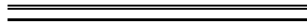


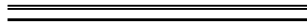
**The Bill Blackwood
Law Enforcement Management Institute of Texas**



Off-Duty Weapon Carry for Law Enforcement



**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**



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ABSTRACT

Concealed handgun training for off-duty law enforcement should be placed in department's policies regarding issues of training, liability, and budget problems. Departments should qualify and train their officers with an off-duty weapon so there is not an issue in failure to train. Officers need to understand liability issues that they can put the departments in. Cities and counties nationwide pay millions of dollar settlements to families that lost loved ones from off-duty issues. They need to change policies that officers are not in an off-duty status just because they are in plain clothes at the store. If departments would change the writing in policies, it would limit the media to add misconceptions to the idea of off-duty. Law enforcement officers they do not just have a moral job to up hold the law but "shall" enforce it if a felony is committed in their presence. Recruiting is a key issue in trust. Departments should be able to trust their officers off-duty if they trust them on duty with firearms. Many negative issues can happen where an officer hangs out in the off-duty time, such as night clubs, lewd conduct bars, and unethical places where they should not be with a gun. Proper background checks can eliminate potential problem officers from the applicant pool.

The information that was obtained for this paper was very difficult to retain due to limited books that have ever been published, and due to this it has become difficult to find information on the subject. Dave Grossman (2008) explained that many of today's issues are off-duty and on duty encounters; it includes ethics for today's modern time. Proper training, practice and recruitment of officers for off-duty concealed carry should be required for departments. Most of the information was found on the internet from past court cases and past department's investigations.

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INTRODUCTION

One of the main issues for law enforcement officers in Texas and throughout the United States is proper training for an off-duty carry gun that is carried in a concealed manner. Most departments do not have a written policy on how their officers will qualify with a concealed carry weapon. It is the custom at most departments that the backup gun or off-duty gun is qualified in the same manner as the open carry primary gun that is carried on duty. This can create a safety issue with serious liability issue for departments and the officers carrying the firearms. They carry the guns with them in an off-duty manner, but they never train in the manner the gun is carried. Most police officers carry their gun in a concealed manner that is too difficult to access when it is needed in an encounter. Concealed handguns is carrying in the manner of not in view or not to be seen by the anyone, not to concealed it is too difficult to access and gets an officer killed.

One of the problems is that off-duty incidents may not be covered under the city or county legal defense if the officer is in an off-duty shooting. Many officers carry legal defense for themselves to cover these types of issues that the city and counties do not. Officers must be trained in properly carrying an off-duty weapon and understanding the liability issues that the officers put themselves and their department under. Some law enforcement officers are required to carry and some have been given the option to carry their weapon off-duty, but the agencies need to re-think how their policy and guidelines are made out for their officers. Proper training and recruiting is a must for protecting the citizens and the integrity of law enforcement. If the agency uses good hiring ethics, they will be able to trust the officers in an off-duty status. If officers use clear judgment and

make the right choices off-duty, it will limit the agency on liability issues. If an officer is un-armed and an encounter happens, they may never be able to live with the guilt they will have if a family member or even their own child was killed because they were not prepared. Officers in this country are trained to act and respond every day in their course of duty. Proper training, practice and recruitment of officers for off-duty concealed carry should be a must for departments. This will reduce the risks of liability in off-duty encounters when proper training is in place to protect society.

POSITION

Police are the enemy to criminals; they need to practice off-duty firearms tactics. It is in the agency's best interests to provide them with the necessary skills. In these tough economic times, it is difficult to get funding for normal firearms training, let alone additional firearms training for off-duty situations. This is something that administrators will have to challenge these types of liability issues when they arise. If agencies allow, or, in some cases, mandate officers to carry weapons off-duty, they need to give them off-duty firearms skills. It is not enough for officers just to qualify with their off-duty weapons.

Most departments require that officers come to the range with any off-duty firearm the officer carries and fire the same qualification course used for a duty gun. This is the bare minimum and does not prepare police for off-duty confrontations on the street, which opens the agency up to liability for failure to train. One other reason to train in off-duty firearms skills, which is just as important as protecting themselves and their family, it is also common for off-duty officers to be mistakenly identified as a bad guy by on-duty officers, proper display of identification of them is a must. If agencies are

going to allow or, in the case of some departments, mandate that officer's carry off-duty, then they need to give officers the proper training tools and tactics to do it safely.

Proper budgets should be set forth to pay the training and ammunition costs. The cost will be cheaper than a lawsuit any day. Training budgets are being squeezed every day in cutting costs for supplies that includes ammunition. However, there are ways to train but still have enough ammunition (Grossi, 2009). There are many other ways to train without live fire exercises. Agencies can train with slideshow programs, to simulators. A good range master can cut down on the ammunition that they shoot by changing course descriptions. They can also cut back on real life targets and re-use the targets by taping up the previous bullet holes. It can also be practiced that the officers come to train during duty hours to cut overtime costs. There is no reason officers cannot get the training they need; it just needs to be changed by the administrators of agencies and followed by the officers.

On July 22, 2010, President Bush signed into law Senate Resolution 1132 (2010). This legislation allows off-duty and retired officers to carry concealed weapons throughout the country. In order to become exempt from state or local laws that would otherwise restrict carrying concealed weapons, the act lays out criteria that must be met by active and retired law enforcement officers. These individuals must be either a qualified law enforcement officer or a qualified retired law enforcement officer, as defined by the act. Also, they must carry official identification, which is specified in the act. It also gives agencies the discretion to not allow officers to carry except where specified by department policy (S. Res. 1132, 2010).

Grossman (2008) stated, "I am a sheep dog. I live to protect the flock and confront the wolf" (p.108). This refers to people as the flock of sheep, sheep dogs are the protectors, and wolves are the criminals. As quoted by Grossman (2008) "Sheep are nervous because the sheep dogs are the constant reminder that the wolves are out there, but if a sheep dog ever hurts a sheep, he will be removed" (p.108). Having this type of mentality is good for some but may not apply to all officers; they may not get involved in an off-duty encounter or department policy may not allow them. It also comes down to trust of the officers; if trust is giving them the full power of the law while on duty, they should have the same trust while they are off-duty.

Criminals are criminals 24/7. Officers, on the other hand, work an eight-, 10-, or 12-hour shift and are then "off-duty." The problem is that criminals do not see it that way. In their minds, it does not matter if officers are driving a marked patrol unit on an urban beat or the wife's mini-van taking the kids to soccer practice. If for no other reason than the protection of officers and loved ones, officers must practice off-duty firearms tactics. Officers might be thinking, "I won't carry off-duty, I'll just be a good witness." Even if a criminal does not know the officer, the way that officer can, act, talk, look, and what police wear off-duty sometimes gives them away as law enforcement, so they should always be armed.

When an officer is armed off-duty, he can take action if a situation threatens his life and others. Traditionally, the presumption has been that off-duty police should be armed all of the time. There are several long-standing arguments favoring armed off-duty police. First, traditional philosophy argues that officers should take appropriate action when confronted with criminal activity, regardless of their duty status. The

presence of the handgun facilitates proactive intervention when the officer is off-duty (Geller & Scott, 1992).

A second defense for arming off-duty police is that it protects them against retaliation from disgruntled citizens. If a suspect arrested by an officer gains release, he may subsequently seek revenge against the officer by attacking him off-duty. An armed off-duty officer can defend himself or herself. Arming off-duty police has a deterrent value that police may be in the areas that deter criminals from engaging in unlawful behavior.

Most departments and officers agree that off-duty shootings usually involve a situation that on duty officers never will be involved in. Behavior aspects of off-duty officer shootings may create liability for the agencies. Proper employment of officers must be stable through agencies, which includes investigating into the officer's personal lives to see what they are doing off-duty. Agencies do not want to see their officers in a strip club or some type of atmosphere that tarnishes the officer and the agency they represent. Training and proper concealment issues must be addressed to clear the issues that officers will use correct judgment off-duty. If proper recruitment and ethics were in place at agencies this could eliminate issues of improper behavior, how the public views their local police officers reflects the image of the whole department, night clubs and taverns are not illegal by any means but carrying a weapon to these places can put everyone at risks (Nuckols, 2010).

Some off-duty employment requires officers to be in plain clothes, this has less effect in having a command presence by wearing a uniform; this is a crucial role in police work. Many officers work extra employment jobs as private security for

businesses. If an officer is involved in a shooting while in the scope of their duties, they need to be able to reach and deploy justifiable force in a trained manner. The officer also needs to be able realize that they may not have a clear background so no one else is injured, due to missed rounds and injuring someone. That can also protect the officers in a civil suit and the agencies that hold the officers commissions as a peace officer.

According to a Chicago newspaper, an officer was going home while he was off-duty, when four males came to his home (Mills & Heinzmann, 2007). One of the men pulled a knife and picked up broken beer bottle, the officer shot and killed the suspect. The city paid the suspects family over \$600,000.00 in civil damages. The officer was cleared of any wrong doing criminally. The Chicago police policy manual stated even when officers are off the clock and out of uniform; they are still obligated to respond to emergencies. For that reason, off-duty officers are required to carry their equipment (City of Chicago, 2010). Several other agencies throughout the United States have modeled the same policy. With these kinds of policies in place for big city agencies, this lets other agencies have some good role model policies that they can adopt.

Most officers purchase their own legal defense to help reduce their costs at trial, but it is expensive for an officer to afford most legal defense plans cost at \$30.00 a month ("Member Benefits," n.d.). If these fees were budgeted and paid by the agencies it can be a great benefit to the officer and their agency. Officers should be trained for liability issues, for themselves and their departments.

COUNTER POSITION

Officers and departments around the country are constantly being burdened by the media and politicians about them carry weapons off-duty. Mayor Michael Bloomberg, of New York City felt that guns kill people; he has campaigned heavily to restrict off-duty carry of firearms of police officers (Lott, 2003). Bloomberg's new solution is to ban off-duty and former cops from being able to carry guns. In 2003, James Davis, a New York City Councilmember was blindsided by an attack and was stopped by an on-duty police officer. Bloomberg questioned James Davis as to why he would want to carry a gun, after an attack, even having a permit for it (Lott, 2003). Baltimore city is asking to prohibit the carrying of service weapons during officers' off time in order to encourage them to relax and not worry about their jobs. They claim that it would turn police in to a regular civilian job.

There has been several officer involved shootings at taverns and pool halls due to officer intoxication. The Baltimore police commissioner refuses to change the policy for his officers carrying guns in bars and night clubs. Baltimore police has left the policy in place the way it is stated, to help protect the public; officers will be armed at all times (Nuckols, 2011). This was an advisement of an editor to the city in Baltimore after a shooting of a soldier outside a bar by an off-duty officer (Nuckols, 2011). In New York, an off-duty officer shot himself in public and bullet fragments wounded bystanders in 1981; the city then put a ban on off-duty officers carrying weapons. The claims that those officers are careless and reckless in discharging weapons off-duty are slim (Krauss, 1996).

The New York Mayor who claimed guns kill people is wrong; a suspect has to be behind the weapon. His city council member was killed not long after he made the statement in front of city hall; James Davis was killed in 2003 in front of city hall by a gunman. The gunman was shot by an on duty New York officer. James Davis was a retired police officer, and if he had been armed, he may have had a chance to escape death. The Baltimore Police Department stated that officers shall carry at all times, they are considered on duty and ready or it can be subject to discipline for negligent of duty. The ban in New York was lifted in 1996 after an incident of a New York of the officer that committed suicide in 1981, the argument that officers were at risk of attack from criminals and could not protect the public due to not being armed (Nuckols, 2010).

Giving the facts of the issue of concealed carry and public opinions, it remains a debate between politics and agencies. It takes one police officer to make a mistake, and the whole world is against not just this officer, but all police officers can suffer from the outcome. The off-duty shootings and accidents are very few. There is movement every year to mandate officers and agencies to limit the off-duty carry. In 2004, a law was passed to let full time and retired officers to carry anywhere in the United States. The law will be hard for local governments to challenge to not authorize officers to carry at all, even when (Sullivan, 2008) when two officers were caring weapons on private property; these 3 officers shot a Hells Angel Member at a Roadhouse bar. The judge ruled that under HR218, private property owners can restrict a citizen from carrying a firearm on private property, but they cannot restrict law enforcement (Wallentine, 2009). Agencies have the right to limit their officers regarding where they can carry under this law.

Due to off-duty encounters, agencies have been sued for the officers' actions, and the officers have had to pay the defendants or their families either for injuries or wrongful death. There is one instance that an off-duty Denver police officer shot a man in a traffic argument. The city was liable for \$400,000 to the motorist shot by the off-duty Colorado officer, and the department adopted a policy requiring officers to always be on duty and always be armed, but they provided no training on how to handle police response when off-duty and without police vehicle, uniform, or radio (*Brown v. Gray*, 2000). Since then, the Denver Police Department has corrected the policy and covers the officers in training for off-duty encounters. At the Hays County Constable Pct. 3 Office, officers have been taught to communicate from police radios to cell phones and proper placement of a badge, so it can be seen to identify a police officer (Hays County Constable Precinct 3, 2010).

RECOMMENDATION

Proper training, recruitment, trust, and liability issues for departments should be reviewed to help officers on the street. If an officer is not allowed to carry his weapon off-duty to protect him and others, they should prepare for other means of protection if an off-duty encounter does happen. Officers across the country are targets of criminals. Officers who are known in their community as police officers, community members expect him to take a stand in violent crime, even off-duty he is the sheep dog, and he protects the sheep.

Agencies should have action plans to include training, knowledge and ethics. Ethics and maturity play an important role in officer actions. Policy needs to change in areas that will allow officers to be covered on departments' defense plans. In order to

change this, officers must be considered on duty 24/7. Once it is recognized nationwide as on duty all the time the agencies will have less liability. The term off-duty needs to be abolished in any policy. Training of officers for concealed carry when they are off-duty is a must; they should practice from where it is carried, qualify from that position, use good judgment, and always avoid areas of high crime.

Off-duty employment or shopping at the grocery store has to be treated in the same manner as an on duty status if a critical incident occurs. The agency and the public can trust an officer on duty with their lives, so agencies should trust their officers in the in same manner off-duty. Public debate and politics have tried to fight officer rights to carry off-duty due to a few fatalities and poor judgment. The claims that have been made are small compared to what has been reported in justified deadly force. Due to the national carry law, the claims are very weak or the law would have never passed in the United States. Law enforcement officers and their agencies should to come together with the public to create an action plan to fight crime. The public watch police and what they do. The public has no idea what goes on in their neighborhoods. The public should feel more comfortable in the presence of an off-duty officer when they meet up at a gas pump.

Citizens and officers should visit with each other and become a part of the views they both see every day. People should remember peace officers are here for them; it is not an "us against them mentality." Funds should be granted to agencies to train, recruit, educate, and protect. Officers put themselves and citizens' lives on the line every day. They need to keep training up to standards and use all possible resources

to make this happen. Agencies should properly train, recruit, and keep a supplied budget that will keep the citizens safe and benefit the public trust.

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