

LAW ENFORCEMENT STANDARDS BOARD (LESB)
Physical Readiness Test (PRT) SUBCOMMITTEE MEETING

MINUTES – NOVEMBER 12, 2024

ATTENDANCE:

PRT SUBCOMMITTEE

Kelly Bakken
Shawn Becker
Ryan Chaffee
Christopher Domagalski
Christy Knowles
Shelly Sandry
Rebecca Sommers
Mike Steffes
Heidi Studnicka
Mark Westen

ABSENT MEMBERS

Courtney Kostuchowski
Jeremy Peery
Nicole Waldner

STAFF

Eric Hartwig
Katie Maule
Jerry Mullen
Stephanie Pederson
Lauren Racey
Mark Rather
Dana Vike

Guests: Dana Hartje, Tim Hufschmid, Jon Kuffel, Kris Wubben

1. Call the Meeting to Order – Kelly Bakken called the meeting to order at 11:03 am.

2. Introductions

3. Proof of Posting of Meeting Notices

The meeting notice publication procedures were followed in compliance with Wis. Stat. §19.84.

4. Review and Approve Minutes for the March 22, 2024, PRT Subcommittee Meeting

Motion to approve the March 22, 2024, PRT Subcommittee Meeting Minutes. Move by Christopher Domagalski, second by Christy Knowles. Motion carried unanimously.

5. Review PRT Subcommittee Survey Results (Kelly Bakken)

A survey was sent to the PRT Sub-Committee members; eight people responded to the survey.

Question one: Should Wisconsin keep a Physical Readiness Test (PRT), not necessarily the test we currently have. Specifically, a test that is validated, has no disparate impact, and allows for diverse candidates that have the necessary physical abilities to be accepted into the academy. Results: 87.5%, or 7 out of 8 respondents said yes, one said no.

Question two: Are there any questions regarding the collected PRT data reflecting a disparate impact? Results: More data should be collected. We should ask what the candidate did to prepare for the test.

Question three: Do you have questions about the current PRT being defensible in court. Results: Incumbent testing was brought up to strengthen the PRT. Discussion: Legislation surrounding fitness testing incumbents has been discussed and is possible. Stephanie added that no states are currently

testing incumbents. Guam tried, but too many people were failing. Shelly stated that Nevada tried, but it didn't last very long due to COVID and a lack of support. Ryan asked if the current thought is that the PRT would not be defensible in court without incumbent testing. Stephanie responded that when the PRT discussion began, several AAG's said that there were three things needed: it must be validated, it could not disqualify more than 20% of a protected class, and because we didn't have incumbent testing, we couldn't call it the PT test in order to be a law enforcement officer. For this reason, it was called the Physical Readiness Test, to make it specific to the academy, not to law enforcement. Shelly added that there are varying opinions; Jay from FitForce believes it is very court defensible.

Ryan asked if the disparate impact is not concerning as long as it is defensible in court since it is a required and necessary component of the work. Rebecca stated that if incumbents don't have to take the test, how can it be a requirement for the job? The PRT began January 2016, so not every current law enforcement officer has taken the PRT. Some academies were holding their own testing, but there was not a standard, students simply needed to improve. Mike Steffes added that it is like the entrance medical exam which determines if you can meet the essential functions of the job at the time you are entering the academy. Mark Westen also added that there is initial drug testing to become an officer.

Christopher Domagalski stated the PRT was an attempt to add a state standard rather than numerous standards at various agencies and academies that was consistent, validated, and defensible. Shelly stated that the PRT had a thorough job task analysis completed as well. Jerry Mullen stated that the requirement for officers to have 60 hours of college credits at the 5-year mark in their career was implemented in 1993. All officers that were certified at that time were grandfathered in. Katie noted that when an officer gains new employment, they are drug tested and given a new medical exam.

Rebecca would like to review all of the legal analysis before weighing in and asked if there has ever been a claim that the college credit requirement had a disparate impact on a protected class? Answer: No, there have not been any cases.

Question four: Do you have questions regarding the validity of our current PRT test? Results: There were no substantiative responses.

Question five: What unanswered legal questions do you have regarding our current PRT? Results: No mandated incumbent testing, is that problematic regardless of what type of test we have for the entry test? No further discussion.

Question six: Should we collect more data from the current PRT? Results: Continue to collect data to ensure there is no disparate impact. Collect height and weight of candidates. Do a better job ensuring the data is accurately collected. Ask candidates and collect responses on what they have done to prepare for this test. Collect the location of the source that is entering the data in order to evaluate the source and if there's a problem with the source that is collecting the data. Discussion: Rachel Bachhuber advised against collecting height and weight as that is protected information, however, collecting data on what the individual has done to prepare for the test might give an indication of their physical fitness level, or if they have done anything to prepare for the PRT. The source of the data that is being entered has been discussed in the past, specifically if there are discrepancies in how entities are administering the PRT. Who can we make these recommendations to? Mike suggested that this group discuss what data it would like collected and present that to the LESB. RedCap could collect this additional information, and it does collect the data on failed PRT attempts.

Question seven: What unanswered questions do you have about the Wisconsin PRT data that has already been collected? Results: There was nothing additional other than what was discussed.

Question eight: Do you have any additional questions about FitForce or for Jay from FitForce? Results: The findings are ten years old, are there updated statistics that continue to show relevance of the tests used in our current PRT? Discussion: We may potentially get those questions answered through our motion. We did discuss this in our last meeting when we motioned to re-evaluate the PRT.

Question nine: Would you like more information on physical testing in any other states? One person wanted a state-by-state comparison. Discussion: There was an IADLEST meeting last week where they released the Source Book which contains information from each state. The document will be shared.

Question ten: Is there any fitness research or company you would like more information about? Results: Low impact alternatives. Discussion: We may potentially get this answered through a motion if we agree to re-evaluate the test.

Question eleven: Do you have any questions about PRT legal challenges in other states? Results: 1. Has Wisconsin been legally challenged regarding the PRT? Have other states been challenged and lost or have they just settled out of court? Discussion: Legal litigations are attached to this agenda.

Question twelve: Do you have any other questions or suggestions regarding the PRT or for the PRT Committee? Results: Conduct a survey of departments to see who is conducting incumbent testing and try to gather the details of that testing. Discussion: We can look into conducting a survey.

6. Next Steps

At the last meeting, there was a motion to suggest to LESB to hire a consultant to re-validate the PRT and provide other options for a PRT. Kelly suggested that we articulate that motion and recommendations to LESB at the December LESB Meeting since there are concerns about the current test. The 2021 DOJ survey shows that 77.1% of the respondents believe there should be a PRT requirement for entrance into the academy, 9% were unsure, and 13.9% said no. The Wisconsin Chiefs of Police Association (WCPA) Executive Board was surveyed. The WCPA supports a PRT. Based on the survey, there is an indication that overall, law enforcement supports a PRT, but it does not necessarily have to be this PRT. We all want to ensure the PRT is not disparate and welcomes diverse candidates with the necessary physical abilities for the job.

From the past meetings and with the current data we have three options:

1. Eliminate the PRT requirement. Based on surveys, the support would not be there.
2. Maintain the current PRT requirement, however the attorney general's office has concerns about it potentially being disparate.
3. Make a recommendation to LESB to hire professionals with the knowledge, skills, and abilities to conduct a job task analysis to determine the essential functions of the job. Once the analysis is completed, professionals certified in athletic training and physical training should determine the appropriate physical testing that will result in the correct candidates becoming police officers. The test should ensure there is no disparate impact and allow for diverse candidates that have the necessary physical abilities to be accepted into the academy.

Based on the survey, there are a couple other recommendations we could make:

1. Collect additional PRT data during the collection period, specifically the location submitting the data.
2. Collect data on what the candidate has done to prepare for the PRT.
3. Work on incumbent testing or incentives.

Christopher suggested that the failure point data should be collected. Those doing the PRT should complete the PRT so we know where the failure points are. Heidi encourages everyone to finish the PRT so they have a baseline but cannot make them do it. Not everyone encourages candidates to complete the entire test once they fail a part of it. Also, candidates may not try to complete the test knowing they already failed. Heidi would like a standardized form asking questions such as how many times they have previously taken the PRT along with the location.

Ryan asked, are we trying to focus on a PRT that doesn't have a disparate impact or are we focusing on a PRT that is job specific? Christopher agrees but wonders if the information would be informative to someone like Jay where he can come up with an alternative part of the test. Ryan suggested collecting uniform data to help with the decision. Christopher added that the lawyers will need that data to defend this change. REDCap is the data collection point.

Mike reflected on the first presentation from the attorney general and AAGs stating that even if the PRT reflects the essential functions of the job, there still cannot be a disparate impact to any group. Mike believes this was the answer in closed session but would like to hear more from the AAG's. If this is accurate, it may change the direction of whether we will revalidate the test or continue to collect data.

Motion by Mike Steffes-Based on the recollection that we cannot cause a disparate impact even if the essential functions of the job are required, make a recommendation to the LESB, Training and Standards Bureau, to hire outside professionals with the knowledge, skills, and abilities to conduct a job task analysis to determine the essential functions of the job. Once the analysis is completed, complete an RFP to hire outside consultants certified in athletic training to either re-validate our current test, or create a test that will not create a disparate impact. In addition, collect data annually, which will go to the LESB in an annual report to ensure there are no further testing validations or issues.

Discussion: Ryan Chaffee agrees with everything except for creating a test with the intent of having no disparate impact, why are we testing? Is the point of testing just to have a test with no disparate impact, or is the point of testing to measure job tasks? Other than this concern, Ryan agrees with the motion.

Christopher asked for an amendment to Mike's motion to keep the current PRT in the interim while waiting for the results of the review of the PRT.

Rebecca stated that the legal team that reviewed the data included there was a statistically significant relationship with gender in passing the entrance and exit test. Because of cases that have been litigated across the country with large settlements there is concern where gender is found to be statistically significant the burden then shifts to prove it is job related and consistent with the business need. The challenge that we face here is you've said that it is job task related, but then there is no continuing testing for incumbents, and there are incumbent

employees who did not have to take the test, but now you are saying that it is a necessary component of the job and it is a business need. It would be very challenging to defend that from a legal standpoint to say that you have to meet these physical things to do the job effectively, but only at the time of hire.

Christopher said when we get into the ongoing legislation, as part of the consent decree they enter in with Maryland, they're suggesting just that thing, that they hire a group to develop a new test that won't have a disparate impact or meets the business necessity of job relatedness.

Rebecca asked, are you saying keep the current test for now, hire consulting to make it so it doesn't have a disparate impact. Christopher agreed and Mike confirmed that is his motion.

Ryan Chaffee asked do we want to find a test that has no disparate impact, or do we want to find a test that is reflective of the job tasks, and we can defend as a business necessity regardless of impact? Christopher responded that as long as incumbents are not doing it, we will have a hard time meeting the business necessity of it.

Stephanie added when the PRT began, the focus was to get candidates through the academy safely and to help them with the physical components. Since creating a test to make things safer in the academy we've reduced injuries greatly when the focus was on the academy, not the job. Georgia has had recruits pass away in the academy due to the physical demands because they were so out of shape. Christy comes from an agency that does not have an incumbent test as everyone is sent to the academy, that PRT is there to keep them safe. Stephanie added that in addition to the PRT, the academy attempts to set them up for a safe career with officer wellness, nutrition, the benefits of good sleep, along with a healthy lifestyle.

Ryan added that you could refer to it as a recruit readiness test or cadette readiness test, but a job task analysis would be needed if you fashioned it as a recruit/cadette physical readiness test instead of an officer physical readiness test. If you limit it to cadette, you eliminate the incumbent testing element.

Christy added that incumbent testing of employees close to retirement could create an issue. The candidate pool will drastically decrease and will create issues. They can do the job tasks, but many take jobs inside the courts. The job duties are different from those on the streets.

Motion by Mike Steffes-Keep the current PRT and make a recommendation to the LESB, to hire professionals with the knowledge, skills, and abilities to conduct a job task analysis to determine the essential functions of the job. Once the analysis is completed, hire professionals that are certified in athletic training, physical training, to determine the appropriate physical testing that will result in the correct candidates becoming police officers. The test should ensure that there is no disparate impact and should allow for diverse candidates that have the necessary physical abilities to be accepted into the academy. Data will be collected and reported annually to the LESB to ensure there is no potential of moving back into disparate impact or any other issues. Second by Christopher Domagalski. Motion carried unanimously.

7. New Physical Readiness Testing Litigation

Assistant Attorney General Sommers has no additional comments.

Christopher asked if AAG Sommers has an opinion on how the litigation will change with the change in administration. AAG Sommers does not know how this will affect litigation.

8. Public Comment

Kris Wubben, the academy director at Southwest Technical College since 2005, commented that the PRT has dramatically changed their ability to operate the academy prior to the PRT implementation. There were so many injuries before the PRT that they were forced to create and use their own due to students not being able to do the training. The PRT implementation dramatically improved the ability to offer good quality training. The academy is giving the students the tools to have lifelong fitness.

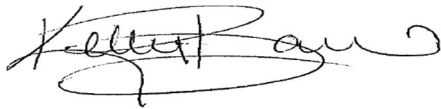
Tim Hufschmid, the academy director at Fox Valley Technical College (FVTC) since 2016, agrees with Kris. FVCT runs four law enforcement academies and three jail academies per year. Since Tim took over the position of academy director, and since the implementation of the PRT, the injuries have dropped significantly. The academies get a far better candidate due to the PRT.

9. Round Table

Nothing to report.

10. Adjourn.

Motion to adjourn by Ryan Chaffee, second by Mike Steffes. Motion carried unanimously.



Kelly Bakken
LESB Physical Readiness Test (PRT) Subcommittee Chairperson

Minutes taken by Dawn Strassman