



Off-Duty Police Employment Audit Report 201213-07

June 18, 2013

Executive Summary

The Florida Highway Patrol (FHP) allows its sworn members to engage in off-duty police employment (ODPE) that does not conflict with primary job assignments or obligations and does not discredit or embarrass the Department or diminish public confidence in law enforcement or in FHP's commitment to integrity. The FHP defines ODPE as any secondary employment undertaken while in other than duty status which entails actual or potential use of police authority and requires vested police powers as a condition of employment.

For any ODPE worked, sworn members are permitted to use Department uniforms, equipment and vehicles. Members are responsible for compensating the State of Florida in the form of mileage reimbursement for miles driven in an FHP vehicle during the course of ODPE. Any scheduling and administrative duties associated with ODPE are required to be accomplished by an FHP sworn member working in an off-duty status.

Real time, detailed data on the extent of FHP member participation in ODPE is not readily available; however, we estimated that at the time of the audit FHP had approximately 600 approved ODPE jobs and in the 2011-12 Fiscal Year, sworn personnel earned at least \$14 million in supplemental income from ODPE.

The audit determined that the FHP should evaluate its current ODPE policies and should also consider enhancements to current processes and procedures to improve internal controls and monitoring of ODPE services performed by participating members. The following issues were identified that require management attention.

Off-Duty Police Employment within the Florida Highway Patrol Lacks Substantive Internal Controls and Oversight

The current, highly decentralized system of coordination and documentation related to ODPE has resulted in a culture susceptible to the risks of fraud, conflicts of interest and inequity. The potential for significant additional financial gain that ODPE provides may distort member's incentives and foster a culture in which there is an increased risk of fraud and other problems.

To effectively manage and provide proper oversight and internal controls, FHP should evaluate the current structure of ODPE and establish an electronic system to more

effectively monitor member participation and provide internal controls to ensure participating members followed policies and procedures. The emphasis on this evaluation should be to improve, streamline and automate the approval, documentation, and retention of ODPE information as well as provide FHP with sufficient details about the entities to which ODPE services are being provided and what members are providing these services.

Failure of Florida Highway Patrol Supervisors to Identify Off-Duty Police Employment Violations

The current ODPE system does not permit supervisors to easily review and identify policy violations by participating members. Violations are occurring that are going undetected by FHP supervisors. We identified numerous instances in which FHP members claimed time worked simultaneous with ODPE hours. Additionally, participating members exceeded work hour limitations, adjusted or split regular work shifts to accommodate ODPE and worked or scheduled ODPE jobs prior to troop commander approval. Members also failed to report off-duty work status in CAD and on ODPE forms. FHP should take action to ensure supervisors enforce the policies and procedures governing ODPE. Specifically, tools and techniques should be developed to assist supervisors with the ability to efficiently and effectively identify violations and establish an oversight function to review member compliance with ODPE policies on an on-going basis.

Off-Duty Police Employment Schedulers can Potentially Undermine the Florida Highway Patrol Chain of Command

Members who serve as schedulers have the ability and power to offer ODPE to other members. Schedulers, through this ability, have the potential to create an alternative chain of command. This authority vests a significant amount of power with schedulers and can potentially undermine the chain of command.

Off-Duty Police Employment Documentation is Maintained in an Incomplete and Inaccurate Manner and in Violation of Department Policy

Members are required to complete Department forms pertaining to ODPE. We identified numerous instances of documentation which contained incomplete or inaccurate information. Additionally, members are using outdated or altered forms, not maintaining required documentation or documentation is not approved on a timely basis.

Off-Duty Police Employment Rates are Negotiated by Schedulers without Florida Highway Patrol Oversight

The FHP does not govern the rates that businesses pay officers or the rates schedulers charge for their services. While not all schedulers charge a fee to businesses for their service, the lack of directives by the FHP provides the opportunity for schedulers to bill

one rate for a member's work and pay the member a different rate, as well as significantly mark-up services provided by FHP members.

Costs to the Department - Off Duty Police Employment

While members reimburse the Department for mileage incurred in the performance of ODPE services, this reimbursement does not represent the costs incurred by the Department. FHP should evaluate costs incurred to manage ODPE and implement an hourly administrative fee, in addition to mileage reimbursement, to offset equipment cost and applicable Department member overhead.

Retention of Off-Duty Police Employment Records

Retention schedules identify Department records and establish minimum periods of time the records must be retained based on the records administrative, fiscal, legal and historical values. The FHP does not have established records retention requirements for ODPE documentation and should establish and implement records retention and management guidelines for ODPE documentation, to include scheduler's ODPE documentation.

Off-Duty Police Employment SharePoint Site

FHP Policy 5.08 requires each Troop commander to establish and maintain a list of approved ODPE jobs for the troop. The list is to also include the names of the schedulers approved to schedule each approved job. We identified numerous instances of duplicate listings, inactive jobs, non-members listed as schedulers, jobs listed with no assigned scheduler and Department issued cell phone or troop phone numbers listed as contact numbers. The FHP should establish and implement documentation standards and requirements for an ODPE electronic system.

Officer Fatigue

During our review of detailed ODPE records, we noted many FHP officers were working off-duty jobs in conjunction with their normal shift, without a break or rest period between the two. The FHP should review their policies pertaining to the number of hours FHP officers can work and evaluate whether a mandated rest or break period should be established and whether the 24-hour and workweek period limits should be adjusted.

FHP management generally concurred with our findings and began implementation of corrective actions for some of the findings prior to the completion of this report.

Background and Introduction

The Florida Highway Patrol (FHP) allows its sworn members to engage in off-duty police employment (ODPE) that does not conflict with primary job assignments or obligations and does not discredit or embarrass the Department or diminish public confidence in law enforcement or in the FHP's commitment to integrity.

The FHP defines ODPE as any secondary employment undertaken while in other than duty status which entails actual or potential use of police authority and requires vested police powers as a condition of employment. The definition encompasses those who schedule ODPE. When sworn members are working in FHP uniform at an ODPE job, a member of the public would have difficulty distinguishing whether they are on regular duty for the FHP or working for an off-duty police employer.

In addition to ODPE, FHP sworn members also participate in Hireback. Hireback is a program created by mutual agreements between the FHP and other government entities that compensates members for performing specified law enforcement duties outside their regular duty hours. Primarily, Hireback jobs are administered through contracts with the Florida Department of Transportation on road construction job sites.

Regulation of Off-Duty Police Employment Programs in Florida

There are various Florida Statutes and Attorney General Opinions that address different aspects of secondary employment components, such as payment to troopers, program costs, and worker's compensation liabilities. Additionally, the Code of Federal Regulations Fair Labor Standards Act addresses how off-duty hours apply to overtime pay. These laws support that law enforcement agencies can provide a secondary employment program that primarily serves a public purpose; however, the costs to operate such a program cannot be borne with public funds¹.

Off-Duty Police Employment Policies

The FHP Policy Manual includes written policies and processes related to ODPE. These include the process for members to obtain permission to engage in ODPE; the conditions for authorization; the prohibited types of work; prohibitions on working ODPE; the maximum hours permitted to work; scheduling/administration of ODPE;

¹ The related Florida Statutes (F.S.), Florida Attorney General Opinion and Code of Federal Regulation (CFR) governing off-duty police employment:

- Section 112.316, F.S., allows for public officers and employees to accept other employment which does not interfere with the full and faithful discharge of his/her duties to the state.
- AGO 97-01 clarified that public monies should not pay for the costs associated with secondary employment programs since secondary employment is a "private purpose."
- 29 CFR Part 553, Section 553.227, Fair Labor Standards Act provides that the hours of work performed by law enforcement officers for a separate and independent employer during their off-duty hours, at their own option, are not combined with the hours worked for the primary public agency for purposes of overtime compensation.

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requirements that off-duty employees log-on to patrol communications systems; and the right to suspend, revoke, or deny any ODPE.

Specific directives to FHP sworn members regarding ODPE and Hireback are provided in FHP Policy 5.08, *Off-Duty Employment*, FHP Policy 5.09, *Administration of Hireback Programs*, and FHP Policy 5.10, *Escorts*.

Predominantly, ODPE jobs worked by FHP members consist of:

- Traffic control and job site/worker security for road construction or road repair;
- Traffic control and pedestrian safety for churches, universities, and special events;
- Crowd control and security assistance for retail outlets, sporting events, and grocery stores; and
- Escorts for oversized or sensitive loads on highways.

FHP Policy 5.08 prohibits the following types of ODPE jobs for its members:

- Any type of employment at establishments or businesses which sell alcoholic beverages for on-site consumption as a regular and primary part of the business enterprise;
- Delivery of labor or other services in direct or indirect support of agencies engaged in debt collection or repossession of property, wrecker companies, bail bonding companies, private investigation services, paralegal services, nude/topless dancing establishments, or any event that would involve any activity that would be considered adult entertainment; and
- Any type of employment that would require a member to testify in a court of law in opposition to another law enforcement agency, such as case preparation for the defense or plaintiff in any criminal or civil action or proceeding.

Scheduling and administrative duties associated with ODPE are required by FHP Policy 5.08 to be accomplished by an FHP sworn member working in an off-duty status. Compensation for members is the responsibility of the private employer. The Department does not maintain any liability for taxes owed on compensation received by sworn members for ODPE.

Sworn members are limited in the number of hours they can work in both a 24-hour period as well as a workweek. Members may not work a combination of on-duty (regular and scheduled overtime), Hireback, and off-duty hours of more than 16 hours in any 24-hour period. A member may not work a combined total of more than 72 hours of on-duty (regular and scheduled overtime), Hireback, or ODPE in each workweek, Friday through Thursday.

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For any ODPE worked, sworn members are permitted to use Department uniforms, equipment, and vehicles and may be called back to service when needed. Members are responsible for reimbursing the State of Florida for any miles driven in an FHP vehicle during the course of ODPE. During the 2011-12 Fiscal Year, sworn members reported and reimbursed the Department for 1,332,056 miles driven while performing ODPE services.

Scope of Off-Duty Police Employment

Real time, detailed data on the extent of FHP member participation in ODPE is not readily available. The approved jobs listed on FHP's SharePoint sites reflect that FHP has approximately 1,165 ODPE jobs and 350 schedulers.

During the 2011-12 Fiscal Year, sworn personnel reported working 283,386 hours of ODPE. Based on an average hourly compensation of \$50 per hour worked, we estimated that approximately \$14 million was paid for ODPE services during the 2011-12 Fiscal Year. Additionally, during the 2011-12 Fiscal Year, the FHP Office of Strategic Services reported sworn personnel worked 162,764 hours of Hireback and were paid approximately \$6 million.

Florida Highway Patrol Off-Duty Police Employment Procedures

Businesses or individuals that want to employ FHP members for ODPE are required to submit a Request for Off-Duty Police Services form to the troop commander of the troop in which the actual delivery of services will take place. Many FHP members that schedule ODPE manage their own corporations which employ co-workers and subordinates to fulfill ODPE requests.

Any sworn member who desires to schedule or seek ODPE during off-duty hours or leave periods must obtain written approval from their respective troop commander prior to beginning any ODPE. Troop commanders are required to determine whether requests constitute a conflict of interest, interfere with members' primary duties as a law enforcement officer, or involve prohibited services. Currently, approval of any request to work ODPE may be granted on a continuous basis until a job is terminated or approval is withheld.

Work agreements for ODPE are typically arranged between Department approved schedulers and the employers. The scheduler has the responsibility to coordinate and schedule members and is required to do so in an off-duty capacity. Schedulers, per FHP Policy 5.08, are to refrain from arranging any ODPE for any supervisory members who maintain an organizational rank greater than that held by the scheduler and who serve in the same organizational component with the scheduling member².

² A trooper cannot schedule their lieutenant who is in their chain of command. However, the same trooper can schedule a lieutenant who is not within their chain of command.

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Schedulers are required each month to submit an Off-Duty Police Employment Scheduler's Monthly Report to each district commander whose subordinates have performed any ODPE. The report details the member's name, work location and dates as well as number of hours worked for each ODPE job.

Each member who worked ODPE is required to submit a Monthly Off-Duty Police Employment Report listing all periods of private sector employment worked during any calendar month. The reports are submitted to the member's troop district commander and include dates worked, employer and location, times of employment, and mileage driven (if a patrol vehicle was used).

Violations of Off-Duty Police Employment Policies

Based on past investigations and a sample of ODPE documentation, FHP members of varying ranks are violating Department ODPE policies. The following are samples of cases investigated by the Office of Inspector General in which ODPE violations were identified.

- In May 2011, a trooper working ODPE at a restaurant witnessed an altercation between customers. FHP received a rude and discourteous complaint against the trooper and determined that the trooper was not approved for ODPE at the date of the incident. An internal investigation into the complaint determined the trooper failed to report their ODPE activity.
- In August 2012, an investigation determined a captain was scheduled to work by his subordinate and worked ODPE and Hireback details at a road construction job site in violation of policy. A lieutenant, who was also a subject in the investigation, was found to have scheduled their supervisor for ODPE as well as scheduled a lieutenant and two captains for Hireback details when other bargaining unit members were available in violation of policy.
- In August 2012, two sergeants violated policy by scheduling private sector ODPE for a supervisor within their chain of command. The lieutenant who worked the ODPE was also found to have falsified Requests for Off-duty Police Services forms and monthly Off-Duty Police Employment reports.
- In October 2012, a troop commander was found to not have enforced policy regarding secondary employment and/or provide effective oversight by allowing a captain to work traffic related ODPE and Hireback in violation of Department policy.

Off-Duty Police Employment Survey of Other Police Agencies

As part of the audit, nine state police agencies were surveyed to determine how they administer ODPE. The following state patrols participated in the survey:

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- Florida Highway Patrol;
- Georgia State Patrol;
- Illinois State Police;
- Louisiana State Police;
- Missouri State Highway Patrol;
- North Carolina State Highway Patrol;
- Pennsylvania State Police;
- South Carolina Highway Patrol; and
- Tennessee Highway Patrol.

Highlights from the state police agency survey include the following:

Four of the nine state patrols prohibit troopers from taking any off-duty supplementary law enforcement employment, independent of the agency (Illinois State Police, Pennsylvania State Police, North Carolina State Highway Patrol and Missouri State Highway Patrol).

None of the nine agencies use an automated system for scheduling or managing their secondary employment program.

The Louisiana State Patrol is the only agency that uses agency personnel to schedule officers to work secondary law enforcement employment. Additionally, the Louisiana State Patrol collects officers' payments from businesses and pays officers directly. The Louisiana State Patrol has also established pre-set hourly rates or ranges for officers working secondary law enforcement employment. The FHP and Louisiana State Patrol are the only two agencies to charge an administrative fee to businesses or collect mileage reimbursement for secondary law enforcement employment events.

Local police agencies in Florida were selected due to the size of the agency. Local police agencies surveyed included:

- Hillsborough County Sheriff's Office (HCSO);
- Jacksonville Sherriff's Office (JSO); and
- Orange County Sherriff's Office (OCSO).

Highlights from the local police agency survey include the following:

Two of the three agencies use on-duty agency personnel, as well as an automated system, to schedule officers to work (HCSO and JSO).

All three agencies schedule ODPE on a first responder basis, allow businesses to request particular officers, have pre-set hourly rates, require businesses to pay the officer directly, and charge an hourly administrative fee.

Findings and Recommendations

Our audit determined the FHP should evaluate its current ODPE policies and consider enhancements to current processes and procedures to improve internal controls and monitoring of ODPE services performed by participating members.

Off-Duty Police Employment within the Florida Highway Patrol Lacks Substantive Internal Controls and Oversight

ODPE worked by FHP officers lacks substantive oversight. The current, highly decentralized system of coordination and documentation related to ODPE has resulted in a culture susceptible to the risks of fraud, conflicts of interest, and inequity. The potential for significant additional financial gain that ODPE provides may distort member's incentives and foster a culture in which there is an increased risk of fraud and other concerns.

During the audit, the FHP could not provide real time comprehensive data about its officers' ODPE including how many hours are worked, where, by whom, and for whom. This information is maintained throughout the FHP district offices and retained predominantly in paper.

The current paper driven system does not provide sufficient data to allow supervisors to easily compare reported ODPE and regular duty hours for possible overlapping time. It also does not allow supervisors to easily track the total number of hours worked by participating members. Additionally, the forms used to approve ODPE jobs lack sufficient details for FHP to fully determine job and staffing specifics and in some occasions contained typed signatures.

The current decentralized system of coordination of ODPE by members, referred to as schedulers, throughout the Department has inherent risks, fosters potential inequities among employees who seek ODPE, and provides opportunities for favoritism. Schedulers serve as the key contact between private businesses seeking ODPE services and the members that participate and have the ability to select and assign paid hours to members. This authority vests a significant amount of power with schedulers and can potentially undermine the chain of command.

The current system of using schedulers to coordinate ODPE results in the Department lacking basic real-time systematic ODPE data. This is critical, because in most cases of ODPE, officers are wearing FHP uniforms and their actions represent to the public their work and duty as FHP members.

The audit identified the need to reform current ODPE policies and procedures with an emphasis of adding internal controls. To effectively manage and provide proper oversight and internal controls, a systematic process to electronically record detailed

data including how many hours are worked, where, by whom, and for whom should be implemented.

Finding 1

The current policies and procedures that govern ODPE within the FHP do not provide sufficient internal controls or mechanisms to effectively monitor member participation and ensure compliance with policies and procedures.

Recommendation

We **recommend** the FHP evaluate the current structure of ODPE and establish an electronic system to more effectively monitor member participation and provide internal controls to ensure participating members follow policies and procedures. The emphasis on this evaluation should be to improve, streamline and automate the approval, documentation and retention of ODPE information as well as provide FHP with sufficient details about the entities to which ODPE services are being provided and what members are providing these services.

Management Response

The Florida Highway Patrol concurs with the recommendation in Finding 1.

The Florida Highway Patrol has completed a review evaluating all aspects of its ODPE program, including those addressed in this audit report. As part of the results, the Department will issue a Request for Information (RFI) by July 31, 2013, to seek project implementation information regarding available solutions designed to schedule and administer ODPE worked by Florida Highway Patrol troopers. It is anticipated that the Department will procure a private vendor who will be issued a multi-year contract with full administrative responsibilities for scheduling and management with regards to ODPE in compliance with FHP rules and policies.

The Division has recently purchased "PowerDetails" to schedule and manage Hireback projects administered by the Department. In the event a private vendor is not procured to administer ODPE, FHP will examine the use of this scheduling system for scheduling and management of ODPE.

Failure of Florida Highway Patrol Supervisors to Identify Off-Duty Police Employment Violations

We reviewed a sample of ODPE documentation (Request for Off-Duty Police Services form, Monthly Off-Duty Police Employment Report, and Off-Duty Police Employment Scheduler's Monthly Report) and compared reported activities with both People First timesheet records and computer aided dispatch (CAD) notes. The sample included

documentation from six troops. We identified the following potential Department policy violations:

- Members claimed time worked simultaneous with ODPE hours;
- Members exceeded work hour limitations for a 24-hour period;
- Members over reported regular duty hours;
- Members did not report regular work and ODPE shifts in CAD;
- Members adjusted or split regular work shifts to accommodate ODPE and Hireback;
- Members worked ODPE and Hireback in conjunction with sick leave;
- Members did not record ODPE shifts on monthly ODPE reports;
- Member reported ODPE mileage in conjunction with shift but did not work a regular shift that day;
- Members worked ODPE prior to troop commander approval;
- Members scheduled ODPE for businesses for which they are not listed as a scheduler; and
- Members worked ODPE shifts scheduled by subordinates whom directly report to them.

All instances in which it appeared that FHP members violated Department policies were referred to the FHP Office of Professional Compliance for additional research and evaluation. In some cases, an internal investigation was initiated.

Finding 2

The current ODPE system does not permit supervisors to easily review and identify policy violations by participating members. Violations are occurring that are going undetected by FHP supervisors.

Recommendations

We **recommend** the FHP take action to ensure supervisors enforce the policies and procedures governing ODPE. Specifically, the FHP should develop tools and techniques for supervisors to efficiently and effectively monitor member compliance with ODPE policies.

We **recommend** the FHP establish an oversight function to review member compliance with ODPE policies on an on-going basis.

Management Response

The Florida Highway Patrol concurs with the recommendations in Finding 2.

The RFI and subsequent vendor contract referred to in response to Recommendation 1 will include components that facilitate the review, approval, and overall monitoring of ODPE by supervisors and managers.

In the interim, FHP will work with troop commanders to reinforce the requirements contained within current FHP off-duty employment policies. The Office of Strategic Services will research and develop monitoring tools in conjunction with implementation of the improved Computer Aided Dispatch and Records Management System (CAD/RMS) scheduled for Fiscal Year 2013-14. The research will include an attempt to correlate hours worked as ODPE and Hireback in the CAD/RMS with actual straight time and overtime reported in People First.

Additionally, FHP will continue the troop staff inspection process with special emphasis on records related to ODPE, including compliance with the policies and procedures governing ODPE.

Off-Duty Police Employment Schedulers can Potentially Undermine the Florida Highway Patrol Chain of Command

FHP Policy 5.08 currently prohibits a member from scheduling another member who is above them in their chain of command. For example, a member cannot schedule their lieutenant who is in their chain of command; however, the same trooper can schedule a lieutenant who is not within their chain of command.

The concept of chain of command is predicated on the idea that each rank respects the authority of and defers to the decision making power of higher ranks.

Members who serve as schedulers have the ability and power to offer ODPE to other members. The scheduler is, for practical purposes, the supervisor at the job they schedule. This puts employees who work the job in a conflicted position of reporting to the scheduler for the off-duty job, but reporting through the regular chain of command for on-duty work. This conflicted position can be elevated when higher ranking members work for lower ranking schedulers at ODPE jobs. Schedulers, through this ability, have the potential to create an alternative chain of command that has the potential to undermine the actual chain of command.

The audit determined there are approximately 20 schedulers within the FHP that schedule in excess of 10 jobs, with 11 of those scheduling over 20 jobs.

Finding 3

ODPE schedulers have the power to potentially undermine the FHP chain of command.

Recommendations

We **recommend** the following:

- FHP evaluate alternative methods for scheduling ODPE, both internally and externally.
- FHP evaluate the role, function and authority of schedulers to include secondary schedulers.
- FHP prohibit any member in a supervisory position from working an ODPE assignment scheduled by a member of a lesser rank.
- FHP review ODPE policies and evaluate whether to allow sworn members above a particular rank to schedule and/or work ODPE.
- FHP evaluate whether to include ODPE scheduling as an ODPE job. If scheduling ODPE is determined to be an ODPE job, we **recommend** updating policies to require members to report ODPE scheduling on monthly ODPE reports.
- FHP establish limits for the number of ODPE jobs a member can schedule.
- FHP evaluate prohibiting members from scheduling ODPE jobs outside of a pre-established range.

Management Response

The Florida Highway Patrol concurs with the recommendations in Finding 3.

A primary aspect covered in the RFI and subsequent vendor contract referred to in response to Recommendation 1 is ODPE scheduling statewide. This will address each of the bullet points of the recommendation by removing FHP members from the scheduling process and centralizing ODPE scheduling within an entity contracted by FHP.

In the interim, Florida Highway Patrol management will review the current rules applicable to the overall role, function and authority of ODPE schedulers. All of the recommendations in this finding will be taken into consideration during FHP policy review to determine the best course of action including the update of FHP Policy 5.08 – Off-Duty Employment, to reflect those recommendations which will alleviate the potential undermining of FHP chain of command structure. Any update to FHP policy will occur after FHP reaccreditation activities are completed in the fall of 2013.

Off-Duty Police Employment Documentation is Maintained in an Incomplete and Inaccurate Manner and in Violation of Department Policy

In conformance with DHSMV Policy 5.03, *Dual Employment and Compensation*, sworn members desiring to seek private sector off-duty employment are required to complete a Request to Work Secondary Police Employment Form. The sworn member is required to provide a copy of the completed and approved Request to Work Secondary Employment Form to the Troop Commander over any troop in which the member desires to work private sector police employment. Troop Commander approval must be obtained prior to the member beginning any such work in the troop.

FHP Policy 5.08, *Off-Duty Employment*, states “District Commanders shall be responsible for establishing and maintaining a current database of insurance information for all members who have been approved to work off-duty police employment under their command. The database will be updated continuously or at a minimum of every six months.”

FHP Policy 5.08, *Off-Duty Employment*, states “Private individuals or corporations desiring to employ FHP members for off-duty police employment shall submit a Request for Off-Duty Police Services to the Troop Commander of the troop in which the actual delivery of services will take place. Normally, completed request forms for off duty police employment services must be submitted to respective Troop Commanders/Deputy Directors at least ten working days prior to the date on which secondary employment is scheduled to commence. However, if exigent circumstances prevail the Troop Commander may waive this requirement. Anytime this provision is waived and the Troop Commander gives verbal approval, the date of such waiver/approval shall be noted on Request for Off-Duty Police Services form.”

We reviewed ODPE documentation (Request to Work Secondary Police Employment form, Request for Off-Duty Police Services form, Monthly Off-Duty Police Employment Report and Off-Duty Police Employment Scheduler’s Monthly Report) for six troops.

In our review of ODPE documentation, we found the following:

- Forms missing members’ names, scheduler’s name, district commander’s names, scheduler’s contact number, locations, start and end dates, whether patrol car is required, and signatures.
- Members using outdated or altered forms.
- Approximately 40% of members maintained binders or expired insurance on file.
- Over 50% of the Request for Off-Duty Police Services forms were approved by the troop commander after the listed start date.

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- Approximately 10% of the schedulers are using Department issued cell phone and/or land-lines as their contact numbers for ODPE services. Three troops had 25% of their schedulers using Department phone numbers.
- Trooper's corporation names listed on documentation.

Additionally, we found one job which had been approved in a particular troop, rescinded within the same month due to safety and liability considerations, and then approved six months later in the same troop by the next troop commander.

Finding 4

ODPE documentation is accepted and maintained in an incomplete and inaccurate manner and in violation of Department policy.

Recommendations

We **recommend** the following:

- FHP ensure ODPE documentation is complete and accurate prior to approval.
- FHP reevaluate the forms currently being used for ODPE and make appropriate changes to ensure supervisors have sufficient details of ODPE services being performed by members.
- FHP ensure current insurance is maintained for each member.
- FHP ensure ODPE schedulers are not using Department issued contact numbers for ODPE scheduling services.
- FHP prohibit the use of trooper's corporations on ODPE documentation.

Management Response

The Florida Highway Patrol concurs with the recommendations in Finding 4.

A primary aspect covered in the RFI and subsequent vendor contract referred to in response to Recommendation 1 is electronic scheduling and reporting of ODPE activities. This will address each of the bullet points of the recommendation by providing for electronic monitoring, review and approval of ODPE activities.

In the interim, FHP troop commanders and district commanders will be instructed to perform a quality control review of all required documentation from troopers working ODPE and certify that current documentation on file complies with existing FHP policy.

Florida Highway Patrol staff in the Policy, Accreditation, Inspections and Forms Office will perform an evaluation of all forms currently required for ODPE. The forms will be updated, if warranted, to reflect the recommendations of this finding. Revised forms will be included in the final product that results from the RFI referred to in the response to Recommendation 1.

Additionally, staff will review Policy 5.08 and make recommended updates to prohibit the use of Department issued contact numbers, equipment and clerical staff for the use of scheduling ODPE. The update of Policy 5.08 will also require the use of trooper name in lieu of a corporation on all ODPE documentation. Any update to FHP policy will occur after FHP reaccreditation activities are completed in the fall of 2013.

Off-Duty Police Employment Rates are Negotiated by Schedulers without Florida Highway Patrol Oversight

While many police agencies have established off-duty rates of pay (rates) for officers, the FHP does not govern the rates that businesses pay officers or the rates schedulers charge for their services. Currently, the establishment of rates paid for ODPE services is determined by the scheduler of the job. Schedulers are not prohibited from being compensated for their coordination work and their compensation could include hourly rates and fees for their scheduling activities.

During the audit, the FHP received a complaint from a business regarding their billing for ODPE services. The business was billed \$55 per hour for FHP members who performed police work and was billed an additional \$45 per shift per trooper. Billing records maintained by the scheduler and provided by the business, revealed that for a five hour shift the trooper worked, the company was billed \$320, \$225 went to the trooper, \$85 went to the scheduler and \$10 went to the 3rd party billing company. Scheduling and payment processing added an additional 42% to the cost of the direct ODPE services. In their complaint, the business wanted to deal directly with the troopers rather than a scheduling corporation.

While not all schedulers charge a fee to businesses for their service, the lack of directives by the FHP provides the opportunity for schedulers to bill one rate for a member's work and pay the member a different rate, as well as significantly mark-up services provided by FHP members.

Finding 5

The FHP does not have established ODPE rates.

Recommendations

We **recommend** the FHP establish guidelines related to rates for its members participating in and scheduling ODPE services. If rates are established, we

recommend including rates on the Request for Off-Duty Police Services form completed by the business/corporation or individual requesting ODPE services.

Management Response

The Florida Highway Patrol concurs with the recommendations in Finding 5.

The Florida Highway Patrol will examine the feasibility and legality of establishing rates for troopers working and scheduling ODPE services. If rates are recommended for troopers working ODPE, they will be included on relevant documents used for administration of ODPE.

Costs to the Department - Off Duty Police Employment

FHP members working ODPE predominantly perform these duties in FHP uniforms, using taxpayer-funded equipment and vehicles. During the 2011-12 Fiscal Year, FHP members reported they worked 283,386 hours of ODPE and reimbursed the Department for 1,332,056 miles driven in Department vehicles performing these services³. Additionally, FHP members worked 162,764 hours of Hireback and drove 1,817,875 performing these Department contracted services.

Many off-duty assignments entail the use of a police vehicle without the actual incurrence of driven mileage (idling vehicle). An idling vehicle uses fuel as well as impacts the life and operation of the vehicle. In the case of ODPE, for idling vehicle time, there is no cost reimbursement to the Department. Thus, public monies are paying some of the costs associated with ODPE.

In addition to the wear and tear on Department equipment and uniforms, FHP supervisors spend time reviewing and approving officer requests for ODPE services. They also monitor members' participation to ensure compliance with Department policies and procedures. FHP administrative staff is used to process ODPE paperwork. In addition to the time spent by FHP staff overseeing officer ODPE, work is performed by various offices within the Department processing, investigating and administering discipline associated with ODPE policy violations.

While members reimburse the Department for mileage incurred in the performance of ODPE services, this reimbursement does not represent the costs incurred by the Department.

Finding 6

The current cost reimbursement structure for ODPE is inadequate and requires that public monies be expended for costs associated with ODPE.

³ FHP members reimburse the Department 44.5 cents per mile driven for ODPE.

Recommendations

We **recommend** the FHP evaluate costs incurred to manage ODPE. Based on this evaluation, we **recommend** the FHP implement an hourly administrative fee, in addition to mileage reimbursement, to offset equipment cost and applicable Department member overhead.

Management Response

The Florida Highway Patrol concurs with the recommendations in Finding 6.

The Florida Highway Patrol Budget Office, in conjunction with the Division of Administrative Services' Office of Accounting and the DHSMV Budget Office, will analyze and determine the actual annual fiscal impact of ODPE to the Department.

The results of the ODPE fiscal impact analysis will form the basis, if warranted, for a proposed hourly administrative fee, in addition to mileage reimbursements to ensure that ODPE is performed at no cost to state of Florida taxpayers.

Retention of Off-Duty Police Employment Records

An effective records management program requires an inventory of records maintained by the Department and the identification of existing retention schedules or the establishment of new retention schedules that can be applied to those records. Retention schedules identify Department records and establish minimum periods of time the records must be retained based on the records administrative, fiscal, legal and historical values.

ODPE records are maintained in a decentralized manner. District records custodians maintain ODPE records for troopers assigned to their district. Since there are multiple records custodians within each troop district, a lack of definitive records requirements could lead to inconsistent handling and retention of these records.

Finding 7

The FHP does not have established records retention requirements for ODPE documentation.

Recommendation

We **recommend** the FHP establish and implement records retention and management guidelines for ODPE documentation, to include scheduler's ODPE documentation.

Management Response

The Florida Highway Patrol concurs with the recommendation in Finding 7.

Florida Highway Patrol staff will coordinate a review of ODPE documentation required for submission in FHP Policy 5.08 with the DHSMV Records Management Liaison Officer.

Upon the conclusion of this review, FHP will establish new retention schedules for all ODPE documentation and include the new retention schedule requirements within FHP Policy 5.08. The new retention schedules will be a requirement in the scope of the vendor contract awarded to schedule and manage ODPE. Any update to FHP policy will occur after FHP reaccreditation activities are completed in the fall of 2013.

Off-Duty Police Employment SharePoint Site

FHP Policy 5.08 requires each troop commander to establish and maintain a list of approved ODPE jobs for the troop. The list is to also include the names of the schedulers approved to schedule each approved job. Currently, the FHP uses SharePoint as a document management application for FHP management and troopers to know what ODPE jobs are approved to work or schedule. Each troop maintains varying documentation and detail within their respective ODPE SharePoint site. At the time of the audit, the listing of approved jobs on FHP's SharePoint sites reflected that FHP had approved 1,165 ODPE jobs and 350 schedulers. For the six troops reviewed, we identified approximately 450 ODPE jobs and 225 schedulers.

The following concerns were noted during the audit:

- Duplicate listings of the same ODPE job;
- ODPE jobs listed which were not active jobs;
- Non-members and corporations listed as schedulers;
- ODPE jobs listed with no assigned scheduler; and
- Department issued cell phone or troop phone numbers listed as contact numbers.

The establishment of documentation standards as well as required elements within each troop site may assist in the oversight of ODPE. We noted several opportunities for consideration to improve and standardize ODPE sites:

- Consolidate all ODPE information into one location rather than by troop;
- Each Request for Off-Duty Police Services form should be attached;
- Troop of ODPE job;
- Name of business;
- Type of business;

- Rank of scheduler;
- First name of scheduler;
- Last name of scheduler;
- Contact number for scheduler;
- Patrol car requirement;
- Members duties and responsibilities;
- County of work performance; and
- Start and end date of ODPE job.

Finding 8

The ODPE SharePoint site does not provide current, accurate and detailed information to assist FHP supervisors and members with ODPE oversight.

Recommendations

We **recommend** the FHP establish and implement documentation standards and requirements for an ODPE electronic system.

We **recommend** the FHP update policy to discontinue the approval of ODPE jobs for continuous periods. At a minimum, ODPE jobs should be reviewed annually.

Management Response

The Florida Highway Patrol concurs with the recommendations in Finding 8.

Florida Highway Patrol staff will examine the possibility for enhancements to the FHP SharePoint site on which ODPE information is contained as well as exploring other web-based options to provide current, accurate and detailed information related to ODPE. The procurement of a vendor contract to administer ODPE and maintain required documentation will include the provision for an electronic, web-based ODPE information and management system.

Additionally, FHP Policy 5.08 will be updated after FHP reaccreditation activities are completed this fall to require annual approval or renewal (July 1 of each year) for all ODPE jobs.

Officer Fatigue

In 2010, the International Association of Chiefs of Police formally recognized through resolution that law enforcement officer fatigue is a common health and safety concern for all law enforcement officers. Officer overtime, special duty assignments, secondary employment and shift work are contributing factors to fatigue. The recommendation was made that all law enforcement agencies provide training and adopt policies which

minimize the effects of fatigue on officers prior to and during their duty assignments. During our review of detailed ODPE records, many FHP members were working off-duty jobs in conjunction with their normal shift, without a break or rest period between the two. Additionally, we identified the following issues during a review of ODPE records:

- Member worked 19 hours in a 24-hour period;
- Member worked three consecutive 16-hour days and six 16-hour days in a nine day consecutive period; and
- Member worked on 28 out of 31 days in a calendar month.

Long hours of combined off-duty and on-duty employment raise concerns about member fatigue and the safety of both the members and the public.

Finding 9

FHP members are working significant hours without mandated periods of rest.

Recommendation

We **recommend** the FHP review their policies pertaining to the number of hours FHP members can work and evaluate whether a mandated rest or break period should be established and whether the 24-hour and workweek period limits should be adjusted.

Management Response

The Florida Highway Patrol concurs with the recommendation in Finding 9.

Florida Highway Patrol management will review all policies applicable to hour limitations allowed for combined overtime, Hireback, or off-duty police employment in each work week. Additionally, FHP will review the necessity of requiring rest or break periods between on-duty shifts and work performed in an off-duty status. Any update to FHP policy will occur after FHP reaccreditation activities are completed in the fall of 2013.

Acknowledgements

We would like to thank the FHP personnel statewide for their cooperation and assistance during the audit.

ATTACHMENT 1 - Purpose, Scope and Methodology

The purpose of this audit was to review and evaluate the FHP off-duty police employment process and compliance with applicable state laws and Department policy and procedure.

The objective of this audit was to evaluate off-duty police employment within the Florida Highway Patrol. Specifically, the audit evaluated the costs, benefits, and risks associated with off-duty police employment.

The scope of this audit included off-duty police employment and Hireback conducted within the 2011-12 Fiscal Year and the first quarter of the 2012-13 Fiscal Year (July through September 2012).

Our methodology included:

- Reviewing Federal and Florida Statutes related to secondary employment;
- Reviewing Department policies, procedures, and processes;
- Interviewing appropriate Department personnel;
- Reviewing Request to Work Secondary Employment forms;
- Reviewing member's insurance documentation;
- Reviewing Request for Off-Duty Police Services forms;
- Reviewing Monthly Off-Duty Police Employment Reports;
- Reviewing Off-Duty Police Employment Scheduler's Monthly Reports;
- Reviewing Off-Duty Police employment (Private) Monthly Report of Activity;
- Reviewing People First Timesheet Summary Reports;
- Reviewing CAD Unit Status Change Logs; and
- Reviewing other applicable documentation.

ATTACHMENT 2 - Audit Team and Statement of Accordance

Engagement Team

Doane Rohr, Auditor
David Ulewicz, Audit Director

Statement of Accordance

Section 20.055, Florida Statutes, requires the Florida Department of Highway Safety and Motor Vehicles' Inspector General to review, evaluate, and report on policies, plans, procedures, accounting, financial, and other operations of the Department and to recommend improvements.

This audit engagement was conducted in accordance with applicable *International Standards for the Professional Practice of Internal Auditing* published by the Institute of Internal Auditors and Principles and Standards for Inspectors General published by the Association of Inspectors General.

ATTACHMENT 3 - Addressee and Distribution List

Julie L. Jones, Executive Director
Colonel David Brierton, Director of Florida Highway Patrol

Copies distributed to:

Diana Vaughn, Deputy Executive Director
Terry Rhodes, Chief of Staff
Lt. Colonel Kelly Hildreth, Director of Patrol Operations
Lt. Colonel Ernesto Duarte, Director of Special Services
Rick Creamer, Chief Administrative Officer of Florida Highway Patrol

Melinda M. Miguel, Chief Inspector General
David W. Martin, Auditor General

ATTACHMENT 4 – Management Response



Julie L. Jones
Executive Director

2900 Apalachee Parkway
Tallahassee, Florida 32399-0800
www.flhsmv.gov

MEMORANDUM

DATE: June 17, 2013
TO: David Ulewicz, Audit Director
FROM: Colonel David H. Brierton 
Director, Florida Highway Patrol
SUBJECT: Management Response to the Off-Duty Police Employment Audit
(201213-07)

The following is our response to the findings and recommendations presented in the report.

Finding 1

The current policies and procedures that govern ODPE within the FHP do not provide sufficient internal controls or mechanisms to effectively monitor member participation and ensure compliance with policies and procedures.

Recommendation

We **recommend** the FHP evaluate the current structure of ODPE and establish an electronic system to more effectively monitor member participation and provide internal controls to ensure participating members adhere to policies and procedures. The emphasis on this evaluation should be to improve, streamline and automate the approval, documentation and retention of ODPE information as well as provide FHP with sufficient details to whom ODPE services are being provided and what members are providing these services.

Division Response

The Florida Highway Patrol concurs with the recommendation in Finding 1.

The Florida Highway Patrol has completed a review evaluating all aspects of its ODPE program, including those addressed in this audit report. As part of the result, the Department will issue a Request for Information (RFI) by July 31, 2013 to seek project implementation information regarding available solutions designed to schedule and administer ODPE worked by Florida Highway Patrol troopers. It is anticipated that the

Department will procure a private vendor who will be issued a multi-year contract with full administrative responsibilities for scheduling and management with regards to ODPE in compliance with FHP rules and policies.

The Division has recently purchased "PowerDetails" to schedule and manage Hireback projects administered by the Department. In the event a private vendor is not procured to administer ODPE, FHP will examine the use of this scheduling system for scheduling and management of ODPE.

Finding 2

The current ODPE system does not permit supervisors to easily review and identify policy violations by participating members. Violations are occurring that are going undetected by FHP supervisors.

Recommendations

We **recommend** the FHP take action to ensure supervisors enforce the policies and procedures governing ODPE. Specifically, the FHP should develop tools and techniques for supervisors to efficiently and effectively monitor member compliance with ODPE policies.

We **recommend** the FHP establish an oversight function to review member compliance with ODPE policies on an on-going basis.

Division Response

The Florida Highway Patrol concurs with the recommendations in Finding 2.

The RFI and subsequent vendor contract referred to in response to Recommendation 1 will include components that facilitate the review, approval, and overall monitoring of ODPE by supervisors and managers.

In the interim, FHP will work with Troop Commanders to reinforce the requirements contained within current FHP off-duty employment policies. The Office of Strategic Services will research and develop monitoring tools in conjunction with implementation of the improved Computer Aided Dispatch and Records Management System (CAD/RMS) scheduled for fiscal year 2013-14. The research will include an attempt to correlate hours worked as ODPE and Hireback in the CAD/RMS with actual straight time and overtime reported in People First.

Additionally, FHP will continue the troop staff inspection process with special emphasis on records related to ODPE including compliance with the policies and procedures governing ODPE.

Finding 3

ODPE schedulers have the power to potentially undermine the FHP chain of command.

Recommendations

We **recommend** the following:

- FHP evaluate alternative methods for scheduling ODPE, both internally and externally.
- FHP evaluate the role, function and authority of schedulers to include secondary schedulers.
- FHP prohibit any member in a supervisory position from working an ODPE assignment scheduled by a member of a lesser rank.
- FHP review ODPE policies and evaluate whether to allow sworn members above a particular rank to schedule and/or work ODPE.
- FHP evaluate whether to include ODPE scheduling as an ODPE job. If scheduling ODPE is determined to be an ODPE job, we **recommend** updating policies to require members to report ODPE scheduling on monthly ODPE reports.
- FHP establish limits for the number of ODPE jobs a member can schedule.
- FHP evaluate prohibiting members from scheduling ODPE jobs outside of a pre-established range.

Division Response

The Florida Highway Patrol concurs with the recommendations in Finding 3.

A primary aspect covered in the RFI and subsequent vendor contract referred to in response to Recommendation 1 is ODPE scheduling statewide. This will address each of bullet points of the recommendation by removing FHP members from the scheduling process and centralizing ODPE scheduling within an entity contracted by FHP.

In the interim, Florida Highway Patrol management will review the current rules applicable to the overall role, function and authority of ODPE schedulers. All of the recommendations in this finding will be taken into consideration during FHP policy review to determine the best course of action including the update of FHP Policy 5.08 – Off-Duty Employment, to reflect those recommendations which will alleviate the potential undermining of FHP chain of command structure. Any update to FHP policy will occur after FHP reaccreditation activities are completed in the fall of 2013.

Finding 4

ODPE documentation is accepted and maintained in an incomplete and inaccurate manner and in violation of Department policy.

Recommendations

We **recommend** the following:

- FHP ensure ODPE documentation is complete and accurate prior to approval.
- FHP reevaluate the forms currently being used for ODPE and make appropriate changes to ensure supervisors have sufficient details of ODPE services being performed by members.
- FHP ensure current insurance is maintained for each member.
- FHP ensure ODPE schedulers are not using Department issued contact numbers for ODPE scheduling services.
- FHP prohibit the use of trooper's corporations on ODPE documentation.

Division Response

The Florida Highway Patrol concurs with the recommendations in Finding 4.

A primary aspect covered in the RFI and subsequent vendor contract referred to in response to Recommendation 1 is electronic scheduling and reporting of ODPE activities. This will address each of bullet points of the recommendation by providing for electronic monitoring, review and approval of ODPE activities.

In the interim, FHP Troop Commanders and District Commanders will be instructed to perform a quality control review of all required documentation from troopers working ODPE and certify that current documentation on file complies with existing FHP policy.

Florida Highway Patrol staff in the Policy, Accreditation, Inspections and Forms Office will perform an evaluation of all forms currently required for ODPE. The forms will be updated, if warranted, to reflect the recommendations of this finding. Revised forms will be included in the final product that results from the RFI referred to in the response to Recommendation 1.

Additionally, staff will review Policy 5.08 and make recommended updates to prohibit the use of Department issued contact numbers, equipment and clerical staff for the use of scheduling ODPE. The update of Policy 5.08 will also require the use of trooper name in lieu of a corporation on all ODPE documentation. Any update to FHP policy will occur after FHP reaccreditation activities are completed in the fall of 2013.

Finding 5

The FHP does not have established ODPE rates.

Recommendations

We **recommend** the FHP establish guidelines related to rates for its members participating in and scheduling ODPE services. If rates are established, we **recommend** including rates on the Request for Off-Duty Police Services form completed by the business/corporation or individual requesting ODPE services.

Division Response

The Florida Highway Patrol concurs with the recommendations in Finding 5.

The Florida Highway Patrol will examine the feasibility and legality of establishing rates for troopers working and scheduling ODPE services. If rates are recommended for troopers working ODPE, they will be included on relevant documents used for administration of ODPE.

Finding 6

The current cost reimbursement structure for ODPE is inadequate and requires that public monies be expended for costs associated with ODPE.

Recommendations

We **recommend** the FHP evaluate costs incurred to manage ODPE. Based on this evaluation, we **recommend** the FHP implement an hourly administrative fee, in addition to mileage reimbursement, to offset equipment cost and applicable Department member overhead.

Division Response

The Florida Highway Patrol concurs with the recommendations in Finding 6.

The Florida Highway Patrol Budget Office, in conjunction with the Division of Administrative Services' Office of Accounting and the DHSMV Budget Office, will analyze and determine the actual annual fiscal impact of ODPE to the Department.

The results of the ODPE fiscal impact analysis will form the basis, if warranted, for a proposed hourly administrative fee, in addition to mileage reimbursements to ensure that ODPE is performed at no cost to state of Florida taxpayers.

Finding 7

The FHP does not have established records retention requirements for ODPE documentation.

Recommendation

We **recommend** the FHP establish and implement records retention and management guidelines for ODPE documentation, to include scheduler's ODPE documentation.

Division Response

The Florida Highway Patrol concurs with the recommendation in Finding 7.

Florida Highway Patrol staff will coordinate a review of ODPE documentation required for submission in FHP Policy 5.08 with the DHSMV Records Management Liaison Officer.

Upon the conclusion of this review, FHP will establish new retention schedules for all ODPE documentation and include the new retention schedule requirements within FHP Policy 5.08. The new retention schedules will be a requirement in the scope of the vendor contract awarded to schedule and manage ODPE. Any update to FHP policy will occur after FHP reaccreditation activities are completed in the fall of 2013.

Finding 8

The ODPE SharePoint site does not provide current, accurate and detailed information to assist FHP supervisors and members with ODPE oversight.

Recommendations

We **recommend** the FHP establish and implement documentation standards and requirements for an ODPE electronic system.

We **recommend** the FHP update policy to discontinue the approval of ODPE jobs for continuous periods. At a minimum, ODPE jobs should be reviewed annually.

Division Response

The Florida Highway Patrol concurs with the recommendations in Finding 8.

Florida Highway Patrol staff will examine the possibility for enhancements to the FHP SharePoint site on which ODPE information is contained as well as exploring other web-based options to provide current, accurate and detailed information related to ODPE. The procurement of a vendor contract to administer ODPE and maintain required documentation will include the provision for an electronic, web-based ODPE information and management system.

Additionally, FHP Policy 5.08 will be updated after FHP reaccreditation activities are completed this fall to require annual approval or renewal (July 1 of each year) for all ODPE jobs.

Finding 9

FHP members are working significant hours without mandated periods of rest.

Recommendation

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Division Response

The Florida Highway Patrol concurs with the recommendation in Finding 9.

Florida Highway Patrol management will review all policies applicable to hour limitations allowed for combined overtime, Hireback, or off-duty police employment in each work week. Additionally, FHP will review the necessity of requiring rest or break periods between on-duty shifts and work performed in an off-duty status. Any update to FHP policy will occur after FHP reaccreditation activities are completed in the fall of 2013.

Cc: Julie M. Leftheris, Inspector General