



Officer Burnout and Legal Liability

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June, 2024

For many law enforcement agencies, summer represents an increase in call volumes, violent crime, public events, and other factors that place significant strains on sworn officers in the face of increasing public demands. This may be an ideal time to discuss the risks associated with officer burnout that results from too many hours worked without rest.

While agencies may continually increase the financial incentives that entice officers to go without enough sleep or rest, and police leaders may be tempted to ignore the obvious exhaustion being exhibited by officers, eventually, officers will show signs of mental, physical, and emotional fatigue. This fatigue *will* impact their family lives and their work. The only question is how severe the impact will be and how long it will take for the “wear and tear” to become apparent.

Officer burnout is clearly a matter of officer health, officer retention, operational effectiveness and public trust. Requiring exhausted officers to make split-second decisions regarding appropriate use of force, while engaging with the most difficult people in highly stressful situations, is a recipe for disaster in the court of law and the court of public opinion.

If all of the aforementioned issues prove insufficient to convince law enforcement leaders and elected officials to re-evaluate their deployment strategies in light of officer burnout, there is an additional consideration. There are legal liability risks associated with sleep

deprived and overworked officers. Oftentimes, when appeals to officer health fall short of effectively “moving the needle,” the looming threat of legal fallout may be more effective in producing changes, as unfortunate as that might be.

In May of 2019, as the Minneapolis Police Department grappled with the reality of excessive overtime and exhausted MPD officers, a criminal justice professor at John Jay College of Criminal Justice named Dennis Kenney offered the *Minneapolis Star Tribune* a very straightforward articulation of the issue of exhaustion among law enforcement officers. Based on his research with law enforcement officers, he indicated that fatigue produces a physiological response. Fatigue results in less attention and less focus. Hand-to-eye coordination begins to diminish as fatigue increases, and anger surfaces more rapidly. Kenney stated, “As I tell students: ‘I can work tired, I’m just not nice when I do it.’”¹

While publicly denying that there was any connection between officer fatigue and poor decision making by officers, the public discussion of officer fatigue actually came on the heels of the City of Minneapolis having settled in the amount of \$20 Million in a negligent fatal shooting case involving Officer Mohamed Noor. Officer Noor had worked a seven-hour shift at an off-duty assignment before beginning the MPD shift during which he would inexplicably shoot and kill a woman who had called 911 for assistance. The woman he shot and killed, whose family filed the lawsuit, was standing outside her residence in her pajamas when the squad car approached her. She was shot and killed by Officer Noor, who fired from the passenger side of the squad car, within moments of the officers’ arrival.²

In discussing the department’s failure to account for hours worked in relation to agency policies limiting off-duty hours, Minneapolis Mayor Jacob Frey concluded, “If we can’t track hours worked, that’s not good.”³

It is striking to realize that the Minneapolis Police Department, the flash point agency for debates surrounding police misconduct and police reform over the last four years, was publicly grappling with the issue of officer burnout in the months and years leading up to the in-custody death of George Floyd, and the subsequent fall out that continues to this day.

Officer Supply and Public Demand

The challenge of maintaining adequate staffing levels, which impacts officer time off, has been another issue facing police leaders in recent years. In August 2023, the Police Executive Research Forum (PERF) published a report on the state of police staffing in the United States. PERF compiled some of the most comprehensive statistics regarding police recruiting, staffing, and retention, based on its surveys of law enforcement agencies across the country. Based on PERF's survey of over one-hundred law enforcement agencies across the country, its findings indicated that officer staffing levels fell by 4.8% overall between January of 2020 and January of 2023, fueled by substantial increases in both resignations and retirements.⁴

These statistics are not surprising, given the nationwide trend of reported struggles in recruiting, retention, and staffing by law enforcement agencies. These statistics are also consistent with the thousands of exchanges that I have had with police leaders in recent years in which they express increased struggles in reaching and maintaining authorized staffing levels of sworn officers.

News accounts of cities in desperate need of more law enforcement man-hours are abundant. The decades of declining U.S. birth rates, and the current labor shortages across all professions, suggest that the overwhelming demand for more officers will not subside anytime soon.

As a result of these circumstances, agencies across the country saw explosions in police overtime spending in 2023. Portland, Oregon officers were offered *double overtime* to fill vacant shifts.⁵ In Philadelphia, police officer overtime increased by 36% in the face of a staffing shortfall.⁶ The Kalamazoo County Sheriff's Office in Michigan reported the highest rates of mandatory overtime in recent history.⁷ The Spokane Police Department's overtime budget grew by 50%, year over year.⁸ Chicago's police superintendent sought to "rein in" overtime spending, which had reached levels far in excess of \$200 million after multiple years.⁹

These financial assessments of the costs of police overtime do not calculate, however, the human toll on officers and their families, and the liability risks created by allowing or mandating staggering amounts of overtime and/or off-duty work. We will never be able to precisely calculate how many costly and career-ending decisions by officers were significantly impacted by officer burnout in the form of excessive hours worked, lack of sleep and rest, and inadequate opportunities for quality family time. **Only time will tell how many plaintiff attorneys will seek to use the fact that officers were permitted or mandated to work excessive hours**

as a source of agency liability in cases of alleged misconduct or negligence in the years ahead.

In Chicago, in the summer of 2022, several aldermen moved to pass legislation affirming Chicago police officers' rights to days off, barring emergencies. This came in the wake of three CPD officer suicides in one month, and 20 officer suicides in three years.¹⁰ Shortly thereafter, the Chicago Police Department instituted a new policy under which officers could have no more than one day of requested days-off canceled in a single week, with the exception of holidays. Then-mayor Lori Lightfoot commented that, "tired, emotionally wrought officers is not good for them, not good for their families, and not good, frankly, for the community members that they're serving."¹¹

The case of Chicago in 2022 is a sadly common one. Issues surrounding officer burnout and mental health are addressed, if at all, only after a surge in officer suicides. Police leaders and elected officials owe it to their officers and their communities to be honest about the human limitations within which they must operate when it comes to officer hours worked. Part of that conversation should involve a recognition that various mental health resources, as valuable as they are, cannot undo the damage often done to officers' mental and physical health as a result of excessive work and time away from their families.

It should be sufficient to simply argue to elected officials and other decision-makers that officer burnout is a threat to the well-being of the men and women in their law enforcement agencies. Unfortunately, it sometimes seems that only the specter of *liability* may be the factor that motivates many of those decision-makers to approach this issue with the seriousness that it deserves.

Voluntary Overtime Policies—Protecting Our People from Themselves

Many agencies have worked to move from mandatory overtime to voluntary overtime, but this change does not necessarily solve the problem. First, there is a strong argument to be made that financially-stressed officers should not have the *option* to work *excessive* overtime—whether for the department or for an outside entity in the form of off-duty work. This is because doing so would pose liability and safety risks to themselves and the public. Secondly, even when limits exist in policy, time and time again, agency leaders have failed to adequately monitor overtime hours worked by officers to ensure that the policies limiting work hours are adhered to.

As mentioned above, in the months before the in-custody death of George Floyd, one of the areas of mismanagement that Minneapolis Police and city leaders were seeking to address was the issue of officer exhaustion in a system where hours worked were simply not tracked.

In addition to the inherent liability risks associated with excessive overtime, there is also an increased risk of officers engaging in unlawful overtime fraud when police leadership fails to diligently monitor hours worked, compare those hours to relevant policies, and ensure that the cops on the street know that their hours are being evaluated. Notable overtime scandals have emerged in the last three years that illustrate this fact in New Orleans, Baltimore and Albuquerque.¹²

As with so many critical areas of police operations and liability management, creating sound policies and procedures is often not the difficult part. Rather, the steady and mundane work of monitoring performance and conduct and ensuring that those well-crafted policies and procedures are followed, is the hard part. This is what separates highly professional agencies from dysfunctional ones. In the case of some of the agencies referenced above, the issue was not that the overtime and off-duty work policies and procedures were flawed, but that the ability and/or willingness of agency leadership to track hours worked was woefully lacking.

One final cause for serious concern in regard to voluntary excessive overtime work is brought to the forefront by asking the question: Who is most likely to put in for the most overtime? **Is there a distinct possibility that the men and women experiencing the most serious financial strains, and the personal and family stress so often associated with those strains, are those volunteering for the most overtime? If this is so, it is highly plausible that an agency's most vulnerable officers are taking on greater risks for themselves and their agencies by working more and more.**

Conclusion

Consider the idea of officers working in a state of exhaustion in comparison to officers working under the influence of alcohol. In past generations of American law enforcement, the consumption of alcohol on duty was not taken nearly as seriously as it is now. With time, cultural shifts based on the growing appreciation of the dangers associated with alcohol consumption while engaged

in dangerous and complex tasks have resulted in a current reality where such conduct would be shocking to the public, supervisors, and rank-and-file officers, alike.

It is striking to think that the same police leaders who would never allow officers to work while under the influence of alcohol—shaking their heads in disbelief at generations past that allowed it—are now allowing, or even mandating, that troopers, deputies, and officers across the country work schedules that are so demanding and detrimental to their sleep and rest, that they might as well be operating at levels similar to legal intoxication.

Is it possible that in one or two generations, police leaders will look back on this era in disbelief that cops were allowed to work, carrying guns and badges, and encountering stressful, often life and death situations, while being so low on sleep that they may as well have been drunk?

About the Author

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Matt Dolan is a licensed attorney who specializes in training and advising public safety agencies in matters of legal liability, risk management and ethical leadership. His training focuses on helping agency leaders create ethically and legally sound policies and procedures as a proactive means of minimizing liability and maximizing agency effectiveness.

A member of a law enforcement family dating back three generations, he serves as both Director and an instructor with Dolan Consulting Group. He has trained thousands of law enforcement professionals over the last decade.

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Disclaimer: This article is not intended to constitute legal advice on a specific case. The information herein is presented for informational purposes only. Individual legal cases should be referred to proper legal counsel.

References

- ¹ Libor Jany, "Minneapolis Contemplating Limiting Off-Duty Police Work: The Amount of OT Paid Out Rose by \$1.3 million in 2018." *Minneapolis Star Tribune*, May 25, 2019. Accessed on April 4, 2024 at: <https://www.startribune.com/minneapolis-contemplating-limiting-off-duty-police-work/510432922/>
- ² Matt Sepic, "Task Force to Look at Minneapolis Cops' Off-Duty Work," *Minnesota Public Radio News*, February 6, 2020. Accessed on April 7, 2024 at: <https://www.mprnews.org/story/2020/02/06/task-force-to-look-at-minneapolis-cops-off-duty-work>
- ³ Leah Beno, "Minneapolis Task Force to Reexamine MPD Off-Duty Employment Policies," *KMSP Fox 9 News*, February 5, 2020. Accessed on April 8, 2024 at: <https://www.fox9.com/news/minneapolis-task-force-to-reexamine-mpd-off-duty-employment-policies>
- ⁴ Police Executive Research Forum, *Responding to the Staffing Crisis: Innovations in Recruitment and Retention* (Washington, DC: Police Executive Research Forum, 2023). Accessed on April 5, 2024 at: <https://www.policeforum.org/assets/RecruitmentRetention.pdf>
- ⁵ John R. Ferrara, "PPB Offering Officers Double Overtime to Fill Vacant Shifts Amid Staffing Crisis," *KOIN CBS Portland News*, August 16, 2023. Accessed on April 5, 2024 at: <https://www.koin.com/news/portland/ppb-offering-officers-double-overtime-to-fill-vacant-shifts-amid-staffing-crisis/amp/>
- ⁶ Anna Orso, "Philadelphia is Spending a Record Amount on Overtime as 1 in 5 City Jobs Sits Vacant," *Philadelphia Inquirer*, July 5, 2023. Accessed on April 5, 2024 at: <https://www.inquirer.com/politics/philadelphia/philadelphia-record-overtime-short-staffing-police-20230705.html>
- ⁷ Ron French, "Michigan Police Shortage Becoming Dire: Where Did Everyone Go?" *The Bridge: The Bridgeman, Michigan Newspaper*, July 2, 2023. Accessed on April 6, 2024 at: <https://www.bridgemi.com/michigan-government/michigans-police-officer-shortage-becoming-dire-where-did-everyone-go>
- ⁸ Emry Dinman, "Spokane Police Overtime Budget Nearly Doubled in 2023: It Won't Be Nearly Enough," *The Spokesman Review*, June 28, 2023. Accessed on April 6, 2024 at: <https://www.spokesman.com/stories/2023/jun/28/spokane-police-overtime-budget-nearly-doubled-in-2/>
- ⁹ Heather Cherone, "Chicago's Top Cop Vows to Rein in Police Overtime Spending as 2023 Bill Tops \$200M," *WTTW NPR News*, October 0, 2022. Accessed on April 6, 2024 at: <https://news.wttw.com/2023/10/30/chicago-s-top-cop-vows-rein-police-overtime-spending-2023-bill-tops-200m>
- ¹⁰ Fran Spielman and Tom Schuba, "Chicago Police Officers Could Decline Excessive Overtime Hours Under Proposed Ordinance," *Chicago Fox 32 News*, July 20, 2022. Accessed on April 7, 2024 at: <https://www.fox32chicago.com/news/chicago-police-officers-could-decline-excessive-overtime-hours-under-proposed-ordinance>
- ¹¹ Charlie De Mar, "CPD Makes Change After Scathing Report on Cancellation of Officers' Days Off," *CBS Chicago Channel 2 News*, August 30, 2022. Accessed on April 7, 2023 at: <https://www.cbsnews.com/chicago/news/cpd-makes-change-after-scathing-report-on-cancellation-of-officers-off-days/>
- ¹² John Simerman, "26 New Orleans Police Officers Suspended from Off-Duty Security Work Amid Investigation," *NOLA.com*, November 18, 2021. Accessed on April 8, 2024 at: https://www.nola.com/news/crime_police/26-new-orleans-police-officers-suspended-from-off-duty-security-work-amid-investigation/article_314863d6-48ca-11ec-a62e-fb326a0266e7.html; Associated Press, "Baltimore School Police Officer Indicted on Overtime Fraud Charges," *Associated Press*, September 8, 2023. Accessed on April 8, 2024 at: <https://apnews.com/article/baltimore-school-police-officer-overtime-fraud-1ec8484ed1069fc6aa5274514ca22495>; Larry Barker, "'Worst I've Seen': APD Overtime Scandal Uncovered," *KRQE News*, March 15, 2022. Accessed on April 8, 2024 at: <https://www.krqe.com/news/larry-barker/worst-ive-seen-apd-overtime-scandal-uncovered/>