

**THE BILL BLACKWOOD
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS**

**IMPLEMENTING THE RIGHT PHYSICAL FITNESS TESTING
WITHIN A LAW ENFORCEMENT AGENCY**

A Policy Research Project
Submitted in Partial Fulfillment
of the Requirements for the Professional Designation
Graduate, Management Institute

by

Joseph J. Schmidt

Austin I.S.D. Police Department
Austin, TX
January 1997

#5666

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Abstract	
Introduction	
Historical, Legal or Theoretical Context	
Review of Literature or Practice	
Discussion of Relevant Issues	
Conclusion/Recommendations	
Bibliography	
Appendices	

Abstract

Implementing physical fitness programs within law enforcement has become a sensitive area. Recent legal cases and legislation have caused departments to revise, improve, or totally do away with fitness testing for officers. The focus is no longer on maintain a physical fit department, but whether or not the test is discriminatory.

A department must now develop a plan which is job specific and part of the essential functions of the job. However, compromises are being made to fitness programs which challenge the officers physical ability and body condition.

The information included in this paper which discuss the case law, legislation, and other legal issues involved in physical fitness testing. The information will discuss the pros and cons to different methods of testing and help to establish a guideline for selecting and implementing the right physical fitness testing.

Further, the information will be used to develop and implement a physical fitness standard for the Austin I.S.D. Police Department.

Introduction

Physical fitness within law enforcement has always been an area of sensitivity. Recent legislative changes and new liabilities have forced law enforcement agencies to change physical fitness requirements and the type of testing. This issue is especially sensitive in testing potential recruits. This research will discuss the benefits, liabilities, constraints, and some of the drawbacks to testing used by police agencies. The goal is to help an agency select the most appropriate method for their department and implement a policy within the legal and logical realm.

Some physical testing has been labeled as discriminatory and some violates legislation. There is a liability factor that must be considered by all departments to avoid lawsuits and civil liability. With all of the restrictions and requirement guidelines that the agency must follow, we cannot lose sight of the real reason for testing, which is to ensure that a police officer is capable of protecting themselves and others when the need arises. This research will discuss some of the benefits to physical fitness within law enforcement and the advantages to some of the testing or physical assessments.

The intended audience of this research is the Austin I.S.D. Police Department. This research may also be of interest to other law enforcement agencies in Texas who may be re-evaluating their current policies and guidelines in the area of physical fitness testing.

Recent legislation and case law has set minimum standards and provided guidelines for physical fitness testing. This research will use these cases and other books, surveys, and journals available. Some of this information will also come from the FitForce Coordinator Guide, which is a fitness program offered to law enforcement officers that is written and developed by Dr. Thomas Collingwood, Robert Hoffman, and Patricia Sammann. This

program was developed specifically for law enforcement officers and established as a result of the research conducted by the Cooper's Institute in Dallas, Texas.

The intended outcome of this project is to aid law enforcement agencies, specifically the Austin I.S.D. Police Department, in implementing a new physical fitness assessment policy, which follows and considers the current models of wellness programs.

Historical, Legal or Theoretical Context

Historically, physical fitness testing or assessment was used to screen out small-framed applicants, such as females. Due to changing legislation and current case law, departments have been forced to evaluate the method in which officers are assessed for physical fitness. Past fears that women could not perform these jobs have proven unfounded to a large degree in policing (Standard, November 1993). This was based on the fact that women were given lower requirements than men for the testing purposes, but required to perform the same job as a police officer.

Many departments designed their fitness programs and assessments after the fitness-based model from the Cooper's Institute in Dallas, Texas. The basis for the difference in the "fitness norms" is that the aerobic capacity of a female is different than that of a male. The female norm makes the test similar and equivalent to that of a male (Hoffman, 1995).

The Americans with Disabilities Act states, "No covered entity shall discriminate against a qualified individual with a disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment." The act provides a general "defense to a charge of discrimination under this Act that an alleged application

of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this title.”

It is important to understand that a police agency is not expected to lower or eliminate fitness standards and are not expected to hire unqualified or unfit applicants. The law is intended to create equal and fair employment opportunities for all applicants and to eliminate any bias or prejudice on the part of the employer.

Certain consideration is given to law enforcement because of the physical demands that are required to perform the critical job functions as a police officer. In the case of *United States v. Wichita Falls*, the court ruled that an applicant’s successful completion of the Wichita Falls Police Department’s physical assessment and physical ability test was necessary to be an effective police officer in Wichita Falls, Texas (Schofield, June 1989).

Weight standards and obesity have also become a factor. The Americans with Disabilities Act may protect some overweight individuals if it is medically caused. An individual assessment must be made as to whether the officer can safely perform the essential job functions of the job (McCormack, 1994).

The fitness selection process comes under attack because the standards are different depending on age and sex. The 1991 Civil Rights Act states, “It shall be unlawful employment practice for a respondent in connection with the selection or referral of applicants, to adjust the scores of, use different cut off scores for, or otherwise alter the results of employment related tests on the basis of race, color, religion, sex or national origin” (Standard, 1993).

In the case of *Harless v. Duck, C.A. Ohio, 1980*, the court found that the Toledo Police Department's physical ability test impacted disparately on women. The court noted that the department showed no justification for the types of exercises chosen or the passing marks for each exercise. Their physical ability test was ruled invalid because it could not be shown that it was job related.

Peanick v. Reno was a 1995 case that was decided in the United States Court of Appeals for the Eighth Circuit. The court rejected the plaintiff's claim that the separate fitness standards for men and women violated Title VII of the Civil Rights Act. The court ruled that due to physiological differences in aerobic capacity that vary with age and gender, the test was developed as a relative rather than an absolute standard. Thus, while men must complete the 1.5 mile run in a faster absolute time than women of the same age, the measure of aerobic capacity remains the same. Each candidate must perform at the same level of aerobic capacity.

Case law has reflected in favor of both types of testing, fitness-based models and job specific. The courts have found that a testing type may be validated as long as it can be justified and does not discriminate or impact disparately on a particular group.

Review of Literature or Practice

Law enforcement agencies have the option of choosing the method in which applicants and/or incumbent officers are evaluated on physical fitness. The agency may use a job-specific physical fitness test, which includes job task scenarios that test the performance of critical job functions. An obstacle course simulates activities encountered in the daily performance of a police officer. The obstacle course may include a series of walls, which

simulate privacy fences officers encounter, or a dummy drag to assess the officer's ability to remove a subject to safety or affect an arrest, and a stair run which includes two trips up and down two flights of stairs, or a street chase consisting of a 440 yard run (Gettman, 1976).

In 1990, a survey was conducted of a police department in Sparks, Nevada. The purpose of the survey was to develop a physical ability test for applicants. The department had to determine which type of test to use so they surveyed all sixty-seven officers in the department for the type of daily activities they had to perform. The survey evaluated the activities and compared them to the types of individuals, or future inmates, the officers would come in physical contact with.

The results reflected several criteria for which police recruits should be tested, including the ability to move quickly over short distances; to apply and control dynamic directional forces; to control resisting male adults who are standing on the ground; to lift and carry heavy weights; and to perform demanding work longer than three minutes (Peak, 1992). This test reflects a close relation to the actual job performed as a police officer and is job-specific.

A second assessment of physical ability is the physical fitness assessment or fitness based models. This consists of six components of physical fitness: cardiovascular endurance, muscular strength, muscular endurance, anaerobic power, body composition, and flexibility. Cardiovascular endurance is the ability to perform activity that requires the body to combine its energy sources with oxygen. Muscular strength relates to the muscles' ability to generate maximum force. Muscular endurance measures the muscles' capacity to make repeated contractions without too much fatigue. Anaerobic power is the

ability to make short, intense burst of maximal effort. Body composition is the balance between fat and lean tissue in the body. Flexibility is the range of motion of part of the body around a joint (Hoffman 1995). These six components measure the demands placed on law enforcement officers, such as running, climbing, jumping, lifting and carrying, dragging, pushing, and the use of force. This type of testing can be measured and used to aid an officer in the improvement of his/her overall physical fitness for duty.

In 1994, the State of Washington implemented Cooper Test standards at the 40% level, which is minimal. The Spokane department wanted the level at the 50 percentile. To meet the 40% level, males between the ages of 20-29 only have to complete 38 sit-ups in one minute, 29 push-ups in one minute, 16.5 flexes in one minute, and run 1.5 miles in 12.51 minutes (Sharp, 1994). The state implemented a base standard and individual departments went from that standard.

Physical agility tests are not medical examinations and may be given at any time during the application process, so long as they are required of all applicants. They must be job related and consistent with business necessity. They must relate to job functions that cannot be achieved with reasonable accommodations (A.D.A., 29 CFR 1630.14). This means that departments may have physical assessments but may not require a pre-screening by a physician prior to the assessment. Some employers currently require a medical screening before administering a physical agility test to assure that the test will not harm the applicant. There are two ways an employer can handle this problem under A.D.A. The employer can request that the applicant's physician to respond to a very restricted inquiry which describes the specific test and asks if the person can safely

perform the test, or the employer may administer the physical test after a conditional job offer (Litchford, 1992).

This author surveyed thirty-four police departments in Texas. Twenty-six responded to the survey and the results were as follows: thirteen departments had a fitness program or screening test in place for recruits, two departments used the test for SWAT officers, two departments had testing for incumbent officers, and one department used the testing in promotional processes. Out of the twenty-six departments that responded, fourteen did not have any type of physical testing at all. Six departments used obstacle course testing, six used the Cooper's based testing, and one department used Fitforce testing. Attached is appendix A that reflects all of this information.

Discussion of Relevant Issues

While physical fitness training in police recruit training academies is mandated along with firearms, defensive tactics, and first aid, physical fitness training is not continued or required by most law enforcement agencies (Nichols, 1994). Officers are required to constantly test their proficiency with firearms and seldom use them. Officers quite frequently come into physical challenges with suspects and or other job demands, yet there is no standard set to maintain and evaluate the officers physical ability to perform.

There are no universal standards among agencies, no emphasis on physical fitness other than a physical exam and physical fitness agility exam as part of the testing procedure (Ness, 1992). Even when testing is established, you must choose which type of testing is best designed or applicable to your agency. Some smaller agency can not afford to spend

the money on consultant firms or allow officers time away from patrol to evaluate the fitness program and implement the right one for the agency.

The major concern when evaluating and designing a fitness program or assessment is whether it falls in the guidelines set out by the Americans with Disabilities Act, Title VII of the Civil Rights Act, and with precedent from case law dealing with these statutes. All courts are in agreement that the process must be fair and not impact differently on other groups because of age and gender. Some agencies are fearful to put a policy in place because of the threat of civil litigation. Health and fitness standards are constitutionally valid if fairly implemented and rationally related to legitimate law enforcement interests (Schofield, 1989).

Veteran officers are the hardest group of individual to implement in the fitness program. These officers take the position that they have been doing this for years and they haven't been hurt yet. Many police officers consider themselves invincible because they are the police and they are confident that their training with firearms will resolve the majority of situations (Ness, 1992). Everyone agrees that recruits and applicants should be tested before employment is granted, however, to have a successful program, all members in the department must participate. To ensure that a total fitness program is successful, the head of the agency must be very supportive and participate in the program himself (Ness, 1992).

Physical fitness has benefits to the officers, citizens, and police departments as a whole. On-going physical ability testing is the first step to insuring a fit and prepared work force (Standards, 1995). Law enforcement officers must maintain a good level of fitness in order to protect and be able to serve their community in a moment's notice. Not only do

the officers owe it to their community, they owe it to themselves. Beyond ordinary dangers to good health, situations may arise where a human life depends on the endurance, strength, and agility of a responsible officer (Collingwood, 1979)

Heart disease, which is brought on by the stress of the job, shift work, and improper diet, is the number one killer among police officers (Brown, 1994). It is assumed that officers are killed by being shot or injured by a criminal. The majority of police officers die from something that they have a great amount of control over. Staying fit is important for all individuals, but due to the strains and abnormal difficulties officers face, fitness is extremely important and must be maintained.

Police administrators are also concerned with fitness because of the increased levels of sick time, increased incidence of disability, early retirement, and other fitness-related losses of productivity (Collingwood, 1979). Being physically fit diminishes stress, promotes self-esteem, improves firearm accuracy, increases an officer's confidence in confrontations, makes him/her more effective with impact weapons and defensive tactics, and generally improves his/her quality of life (Nichols, 1994).

The development of a physical fitness program for police employees, therefore, is essential for two reasons: (1) physically sound officers will be better able to respond successfully to emergency situations requiring high degrees of physical effort; and (2) improved health should result if officers acquire and maintain fitness, a circumstance that could provide financial savings to the police department (Charles, 1983).

The cost to maintain a fitness program will actually benefit the department over a long period of time. Along with the cost will come a boost in morale and increase in job

performance. Many departments already have the weight and workout equipment or have immediate access to it.

Conclusions/Recommendations

The purpose of this research is to implement to right physical fitness program within a law enforcement agency, specifically the Austin I.S.D. Police Department. The arguments have been made in regards to which type of testing, job-specific or fitness-based norms are the right type of testing to implement. The courts have ruled in favor of both with the same underlying rule. The assessment or test must be fair and not discriminate on a particular protected group. The test must also be an essential part of the job-function.

Research had shown that fitness programs benefit police departments and are not costly programs. They also improve the quality of life for the officers and life expectancy. The barrier to overcome is selecting a program that benefits a particular program and gaining all of the support to implement it properly. A period of adjustment should be given to allow officers to improve and become fit for duty. Officers who are physically fit have a good appearance in uniform and to the public. This may make some individuals think twice about confronting and challenging a physically fit officer. Aside from the criminals, the public will have a positive attitude towards the police, instead of a bunch of arrogant donut eating fools.

After reviewing the literature, handout, surveys, and other materials obtained in this research, I recommend that the Austin I.S.D. Police Department adopt the FitForce fitness policy. This should be administered to recruits as well as incumbent officers. Assessing and maintain a fitness policy will allow for improvement amongst the officers and promote

a positive image to the general public. This policy should have an adjustment period over one year to allow incumbent officers the opportunity to strive for compliance.

A list of essential job functions should be compiled and evaluated by the officers to establish a basis for recruit examinations. Again, if the incumbent officers are physically fit, they can lead by examples to the recruits as they do in the field training period.

The implementation of this program will allow the Austin I.S.D. Police Department to continue to grow in a positive and healthy manner. The benefits to the program outweigh the cost. Not only will we improve the law enforcement community, but the overall lives of the officers.

BIBLIOGRAPHY

Americans with Disabilities Act of 1990.

Brown, W.C. "Managerial Perspectives in the Development of a Physical Fitness Program." Human Resources in Criminal Justice. 1994: 60 - 72.

Civil Rights Act of 1991.

Charles, Michael T. "Police Training: A Contemporary Approach." Journal of Police Science and Administration. 1983: v 11 251 - 263.

Collingwood, Thomas R. "Implementing Programs and Standards for Law Enforcement Physical Fitness." Police Chief. April 1988: 20-37.

Gettman, L. R. "Evaluation of Physical Fitness Programs for Police Officers." National Institute of Justice. Rockville, Maryland: 1976.

Harless v. Duck, 1980.

******Hoffman 1995 (need rest of information on dates, etc.)*

Litchford, Jody. "Employment Requirements of the Americans with Disabilities Act: Application to Law Enforcement Officers." Polygraph. 1993.

McCormack, William U. "Grooming and Weight Standards for Law Enforcement: The Legal Issues." FBI Law Enforcement Bulletin. July 1994: 27 -32.

Ness, J.J. "Mandatory Physical Fitness Standards: Issues and Concerns." Police Chief. August 1992: 74 - 78.

Nichols, David A. "Establishing a Mandatory Fitness Program for Law Enforcement Agencies." Campus Law Enforcement Journal. March/April 1994: 38 - 40.

Peak, Ken., et al., eds. "Physical Abilities Testing for Police Officers: A Flexible, Job-Related Approach." Police Chief. January 1992: 51 - 56.

Peanick v. Reno, 1995.

Schofield, Daniel L. "Establishing Health and Fitness Standards: Legal Considerations." FBI Law Enforcement Bulletin. June 1989: 25 - 30.

Sharp, Arthur G. "Recruiting Quality Applicants." Law and Order. September 1994: 100 - 108.

Standard, Steven J. "Physical Ability Testing: The ADA, and The 1991 Civil Rights Act." Law and Order. November 1993.

Standards & Associates, Inc. Quality Through Selection. Spring 1995.

AGENCY	PROGRAM ?	TYPE OF TEST	RECRUITS	INCUMBENTS	SANCTIONS
Abilene P.D.	Yes	Cooper	Yes	No	Recruits
Beaumont P.D.	Yes	Obstacle	Yes	No	Recruits
Bexar Co. S.D.	Yes	FitForce	Yes	No	Recruits
Borger P.D.	No	N/A	N/A	No	N/A
Brazoria Co. S.D.	No	N/A	N/A	No	N/A
Corinth P.D.	Yes	Obstacle	Yes	Yes	None
Dallas P.D.	Yes	Cooper	Yes	SWAT	Recruits
Del Rio P.D.	No	N/A	N/A	No	N/A
El Paso P.D.	No	N/A	N/A	No	N/A
Fort Worth P.D.	Yes	Cooper	Yes	Promotional	Recruits
Harris Co. S.D.	Yes	N/A	Yes	No	N/A
Jersey Village P.D.	No	Cooper	Yes	Yes	None
Kingsville P.D.	No	N/A	N/A	No	N/A
Nassau Bay P.D.	No	N/A	N/A	No	N/A
Pasadena I.S.D. P.D.	No	N/A	N/A	No	N/A
Roanoke P.D.	No	N/A	N/A	No	N/A
San Antonio P.D.	Yes	Cooper	Yes	No	Recruits
SanAntonio I.S.D. P.D.	No	N/A	N/A	No	N/A
Spring Branch I.S.D.P.D.	No	N/A	N/A	No	N/A
Terrell Hills P.D.	No	N/A	N/A	No	N/A
Texas City P.D.	No	N/A	N/A	No	N/A
Texas DPS	Yes	Obstacle/Agility	Yes	No	Recruits
Tyler P.D.	Yes	Obstacle	Yes	SWAT	Recruits
Victoria P.D.	Yes	Obstacle	Yes	No	Recruits
W. Tawakoni P.D.	No	N/A	N/A	No	N/A
Webster P.D.	Yes	Cooper	Yes	Yes	Recruits
Wichita Falls P.D.	Yes	Obstacle	Yes	No	Recruits