

# JACKSONVILLE'S JUSTICE FUTURE

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## Introduction

Thank you for the opportunity to speak with you. Today Duval County faces serious challenges in education, violent crime, a population exodus and a growing fiscal crisis left unaddressed since the 1970s. This once-per-decade opportunity for community feedback on the structure of Jacksonville's consolidated government is always momentous and I believe it is particularly so right now.

My interest lies primarily in the ways the consolidated government impacts the community experience of crime and violence, but so many policy issues influence the dynamics of crime that are relevant to the Charter, that it is necessary to examine the Charter holistically. I have a PhD in justice policy from Arizona State University and currently serve as chairman of the Department of Criminology & Criminal Justice at the University of North Florida. I have helped design and evaluate programs for national, state and local justice organizations, both public and non-profit, two State Supreme Courts, four state legislatures, and many organizations including Jacksonville Sheriff's Office. I served on the management team of the JCCI Homicide study and currently serve on the Jacksonville Journey Oversight Committee. In preparation for my presentation today, I have reviewed all the previous testimony before you.

I was impressed with Rick Mullaney's two presentations on the history and operational logic of the charter and Jacksonville's version of "consolidated" government. I was particularly interested in his articulation of the often challenging need to reign-in the consolidated government's various entities and the frequent need to enforce the boundaries of consolidated government. As Mr. Mullaney pointed out, it is the ongoing tendency for entities of the Consolidated government to desire autonomy—in lots of different ways—and to try to escape the constraints of consolidation to serve their own institutional interests.

Of course, the difficult job of enforcing the boundaries of consolidated government structurally falls to the General Counsel's Office—except every ten years when a committee of citizens is empowered to make their own recommendations outside the constraints of the prevailing political winds. This is

an impressive and unique system and one that needs to be safeguarded. I feel privileged to be invited to speak with you.

## Meaning of Consolidation

In my view there are three developments unforeseen in 1968 that now threaten both the integrity and operation of the consolidated government.

1. The limited public understanding of Consolidation and its original purpose.
2. The abandonment of “home rule” by Tallahassee and our somewhat but-not-entirely-related Fiscal liabilities.
3. The rise of public sector employee unions and their de facto control over the city’s budget and their influence in local politics, particularly in the criminal justice system.

**Let me start with number one:** “The limited public understanding of Consolidation and its purpose.” I believe the fiscal crisis we currently face is in part due to a loss of public understanding of the original objectives of Consolidation. While Consolidation was ushered-in on the mantra of good government and political accountability in the aftermath of the 1960’s corruption scandal—easy to do at a time like that—today Consolidation has come to simply mean low taxes and cheap services. **Insofar as “consolidation” has come to simply mean “cheap” —rather than a value-added formula for the city being successful—much of the most important history of Consolidation has been lost.**

You cannot succeed as a city just by being cheap. You’ve got to be smart. In 1968 Consolidation was smart—and consolidation is still smart, but circumstances have changed and corresponding changes must be made to the charter. As others have pointed out, many people leaving Duval county relocate to surrounding counties **with higher taxes and more comprehensive services**. In short—*they leave Jacksonville because of its failing civic infrastructure, not high taxes..*

Citizens don’t simply want cheap government—they want effective government at justifiable cost. You can undermine your success as a City by being too cheap—to the point where we find ourselves today: with spiraling debt and a shrinking population tax base. I heard it remarked in testimony given before you that many

people leave Jacksonville because of its challenges in public education. As children fail in school, they are six times more likely to end up in the criminal justice system. I'm not going to talk about schools today but the schools are somewhat within your purview and I hope you pursue that issue.

But first, I hope you reassert the understanding of Consolidated government *as a formula for Jacksonville success* and not just an excuse to be cheap. As both the mayor and sheriff have pointed out, our funding of public services lies at about 18% less than our closest peer by population size. Per capita spending on resources for policing, public works, recreation, and public education too, lags well behind the rest of the state.

**Let's move on to number 2:** The abandonment of "home rule" by Tallahassee and our current Fiscal liabilities.

The 2009 JCCI study on Jacksonville's fiscal crisis titled *Our Money, Our City: Financing Jacksonville's Future. A report to the citizens of Jacksonville*<sup>1</sup> starts with the premise that we have not had an honest conversation about where we are as a city vis-a-vis our mounting pension debt since consolidation—but instead have put off dealing with mounting unfunded liabilities that literally now threaten the solvency of the city (their words, not mine). The three concluding findings from the study are put forward as priorities:

1. Make Hard Choices Now—"what the role of government should be and level of services we want;"
2. Fund infrastructure maintenance
3. Eliminate the unfunded pension liability

The single largest part of the City's budget, by far, is the Jacksonville Sheriff's Office. The Sheriff's Office budget has increased by roughly 500% since 2003, but mostly due to the City's failure to meet clearly-defined obligations to the City's public employees' pension fund. Even though property values were rising in the late 1990s and early parts of this decade, the city's unfunded pension liabilities stretch back to the 1970s. In short, I agree with Mr. Keane and the Sheriff and the JCCI study that millage rate reductions in the 1990s utilizing money from

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<sup>1</sup> *Our Money, Our City: Financing Jacksonville's Future. A report to the citizens of Jacksonville.* Jacksonville Community Council, Inc.: Jacksonville, FL Available at: <http://www.jcci.org/jcciwebsite/documents/09%20City%20Finance.pdf>

employees pension funds—and not just the Police and Fire Pension Fund—helps put Jacksonville today in a very compromised position. Tallahassee changing the rules for how localities maintain their tax base, obviously doesn't help either.

As the JCCI study on Jacksonville's finances documents, our pension plans are in some cases less than 50% solvent. This year, just paying the debt on the City's pension liability will exceed \$110 million. Just the preceding year, it was only \$40 million. **This compounding debt is a major threat to the funding of city services directly related to prevention and control of crime.** This debt has more to do with the City's failure to keep up with its known obligations, than it does with the supposedly lavish terms of pensions, which were not markedly different to other plans around the state at the time they were negotiated. Things are very different today, mind you, and the fact is that the City owes an 8.4% return on a whole lot of money it does not currently have. Estimates I have seen on the current unfunded liability of the city vary from \$1.2 billion to \$1.5 billion. It's hard to see how we're going to get there—and I don't believe people realize how frankly tenuous our situation as a City really is.

Employee salaries, of course, comprise a huge chunk of the overall city budget. Many of our city's employees belong to one of three retirement funds, the Police and Fire Pension Fund, the General Employees Pension Plan, and the Correctional Officer Pension Plan and are represented by employee unions.

**Which brings me to unanticipated development number 3:** The rise of public sector unions.

In his testimony, Mr. Mullaney emphasized the importance of consolidation's "strong mayor" form of government, placing executive status and veto power into *that* senior position. With legislative and budgetary authority vested in the City Council, and veto power in the mayor, the newly consolidated government had both clear lines of authority and accountability, as well as checks and balances—with the general counsel's office acting as a kind of Supreme Court.

In his testimony to you, the Sheriff noted that there are some occasions when the electoral independence enjoyed by the Sheriff empowers him to take issues beyond the purview of the mayor's office directly to the City Council. In one example, the Sheriff cited his desire to expand his control over procurement and

outsource vehicle maintenance, beyond of the existing authority structure of the mayor's office. In another example, he came directly to you to ask that you recommend altering the charter to allow him to hire his own independent legal counsel.

As Mr. Mosely pointed out immediately after the Sheriff's presentation, in fact, both the auditor's office and the Mayor's Office vetted the Sheriff's proposal and found that it would not save money. But whether a particular proposal is valid or not, your job is to think about the structure: the point is that the Sheriff sought to go around the executive authority of the mayor and to assert the interests of his **agency** as distinct from those of the consolidated government. But the Sheriff referenced to you only the costs to his agency, whereas, any valid cost-benefit analysis requires examination of all costs, the full range of costs to all parties. And it's a good demonstration of the problem.

In addition to the three unforeseen developments listed above (limited public understanding of Consolidation; home rule and our debt; and the rise of the public sector unions), it is also my view that the political context of 1968 consolidation—namely a public corruption scandal involving then mayor Hayden Burns and the sheriff—resulted in a fourth concern, right from the beginning—the establishment of an independently elected sheriff in a so-called *consolidated government* with only one police force in a City Jacksonville's size.<sup>2</sup>

**What other agency head has the power to independently lobby Council? Either have a strong mayor model or don't—but this system empowers the sheriff's office like no other police department in the United States. But the tandem lobbying power afforded the agency between the Sheriff and the FOP, in my opinion, adds up to the Sheriff's Office having the de facto power of a co-equal branch of government, not just an agency among agencies within the City government.** My view is, that all of this was unanticipated and that we need to reinforce the “strong mayor” model of government outlined in the original Charter.

Now, whoever the Sheriff of Jacksonville is, he is going to work the system as it is structured—that is his job. Particularly because we so dramatically under-fund social services, every agency head in Jacksonville has got to be an entrepreneur. In Sheriff Rutherford you have capable, energetic, and ultra-competent public

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<sup>2</sup> This danger may well have been anticipated by the framers of consolidation, who stipulated the sheriff be appointed in their original draft. The details of that change and how it happened are unknown to the author.

official who vigorously works within the structure he has. But your job is to look at the current structure and I believe the current structure is flawed in reference to a strong mayor model of local governance.

I thought Mr. Mullaney's remarks were perfectly on-point regarding this issue when he noted how consolidated government is seen as particularly "constraining" by Constitutional officers. In an important moment of candor during his second presentation to you, Mr. Mullaney stated: *"...if the truth be known, most agencies of the consolidated government truly don't want to be a part of it when it comes to them. They love it, they'll tell you it's great as long as they can have their own lawyer and they can deal with their own budget. It's a great system. --As long as I can have my own lawyer and deal with my own budget, I really love this system."* And such a system, of course, is not a consolidated government at all—but a government of independent agencies. And therein lies the rub.

Not to put too fine a point on it, the Sheriff was very direct in explaining to you that it was his *political independence* that empowered him to take measures beyond the mayor's office—the supposed chief executive of the city. *But political independence does not represent consolidation and in the original draft charter, the sheriff was appointed as a Director of Public Safety.*

**In the operation of Jacksonville's local government, the power of Jacksonville Sheriff's Office is profound.** Over the years, with the tandem powers of the independently-elected Sheriff and a **powerful public employee labor union that is very active in local politics**, JSO has become by far the city's single largest budget item—and has two powerful sources of independent lobbying power: the Sheriff himself and the FOP. Structurally speaking, today, the fact that the FOP can simultaneously sponsor the Sheriff's candidate, the state attorney candidate, and public defender candidate and several Council members—and hold a victory party for the public defender at FOP headquarters—arguably gives the appearance of compromising the objectivity and adversariality of the local justice system.

**I hope through these examples I've demonstrated how the independence of the elected sheriff can actually render the agency less accountable than would otherwise be the case with an appointed police chief. Just do a brief history of sheriff's offices across Alabama, Louisiana and Mississippi and you will**

**encounter histories of political efforts to reign in the power of the county Sheriff through a political appointment process.**

In short, JSO has unprecedented power. The sources of this power—an independently-elected sheriff who has his own political constituency, his own budget, his own employee union, and who wants his own lawyer—was unanticipated at the Charter’s founding. Even if you keep the independently-elected sheriff, my view is he cannot continue to be allowed to independently lobby the Council, Tallahassee, even Washington, DC. As a political conservative, I don’t like the police department being a co-equal branch of government—it’s just bad policy.

Structurally speaking—who do you want to be in control of the budget? **The fact that the Finance Committee recently “failed” to cut the city’s budget had nothing to do with the veteran’s day parade. After identifying tens of millions in cuts, the Finance Committee could not dig deeper into the budget because the salaries of public sector union employees can only be set or adjusted through collective bargaining. The tandem power of the FOP and independently elected sheriff is thereby used to grow the size of the agency with few controls. Everyone who follows Council knows that JSO leverages great power over that body because of the two kinds of power I’m describing—and I would argue that it is undue power for a police department. Over the years, I’ve had pieces of this very conversation with Council members, countless influential leaders of Jacksonville, and ministers from the Northside: and all of these disparate groups agree—going against JSO is like near impossible.**

A Sheriff with the authority to independently lobby is not a good way to control costs. For example, the COPS grant is federal grant which funds 50 officers, but only for the first three years. After that, the City of Jacksonville has to absorb the costs of those officers—which is what just happened.

## **PART II: A Metropolitan Police Department: JSO as Public Monopoly**

Given all these factors, the central issue the Charter Review Commission faces vis-a-vis law enforcement today, is not just the electoral independence of the Sheriff—but also the fact that JSO was installed as the sole law enforcement authority for the geographically-largest city in the United States. The tandem powers of JSO mentioned above are amplified by size.

It has long been my view that the City of Jacksonville should adopt a law enforcement structure similar to that of every other large city in Florida: to have an urban metropolitan police department headed by an appointed police chief while maintaining a Sheriff's Office headed by an independently elected sheriff. I believe such a system improves checks and balances and would in fact enhance efficiency and accountability. I also believe it would *cost less*—because the fact of the matter is, JSO has become what's called a **"public monopoly."** They're the only game in town and they use their power at the Council level very effectively. They essentially charge what they want for things like overtime services—and as the Duval County School Board recently determined—are far less cost-effective than an entirely new department might be—and accountable in different ways than an agency headed by an appointed police chief and overseen by a mayor and city manager.

And it is really unheard of. **The research shows not a single large jurisdiction operating "consolidated" government in which the elected sheriff has both independent lobbying power and is also the chief and primary law enforcement official in charge of the one police department in the jurisdiction.<sup>3</sup> It's bad practice and arguably was set up in haste—and directly contradicts the original draft charter, which should be reexamined on this point.**

I would encourage you to take a look at the work of Stephen Goldsmith, former mayor of Indianapolis and current fellow at Harvard's JFK School of Government. In the late 1980s and early 1990s, Indianapolis was in similar shape to that of Jacksonville today. With urban exodus in full swing, falling revenue required innovations that would shrink government. Goldsmith's books *The Twenty-First Century City*<sup>4</sup> and *Governing by Networks: The New Shape of the Public Sector*<sup>5</sup>, map out how he reduced, as mayor, the Indianapolis city budget by 7% while

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<sup>3</sup> Sheriff Rutherford in his testimony pointed to Las Vegas as an example of where there is an independently elected Sheriff in charge of a large geographic area, but for many reasons in my opinion the comparison doesn't apply. Not only does Las Vegas Metropolitan Police Department share jurisdiction in Clark County with 15 other law enforcement agencies across the county, Clark County itself comprises over 8,000 square miles of territory, with officers concentrated in the Las Vegas city limits but spread sparsely elsewhere over the rest of the whole county. In addition, the funding structure of LVMPD comprises not just one city/county funding source like ours does, but three separate funds including the City of Las Vegas, the Clark County Commission, and a newly-passed "More Cops" sales tax. For these reasons and others, LVMPD is arguably unique in the country. On a related note, LVMPD does not have a take home car policy because of cost, according to their public information officer (Ofc Barbara Morgan, personal communication).

<sup>4</sup> *The 21<sup>st</sup> Century City*. Stephen Goldsmith. Washington, DC: Regnery (1997).

<sup>5</sup> *Governing by Network: The New Shape of the Public Sector*. Washington, DC: Brookings Institution. (2004)



simultaneously making the largest infrastructure investment in the city's history. How did he do it? By establishing a model of local governance founded on performance-based competition and public private partnerships that ended all government monopoly—he totally restructured the city. Creating a marketplace for public services where entities have to compete and innovate and where all government monopolies are abolished, is the essential first step. I would argue JSO is a government monopoly—a very powerful government monopoly that is priced out of the market.

Taking consolidated cities of our size, for example, Charlotte, Nashville, and Indianapolis—all have appointed police chiefs and metropolitan police departments as their primary law enforcement agency in addition to an elected county Sheriff, whose office runs the jail, serves papers, and patrols the rural perimeter of counties. Larger consolidated jurisdictions such as Phoenix also have appointed police chiefs. In these cases, the independently-elected sheriff still exists, but with a much narrower range of duties, responsibilities and smaller operational budgets. This appointed police chief formula so common around the country and the state of Florida, has primarily to do with controlling the costs and character of urban law enforcement through the accountability and authority structure of an independent city executive. Urban localities such as Jacksonville also have economic, racial and other meaningful political considerations to take into account that are directly related to law enforcement that must be taken into consideration in any jurisdiction's law enforcement strategy.

In recent months some residents of Jacksonville have expressed public concern over police shootings and asked for expanded oversight in the RTR process. In private meetings with the Sheriff, local ministers had asked for a civilian police review board. In conversations about that topic, the less dramatic option of simply expanding the format of the Response to Resistance Board process—by placing an external *law enforcement* member on the board that could liason between the Sheriff's Office and the community, was also rejected by the Sheriff.

Now, would an appointed police chief be more responsive to community members' concerns about such issues? I believe he would be. ***And we're really not talking here about the accountability of the Sheriff per se—we're talking about the accountability of the agency to community concerns.*** Insofar as the subtext of consolidation in 1968 and beyond was a community conversation about race relations, this should also be a factor in your deliberations. While the independently-elected Sheriff certainly leads the agency, lots of factors beyond

the Sheriff's direct control influence police/community relations. **The fact that JSO is a monopoly, the only and largest law enforcement agency in the city, also prevents multiple voices—particularly those of the minority community—from being full participants in local justice policy because they so heavily dominate public discussion about crime.**

While the Sheriff will point correctly to the fact that Jacksonville's per capita spending on policing is lower than other cities in Florida, I believe that—because of the pension issue (not JSO's fault) and the take home car policy—that JSO unit costs per officer are in fact higher than other cities in Florida. For one thing, the unfunded pension liability for JSO in the Police & Fire Pension Fund is the greatest according to JCCI (*through no fault of JSO*), because it is the least solvent (at about 50% in 2008, before the worst of the meltdown). The insolvency of this fund arguably requires a renegotiation of the current collective bargaining agreement. Both the mayor and the sheriff have said as much.

As an example of how this cannot continue, the recently-authorized 50 new officers under the federal COPS grant, are to be grandfathered into the current collective bargaining agreement with the current level of benefits. How much that will cost Jacksonville is unknown in my view. Probably there is no precise way to tell—except to say that the unfunded liability in the Police & Fire Pension Fund just increased by 50 officers.

So we've got both problems: number one, we spend less overall for policing—but we also cost more per officer. The figure used by JSO is approximately \$100,000 per officer through the first year and off probation (with car, laptop, benefits, equipment, training, and salary through year one). It seems to me this is probably an underestimate.

### **The Matrix Audit**

**Well, wouldn't creating a new police department just add to the bureaucracy and expense of city government? Not necessarily. JSO already has a lot of its own bureaucracy. The recently-completed Matrix audit, which is frequently pointed to as a source of justification for hundreds of more officers, only actually advocated a need for 21 more officers in patrol (MATRIX, at page 21 and elsewhere). It also recommended using a different formula than that currently used by JSO in calculating how many officers are necessary—suggesting that the current formula used by JSO “could inflate the number**

needed” (MATRIX at page 21) and—using their recommended workload formula instead of the per capita formula used by JSO—redeploying more under-utilized officers from the midnight shift to afternoon shift (MATRIX, at page 43 - 44). Exploring data on efficiencies like these are beyond the scope of this testimony, but I believe they exist.

**But I think the far larger issue, is how is the City of Jacksonville going to sustain the growing costs of public safety and survive financially?** Without getting control of public safety expenditures—across the board—the city will be bankrupt. As the JCCI report points out, then there will be no pensions--and this is not inconceivable. As JCCI put it, Jacksonville must make hard choices now. And you are among the only people who can make those choices. I would finally point to Indianapolis and the work of Mayor Stephen Goldsmith along with Newt Gingrich as a resource in this effort.<sup>6</sup> They are examples of bold conservative thinkers who took radical measures—and turned things around.

Given the evidence, my view is that the Charter Review Commission should recommend empanelling a Feasibility Committee on the establishment of a metropolitan police department with an appointed police chief. Unfortunately, I believe we have entered the realm of essentially having to nationalize a sizeable portion of JSO and turning it into a Metropolitan police department under the authority of an appointed chief of public safety. During a time of transition, the elected sheriff can be appointed acting police chief. How else are you going to get control of public safety spending in Jacksonville anytime in the near future?

Short of this, I believe restrictions on the ability of the independently-elected sheriff to independently lobby for budget resources should be put in place, to match the strong mayor model of government outlined for Jacksonville by the framers of Consolidation. In not insignificant ways, the city of Jacksonville has fallen victim to the pitfalls of the state of California, with collective bargaining units exerting de facto control over large portions of government that—combined with the underinvestment and population exodus we spoke of earlier—can well lead to bankruptcy. I would encourage you to take a careful read of the JCCI study *Our Money, Our City*.

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<sup>6</sup> I highly recommend review of Stephen Goldsmith’s workshops on 21<sup>st</sup> Century Government: Helping Local, State and Regional Governments Do More with Less at Harvard. <http://ashinstitute.harvard.edu/innovation> Many of Goldsmith’s public lectures are available at c-span.org

## Quotes from the November 2007 MATRIX Audit of JSO

As indicated in the previous section, the JSO utilizes an analytical model to deploy patrol personnel.

A primary purpose of this model, called the "Units Field Analysis," is to evaluate the utilization of patrol in each of the six patrol zones. ... A potential problem with this approach is that the availability of patrol at any given moment is tied to operational decisions about how personnel are utilized. For example, some patrol zones may utilize patrol more often for special assignments, traffic assignments, or spend more time on vehicle maintenance or at the firing range than others. This could inflate the number needed in those areas (page 21).

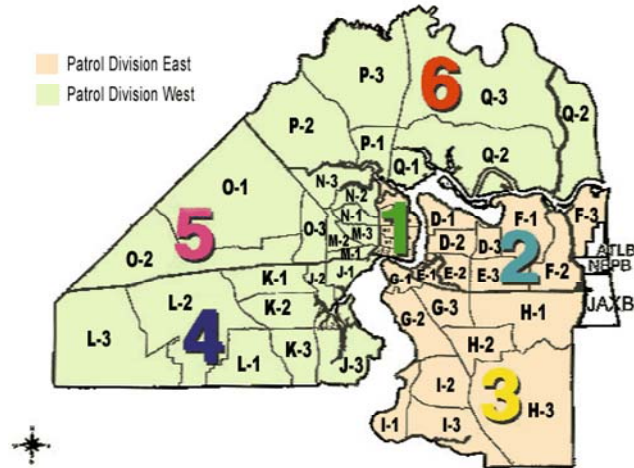
An alternative approach, recommended by the project team, would focus only on community generated workloads, proactivity targets and officer availability. (page 22).

While you often see the per capita figure used in requests for more officers, the Matrix audit says on page 23:

Matrix Consulting Group does not use a "per capita" or "per 1,000" ratio as an analytical tool in assessing field staffing needs, for the following reasons:

- Ratios do not consider the seriousness of the workload levels of the jurisdictions being compared. For example, the crime rate should be considered in any comparative analysis of workloads, specifically, the number of serious crimes in a community (e.g., murder, rape, robbery, aggravated assault, burglary, motor vehicle theft, and larceny).
- Ratios do not consider the differences in service levels selected or capabilities, which a jurisdiction may have for their law enforcement services (e.g., community-oriented or problem-solving oriented, a reactive versus proactive philosophy, the utilization of City or County-wide resources in solving problems, etc.). All of which add to the inability to compare the necessary number of field patrol personnel.
- **The Analysis of Field Patrol Resource Requirements Should Be Based on Actual Workloads Handled and Appropriate Targets of Proactivity. The Matrix Consulting Group utilizes a method in which the number of field personnel required is based on an analysis of the unique workloads and service level expectations of a community.**
- As shown above, with the addition of 40 CSOs, the number of Police Officers needed decreases from 835 to 781. There are currently 672 Patrol Officer positions assigned to Patrol. In addition, 94 recruits are assigned to the Academy or Field Training Program, for a total of 766 Patrol Officers. The analysis shows that in order to meet the 40% proactive time target, as well as the response time targets in the rural areas, the JSO needs an additional 21 Police Officer positions allocated to patrol. PAGE 81

## ALL ZONES AND SUB-SECTORS



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## Jacksonville Sheriff's Office \* Officers per Patrol Zone, July 09

- Zone 1: 16 Sgt, 104 Ofc
- Zone 2: 16 Sgt, 134 Ofc
- Zone 3: 16 Sgt, 161 Ofc
- Zone 4: 20 Sgt, 161 Ofc
- Zone 5: 17 Sgt, 136 Ofc
- Zone 6: 10 Sgt, 90 Ofc
- Spcl Enf 4 Sgt, 39 Ofc

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## Average Years of Service DROP Applicants

Year	# Applicants	Average Years Service
1998	180	29.32
2000	69	26.32
2004	51	25.24
2008	122	21.34

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