

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

**The Citizen Police Academy
and
The Concealed Handgun Law**

**A Policy Research Project
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ABSTRACT

Police departments daily encounter situations which if not handled properly could result in a civil suit being filed against the officer(s) involved and their departments. Citizen Police Academies (CPA) have been in existence in the United States for only a few years. It is common in these academies to allow the participants to ride with uniformed patrol officers and answer calls for police assistance. The State of Texas passed a law allowing citizens to obtain a license to carry a concealed handgun. It is foreseeable that a person licensed to carry a handgun could also be a participant of a citizen police academy. That same person might want to carry the handgun while riding on patrol with an officer. It is also foreseeable that this person might act inappropriately if placed in a dangerous situation, for instance using deadly force when not needed.

The purpose of this research is to determine if a CPA participant should be allowed to carry a handgun while on patrol. Methods of research used for this paper include personal interviews of law enforcement personnel, a review of published information from various comprehensive criminal justice sources, and a review of several police departments policies.

The conclusion of this research is to not allow concealed handgun licensed, CPA participants to carry a handgun in the ride-a-long program. A recommendation is made to draft a prohibitive written policy.

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Introduction

The Citizen Police Academy (CPA) is a relatively new concept in American policing. The purpose of such an academy is to instruct citizens on the practices and policies of their local police departments. The State of Texas, with the passing of the Concealed Handgun Law, made it legal for Texas residents to lawfully carry a concealed handgun. This paper explores the opportunities that exist for citizen police academies in regard to the concealed handgun law.

CPAs involve actual hands-on training in many areas of police work including firearms, training and patrol. When a participant receives training in patrol he/she is assigned to a uniformed police officer. The officer and CPA participant are then assigned to patrol where they respond to calls, investigate crimes, and make reports. These activities sometimes involve dealing with violent people and dangerous situations. The problem that arises is whether or not the concealed handgun licensed CPA participant should be allowed to carry a concealed handgun while riding on patrol.

The purpose of this paper is to provide information to the Canyon Police Department from which a policy can be drawn that best meets the needs of the CPA and the civilian observer (ride-a-long), thus reducing potential liability through the existence of an established and standing policy.

This research is intended to serve as a resource for the Canyon Police Department for creating and implementing an adequate policy for CPA participants. Also, law enforcement agencies throughout the nation could benefit from the findings of this research project since many states and jurisdictions are legalizing the carrying of concealed handguns. Some of the same jurisdictions allow citizens to ride on patrol with police officers bringing to light the above stated concerns.

Information for this paper was obtained from various criminal justice sources that have

become accepted not only as reliable, but also comprehensive in nature. Research data was also obtained from personal interviews of law enforcement personnel in agencies that currently are or plan to become involved in a CPA and their written policies/directives if available.

Historical, Legal, and Theoretical Context

Before 1977, no Citizen Police Academy existed. The Devon and Cornwall, England, Constabulary conceived and implemented the first "Police Night School" in 1977. Since the program met with great success the concept spread rapidly throughout England. The Orlando, (Florida) Police Department adopted the program in 1985. Police Night School was then to be known as the Citizen Police Academy (CPA). CPAs were started in some Texas departments in 1985 (Hilson, 1). Police departments in Texas are reporting success with their CPAs. The number of CPAs in Texas is growing rapidly.

While bringing in the new year on January 1, 1996, the State of Texas also brought a new law into effect, the concealed handgun law. This law made it legal for persons, who are properly licensed, to carry a concealed handgun. There are some areas off-limits to citizens carrying their pistols. Some of those places are: schools; places where school activities are taking place; government court and offices used by the court; polling place when opened for voting; a racetrack; a secured area of an airport; bar, cocktail lounge, or pub; correctional facility; hospital or nursing home; an amusement park; church, synagogue, or place of religious worship; and any meeting of a governmental entity (Texas Penal Code, 105,106). Otherwise a licensed citizen may carry a concealed handgun.

There are a number of legal issues relating to the use of deadly force. State law allows the use of force, including deadly force, under certain circumstances. These laws apply to citizens and

peace officers. The State of Texas defines deadly force as force that is intended or known by the actor or cause, or in the manner of its intended use is capable of causing death or serious bodily injury (Texas Penal Code, 14). The use of a handgun is considered deadly force. Deadly force can be implemented in the following conditions:

- Self-Defense: a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly force; or to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.
- Defense of Third Person: a person is justified in using force or deadly force against another to protect a third person if: under the circumstances as the actor reasonably believes them to be, the actor would be justified as listed under self defense (above) in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and the actor reasonably believes that his intervention is immediately necessary to protect the third person.
- To Protect Property: to prevent the imminent commission of arson, burglary, robbery, aggravated robbery, theft during the night time or criminal mischief during the night time and the actor believes the land or property cannot be protected by any other means (Texas Penal Code, 15 - 17).

The United States Supreme Court in a review of Tennessee v. Garner handed down a landmark deadly force decision. A police officer in Tennessee shot an unarmed felon who was fleeing the scene of a crime. Tennessee law permitted such use of deadly force. The United States Supreme Court stated the use of deadly force should not be implemented if the person is not an imminent danger to the actor or the public.

Reckless injury of a third person is addressed by Texas Law. Even though an actor is justified under state law in threatening or using force or deadly force against another, if in doing so he also recklessly injures or kills an innocent third person, the justification afforded by the law is unavailable in a prosecution for the reckless injury or killing of the innocent third person (Texas Penal Code, 14). Civil remedies are unaffected . The fact that force or deadly force is justified under state law does

not abolish or impair any remedy for the conduct that is available in a civil suit (Texas Penal Code, 14).

Peace officers may summon the aid of citizens from the county to assist him in overcoming resistance while he is discharging any duty imposed upon him by law (Texas Penal Code, 12). A person acting in the presence of a peace officer and at his discretion, is justified in using force including deadly force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, and in some cases an escape or attempting escape (Texas Penal Code, 17).

Theoretically, the Orlando P.D.'s purpose for implementing a CPA was to increase understanding between the police and the citizens through education. The ultimate goal is the reduction of crime through a stronger commitment to the police department and the community (Hilson, 1). The overall goals are to gain support for police work, explain the operations of police agencies, and encourage private citizens to undertake appropriate security measures (Greenburg, 10). The objective is not to create “quasi-cops”, but to produce informed citizens. Sir Robert Peel identified public approval, citizen cooperation, and crime prevention as necessary elements of policing (Hilson, 1).

Review of Literature and Practice

Citizen Police Academies provide a mechanism for educating the public about the criminal justice system and ways to resist crime (Greenburg, 10). Citizens bring knowledge of the problems in their neighborhoods to the academy and share it with the officers (Hilson, 1). Communication lines are opened between the community and the police department, thus allowing the public to make the

officers more aware of their feelings and concerns. The Missouri City (Texas) Police Department started the first CPA in Texas in 1985. Sixty seven percent (67%) of all CPAs were created after 1990. In a recent survey the following reasons were given for starting a CPA : to educate public on operations, policies, and procedures; and to improve public relations. Firearm safety, firearm training (shooting), and riding with officers on patrol (ride-a-long) are included in the curriculum of seventy eight percent (78%) of Texas CPAs (Hilson, 1-2).

Requirements for participation in CPA.

<u>Requirement</u>	<u># of Agencies</u>	<u>%</u>	
Criminal History Check	25	93	
Age Limit	23	85	
Sign Waiver of Liability	22	82	
Drivers License Check	22	82	
Residency Requirements	21	78	
No Prior Criminal History	15	56	(Hilson, 4).

Most agencies do a background check on the applicants. Several agencies do not allow persons with a criminal history to participate in the program, indicating a desire to restrict entrance to law abiding citizens. Eighty two percent require a signed waiver of liability. With any type of police training there is always the possibility that someone may get hurt or injured in some way. Due to the nature of the training and the amount of certain risk and dangers involved, legal liabilities are a top priority. Emphasis is placed on safety (Lawson, 2). Residency requirements are normally put in place to restrict entrance to citizens in the primary jurisdiction of the police agency. Agencies stated that the hands on activities: defensive tactics, firing department weapons, and riding on patrol were among the most popular classes in the curriculum (Hilson, 6; Lawson, 8).

The Orlando (Florida) Police Department has developed its own “shoot, don’t shoot” video. During training, two students at a time are brought into a dark auditorium. Each has a mock gun and

they stand in front of separate television monitors. The video is played and the students react to the scenarios. After the training, the students must defend their actions and state whether the shooting complied with department policy or not. Although students know it's just a video, they do get nervous and experience an adrenaline rush (Dvorak, 18, 21).

Liability factors have not been a problem for many departments involved in a CPA. Although the Grand Prairie (Texas) P.D. has had one claim. A participant's eye glasses were damaged during a hands on activity. The department replaced the eye wear at a cost of \$150.00 (Lawson, 11).

All departments contacted stated the CPA has done more for the police-community relations than any other type of program they have tried. The citizens have the ability to ultimately serve as community ambassadors to educate others (Lawson, 11). Agencies surveyed reported overwhelming success with their CPA. Harris County Constable Pct. #4 states CPA is the best thing going, information is freely shared (Hickman, 1996).

The table below indicates the agency response to the questions listed.

<u>Response</u>	<u>%</u>	
Have Ride-a-Long program	80%	
No ride along program	20%	
Allow CHL to carry weapon on patrol	0%	
CHL can not carry weapon patrol	100%	
Liability concerns	100%	
CPA in operation	70%	
No CPA	30%	
CPA improved public relations	100%	(Moore, 1).

Reflections offered by those surveyed with regard to concealed carry licensee carrying a weapon in a ride-a-long program are predictable. Trouble can start too fast and you can not predict what the observer might do or how he would react (Jackson, 1996). There is a concern over what the

observer might do in the heat of a life threatening situation and whether other officers would realize the observer was not an armed offender (Dingler, 1996). Officers reasonably know how their fellow officers will react under pressure but they don't know how an observer will react (Hickman, 1996). The CPA guidelines of the Dumas Texas Police Department clearly state that citizen police academy participants or graduates who are licensed to carry a concealed handgun are not permitted to carry a handgun while participating in the ride-a-long program with department officers. Ride-a-longs are for observation only, and will not become involved in any circumstance unless there is a proven concern for the officer's safety or unless requested by the officer (Dumas (Texas) Police Department, 4).

Liability concerns are revealed in the literature, policy and practice. Departments overwhelmingly reject the concept of observers carrying handguns. Before January 1996, this was not an issues. The research findings are in line with the practices of most departments in Texas.

Discussion of Relevant Issues

Civil liability is one of the most relevant issues for the Citizen Police Academy. When a CPA does have ride-a-long program or hands-on activities potential for liability claims increase. If CPA programs include the firing of firearms or observers carrying a handgun on a ride-a-long potential claims are infinitely higher.

Civil tort under state law allow for a cause of action on intentional torts and negligence torts. Intentional torts include claims of wrongful death (del Carmen, 25). If, while a person is participating in the hands-on activities, he or another dies could the department be held liable under this tort? Negligence torts include negligent failure to protect. The police have a general duty to protect the

public as a whole and to prevent crime. However, the police in general are not liable for injury to someone whom they fail to protect. The usual exceptions applicable in states are as follows:

- if a “special relationship” has been created
- in some cases if there is foreseeability (del Carmen, 25).

Legal defense in civil liability cases are made easier by the department having a written policy in place. If an officer acted in accordance with the agency rules and regulations he enjoys greater protection. This is because agency rules and regulations are law as far as the officer is concerned, unless declared otherwise by the courts. In Moore v. Zarra, 700 F.2d 329 (6th Cir. 1983), the court said that good faith reliance on departmental regulations precludes liability (del Carmen, 55). This clearly points out the need for a policy to be in place on all aspects of the CPA.

Eligibility and training requirements for a person to obtain a concealed handgun license may be sufficient for every day life, but are they sufficient for what a person might face while participating in a ride-a-long? The concealed carry law requires initial instruction to be a minimum of ten hours and a maximum of fifteen hours. While attending this class the student will be instructed in and tested on: handgun use, proficiency, and safety; non violent dispute resolution; laws related to weapons and to the use of deadly force; and the proper storage of firearms (Texas Criminal Procedure - Code and Rules, 200). After completing the course requirements the person may be issued a concealed carry license. The license expires in four years. Renewal of the license requires the person to attend a class similar to the one taken to initially receive the license. At renewal minimum class time limit is reduced to four hours.

In comparison peace officers go through a basic academy where extensive instruction on use of force and the laws that apply is required. Before graduation from an academy the officer is instructed for forty hours on use of firearms. Handgun proficiency is included in the forty hour block

of instruction. Academies commonly use the “shoot, don’t shoot” video training in the course of instruction. TCLEOSE requires officers to annually show proficiency in the use of firearms. Proficiency is demonstrated by a score of a minimum of 70% on a scoreable target.

State law allows for the use of deadly force to protect property. The United States Supreme Court in its review of Tennessee v. Garner indicates deadly force should be used only when a person presents an imminent danger to someone else. Would a concealed carry licensee react in response to state law or Tennessee v. Garner. The peace officer should be knowledgeable of the review on Tennessee v. Garner.

Under concealed carry law, a court may not hold the state, an agency, or subdivision of the state, an officer or employee of the state, a peace officer liable for damages caused by the actions of an applicant or license holder that occur after the applicant has received a license. Immunities granted do not apply to acts or failures to act by the state, an agency, or subdivision of the state, an officer or employee of the state when such acts or failures to act were capricious or arbitrary (Texas Criminal Procedure - Code and Rules, 200). The limitation of liability is not afforded to the licensee and it does not provide any protection for a ride-a-long program (Hendley, 1996).

If an agency decided to allow observers, who are concealed carry licensees, to carry a weapon during a ride-a-long that observer would be restricted by law from accompanying the officer to certain locations. As previously stated, the law prohibits a citizen to carry a weapon to a school, church, court, correctional facility, amusement park, and etc. Private business may restrict access to their businesses to citizens who are not carrying a firearm, via criminal trespass statute. Therefore, the ride-a-long could have to wait in the patrol vehicle and not be afforded the full benefit of the ride-a-long program.

Community involvement is the most powerful, efficient, and practical force any local law enforcement agency has in the fight against crime (Ferguson, 5). Citizens are anxious to learn of the operations of their police force, which were previously obscure and private. Most members of the public are almost totally ignorant of features of police work that the average police officer takes for granted. Even something as basic as rank structure is only vaguely understood, let alone the complexities of a modern police organization (Ferguson, 6). CPAs present an avenue to bridge the gap between law enforcement and the citizens they serve. Community involvement, which is virtually untapped, has the potential of making crime in the neighborhoods a rare occurrence (Ferguson, 7). These opportunities should not be overlooked.

In summary of the key points of this section: liability; safety of the officer, the ride-a-long observer, and the public; lack of control over licensee training; necessity of written policy; granted immunities; and the department assuming unnecessary liability risk. Risk management would require that a prohibitive policy be drafted to reduce liability.

Conclusion / Recommendations

The purpose of a Citizens Police Academy is to instruct citizens on the practices and policies of their local police departments. This paper explored the opportunities that exist for current and future citizen police academies in regard to the concealed handgun law.

This research is intended to serve as a resource for the Canyon Police Department for creating and implementing an adequate policy for CPA participants. Also law enforcement agencies throughout the nation could benefit from the findings of this research project since many states and jurisdictions are legalizing the carrying of concealed handguns. Some of the same jurisdictions allow

citizens to ride on patrol with police officers that brings to light the above stated concerns.

Many CPAs involve actual hands-on training in many areas of police work including firearms training and patrol. When a participant receives training in patrol he/she is assigned to a uniformed police officer. The officer and CPA participant are then assigned to patrol where they respond to calls, investigate crimes, and make reports. These activities sometimes involve dealing with violent people and dangerous situations. The problem that arises is whether or not the concealed handgun licensed CPA participant should be allowed to carry a concealed handgun while riding on patrol.

After considering the findings of this research the conclusion is made that a CPA does provide for the exchange of information between the community and the police department. Furthermore, the research reveals a definite need for a written policy on CPA practices specifically in regards to the participants and the concealed handgun law. The Canyon Police Department, by written policy, should prohibit all CPA participants from carrying a handgun while participating in the ride-a-long program, including those licensed to carry a weapon.

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