

Background Investigations

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

BACKGROUND INVESTIGATION – 1820-30340

EXPANDED COURSE OUTLINE

I. INTRODUCTION TO THE PRE-EMPLOYMENT BACKGROUND INVESTIGATION PROCESS

A. Reasons for Conducting Pre-employment Background Investigations

1. Legal Requirements
2. POST Requirements
3. Agency Requirements
4. Vicarious Liability (negligent hiring)

B. Peace Officers: (POST regulations and requirements regarding pre-employment background investigations per POST Regulations 1002)

1. Verification of appointment eligibility

C. Public Safety Dispatchers: (POST regulations and requirements regarding pre-employment background investigation per POST Regulation 1018)

1. POST minimum selection standards for public safety dispatchers are less specific than those for peace officer candidates. The minimum requirements relate to three specific areas
2. Minimum elements of a *thorough* public safety dispatcher background investigation.
3. Retention of public safety dispatcher background investigation files

II. ROLES AND RESPONSIBILITIES OF BACKGROUND INVESTIGATORS, APPOINTING AGENCIES, AND THE CALIFORNIA COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

A. The fundamental responsibilities of pre-employment background investigators are to:

1. Conduct an **objective** investigation of pre-employment suitability for appointment
2. Conduct a **thorough** investigation
3. Conduct a **defensible** investigation
4. Conduct a **culturally-appropriate** investigation
5. Conduct a **professional** investigation
6. Adhere to agency policies and procedures

B. The basic role and responsibilities of the California Commission on Peace Officer Standards and Training (POST) with respect to the selection and appointment of peace officers and public safety dispatchers

1. POST has a statutory obligation to establish *minimum* selection standards for specified California peace officers and for public safety dispatchers participating in the POST program (California Penal Code Sections 13510, et. seq.).
2. POST also publishes a variety of documents containing helpful *guidelines* related to pre-employment selection (e.g., the POST Medical Screening Manual and the POST Psychological Screening Manual).
3. POST has a statutory obligation to conduct compliance inspections to ensure that law enforcement agencies participating in the POST program are adhering to the standards for recruitment and training required by law (California Penal Code Section 13512)
4. The POST compliance process, with respect to selection standards, normally involves an annual inspection of the background files of peace officers and public safety dispatchers appointed by the law enforcement agency since the last POST inspection.

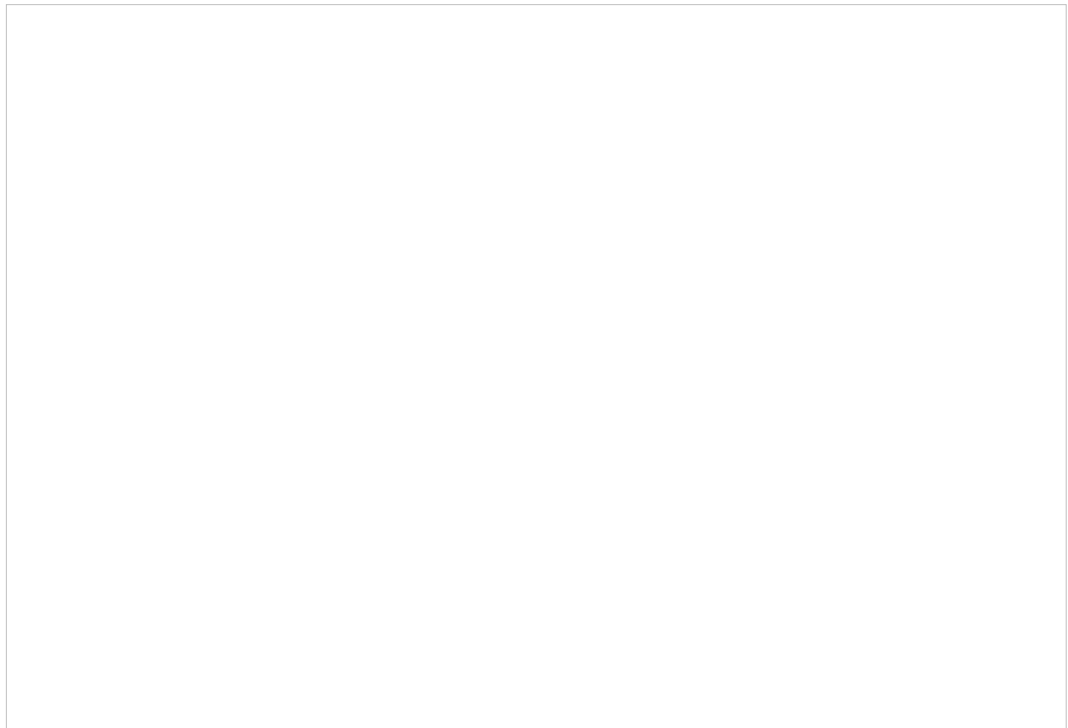
C. Roles and responsibilities of local agencies with respect to peace officer and public safety dispatcher selection.

1. Individual law enforcement agencies have the ultimate responsibility for setting selection standards for their personnel, consistent with the limitations imposed by prevailing law.
2. Agencies may establish job-related selection standards which exceed the minimum requirements contained in law or in POST Regulation. In such cases, the hiring agency assumes the burden of substantiating the validity of such standards.
3. Law enforcement agencies may elect to selectively or globally adopt POST selection *guidelines* (e.g., color vision guidelines versus full content of the POST Medical Screening Manual) as their individual selection threshold.

4. Individual agencies may establish their own requirements regarding background documentation or file packaging protocols so long as they meet or exceed prevailing legal requirements.
5. Whether or not a background file contains a background investigator's recommendation for hire is a matter of local agency discretion.

D. The Background Investigation Arena

1. An effective pre-employment background investigation is the product of a collaborative relationship among the three fundamental areas which are illustrated in the graphic below:
2. As illustrated below, compliance with statutory/regulatory requirements (e.g., GC§ 1029, 1031) are non-discretionary. POST is obligated to verify compliance of their constituent agencies with Government Code provisions and POST regulations. Whereas training and consultation are relevant to any area, agency policy cannot conflict with legal requirements.



III. BACKGROUND DIMENSIONS

A. The origin of the POST Background Dimensions

1. The POST background investigation dimensions were developed as the result of a comprehensive review of multiple job analyses of both the peace officer and public safety dispatcher positions.
2. Based on these analyses, it was determined that, despite the significant difference between the tasks and duties of these two positions, they share strikingly similar worker requirements (e.g., integrity, stress tolerance, communication skills).
3. Given this similarity, one common set of 10 background dimensions was created for peace officers and public safety dispatchers. It is divided into five major categories.
4. The ten individual background dimensions have been grouped into five categories

B. Background dimensions related to **moral character**:

1. Integrity (Background Dimension #1)
2. Impulse Control/Attention to Safety (Background Dimension #2)
3. Substance Abuse and Other Risk-Taking Behavior (Background Dimension #3)

C. Dimensions related to handling stress and adversity:

1. Stress Tolerance (Background Dimension #4)
2. Confronting and Overcoming Problems, Obstacles, and Adversity (Background Dimension #5)

D. Dimension relating to **work habits**:

1. Conscientiousness (Background Dimension #6)

E. Dimension relating to **interactions with others**:

1. Interpersonal skills (Background Dimension #7)

F. Dimensions Related to **intellectually-based abilities**:
Decision-Making and Judgment (Background Dimension #8)

1.

2. Learning Ability (Background Dimension #9)
3. Communication Skills (Background Dimension #10)

IV. LEARNING ACTIVITY 1

- A. Students need to be adept at utilizing the background manual to conduct pre-employment background investigations
1. Conduct initial searches for legal requirements
 2. Selection Criteria
 3. Procedural guidance

V. LEGAL ASPECTS OF PRE-EMPLOYMENT BACKGROUND INVESTIGATIONS

A. Employee selection

1. Hiring practices are regulated by a variety of laws
2. Fair employment law specifies that selection devices
3. Statutory and case law have consistently supported the responsibility of government agencies to be able to swiftly eliminate those applicants *most likely* to commit misconduct and exercise bad judgment.
4. Problems can be minimized

B. Fundamental fair employment definitions

1. An applicant is **anyone** who inquires about, applies for, or who is deterred from applying by past practices, for any position within an agency (including application for promotion).
2. An employee can be anyone, paid or unpaid, who is allowed to perform any function for the employer (e.g., full-time, reserve, independent contractor, explorer, volunteer employees, etc.), although remuneration is often a requirement.
3. Discrimination is treating an individual(s) differently based upon a protected classification. There are two categories of discrimination
4. Protected classification refers to any category of individuals defined by legislation (FEHC, ADA, Title VII, Age Discrimination in Employment Act and California legislation) to be protected. These include, but are not limited to:
5. Under the Americans with Disabilities Act of 1990 (ADA), a person with a disability is a person who:
6. The *California Fair Employment and Housing Act (FEHA)* includes provisions which prohibit discrimination on the basis of the protected classifications defined above and makes no requirement that the impairment substantially limit the major life function, or that the impairment even be permanent.

7. The Americans with Disabilities Act of 1990 (ADA) refers to a federal body of law which prohibits discrimination based upon actual or perceived disabilities.

8. Conditional Offer of Employment (COE) is a **legitimate, bona fide** job offer that deems an individual qualified on all assessments conducted to that point. To be considered bona fide, a conditional offer should not be extended until after the candidate has been judged as qualified on **all** selection steps that do not include medical, psychological, or other pre-offer inquiries prohibited by ADA and FEHA.

9. Pre-offer inquiry refers to any inquiry made prior to the extension of a conditional offer of employment.

10. Post-offer inquiry refers to any inquiry made after the extension of a conditional offer of employment.

11. Essential job functions refer to those tasks which, unlike marginal job functions, are absolutely necessary to perform on the job with or without reasonable accommodation.

12. Reasonable accommodation is anything which is reasonably necessary to accommodate an applicant or employee's ability to perform an essential job function. (Reference Government Code Section 19231)

13. Background dimensions refer to the ten dimensions identified and validated by POST for use in conducting pre-employment background investigations of peace officers and public safety dispatchers. The background dimensions are identified in Section 1 in this document and are described in greater detail in the POST document *Background Investigation Manual: Guidelines for the Investigator*.

14. Medical examinations are procedures or tests that seek information about the existence, nature, or severity of an individual's physical or mental impairment, or that seek information regarding an individual's physical or psychological health. This typically includes physical and psychological examinations.

C. Regulatory agencies involved in fair employment practices and enforcement.

1. Equal Employment Opportunity Commission (EEOC)

2. Department of Fair Employment and Housing (DFEH)

3. The Department of Justice (DOJ) refers to both the State and Federal-level agencies which initiate legal action for violation of the Americans with Disabilities Act or other civil rights violations

4. Local Human Rights, Civil Rights, or Affirmative Action Boards and Commissions may also have jurisdiction over the employment practices of the law enforcement agency

D. Pre-employment inquiry areas

1. Problems have resulted for employers when inquiries into certain background areas were proven to be unrelated to the job.
2. As a result, EEOC, DFEH, and other regulatory bodies have adopted specific laws and regulations which may impact inquiry into any of the following areas.
3. It is imperative that instructors become conversant with the extent to which inquiries into these areas may be lawfully initiated.
4. Specific areas of inquiry

E. Minimum standards for appointment

1. The minimum standards for the appointment of entry-level and lateral peace officer applicants
2. Additional requirements for lateral peace officer applicants
3. Reserve peace officer applicants must meet similar standards for appointment as regular peace officers.
4. Minimum standards for the appointment of public safety dispatcher applicants
5. Other criminal justice/public safety positions

F. Valid disqualifiers for peace officer applicants

1. Inability to lawfully possess a firearm
2. Felony Conviction (Government Code Section 1029)
3. Failure to meet citizenship requirement (or fails to meet the criteria identified in Government Code Sections 1031(a), 1031.5 and Vehicle Code Section 2267).
4. Failure to meet the minimum age requirement (e.g., the appointee is under 18 years of age in conflict with the provisions of Government Code Section 1031(b).
5. Is “adjudged addicted or in danger of being addicted to narcotics, convicted, and committed to a state institution” per the provisions of Section 3051 of the Welfare and Institutions Code.
6. Has been found “not guilty” by reason of insanity for a felony offense
7. Has been legally designated as a sexually violent predator
8. Fails to meet any other valid, job-related published standard (e.g., fails to meet a higher educational standard imposed by the employer, etc.)

G. Disability Laws

1. The Americans with Disabilities Act of 1990, Title 1 (ADA), and California Fair Employment and Housing Act (FEHA) regulations
2. The ADA prohibits an employer from making any inquiries which may reveal information regarding any real or perceived disability until the applicant is determined to be otherwise qualified.
3. In order to comply with the provisions of the ADA and FEHA, a “conditional job offer” is made **after** the background investigator has completed inquiries into all non-medically-related areas which can legally and practically be obtained.
4. Following a conditional job offer, the applicant can be medically and psychologically evaluated.
5. The background investigation can continue after the conditional job offer.
6. Detection of deception examinations (i.e., Polygraph, Voice Stress Analysis, etc.), if conducted before a conditional job offer, cannot address medically-related issues.
7. Examples of prohibited types of employment discrimination under the ADA and FEHA

H. Other Fair Employment Issues of Relevance to Background Investigators

1. Civil Rights Act of 1964 (Title VII)
2. The EEOC Act of 1972 subjected state and local governments to Title VII

I. Legal issues associated with medical and psychological screening

1. Government agencies have a responsibility to swiftly eliminate those applicants who are most likely to commit misconduct or exercise bad judgment. Individuals cannot allege that they have a constitutional right to employment as peace officers or other government employment.
2. In California, Government Code Section 1031(f) **requires** both a medical and psychological evaluation of peace officer candidates and states in pertinent part:

“Each class of public officers or employees declared to be peace officers shall meet all the following minimum standards:

(f) be found to be free from any physical, emotional or mental condition which might adversely affect the exercise of the powers of a peace officer... Emotional and mental condition shall be evaluated by...”

3. The California Code of Rules and Regulations, Title 11, Division 2, Article 1 ‘ 1018 **requires** a pre-employment medical examination of public safety dispatcher applicants. A psychological evaluation is discretionary.

4. Recency of the evaluations

5. Pre-employment psychological evaluations, medical histories, and physical examinations are medical inquiries under the ADA.

6. Rejections and appeals

J. Civil and Criminal Liability Issues

1. Background investigators and their agencies can be held liable for defamation, harassment, or other violations of a person's civil rights.

2. Employers can be held liable for negligent appointment, negligent entrustment, and negligent assignment.

K. Release of information

1. Waivers

2. Confidentiality of information

L. Obtaining information related to criminal conduct

1. Arrest records

2. Convictions

3. Undetected criminal conduct

4. Probation and Diversion

5. Conduct as a juvenile

6. Other inquiries

7. Restoration of rights following arrest and/or conviction

M. Civil court actions

1. Investigators may inquire as to the applicant's involvement, as a plaintiff or defendant, in any civil court action.

2. As with other inquiries, investigators should carefully evaluate the specific circumstances surrounding the underlying event leading to the litigation.

N. Investigative Consumer Reporting Agencies Act (ICRA) - Civil Code '1786

1. Third party investigative consumer reports

O. Non-selection of applicants

1. Reasons for non-selection must be thoroughly documented.
2. Applicants found unsuitable for employment should be informed in writing at the time of the decision as to the reason(s) for their non-selection.
3. Local agency policies will govern any subsequent appeals process.
4. The Fair Credit Reporting Act (FCRA) requires written notification to the applicant where their rejection is based solely, or in part, upon credit information.

VI. AREAS OF INQUIRY

A. Mandatory areas of investigation

1. POST Commission Procedure C-1 (Section 1-5 (a) through (l)), identifies 12 specific areas which must be investigated during the conduct of a **peace officer** background investigation.
2. According to POST Commission Procedure C-1:

B. The POST Personal History Statement (PHS)

1. Personal Identifying Information
2. Relatives and References
3. Education
4. Residence
5. Experience and Employment
6. Military
7. Financial
8. Legal
9. Motor Vehicle Operation
10. Other Topics

VII. LEARNING ACTIVITY 2
Personal History Statement

2. Discrepancies
Missing blocks of time

- A..Review a mock POST
1. Completeness
 - 3.
 4. Other factors

determining eligibility

VIII. INFORMATION SOURCES

A. Major Sources of Information (The three “Ps” of information: people, paper, and personal observation)

1. People (interviews)
2. Paper (documents)
3. Personal Observation

B. Automated Information Systems

1. Internet resources
2. Criminal justice information systems

C. Document Evaluation

1. Original or certified documents obtained by the investigator are the most reliable source of information.
2. The original documents or certified copies of documents should be incorporated into the completed background investigation package.
3. Common problems with documents

VIII. PRE-EMPLOYMENT INTERVIEWING

A. Introduction to interviewing

1. Interviewing is how we gain information from others.
2. Interviewing is the main tool of the background investigator.
3. Interviewing is a dialogue, not a monologue.
4. Pre-employment interviewing is different from criminal interviews

B. Standard interview technique

1. Establish rapport.

2. Free narrative
 3. Initial inquiries
 4. Clarification
 5. Closing
- C. Interview preparation
1. Setting
 2. Proper preparation for the interview
- D. Tools for the interviewer
1. Questions are the principal tool of the interviewer.
 2. Questions have two meanings
 3. Types of questions
 4. Question composition
 5. Question sequencing
- E. The Five Steps of Interviewing
1. Rapport building
 2. Free narrative
 3. Initial inquiry
 4. Clarification
 5. Closing
- F. Other considerations for the Interviewer
1. Professional appearance
 2. Demeanor
 3. Recording and “memorialization”
 4. Professional impressions

G. Potential indicators of deception include, but are not limited to:

1. Body language
2. Word choice

H. When deception is suspected

1. Consider confronting the interviewee
2. Stress the need for truth.
3. Be polite but firm.

I. Applicant Discrepancy Interviews

1. Ensure that preparations for the discrepancy interview are completed.
2. All discrepancy interviews should be recorded.
3. The applicant should provide a written explanation of each discrepancy.
4. Interviewers should not make a commitment as to the outcome of the background investigation process.

IX. PRE-EMPLOYMENT PSYCHOLOGICAL EVALUATIONS

A. Legal requirements

1. Psychological suitability examinations are considered medical inquiries, in compliance with ADA and FEHA, and therefore must be conducted post-conditional job offer.
2. Peace officer applicants
3. Public Safety Dispatcher candidates

B. Guidelines for Interactions between Psychologist and Background Investigators

1. Psychologists should be provided with information sufficient to gain a full understanding of the peace officer position, including essential job functions, job requirements and demands, and the Background Dimensions.
2. The working relationship of the psychologist and the background investigator and/or polygraph examiner is largely determined by agency policy.

3. Any information exchange between background investigators and screening psychologists must abide by the confidentiality provisions of the ADA/FEHA.

4. Examination Documentation

C. Second Opinion Requests

1. California Regulations (CCR, Title 2, Section 7294(d) (2)) entitles candidates who are disqualified on the basis of medical or psychological examination results to submit an independent medical/psychological opinion for consideration before a final determination is made

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X.. LEARNING ACTIVITY 3

A. Review a mock detection of Deception Report
deception or admissions

1. Address evidence of

XI. DEVICES FOR THE DETECTION OF DECEPTION

A. There are two main devices used for the detection of deception:

1. Polygraph - a device which measures and records several areas of the autonomic nervous system reaction including breathing, blood pressure, and galvanic skin response
2. Voice Stress Analysis – a device which measures the micro-muscle tremor of Lippold.

B. Legal considerations

1. Government agencies are exempt from the Federal Employee Polygraph Protection Act of 1988 (29 USC. 2001 et. seq.) which prohibits most private employers from requiring a polygraph examination as a condition of employment.
2. Government agencies are exempt from California Labor Code 432.2 which prohibits most private employers from requiring a polygraph examination as a condition of employment.
3. Applicant cannot be disqualified on the basis of the results of detection of deception examinations alone (notwithstanding self-admissions or substantive inconsistencies between information supplied during the examination and that provided by the applicant previously).

C. Benefits of detection of deception examinations

1. Detection of deception examinations aid in establishing and confirming background information (e.g., the content of the Personal History Statement)
2. The examinations also aid in uncovering disqualifying information not available from other sources (e.g., self-admissions)

3. Examinations encourage candid responses to lawful inquiries

D. Limitations of detection of deception examinations

1. Cannot predict future behavior
2. Cannot ask about intentions
3. Examinations are based on applicant=s knowledge and perceptions (e.g., they did not realize they were arrested, @ were not aware of a collection account on their credit report, etc.)

E. Placement within the selection process

1. Pre-job offer
 2. Post-job offer
 3. Bifurcated exams

F. Reports

1. Summary of all relevant information reported during the examination.
2. Indicates one of the following conclusions
3. May include examiner=s observations and comments
4. Must be directed to the hiring authority or designee. The background investigator should be privy to the contents of the report.
 5. Must be kept confidential
 6. All material used in the evaluation process (including forms, analog and/or computer charts, audiotapes, videotapes, etc.,) must be maintained by the examiner for two years.

G. Other issues associated with detection of deception

1. Employers are responsible for all acts of their agents upon whose work the employer relies (employees and contractors) and must ensure that examiners ask only lawful and appropriate job-related questions. Employers should periodically review the pre-examination questionnaires to ensure job-relevance, appropriateness, and usefulness.
2. In many instances the background investigator will have little or no input as to the selection of examiners, placement of the examination in the selection process, or the specific questions asked.
3. Audio and/or audio-visual recordings of applicant interviews has specific benefit.

H. Working relationships among the examiner, background investigator, and psychologist/medical

examiner

1. Working relationships among background investigators and support personnel should be one of information exchange to resolve discrepancies.
2. Background investigators and support personnel should have knowledge of how their particular examiner operates
3. Background investigators, at their agency=s discretion, may wish to monitor detection of deception examinations
4. Information must be kept confidential

XII. LEARNING ACTIVITY 4

A. Assess supporting background documents

1. Legibility
2. Validity
3. Adequacy

XIII. DOCUMENTATION AND COMPLIANCE INSPECTION:

A. Format and organization of background investigations are dictated by agency/department head policies and/or preferences.

B. Organizing the investigative report

1. Non-bifurcated schemes
2. Bifurcated schemes

C. Investigative notes

D. Supporting documentation

1. Methods of collection
2. Sufficiency

E. Specialized (executive) summaries

1. Agency driven
2. Often confidential communications
3. Disqualified applicants

F. Retention of information

1. Statutory requirements
2. Regulatory requirements
3. Agency requirements
4. Special requirements

G. Disclosure

1. Legal issues
2. Agency policy and legal duty

H. POST Compliance

1. Inspections are required by statute
2. Compliance Inspection Checklists
3. Common background file deficiencies
4. Importance of letters attesting to compliance

XIII. LEARNING ACTIVITY 5

A. Credit Report Evaluation
Information

A. Develop discrepancy interview questions

1. Resolve significant issue

XIV. LEARNING ACTIVITY 6

1. Clarify