

WASPC FITNESS FOR DUTY EVALUATIONS

For the Police Chief and Sheriff: Guidelines for Seeking Psychological Evaluations Regarding Police Officer Fitness for Duty

OBSERVATION OF BEHAVIORS OF CONCERN AND REFERRAL FOR EVALUATION

It has come to your attention that one of your officers has been behaving in a way that indicates that he or she may be having psychological problems that could impact the performance of duty. After discussing your concerns with your supervisors/advisors, you have determined that you wish to have the officer evaluated by a mental health professional. Issues present themselves immediately: Can you require such an evaluation? What do you really want to know? How do you go about making a referral? To whom should you refer the officer? How should the referral be made? What information do you want from the mental health professional? What information can/should you share with the mental health professional? How will you use the information you receive from the evaluation? With whom will you share the information from the evaluation? Where will the evaluation be filed? For how long will the evaluation be useful? The following information is designed to assist you with these and other important considerations relating to FITNESS FOR DUTY EVALUATIONS.

SOME GUIDELINES FOR DECISION MAKING

Fitness for Duty: A working definition

Fit for duty means an officer's consistent ability to perform all the duties defined in his/her job description and to function within the standards defined by the state law enforcement community. "Consistent" refers to performance over time as well as across stressful and non-stressful situations. The fact that officers perform adequately during periods of low stress and routine demands does not mean that they are "Fit for Duty." The fact that an officer has recovered from a psychologically disabling condition does not mean that s/he is fit for duty unless the professional is confident that s/he can return to work without a recurrence under performance conditions. Be aware that the standards for fitness for duty are different than the standards for pre-hire. Veteran officers being evaluated for fitness for duty generally have demonstrated the capacity to perform the job (often for many years) while the recruit has not yet even demonstrated the capacity to learn the job. Individuals who have performed a job in the past are often able to return to that job and do it again despite the presence of psychological and situational problems that might disqualify the recruit candidate.

A referral for a fitness for duty psychological evaluation occurs when you know or should know that an officer's performance of duties may be negatively impacted and you believe that the negative impact may result from his psychological functioning. As Chief of Police or Sheriff you have the right to require a fitness for duty evaluation according to case law precedent (see appendix). In fact, if you know or should know that an officer may have a psychological problem that could impact their performance of duty and don't seek an evaluation, you may open yourself up to vicarious liability (negligent assignment, negligent retention, negligent training, etc.).

If you have a concern about fitness for duty, it is recommended that you discuss your concerns with the individuals who have observed the officer at work. If the concerns persist after these discussions, it is recommended that you further discuss these concerns with whatever advisors you have within your municipality (For example, mayor, city manager, city attorney, etc).

Once a decision has been reached that the officer should be evaluated for psychological fitness for duty, you will need to determine just what you want to know from the person who will conduct the evaluation. It is recommended that you frame your concerns as specific questions, some examples of which are below:

"Is this officer psychologically fit to perform all of the duties of a Patrol Officer?"

"If he is not able to do so, which duties is s/he able to perform and which duties is s/he not able to perform?" "If s/he is unable to work at this time, when will s/he be able to return to work (to regular duties)?"

"Does this officer have a psychological condition that affects his/her ability to carry a weapon on duty?"

"Is this officer likely to continue to have difficulties managing anger provoking circumstances?"

"Does this officer require psychotherapy?"

The questions above are only examples. You may have questions other than these. Once you have your specific referral questions in mind you will need to find a qualified person to conduct that evaluation. The IACP psychologist guidelines for fitness for duty evaluations recommend that only qualified psychologists and psychiatrists (hereinafter referred to as "the professional") conduct these evaluations. Qualifications you may likely want to consider to determine which professional you use for your fitness for duty evaluations include: a Washington State license to perform within his/her field, evidence of experience and competence in law enforcement fitness for duty evaluations, an understanding of; your specific needs, your department and the work situation in which the officer must perform. Hopefully you will have established a relationship with a

licensed psychologist or psychiatrist in your surrounding community prior to the need for a fitness for duty evaluation. If not, you might want to discuss your needs with a fellow Chief or Sheriff and ask for recommendations. In general, evaluations of this type are best conducted by psychologists and psychiatrists with experience in working with the Police. Be aware that Psychology is the only mental health profession that trains its practitioners in psychological testing procedures as well as interviewing methods. Psychological testing allows for a much more comprehensive look at the individual being evaluated than does interviewing alone. Further the American Psychological Association requires that all member psychologists conduct psychological testing in accordance with its "Standards for Educational and Psychological Tests." If you only involve yourself with psychologists who are qualified as indicated above and who are members of the American Psychological Association as well then you have an additional check into that professional's credibility and competence.

Once you have a qualified psychologist or psychiatrist in mind to conduct the evaluation, contact that person and tell them the issues and your needs. The following list of guidelines may be useful to have in front of you before you contact the mental health professional:

GUIDELINES FOR REFERRAL

1. You should identify yourself as the client and specify your specific concerns and referral questions. In this way, you can specify your needs for this situation.
2. It is helpful if a letter is written that addresses the following areas:
 - a) The circumstances of the referral (e.g. Mandatory fitness for duty with the agency being the client).
 - b) The concerns about the officer's ability to perform his/her duties.
 - c) Other questions or concerns you want the psychologist to address.
 - d) Your interest in knowing any other information that emerges during the evaluation which may not be known by you at the time of the referral but which is pertinent to the officer's ability to perform the job.
 - e) Other expectations you may have (For example, a confidential report sent directly to you).
3. Ask the professional if s/he is able to conduct such an evaluation of the specific questions within your specified time frame. Be aware that not all psychologists and psychiatrists are competent to conduct such an evaluation and it is the professional's responsibility to let any potential client know if s/he is not able to provide the service you are requesting. Thus, you should ask the professional questions about his/her experience, licensure, and memberships in APA and other related professional organizations that indicate minimum levels of competency and commitment to professional standards. Ask how long it will take for you to receive the written report.

4. Ask the professional what s/he needs to conduct this evaluation. Be certain to give the professional an up-to-date job description for the position the Officer has. Be prepared to share previous psychological evaluations (including pre-hire), incident reports, internal investigation files, personnel files, etc. Also be prepared to allow the professional time to talk to you and any other of your personnel who have information about the officer that the psychologist may need to know about. While some of these items may have gone beyond their stated shelf lives, they may still have some assessment value for the professional.
5. Ask the professional about costs and billing. Tell the professional where the bill should be sent.
6. Ask the professional to indicate the "shelf life" of the report within the report itself and explain to the professional where the report will be filed. It is best to file this type of report separately from the Officer's personnel file so that greater privacy can be maintained. Since people can and do change, the "shelf life" of such reports is generally no longer than one year. However, you will need to follow applicable State and Federal laws for paperwork retention as they apply to fitness for duty evaluation reports.
7. Tell the professional that you want a prognosis and recommendations regarding the Officer's condition whether or not s/he is found unfit for duty. You will want to know for how long he will need to be off his regular duties, the conditions under which he will be likely to return to his duties, whether the officer can or should work in another assignment in the interim, what kind of assignment that might be, etc. Also, be aware that a "light duty" assignment may have legal/contractual ramifications. You may wish to research this prior to making such an assignment.
8. After you have finalized your referral with a professional, you will need to advise the officer of the referral and the reasons as well as the time for the first appointment with the professional. Remember, such a referral represents a crisis for the officer. His job is in jeopardy. S/he may be apprehensive and anxious, perhaps even angry about the referral. While you may have case law and organizational authority to require such an evaluation, the officer may wish to seek legal counsel through his labor organization or elsewhere. Experience says that this is best handled by encouraging the officer to seek whatever counsel s/he needs and by remaining firm in regard to your directive. In making a referral for a fitness for duty evaluation, it is probably wise to remove the officer from duty at the earliest possible time to the point where you came to know that the Officer might be having psychological problems that could impact his work. If you allow him to keep working while you are aware that his behavior indicates that he needs a psychological evaluation, you are begging the questions. If the Officer is involved in an on-duty incident that may produce liability after you have identified that you knew s/he might have a psychological problem, you have created a paper

chain that any plaintiff attorney could easily follow to show that you "negligently assigned" the officer. During the period the Officer is off duty you may wish to place him/her on administrative or disability leave, or light duty. Your choice of off duty status has financial, career, and contractual/legal ramifications. It should be made as thoughtfully as possible.

9. At the time of the evaluation, your officer will be asked to sign an acknowledgement that the officer was advised that the agency is the client, not the officer, by the professional prior to the fitness for duty evaluation.
10. The report you receive will be written to answer your referral questions. Often the professional will delete information gathered during the evaluation simply because it does not relate specifically to the referral questions. This is a wise professional practice and results in a report that is not cluttered with personal/private information that is unnecessary for your decision making process.

AFTER THE FITNESS EVALUATION

After you have received the report of evaluation, you will need to make some other decisions. The officer will be curious as to its contents. Unless it has been otherwise arranged, the officer will not receive a copy of the report. It is generally not advisable for you to release a copy to the officer. The report was written to meet your needs. You maximize its usefulness to you by telling the professional that you and your staff are the only ones who will receive and read the report. While the report is your property because you are the client and you can do whatever you feel is necessary in sharing it with your staff, it is generally best to have the fewest number of people as possible involved with the report itself. If the officer wants feedback and you want them to have it, allow them to go to the professional who conducted the evaluation so that s/he can receive the feedback in a manner directed toward their needs. Your needs from the report are different from his/hers.

Such reports may be discoverable by the press through court order. Therefore, you want to consider where the report is placed for final storage. Some agencies prefer to return the report to the professional after they have perused it.

WHAT IF PSYCHOTHERAPY IS RECOMMENDED?

If the report recommends that the Officer needs psychotherapy or counselling some other issues emerge. Psychotherapy is best conducted in a context where privacy and confidentiality exist. In that way, the patient/client can most easily trust and share aspects of his/her life that are emotionally laden and produce concern about therapy and personal security. An Officer who is in therapy is relatively unlikely to benefit from therapy if s/he fears that the details of his/her life or problems will be shared with you, the employer. Thus, the Officer who is required to be in treatment should expect that conversations with his/her therapist are not passed on to the employer. You may need

feedback from the therapist about the Officer's attendance and the termination of the therapy. If that is the case, you will be wise to direct the Officer to be in therapy and require that s/he successfully complete therapy and only terminate that treatment with the written consent of his/her therapist. You should also require that the therapist must advise you of the officer's attendance and at the termination of the treatment (in writing). You will likely not need any more information from the therapist than that about the officer's regular attendance and termination of treatment.

Be aware that if the therapist feels that his/her client (your Officer) represents a danger to self or others, s/he is required by law to advise the appropriate parties of this. If you require that the officer be in psychotherapy in order for him/her to return to duty, you will likely have to arrange for payment of his/her bill (Note: This needs to be checked out with your legal advisor and the officer's health insurance plan provisions).

It is important to note that the professional who conducts the fitness for duty evaluation not be the same person who conducts the psychotherapy. This is a matter of ethics for the professional. Since the professional cannot serve two clients, one must separate the evaluation function done for you as the client from the therapy where the Officer is the professional's client. It is also true that the therapist cannot later conduct an evaluation of his/her patient for you as the client. Both of these situations represent conflict of interest, and must be avoided by the ethical mental health professional.

OTHER SITUATIONS

The Officer in mandated therapy continues to have job related problems. What do you do then? Seek consultation with someone other than his/her therapist if necessary. However, you will rarely (if ever) need to treat the Officer who is still working while going to therapy any differently than you would treat any other Officer in your department.

What about the officer who is found to be psychologically not fit for duty in terms of *The Americans With Disabilities Act (ADA)*? Under the provisions of the ADA you may be required to seek reasonable accommodations so that the officer can continue to be employed. Check with your legal advisor as to your responsibilities under ADA when one of your officers is found not fit for duty.

You need to discipline the Officer who is receiving therapy. What then? Go ahead. Experience says that Officers in therapy do best when treated like everyone else. Of course, the therapist should not be involved in the decision as to the kind of discipline.

Can you ever talk to the Officer's therapist? While the Officer's therapist cannot legally or ethically talk with you about his patient because of the patient's right to confidentiality, there may be emergency or near-emergency concerns that you feel that you should pass on to the therapist. If you feel it is absolutely necessary to contact the Officer's therapist, the therapist may listen to your concerns without commenting in such

a manner as to breach confidentiality. Remember, if the Officer gets the feeling that you (as Chief or Sheriff) have a talking relationship with his/her therapist, the Officer's therapeutic relationship may be severely damaged or even destroyed. Therefore, only emergent issues should lead you to call the Officer's therapist. Remember also that the therapist may feel it important to share with his/her client (the Officer) that you called and what your concerns were. Generally, it is best to handle your concerns without contacting the therapist if that is possible. Before you attempt to contact the Officer's therapist you might wish to consult with your own Department psychologist or another trusted advisor who can or does already understand your department, your concerns, and the confidentiality issues in situations like this.

There are other issues that can arise. Basically, if you remember that you want a professional who advises you to be unencumbered by any relationship that might cause a conflict of interest you will receive the best advice. Remember also that your Officer has the right to expect the same kind of advice (free from conflict of interest) from his/her psychologist. Avoid, as much as possible, adversarial interactions between yourself, your mental health advisors and the Officer's therapist. Adversarial interactions in this realm are extremely unproductive and result in very negative effects on your organization. The psychologically troubled officer often can return to his/her duties and finish a career. The psychologically troubled officer who gets into a war with you as Chief or Sheriff rarely returns to work.

The following additional issues might come up in situations where an officer's psychological fitness for duty is in question. Some considerations are included for each of the situations cited.

1. What should I look for in selecting a psychologist or psychiatrist to conduct a fitness for duty evaluation of one of my officers?

In answering this question the following guidelines are suggested:

The professional should have a current license to practice in his/her field in Washington State and should have experience (generally, the more the better) in dealing with Law Enforcement Officers. It is advised that whoever you select should be able to offer evidence that s/he has had experience in treating Law Enforcement Officers as well as experience in all phases of officer evaluation including pre-hire as well as fitness for duty evaluations. Licensed professionals who do not have this kind of experience should have had training and/or supervision from a psychologist or psychiatrist who has had these kinds of experiences. You are well advised to avoid seeking fitness for duty evaluations from professionals who are inexperienced with Law Enforcement issues and in conducting these kinds of evaluations.

The professional should also be familiar with the research on testing and evaluation in this field.

Aside from the professional's experience and expertise, it is suggested that you utilize mental health professionals who show an interest in your Department and (particularly) in your needs. If you need help in finding and selecting a mental health professional to conduct a fitness for duty evaluation, contact a Chief or Sheriff in your local area who has some experience in these kinds of situations. Ask for a referral!

2. What if the officer has a non-job related psychological disability? Who should pay for the therapy related to that problem?
The answer to this may depend on the officer's insurance plan provisions and the availability to the Chief or Sheriff of funds for this kind of thing. You may wish to ask your legal advisor about this issue.
3. What about deferring discipline on the condition that the officer successfully completes psychotherapy?
This approach has been utilized effectively many times. The only danger would appear to come if the officer (union/association or administrative staff) confuse mandated therapy as being negative discipline rather than necessary supportive assistance for the officer.
4. If you believe that an Officer may not be fit for duty, should you remove his weapon from him/her at the time you decide to refer the officer for evaluation or only after the mental health professional has informed you that s/he is not fit for duty?
Situations differ as to the perceived severity of a situation. For example, the officer who has informed you that s/he feels suicidal is quite a different case from the officer who has had a shouting match with a supervisor. Some agencies allow the evaluating professional to make the decision as to whether the officer should be allowed to keep his gun. That is, it is a matter of policy if the officer is found "not fit for duty" for any reason, the department issued weapon is taken away. Other agencies remove the officer's weapon when the officer is placed on leave and referred for evaluation. It is likely that it will be wise to have a written policy that is consistently applied across all cases regarding removal of department issued firearms. A consistent policy will avoid creating situations where one officer is singled out in a situation that can be very threatening to self-esteem and reputation with his/her peers and other department members. Clearly, if you are concerned about an officer's psychological functioning to the degree that you feel a psychological evaluation is indicated, you have serious concerns that require that you take serious steps to make sure that the officer's potential problems do not spill over into the inappropriate use of his/her firearm.
5. The officer in mandated psychotherapy continues to have (or develops additional) job related problems. What then?
Some possible solutions: Call or write to the therapist indicating your concerns. Tell the officer of your concerns. Relieve the officer of duty. Contact the

professional who conducted the initial evaluation and discuss the matter. Of course, the severity of the job related problems is a major consideration as to the course you may wish to take.

6. You need to discipline the officer in therapy. What should you do?
Ordinarily, the therapist should not be connected to any disciplinary action that you need to take. Therapists are not properly involved in disciplining their patients. You may want to avoid disciplining any officer who is off duty for a psychological disorder that makes him unfit for duty. However, in the case where the officer is working, it is suggested that you go ahead with whatever disciplinary action is needed. It is also suggested that you do not contact the therapist about this. If you need assistance in determining what discipline is appropriate, use your usual advisors in these kinds of matters.

7. Can you discuss your concerns regarding an officer with his/her therapist?
In general, you must be aware that the treating professional is required, by statute, to maintain his/her patient's confidentiality. If you have major concerns about the officer you can tell his therapist. However, do not expect information back other than whether the officer is attending his regularly scheduled sessions or if he has successfully completed his treatment and only expect that information if it was originally understood by all concerned that the therapist was to provide that to you.

8. What about a second opinion?
There may be times when you feel that you need a second professional opinion regarding an Officer's fitness for duty. Be aware that seeking a second opinion can create an adversarial relationship with the Officer particularly in a situation where his/her therapist has written the fitness for duty report (whether pro or con). The seeking of a second opinion under such circumstances can result in your Officer feeling that you are "out to get him/her." Experience suggests that the Officer about whom you receive an "unfit for duty" report is best taken off duty and allowed some time to get his/her life back in order. On the other hand, the Officer who is recommended back to duty by his/her therapist may wisely be evaluated again by a professional with whom you have the client relationship particularly whenever you have concerns about your liability. In cases where a disability board is involved in the Officer's return to duty, it is generally wise to let the board seek an objective second opinion since that is one of their functions.

APPENDIX I

The following case citations relate to fitness for duty evaluations:

Chief's right to be informed about the physical and mental capabilities of subordinates, in order to assure effective performance of department members. *Conte v. Horcher*, 365 N.E. 2d 567 (III. App. 1977)

Psychiatric evaluation was properly ordered as a precondition to reissuing the weapon to the officer. *City of Boston v. Boston Police Patrolmen's Assn.*, 392 N.E. 2d 1202 (Mass. App. 1979)

Police Officer must submit to a psychological evaluation. The test results could be sent to the commissioner, but should otherwise remain private unless used in disciplinary hearings. In addition, the court said that the employee did not have a right to have his attorney present at the time of his interview. *Nolan v. Police Cmsnr. of Boston*, 420 N.E. 2d 335 (Mass. 1981)

Court upheld the termination of a civil service deputy sheriff who refused to undergo a mental examination after a series of minor neglects of his duties. The court found the order lawful and his refusal constituted insubordination of the highest order, justifying dismissal as an appropriate penalty. *Lucheso v. Dillon*, 439 N.Y.S. 2d 783 (A.D. 1981)

Terminated police officer suffered from a non-correctable pre-existing mental health problem. His condition was found to have been aggravated by job-related stress that produced disciplinary problems. Although the department could separate the officer from employment, he was entitled to a line-of-duty disability pension for his mental disorders. This was the case even though the officer might have a pre-existing psychiatric difficulty when hired. *Tingler v. City of Tampa*, 400 So. 2d 146 (Fla. App. 1981)

APPENDIX II

Guidelines for determining when a Fitness for Duty evaluation may be needed

The following are some indications that an officer may need to be evaluated for fitness for duty. In reviewing these, please be aware that an attempt is made to list some (not all) situations and behaviors that suggest the possibility that an officer may be having problems affecting the performance of duty.

1. The officer tells a supervisor they are having a problem doing their assigned duties. This is a very obvious situation where further exploration should be done to determine whether the officer might be having a psychological problem that requires a fitness for duty evaluation. In this situation, you have received a direct warning that the officer is having a problem and that warning is best not ignored.
2. The supervisor tells you that the officer is having difficulty performing some (or all assigned tasks). Again this is an obvious red flag that should initiate further inquiry by you.
3. You become aware that one of your officers is receiving psychotherapy. In such a situation, it is advisable to check with his/her supervisor to see if the officer is performing properly. If so, it is probably not necessary to seek a fitness for duty evaluation. Seeking professional assistance is not a sign that the officer is unable to perform. It is often the sign of good judgment for an officer to seek professional treatment. If you require the officer who has sought help to submit to a fitness for duty evaluation you are telling him/her and the rest of your department that they are "in trouble" with you when they seek help. You probably do not want to give that kind of message. Further, it is very unlikely that you have any vicarious liability when an officer who is performing within your standards seeks professional help ON THEIR OWN.
4. One or more of your officers has been involved in a "traumatic incident." There are a number of situations that are notorious for producing performance problems in law enforcement officers. For example, police officers involved in on-duty shooting situations are at risk for developing psychological symptoms immediately thereafter or in a delayed manner. You are well advised to have a post shooting policy that includes a psychological debriefing for officers involved in a shooting whether the shooting was fatal or not.

There are other traumatic duty situations that can produce psychological symptoms in your officers. These include:

1. Any situation in which the officer him/herself or another officer (particularly a partner, fellow squadmember or close friend) is seriously hurt or killed in the line of duty.
2. Any situation in which an officer was involved where anyone (including another officer) is killed or seriously injured as the result of the officer's action or failure to act (e.g., high speed chases that end in a crash causing death or serious injury, CPR situations, and fights with suspects -- particularly when there are serious injuries to anyone and where deadly weapons may have been involved).
3. Community disasters including air crashes, fires in which one or more persons killed or seriously burned and where the officer had any contact with a burned victim, and auto accidents in which there are fatalities or horribly injured victims.
4. Situations where the officer must deal with infant death or the victims of child sexual abuse (this can be particularly important for detectives who specialize in child sexual abuse cases).
5. Officers in special units (particularly vice, narcotics, intelligence) who are assigned, over the long term, to deal with suspects and situations that are perverted, dangerously violent, or who are in other ways sure to inspire fear, anger, or visceral disgust in the officer. In these kinds of situations the officer is required to act professionally and/or under threat of violence to avoid "blowing cover" and so must remain involved despite powerful emotional stimulus to run, fight or vomit. Officers assigned to undercover units can be dramatically and insidiously traumatized by their duties in ways that are often not obvious. Thus, it is often wise to limit the length of such assignments to no more than two years and to require psychological evaluations before and at the end of such assignments. It is also wise to require a psychological debriefing of all officers at the end of such an assignment to ease the return to new duties even if the officer has performed the "new" duties at some time in the past.