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THE EXTENT AND IMPACT OF FAIR EMPLOYMENT
JOB-RELATED VALIDATION STUDIES UPON
MICHIGAN POLICE AGENCIES AND THEIR
MINIMUM ENTRY SELECTION STANDARDS:
A SURVEY STUDY

by
Richard Allan Talley
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ABSTRACT

THE EXTENT AND IMPACT OF FAIR EMPLOYMENT JOB-RELATED VALIDATION STUDIES UPON MICHIGAN POLICE AGENCIES AND THEIR MINIMUM ENTRY SELECTION STANDARDS: A SURVEY STUDY

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Purpose

State and federal fair employment guidelines and regulations have prescribed validation studies to be implemented by employers to assure their selection process does not unfairly exclude protected groups. However, the extent and impact of such studies upon police agencies and their selection standards should be investigated.

Method

The sample consisted of Michigan police agencies (N=423) which responded to a survey questionnaire composed of various questions inquiring about the extent and impact of validation studies. Questions concerning the state of the art of police selection were also included.

Quantitative and qualitative variables were measured by frequency counts, and tables and graphs were constructed to illustrate the findings. Simple comparisons by size and type of police agency were made.

Results

A relevant number of agencies were found to have faced a legal challenge or a formal legal suit for unfair employment practices relating to selection standards. A large variation was found among the agencies standards or criteria used to disqualify police candidates. A significant number of police agencies have conducted their own validation study, adopted that of another agency and have changed selection standards as a result of the study.

ACKNOWLEDGEMENTS

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CHAPTER I

INTRODUCTION

ORIGINS AND DEVELOPMENT

In the decade beginning in the early 1960's the civil rights movement, together with the rise in crime, gave rise to much public interest and legislative action in both civil rights and law enforcement. Minorities demanded true equality and opportunity to participate in the mainstream of society; which have been denied to them by unjust social barriers. Discrimination was the persistent cry. This cry was so persistent that it could no longer be ignored, especially when coupled with civil unrest and social discontent. Few will ever forget the freedom marches, Martin Luther King, the sit-ins, and the riots in some of America's greatest cities.

The police were in the forefront of the controversy. Minorities viewed the police as a mechanism of America's white society, with the intention of suppressing and controlling minority groups in the community and to deny them their civil rights. It was implied that if a fair balance of police officers was of the minority groups, a white police

force could perhaps not be viewed as the adversary by discontented minorities.¹

At the same time, the American public looked toward law enforcement to provide protection from rising crime rates and rebellious lawlessness that threatened the peace and safety of urban society. The function of the police became a serious concern. The police were seen as society's most effective weapon to battle crime and maintain order. The federal government responded by allocating abundant monetary and personnel resources to study the crime problem in relation to the criminal justice system. As a result of this endeavor, the President's Commission on Law Enforcement and Administration of Justice made recommendations for attaining effective personnel for law enforcement agencies. Some of their recommendations focused specifically on the entry selection process and standards used to evaluate candidates:

¹ The President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (New York: Avon Books, 1968), pp. 261 - 62. The President's Commission reported, "If there is not a substantial percentage of Negro officers among the policemen in a Negro neighborhood, many residents will reach the conclusion that the neighborhood is being policed, not for the purpose of maintaining law and order, but for the purpose of maintaining the ghetto's status quo." The Commission went on to say, "Inducing qualified young men from minority groups to enter police work is not easy in view of the distrust for the police felt by members of minority groups, and especially young men."

Until reliable tests are devised for identifying and measuring the personal characteristics that contribute to good police work, intelligence tests, thorough background investigations and personal interviews should be used by all departments as absolute minimum techniques to determine the moral character and the intellectual and emotional fitness of police candidates.²

Police departments and civil service commissions should reexamine and, if necessary, modify present recruitment standards on age, height, weight, visual acuity, and prior residence. The appointing authority should place primary emphasis on the education, background, character and personality of the candidate for police service.³

Thus, the President's Commission implied a need to develop reliable tests to distinguish and measure personal characteristics that were related to police work.⁴

² Ibid., p. 280.

³ Ibid., p. 282.

⁴ Richard H. Blum, Police Selection (Springfield, Illinois: Charles C. Thomas, 1964), p. 47. Blum also emphasizes the need to develop more reliable tests to distinguish and measure personal characteristics related to police work. He points out that the error inherent in such selection tools should be taken into account before relying too heavily on any selection instrument to make a hiring decision: "We cannot escape from the uncertainty and error in every measure which we apply to applicants. What we can do is to know as much as we can about the selection tools we are using so that we know about what the likelihood of error is, where the measurement will be poorest, and where we need to concentrate on building new selection tools to replace faulty ones now in use."

It was also emphasized that some present selection standards were questionable as to their effectiveness in distinguishing potentially good police officers. Above all, police agencies should use at least minimum selection process techniques to assure the recruitment of moral, intellectual and emotionally sound police candidates until more sophisticated methods are developed. It should also be noted here that the President's Commission was in favor of police agencies hiring more minorities and eliminating those standards that unfairly disqualify good potential police officers.⁵

Congress, in 1972, was also involved in the issues of civil rights and the selection of police officers. It was at this time that the Federal Equal Employment Opportunity Act was extended to encompass public employers which received federal assistance.⁶ State and local governmental units had in the past been excluded by the coverage of the Equal

⁵ The President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (New York: Avon Books, 1968), pp. 261 - 62.

⁶ See Appendix A. LEAA: Equal Employment Opportunity Regulations (28 CFR 42.201 et seq. Subpart D). In addition to the EEO Act of 1972, the LEAA fair employment regulations were developed to apply directly to criminal justice agencies receiving federal financial assistance obtained under title 1 of the Omnibus Crime Control and Safe Streets Act of 1968. The LEAA basic provisions may require any criminal justice agency which is a recipient of LEAA funds to develop and utilize an equal employment program for class protected groups as described under Title VII.

Employment Opportunity Commission (EEOC) to bring lawsuits in the federal district courts to enforce the rights guaranteed by Title VII of the Civil Rights Act of 1964.⁷ The law prescribed in the Act "is designed to achieve equality of employment opportunity and to remove barriers that have operated in the past to favor some groups of employees over others."⁸ According to the Act, the use of selection standards, qualifications, or systems by police agencies that detrimentally distinguish and jeopardize the employment of minority groups are prohibited, unless job-relatedness of such selection standards, qualifications, or systems can be validly demonstrated. It was not long after, that many governmental units throughout the nation found their police agencies in court trying to defend selection standards, or their selection process, for being allegedly in violation of Title VII of the Civil Rights Act of 1964, made applicable by the EEO Act of 1972.

⁷ Job Discrimination? Laws and Rules You Should Know, Lowell W. Perry, chairman (Washington, D.C.: Equal Employment Opportunity Commission, 1972), pp. 1 - 2, President Nixon, upon signing into law the EEO Act of 1972, on March 25, 1972, remarked, "The experiences of both the Justice Department and the EEOC under Title VII have demonstrated that considerable discrimination problems have existed in state and local governments. . . Individuals employed in these areas have not heretofore been protected by Title VII. This bill corrects that defect."

⁸ Ibid., p. 1.

Many⁹ courts have defined validity by the EEOC guidelines listed at 29 CFR Sect. 1607.4-(c):

Evidence of the test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which the candidates are being evaluated.¹⁰

In addition, Affirmative Action and Equal Employment, A guidebook for employers, explains:

Many court decisions, culminating in the 1971 Supreme Court decision in Griggs v. Duke Power Co. have upheld the basic principles of EEOC's Employee Selection Guidelines which prohibit any job qualifications or selection standards which disproportionately screen out individuals in groups protected by Title VII unless (1) they can be significantly related to job performance, and (2) no alternate nondiscriminatory standards can be developed to meet requirements shown to be justified by "business necessity".¹¹

⁹ Davis v. Washington, 4 FEP Cases 1132 (D.D.C. 1972). It must be noted that not all courts have required that a validation study is necessary for proof to defend a selection procedure. The plaintiffs alleged in Davis v. Washington that a written examination was discriminatory on Negro applicants and had not been validated to give evidence that it was job-related. After examining both the police training course syllabus and the written test, the district court found the test to be reasonably and directly related to the recruit training program. The court held a validation study was unnecessary.

¹⁰ Job Discrimination? Laws and Rules You Should Know, Lowell W. Perry, chairman (Washington, D.C.: EEOC, 1974) p. 54.

¹¹ U.S. Equal Employment Opportunity Commission, Affirmative Action and Equal Employment, A guidebook for employers, Vol. I (Washington, D.C., 1974), p. 35.

Thus, some police agencies were in the position of needing to prove that their selection standards and selection process were empirically valid¹² according to the court's adoption of the EEOC guidelines. Anthony Blazer commented on the situation in which the San Francisco Police Department (SFPD) was caught during April of 1973, when a litigated class action suit for unfair hiring and promotion procedures was brought against the department. He stated, "At this point, the burden of proof shifted crushingly upon the defendants (SFPD), who were not adequately prepared to demonstrate, by approved empirical techniques, the validity of their tests."¹³ The court enjoined any further use of the examination system to hire and promote since the SFPD had not validated the examination on the basis of rigorous EEOC criteria.

To meet the burden of proof for entry level selection standards, police agencies would be required to conduct job related validation studies according to EEOC guidelines adopted by the courts. If they did not conduct such studies

¹² See Appendix B. Part 1607 - "Guidelines on Employee Selection Procedures". This explains EEOC basic requirements of conducting an acceptable validation study. Important definitions relating to validation are also presented.

¹³ Anthony Blazer, "A View of the Quota System in the San Francisco Police Department", Journal of Police Science and Administration, Vol. 4, No. 2 (Northwestern University School of Law, 1976), p. 126.

when feasible, the agencies could be in jeopardy of legal challenges of their agency's entry selection standards and the selection process used to disqualify police candidates. Therefore, the impact of Title VII as construed by the EEOC Act of 1972, resulted in a number of police agencies reviewing their present minimum entry selection standards and selection procedures. Many agencies also saw a need to conduct a job related study to validate such standards and selection procedures.

Michigan police agencies have not gone untouched by the EEO Act and Title VII.

In Schaefer v. Tannian, the plaintiffs in a class action representing all women who have been employed, might be employed or who are applicants for employment in the Detroit Police Department moved for a summary judgment and preliminary injunction against the Commissioner of Public Safety in order to end allegedly unlawful sexual discrimination in the hiring of women for the Detroit Police Department.¹⁴

The minimum entry selection standard for males, before 1974, was 18 years old with a high school degree, and for women the entry standard was 21 years old and two years of college education. The DPD argued that "they had a business justification for their dual system of hiring," but could offer no proof to satisfy the court.¹⁵ Thus, the double standard was enjoined in the decision rendered by the court.

¹⁴ Walter B. Connally, Jr., A Practical Guide to Equal Employment Opportunity, Vol. (New York, Law Journal Press, 1975), p. 248.

¹⁵ Ibid., p. 249.

POLICE SELECTION PROCESS AND
MINIMUM ENTRY SELECTION STANDARDS

For one hundred years the poor occupational status of a policeman has tended to attract the poorest candidates for police work.¹⁶ Early police departments therefore found it difficult to be highly selective of police candidates.

Lewis Terman stated nearly 60 years ago that no one actually understood what abilities were necessary for successful police performance, let alone how to test for these abilities.¹⁷ The problem Terman stated still exists to a great degree. Blum comments:

. . . job performance in police work may be a mystery even to those involved in doing and supervising it. What does a policeman do? Until we know, how can we say what qualifications he must have in order to do that job well? But there is no such thing as one police job. There are dozens of them; how many depends upon the site and situation of each department. They differ by command rank, by bureau, and by job or post assignments. They also change over the years as cities and their populations change and as technology, crime, law, and police methods are altered.¹⁸

¹⁶ Douglas S. Drummond, Police Culture (California: Sage Publications, 1976), p. 9.

¹⁷ Lewis M. Terman, "A Trial of Mental and Pedagogical Tests in a Civil Service Examination for Policemen and Firemen," Journal of Applied Psychology, Vol. 1 (March 1917), pp. 17 - 29.

¹⁸ Richard H. Blum, Police Selection (Springfield, Illinois: Charles C. Thomas, 1964), pp. 45 - 46.

Germann adds:

If the policeman's role could be defined in terms of specific and concrete skills, the development of tests to measure those skills would be relatively simple. But, because the policeman has such varied tasks to perform, it would seem that desirable characteristics are less easily subject to quantitative measurement--creativity, honesty, flexibility, emotional stability, freedom from prejudice, concern for the general welfare, capacity to accept discipline and to extract compliance, empathy and the like.¹⁹

Despite the perplexing problems of identifying the abilities and characteristics necessary to become a successful policeman, and developing a reliable selection process to distinguish these attributes, law enforcement has made progress in police selection. As early as 1921, August Vollmer screened police candidates in the Berkeley Police Department, "which had long exercised stringent selection standards for a force of 150 serving a town of 150,000."²⁰ Richard Blum acknowledges Vollmer's early achievements in police selection. Blum also comments on the selection process utilized by the Berkeley police:

Over the last ten years selection experience has been such as to provide the following general

¹⁹ A. C. Germann, "Recruitment, Selection, Promotion and Civil Service," The President's Commission on Law Enforcement and Administration of Justice, Preliminary Draft, 1966, p. 63.

²⁰ Douglas S. Drummond, Police Culture (California: Sage Publications, 1976), p. 10.

picture. For every two hundred applicants, approximately one hundred qualify on the basis of their application forms. After the written examination (primarily psychological testing including a standard intelligence test requirement of IQ 112) only twenty-five men remain to go on to the next step of the selection procedure. Three will fail the physical ability test, leaving twenty-two men of the original 200. Of these, four will be failed by the oral board, and this leaves eighteen. The psychiatric examination will eliminate two men. (It is quite apparent the earlier the psychiatric examination occurs, the higher the percentage of candidates it will remove early in the procedure.) While one man will fail the medical examination, this leaves fifteen men. Of these one-third, five are rejected on the basis of the background investigation. Ten men out of the original group of two hundred will be hired. About 200 percent of these are lost during the two-year probationary period, so that eight permanent employees remain.²¹

Not long after Vollmer's development of a selection process to detect minimum selection standards in the Berkeley Police Department, other law enforcement agencies also developed a selection process and minimum entry selection standards. These did not exactly replicate those of the Berkeley Police Department. Obviously police departments varied in their judgment about the abilities and characteristics necessary to perform successfully as a policeman. As a result, police agencies throughout the

²¹ Richard H. Blum, Police Selection (Springfield, Illinois: Charles C. Thomas, 1964), pp. 45-46.

nation²² and within Michigan vary considerably in minimum selection standards and selection procedures.²³

While many police organizations have stringent minimum entry selection standards, Blum points out that many such standards are accepted "on faith and that we lack clear evidence²⁴ showing how each is related to job performance."²⁵ To obtain such evidence, he emphasizes the need to study the

²² Charles R. Wall, et al., "State Standards For Law Enforcement Selection and Training," Journal of Police Science and Administration (Northwestern University School of Law, 1973), pp. 426 - 27.

²³ Bruce Olson, Selecting Local Law Enforcement Officers In Michigan: Current Practice And Future Progress (Michigan Law Enforcement Officers Training Council, 1968), pp. 50 - 51. A questionnaire was mailed in November, 1966, to all known Michigan police departments to inquire about both recruitment and selection practices for police officers. The responses included 360 Michigan police departments. The responses from questions relating to citizenship, age, background investigation, education, written examinations, and psychiatric examination, revealed a great discrepancy in Michigan with regard to selection theory and practice.

²⁴ Deborah A. Kent, et al., "The Selection and Promotion of Police Officers: A Selected Review of Recent Literature," The Police Chief, (February, 1972), p. 21. After a review of several research studies concerning the validity of selection procedures such as tests used to predict police performance, Kent and Eisenberg state, "With some exceptions, the quality of research which has been performed in the area is poor." The evidence used to draw conclusions are "statistical artifacts or methods associated with the absence of cross-validation, numerous predictor variables and/or concurrent validity."

²⁵ Richard H. Blum, Police Selection (Springfield, Illinois: Charles C. Thomas, 1964), p. 44.

jobs performed by a policeman

[to determine the] common denominators so that we can say what the minimum capacities of each recruit must be, the minimum capacities which will allow that recruit to work anywhere and anytime in our agency and still turn in acceptable performance. What is required is that each agency perform a job analysis for each job, that it compare and combine the results of this job analyses, and that it come up with basic capabilities and skills which every policeman will need.²⁶

Blum describes a selection standard as a "common denominator" needed to perform the various jobs in police work. The President's Commission on Law Enforcement and Administration of Justice defines it differently:

Standards set for selection must not only be realistic, but should correlate positively with on-the-job performance. In other words, if a characteristic makes absolutely no difference as to whether or not a man would make a good patrolman, it should not be used as a criterion for selection.²⁷

²⁶ Richard H. Blum, Police Selection (Springfield Illinois: Charles C. Thomas, 1964), p. 46.

²⁷ U.S. President's Commission on Law Enforcement, Task Force Report: The Police (Washington D.C., U.S. Government Printing Office, 1967), p. 7.

In summary, the discussion in this section has emphasized some elementary but critical points concerning the selection of policemen:

- 1) The role of the policeman is often not defined well enough to determine what critical abilities or characteristic every police candidate must have in order to perform police work adequately.
- 2) There is often a lack of evidence showing the job-relatedness of minimum entry selection standards and procedures. A minimum entry selection standard should reflect those abilities, characteristics, etc. necessary for each police officer to at least adequately perform the tasks required of a police officer.
- 3) Some authorities see a need to conduct a job analysis studies to determine what abilities and characteristics every policeman will need to perform successfully.

It is apparent that there is a need for sophisticated and valid methods of police selection. The police selection process has improved, but it still falls short in many agencies due to the assumed reliability of minimum selection standards and procedures. By implementing a validation study a job analysis would be conducted and selection standards could

be developed from identifying the essential abilities, characteristics, etc. that are related to the successful performance required of a policeman. A validation study could also assure that such selection standards are demonstrated by empirical evidence to be related to any test, or selection procedure, used to identify such standards. Thus, a validation study could improve and aid in distinguishing qualified personnel based upon valid job-related performance criteria. This would assure a good potential work force.

This view is also held by the EEOC. A validation study will serve more than just to eliminate discrimination: it works to the advantage of the organization to select good personnel. Section 1607.1 (a) of EEOC Guidelines on Employment Selection Procedures makes this statement:

The guidelines in this part are based on the belief that properly validated and standardized employee selection procedures can significantly contribute to the implementation of nondiscriminatory personnel policies, as required by Title VII. It is also recognized that professionally developed tests, when used in conjunction with other tools of personnel assessment and complemented by sound programs of job design, may significantly aid in the development and maintenance of an efficient work force and, indeed, aid in the utilization and conservation of human resources generally.²⁸

²⁸ See Appendix B.

Validation studies are the next progressive step for law enforcement in providing a more operationally effective and nondiscriminatory selection system. One problem that must be considered is that police organizations are usually resistant to any changes in traditional minimum entry selection standards such as residency, eyesight, height, weight, age, citizenship, and education.²⁹ It must also be remembered that many people are denied the opportunity of applying, or being employed as a policeman due to these stringent requirements. Therefore the fairness, or job-relatedness, of each minimum entry level selection standard must be questioned.

²⁹ Douglas S. Drummond, Police Culture (California; Sage Publications, 1976), p. 10.

STATEMENT OF PURPOSE

The purpose of this investigation is to determine the extent³⁰ and impact³¹ of job-related validation studies, as prescribed by state and federal fair employment guidelines and regulations, upon Michigan police agencies in relation to their minimum entry selection standards for police officer candidates. This study will fill a research gap³² in a very practical problem of Michigan police agencies validating minimum entry selection standards by job-related validation studies. Based on survey research data, complemented by an overview of the related literature, this study will extend existing knowledge on the extent and impact of job-related validation studies upon Michigan

³⁰ The term "extent" refers to how many Michigan police agencies have conducted studies to validate minimum entry selection standards.

³¹ The term "impact" refers to how many police agencies have had their minimum entry selection standards challenged in court. Also, it refers to any alterations in minimal entry selection standards due to a validation study.

³² A thorough examination of dissertation abstracts from Dissertation Abstracts International, July 1972 to July 1977, reveals no doctoral dissertation related specifically to this study. Furthermore, a number of periodicals and books reveal the same. This study is unique in that there have been no directly related consensus studies concerning the impact and extent of job-related validation studies either nationally or statewide.

police agencies and their minimum entry selection standards for candidates. Furthermore, the state of the art of police selection methods in Michigan is based on the analysis of various survey data.

THEORETICAL FRAMEWORK

The concept of the "Democratic Policeman" will be the basis of theoretical framework in this investigation. According to George E. Berkley, author of the Democratic Policeman, "democracy first of all, requires consensus".³³ Secondly, there is a need of "freedom" in the participation in power.³⁴ The theory of the Democratic Policeman thus encompasses both the above vital elements of democracy. The absence of either of the above elements of democracy would result in an undemocratic police force.

The problem of this proposed investigation is related to the concept of the Democractic Policeman in several ways. To have consensus and freedom of participation in a democratic society, all should have equal access to the opportunities that permit such involvement. If these opportunities exist, then there should be equal representation from all

³³ George E. Berkley, The Democratic Policeman (Boston: Beacon Press, 1969), p. 2.

³⁴ Ibid., p. 3.

sectors of society. But history indicates there have been unjust barriers preventing certain classes of society from becoming police officers. These people who have been unjustly excluded have therefore lost their rightful freedom to participate in a vital sector of the power structure in society. Furthermore, the exclusion of particular minority groups from participation, "reduces cross-pressures, diminishes the diversity and representativeness within the force, hampers rapport with the population, and increases in-group solidarity, emphasizing a sense of apartness from the community."³⁵ The end result is an undemocratic police force.

This investigation is concerned with validation of minimum entry selection standards according to state and federal fair employment practices. If a minimum standard is validated by a job-related validation study, the standard when applied should exclude candidates fairly since it is job-related. Those standards which have not been proven to be job-related should be removed. This would eliminate an unjust barrier that would deny an individual his freedom to participate. Thus, the investigation of job-related validation studies in Michigan police agencies will provide

³⁵ Ibid., p. 64.

a measure of the movement towards a more democratic policeman.

OVERVIEW

Some authorities believe many selection standards and procedures presently used to recruit police candidates should be subject to reexamination, since standards and procedures are often questionable as to their competence to fairly and reliably select good potential police officers. Since the passage of Title VII as construed with the EEO Act of 1972, many police agencies have had their selection process challenged in court for adversely excluding protected groups. As a result a number of police agencies have reviewed their selection standards and procedures. Many agencies have also seen a need to conduct a job-related study to validate such standards and procedures.

Some authorities within law enforcement see the need to conduct job analysis studies to determine what abilities and characteristics every police officer needs to perform successfully. The ill defined role of the police officer and the lack of evidence of the job-relatedness of minimum entry selection standards and procedures further demonstrate the need to validate such standards and procedures.

It must also be remembered that many people are denied the opportunity of employment as a police officer because of stringent recruitment standards. Therefore the fairness, or job-relatedness, of each minimum entry selection standard for police candidates should be questioned.

In Chapter II, the job-relatedness and legality of some minimum selection standards and procedures are reviewed in the literature. This survey study investigates the extent and impact of job-related validation studies upon Michigan police agencies in relation to their minimum selection standards for police candidates. The study also investigates the general state of the art of police selection in Michigan police agencies.

In Chapter III, the population, the instrument, the measures, and the analyses used in this study are outlined and explained.

The results of the survey of validation studies and police selection are presented in Chapter IV.

CHAPTER II

REVIEW OF THE LITERATURE

MINIMUM ENTRY SELECTION STANDARDS

The lack of clear evidence that certain minimum entry selection standards and procedural methods (i.e., tests, background investigations and interviews) are job-related, has induced criticism of police selection practices. Since the passage of state and federal guidelines and regulations requiring that clear and reasonable evidence be produced to validate selection standards that unfairly exclude protected groups are indeed necessary to assure job performance, studies and court decisions have shed some light on what selection standards are justifiably related to job performance. In this chapter I consider each selection standard and the arguments and evidence for the reasonable applicability of each to job performance. Some procedural methods are also reviewed as to their reasonableness and reliability in predicting job performance.

In 1965 the State of Michigan created the Michigan Law Enforcement Officers Training Council. The M.L.E.O.T.C. has been empowered by law to establish mandatory minimum entry selection standards for all police agencies as

prescribed in the Michigan Law Enforcement Training Council Act of 1965, as amended. These standards read as follows:

R 28.4102. Employment qualifications.

Rule 2. A person employed as a police officer under the act shall:

- (a) Be a citizen of the United States.
- (b) Have attained the minimum age as established by the hiring agency, which shall be not less than 18 years or as otherwise provided by law.
- (c) Have obtained a high school diploma or have attained a passing score on the general education development test indicating a high school graduation level.
- (d) Have no prior felony convictions.
- (e) Possess good moral character as determined by a favorable comprehensive background investigation covering school and employment records, home environment and personal traits and integrity. Consideration will be given to all law violations, including traffic and conservation law convictions, as indicating a lack of good character.
- (f) Possess normal hearing, normal color vision and normal visual functions and acuity in each eye correctable to 20/20. Be free from any other impediment of the senses, physically sound, in possession of his extremities and well developed physically, with height and weight in relation to each other as indicated by accepted medical standards. Be free from any physical defects, chronic diseases, organic diseases, organic or functional conditions, or mental and emotional instabilities which may tend to impair the efficient performance of his duty or which may endanger the lives of others or himself.
- (g) Successfully complete the basic police training curriculum at a council approved school.

R 28 4103. Examinations...

Rule 3. Before sending a person to a council approved school, the hiring agency shall:

- (a) Cause the applicant to be examined by a licensed physician to determine that the applicant meets the standards set forth in subrule (f) of rule 2. A declaration of the applicant's medical history shall be made available to the examining physician and shall become a part of the background investigation.

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(c) Conduct an oral interview to determine the applicant's acceptability for a police officer position and to assess appearance, background, and ability to communicate.³⁶

These selection standards are presently mandatory for all Michigan police agencies that employ one or more full time officers. They were developed by experienced law enforcement personnel whose intent was to assure some reasonable control over the quality of police officers employed in the state. Other police agencies in Michigan have surpassed minimum state requirements for the same intended purpose, to obtain quality policemen. Even though the intent of these standards can not be questioned, the assumptions of job-relatedness and legality can.

CITIZENSHIP

Presently it is required by law in the State of Michigan that a police officer be a U.S. citizen. Blum points out the general reasonings behind this standard in police agencies:

It reflects widespread beliefs about who should be eligible to receive tax money and public employment (and may well be an extension of patronage ideas converted into broader, nationalistic terms). It reflects beliefs about loyalty and a desire to prevent any conflict of loyalties in a police officer which would involve one's nation of citizenship versus one's nation of employment, and beliefs about the likelihood of nationals being more familiar with American codes and customs, thus rendering them better able to understand and enforce laws and to deal with citizens.³⁷

³⁶ Michigan, Michigan Law Enforcement Training Council Act, Statutes (1965), Act No. 203, sec. 9.

³⁷ Richard H. Blum, Police Selection (Springfield, Illinois: Charles C. Thomas, 1964), p. 50.

But do these reasonings establish the job-relatedness, or legality of the standard? A validation study conducted by the Commission on Peace Officer Standards and Training/State Personnel Board (POST) concluded:

... the requirement of citizenship as a condition for employment as a peace officer is unconstitutional. This analysis, of course, does not preclude testing for job qualification apart from citizenship per se, such as, but not limited to, awareness of local community, tradition, culture, etc. which cannot be otherwise acquired during a brief orientation on the job.³⁸

In the view of both Blum and POST, the requirement of citizenship as a standard seems related to job performance only on two assumptions. One is that to perform the job of a police officer a person must have national allegiance to uphold and enforce the constitutions and laws of the state and federal governments. A non-citizen may have conflicting loyalties which could interfere with performing the necessary duties of a police officer. Second, a citizen is more apt to possess the necessary understandings of American and local community codes, customs, traditions, etc., needed to competently exercise delegated enforcement powers within the social setting. Citizenship in and of itself is perhaps not an accurate measure or criterion, to predict

³⁸ Commission on Peace Officer Standards and Training/State Personnel Board, Selection Study - Component A-Selection Standards Project (Sacramento, California: Selection Consulting Center, 1974), p. 25.

if one has the social knowledge necessary to perform the job of a police officer adequately. POST findings imply that testing would be a fairer indicator.

The strong likelihood of the citizen selection standards being unlawful or unconstitutional is obvious, according to fair employment laws. Title VII of the Civil Rights Act of 1964, as amended by the EEO Act, prescribes it is illegal to discriminate against employing non-citizens on the basis of national origin.³⁹ This is especially true when alternative "nondiscriminatory standards can be developed⁴⁰ to meet requirements shown to be justified by business necessity."⁴¹ As the POST findings imply, a test could measure the awareness of important social knowledge related to job performance. Such a test could satisfy the nondiscriminatory alternative in place of the citizenship entry selection standard.

³⁹ Job Discrimination? Laws and Rules You Should Know, Lowell W. Perry, chairman (Washington, D.C.: EEOC, 1974), p. 52. (Excerpt from Title 29, Code of Federal Regulations, pertaining to the Equal Employment Opportunity Commission, Part 1606 - Guidelines on Discrimination Because of National Origin).

⁴⁰ U.S. Equal Employment Opportunity Commission, Affirmative Action and Equal Employment, A guidebook for employers, Vol. (Washington, D.C., 1974), p. 35.

⁴¹ Ibid., p. 7. "Courts have interpreted business necessity very narrowly, requiring overriding evidence that a discriminatory practice is "essential" to safe and efficient operation of the business and/or a showing of extreme adverse financial impact."

Blum, in his criticism of the citizenship selection standard, emphasizes that many aliens come from countries which have codes and customs similar to America's.⁴² To classify all aliens as unqualified to perform as a policeman in local communities would be a false stereotype. Not only is the likelihood of culture-conflict slim, but some aliens come from nations with advanced police systems, in which they have served actively as police officers.⁴³ With the inflexibleness of the citizenship standard, "there is no opportunity to take advantage of exceptional applicants so long as this standard exists."⁴⁴

An employer may lawfully refuse to employ a person on the basis of his citizenship when the requirement is in the interest of national security.⁴⁵ Police work is rarely of such critical importance to this country's national security. As Blum observes, "It would be well to keep in mind that industries engaged in secret military projects do not hold such a requirement. It is unlikely that the national loyalties required of policemen would exceed those required for military personnel or sensitive-project worker."⁴⁶

⁴² Richard H. Blum, Police Selection (Springfield: Illinois: Charles C. Thomas, 1964), pp. 50 - 51.

⁴³ Ibid.

⁴⁴ Ibid., p. 51.

⁴⁵ Job Discrimination? Laws and Rules You Should Know, Lowell W. Perry, chairman (Washington, D.C.: EEOCC, 1974) p. 53.

⁴⁶ Richard H. Blum, Police Selection (Springfield: Illinois: Charles C. Thomas, 1964), p. 51.

A close search was unable to uncover any judicial decisions that directly confronted the issue of the legality or constitutionality of citizenship as a police selection standard , other related court decisions are worth noting. In Sugarman v. Dougall, 5 FEP 1152, the United States Supreme Court ruled against the City of New York's practice to deny aliens employment by prohibiting them from competition in civil service examinations.⁴⁷ The Court said the practice was in violation of the Fourteenth Amendment. In Purdy v. State of California, 71 California 22nd 566, 2 FEP 415, employment discrimination based on a person being an alien was held by the California Supreme Court to violate the equal protection clause of the Fourteenth Amendment.⁴⁸

In summary, considering the lack of evidence that citizenship per se is job-related and is predictive of job performance, the legality of this selection standard is highly questionable. Title VII of the 1964 Civil Rights Act forbids such a class wide criterion as a citizenship requirement to be used to adversely exclude people due to their national origin. The Fourteenth Amendment and other legislative measures such as the Civil Rights Act of

⁴⁷ Commission on Peace Officer Standards and Training/ State Personnel Board, Selection Study - Component A-Selection Standards Project (Sacramento, California: Selection Consulting Center, 1974), p. 26.

⁴⁸ Ibid.

1866⁴⁹ have also been held by the courts to protect legally immigrated aliens from invidious discrimination. Yet, it must be remembered, the police entry selection standard of citizenship has not been judicially tested to determine its validity as a bona fide occupational qualification.⁵⁰

AGE

Presently it is required by law in the State of Michigan that a person must meet the minimum age standard of eighteen years to qualify for the position of a police officer. This requirement appears to be reasonable, since the age of majority in Michigan is also eighteen. But complications may arise when a police agency has a minimum age requirement beyond the majority age.

⁴⁹ Walter B. Conally, Jr., A Practical Guide to Equal Employment Opportunity, Vol. 1, (New York: Law Journal Press, 1975), p. 27.

⁵⁰ Jerome J. Suich, "Height Standards in Police Employment and the Question of Sex Discrimination: The Availability of Two Defenses for a Neutral Employment Policy Found Discriminatory Under Title VII," Southern California Law Review, Vol. 48 (1974), pp. 626 - 27. "The elements of proving both the business necessity defense and the BFOQ are (at least in the Fifth Circuit) the same, i.e., that the discriminatory requirement be essential to the safe and efficient operation of the employer's business. This similarity has led courts and commentators to confuse the two defenses by failing to recognize that they operate in distinct contexts. The business necessity defense allows the court to focus on the justification for the particular neutral employment standard itself, ... the bfoq defense is concerned with the justification for an explicitly discriminatory employment standard based on sex, religion, or national origin."

The basic job-related rationale used by police agencies to set the minimum age requirement at the age of majority is as follows:

1. Candidate must be able legally to enter an establishment where alcohol is served.
2. Candidate must be able legally to carry a firearm.
3. Minimum age requirement is an indication of maturity.⁵¹

The above rationales support the minimum age standard for a police officer being the age of majority. But a survey conducted in 1968, by the M.L.E.O.T.C., indicated that over 80 percent of the local police departments had a minimum standard of 21 years of age, or older.⁵² Police agencies in Michigan have the discretion to set a higher minimum age requirement than the state standard. There are two reasons for setting a higher standard: first, the belief that a higher minimum age standard will draw more mature police candidates than the age of majority; second, a local home-rule law that police officers must be older than the

⁵¹ Commission on Peace Officer Standards and Training/ State Personnel Board, Selection Study - Component A-Selection Standards Project (Sacramento, California: Selection Consulting Center, 1974), p. 30.

⁵² Bruce Olson, Selecting Local Law Enforcement Officers in Michigan: Current Practice and Future Progress (Lansing Michigan: Michigan Law Enforcement Officers Training Council, 1968), p. 53. It should be noted the age of majority in 1968 was 21; presently (1977) it is 18.

age of majority.⁵³ The implications of these reasonings will be discussed.

Blum points out that the arbitrary age of twenty-one has been commonly held the age at which most people have reached emotional maturity.⁵⁴ Blum comments, in his criticism of the twenty-one year standard:

While it is apparent that chronological age has some relationship to emotional maturity, it is also evident that there is no one-to-one correspondence. Men are considered mature enough to fight in a war at age seventeen. Some persons are obviously emotionally immature at age fifty...

...the age twenty-one requirement is more restrictive than beneficial. Background checks, interviews, psychiatric evaluations, and psychological tests should be able to establish maturity with considerably more certainty than a fixed age standard does.⁵⁵

It is apparent that establishing an age standard of twenty-one, as opposed to eighteen, is not necessarily a reliable selection strategy to attain mature candidates. There are methods which more accurately assess maturity.

⁵³ City of Ypsilanti v. Michigan Civil Rights Commission, 9 EPD 9972 (Michigan State Supreme Court 1974). Michigan entitles a home-rule city to establish reasonable qualifications for its public employees, including police.

⁵⁴ Richard H. Blum, Police Selection (Springfield, Illinois: Charles C. Thomas, 1964), pp. 51 - 52.

⁵⁵ Ibid., p. 52.

Therefore, the assumption of job-relatedness of an age standard above majority age status is questionable in terms of being necessary for job performance.⁵⁶

The Michigan Employment Opportunity Act prescribes that any employer discriminating against any individual between the ages of 18 and 60 is utilizing an unfair employment practice.⁵⁷ But the act also states, "Any such refusal to hire or discrimination shall not be an unfair employment practice if based on law, regulation, the requirements of any federal or state training or employment program, or on a bona fide occupational qualification."⁵⁸ The Michigan Civil Rights Commission stated that the bona fide occupational qualification exception as to age should be construed narrowly, with the burden of proof being on the employer.⁵⁹ The Commission will also determine whether the bona fide occupational qualification is a "compelling business necessity" for the normal operation of the business based on the pertinent facts about

⁵⁶ I was unable to locate any validation study which revealed empirical findings to indicate that persons twenty-one years of age are substantitally more mature than persons eighteen years of age. The same is true of police job performance.

⁵⁷ Michigan State Fair Employment Practices Act, Act 251 (1955), Sec. 3A.

⁵⁸ Ibid.

⁵⁹ State of Michigan Department of Civil Rights, Employment Guidelines and Interpretations of the Michigan Civil Rights Commission (Lansing, Michigan, 1972), p. 8.

that particular business.⁶⁰

In New Jersey State Policemen's Benevolent Association of New Jersey v. Town of Morristown et al., the New Jersey Supreme Court struck down a state statute prescribing a twenty-one year old minimum age requirement to be employed as a policeman.⁶¹ The state statute was superseded by a general majority statute which qualifies for public employment persons eighteen years of age. In the Court's discussion of the issues, one being that of age of 21 as indicating maturity, the Court commented:

There is no magic to the age of 21. The 21-year age of maturity is derived only from historical accident. It is not a mystical figure whose importance as the age of majority has captured every civilization. While many societies have had laws or conventions regulating age at which young people were considered adults, those ages have varied.⁶²

From the above, it appears that the Court's view in this case is much in agreement with Blum's criticism: reaching the age of twenty-one is only a presumptive evidence of maturity, not a test to be applied uniformly to all.

Even though there is no maximum age State selection standard for police recruits, over 70 percent of Michigan

⁶⁰ Ibid., pp. 8 - 9.

⁶¹ New Jersey State Policemen's Benevolent Association of New Jersey v. Town of Morristown et al., 8 EPD 9624 (New Jersey Supreme Court, 1974).

⁶² Ibid.

police agencies were recorded as having such a requirement in 1967 study.⁶³ Blum states the main rationale for a maximum age limit: first, a minimum number of years must be served to qualify for a pension; second, health problems are believed to be more associated with older people than younger; third, people looking for employment after age 35 may be unstable job-hoppers.⁶⁴

Blum acknowledges that the reasons given are plausible but that there are possible alternatives. He suggests that the requirement for pension can be revised and background and medical examination checks can identify those applicants who are job-hoppers, or a sickness risk.⁶⁵ With careful evaluation, more flexible maximum age limits could be utilized by a police agency wanting to expand its recruitment pool.⁶⁶

The Age Discrimination in Employment Act (ADEA) of 1967 states that it is unlawful not to hire an individual solely on the basis of age when that person is between the ages of

⁶³ Bruce Olson, Selecting Local Law Enforcement Officers in Michigan: Current Practice and Future Progress (Lansing Michigan: Michigan Law Enforcement Officers Training Council, 1968), p. 53.

⁶⁴ Richard H. Blum, Police Selection (Springfield, Illinois: Charles C. Thomas, 1964), pp. 52 - 53.

⁶⁵ Ibid., p. 53

⁶⁶ Ibid.

40 and 65.⁶⁷ Congress' purpose in passing the Act was to make certain that the decision to hire is based on objective evaluation of an individual's potential for job performance, instead of on false assumptions about the effect of age on ability.⁶⁸

"The ADEA, like Title VII with respect to all traits but race, provides that it shall not be unlawful for an employer to base his decisions on age where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business."⁶⁹

Establishing a bona fide occupational (BFOQ) defense would probably be easier for police agencies since the argument of human risk involved in hiring an unqualified applicant sounds rational.⁷⁰ But the question of BFOQ defense may hinge upon the cost and effectiveness of the maximum age standard as compared to individualized testing of police applicants. The problem of determining which is the best or legal way to screen applicants, considering maximum age requirements versus individualized testing, revolves around the factors of human risk, cost, and effectiveness. The

⁶⁷ Commission on Peace Officer Standards and Training/ State Personnel Board, Selecting Study - Component A-Selection Standards Project (Sacramento, California: Selection Consulting Center, 1974), p. 31.

⁶⁸ "Notes - The Age Discrimination in Employment Act of 1967, Harvard Law Review, Vol, 90, No. 2 (1976), p. 381.

⁶⁹ Ibid., p. 400.

⁷⁰ Job Discrimination? Laws and Rules You Should Know, Lowell W. Perry, chairman (Washington D.C.: Equal Employment Opportunity Commission, 1972), p. 56.

problem has been expressed in these terms:

Differences in degree seem clear: where the cost of abandoning a bfoq test would be to increase substantially the likelihood of risk to the public, validation seems appropriate, even if the bfoq is only sixty or seventy percent accurate and if individualized testing would be only slightly less effective. On the other hand, a more effective bfoq may nonetheless be properly invalidated if the alternative test is equally effective and slightly more expensive.⁷¹

Since many police agencies already use a variety of individualized tests in their selection process to determine an applicant's ability to perform, any extra cost of evaluating older applicants would probably be slight. Yet the human risk factor in police performance is of prime importance in certain critical police tasks. The courts will have to make the legal determination whether a bfoq defense or individualized testing is valid.

In Ridaught v. Division of Florida Highway Patrol the Florida Supreme Court upheld a maximum age limitation of thirty-five and stated the standard was not unconstitutional age discrimination.⁷² The Court said the maximum age limitation rule was valid and based their decision on the following rationale:

In view of the purpose of the maximum age limitation of age 35 to achieve maximum qualification in agility, alertness, and dexterity in performance

⁷¹ "Notes - The Age Discrimination in Employment Act of 1967," Harvard Law Review, Vol. 90, No. 2 (1976), p. 408.

⁷² Ridaught v. Division of Florida Highway Patrol, 11 EPD, 10.953 (Florida Supreme Court, 1975).

of the duties of a highway patrol officer, the rule was not invalid as arbitrary or invidious discrimination between applicants who are within the age limit and those who are not. Constitutional guarantees of equal protection do not require that a rule apply equally to all persons, but impose only a requirement that there be some rationality in the nature of the class of persons singled out for special treatment.⁷³

In Murgia v. Commonwealth of Massachusetts Board of Retirement the United States District Court held a mandatory retirement age set at 50 for state police officers was valid and rational despite minor inconsistencies.⁷⁴ Citing a Supreme Court decision relating to states passing "imperfect" statutes in the area of economics and social welfare the Court held:

...a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality... The problems of government are practical ones and may justify, if they do not require, rough accommodations--illogical, it may be, and unscientific... A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.⁷⁵

It appears that the courts rule favorably toward the rationale of setting maximum age requirements for police officers, whether for entry selection or forced retirement.

⁷³ Ibid.

⁷⁴ Murgia v. Commonwealth of Massachusetts Board of Retirement, 5 EPD, 8483 (U.S. District Court, Mass., 1972).

⁷⁵ Ibid.

"Reasonableness" so far is what courts have demanded for evidence to justify maximum age limitations for police officers. The burden of proof has, therefore, not been one of providing rigorous empirical evidence to validate police maximum age standards.

In summary, the minimum and maximum age standards set for police have been decided upon by the courts without an abundance of empirical evidence. The courts have implied in their rulings that there is enough inherent truth⁷⁶ that age is job-related to support maximum age limitations based on physical ability.⁷⁷ Minimum age standards premised on the assumption that a certain age better equals maturity than the age of majority, on the other hand, has been met with disbelief by at least one court. The validity of maximum age standards set by police therefore seems to be in less judicial question than minimum age standards set above the legal age of majority.

⁷⁶ "Notes - The Age Discrimination in Employment Act of 1967," Harvard Law Review, Vol. 90, No.2 (1976), p. 384
Unlike race or national origin, "age is at some point inherently related to ability, a fact which is implicitly recognized by both the legislative history and the provisions of the ADEA."

⁷⁷ Ibid., p. 386.

EDUCATION

In Michigan it is presently a mandatory entry selection standard that a person employed as a police officer has either obtained a high school diploma or passed a general education test indicating high school equivalency. The police candidate must also attend a M.L.E.O.T.C. approved school, where he/she must complete a basic police training curriculum. Some Michigan police agencies' educational selection standards exceed state standards by requiring at least some years of college education.⁷⁸

It is apparent that there can be a credible assumption that requiring a police candidate to complete basic⁷⁹ police training is job-related. During such training a police officer learns the basic techniques for effective performance. But can the same be said of a high school diploma (or equivalent) and a college education? Are these valid prerequisites of employment as a police officer, as ensuring

⁷⁸ Bruce Olson, Selecting Local Law Enforcement Officers in Michigan: Current Practice and Future Progress (Lansing Michigan: Michigan Law Enforcement Officers Training Council 1968), p. 58.

⁷⁹ Bailey v. DeBard, 10 EPD, 10,389 (U.S. District Court, Southern Indiana, 1975). The Court held the requirement of the Indiana State Police Department to have a police candidate attend and complete a police training school was valid since no evidence indicated racially discriminatory impact upon minority applicants. The Court said, "The curriculum is practically adapted to the needs of an Indiana State Police Officer and successful completion of such study is validly predictive of the measure of his actual job performance."

better job performance? The questions merit examination.

The President's Commission on Law Enforcement and Administration of Justice has stated, "The ultimate aim of all police departments should be that all personnel with general enforcement powers have a baccalaureate degree."⁸⁰ The President's Commission also emphasized that police officers with enforcement powers should have at the minimum a high school diploma and the ability to do college work.⁸¹ In addition, police observers, administrators, and theorists all advocate higher education requirements for police officers: from all sides, the long standing high school education entrance standard has met serious challenge.⁸² Cynthia Sparling points out the main rationale for this challenge:

...the increasingly complex job demands made on a police officer require that he possess the judgment, ability, and emotional stability assumed to be developed through college education.⁸³

⁸⁰ The President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (New York: Avon Books, 1968), p. 279.

⁸¹ Ibid.

⁸² Cynthia L. Sparling, "The Use of Education Standards as Selection Criteria in Police Agencies: A Review," Journal of Police Science and Administration, Vol. 3, No. 3, (Northwestern University School of Law, 1975), p. 332.

⁸³ Ibid.

White and Francis indicated in their legal review of credentialism that the courts have used three methods to justify credential requirements for high status jobs, including those of police officers. They evaluated these requirements as follows:

The first involves deference to apparent experts who support credential requirements; the second involved casual acceptance of a preferred validity study; the third involves lowered standards for validity studies involving a high risk occupation.⁸⁴

Castro v. Beecher⁸⁵ and Arnold v. Ballard⁸⁶ involved the litigated problem of a high school diploma or equivalency certificate as legal minimum entry selection standard for police applicants. In both these cases the high school or equivalency employment prerequisite was upheld. The court upheld the Castro decision by acknowledging the President's Commission on Law Enforcement and Administration of Justice recommendation that a police officer have a high school diploma and the ability to do college work. The court believed the recommendation was the result of a meaningful study of the educational requirements necessary to perform

⁸⁴ David M. White and Richard L. Francis, "Title VII and the Masters of Reality: Eliminating Credentialism in the American Labor Market," The Georgetown Law Journal, Vol. 64, No. 6 (July 1976), p. 1238.

⁸⁵ Castro v. Beecher, 4 EPD, 7569 (U.S. District Court, Mass., 1971).

⁸⁶ Arnold v. Ballard, 9 EPD, 9921 (U.S. District Court, Ohio, 1975).

adequately as a police officer.⁸⁷ The President's Commission claim "that a higher education was necessary to produce an intelligent and socially sensitive police force" was not supported by statistical evidence.⁸⁸

In Arnold v. Ballard the court accepted several factors as evidence to support a high school or General Educational Development certificate as substantially related to job performance of Akron police officers:⁸⁹

1. A reading analysis based upon work samples from the police training bulletins found a reading level above the twelfth grade for a police trainee was required.
2. A job analysis study revealed that ten to fifteen percent of an Akron police officer's daily time is expended in preparation of comprehensive and detailed written reports, which are sometimes used as the basis of court testimony.
3. Several state and federal reports⁹⁰ by independent commissions recommended a high school education as a minimum educational requirement for police applicants.

⁸⁷ White and Francis, op. cit., p. 1239.

⁸⁸ Ibid.

⁸⁹ Arnold v. Ballard, 9 EPD, 9921 (1975).

⁹⁰ Ibid. Among the reports mentioned were Standards and Goals Comparison Project, Final Report, Volume II, Police, Ohio Department of Economic and Community Development, Administration of Justice Division, Ohio State University, 1974; Police Task Force Report, National Advisory Commission on Criminal Justice Standards and Goals, 1973; The Challenge of Crime in a Free Society, The President's Commission on Law Enforcement and Administration of Justice, 1967, and Task Force Report: The Police, the President's Commission on Law Enforcement and Administration of Justice, 1967.

4. A validation study (Cohen and Chaiken, 1972) of educational requirements in the New York Police Department, which indicated a "significant correlation between higher education attainment and improved police performance."⁹¹
5. Continuing education and training in innovative investigative and forensic procedures usually requires the police officer to build upon past knowledge obtained by a high school education.⁹²

After the Court had appraised the above evidence, it held:

Based on these findings, the Court determines that the high school education requirement is substantially job-related and is a valid requisite for employment as a policeman even if a high proportion of blacks are disqualified because of it.⁹³

The review of the Castro and Arnold cases has revealed that the courts have accepted an assortment of evidence in favor of the high school education requirement. Much of this evidence has been non-statistical, and expert opinion. Yet it appears the high school education requirement will continue to stand legally. The requirement "is viewed as a bare minimum for successful performance of the policeman's responsibilities," since many experts advocate higher education requirements for police officers as a legitimate long term goal.⁹⁴

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Commission on Peace Officer Standards and Training/ State Personnel Board, Selection Study - Component A-Selection Standards Project (Sacramento, California: Selection Consulting Center, 1974), pp. 66 - 67.

There is evidence in the POST selection standard study that a high school educational standard is inadequate for entry-level police officers.⁹⁵ The study was based upon a total of 947 police candidates who failed either police academy training or the probationary period. The findings revealed 71 (19%) out of 373 police academy failures were due to reading and writing deficiencies. The same was true for 37 (6%) out of 574 probationary failures. Combining the academy and probationary failures, an attrition rate of 11% for individuals who met the high school educational standard resulted because of inadequate reading and writing skills. The authors of the study said this "is an intolerably high percentage."⁹⁶

In a validation study conducted by Cohen and Chaiken (1972) of educational requirements in the New York City Police Department, the same study, accepted as evidence in Arnold v. Ballard, revealed higher education was positively correlated with job performance. Data was obtained over a period of 11 years on 1,608 police officers:

As a group, the men with at least one year of college education who remained on the force were found to be very good performers. They

⁹⁵ Ibid., pp. 70 - 71.

⁹⁶ Ibid., p. 71. Since the authors believed high school diploma requirements were inadequate, they also recommended "that achievement tests which are job-related and measure the precise level of reading and writing skills necessary for successful performance be developed."

advanced through civil service promotion, but not disproportionately through the detective route of advancement, and they had fewer civilian complaints than average. The men who obtained college degrees, either before or after appointment to the force, exhibited even better on-the-job performance. They advanced through preferential assignments and civil service promotions, they had low incidence of all types of misconduct except harassment, on which they were average, they had low sick time, and none of them had their firearms removed for cause.

A typical example of the difference in patterns between the college graduate and non-college graduate was in the number of civilian complaints incurred over an eleven-year period. Our data revealed that 369 men, or 24 percent of the non-college graduates, had a civilian complaint, compared to only 4 college graduates, or 8 percent. Generally speaking, the older, more educated officer received fewer civilian complaints than the younger, less educated officer.⁹⁷

Through multiple regression analysis it was also found that high school graduates who join the police force at age 21 receive 6 1/2 times as many civilian complaints after 11 years on the force as older (age 31) college graduates.⁹⁸ Even with all the positive factors found related to higher education and job performance, the authors believed that non-college graduates with average intelligence should be hired as police officers to work routine assignments such as traffic duty. According to the authors, the police officer of average

⁹⁷ Cohen and Chaiken, Police Background Characteristics and Performance: Summary Report, Grant No. 71-030-G, The National Institute of Law Enforcement and Criminal Justice, 1972, pp. 20 - 21.

⁹⁸ Ibid., p. 23.

intelligence could perform such routine tasks adequately and with self-satisfaction.⁹⁹

Sparling (1975), in reviewing research concerning the validity of higher education for selection standard criteria, found both positive and negative aspects:¹⁰⁰ Generally, police officers with a college education were less authoritarian than noncollege police officers;¹⁰¹ increased education was related to "positive cognitive changes;"¹⁰² college officers received higher performance ratings;¹⁰³ length of service was less as education increased;¹⁰⁴

⁹⁹ Ibid., p. 31.

¹⁰⁰ Cynthia L. Sparling, "The Use of Education Standards as Selection Criteria in Police Agencies: A Review," Journal of Police Science and Administration, Vol. 3, No. 3 (Northwestern University School of Law, 1975), p. 335.

¹⁰¹ Ibid., p. 334. Based on a study conducted by: Alexander B. Smith, Bernhard, Lock, and William F. Walker, "Authoritarianism in Police College Students and Non-Police College Students," Journal of Criminal Law and Criminology and Police Science, Vol. 58 (1967), p. 132.

¹⁰² Ibid. Based on a study conducted by: Irving B. Guller, "Higher Education and Policemen: Attitudinal Differences Between Freshmen and Senior Police College Students," Journal of Criminal Law, Criminology and Police Science, Vol. 63 (1972), pp. 396 - 401.

¹⁰³ Ibid. Based on a study conducted in Flint, Michigan: the study "examined the relationship between the amount of college education and performance ratings. Nineteen officers with at least 60 hours of college credit scored an average of 85-22 on supervisory ratings, and a similar number of officers with no college training scored an average of 76-35." It should be noted, even though the college officers received a better performance rating, the police officers with no college still received adequate performance ratings.

¹⁰⁴ Ibid. Based on a study conducted by: Ruth Levy, "Predicting Police Failures," Journal of Criminal Law, Criminology and Police Science, Vol. 63 (1972), pp. 265 - 76.

increased education was negatively related to disciplinary action and positively related to advancement.¹⁰⁵ The conclusion Sparling drew was that increased education has a generally positive effect on police officers' performance. However, how the specific effects of higher education should be translated into entry selection standards for police officers has not been clearly established.¹⁰⁶

In Holliman v. Price the United States District Court concluded the educational selection standard of sixty semester hours of college credit in police related field or equivalent police experience produces an "artificial barrier to employment" for the disadvantaged minorities.¹⁰⁷ Evidence revealed at the preliminary hearing by the Civil Service Commission

¹⁰⁵ Ibid., p. 335 Based on a study conducted by: Cohen and Chaiken, Police Background Characteristics and Performance: Summary Report, Grant No. NI 71-030-G, The National Institute of Law Enforcement and Criminal Justice, 1972.

¹⁰⁶ Ibid. In addition: James W. Sterling, "The College Level Entry Requirement: A Real or Imagined Cure-All", Police Chief (August, 1974), p. 30. Sterling is in basic agreement with Sparling in his analysis of the college level entry requirement. Sterling emphasizes that attention must be given to the "fact that the effects of advanced education are not adequately supported by research or by logic. Our commitment to the value of higher education should be based on a more precise rationale." He concludes, "We need more carefully to delineate the advantages and disadvantages of a college background in the performance of the police role so that we can shape the police organization to take maximum advantage of the outcomes of a college education."

¹⁰⁷ Holliman v. Price, 7 EPD 9069 (U.S. District Court: Michigan, 1973).

(Flint, Michigan) failed to establish a significant statistical difference in the levels of job performance between police officers who met a two-year college credit requirement and those who did not. Thus the court required Flint to waive the sixty semester hours college credit requirement or equivalent police experience.¹⁰⁸

The court also noted the Flint Police Department's effort to "professionalize" police by following the President's Crime Commission's recommendation to require substantial college study is a laudable one.¹⁰⁹ However, considering the disproportionate effect of such a requirement on black applicants, it would be better to encourage college education after a police applicant is hired. Once hired, all police officers have access to free tuition for college study, as provided by the city and other federal grants which also serve to reimburse tuition for law enforcement college study.¹¹⁰

In summary, it has generally been accepted by professionals in the field of law enforcement and the courts that a high school educational requirement is valid for police applicants. There is also evidence that does cast some doubt whether a high school education standards is actually adequate

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

to provide the reading and writing skills necessary to perform successfully as a police officer. Although other evidence indicates a generally positive correlation of police performance with an increase in educational level, the findings are not significant enough¹¹¹ to override the adverse and disproportionate¹¹² impact a college education standard would have by excluding minority applicants from employment.

Therefore, the doubtful legal validity¹¹³ and the specific positive effect that higher education has upon the performance of a police officer, presently impede the judicial and professional acceptance of higher educational standards as a practical and fair method of selecting police candidates.

¹¹¹ Ibid.

¹¹² Arnold v. Ballard, 9 EPD, 9921, (U.S. District Court: Ohio, 1975). The 1970 United States Census report revealed 52% of the white population has 12 years of education or more, whereas only 34% of the black population is similarly qualified.

¹¹³ See Appendix B. An educational requirement for employment is defined the same as a test (1607.2). "The use of any test which adversely affects hiring...classes protected by Title VII constitutes discrimination unless: (a) the test has been validated and evidences a high degree of utility, and (b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring...procedures are unavailable for his use" (1607.3).

FELONY CONVICTION

Presently in Michigan a person having a felony conviction will be disqualified from employment as a police officer. The justification for this requirement is obvious. The POST study points out that there are sometimes considerations besides the felonious conduct itself¹¹⁴ that make it reasonable to bar convicted felony offenders from employment.¹¹⁵ Persons who have been convicted of a felonious crime are often restricted by law from either owning or possessing a firearm. Also, a police officer's ability to testify effectively with credibility could be jeopardized if the police officer had a felony record. Since the ability to testify effectively and carrying a firearm are both important and critical functions related to a police officer's job performance, not hiring a convicted felony offender seems reasonably valid.¹¹⁶

¹¹⁴ V.A. Leonard and Harry W. More, Police Organization and Management, Fourth ed. (Mineola, New York: The Foundation Press Inc., 1974), p. 215. Leonard and More believe "The character and reputation of a police officer should be unassailable." Thus, police departments at the recruitment stage should make fingerprint identification checks to assure that persons with criminal records are not employed as police officers. The authors' attitudes imply that a felony conviction in itself is reason enough to screen out an applicant: "It is a sad commentary on the American police services that there are instances where known felons have worn a police uniform."

¹¹⁵ Commission on Peace Officer Standards and Training/ State Personnel Board, Selection Study - Component A-Selection Standards Project (Sacramento, California: Selection Consulting Center, 1974), p. 87.

¹¹⁶ Ibid.

Blum agrees that the presence of a felony record is reason enough to exclude applicants with such criminal backgrounds.¹¹⁷ He comments on two common reasons police departments use to exclude applicants with felony records:

One is that a department does not wish to be known as a receiving station for persons with bad reputations, regardless of how honorably they may now conduct themselves, for fear that there would be loss of public respect for the police service and increased suspiciousness of the integrity of the police. The second assumption is that persons with criminal records are likely to be recidivists while those with good moral characters are likely to continue along the path of virtue.¹¹⁸

Although the general reasons given so far to exclude police applicants with a felony record seem plausible, Blum implies there may be exceptional cases worthy of consideration for employment. For instance, juveniles who are convicted of a felony offense¹¹⁹ may discontinue getting in trouble as they grow older.¹²⁰ Recidivism is associated with a

¹¹⁷ Richard H. Blum, Police Selection (Springfield, Illinois: Charles C. Thomas, 1964), p. 53.

¹¹⁸ Ibid.

¹¹⁹ Robert C. Trojanowicz, et al., Community Based Crime Prevention (California: Goodyear Publishing Co. Inc. 1975), p. 9. It should be noted that in "1970, over one million cases were adjudicated by juvenile courts in the United States. Over 25 percent of all people arrested in 1971 were juveniles, and of those arrested for burglary, larceny, and auto theft, over half were juveniles." Having an inflexible "absence of felony or misdemeanor conviction standard" for applicants could eliminate many juveniles from entering the recruitment pools in later years, when perhaps they are both more mature and more law-abiding.

¹²⁰ Richard H. Blum, Police Selection (Springfield, Illinois: Charles C. Thomas, 1964), p. 55.

variety of factors. Consideration should be given for age at first offense, family background, work record, marital history and other important variables. Blum concludes:

...while the present standard has a reasonable basis, its limitations and range of errors is completely unknown. What police selection needs are a series of scientific studies which relate juvenile offenses to later conduct, so that, knowing what kind of record an applicant has, one can make a prediction about his chances for getting in trouble again.¹²¹

In Buck Green v. Missouri Pacific Railroad Company, the United States District Court held that a company's policy of rejecting applicants with a history of criminal convictions, under which a Negro applicant was denied employment, was justified as a business necessity, since it had been demonstrated that policy was related to prevention of theft, compliance with employment directives, and avoidance of disruption caused by recidivism.¹²² The court also believed the policy was based on sound business necessity since such factors were relevant to both the safety and the efficiency of the employer's business. Furthermore, the court held "empirical validation of conviction and arrest record policies in accordance with EEOC guidelines relating to employment

¹²¹ Ibid.

¹²² Buck Green v. Missouri Pacific Railroad Company, EPD, 9831 (U.S. District Court: Eastern District of Missouri, 1974).

testing was inappropriate and was not required."¹²³

Though this case did not question the policy of police departments in disqualifying applicants who are convicted felons, some worthwhile analogies from the Court's holding could possibly be applied to such a hypothetical case. For example, the factors earlier mentioned (carrying a firearm, ability to testify effectively and with credibility, personal integrity, the respect of the citizenry, law abiding personnel, etc.), can be considered necessary qualifications for a police officer in order to perform his duty successfully. A police officer with a known felony record may not have these qualifications which can be rationally related to the safe and efficient operation of a police department. Considering the importance and criticalness of a police officer's duty to the public, a sound business necessity defense could be developed in relation to the above factors.

The court's position that empirical validation of conviction and arrest records was not the same as required by the EEOC guidelines for employment tests,¹²⁴ suggests that "rational justifications" can be used to validate

¹²³ Ibid.

¹²⁴ Appendix B, explains the term test.

non-test employment standards.¹²⁵ Wollack and his associates give three reasons for not requiring empirical validation for criteria such as a felony record due to the infeasibility:

1. Such information is a descriptive nature and is not subject to quantification.
2. A police department would have to hire a sufficient number of persons with various felony backgrounds for a meaningful statistical study. This, coupled with the requirements of the guidelines demonstrating each protected group is represented in the study, would create an insurmountable obstacle.
3. Even if it were statistically possible to overcome the problems inherent in the descriptive nature of various felony offenses to meet EEOC guidelines, hiring a large sample of convicted felons merely to show empirically that persons with such backgrounds do not make the best police officers, cannot be justified.¹²⁶

¹²⁵ Wollack, et al., Background Investigator's Manual: Entry-Level Police Officer (Fair Oaks, California: 1976), p. 21. The authors point out, "While the EEOC Guidelines on Employment Selection Procedures do not provide for rational justification of tests as defined therein...Federal case law supports the appropriateness of a "rational justification" for certain non-test employment standards."

¹²⁶ Ibid., pp. 16 - 17. These three general reasons were given as background investigation criteria of a descriptive nature.

In United States of America v. City of Chicago, arguments presented by the city to defend the job-relatedness of a background investigation used by the city's police department included excluding applicants convicted of a serious offense as a valid selection standard.¹²⁷ This standard was also argued to be a matter of law. The court responded in its ruling by stating:

[the argument]...need not detain us for we agree that a prior conviction of a serious offense would be a valid ground to disqualify a person from police work. And this would be so regardless of the disproportionate racial impact such a standard might have.¹²⁸

In summary, many authorities believe that the absence of a felony record is a justified requirement for a police applicant. The implications of such a record may be associated with various factors having an important relationship with a police officer's ability to perform his/her duty successfully. Court cases have relied on reasonable justification,¹²⁹ instead of rigorous empirical data, to validate the

¹²⁷ Ibid., p. 27.

¹²⁸ Ibid.

¹²⁹ Ibid., p. 22. "In Richardson v. Hotel Corporation of America, 4 EPD 7666, 332 F. Supp. 519 (DC la 1971), the Fifth Circuit Court affirmed a lower court holding that employment could properly be denied persons convicted of property related crimes when the job in question involved responsibility for the security of other people's property." This case is another example of the courts' use of reasonableness or rational justification as the basis of upholding a conviction record.

use of a felony conviction record to reject applicants where reasonable job-relatedness is demonstrated. This could be partially due to the infeasibility of requiring a rigorous empirical validation of such descriptive criteria such as felony offense convictions. Presently it appears that the entry selection standard requiring the absence of a felony record for police officer applicants can be legally and rationally justified.

GOOD MORAL CHARACTER/BACKGROUND INVESTIGATION

Currently the State of Michigan minimum employment standards require that a person possess a good moral character before being employed as a police officer. Good moral character should be determined by a favorable comprehensive background investigation covering such areas as school and employment records, home environment, personal traits and integrity. All law violations, including traffic and conservation law convictions, should be examined and evaluated to determine if the applicant has a lack of good character.

The POST study of selection standards for police concluded, "Good Character as reflected in a background investigation is a job-related standard."¹³⁰ This conclusion was based primarily upon a legal analysis of several variables¹³¹ examined in general background investigations. In the legal review two important findings were found from case decisions

¹³⁰ Commission on Peace Officer Standards and Training/ State Personnel Board, Selection Study - Component A-Selection Standards Project (Sacramento, California: Selection Consulting Center, 1974), p. 79.

¹³¹ Ibid., pp. 84-95. Various variables legally reviewed were arrest record, conviction record (misdemeanor, felonies, possession of marijuana, alcohol related offenses, leaving the scene of accident, theft, conduct endangering safety, and minor offenses), work record, sexual conduct (living with a person out of wedlock, unmarried pregnancy, extramarital heterosexual conduct, sexual conduct criminal in nature, and homosexuality), and indebtedness (garnished wages). Most of the cases cited are related to some type of "public employment", however, the occupation of a police officer is not specifically cited in the case reviews.

concerning job-relatedness. First:

It has been held that "good character" is a proper and constitutionally valid standard which may be established by proof of an individual's conduct or qualities bearing a rational relationship to professional competence. Goldberg v. Barzer, 37 Cal. App. 3d 987 (1974).¹³²

Second:

The question of morality must not be considered in the abstract but in the context of the general public welfare to be served. In connection with employment, such terms as "immoral conduct" and "moral turpitude" may be given precise meaning by reference to the particular profession in question. Thus, such terms substantially overlap with the term "unprofessional conduct." Morrison v. State Board of Education, 1 Cal 3d 214 (1969).

Thus, background factors examined to assess ability to perform the duties of a police officer should be job-related.¹³⁴ This is particularly true when such factors are

¹³² Ibid., p. 79.

¹³³ Ibid.

¹³⁴ Ibid., pp. 79 - 84. In order to determine the rational relationship between public service and the conduct in question, such factors must be assessed: "The probability of adversity upon the service; The anticipated degree of adversity upon the service; The nature of the employee's specific duties; The extenuating or aggravating circumstances surrounding the conduct; Its proximity or remoteness in time; The likelihood of its recurrence; The notoriety of the conduct; The praiseworthiness or blameworthiness of the motives resulting in the conduct; The extent to which an adverse employment decision may inflict a chilling effect upon the constitutional rights of the employee or other employees. (Morrison v. State Board of Education, 1 Cal. 3d 214 (1969) and Vielehr v. State Personnel Board, 32 Cal. App. 3d 187 (1973))."

used to determine a standard of good moral character.¹³⁵ Standards concerning good moral character should actually be a measure of one's moral ability, or occupational morality, necessary to perform the job in question. When morality is derived from factors which can not be reasonably related to job performance, and when such factors adversely disqualify protected groups¹³⁶ under Title VII, such

¹³⁵ Wayne F. Cascio, "Turnover, Biographical Data, and Fair Employment Practice", Journal of Applied Psychology, Vol. 61, No. 5 (1976), pp. 576-80. "At present, there are no legal barriers to asking any biographical information (with the exception of arrests, since by definitions an individual is presumed not guilty when arrested). The important consideration is how such information is used." "Personal history items have come under intense legal scrutiny. While not unlawfully discriminatory per se, the EEOC Guidelines on Employee Selection Procedures (1970), Griggs v. Duke Power Company specify that such items may legitimately be included in the selection process only if it can be shown that (a) they are job-related, and (b) they do not unfairly discriminate against either minority or nonminority subgroups."

¹³⁶ Wollack, et al., Background Investigator's Manual: Entry Level Police Officer (Fair Oaks California: 1976), pp. 9 - 10. "Before the question of job-relatedness arises in actions brought under Title VII, however, there must be evidence of adverse effect. In other words, the plaintiff is required to establish a prima facie case of discrimination. If the court finds that a prima facie case exists, the burden of proof then shifts to the employer to demonstrate that the employment practice in question is, in fact, job-related. If the plaintiff fails to carry his prima facie burden, then the employer is not required to defend the practice in question ---Furthermore, an employer should always be prepared to justify his employment standards as job-related, since the courts have made it surprisingly easy for a plaintiff to establish a prima facie case."

selection criteria may be subject to legal action.¹³⁷

Cohen and Chaiken (1972) conducted a study concerning the relationship of background characteristics and police officer performance. Based on a sample of 1,915 New York City police officers over an eleven year period (1957-1968), and analyzing only quantifiable background and performance measures commonly maintained in police department personnel files, the study revealed various background characteristics were not importantly related in predicting measures of police performance. Personal background characteristics that were mentioned were:

...arrest for a petty crime; military service; military commendations; father's occupation; number of residences; aspects of early family responsibility, including marital status, number of children, and debts; reported history of psychological disorder; place of residence; and number of summonses.¹³⁸

The study also revealed variables that are found to be the strongest predictors of later job performance. These were:

...employment, military disciplinary actions, repeated appearances in civil court, education,

¹³⁷ Ibid., p. 9. Also, once evidence of an adverse effect of a selection criterion is provided, the question of job-relatedness arises under Title VII. "Even if an employment practice is shown to be valid, it might still be discriminatory if it can be shown that suitable (i.e., equally valid) procedures with less adverse effect were available for the employer's use."

¹³⁸ Bernard Cohen and Jan M. Chaiden, Police Background Characteristics and Performance: Summary (New York: The New York City Rank Institute, 1972), pp. 27 - 28.

...Measures which are derived from single incidents...such as arrest for petty crime... are not indicative of major patterns of job performance.¹³⁹

There is a basic point to be made concerning the findings of Cohen's and Chaiken's research study. That is, not all background characteristic factors, or variables, are reliably related to job performance as predicting or measuring with adequate certainty a police applicant's future success as an effective patrol officer. Yet, many police departments, including Michigan's, use such questionable criteria in background investigations to assess police candidates.¹⁴⁰

Ruth Levy (1967) examined biographical data from personnel files of 4,500 law enforcement officers in 14 jurisdictions and found personality characteristics of unsuccessful law enforcement officers were significantly and identifiably different from the personality characteristics of non-failures.¹⁴¹ General personality traits were examined,

¹³⁹ Ibid.

¹⁴⁰ Bruce Olson, Selecting Local Law Enforcement Officers in Michigan: Current Practice and Future Progress (Lansing Michigan: Michigan Law Enforcement Officers Training Council, 1968), pp. 56-57. In a survey conducted by the M.L.E.O.T.C. in 1967, the findings revealed that out of a sample of 364 police departments 74% used school records, 77% used home environment, and 76% used marital status as factors to be explored and assessed in a background investigation of a police applicant.

¹⁴¹ Ruth Levy, "Predicting Police Failures," Journal of Criminal Law Criminology, and Police Science, Vol. 58 (1967), pp. 265 - 76.

along with emotional, social, and physical traits either overt or implied. A Chi-square test was employed to obtain measures of goodness. Cross-validation by dividing the entire sample randomly into two approximately equal subsamples, using a "stepwise multiple regression analysis," was conducted as an additional precaution.¹⁴² The reported differences were above the .01 level of confidence in both subsamples.¹⁴³

The study revealed that many variables could not be demonstrated to be statistically significant as reliable criteria to predict failure:

Military branch, military rank, number of years of military service, number of military enlistments, and whether or not applicant was hospitalized while serving military duty, are all facts investigated by most hiring departments. Many law enforcement administrators feel that success or failure in military, as judged by promotions and demotions, correlate positively with later success or failure in law enforcement.¹⁴⁴ In this study such is not conclusively proven.¹⁴⁴

Reported financial status before appointment, including number and amount of debts and assets, failed to significantly discriminate among our criterion groups.¹⁴⁵

¹⁴² Ibid., p. 266.

¹⁴³ Ibid.

¹⁴⁴ Ibid., p. 273.

¹⁴⁵ Ibid., p. 271.

In addition, "reason given for applying" for the position of a police officer "total number of residences listed in application," and marital status, were found to have no significant relationship.¹⁴⁶

Police officers who were classified occupational failures may be distinguished from other police non-failures by several factors. These factors could possibly be used to identify applicants. Levy expresses this notion in this manner:

These occupational failures may possibly differentiate from other applicants before appointment by the recognition that they have more citations for vehicle code and other violations, greater number of marriages, greater tendency to have grown up in a family from which the father was absent due to death, divorce or emotional distancing.¹⁴⁷

However, the author also noted the characteristics of a successful police officer can vary considering the geographic location, size and ethnic composition of community, individual philosophy of administration, salary, size of law enforcement agency, ratio of peace officers to population, age of department, type of enforcement agency and other various factors.¹⁴⁸ Yet, even though there is substantial diversity of necessary characteristics a patrol officer must have from agency to agency, there are certain common

¹⁴⁶ Ibid., pp. 271 - 74.

¹⁴⁷ Ibid., p. 275.

¹⁴⁸ Ibid., p. 274.

characteristics," such as, inability to suppress retaliatory aggressive behavior toward an arrestee, lack of respect for the authority to be upheld, excessive emotional lability and behavioral mobility, will doom - the job history of the peace officer regardless of locale."¹⁴⁹ She concluded that it is sensible for both humane and economical reasons to exclude those police applicants whose characteristics indicate predictively they will fail to perform adequately as police officers.¹⁵⁰

Levy's research, however, falls short of a validation study according to EEOC guidelines. According to the guidelines, factors that are used to disqualify applicants must be shown not to adversely eliminate protected groups under Title VII when feasible.¹⁵¹ Levy did not indicate, for instance, any difference certain factors would have on excluding minority groups as compared to whites if these factors are used as selection criteria. Furthermore, it must be questioned if such factors (i.e., number of previous jobs, etc.) were used as criteria to exclude applicants if such criteria adversely excluded a protected group, are there alternatives that could take the place of such selection criteria which would be just as reliable - but nondiscriminatory?

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ See Appendix B.

In Commonwealth of Pennsylvania v. O'Neil, 348 F. Supp. 1084 (DC pa 1972), 4 EPD 7916, the Court ruled the background investigation utilized by the Philadelphia Police Department was racially discriminatory.¹⁵² The Court imposed a preliminary injunction to stop further hiring of police officers until such time the background investigation and other particular selection procedures could be shown to be job-related. The Court based its decision on biographical data that indicated a black applicant was more likely to have negative biographical factors than white applicants. Evidence also demonstrated that black applicants were rejected twice as often as white applicants on the basis of background investigation data. The Court found this constituted a prima facie case of racial discrimination.¹⁵³

The probability of various biographical factors having a negative influence on blacks can be seen in Table 2 - 1¹⁵⁴ taken from the Court's opinion.

¹⁵² Wollack, et al., Background Investigator's Manual: Entry-Level Police Officer (Fair Oaks, California: 1976), pp. 23 - 24.

¹⁵³ Ibid., p. 24. "The trial court's finding of a prima facie case of racial discrimination was affirmed by the United States Court of Appeals for the Third Circuit (___F. 2d___, [3rd Cir 1972], 5 EPD 7974)."

¹⁵⁴ Ibid., pp. 23 - 24.

Table 2-1
Incidence of Factors by Race

Factor	White	Black	B%/W%
Convictions	6.3%	9.0%	1.4
Arrests	11.6	18.2	1.6
Police Contacts	1.7	1.7	1.0
Traffic Offenses	26.8	22.5	.8
Juvenile Delinquency	5.1	8.0	1.6
Juvenile Arrests	13.7	20.1	1.5
Juvenile Police Contacts	6.0	3.9	.7
Court Martial Convictions	.6	2.7	4.5
Summary Offenses in Military	15.5	21.5	1.4
Military Arrests	.4	1.5	3.8
Military Discharge	3.0	5.1	1.7
No Valid Driver's License	4.2	9.3	2.2
Falsification of Application	41.3	67.3	1.6
Fired	13.5	27.0	2.0
Job Problems	15.6	29.3	1.9
Unemployed and/or Welfare	22.3	23.7	1.1
Bad Credit	18.8	19.2	1.1
Education: Academic Problems	19.3	23.8	1.2
Education: Discipline Problems	13.8	19.0	1.4
Born out of Wedlock	4.5	3.4	.8
Divorce	3.2	4.8	1.5
Illicit or Immoral Conduct	9.7	29.4	3.0
Alleged Threats or Violence	3.0	6.2	2.1
Improper Conduct of Friends or Relatives	18.5	35.1	1.9
Bad Appearance	24.3	40.1	1.7
Other	56.3	78.7	1.4

Following the Court's order imposing a preliminary injunction, a consent decree was reached and the O'Neil case was settled.¹⁵⁵ The Court in considering the future use of background investigations as a police screening

¹⁵⁵ Ibid., p. 25.

device rendered the decision with the following requirements

The present standards for evaluating background investigation reports shall forthwith be revised so as to eliminate from consideration as negative factors illegitimate birth and divorce (but proven misconduct relevant to performance as a policeman may be considered); and so as to provide for the evaluation of previous arrests and other police contacts in light of the relative seriousness of the acts involved, and their remoteness in time. Every effort shall be made to insure that only job-related factors are considered. (5 EPD 8448)¹⁵⁶

The order therefore did not find a background investigation per se a discriminatory or an ineffective device to screen police applicants. However, certain factors obtained from a background investigation may discriminate against Negroes, and cannot reasonably be justified as relevant to police performance. Wollack and his associates also emphasize an empirical validation study was not required. "To the contrary, the changes ordered by the O'Neil court seem to amount to nothing more than the imposition of a reasonable and rational strategy."¹⁵⁷

In United States of America v. City of Chicago, __F. Supp.__, (DC Ill 1976), 11EPD 10597, the Court imposed a permanent injunction stopping further use of the Chicago Police Department's background investigation.¹⁵⁸ The disproportionate effect of the background investigation

¹⁵⁶ Ibid., p. 26.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

resulted in disqualification of 25.7 percent of the black applicants compared to 15.2 percent of the white applicants. The Court's main criticism was that selection standards criteria, such as bad character, dissolute habits, and immoral conduct were not clearly defined. The Court held:

...we agree that a prior conviction of a serious offense would be a valid ground to disqualify a person from police work. And this would be so regardless of the disproportionate racial impact such a standard might have.¹⁵⁹

Furthermore, we agree that the investigative standards of others do tend to show the need for flexibility in inquiries of this type. But we did not enjoin flexibility in background investigations; we enjoined the standardless application of the unknown in arriving at undefined results in those investigations. All the record shows is that the Department inquires into bad character, immoral conduct and dissolute habits (which the chief administrator of the investigations could not define). In reaching those conclusions inquiry is made with regard to a candidate's education, employment, financial condition, arrests, military service, driving history, and the arrest records of members of his or her family. We have not been given any insight into specific types of negative information that will disqualify a candidate, which may fall into these categories or be learned from these sources. All we know is that across the board, black candidates have been disqualified at a rate of 40% greater than white candidates and at a rate of 2 to 1 on the basis of "negative employment record." When requirements for employment have such a disproportionate impact, they must be defined so that their validity can be determined. The City defendants have declined to provide that definition. Accordingly, the injunction with respect to the use of the results of the background investigations will be made permanent. (11 EPD 10597)¹⁶⁰

¹⁵⁹ Ibid., p. 27.

¹⁶⁰ Ibid., pp. 27 - 28.

In another case, Arnold v. Ballard, the Court, in scrutinizing a background investigation used by the Akron Police Department, held that standards used to disqualify applicants were too vague. This was due to the absence of written standards providing guidelines or regulations for disqualifying an applicant on the basis of a background investigation. Such vagueness could lead to arbitrary or discriminatory application, which may be detrimental to black applicants.¹⁶¹

Along with other provisions rendered by the Court in Arnold v. Ballard, the Court ordered:

There shall be no use of Background Investigations to disqualify future applicants unless and until the defendants develop written criteria for the performance of those Investigations. Those criteria shall set forth, among other things, the areas of a person's background that will be evaluated, which factors will be automatically disqualifying and which factors will be considered detrimental.¹⁶²

Considering United States of America v. City of Chicago and Arnold v. Ballard, the Courts have required that the criteria and the use of criteria obtained in background investigations should be clearly understood how it is utilized in the selection process. This means the criteria assessed in a background investigation should be defined. In addition, it should be made explicitly clear which criteria

¹⁶¹ Ibid., pp. 28 - 29.

¹⁶² Ibid., p. 29.

obtained by such an investigation will be used to disqualify applicants.

Wollack and his associates, after reviewing the cases of Commonwealth of Pennsylvania v. O'Neil, United States v. City of Chicago, Arnold v. Ballard, and Bailey v. DeBard, conclude that these cases:

stand for the relatively simple proposition that, in the case of a background investigation, "business necessity" can perhaps best be demonstrated by a strong showing of rational relationship between the factors considered and the specific requirements of the job.¹⁶³

They continue by commenting:

The "rational justification" is all the more appropriate in view of the insurmountable difficulties to be encountered in any attempt to "validate" a background investigation within the meaning of the EEOC Guidelines. In fact, the terms "validity" and "validation," while entirely appropriate when referring to the job-relatedness of written tests, do not pertain to the background investigation. Such a procedure is most likely to be justified on the basis of a reasonable and rational relationship between the factors considered and the actual requirements of the job.¹⁶⁴

In summary, the standard of "good moral character" has been held as a reasonable legal selection requirement by the courts. However, the biographical factors assessed to measure "good moral character," or predict job performance, should at least have a reasonable and rational justification of job-relatedness. What is also apparent from court decisions is

¹⁶³ Ibid., p. 31.

¹⁶⁴ Ibid.

that biographical criteria used to disqualify applicants should not be abstract, but defined. Such criteria should also be operationally defined in written form to identify which factors will be considered detrimental to employment and which factors will automatically disqualify.

Presently it appears that the courts will reasonably accept standards that exclude applicants who have been convicted of a serious offense. Other biographical data used to assess a "good moral character" standard (i.e., arrests,¹⁶⁵ employment records,¹⁶⁶ home environment, personal traits, and integrity) may be legally questionable as a fair employment practice. The reasoning is that many of these factors are defined too generally to make it possible to understand their significance as criteria. In addition, developed written criteria explaining how a background investigation is utilized in the selection process, and what

¹⁶⁵ "Michigan Civil Rights Act" (Sec. 205a) According to Michigan civil rights law, a law enforcement agency, unlike other employers, can make pre-employment inquiries concerning arrest, or disposition of a violation of law in which a conviction did not result." All employers may make pre-employment inquiries concerning "information relative to a felony charge prior to conviction or dismissal."

¹⁶⁶ Walter B. Connally, A Practical Guide to Equal Employment Opportunity, Vol. 1, (New York, Law Journal Press, 1975), p. 29. Reviewing "Hiring Standards Based on Performance Reports of Other Employers" it was emphasized; "If a performance report of the previous employer of a job applicant is itself due to prohibited discrimination, a refusal to hire the applicant based solely on that report is unlawful (EEOC Decision No. 72-0947, 4 FEP Cases 1305, 1973)."

biographical criteria will automatically be disqualifying, or considered detrimental to the employment of the applicant, are probably lacking in many police agencies. It can be assumed that background investigation selection standards which are ill defined or vague may be ruled arbitrary by the courts and will be difficult to justify as job-related.

PHYSICAL, EMOTIONAL, OR MENTAL CONDITION

Presently, the State of Michigan's selection standards require of a police applicant:

normal hearing, normal color vision and normal visual functions and acuity in each eye correctable to 20/20. Be free from any other impediment of the senses, physically sound, in possession of his extremities and well developed physically, with height and weight in relation to each other as indicated by accepted medical standards. Be free from any physical defects, chronic diseases, organic diseases, organic or functional conditions, or mental and emotional instabilities which may tend to impair the efficient performance of his duty or which may endanger the lives of others or himself.¹⁶⁷

On the surface, these requirements appear to be reasonable and job-related.

The POST study concerning selection standards concluded medical and/or psychiatric standards are job-related and acceptable employment practice.¹⁶⁸ However, the authors admitted "A point-by-point analysis of the job-relatedness of each potentially disqualifying medical or psychiatric factor is well beyond the scope of the present investigation."¹⁶⁹ They went on to say that the burden of demonstrating physical,

¹⁶⁷ Michigan, Michigan Law Enforcement Officers Training Council Act, Statutes (1965), Act no. 203, Sec 9.

¹⁶⁸ Commission on Peace Officer Standards and Training/ State Personnel Board, Selection Study - Component A-Selection Standards Project (Sacramento, California: Selection Consulting Center, 1974), p. 28.

¹⁶⁹ Ibid., p. 29.

emotional or mental standards as job-related by the employer is still required.¹⁷⁰

Blum states three reasons why high physical, emotional and mental standards for police applicants can be rationally job-related:

(a) the necessity for the safe operation of potentially dangerous equipment; guns, and automobiles for the most part; (b) the necessity to protect fellow workers and the public from contagious illness, and (c) the need to detect existing defects so that these do not become the basis for later disability claims.^{171, 172}

In Michigan, employment discrimination based on a physical or mental handicap is unlawful, unless a bona fide occupational qualification or business necessity defense can be established.^{173, 174}

¹⁷⁰ Ibid.

¹⁷¹ Richard H. Blum, Police Selection (Springfield, Illinois: Charles C. Thomas, 1964), p. 61.

¹⁷² V.A. Leonard and Harry W. Moore, Police Organization and Management, Fourth ed. (Mineola, New York: The Foundation Press Inc., 1974), p. 207. It should be noted that a "business necessity" defense could perhaps be established for physical or mental standards due to the cost factor a police department must bear for personnel. Leonard and Moore point out, "Police service accounts for 10.9% of total general municipal expenditures. Of this amount, between EIGHTY and NINETY percent is accounted for by the single budget item of police salaries!" Therefore, such standards may reasonably ensure an economically efficient operation of a police department.

¹⁷³ Michigan, "Michigan Handicappers' Civil Rights Act" Act No. 220, Enrolled Senate Bill No. 749 (1976).

¹⁷⁴ Ibid. (Section 103) As used in this act: (b) "Handicap" means a determinable physical or mental characteristic of an individual or the history of the characteristic which may result from disease, injury, congenital condition of birth,

The Michigan Handicappers' Civil Rights Act (Section 202)

requires an employer shall not:

(a) Fail or refuse to hire, [or] recruit... an individual because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

(c) Limit, segregate, or classify an employee or applicant in a way which deprives or tends to deprive an individual of employment opportunities ...because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

(d) Fail or refuse to hire, [or] recruit...an individual on the basis of physical or mental examinations that are not directly related to the requirements of the specific job.

(f) Fail or refuse to hire, [or] recruit...an individual when adaptive devices or aids may be utilized thereby enabling that individual to perform the specific requirements of the job.

In addition, it is emphasized (Section 207):

Nothing in this article shall be interpreted to exempt a person from the obligation to accommodate an employee or applicant with a handicap for employment unless the person demonstrates that the accommodation would impose an undue hardship in the conduct of the business.

From the preceding excerpts it is clear that there are potential fair employment complications concerning police

174 cont. or function disorder..." (d) "Mental characteristic is limited to mental retardation which is significantly subaverage general intellectual functioning..." It may be assumed by this definition given in the act that a mentally handicapped person would not be intellectually fit for a police officer job. Significant subaverage general intellectual functions would disqualify an applicant in a high risk job where daily decisions may involve intellectually complex and life and death situations.

standards based on physical conditions. Many physical standards such as vision, hearing, etc. can be corrected by adaptive devices or aid to the level where a person can function normally. Thus, setting a physical standard becomes a complex task when considering the possibilities of a person overcoming his/her handicap.

Blum, in considering the issue of handicap disabilities states the problem as follows:

How is one to decide what natural or artificial supports or compensations are unacceptable, what degree of disability is incapacitating?

Some handicaps, whether induced by disease or injury or inherited are permanent. Others are temporary. Some are completely disabling; other are only partially disabling and still allow a man to function well in jobs which do not put demands on his deficiencies. Some defects are permanent but may be compensated for, either by nature herself in which case the man overcomes his defects, or by physical devices and prosthetics, in which case medical care and rehabilitation provide aid, as in eyeglasses, hearing aids, arch supports, hernia belts, wheel chairs, or false teeth.¹⁷⁵

The perplexing problem of how to decipher which physical disabilities should be discontinued as disqualifying physical factors, and redefined as criteria only to be considered before hiring, may become a future legal problem for Michigan police departments. Presently there is a lack of case law addressing

¹⁷⁵ Richard H. Blum, Police Selection (Springfield, Illinois: Charles C. Thomas, 1964), p. 62.

the Michigan Handicappers' Civil Rights Act and its legal impact upon police entry selection standards.¹⁷⁶

Vision

Good vision may be reasonably justified as a bona fide occupational qualification for a police officer. Olson offers this job-related rationale:

Adequate vision is most important to a police officer, for several obvious and valid reasons, among which are: self-protection, ability to focus on action whether near or at a distance, as an aid to the accurate use of firearms, etc.¹⁷⁷

In addition, the POST study concluded, "The use of job-related visual standards is an acceptable employment practice."¹⁷⁸ The POST study research review also found nationally there is a variety of requirements relating to vision. Among the areas of visual requirements are visual acuity, color vision, peripheral vision, depth perception,

¹⁷⁶ Commission on Peace Officer Standards and Training/ State Personnel Board, Selection Study - Component A-Selection Standards Project (Sacramento, California: Selection Consulting Center, 1974), p. 27. The POST study described a similar problem with California civil rights legislation to give handicappers fair employment opportunities. POST suggested police agencies should defer "determining specific job-related medical and psychiatric standards" until an "in-depth review of medical and psychiatric standards by a team of consulting physicians" is conducted.

¹⁷⁷ Bruce Olson, Selecting Local Law Enforcement Officers in Michigan: Current Practice and Future Progress (Lansing, Michigan: Michigan Law Enforcement Officers Training Council, 1968), p. 47.

¹⁷⁸ Commission on Peace Officer Standards and Training/ State Personnel Board, Selection Study - Component A-Selection Standards Project (Sacramento, California: Selection Consulting Center, 1974), p. 57.

binocular vision, night vision, use of corrective lenses and use of contact lenses. In the POST summary of vision requirements it was emphasized setting specific job-related visual standards should be temporarily deferred. "Although standards for vision are job-related, more information and research are needed before definitive standards can be set."¹⁷⁹

Perhaps visual acuity standards for uncorrected vision will become subject to legal challenges under the Michigan Handicappers' Civil Rights Act more than other visual requirements. This assumption is based on the idea that visual acuity defects can often be corrected to meet the 20/20 State of Michigan standard for police applicants. However, uncorrected visual acuity standards range considerably among national police departments.¹⁸⁰ If uncorrected vision can be corrected to the 20/20 standard,¹⁸¹ it must be questioned what job-related purpose an uncorrected vision

¹⁷⁹ Ibid., P. 63

¹⁸⁰ Ibid., p. 58. The IACP and Police Foundation in conjunction with the Educational Testing Service conducted a nationwide survey in 1973, which indicated a wide range of visual acuity standards. The survey findings revealed uncorrected visual acuity standards ranged from 20/20 to 20/100, with the average being 20/50.

¹⁸¹ Ibid., p 60. The POST study points out that "with no hard evidence and few logical reasons behind a stringent visual acuity standard, the trend has been to de-emphasize the need for absolute 20/20 vision."

serves? "From the available literature, it is generally agreed upon that there is no major limiting factor in a law enforcement officers performance which would be due to wearing glasses or contact lenses."¹⁸² Therefore a corrected vision standard appears to better reflect job-relatedness than an uncorrected vision standard.¹⁹³

¹⁸² Ibid., p. 62.

¹⁸³ Ibid., p. 59. It is interesting to note a 20/100 uncorrected and 20/20 corrected eyesight requirement to obtain a pilot's license has been established by the Federal Aviation Authority. This requirements is considerably lower than the average uncorrected vision standard (50/100) utilized by police departments.

Height/Weight

Presently the State of Michigan requires the height and weight of a police candidate meet only acceptable medical health standards. Other police departments which have established general "height and weight in proportion,"¹⁸⁴ or other specific standards (i.e., 5'9" and 160 lbs.) may face legal challenges. These challenges may arise from anyone of three fair employment regulations:

¹⁸⁴ Jerome J. Suich, "Height Standards in Police Employment and the Question of Sex Discrimination: The Availability of Two Defenses for a Neutral Employment Policy Found Discriminatory Under Title VII," Southern California Law Review, Vol. 47 (1974), p. 617. Criteria such as general height and weight charts can be unfair as arbitrarily excluding some police applicants who would, in medical terms, be healthy and fit to perform as a policeman. Suich cites Gillespie and Pittman to make such a point:

Weight in proportion to height is a very ambiguous concept. There is not a defined height-weight relationship that has been accepted by all authorities. Some people can carry greater weight better than others. Professional football players are outstanding examples of men who can carry weight far out of proportion to their height. There is a minimal restriction on police officers whose weight is no longer in proportion to height in later years. In other words, the height and weight requirements are rather arbitrary and depend to a large degree on the value judgements of the persons establishing the selection criteria.

- 1) Michigan Civil Rights Act.¹⁸⁵
- 2) EEO Act as construed with Title VII of 1964 Civil Rights Act.¹⁸⁶
- 3) "Equal Rights Guidelines: Minimum Heights Requirements - Minorities and Women."¹⁸⁷

¹⁸⁵ "Michigan Civil Rights Act"

The Act prohibits practices, policies, and customs based upon religion, race, color, national origin, age, sex, height, weight, or marital status which unfairly discriminates against a person from exercising their civil rights. Article 1, section 102, defines opportunity to obtain employment as one of many civil rights covered by the Act.

¹⁸⁶ Jerome J. Suich, "Height Standards in Police Employment and the Question of Sex Discrimination: The Availability of Two Defenses for a Neutral Employment Police Found Discriminatory Under Title VII," Southern California Law Review, Vol. 47 (1974), pp. 588 - 89. Suich in his legal review indicated that a height requirement set at 5'7" would eliminate 95% of female applicants as compared to 32% of American male applicants. Furthermore, this same height requirement excludes approximately 70% of male Spanish-surnamed Americans, 80% of male Japanese-Americans and 60% of Chinese-Americans. Thus a prima facie case of both sex and racial discrimination under Title VII could be established.

¹⁸⁷ Cheryl G. Swanson and Charles D. Hale, "A Question of Height Revisited: Assaults on Police," Journal of Police Science and Administration, Vol. 3, No. 2 (1975), p. 183. "Federal guidelines stemming from the Office of Civil Rights (LEAA) stipulate that police agencies may no longer maintain minimum height requirements unless they can be proven to be job-related." (See Appendix A)

Police departments offer several arguments to justify that height is a necessary prerequisite to perform successfully as a police officer.¹⁸⁸ First, physical strength and ability to assume to have a direct relationship to a person's height. Secondly, a tall police officer is at an advantage, since the positive psychological effect of height on citizens and possible lawbreakers will aid in controlling potentially disruptive situations. Conversely, a police officer small in stature may create more disruptive situations by overly aggressive behavior to overcompensate for self-perceived deficiencies due to shortness. It has also been recommended a minimal height standard can be used to maintain the police officer's image as a "culture hero."¹⁸⁹ "In brief, the arguments concerning height and its effects on performance are by no means conclusive. Consequently, it is important to examine empirical evidence in order to determine the effect of height on job performance."¹⁹⁰

¹⁸⁸ Jerome J. Suich, "Height Standards in Police Employment and the Question of Sex Discrimination: The Availability of Two Defenses for a Neutral Employment Policy Found Discriminatory Under Title VII," Southern California Law Review, Vol. 47 (1974), pp. 608 - 609.

¹⁸⁹ Ibid.

¹⁹⁰ Thomas W. White and Peter B. Bloch, Police Officer Height and Selected Aspects of Performance (Police Foundation, 1975), p. 3.

The Police Foundation and International Association of Chiefs of Police in cooperation with The Urban Institute implemented a research study concerning height in relation to selected aspects of police performance. Thomas White and Peter Bloch were delegated the authority to conduct and author the study. From the findings reported in this study, a review of related research and professional and legal sources, the authors stated the following operational implications of height requirements for police:

Federal regulations require that shorter applicants not be excluded from employment as patrol officers unless professionally validated studies demonstrate an operational necessity. This study found no such data.

Height requirements can vastly reduce the pool of applicants who have personal qualities needed by police departments. For example, fifty-six percent of young adult males and ninety-nine percent of young adult females would be excluded from employment by a minimum height requirement of 5 feet 9 inches.

Police departments will never know whether shorter officers perform differently than their taller counterparts unless shorter officers are hired as patrol officers and are carefully compared with a properly selected group of taller, "comparison" officers.

There are no data which document that there is any difference in performance between short and tall officers who have similar seniority and are given similar assignments.¹⁹¹

¹⁹¹ Ibid., pp. 8 - 9.

The authors made the following recommendations to police departments in regards to complying with legal regulations and to increase their effectiveness:

Eliminate the height requirement and use a selection system based on the overall potential of the applicant for successful police work. This would prepare the way for future evaluation that would resolve the issue of height.

Provide training for officers addressed to skill development in areas thought by police professionals to involve a height-performance relationship.¹⁹²

Other authorities in analyzing the height requirement have arrived at the same basic conclusions as White and Bloch. The POST study, for example, concluded "the job relatedness of height standard has not been demonstrated."¹⁹³ Jerome Suich found the lack of empirical evidence substantiating the job-relatedness of a height standard should not allow a bona fide occupational or "business necessity" defense to legally justify the adverse impact upon female

¹⁹² Ibid., p. 9.

¹⁹³ Commission on Peace Officer Standards and Training/ State Personnel Board, Selection Study - Component A-Selection Standards Project (Sacramento, California: Selection Consulting Center, 1974), pp. 35, 134 - 44. The authors did remark that there is possible job-relatedness of a weight standard (obesity), but further study is necessary to arrive at any specific and absolute conclusions. It was still suggested, "An arbitrary standard of 20 percent body fat for men is provisionally suggested as the point where a person can be considered obese."

applicants under Title VII.¹⁹⁴ Suich also points out that there are reasonable nondiscriminatory alternatives to better meet the rationales for requiring a height standard. He comments, "psychological and physical agility testing and adequate training in self-defense techniques arguably would achieve these rationales."¹⁹⁵ A height standard is only the crudest method to measure such rationale.¹⁹⁶

There are still authorities who claim that height standards may have value as selection criteria and should not be rejected in haste. The International Association of Chiefs of Police (IACP) stated, "Until some basis in fact is found to indicate that a police officer's height is related to effective service, the IACP is unalterably

¹⁹⁴ Jerome J. Suich, "Height Standards in Police Employment and the Question of Sex Discrimination: The Availability of Two Defenses for a Neutral Employment Policy Found Discriminatory Under Title VII," Southern California Law Review, Vol. 47 (1974), pp. 585 - 640. The author's legal Note examined the legality of height requirements in law enforcement employment under Title VII. The Note discussed the sufficiency of reasonable nondiscriminatory alternatives.

¹⁹⁵ Ibid., pp. 617 - 20. Suich explains a job-related psychological and psychiatric testing can better measure psychological inadequacies in police candidates than a minimum height standard. A job-related physical agility test can better measure a necessary fitness required of a candidate. Furthermore, the knowledge and ability to implement self-defense tactics is more reasonably related to a person's capability of defending himself/herself than would the candidate's height.

¹⁹⁶ Ibid., p. 619.

opposed to the implicit risks of lowering the professional standards of the service."¹⁹⁷ Other authorities have stated in the related literature that a height requirement may be applicable in one police agency, but not in another.^{198,199} The rationale has been expressed in this manner:

It may be that height becomes a factor only as it deviates from the norms of the community with regard to height. A short officer may encounter problems in a community where the average height of the citizen is significantly greater than the height of the officer.²⁰⁰

In Smith v. City of Cleveland, a lower court finding that there was an absence of rational support to justify a city rule requiring a person to be 5'8" in height to qualify for employment as a police officer was reversed.²⁰¹

¹⁹⁷ Thomas W. White and Peter B. Bloch, "Height Requirements Remain Controversial", The Police Chief (May 1973), p. 16.

¹⁹⁸ C.A. Dempsey, "A Study of Police Height Requirements," The Police Chief (September 1974), p. 35.

¹⁹⁹ William B. Kolender and John A. McQueeney, "A Question of Height - Additional Thoughts", The Police Chief (January 1977), pp. 56 - 58. It should also be noted that McQueeney was a coauthor in a San Diego study ("A Question of Height," Police Chief, 1973) which supported the height-performance relationship. In this subsequent article the author explains height (maximum or minimum) should not be eliminated as a selection variable. Yet, it was urged that "height never be used for the sole purpose of disqualifying candidates."

²⁰⁰ Ibid., p. 57.

²⁰¹ Smith v. City of Cleveland, 10 EPD, 10,263, (U.S. Court of Appeals, 6th Cir., Ohio, 1975).

However, a minimum weight standard (135 lb.) was affirmed to be invalid and unconstitutional as interpreted by the Court in accordance with the Fourteenth Amendment.²⁰²

A classification that "bears a rational relationship to a legitimate state objective", even though adverse to one sex when applied uniformly to both genders, is permissible and supported by decisional law. Although the court accepted as sufficient rational support testimony that there are certain psychological advantages in particular police functions being served by taller officers, the same was not found in regard to a minimum weight requirement. The court found no evidence indicating that weight is reasonably related to physical strength.^{203,204}

²⁰² Ibid. It should be noted that this case did not have to meet the more rigorous requirements of Title VII to prove height is a valid selection standard. Conversely, being tested under the Fourteenth Amendment (Equal Protection Clause) sufficient rationale can withstand the basic test of constitutionality.

²⁰³ Ibid.

²⁰⁴ Hail v. White et al. 8 EPD, 9637, (U.S. DC, Northern Calif., 1973). This case also questioned unlawful sex discrimination due to, in part, a height and weight requirement in the Oakland Police Department. The case involved denying a policewoman promotion to sergeant because she failed the height and weight requirement (5'7" and 135 lb.). Although the case was tested under Title VII, the Court accepted rational support in place of empirical evidence to justify the requirements. It was held "the height and weight requirements were necessary to assure some physical equivalence with persons likely to be needed to be subdued, and was psychological factor in crowd control."

In Castro v. Beechler the court ruled a height requirement for employment as a police officer did not constitute racial discrimination.²⁰⁵ The court found that there was no intent to exclude minorities by establishing a height requirement. In short:

In view of the facts that a minimum height requirement for the position of municipal policeman was adopted prior to the mass immigration of a minority racial group whose members were adversely affected by the rule because of their average shorter height than the generality of white and that the requirement was significantly²⁰⁶ related to fitness to be a policeman the requirement could not be viewed as invalid and discriminatory. 42 U.S.C. Secs 1981, 1983.²⁰⁷

The court also refused to allow a prima facie case of racial discrimination be established since "no data was presented concerning the average (height) of Spanish

²⁰⁵ Castro v. Beecher 4 EPD 7569, (U.S. District Court, Mass., 1971).

²⁰⁶ Ibid. In discussing the significance of height as determined by empirical evidence, the Court stated:

It is probable that while height is not determinative of fitness to a policeman, any more than it is of fitness to be an athlete or a general, it is significantly related to fitness to be a policeman, as it is not significantly related to being a judge or a scientist. A policeman of average height or taller may not be more effective than a short one in persuading children, drunks, rioters, and obstreperous persons to obey promptly, he may not be physically stronger, and he may not even look more impressive in a police parade. But obviously the Boston City Council thought so, and its conclusion finds support in the laws, regulations, and customs governing many police forces.

²⁰⁷ Ibid.

surnamed males as compared with other males, either for any city, for Massachusetts, or even for the nation."²⁰⁸ Perhaps if a prima facie case had been established, more rigorous empirical data would have been required by the court to justify the height requirement in judicial question.

In Officers for Justice v. Civil Service Commission of the City and County of San Francisco, the Court enjoined a municipal police department from using a pre-selection height requirement until such time the requirement could be demonstrated to be properly validated as essential to the effective operation of the department.²⁰⁹ It was found that the height requirement of 5'6" had a significant adverse effect on the hiring of Asians, Latins, and females. The disproportionate ethnic and sexual impact of the minimum height requirement resulted in a prima facie case. Although evidence was presented to the court by the police department to meet the burden of proof that the height standard was valid, the court found evidence "too

²⁰⁸ Jerome J. Suich, "Height Standards in Police Employment and the Question of Sex Discrimination: The Availability of Two Defenses for a Neutral Employment Policy Found Discriminatory Under Title VII," Southern California Law Review, Vol. 47 (1974), p. 599.

²⁰⁹ Officers for Justice v. Civil Service Commission of the City and County of San Francisco, 11 EPD 10,618, (U.S. District Court, Calif., 1975).

inconclusive to support any finding."²¹⁰

Other police departments' height requirements have been found invalid. The Iowa Civil Rights Commission, on the authority of the state civil rights act, found a 5 foot 9 inch minimum height requirement discriminated against females disproportionately and was therefore invalid, as held in More v. City of Des Moines Police Department.²¹¹ The Pennsylvania Attorney General found a unisex minimum height requirement of 5 feet and 6 inches was discriminatory against both women and minorities.²¹² The U.S. Civil Service Commission Board of Appeals and Review ruled a height/weight requirement (between 5'8" and 6'5" and minimum weight of 145 lbs.) that excluded a female applicant for the position of Park Police Officer was invalid.²¹³ This decision was based on the consideration the requirement was not supported by a job analysis and

²¹⁰ Ibid.

²¹¹ Jerome J. Suich, "Height Standards in Police Employment and the Question of Sex Discrimination: The Availability of Two Defenses for a Neutral Employment Policy Found Discriminatory Under Title VII," "Southern California Law Review, Vol. 47 (1974), p. 600.

²¹² Ibid.

²¹³ Jacque K. Boyer and Edward Griggs, Equal Employment Opportunity Program Development Manual, (Law Enforcement Assistance Administration, July 1974), pp. 194 - 95.

rational or relevant relationship to successful performance in the position in question."²¹⁴

In summary, although studies have both indicated positive and negative data supporting height and weight requirements, the evidence indicates the job-relatedness of such requirements is inconclusive. However, evidence does exist that certain minimum height/weight requirements disproportionately exclude females and minority groups. Alternatives also exist that would perhaps better serve in a nondiscriminatory manner to measure an applicant's capability to perform successfully as a police officer. Yet some courts have accepted the height/weight requirements as valid selection standards supported by rational arguments in place of empirical evidence. Conversely, other courts find such requirements not only invalid -- but the requirements lack both empirical and rational support to demonstrate any significant relationship to job-relatedness. With all said, height/weight standards remain questionable considering their legality both under fair employment laws and specific job-relatedness.

²¹⁴ Ibid. Subsequently, after this decision was determined, the height requirement was abandoned for "all police functions under the U.S. Civil Service's jurisdiction, including Park Police, U.S. Marshals, Special Agents, U.S. Border Patrol, and FAA Airport Police, In re Shirley Long, November 13, 1972."

Physical Agility Tests

Although it is not a state requirement that a police candidate successfully pass a physical agility test, it is not uncommon for police departments to have such a standard. The job-related rationale for physical agility tests has been expressed as follows:

A physical agility test should be incorporated into the selection process. It should be designed to weed out applicants whose physical agility and condition are not adequate to withstand the vigorous physical activity which is part of police training. It is generally felt that physical tests should measure the endurance, coordination, agility, speed, and the strength and power of the candidate to be a good indicator of the applicant's readiness to begin the police role.²¹⁵

Richard Wilkie, while discussing job-related physical performance tests for police applicants, emphasizes such tests have traditionally not been designed empirically to demonstrate how they are related to a patrol officer's occupational tasks.²¹⁶ It is apparent some physical standards are necessary to perform adequately as a police officer. However, Wilkie states traditional physical performance tests have relied heavily upon various calisthenics (i.e., push-ups, sit-ups, etc.) which fail to

²¹⁵ Gary L. McGhee, "Job-related Pre-Employment Physical Agility Tests," Police Chief (January, 1976), p. 42.

²¹⁶ Richard C. Wilkie, Jr. "Job-Related Physical Tests for Patrol Officers," Police Chief (May, 1974), p. 42

approximate the physical activities performed by police officers. If calisthenics are presumed to be job-related and remain as a main criterion to determine if an applicant is qualified to physically perform the role of a police officer, it will be necessary to correlate calisthenic exercises to physical activities performed by police officers.²¹⁷

An alternative to the traditional calisthenic exercise physical performance test approach is the performance-oriented physical test.²¹⁸ A performance-oriented test is designed to test actual activities, in this case physical activities, which are performed by police officers on the job. Those activities to be utilized in the test should represent frequent and important tasks required of a police officer. The performance-oriented physical test would therefore be job-related and directly measure the applicant's capability to perform the necessary physical tasks demanded of a police officer.²¹⁹

Wollack and his associates emphasize the practicality of using performance-oriented physical tests, when they comment:

²¹⁷ Ibid., p. 42.

²¹⁸ Wollack, et al., The Validation of Entry-Level Police Officer Selection Procedures (Fair Oaks, Calif: Wollack, Waibel & Guenther, Inc., 1976), pp. 216 - 17.

²¹⁹ Ibid.

A performance-type physical test, based on actual job requirements, would not be validated with the empirical or criterion-related methodology because no inference is being made about future job performance. Rather, the performance test based on job content is a direct measure of existing physical skills and abilities and may be content validated in accordance with EEOC 16 07.5.²²⁰

A study conducted at the King County Department of Public Safety revealed that physical agility tests, whether based on traditional calisthenic or performance-oriented criteria, adversely exclude female police applicants when compared to male applicants.²²¹ The King County Civil Service Commission, Seattle, tested 168 male and 33 female police applicants. Each applicant was required to perform adequately four job-related events²²² (fence surmount, body drag, quarter-mile run, stretcher carry), and four calisthenic events (pull-ups, squat thrust, sit-ups, standing broad jump).

²²⁰ Ibid.

²²¹ Richard C. Wilkie, Jr. "Job-Related Physical Tests for Patrol Officers," Police Chief (May, 1974), pp. 42 - 47.

²²² Ibid. The job-related events were based on a task analysis conducted by the King County Department of Public Safety. Information collected from 27 patrol officers and sergeants, which recorded various physical activities encountered over a one year period, resulted in an analysis of 330 separate incidents reported. The analysis revealed an "extremely wide variety of physical activities" were performed by patrol officers and the data was so varied it did not lend itself to quantification. However, it was concluded that physical fitness beyond the average person was necessary for a patrol officer to possess, in order to perform the physical activities that patrol work encompasses.

A pass/fail scoring system was developed for the job-related events, whereas a point system was established to measure the calisthenic events with a cutoff score to determine a passing or failing score.

The age of the sampled applicants ranged between 20 and 34, with females averaging 26 years and 5 months as compared to 25 years and 7 months for males. The average height and weight for males and females were 176 pounds, 5'11", and 130 pounds, 5'6" respectively. All applicants were informed of the various physical events that would be required of them to perform approximately three weeks prior to the test.²²³

Wilkie stated the outcome of the physical test as follows:

Nineteen males (11 percent) and 30 females (90 percent) failed the examination. A failure constituted a failure on any one of the four job-related events or a combined score of less than 130 on the four calisthenic events (out of a possible 400 points). Of the 19 males failing the test, three failed both the job-related and the calisthenic events, 11 failed only the calisthenic events, and five failed only the job-related events. Of the 30 females failing the test, one applicant did not complete the eight events, 25 failed both the job-related and calisthenic events, two failed only the calisthenic events. The 32 females failed to pass an average of 1.4 job-related events.²²⁴

²²³ Ibid., p. 44.

²²⁴ Ibid.

It is obvious from the findings that the physical agility test adversely excluded females. If other physical agility tests could be demonstrated to have the same adverse affect upon female applicants in other police departments, it could be reasonably assume a prima facie case of sexual discrimination could be established. Thus, police departments would be required to prove the job-relatedness of the physical agility test requirement.

In Officers for Justice v. Civil Service Commission of the City and County of San Francisco, the court ordered a municipal police department to from using portions of a physical agility test which adversely excluded female applicants until such time as those portions could be proven as valid selection criteria.²²⁵ The court emphasized that by suspending the adverse portions of the test a certain number of otherwise qualified females would be able to be selected as patrol officers. By permitting these otherwise qualified female officers to be selected, information could be provided to prove or disprove the validity of

²²⁵ Officers for Justice v. Civil Service Commission of the City and County of San Francisco, 11 EPD 10.618. (U.S. District Court, Calif., 1975).

the adverse portions of the physical agility test. While discussing the extreme adverse impact the test had against female applicants, the court stated it would "require a very high degree of persuasion from the defendants (San Francisco Police Department) before the test can be used as a selection device."²²⁶

²²⁶ Ibid. It is interesting to note that the physical agility test was designed after a task analysis study was conducted:

The job analysis that formed the basis for the examination was performed by Dr. Frank Verducci of San Francisco State University. Defendants contend that the analysis was thorough and forms the basis for a valid selection device. Dr. Verducci interviewed police officers, observed officers on patrol and distributed questionnaires to a number of officers. From the data he collected, he constructed a model of the physical skills which officers encountered in emergency situations. He then selected test events that would measure those skills, choosing and giving variable weight to the events in consultation with kinesiologists in an attempt to match as closely as possible the muscle group functions measured by the examination with those actually used by officers in emergency situations. Defendants contend that the job analysis was thorough and that the resultant examination is sufficiently valid to justify the extreme adverse impact it has on female applicants.

In Hail v. White the court held that a strength and agility test used by the Oakland Police Department was not an unreasonable requirement for the position of a police officer even though it may not be the best that can be designed.²²⁷ The test was found to be substantially job-related. Some of the physical agility test was composed of calisthenics such as squat thrusts, sit-ups, push-ups, squat jumps, and pull-ups. Without regard to expert testimony maintaining that most events did not represent actual duties a police officer must perform, such as moving dead weight bodies or chasing and subduing suspects, the court did not find the selection device invalid.²²⁸

In summary, again it is apparent that the courts vary on the evidence required to justify the use of selection criteria which adversely exclude certain protected groups. It can be reasonably assumed that a physical agility test can be incorporated in a police selection process; however, it remains questionable if many of the events used to measure a police candidate's ability are

²²⁷ Hail v. White et al. 8 EPD, 9637, (U.S. DC, Northern Calif., 1973).

²²⁸ Ibid.

validly job-related.²²⁹ Since it is not uncommon for physical agility tests to adversely exclude a disproportionate amount of women and minority groups, legal problems concerning physical agility testing may persist, especially as regards those police departments which use a traditional calisthenic approach as compared to a performance-oriented physical test.²³⁰

²²⁹ Suggested Guidelines for Compliance with Mandatory Selection Standards for Peace Officers, (Minnesota Peace Officer Training Board), p. 5. "A recent agility test was declared invalid when it was shown that there was no wood fence in the community such as the fence the applicants were to climb."

²³⁰ Ibid. The Minnesota Peace Officer Training Board made this following advisory statement:

Problems have arisen out of physical agility testing in recent years. Many of them have been caused by tests which fail disproportionate numbers of females and members of minority groups which tend to be of small stature. Challengers and possible litigation can be avoided if job-related guidelines are followed in the testing procedure. Calisthenics or tests of brute strength should be eliminated. Pushups, situps, squat thrusts, and rope climbs are not job-related. A good "rule of thumb" is to ask whether or not a peace officer would actually have to perform a similar feat in the line of duty. Tests such as running, jumping, fence climbing, pushing a vehicle, carrying a stretcher, dragging a body, and gripping are job-related and, therefore, are probably not discriminatory.

ORAL INTERVIEW

The State of Michigan presently requires that law enforcement agencies conduct an oral interview to evaluate if police candidates are acceptable according to State minimum selection standards. This includes assessing the acceptability of the candidate's appearance, background, and ability to communicate. Since a police candidate must pass the oral interview to become a full-time sworn police officer, such a hurdle can be considered a selection procedure requirement with synonymous implications as a selection standard. That is, failure to pass an oral interview results in the disqualification of a police applicant.

Blum points out that oral boards traditionally assess a police candidate's appearance which includes such factors as manners, dress, expression and other personal qualities.²³¹ He also points out that an appearance standard is difficult to define in concrete terms since the standard revolves around impressions concerning the candidate's maturity, social skills, alertness, personal integrity, judgement, and personality characteristics. Defining an appearance standard is further complicated by the inferences and

²³¹ Richard H. Blum, Police Selection (Springfield: Illinois: Charles C. Thomas, 1964), pp. 63-64.

impressions in each interviewer's mind as to what is the ideal police officer and how an ideal police officer should look and act.²³²

Blum notes some of the basic criticism concerning the use of an oral interview as a selection method.²³³ The oral process is often subjective rather than objective in analysing an applicant's personality factors. Associated also with oral interviews is the difficulty in designing a valid and reliable oral test. The records obtained after an oral interview are often not reviewable. These problems are enhanced by public suspicion that politics have manipulated the outcomes of oral interviews for public employment occupations.²³⁴

Speaking of the advantages of an oral interview, Blum points out the selection procedure "has produced significant success" in spite of its imperfections.²³⁵ The oral interview has in the past served to detect and eliminate applicant misfits who have managed to survive other screening procedures. Blum explains:

No amount of data, no matter how precise, can convey to an employer the sense of "presence" which characterizes the applicant. In the interview this quality is identifiable rather easily. Further, the interview provides a real

²³² Ibid., p. 182

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Ibid., p. 183

opportunity to tie together, the separate tests and examinations which, taken together, constitute the employment process. Correctly used the interview is a device for clarifying or verifying the unanswered questions and inferences which arise in the other phases of the testing activity. This can be done in no other way. Our choice therefore does not appear to be whether or not the oral interview shall be used as a part of the selection process in the law enforcement but rather, how it can be improved so as to be a more effective instrument in the employment of potentially competent and effective peace officers.²³⁶

To incorporate job-related dimensions which may be evaluated by an oral interview of police applicants, Wollack and his associates conducted a systematic evaluation of a job analysis.²³⁷ The evaluation resulted in identifying six job-related personal characteristics that may be assessed in an oral interview. These personal characteristics are "Appearance, Dependability, Initiative, Situational Reasoning Ability, and Interpersonal Skill."²³⁸ After developing empirical rating scales to evaluate applicants on a meaningful pass/fail criterion for the above characteristics, applicants were tested by a four-member interview panel which resulted in statistically significant reliability coefficients ranging

²³⁶ Ibid., p. 184

²³⁷ Wollack, et al. The Validation of Entry-Level Police Officer Selection Procedures, (Fair Oaks, Calif.: 1976), p. 206.

²³⁸ Ibid.

from 0.913 to 0.950.²³⁹ Thus this study implies that a well structured and designed oral interview can be demonstrated to be both reliable (non-arbitrary) and job-related.

A study conducted by Landy (1976) concerning the validity of oral-board scores in predicting performance of police officers on the street concluded "that rated performance could be predicted from averaged interview factor scores but not from averaged overall recommendations of the interviewers."²⁴⁰ The sample interviewed by the above were 399 white male police candidates. Interviewers were periodically alternated to avoid biased ratings. The result was that 150 of the 399 applicants were finally hired while 249 were rejected.

The interview was structured to assess the applicant in relation to nine job-related factors which were developed from a prior job analysis. The independent interview ratings were correlated to determine the reliability of agreement among the three panel members for each related dimension. The

²³⁹ Ibid., pp. 206 - 7. However, the authors emphasized the oral interview should not be used as the sole selection criterion - but should be designed to complement other valid job-related selection procedures.

²⁴⁰ Frank J. Landy, "The Validity of the Interview in Police Officer Selection" Journal of Applied Psychology, Vol. 61, No. 2 (1976), pp. 193 - 98.

intraclass correlation coefficients for each assessed dimension resulted in the following relationships of agreement: appearance (.87), communication skills (.82), education (.98), experience (.92), employment (.82), social sensitivity (.81), apparent emotional stability (.80), responsibility/maturity (.83), sincerity of purpose (.87), and the concluding recommendation, suitability for position (.94). As indicated in the above statistical findings, there was a significantly high degree of agreement among the interviewers index ratings.

Later, 57 officers who had received interview score ratings from the original sample were given performance scale ratings. Supervisory rating scales were developed and scored for the following eight job performance dimensions: job knowledge, judgment, initiative, dependability, demeanor, attitude, relations with others, and communications. The performance scales were based on "9-point behaviorally anchored rating scales" which were developed as part of a research study involving several dozen large municipal police agencies.²⁴¹ The performance scale was demonstrated to be significantly reliable (range of reliability was between .54 - .68) according

²⁴¹ Ibid., p. 194.

to other municipal agencies that had used the device.

To determine performance dimensions a scree test was utilized for the number of factors (Cattell, 1966) which indicated that four dimensions (Professional, Maturity, Technical Competence, Demeanor and Communication) could adequately represent the ratings of performance within 84 percent of the total variance using an oblique rotation. Correlations between averaged interview factors and performance factor scores were computed to demonstrate the validity coefficients for the averaged interview factor scores. The data indicated "3 of the 4 performance factors (Technical, Competence, Demeanor, and Communication) can be predicted from averaged interview factor scores. The values of validity coefficients were significant at $p \leq .01$, or .05 level and are listed as follows: Technical Competence (.26, .33), Demeanor (.29), and Communication (.34).²⁴²

The possible weaknesses in the study are that the performance rating scale was not checked for reliability in the police department conducting this study. This could obviously distort the data obtained from correlations between

²⁴² Ibid., pp. 194 - 95

interview factor scores and performance factor scores if the performance rating scores were not reliable. It must also be remembered that this oral interview is one of various kinds. Therefore, although this one may reliably predict future job performance, other oral interview variations may not. Finally, the sample represented only one police department and therefore the findings cannot fairly be applied uniformly to other municipal police departments until further research provides such evidence.

The author in concluding emphasized:

While the size of the validity coefficients is hardly overwhelming, the mere demonstration of significant validity coefficients is encouraging. Given the widespread use of the selection interview in police departments, it will be much easier to study and appropriately modify this selection tool than to introduce a new device.²⁴³

The legality of an oral interview will be questioned when a prima facie case of discrimination is established by a protected group under Title VII. If the oral interview cannot be demonstrated to be job-related or non-arbitrary by the employer, the selection procedure could be ruled invalid. For it must be remembered the final decision to hire, or not to hire, is often determined at the critical

²⁴³ Ibid., p. 197.

oral interview selection stage. Although the selection decision may be based on tests which predict criterion, the "selection decision based on the tests may lead to unfair employment."²⁴⁴ Furthermore, biased and subjective judgements during oral interviews can be a primary source of discrimination. ²⁴⁵

The Minnesota Peace Officer Training Board emphasizes that oral exams are to be treated like written exams, since both are subject to the same legal constraints. ²⁴⁶ The questioning should be standardized and the "examiners should confine themselves to questions which are related to the job requirements in their own community."²⁴⁷

²⁴⁴ Shavelson, et al., "Criterion Sampling Approach to Selecting Patrolmen." The Police Chief, September 1974, pp. 55 - 61. Authors point out that "Interpretations of test scores may be biased against one or more subgroups in at least two ways: (a) statistically and/or (b) politically."

²⁴⁵ John H. Powell, Jr., Affirmative Action and Equal Employment, A guidebook for employers, Vol., 1974. p. 45. The EEOC further emphasize that, "Interviewers should be free of stereotypes about minorities' or females' capabilities or suitability for particular jobs. Interviewers should be trained to evaluate each candidate's individual ability and potential, and to know actual job requirements, based on realistic job descriptions."

²⁴⁶ Suggested Guidelines for Compliance with Mandatory Selection Standards for Peace Officers (Minnesota Peace Officer Training Board), p. 19.

²⁴⁷ Ibid.

Interviewers should not inquire into an applicant's religious beliefs, political affiliations, union activities, ethnic background or personal philosophies. Interviewers may invalidate an oral interview by straying in irrelevant subject areas which are not valid criteria to measure an applicant's job-related qualifications.²⁴⁸

In summary, in the past the oral interview/examination has been used to assess several factors in order to determine if the candidate is indeed qualified to be a police officer. Although oral examinations have been found to have imperfections, the procedure has definite advantages over other selection procedures as revealing certain factors which might not otherwise be detected. Studies have also empirically demonstrated an oral interview can be structured to be a reliable selection method and can predict job-performance with a slight significance. However, if the oral interview is unstructured and inquires into forbidden and non-job-related areas, it may be both illegal and invalid.

²⁴⁸ Ibid.

SUMMARY

The review of the literature has plainly demonstrated that certain traditional entry selection standards have been successfully challenged in the courts as being both discriminatory and not validly job-related. Among those police selection standards which have at some time failed to be demonstrated by evidence before the courts as justifiably job-related are a minimum age standard set above the state age of majority, education selection standard of sixty semester hours of college credit in police related field or equivalent police experience, good moral character standard evaluated by vague and non-explicit biographical factors, height/weight standards, and physical agility tests. However, it must be emphasized that the courts are not in universal agreement about which standards are invalid, or what kind of evidence is required to legally justify police selection standards. Many courts require not more than a reasonable justification to demonstrate the validity of a selection standard, whereas others require rigorous empirical evidence.

Courts, by the same token have upheld certain police minimum entry selection standards as validly job-related. Among those selection standards or procedures which have at some time been found to be justifiably valid are a maximum age limitation standard set at 35, high school

diploma or equivalent educational standard, absence of felony conviction, good moral character assessed by a valid background investigation, height/weight standard, and physical agility tests. It is obviously clear that some of the above standards have also been found invalid by other courts. These apparent contradictions in court decisions indicate that judicially many police selection standards are still midstream concerning their legal validity. The same contradictions may also indicate that some police agencies were better prepared than others to defend selection standards.

State and federal fair employment guidelines and regulations indicate other police selection standards may in the future be subject to litigation concerning their job-relatedness and discriminatory impact. Title VII states that a citizenship standard is illegal if used to discriminate because of national origin. The Age Discrimination in Employment Act and the Michigan Civil Rights Act both state that age selection standards may be judicially questioned when a bona fide occupational defense cannot be substantiated. The absence-of-an-arrest-record (no conviction) selection standard is also questionable under Title VII and Michigan Civil Rights Act due to its adverse impact upon black applicants. According to the Michigan Handicappers Civil Rights Act, physical handicaps such as

uncorrected vision or a hearing deficiency which serve as selection criteria or standards to exclude applicants, may be both invalid and illegal when such handicaps can be corrected by aids, or do not interfere with essential job performance. Oral examinations may also be judicially questioned if they either invidiously discriminate against protected groups or are based on factors which cannot be demonstrated to be job-related (Title VII).

Findings in various studies also provide evidence both in support and non-support of certain entry selection standards. This is especially true concerning higher education standards, biographical criteria, height/weight requirements, and physical agility tests. Other selection standards or procedures have found support for their reliability through either empirical studies or legal analysis. However, the empirical findings cannot be accepted as proof to validate those selection standards or procedures uniformly. The empirical evidence has tended to be of a slight significance (oral interview), and findings may only be valid for one particular standard, instrument, or police agency. For example, oral examinations may vary considerably in content from agency to agency. The same is true in relation to the work environment and to the qualifications a police officer will need to perform successfully in each agency.

What has also been demonstrated throughout much of the related literature is that reasonable alternatives exist to replace many adverse entry selection criteria.

Citizenship, age, uniform physical handicap restrictions, height/weight, and calisthenics may only be crude measures of the necessary qualifications a police officer must have to perform successfully. When just as effective but nondiscriminatory alternatives are available and can be implemented without imposing an excessive financial or operational burden upon the employer, the adverse selection criteria must by law be replaced by such nondiscriminatory alternatives.

CHAPTER III

METHODOLOGY

SURVEY STUDY

General Format

In cooperation with the Michigan Law Enforcement Officers Training Council (M.L.E.O.T.C.) a survey questionnaire concerning selection standards (see Appendix C) was developed and sent out to all known Michigan law enforcement agencies during the month of September, 1977. The questionnaire was designed to ask the question of "extent" and "impact" as expressed in the statement of the purpose along with other questions related to the state of the art of job-related validation studies in Michigan police agencies. It should also be noted that the M.L.E.O.T.C. inserted questions relating to their role concerning validation studies and minimum entry standards for police candidates.

SAMPLING PROCEDURES

The population surveyed consisted of Michigan police agencies which had at least one full-time police officer employed. A sample frame was used to draw the sample. The sample frame consisted of those Michigan police agencies listed in Law Enforcement Officials of Michigan (1977-78

edition), together with any police agencies not listed in the above directory, but known to the M.L.E.O.T.C. The entire sample frame (607) was sent a survey questionnaire.

The error of selecting a non-representative sample of Michigan police agencies is of no consequence, since only a very few agencies were not sampled. Those excluded comprise some of the smaller ones. These police agencies will tend to be one of three in personnel strength and will not provide 24-hour police service.

METHODS OF GATHERING DATA

The measures of quantitative variables for the most part have to do with frequency. Proportional tables or graphs were constructed to illustrate the percentage of the population which has, for example:

- a. validated minimum selection standards
- b. date of validation
- c. number of legal suits
- d. etc.

Qualitative variables are measured in simple frequency counts, or by rank order method. The qualitative variables consist of opinions and also reasons why an agency has, for example:

- a. conducted a validation study
- b. has not conducted a validation study
- c. the adequacy of M.L.E.O.T.C. selection standards

The questionnaire consisted of 26 survey questions and an optional general comment area. The amount of time needed to complete the questionnaire was dependent much upon whether or

not an agency had validated, or has had legal suits. The average time estimated from a pretest was 15 - 20 minutes. Each agency was asked to return the questionnaire within three days. However, up to twelve days, as based on estimated time after arrival, was allowed for response.

In the pilot test, a few people were asked to complete the questionnaire. The purpose was to detect any semantic or other difficulties with the design of the questionnaire that might hamper accurate data gathering. Again, average time necessary to complete the questionnaire was estimated. The questionnaire was also reviewed by the research and curriculum staff at M.L.E.O.T.C. and the author seven times. In addition, the questionnaire was presented to the formal Michigan Law Enforcement Officers Training Council for review.

The means implemented to distribute the questionnaire was also directed to chiefs and supervisors to reduce the risk of lost responsibility. Notice of the forthcoming "Selection Survey" was provided in the July "M.L.E.O.T.C. Newsletter." The M.L.E.O.T.C. letterhead was on the survey questionnaire along with a cover letter (see Appendix D) of introduction. Telephone call reminders were made to essential police agencies (larger agencies, 100-500+ in size). The strategy was designed to ensure a high response rate and a representative sample.

Possible Mistakes and Consequences

This section addresses the seriousness of possible mistakes made by the respondent. This questionnaire, as an information gathering device, is highly important in obtaining valid information to fill the present research gap. The safeguards built into the questionnaire are discussed as well as possible remaining difficulties. The safeguards are as follows:

1. The wording of questions was kept as simple as possible.
2. Important terms and concepts were clearly stated or defined, or examples were given to eliminate false-positive answers.
3. Other categories were provided in order not to foreclose information in vital areas. A space was provided for "specification".
4. The questionnaire was expressly designed not to place police agencies on guard. Outright trickery or intimidating questions were avoided in order to deter non-responses.
5. Warnings were provided on rank order questions (#O & #S) not to rank any answer which did not play an influential part in the decision to conduct a validation study.
6. Key words were set in bold faced type in some questions.

Some of the possible mistakes are as follows:

1. Persons completing the questionnaire may be unfamiliar with past legal history of the police agency.
2. Persons completing the questionnaire may not be acquainted with the actual problems of validating, or not validating, minimum selection standards; therefore, they may designate priorities mistakenly or with bias.
3. Some police agencies may feel intimidated by the questionnaire. Such attitude may provoke false answers. (Hopefully, these agencies will decide not to respond.)
4. Questions may be read in the wrong context or not understood.
5. Persons completing the questionnaire may not be acquainted with general information concerning minimum selection standards, validation studies, selection procedures, etc. This again will induce false answers based upon unreliable assumptions.

MEASUREMENTS

Information Sought

The survey questionnaire was developed to gather and measure various variables relating to minimum selection standards in Michigan police departments. The general dimensions of data information which the instrument was designed to measure are the following:

Factual Informational Data

1. Type of police department
2. Size of police department
3. General selection standard requirements
4. General selection process
5. Who sets qualifications
6. Extent of selection standard legal problems (frequency, outcome)
7. Police departments with selection qualifications beyond State requirements
8. Police departments with selection standards validated
9. Specific selection standards published
10. Proportion of agencies which appear in violation of fair employment regulations

Opinion Informational Data

1. Why have the police departments validated selection standards?
2. Who should research selection standards?
3. Are the present State selection standards adequate?
4. Who should set standards (state, local, or both)?
5. Are agencies familiar with the EEO Act 1972?
6. Who should enforce State selection standards?

Instrument

Twenty-six survey questions and one general comment area, which was optional, were used to collect the necessary data. Most questions were multiple choice. However, "other" categories were provided in several questions where possible alternative answers would better describe the police department's position. Respondents were also requested to specify the significance, or essence, of the "other" choice. Specified alternative choices were designed to gain insight into various dimensions of data information. Other questions were of a simple yes, no type.

For two questions (#O and #S) a rank order test was devised to identify the primary reasons which have influenced police departments to either validate or not validate selection standards. Unfortunately most respondents did not rank order answers, but only checked answers.

Reliability

Although the questions are unique and the instrument was not extensively pretested for reliability, I believe the information and measurements obtained from the instrument are reliable, for several reasons. First, the instrument was refined by intensive review, and many safeguards were employed to guard against ambiguity and false responses. Second, the questionnaires were screened for obvious mistakes (i.e., answering both questions #O and #S). Third, the measures are

based on simple frequency counts. Finally, the survey was addressed to chiefs or supervisors of police agencies. These officials, if not themselves acquainted with the data required to complete the questionnaire, would be the best people to delegate the responsibility.

Analysis

A computer was used to assist in the analysis of the data. On fill-in questions, the answers were read individually to ascertain their useful content.

Tables and graphs are used to illustrate the significance in frequency or proportional measurements of the population. An analysis of the population according to agency size was carried out on pertinent questions in order to make simple comparisons and check for variation. For example, a comparison was made of the number of legal suits for larger police agencies as compared to smaller agencies. This same basic analysis was also performed for type of agency.

Design

The survey questionnaire was designed to serve various functions. From the analysis of data the "extent" and "impact" of validation studies upon Michigan police agencies and their selection standards can be generally assessed. The survey questions also serve to indicate what is the state

of the art of police selection in Michigan. Survey data may also serve to establish what proportion of Michigan police agencies sampled appear to be in violation of state and federal employment regulations on particular minimum entry selection standards as discussed in Chapter II, "Related Literature". Finally, the interpretation of the results of the survey were fed back into theory in the form of measurements deduced from the data. The measurements, such as police agencies having validated selection standards, will indicate a closer movement towards the ideal of a "Democratic Policeman".

CHAPTER IV

ANALYSIS OF RESULTS

I. SAMPLE OF POPULATION

Total Respondents

A total of 607 survey questionnaires were distributed to Michigan law enforcement agencies with a response from 426 agencies. Three agencies which responded were excluded from the sample either because the agency was discontinued, or it had no full-time sworn police officers. Therefore 604 is the closest approximation of the population of police agencies with at least one full-time sworn police officer employed. The analysis of results is based upon 423 law enforcement agencies which responded to the survey. This sample represents 70% of the approximate population.

Type of Agency

The sample of survey respondents was categorized according to eight different types of law enforcement agencies as shown in Table 4-1.

Table 4-1. --Type of Agencies Sampled.

Agency (N=423)	Frequency	Relative Frequency
Local Community	145	0.343
City	195	0.461
County	65	0.154
State Police	1	0.002
University/Campus	10	0.024
Railroad	1	0.002
Conservation/Park	5	0.012
Other	1	0.002

Table 4-1 shows Local Community (other than city) represents 145 (34%) of the total sample. The other categorical illustrations depict the same kind of information with the results as follows: City 195 (46%); County 65 (15%); State Police 1 (.2%); Conservation/Park 5 (1%); University/Campus 10 (2%); Railroad 1 (.2%); and Other 1 (.2%). The "Other" category comprised an Indian tribal police agency.

Size of Agency

The sample survey respondents were categorized by the size of the law enforcement agency as shown in Table 4-2.

Table 4-2. --Size of Agencies Sampled.

Agency (N=423)	Frequency	Relative Frequency
No Response	2	0.005
1-10	235	0.556
11-25	98	0.232
26-50	33	0.078
51-100	34	0.080
101-200	9	0.021
201-300	7	0.017
301-400	1	0.002
+500	4	0.009

Table 4-2 shows that law enforcement agencies with 1-10 full-time police officers represent 235 (56%) of the total sample. The other categorical illustrations depict the same kind of information with the results as follows:

11-25 = 98 (23%); 26-50 = 33 (8%); 51-100 = 34 (8%);
 101-200 = 9 (2%); 201-300 = 7 (2%); 301-400 = 1 (.2%);
 401-500 = 0 (0%); more than 500 = 4 (1%); and 2 agencies failed to respond to the question.

Other Sample/Population Generalizations

In Michigan the population sample of law enforcement agencies with 101 to more than 500 full-time police officers was estimated to be 21. Therefore the data indicates this population sample is approximately 100% represented since 21 respondents were recorded in these categories. Law enforcement agencies with 1-100 full-time police officers,

other than county sheriff, were estimated at 504 in the total population. There were 337 respondents recorded in this population sample. This population sample is therefore approximately 68% represented considering the total population. Finally, there are 83 county sheriff departments in the total population of Michigan law enforcement agencies. Respondents recorded in this population sample were 65. This population sample is therefore 78% represented considering the total population.

Summary

It is evident from the analysis of the total sample that various sections of the population are adequately represented. This has been statistically demonstrated by illustrating various breakdowns of the total sample of agencies by "type" and "size" (see Tables 4-1 and 4-2). Other sample and population generalizations were also provided to indicate the approximate representation of the sample as related to the population. These population sample approximations are based on M.L.E.O.T.C. accumulated knowledge of the dispersion of Michigan police agencies by size. In short, the total sample overall represents 70% of the population and is also diverse in composition.

LEGAL CHALLENGES AND
FORMAL LEGAL SUITS

Legal Challenge of Selection Standards

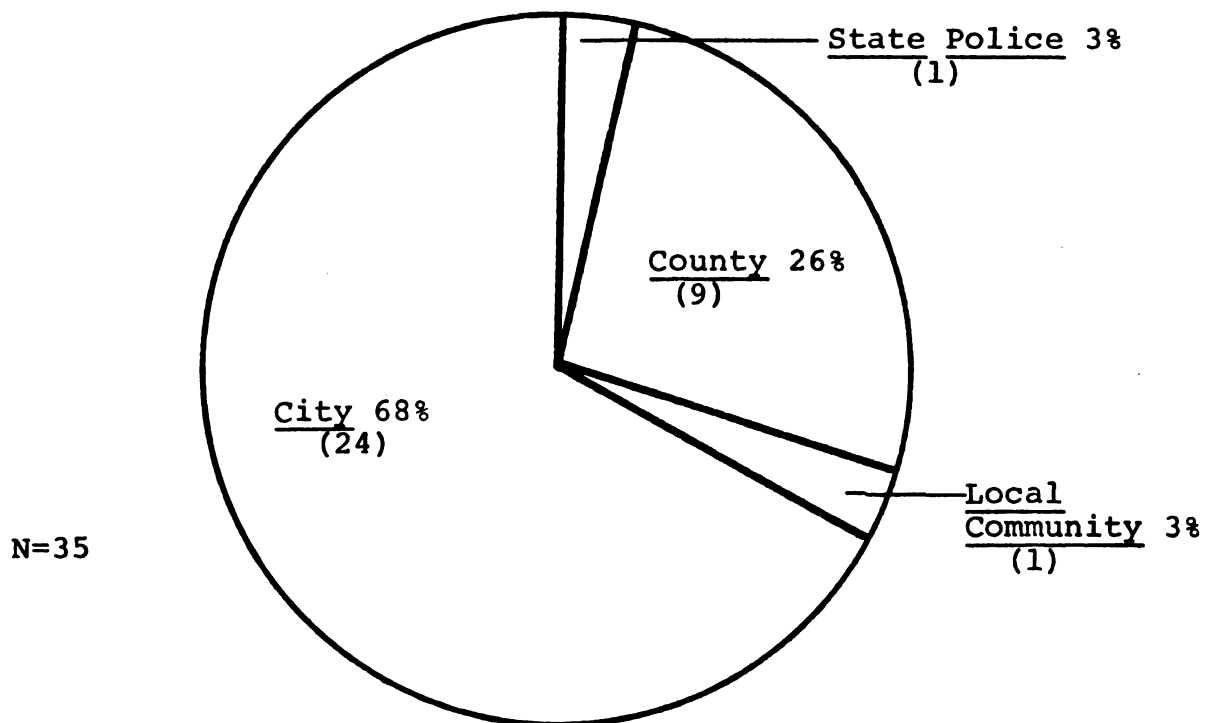
The data revealed that 35 (8%) of total sample (423) responded that their law enforcement agency had faced a legal challenge for unfair employment practices concerning entry selection standards. The remaining respondents 388 (92%), indicated their agency had not been confronted with such a legal challenge.

The thirty-five agencies recorded to have been a party to a legal challenge were categorized by type of agency to indicate the dispersion of agencies which have experienced a legal challenge (Table 4-3). Local Community agencies were recorded to have had only 1 (3%) agency confronted with a legal challenge. The frequency of other type of agencies which also experience legal

challenges are as follows: City 24 (68%); County 9 (26%);
and State Police 1 (3%).

TABLE 4-3

Percentage of Agencies Which Have Had
Legal Challenges - by Type

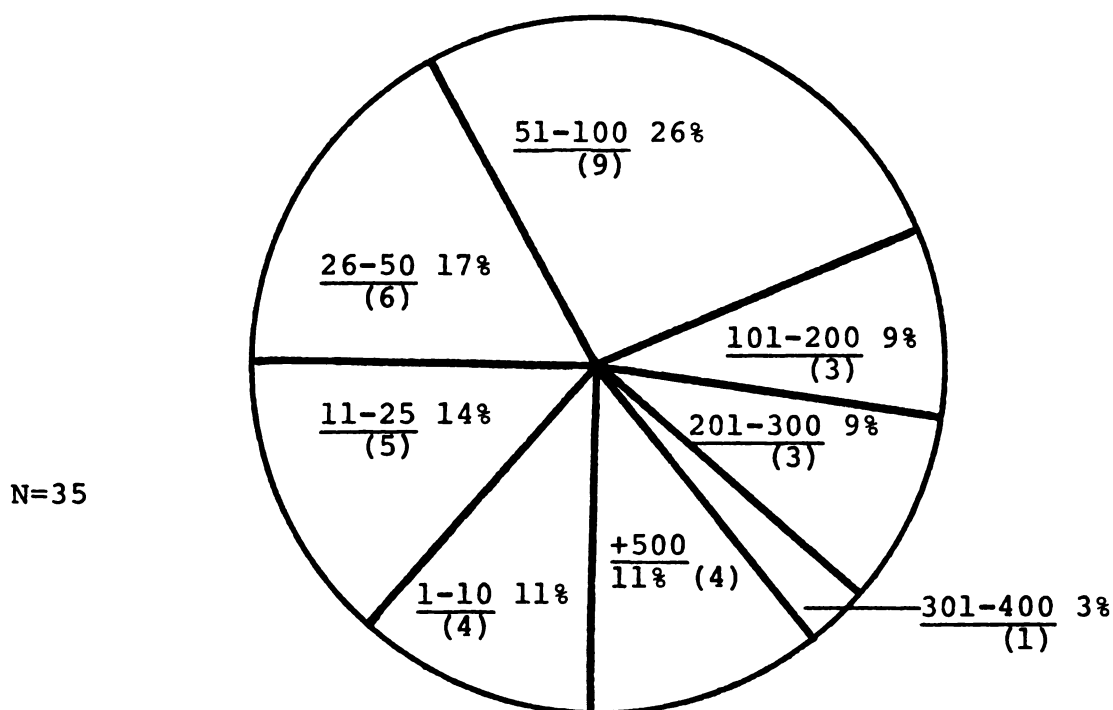


The agencies reporting as having been a party to a legal challenge were categorized by size, to indicate the dispersion of agencies which have experienced a legal challenge (see Table 4-4). The frequency of agencies by size which have had a legal challenge are as follows:

1-10 = 4 (11%); 11-25 = 5 (14%); 26-50 = 6 (17%);
 51-100 = 9 (26%); 101-200 = 3 (9%); 201-300 = 3 (9%);
 301-400 = 1 (3%); and more than 500 = 4 (11%).

TABLE 4-4

Percentage of Agencies Which Have Had
 Legal Challenges - by Size



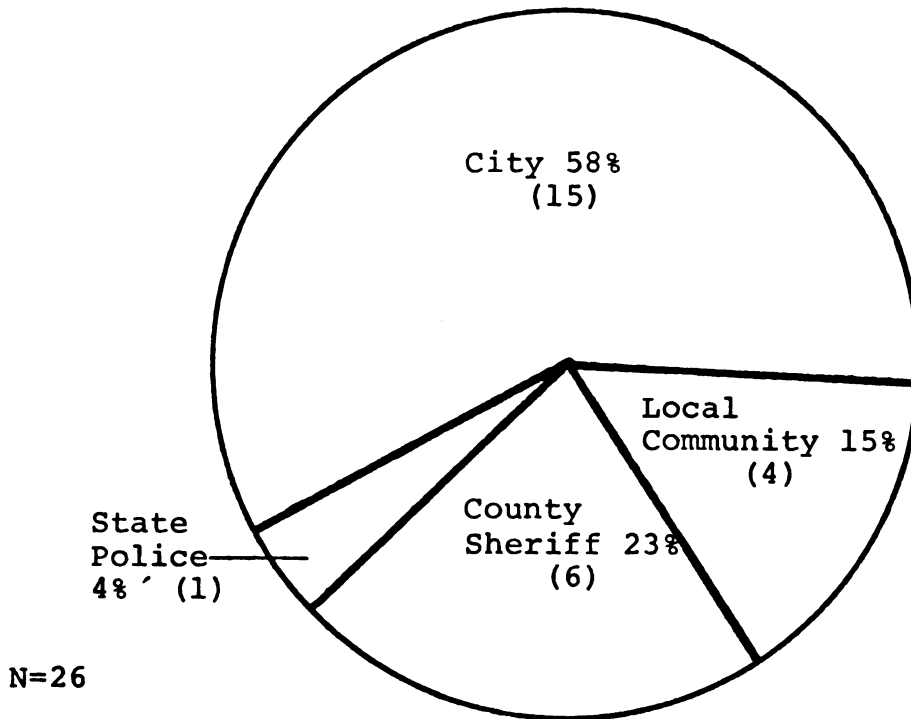
Formal Legal Suits

From the total sample 26 (6%) of the law enforcement agencies surveyed have been a defendant in a formal legal suit, relating to unfair employment practices concerning entry selection standards. The remainder of the agencies either indicated their agency has not been a defendant for such a legal suit (391, 92%), or failed to respond (6, 1%). When asked how many legal suits each agency as a defendant has had, the result was a total of 32 suits considering 24 agency responses. Two agencies failed to indicate the number of legal suits.

The twenty-six (26) law enforcement agencies recorded as being a defendant in a formal legal suit were categorized by type of agency. The dispersion of agencies by type of agency is revealed in the following data: Local Community 4 (15%), City 15 (58%), County 6 (23%), and State 1 (4%). This is shown in Table 4-5.

TABLE 4-5

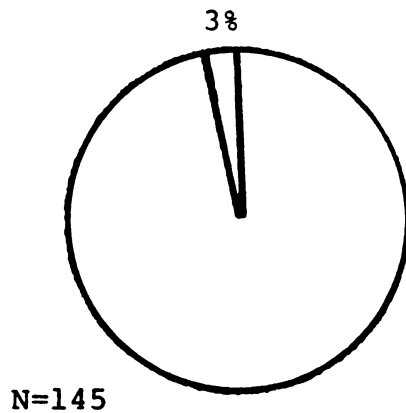
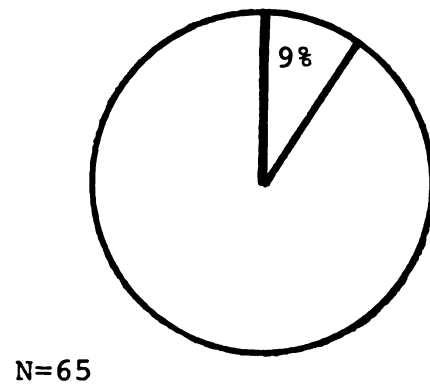
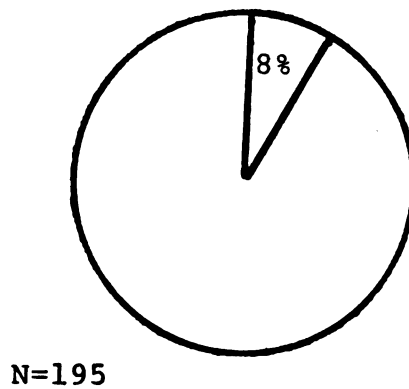
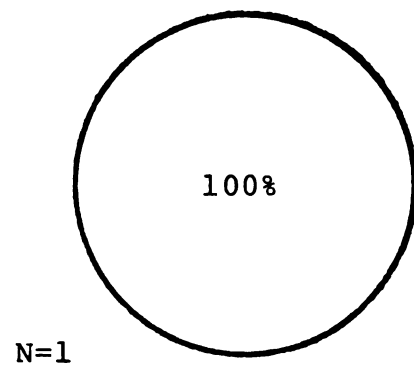
Percentage of Agencies Which Have Had
Legal Suits - by Type



Another way to analyze the data is by calculating the proportion of agencies which have experienced a formal legal suit within each type of agency category. For example, 4 agencies out of 145 Local Community reported having had a formal legal suit. Thus, 3% of the total sample of Local Community agencies had at least one legal suit. The same kind of analysis conducted for the other type of agency categories revealed the following: City $15/195 = 8\%$; County $6/65 = 9\%$; State Police $1/1 = 100\%$. This is shown in Table 4-6.

TABLE 4-6

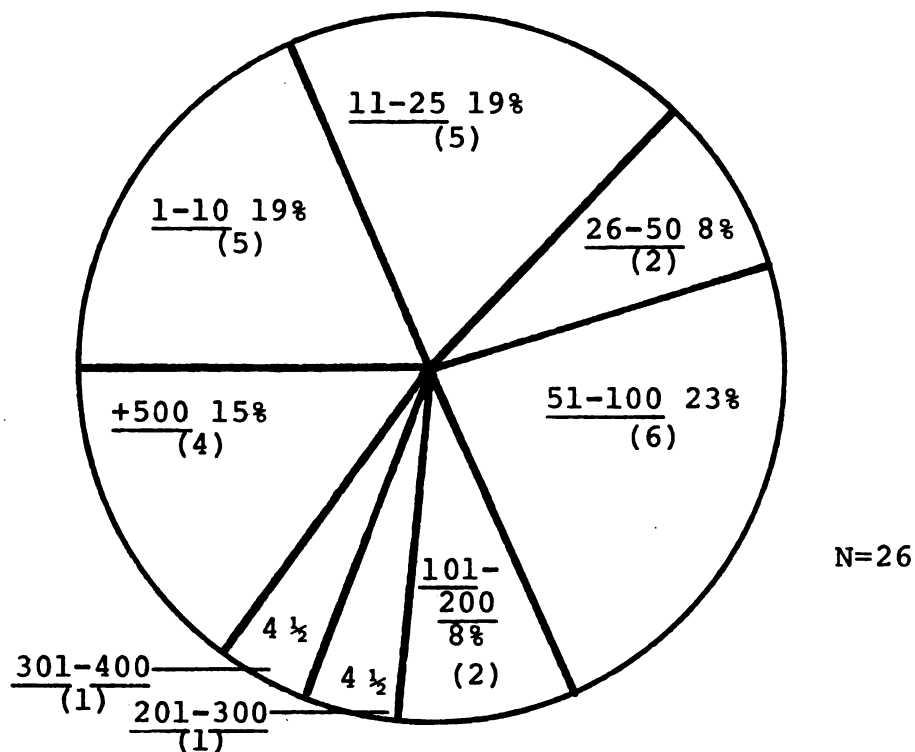
Percentage of Agencies Within Type Categories
Which Have Had Legal Suits

Local Community (4)County Sheriff (6)City (15)State Police (1)

The twenty-six (26) law enforcement agencies recorded as being a defendant in a formal legal suit were categorized by size of agency. The dispersion of agencies by size of agency is revealed in the following data: 1-10 = 5 (19%); 11-25 = 5 (19%); 26-50 = 2 (8%); 51-100 = 6 (23%); 101-200 = 2 (8%); 201-300 = 1 (4 1/2%); 301-400 = 1 (4 1/2%); and more than 500 = 4 (15%). This is shown in Table 4-7.

TABLE 4-7

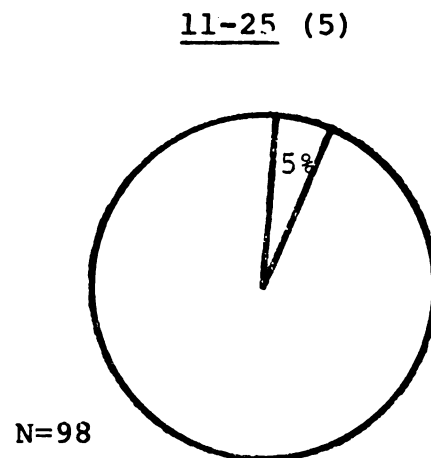
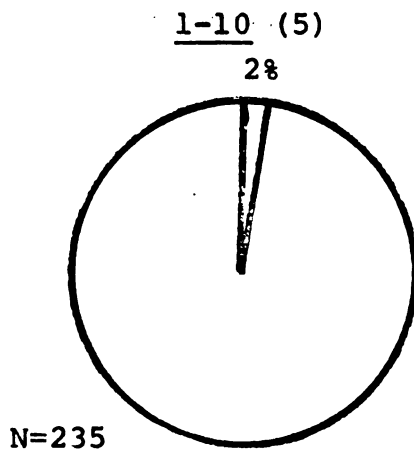
Percentage of Agencies Which Have Had
Legal Suits - by Size

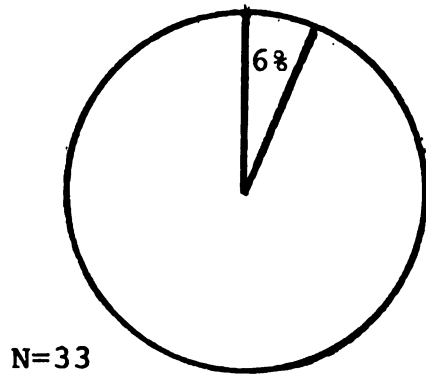
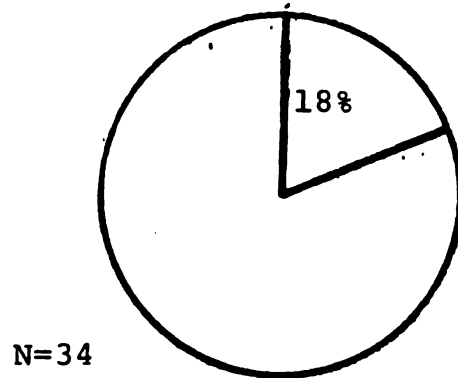
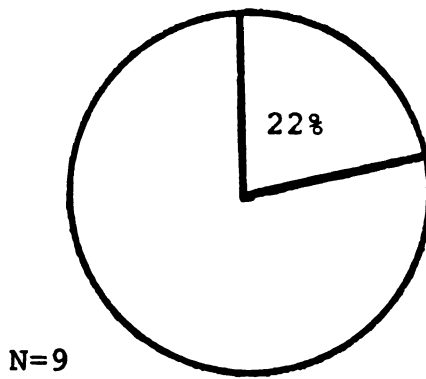
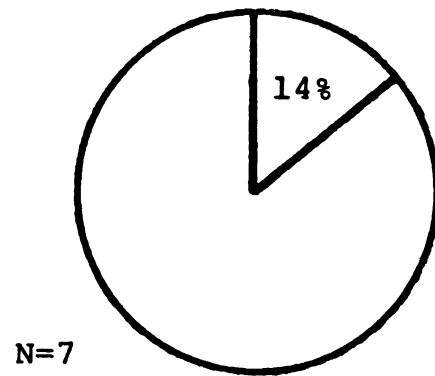
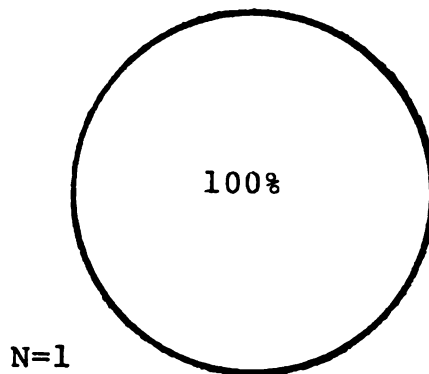
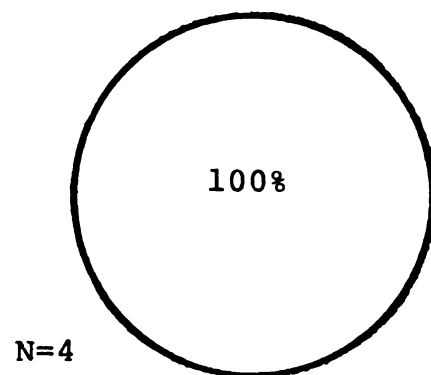


The data can also be described by calculating the proportion of agencies which have experienced a formal legal suit within each size of agency category. For instance, 5 agencies out of 235 in the 1-10 full-time police officers range reported having had a legal suit. Thus 2% of the total sample of agencies ranging from 1-10 full-time police officers had at least one legal suit. The same kind of analysis was conducted for the other size of agency categories revealed the following: 11-25 = 5/98 (5%); 26-50 = 2/33 (6%); 51-100 = 6/34 (18%); 101-200 = 2/9 (22%); 201-300 = 1/7 (14%); 301-400 = 1/1 (100%); and more than 500 = 4/4 (100%). This is shown in Table 4-8.

TABLE 4-8

Percentage of Agencies Within Size Categories
Which Have Had Legal Suits



26-50 (2)51-100 (6)101-200 (2)201-300 (1)301-400 (1)+500 (4)

Legal Suit Decisions

Seventeen (17) agencies responded to the question whether a legal decision concerning any legal suit challenging a selection standard was rendered in favor of the police agency, in favor of the applicant, or both. Eight (47%) agencies reported decisions were in favor of the police agency, 8 (47%) agencies reported decisions were in favor of the applicant and 1 (6%) agency reported decisions were in favor of both police agency and applicant. This is shown in Table 4-9.

Table 4-9. --Formal Legal Suit Decisions.

Decisions (N=17)	Frequency	Relative Frequency
Favor of Police Agency	8	.4706
Favor of Applicant	8	.4706
Favor of Both	1	.0588

Selection Standards In Judicial Question

Law enforcement agencies which had formal legal suits for selection standards were asked to specify what standards were in judicial question. Eighteen (18) agencies responded citing twenty-six (26) instances relating to the nature of the legal suit concerning selection standards. Six (6) categories revealed specific selection standard dimensions judicially challenged. Two (2) other broader categories

(Sex, Race) were necessary since some agency responses were too general to identify what specific standard was in judicial question. The frequency of legal suits for each of the above categories is as follows: Psychological Battery Testing-1; Age-7; Written Test-1; Height-6; Physical Agility Test-3; Education-1; Sex-5; and Race-2. These findings are shown in Table 4-10.

Table 4-10. --Selection Standards in Judicial Question.

Standard (N=26)	Frequency
Psychological Battery Testing	1
Age	7
Written Test	1
Height	6
Physical Agility Test	3
Education	1

Sex	5
Race	2

Summary

The data revealed 35 (8%) of the total sample (423) reported that their law enforcement agency had been confronted with a legal challenge for unfair employment practices concerning entry selection standards. When these agencies reporting legal challenges were categorized according to type of agency, the data indicated that city (24, 68%) and county (9, 26%) agencies accounted for a major proportion (94%) of agencies having been confronted with a legal challenge. The remaining legal challenges were divided among the State Police (1, 3%) and local community agencies (1, 3%).

Agencies having experienced legal challenges were also categorized by size. From the data it was found that overall slightly more larger agencies (51-500 or more police officers) had experienced legal challenges (20, 57%) than smaller law enforcement agencies (15, 43%). However, it should be noted that the larger agencies represent a lesser proportion of police agencies (55, 13%) than the smaller agencies (366, 87%) considering the total sample (421) analyzed by size (Table 4-2). Thus, it is evident a larger agency is more apt to be confronted with a legal challenge for unfair selection standards than a smaller agency.

It was also found that 26 (6%) law enforcement agencies surveyed have been a defendant in a formal legal

suit. A total of 32 suits relating to selection standards were reported by these agencies. When the distribution of agencies have had formal legal suits were divided by type of agency it was found that city (15, 58%) and county (6, 23%) agencies accounted for a major proportion (81%) of Michigan police agencies reporting a formal legal suit. The remaining agencies were dispersed between local communities (4, 15%) and the State Police (1, 4%). When calculating the proportion of agencies which have experienced a formal legal suit within each type of agency (each type of agency being treated as a population), it was found local community agencies were less affected by legal suits (3%) than State Police (100%), county (9%), or city (8%) police agencies.

The law enforcement agencies recorded as being a defendant in a formal legal suit were categorized by size of agency. Larger agencies (51-500 or more police officers) have been defendants slightly more (14, 55%) than smaller agencies (12, 45%). However, by calculating the proportion of agencies which have experienced a formal legal suit within each size of agency category, it was generally found that the larger police agency samples have reported proportionately more than smaller police agency samples to have experienced a formal legal suit (Table 4-8).

Data based on formal legal suits indicated judicial decisions were rendered in favor of the law enforcement

agencies and applicants evenly (Table 4-9). A variety of selection standards were found to have been challenged by a legal suit. Among those specific selection standard dimensions in which legal suit challenges were recorded are Psychological Battery Testing, Age, Written Test, Height, Physical Agility Test, and Education. Age (7), Height (6), and Physical Agility Tests (3) standards were recorded to be involved most frequently in legal suits (Table 4-10).

CURRENT SELECTION STANDARDS

Entry Selection Standards Beyond State Minimum Requirements

The data revealed that 139 (33%) law enforcement agencies in the total sample (423) had minimum entry selection standards beyond State minimum requirements. The remainder of the sample indicated their agency did not exceed state minimum entry level selection standards (274, 68%), or failed to respond (10, 2%).

Selection Standards/Criteria

Twenty-nine (29) various minimum entry level selection standards, or criteria which are used alone to disqualify police candidates were identified by the agencies sampled. Table 4-11 shows the proportion of agencies in the total sample (423) which use such standards alone to disqualify police candidates.

Table 4-11. --Minimum Entry Level Standards/Criteria Used to Disqualify Police Candidates.

Entry Level Standards (N=423)	Frequency	Percentages
Poor general appearance	140	33%
Does not meet minimum age	271	64%
Over maximum age limit	164	39%
Not U.S. citizen	300	71%
Not local resident	69	16%
Does not have high school diploma or equivalent	312	74%

Entry Level Standards (N=423)	Frequency	Percentages
Does not have some college education	15	4%
Does not have Associate Degree	18	4%
Does not have Baccalaureate Degree	3	1%
Has not completed Police Academy Training at a M.L.E.O.T.C. approved school	196	46%
Does not meet minimum height	64	15%
Over maximum weight	56	13%
Obesity	147	34%
Any physical handicap	123	29%
History of homosexuality	191	45%
Substance abuse	248	59%
Failed polygraph test	45	11%
Failed writing ability test	140	33%
Failed reading ability test	133	31%
Failed physical ability test	147	35%
Failed hearing test	179	42%
Failed visual acuity test	167	40%
Failed examination by a licensed physician	324	77%
Failed psychiatric written examination	41	9%
Failed written examination (general intelligence test, etc.)	184	44%
Felony conviction	353	84%
Misdemeanor conviction	59	14%
Arrest record	174	41%
Failed examination by a licensed psychologist	76	18%

Adequacy Of Michigan Law Enforcement Officers Training
Council Selection Standards

The total sample (423) of law enforcement agencies surveyed was asked if the present M.L.E.O.T.C. selection standards for police candidates are adequate. Three hundred seven (307, 80%) agencies agreed the M.L.E.O.T.C. selection standards are adequate, whereas seventy-four (74, 18%) indicated the contrary. The remaining twelve (12, 3%) agencies did not respond to the question.

Minimum Age Restriction

Law enforcement agencies were asked in which age category, if any, their minimum age restriction for police officer candidates is located. The findings, based on 423 agencies sampled, revealed that 115 (27%) agencies had the minimum age restriction set at age 18. The same kind of analysis was conducted for different minimum age categories and resulted in the following findings:

19-20 = 25 (6%); 21-22 = 230 (54%); 23-24 = 5 (1%);
 25-26 = 1 (.2%); Other = 11 (3%); and no response 36 (9%).
 These findings are shown in Table 4-12.

Table 4-12. --Minimum Age Restriction for Sampled Agencies.

Age (N=423)	Frequency	Relative Frequency
18	115	0.272
19-20	25	0.059
21-22	230	0.544
23-24	5	0.012
25-26	1	0.002
Other	11	0.026
No Response	36	0.085

Maximum Age Restriction

Law enforcement agencies were asked in which age category their maximum age restriction for police officer candidates is located. The findings, based on 423 sampled agencies, indicated 97 (23%) agencies had the maximum age restriction set at 35 and older. The same kind of analysis revealed the following: 40 and Older = 23 (5%); 45 and Older = 20 (5%); 50 and Older = 34 (8%); 60 and Older = 23 (5%); 65 and Older = 28 (7%); Other = 46 (11%). These findings are shown in Table 4-13.

Table 4-13. --Maximum Age Restriction for Sampled Agencies

Agency (N=423)	Frequency	Relative Frequency
35 and Older	97	0.229
40 and Older	23	0.054
45 and Older	20	0.047
50 and Older	34	0.080
60 and Older	23	0.054
65 and Older	28	0.066
Other	46	0.109
No Response	152	0.359

Uncorrected Visual Acuity Standards

Michigan law enforcement agencies were asked what, if any, uncorrected visual acuity standard their agency has. Based on 423 sampled agencies the data revealed that 45 (11%) agencies have an uncorrected vision requirement of 20/20. The same kind of analysis for different uncorrected visual acuity standard categories resulted in the additional findings: 20/30 = 21 (5%); 20/40 = 84 (20%); 20/50 = 20 (5%); 20/60 = 6 (1%); 20/80 = 1 (.2%); Other = 24 (6%); and No Response = 222 (53%). These findings are shown in Table 4-14.

Table 4-14. --Uncorrected Visual Acuity Standards

Vision (N=423)	Frequency	Relative Frequency
20/20	45	0.106
20/30	21	0.050
20/40	84	0.199
20/50	20	0.047
20/60	6	0.014
20/80	1	0.002
Other	24	0.057
No Response	222	0.525

Responsibility of Setting Selection Standards

Michigan law enforcement agencies were asked who was responsible for setting selection standards for police candidates. The data obtained from 423 agencies sampled indicated that 62% (263) set their own standards, 10% (40) indicated civil service or a personnel department set entry standards; 9% (39) of the agencies stated that both they themselves and the civil service/personnel department set entry standards; and 12% (50) reported someone else, or some combination "other" than the above categories set entry standards. "Other" category when checked usually was followed by a specification that some civil body (i.e., town council, or mayor) set entry standards for police officers. Thirty-one (31, 7%) agencies did not respond to this question. This data is shown in Table 4-15.

Table 4-15. --Whose Responsibility for Setting Selection Standards.

Whose Responsibility (N=423)	Frequency	Relative Frequency
Police Agency	263	0.622
Civil Service/Personnel	40	0.095
Both Jointly	39	0.092
Other	50	0.118
No Response	31	0.073

Summary

The data revealed that 33% (139) of the law enforcement agencies in the total sample (423) had minimum entry selection standards beyond State minimum entry level selection standards. Of the total sample surveyed, 80% (74) indicated the contrary. Although there was a substantial agreement that state standards are adequate, it was found that a variety of selection standards stipulated in the "Michigan Law Enforcement Training Council Act of 1965," as amended, were not used by many police agencies, by their own statement. It was also shown that there is a large variation in selection standards/criteria used to disqualify police applicants throughout Michigan police agencies sampled.

A closer analysis of specific standards resulted in some interesting findings. Minimum age restrictions, for instance, were set higher than the age of majority by most police agencies (Table 4-12). Maximum age restrictions varied considerably from agency to agency (Table 4-13). It was also found that uncorrected visual acuity standards varied throughout Michigan police agencies considerably: 11% (45) of the agencies require police candidates to meet a 20/20 uncorrected visual selection standard.

Further inquiry relating to selection standards revealed that police agencies are not often solely responsible for

setting entry selection standards. It was found that civil service, personnel departments, or civil bodies may set selection standards alone or may do so jointly with the police agency.

PRESENT STATUS OF VALIDATION STUDIES

Michigan law enforcement agencies were questioned as to their present status concerning validation of selection qualifications through a job-related validation study. The total sample was 423 agencies. Six categories were developed to ascertain the present status of validation studies among agencies. One additional category was added to indicate non-responding agencies. Table 4-16 shows the frequency of law enforcement agencies responding to each category.

Table 4-16. --Validation Study Regarding Selection Standards

Present Status (N=423)	Frequency	Relative Frequency
Yes: have conducted a validation study.	32	0.076
Yes: have validated by adopting study done by another police department.	11	0.026
No: but currently participating in a validation study.	20	0.047
No: but plan to conduct a validation study in the future.	29	0.069
No: do not plan to conduct a validation study unless absolutely necessary (example-a court order to do so).	105	0.248
No: but would consider with more information	225	0.532
No Response	1	0.002

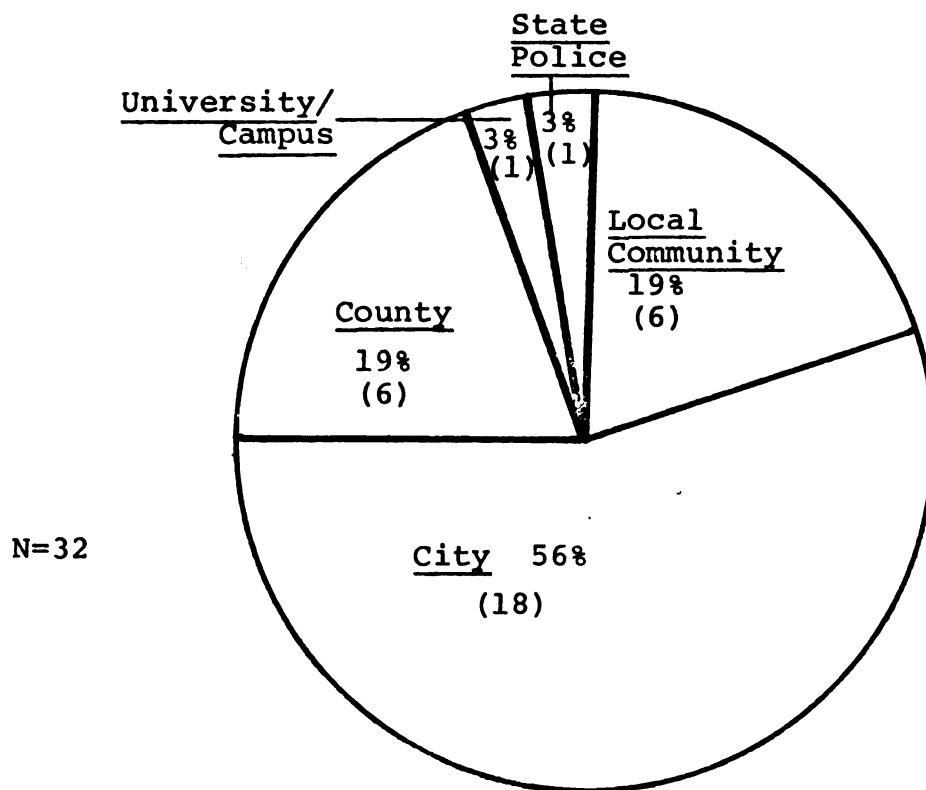
Agencies Which Have Conducted A Validation Study

The previous table (Table 4-16) shows that overall 32 (8%) of the total sample of Michigan law enforcement agencies had stated they had conducted a job-related validation study. In order to obtain a clearer picture of the extent of validation studies among sampled agencies an analysis was conducted by categorizing by type and size of agency.

Thirty-two (32) sampled agency respondents, which indicated their agency has conducted a validation study, were categorized by type of law enforcement agency. The analysis revealed the following dispersion of such agencies: Local Community 6 (19%); City 18 (56%); State Police 1 (3%); University/Campus 1 (3%) and County 6 (19%). Table 4-17 sets forth these findings.

TABLE 4-17

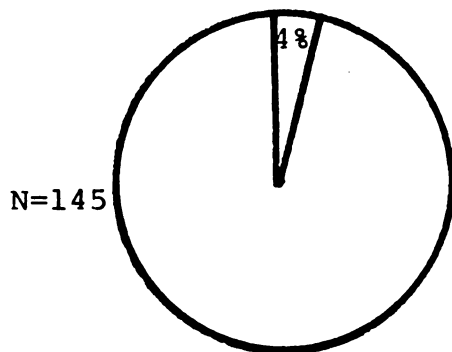
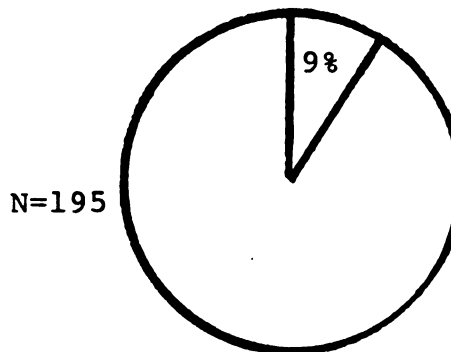
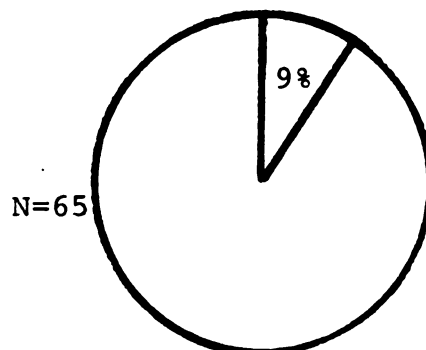
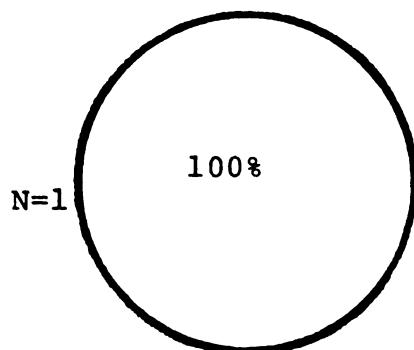
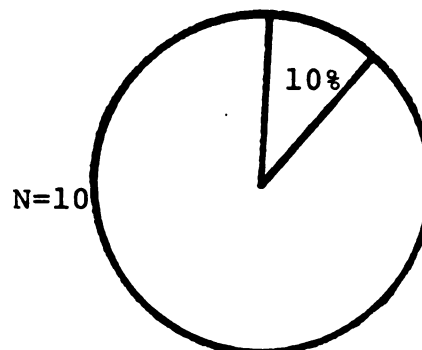
Dispersion of Agencies Which Have
Conducted a Validation Study



The data can also be analyzed by computing the proportion of agencies which have conducted a validation study within each type of agency category. For example, 6 agencies out of 145 Local Community law enforcement agencies had conducted a validation study. Thus 4% of the Local Community agencies sampled have conducted a validation study. The same kind of analysis was conducted for the other type of agency categories and revealed the following: City 18/195 (9%); County 6/65 (9%); State Police 1/1 (100%); and University/Campus 1/10 (10%). Table 4-18 shows these findings.

TABLE 4-18

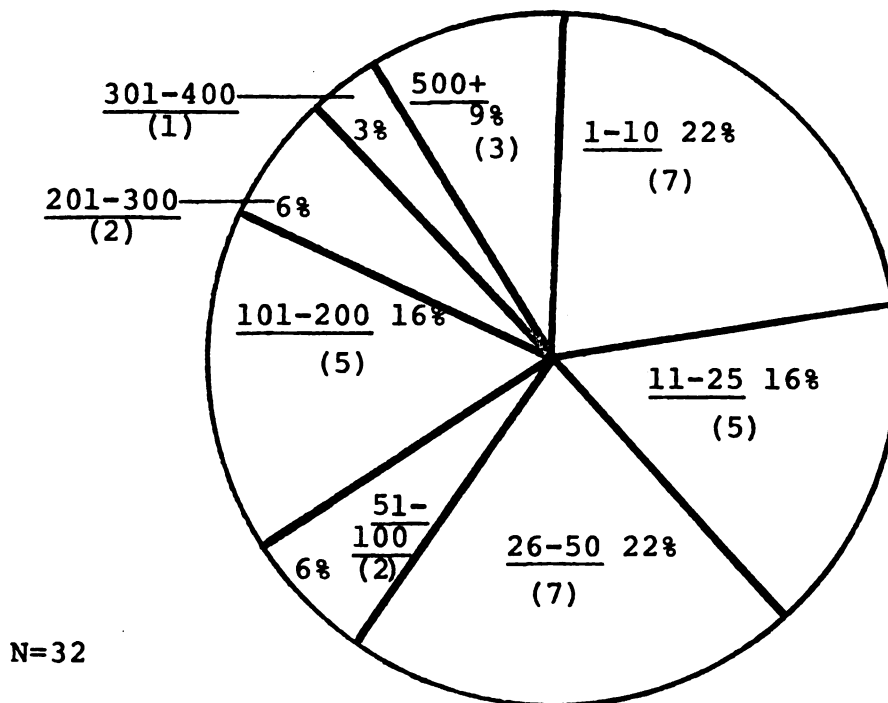
Agencies Which Have Conducted a Validation Study
Within Each Type of Agency Category

Local Community (6)City (18)County (6)State (1)University/Campus (1)

Thirty-two (32) sampled agency respondents, who indicated their agency has conducted a validation study, were categorized by size of law enforcement agency. The analysis indicates the following dispersion of agencies which have conducted a validation study: 1-10 = 7 (22%); 11-25 = 5 (16%); 26-50 = 7 (22%); 51-100 = 2 (6%); 101-200 = 5 (16%); 201-300 = 2 (6%); 301-400 = 1 (3%); and more than 500 = 3 (9%). Table 4-19 shows these findings.

TABLE 4-19

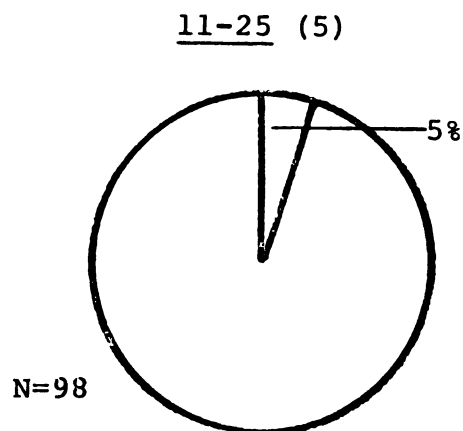
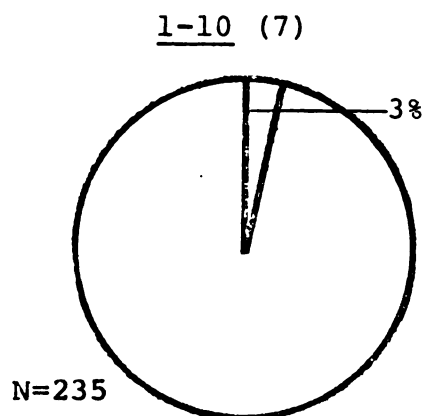
Agencies Which Have Conducted a
Validation Study - by Size

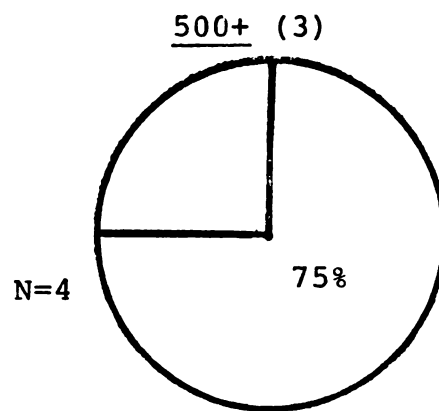
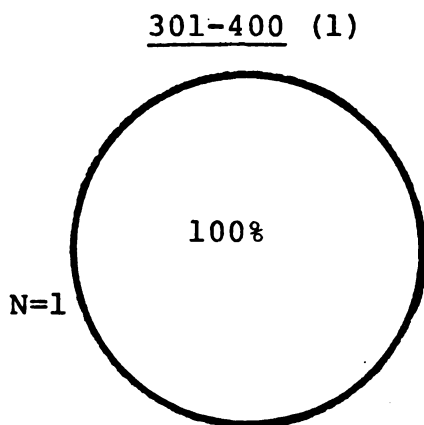
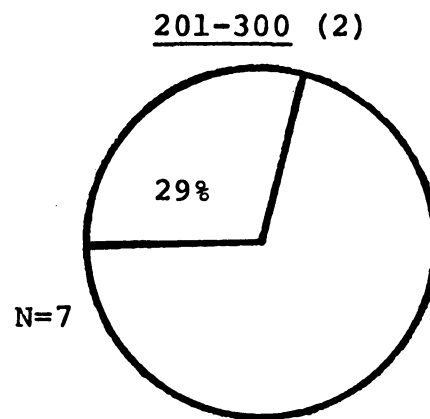
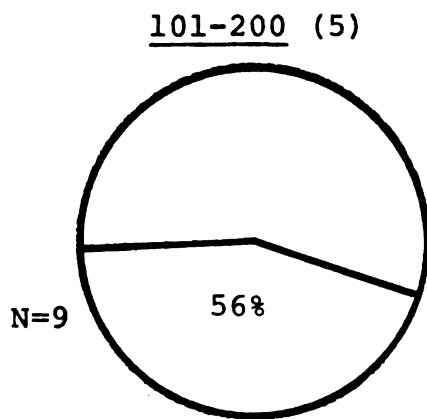
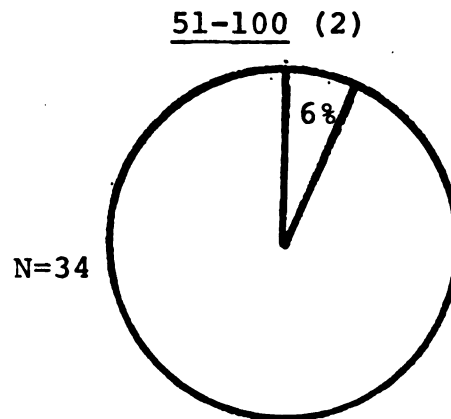
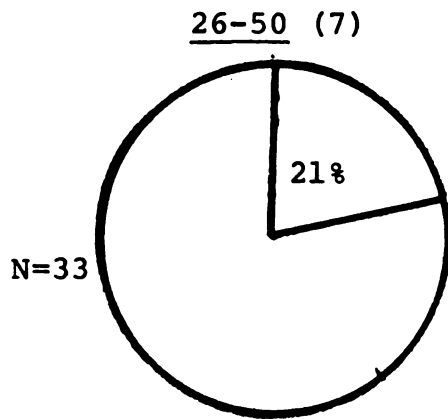


The proportion of agencies which have conducted a validation study was computed within each size of agency category. For instance, 3% of the sample, or 7 agencies out of 235 in the range of 1-10 full-time police officer strength reported having conducted a validation study. The same kind of analysis was conducted for the other sizes of agency categories showed: 11-25 = 5/98 (5%); 26-50 = 7/33 (21%); 51-100 = 2/34 (6%); 101-200 = 5/9 (56%); 201-300 = 2/7 (29%); 301-400 = 1.1 (100%); and more than 500 = 3/4 (75%). Table 4-20 shows these findings.

TABLE 4-20

Agencies Within Size Categories Which Have
Conducted a Validation Study





Adopting a Validation Study

Eleven (11) law enforcement agencies (3%) from the total sample (423) reported that their agency had adopted a validation done by another police department (Table 4-16). Table 4-21 and 4-22 show the dispersion of agencies which have adopted validation studies by both type and size of agency.

Table 4-21. --Type of Agency Adopting Validation Study

Agency	Frequency	Relative Frequency
Local Community	6	0.545
City	3	0.273
County	1	0.091
Conservation/Park	1	0.091

Table 4-22. --Size of Agency Adopting Validation Study

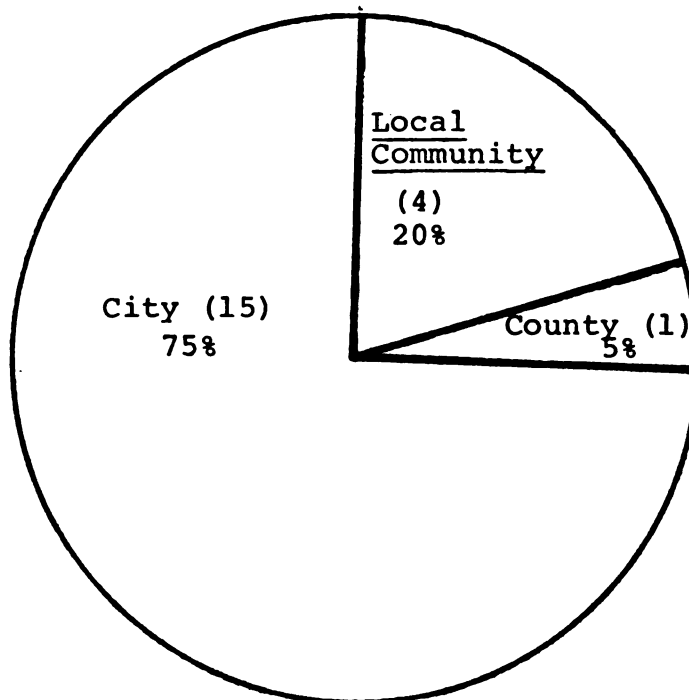
Agency	Frequency	Relative Frequency
1-10	5	0.455
11-25	1	0.091
26-50	1	0.091
51-100	1	0.091
201-300	1	0.091
+500	1	0.091
No Response	1	0.091

Currently Participating in a Validation Study

Twenty (20) law enforcement agencies, which represented 5% of the total sample (423), reported their agency was currently participating in a job-related validation study. An analysis was conducted by categorizing the above twenty agencies by type and size. Tables 4-23 and 4-24 show the dispersion of the agencies.

TABLE 4-23

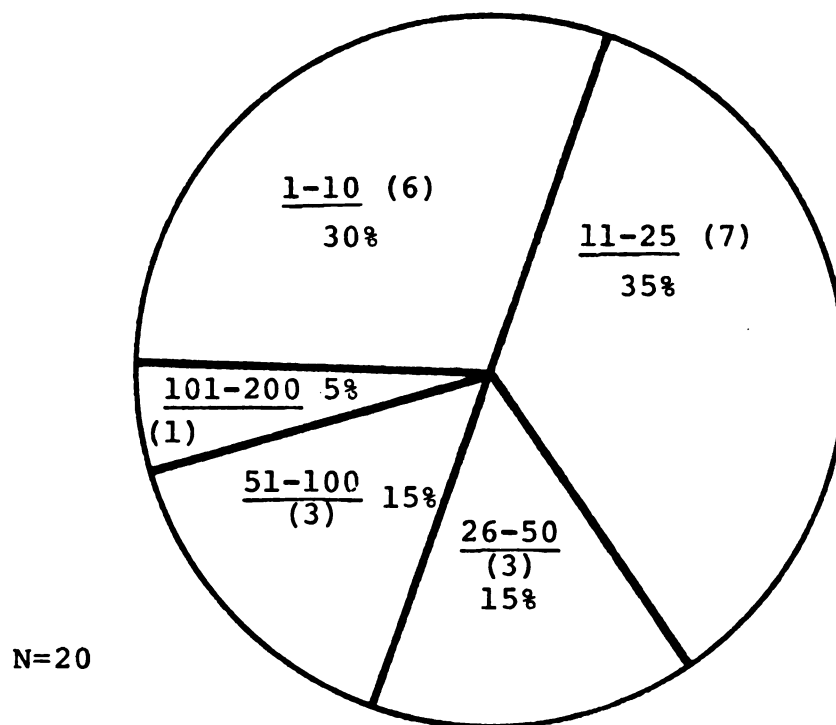
Type of Agency Participating in a Validation Study



N=20

TABLE 4-24

Size of Agency Participating in a Validation Study



Changes In Entry Selection Standards Due to a
Validation Study

Forty-three (43) law enforcement agencies which indicated their agency has either conducted or adopted a validation study were asked if any changes in selection standards occurred as a result. Forty-one (41) agencies responded to the question: two (2) agencies did not. Fourteen (14) agencies reported changes in entry selection standards due to a validation study, while twenty-seven (27) reported no changes.

Those agencies which reported changes in their selection standards were asked to specify where the changes were made in their selection process. Although several agencies did not specify the changes precisely enough to construct specific categories for all replies, eight (8) categories were developed to illustrate where agencies have tended to change selection standards. The number of agencies changing standards in various categories of the selection process is shown in Table 4-25.

Table 4-25. --Changes in Selection Standards/Process

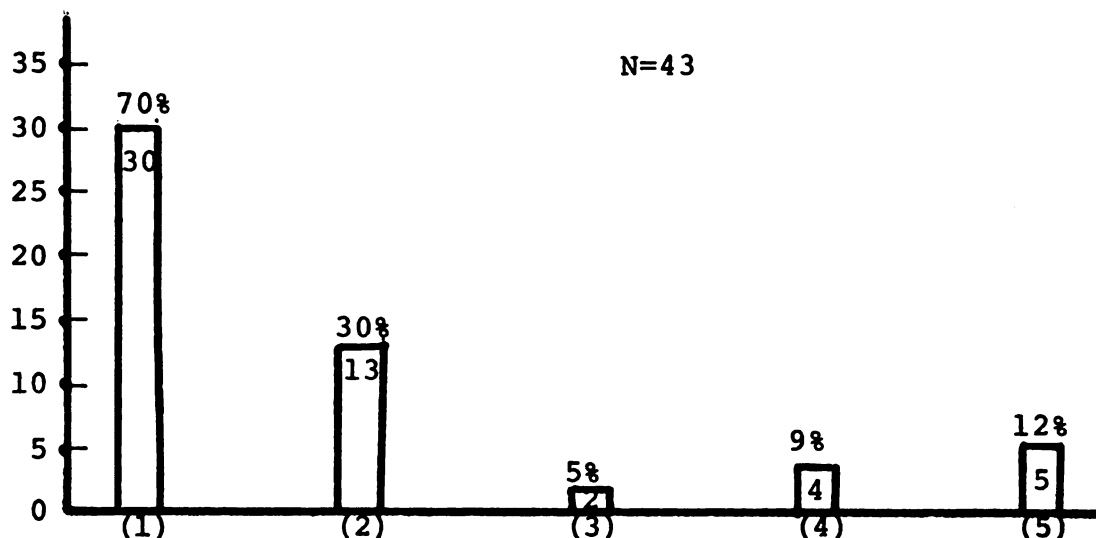
Type of Change (N=14)	Frequency
Background Investigation	1
Written Test	5
Physical Agility Test	6
Oral Examination	2
Height/Weight	1
Education/Training	1
Standards for Females	1
Other General Test Revisions	3

Why Agencies Decided To Conduct a Validation Study

Forty-three (43) agencies which indicated that they had either conducted or adopted a validation study were asked why they wanted to make use of such a study. The question (question 0) was originally designed to rank order answers. However, since most responding agencies failed to rank order their answers, the data is set forth in terms of the proportion of agencies indicating that the answer had an influential part in the decision to validate selection standards by a job-related study. The general findings are set forth in Table 4-26.

TABLE 4-26

Influential Reasons to Use a Validation Study

Categorical Key to Table 4-26.

- 1- Such a study would provide entry level selection qualifications necessary to predict future job performance. Thus, such a study would minimize the likelihood of selecting a poor performer.
- 2- Anticipated legal action against our agency for unfair employment practices and therefore needed a legal defense.
- 3- Court order to do so.
- 4- Was invited to participate in a joint job-related validation study.
- 5- Other

Entire Selection Process Validated

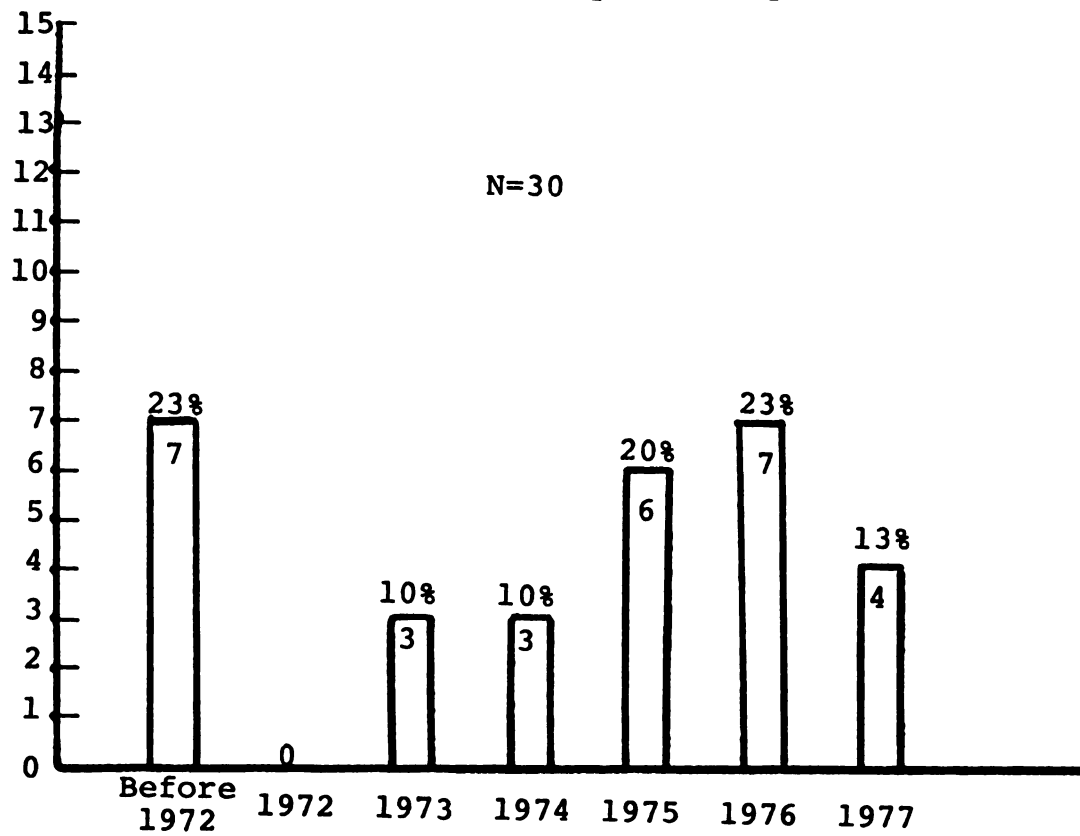
Law enforcement agencies (43) which indicated their agency has either conducted or adopted a validation study were asked if both selection standards and procedures were validated for each step of the selection process. Thirty (30) answered that each step of the selection process was validated. Therefore 70% of the above agencies claim to have their agency's entire selection process validated.

When Validation Study Was Completed

Law enforcement agencies (32) which have actually conducted a job-related validation study were asked when their study was completed. Seven yearly categories were provided for respondents. Thirty (30) of the agencies reported what year their agency's study was completed, while two (2) agencies failed to respond to the question. The number of agencies recorded in each category is as follows: Before 1972 = 7 (23%); 1972 = 0; 1973 = 3 (10%); 1974 = 3 (10%); 1975 = 6 (20%); 1976 = 7 (23%); 1977 = 4 (13%); and no response = 2. The above is shown in Table 4-27.

TABLE 4-27

Year Validation Study Was Completed



Why Agencies Decided Not To Conduct A Validation Study

Law enforcement agencies (380) indicating their agency has not conducted or adopted a validation study were asked the reason for their decision. Responses fell into six categories. Answers were rank ordered by indicating the prime reason with the number 1, second reason 2, etc. Those answers only checked and not provided numerical value were assigned the numerical weight of 1, or primary reason. Each category is treated in a separate table.

The first category comprises those agencies (210) which did not conduct a validation study because they believed their present standards to be fair and reliable. The rank ordered value indicating the influence of the above reason for not conducting a validation study is provided in Table 4-28.

Table 4-28. --Agencies Believe Standards are Fair and Reliable

Rank (N=210)	Frequency
1	179
2	22
3	7
4	2
5	0
6	0

The second category comprises those agencies (124) that were not aware of their responsibility to conduct such a study. The rank ordered value indicating the influence of the above reason for not carrying out a validation study is recorded in Table 4-29.

Table 4-29. --Agencies Not Aware of Responsibility to Conduct a Validation Study

Rank	(N=124)	Frequency
1		94
2		19
3		7
4		1
5		3
6		0

The reason expressed in the third category indicates those law enforcement agencies (88) which do not anticipate any legal challenges or formal legal suits for unfair employment practices. The influence of the above reason for not conducting a validation study is recorded in Table 4-30 by rank ordered value.

Table 4-30. --Agencies Which Do Not Anticipate Legal Problems For Unfair Employment Practices.

Rank	(N=88)	Frequency
1		40
2		22
3		16
4		7
5		3
6		0

The fourth category comprises the agencies (62) which believed their selection standards would stand up against a legal challenge. The rank ordered values indicating the influence of the above reason for not conducting a validation study is recorded in Table 4-31.

Table 4-31. --Agencies Which Believe Standards Will Stand a Legal Challenge

Rank	(N=62)	Frequency
1		29
2		15
3		11
4		6
5		1
6		0

The fifth category comprises those agencies (162) reporting a lack of monetary or personnel resources for conducting a validation study. The influence of this reason is given in Table 4-32 by rank ordered values.

Table 4-32. --Agencies Lacking Resources

Rank	(N=162)	Frequency
1		107
2		33
3		15
4		5
5		2
6		0

The sixth category comprises those agencies (20) which reported other reason(s) for not conducting a validation study besides those provided in the prior five categories. The rank ordered values indicating the influence of other reason(s) is recorded in Table 4-33.

Table 4-33. --Agencies Having Other Reasons for Not Conducting a Validation Study

Rank	(N=20)	Frequency
1		16
2		2
3		1
4		0
5		0
6		1

An overview of these last six categories by comparison is given in Table 4-34. It shows the proportion of agencies which did not conduct a validation study because of or partly due to the reasons expressed in the prior six tables.

Table 4-34. --Overview of Influential Reasons for Not Validating

Reasons (N=380)	Frequency	Relative Frequency
Agencies Believe Standards Are Fair and Reliable	210	.553
Agencies Not Aware Of Responsibility To Conduct A Validation Study	124	.330
Agencies Do Not Anticipate Legal Problems For Unfair Employment Practices	88	.232
Agencies Believe Standards Will Stand A Legal Challenge	62	.163
Agencies Lacking Resources	162	.430
Agencies Having Other Reasons	20	.053

Compliance With Title VII Of The 1964 Civil Rights Act

The total sample (423) of law enforcement agencies were asked if their agency is having difficulty complying with the requirements of Title VII of the 1964 Civil Rights Act as it now applies to state and local governmental employers under the Equal Employment Opportunity Act of 1972. Thirty-four (34, 8%) agencies admitted having difficulty complying with Title VII, whereas three hundred nine (309, 73%) agencies indicated their agency was having no such difficulty. Another thirty-one (31, 7%) agencies reported their agency was unaware of Title VII, and the remaining forty-nine (49, 12%) agencies failed to respond. Table 4-35 shows the dispersion of agencies.

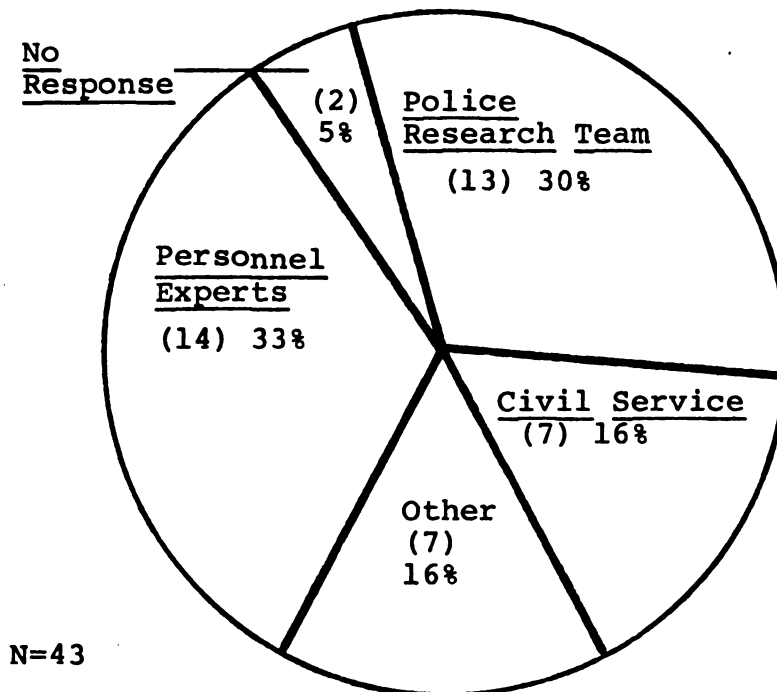
Table 4-35. --Compliance with Title VII

Response (N-423)	Frequency	Relative Frequency
Having Difficulty Complying With Title VII	34	0.080
No Difficulty Complying	309	0.730
Unaware of Title VII	31	0.073
No Response	49	0.116

Who Conducted The Validation Study

Forty-three (43) law enforcement agencies which reported having either conducted or adopted a validation study were asked who had conducted the study. Forty-one (41) agencies responded to the questions while two (2) agencies failed to reply. The number of reporting agencies which conducted the validation study is: Police Research Team 13 (30%), Civil Service 7 (16%), Personnel Expert (such as a consultant firm) 14 (33%), Other 7 (16%), and No Response 2 (5%). These findings are shown in Table 4-36.

TABLE 4-36

Who Conducted the Validation Study

Summary

The data indicated 8% (32) of the law enforcement agencies surveyed have conducted a job-related validation study. It was found that city agencies represent the largest proportion (56%); county (19%) and local community (19%) agencies, at the same percentage level, represent the second major proportion of agencies which have conducted a validation study, with State Police (3%) and university/campus (3%) agencies following. Each agency category being treated as a population revealed that proportionately less local community agencies (4%) have conducted a validation study than State Police (100%), university/campus (10%), city (9%), and county (9%) law enforcement agencies (Table 4-18).

Agencies having conducted a validation study were categorized by size (Table 4-19 and 4-20). Larger agencies (51-500 or more police officers) were found to have conducted a validation study proportionately less (41%, 13) than smaller agencies (59%, 19). However, when each size of agency category was treated as a population in and of itself, it was found proportionately more agencies within the four larger agency populations (100-200=56%, 201-300=29%, 301-400=100%, 500 or more=75%) have conducted a validation study, as opposed to small size populations. The two smallest populations (1-10=3% and 11-25=5%) had proportionately fewer agencies within their population which have conducted a

validation study.

It was found that 3% (11) of the 423 agencies sampled have adopted a validation study from another agency. Generally the data also demonstrated more local community agencies (6) have done so than other type of agencies (Table 4-21). Overall, agencies ranging from 1-10 in size (6) were found to have adopted a validation study more than larger size law enforcement agencies (Table 4-22).

Twenty (20) law enforcement agencies, which represent 5% of the total sample, reported their agency was currently participating in a study. Analyzing the above agencies by type revealed more city agencies (15, 75%) were participating than local community (4, 20%) and county (1, 5%) law enforcement agencies. When analyzed by size of agency it was found smaller agencies (1-10=30%, 11-25=35%, and 26-50=15%) were participating in a validation study proportionately more (80%) than larger agencies (51-100=15%, 101-200=5%).

Of the 43 law enforcement agencies reporting to have conducted or adopted a validation study, 27 (63%) indicated changes were subsequently made in their entry selection standards for police candidates. The selection standards most frequently changed were physical agility tests (6), and written tests (5). Background investigation (1), oral examinations (2), height/weight requirements (1), education/training standards (1), standards for females (1) and other general test revisions (3) were also specified as having

been changed as a result of a validation study.

Of those agencies indicating their agency has conducted or adopted a validation study, the majority of agencies (30, 70%) were influenced to do so because their agency believed such a study would provide entry level selection qualifications to predict future job performance. Thus, such a study would minimize the chance of selecting a poor performer. The second major reason to obtain a validation study was anticipation of legal action for unfair employment practices and the need for a legal defense by the agency. Other agencies reported they were influenced to conduct a validation study by an invitation from another agency to participate jointly in such a study (4, 9%), a court order to do so (3, 5%), or some other reason (5, 12%). It was also found that a personnel expert such as a consultant firm (30%), or police research team (30%) was most apt to have conducted a validation study for the agency (Table 4-36).

Thirty (30), or 70%, of the law enforcement agencies which have conducted or adopted a validation study replied that both selection standards and procedures were validated for each step of the selection process. These agencies were asked when their study was completed and their responses were recorded graphically. Since 1972 there was a general increase in the amount of validation studies (Table 4-27). It should be noted that the list of validation studies

completed in 1977 is not exhaustive, since the survey was conducted in August 1977. Twenty (20) agencies at the time of the survey indicated their agency was currently participating in a validation study. Some of these agencies may complete the study before 1978.

Law enforcement agencies (380) responding that they had not conducted or adopted a validation study indicated the reason why they decided not to do so. The five primary reasons, in order of importance, are: agencies believe their selection standards are fair and reliable, agencies lacked monetary and personnel resources, the agency is not aware of the responsibility, the agency does not anticipate legal problems for unfair employment practices, and the agency believes its standards will stand a legal challenge (Tables 4-28 thru 4-34).

The majority of law enforcement agencies (309, 73%) reported having no difficulty complying with Title VII of the 1964 Civil Rights Act. However, 8% (34) of the agencies admitted having difficulty. Another 7% (31) of the agencies indicated they were unaware of Title VII (Table 4-35).

CHAPTER V

SUMMARY AND CONCLUSIONS

SUMMARY

Purpose

Since 1921, when August Vollmer developed stringent selection standards for police candidates, such standards have been based heavily on human assumptions of what makes a good police officer. Today, job-related validation studies provide a scientific alternative for developing selection standards.

Many police departments have conducted validation studies in order to develop or affirm that existing minimum entry level selection standards are fair and reliable. State and federal fair employment guidelines and regulations have directed such studies be implemented by employers to assure their selection process does not unfairly exclude protected groups. However, the extent and impact of validation studies upon police departments and their selection standards should be investigated.

Method

Survey questionnaires were distributed to all known police agencies in Michigan (N=607) with at least one full-time police officer. 423 agencies responded. The questionnaire was composed of various questions on the extent and

impact of validation studies upon agencies and their selection standards for police candidates. Other questions concerning the state of the art of police selection were also included.

Quantitative and qualitative variables were measured by frequency counts. Proportional tables and graphs were constructed to illustrate the findings. An additional rank order method was used to measure certain qualitative variables. An analysis of the sample according to agency type and size was performed on pertinent questions in order to make comparisons.

Results

Thirty-five (8%) police agencies have faced a legal challenge for unfair employment practices concerning entry selection standards and 26 (6%) agencies have been defendants in formal legal suits for allegedly having unfair selection standards. City and county agencies have experienced proportionately more legal challenges and formal legal suits than other types of agencies. Slightly more larger agencies (51-500 or more police officers) have experienced legal challenges and formal legal suits than smaller agencies. Judicial decisions were rendered in favor of the law enforcement agencies and applicants evenly.

Although there was substantial agreement that state selection standards are adequate, it was found that

many standards were not reported to be used by many police agencies to select police candidates.

Throughout Michigan police agencies, a large variation was found in selection standards/criteria used to disqualify police candidates. Furthermore, police agencies, themselves are often not solely responsible for developing selection standards.

Validation studies were reported to have been conducted by 32 (8%) police agencies. City agencies represent the largest proportion (56%) of agencies having conducted a study. Another 11 (3%) agencies have adopted a study. Of the 43 agencies having conducted or adopted a validation study, 27 (63%) indicated changes were made in their agency's entry selection standards. A general increase in validation studies has occurred since 1972. Police agencies indicated various reasons for either conducting or not conducting a study.

CONCLUSIONS

As a result of the analysis, certain conclusions can be made concerning the extent and impact of job-related validation studies upon the selection standards of Michigan police agencies. Other conclusions can also be made about the state of the art of police selection in Michigan.

State of the Art of Police Selection in Michigan

Legal Challenges and Formal Legal Suits

1. A significant number of law enforcement agencies sampled have reported having had a legal challenge or a formal legal suit relating to selection standards.
2. More city agencies have experienced a legal challenge and a formal legal suit than other types of agencies.
3. Proportionately more agencies within each county and city type of agency have experienced a formal legal suit than within other types of agencies.
4. It was found that larger police agency categories (>51 police officers) have reported proportionately more than smaller police agency categories to have experienced a formal legal suit.
5. Judicial decisions concerning selection standards were rendered in favor of the law enforcement agencies and applicants equally in formal legal suits.

6. Age, height, and physical agility test standards were recorded to have the highest frequency of legal suits challenging their validity.

Current Selection Standards

1. A relevant proportion of law enforcement agencies have minimum selection standards beyond state minimum requirements.
2. A large variation was found in selection standards/criteria used to disqualify police candidates.
3. Although a substantial proportion of agencies agreed that the M.L.E.O.T.C. selection standards were adequate, a number of them indicated the contrary.
4. Many state minimum selection standards are not used by a substantial number of police agencies.
5. Minimum age restrictions are set above the age of majority by most police agencies.
6. Maximum age restrictions for police candidates vary considerably.
7. Uncorrected visual acuity standards vary. A number of agencies have a 20/20 uncorrected visual acuity selection requirement.
8. Police agencies alone are not often responsible for setting selection standards.

Present Status of Validation Studies

1. A significant number of police agencies have conducted or adopted a validation study.
2. More city agencies have conducted a validation study than other types of agencies.
3. Substantially fewer agencies within the local community police agency category have conducted a validation study than agencies within other categories.
4. Proportionately more agencies within larger agency categories (≥51 police officers) have conducted a validation study than agencies within smaller categories.
5. Twenty agencies are currently engaged in a validation study.
6. A substantial number of agencies reporting conducting or having adopted a validation study indicated changes were made in their selection standards for police candidates as a result of the study. Most frequently changed were physical agility tests and written tests.
7. The majority of police agencies having conducted or adopted a validation study were influenced to do so because they believed a study would provide entry level qualifications necessary to predict future job performance, thus minimizing the risk of selecting

a poor performer. The second major reason given was the anticipation of legal action for unfair employment practices and the need for a legal defense.

8. The majority of validation studies were conducted by personnel experts such as a consultant firm or a police research team.
9. A substantial proportion of agencies that have either conducted or adopted a validation study reported that both selection standards and procedures were validated for each step of the selection process.
10. A general increase in the amount of validation studies was demonstrated since 1972.
11. The five primary reasons influencing agencies not to conduct a validation study, given in order of importance, are: agencies believed their selection standards are fair and reliable, they lacked monetary and personnel resources, they were not aware of the responsibility, they did not anticipate legal problems for unfair employment practices, and they believed their standards would stand a legal challenge.

12. A substantial majority of law enforcement agencies reported having no difficulty complying with Title VII of the 1964 Civil Rights Act. However, a significant number of agencies admitted having difficulty or indicated their agency was unaware of Title VII.

DISCUSSION

Interpretation of Results

The findings of this investigation suggest the extent and impact of job-related validation studies upon Michigan police agencies and their selection standards are significant. In theory, if a minimum selection standard is validated by a job-related validation study, the standard when applied should exclude candidates on a fair basis. Those standards which have not been proven to be job-related should be removed. This would eliminate unjust barriers that would deny an individual a chance to become a police officer. It has been demonstrated that a significant number of police agencies have reported using a validation study to validate minimum selection standards. The majority of these agencies have also indicated there has been a change in their selection standards in relation to the study. Furthermore, there is a general increase in the use of validation throughout Michigan police agencies. It is safe to conclude that Michigan police agencies are moving toward the theory of the Democratic Policeman.

The possibility of more legal action challenging certain selection standards of Michigan police agencies is obvious from the findings in Chapter II and the investigation. It has been found that many police agencies have selection

standards which are questionable in regard to their job-relatedness as defined by fair employment practice laws. Citizenship, height/weight, 20/20 uncorrected vision, and above the age of majority selection requirements are legally questionable.

This investigation has found a large variation in police selection practices throughout Michigan police agencies. Such a variation could be explained by many people as necessary to meet the different needs of police agencies. There is agreement that different styles of policing may require different police qualification standards. However, the discrepancy found in Michigan extends beyond any rational consideration of who makes a good police officer and how agencies should select the person. It is my belief that there are essential common characteristics and attributes that all police officers need in order to perform adequately. These should be reflected in common selection standards. Variation from these standards, for the most part, should be only slight, as required to meet the special needs of each agency.

As reported in Chapter I and II, many selection standards have been based on assumptions about what makes a good police officer. The investigation has indicated that these presumptive standards have often been created by political figures such as mayors or town councils and

not solely by police administrators. The layman's approach to creating police standards probably adds to the wide variation in police selection found in Michigan.

Job-related validation studies offer the alternative of developing fair, effective and reliable standards and procedures for police selection. The literature has expressed the need to define the role of the police officer in more concrete terms. A job-analysis would serve this function. Furthermore, there is a lack of evidence demonstrating whether certain selection standards and procedures can reliably predict a good police officer. Validation studies could provide more evidence to determine the validity of certain standards and procedures.

However, it is not the purpose of this discussion to propose that job-related validation studies are the panacea for developing fair, effective and reliable selection standards and procedures for police selection. Conducting job-related validation studies in good faith may reveal and lead to invaluable knowledge of the police role and the selection process. The adoption of validation studies is the next progressive movement in police education. The critical nature of a police officer's function in our democratic society should direct those in the law enforcement field to pursue validation studies for their potential value.

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UNIVERSITY MICROFILMS

RECOMMENDATIONS

1. A statewide validation study should be conducted for the purpose of developing relevant and reliable job-related selection standards to apply to all full-time police officers. Such standards would better serve to measure a candidate's fundamental capability of performing successfully as a police officer than current standards. Validated selection standards would be based on empirical evidence, whereas current standards are based upon assumptions.
2. Developing different selection standards to fit the special personnel needs of diverse police agencies (i.e., sheriff, conservation officer, small community, large urban, etc.) should be considered when conducting and analyzing the validation study. A universal set of selection standards may not be flexible enough to serve as fair and reliable criteria to select candidates for various kinds of police agencies involved in different major work functions.
3. State citizenship selection standard for police officers should be eliminated. This standard appears to be in violation of Title VII and fails to serve as an effective job-related criteria

to reliably distinguish a persons ability to successfully perform as a police officer.

4. Good moral character, physical and mental standards should be defined in clearer operational terms as they apply in disqualifying/qualifying police candidates. These standards currently are so vague that they can be applied arbitrarily and therefore create artificial barriers in the selection process. According to EEOC guidelines, such application is considered unlawful when it serves to adversely exclude protected groups.
5. There should be enforcement of valid job-related state selection standards. Enforcement of reliable standards will assure the public that police officers are both qualified and competent. At the same time, such enforcement will aid in upgrading and maintaining effective police officers throughout Michigan.
6. Consideration should be given in developing a valid job-related police selection system which is accessible to all police agencies within Michigan. An accessible statewide selection system would allow police agencies, which either lack expertise in personnel selection or lack resources, to take advantage of a valid selection system without an undue hardship.

APPENDICES

APPENDIX A

**LEAA: EQUAL EMPLOYMENT
OPPORTUNITY REGULATIONS**

APPENDIX A

LEAA: EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS (28 CFR 42.201 et seq. Subpart D.)

Subpart D--Equal Employment Opportunity in Federally Assisted Programs and Activities

Sec.

- 42.201 Purpose and application.
- 42.202 Definitions.
- 42.203 Discrimination prohibited.
- 42.204 Assurances required.
- 42.205 Compliance information.
- 42.206 Conduct of investigation, procedures for effecting compliance hearings, decisions, and judicial review; forms, instruction, and effect on other regulations.

AUTHORITY: The provisions of this Subpart D issued under 5 U.S.C. 301; and sec. 501 of the Omnibus Crime Control and Safe Streets Act of 1968. Public Law 90-351, 82 Stat. 197, as amended.

SEC. 42.201 Purpose and Application.

(a) The purpose of this subpart is to enforce the provisions of the 14th amendment to the Constitution by eliminating discrimination on the grounds of race, color, creed, sex, or national origin in the employment practices of State agencies or offices receiving financial assistance extended by this Department.

(b) The regulations in this subpart apply to the employment practices of planning agencies, law enforcement agencies, and other agencies or offices of States or units of general local government administering, conducting, or participating in any program or activity receiving Federal financial assistance extended under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (the Act). This subpart shall not apply to federally assisted construction contracts covered by Part III of Executive Order 11246. September 24, 1965; enforcement of nondiscriminatory employment practices under such contracts shall be effected pursuant to the Executive order.

SEC. 42.202 Definitions

(a) The definitions set forth in Sec 42.102 of Subpart C. Part 42, Title 28, Code of Federal Regulations are, to the extent not inconsistent with this subpart, hereby made applicable to and incorporated in this subpart.

(b) As used in this subpart, the term "employment practices" means all terms and conditions of employment including, but not limited to all practices relating to the screening, recruitment,

selection, appointment, promotion, demotion, and assignment of personnel, and includes advertising, hiring, assignments, classification, discipline, layoff and termination, upgrading, transfer, leave practices, rates of pay, fringe benefits or other forms of pay or credit for services rendered and use of facilities.

(c) As used in this subpart, the term "law enforcement," "State," and "unit of general local government" shall have the meanings set forth in section 601 of the Act.

SEC. 42.203 Discrimination prohibited.

No agency or office to which this subpart applies under Sec. 42.201 shall discriminate in its employment practices against employees or applicants for employment because of race, color, creed, sex, or national origin. Nothing contained in this subpart shall be construed as requiring any such agency or office to adopt a percentage ratio, quota system, or other program to achieve racial balance or to eliminate racial imbalance. Notwithstanding any other provision of this subpart, it shall not be a discriminatory employment practice to hire or assign an individual on the basis of creed, sex or national origin where the office or agency claiming an exception for an individual based on creed, sex, or national origin is able to demonstrate that the creed, sex, or national origin of the individual is essential to the performance of the job.

SEC. 42.204 Assurances required.

(a) (1) Every application for Federal financial assistance to carry out a program to which this regulation applies shall, as a condition of approval of such application and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by an assurance that the applicant will comply with the requirements of this subpart, and will obtain such assurances from its subgrantees, contractors, or subcontractors to which this subpart applies, as a condition of the extension of Federal financial assistance to them.

(2) The responsible Department officials shall specify the form of the foregoing assurances. Such assurances shall be effective for the period during which Federal financial assistance is extended to the applicant or for the period during which a comprehensive law enforcement plan filed pursuant to the Act is in effect in the State, whichever period is longer, unless the form of the assurance as approved in writing by the responsible Department official specifies a different effective period.

(b) Assurances by States and units of general local government relating to employment practices of State and local law enforcement agencies and other agencies to which this subpart applies shall apply to the policies and practices of any other department, agency, or office of the same governmental unit to the extent that such policies or practices will substantially

affect the employment practices of the recipient State or local planning unit, law enforcement agency, or other agency or office.

SEC. 42.205 Compliance information.

The provisions of Sec. 42.106 are hereby made applicable to and incorporated in this subpart.

SEC. 42.206 Conduct of investigations, procedures for effecting compliance, hearings, decisions, and judicial review: forms, instruction, and effect on other regulations.

(a) Each responsible Department official shall take appropriate measure to effectuate and enforce the provisions of this subpart; and shall issue and promptly make available to interested persons forms, instructions, and procedures for effectuating this subpart as applied to programs for which he is responsible. Insofar as feasible and not inconsistent with this subpart, the conduct of investigations and the procedures for effecting compliance, holding hearings, rendering decisions and initiating judicial review of such decisions shall be consistent with those prescribed by Sec. 42.107 through 42.111 of subpart C of this part; provided, that where the responsible Department official determines that judicial proceedings (as contemplated by Sec. 42.107 (d)) are as likely or more likely to result in compliance than administrative proceedings (as contemplated by Sec. 42.108 (c)), he shall invoke the judicial remedy rather than the administrative remedy; and provided further, that no recipient of Federal financial assistance or applicant for such assistance shall be denied access to the hearing or appeal procedures set forth in sections 510 and 511 of the Act for denial or discontinuance of a grant or withholding of payments thereunder resulting from the application of this subgrant.

(b) If it is determined, after opportunity for a hearing on the record, that a recipient has engaged or is engaging in employment practices which unlawfully discriminate on the ground of race, color, creed, sex, or national origin, the recipient will be required to cease such discriminatory practices and to take such action as may be appropriate to eliminate present discrimination to correct the effects of past discrimination and to prevent such discrimination in the future.

(c) Nothing in this subpart shall be deemed to supersede any provisions of Subparts A, B, and C of Part 42, Title 28, Code of Federal Regulations, or of any other regulation and instruction which prohibits discrimination on the ground of race, color, creed, sex, or national origin in any program or situation to which this subpart is inapplicable or which prohibits discrimination on any other ground.

Effective date. This regulation shall become effective upon publication in the FEDERAL REGISTER (8-18-72).

Dated: August 9, 1972.

Concur:

Jerry Leonard,
Administrator, Law Enforcement
Assistance Administration.

Richard W. Velde,
Associate Administrator
Clarence M. Coster,
Associate Administrator

APPENDIX B

**EEOC: GUIDELINES FOR EMPLOYMENT
SELECTION PROCEDURES**

APPENDIX B

EEOC: GUIDELINES FOR EMPLOYMENT SELECTION PROCEDURES

Part 1607--Guidelines On Employee Selection Procedures

Sec.

- 1607.1 Statement of purpose.
- 1607.2 "Test" defined.
- 1607.3 Discrimination defined.
- 1607.4 Evidence of validity.
- 1607.5 Minimum standards for validation.
- 1607.6 Presentation of validity evidence.
- 1607.7 Use of other validity studies.
- 1607.8 Assumption of validity.
- 1607.9 Continued use of tests.
- 1607.10 Employment agencies and employment services.
- 1607.11 Disparate treatment.
- 1607.12 Retesting.
- 1607.13 Other selection techniques.
- 1607.14 Affirmative action.

AUTHORITY: The provisions of this Part 1607 issued under sec. 713 (a), 78 Stat. 265; 42 U.S.C. 2000e-12.

SOURCE: The provisions of this Part 1607 appear at 35 F.R. 12333, Aug. 1, 1970, unless otherwise noted.

§ 1607.1 State of purpose.

(a) The guidelines in this part are based on the belief that properly validated and standardized employee selection procedures can significantly contribute to the implementation of nondiscriminatory personnel policies, as required by title VII. It is also recognized that professionally developed tests, when used in conjunction with other tools of personnel assessment and complemented by sound programs of job design, may significantly aid in the development and maintenance of an efficient work force and, indeed, aid in the utilization and conservation of human resources generally.

(b) An examination of charges of discrimination filed with the Commission and an evaluation of the results of the Commission's compliance activities has revealed a decided increase in total test usage and a marked increase in doubtful testing practices which, based on our experience, tend to have discriminatory effects. In many cases, persons have come to rely almost exclusively on tests as the basis for making the decision to hire, transfer, promote, grant membership, train,

refer or retain, with the result that candidates are selected or rejected on the basis of a single test score. Where tests are so used, minority candidates frequently experience disproportionately high rates of rejection by failing to attain score levels that have been established as minimum standards for qualification.

It has also become clear that in many instances persons are using tests as the basis for employment decisions without evidence that they are valid predictors of employee job performance. Where evidence in support of presumed relationships between test performance and job behavior is lacking, the possibility of discrimination in the application of test results must be recognized. A test lacking demonstrated validity (i.e., having no known significant relationship to job behavior) and yielding lower scores for classes protected by title VII may result in the rejection of many who have necessary qualifications for successful work performance.

(c) The guidelines in this part are designed to serve as a workable set of standards for employers, unions and employment agencies in determining whether their selection procedures conform with the obligations contained in title VII of the Civil Rights Act of 1964. Section 703 of title VII places an affirmative obligation upon employers, labor unions, and employment agencies, as defined in section 701 of the Act, not to discriminate because of race, color, religion, sex, or national origin. Subsection (h) of section 703 allows such persons "****to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin."

§ 1607.2 "Test" defined.

For the purpose of the guidelines in this part, the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The guidelines in this part apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted to, measures of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical and other aptitudes; dexterity and coordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term "test" includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information

blanks, interviewers' rating scales, scored application forms, etc.

§ 1607.3 Discrimination defined.

The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by title VII constitutes discrimination unless: (a) the test has been validated and evidences a high degree of utility as hereinafter described, and (b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use.

§ 1607.4 Evidence of validity.

(a) Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate § 1607.3. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist based on a test, must be relevant to performance on the jobs in question.

(b) The term "technically feasible" as used in these guidelines means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

(c) Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(1) If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to

underscore the principle that attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

(2) Where a test is to be used in different units of a multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected throughout a multi-unit organization, evidence of validity specific to each unit may not be required: Provided, That no significant differences exist between units, jobs, and applicant populations.

§ 1607.5 Minimum standards for validation.

(a) For the purpose of satisfying the requirements of this part, empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals" published by American Psychological Association, 1200 17th Street NW., Washington, D.C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity, should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behaviors composing the job in question. The types of knowledge, skills or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job.

(b) Although any appropriate validation strategy may be used to develop such empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

(1) Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is

representative of the minority population available for the job or jobs in question in the local labor market. Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of his subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.

(2) Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to insure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of test results, that are privately developed and/or are not available through normal commercial channels must be included as a part of the validation evidence.

(3) The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Such criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses.

(4) In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisor's prejudice, as when, as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.

(5) Differential validity. Data must be generated and results separately reported for minority and nonminority groups wherever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these guidelines pending separate validation of the test for the minority group in question. (see § 1607.9). A test which is differentially valid may be used in groups for which it is valid but not for

those in which it not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

(c) In assessing the utility of a test the following considerations will be applicable:

(1) The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

(2) In addition to statistical significance, the relationship between the test and criterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors including:

(i) The larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available;

(ii) The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory;

(iii) The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high.

§ 1607.6 Presentation of validity evidence.

The presentation of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. (See § 1607.5 (c) concerning assessing utility of a test.) Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or

both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted.

§ 1607.7 Use of other validity studies.

In cases where the validity of a test cannot be determined pursuant to § 1607.4 and § 1607.5 (e.g., the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when:

- (a) The studies pertain to jobs which are comparable (i.e., have basically the same task elements), and
- (b) there are no major differences in contextual variables or sample composition which are likely to significantly affect validity.

Any person citing evidence from other validity studies as evidence of test validity for his own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in paragraphs (a) and (b) of this section.

§ 1607.8 Assumption of validity.

- (a) Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on test names or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes.

- (b) Although professional supervision of testing activities may help greatly to insure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity.

§ 1607.9 Continued use of tests.

Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for

example, determination of criterion-related validity in a specific setting practicable and required but not yet obtained, the use of the test may continue: Provided: (a) The person can cite substantial evidence of validity as described in § 1607.7 (a) and (b); and (b) he has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained.

§ 1607.10 Employment agencies and employment services.

(a) An employment service, including private employment agencies, State employment agencies, and the U.S. Training and Employment Service, as defined in Section 701 (c), shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standards not validated in accordance with these guidelines.

(b) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in these guidelines. An employment service is not relieved of its obligation herein because the test user did not request such validation or has requested the use of some lesser standard than is provided in these guidelines.

(c) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the guidelines in this part, before it administers the testing program and/or makes referral pursuant to the test results. The employment agency must furnish on request such evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the test user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity (see § 1607.8 (a)). An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in § 1607.7.

§ 1607.11 Disparate treatment.

The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard--even though validated

against job performance in accordance with the guidelines in this part--cannot be imposed upon any individual or class protected by title VII where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority or sex group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by title VII who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force.

§ 1607.12 Retesting.

Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration to earlier "failure" candidates who have availed themselves of more training or experience. In particular, if any applicant or employee during the course of an interview or other employment procedure claims more education or experience, that individual should be retested.

§ 1607.13 Other selection techniques.

Selection techniques other than tests, as defined in § 1607.2, may be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of his unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in §§ 1607.4 and 1607.5. Data suggesting the possibility of discrimination exist, for example, when there are differential rates of applicant rejection from various minority and nonminority or sex groups for the same job or group of jobs or when there are disproportionate representations of minority and nonminority or sex groups among present employees in different types of jobs. If the person is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination.

§ 1607.14 Affirmative action.

Nothing in these guidelines shall be interpreted as diminishing a person's obligation under both title VII and Executive Order 11246 as amended by Executive Order 11375 to undertake affirmative action to ensure that applicants or employees are treated without regard to race, color, religion, sex, or national origin. Specifically, the use of tests which have been validated pursuant to these guidelines does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by title VII.

APPENDIX C

**M.L.E.O.T.C. SELECTION STANDARDS
SURVEY**

STATE OF MICHIGAN



WILLIAM G. MILLIKEN, GOVERNOR
DEPARTMENT OF STATE POLICE
**LAW ENFORCEMENT OFFICERS
TRAINING COUNCIL**

7426 NORTH CANAL ROAD, LANSING, MICHIGAN 48913
PHONE: (517) 373-2626

September 9, 1977

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Michigan Sheriffs Association

SHERIFF KENNETH PREAMORE
Michigan Sheriffs Association

SHERIFF RICHARD WEILER
Michigan Sheriffs Association

LEGAL COUNSEL

MR. ROBERT GOUSSY
Assistant Attorney General

EXECUTIVE-SECRETARY

LESLIE VAN BEVEREN

Dear Law Enforcement Administrator:

Police agencies across our nation are finding themselves increasingly affected by new state/federal legislative action and judicial rulings that pertain to police hiring and promotion. It is both a perplexing and complex problem for law enforcement agencies to stay attuned to and understand the ramifications of the multitude of legal actions. It should, therefore, be a common endeavor for all law enforcement agencies to cooperate and share in our understanding of such developments.

Michigan law enforcement agencies are certainly not untouched by recent legislative/judicial regulations. The problem that the enclosed survey will address is one of minimum entry level selection standards and how they are affected by state and federal fair employment guidelines and regulations. The essence of the above problem is reasonably upgrading selection standards without violating fair employment policies. It is, therefore, the purpose of this survey to identify the present state of entry level selection standards in Michigan law enforcement agencies and to assess the impact of fair employment guidelines and regulations upon those entry standards.

In order to analyze the present state of entry level selection standards, it is necessary to obtain accurate data from every law enforcement agency. The information you provide in this survey is critically important and will permit MLEOTC to develop meaningful conclusions about the state's selection standards for police candidates. The general information obtained from this study will be made available to any participating law enforcement agency upon request.



September 9, 1977

Page Two

It must be stressed that the following survey questionnaire be completed immediately. On the average, less than 15 minutes is requested to complete the survey form. Due to a critical time schedule, please return the questionnaire no later than 3 days after arrival at your agency. The postage paid questionnaire can be returned by simply folding and stapling this form according to instructions. A reminder will automatically follow this letter. Please disregard the reminder if your agency has already responded.

Finally, it is most important that this survey questionnaire be filled out by personnel who are knowledgeable about the present selection process and standards used in your agency. The information you provide will remain highly confidential. We will only report information by major groupings such as "size" and "type" of department, etc. "Name" of the agency is requested only to assure that each agency has participated. Every agency's participation is essential to obtain the information necessary for the survey. Your assistance and time devoted towards this endeavor is greatly appreciated.

Sincerely,

Leslie Van Beveren
Executive Secretary

LVB:ck

Enclosure

M.L.E.O.T.C. SELECTION STANDARDS QUESTIONNAIRE

INSTRUCTIONS: Check only one answer for each question, unless otherwise indicated. Place the check mark clearly inside the box to indicate your best answer. Example: () NO. When the answer checked has asked you to "Specify," please do so. Be as brief and accurate as possible. Fold and staple questionnaire as indicated with the self-addressed mailing head facing outward. Please mail promptly.

DEMOGRAPHIC

A. Which type best describes your police agency?

- | | |
|---------------------------------------|-------------------------------|
| 1 () Local Community other than city | 6 () Airport |
| 2 () City | 7 () Railroad |
| 3 () County | 8 () Conservation/
Park |
| 4 () State Police | 9 () Other:
Specify _____ |
| 5 () University Campus | |

B. Approximately how many full-time SWORN police officers does your agency presently have employed?

- | | |
|---------------|---------------------|
| 1 () 1-10 | 6 () 201-300 |
| 2 () 11-25 | 7 () 301-400 |
| 3 () 26-50 | 8 () 401-500 |
| 4 () 51-100 | 9 () More than 500 |
| 5 () 101-200 | |

SELECTION STANDARDS INFORMATION

C. Does your police agency have minimum entry level selection standards for police candidates beyond State minimum requirements?

1 () YES

2 () NO

- D. Has your police agency been a party to a legal challenge for unfair employment practices concerning entry selection standards for the position of a police officer? (A legal challenge would be an informal complaint by an attorney, organization, or agency, but SHORT of a formal legal suit.)

1 () NO

2 () YES - Specify:

- E. Considering the above question, has your agency been a defendant in any formal legal suits?

1 () Has NOT been a defendant.

2 () Has been a defendant. How many times? (Circle correct number)

1 2 3 4 5 6 If more, specify: _____

- F. If your agency has been a party to a legal suit for unfair employment practices concerning entry-level selection standards for the position of a police officer, and a court decision was rendered or out-of-court settlement was reached--was the decision:

1 () in favor of the police agency in all legal suits?

2 () in favor of the applicant in all legal suits?

3 () both in favor of the police agency and applicant considering all legal suits?

- G. If your agency has had a formal legal suit, what entry selection standards for police officer candidates were in judicial question? (Example - age, local residency, good moral character, etc.)

SPECIFY: _____

- H. Which of the following minimum entry level standards alone are used to disqualify police candidates in your agency? (May check more than one.)

***Already State Disqualifiers

- 01 () Poor general appearance
- 02 () Does not meet minimum age
- 03 () Over maximum age limit
- 04 () Not U.S. citizen***
- 05 () Not local resident
- 06 () Does not have high school diploma or equivalent
- 07 () Does not have some college education
- 08 () Does not have Associate Degree
- 09 () Does not have Baccalaureate Degree
- 10 () Has not completed Police Academy Training at a M.L.E.O.T.C. approved school***
- 11 () Does not meet minimum height
- 12 () Over maximum weight
- 13 () Obesity
- 14 () Any physical handicap
- 15 () History of homosexuality
- 16 () Substance abuse
- 17 () Failed polygraph test
- 18 () Failed writing ability test
- 19 () Failed reading ability test
- 20 () Failed physical ability test
- 21 () Failed hearing test
- 22 () Failed visual acuity test
- 23 () Failed examination by a licensed physician***
- 24 () Failed examination by a licensed psychologist or psychiatrist
- 25 () Failed psychiatric written examination

- 26 () Failed written examination (general intelligence test, etc.)
- 27 () Felony conviction***
- 28 () Misdemeanor conviction
- 29 () Arrest record

I. If your agency uses a MINIMUM age standard for entry selection, which category does the age restriction fall in?

- | | |
|-------------|------------------------------|
| 1 () 18 | 4 () 23-24 |
| 2 () 19-20 | 5 () 25-26 |
| 3 () 21-22 | 6 () Other:
Specify_____ |

J. If your agency uses a MAXIMUM age standard to disqualify police candidates, which category does the age restriction fall in?

- | | |
|--------------------|------------------------------|
| 1 () 35 and older | 5 () 60 and older |
| 2 () 40 and older | 6 () 65 and older |
| 3 () 45 and older | 7 () Other:
Specify_____ |
| 4 () 50 and older | |

K. If your agency uses a minimum uncorrected visual acuity standard, what is it?

- | | | |
|-------------|-------------|------------------------------|
| 1 () 20/20 | 4 () 20/50 | 7 () 20/80 |
| 2 () 20/30 | 5 () 20/60 | 8 () 20/90 |
| 3 () 20/40 | 6 () 20/70 | 9 () Other:
Specify_____ |

L. State and federal guidelines and regulations require job-related studies to validate (confirm) selection qualifications. Such qualifications must be demonstrated statistically to be significantly related to any test or selection procedure used to select police applicants. Selection qualifications must be directly related to characteristics of work behavior or job performance for the job of a police officer. Considering the above, has your police agency conducted

a validation study regarding selection standards?

- 1 () Yes: have conducted a validation study.
- 2 () Yes: have validated by adopting study done by another police department.
- 3 () No: but currently participating in a validation study
- 4 () No: but plan to conduct a validation study in the future.
- 5 () No: do not plan to conduct a validation study unless absolutely necessary (example--a court order to do so).
- 6 () No: but would consider with more information.

*If your answer was NO for Question L -- DO NOT answer M through R.

M. If your agency has conducted a validation study, is there a formal report prepared and published?

1 () YES

2 () NO

N. If your agency has validated entry level selection standards by a job-related study, were there any changes in your agency's entry selection standards for police candidates?

1 () NO

2 () YES SPECIFY: _____

O. In the event your agency has validated entry selection standards by a job-related study as described above, why did your agency decide to conduct such a study? (May mark more than one answer. If more than one answer is given, please rank order answers numerically by indicating the most primary reason with the number 1, second primary reason 2, etc... DO NOT rank any answer

which did not play an influential part in the decision of conducting a job-related validation study.)

- 1 () Such a study would provide entry level selection qualifications necessary to predict future job performance. Thus, such a study would minimize the error of selecting a poor performer.
- 2 () Anticipated legal action against our agency for unfair employment practices and therefore needed a legal defense.
- 3 () Court order to do so.
- 4 () Was invited to participate in a joint job-related validation study.
- 9 () Other reason(s)-SPECIFY: _____

P. Does your police agency have validated standards, or procedures, for each step of the selection process?

1 () YES

2 () NO

Q. In the event your agency has conducted a job-related validation study as described above, when was it completed?

- 1 () Before 1972 4 () 1974 7 () 1977
- 2 () 1972 5 () 1975
- 3 () 1973 6 () 1976

R. In the event your police agency has conducted a job-related validation study as described above, who conducted the study?

- 1 () Research team within our police agency.
- 2 () Civil service.
- 3 () Outside personnel experts (such as a consultant firm).
- 9 () Other-SPECIFY: _____

S. If your agency has not validated entry level selection standards by a job-related study, WHY has your agency decided not to conduct a job-related study? (May mark more than one answer. If more than one answer is given, please rank order answers numerically by indicating the most primary reason with the number 1, second primary reason 2, etc... DO NOT rank any number which did not play an influential part in the decision of conducting a job-related study.)

- 1 () Believe the standards presently used to select entry level police candidates are fair and reliable.
- 2 () Was not aware of the responsibility to conduct a study.
- 3 () Do not anticipate any legal challenges or formal legal suits against our agency for unfair employment practices.
- 4 () Believe the standards will stand a legal challenge.
- 5 () Lack of monetary or personnel resources to conduct such a study.
- 9 () Other reason(s)-SPECIFY: _____

T. Who has the responsibility of conducting the selection process and setting minimum entry level selection standards for police candidates for your police agency beyond state minimum standards?

- 1 () Your agency.
- 2 () Civil service/personnel Dept.
- 3 () Cooperative effort of the above two.
- 9 () Other-SPECIFY: _____

ROLE OF M.L.E.O.T.C.

V. What do you believe the responsibility of the M.L.E.O.T.C. should be concerning minimum entry level selection standards for police officer candidates? (Check the best answer as to your view.)

- 1 () Should not determine selection standards, but let each agency research and develop its own set of standards.

- 2 () Should conduct research and provide information and advice to those agencies that see it.
- 3 () Should establish voluntary standards.
- 4 () Should establish mandatory standards.
- 5 () Should establish mandatory standards and advise agencies on a valid selection process whereby policy candidates could be screened and evaluated for job qualifications.
- 6 () Should establish mandatory standards and selection process whereby police candidates would be screened and evaluated for qualifications that have been validated.
- 9 () Other-SPECIFY: _____

W. Who should be responsible and have the authority to vigorously enforce State minimum entry level selection standards?

- 1 () local hiring employer
- 2 () local prosecutor
- 3 () county prosecutor
- 4 () State Police Licensing Unit
- 5 () Attorney General
- 6 () M.L.E.O.T.C.
- 7 () Michigan Dept. of Licensing & Regulation
- 9 () Other-SPECIFY: _____

X. Is your agency having difficulty complying with the requirements of Title VII of the 1964 Civil Rights Act as it now applies to state and local governmental employers under the Equal Employment Opportunity Act of 1972?

- 1 () YES
- 2 () NO
- 3 () Unaware of Enactment

Y. Would your agency attend a M.L.E.O.T.C. one or two-day workshop concerning state and federal guidelines and regulations as they pertain to selection and promotion of law enforcement officers?

- 1 () NO
- 2 () YES

If so, what month would best fit your schedule?

- 1 () Nov.
- 2 () Dec.
- 3 () Jan.
- 4 () Feb.
- 5 () Mar.
- 6 () April

Z. Would your police department serve on a standards advisory committee?

1 () YES

2 () NO

ZZ. At this time we would appreciate any general comments? _____

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