If officers gain probable cause to arrest a person within their primary jurisdiction, then the officers may follow/chase the suspect out of their primary jurisdiction and still maintain authority. The fresh pursuit doctrine only applies within the officers' state.

One of the primary problems with "fresh pursuit" is that some officers believe that they need only acquire "reasonable suspicion" of wrongdoing within their jurisdictions in order to stop the person outside of their primary jurisdiction. This is not true. The officers must have more than reasonable suspicion, the officers must have probable cause to engage in fresh pursuit.



USE THIS MAP TO FOLLOW EXAMPLES FROM THE TEXT

Intoxicated Driver - Some states allow an officer to follow an intoxicated driver anywhere within the state to arrest the person. As an example: A Bigcounty deputy is dispatched to a traffic accident scene. Prior to the deputy arriving at the scene the driver of the car was transported by ambulance to a hospital in Nextcounty - outside the deputy's primary jurisdiction. At the scene, the deputy sees several beer cans in the car, and is also told by two witnesses that the driver was drunk. Because of the "intoxicated driver" exception the deputy may follow the ambulance, with the intoxicated driver, into Nextcounty and arrest him.

Beware, the intoxicated driver exception normally only applies within the officers' home state. Thus, if the intoxicated driver had been transported to a hospital in a neighboring state then this exception would not apply. Also, if the crime for which the intoxicated driver is wanted is not a "felony" level crime, then the "close pursuit" doctrine does NOT apply.

Close Pursuit - "Close pursuit" is the same as "fresh pursuit," except here the officer follows/chases the person into another state. In "close pursuit" the officer must have probable cause to believe the suspect has committed a felony.

Most states have adopted the "Uniform Act on Close Pursuit" which standardizes the close pursuit doctrine. One area of major concern to you should be the "extradition" requirements for your state and its' contiguous states. Some officers believe that they can chase an evildoer into the neighboring state, arrest him/her, and then immediately transport the person back to the officers' home state. This action of returning the person to the officers' home state may be a violation of the law of one and/or both states, a kidnapping, a Constitutional rights violation, etc.

Emergency/Felony In Progress Exception - Some states allow "on-duty" officers who are on official business, in uniform, and driving a marked unit (if a vehicle is used) to respond to an emergency and/or a felony in progress. During this event the officers maintain their full authority and liability shielding. Some states allow the same exception, but without the uniform and/or marked squad requirements.

Beware, in some states that have this exception the exception is ONLY valid if the department has a written policy allowing the jurisdiction extension in existence prior to the officers' actions.

## **PRIMARY JURISDICTION PROBLEMS**

As careful as some departments try to be in establishing jurisdictional guidelines, problems sometimes occur. For example, it is not uncommon for officers to find themselves crossing through another jurisdiction in order to reach the scene of a call in the most timely, safe manner. As the officers pass through the neighboring jurisdiction where they do NOT have authority, they witness a problem. Do the officers take some action, ignore the problem, or take some other alternative?

The officers' decision should consider the jurisdictional issues involved. One solution is for the officers to contact an agency that has primary jurisdiction over the geographical area where the problem is occurring and have that agency request the officers' assistance (via mutual-aid request) in dealing with the problem.

Another common jurisdictional problem arises involving the use of reserve, auxiliary, volunteer, or part-time officers. In some states the authority of reserves, auxiliaries, volunteers, and part-time officers may only be derived from the full-time officers with whom the reserves are working. The volunteer who rides with a full-time officer does not have his/her own stand-alone authority. Based upon these principles, consider the following scenarios involving officers from "Bigcity" and "Littleville":

- What if a Bigcity officer and his reserve partner respond to a mutual-aid request from Littleville. Upon arrival at the incident scene in Littleville, outside the full-time officer's primary jurisdiction, the Bigcity reserve is teamed up with a Littleville reserve. The two reserves get into a major incident resulting in severe potential risk exposures. What is the jurisdiction of the Bigcity reserve? Since the Bigcity reserve only derived his authority from the Bigcity full-time officer, then where is the Bigcity reserve's authority (and, hence the Littleville reserve's authority) at the time of the incident?
- What if Bigcity's full-time officer is teamed with the Littleville reserve officer? The Bigcity full-time officer has authority, but does the Littleville reserve?
- Does the term "under the direction of a full-time officer" mean being within radio contact? Is that close enough direction by a full-time officer? Probably not.

## INHIBITING PRIMARY JURISDICTIONAL AUTHORITY

When a governmental employer grants authority to a person, the employer accepts a great, and sometimes costly, responsibility. Because of this relationship it may be wise for manager's to "inhibit" an officer's authority under certain circumstances. Before we explore some of the reasons why, consider that: (1) state law may not allow an agency to inhibit the officer's authority; (2) it may be unsafe, or detrimental to the officer to inhibit his/her authority; or (3) it may be detrimental to the performance of the agency's mission to inhibit the officer's authority.

If an agency does decide to inhibit an officer's authority, then the restrictions should be reduced to written policy. In addition, a specific letter of understanding that clearly spells out the authority restrictions should be filed. The officer's receipt of this letter should be acknowledged by dated signature of the officer whose authority is being inhibited.

An agency might consider inhibiting an officer's authority under the following circumstances:

- If the department has reserve, auxiliary, volunteer, or other officers who are not fully empowered, are not employees, or who do not meet the same employment, training, and competency requirements as the agency's full-time officers.
- Any time an officer is under the influence of a consciousness altering substance (including alcohol), without a written physician's exception. In this case, it should be clear that the officer forfeits all power and authority derived from the governmental employer.
- Depending on the nature of the employment, off-duty employment can create numerous conflicts with the officer's employer as well as create significant risk exposures. These risks must be carefully analyzed and then a competent off-duty employment policy should be developed.<sup>2</sup>

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<sup>2</sup> See, Brave, Michael A., and Peters, John G., Jr., *The Problem of Off-Duty Employment (with sample policy)*, pages 3-8, Law Enforcement Legal Defense Manual, Brief 93-2.

## **CREDENTIALLED EMPOWERMENT: WHAT'S A SHERIFF TO DO?**

Special problems can occur when a Sheriff grants authority and jurisdiction through the issuance of credentials to non-full-time employees of his/her department. This practice is sometimes referred to as "deputizing", and the individuals so empowered are usually dubbed "Special Deputies."

Numerous sheriffs across the country empower individuals with law enforcement authority in this way, even though those empowered are not full-time sheriff's department employees. Sheriffs typically grant these credentials to city officers within the sheriff's county; and sometimes convey similar credentials to reserve, part-time, and auxiliary officers, as well as volunteers and other citizens. While this action is sometimes understandable, it is often not well thought out. Examples of some of the potential problems created by this practice include:

Many sheriffs' departments provide deputy credentials to small town officers within a sheriff's jurisdictions. The sheriffs do this to give the town officers authority while those officers are outside of their towns, but yet within a sheriff's county. This is done primarily to benefit the Sheriff, as the credentials, and thus the authority they convey, are not needed within the officer's primary jurisdiction.

When a town officer carrying deputy credentials becomes involved in an incident where the officer's only source of authority is the sheriff's department issued deputy credentials, then this incident creates substantial risk, particularly for the credential issuing county. There could be some very serious, and possibly costly, questions that the sheriff will have to answer. One question will be: did the sheriff do everything to/for the town officer to assure that the officer met the same hiring, screening, training, retention, etc., standards as full-time deputies of the sheriff's department? The answer will probably be - no.

Some possible solutions to these problems may include:

- Cease the practice of issuing deputy credentials to non-full-time (or other) deputies - or others.
- If the practice is continued, prepare a comprehensive letter outlining the sheriff's department's hiring, training, supervision, etc. requirements. Send this letter to the chief of the town officer to whom the sheriff would like to provide the deputy card. Have the chief verify that the town officer has completed the same levels of hiring, screening, training, supervision, etc. that the sheriff's department's full-time deputies are required to meet.
- Have each special deputy sign a statement acknowledging that the deputy credentials are not in force:
  - when the officer is inside his/her own primary jurisdiction
  - any other time that the officer has jurisdiction within his/her own primary agency (including: fresh pursuit, close pursuit, etc.)
  - when the officer is NOT on duty and in uniform

- when the officer is under the influence of any consciousness-altering substances
- when the officer has violated any (state and/or federal) criminal statutes
- the officer is not in compliance with the sheriff's department's policy/procedure manual

As a part of this signed document, each officer should also verify that (s)he is a certified law enforcement officer within that state, will maintain all requirements of officer certification, will not abuse the authority of the credentials, and if, for whatever reason, the officer becomes decertified, criminally charged/prosecuted, or unable to fulfill the duties of a deputy, then the officer's authority is immediately voided.

Some state statutes require a special deputy's bond whenever deputy credentials are issued to another communities' officer. If a deputy's bond is required, then the existence of the bond should be verified, whether the bond has been secured, and what the expectations are regarding the maintenance and conditions of the bond. In other words, is the bond-requirement law being complied with?

## **JURISDICTION GRANTORS**

Do not confuse jurisdiction grantors with the jurisdiction extenders that were discussed earlier - they are not the same thing. Remember, jurisdiction "extenders" extend the officer's primary jurisdiction, while jurisdiction "grantors" grant the officer the jurisdiction (authority) of the "jurisdiction/authority granting" agency. Consider these examples of problems created through the use of jurisdiction grantors:

*Pursuing Misdemeanor Suspects Across State Line* - An officer from Sunnystate is in pursuit of a misdemeanor traffic suspect. The officer's agency is a signatory to a mutual-aid agreement with the neighboring (adjoining) state's county sheriff's department. Therefore, the officer from Sunnystate has been given (granted – by the granting agency) the same authority as a sheriff's department deputy from the adjoining state. Now, the suspect crosses the state border, with the officer in pursuit. Immediately upon crossing the state border the suspect comes into total compliance with the law in the newly entered state. The officer now tries to stop (seize, detain, or arrest) the suspect. The officer mistakenly believes that (s)he has authority in the new (adjoining) state because of the mutual-aid agreement. This is not true. The officer was "*granted*" the authority of the other state's sheriff's department. Since the other state's sheriff's department deputies had no reasonable suspicion or probable cause to stop (seize) the suspect, then the officer who had been "*granted*" the authority also cannot stop the suspect. This is far different from a jurisdiction "extender."

*Intoxicated Driver (Misdemeanant) Transported Out of State* - Bigcounty in Sunnystate has signed a mutual-aid agreement with Littlecounty in Cloudystate. Because of this agreement officers are under the mistaken belief that they can chase misdemeanor suspects into the other state. This is NOT true. As an example:

Bigcounty Deputy Smith (Sunnystate) responds to a traffic accident scene. Before Deputy Smith arrives, the driver of the car involved in the accident is transported by ambulance to a hospital in Littlecounty (Cloudystate). At the accident scene Deputy



Smith finds several beer cans, and is also told that the driver of the car was highly intoxicated. Deputy Smith now has probable cause to believe that the driver was operating a motor vehicle while under the influence of an intoxicant, a misdemeanor.

Because of the mutual-aid agreement, and because Deputy Smith has been wrongly advised by his department's legal advisor, he travels to Littlecounty (in Cloudystate) and arrests the intoxicated driver at the hospital and transports him against his will back to Bigcounty (in Sunnystate). Deputy Smith has just falsely arrested, kidnapped, assaulted, and battered the driver. Deputy Smith has also just violated the driver's Constitutional rights. Deputy Smith violated the driver's Constitutional rights because of his department's "deliberate indifference" to the driver's Constitutional rights by the department's failing to provide a competent mutual-aid agreement, policy, training, and supervision on the jurisdictional issues. Deputy Smith also did not comply with the state's extradition requirements.

## **MUTUAL-AID AGREEMENTS/REQUESTS: BOTH A PROBLEM AND A SOLUTION**

Mutual-aid is the term normally applied to a law enforcement agency's request for assistance from another law enforcement agency. Normally, the requesting agency is accepting full responsibility for all losses incurred by the agency responding to the mutual-aid request.

When considering your law enforcement agencies' response to mutual-aid requests, several questions should be addressed:

- Has a request actually been made? Should the request be confirmed, and how?
- Are there "risk transfer" documents in place (a written Mutual-Aid Agreement), so as to address issues of responsibility and indemnity prior to any potential loss?
- Are there mutual-aid statutes in your state, and if so, do they apply in your situation?
- Does your insurance carrier or coverage "pool" cover you for mutual-aid related losses?
- Who can request mutual-aid from you, and who in your jurisdiction can request mutual aid from others?

In analyzing each of these questions, and how to address them through procedural guidelines, consider the following examples and comments:

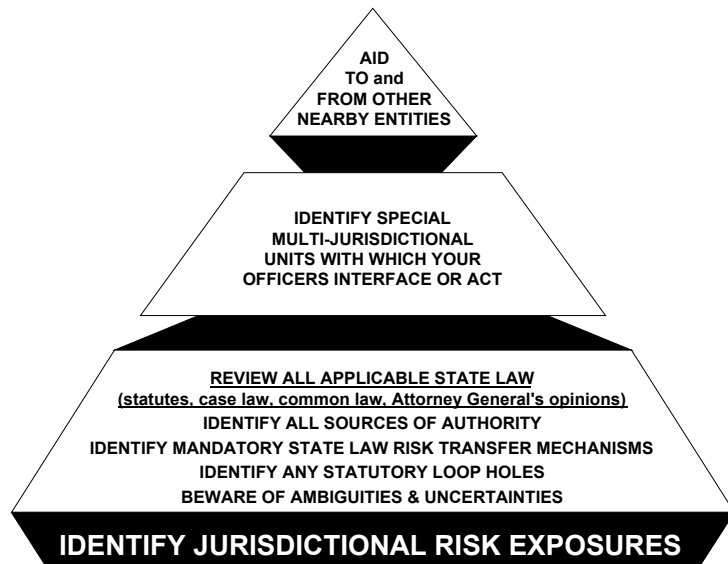
*Confirmation of Mutual-Aid Request* - Example - Smalltown officer overhears an emergency call for service to the County. The call is for a multi-person bar fight (with weapons) one mile outside Smalltown. The County units are 30 minutes out. A Smalltown officer radios a responding deputy and asks, "Would you like us to respond?" The deputy responds, "Go ahead." The Smalltown officers respond to the fight.

During the incident, and before the County deputies arrive, one officer is paralyzed, three citizens are severely injured, and two Smalltown squad cars are destroyed. At this point a

County deputy arrives and asks, "What are you guys doing here?" A Smalltown officer replies, "You told us to come out here - mutual-aid!" The deputy responds, "No, I said 'go ahead' - with your radio traffic!"

In your opinion, was there a "valid" mutual-aid request? Who pays? This will be litigated, at great cost, for years.

Risk Transfer - Concurrent Jurisdiction - Littleville is in Bigcounty. A Littleville officer requests assistance from a Bigcounty deputy. The deputy responds. A major incident evolves with numerous losses. Bigcounty attempts to transfer the risk of loss to Littleville by saying that the request for assistance was a "mutual-aid" request. This attempted risk transfer is usually ineffective because it is against public policy. It is against public policy because if two law enforcement agencies with concurrent jurisdiction try to transfer risks, then the public will suffer in the end.



Do the "Mutual-aid" Statutes Apply? Your state may have mutual-aid statutes, which specify certain conditions and requirements that must be met in mutual-aid situations. If these are not met, serious questions of legality and liability can arise.

In one state the mutual-aid law states that any "law enforcement" agency may request mutual-aid. The same state's law defines a "law enforcement" agency as one that has at least one full-time employee. A "full-time" employee is defined as one that works at least 32 hours per week.

So, what happens when an officer in a department that does NOT have a full-time employee requests mutual-aid? Since the officer does NOT (by state statutory definition) work for a "law enforcement agency," and it is only a "law enforcement agency" that can request mutual-aid, then when a major loss occurs - who pays? The courts will finally decide this issue after a great deal of time, energy, and money have been unnecessarily expended.

In this case, one solution might be to identify any agencies that might be provided mutual aid that do not have a full-time officer, and create an arrangement with another department that has simultaneous jurisdiction over the town. In other words - Littletown is located in Bigcounty. Littletown does not have a full-time officer. Therefore, Littletown is not a "law enforcement agency" (by state statute). Arrange for Bigcounty to provide jurisdictional authority to your officers when they are responding to assist Littletown. This arrangement could, of course, have very negative and costly repercussions for Bigcounty if not properly established.

Is There Mutual-Aid Insurance Coverage? A communities' managers are ultimately concerned

with issues beyond the reduction of risk. There also must assure that activities performed by the agencies' employees are "covered" by the insurance carrier or risk management "pool". Here's one example of how a failure to confirm mutual-aid coverage requirements can lead to catastrophic losses:

A Smalltown officer requests immediate (emergency) mutual-aid assistance from Bigcity. Three Bigcity officers arrive. One Bigcity officer is killed; a Bigcity officer shoots three people; the third Bigcity officer sustains a paralyzing injury; and Bigcity loses two squad cars. In most states, Smalltown would normally be the responsible party for all of the losses - all several million dollars of them! Here, Smalltown's insurance policy specifically states that other agencies responding for mutual-aid ARE covered by insurance. However, the policy also has a clause that specifically states that there will only be other agency mutual-aid insurance coverage if there is a written mutual-aid agreement between the two agencies in place prior to the incident. In this incident, since there was no written policy or agreement then there is no insurance coverage by Smalltown's insurer. Since it was a mutual-aid request, Bigcity's insurer may also attempt to deny coverage. Since there were millions of dollars in losses, Smalltown and Bigcity cannot afford the losses either. The (unnecessary) litigation is on, and it will be incredibly costly - in time, energy, teamwork, and money.

All of this could have been avoided by proactively identifying any foreseeable agency to which mutual-aid assistance may be provided. Establish a written mutual-aid agreement with that agency that will meet statutory and insurance coverage requirements.

*Who Can Request Mutual-Aid Response?* What happens when a county deputy is being severely beaten by several suspects and Smalltown officers know that only a county supervisor can request mutual-aid, but there is no county supervisor available within a 10 minute period to request the mutual aid?

If the county deputy does not have the authority to request mutual-aid, then there is no legitimate mutual-aid request and therefore many of the liability shielding mechanisms are not present. While the responding Smalltown officers may be covered by some form of "aiding an officer" statute, these statutes are normally not as clearly delineated as are mutual-aid statutes.

*Assisting Another Jurisdiction's Officer When the Officer's Agency Refuses to Enter a Mutual-Aid Agreement* - This is a special problem for law enforcement officers, and therefore for agency attorneys and risk managers. Officers are unlikely to deny assistance to any officer that is in trouble, no matter what agency he or she works for. This tendency is less likely to manifest itself if the call for assistance is not an emergency. There are two general types of situations that present themselves:

Immediate Emergency - Do officers outright refuse to assist an officer who's agency is not a signatory to the mutual-aid agreement? Will state law allow us to do this? Is it the "RIGHT" thing to do? Some states have criminal statutes that require a person to respond to an officer's demand for assistance. Knowing that

our officers will probably respond anyway, we have an obligation to manage this likelihood.

General Call Outs (NOT Emergencies) - The problem of responding outside your primary jurisdiction without authority. Example - Smalltown has a dispatch center that covers 3 towns, including Littleville. There is a call in Littleville and dispatch cannot reach a Littleville officer. If a Smalltown officer responds (s)he may have no authority, no liability shielding, and none of the usual criminal and/or civil protections.

## **MULTIPLE-AGENCY RESPONSE TEAMS AND TASK FORCES**

These are special groups comprised of officers from more than one agency. Multiple-agency response teams are usually utilized in times of extreme emergency, mass devastation, disaster, large scale riots, large concerts or sporting events, etc. Other types of multi-agency teams include drug task forces; special critical incident response teams (e.g. S.W.A.T. or C.I.R.T.), vehicle theft teams, organized crime task forces, etc. There are two primary Multi-Agency Response Team concerns, origin of authority and policy control.

*What is the Origin of the Team's Authority?* - Several agencies have banded together to establish an emergency response team. The team is called out by a small town. The incident results in significant loss exposures. Who pays? Who are the defendants going to be?

One way to answer these questions beforehand is to have a written agreement that both provides necessary authority, and removes authority when the officer is outside his/her primary jurisdiction. The idea here is to make sure that the officers have adequate authority, but at the same time assure that authority is limited to one agency.

Some agencies attempt to solve this problem by making each officer of the team a sworn officer of every department in the team. So, one officer may carry sworn authority from five or six jurisdictions. If this authority is not limited, then each of those agencies may find themselves defendants in any lawsuit that may arise.

A better way to derive authority from one agency is to form the team under the auspices of a county or state law enforcement agency. This is the approach taken in many jurisdictions.

In this approach, the members of the team draw authority from an all-encompassing jurisdiction, most typically the state. Thus, members can go anywhere within the state to perform their duties, having the full authority of the state police.

*Which Policies and/or Procedural Guidelines Govern Team Operations?* - Sometimes, this approach creates a problem, in that questions arise as to the policies and procedures that will govern the operation of the special unit. With each member of the team coming from a different agency (each with its own set of policies, procedures, and general orders), and with the group working under the collective authority of the county or state, usually this is addressed by operating under the procedural guidelines of the authorizing agency.

In examining this solution to the policy/procedure question, be certain to address the following:

- Which policies govern? Are there conflicts between the policies of each team member's home agency, and the policies that the team is actually operating under?
- Do the special teams need to develop their own policies?
- Typically the state police provide the authority, and the team commander. State police will normally not allow their officers to work under someone else's authority. Does this create conflict(s) between the state (as the authorizing agency) and local chiefs and sheriffs?
- State agencies usually will not sign mutual-aid agreements. If an agreement is needed, how will this issue be resolved?

## **OTHER AGENCIES ENTERING YOUR JURISDICTION**

There are numerous occasions when another jurisdiction's officers may enter your jurisdiction (where they do not have concurrent primary jurisdiction) and take some type of law enforcement action. During these incidents what action, or non-actions, should your officers take? Some examples of other officers coming into your jurisdiction include:

Pursuits - Another jurisdiction's officers are in pursuit of an evildoer. The pursuit has gotten very hazardous because of speed, reckless driving, attempting ramming, etc. What action, or non-action, do you want your officers to take? Has your direction been reduced to writing (policy)? Has your guidance been explained to your officers (training)? Will your officers' action be monitored (supervision)?

Surveillance/Investigation - Another jurisdiction's officers are in your town conducting a surveillance. Have you been notified? What if those officers violate someone's Constitutional rights while in your town?

Warrant Service - A neighboring jurisdiction's officers call you and request authority to serve a misdemeanor arrest warrant within your county, by 50 feet. Your dispatcher tells them to "go ahead." The warrant is served. A man is shot and killed. An officer takes two rounds in the chest. Who pays? If this was a valid mutual-aid request then YOUR county just bought it. If, on the other hand, the dispatcher did not have authority to request the mutual aid, then there was no valid authority for the warrant serving officers. The problems include numerous potential criminal prosecutions, civil causes of action, departmental administrative sanctions, and others.

Other State's Officer Enters Your Jurisdiction Without Authority - An officer from the neighboring state comes into your state, crossing the border and says that he is going to take evil traffic doer BACK to his state - what do you do? The evil traffic doer vehemently says that he is NOT going back to the other state. Your officer at the scene knows that the neighboring state's officer: (1) has no jurisdiction, (2) had no legitimate right to cross the state line, (3) has falsely arrested and used force upon the arrestee, and (4) will violate the arrestee's rights (including extradition) if the

officer returns the arrestee back to the other state. If you do nothing you are a co-conspirator in an illegal kidnapping as well as a violator of numerous federal and state constitutional rights.

## **A FINAL NOTE ABOUT TRAINING**

Regardless of how your agency manages the other risks discussed in this article, a lack of training can be your downfall. There are two very significant issues as regards to training in this context:

- You have an obligation to train your officers as to the requirements of gaining and maintaining jurisdiction, and in dealing with other individuals that may, or may not, have authority to act as law enforcement officers in your jurisdiction.
- You have an obligation to learn all that you can about the training practices of the agencies that you assist, or are assisted by. For example, consider a situation where you require all of your officers to be up to date - but the next town from which your officers routinely get backup does not do any training (updates or otherwise). You know that the town that backs up your officers routinely doesn't do any training and doesn't have any policies. Have you been put on notice? Do you have prior knowledge of the problem? Are you "deliberately indifferent" to any potential harm that may be created by this situation?

As with most areas of law enforcement operations, training is often the key to good risk reduction.

## **CONCLUSION**

Law enforcement jurisdictional issues can create many risk exposures. Although many of these risks cannot be eliminated, they can be managed through in-depth, proactive thought and action. To start the jurisdictional management process, consider:

- Jurisdictional issues are normally state law specific. Every state is different and you must have a thorough analysis of your state's laws. Because of these variances, not everything covered in this article will apply to your law enforcement agency.
- You must manage the jurisdictional issues fairly. Officers must be protected and given the latitude to effectively do their jobs. Risk should not be unfairly transferred.

As a law enforcement manager, it is possible to perform the analysis, identify the risks, manage those risk exposures proactively by developing policies, training and supervision mechanisms, and by eliminating and/or transferring risk whenever it is reasonable to do so. Once you have done so, you will have acted to control one of the most troublesome, yet misunderstood, aspects of law enforcement operations.



## DEFINITIONS

*(Note: Jurisdictional definitions are normally defined by state statute. The definitions that follow may NOT apply to your state.)*

**Authority** -The legal empowerment to act, in this case as a "law enforcement officer."

**Authority Inhibitor** - A condition or limitation placed upon an officer's ability to act by the authority granting entity.

**Deputized** - The conveying of authority to act upon another by a Sheriff or Town Marshall.

**Fresh Pursuit** - A situation where an officer acquires probable cause for an arrest within his/her primary jurisdiction. The officer then follows the arrestable person outside the officer's primary jurisdiction, but remains within the officer's state.

**Close Pursuit** - Same as "Fresh Pursuit," but, here the officer follows the arrestable person OUT of the officer's state. Usually the officer must have probable cause for a "felony" arrest. This doctrine can be found in the "Uniform Act on Close Pursuit," which has been adopted by most states.

**Hot Pursuit** - A term normally applied to an officer's action of chasing a person into a residence. This term was developed because of the greater protection afforded a residence by the 4th Amendment to the United States Constitution.

**Primary Jurisdiction** -The city, county, etc., where an individual is sworn as a law enforcement officer and from which (s)he receives authority. Usually the entity that employs the officer. The primary jurisdiction is the area within which the officer has authority without other jurisdiction extenders, grantors, etc. providing a greater degree of authority.

**Jurisdiction Extender** - Special conditions that allow an officer to retain authority to act beyond his/her normal jurisdictional boundaries. "Fresh pursuit" and "close pursuit" are examples of jurisdiction extenders.

**Jurisdiction Grantor** - A condition, law, or arrangement that allows an officer to have special authority to act while in a jurisdiction other than his/her own, and is not a "jurisdiction extender." Examples of "jurisdiction grantors" include mutual aid, aiding an officer, border county (to the state) mutual aid, etc.

**Probable Cause (PC)** - is that standard/degree of proof required under the Fourth Amendment to the United States Constitution to arrest a person. "Probable cause" is a fair probability that a crime has been committed and the person about to be arrested committed it.

"Reasonable grounds for belief that a person should be arrested or searched. Probable cause exists where the facts and circumstances would warrant a person of reasonable caution to believe that an offense was or is being committed. [Citation omitted.] Probable cause is the existence of circumstances which would lead a reasonably prudent [person] to believe in [the] guilt of [the] arrested party; mere suspicion or belief, unsupported by facts or circumstances, is insufficient. [Citation omitted.] ... Probable cause justifying officer's arrest without warrant has been defined as a situation where an officer has more evidence favoring suspicion that a person is guilty of crime than evidence against such suspicion, but there is some room for doubt. {Citation omitted.] ..." Black's Law Dictionary, 6th edition, page 1201, under heading "Probable cause."

**Reasonable (Articulable) Suspicion (RAS)** - is that Fourth Amendment (to the United States Constitution) standard/degree of care required to briefly detain a person and/or frisk a person, vehicle, etc.

Reasonable suspicion refers to a Terry v. Ohio [citation omitted] type Fourth Amendment seizure (temporary detention) of a free citizen. "Reasonable suspicion which will justify [an] officer in stopping [a] defendant in [a] public place is [that] quantum of knowledge sufficient to induce [an] ordinarily prudent and cautious man under circumstances to believe criminal activity is at hand." Black's Law Dictionary, 6th edition, page 1266, under heading "Reasonable suspicion."