

**The Bill Blackwood
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**A Discussion of the Benefits of Law Enforcement Agencies
Issuing Firearms to Personnel**

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ABSTRACT

As law enforcement deals more and more with budgetary issues, ideas on cost reduction become more relevant to departments. One area seldom addressed in midsized and smaller departments is the standardized issuance of weapons to personnel. Traditionally, these departments have allowed or required officers to provide their own weapons for use while on duty. By evaluating the pros and cons of requiring officers to provide their own firearms, the reader will understand why it is in the best interest (financially, from the standpoint of liability, etc.) of departments to pursue a policy of providing firearms to their employees. Research from relevant authors, recent articles from newspapers and journals, case law, and the experiences of law enforcement leaders from across the country have been used to illustrate the benefits of a standardized weapon issue program. These sources clearly indicated the cost savings in equipment, training, and liability, as well as the enhanced safety inherent in this type of program. Even when countered with common arguments to implementing a standardized weapon issue program, the benefits outweigh the perceived barriers.

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INTRODUCTION

Law enforcement organizations are continually being faced with budget constraints and reduced funds to perform their duties. With these cutbacks, it is essential that officers are using the most effective tools to perform their jobs and departments are getting the most return on their investments. In many small to mid-sized departments, it is customary for officers to provide their own firearms. In this scenario, officers are responsible for the procurement of a duty weapon and often the ammunition for both practice and duty use. However, departments do not factor in whether requiring or allowing officers to purchase these items are the best practice when the factors of liability, training dollars, and officer safety are considered.

By evaluating whether officers should provide their own firearms, the reader will understand why departments should pursue a policy of providing firearms to their employees. This position can be summed up in the following quote: "Having the same weapon and caliber would enhance officer safety and reduce department liability if deadly force had to be employed" (Place, 2005, p. 18). It is the intent of this document to persuade the reader that modern police departments are best served by issuing weapons to their personnel in lieu of having officers purchase weapons on their own. Specific benefits regarding cost, inventory reduction, supply chain streamlining, and liability reduction will be discussed further in this document. Once presented, these arguments make a compelling case to adopt the recommendation of standardized weapon issue.

POSITION

First, issuing firearms to officers will enhance standardization, thus enhancing the ability of the department to operate efficiently. Standardization within a department will allow interchangeability in equipment and ammunition between officers. This is one of the asserted best practices as set forth in a current National Criminal Justice Reference Service (NCRJS) report. This report summarized recommendations regarding Personal Protection Equipment (PPE) from a series of discussions involving individuals with experience in responding to acts of terrorism. One chapter in the report specifically addresses standardization of equipment (Jackson et al., 2002). This idea can be expanded to include surrounding agencies. Standardization in firearms, equipment, and ammunition could enhance the effectiveness of not only a city or county, but also an entire region, by allowing resources to be easily obtained in the event of a large-scale incident. This is a concept currently employed by the military here in the U.S. and other countries. This concept enhances the training and interchangeability when utilizing weapons systems between countries. In addition to benefitting in the event of large scale incident, standardization will allow one or a few officers to become subject matter experts in inspecting, maintaining, and repairing issued firearms.

Next, issuing firearms to officers could reduce costs for individual officers and, in the long run, departments. This is indicated in the following quote: “also, departments that maintain, repair, and keep an inventory of parts for a particular model instead of several, perhaps incompatible ones, benefit from lower costs” (Kaestle & Buehler, 2005, p. 7). It is obvious that the initial cost to the officer would be reduced. If a weapon is supplied to an officer by an agency, the officer will not incur the cost of purchasing a tool

essential to the profession. It is conceivable that once a department has adopted a policy by which it issues standardized weapons, the idea could be expanded to the recruits of the department. Recruits who are sponsored by a department to attend an academy could be issued a firearm and trained in its use by the academy, reducing training time and cost to the sponsoring department. To help further reduce department expenditures and revisit the material cost issue by utilizing the basis of standardization noted earlier, departments can streamline their inventory in accessories such as magazine pouches, holsters, and ammunition, and use bulk purchasing to purchase equipment at a discount and equip officers at a level not likely possible on their own. This was recently illustrated by the Bayonne, Illinois police department with the purchase of department-issued duty weapons. Chief Robert Kubert expressed his pleasure in being able to provide his officers with weapons that incorporated the most up-to-date features such as night sights and lights (Sullivan, 2010). The article also stated that the cost of upgrading the department's inventory was reduced by re-selling the department's old weapons to the company from which the new weapons are being purchased (Sullivan, 2010).

An area continually under scrutiny in law enforcement is the idea of liability. Both direct liability and vicarious liability can be impacted by departments issuing firearms. This liability will be mitigated by departments being able to monitor and identify modifications to the weapons. Anecdotally, there has always been the story of the officer who is called before the court and asked to explain any modifications to his weapon. Traditionally, this story has the officer accounting for a non-factory specification, light-trigger pull. An actual incident, in which the condition of a weapon in

which the function of its trigger had been modified from factory specification, was reported in 2009 by *The Salt Lake Tribune*. In this incident, a student was fatally shot with a live weapon used as a prop in a play. The subsequent investigation revealed the weapon had been modified with a “hair trigger”. The condition of the weapon, namely its modification, was deemed as a contributing factor in the suit (McCann, 2009).

Though this example is not specific to a law enforcement setting, it is a precedent that could be used in subsequent civil cases. This brings to the front the duty of departments to ensure the weapons officers carry are maintained and secured, so they do not cause harm to the public.

In the realm of law enforcement, there is one specific case that does set the precedent for accountability of weapons and how officers utilize them. If better control and accountability of an officer’s weapon had been exercised, likely the department would not have been found to contribute to the death of a juvenile in the case of *Marusa v. District of Columbia* (1973). This case determined that The District of Columbia had a duty to minimize the risk of injury to the public when requiring officers to carry weapons whether in or out of uniform. The decision carried this argument further and determined it would not be unreasonable for a judge or jury to determine misuse was the result of government’s negligence in hiring, training, and supervising personnel. In essence, the case indicated that a department requiring or encouraging an officer to carry a weapon on or off duty is accepting the liability issues that may arise from subsequent harm as a result of the use of the weapon.

This idea was put to the test in the landmark case, *Gaffney v. The City of Chicago* (1998). In this case, a young man was killed by the son of an officer, using the

officer's duty weapon. A suit was filed against the officer alleging negligent storage of the weapon and attempted to also hold the city liable. The court determined the officer was required to store the gun at his home, which was incidental to his employment. In addition, the court heard testimony that the officer kept the gun at home in case an emergency arose that required his armed response. These facts demonstrated to the court that the officer was storing his weapon at home in the interest of serving the city. All this led to the determination the officer was acting in the interest of the city, and the city was also held liable (*Gaffney v. The City of Chicago*, 1998). Had effective measures of storage, control, and knowledge of modification been employed in the mentioned cases, there would likely be much less liability on the parts of these departments. Individuals in smaller agencies may purchase "discount trigger jobs," buy cheap repair or replacement parts at gun shows, and improperly store weapons under the seat of their car or other readily accessible area.

Aside from the weapons themselves, many agencies require officers to supply their own duty and practice ammunition. If there is no control over the type and manufacture of ammunition, departments may be allowing their officers to use "hot" or "souped up" rounds that may over penetrate or perform outside the specifications of the weapons and best standards of the profession. By conforming to Sporting Arms and Ammunition Manufacturers Institute (SAMMI) standards and standardizing the caliber and ammunition used, there is less of a chance the department will be held liable for the performance of ammunition utilized by officers. This is illustrated by a comment made by Bayonne Police Chief Robert Kubert while promoting the purchase of new department issued weapons for his department. In his comment, Chief Kubert indicated

that he based his decision on the performance characteristics of the round fired by the Glock model 21FS. A major factor was the design of the rounds not to pass through targets and hit innocent bystanders (Sullivan, 2010).

As was mentioned in *Marusa v. District of Columbia* (1973), departments have a duty to ensure their officers are well trained and supervised. It can also follow that departments have a duty to ensure their equipment is regularly maintained and inspected. Such inspections fall under the area of supervision in the realm of liability. By issuing weapons to officers and continually ensuring the weapons are maintained and having ready replacements available, departments can increase the safety of the officers and again reduce their direct liability, i.e. inadvertent injury to an officer by a poorly or improperly maintained weapon. Several instances exist in which the issuance of weapons by departments helped identify performance issues in weapons that likely would not have arisen had not a large lot of weapons not been purchased. Haddon Heights identified that there were ejection failures and stovepipe issues with the weapons they purchased (as cited in Speir, 2007). In this incident, the purchase of weapons by the department enhanced the safety of officers by identifying potential problems with specific lots of weapons which allowed investigators to identify the cause of an officer's injury in a shooting incident (Speir, 2007). Also, in "Milwaukee Police Department finds problems with guns," it was learned that one bullet casing had stove piped, or jammed, in an officer's weapon ("Milwaukee Police Department Finds Problems With Guns," 2009). The article goes on to say Glock Inc. replaced 2,700 pistol magazines at no cost to the Milwaukee Police Department ("Milwaukee Police Department Finds Problems With Guns," 2009). Through these examples, it is clear

that officer safety will be enhanced in departments that choose to supply weapons to their officers by ensuring weapons and related equipment is compatible, thoroughly tested, and properly maintained.

Finally, officer safety can be further enhanced by departments recognizing and addressing the physical differences between officers. It is not uncommon for officers to purchase firearms that are not easily handled by officers of all statures and physical types or suited to a particular type of duty. Members of the profession have often seen officers purchase a firearm that is popular at the time of the purchase, only to find it is not suited to their shooting ability or body type. Examples include the .44 magnums of the 1970's that are too big to handle or even the .38's of the 1930's which are underpowered for most circumstances. Issuing firearms will also ensure officers with physical limitations are properly equipped, thereby enhancing officer safety. Females and those with smaller hands can be custom fit. In an article detailing the purchase of issue firearms by The Maryland State Police, the following statement was made that illustrates this point. The selected firearm "...Provides a single solution to a pistol fit in a diverse agency setting" and it "Allows each officer to customize his pistol based upon hand size and left right preference with interchangeable back straps and grips, reversible and interchangeable magazine releases, and slide catches" ("Maryland State Police Officers to Carry," 2008, para. 4).

It is likely that officers left to their own devices when purchasing weapons will not do the research to find a system that is best suited to their physical needs. Often, the cost is the determining factor, and even if it is not, it may be that they are not aware of all options available to them. Societal pressures may cause them to choose what is

popular at the time and not make a clear choice to equip themselves with the best possible system. By the same token, officers will often purchase a weapon that conforms to an approved series of calibers. This could raise the issue of the officer not being able to effectively handle their chosen weapon. Those that have trouble handling a specific caliber may be issued a smaller caliber weapon to enhance marksmanship. This is supported by an article that states, if officers have problems “managing the recoil of a .40 or .357 automatic, a department could issue them a 9 millimeter in a similar or same size handgun that they may feel more comfortable with; hopefully, better marksmanship skills would result” (Kaestle & Buehler, 2005, p. 7).

COUNTER POSITION

Opposition to the issuance of weapons by law enforcement agencies usually employs the exact opposite arguments against standard issue of firearms, as have been presented as for the standard issue of firearms. Often the same evidence and logic is used to support the con side of the discussion. Generally, the con side presents three areas of argument in the debate.

One of the most common arguments presented is from individual officers, as opposed to a department or organization. This argument insists that issuing firearms to officers will negatively affect the individual choice of officers. Interestingly, one of the main arguments made is one of the strongest arguments for the standardization and issue of weapons. Borelli (2008) summarized this argument: One weapon fits all does not always work for everyone. It is illustrated in the following post comment by Patrol: “why should the 113 lb female officer carry the same large, bulky Glock that the 6’5” 300

lb gorilla carries, when it's obviously too big for her hands?" (as cited in Borelli, 2008, Responses section, para. 3).

To address the "one size fits all doesn't work" argument, it is suggested the argument does not specifically mean the department only purchase one specific weapon, but perhaps a series of standardized weapons from a manufacturer that offers different models with the same general features (Glock is an example). There are significant benefits to the department as a whole as is indicated that "There are however some advantages to the "one size fits all" approach. Service and practice ammo can be purchased easier since every officer is carrying the same weapon" (Koehne, 2006, p. 3). Not only can a weapon be chosen to fit individual officers as was stated earlier in this document, there is the re-enforced benefit of eventual cost reduction to departments that supplying ammunition.

In addition to the resistance of "pigeon holing" that most officers resent, there is the fundamental American belief in freedom of choice, be it that their choice of elected leader or their choice of sidearm should not be infringed upon. For some, it is a matter of pride; for others, it is a matter of familiarity. This could be based upon their familiarity with weapons used in military service or other departments. This is the logic behind the following quote: "If the officer is more proficient with a specific approved off-duty firearm, why shouldn't (s)he be able to carry it on duty?" (Borelli, 2008, Introduction, para.6).

It can be argued that a broad variety of weapons will cause confusion and possible lack of technical skills if an officer unfamiliar with another's weapon is forced to use it. This is illustrated in the following quote: "If all officers are not familiar or aware of how other weapons operate, it can create a problem if they would need to use a

weapon different from their own” (Koehne, 2006, p. 3). By standardizing weapons and issuing them to officers, this factor is removed. The expected result would be an increase in proficiency with weapons and knowledge to improve the safety of officers.

Also offered as an objection is the reluctance to allow others who the patrol officer may consider as less knowledgeable to make what is perceived as a life or death decision for them. This argument is based on the often-naive argument that no one knows as much as is needed to make this type of informed decision. These opponents argue that using the idea of “one size fits all” may actually inadvertently subject officers to a firearm choice that will be detrimental to an officer. Using the same source as is listed as an affirmative argument for issuing weapons, it is said, “Administrators without knowledge of firearms may not have recognized the problems shooters would experience while operating a handgun too large for them” (Kaestle & Buehler, 2005, p. 6). As noted above in the support for the issue of firearms, there is often an argument that the broad and general issue will supply the officer with a weapon that “may prove inappropriate for carry by employees in specialized assignments, such as detectives and undercover officers” (Kaestle & Buehler, 2005, p. 7). The last support in this portion of the opposition is that the “arbitrary” assignment of a weapon will lead to an officer having a piece of equipment forced upon him that he neither wants nor chooses to become proficient with. Proponents of this argument state that the officer’s morale will be lowered, he will not wish to train above basic proficiency, and the level of optimal comfort with their weapon will never be reached. Therefore, the realization that “If an officer feels comfortable with a particular weapon, he or she will train with it more often

and efficiently” (Koehne, 2006, p. 3) will never be reached by the department’s administration.

The idea that officers would not be pleased with the end result of a weapon issue process was addressed when the Ohio State Patrol chose their new weapon system. In 1997, an incident occurred that tested the officers’ faith in their weapons. The agency was able to develop a process to evaluate new weapons and sought the officer’s input. A total of 19 weapons were tested by officers from the ranks. By testing in this manner and involving the end user, officers were able to contribute to the process and confidence in the department’s weapon selection was reinforced. (Kaestle & Buehler, 2005). The idea of “buy in” regarding the choice was reinforced and contributed to the acceptance of the weapon system. This example indicated that the end result was a more effective, end-user oriented system that utilized the inherent value in standardized weapon issue to address a perceived problem. Had there not been a base line for implementation, it is likely any action taken to address the issue would have occurred at a more substantial cost to the department or individual officer, or the issued would not have been addressed, to the detriment of officer safety.

The next objection to the general issue of firearms is based on the cost of the program. As with any other department-supplied commodity, there are associated costs that will need to be considered for implementation. A sample cost analysis was performed and documented by Place (1997). This sample included the purchase of 50 weapons at a yearly cost of \$7,650 and an overall cost of \$22,950. An additional \$10,000 would cover the cost of accessories, such as extra magazines, holsters, and magazine carriers. Total cost to standardize the side arms of 50 officers was \$32,950,

which is a cost of \$659 per officer (Place, 1997). In addition to the cost of weapons and ancillary items, there are other costs not addressed in this analysis, such as storage, construction of secure armories for the unissued damaged weapons, and the cost of research to find a weapon to adopt if one chooses not to use the volumes of research already available. Factoring into the cost is the perception that current department regulations on make, model, and caliber are sufficient controls to the selection of a firearm. If the department exercises this minimal level of control, it will have met the requirement to provide supervision that will ensure a safe environment for the officers. This attitude is again noted in the article by Koehne 2006, "all majority of the agencies did not feel there was a safety issue with officers carrying different type of weapons" (Koehne, 2006, Abstract).

This argument is easily addressed by simply looking at the process to equip an individual officer. In addition to the cost in ammunition noted above, the standardization of weapons and the ancillary items that would be needed would be mitigated in the long run. Holsters, magazine pouches, and accessories could be easily reused, making these items more cost effective. Training budgets could see a benefit as range personnel are no longer having to learn several different weapons systems, but can concentrate on providing the best training for the chosen system, thus limiting the amount of training time needed. Koehne (2006) stated, "Both the officer and the department may find this to be beneficial, but the range staff may not be so happy since they have to learn several different types of weapons systems" (p. 3). Additionally, after the initial purchase of a weapons system, the system could be updated by turning in the old system to the manufacturer (Sullivan, 2010) and utilizing the funds generated to

fund the new purchase. The savings gleaned from streamlining inventory and the ability to re-use items will also show a positive benefit in the long run. So, by choosing one weapon system and equipping the officers with the system, departments could experience less cost in training and equipping their officers.

Finally, the argument is often made that issuing firearms will have no effect on liability on the part of departments. This argument could cite the same cases as were used on the affirmative side. It is obvious that the suits regarding the incidents were brought forth. It can be argued that liability issues will arise whether the weapon utilized in incidents is actually issued by the department or purchased by the individual. The problem is not from where the weapon originates but the status of the person using it (*Gaffeny v. The City of Chicago*, 1973).

To address this final argument requires some speculation, just as speculation is used to make the argument. Modern law enforcement bases policy and future plans on scenarios it is hoped will never occur. The liability generated by these scenarios is often the mitigating factor in these decisions. The arguments in the body of this paper make a strong case for placing as much control as possible over the issue and possession of department weapons. It is clear that the profession of law enforcement will always have an inherent risk of officer's weapons being used in a way that unintended harm is the result. By adopting a program by which officer's weapons are issued, maintained, and more closely supervised, these risks can be reduced. In the cases quoted, it would probably have had much less effect on the liability of the government had a trigger lock device been issued with the weapons (as is required at the time of this writing), had the officer been instructed in how to use the device, had

there been documentation of the training, and had inspections of the weapon to ensure the device was still in the possession of the owner been completed.

RECOMMENDATION

Supervisors will continue to be held responsible for the actions or in-actions of their employees. Departments and government organizations will continue to be held liable for the actions or inactions of their supervisors and subordinates. By implementing a program that issues weapons to officers, the benefits discussed for both departments and officers will be realized. These benefits are a reduced expenditure by the officer, increased control for departments; a potential for decreased vicarious liability, if basic supervisory procedures are followed; and, enhanced safety and service for the public. Though there will always be opposition to implementing this type of program, the substantial benefits to safety and potential decrease in liability more than outweigh the monetary cost. As a people, Americans resist perceived limitations of fundamental rights. Such a program appears to restrict two individual rights held dear: the right to free choice and to bear arms. In fact, neither right is suppressed by implementing a department issued weapon program. A program instituted for the reasons expressed will, in fact, allow more freedom for officers to perform their duties with the assurance of having their department fully support them.

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