



## Negligent Hiring Liability for Law Enforcement in 2024

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March, 2024

Over the last few years, we at Dolan Consulting Group have published an article early in the year focused on the topic of negligent hiring liability in law enforcement. We do this because the issue of negligent hiring is so fundamental to every other aspect of law enforcement operations in the near future and in the long term.

Unfortunately, year after year, the causes for concern in this area have not diminished and, in some respects, have only grown. More and more of the conversations we have with law enforcement leaders across the country involve their concerns about their agencies lowering standards in order to hire “warm bodies,” and new cautionary case studies in this area continue to emerge with disturbing regularity. Sadly, once again, it seems that an updated article on this crucial topic is necessary.

**Even more striking than the negligent hiring decisions of individual agency leaders are the recommendations made by the Department of Justice in its report on “Recruitment and Retention for the Modern Law Enforcement Agency”, published in October of 2023.<sup>1</sup> Immediately following the report’s *Introduction* section, the DOJ report recommends that law enforcement agencies “modernize eligibility requirements.”<sup>2</sup> This creative framing does not effectively disguise the thrust of the DOJ report’s recommendation—*lower standards and find “warm bodies.”***

While the authors of the DOJ report repeatedly insist that their recommendations do *not* amount to the lowering of hiring standards, it is hard to conceive of a reasonable explanation of how the DOJ report does not recommend precisely that—**lower standards of character, competence, and**

**integrity at a time when the law enforcement profession’s reputation must be protected from the damage incurred by those unqualified to wear a badge.**

The DOJ report recommends the following:

*Participants at the convening identified the usefulness and supported the development of a national standard for police hiring developed by accrediting bodies. They also recommended that agencies consider their current eligibility requirements, highlighting those that cannot be compromised, those that can be updated, and those others that should be added. Some stressed incorporating “room for redemption,” recognizing that brain function is not fully developed until early adulthood and that recruits may have made minor unwise decisions in their younger years that affect their hiring eligibility now....<sup>3</sup>*

*Examples of potential items that participants identified for consideration include... considering adjustments around drug use to account for time passed and/or changes in law; assessing the need for spelling tests or other written examinations...reconsidering flat bars based on minor, isolated criminal offenses, especially where offenses occurred a long time ago; evaluating the importance of financial history and credit scores; and adapting physical fitness standards, such as distance running.<sup>4</sup>*

These statements clearly encourage lowering standards pertaining to drug abuse, criminal histories, written examinations intended to measure basic literacy and reading comprehension, and physical fitness. There is also the mention of making exceptions for incidents occurring prior to “fully developed” brain function, a timeframe which is notably undefined. According to the National Institute of Mental Health, the brain finishes developing and maturing in one’s late twenties.<sup>5</sup> So does this mean that law enforcement agencies should overlook criminal offenses and character issues the applicant committed throughout his or her twenties?

While there are undoubtedly agencies with eligibility requirements that should be reevaluated—such as those pertaining to maximum age limits, college credit hours attained or other requirements which seem to bear little or no relationship to an applicant’s character, competence, or integrity—the eligibility items highlighted by the DOJ report send the message that now is the time to lower standards, hire “warm bodies,” and deal with the fallout later. Law enforcement leaders should follow their ethical compasses and apply common sense. They should look to their own experiences with this type of short-sighted and unethical thinking in their agencies, as well as the history of modern American policing in rejecting it.

**The DOJ report comes at a time when more and more law enforcement agencies are 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 months or 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 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 unqualified applicants 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.

### **Emphasizing Quality Over Quantity**

Fortunately, in recent months, we have also seen agency leaders defending small recruit classes when they believe that quality is being preserved at the sake of quantity. In Cleveland, a December 2023 recruit class numbering just nine new officers was defended by the then-director of public safety along these lines of quality focus over quantity focus. Public Safety Director Karrie Howard told a local news outlet, "Those nine people are going to be worth, I don't know, twenty-seven lackluster. We have nine quality superstars that graduated the academy."<sup>6</sup>

In Tulsa, facing similar recruiting and staffing challenges, the police chief told a local news outlet in November of 2023 that "I could fill an academy class if I wanted, but I would be pushing lower-quality people through, and I just won't do that."<sup>7</sup>

These are only two examples of what is *hopefully* a more broadly held belief—that lowering standards and hiring officers in a way that proves negligent is not making things better, but making them immeasurably worse for departments and the communities that they serve.

A patrol captain at a sheriff's office recently told me that his agency was authorized for 150 sworn deputies, but was currently staffed at only 125. "I begged the Sheriff," the captain said, "Just give me five workers and we'll be good. Please don't give me five workers and five problems, because then we're back to square one. I don't need somebody hiding behind a grocery store on their phone,

or pissing people off for no reason. Just give me five workers and no new problems and we'll be good to go.”

What that captain was talking about is a very common math equation that police leaders sometimes struggle to effectively communicate to those who are understandably eager to see the number of officers increase. Hiring “minor league” problem officers leads to lost time and proactivity, as officers and sergeants put out the fires that are set in the form of demeanor complaints, sloppy report writing, and various “professional backer-upper” activities. Hiring “major league” problem officers can lead to disastrous outcomes, as appears to have been true in so many cases like the Memphis SCORPION Unit, the Baltimore Gun Trace Task Force, the Miami River Cops, and countless other tragic examples of negligent hiring over the years. As that sheriff’s office captain explained, an agency cannot afford to hire problems that get in the way of its good workers.

### **The Negligent Hiring “Doom Loop”**

The term “doom loop” has garnered some attention in recent years as a way of describing urban decay that seems to get worse and worse, as less safety means less business and less public finances for safety, which means less business, and so on.

The credit for coining this term in reference to urban decay seems to belong to Columbia Business School professor Dr. Stijn Van Nieuwerburgh. In a 2023 *New York Times* article, Dr. Nieuwerburgh summarized what was meant by the term “doom loop.”

*People with money...move out, taking their tax dollars and retail spending with them...leaving empty storefronts... Crime and grime increase. More people feel unsafe and leave... More crime, more grime, more cuts in services.<sup>8</sup>*

What Dr. Van Nieuwerburgh is describing is similar in many ways to the urban decay that occurred in many American cities in the 1960s and 1970s, when many cities across the country saw that the worse things got, the worse things got. The less livable a city becomes, the more difficult it is to reverse the trend. In policing, there is a strikingly similar phenomenon in terms of lowering hiring standards.

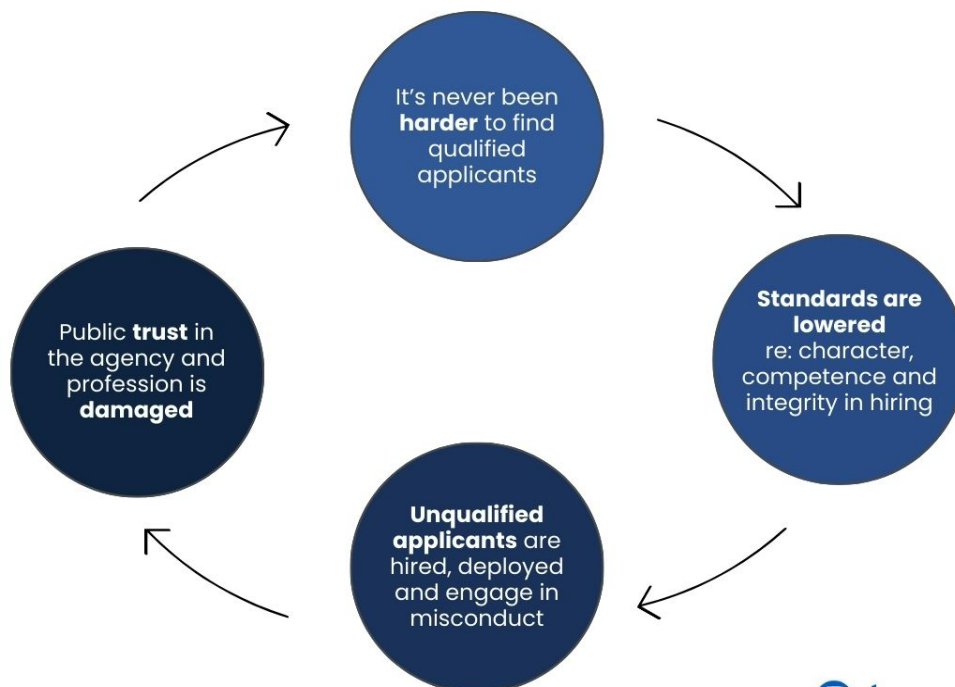
**What the recent DOJ report seems to invite law enforcement leaders to engage in may prove to be a similar kind of “doom loop”. In this Negligent Hiring “Doom Loop,” law enforcement leaders justify lowering standards and cutting corners on background investigations because they are desperate to find applicants. This leads to hiring people who do not have the character, competency, and integrity to serve honorably as officers. These individuals, who should not have been hired, engage in misconduct. That misconduct lowers public trust in the agency, harms morale, and makes the agency even less attractive to qualified applicants**

who are all the more likely to look elsewhere for employment in the future. Now, it is once again tempting to lower standards *even further* since, as at the beginning of the Negligent Hiring “Doom Loop,” agency leaders are more desperate than ever to find applicants.

And the damage is not just to the community’s trust in an agency, but also to morale within the agency. Good officers don’t want to work with individuals who were clearly hired under a lower standard, and good candidates don’t want to apply to an agency where people are hired and deployed without proper vetting. This is born out of the frequency with which police union leaders have publicly cautioned against lower standards, presumably on behalf of the vast majority of their membership that believes in hiring people who are assets and not liabilities.

**We would urge law enforcement leaders to fight the temptation to lower standards. This mistake may be rationalized away as a temporary fix or a necessary evil. But the available case studies demonstrate that these are rarely temporary fixes and the evil that they invite is never necessary.**

## THE NEGLIGENT HIRING “DOOM LOOP”



## About the Author

### **Matt Dolan, J.D.**

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.

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*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.*

## References

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<sup>1</sup> Bureau of Justice Assistance and Office of Community Oriented Policing Services, *Recruitment and Retention for the Modern Law Enforcement Agency: Revised* (Washington, DC: Office of Community Oriented Policing Services, 2023).

<sup>2</sup> BJA and COPS, *Recruitment and Retention for the Modern Law Enforcement Agency*, 3-4.

<sup>3</sup> BJA and COPS, *Recruitment and Retention for the Modern Law Enforcement Agency*, 4.

<sup>4</sup> BJA and COPS, *Recruitment and Retention for the Modern Law Enforcement Agency*, 4.

<sup>5</sup> Mariam Arain, Maliha Haque, Lina Johal, Puja Mathur, Wynand Nel, Afsha Rais, Ranbir Sandhu, and Sushil Sharma. "Maturation of the adolescent brain," *Neuropsychiatric Disease and Treatment* (2013): 449-461.

<sup>6</sup> Neil Fischer, "City of Cleveland Hosts Hiring Event for Police Department; Latest Academy Class Brings in Just 9 Officers," *WKYC News*, December 6, 2023. Accessed on 03/03/2024 at: <https://www.wkyc.com/article/news/local/cleveland/cleveland-hiring-event-police-department-latest-academy-class-9-officers/95-a19f1b91-ed6f-4b05-91ee-858d9a044abf>

<sup>7</sup> Brad Krehbiel, "Tulsa Police Will 'Hold Fast' on Standards Chief Says Despite Chronic Recruiting Difficulties," *Tulsa World*, December 12, 2023. Accessed on 03/03/2024 at:

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<sup>8</sup> John Leland, “The Prophet of Urban Doom Says New York Still Has a Chance,” *New York Times*, February 8, 2023. Accessed on 02/18/2024 at:

<https://www.nytimes.com/2023/02/08/nyregion/doom-loop-remote-work-pandemic-nyc.html>.