

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

Participating in a Mandatory Wellness/Fitness Program

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ABSTRACT

Health and fitness levels of law enforcement are a righteous concern for police and the public. Many police tasks require physical effort. Failure to meet these tasks may be detrimental. Also, officers have a higher rate of heart disease, stress, and lowback injuries than the general public. To counter these measures a mandatory wellness/ fitness program could be appropriate. Fit officers are better able to accomplish physical tasks and minimize disease and health risk problems.

Under the constitution, job related standards can only be enforced if they are fair and reasonable. Legal considerations include disparate impact on women and proof of job relatedness. These issues are addressed under Title VII of the Civil Rights Act of 1964 (CRA), the CRA of 1991, and the Americans with Disabilities Act (ADA). For job relatedness to be accepted for any standard, a validation needs to be done.

Dr. Thomas Collingwood explains that physical fitness tests are validated by construct and criterion methods and physical ability tests are validated by content methods. The benefits of fitness testing are that they directly relate to fitness programming for all officers.

For successful implementation of a wellness/fitness program it is important to allow officer input and give reasonable time for standards to be met. A reward system should also exist. This program should provide officers with a more efficient, safer, and healthier career.

Introduction

The purpose of this research is to identify a variety of issues, which will lead to a successful implementation of a mandatory wellness/fitness program. The research gathered will provide administrators of the Lufkin Police Department with relevant information concerning the benefits and legal considerations relating to this proposed program.

Health and fitness levels of law enforcement personnel are a legitimate concern for police administrators and the public in general. It is indisputable that police officers should maintain a high level of fitness. It would be unheard of for law enforcement officers not to have firearms training or demonstrate proficiency, even though most officers never fire their weapon in the line of duty. The need for physical ability, by contrast, occurs regularly. Officers must always be in a state of readiness, and be prepared to successfully meet the physical demands placed upon them. They must maintain a level of fitness better than the average person, since strength and endurance are often critical factors in determining the outcome of an encounter, especially with people who are angry, intoxicated, drug overdosed, or extremely violent. Furthermore, studies show that law enforcement officers exhibit lower levels of fitness and higher levels of heart disease risk factors, as compared to the general population. Studies have found that officers younger than 30 to 35 have average

levels of risk factors, but older officers have higher risks than the common population. In general, lower levels of fitness equal higher risk factors. In Figure 1, officers from a large department were given electrocardiograms to check for heart disease and found evidence of disease in 5% of officers under age 34, 13% between ages 35 and 44, and 21% between ages 45 to 54. Data such as this, document the need for officers to maintain fitness throughout their career, not only for job performance, but also to minimize disease and health risk problems.

In addition, fitness is becoming a legal responsibility for agencies. There has been one court decision, (Parker v. Washington D.C., 1988) in which the city was found negligent for not having an ongoing fitness program for officers. The issue in this case, was inappropriate use of force. By not having a program, the agency was found to be "deliberately indifferent" to the needs of officers to remain trained, and as a consequence the officer applied excessive force. To counter these measures and demonstrate a serious commitment toward all these issues, a mandatory wellness/fitness program could be appropriate. This program will not only benefit the officers, but also the department, and the public.

Historical, Legal or Theoretical Context

Court decisions suggest that "law enforcement administrators have considerable latitude under the constitution

Evidence of Heart Disease

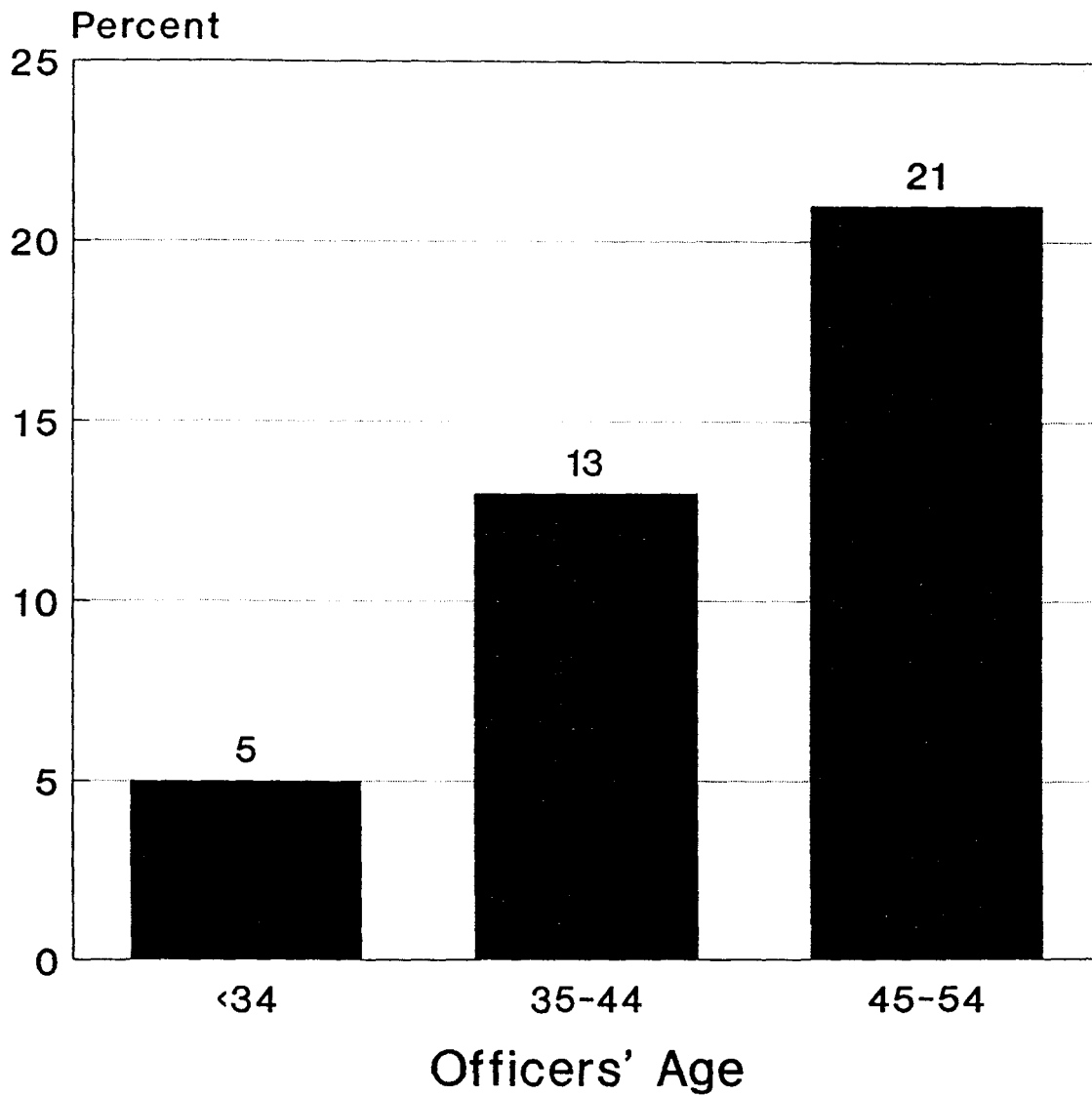


Figure 1

to enforce reasonable health and fitness standards". These job related standards must be fair and reasonable. The courts generally assess the validity of a legitimate government interest, (mandatory standards) by what is often referred to as the "rational basis" test. According to FBI Special Agent Schofield, " under the rational basis analysis, courts adopt a deferential posture that initially assumes the validity of the fitness standard". For example, in *Grusendorf v. City of Oklahoma*, the U. S. Court of Appeals for the 10th Circuit upheld a nonsmoking rule. In this case, a firefighter was terminated because he had violated the terms of his agreement he had signed as a precondition of employment that he would not smoke for 1 year. The court found a rational connection between the nonsmoking rule and the promotion of health and safety.

In *Padilla v. City of Topeka*, the Supreme Court of Kansas, using the "rational basis analysis" upheld a physical standard for hiring police with uncorrected visual acuity not less than 20/50 for each eye-correctable to 20/20 for each eye. The court found the standard constitutional, even though the standard was somewhat new to the department and a number of officers could not meet it. The court concluded, "it would be poor public policy to hold that a police department cannot upgrade its officers by imposing standards without terminating all existing officers who could not meet the new standards."

In 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." The assessment test was used to screen applicants prior to entering the police academy, and successful completion of the agility test was required after undergoing training at the academy. The court concluded that the tests conducted by Wichita Falls are valid and stated, "officers are daily confronted with situations where they must exert physical force, move rapidly, and stress their cardiovascular system."

Although court decisions suggest that administrators may enforce reasonable health and fitness standards, under Title VII of the Civil Rights Act of 1964 (CRA), these standards must not show disparate impact, or in other words discriminate against women and other protected groups, unless they are justified by proof of job relatedness. The Americans with Disabilities Act (ADA) and the Civil Rights Act of 1991 also reiterate that all employee tests must be job related. In addition, the CRA of 1991 prohibits employers from "norming" or adjusting test scores based on race, sex, religion, or national origin. This may present a problem, since many agencies are currently using different standards for men and women to avoid disparate impact; which is demonstrated if less than 80 percent of a protected group

of officers passed a given standard at the pass rate of majority officers (white males). It appears that the 1991 legislative intent was to address adjusted scores for employee cognitive tests only, but as of this date the controversy over the interpretation of the Act is still unresolved.

In review of these Acts the key issue or main focus has to do with job relatedness. For job relatedness to be accepted for any standard, a validation needs to be undertaken. Health and fitness expert Dr. Thomas Collingwood states, "a test is valid if it measures a dimension or factor which has a bearing on the individual's capability to perform the job". There are three validation strategies that are acceptable for demonstrating job relatedness of a given standard: 1) *Content*-properties or (tasks) measured by a test as being the same as the properties of a specific job task. For example, if an officer has to climb six-foot fences, then the test would measure the ability to climb a six-foot fence. 2) *Construct*-measures an underlying factor that is a characteristic of an officer's ability to perform a variety of job tasks. An example would be upper body strength as an underlying factor for an officer performing a variety of use of force, lifting and carrying tasks. 3) *Criterion*-measures a dimension that is predictive of an officer's ability to perform a task or variety of tasks. An example of a fitness test with predictive validity would

be aerobic power predicting an officer's ability to complete a pursuit lasting over two to three minutes. Although anyone of these methods may be used for validation, physical fitness cannot be validated as being content valid since fitness is defined as an underlying dimension, not a task specific dimension. For example, an officer would not be required to do situps as a job task, but there are some job tasks that require lifting, carrying and use of force whereby situps would be predictive and an underlying factor in the officer's ability to perform those tasks. Content validity is the method used for job task simulation testing, and construct and criterion validation is used for validating fitness tests.

A validation process is very important and critical to a mandatory fitness program, since courts have gone both ways in determining whether a fitness standard was valid or not. Furthermore; as mentioned earlier, the constitution permits the enforcement of mandatory standard that have a "rational basis" and are fairly implemented. Prior to enforcement of any mandatory standards, fitness and health experts should be consulted, along with competent legal counsel to ensure that the standard is reasonable and legally defensible.

Review of Literature or Practice

Thomas Collingwood, Ph.D., along with The Cooper Institute For Aerobics Research, has completed extensive

research on this topic. He demonstrates, through construct and criterion validation that physical fitness is job related. These validation studies indicate that the same physical fitness areas that are important for health (aerobic power, strength, muscular endurance, flexibility, and body composition) are also the underlying and predictive factors of job performance. These underlying factors provide officers with "physiological readiness" to perform frequent or critical job tasks. In comparison to an ability test, which can only measure the performance capability for one task at hand, the physical fitness test measures an underlying factor that accounts for officer performance of a variety of physical tasks. These fitness tests consist of:

- 1) aerobic power/endurance (1.5 mile run or 12-minute walk/run): pursuits and use of force lasting over one to two minutes,
- 2) dynamic strength (one minute sit-up and push-up): use of force, lifting, carrying, dragging, and pushing,
- 3) absolute strength (1RM bench and leg press): lifting, carrying, pushing, and dragging heavy objects,
- 4) flexibility (sit and reach): lifting, carrying, bending, pursuit with obstacles,
- 5) body composition (% body fat): short and long pursuits, use of force, lifting, and carrying.

Age and gender standards or norms have been established from a data bank of over 40,000 people of the general population. Single standards have also been established. These tests have been upheld in court as valid

and job related, (U.S. v. Wichita Falls, TX 1988). Another advantage to physical fitness testing as opposed to job task ability standards, is that they directly relate to fitness programming for both recruits and incumbents; which is very important to the wellness side of this program.

Most of the departments I have contacted are using all or some part of the "Cooper method" of testing. Some of the agencies have mandatory standards that must be met, and others test only through training programs which impose no negative sanctions against officers that are not able to meet an acceptable level. I have found that the agencies with successful programs, (Midland PD & Altamonte Springs PD, FL in particular) involve four distinct characteristics: 1) they involve employee input, 2) they allow reasonable and considerable time for officers to meet standards, 3) they impose no negative sanctions where officers, who are unable to meet standards, demonstrate substantial effort and reasonable progress; or allow officers more than ample time to meet standards before imposing negative sanctions, and 4) they reward officers for meeting or exceeding standards. I believe this data is very important and will be extremely beneficial to this program.

Discussion of Relevant Issues

It is indisputable that police officers should maintain a high level of fitness, but many fitness related problems are brought about by lifestyle factors such as poor

nutrition and lack of exercise. To counter these measures a mandatory wellness/fitness program could be appropriate. One of the most important issues in the implementation of a successful program is leadership. Not having a leader that is committed toward health and fitness is the first step in the wrong direction. The constitution gives administrators considerable latitude to enforce reasonable health and fitness standards. However, as discussed earlier these standards must not demonstrate disparate impact as defined under Title VII of the Civil Rights Act of 1964, unless they are justified by proof of job relatedness. The ADA, which adds the handicapped to the list of protected groups, and the Civil Rights Act of 1991 also place emphasis on documenting the job relatedness of standards. The CRA of 1991 also outlaws "norming" or adjusting test scores, which by contrast is the method used to avoid disparate impact. This places a greater importance on single standards and the validity on job relatedness.

As mentioned previously, physical fitness tests are validated by construct and criterion methods, while agility or ability tests are validated by content methods. The advantage to physical fitness testing opposed to ability standards is that they directly relate to fitness "programming" for both recruits and incumbents. Research suggests the best approach used in implementing a program is the "evolutionary approach". With this method officers

receive education concerning the program, testing to determine their current fitness level, and assistance in meeting the requirements. After a time, when all personnel have had a reasonable opportunity to comply, the program becomes mandatory. This method is the most effective and creates less friction with members of the agency.

Another important and relevant issue is cost/benefit analysis. Data from several studies: California Highway Patrol, Prudential, General Mills, Tennecco, Johnson & Johnson, and General Electric show that in promoting wellness/fitness programs, reduced health care costs occur, absenteeism and job related injuries decrease, and morale and productivity rise. Figure 2, shows that fitness programs can significantly decrease absenteeism. At General Electric, exercisers call in absent 45% less than those who do not exercise. After one year of its fitness program, Johnson & Johnson discovered that sick leave dropped 9% for participants, and rose 13% for those who did not partake. Those who participated in General Mills fitness program showed a 19% reduction in absenteeism, compared to a 69% increase for nonparticipants.

Indeed, cost effectiveness is very important; but also difficult to measure, it is more reasonable to justify a program by arguing that a "compelling interest" exists in law enforcement to have officers who are healthy and fit throughout their career. The ultimate result should be

Changes in Absenteeism

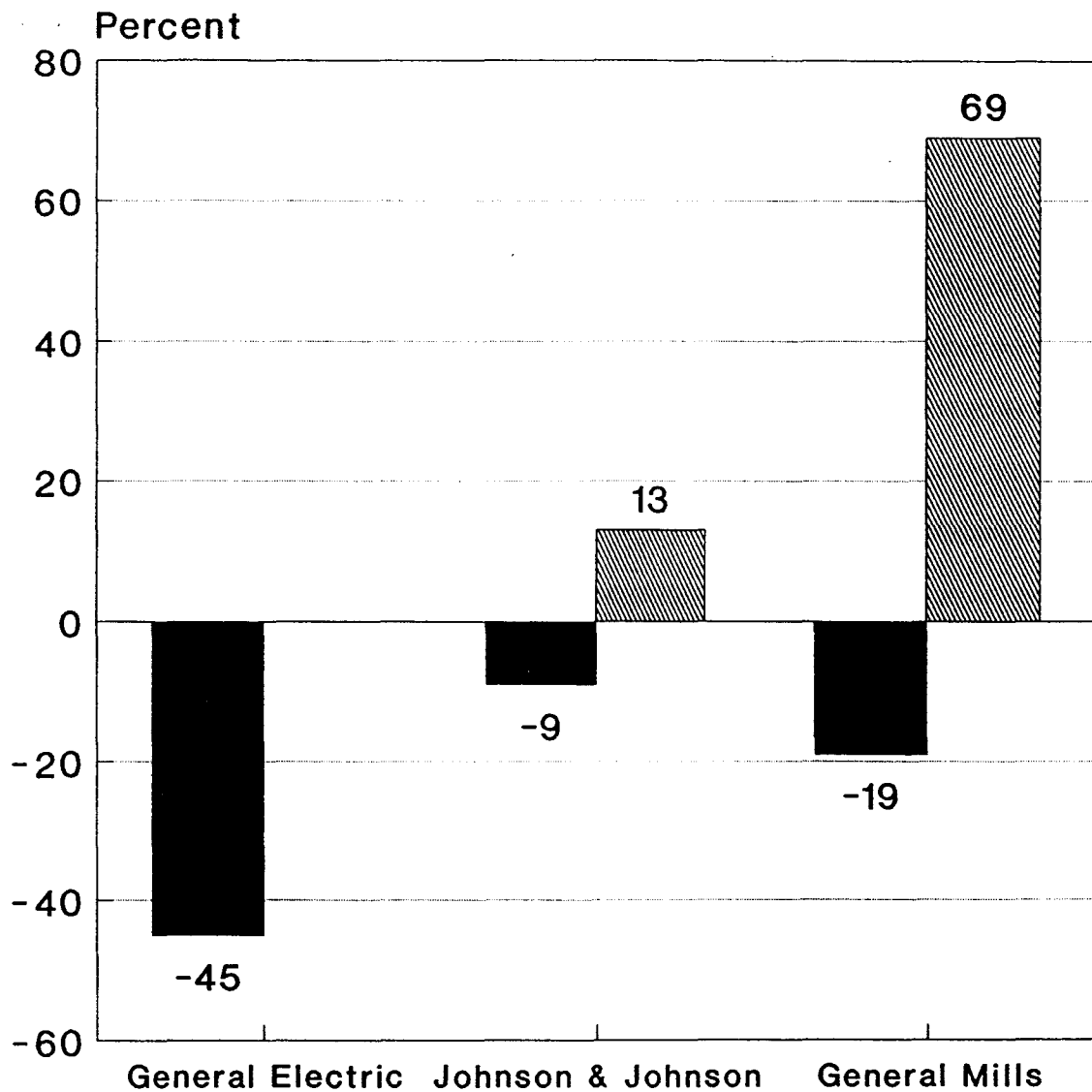


Figure 2

■ Participants ▨ Nonparticipants

employees who are healthier and better able to provide effective policing service.

Conclusion/Recommendations

There is no question that police officers must be in good physical condition to perform their jobs at the utmost level. Physical challenges occur regularly and officers must be prepared to meet the demands placed on them. Stress, heart disease, lack of exercise, and poor nutrition can all lead to poorer physical and mental health. A mandatory wellness/fitness program could be essential. Such a program will enable officers and management to function more efficiently, both physically and emotionally, thus leading to a more healthier and productive career.

The issue of a mandatory physical fitness program raises potential legal issues. All mandatory fitness standards must be fair and reasonable to be legally enforced. The courts generally assess the validity of these standards by what is often referred to as the "rational basis" test. The legality under Title VII of the Civil Rights Act of 1964, (CRA) concerning these standards must not show adverse impact towards women; if so, it must be justified by proof of job relatedness. The ADA and the CRA of 1991 also reiterate that employee tests must be job related.

Considering these issues, the following is recommended:

- 1) employees have input in the implementation process, 2) a

validation study be undertaken, 3) use physical fitness standards alone or in conjunction with agility testing, (fitness testing and agility testing can both be validated and shown to be job related, the advantage of fitness testing is that it incorporates programming, which is essential for incumbents), 4) use single standards, 5) allow reasonable and considerable time for officers to meet standards and impose no negative sanctions where officers (not able to meet standards at a given time) demonstrate substantial effort and reasonable progress, and 6) reward officers for meeting or exceeding standards. A wellness/fitness program shows a concern for officers, not only for job performance, but as a valuable employee. This program can also lead to reduced overall health care costs, but more importantly increase the effectiveness and security of officers. The bottom line is a safer, healthier, more satisfying career.

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