



Safety Shorts

General Safety, Highway, & Law Enforcement

November 2022 - Volume 10, Number 11

November is National Gratitude Month

November is National Gratitude Month, a time to celebrate and give thanks. Reflecting on that for which we are grateful, is an important way for people to feel satisfaction with themselves and current state, rather than dissatisfaction with what they don't have.

Ways to Show Gratitude

Showing gratitude can make you feel better about your life, manage mental health problems like depression and anxiety, improve self-esteem and sleep, lower your stress and more. Sounds great. Some of the ways to do this are:

1. Say something nice to someone—a compliment, a word of thanks or recognition.
2. Write your gratitude as a letter or in a notebook/journal.
3. Show your gratitude with a gift.
4. Invite someone to spend time with you.

The above is from Canvas Health – <https://www.canvashealth.org/national-gratitude-month/>

HIGHWAY DEPARTMENT

By K C Pawling, Road Safety and Loss Prevention Specialist

It Takes Two

After a successful completion of the NIRMA Self-Defense Conference, I am finding that we have interest and questions regarding a presentation that Todd Duncan, the Law Enforcement and Safety Specialist, and I presented at the conference, "It Takes Two to Effectively Manage Risks from Auto Accidents on County Roadways". Some folks could not make it to our session, so I wanted to just highlight some of the information that we presented. This article was intended to go along with the Safety Shorts article that Todd has written. So please take the time and read his article if you have not.

When you as a road department are notified by the sheriff's office, or if you learn of an accident by other means, you need to conduct your own accident review, we do not want to rely solely on the law enforcement report. When conducting your review, you are going to be looking at and documenting many aspects that law enforcement probably will not be documenting. The documentation will include reports, sketches, and photos. I would also like to stress that we do not want to discuss the accident with anyone other than investigating law enforcement, the county attorney, county management and NIRMA.

When you head out to do your review, make sure that you have some report forms that will help guide you through all the items that you need to collect information on. You will want to focus on roadway geometrics, sight distance (usually at 3.5 feet height) and visibility of intersecting traffic if it is a multi-vehicle accident. Make sure to note and photograph any hills, weeds, trees, and brush at the crash scene. I also want you to take pictures of things that you would not believe

It Takes Two - *continued*

contributed to the accident, for example, height of grass in the right of way, any objects that are in the right of way, and even farm equipment that could be sitting on the edge of a field. While you are looking at line-of-sight concerns, you should take pictures at the line of eye height of vehicles involved in the crash, either the typical 3.5 feet standard passenger vehicle height, or the height of a different type of vehicle.

Signs are another item that you will be documenting. Pictures should be taken at the time of arrival to the scene. This ensures that the presence of the signs has been documented. Pictures need to be taken of all the damaged signs also, we want to document everything, even downed signs. Were the signs damaged due to the accident or vandalism? Again, document all of this with photos. Measurements should also be taken of sign height and location of installation. Is the sight of any signs obscured by any trees and brush that hasn't been managed? Take more pictures.

Pictures of the road surface should be taken. Include any skid marks, noting the length of skid marks, using the length noted on the law enforcement's report. Also note the condition of the road, any potholes, ruts, washboards? Is the road muddy, or any other conditions of the road that may be a result of any recent weather events?

We also ask you to video the scene while driving through. If it involves a location at an intersection, get a video from all four approaching directions. This gives us a "real time" view of the scene. You may just pick something up in the video that you would not otherwise see.

When you have the accident review completed, you need to send NIRMA the review, the past 6 months of grading and signing records, and a copy of the law enforcement accident report. Remember to include all the photos and videos that you have taken. The efficacy of NIRMA's help is directly related to the information you produce and provide us.

If this seems like a lot, it is. It can be hard to remember all that we ask you to do to **help us - help you**. We do have accident review forms available on the NIRMA website, and I can help you find those if you would like. I am also available to assist you with any aspect of the accident review process. Just let me know what I can do to help you. I also want you to remember to ask for accident reports from law enforcement if you are not automatically receiving them.

Any deficiencies, signs, or road, that are found during the review process need to be corrected immediately. This is not something you want to do days after the fact. Also document the corrections that have been made and when they are completed.

If you have any questions on any of the above information, or want to request training, please contact me at 402-310-4417 (cell) or email kcpawling@nirma.info.

LAW ENFORCEMENT AND CORRECTIONS

Todd Duncan, Law Enforcement and Safety Specialist

A Collaborative Approach To Managing Risks When Investigating Serious Motor Vehicle Crashes

When a motor vehicle crash occurs on a county road or involves a county driver, there is a possibility someone involved will allege the county is at fault. The purpose of this Safety Short is to discuss ways that law enforcement can reduce this risk by partnering with their local roads department when investigating serious crashes on county roads. While a partnership between sheriff's deputies and roads department personnel may seem unusual, both have a shared responsibility of ensuring the safety of county roads while reducing liability and risk to the county.

A simple Google search highlights the significant liability that exists in seemingly routine events. Last month, the Georgia Department of Transportation (GDOT) settled a \$1.4 million wrongful death suit in a road defect case where a motorist died after the vehicle they were riding in lost control and crashed due to a dangerously low road shoulder that the GDOT failed to repair. In another recent case, an Illinois county settled a \$3 million wrongful death suit after a motorist was killed when their vehicle was struck in an intersection where a stop sign was missing. The downed stop sign had been reported earlier, but the dispatcher taking the call was distracted and failed to send a deputy to investigate.

So how can law enforcement help reduce liability to the county when investigating serious motor vehicle crashes on county roads? First, look beyond driver error and law violations. While these are usually the main causes of motor vehicle crashes, it is essential that deputies also consider and document key roadway factors. Things such as lighting, road surface defects, traffic control devices, visual obstructions, and other roadway factors are often called into question by personal injury attorneys representing motorists who are seriously injured or killed in crashes.

As with any investigation, documentation is critical. Thoroughly documenting the presence or absence of roadway hazards will assist the county in defending future claims alleging the crash was caused by roadway defects. When it comes to documentation, a picture is worth a thousand words. Clear photos and/or video capturing the entire scene; drivers' point of view; presence or absence of roadway hazards or defects; and other important items can be extremely helpful when defending a claim against the county later.

It is also important that law enforcement notify NIRMA and their roads department as soon as possible when a crash involving serious injury or death occurs on a county road or when there is reason to believe the county may be accused of fault. There are multiple benefits of law enforcement partnering with roads in these situations. Roads department personnel offer a unique perspective when it comes to evaluating and documenting roadway factors post-crash including road and sign conditions. They are also subject matter experts on the Manual on Uniform Traffic Control Devices (MUTCD) which defines national standards for installing and maintaining traffic control devices on all public roads and highways. Lastly, roads personnel can assist in identifying and correcting roadway defects or hazards that may be present.

Releasing the scene after the investigation is complete can also be an area of significant liability, so it is important that law enforcement ensures that roadway hazards have been properly addressed before opening the road to traffic. Take *Kimminau v. City of Hastings*, 291 Neb. 133 (2015), for example. In *Kimminau*, a trooper stopped a truck that was carrying a load of corn mash that had spilled on the roadway. Various first responders assisted in clearing the mash

A Collaborative Approach To Managing Risks When Investigating Serious Motor Vehicle Crashes - *continued*

from the road and onto the shoulder. The following day, Kimminau was driving through the area occurred, lost control of her vehicle, that the crash was caused by the corn mash that had spilled the previous day. The Nebraska Supreme Court held that the county, "Failed to monitor the cleanup job by other agencies and ensure the shoulder of the road was clear of mash, such that the problem reoccurred." This case serves as a good reminder to ensure that potential hazards are properly addressed before releasing scene and reopening the road to traffic. The key takeaways regarding reducing risk and liability associated with serious crashes on county roads are:

- Recognize the risk and liability.
- Look beyond driver error and remember to evaluate and document key roadway factors part of the crash investigation.
- Ensure all roadway hazards are addressed as soon as reasonably possible and in all cases before re-opening the roadway following crash investigations.
- Promptly notify NIRMA and your roads department as soon as possible when a crash involving serious injury or death occurs on a county road or when there is reason to believe the county may be accused of fault.
- NIRMA should also be notified of any adverse incident involving your office that is significant enough to make the news such as an in-custody death or allegation of misconduct by an on-duty staff member as these incidents may also give rise to a claim against the county.
- Share information as appropriate to facilitate NIRMA and roads department activities.

Please contact Todd at 531-510-7446 (cell) or tduncan@nirma.info if you have any questions.

GENERAL SAFETY

By Chad Engle, Loss Prevention and Safety Specialist

What Does the New Year Mean to Employers of CDL Holders?

Good news highway department superintendents and anyone else that oversees conducting drug and alcohol queries on newly hired CDL holders, January 6th, 2023, is the day you've been waiting for. Remember back in 2014 when the Department of Transportation proposed the Clearinghouse? It was intended to be a database that contains CDL holders' drug and alcohol program violation information and would eventually make it easier to hire a new CDL holder by replacing the practice of contacting their previous employers and requesting the information. That day is almost here.

Starting January 6th, 2023, there will be three years of drug and alcohol violation data stored in the Clearinghouse, so prospective employers will no longer have to conduct manual queries with previous employers, they can simply conduct a pre-employment query on the Clearinghouse and comply with § 391.23(e).

Annual query requirements have not changed. Employers of CDL drivers are still required to conduct a query in the Clearinghouse at least once a year for each CDL driver they employ. This requirement applies on a rolling 12-month basis. Employers must obtain a general consent from CDL drivers before conducting limited queries in the Clearinghouse. Sample limited query consent forms are available here: [SAMPLE LIMITED CONSENT FORM](#). If you are unsure whether you are up to date on your annual Clearinghouse queries you can log in and visit your query history page and see if you are due.

Property/Building Inspection Checklist Update

NIRMA has updated our Property/Building Inspection Checklist to include items that will help prevent or reduce the severity of common property damage claims caused by fire, water, wind/hail as well as premises liability issues. The updated items on the checklist were developed with the help of Ken Botes, a consulting engineer with Marsh Advisory, Property Risk Consulting.

Best Safety Practice for Members number 8 is *Inspect all workplace sites on a regular basis*, I would recommend that your next workplace inspection is done using NIRMA's new checklist. It will help you protect your county or agency from potential hazards that lead to common property claims.

The checklist can be found on NIRMA's website here: [Property/Building Inspection Checklist](#)

To date NIRMA has provided property inspection training in multiple member counties across the state. I would like to hold at least one more property inspection training session. If you are interested in hosting a training session in the Northeast/Northcentral area, please give me a call at 1.800.642.6671 or contact me via email at chad@nirma.info.