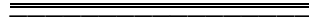


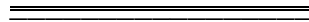
**The Bill Blackwood  
Law Enforcement Management Institute of Texas**



**Reassessing Physical Ability Testing for Police Officers**



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



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June 2017**

## **ABSTRACT**

A declining applicant pool of police officer candidates is a major issue facing law enforcement. The challenge for law enforcement is to evaluate ways to increase applicant pools. History in law enforcement suggests that qualified candidates have been eliminated from consideration for various reasons that were later discovered to be inaccurate. A current segment of the population, namely disabled persons, seem to be mirroring the fate of prior candidates. They are being eliminated from consideration for employment as police officers because of invalid physical ability testing standards. Law enforcement agencies should reassess existing pre-employment physical ability testing standards for police officers to make certain the measures tested are validated and meet the job requirements for the positions.

Discussion will center on the physical ability tests and their applicableness to the actual essential tasks being performed. An evaluation of the American with Disabilities Act and other discrimination laws as it relates to physical ability testing will result in demonstrating that many law enforcement agencies may be in violation of federal law. In addition, discussion will center on the assertion that many persons with disabilities often adapt to their environment and most probably, with the ongoing technological advancements, could adapt to the essential functions of the position of police officer. The conclusions, based on the research, results in a suggestion that law enforcement evaluate current physical ability standards to affirm that they are valid and based on scientific data for each respective agency. In addition, the proposition advises that agencies continually assess their physical ability standards testing to ensure compliance with the American with Disabilities Act and other discrimination laws.

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## INTRODUCTION

Physical ability testing during the hiring process for police officers is a widely accepted practice by many law enforcement agencies. It is understood that law enforcement officers must be able carry out the essential functions of the position. Defining those tasks is necessary to ensure that agencies are in compliance with applicable federal and state laws and to minimize the possibility of eliminating viable police officer candidates. As it becomes more difficult to recruit qualified police officer applicants, law enforcement must continue to evolve police hiring practices to ensure that attractive candidates are not unnecessarily excluded from consideration. For example, written exams have changed dramatically over time because certain minority groups were not having significant success with the earlier tests. It was realized that practical candidates were being eliminated from consideration and changes were made (Means & Lowry, 2011). However, written testing is not the only area where changes have occurred.

Physical testing has witnessed some evolution over the past years, especially with regards to the employment of females. Nevertheless, physical ability testing for most of law enforcement remains virtually unchanged over the years and thus far has fended off most external challenges. It is vitally important that police agencies continually assess their internal processes. Many agencies use global data for their physical testing practices or use nationally standardized testing and fail to ensure that the tested standards are applicable to their own respective agencies. In addition, it is probable that there are police agencies that employ invalid physical ability testing standards, which, in turn, potentially eliminates qualified candidates for consideration.

Law enforcement agencies should reassess existing pre-employment physical ability testing standards for police officers to make certain the measures tested are validated and meet the actual job requirements for the positions.

## **POSITION**

Law enforcement physical ability testing requirements and physical standards are often based on global data and not on individual department tasks. Title I of the Americans with Disabilities Act (ADA) restricts employers, including local police agencies during the hiring process, from discriminating against qualified disabled persons. Additionally, the ADA provides calls for reasonable accommodations for prospective employees (Iyer & Masling, 2015). The issue of what a qualified person looks like is at question and should be examined. Qualified persons today come in all shapes and sizes, and they are able to achieve at high levels. Questions have even been raised as to whether two good eyes are required to accomplish police job responsibilities (Means & Lowry, 2011). While pondering other standard police officer physical requirements, Means and Lowry (2011) proposed, “traditional thinking may need re-examination in light of current ADA principles...and whether one really needs two biological legs when one plus a darn good prosthesis seems to make the candidate able” (p. 12). While this type of interpretation is newer to law enforcement, it is not a new law.

The ADA and reasonable accommodation requirements have been in existence since 1990. Colbridge (2001) explained it best when he said, “The disabled have a fundamental statutory right to have their disabilities accommodated unless it would create an undue hardship on the employers or they pose a direct threat” (p. 24). It is

imperative for law enforcement to realize that medical advances have impacts on traditional police hiring practices and those accommodations once thought to be unnecessary may very well not only be necessary, but required by law.

Furthermore, law enforcement should acknowledge that current tested physical requirements are often discovered to actually not be utilized during employment or there is insufficient data to support the existence of certain requirements. Law enforcement agencies must demonstrate that the job descriptions are consistent with the actual work performed. That fact is confirmed in *Easterling v State of Connecticut, Department of Correction*. The Department of Corrections (DOC) used physical fitness testing during the hiring process. The DOC utilized the Cooper Institute standards as their physical performance standards, including the 1.5 mile run (Smith & Spottswood, 2014). Smith and Spottswood (2014) elaborated, "The DOC, like many agencies, unilaterally applied the Cooper fitness norms as employment expectations, a practice not supported by the Second Federal Court or by Coopers" (p. 77). However, law enforcement cannot apply one size fits all physical standards to their respective agencies. Job descriptions should contain only physical requirements that are in fact required responsibilities or actual tasks of the position. It is hard to consider a tested physical standard as essential when the function is not found on the job description of the position. In addition, job task analyses and other approved studies should be conducted to ensure that the physical testing is valid (Means & Lowry, 2012). Thus, a major point of emphasis for law enforcement should be the evaluation of job descriptions and their relationship to physical ability testing to guarantee that updated appropriate tasks are actually being measured.

Accordingly, in the past, certain changes to police officer hiring requirements have occurred to ensure compliance with court decisions or applicable laws. The law enormously effects employment practices. For years, there were mandatory height requirements for law enforcement applicants. However, in response to the United States the Civil Rights Act of 1964 and Title VII, physical stature requirements and physical performance testing was stopped by many employers because they were not able to demonstrate that those tests properly demonstrated the requirements of the positions (as cited in Smith & Spottswood, 2014). Height requirements were removed from prospective applicants in the United States in the late 1970's. In contrast, the Norwegian height requirements were not eliminated until 2003 (Lagestad, 2012). The outcome of changing the height requirements resulted in an expanded applicant pool. That is evidenced by an increase in females in their police college and an expectation that female officers will comprise almost 40% of the total police force in the near future (Lagestad, 2012). Additionally, other aspects of law enforcement have made changes to keep up with the evolving times.

Changes have been made to the written testing process in the United States to address identified issues with written measures that failed minority groups at an alarming rate. The choice for updated written tests that determine the candidates' abilities to read and write, while also testing the ability to follow directions, are now more traditionally accepted as effective and legal (Means & Lowry, 2011). This change in philosophy has resulted in a larger applicant pool because more individuals are now passing the revamped written testing instruments.

Additionally, law enforcement found that many female candidates were not passing the established physical agility standards, nor were older male applicants. Agencies developed standards that were not age or gender adjusted. This caused negative impacts to both females and persons over 40 years of age. While it is possible to legally adopt such requirements, the standards must be validated, and it must be demonstrated that the requirements are job related (Means & Lowry, 2011). It is easily defensible to have physical standards that specifically measure normal law enforcement activities. Means and Lowry (2011) explained, "Physical performance standards should involve specific activities which are clearly job-related and may be required of any police officer at any time" (p. 12). Clearly identifying actual essential job functions and testing for those functions with a validated testing instrument results in an increased applicant pool of women and men over the age of 40 years of age. Further, increasing a dwindling police officer applicant pool merits added discussion.

Dialogue, especially as it relates to candidates with disabilities who may be arbitrarily removed from consideration because of their disabilities, is definitely warranted. It is probable that a declining candidate pool could be increased dramatically if physical testing standards were more consistent with the actual tasks performed and, thus, not a deterrent to possible candidates. Means and Lowry (2011), when evaluating police officer hiring criteria, stated, "Physical ability tests bring down a great number of candidates" (p.12). Radical changes will be required in the future to address diminishing police officer candidate pools. The struggling economy, more responsibilities for police personnel, and a lagging applicant pool are all causes of police department staff shortage (Wilson & Heinonen, 2011). It is incumbent on law



enforcement to address all employment practices to affirm that best practices are in place. Wilson and Heinonen (2011) offered, “the need today for data and analysis to help police agencies understand and respond to staffing challenges may be greater than ever” (p. 278). As it relates to physical standards and testing for police officers, a failure of the system is that the tests often are for new hires only. This means that the established requirements often are not retested after a person is employed. It is hard to argue that a physical agility standard or a physical requirement is necessary to function in the position when those agility standards or requirements are not necessary later in an officer’s career. This is problematic, especially when applicants being eliminated from consideration are persons with disabilities.

Clarifying this point, incumbent employees who, over time, end up with hearing aids, glasses, or could no longer satisfactorily pass a physical agility test that is used for new hires, are all still fully functioning police officers with patrol or other duty assignments. This seriously brings physical ability testing validity into question. Thus, it becomes extremely difficult to argue that these medical requirements or physical testing requirements are “essential,” when a significant amount of a department cannot meet the requirements (Means & Lowry, 2012). Two points of view can be made regarding these phenomena. One opinion could very well be that many law enforcement agencies need to test incumbent police officers to ensure that they still are capable of meeting the standards that were in place at the time they were initially employed. However, the other point could very well be that those officers are adequately performing in their areas of responsibility and the pre-employment testing standards and requirements being tested need to be studied to ensure that the requirements are

actually “essential” for the position. If an incumbent officer is succeeding in the position, then the reasonable deduction would be that others, such as persons with certain disabilities, could function as well. If a disabled person is fit enough to meet the minimum safety standards and performs effectively, then that is all that should be required or expected by an employer (Means & Lowry, 2011). One can surmise that people with certain disabilities could also adequately perform as police officers because they could certainly meet the minimum necessary requirements that more senior officers at many law enforcement agencies are currently meeting. In addition, those disabled persons could very well pass validated physical tests that measure actual work requirements and not subjective measures.

### **COUNTER POSITION**

Conversely, many in law enforcement believe existing physical standards testing are valid, do not need to be evaluated, or they do not worry about being legally challenged. It is without question that police officers should be physically capable of performing their job related responsibilities, and officers should be able to protect themselves and others. Many point to the FBI and the Law Enforcement Officer Killed and Assaulted (LEOKA) report for empirical data regarding assaulted officers. For example, in 2010, 54,469 officers were assaulted and over 30% of those assaulted received injuries (FBI, 2010). The reasonable assertion is that police officers must be physically fit to perform their jobs. To that point, law enforcement academies around the nation have physical training standards during the academy. In addition, consultants have developed validated job related physical ability standards that were not adjusted for age or gender that have met ADA and Title VII of the Civil Rights Act of

1964 and 1991 standards (Sheets, 2012). While these seem like the definitive justifications for physical fit police officers and physical standards testing for pre-employment evaluations, Sheets (2012), a proponent of physical fitness, concedes that police officers, as they become older, do not keep the same fitness standards that they were exposed to in the academy. While, arguably, these officers are not in same physical shape as officers first employed, there is no indication that these less in-shape officers are not able to perform satisfactorily in their positions. It can then be logically deduced that there are persons with certain disabilities who could perform at the same level as many older law enforcement officers. Disabled individuals generally are able to adapt to challenges and are successful in their endeavors.

In 2012, Eli Pierre was not given a position at a Starbucks because he was missing a part of one arm. He brought suit against Starbucks and ended up settling with the company. The major point of the case was that he was told he was not hired because he could not reach the pumps that are located up above the employees' heads and that he could not operate the pumps because of his arm. The problem for Starbucks was that Pierre was not given the opportunity to demonstrate whether he could or could not perform the required tasks, nor was he offered an accommodation for those requirements. In addition, it was not taken into consideration that he had succeeded in other previous jobs, including one as a bartender (Braukman, 2012; Little, 2012). Disabled persons are able to adapt and be successful at many tasks when others believe they cannot be.

With that said, however, it could be stated that persons with disabilities are just not physically capable of performing all necessary job requirements for police officer

positions, and there is no need to reassess existing current physical ability testing measures. Being a police officer is an extremely physically demanding position. It is understood that police officers must be able to go up and down stairs, jump fences, defend others, and defend themselves. Police agencies utilize physical standards testing to affirm that persons can meet those rigorous standards. Biggs (2015) conducted a study regarding physical ability testing between 1992 through 2015. He found through his research that the courts were much more likely to side with law enforcement in alleged discrimination physical ability test cases. Biggs (2015) stated in his findings, "Furthermore, it can be inferred that the court supports physical ability testing (PATs) for jobs involving public safety; however, they do not always support PATs for jobs not involving public safety (p. 30). To continue on this point, lawsuits challenging physical standards testing for law enforcement have not been extremely successful for plaintiffs. Courts tend to not challenge law enforcement physical ability testing standards. Assumptions can be made from previous discussions that the prevailing belief is that the standards are valid.

However, it is possible that ADA and other disability discrimination cases are not successful against law enforcement because courts incorrectly require the plaintiffs to prove intent on the part of the police agencies when, by applicable laws, there is no requirement for the plaintiff to demonstrate intent (Weber, 2015). Thus, while it seems that physical ability testing for police officer positions is merited and there is not a need for agencies to evaluate their testing standards, that position is not based in law. The ADA and other discrimination laws are not being correctly applied to law enforcement physical ability testing standards. In addition, as previously discussed, physical ability

testing is conducted for pre-employment purposes, but it routinely is not continued post-employment, and officers who no longer can pass the physical ability tests remain in their positions as fully functioning police officers.

For a final point, liability concerns are always a worry for law enforcement professionals. Physical confrontations between police officers and those they come in contact with place departments in litigious situations. It is imperative that police officers be in good physical shape and be able to utilize tactics, whether defensive tactics or less than lethal options, to effect arrests or subdue combatants. This assertion was affirmed in a lawsuit, *Parker v. District of Columbia* (Quigley, 2008). The circumstances surrounding that case were that an officer, while attempting to place a person into custody who was combative, discharged his firearm and left a suspect a paraplegic. The lawsuit claimed, among other things, that the lack of the officer's physical fitness resulted in the use of deadly force when that use should not have been necessary. The court awarded the plaintiff a significant amount of money and ruled that the District of Columbia was "deliberately indifferent" to the physical training needs of its employees (Quigley, 2008).

It can be extrapolated that persons with disabilities lack the physical fitness to properly defend themselves or to efficiently make arrests. Officers in good physical shape and who are physically fit are less likely to be injured while on duty (Quigley, 2008). Physically fit officers are also better prepared to perform their duties and because of their fitness, law enforcement liability is reduced (Smith & Tooker, 2005). Additionally, physical fitness equates to cost savings for law enforcement. Physical fitness for police officers result in 40% to 70% less absenteeism than less fit officers. In

addition, fit officers are less of a risk to end up with a degenerative disease (Smith & Tooker, 2005). Less absenteeism and less injury correlates to less funds expended by agencies for overtime and for health care costs (Smith & Tooker, 2005). In summary, evidence suggests that physical fitness is a requirement to be a successful police officer and the thought follows that persons with disabilities could not obtain that level of fitness.

However, there is limited information to confirm that persons with physical disabilities are not actually physically fit. It goes without saying that police officers must maintain certain fitness levels to perform the functions of their position (Smith & Tooker, 2005). Nonetheless, none of the data suggests, nor addresses, whether persons with disabilities can be physically fit to the level necessary to handle the requirements of a police officer position. The studies discuss fitness, but they talk about wellness programs and components for fitness, like health screenings and fitness assessments (Smith & Tooker, 2005). With the advancements discussed earlier that enhance the abilities of persons with disabilities, it is reasonable to believe that disabled persons could reach the level of physical fitness necessary to perform their daily responsibilities and, thus, because of their physical fitness, they could reduce liability and other costs for agencies.

## **RECOMMENDATION**

Law enforcement is an evolving institution. It continues to assess its policies, its procedures, and its tactics. For example, the standard approach to a shooting situation in schools or universities used to be “isolate, contain, and wait” while today, first responders rush in straight towards the gunfire (Smith & Spottswood, 2014). Law

enforcement has also evolved in pre-employment testing areas to address legal challenges. Females were often eliminated from consideration for police officer positions because of physical ability tests. Standards were adjusted, and the number of female police officers dramatically increased (Lagestad, 2012). Written tests have also adjusted over time to instruments that now generally only assess basic reading and writing skills. This change occurred when it was realized that a significant number of minority candidates were being eliminated from consideration because of the types of questions being utilized on the written exams (Means & Lowry, 2011). Just as women were found to be viable candidates who had been previously excluded by certain physical ability testing, viable qualified minority candidates were also identified who previously had been disqualified by ineffective written tests. Law enforcement has to continue to evolve to ensure policies and procedures are current and valid.

Persons with disabilities are a segment of society that are not seriously considered for police officer positions because of physical ability testing that is often invalid. Persons with disabilities' fate parallels the earlier destiny of females and minority candidates. Strides should be made that will help ensure that persons with disabilities are not excluded from police officer positions because of their disabilities. This is potentially problematic for law enforcement because this practice borders on discrimination. The Americans with Disabilities Act offers protections for disabled workers. The ADA defines a "qualified individual with a disability" for employment as someone who meets the essential job requirements and skills for the position. Specifically, the ADA allows for job related testing, but the testing has to be an assessment for the work that is actually done (U. S. Department of Justice, 1997). It

has been demonstrated that law enforcement has been inconsistent with this requirement. Physical ability standards often do not match job descriptions. Furthermore, there are senior officers who are older or out of shape and have diminishing physical abilities who continue in their positions and are functioning police officers. These senior officers were tested at their time of initial employment but not after that. These inconsistencies bring into question the validity of the physical ability testing. The obvious conclusion is that there are disabled persons, who, at minimum, could perform at the same “essential levels” as those out of shape officers. It is also reasonable to assume that if physical ability standards matched actual essential job functions, disabled persons, especially with technology that advances daily, could very well pass “validated” tests. Law enforcement must continue to evolve and that includes evaluating current physical ability standards to affirm that they are valid and based on scientific data for each respective agency. One size can no longer fit all when it comes to law enforcement physical ability testing.

A requirement by law enforcement to continually assess physical ability testing standards will ensure that law enforcement is in compliance with the American with Disabilities Act as well as other discrimination laws. In addition, and most importantly, updated validated standards that actually measure the job descriptions and essential tasks will result in fair opportunities for persons with disabilities to become police officers. That translates into a larger applicant pool and provides law enforcement increased opportunities to better serve its communities. Indisputably, as law enforcement continues to evolve, departments must reexamine current physical ability



testing standards for police officers to guarantee that they are tested for validity and they meet the job tasks actually being performed.

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