A Law Enforcement Executive’s Primer Concerning Replacement of Law Enforcement Services by Private Security
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Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered by a chief while designing policies and procedures for the department. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives, and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors. With this in mind this document is designed to provide law enforcement executives with information they need to develop solutions that address the needs of their communities. They do not represent a “suggested” or “model” solution that law enforcement agencies are recommended or required to follow.

Executive Summary

At times, in an era of declining resources, jurisdictions may consider whether costs associated with law enforcement might be mitigated by replacing public police personnel or entire agencies with “lower cost” private security personnel. When such arrangements are considered, it is important that full consideration of the implication of such arrangements be assessed, and that local law enforcement officials participate in the evaluation of any arrangement.

The key is to ensure that a full consideration of the issues at hand be undertaken by local legislators and other elected officials when structuring a program involving the use of private security providers to supplement or replace activities previously performed by public police agencies.

While many examples of working partnerships abound where private security officers supplement public police, law enforcement executives must be able to provide cogent advice to elected officials when arrangements to replace police agencies with private security companies are advanced. The implications of such a replacement arrangement are far reaching, and the factors below represent a survey of the key issues to review and discuss in such cases.

Background

As economies within jurisdictions around the country generally continue to be challenged with lower revenues, a decreasing tax base, and additional burdens, government officials are acknowledging the fact that a policy of “business as usual” cannot withstand the scrutiny of stakeholders, nor will it serve as the mechanism to balance the respective jurisdiction’s budget shortfalls. A recent publication by the Office of Community Oriented Policing Services (COPS), U.S. Department of Justice, details some of the impacts of reduced resources and budget cuts. In “The Impact of the Economic Downturn on American Police Agencies,” COPS Director Bernard K. Melekian states, “We believe that the changes that have been occurring across the country are going to continue to have a serious impact on the way American police agencies operate in the years to come.” As a consequence, law enforcement agencies and the governments they support, know that legitimate options for cost cutting need to be explored.

The costs associated with public safety continue to be a significant portion of the budget and therefore subject to increased scrutiny by elected officials and the voting public. For that reason, law enforcement executives are routinely tasked to participate in budget reduction efforts. Naturally, police executives must be willing to explore cost cutting. Initiatives such as civilianization, outsourcing, using reserve or auxiliary officers or volunteers, and the hiring of retired officers are some examples of measures employed in many jurisdictions. Among the cost-cutting opportunities that may well receive attention might be an initiative to supplement, or even replace, sworn officers with qualified private sector security professionals. At times, such efforts are undertaken with little input from law enforcement executives, but rather become enacted solely based on the belief the initiatives will achieve significant cost savings.
Consider these examples:

**New Jersey**

In Sussex Borough, New Jersey (1993), the borough council approved a contract with a Totowa, New Jersey–based security company to provide patrol services after the borough’s four-member police department was disbanded. (The chief and one of the three patrolmen were indicted in a drug-related offense.) The state attorney general later brought a lawsuit alleging the security officers were illegally conducting searches and stopping vehicles, as they were not police officers and were not empowered to do so. The county police chiefs association also decried the arrangement, warning that the private security guards working in such a capacity could compromise public safety and pose legal risks. A superior court judge ruled the arrangement was illegal and “dangerous,” and ordered it discontinued.

**Florida**

In Tampa, Florida (1994), the University of Tampa elected to abandon the idea of hiring city police to patrol their campus and instead hired a security firm when the Hillsborough Sheriff’s Office declined to continue providing campus police officers with commissions. For 20 years, the campus police force had full powers of arrest and investigation through the commissioning process; however, the newly-elected Sheriff at that time was concerned about the potential for vicarious liability. The university and city police were unable to reach an agreement because “the cost was greater than [the university] could justify spending.” University of Tampa President David Ruffer was quoted at the time, “If we had no other options other than contract with the city, then we would have done it because student’s security is the real issue here. But this [private security] gave us another, less expensive alternative.”

**California**

In Oakland, California (2009), faced with pressures to reduce crime amid a record budget deficit, the city council there voted to hire a private security agency to patrol high-crime districts in the city. Although like many municipalities, businesses and local residential developments had previously paid for their own unarmed private security services, this represented the first time public funds were being used to pay for private security officers. This arrangement concerned the Oakland Police Department, which considered unarmed guards acceptable, but did not support the hiring of armed guards, citing a lack of adequate training and screening. The mayor expressed concern that private guards without proper training would create liability concerns for the city. A newspaper article at the time noted, “When other U.S. cities have hired uniformed guards to patrol downtown districts, they most often have acted more as cleanup crews and neighborhood ambassadors than security officials.” Ultimately, Oakland Mayor Rod Dellums tabled the plan, and it was never implemented.

**Minnesota**

In Foley, Minnesota (2011), the city council voted to enter into an agreement with a security company to provide community and security services for its city, 24 hours a day, and seven days a week. In a related action, the city council decided not to renew the expiring law enforcement contract with the Benton County Sheriff’s Office. The change is expected to save the city $53,000 per year. Despite urging from the Minnesota attorney general to reconsider, the plan at this writing is moving forward. The agreement provides for the enforcement of city ordinances and a proactive security patrol, and the services to be provided by the security company were portrayed by the city as “similar to those provided by community services officers employed by other cities throughout Minnesota.” Residents were instructed to call the Benton County Sheriff’s Department when the assistance of a licensed peace officer is needed and to still call 9-1-1 for all emergencies. The council’s decision followed several months of study to determine the most effective way to provide for community service and law enforcement in an environment of diminishing city resources, and came after the Benton County Sheriff rejected a contract offer made by the city. The press release from the city reported that residents would receive increased patrol hours and a more visible presence by security personnel.

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These examples demonstrate that today, traditional public law enforcement may not be the “only game in town,” and communities may consider alternatives to public law enforcement in an effort to save money. These scenarios also serve as opportunities, and perhaps a mandate, for law enforcement executives to be well prepared to provide a needed level of input in the decision-making process. Further, having such source and reference material may well make those executives more comfortable in engaging and even pressing the issue, when such an initiative is first raised by officials or stakeholders.

Aware of this need, and wanting to provide law enforcement executives with a degree of preparation for these discussions, the Private Sector Liaison Committee of the International Association of Chiefs of Police has prepared this briefing paper as a primer to provide information that will form the basis for law enforcement officials engaging in discussions with, and subsequently making recommendations to, elected officials to inform those same discussions and decisions. As always, the local law enforcement executive will have at her or his disposal resources to provide the detail needed to flush out each of these concerns, including local counsel, state and local laws and ordinances, state chief’s associations, the IACP, and others. Executives could compare any approach being considered with similar efforts in comparable environments in their county or state.

The area of public-private partnerships has seen a great deal of attention and growth over the past decades. Many examples of effective, bilaterally beneficial partnerships exist. Often, these partnerships may involve private, unarmed security officers observing and reporting incidents and suspicious behavior to the police, while serving as a visible deterrent to criminal activity. Such an initiative may also involve private security personnel performing more “routine” duties traditionally performed by police officers, such as juvenile transports, guarding hospitalized arrestees, and handling non-life-threatening accidents involving personal injuries. Such policies may deliver impressive benefits to localities in terms of cost savings and also free up police personnel to concentrate on issues for which police powers are central to effective resolution.

Another option, as aforementioned, is to replace local law enforcement officers or entire agencies, to achieve cost savings. In such cases, security officers are deployed, generally armed, in uniform, and often in mobile patrol vehicles to provide patrol services and sometimes may be cloaked in the authority of a police officer (deputization or “special patrolman” status, for example.) Laws vary from jurisdiction to jurisdiction. At first blush, such arrangements raise many obvious questions. Do state or local laws permit security officers to have such status on public streets or highways, or is the authority restricted to specific locations, such as mass transit facilities, ports, government property, and so forth? Of course, many other questions may be raised about such arrangements.

Inherent in this topic is the realization that every jurisdiction will differ in terms of state and local laws governing a host of aspects of ceding police operations of any type to private security companies. As noted above, the nature of the arrangement may run the gamut from supplementation to replacement. This paper is agnostic as to the efficacy of any arrangement; such matters are the purview of the jurisdiction’s elected representatives, with, hopefully, the input of the local law enforcement executive with responsibility for the village, town or city concerned. However, there are a myriad of issues that should be considered when determining how any arrangement should be structured. Points that police executives should consider when advising elected officials concerning these arrangements are listed below.
Factors to Consider in Evaluating Proposals to Replace a Police Agency with a Private Security Company

Jurisdiction/Accountability

1. What are the current limits of legislation/authorization for such an arrangement?
2. Will any legislative enhancements be needed to permit such an arrangement? (e.g., deputization, civil liability protection?)
3. How will complaints by citizens about actions taken by security officers be handled?
4. How would the public be educated about any “differences” in what they can or should expect in their law enforcement (LE) services?
5. Will the security officers or security company be acting in cooperation with, or under, police agency supervision?
6. What are the expectations of the affected jurisdiction concerning the delivery of police or public safety services?
7. Are local residents satisfied or dissatisfied with the current service they are receiving? On what basis?
8. Are local residents supportive of police functions being conducted by a private provider of security services? On what basis?
9. Is the privatization of police service truly a more effective way of delivering certain services, or is it simply a way of lowering costs, where in reality less service, or less efficacious service, will be delivered? How would that be determined?
10. In cases where local neighborhoods or business communities are advocating for the establishment of a right to field an armed private security force, which may have police powers or may engage in activities heretofore reserved for public police agencies, what are the implications from a constitutional, liability, philosophical, policy, operational, and taxation perspective?
11. Almost all states permit citizen's arrests, however constitutional protections limit non-arrest detention powers and search authority of private citizens (security officers.) Will this impact on any non-deputized private security officer's ability to perform effective public safety and investigative actions?
12. What state or jurisdictional authority regulates private security services? And, what are the considerations when making agreements with private security companies to provide services?

Mission

13. How will the mission, authorities, expectations, and definition of success by all stakeholders (community members, elected or appointed officials, LE community, and security provider) be defined?
14. Is there an opportunity to redefine the LE mission and sworn officers’ roles in combating crime (e.g., schools, parks, traffic posts, and special events)?
15. Will there be confused expectations by the public as to the authority of sworn versus non-sworn officers?
16. Is there any current confusion when a department uses civilian or reserve personnel?
17. What is the existing state and local authorities for non-sworn private security engaged in public safety/public order activities?
18. Might this provide an opportunity for an LE agency to enhance recruiting of qualified police academy recruits, by observing them in a private security role?
19. Are there cross-jurisdictional authority issues, that is, how will the security company relate to other LE agencies, the courts, correctional facilities, and other actors?
Costs

20. What would the true cost differential for sworn versus non-sworn (i.e., security) officers be? This should include all aspects of uniforms, hiring, recruitment, human resource benefits such as pension, annuity, health care, training, and so forth.
21. What are the training costs and are their potentially different standards of training needed incurring additional costs?
22. What are the potential liability costs (for example, related to use of force to include, but not limited to, deadly force)? Who will bear those costs (will the security company be the responsible party, or will the jurisdiction concerned have any liability)?
23. Are there any economies of scale (smaller municipalities combining services)?
24. In cases where security patrols must still call a police agency in situations where police service is required, would there be cost savings realized? And, what are the implications from an efficiency perspective if the security provider is placed in such an intermediary role? And how might an “intermediate role” be described?
25. What are the legal, practical, and operational implications of a private sector security entity failing in its contract provision(s)?

Licensing and Certification

26. Are security personnel licensed by the state? What are the standards for licensing? (Note: Security Officer Regulation varies from state to state, and law enforcement executives should ascertain the nature of regulation and licensing standards in their states. Regulatory agency contact information can be obtained from the International Association of Security and Investigative Regulators [IASIR] at www.iasir.org. A contact with the regulatory agency can define on what basis a license was issued; examination or qualification, whether or not a license is in good standing [if there have been any disciplinary actions], who the key person is in oversight of the licensed activity, training requirements, and so forth.)
27. Do the security officers have, or are they able to obtain, special police powers under laws of the jurisdiction concerned and/or the state concerned?
28. Who will be responsible for ensuring the company has obtained the necessary licensing and that the officers deployed are currently certified and/or licensed, and who will verify this on a continuing basis? (Note: This can be recommended as a part of a bid for such services and included in any contract.)

Training

29. What training is required by state law or local law for licensing?
30. What additional training might be required and who would provide it?
31. Is there any ability to replace ineffective, contracted security officers without a labor-intensive process involved when dismissing a jurisdiction's employee? (Note: There are union organizations for security officers, and participation can vary from state to state. When evaluating this parameter, ascertain the situation in your case.)

Union/Morale

32. Would there be any morale issue for sworn officers or for other agency’s sworn officers who might interact with the security officers? On what basis?
33. Is there any union/collective bargaining issue for sworn officers (if union affiliated)?
Summary

Clearly, in situations where the replacement of sworn law enforcement officers or an entire agency is contemplated, a litany of issues must be considered. The IACP urges elected officials in jurisdictions facing budget issues related to the delivery of police and public safety services to tap into the reservoir of knowledge available within the greater law enforcement community to consider the implications of such a decision. The key is to ensure that a full consideration of the issues at hand be undertaken by local legislators and other elected officials when considering, structuring, and implementing a program involving the use of private security providers to replace activities previously performed by public police agencies. In those cases where supplementation of police services is desired, or where the replacement of certain functions with non-sworn personnel is desired, many effective models exist to facilitate the introduction of such cost-saving, or efficiency-producing measures.

Resources

That which follows is a list of multiple resource materials that can provide additional articles and information that the police executive may access concerning this topic.

COPS Office, U.S. Department of Justice:


Police Executive Research Forum (PERF):


Law Enforcement – Private Security Consortium (Project supported by agreement with COPS)


International Association of Security and Investigative Regulators (IASIR)