



Negligent Hiring Liability for Law Enforcement in 2022

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In the months ahead, law enforcement agencies will be struggling to fill vacant positions in an extremely difficult recruiting environment. Beyond the labor shortage that appears to be impacting countless professions from nursing to transportation to hospitality, law enforcement vacancies seem particularly difficult to fill. This is true not only because of the rigors of the job, but also because of the sustained anti-police rhetoric which has dominated so much of popular culture in the last two years. Even many of the agencies that were defunded only a year ago are now being tasked to pull a “U-Turn” and increase staff in the face of a surge in violent crime.

Confronted with pressures to hire officers as quickly as possible and generate recruit classes that are more diverse, there will inevitably be the temptation to cut corners and ignore red flags to get “boots on the ground”. These increasing pressures may unfortunately mean that those boots are not filled with qualified men and women who demonstrate the character traits and competencies necessary to successfully serve their communities. Making these short-term fixes even more appealing are their delayed consequences; bad hires may not become public safety, legal liability or public trust disasters for many months. Short-term thinking could motivate hiring decisions that may fill the ranks today but make for bad headlines for years to come.

At this moment, the law enforcement profession, and the citizens who depend on it, need agency leaders and other key personnel to meet the ethical challenge of resisting the temptation to hire unqualified applicants who, in the long run, can inflict tremendous damage on agencies, the profession and the communities that these agencies serve.

The last thing that officers and citizens need now is “warm bodies” hired into the law enforcement field who will ultimately bring disrepute to the profession, rather than further the mission to protect and serve. By learning from the mistakes of the past, being wary of common hiring pitfalls and

understanding the long-term impact of negligent hiring practices, agency leaders can uphold their integrity and that of the profession without contributing to the detriment of their agencies and communities.

We've Been Here Before

Law enforcement's hiring frenzies of the 1980s and early 1990s should teach us that bad things happen when we "hire them now and ask tough questions later." Skyrocketing violent crime rates, an economic recession and federal funding assistance to hire more police officers nationwide resulted in hiring surges in law enforcement agencies across the nation during the aforementioned decades. Accomplishing the goal of getting "boots on the ground" quickly, however, often came at the expense of hiring quality candidates.

The New York City Police Department's hiring frenzy directly contributed to a corruption scandal in the 1990s. In May 1992, a joint drug task force in New York City revealed a ring of corrupt NYPD officers who stole drugs and money, sold drugs themselves, and engaged in various forms of brutality. An investigation by **the Mollen Commission revealed that, in the midst of the hiring frenzy, overwhelmed background investigators were not conducting thorough investigations and the department was placing applicants in the academy before background checks had even been completed.**

The authors of the Mollen Commission Report stated that, "[a]pproximately 20 percent of the officers suspended or dismissed should never have been admitted into the Department." The Commission noted this failure to follow proper applicant screening procedures when it wrote, "[t]he Department has routinely admitted applicants to the Department—and put them on the streets as sworn officers with guns and shields—before their background checks are complete. Eighty-eight percent of the (corrupt) officers in our study, for example, entered the Police Academy before the completion of their background (investigation)."

The Commission revealed that during the hiring surge, background investigations were often not completed until after the applicant became a sworn police officer. "This is particularly troublesome because by the time recruits have graduated from the Police Academy and become sworn members of the Department, much time, energy and money has been invested in them. **Consequently, the focus shifts from the question of whether the applicant is qualified, to how the Department could justify dismissing a sworn police officer, which carries a heavier burden of proof.**"

The same scenario was repeated in many other law enforcement agencies across the nation during that era. A 1985 corruption investigation of the Miami Police Department uncovered a group of

corrupt officers that eventually became known as the “Miami River Cops”. This investigation revealed a contingent of twenty Miami officers who engaged in murders, robberies, burglaries, drug deals, and bribes. An investigation by the lead prosecutor in the case revealed that, **just as had occurred in New York City, the Miami Police Department had gone through a hiring surge, beginning in 1980**, in response to a spike in violent and drug crime. This resulted in a curtailing of thorough background investigations. **Every single one of the twenty convicted Miami River Cops had been hired after 1979 (during the hiring surge) and many had past histories of criminal behavior, violence, drug and alcohol abuse, or mental health issues before their date of hire.** Similar situations contributed to criminal scandals in New Orleans, Louisiana and Gary, Indiana in the early 1990s, and the Rampart Division Scandal for the Los Angeles Police Department in the late 1990s.

While these cautionary tales do not indicate that every bad hire will result in criminal behavior or an extreme case of corruption, they do illustrate the disastrous results that can come from cutting corners on the background investigation process. Throughout the country, there are less egregious examples of the outcomes of hiring frenzies. For instance, there are agencies in which department members are forced to deal with problem officers while the police chiefs or sheriffs who were responsible for these hires have long since retired from the profession. **A leader’s greatest legacy in law enforcement is the men and women that carry on after the leader has left. Hiring people that have no business joining the ranks of law enforcement hurts the agency and the profession.** The damage done by today’s bad hires on tomorrow’s recruiting efforts is incalculable.

A State Certification is Not a Replacement for a Thorough Background Investigation

The temptation to rush the background investigation and hiring process is often heightened when the applicant is already a certified officer. So, despite any behavioral issues an applicant may have displayed through past employment with other agencies, he or she represents an opportunity to expedite the process of getting “boots on the ground” without the time and money investment of academy training. While many officers seek lateral employment opportunities for legitimate reasons, there are some who have left their past employers out of necessity due to conduct issues, but have managed to maintain their state certification.

This national problem of “gypsy cops” is not a new one. Toxic officers engage in misconduct in one agency after another over the course of a career and, in the meantime, cost thousands of dollars in lawsuits and inflict damage to agency reputations and morale along the way. These officers leave one agency, where they are widely known to be a serious problem, only to find a new home within a new agency where their bad behavior continues until it is time to move again.

As states across the country look to improve the processes by which officers are certified and de-certified, agency leaders should resist falling into the trap of assuming that their state boards of certification are ultimately responsible for hiring decisions. Make no mistake: if unqualified officers with checkered pasts are hired and engage in misconduct, the fact that they were certified by the state at the time of their employment does not absolve the agency from liability in a court of law or in the court of public opinion.

Going Beyond Automatic Disqualifiers

An agency's automatic disqualifiers, whether related to past criminal convictions, drug use or other clear "red flags", are a vital part of the vetting process. However, no compilation of automatic disqualifiers—no matter how well drafted—will render a thorough background investigation less important. Possible disqualifiers related to temperament and character will inevitably emerge that do not fit neatly into one of the automatic disqualifier categories. Past supervisors, neighbors, family members and others are invaluable sources of information. The information they provide may not be in the form of a criminal conviction or even an arrest. It may not point to prohibited drug use. It may, however, reveal issues pertaining to anger management, mental health, alcohol abuse, trustworthiness or any other of a multitude of concerning character traits.

The fact that a candidate occupies the problem house or apartment in a community is relevant. The fact that the police are called to their residence on a regular basis in response to noise complaints is relevant. The fact that multiple supervisors or personal references describe them as somehow prone to anger is relevant. *Even if none of these pieces of information are a part of our list of automatic disqualifiers, they are still relevant.*

It seems likely that the over-reliance on automatic disqualifiers is born of an interest in speed and convenience. Conducting home visits, canvassing neighborhoods and interviewing references all require significant time and effort. Agency leaders are tempted to expedite the hiring process by focusing less on these fundamental investigative techniques. As important as it is to process applicants as quickly as possible, neglecting these tried-and-true background investigation strategies may lead to missing those critical pieces of information that do not show up on a criminal record or social media account.

Hiring the Wrong People Today Makes it Harder to Recruit the Right People Tomorrow

In 2022 and beyond, hiring decisions will be made that will profoundly impact the future of American policing. Who will be our next generation of law enforcement officers? Beyond the legal liability concerns related to negligent hiring, the societal costs are much greater.

If agency leaders give in to the temptation to fill recruit classes hastily with a short-sighted mindset in order to “hit their numbers” in hiring, without due regard for the quality of the people being hired on, what is the predictable impact on the occurrence of police misconduct on and off the job? If the past is repeated and these hiring frenzies continue to result in unqualified individuals being hired, and in turn a rise in instances of misconduct, the challenge of recruiting will only get much more difficult.

It has never been harder for law enforcement agencies to hide their problem people than it is today. The odds of a bad hire becoming the face of the agency is greater than ever before. Therefore, the legal, public safety and public trust costs of negligent hiring decisions have never been a greater risk.

For the generation of leaders in law enforcement who will be retiring in the coming years, the most significant impact they will have on your agencies and their communities may be the role you play in vetting and hiring the next generation of officers who will answer the call long after they retire. That may well be their legacy, for better or for worse.

About the Author

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.

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