

**THE BILL BLACKWOOD
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS**

Take Home Vehicle Policy
for the Travis County Sheriff's Office

A Policy Research Project
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Requirements for the Professional Designation
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ABSTRACT

District coverage and officer to citizen ratios are a primary concern for the sheriff, county commissioners, and the public in the prevention of and response to crime. An option used by several agencies has been the adoption of a "take home" car policy, with each officer being issued a patrol car. The take home car increases the amount of law enforcement personnel seen on the street at any one time. The purpose of this research project is to identify the issues relating to take home cars. Included in the policy presentation would be all the relevant information relating to law enforcement agencies' use of take home cars including: case law, other department's current policies, practices, and liability issues. Police officers in departments across the country have been issued patrol cars to take home since the early 1970's. Research conducted then and now continues to show the same results; although initially expensive, these programs are beneficial for the community, the department, and the officer. Included in the research was relevant information relating to law enforcement agencies' use of take home cars including: case law, other department's current policies, practices, and liability issues. Similarities included: increased life span of vehicle, lower accidents rates, higher visibility, more vehicles available for response, and increased moral, and the major difference being how liability for damage and/or injuries was handled. I fully recommend the take home car program with strict policy guidelines; to include that if the department owns and assigns the vehicle to the officer, and the officer is bound by state law and departmental policy to respond to and suppress crime then the department should provide or continue complete liability coverage.

INTRODUCTION

District coverage and officer to citizen ratios are a primary concern for the sheriff, county commissioners, and the public in the prevention of and response to crime. The majority of the public may prefer to see an officer on every corner whereas, the County Commissioners could never support such coverage due the tremendous monetary implications. An option used by several agencies has been the adoption of a "take home" car policy, with each officer being issued a patrol car. The take home car increases the amount of law enforcement personnel seen on the street at any one time. The mere sighting of a patrol car is a deterrent to crime, since there is usually no distinction of whether the officer is working or not. With such a policy, the public perception of the amount of officers on duty is greatly increased, thus they feel safer. However, such a policy could have dramatic implications on liability to the county, the department, the officers, the Fair Labor Standards Act, and vehicle maintenance. Although several Travis County agencies have take home cars, there is no policy in place that addresses the implications mentioned above. A take home policy is currently being reviewed by the County Commissioners, Sheriff, and other County Department Heads.

The purpose of this research project is to identify the issues relating to take home cars. The primary intent is to establish guidelines for a policy that can be used and adopted by the County Commissioners for use within the Travis County Sheriff's Office and other county departments where take home cars are used. This research could also be used as an aid to other departments considering or using take home cars. Included in the policy presentation would be all the relevant information relating to law enforcement agencies use of take home cars including: case

law, other department's current policies, practices, and liability issues.

This research is being conducted for the immediate benefit of the Travis County Sheriff's Office. However, it could be considered or modified for use within other departments of Travis County or any other agency considering such a policy. Upon completion, this project will be presented to the administration of the Travis County Sheriff's Office for their review and consideration. It will also be presented to the members of the Travis County Sheriff's Officers Association for their review and suggestions. Subsequently, it could be presented to Travis County Commissioners Court for their consideration. All research data will be saved for future reference, updating, and assistance to other departments.

There are four primary sources of information that will be researched for this project. First, case law as it relates to officers using county owned vehicles off-duty. Second, insurance law in relation to who is responsible for insuring a vehicle. Third, The Fair Labor Standards Act in relation to off duty responses by officers. Finally, other department's policies in regard to their take home cars and the consistencies between them. The result of this research will be a comprehensive package that any department could use for policy consideration.

HISTORICAL AND LEGAL

Police officers in departments across the country have been issued patrol cars to take home since the early 1970's. Research conducted then and now continues to show the same results; that these programs are beneficial for the community, the department, and the officer. There are

several considerations involved in having such a program. These will be discussed one at a time.

FIRST, Duty and Powers of Peace Officers, Code of Criminal Procedure (CCP) Art. 2.13 states that "It is the duty of every peace officer to preserve the peace within his jurisdiction." "It is the purpose of the law that peace officers especially shall do everything necessary to prevent, suppress, and punish crime." Ex parte Preston (1914) 72 Cr.R. 77, 161 S.W. 115. Further, Art. 14.03 increases authority statewide. Art. 2.17 States "Each sheriff shall be a conservator of the peace in his county, and shall arrest all offenders against the laws of the State, in his view or hearing, and take them before the proper court for examination or trial. He shall quell and suppress all assaults and batteries, affrays, insurrections and unlawful assemblies. He shall apprehend and commit to jail all offenders, until an examination or trial can be had." And Art. 2.20 gives deputies the same power. "An off-duty police officer who observes a crime immediately becomes an on-duty police officer." City of Dallas v. Half Price Books, Records, Magazines, Inc. (App. 5 Dist. 1994) 883 S.W.2d 374. Thus, as a peace officer you are technically on-duty 24 hours of the day and have a duty to respond to crime in your presence. Obviously, you would not take action on everything you observe off-duty but would in the event of an emergency or serious crime. If you are issued a take home car and are traveling to or from work in uniform the public is going to perceive you as on-duty and thus expect you to respond to any violation you might observe. In effect, you are on-duty the moment you leave your house and until return.

SECOND, liability for injuries sustained to the officer in the event of a traffic accident.

Workers Compensation Law under The Rights of Law Enforcement Officers rule 6 states: "In general, injuries suffered while traveling to and from work are not compensable. However, an exception to the general rule of non-compensability of such injuries exists if the employer benefits from the law enforcement presence of the commuting officer... in Jasaitis v. Patterson where the court reasoned that the officer's uniform signaled to the public that he was on-duty." (Workers' Compensation p.369) In Gebert v. Clifton, Jr. (553 S.W. 2d, p. 230) it was ruled that "an employee is not ordinarily within course and scope of his employment while using public streets in going to or coming from work unless the employee has undertaken a special mission at the direction of his employer or is performing a service in furtherance of the employer's business with the express or implied approval of the employer." It stands to reason an officer in uniform, in a marked patrol car, benefits the public performing a service in furtherance of the employer's business.

THIRD, liability for vehicle damage and/or personal injury to others. The rules of the State Board of Insurance state that the owner of the vehicle is ultimately responsible for the vehicle he owns, thus making the department liable to third parties involved, presuming the county is deemed at fault. Some departments hold their personnel responsible for damage caused by negligence to their patrol cars while others consider it a cost of doing business.

FOURTH, is the take home car a taxable benefit for the officer? Internal Revenue Code 3.2-2 states "If the employee uses a company car mainly for the employer's business, infrequent and

brief side trips for personal reasons are considered de minimis fringe benefits whose value is excluded from income. Also, if a company-provided vehicle is unlikely to be used for personal travel because of its special design, use of the vehicle by an employee is excluded from income. Such vehicles include: marked police cars..."

FIFTH, is an off-duty response by an officer compensable? According to The Fair Labor Standards Act the officer is to be compensated for any time spent answering a call off-duty and for all related paperwork. This could have implications on an overtime budget and would have to be monitored. In order to control this cost policy should dictate when an off-duty response is required.

REVIEW OF LITERATURE OR PRACTICE

A survey conducted by the TCSO in early 1995 of twenty-six Sheriff's Departments across fifteen states found that 48.1 percent had a take home car program, 44.4 percent did not and, 7.4 percent did not answer. A review of several departments' policies and general orders in reference to take home cars revealed most do things very similarly. These similarities are described as follows: most departments that have take home cars also allow their use while the officer is off-duty. This is considered a valuable part of the program to enhance visibility, build community relations, and better to respond to serious in-progress crime. In addition, officers will not use the marked vehicle on a part-time job as part of the employment but the vehicle may be driven to and from a part-time job. Personal use is limited to within the city or county limits but most let their officers live and take their cars into surrounding communities. Also, officers are to be

dressed appropriately to be able to respond off-duty, if required. Furthermore, the police radio is to be monitored at all times; however, contact with dispatch is not necessary unless making an off-duty response. If an off-duty response is made the officer will be compensated in accordance with The Fair Labor Standards Act. And finally, maintenance is to be done while the officer is off-duty.

Differences between policies include liability and who is responsible for damage to the vehicle.

"Many departments simply absorb the cost by including off-duty driving in their departments' liability insurance coverage. Most departments with take home cars simply accept the increased cost as part of the program. It's a trade-off for the benefits of the program." (Snow 1994, p.36)

"Vehicles may be used only for work related duties and to commute to and from work. During the commute, the employee is fully covered by the County's self-insurance program." (Tarrant County Sheriff's Department Policy Manual, 1995, p. 3) Dallas County Policy (1993) states that officers who use their vehicles in violation of policy automatically forfeit the County's liability protection. This implies that as long as the officer is operating the vehicle within policy then he is covered by the county. It goes on to "encourage officers to obtain a liability endorsement on their personal automobile policy in regards to personal liability while driving the county vehicle." (p. 161) It's generally accepted that officers tend to be more careful with the car because they know if it gets damaged they will be stuck with a pool car, possibly face disciplinary action, and may be responsible for the damage if it's determined to be their fault. If not then it's considered a cost of doing business. Houston P.D. General Orders, (1993) state that "employees will be insured by the City of Houston for liability to a third person arising from the

operation, maintenance or use of motor vehicles owned or leased by the city, provided such operation is within the course and scope of the employee's position with the city. Employees need not carry riders to provide liability coverage for their operation of city vehicles." (p. 3)

DISCUSSION OF RELEVANT ISSUES

"The argument most police executives use to justify such a program is that the sight of these marked police vehicles being driven and parked in the community, in effect an added police presence, will make citizens feel safer." (Snow, 1994, p. 35) Wording within resolution number 941-91 of Dade County states: "this Board has determined that the benefits to the community of increased police visibility, improved response time, reduced per vehicle maintenance costs, increased vehicle longevity and other improvements in operation efficiency outweigh the costs." (p. 1) This is typical of the justification used by all the departments that have adopted a take home car program. According to Snow (1994) Assistant Chief Phill Smith of Speedway, IN P.D. whose department has had the program for 23 years said "We definitely think it's a valuable program and just seeing their cars makes people feel a lot safer." (p. 36) Chief L.M. Macomber of Whitesboro, TX says: "I think it's a great program because of the coverage it gives us. Even when the cars are not being used and are just sitting parked, they still have a great deterrent value." (Snow, 1994, p. 36) "A lot of crime is based on opportunity. Seeing one of these take-home cars stop many such crimes." says Chief Butler of Kenton County, KY, Police Department. (Snow, 1994, p. 38) "Almost every city that has instituted a take home car program has found that its vehicles last longer and are much better maintained... Studies show that the repair and maintenance costs for take-home cars is significantly less than pool cars."

(Snow, 1994, p. 38) "An intangible benefit of a take home policy is that officers get to know their vehicle's specific limits and capabilities. They are not reckless with the vehicle." (Yates, 1992, p. 90) "The biggest benefit of a take-home car program is the high visibility of more police vehicles throughout the community. This strengthens the public's perception of safety, which is usually one of the major reasons for implementing the program. Also, in case of a community-wide emergency, the perception becomes reality as off-duty officers are able to respond, fully-equipped, and much quicker." (Snow, 1994, p. 38) "A take home policy offers a department several advantages. During shift change, there are effectively two shifts on the road. Since every agency with a take home policy requires officers to handle situations they see while in the police vehicle, the officers often handle an accident, drunk driver or other problem encountered going on or off-duty... Obviously those off-duty actions freed up on-duty officers to handle other problems... The mere regular presence of a marked patrol car in a neighborhood would likely make a drug dealer think twice about setting up shop nearby... Every department that spoke about the take home policy said they'd keep it." (Yates, 1992, p. 88-91)

Another consideration to the program is whether the officers want it. This varies as to the limitations placed on the use of the vehicle and whether or not its tied to wages. Restrictions of only driving to and from work, not allowing the family to be transported, and touting the vehicle in lieu of pay increases can make the vehicle less appealing in the officer's eyes and the latter can be a serious mistake. "A take home policy is oftentimes considered a "perk" for officers. With a take home unit officers usually don't have to worry about the expense of a second car. The car is usually offered as a benefit to attract better quality officers and depending on the

restrictions placed on the car and the department's salary practices opinions vary between officers." (Yates, 1992, p. 91) I know they do within mine.

A study done by the St. Louis County Police Department, (1980) of their take home policy, determined the following regarding take home cars versus pool cars:

- ▶ Lower per mile and per unit operating cost;
- ▶ Longer life of department vehicles;
- ▶ Larger number of marked patrol cars available for service;
- ▶ 43.9 percent increased visibility;
- ▶ Increased public contact;
- ▶ Less inter-beat dispatching;
- ▶ Increased patrol time;
- ▶ Reduced response time to crimes in progress;
- ▶ Decreased on-duty vehicle service and maintenance;
- ▶ More timely mobilization of police officers;
- ▶ Increased flexibility in assigning personnel for special programs and events;
- ▶ Improved employee moral.

Other benefits observed by St. Louis were improved police-community relations and decreased sick time usage.

Surveys have shown that take home cars are less likely to be involved in traffic accidents than pool cars; for example: "A survey of 416 Tennessee law enforcement officers revealed that

officers with assigned vehicles on a take-home basis were involved in fewer accidents (24.4%) than those who used fleet vehicles, and that most officers surveyed were not required to pay for damages to their vehicles even when the accident was ruled their fault. Evidently, officers tend to take better care of police vehicles when such vehicles are assigned to them. Officers interviewed indicated that they knew their vehicles, kept up with maintenance, and considered the car a privilege thus raising morale." (Miller, 1983, p. 25-26) A Hampton, VA P.D. survey had similar results to the Tennessee study. Hampton took their survey one step further by surveying their citizens to determine community satisfaction and found:

- ▶ 83.8 percent said they felt more secure with a patrol car in their neighborhood;
- ▶ 84 percent wanted one in their neighborhood;
- ▶ 88 percent felt the program should be continued.

(Hampton Police Department, 1986)

CONCLUSION / RECOMMENDATIONS

Once again, the purpose of this research is to establish guidelines for a take home vehicle policy for the Travis County Sheriff's Office but also one that can be used as a guide for other departments. This is relevant because the Travis County Commissioners Court is currently reviewing current policies regarding their implications on liability, The Fair Labor and Standards Act, and vehicle maintenance. This policy would be applicable primarily to the Sheriff's Office but could be applied or modified for other departments. The problems considered in the decision to have or continue a take home vehicle policy include the purchase cost of vehicles, how they are to be issued, the officer's on/off duty status when operating the vehicle, and who is

liable in the event of a collision for property damage and/or injuries which also has implications on the on/off duty status. It is widely established that although the initial cost of buying vehicles to start a program is considerable, it is offset by the lower cost of maintenance and the longer life of the vehicle thus the department saves money in the long term. All departments surveyed generally considered themselves liable for property damage and/or injuries incurred by their officers while operating a department vehicle and/or acting under the color of their office in relation to use of the vehicle. Departments should consider their officers on-duty any time they operate a department vehicle since they are obligated to respond under Art 2.13 of the CCP. The department benefits widely by the public perception that there are many more officers on patrol at any one time than there actually are.

Based on considerable research of other department's policies, practices, and case law my recommendation is to establish a take home vehicle program with the following guidelines.

- A. Vehicles should be issued to all law enforcement officers that may be recalled in an emergency.
- B. Use should be allowed off-duty within the county. Extra job use covered in that policy.
- C. Officers must live in or within close proximity to the county. (Within 15 miles)
- D. Off-duty officers are obliged to monitor radio traffic and respond in the event of an emergency or serious in-progress call.
- E. Officers will be dressed appropriately in the event of an off-duty response.
- F. Off-duty responses must be approved by a supervisor.
- G. If there is an off-duty response the officer will be compensated for the time the officer

spends on the call and related paperwork.

- H. Officers are fully covered by the county's self-insurance program so long as they operate the vehicle within policy. Additional personal liability riders are optional.
- I. All off-duty responses should be documented for statistical purposes and further justification of the program.
- J. Vehicle maintenance is done while off-duty.
- K. An officer may never operate the vehicle after consuming alcoholic beverages.
- L. Officers and appropriate maintenance personnel are the only permissible operators of the vehicle.
- M. Family members may be transported in the vehicle with proper consideration given prior to making an off-duty response.
- N. Failure to properly maintain or operate the vehicle within policy is cause for exclusion from the program.

Proper implementation of these guidelines should take into account and control overtime costs, care of the vehicle, and the county's liability. Under these guidelines each party knows their responsibilities as they relate to the use of the vehicle and what is required of them.

In conclusion, it is my belief that take home car programs are very beneficial to both the department and the community it serves. Departments not allowing off-duty use are not receiving the full benefit of the program. Further, if the department owns and assigns the vehicle to the officer, and the officer is bound by state law and departmental policy to respond to and suppress crime then the department should provide or continue complete liability coverage.

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