

**The Bill Blackwood
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Back-Up\Off-Duty Weapons

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ABSTRACT

This study focuses on the use of back-up/off-duty weapons in law enforcement, the training implications and if a need exists to standardize and or issue these weapons. The issue regarding back-up/off-duty weapons proposes that the training, guidelines and policy that governs this class of weapons is inadequate and is in need of updating. The research was conducted through a review of literature pertinent to the issue and a survey instrument was directed to various law enforcement agencies.

The findings of the study support the hypothesis that the training and resources directed toward the back-up/off-duty weapon will benefit from a review of the best practices and implementation of updated training. Further, the findings provide direction and suggestions on the development of a viable policy, regarding the training and standardization of the back-up/off-duty weapon.

This study concludes with a cursory look into the causation of the identified deficiencies, additional resources and points of interest for consideration, in conjunction with this research, and the benefits derived with the reduction and or elimination of those deficiencies.

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INTRODUCTION

A substantial amount of law enforcement officers carry a back-up weapon while on-duty, and a majority of all Texas law enforcement officers carry some type of weapon while off-duty. Increasingly, legislation is being passed that requires peace officers to take action in certain instances of criminal conduct that occurs in the view of the officer while he\she is off-duty. The purpose of this research is to determine if there is a training deficiency in the use and carry of back-up and off-duty weapons and if there is a need to standardize the utilization of these weapons. Further, the research will determine if a need exists for law enforcement organizations to issue back-up\off-duty weapons to its officers. The focus of this research considers and questions what the training implications are and whether or not back-up\off-duty weapons should be issued.

In order to provide an objective and informative response to the proposed question, different methods will be used to accomplish the research. A substantial portion of the research will consist of obtaining and reviewing a variety of published data on this subject to include: books, manuals, magazine articles and internet searches. Additional data will be obtained through a survey instrument directed to various law enforcement agencies across the state of Texas.

It is the researcher's belief that firearms training provided to the officer by their agencies in relation to back-up\off-duty weapons are minimal at best. After the culmination of this research, it is anticipated that it will be readily apparent to peace officers and their respective agencies that training, along with guidelines and procedures for utilizing back-up\off-duty weapons is generally lacking statewide. In addition to the aforementioned deficiencies, there is an identifiable need for

organizations to standardize the type of back up\off duty weapons in correlation to the primary duty weapon in use. Further, law enforcement agencies which issue primary duty weapons will benefit from standardizing and issuing back-up\off-duty weapons in concert with the issued duty weapon.

A significant amount of an organization's resources are directed toward firearms training to enhance an officer's survivability in a lethal encounter and reduce the liability associated with the deployment of weapons. The benefit to law enforcement that may be found through this research should propose the need to develop training and standardize the practices of the carrying and deployment of back-up\off-duty weapons. This, in turn, can assist in preparing peace officers to react safely and efficiently to criminal conduct while off-duty and enhance their survivability in those situations.

REVIEW OF LITERATURE

The issue of back-up\off-duty weapons in law enforcement is multifaceted, the topics range from questions relating to whether or not they have a purpose, discussions regarding: the type and caliber of the weapons, the policy content relating to these weapons, the legal liability linked to their use and who incurs that liability.

Davis & Pinizzotto (1996), who served in the behavioral Science Unit at the FBI Academy, related in their report *Above and Beyond the Call of Duty: Preventing Off-Duty Officer Deaths*, that the 1993 edition of the FBI's annual publication, Law Enforcement Officers Killed and Assaulted (LEOKA), indicates that between 1975 and 1985, 130 off-duty officers were feloniously killed. In the period from 1991 to 1993, 35 officers were killed while in an "off-duty" capacity.

In two of the cases involving off-duty killings reviewed by Davis & Pinizzo (1996) they found that “At the time of their deaths, their departments did not have established procedures for how officers should perform police functions while off-duty – procedures that might have saved their lives. Both departments did, however, require that their officers be armed while off-duty” (p. 3).

Davis & Pinizzotto (1996) reference incidents of: officers taking action unarmed and off-duty, officer being ambushed at home while off-duty, on-duty officers killing off-duty officers because of mistaken identity, reporting that from 1990 to 1993, 11 on and off-duty officers were killed by other officers. They conclude in this report that: (1) many homicides might be avoided if departments train officers to handle off-duty incidents involving lethal encounters with armed suspects; (2) every department should have a policy that outlines whether off-duty officers should carry weapons; (3) what officers should do if they witness a crime or become victims of a crime; and (4) how off duty officers should react when encountering on duty law enforcement officers (Davis & Pinizzotto, 1996).

It was reported in the International Association of Chiefs of Police (IACP), training key #403 (Anonymous, 1990), that during the period from 1977 to 1986, 12 percent of all officers killed in the line of duty (while acting in an off-duty capacity) were intervening in robberies, attempting to arrest armed offenders. IACP Training Key #403, suggests “officers should be *encouraged*, but not *mandated* to carry a handgun while off-duty” (Anonymous, 1990, p. 3).

During testimony to the U.S. Senate Committee on the Judiciary, Lieutenant Young remarked to the committee that The Law Enforcement Officers Safety Act

(S.2480) was an officer safety issue. Young effectively summed it up during his testimony when he stated that police officers were a group of dedicated and trained individuals that unlike people in other professions, police officers are rarely off-duty, and the oath they took to serve and protect when they became police officers never stops (S. Young, personal communication, July 23, 2002).

Additionally, Young commented that police officers will continue to be targets on-duty and off, due to the fact that offenders have excellent memories when it comes to the one police officer that brought them to justice. However, it is practically impossible for police officers to remember the name and face of every offender that they have taken into custody during their career (S. Young, personal communication, July 23, 2002).

In support of his testimony Young cited several cases that involved law enforcement officers killed off-duty, while either acting under the color of law, or ambushed off-duty due to their law enforcement activities while on-duty. In addition to the tragic outcome of those incidents he also cited two cases of officers who were off-duty and armed, acting under the color of law, using their off-duty weapon to stop felony criminal conduct.

In the journal article *Freeway Shootout: Backup Gun to the Rescue*, Hanten, (2001) relates an incident involving a San Diego Police Department officer who utilized his back-up weapon during a traffic stop that went bad from the beginning. The officer was fired on immediately when the violator vehicle was stopped. The suspect then proceeded to physically assault the officer in an attempt to take his duty weapon away.

The officer was able to retrieve the back-up weapon he carried and utilize it to stop the attack on his life, resulting in the death of the suspect.

Hanten (2001) states in this article “Certainly your life is more important than your career or any heat you might take after a shooting, but I recommend trying to find one approved by your department. Using a gun not authorized may cause you to incur some civil liability that your department will not help you with” (p. 39). This would certainly give credence to the statement probably heard by a large portion of officers at some point during their career, “Better to be judged by 12, than carried by six.”

In the article, *To carry-or not to carry*, Pollack (1999) addresses some desirable points in the utilization of back-up/off-duty weapons. The ideas presented are: (1) law enforcement agencies and it’s officers will benefit from an off-duty policy that is the same as the policy for duty weapons and the use of deadly force, (2) policy should dictate what the make, type and caliber of the off duty weapon, (3) off-duty ammunition should be approved by the department or issued, (4) the officer’s responsibilities and reporting requirements following the deployment and or discharge of an off-duty weapon. He also touches briefly on the merits of restricting the type of off-duty weapon to being of the same manufacture with the same type of operational system (Pollack, 1999).

Additional points of interest for consideration in any back-up/off-duty weapon program are addressed in the article *Back-up Weapons: Current Thinking*. Lesce (1989) addresses the utilization of back-up/off-duty weapons along with considering valid reasons for an agency’s administrators to promote the training and utilization of these weapons. An excellent starting point that should be addressed in a department’s

policy includes the premise: (1) that the back-up\off -duty weapon should be a smaller version of the duty weapon due to the hazards associated with changing to an unfamiliar operating system during stressful situations encountered during a lethal confrontation, (2) that the setting requirements for the mode of carry for a back-up weapon should be standardized and include training geared towards deployment of the weapon under stress.

Lesce (1989) touches upon several other reasons why law enforcement agencies should promote the training and utilization of the back-up\off-duty weapon. Some are common sense within the law enforcement profession, while other reasons are becoming painfully more apparent every day and include the premise that: (1) any weapon can malfunction at any time, (2) the officer may lose the weapon when surprised by physical attack, (3) the officer may be disarmed, (4) it can be faster to draw a second weapon than reload an empty weapon, (5) during a criminal episode an off-duty officer may be targeted and harmed before he/she can react in the event he/she is identified as a law enforcement officer by the perpetrator, (6) within the litigious atmosphere present in today's society, the absence of a clear, well defined policy and training program relating to back-up\off-duty weapons, presents a real liability issue for both the officer and agency.

The review of literature so far has focused on the purpose, training implications and other considerations when developing policy and implementing a back -up/off-duty weapon program. The review would not be complete without at least a cursory examination of the case law pertinent to the research, which will provide clarification on

the liability issues associated with the use of back-up/off-duty weapons and define who incurs that liability.

In *Monroe vs. Pape* (1961), the court commented that a municipality could not be held liable under 42 USCS 1983 for claims based solely on the *respondeat superior* theory. The *respondeat superior* theory dictates that an employer is responsible for an act of its employee if the act was committed within the scope of the employee's employment. This became a watershed of protection for law enforcement agencies when the court held that municipalities were not 'persons' for the purpose of a 1983 claim. This ruling stood for 17 years, until the court decided *Monell vs. New York City Department of Social Services* in 1978.

In *Monell* (1978), the court held that if a civil rights violation occurring by a government employee was the result of serious shortcomings of the employing agency's customs or practices (such as negligent supervision or inadequate training), then the agency (along with the employee) could be held liable. Since the decision in the *Monell vs. New York City* (1978) case, there have been numerous instances where the courts followed the guidelines set forth in the decision focusing on the failure to provide proper training for the employee and or deliberate indifference.

Gibson vs. City of Chicago (1988) is a significant case due to the fact that the court held that it made no difference whether the officer was on or off-duty for determining agency liability, but focused on whether or not the officer was acting in a law enforcement capacity. *Gibson* (1988) makes it clear that law enforcement agencies need to train their officers on performing in their official capacity while off-duty. Another case directly pertinent to this research is *Brown vs. Gray* (2000), where the court

accepted the argument that police officers are 'always armed-always on-duty'. Brown (2000) demonstrates a need for law enforcement agencies to have a comprehensive written policy on officers taking police action while off-duty and provide training in accordance with that policy.

METHODOLOGY

When discussing back-up\off-duty weapons, it is important to consider what the training implications are and whether or not these weapons should they be issued. Though not all inclusive, the researcher's knowledge and experience has demonstrated that of the countless hours law enforcement officers spend training on various subject matter including weapons training, very little of that training (whether state mandated or department required) is focused on the carrying and deployment of back-up and off-duty weapons. The majority of this type of weapons training centers largely around the individual agency instructing it's officers in the content of the agency's policy concerning these weapons and demonstrating basic knowledge and proficiency on the firing range with the weapon the officer intends to utilize as a back up or off duty weapon.

It is hypothesized that the research will show, that the popular train of thought on the type of training, including the topics covered such as weapon type, carrying, presentation, and after action reporting are inadequate. With the minimal resources that are dedicated to training officers in the use and carry of back-up\off-duty weapons, law enforcement agencies, along with their administrators, trainers and the individual officers are creating a potential work hazard coupled with the associated liability.

With the objective of providing an informative response to the proposed question, the methodology utilized for this research will include a survey instrument directed to 23

law enforcement agencies within the state of Texas and one law enforcement agency in the state of Alaska.

The survey instrument will be in the form of a written questionnaire. Some of the information that should be obtained from the survey instrument will include the type of agency, number of sworn personnel, back-up\off-duty weapon requirements, along with training requirements and frequency. A specific geographical area within the State of Texas will not be targeted for surveying in an effort to gain a diverse sampling of agencies from which reasonable conclusions could be drawn.

FINDINGS

The information obtained from the survey responses was compiled and analyzed to form a baseline with an emphasis placed on the selection, use and training of back-up\off-duty weapons. Demographically the agencies surveyed ranged from less than 20 sworn officers, to over 175 officers of which 81% are municipal police departments. Fifty-two percent of the agencies surveyed were evenly split, varying in size from less than 20 sworn officers to employing over 175 officers. The largest percentage (48%) of the agencies surveyed employed between 20 and 75 officers. The response rate to the survey exceeded expectations with 21 of the 23 agencies providing input.

From the information obtained through the survey, it is readily apparent that it is generally not a requirement to carry a back-up weapon. For instance, 100% of the survey respondents reported that a back-up weapon was optional. A majority (85%) of the agencies give officers an option to carry an off-duty weapon with 9% reporting a requirement to carry an off-duty weapon. The survey further indicated that 71% of the

agencies issued its officers a primary duty weapon, in contrast to 4% that issued a back up\off duty weapon.

Eighty five percent of those surveyed reported that their agencies have policies governing weapon characteristics, indicating their policy dictates the minimum caliber of the weapon and/or that it be approved by either the Chief of Police or a firearms instructor. Ninety-five percent of the agencies require the officers to qualify with the back-up/off-duty weapon (at least annually) in conjunction with the duty weapon qualifications. However, 66% of those surveyed report they had not received any training addressing the carrying, presentation and deployment of the back-up/off-duty weapon. The predominate topic covered for those who had received training specific to the off-duty/back-up weapon was in concealment and proficiency, with only two agencies providing training on topics such as retention, when, where, why, and how to deploy the weapon and the procedure following deployment of the weapon.

The literature reviewed during this research indicates that the back-up/off-duty weapon has an essential purpose in law enforcement. This class of weapons has and will continue to save lives and contribute to preventing felony criminal acts. When the decision is made to utilize the back-up/off-duty weapon, there are multiple aspects that should be considered by an agency and it's individual officers. For example, the back-up weapon should be a small, easily concealed weapon. However, the research indicates that it would be prudent for a law enforcement agency's policy to dictate comprehensive guidelines on the weapon utilized, not just the minimum caliber and that it be approved by a higher authority within the agency. A detailed policy that establishes guidelines for the carrying of a back-up weapon is of benefit to both the

agency and officer. An important characteristic of a viable policy would include a requirement that the back-up weapon's operational system mirror the duty weapon's operating system.

It is important to emphasize the way the body reacts during times of stress, such as tunnel vision, loss of gross motor skills and an elevated heart rate, to name a few. During these times officers tend to revert back to their training to carry them through stressful situations. This is why essential skills training is repeated over and over, ingraining it into the officer's memory, both physically and mentally. With the back-up weapon and duty weapon utilizing the same operating system, training resources are used more effectively. This allows for the inclusion of education (specifically geared toward back-up/off-duty weapons) in conjunction with duty weapon training.

The one weapon system concept for duty, back-up and off-duty weapons allows for more effective, essential skills repetition. For example, the one weapon system focuses on the manipulation of weapons, encompassing all three weapon types simultaneously, instead of focusing on two or possibly three different operating systems. The one weapon system concept also removes one more obstacle that can cause or increase confusion during a lethal confrontation. Plausibly, the officer will be able to react more efficiently when employing the back-up or off-duty weapon when they have training to revert to when faced with stressful situations. Moreover, this highly benefits their survivability and effectiveness. The one weapon system concept allows an agency to broaden its current firearms training curriculum without an additional drain on training resources or having to develop and implement another training program.

Other guidelines provided by the policy should include: ammunition, specifications, usage parameters and authority/reporting procedures, suggested modes of carry, identification and interaction with responding officers, training and qualification requirements, the frequency of training/qualification, in addition to the traditional make, model and caliber of weapon approved by the agency.

In any policy regarding off-duty weapons, officers should be encouraged to carry a weapon while off-duty. The weapon used in the off-duty capacity can be the duty weapon itself, or a smaller weapon, as long as the operational system of the weapon is the same as previously stated. Of equal if not greater importance than the weapon characteristics, is the need for a training program that encompasses, among other things, concealment and presentation of the off-duty weapon in a critical situation.

Other topics appropriate for inclusion in a back-up/off-duty weapon training program are: the mode of carry, when and where to deploy the weapon, the legal justifications for deployment of the weapon, the interaction and identification to responding on-duty officers and reporting procedures following the deployment of the weapon in an off-duty capacity.

With the courts being cognizant of the training and policy implications involving law enforcement weapons and the training officers receive, it will be beneficial to reiterate the core topics that are presented during firearms training in the back-up/off-duty policy. Core topics should include: proficiency, safety, weapon manipulation, inspection and maintenance, threat identification, moving and cover/concealment, low light tactics, retention, malfunctions and mind set.

Since the decision in *Monell* (1978), the courts have consistently put emphasis on the review of an agency's reasonableness and responsiveness in regards to training and policy content. These decisions have influenced the content of training programs and prompted the revision or creation of agency's policies and standard operating procedures. Collectively, the courts have not distinguished a difference in an officer's duty status, electing to focus more on whether or not the officer's actions were within the scope of his authority (under the color of law). This trend has made it apparent that being "on" or "off" duty is not nearly as important as the answer to the question "was the officer acting as an individual or as a law enforcement officer" when the incident occurred. Once the court determines that the officer was acting under the color of law, their next determination might consider whether or not the officer's actions were appropriate and within the agency's policy. Finally a court might determine whether or not the training provided to the officer by the agency was sufficient. When the court determines that that policy or training is inadequate, that agency will incur the associated liability.

The results of the survey instrument used in this research should not be particularly surprising. It is a corroboration of information that was already known. Moreover, the survey results may serve as an indicator of the importance law enforcement agencies and officers place on the subject of back-up/off-duty weapons. With 66% of those surveyed reporting that they had not received any significant training on back-up/off-duty weapons, it is critical that the emphasis or lack thereof placed on these weapons needs to change. The number of agencies that issue duty weapons (71%) was larger than expected, with only 4% reporting that they issued a back-up/off-

duty weapon to their officers. The manufacturers of the predominate weapons that are issued as duty weapons also produce compact or sub-compact versions of that particular weapon. This easily enables the agency to issue a companion weapon of the same caliber and operating system to use during the back-up/off-duty role.

Presumably, if enough justification exists to standardize and issue an agency's duty weapon, that same justification applies to the back-up/off-duty weapon or any other weapon that agency utilizes. Ninety-five percent of the responses on the survey stated that the officer is required to qualify with the back-up/off-duty weapon annually, which is usually in conjunction with the duty weapon qualification. From the survey responses, it is obvious that the terms *qualifying* and *training* are not being interpreted to mean the same thing. As a whole, law enforcement agencies are requiring qualification with the back-up/off-duty weapon without requiring training or with only minimum training.

CONCLUSIONS

Back-up\off-duty weapons: What are the training implications and should they be issued? The research was conducted in an attempt to determine what type of deficiencies, if any, are present in the area of training concerning the use and carry of back-up/off-duty weapons. The research was also executed to examine whether or not there is a need to issue and/or standardize the utilization of these weapons. The problem presented determined that back-up/off-duty weapon training provided to the officer by their agencies is minimal at best and the guidelines, and procedures for utilizing these weapons is generally lacking. It was hypothesized that the popular train of thought on training topics, weapon type, carrying, presentation, and after action

reporting are inadequate, which creates a potential work hazard in addition to legal liability.

It is easily concluded that the training resources dedicated to the back-up/off-duty weapon are inadequate and in some cases non-existent. Additionally, there is room for substantial improvement in the guidelines currently used to dictate the weapon used in the off-duty role. Providing training on the back-up/off-duty weapon has not been overlooked or ignored. Instead, this type of training has been placed low on the priority scale due to the long-standing assumption that what an officer does in his off-duty time is not the agency's concern as long as it does not discredit the officer's agency. Historically, officers have been required to qualify with a secondary weapon when they exercise their option to carry a back-up weapon while on-duty. The main thought behind this qualification requirement was the need to show proficiency in the event the weapon was deployed during work hours. However, the time has arrived where being "off duty" does not exist if the officer is acting within the scope of their employment.

Whether an officer is ever "off duty" lends itself to the answer that is the subject of this research. The researcher concludes that there is no "off duty" for police officers who: are in good standing, are fulfilling their oath of office, are acting under the color of law in good faith, stop or deter criminal acts. Therefore, the responsibility to provide officers with adequate training, guidance, resources and support, rests with the individual officer's agency, administrators and supervisors. Law enforcement cannot ignore the needs of police officers who are performing their duties at times other than their scheduled tour of duty. The development and implementation of training, policy and standardization of weapons for back-up/off-duty use is the foundation for increased

survivability, reducing liability risk and enhancing performance during “off shift” incidents.

Though the findings of this research and the previously stated conclusions support the hypothesis, the limitation of this research does not include the consideration of other resources and factors that would serve to provide further support. The short list of other resources for consideration in conjunction with this research, including but not limited to are; (1) The purpose of the United States Congress with the passage of H.R. 218; (2) The ramifications of prolonging the implementation of this training, and standardization with the passage of H.R. 218; (3) The absence of differentiation between on and off duty officers in the construction of the Texas Criminal Code of Procedure articles addressing the duty, powers and authority of peace officers; (4) The purpose of the wording in section 46.15(a)(1), Texas Penal Code specifically exempting peace officers from the provisions of the UCW and places weapons prohibited statutes, regardless of whether or not the officer is in the actual discharge of his duties (LexisNexis, Texas Criminal and Traffic Law Manual, 2005).

Law enforcement professionals need to reprioritize the needs associated with the back-up/off-duty weapon. Changes in society and world events alter what is expected from law enforcement officers by the public, the state legislature, the federal government and police officers themselves. The expectation that police officers should and will intervene in critical incidents (regardless of their duty status) becomes more prevalent every day. Police officers, as a group and individually, will continue to rise to meet those expectations and challenges that threaten the safety of the citizens they serve.

The reduction or elimination of the deficiencies identified during this research is relevant to the law enforcement profession by enhancing the tactical ability of officers, and reducing the physical risks to the officers and the public. The individual agency, administrators and its officer's professional image and credibility with citizens is enhanced by the citizen's knowledge that "their" local law enforcement agency strives to achieve a safer community, both in and out of uniform. Whatever resources used to accomplish anything that has the potential to improve safety, reduce liability, increase individual officer capabilities, and enhance professional image or reputation, will justify the expenditure.

Police officers placing themselves in harms way is a fact of life in law enforcement. If those officers are continually in harms way, due to a lack of skills or training, then the law enforcement profession is setting them up for failure. When that failure occurs, the potential outcome is the loss of a police officer in the line duty.

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