



Negligent Hiring Liability for Law Enforcement in 2023

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Over a year ago, we at Dolan Consulting Group published an article entitled *Negligent Hiring Liability for Law Enforcement in 2022*. Unfortunately, 14 months later, the cause for concern in this area has only grown. More and more conversations we have with law enforcement leaders involve concerns about lowering standards in order to hire “warm bodies”, and more case studies are emerging. Sadly, it seems that an updated article on this crucial topic is necessary.

Over the course of the last few years, and in the months ahead, law enforcement agencies have and will continue to struggle 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 the case, 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.

Many of the agencies that were defunded only two or three years 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, leaders will inevitably face the temptation to cut corners and ignore red flags to get “boots on the ground”.** These increasing pressures may regrettably 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 or even years. Short-term thinking could motivate hiring decisions that will fill the ranks today, but make for negative headlines and lawsuits 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. In the long run, these applicants have the potential to 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.

What We’ve Seen Since the Start of 2022

In May of 2022, the mayor of San Jose, amidst what he described as a “drumbeat” of disturbing police misconduct cases, acknowledged that improved screening of new applicants was vital to addressing the personnel problems facing the San Jose Police Department. Then-mayor Sam Liccardo, noting the prevalence of newer officers among those facing criminal and/or administrative charges, publicly stated his concerns surrounding screening protocol. Mayor Liccardo asserted, “I expect and I know the department is looking into this right now and in the next several days, we’ll be able to identify the specific actionable steps the department will take to ensure that we don’t see news like this again.” [1]

In September of 2022, a Colorado officer parked his patrol car across train tracks and placed a handcuffed arrestee inside. Shortly after the arrestee was placed in his patrol car, a freight train struck the vehicle, causing severe injuries to the woman inside. In October of 2022, local news outlets uncovered recent personnel files from his former department, including performance evaluations and Internal Affairs investigation findings. These documents raised red flags concerning the officer’s competence and regard for officer and public safety. Local media inquiries for comment were met with standard statements regarding background processes but did not speak to the past employment problems in question. [2]

In late October of 2022, a Maryland Sheriff’s deputy was arrested and charged with raping a woman while on duty and in uniform. The deputy had been employed with the agency for less than one year. In a media interview in early November of 2022, the Sheriff stated that, “[i]t’s very difficult to recruit good quality candidates...So what do we find ourselves doing? Hiring people that didn’t wow us during the interview. But we need warm bodies on patrol still in these vacancies that we have within our agencies. And inevitably, what does that do? It lowers our standards. This is how individuals are able to get through the cracks.” [3]

In November of 2022, a newly-hired Virginia Sheriff's deputy traveled to California and allegedly murdered a young woman he had met online, along with her parents, before killing himself with local police officers surrounding him. In December of 2022, it became clear that the deputy had previously worked as a Virginia State Trooper—having been hired in spite of the apparent availability of a 2016 police report detailing a police encounter during which he was held for a psychiatric evaluation after threatening to kill himself and his father. A Virginia State Police spokesperson indicated that “human error” was to blame for his hiring in 2021. [4]

And finally, in February of 2023, in the wake of Tyre Nichols' death and the filing of criminal charges against several officers involved in his arrest, former members of the Memphis Police Department recruiting unit came forward with allegations that the MPD had lowered hiring standards in the years leading up to Nichols' death. One retired MPD lieutenant formerly in charge of recruiting claimed, “[t]hey would allow just pretty much anybody to be a police officer because they just want these numbers.” [5]

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. In a thorough background investigation, *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 insight 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, substance 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 the candidate's residence on a regular basis in response to noise complaints is relevant. The fact that multiple supervisors or personal references describe him or her as somehow prone to anger is relevant. *Even if none of these pieces of information are a part of the 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 quickly, neglecting these tried-and-true background investigation strategies may lead to

missing 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 2023 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 even greater.

If agency leaders give in to the temptation to fill recruit classes hastily and short-sightedly in order to “hit their hiring numbers”, 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, police recruiting will only become more challenging.

It has never been more difficult 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 law enforcement leaders who will be retiring in the coming years, the most significant impact they will have on their agencies and their communities may be the role they 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

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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 Public Safety Instructor with Dolan Consulting Group.

His training courses include [Internal Affairs Investigations: Legal Liability and Best Practices](#), [Supervisor Liability for Law Enforcement](#), [Recruiting and Hiring for Law Enforcement](#), [Confronting the Toxic Officer](#), [Performance Evaluations for Public Safety](#), [Making Discipline Stick®](#), and [Confronting Bias in Law Enforcement](#).

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.

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