

COMMISSION MEETING
April 9, 1992 - 10:00 A.M.
Red Lion Hotel
Ballroom #7/8
7450 Hazard Center Drive
San Diego, CA 92108
(619) 297-5466

AGENDA

CALL TO ORDER

FLAG SALUTE

WELCOME TO NEW COMMISSIONERS

- o Jody Hall-Esser
- o Marcel Leduc

ROLL CALL OF COMMISSION MEMBERS

INTRODUCTIONS

APPROVAL OF MINUTES

- A. Approval of minutes of the January 23, 1992 regular Commission meeting at the Bahia Hotel in San Diego.

CONSENT CALENDAR

B.1 Receiving Course Certificate Report

Since the January meeting, there have been 29 new certifications, 5 decertifications, and 35 modifications. In approving the Consent Calendar, your Honorable Commission receives the report.

B.2 Receiving Financial Report - Third Quarter FY 1991/92

The third quarter financial report will be provided at the meeting for information purposes. In approving the Consent Calendar, your Honorable Commission receives the report.

B.3 Receiving Information on New Entries Into the POST Regular (Reimbursement) Program

The Modoc County District Attorney's Office has met the Commission's requirements and has been accepted into the POST Regular (Reimbursement) Program. In approving the Consent Calendar, your Honorable Commission receives the report.

B.4 Receiving Information on New Entries into the Public Safety Dispatcher Program

Procedures provide that agencies that have expressed willingness to abide by POST Regulations and have passed ordinances as required by Penal Code Section 13522 may enter into the POST Reimbursable Public Safety Dispatcher Program pursuant to Penal Code Sections 13510(c) and 13525.

In approving the Consent Calendar, your Honorable Commission notes that since the January meeting, the Benicia Police Department, the Huron Police Department, and the Merced Police Departments have met the requirements and have been accepted into the POST Reimbursable Public Safety Dispatcher Program. These new entrants bring to 312 the number of agencies joining the program since it began July 1, 1989.

B.5 Approving Resolution Commending Retiring Advisory Committee Member Dolores Kan

In approving the Consent Calendar, your Honorable Commission adopts a Resolution recognizing the service of Dolores Kan as a member of the POST Advisory Committee from May 1988 to April 1992, representing the Women Peace Officers' Association of California (WPOA).

PUBLIC HEARING

C. Receiving Testimony on the Proposal to Change POST Regulations to Implement P.C. 832 Course Requalification Requirements

Penal Code Section 832(a) requires all peace officers (except those who complete the Basic Course) to satisfactorily complete an introductory course of training prescribed by POST. Satisfactory completion of the course must be demonstrated by passing a POST-approved examination.

With the passage of Commission-supported legislation (Senate Bill 474), Penal Code Section 832(e) was added, which requires that any person who successfully completes 832 training, but either: (1) does not become employed as a peace officer within three years of successful completion of training; or (2) has a three year or longer break in service as a peace officer, must "requalify" to exercise the powers of a peace officer. This may be done by either passing the same POST-developed or POST-approved tests that are administered in conjunction with the PC 832 Course, or by successfully repeating a PC 832 Course (and thus passing the tests at the conclusion of the course).

The requalification requirement does not apply to any person who: (1) is returning to a law enforcement management position at the second level of supervision or higher; (2) has successfully requalified for a POST Basic Course; (3) has maintained proficiency through teaching the P.C. 832 Course; or (4) was continuously employed as a peace officer in another state or at the federal level during the break in California service.

Senate Bill 474 also added Penal Code Section 832(f), which grants the Commission the authority to charge fees for all "requalification" exams, with the amount of such fees not to exceed actual costs. In order to comply with the provisions of Penal Code Sections 832(e) and 832(f), it is proposed that a new subsection be added to Commission Regulation 1080. Key provisions of the proposed new subsection are as follows:

- (1) Persons seeking to satisfy P.C. 832 Course requalification requirements via testing would be permitted two opportunities to pass each applicable test (i.e., Arrest Procedures exam and Firearms exam), as is the case for persons who take the tests at the conclusion of P.C. 832 training. Failure to pass any test upon the second attempt would result in the need to successfully repeat the applicable P.C. 832 training.
- (2) Those persons who are exempt from the P.C. 832 Course requalification requirements would be enumerated in the proposed regulations. Employing agencies would be required to retain, as a permanent record, all documentation in support of an employee's exemption.
- (3) As provided for in law, POST would charge examination fees, not to exceed actual costs, to those who wish to test for purposes of satisfying the P.C. 832 Course requalification requirements.

Subject to the results of the public hearing, if the Commission concurs, the appropriate action would be a MOTION to adopt the proposed additions to Commission Regulation 1080, concerning P.C. 832 course requalification requirements, to be effective upon approval as to form and procedure by the Office of Administrative Law.

COMPLIANCE AND CERTIFICATES

D. Fee Setting - P.C. 832 Requalification Testing

Assuming the Commission adopts regulations described in the preceding agenda item, there is need to approve fees that

will be charged to persons taking P.C. 832 course requalification tests. The proposed testing system will require applicants to apply to and submit fees to POST. POST will, following review of eligibility, refer the applicant to the presenters who agree to administer the requalification tests. These presenters will be paid by POST via contracts.

Proposed fees are \$100 for a written exam, \$150 for the firearms test, and \$100 for the skills exam associated with arrest techniques and defensive tactics.

If the Commission concurs, the appropriate action would be a MOTION to approve fees that will be charged to persons taking P.C. 832 course requalification tests.

STANDARDS AND EVALUATION

E. Report and Recommendation to Approve and Distribute a POST Drug Screening Manual for Voluntary Use by Agencies in Initial Hiring

Pursuant to direction from the Commission, drug screening guidelines have been developed for voluntary use by agencies in the POST program. The guidelines are advisory in nature, address pre-employment drug screening only, and cover the full range of legal, technical, and other issues which must be considered when implementing a pre-employment drug screening program.

The Long Range Planning Committee recommends that the Commission approve the guidelines for publication and general distribution. A copy of the guidelines is included as an attachment to the full agenda report.

If the Commission concurs, the appropriate action would be a MOTION to approve publication and general distribution of the POST Pre-Employment Drug Screening Guidelines (1992).

MANAGEMENT COUNSELING

F. Review of a Peace Officer Feasibility Study for the Department of Insurance and Recommendation to Finalize and Submit the Report to the Insurance Commissioner and the Legislature

Penal Code Section 13540 requires persons interested in new classes of peace officers to seek a feasibility study from POST. POST conducts such studies pursuant to contracts for recovery of costs. Completed studies are submitted to both the Legislature and the requesting party.

State Insurance Commissioner John Garamendi requested a study concerning the extension of peace officer powers to certain investigators of the Department of Insurance. The Department of Insurance currently employs some peace officer investigators [authorized by P.C. 830.3 (i)]. The study addresses non-peace officer investigators of the department.

The enclosed report concludes that the work of the non-peace officer investigators does not include sufficient need for peace officer powers. The report also notes that it appears feasible for the Department to rely upon its existing peace officers to provide as needed support for the non-peace officer investigators who work in a separate division.

If the Commission concurs, the appropriate action would be a MOTION to submit the completed feasibility study report, including recommendations, to the Insurance Commissioner and the Legislature.

TRAINING PROGRAM SERVICES

G. Report and Possible Recommendation to Amend Contract with General Physics re Making Minor Out-of-Contract Refinements to the IVD Driver Training Course Prior to Its Delivery to POST

POST currently has a contract with General Physics of Columbia, Maryland to develop the Driver Training IVD courseware, and deliver fifty (50) sets of the courseware to POST for \$388,565. On-going beta testing of the courseware by subject matter experts and law enforcement trainees suggest several areas of courseware improvements, many of which have already been corrected within the contract amount. The beta review will be completed on March 27, 1992. Any modifications identified as being outside the scope of the contract will be individually evaluated, and a report with any recommendations brought to the Commission at this point on the agenda.

This item is on the agenda to provide the opportunity to modify the contract if additional expenditure is necessary. Large or costly changes are not anticipated, based on review so far. Any changes the Commission chooses to make should be by ROLL CALL VOTE.

EXECUTIVE OFFICE

H. Review of Salary Reimbursement: Recommendation to Reinstate Reimbursement for Mandated Training for Claims Received after the November 1, 1991 Suspension

At this point, training volumes and revenues to date appear

to make resumption of salary reimbursement at some level feasible. Specific options will be reviewed by the Finance Committee and its recommendation will be included in the report for this agenda item. The amount will be less than the 20-35% rates in effect when salary reimbursement was suspended November 1, 1991; but will provide some welcome additional support retroactive for claims received since then. A ROLL CALL VOTE is indicated.

I. Report and Recommendation of Field Survey Regarding Reimbursement Options

The Governor's 1992/93 budget includes \$42.9 million for POST plus a proposed supplement of \$3.1 million. If these are approved, and if revenues are forthcoming as projected, the Commission will be in a position to sustain its present standards and training services and provide reimbursements, including salary, to the field. However, there is the possibility that the budget will be cut or revenues fall below projections. Against that event, it is proposed that a survey be distributed to law enforcement agencies and associations.

The survey outlines the options for long term adjustments before the Commission and asks for field responses. Results of the survey would provide the Commission with the collective views of law enforcement regarding priorities in a variety of areas. The survey is designed to give the Commission a sense of field priorities and views. The survey response would be among the considerations the Commission might take into account in the event POST is faced with a long term revenue shortfall situation.

A draft of the survey instrument is enclosed. The draft has been reviewed and approved by the Finance Committee. If sent, the results would be available by the July 1992 meeting.

If the Commission concurs, the appropriate action would be a MOTION authorizing dissemination of the survey.

COMMITTEE REPORTS

J. Finance Committee

At its January meeting, the Commission authorized negotiation of a number of training, standards, and administrative contracts. These contracts will be reviewed by the Finance Committee at its April 8, 1992 meeting in San Diego. Commissioner Wasserman will report the Committee's recommended actions on the following contracts.

Assuming favorable recommendations of the Finance Committee, the appropriate action, if the Commission concurs, would be a MOTION to authorize the Executive Director to sign them on behalf of the Commission. (ROLL CALL VOTE)

Proposed contracts to be negotiated for Fiscal Year 1992/93:

Training Contracts

1. Contracts for the Management Course are \$327,448 proposed for the following presenters

California State University - Humboldt
California State University - Long Beach
California State University - Northridge
California State University - San Jose
San Diego Regional Training Center

2. A contract with San Diego Regional Training Center for support of Executive Training (e.g., Command College, Executive Seminars, and Executive Development Course) \$562,166

It should be noted that for the first time, the Executive Development Course (EDC) costs are included in this contract. These costs amount to \$116,435 of the total. Previously, and for many years, the EDC has been presented under contract with Cal Poly, Pomona, which has recently decided to discontinue presenting the course.

3. A contract with CSU Long Beach for support of the Supervisory Leadership Institute \$408,873

4. An Interagency Agreement with the State Department of Justice \$928,109

5. An Interagency Agreement with San Diego State University for 12 satellite broadcasts \$ 54,000

6. Contracts with Alameda County District Attorney's Office and Golden West College for Case Law Update Video Production \$ 52,000

7. A contract with San Diego State University for 1992/93 Telecourse Programs \$420,000

Standards Contracts

8. An Interagency Agreement with Cooperative Personnel Services - Basic Course Proficiency Exam \$ 33,800
9. An Interagency Agreement with Cooperative Personnel Services - Entry-Level Reading and Writing Test Battery \$ 98,400
10. An Interagency Agreement with the Cooperative Personnel Services - P.C. 832 Written Examination \$ 78,560

Administrative Contracts

11. A contract with the State Controllers Office - Agreement for Auditing Services \$ 85,000
12. An Interagency Agreement with the Teale Data Center for Computer Services \$ 89,000
13. An Interagency Agreement with the Health and Welfare Data Center - CALSTARS Contract \$ 25,000

K. Long Range Planning Committee

Chairman Lowenberg, who also chairs the Long Range Planning Committee, will report on the Committee meeting held in Los Angeles on February 27, 1992.

L. Ad hoc Labor/Commission Committee

Chairman Lowenberg, who also chairs the Ad hoc Labor/Commission Committee, will report on the first Committee meeting held in Sacramento on March 11, 1992.

M. Legislative Review Committee

Committee Chairman Block will report on the Committee meeting held April 9th just prior to the Commission meeting.

N. Advisory Committee

Committee Chairman Donald Forkus will report on the Committee meeting held April 8, 1992 in San Diego.

OLD/NEW BUSINESS

O. Report from Chairman Lowenberg - Progress on Accreditation Standards Development

P. Correspondence

- o Letter from Willis A. Casey, Chief of Police, City and County of San Francisco, and staff response
- o Letter from Dr. James Garrick, Center for Sports Medicine, and response from Attorney General Daniel E. Lungren
- o Letter from Jeannette McCahan, Computer Consultant for Training and Instruction
- o Letter from Robert Kristic, Chairman, California Academy Directors' Association

Q. Report of Nominating Committee for Election of Officers

Commissioners Wasserman and Tidwell, members of the Nominating Committee, will report the results of the Committee's recommendations for nominations for Commission Chairman and Vice-Chairman.

DATES AND LOCATIONS OF FUTURE COMMISSION MEETINGS

July 16, 1992 - Red Lion Hotel - San Diego
October 15, 1992 - Radisson Hotel (Tentative) - Sacramento
January 21, 1993 - Holiday Inn Embarcadero, San Diego
April 15, 1993 - To be Determined

COMMISSION MEETING MINUTES
January 23, 1992
Bahia Hotel
San Diego, CA

The meeting was called to order at 10:10 a.m. by Chairman Lowenberg.

Advisory Committee Chairman Donald Forkus led the flag salute.

OATH OF OFFICE FOR NEW COMMISSIONER

New Commissioner Devallis Rutledge, Deputy District Attorney for Orange County, was administered the oath of office by Attorney General Daniel E. Lungren.

ROLL CALL OF COMMISSION MEMBERS

A calling of the roll indicated a quorum was present.

Commissioners Present:

Ronald E. Lowenberg, Chairman
Sherman Block
Attorney General Daniel E. Lungren
Edward Maghakian
Devallis Rutledge
Floyd Tidwell
Robert Wasserman

Commissioners Absent:

Edward Hunt
Raquel Montenegro

POST Advisory Committee Members Present:

Jay Clark
Donald Forkus
Jack Healy
Joe McKeown
Carolyn Owens
Cecil Riley

Staff Present:

Norman C. Boehm, Executive Director
Glen Fine, Deputy Executive Director
Hal Snow, Assistant Executive Director
John Berner, Bureau Chief, Standards and Evaluation
Gwyn Campbell, Office Technician, Certificate and Compliance
Mike DiMiceli, Bureau Chief, Management Counseling

Holly Mitchum, Bureau Chief, Information Services
Ken O'Brien, Bureau Chief, Training Program Services
Otto Saltenberger, Bureau Chief, Administrative Services
Ken Whitman, Senior Law Enforcement Consultant, Training Program
Services
Frederick Williams, Bureau Chief, Compliance and Certificates
Vera Roff, Executive Secretary

Visitor's Roster:

Robert Berry, San Francisco PD
Don Blankenship, Santa Ana POA
Beverly Curl, Long Beach City College
Bob Curry, San Diego County Marshal's Office
Ricardo Diaz, Latino Peace Officers Association
Doug Drummond, August Vollmer University
Andrea Granick, General Physics
Mark Gravel, Department of Justice
Craig Harvey, Los Angeles County Department of Coroner
Ed Hendry, Orange County Sheriff's Department
Mary Kay Borchert, Imperial Valley College
Ernie Klevesahl, San Diego Sheriff's Department/CADA
Dennis Kollar, San Diego Sheriff's Department/CADA
Paul Lazar, General Physics
Ilona Lewis, Director, Los Angeles County Dept. of Coroner
Kelson McDaniel, LETN
Herb Pettus, L.A. County Sheriff's Recruit Training
Jerry Pierson, Orange County Sheriff's Office
Yvonne Williams, San Diego County Medical Examiner's Office
Linda Zellman, Cal Poly University/Kellogg West

PRESENTATIONS

Chairman Lowenberg presented a plaque to former Commissioner C. Alex Pantaleoni in appreciation for outstanding public service and dedication to law enforcement as a Commissioner from April 1983 to November 1991. Mr. Pantaleoni served as POST Chairman from April 1988 to April 1989.

Chairman Lowenberg also presented a plaque to former Commissioner Robert L. Vernon in appreciation for outstanding public service and dedication to law enforcement as a Commissioner from January 1980 to November 1991. Chief Vernon served as POST Chairman from April 1984 to April 1985.

A plaque has also been prepared for former Commissioner Richard L. Moore in appreciation for outstanding public service and dedication to law enforcement as a Commissioner from June 1990 to November 1991. Although Mr. Moore was unable to attend the Commission meeting, the plaque will be presented to him at an appropriate time.

A. APPROVAL OF MINUTES

MOTION - Block, second - Wasserman, carried unanimously to approve the minutes of the October 31, 1991 regular Commission meeting held at the Pan Pacific Hotel in San Diego.

CONSENT CALENDAR

B. MOTION - Tidwell, second - Maghakian, carried unanimously to approve the following Consent Calendar:

- B.1 Receiving Course Certification Report
- B.2 Receiving Financial Report - Second Quarter FY 1991/92
- B.3 Setting Command College Tuition for Non-Reimbursable Agencies
- B.4 Setting Supervisory Leadership Institute Tuition for Non-Reimbursable Agencies

PUBLIC HEARING

C. Receiving Testimony on the Proposal to Change POST Regulations to Establish Standards and Reimbursement for Peace Officer Members of Coroners' Offices (SB 249)

The purpose of the public hearing was to receive testimony in regard to proposed amendments of Commission Regulations and Procedures to:

- o add coroners and deputy coroners to those eligible for reimbursement;
- o specify all existing selection standards for regular officers as applicable to the employment of peace officer members of coroners' offices;
- o require that coroners and deputy coroners complete the P.C. 832 course before exercise of peace officer powers and complete the 80-hour Death Investigators' course within one year of employment.

The public hearing was held in compliance with requirements set forth in the Administrative Procedures Act to provide public input on the proposed regulatory actions.

Staff reported that the proposal to require P.C. 832 and the Death Investigators' Course is intended as an initial standard pending completion of a more thorough study of the needs and requirements of the position.

As a policy matter, there was discussion and consensus that reimbursement would be for the minimum initial training standard. Accordingly, if the student goes to the 340-hour Specialized Investigator Course, reimbursement will be only for the maximum hours required for the P.C. 832 course and the Coroners' Death Investigation Course which together comprise the minimum training requirement.

Following the staff report, Chairman Lowenberg invited attendees opposed to the recommendation to address the Commission. No one present indicated a desire to testify.

The Chairman invited oral testimony from those in favor of the recommendation. Ilona Lewis, Director, Department of the Coroner, County of Los Angeles spoke in support of the recommendation. A letter from Glenn Sipma, President, California State Coroners' Association, in support of the recommendation was submitted.

There being no further testimony, the hearing was closed and the following action was taken:

MOTION - Maghakian, second - Block, carried unanimously to approve adoption of the standards and establish reimbursement for peace officer members of Coroners' Offices. The regulation changes will be effective upon approval as to form and procedure by the Office of Administrative Law.

(The following item was addressed at this stage of the agenda for the convenience of representatives from August Vollmer University.)

COMPLIANCE AND CERTIFICATES

N. Accreditation Process - New Campuses of Public College & Universities

At the October 31, 1991 Commission meeting, staff was directed to clarify whether new branch campuses of the CSU, UC, and Community College systems operate for a period of years without accreditation and whether POST has accepted units from non-accredited new campuses. The issue was raised by representatives of August Vollmer University.

The Commission received a staff report which indicated that units from non-accredited colleges and universities have been accepted for certificate award only following accreditation, and following acceptance of the units by other accredited institutions.

There was consensus by the Commission that the staff report resolved the questions concerning the accreditation process and no additional input was required.

STANDARDS AND EVALUATIONS

D. Scheduling a Public Hearing to Adopt Regulations to Implement P.C. 832 Course Requalification Requirements

Penal Code Section 832(a) requires all peace officers (except those who complete the Basic Course) to satisfactorily complete an introductory course of training prescribed by POST. Satisfactory completion of the course must be demonstrated by passing a POST-developed or POST-approved examination.

With the passage of Commission-supported legislation (Senate Bill 474), Penal Code Section 832(e) was added, which requires that any person who successfully completes 832 training, but either: (1) does not become employed as a peace officer within three years of successful completion of training, or (2) has a three year or longer break in service as a peace officer, must "requalify" to exercise the powers of a peace officer. This may be done by either passing the same POST-developed or POST-approved tests that are administered in conjunction with the PC 832 Course, or by successfully repeating a PC 832 Course (and thus passing the tests at the conclusion of the course).

The requalification requirement does not apply to any person who: (1) is returning to a law enforcement management position at the second level of supervision or higher, (2) has successfully requalified for a POST Basic Course, (3) has maintained proficiency through teaching the P.C. 832 Course, or (4) was continuously employed as a peace officer in another state or at the federal level during the break in California service.

Senate Bill 474 also added Penal Code Section 832(f), which grants the Commission the authority to charge fees for all "requalification" exams, with the amount of such fees not to exceed actual costs.

In order to comply with the provisions of Penal Code Sections 832(e) and 832(f), it was proposed that the Commission schedule a public hearing in conjunction with its April 9, 1992 meeting for the purpose of adding subsection (b) to Commission Regulation 1080. Key provisions of the proposed new subsection are as follows:

- (1) Persons seeking to satisfy P.C. 832 Course requalification requirements via testing would be

permitted two opportunities to pass each applicable test (i.e., Arrest Procedures exam and Firearms exam), as is the case for persons who take the tests at the conclusion of P.C. 832 training. Failure to pass any test upon the second attempt would result in the need to successfully repeat the applicable P.C. 832 training (Arrest Procedures or Firearms).

- (2) Those persons who are exempt from the P.C. 832 Course requalification requirements would be enumerated in the proposed regulations. Persons seeking written notification from POST as to exemption status would be required to submit verifiable documentation in support of the contended exemption.
- (3) As provided for in law, POST would charge examination fees, not to exceed actual costs, to those who wish to test for purposes of satisfying the P.C. 832 Course requalification requirements.

MOTION - Wasserman, second - Tidwell, carried unanimously to schedule a public hearing in conjunction with its April 9, 1992 meeting for purposes of adopting the proposed regulation changes.

TRAINING PROGRAM SERVICES

E. Approval of Additions, Deletions, and Changes to the Regular Basic Course Performance Objectives

Staff reported on additions, deletions, and changes are recommended to the Basic Course performance objectives (PO's) as a result of staff and subject matter experts (SME's) meeting in curriculum update workshops and test item writing workshops. These workshops assured that PO content is standardized, current, and provides precise language which enables objective test questions to be written. Additional changes were proposed as a result of conversion to Knowledge Domain format previously approved by the Commission.

Although changes affect a majority of the PO's, the impact on actual content of the course is modest. The major impact is on organization of the PO document and improved clarity and specificity. All of the recommended additions, deletions, and changes have been reviewed by basic course academy directors and members of the basic course consortium.

The proposed additions, deletions, and changes must be adopted pursuant to the Administrative Procedures Act. It was proposed that the abbreviated public hearing process be

used. If no one requests a public hearing, these proposed changes would go into effect 30 days after approval as to form and procedure by the Office of Administrative Law.

MOTION - Maghakian, second - Block, carried unanimously, that subject to the results of the proposed Notice of Regulatory Action, to approve the proposed revisions to the Regular Basic Course curriculum described in the agenda, and amend Performance Objectives for the Basic Course, PAM, Procedure D-1, and Regulation 1005 to include these revisions. The regulation changes will be effective upon approval as to form and procedure by the Office of Administrative Law.

F. Progress Report and Demonstration - Law Enforcement Driver Training Interactive Courseware

The Commission was given a demonstration of several parts of the Law Enforcement Driver Training IVD project. Final programming, graphics generation, and the study reference manual are nearing completion.

The final testing of the courseware will be completed during the week of February 3, 1992. The courseware will be delivered to the Commission during March 1992. Distribution of the courseware to agencies which have IVD hardware and have received instruction in use of the courseware will begin at that time.

Discussion following demonstration centered on royalty arrangements with the vendor. Commissioners were reminded that provisions of this contract include no royalties for POST, and the vendor will be free to market the courseware outside the State of California.

This item was on the agenda for information only and required no formal action.

EXECUTIVE OFFICE

G. Approval to Initiate Contracts for Tactical Communications Training

Staff reported that one of the Symposium on Training Issues recommendations is for additional emphasis on verbal communication skills training.

Dr. George Thompson has developed a course in Tactical Communication (Verbal Judo). This course has received high

praise for its effectiveness from those who have used it. A proposal to make the training available to all California law enforcement officers has been explored with Dr. Thompson.

A four-part program has been identified to integrate tactical communications skills into California law enforcement training. The proposed program consists of: (1) a telecourse; (2) a series of training videotapes; (3) development of specific curriculum for the basic and field training officer courses; and (4) a 40-hour train-the-trainer program to be presented as a certified course.

The approximate costs for all aspects of this program are estimated at \$174,000. All agencies could receive the telecourse and each would receive the full series of training video tapes. Those trained in the train-the-trainer course taught by Dr. Thompson would constitute an instructional reservoir for California law enforcement.

The Advisory Committee discussed this at its meeting on January 22nd; expressed support for the proposal; and suggested that all law enforcement executive personnel be encouraged to participate in this training.

Following the discussion, staff was directed to explore modifications made by agencies who have previously used the program and are now teaching the same subject.

MOTION - Tidwell, second - Wasserman, carried unanimously by ROLL CALL VOTE to authorize the Executive Director, subject to agreement that POST will retain script control, to finalize negotiations and enter into contracts with Dr. George Thompson (in an amount not to exceed \$6,000) and a public entity (in an amount not to exceed \$168,000) to do work associated with video taping and broadcasting as noted in the staff report at a total cost not to exceed \$174,000.

H. Approval to Extend and Increase a Current Contract with the City of Los Angeles for Professional Services Associated with the Revision and Update of the POST Medical Screening Manual

At its January, 1991 meeting, the Commission authorized a \$26,000 interagency agreement with the City of Los Angeles for the assistance of Dr. Robert Goldberg, Assistant Director of Occupational Health, in revising the POST Medical Screening Manual for California Law Enforcement (1977). The project is progressing well; however, completion of the project will require an additional 52 days of Dr. Goldberg's time, at a cost of \$17,600.

MOTION - Wasserman, second - Tidwell, carried unanimously by ROLL CALL VOTE to amend the current interagency agreement with the City of Los Angeles for assistance in revising the POST Medical Screening Manual for California Law Enforcement by an amount not to exceed \$17,600.

COMMITTEE REPORTS

I. Finance Committee

Commissioner Wasserman reported on the Finance Committee meeting held January 22nd in San Diego. In addition to contracts addressed earlier on the Commission agenda, the Committee reviewed the following:

- a. The second quarter financial report was discussed. It was pointed out that revenue, although displaying a slight upturn in December, still projects a substantial shortfall at the end of the year. The number of reimbursed trainees is slightly lower than the number for a similar period last year. But of particular note, the Basic Course attendees represent only about 35% of those that were trained during the similar period last year. The Committee requested that staff explore the reasons for the downtrend in the reimbursable basic course attendees and have the information available for the next quarterly Finance Committee meeting.
- b. The status of the local assistance budget was reviewed. If the financial picture does not change, POST will still be within the allotted reimbursed budget and will not go into a deficit.
- c. A brief overview of the FY 92/93 Department of Finance authorized POST budget was presented. The budget authorization is for \$42.9M with a local assistance budget of \$29.3M. If the current year training trend continues, resources will be available for the next fiscal year to restore salary reimbursement to a prudent level, commensurate with the Department of Finance's budget allocation.
- d. In addition to the contracts already approved on the agenda, the proposed continuing contracts to be negotiated for FY 92/93 were reviewed. The Finance Committee recommended that the following proposed contracts be negotiated for FY 92/93:

Training Contracts

1. Management Course

This course is presently budgeted at \$330,783 for 22 presentations spread among five presenters.

California State University - Humboldt
California State University - Long Beach
California State University - Northridge
California State University - San Jose
San Diego Regional Training Center

Course costs are consistent with Commission guidelines, and performance by all five presenters has been satisfactory. Staff anticipates modest increases over FY 1991/92 due to increased costs for instructors, coordination, facilities, and materials. No additional presenters or presentations are planned for FY 1992/93.

2. Executive Development Course

This course is currently budgeted at \$121,555 for five presentations. The EDC has been presented by California State Polytechnic University, Pomona, since October 1979.

Course costs are consistent with POST guidelines, and the performance of the presenter has been satisfactory. Staff anticipates modest additional costs over FY 1991/92 due to increased costs for instructors, coordination, and facilities. One of the five course presentations will be offered in Northern California for the first time to accommodate departments with limited travel budgets. This move will, however, increase faculty travel costs slightly. Five presentations are planned for FY 1992/93.

3. San Diego Regional Training Center - Support of Executive Training (e.g., Command College and Executive Seminars)

The San Diego Regional Training Center serves as the chief contractor for a variety of training activities of the Commission conducted by the Center for Leadership Development. Curriculum development as well as instructional and evaluation costs for these training activities for FY 1991/92 was \$453,618. Staff anticipates only

modest, if any, increased costs in the 1992/93 contract.

4. CSU Long Beach - Support of the Supervisory Leadership Institute

The CSU Long Beach Foundation provides administrative services for the Supervisory Leadership Institute. This includes training site support, ordering materials, paying instructors and auditors, and purchasing/maintaining equipment. Costs for these services in FY 1991/92 were \$391,684 for six classes running continuously throughout the year. Staff anticipates only modest increased costs in FY 1992/93.

5. Department of Justice - Training Center

The Department of Justice has provided training to local law enforcement each year through an Interagency Agreement with POST since 1974. The Commission approved a current year contract in an amount not to exceed \$953,081.

Staff anticipates that any presentation cost increases will be offset by the consolidation of several existing courses. The overall contract amount is expected to not exceed the 1991/92 total.

6. San Diego State University - Satellite Video Broadcasts

POST currently has an interagency agreement with San Diego State University for \$54,000 for the assembly and transmission of twelve videotape training programs during 1991-92. It was recommended that this interagency agreement be continued for similar services during 1992-93.

7. Alameda County District Attorney's Office and Golden West College - Case Law Update Video Production

POST currently has contracts with Alameda County District Attorney's Office and Golden West College for \$52,000 for the production of twenty-four Case Law Update programs each during 1991-92. It was requested that these contracts be continued with similar amounts for similar services during 1992-93.

8. 1992/93 Telecourse Programs

POST will deliver six telecourse programs during Fiscal Year 1991/92. The current contract for these six programs is with the San Diego State University for a cost not to exceed \$210,000, based on an average of \$35,000 per program.

It was proposed to increase the distance learning telecourse training provided in Fiscal Year 1992/93 from six to twelve telecourses, allowing for the production of one telecourse per month. The total estimated cost for the telecourse programs is approximately \$420,000, based on the \$35,000 average per program.

Approval was requested to negotiate and enter into interagency agreement(s) with the San Diego State University, or any other public entity, to produce and broadcast POST telecourse training for an amount not to exceed \$420,000.

Standards Contracts

9. Cooperative Personnel Services - Basic Course Proficiency Examination

POST has contracted with Cooperative Personnel Services for administration of the POST Proficiency Examination for the last nine years. The current year contract is for \$33,800. The proposed contract for fiscal year 1992/93 is not expected to exceed this amount.

Approval was requested to negotiate a similar contract with Cooperative Personnel Services for fiscal year 1992/93 for an amount not to exceed \$33,800.

10. Cooperative Personnel Services - Entry-Level Reading and Writing Test Battery

POST has contracted with Cooperative Personnel Services for administration of the POST entry-level reading and writing test battery since 1983. The current year contract is for \$98,400. The proposed contract for fiscal year 1992/93 is not expected to exceed this amount.

Approval was requested to negotiate a similar contract with Cooperative Personnel Services for fiscal year 1992/93 for an amount not to exceed \$98,400.

11. Cooperative Personnel Services - P.C. 832 Written Examination.

POST has contracted with Cooperative Personnel Services for administration of the P.C. 832 Written Examination since 1989. The current year contract is for \$78,560. The proposed contract for fiscal year 1992/93 is not expected to exceed this amount.

Approval was requested to negotiate a contract with Cooperative Personnel Services for fiscal year 1992/93 for an amount not to exceed \$78,560.

Administrative Contracts

12. State Controller's Office - Agreement for Auditing Services

Each year POST has negotiated an Interagency Agreement with the State Controller's Office to conduct audits of selected local jurisdictions which receive POST reimbursement funds. The Commission approved an agreement not to exceed \$85,000 for the current fiscal year.

Approval was requested to negotiate a similar agreement to maintain current level of service for Fiscal Year 1992/93.

13. Computer Services Contract - Teale Data Center

POST has an Interagency Agreement with Teale Data Center (a state agency) for computer services. The contract links between POST's computer and the Data Center's mainframe computer. This allows POST to utilize the mainframe's power for complex data processing jobs and the storage of large data files that require more resources than POST's minicomputer can provide. The current year contract is for \$89,000.

Approval was requested to negotiate an Interagency Agreement with the Teale Data Center for computer services in 1992/93 for an amount similar to the current year's costs.

14. CALSTARS Contract

The mandated California Accounting and Reporting Systems (CALSTARS) requires an agreement with the Health and Welfare Data Center to provide computer linkage and necessary data processing services. The Commission approved a current year contract in an amount not to exceed \$24,000.

MOTION - Wasserman, second - Tidwell, and carried to authorize the Executive Director to negotiate the contracts and return them to the April meeting for formal approval. (Commissioner Rutledge ABSTAINED on Item #7)

J. Training Review Committee

Commissioner Wasserman, Chairman of the Training Review Committee, reported that the Committee met in Ontario on January 15th, and reviewed an action plan developed by staff which includes: (1) strengthening use of force and cultural-racial training in the Basic Course; (2) strengthening the selection and training of field training officers; and (3) furthering the development of supervisory training.

The action plan will result in specific program proposals to the Commission at its July 1992 meeting. In the meantime, current proposals and recommendations were reviewed. In addition to the tactical communications training, which was approved earlier on the Commission agenda, the Committee made the following recommendations:

1. Encourage relevant televised courses by major Symposium presenters and other experts as part of the Commission's telecourse training program.
2. Encourage the use of the POST FTO manual which provides an excellent program. The Committee recommended that the POST FTO program, and other programs, be given some "advertisement" time on future POST teleconference broadcasts.
3. Develop a plan to improve the monitoring of training, particularly in the area of use of force, by POST staff and representatives in the field.
4. Develop a process to annually evaluate the effectiveness of training which results from the symposium.
5. Prepare periodic bulletins to the field which describes the progress of implementing the training review/symposium recommendations.

MOTION - Wasserman, second - Tidwell, carried unanimously to approve the recommendations of the Training Review Committee.

K. Long Range Planning Committee

Chairman Lowenberg, who also chairs the Long Range Planning Committee, reported the Committee met in San Diego on January 22, 1992. In addition to items already addressed on the agenda, the Committee reviewed the following:

1. The Committee received a report from staff and discussed the proposed implementation of the Institute of Criminal Investigation. The development of this institute was approved by the Commission several years ago. The developmental work, including the job task analysis of the investigator position, development of a basic or core course, an array of foundation specialty courses, and a general scheme for investigative training that can result in the reward of a special certificate.

Staff reviewed the proposal with the full Commission.

MOTION - Block, second - Maghakian, carried unanimously to approve the concept of the Institute of Criminal Investigation (ICI) and postpone action on formal introduction of the ICI until POST's fiscal picture becomes more clear.

2. Last year the Commission, following a survey of law enforcement administrators and recommendations by the Long Range Planning Committee, directed staff to develop guidelines for pre-employment drug screening. Staff has completed the final draft of these guidelines. The plan is for the final product to be before the Commission for approval at its April meeting.

L. Legislative Review Committee

Chairman Block, Chairman of the Commission's Legislative Review Committee, reported on the results of the Committee meeting held July 23, 1992 just prior to the Commission meeting and recommended support of:

1. Proposed legislation to restore POST funding; and
2. SB 1126 by Senator Robert Presley, which has been amended to authorize the Law Enforcement Agency Accreditation program to be administered by POST.

The Committee also recommended support for legislation that to require a percentage of civil awards or settlements against cities/counties or individual officers to be deposited in the Peace Officer Training Fund.

The Committee also recommends that a friend of the court brief be filed with the California Supreme Court. The brief will oppose the Appellate Court decision which grants the County of Santa Clara authority to confer peace officer status on correctional personnel employed by the County Department of Corrections.

MOTION - Block, second - Maghakian, carried unanimously to approve the recommendations of the Legislative Committee.

M. Advisory Committee

Donald L. Forkus, Chairman of the POST Advisory Committee, reported on the Committee meeting held July 22, 1992 in San Diego. He welcomed new Advisory Committee members Jack Healy, Chief of the Personnel and Training Division, California Highway Patrol; and Dr. Ernest Leach, Deputy Chancellor of the California Community Colleges.

The Chancellor's Office of the California Community Colleges is conducting research into innovative methods of training and education with a study similar to the Commission's 1990 ACR 58 Study. The information should prove to be very useful and will be shared with the Commission when the study is completed.

OLD/NEW BUSINESS

- o Captain Robert Berry, Captain, Coordinator of Training, San Francisco Police Department, expressed serious concerns about the lack of salary reimbursement on training. On behalf of Chief Willis Casey, San Francisco Police Department, he offered the department's assistance in seeking strategies which would help alleviate this problem.
- o Chairman Lowenberg announced that plans are underway for a joint meeting with representatives from labor organizations to discuss issues of mutual concern.
- o It was announced that the first meeting of the Accreditation Standards Committee will meet immediately following the Commission meeting. Members of the Committee include two representatives each from CAL Chiefs, CPOA, PORAC, and CSSA.

o Appointment of Nominating Committee

Chairman Lowenberg appointed Commissioners Tidwell and Wasserman to serve as members of the Nominating Committee. The Committee will make recommendations at the April Commission meeting.

DATES AND LOCATIONS OF FUTURE COMMISSION MEETINGS

April 9, 1992 - Red Lion Hotel - San Diego
July 16, 1992 - Red Lion Hotel - San Diego
October 15, 1992 - Radisson Hotel (Tentative) - Sacramento
January 21, 1993 - Holiday Inn Embarcadero, San Diego

CERTIFIED (Continued)

	<u>Course Title</u>	<u>Presenter</u>	<u>Course Category</u>	<u>Reimbursement Plan</u>	<u>Annual Fiscal Impact</u>
10.	Problem Oriented Policing - Supervisors	San Diego P.D.	Technical	IV	\$15,360
11.	Advanced Officer	Kern Co. S. D.	AO	II	34,320
12.	Tactical Communication (Verbal Judo)	Chico P.D.	Technical	IV	1,080
13.	Arrest & Control Instr.	Golden West Col.	Technical	IV	34,560
14.	Advanced Officer	San Francisco Airport P.D.	AO	II	-0-
15.	Straight Baton Instr.	Dept. of P&R	Technical	IV	-0-
16.	Advanced Officer	Ohlone College	AO	II	57,600
17.	Gun Retention	Dept. of P&R	Technical	IV	-0-
18.	Reserve Training, Module A, B, C.	Sacramento Co. S. D.	Reserve Training	N/A	-0-
19.	Driving under the Influence Update	Sacramento Public Safety Center	Technical	IV	2,160
20.	Sexual Assault Inv.	Kern Co. CJTC	Technical	IV	3,600
21.	Drug Influence - 11550 H&S	Kern Co. S.D.	Technical	IV	21,504
22.	Hazardous Materials - First Responder	Tulare/Kings Co. Police Academy	Technical	IV	8,000
23.	First Aid/CPR Instr.	San Bernardino Co. S.D.	Technical	N/A	-0-
24.	Reserve Training, Module B	Porterville Law Enforcement TC	Reserve Training	N/A	-0-
25.	Arrest & Firearms P.C. 832	Porterville Law Enforcement TC	P.C. 832	IV	-0-

CERTIFIED (Continued)

	<u>Course Title</u>	<u>Presenter</u>	<u>Course Category</u>	<u>Reimbursement Plan</u>	<u>Annual Fiscal Impact</u>
26.	Traffic Collision, Inter., Skidmark, Anal.	San Bernardino Co. S.D.	Technical	IV	2,568
27.	Traffic Collision Inv. Adv.	San Bernardino Co. S.D.	Technical	IV	5,136
28.	Analytic Interviewing Instructor	Los Angeles Co. S.D.	Technical	N/A	-0-
29.	Driver Training Update (EVOC)	Santa Rosa Center	Technical	IV	720
30. - 35.	6 additional Proposition 115 Hearsay Evidence Testimony Course Presenters have been certified as of 03-18-92. Presentation of this course is generally done using a copy of POST Proposition 115 Video Tape. To date 226 presenters of Proposition 115 have been certified.				

DECERTIFIED

	<u>Course Title</u>	<u>Presenter</u>	<u>Category</u>	<u>Reimbursement Plan</u>
1.	Arrest & Firearms P. C. 832	San Diego Co. SD/ Southwestern Col.	P.C. 832	IV
2.	Management Update Seminar	San Diego Co. SD/ Southwestern Col.	Mgmt. Trng.	IV
3.	Computer Crime, Prosecution	Search Group, Inc.	Technical	IV
4.	Focus on the 90's	Calif. Public Management Inst.	Supv. Trng.	III
5.	Tactical Communication (Verbal Judo)	Chico P.D.	Technical	IV

TOTAL CERTIFIED	<u>29</u>
TOTAL DECERTIFIED	<u>5</u>
TOTAL MODIFICATIONS	<u>35</u>

1359 Courses certified as of 03-18-92

369 Presenters certified as of 03-18-92

593 Skills & Knowledge Modules certified as of 03-18-92

55 Skills & Knowledge Presenters certified as of 03-18-92

1,951 TOTAL CERTIFIED COURSES

suggests that sufficient projected resources are available for the Commission to consider reinstatement of salary reimbursement at a reduced level, retroactive to November 1st. Fiscal expenditures, the status of revenue and reserves, and training projections will be addressed by the Finance Committee. The Committee's recommendations will be reported on as a separate agenda item.

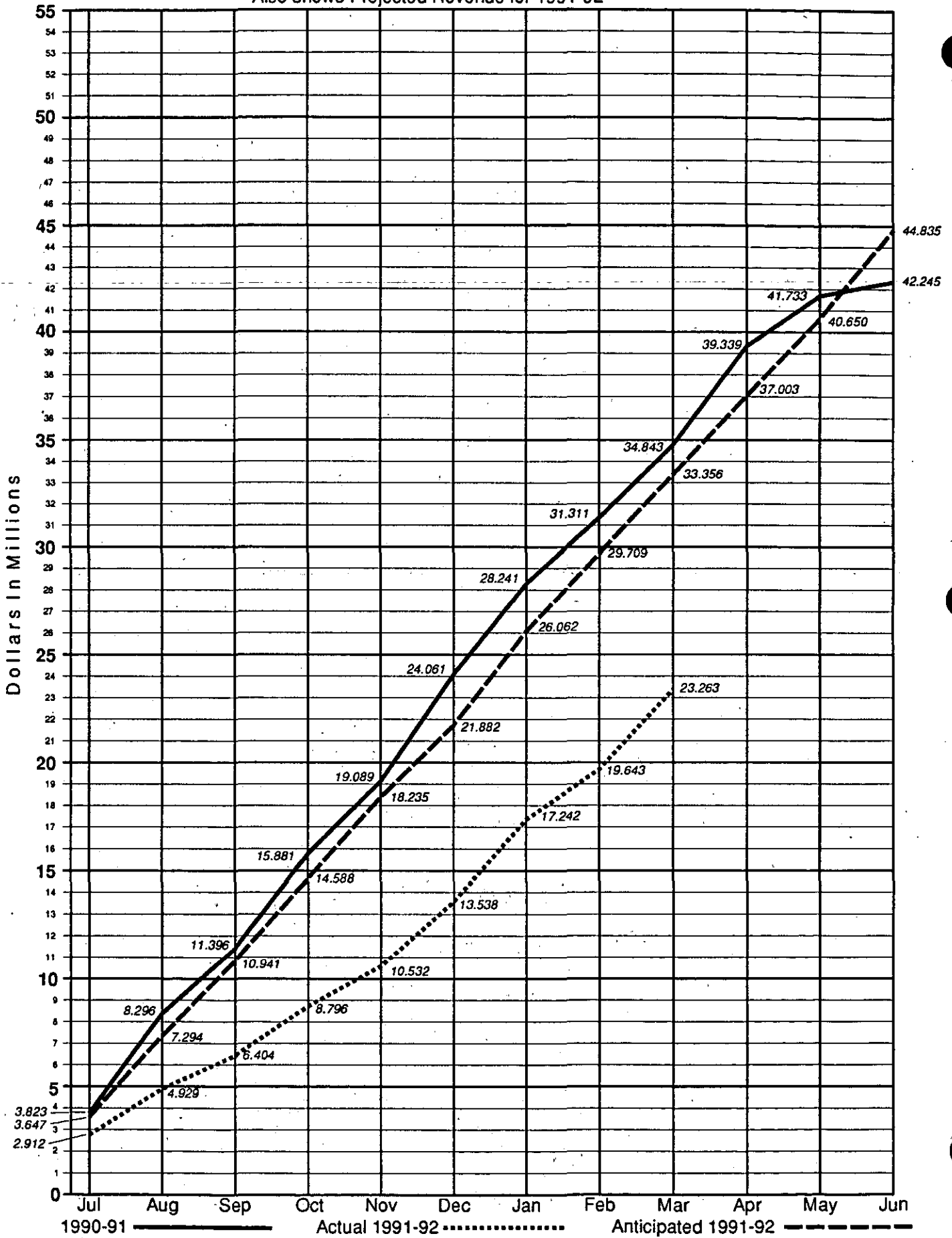
Comparison of Revenue by Month Fiscal Years 1990-91 and 1991-92								
	<u>1990-91</u>				<u>1991-92</u>			
	Penalty Assessment Fund	Other	Cumulative Total	Cumulative Monthly Estimate	Penalty Assessment Fund	Other	Total	Cumulative Total
July	\$ 3,822,890	\$ 541	\$ 3,823,431	\$ 3,647,000	\$ 2,886,023	\$25,676	\$ 2,911,699	\$ 2,911,699
August	4,467,623	5,433	8,296,487	7,294,000	1,992,791	24,624	2,017,415	4,929,114
September	3,096,014	3,690	11,396,191	10,941,000	1,467,766	7,359	1,475,125	6,404,239
October	4,468,976	16,184	15,881,351	14,588,000	2,378,813	13,105	2,391,918	8,796,157
November	3,207,368	412	19,089,131	18,235,000	1,722,707	12,819	1,735,526	10,531,683
December	4,971,707	273	24,061,111	21,882,000	2,970,202	36,376	3,006,578	13,538,261
January	3,641,274	538,309	28,240,694	26,062,000	3,461,559	242,073	3,703,632	17,241,893
February	3,069,568	402	31,310,664	29,709,000	2,382,614	18,219	2,400,833	19,642,726
March	3,515,682	16,549	34,842,895	33,356,000	3,589,609	30,578	3,620,187	23,262,913
April	4,482,331	14,204	39,339,430	37,003,000				
May	2,388,687	4,495	41,732,612	40,650,000				
June	0	512,275	*42,244,887	44,835,000				
Total	\$41,132,120	\$1,112,767	\$42,244,887	\$44,835,000	\$22,852,084	\$ 410,829	23,262,913	\$23,262,913

* End of FY 90-91 revenue reported as \$44,273,729.
Due to posting error, Controller's Office reversed \$2,028,842.

Rev. 4/2/92
Comprev.mod

Comparison of Revenue by Month

Fiscal years 1990-91 and 1991-92
Also shows Projected Revenue for 1991-92



NUMBER OF REIMBURSED TRAINEES BY CATEGORY - FOR CLAIMS PROCESSED

March 1992

	1990-91			1991-92		
	Actual Total For Year	Actual Jul - Mar	% of Total	Projected Total For Year	Actual Jul - Mar	% of Projection
Basic Course	4,438	3,510	.79	4,500	1,655	.37
Dispatchers - Basic	814	597	.73	820	373	.45
Advanced Officer Course	18,672	11,536	.62	19,500	* 8,337	.43
Supervisory Course (Mandated)	1,200	824	.69	1,275	403	.32
Supervisory Seminars & Courses	3,088	2,123	.69	3,200	2,428	.76
Management Course (Mandated)	384	192	.50	390	187	.48
Management Seminars & Courses	2,882	1,729	.60	2,910	1,680	.58
Executive Development Course	443	332	.75	520	444	.85
Executive Seminars & Courses	155	53	.34	200	426	2.13
Other Reimbursement	570	354	.62	600	204	.34
Technical Skills & Knowledge Course	30,901	21,662	.70	32,500	21,654	.67
Field Management Training	27	13	.48	40	20	.50
Team Building Workshops	544	380	.70	575	408	.71
POST Special Seminars	935	593	.63	1,000	622	.62
Approved Courses	69	46	.67	80	47	.59
TOTAL	65,122	43,944	.67	68,110	38,888	.57

3/30/92

numreim.tab

*Some 3,000 plus trainee claims requesting salary only have not been paid.

COMMISSION ON POST
REIMBURSEMENT BY COURSE CATEGORY

Course Category	1990-1991		1991-1992	
	Total For Year	Actual July - Mar.	March	Actual *July - Mar.
Basic Course	\$ 12,356,552	\$ 9,600,738	\$ 220,976	\$ 3,163,353
Dispatchers-Basic	426,520	277,234	10,274	207,393
Advanced Office Course	4,620,685	2,784,257	29,294	1,341,767
Supervisory Course (Mandated)	1,145,719	782,249	16,739	328,339
Supervisory Seminars and Courses	1,157,463	791,422	87,370	897,024
Management Course (Mandated)	566,879	264,033	21,747	205,458
Management Seminars and Courses	1,074,787	636,867	152,633	651,840
Executive Development Course	352,868	267,067	11,084	278,756
Executive Seminars and Courses	73,438	33,531	24,292	150,647
Other Reimbursement	498,739	317,771	18,266	129,970
Technical Skills and Knowledge Courses	9,538,765	6,420,154	808,773	6,334,265
Field Management Training	11,197	4,784	2,397	8,651
Team Building Workshops	241,188	177,101	16,680	164,604
POST Special Seminars	216,509	122,631	14,118	131,024
Approved Courses	12,011	9,821	1,813	9,624
TOTAL	\$ 32,293,320	\$ 22,489,660	\$ 1,434,059	\$ 14,002,715

*Includes funds charged to 90-91 F. Y. for training

3/30/92

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1991-92 LOCAL ASSISTANCE BUDGET
AS OF: MARCH 31, 1992

	Allocated	Expended	Balance

AID TO LOCAL GOVERNMENT:			
Course Reimbursement **	\$30,581,416	11,547,023	\$19,034,393
Carry Over from FY 90-91	2,467,110	2,455,690	11,420

Sub-Total, Reimbursements	\$33,048,526	14,002,713	\$19,045,813
OTHER:			
Reserve for Satellite Dishes	\$600,000	\$0	\$600,000
Transfer to Training Contracts	1,105,000	1,105,000	0
Transfer to Training Contracts	400,000	400,000	0
Reserve for Contingencies	813,584	0	813,584

Sub-Total, Other	\$2,918,584	\$1,505,000	\$1,413,584

Total, Local Assistance	\$35,967,110	\$15,507,713	\$20,459,397
EXPENDITURE REDUCTIONS:			
DUE TO REVENUE SHORTFALL	(8,657,000)		(8,657,000)

Revised Balance	27,310,110	15,507,713	11,802,397

** Salary reimbursement @ 20/35%
Salary suspended as of 11-1-91

FUNDING

LOCAL ASSISTANCE	33,500,000
CARRYOVER FROM 1990-91	2,467,110
EXPENDITURE REDUCTION	(8,657,000)

TOTAL	27,310,110

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

COMMISSION AGENDA ITEM REPORT

Agenda Item Title NEW AGENCY - MODOC COUNTY DISTRICT ATTORNEY		Meeting Date April 9, 1992
Bureau Compliance and Certificate Services	Reviewed By <i>FW</i> Frederick Williams	Researched By Thomas Farnsworth <i>TF</i>
Executive Director Approval <i>Morgan C. Behm</i>	Date of Approval 3-24-92	Date of Report March 24, 1992
Purpose: <input type="checkbox"/> Decision Requested <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Status Report		Financial Impact: <input type="checkbox"/> Yes (See Analysis for details) <input type="checkbox"/> No

In the space provided below, briefly describe the ISSUE, BACKGROUND, ANALYSIS, and RECOMMENDATION. Use additional sheets if required.

ISSUE

The Modoc County District Attorney's Office is seeking entry into the POST Reimbursable Program on behalf of its investigator.

BACKGROUND

The provisions of 830.1 Penal Code permit a District Attorney's Office to employ sworn investigators. The Modoc County Board of Supervisors has submitted the proper documents supporting POST objectives and regulations.

ANALYSIS

The District Attorney's Office has one full-time sworn deputy. Adequate background investigations have been conducted and the agency is complying with POST Regulations.

RECOMMENDATION

The Commission be advised that the Modoc County District Attorney's Office has been admitted into the POST Reimbursement Program consistent with Commission Policy.

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

COMMISSION AGENDA ITEM REPORT

Agenda Item Title Public Safety Dispatcher Program		Meeting Date April 9, 1992
Bureau Compliance and Certificate Services	Reviewed By <i>[Signature]</i> Frederick Williams	Researched By
Executive Director Approval <i>[Signature]</i>	Date of Approval 3-24, 1992	Date of Report March 24, 1992
Purpose: <input type="checkbox"/> Decision Requested <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Status Report		Financial Impact: <input checked="" type="checkbox"/> Yes (See Analysis for details) <input type="checkbox"/> No

In the space provided below, briefly describe the ISSUE, BACKGROUND, ANALYSIS, and RECOMMENDATION. Use additional sheets if required.

ISSUE

Acceptance of agencies into the Public Safety Dispatcher Program.

BACKGROUND

The agencies shown on the attached list have requested participation in the POST Reimbursable Public Safety Dispatcher Program pursuant to Penal Code Sections 13510(c) and 13525. The agencies have expressed their willingness to abide by POST Regulations and have passed ordinances or resolutions as required by Penal Code Section 13522.

ANALYSIS

All of the agencies presently employ full-time dispatchers, and some employ part-time dispatchers. The agencies have all established minimum selection and training standards which equal or exceed the standards adopted for the program.

RECOMMENDATION

That the Commission be advised that the subject agencies have been accepted into the POST Reimbursable Public Safety Dispatcher Program consistent with Commission policy.

NEW AGENCIES IN THE PUBLIC SAFETY DISPATCHER PROGRAM

OCTOBER 1991 - MARCH 1992

<u>AGENCY</u>	<u>ORD\RES\LETTER</u>	<u>ENTRY DATE</u>
BENICIA P.D.	ORD. 91-15	10-22-91
HURON P.D.	ORD. 273	1-27-92
MERCED P.D.	ORD. 1807	3-9-92

TOTAL AGENCIES IN PROGRAM: 312



Resolution OF THE
Commission on Peace Officer Standards and Training
STATE OF CALIFORNIA

WHEREAS, Dolores Kan has served as a member of the Advisory Committee of the Commission on Peace Officer Standards and Training (POST) from May 1988 to April 1992; and

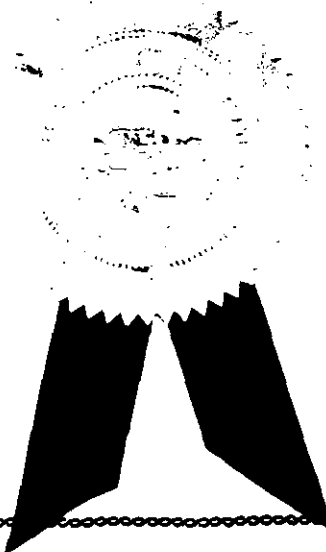
WHEREAS, Dolores Kan has effectively represented the Women's Peace Officer Association of California (WPOAC) during her tenure on the POST Advisory Committee; and

WHEREAS, Dolores Kan has demonstrated leadership and diligence in her service as a member of the POST Advisory Committee; and

WHEREAS, California law enforcement has benefitted greatly from her advice and counsel; now

THEREFORE, BE IT RESOLVED, That the members of the California Commission on Peace Officer Standards and Training (POST) do hereby commend Dolores Kan for her outstanding service and dedication to California law enforcement; and

BE IT FURTHER RESOLVED, That the Commission extends best wishes to Dolores Kan in her future endeavors.



Chairman

Executive Director

April 9, 1992
Date

ANALYSIS

The intent of Penal Code Section 832(e) is to impose a "3-year rule" for peace officers for whom PC 832 training is the minimum training requirement that is analogous to the "3-year rule" for peace officers for whom the minimum training requirement is a POST-certified basic course (as specified in Commission Regulation 1008).

Key factors of the proposed regulations to accomplish this objective are as follows:

- o Persons seeking to satisfy PC 832 Course requalification requirements via testing will be permitted two opportunities to pass each applicable test (i.e., written test for Arrest Procedures and course-of-fire for Firearms), as is the case for persons who take the tests at the conclusion of PC 832 training. Failure to pass any test upon the second attempt will result in the need to successfully repeat the applicable PC 832 training (Arrest Procedures or Firearms).
- o Those persons who are exempt from the PC 832 Course requalification requirements, as specified in Penal Code Section 832(e) (see above), are enumerated in the proposed regulations. The proposed regulations further specify that in order to qualify for exemption through teaching the PC 832 Course, one must have taught the entire course curriculum within 3 years of the date of the exemption request. Further, because the PC 832 Course curriculum is divided into two modules - Arrest Procedures and Firearms - exemption status will be determined separately for each module.¹ Also proposed is language which specifies that to qualify for exemption based on continuous employment as a peace officer in another state or at the federal level, one must have no more than a 60-day break in service between law enforcement employers (as is required under the 3-year rule for the basic course). Finally, as proposed, law enforcement employers would be required to retain, as a permanent record, any documentation in support of an employee's exemption.
- o As provided for in law, POST will charge examination fees, not to exceed actual costs, to those who wish to test for purposes of satisfying the PC 832 Course requalification requirements.

¹The Firearms module is required only of PC 832 officers who carry firearms.

It is difficult to estimate with any certainty the testing volume that will result from adoption of the proposed regulations. Fewer than 20 people a year undergo the testing process associated with the 3-year rule for the basic course. The number of persons who complete PC 832 training is approximately two and one-half times that for basic training. Based on this difference in training volume, and in the absence of any other data, it is assumed that 50 to 60 persons per year will request and qualify for PC 832 requalification testing.

As with the basic course waiver examination program, it is proposed that POST contract for actual administration of all requalification exams, with the fees for testing used to pay all contract costs.

Fewer than 25 persons a year are expected to qualify for an exemption. This estimate is based on past experience with the 3-year rule for the basic course, where the exemption criteria are similar to those proposed for PC 832 Course requalification. Exemptions under the 3-year rule for the basic course have averaged 10 a year over the last 6 years. Again, in consideration of the two and one-half times greater training volume for the PC 832 Course, this would translate to between 20 and 25 exemptions per year for PC 832 requalification.²

The proposed regulations were presented to the Commission at its January 23, 1992 meeting, at which time the Commission moved to schedule a public hearing on the matter for April 9, 1992.

The required legal notice, including proposed regulation language, was distributed statewide as POST Bulletin 92-6. See Attachment B.

RECOMMENDATION

Subject to the results of the public hearing, it is recommended that the Commission adopt Regulation 1080(b) concerning PC 832 Course requalification requirements, to be effective upon approval by the Office of Administrative Law (OAL) as to form and procedure.

²With respect to all exemptions to the 3-year rule for the basic course over the past 6 years, 48% were for persons returning to a law enforcement position at the second level of supervision or higher, and 20% (approximately 2 per year) were for persons who had been continuously employed as a peace officer in another state or at the federal level.

SEC. 2. Section 832 of the Penal Code is amended to read:

832. (a) Every person described in this chapter as a peace officer shall satisfactorily complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training. On or after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by the commission. Training in the carrying and use of firearms shall not be required of any peace officer whose employing agency prohibits the use of firearms.

(b) (1) Every peace officer described in this chapter, prior to the exercise of the powers of a peace officer, shall have satisfactorily completed the course of training described in subdivision (a).

(2) Every peace officer described in Section 13510 or in subdivision (a) of Section 830.2 may satisfactorily complete the training required by this section as part of the training prescribed pursuant to Section 13510.

(c) Persons described in this chapter as peace officers who have not satisfactorily completed the course described in subdivision (a), as specified in subdivision (b), shall not have the powers of a peace officer until they satisfactorily complete the course.

(d) Any peace officer who, on March 4, 1972, possesses or is qualified to possess the basic certificate as awarded by the Commission on Peace Officer Standards and Training shall be exempted from this section.

(e) (1) Any person completing the training described in subdivision (a) who does not become employed as a peace officer within three years from the date of passing the examination described in subdivision (a), or who has a three-year or longer break in service as a peace officer, shall pass the examination described in subdivision (a) prior to the exercise of the powers of a peace officer, except for any person described in paragraph (2).

(2) The requirement in paragraph (1) does not apply to any person who meets any of the following requirements:

(A) Is returning to a management position that is at the second level of supervision or higher.

(B) Has successfully requalified for a basic course through the Commission on Peace Officer Standards and Training.

(C) Has maintained proficiency through teaching the course described in subdivision (a).

(D) During the break in California service, was continuously employed as a peace officer in another state or at the federal level.

(f) The commission may charge appropriate fees for the examination required by subdivision (e), not to exceed actual costs.

New

**COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING**1601 ALHAMBRA BOULEVARD
SACRAMENTO, CALIFORNIA 95816-7083

February 14, 1992

BULLETIN: 92-6

SUBJECT: PUBLIC HEARING - ADOPTION OF P.C. 832 REQUALIFICATION
REQUIREMENTS

A public hearing has been scheduled in conjunction with the April 1992 Commission meeting:

Date and Time: April 9, 1992 - 10:00 a.m.
Location: Red Lion Hotel, San Diego

The purpose of the hearing is to consider proposed additions to Commission Regulation 1080 which would establish P.C. 832 requalification requirements.

Under Penal Code Section 832, all peace officers, except those who complete a basic course, must complete a course of training prescribed by POST (i.e., P.C. 832 training) prior to the exercise of peace officer powers. Satisfactory completion of the course must be demonstrated by passing a POST-developed or POST-approved examination.

Pursuant to Senate Bill 474, Penal Code Section 832 was amended to require that any person who does not become employed as peace officer within three years from successful completion of P.C. 832 training, or who has a three-year or longer break in service as a peace officer, must "requalify" to exercise the powers of a peace officer by either: (1) passing the same POST-developed or POST-approved tests that are administered at the conclusion of P.C. 832 training; or (2) successfully repeating P.C. 832 training.

Exempt from the requalification requirement are persons who: (1) are returning to a management position at the second level of supervision or higher; (2) have successfully requalified for a POST basic course; (3) have maintained proficiency through teaching the P.C. 832 Course; or (4) have been continuously employed as a peace officer in another state or at the federal level during their break in California service.

Senate Bill 474 also authorizes the Commission to charge fees for all "requalification" exams not to exceed actual costs.

The attached Notice of Public Hearing, required by the

Administrative Procedures Act, provides details concerning the proposed regulation changes and provides information regarding the hearing process. Inquires concerning the proposed action may be directed to Anna Del Porto at (916) 739-5400.

The Commission invites your comments on this matter.



NORMAN C. BOEHM
Executive Director

Attachment

Commission on Peace Office Standards and Training

NOTICE OF PUBLIC HEARING

ADOPTION OF PC-832 COURSE REQUALIFICATION REQUIREMENTS

Notice is hereby given that the Commission on Peace Officer Standards and training (POST), pursuant to the authority vested by Sections 13503 and 13506 of the Penal Code and in order to make specific Section 832 of the Penal Code, proposes to amend, or repeal regulations in chapter 2 of Title 11 of the California Code of Regulations. A public hearing to adopt the proposed amendments will be held before the full Commission on:

Date: April 9, 1992
Time: 10:00 a.m.
Place: Red Lion Hotel
San Diego, California

Notice is also hereby given that any interested person may present oral or written statements or arguments, relevant to the action proposed, during the public hearing.

INFORMATIVE DIGEST

Penal Code Section 832(a) requires all peace officers (except those who complete the Basic Course) to satisfactorily complete an introductory course of training prescribed by POST. Satisfactory completion of the course must be demonstrated by passing a POST-developed or POST-approved examination. Testing requirements and procedures pursuant to Penal Code Section 832(a) are described in Regulation 1080.

With the passage of Senate Bill 474, Penal Code Section 832(e) was added, which requires that any person who successfully completes 832 training, but either: (1) does not become employed as a peace officer within 3 years of successful completion of training, or (2) has a 3 year or longer break in service as a peace officer, must "requalify" to exercise the powers of a peace officer. This may be done by either passing the same POST-developed or POST-approved tests that are administered in conjunction with the PC 832 Course, or by successfully repeating a PC 832 Course (and thus passing the tests at the conclusion of the course).

Pursuant to Penal Code Section 832(e), the requalification requirement does not apply to any person who: (1) is returning to a law enforcement management position at the second level of supervision or higher, (2) has successfully requalified for a POST Basic Course, (3) has maintained proficiency through teaching the PC 832 Course, or (4) was continuously employed as a peace officer in another state or at the federal level during the break in California service.

Senate Bill 474 also added Penal Code Section 832(f), which grants the Commission the authority to charge fees for all "requalification" exams, with the amount of such fees not to exceed actual test administration costs.

In order to comply with the provisions of Penal Code Sections 832(e) and 832(f), it is proposed that Commission Regulation 1080 be amended to add section (b), to include the following provisions:

1. Persons seeking to satisfy the PC 832 Course requalification requirements via testing will be required to establish their eligibility by submitting verifiable evidence of prior successful completion of PC 832 training. POST will evaluate the submitted information and respond within 30 days of receipt.
2. All costs associated with requalification test administration, as determined by POST, will be paid in advance by the examinee. Fees paid by persons found to be ineligible will be refunded.
3. Persons eligible for requalification testing will be tested within 90 days of notification of eligibility, and will be notified at least 30 days in advance of the exam as to the specific date, time and location of testing. Failure to appear for testing will result in loss of eligibility to test and forfeiture of exam fees.
4. All requalification tests will be administered at POST-approved locations by authorized test proctors.
5. Official notification of requalification test results will be provided by POST within 5 working days of receipt by POST of the test material.
6. One requalification retest will be permitted within 90 days of failure for any test failed, contingent upon advance payment of any applicable retest exam administration fees. Persons who fail to achieve a passing score upon retesting, or who fail to appear for retesting, will be required to satisfactorily complete the appropriate PC 832 training (i.e., Arrest Procedures or Firearms) in order to meet the PC 832 Course requalification requirements.
7. Pursuant to Penal Code Section 832(e), the following persons will be considered exempt from the PC 832 Course requalification requirements:
 - (a) Those who return to management level positions at the second level of supervision or higher;
 - (b) Those who have successfully requalified for a POST Basic Course as provided for in Commission Regulation 1008;
 - (c) Those who have maintained proficiency through teaching the entire Arrest Procedures and/or

Firearms module of the PC 832 Course (exemption status for each module to be determined separately);

(d) Those who were continuously employed in another state or with a federal agency as a peace officer (with no more than a 60 day break in service between law enforcement employers), during the break in California service.

8. The employing agency shall retain, as a permanent record, all documentation in support of the exemption status of any given employee.

PUBLIC COMMENT

The Commission hereby requests written comments on the proposed actions. All written comments must be received at POST no later than 4:30 p.m. on March 30, 1992. Written comments should be directed to Norman C. Boehm, Executive Director, Commission on Peace Officer Standards and Training, 1601 Alhambra Blvd., Sacramento, CA 95816-7083.

ADOPTION OF PROPOSED REGULATIONS

After the hearing and consideration of public comments, the Commission may adopt the proposals substantially as set forth without further notice. If the proposed text is modified prior to adoption and the change is related but not solely grammatical or nonsubstantial in nature, the full text of the resulting regulation will be made available at least 15 days before the date of adoption to all persons who testified or submitted written comments at the public hearing, all persons whose comments were received by POST during the public comment period, and all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date on which the revised text is made available.

TEXT OF PROPOSAL

Copies of the Statement of Reasons and exact language of the proposed action may be obtained at the hearing, or prior to the hearing upon request in writing to the contact person at the address below. This address also is the location of all information considered as the basis for these proposals. The information will be maintained for inspection during the Commission's normal business hours (8 a.m. to 5 p.m.).

ESTIMATE OF ECONOMIC IMPACT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:
None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Small Business Impact: None

Cost Impact on Private Persons or Entities: None

Housing Costs: None

CONSIDERATION OF ALTERNATIVES

In order to take this action, the Commission must determine that no alternative considered by the Commission would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries concerning the proposed action and requests for written material pertaining to the proposed action should be directed to Anna DelPorto, Staff Services Analyst, 1601 Alhambra Blvd., Sacramento, CA 95816-7083, or by telephone at (916) 739-5400.

POST ADMINISTRATIVE MANUAL

REGULATIONS

Proposed Language

1080. **PC 832 COURSE Testing and Requalification Requirements**

(a) through (a) (4) Continued

(b) Any person who does not become employed as a peace officer within 3 years of successfully completing PC 832 training, or who has a 3-year or longer break in service as a peace officer subsequent to successfully completing PC 832 training, must requalify to exercise the powers of a peace officer by either: (1) repeating and satisfactorily completing PC 832 training, or (2) demonstrating continued mastery of PC 832 training material by passing the examinations enumerated in POST Regulation 1080(a). This section does not apply to persons who qualify for an exemption as per Penal Code Section 832(e) (2).

(1) Requalification Examination Procedures:

(A) Eligibility: Persons seeking to test shall make written request to the Commission, and provide the Commission with verifiable information regarding prior successful completion of PC 832 training. This information shall include the name of the training institution (presenter) where training was completed, and ending date of training. All requests to test must include payment of all applicable examination fees [see (E), below], in the form of a certified check or money order made payable to the Commission on POST.

(B) Notification of Eligibility to Test: Persons seeking to test shall receive written notification from POST as to eligibility to test within 30 days of receipt by POST of all documentation required per (A) above.

All applicable examination fees will be returned to those persons who are determined to be ineligible for testing.

(C) Administration of Examinations:

(1) Every eligible person shall:

(a) be tested at a POST-approved location within 90 days of notification of eligibility to take the requalification exam.

(b) be notified as to the specific date, time, and location of testing at least 30 days in advance of the test.

(2) Failure to appear for testing shall result in forfeiture of all applicable examination fees and loss of eligibility to test.

Persons desiring to test after failure to appear for a scheduled exam must reestablish eligibility to test by completing the requirements described in Regulation 1080(b)(1)(A).

(3) All examinations shall be administered by persons who have been approved by POST.

(D) Notification Procedures: POST shall notify all examinees in writing as to examination results within 5 working days of receipt by POST of all applicable test materials.

(E) Requalification Examination Retesting: One requalification exam retest shall be permitted for any test failed, contingent upon advanced payment of any applicable examination fee [see (F), below]. Such retesting must occur within 90 days of the original examination.

Persons who fail to achieve a passing score upon requalification exam retesting, or who fail to appear for requalification exam retesting, shall be required to successfully complete the appropriate PC 832 training (i.e., Arrest Procedures, Firearms, or both) in

order to meet the PC 832 Course
requalification requirements of Penal
Code Section 832(e).

(F) Examination Fees: POST shall charge
fees for all examinations administered.
The appropriate fees shall be determined
by the Commission and shall not exceed
actual test administration costs.

(2) Exemptions:

(A) A person who meets any of the following
criteria shall be exempt from the PC 832
Course Requalification Requirements:

(1) Is returning to a management level
law enforcement position at the
second level of supervision or
higher.

(2) Has successfully completed the
Basic Course Requalification
Process as provided for in
Commission Regulation 1008.

(3) Has maintained proficiency by
teaching the course described in PC
832 (a).

Required curriculum for the PC 832
course is comprised of two separate
modules - Arrest Techniques and
Firearms. Accordingly, a person
may seek exemption under this
provision for the Arrest Techniques
module only, the Firearms module
only, or the entire PC 832 course
(both Arrest Techniques and
Firearms).

For the purpose of granting an
exemption on the basis of teaching
experience, "maintained
proficiency" shall be defined as
having taught the entire module(s)
for which an exemption is being
sought. Additionally, exemptions
shall be granted only for recent
teaching experience that was gained
within three years of the exemption
request.

(4) Has been employed continuously,

with no more than a 60-day break in service between law enforcement employers, in another state or with a federal agency as a peace officer.

(B) Employing agencies shall retain as record all documentation used for determining exemptions.

Authority cited: Sections 13503, 13506, Penal Code.

Reference: Sections 832, Penal Code.

This procedure is necessary to prevent persons who have never completed PC 832 training from entering the requalification testing process.

The name of the training institution and the date of completion are necessary because all PC 832 course records prior to July 1, 1989 have not been automated. This information is required in order to manually locate the applicant's training record.

All costs associated with requalification testing, as determined by POST, will be paid in advance by the examinee.

Amended Penal Code Section 832 explicitly authorizes the Commission to charge fees for all requalification testing, with the amount of such fees not to exceed actual test administration costs.

The fees actually charged will be determined yearly, based on annual evaluation of actual costs.

The requirement that all fees be paid in advance of testing is consistent with current requirements for the Basic Course Waiver Examination process as enumerated in Commission Procedure D-11-2.

Persons seeking to test shall receive written notification from POST as to eligibility to test within 30 days of receipt by POST of the required documentation and fee.

Written notification is necessary to assure that both POST and the individual seeking to test have a permanent record of eligibility.

While it is anticipated that far less than thirty days will generally be required to evaluate the submitted information, to clear the fee, and to issue a written notice, the 30 day time period is needed time to assure adequate time for review and evaluation of those records that are not now stored in a centralized location (i.e., the training records of persons who successfully completed the PC 832 course prior to July 1, 1989).

All applicable examination fees will be returned to those persons who are determined to be ineligible for requalification testing.

Pursuant to PC 832(f), the fees collected for the requalification examination are for actual "examination" costs only. Since persons who are ineligible for testing will not be tested, their fee must be returned.

Persons eligible for requalification testing will be tested at a POST-approved location within 90 days of verification of eligibility to test, and will be notified at least 30 days in advance as to the specific date, time and location of testing.

Testing only at POST-approved locations is necessary to assure that all tests are administered in a uniform and safe manner, at suitable locations (especially the firearms skills test).

It is anticipated that fewer than 100 persons annually will seek to test. Given this small testing volume, the desirability of testing more than one individual at a time, and the likelihood that requests will be received from all over the state, there may be occasions when eligible persons will have to wait up to 90 days to be tested. When feasible, the waiting period will be shortened. By comparison, the waiting period for the Basic Course Waiver Examination is 180 days.

By providing at least 30 days advance notice of when and where to appear for testing, all examinees will receive ample time to arrange their schedules accordingly.

Failure to appear for testing as scheduled will result in loss of eligibility to test pending reapplication to establish eligibility.

All examinations (including requalification retests - see below) will be administered by contract personnel, and POST will be charged the same per candidate fee, whether or not the candidate appears for testing. This requirement ensures that all direct costs to administer the requalification testing program will be borne by the test candidate, as intended in amended Penal Code Section 832.

All requalification examinations will be administered by persons who have been approved by POST.

This requirement is necessary to maintain test security and to ensure that the requalification tests are administered and scored in a consistent manner. All requalification exams will be administered by persons who have agreed to the terms of a formal test security agreement and have received exam administration training from POST.

Official notification of requalification test results will be provided by POST within 5 working days of receipt of applicable test materials.

In order to assure all PC 832 examination data is properly processed and recorded, existing PC 832 testing procedures require that POST receive and process all test score data and officially notify all trainees of successful/unsuccessful course completion. It is proposed that requalification examination data be handled in a like manner, with each examinee notified by POST as to PC 832 Course requalification test results (i.e., successful/unsuccessful PC 832 Course requalification). A five day processing period is needed to assure that test results can be processed in a manner that does not unduly disrupt other test score processing functions currently performed by POST staff.

One requalification retest will be permitted within 90 days of failure for any test failed, contingent upon advance payment of any applicable retest exam administration fees.

Tests are not infallible and errors in measurement occur. In recognition of this reality, it is proposed that persons who fail any requalification test be permitted one opportunity to retest. This proposed provision (including the 90 day time restriction) is identical to that found in Commission Regulation 1080(a)(3) for persons tested (using the same tests) at the conclusion of a PC 832 Course.

Persons who fail to pass the requalification "retest," or who fail to appear for the requalification "retest," will be required to successfully complete the appropriate PC 832 training (i.e., Arrest Procedures, Firearms, or both) in order to meet the PC 832 Course requalification requirements.

Two failures of the same test constitutes reasonable evidence that the individual has not mastered (is no longer the master of) the course material, and therefore does not meet the requirements for "requalifying" for 832 training via testing. The requirement that such persons enroll and successfully complete the appropriate PC 832 training is consistent with POST Regulation 1080(a)(3) [which requires persons who fail a PC 832 retest to repeat the related training], and is consistent with the intent of amended Penal Code Section 832.

A person who meets any of the following criteria shall be exempt from the PC 832 Course Requalification Requirements:

- (1) Is returning to a management level law enforcement position at the second level of supervision or higher.
- (2) Has successfully completed the Basic Course Requalification Process as provided for in Commission Regulation 1008.
- (3) Has maintained proficiency by teaching the course described in PC 832 (a).

Required curriculum for the PC 832 course is comprised of two separate modules - Arrest Techniques and Firearms. Accordingly, a person may seek exemption under this provision for the Arrest Techniques module only, the Firearms module only, or the entire PC 832 course (both Arrest Techniques and Firearms).

For the purpose of granting an exemption on the basis of teaching experience, "maintained proficiency" shall be defined as having taught the entire module(s) for which an exemption is being sought. Additionally, exemptions shall be granted only for recent teaching experience that was gained within three years of the exemption request.

- (4) Has been employed continuously, with no more than a 60-day break in service between law enforcement employers,

in another state or with a federal agency as a peace officer.

All of the exemptions to the requalification requirement, as enumerated above, are referenced in newly added Penal Code Section 832(e).

The wording for numbers (1) and (2) above is taken directly from this Penal Code Section and restated for purposes of clarity, as is the wording of the first sentence for number (3). Additional language has been added under (3) to acknowledge that there are two separate PC 832 training modules - Arrest Techniques and Firearms - and that proficiency via teaching experience must be evaluated for each module separately. Further, for each module, due to the changing nature of the training, proficiency via teaching can reasonably be assumed only for recent teaching experience (i.e., within 3 years of the exemption request) that involved teaching of all aspects of the given module (i.e. Arrest Techniques and Firearms).

The wording for (4) above is interpretive of the exemption included in newly added Penal Code Section 832(e), which states that an exemption to the requalification requirement is granted to any person who "...during the break in California service was continuously employed as a peace officer in another state or at the federal level." Granting up to a 60 day "break in service" between such employers, is consistent with the intent of this provision of law, and yet acknowledges that such employment need not be literally continuous (in reality, persons who change employers, especially if it involves moving to another state, will have often have a short "break in service"). The proposed allowable "break in service" of up to 60 days identical to language found Commission Procedure D-11-12 with reference to requalifying for the Basic Course.

The employing agency shall retain, as a permanent record, all documentation in support of an employee's exemption status.

This provision is necessary to assure that, upon request, agencies in the POST program can provide documentation in support of purported exemption status for any officer (just as POST requires that agencies retain documentation in support of other officer selection and training requirements).

ANALYSIS

Contingent upon Commission approval, POST staff is currently in the process of identifying potential contract agencies to administer the P.C. 832 3-Year requalification examinations. The intent is to have enough sites strategically placed around the State so as not to impose unnecessary financial or travel hardship upon the examinee. The sixty-five current POST certified presenters of the P.C. 832 course are being canvassed to determine their interest and ability to become a contract agency.

The following is a description of the process and recommended fee schedule for the administration of the P.C. 832 Course requalification examination. Applicants affected by the requalification requirement will apply to POST to exercise the option of retesting. The applicant will pay the prescribed fees to POST which will offset the cost to POST to contract for the administration of the examinations.

P.C. 832 Course and Examinations

Penal Code Section 832 (b) requires all peace officers to satisfactorily complete an introductory course of training prior to exercising the powers of a peace officer. Section 832 (a) states that training in the carrying and use of firearms shall not be required of any peace officer whose employing agency prohibits the use of firearms. Because of this requirement, P.C. 832 training is offered in two courses:

- o Laws of Arrest
- o Firearms Familiarization and Safety

Students in regular P.C. 832 courses are required to pass an examination in each course that they are required to take:

- o a written multiple-choice test for the Arrest Course
- o a firearms skill examination for the Firearms Course

Beginning in July, 1992, owing to increased course content, the Laws of Arrest Course examination will contain two components:

- o a written multiple-choice test covering the laws of arrest and related topics
- o an arrest techniques skills examination covering note-taking, defensive foot movements, a takedown tactic, a control hold, handcuffing, and a visual, cursory and high risk search

P.C. 832 Regualification Examination

The regualification examination is comprised of the same examinations that are required in the regular P.C. 832 Courses.

Requirements of Regualification Contract Agencies

Facilities:

a class room suitable for administration of the P.C. 832 written examination (approximately 3 hours)

a firearms range (approximately one hour per session)

a room with gym mats suitable for administering the arrest techniques skills examination (approximately 2 hours per session)

Proctors:

individuals who are qualified to administer the following P.C. 832 examinations:

Laws of Arrest written examination (approximately 3 proctor hours for each session)

Laws of Arrest skills examination (approximately 2 proctor hours for each session)

Firearms examination (approximately 2 proctor hours - plus a range master on the range during each test session)

A coordinator:

to work with POST in scheduling administrations of the test procedures

Contract agencies will also be required to enter into a written test security agreement with POST and be in compliance with "POST Guidelines for Student Safety in Certified Courses."

Scheduling

Regualification examinations will be scheduled by the contract agency within 30 days after notification by POST, with the actual test administration taking place within 90 days after initial notification.

Retesting

Persons who fail a regualification examination will be afforded one opportunity to retest within 90 days of failure. For the Firearms and Arrest Techniques Skills examination, students will

have the option of either retesting immediately or scheduling a retest within 90 days.

The Laws Arrest Course written requalification examination will be administered and scored locally, but POST will provide official scoring and notification of examination results, including the scheduling of all requalification retests.

Fee Structure

The following fee schedule, arrived at in part through a survey of 12 P.C. 832 presenters, has been established, contingent upon Commission approval:

Administration of the Written Examination (3 hours)	\$100.00
Administration of the Firearms Examination (2 hours)	\$150.00
Administration of the Arrest Techniques Skills Examination (2 hours)	\$100.00

These are fees that applicants will pay to POST to cover the cost to POST for contractors to administer the examinations. The fee for the Firearms and Arrest Skills examinations includes the administration of the immediate retest option for these tests. Retests for the written examination will be scheduled through POST for a later date and compensated at the indicated rates. The fee for the firearms examination is intended to cover any target and ammunition expenses that the contractor incurs.

It is noted that the Arrest Skills examination covering note-taking, defensive foot movements, a takedown tactic, a control hold, handcuffing, and visual, cursory and high risk search is under development. The examination will be available to accommodate this instruction which will be required in the course on July 1, 1992.

Staff anticipates between 50 to 60 requalification examinees per year, statewide.

Attachment A presents a matrix of the fee schedule and accompanying rationale. The fees are based upon rates currently paid by institutions for personal services that would be required to conduct tests of applicants and evaluate their proficiency. Administrative overhead costs are also accounted for in these calculations, which are computed based upon the testing of individual applicants. The fees are reasonable as compared with the current fees that are charged applicants for the Basic Course Equivalency Examinations (written examination, \$91.00; Skills Examination, \$300.00).

Administrative costs to POST which would be incurred in the administration of the requalification requirements are expected to be minimal, considering the low volume of applicants. Therefore, the fees proposed would not include recovery of POST's administrative costs.

RECOMMENDATION

If the Commission concurs, approve staff recommendations regarding the recommended fee schedule which is calculated to cover the cost of administering the P.C. 832 requalification examination requirements.

ATTACHMENT A

Test	Expense Item	Hrs*	Fee**	Total
Firearms	Firearms Proctor (includes testing 4 P.O.'s and course-of-fire)	2	\$37.50	\$ 75.00
	Range Master	1	37.50	37.50
	Range costs (Target, Ammo)	N/A	12.50	12.50
	Administrative overhead	1/2	50.00	25.00
	Total			\$150.00
Arrest Course Written	Test Proctor	3	\$25.00	\$ 75.00
	Administrative overhead	1/2	50.00	25.00
	Total			\$100.00
Arrest Course Skills	Test Proctor (includes administering 5 defensive tactics and 1 note taking P.O.)	2	\$37.50	\$ 75.00
	Administrative overhead	1/2	50.00	25.00
	Total			\$100.00
* Based on our past experience administering tests ** Based on a survey of 12 PC 832 presenters				

COMMISSION AGENDA ITEM REPORT

Agenda Item Title Request to Publish POST Pre-Employment Drug Screening Guidelines		Meeting Date April 9, 1992
Bureau Standards & Evaluation	Reviewed By	Researched By John Berner <i>JBS</i>
Executive Director Approval <i>Thomas L. Keenan</i>	Date of Approval 3-20-92	Date of Report February 26, 1992
Purpose: <input checked="" type="checkbox"/> Decision Requested <input type="checkbox"/> Information Only <input type="checkbox"/> Status Report		Financial Impact: <input type="checkbox"/> Yes (See Analysis for details) <input checked="" type="checkbox"/> No

In the space provided below, briefly describe the ISSUE, BACKGROUND, ANALYSIS, and RECOMMENDATION. Use additional sheets if required.

ISSUE

Request to publish POST pre-employment drug screening guidelines.

BACKGROUND

In January 1991, following a survey of law enforcement administrators, and upon the recommendation of the Long Range Planning Committee, the Commission directed staff to develop pre-employment drug screening guidelines for voluntary use by agencies in the POST program.

ANALYSIS

A draft document entitled Pre-Employment Drug Screening Guidelines (1992) was presented to the Long Range Planning Committee for review and comment at their January 22, 1992 meeting. The Committee recommended that the finalized document be presented for approval by the Commission at this meeting.

A copy of the guidelines document is attached. The focus of the document is on pre-employment drug screening exclusively. Employee testing, whether random, or for reasonable suspicion, is not addressed.

The basic approach taken in the document is to provide general guidance with regard to the full range of legal, technical, and procedural issues that should be considered when instituting a pre-employment drug screening program.

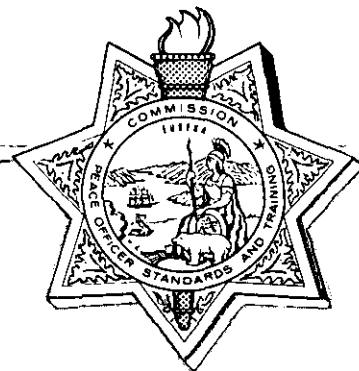
Great deference is given throughout the document to the guidelines and recommendations of the National Institute of Drug Abuse (NIDA). NIDA is the agency responsible for developing scientific and technical guidelines for federal agency drug screening programs.

RECOMMENDATION

If the Commission concurs, the appropriate action would be a motion to approve publication and general distribution of the POST Pre-Employment Drug Screening Guidelines (1992).

PRE-EMPLOYMENT DRUG SCREENING GUIDELINES

DRAFT



THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING
STATE OF CALIFORNIA

PRE-EMPLOYMENT

DRUG SCREENING GUIDELINES

1992

The Commission on
Peace Officer Standards and Training
State of California

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Robert Wasserman	Chief of Police Fremont
Daniel E. Lungren	Attorney General
Norman C. Boehm	Executive Director Commission on Peace Officer Standards and Training

PREFACE

This manual has been developed in response to the wishes expressed by California law enforcement in a recently completed POST survey concerning pre-employment drug screening policies and practices.

An attempt is made in the manual to cover the full range of legal, technical, and procedural issues that should be considered when instituting a pre-employment drug screening program.

While the intent of the manual is to provide general guidance to those agencies that are preparing to implement such a program, the information provided should also prove useful for purposes of evaluating ongoing programs.

We welcome your comments and suggestions.

NORMAN C. BOEHM
Executive Director

TABLE OF CONTENTS

	<u>Page</u>
POST COMMISSIONERS.....	iii
PREFACE.....	v
TABLE OF CONTENTS.....	vii
INTRODUCTION.....	1
Statement of Purpose.....	1
National Institute on Drug Abuse.....	1
Organization of the Guidelines.....	2
LEGAL CONSIDERATIONS.....	3
TECHNICAL ISSUES.....	7
Specimens.....	7
Analytical Methodologies.....	8
Substances to be Tested.....	10
Laboratories.....	12
PROCEDURAL ISSUES.....	13
NIDA Recommendations.....	13
IACP Drug Testing - Model Policy.....	19
Current Practices in California	
Law Enforcement Agencies.....	20
Other Issues.....	20
SUMMARY.....	23
GLOSSARY OF TERMS.....	25
BIBLIOGRAPHY.....	27
APPENDICES.....	29
Appendix 1 - POST Survey of Local Agency Pre-Employment Drug Testing Policies and Practices	
Appendix 2 - Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs	
Appendix 3 - U.S. Dept. of Labor Drug Fact Sheets	

- Appendix 4 - Department of Health and Human Services
Current List of Laboratories Which Meet
Minimum Standards to Engage in Urine Drug
Testing for Federal Agencies
- Appendix 5 - International Association of Chiefs of Police
Model Policy - Drug Testing - Sworn Employees
- Appendix 6 - Drug Detection Periods
- Appendix 7 - Sample Drug Screening Consent and Medical
Information Release Authorization
-

INTRODUCTION

Statement of Purpose

A recent POST survey of California law enforcement agencies (see Appendix 1) indicated that there is much interest in pre-employment drug screening. Slightly over one-third of the responding law enforcement agencies reported having a drug screening program, and more than half indicated that POST should provide general information or guidelines to those agencies that wish to establish their own programs.

These guidelines have been developed in response to the widespread interest expressed for guidance from POST in establishing pre-employment drug screening programs. They have been developed solely for **pre-employment** screening and do **not** address **employee** testing whether random, for reasonable suspicion, or post-accident.

The purpose of these guidelines is to assist local law enforcement agencies in establishing pre-employment drug screening programs that are as cost efficient and legally defensible as possible. The merits of such a program will no doubt vary as a function of the characteristics of the local applicant pool, the financial and other resources of the agency, the presence or absence of pre-employment polygraph testing, etc. In addition, local regulations or collective bargaining agreements may place limits on instituting such a program. The purpose of this document is not to influence the decision to institute pre-employment drug screening, but rather to assist an agency once the decision has been made to conduct pre-employment drug screening.

Concerned exclusively with pre-employment drug screening, these guidelines may be used to develop part of an agency's comprehensive substance abuse program. The U.S. Department of Labor recommends that a comprehensive program include: (1) a written substance abuse policy, (2) a supervisory training program, (3) an employee education and awareness program, (4) access to an employee assistance program (EAP), and (5) a drug testing program, where appropriate. More information on each of these areas can be found in the POST publication Substance Abuse Resource Manual (1988).

National Institute on Drug Abuse

Great deference will be given throughout these guidelines to the National Institute on Drug Abuse (NIDA). NIDA is the federal agency under the Department of Health and Human Services responsible for developing scientific and technical guidelines for drug testing programs for federal agencies. The issuance of the "Mandatory Guidelines for Federal Workplace Drug Testing

Programs" on April 11, 1988 (see Appendix 2) established an industry standard that is widely and highly respected. Often cited for their defensibility, NIDA standards will be referred to often throughout these guidelines.

Organization of the Guidelines

These guidelines have been grouped in what is hoped will be a useful organization for the user agency. Following the "Introduction," is a brief discussion of legal issues, including court decisions and federal guidelines, concerning pre-employment drug screening. After the "Legal Considerations" section is the "Technical Issues" section which discusses some of the decisions that must be made concerning specimen collection, analytical methodologies, substances to be tested, choosing laboratories, etc. The next major section is titled "Procedural Issues" and addresses the logistics of moving applicants through drug screening in a secure, efficient manner. Following that section is the "Summary," then a "Glossary of Terms" with definitions of some of the applicable vocabulary, followed by the "Bibliography." Finally, supporting documents are assembled in the "Appendices" section.

LEGAL CONSIDERATIONS

In the public sector, the principal grounds for challenging drug testing has been the Fourth Amendment which provides:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

The U.S. Supreme Court issued two decisions in 1989 which considered the applicability of the Fourth Amendment to the testing of government employees for drug usage. In one case, Skinner v. Railway Labor Executives' Association (1989) 109 S. Ct. 1402, the court held that drug and alcohol testing of employees was reasonable under the Fourth Amendment even though there was no requirement of a warrant or a reasonable suspicion that any particular employee might be impaired. The Court concluded that the government's compelling interest in safety outweighed the employee's privacy concerns. In the second case, National Treasury Employees Union v. Von Raab (1989) 109 S. Ct. 1384, the Supreme Court held that the U.S. Customs Service's drug testing program for its employees who transferred or promoted to a position involving (1) the carrying of firearms or (2) the interdiction of drug smugglers was reasonable under the Fourth Amendment. The program was reasonable despite the absence of a requirement for a warrant or individualized suspicion and was permissible because the government's compelling interests in public safety and in the integrity of U.S. borders outweighed the privacy interests of the workers subject to the testing. (The two cases discussed above are concerned with employees as opposed to applicants. However, Von Raab was concerned with employees who were required to undergo testing as part of an application process.)

Since the seminal decisions in Von Raab and Skinner, lower federal courts have upheld government-compelled pre-employment drug testing of employee applicants [International Brotherhood of Teamsters v. Dept. of Transportation, 932 F.2d 1292, 1307 (9th Cir.1991) and Willner v. Thornburg, 928 F.2d 1185, 1193-1194 (D.C.Cir.1991)]. Thus, most likely the Fourth Amendment will not bar pre-employment drug testing of peace officer applicants.

The recently enacted Americans with Disabilities Act (ADA) makes it unlawful to discriminate in employment against a qualified individual with a disability and affects all employers, including state and local government employers. The ADA, whose regulations are effective on July 26, 1992, protects prior drug users, but

specifically exempts current drug users from its protection and permits drug testing to determine current use.

Section 1630.3 of the ADA regulations states that "[t]he terms 'disability' and 'qualified individual with a disability' do not include individuals currently engaging in the illegal use of drugs..."

Section 1630.3(b) of the ADA does not, however, exclude from the terms "disability" and "qualified individual with a disability," an individual who (1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or (2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or (3) is erroneously regarded as engaging in such use, but is not engaging in such use.

With specific regard to drug testing, the ADA in Section 1630.16(c) reflects a general neutrality:

(1) General policy. For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by a covered entity to its job applicants or employees is not a violation of Section 1630.13 of this part. However, this part does not encourage, prohibit, or authorize a covered entity to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.

Further elaboration of the ADA regulations is provided in the "Appendix to Part 1630--Interpretive Guidance on Title I of the Americans with Disabilities Act." In reference to Section 1630.3, the appendix states (in part),

Part 1630 provides that an individual currently engaging in the illegal use of drugs is not an individual with a disability for purposes of this part when the employer or other covered entity acts on the basis of such use. Illegal use of drugs refers both to the use of unlawful drugs, such as cocaine, and to the unlawful use of prescription drugs.

Employers, for example, may discharge or deny employment to persons who illegally use drugs, on the basis of such use, without fear of being held liable for discrimination. The term 'currently engaging' is not intended to be limited to the use of drugs on the

day of, or within a matter of days or weeks before, the employment action in question. Rather, the provision is intended to apply to the illegal use of drugs that has occurred recently enough to indicate that the individual is actively engaged in such conduct." ...

With regard to drug testing and history of illegal drug use, the Appendix states:

Employers are entitled to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real and ongoing problem. The reasonable assurances that employers may ask applicants or employees to provide include evidence that the individual is participating in a drug treatment program and/or evidence, such as drug test results, to show that the individual is not currently engaging in the illegal use of drugs. An employer, such as a law enforcement agency, may also be able to impose a qualification standard that excludes individuals with a history of illegal use of drugs if it can show that the standard is job-related and consistent with business necessity.

At the state level, the principal potential limitation upon drug testing of public employees is the constitutional right of privacy, Article 1, Section 1 of the California Constitution. To date, there has been relatively little case law on whether or not public employee drug testing violates that right of privacy, and no definitive rulings from the California Supreme Court. Given this current situation, the legality of peace officer applicant drug testing under the state right of privacy is uncertain.

Once decided, two cases currently pending before the state Supreme Court most likely will have great impact on the law in this area: Hill v. NCAA (involving athlete drug testing) and Soroka v. Dayton-Hudson Corp. (involving pre-employment psychological screening). Among the issues raised in the pending cases are: (1) whether the state right of privacy requires that a procedure (such as drug testing) meet a compelling interest test or a mere reasonableness standard, and (2) whether employee applicants enjoy the same standard of protection under the right of privacy as employees. Pending resolution of these issues by the state Supreme Court, it remains an open question whether pre-employment drug testing meets state constitutional standards.

TECHNICAL ISSUES

Specimens, Analytical Methodologies, and Substances to be Tested

Once an agency has made the decision to proceed with pre-employment drug screening, it must begin to grapple with a host of technical and procedural issues including which substances are to be tested? using what analytical methods? on what types of specimens collected? under what conditions? As mentioned previously, great deference will be given throughout these guidelines to the National Institute on Drug Abuse (NIDA) on these matters. NIDA, under the Department of Health and Human Services is responsible for developing scientific and technical guidelines for drug testing programs for federal agencies. The issuance of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" on April 11, 1988 established an industry standard that is widely and highly respected. In fact, recent years have seen federal legislation proposed in both houses which would impose federal standards for drug testing in the private sector. Further, there is apparent widespread support among business and labor for a single federal standard that would apply to all employee drug testing and would be preemptive of any state laws.

Given this encompassing trend, and given the realization that the NIDA guidelines should not be considered "immutable," much less perfect, NIDA itself recently (1990) sponsored a Consensus Conference to assess its guidelines and to develop recommendations for change. Participants in the Consensus Conference included politicians and government officials, representatives of business, industry and labor, as well as laboratory scientists and physicians. Their recommendations will also be cited throughout these guidelines.

Specimens

For a number of reasons, NIDA states that urine continues to be the best specimen for analysis in the context of detecting drug use related to employment.

While analyses of blood for drugs may potentially provide more specific indication of drug impairment, blood analysis generally requires more sophisticated techniques of analysis, is more invasive to obtain, and requires more trained personnel to obtain. For these reasons, it is less suitable for use in mass screening such as would be required for pre-employment purposes. However, of those agencies with drug screening programs in place that responded to the POST survey, almost 23% reported collection

of blood specimens, presumably with satisfactory results. If an agency should choose to collect blood samples rather than urine, the same testing methodologies can generally be used (though blood samples must be first prepared for testing by the laboratory) and the same security precautions would apply; however, the cost for processing blood samples is higher than for urine.

Saliva and hair are among the easiest to obtain samples. However, though drugs can be detected through both samples, because of incomplete knowledge and lack of scientific data, neither are recommended by NIDA for mass screening. The following statement is from the 1990 NIDA Consensus Report resulting from its Consensus Conference:

Saliva, a biological fluid generally collected from the parotid gland in the mouth has perhaps even more difficulties and variables than a urine specimen, and, therefore, may not provide any advantage other than convenience of collection. The biodisposition and kinetics of abused drugs in saliva are not well understood and therefore interpretation of analytical data cannot be made reliably. Recent research reports on the analysis of hair have clearly indicated that there is a great deal yet to be learned about the pharmacokinetics of drugs in hair and the adequacy of hair as a specimen for drug and metabolite analysis. Drugs of abuse and their metabolites can be detected in hair but studies have raised many questions about the nature and specification of the hair sample, the dispositional kinetics and reproducibility of results from hair analysis. It is, therefore, too soon to adopt these alternative specimens because there is clearly insufficient, established data available, at present, for their use in mass screening.

The NIDA Consensus Conference also addressed the acceptable volume of urine needed for testing. Current NIDA Guidelines require "at least 60 milliliters." This requirement, however, has resulted in some difficulties in the real world setting. Given this situation, the following recommendation was made: "A urine volume of 30ml should be an acceptable specimen volume, provided that it does not create any technical problems for the laboratory."

Analytical Methodologies

The NIDA Guidelines require an initial test and a confirmatory test for screening specimens. The initial screening and confirmatory methods must be based on different chemical principles or different chromatographic separations.

Initial Test. The goal of the initial test (also known as a screening test) is to eliminate negative urine specimens from further consideration in a expeditious and inexpensive manner. For this purpose, NIDA recommends an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution (FDA approved). Specimens that do not test negative are considered **presumptively positive**.

Immunoassay tests work on the principle of competition between labeled (known) and unlabeled antigens (drugs) for binding sites on a specific antibody (a protein substance to which specific drugs or drug metabolites will bind). Two types of immunoassay are commonly used with urinalysis. They are radioimmunoassay (RIA) and enzyme immunoassay (EIA). Two commonly used forms each of these types of immunoassay tests are Abuscreen (a radio immunoassay test) manufactured by Roche Diagnostics and Enzyme Multiplied Immunoassay Technique (EMIT), manufactured by Syva Company, and the most widely used enzyme immunoassay. A third type of immunoassay test is fluorescein polarization immunoassay (FPIA) which is the basis for Abbott Laboratories' TDxToxicology/ Abused Drug Assays.

Immunoassays can produce false-positive results because antibodies used in immunoassays can cross-react with related drugs and sometimes even with unrelated compounds. This makes confirmation of **presumptively positive** immunoassay results with an independent procedure **imperative**. For the confirmatory test, NIDA recommends using gas chromatography/mass spectrometry (GC/MS).

Confirmatory Test. The gas chromatography/mass spectrometry (GC/MS) confirmatory test recommended by NIDA is often referred to as the "gold standard" in drug testing.

Gas chromatography separates a substance into its component parts by using an inert gas, such as nitrogen or helium, as the moving phase to transport a vaporized sample of a drug through a glass column containing a coated packing. The column is stored within a tubing; when the components leave the tubing, they enter into a detector that registers the presence of the component and its quantity.

Mass spectrometry is based on the fact that molecules of known substances will exhibit characteristic spectra patterns when fragmented and that one fragmentation pattern is peculiar to one compound. Mass spectrometry can detect the presence of a substance and its concentration with great accuracy; however, the substance must be in pure form. Therefore, chromatography testing is needed as a preparatory step.

When the efficient separating power of gas chromatography is combined with the high sensitivity and specificity of mass spectrometry, accuracy can approach 99 percent. POST survey results indicate that by far, GC/MS is the most widely used confirmatory test by California law enforcement agencies.

Substances to be Tested

Currently, NIDA Guidelines identify five drugs (or classes of drugs) for which specimens should be tested. Those drugs, along with recommended cutoff levels for both initial and confirmatory tests are indicated below. (See Appendix 3 for more information on drugs.)

	Initial test level (ng/ml)
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	300*
Phencyclidine	25
Amphetamines	1,000
*25ng/ml if immunoassay specific for free morphine.	
	Confirmatory test level (ng/ml)
Marijuana metabolite ¹	15
Cocaine metabolite ²	150
Opiates:	
Morphine	*300
Codeine	*300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine	500
¹ Delta-9-tetrahydrocannabinol-9-carboxylic acid.	
² Benzoyllecgonine.	

NIDA considered incidence and prevalence of abuse of these drugs in the general population and also within the workforces of the Departments of Defense and Transportation as criteria for selecting these five drugs for testing.

During the NIDA Consensus Conference, the addition of other drugs as well as revised cut-off levels for currently screened drugs were considered. Some of the Consensus Statements on these issues follow:

- Additional drugs should be considered for inclusion in urine testing protocols when they can be justified as special problems in particular workplace environments.
- Drugs that might be considered included the benzodiazepines, barbiturates, and other selected psychoactive agents.

With regard to revised cut-off values, the Consensus Conference issued the following recommendations:

- Cannabinoids (delta-9-THC-acid) - reduce the screening cut-off from 100 ng/ml to 50ng/ml; the confirmation cut-off level should remain unchanged at 15ng/ml. Cocaine (benzoylecgonine) - reduce the present screening cut-off level to 200 ng/ml and the confirmation level to 100 ng/ml. No changes are recommended for the opiates and phencyclidine.
- For the amphetamine(s) a study should be undertaken to critically evaluate present data for the purpose of recommending lower cut-off levels for both screening and confirmation...
- All of the present cut-off levels should be retained until a careful laboratory evaluation of the recommended changes has been completed.

Anabolic Steroids. The abuse of anabolic steroids, synthetic male hormones used to build muscle tissue, is becoming of increasing concern to many law enforcement agencies. Detection of abuse through pre-employment drug screening, however, may not be the most effective and efficient method available. Steroids occur naturally in the body, and the laboratory test for detection is less reliable than are tests for other substances. In addition, the test is very costly. For these reasons, a more effective means of detection may be through the background investigation process.

Laboratories

Selection of a reputable, highly accurate laboratory to analyze specimens is essential to the success of a drug testing program. To ensure the highest level of laboratory accuracy possible for federal drug testing programs, NIDA in July of 1988 instituted a National Laboratory Certification Program under criteria established by the Mandatory Guidelines for Federal Workplace Drug Testing Programs, Subpart C. Among its stringent requirements, this program provides for periodic on-site inspections; every-other-month performance testing; requirements for laboratory personnel, chain of custody, security, documentation, storage, etc.; and of course, the capability (at the same laboratory site) to perform both initial immunoassays and confirmatory GC/MS tests.

NIDA certified labs will also provide required chain of custody forms, specimen bottles and materials used to secure specimens, and may provide testing consent forms.

Monthly, NIDA publishes the most recent information on laboratories certified under their National Laboratory Certification Program (see Appendix 4). There are currently eight laboratories in California that are NIDA certified.

Another certification program is administered by the College of American Pathologists (CAP) 325 Waukegan Road, Northfield, Illinois 60093-2750. Currently there are five laboratories in California that are accredited under CAP's Forensic Urine Drug Testing Laboratories program. All five laboratories are also NIDA certified.

Once again, because the selection of a laboratory is an essential element to the success of the entire program, it is recommended that a NIDA or CAP certified laboratory be chosen.¹

¹This recommendation does not, however, preclude the existence of non-certified laboratories that may have the experience and technical ability to conduct proficient forensic testing.

PROCEDURAL ISSUES

In any successful drug screening program, procedures that ensure the integrity and security of the samples are critical. This section addresses such issues as collection site security, chain of custody, personal privacy, etc. Current practices in California law enforcement agencies are reported as well as recommendations from the model drug testing policy provided by the International Association of Chiefs of Police (see Appendix 5), and procedures recommended by NIDA.

NIDA Recommendations

The Specimen Collection Procedures from the NIDA Guidelines, though lengthy, are particularly comprehensive and are worthy of review:

2.2 Specimen Collection Procedures.

(a) **Designation of Collection Site.** Each agency drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory.

(b) **Security.** Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(c) **Chain of Custody.** Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

(d) **Access to Authorized Personnel Only.** No unauthorized personnel shall be permitted in any part of the designated collection site when urine specimens are collected or stored.

(e) **Privacy.** Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.

(f) **Integrity and Identity of Specimen.** Agencies shall take precautions to ensure that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle and in the record book can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtain and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There shall be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs.

(2) When an individual arrives at the collection site, the collection site person shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection site person shall contact the supervisor of the individual, the coordinator of the drug testing program, or any other agency official who can positively identify the individual. If the individual's identity cannot be established, the collection site person shall not proceed with the collection.

(3) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet.

(5) The individual shall be instructed to wash and dry his or her hands prior to urination.

(6) After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.

(7) The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.

(8) The collection site person shall note any unusual behavior or appearance in the permanent record book.

(9) In the exceptional event that an agency-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., an accident investigation), a public rest room may be used according to the following procedures: A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10) Upon receiving the specimen from the individual, the collection site person shall determine that it contains at least 60 milliliters of urine. If there is less than 60 milliliters of urine in the container, additional urine shall be collected in a separate container to reach a total of 60 milliliters of urine. (The temperature of the partial specimen in each separate container shall be measured in accordance with paragraph (f)(12) of this section, and the partial specimens shall be combined in one container.) The individual may be given a reasonable amount of liquid to drink for this purpose (e.g., a glass of water). If the individual fails for any reason to provide 60 milliliters of urine, the collection site person shall

contact the appropriate authority to obtain guidance on the action to be taken.

(11) After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed 4 minutes.

(13) If the temperature of a specimen is outside the range of 32.5°-37.7°C/90.5°-99.8°F, that is a reason to believe that the individual may have altered or substituted the specimen, and another specimen shall be collected under direct observation of a same gender collection site person and both specimens shall be forwarded to the laboratory for testing. An individual may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted in the permanent record book.

(15) All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.

(16) Whenever there is reason to believe that a particular individual may alter or substitute the specimen to be provided, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.

(17) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.

(18) The collection site person and the individual shall be present at the same time during procedures outlined in paragraphs (f)(19)-(f)(22) of this section.

(19) The collection site person shall place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the agency.

(20) The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter in the permanent record book all information identifying the specimen. The collection site person shall sign the permanent record book next to the identifying information.

(22) The individual shall be asked to read and sign a statement in the permanent record book certifying that the specimen identified as having been collected from him or her is in fact that specimen he or she provided.

(23) A higher level supervisor shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based on a reason to believe that the individual may alter or substitute the specimen to be provided.

(24) The collection site person shall complete the chain of custody form.

(25) The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage.

(26) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the specimen and custody form shall be taken with him or her or shall be secured. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended

period of time, the specimen shall be packaged for mailing before he or she leaves the site.

(g) Collection Control. To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled. An approved chain of custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on an approved chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

(h) Transportation to Laboratory. Collection site personnel shall arrange to ship the collected specimens to the drug testing laboratory. The specimens shall be placed in containers designed to minimize the possibility of damage during shipment, for example, specimen boxes or padded mailers; and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the container, the collection site supervisor shall sign and enter the date specimens were sealed in the containers for shipment. The collection site personnel shall ensure that the chain of custody documentation is attached to each container sealed for shipment to the drug testing laboratory.

Comments on NIDA Specimen Collection Procedures

Though the NIDA Guidelines may appear imposing in their detail, it is important to note that many successful challenges to drug testing results are based on breaches in security. The following is a statement from the NIDA Consensus Conference:

The specimen is considered to be the total volume of urine collected and supplied to the laboratory, and any aliquot or portion taken from it. The specimen particularly, and aliquots taken from it, constitute the physical evidence upon which analytical procedures are used to produce information to decide whether drug use has occurred. A decision that drug use has occurred can be challenged; it must be defensible in a legal setting and, therefore, specimen management is a critical issue. Inadequacies in the specimen which are

a result of mismanagement, can negate or reverse any decision made from the testing procedure. Management problems are the most common and most successfully challenged deficiencies in forensic urine drug testing. They include misidentification of the specimen, non-identification, contamination, substitution, adulteration, and loss... [emphasis added]

IACP Drug Testing - Model Policy

While the model IACP drug testing policy concerns itself similarly with maintaining the integrity of the drug testing process, it differs from the NIDA Guidelines in two procedural areas.

Specimen Collection - Direct Observation

The IACP model, which applies to all applicants, probationary, and sworn employees, recommends that, "Testing personnel of the same sex as the employee shall observe production of the urine sample." [emphasis added] The NIDA Guidelines, by comparison, require direct observation only in collection of a second specimen when there is reason to believe that the first specimen has been altered or substituted.

Specimen Collection - Split Sample

The split sample technique involves dividing a urine specimen into two parts, one for immediate testing, the other to be held in storage in case of the need for confirmation analysis or reanalysis. The IACP model program makes provision for requests for split samples; NIDA Guidelines do not.

When the NIDA Guidelines were first adopted, the split sample technique was not included because it was viewed as "cumbersome and expensive," carrying with it the potential increased "risk of administrative error by doubling the labeling, initialing, storage, and accountability requirements." The NIDA Consensus Conference, however, has subsequently stated that, "Split urine specimens should be permitted provided they are both part of the same specimen and are handled with identical safeguards." This recommendation was made after taking into account the fact that many employers in the private sector have binding labor agreements which require split samples. However, in the absence of such agreements, the inclusion of the split sample technique in a drug testing program may unnecessarily add additional handling and expense.

Current Practices in California Law Enforcement Agencies

In the POST Survey a number of questions dealt with how those California agencies with pre-employment drug screening programs handle the procedural aspects of their programs.

By far, the majority of California agencies with drug testing programs collect specimens at the time and site of the medical examination. Most give no more than one week's advance notification to the applicants or no notification at all. (See Appendix 6 for approximate lengths of time drugs are detectable.) Medical personnel (examining physicians or physicians' designees) are responsible for specimen collection in the majority of cases, and presumably take responsibility for security precautions including applicant identification, specimen handling and chain of custody forms. Approximately one-third of the agencies with drug testing programs practice observed sample collection.

Other Issues

Applicant Consent Form

All applicants should be asked to sign a consent form which authorizes the test and authorizes communication of the test results to the employer. To ensure that an informed consent is given, the form should disclose who will have access to the test results, the consequences of a positive result, and the consequences of a refusal to sign the consent form.

The consent form should also include a section which gives the applicant an opportunity to list all medications, alcohol or controlled substances which may be detected in the drug testing. Such information would be reviewed by the Medical Review Officer (see below) in the event of a positive test result and could provide important information in regard to a positive finding. An example of such a form used by a California law enforcement agency is shown in Appendix 7.

Medical Review Officer

NIDA defines the Medical Review Officer (MRO) as "a licensed physician responsible for receiving laboratory results generated by an agency's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information."

It is the job of the Medical Review Officer to conduct the final review of test results. The Medical Review Officer looks for possible alternate medical explanations for positive test results by conducting medical interviews with applicants, reviewing applicants' medical histories or any other relevant biomedical factors, or reviewing medical records made available by the tested individual that may reveal use of legally prescribed medication.

The Medical Review Officer may be an employee of the hiring agency, a contract physician, or may be provided by the laboratory providing the testing services. Currently, there is no certification program for MROs; however, at the NIDA Consensus Conference, it was recommended that:

- Medical Review Officers should be licensed doctors of medicine or osteopathy.
- A comprehensive, continuing education program that addresses all aspects of MRO function (not just drug abuse recognition) should be developed.
- Professional associations, forensic toxicologists and others should be involved in developing guidelines for continuing education.
- Maintenance of adequate continuing education and training in MRO functions should be required for MROs.
- MROs should be required to develop standard operating procedures that clearly define how all MRO functions are addressed.

Four programs that now provide MRO training are the American College of Occupational Medicine, the American Society of Addiction Medicine, the Federal Aviation Administration, and Employee Health Programs.

Length of Specimen Storage and Testing Records

NIDA Guidelines require that positive urine specimens be retained and placed in properly secured long-term frozen storage (-20° C or less) for a minimum of 1 year. This practice assures that the specimens will be available for any necessary retest during administrative or disciplinary proceedings. NIDA also requires that "...all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years."

California law enforcement agencies adhere to similar practices. According to the POST survey, typically only those specimens that

test positive are retained. The most common period of retention of positive specimens is 12 months.

Confidentiality

The sensitive nature of records pertaining to drug testing make it apparent that they should be handled confidentially. The IACP model policy states, "All records pertaining to department required drug tests shall remain confidential, and shall not be provided to other employers or agencies without the written permission of the person whose records are sought." The IACP includes as confidential "...pre-test consent forms, interviews containing lists of prescribed drugs used, preliminary test results, and any other written documentation of the drug test."

Appeals

As indicated in the POST survey, about one half of those agencies with a drug testing program in place have an appeals procedure. However, very few (less than one percent) of disqualified applicants ever appeal the decision.

For many agencies, pre-existing appeals requirements and procedures may exist for local civil service pursuant to the city/county charter, city/county ordinances, or city/county regulations.

Resources

Two particularly useful services provided by NIDA are their toll-free helpline and their clearinghouse. The helpline is staffed until 8:00 p.m. (eastern time zone) to accommodate the west coast and provides information to employers who want to establish drug free workplace policies and programs. The NIDA Clearinghouse for Alcohol and Drug Information provides NIDA publications free of charge and produces a catalog of its most recent documents. To contact either of these resources, agencies may contact:

NIDA Drug Free Workplace Helpline
1-800-843-4971

NIDA Clearinghouse for Alcohol and Drug Information
1-800-729-6686

SUMMARY

A law enforcement agency's decision to institute a pre-employment drug screening program must be made locally on an agency-by-agency basis. It should take into account such factors as the prevalence of drug abuse in the geographical recruitment area, the types of drugs abused, the perceived cost effectiveness of drug screening, and the effectiveness of other procedures for detecting drug abusers, such as the polygraph, background investigation, or medical examination.

These guidelines were developed with the intention of providing a foundation upon which those agencies that choose to institute pre-employment drug testing can build a program. Extensive reference is made to the NIDA Guidelines and recommendations because they are by far the most widely recognized and thoroughly researched. However, unquestioned wholesale adoption of the NIDA Guidelines is neither necessary nor recommended.

For example, the NIDA Guidelines recommend that testing be conducted for five drugs only, based on a variety of factors, not the least of which is the incidence of abuse of different substances. However, NIDA acknowledges that there are many other drugs that are misused or abused and that such misuse or abuse can result in impaired behavior in the workplace. Once again, each agency considering a drug screening program must decide, based on local factors, the drugs for which it will screen.

Whether the decision is to test for the five NIDA recommended drugs or to tailor the testing to local conditions, POST strongly recommends that the **NIDA procedures for guarding the integrity of the process be followed** (see pp. 13-18). Following NIDA's carefully considered security procedures will help to ensure the success of any pre-employment drug testing program.

GLOSSARY OF TERMS

Aliquot - A portion of a specimen used for testing

Chain of Custody - Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen, using a chain of custody form.

Collection Site - A place designated by the agency where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection Site Person - A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals.

Confirmatory Test - A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

Cross Reactivity - The degree to which an antibody interacts with antigens other than the one used to produce the antibody. This is a property of nearly all naturally derived antibodies.

Cutoff Level (Threshold) - Value serving as an administrative breakpoint (or cutoff point) for labeling a result positive or negative.

False Negative - A test result which states that no drug is present when, in fact, a tested drug or metabolite is present in an amount greater than the threshold or cut-off amount.

False Positive - A test result which states that a drug or metabolite is present when, in fact, the drug or metabolite is not present or is in an amount less than the threshold or cut-off value.

Gas Chromatography/Mass Spectrometry (GC/MS) - The instrumental technique which couples the powerful separation potential of gas chromatography with the specific characterization ability of mass spectroscopy.

Immunoassay - The measurement of an antigen-antibody interaction utilizing such procedures as immunofluorescence, radioimmunoassay, enzyme immunoassay or other nonradioisotopic techniques. In drug testing, the antigen is a drug or metabolite and its corresponding labeled analog; the antibody is a protein

grown in an animal and directed towards a specific drug, metabolite or group of similar compounds.

Initial Testing Procedures - The initial test, or screening test, is used to identify those specimens which are negative for the presence of drugs or their metabolites. These specimens need no further examination and need not undergo a more costly confirmation test.

Mass Spectrometry - Analysis using an analytical instrument that provides accurate information about the molecular mass and structure of complex molecules. This technique can identify and quantify extremely small amounts of drugs or metabolites by their mass-fragment spectrum.

Medical Review Officer - A licensed physician responsible for receiving laboratory results generated by an agency's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

Metabolite - A compound produced from chemical changes of a drug in the body.

ng/ml - Nanogram per milliliter. A nanogram is one billionth of a gram.

Split Specimen - The practice of dividing a urine specimen into two portions, one of which may be submitted for analysis and the other preserved by freezing for the confirmation analysis or reanalysis.

Verified Positive Test Result - A test result that was positive on both the initial and confirmatory tests, and reviewed and verified by the Medical Review Officer.

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State of California

Department of Justice

MEMORANDUM

To : Interested Agencies

Date: January 22, 1991

Norman C. Boehm
Norman C. Boehm
Executive Director

From : Commission on Peace Officer Standards and Training

Subject : Pre-Employment Drug Screening Survey Results

Thank you for taking the time to respond to the POST Survey of Local Agency Pre-Employment Drug Testing Policies And Practices.

Attached per your request is a summary of the survey results. As you will note, the overall return rate for the survey was a gratifying 78%.

The survey findings were presented to the Commission at its January 17, 1991 meeting. Upon review of the findings, the Commission directed staff to develop pre-employment drug screening guidelines for distribution to all agencies in the POST program. The guidelines will be drafted and presented to the Commission for final approval in late July. Assuming Commission approval is granted, a copy of the guidelines will be mailed to each agency in the POST program shortly thereafter.

Thank you again for your assistance. Should you have any questions about the survey methodology or results, please contact Dr. John Berner, at (916) 739-3872.

Attachment

SURVEY RESULTS

LOCAL AGENCY PRE-EMPLOYMENT DRUG SCREENING PRACTICES

Response Rate:

451 of the 580 agencies surveyed returned completed questionnaires, representing an overall return rate of 77.8%. The return rate for sheriffs' departments was 87.9%; for municipal police departments 78.8%.

Prevalence of Pre-Employment Drug Screening Programs:

Slightly over one-third of the responding agencies (35.9%) reported having a drug screening program. Drug testing was more frequently reported as being conducted by municipal police departments (46.4%) than by sheriffs' departments (33.3%) or "other" departments (12.4%).¹ Testing was also more frequently reported by agencies located in the southern part of the state (44.9%) than by agencies located in the central (34.2%) or northern (28.0%) regions. Among municipal police and sheriffs' departments, large departments more often reported drug testing (59.3%) than medium-sized departments (43.2%) or small departments (39.3%).²

Characteristics of Existing Pre-Employment Drug Screening Programs:

On average, existing drug screening programs have been in place 3.0 years.

The most frequently cited reasons for implementing a program were concerns over increased drug use by the public at large (83.3%) and dissatisfaction with other screening procedures for detecting past/current drug users (37.0%).

The vast majority of agencies with a program report being either "very satisfied" (45.3%) or "satisfied" (45.9%) with the program.

Urine specimens are analyzed in almost nine out of every ten programs (88.9%); blood specimens were reported as being collected as part of 22.8% of the programs (some agencies reported collecting either or both). Specimens are most often collected at the time of the pre-employment

¹"Other" agencies includes college/university police departments, state agencies, marshals' offices, etc.

²For purposes of data analysis, "large" agencies were defined as those with over 200 employees, "medium-sized" agencies as those with 50 to 200 employees, and "small" agencies as those with fewer than 50 employees.

medical examination (84.2%), and the candidate is typically given no advance notification that a specimen will be collected (42.0%), or is given less than one week's advance notification (19.1%).

The most common precautions used to ensure the integrity of testing are sealing the specimens in tamper-proof bags or with tamper-proof tape (56.2%); questioning the candidate at the time of specimen collection as to the use of prescription or non-prescription medications (53.1%); using chain-of-custody forms (46.3%); requiring photo identification at the time of specimen collection (41.4%); and observing the candidate during specimen collection (35.8%).

Typically only those specimens that test positive are retained, with the most common retention period being 12 months.

Approximately four out of ten survey respondents (40.7%) were unable to identify the specific test protocol used for initial screening. Among those who had this knowledge, the EMIT (Enzyme Multiplied Immunoassay Technique) protocol was most often reported (54.2%).

A like number of respondents (38.9%) were unaware of the protocol used for confirmatory testing. Gas Chromatography/Mass Spectrometry (GC/MS) was most often reported as the test used among those who knew (72.7%).

Very little reliable information was obtained regarding the costs to local agencies for testing, and thus no results are reported in the attachment by specific test. Best estimates based on the limited cost data that were provided are that per candidate costs average about \$30 for initial testing and \$37 for confirmatory testing. For those agencies that pay a flat per candidate fee (which covers both initial testing and confirmatory testing, if necessary) the average cost was found to be \$54. Fees were found to vary considerably, with larger agencies generally paying less per candidate. The lowest reported per candidate fees were \$7 for initial testing and \$17 for confirmatory testing.

The substances most often reported as being tested for were cocaine (89.5%), amphetamines (88.3%), barbiturates (83.3%), marijuana (83.3%), and phencyclidine (74.1%). Slightly more than one in five agencies (20.4%) reported that they also test for steroids. The specific substances tested for were "unknown" by 6.2% of the agencies.

Approximately one-third of the agencies were unable to provide estimates of the percentages of candidates who test positive for each of the various substances. For those who did provide this information, the average overall positive

test rate (i.e., "hit rate" for all substances combined) was .91%, and 74.5% of the agencies reported never having a candidate test positive. By individual substance, the highest average positive test result rates were for marijuana (.23%) and cocaine (.21%). In general, the reported percentages of candidates who test positive were not found to vary as a function of agency type, agency size, or geographic location.

Approximately half of the agencies (49.3%) reported that they have an appeal process for those candidates who test positive. The average reported appeal rate was less than one percent (.9%).

Slightly less than one in five (17.9%) of the agencies that reported not having a drug screening program indicated that they gave serious consideration to implementing such a program and then decided against doing so. The reasons most often cited for deciding against implementation were legal concerns (50.0%) and funding concerns (31.3%).

As shown in the responses to question #24 below, agency preferences with respect to POST involvement in pre-employment drug screening vary considerably. No significant differences in the pattern of responses to this question were found by agency type, agency size, or geographic location. Interestingly, those agencies that currently have a drug screening program more frequently expressed a preference for either alternative a (POST should take no action; 7.3%) or alternative d (POST should require drug screening, but leave the specifics to local agencies; 17.2%).

24. Check below the statement which best describes your preference with respect to POST involvement in pre-employment drug testing: (check one)
- a. POST should take no action [5.1%]
 - b. POST should provide general information to those agencies that wish to establish their own programs [24.9%]
 - c. POST should publish drug testing guidelines for use by local agencies [32.5%]
 - d. POST should require that all agencies conduct pre-employment drug testing, but leave the specifics as to testing procedures and screening criteria to the discretion of the local agency [11.8%]

- e. POST should require that all agencies conduct pre-employment drug testing and should further specify the testing procedures and screening criteria that must be used [24.7%]
- f. Other (specify) [1.2%]

Polygraph Testing:

Several questions were also asked about pre-employment polygraph examinations. Approximately half of the agencies (49.1%) reported using pre-employment polygraphs. Most frequently, the polygraph is administered to all candidates (82.5% of the time), as opposed to selectively. Seventy-one percent of the agencies reported that private firms conduct all or some of the exams. With few exceptions, questions about prior/current drug use are a routine part of the exams.

POST SURVEY OF LOCAL AGENCY PRE-EMPLOYMENT DRUG TESTING POLICIES AND PRACTICES

DEPARTMENT _____	DO NOT WRITE IN THIS SPACE
YOUR NAME _____	DATE _____
TELEPHONE NUMBER _____	

If your agency does not currently have a pre-employment drug testing program, check (✓) here and proceed to Question #22.

1. How long has your agency had a pre-employment drug testing program? AVG: years months
2. Approximately how many candidates have been tested to date? AVG: 275.7
3. Approximately what percentage of candidates fail to appear for drug testing? AVG: .56%
4. What prompted your agency to institute a drug testing program? (check all that apply)
 - 83.3% a. Concerns over increased drug use by public at large
 - 37.0% b. Dissatisfaction with other procedures for identifying past/current drug users (e.g., background investigation)
 - 11.1% c. Instances of unlawful use/possession of illegal drugs by incumbents officers
 - 10.5% d. Instances of misuse/abuse of controlled substances by incumbents officers (e.g., alcohol, prescription medications)
 - 12.3% e. Action initiated by City Council, Board of Supervisors, etc.
 - 6.2% f. Concerns from outside the agency (e.g., citizens' groups)
 - 25.9% g. Experiences reported by other departments with drug testing programs
 - 11.1% h. Costs to conduct such a program became reasonable
 - 16.0% i. Concerns over legality of such programs lessened (case law decisions)
 - 13.6% j. Other (specify) _____
5. Have there been any organized objections to the program? Please explain. _____
 "YES" - 0.6% ; "NO" - 99.4%
6. In general, how satisfied are you with the program? (check one)
 - 45.3% a. Very satisfied
 - 0.6% c. Dissatisfied
 - 7.5% e. Too early to tell
 - 45.9% b. Satisfied
 - 0.6% d. Very dissatisfied
7. With respect to your program, what type of specimen is collected and analyzed?
 - 22.8% a. Blood
 - 88.9% b. Urine
 - 1.9% c. Other (specify) _____
8. How many specimens are collected from each candidate?
 - 59.2% a. One
 - 19.8% b. Two
 - 21.0% c. Don't know
9. When are the specimens collected? (check one)
 - 5.1% a. Just prior to the medical examination
 - 84.2% b. At the time of the medical examination
 - 0.6% c. Just prior to the background investigation
 - 1.3% d. At the time of the background investigation
 - 7.0% e. Timing of specimen collection varies
 - 1.9% f. Other (specify) _____
10. How far in advance are candidates notified of the actual time and date when the specimen(s) will be collected? (check one)
 - 42.0% a. No prior notification is given
 - 5.7% b. 24 hours or less
 - 6.4% c. 48 hours or less
 - 7.0% d. 72 hours or less
 - 19.1% e. One week or less
 - 3.8% f. Two weeks or less
 - 15.9% g. Other (specify) _____

11. Where are the specimens collected? (check one)

- 3.9% a. On site (at the department)
- 90.3% b. At the site of the medical examination
- 3.2% c. At the lab where the specimens are analyzed
- 1.3% d. Site varies depending on circumstances
- 1.3% e. Other (specify) _____

12. Who collects the specimens? (check one)

- 4.4% a. Department staff
- 86.1% b. Medical personnel (examining physician or physician's designee)
- 7.0% c. Staff from lab that analyzes the specimen
- 0.6% d. Varies depending on circumstances
- 1.9% e. Other (specify) _____

13. What precautions are taken to ensure the integrity of the testing process? (check all that apply)

- 28.4% a. Collection site is searched before collection of each specimen
- 35.8% b. Candidates are observed during specimen collection
- 41.4% c. Candidates are required to present photo ID at time of specimen collection
- 9.3% d. Candidates are advised in advance against use of certain non-prescription medications
- 53.1% e. Candidates are questioned at time of specimen collection concerning use of prescription and non-prescription medications
- 46.3% f. Custody of specimens is documented via chain of custody forms
- 56.2% g. Specimens are sealed in tamper-proof bags or with tamper-proof tape
- 19.8% h. Other (specify) _____

14. Who analyzes the specimens? (check one)

- 3.2% a. Department staff do initial testing, with confirmation testing done by outside source
- 72.8% b. Staff at privately owned lab do all testing
- 3.8% c. Staff at publicly owned lab do all testing
- 15.8% d. Staff at location of medical examination do all testing
- 4.4% e. Other (specify) _____

15. How long are the specimens kept? (check one)

- 10.9% a. All specimens are destroyed immediately after analysis
- 14.7% b. Only those specimens that test positive are retained--retention period unknown or varies
- 26.9% c. Only those specimens that test positive are retained--retention period is ____ months (specify) AVG: 13.9
- 6.4% d. All specimens are retained--retention period unknown or varies
- 7.7% e. All specimens are retained--retention period is ____ months (specify) AVG: 9.4
- 33.3% f. Don't know

16. What measures does your agency take to ensure the quality of the testing lab it uses? (check all that apply)

- 38.3% a. Require that lab be certified by the National Institute on Drug Abuse
- 14.2% b. Require that lab participate in the Inter-Lab Comparison Program sponsored by the College of American Pathologists
- 24.7% c. Require that lab be accredited by the College of American Pathologists
- 4.3% d. Require other certification (please specify) _____
- 14.2% e. Other (please specify) _____
- 39.5% f. Don't know

17. What initial drug screening test does your agency use? (for test used, please indicate approximate cost.)

- | | Cost per candidate |
|---|--------------------|
| 7.4% a. <input type="checkbox"/> TLC (Thin Layer Chromatography) | \$ _____ |
| 2.5% b. <input type="checkbox"/> HPTLC (High Performance Thin Layer Chromatography) | \$ _____ |
| 4.3% c. <input type="checkbox"/> GLC (Gas Liquid Chromatography) | \$ _____ |
| 8.6% d. <input type="checkbox"/> GCIMS (Gas Chromatography/Mass Spectrometry) | \$ _____ |
| 0.0% e. <input type="checkbox"/> HPLC (High Pressure Liquid Chromatography) | \$ _____ |
| 6.2% f. <input type="checkbox"/> RIA (Radioimmunoassay) | \$ _____ |
| 32.1% g. <input type="checkbox"/> EMIT (Enzyme Multiplied Immunoassay Technique) | \$ _____ |
| 9.3% h. <input type="checkbox"/> Other (please specify) _____ | \$ _____ |
| 40.7% i. <input type="checkbox"/> Don't know | |

18. What confirmatory test does your agency use? (for test used, please indicate approximate cost.)

	Cost per candidate
49% a. TLC (Thin Layer Chromatography)	\$ _____
3.1% b. HPTLC (High Performance Thin Layer Chromatography)	\$ _____
4.3% c. GLC (Gas Liquid Chromatography)	\$ _____
44.4% d. GCIMS (Gas Chromatography/Mass Spectrometry)	\$ _____
0.0% e. HPLC (High Pressure Liquid Chromatography)	\$ _____
0.0% f. RIA (Radioimmunoassay)	\$ _____
3.1% g. EMIT (Enzyme Multiplied Immunoassay Technique)	\$ _____
3.7% h. Other (please specify) _____	\$ _____
38.9% i. Don't know	

19. For what substances does your agency test? (Please check all that apply.) For each substance tested for, indicate the approximate percentage of candidates who test positive.

	AVERAGES:	% who test positive
46.9% a. Alcohol		.07%
98.3% b. Amphetamines		.03%
83.3% c. Barbiturates		.02%
67.3% d. Benzodiazepines		.05%
89.5% e. Cocaine		.21%
83.3% f. Marijuana		.23%
88.3% g. Opiates		.02%
74.1% h. Phencyclidine		.00%
20.4% i. Steroids		.00%
2.8% j. Other (please specify) _____		.22%
6.2% k. Don't know		

Percentage of candidates who test positive overall AVG: .91%
 (Note: Overall percentage should equal total of percentages reported for individual substances)

20. What standards for cutoff levels (nanograms per milliliter at which test results are considered positive) has your agency adopted?

- 3.3% a. | IACP standards
- 36.0% b. | National Institute on Drug Abuse standards
- 14.0% c. | Other standards (please name source and if possible attach copy of standard) _____
- 46.7% d. | Don't know

21. If an individual tests positive after the confirmatory test, does your agency have an appeals process?

49.3% Yes 50.7% No

If "yes," please describe the process: _____

Approximately what percentage of disqualified applicants appeal? AVG: .90%

Proceed to Question #23.

(Note: Answer this question only if your agency does not have a pre-employment drug testing program.)

22. Did your agency ever have a pre-employment drug testing program?

Yes 282 No

If "yes," indicate below the reasons why the program was discontinued: (check all that apply)

- a. Adverse legal decision
- b. Program was not cost effective
- c. Lack of funds to pay for program
- d. Dissatisfaction with lab service
- e. General concerns about integrity of program
- f. Suspicion that candidates were learning how to "beat the system"
- g. Program was difficult to administer properly
- h. Other (specify) Personnel department let it lapse

If "no," did your agency ever give serious consideration to implementing a drug testing program and then decide against doing so?

17.9% Yes 82.1% No

If "no," proceed to Question #23

If "yes," indicate below the reasons why you decided against implementation: (check all that apply)

- 31.3% a. Required funds not available
- 18.9% b. Concerns over cost effectiveness of such programs
- 50.0% c. Concerns over legality of such programs
- 12.5% d. No reputable labs in vicinity
- 29.2% e. Concerns over ability to administer program appropriately
- 18.8% f. Request for approval to implement program was denied (by City Hall, Board of Supervisors, etc.)
- 35.4% g. Other (specify) _____

Use of Polygraph

23. Do you currently conduct pre-employment polygraph examinations?

49.1% Yes 50.9% No

If "yes," who must take a polygraph examination? (check one)

- 82.5% a. All candidates who are ultimately hired
- 12.7% b. Some, but not all candidates who are ultimately hired (i.e., decision to administer polygraph is made on a case-by-case basis)
- 4.7% c. Other (specify) _____

Who administers the polygraph? (check all that apply)

- 21.3% a. We do (Departmental/Agency Personnel)
- 12.5% b. Personnel from another Law Enforcement Agency
- 71.3% c. Private Individual/Firm
- 9% d. Other (specify) _____

Are questions asked about prior/current drug use as part of the polygraph examination? (check one)

92.4% Yes, always 7.6% Sometimes No

24. Check below the statement which best describes your preference with respect to POST involvement in pre-employment drug testing: (check one)

- 5.1% a. POST should take no action
- 24.9% b. POST should provide general information to those agencies that wish to establish their own programs
- 32.5% c. POST should publish drug testing guidelines for use by local agencies
- 11.8% d. POST should require that all agencies conduct pre-employment drug testing, but leave the specifics as to the testing procedures and screening criteria to the discretion of the local agency
- 24.7% e. POST should require that all agencies conduct pre-employment drug testing and should further specify the testing procedures and screening criteria that must be used
- 1.2% f. Other (specify) _____

Thank you for taking the time and effort to complete the survey. If you would like to receive a copy of the results, please provide your name and address in the space provided. Please return the completed survey by November 9th in the envelope provided to POST, 1601 Alhambra Blvd., Sacramento, CA. 95816-7083.

Federal Register

**Monday
April 11, 1988**

Part IV

**Department of
Health and Human
Services**

**Alcohol, Drug Abuse, and Mental Health
Administration**

**Mandatory Guidelines for Federal
Workplace Drug Testing Programs; Final
Guidelines; Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Final Guidelines.

SUMMARY: The Department of Health and Human Services (DHHS) adopts scientific and technical guidelines for Federal drug testing programs and establishes standards for certification of laboratories engaged in urine drug testing for Federal agencies.

EFFECTIVE DATE: April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Maureen Sullivan (301) 443-6780.

SUPPLEMENTARY INFORMATION: These Final Guidelines, titled "Mandatory Guidelines for Federal Workplace Drug Testing Programs" were developed in accordance with Executive Order No. 12564 dated September 15, 1986, and section 503 of Pub. L. 100-71, the Supplemental Appropriations Act for fiscal year 1987 dated July 11, 1987. The statute specifically requires that notice of proposed mandatory guidelines be published in the Federal Register; that interested persons be given not less than 60 days to submit written comments; and that after review and consideration of written comments, final guidelines be published which:

I. Establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order No. 12564, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

II. Specify the drugs for which Federal employees may be tested; and

III. Establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out Executive Order No. 12564.

Subpart A of this document contains general provisions. Subpart B, titled "Scientific and Technical Requirements," responds to the mandates in items I and II above. Subpart C, titled "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," responds to item III.

In substance, these Final Guidelines are very similar to those in the Notice of Proposed Guidelines published on August 14, 1987 (52 FR 30638). However, significant editorial and format changes have been made. The Guidelines have been edited as a single, integrated document organized in a more traditional format with subparts, numbered sections, and consistent paragraph designators. Definitions have been grouped together in Subpart A. Rather than repeat identical material, the document contains internal cross-references, particularly from Subpart C to Subpart B. This new organizational approach should add clarity to presentation of the material and aid the cross-referencing and citation of individual sections and paragraphs.

Prior to addressing comments on the specifics of the scientific and technical requirements and the certification program, it is worth noting that a number of commentators perceived the laboratory standards in these Guidelines as redundant, viewing existing regulations, guidelines, and certification/licensure mechanisms of the Medicare and Clinical Laboratory Improvement Act of 1967 (CLIA) interstate licensure program—also administered by DHHS—as sufficient to provide quality assurance for urine drug testing laboratories.

The Medicare and CLIA certification requirements apply to laboratories conducting a wide range of medical tests, having been designed for any medical testing laboratory receiving Medicare/Medicaid reimbursement or performing testing on specimens in interstate commerce, respectively.

The laboratory portion of the President's Drug-Free Federal Workplace Program can be distinguished from the Medicare/CLIA programs by important differences in policies, procedures, and personnel arising from standards appropriate to the application of analytical forensic toxicology for this program. Unique distinguishing features include:

- Rigorous chain of custody procedures for collection of specimens and for handling specimens during testing and storage.
- Stringent standards for making the drug testing site secure, for restricting access to all but authorized personnel, and providing an escort for any others who are authorized to be on the premises;
- Precise requirements for quality assurance and performance testing specific to urine assays for the presence of illegal drugs; and
- Specific educational and experience requirements for laboratory personnel to

ensure their competence and credibility as experts on forensic urine drug testing, particularly to qualify them as witnesses in legal proceedings which challenge the finding of the laboratory.

Medicare and CLIA laboratory certification procedures do not provide for quality assurance and performance testing specific to urine drug testing laboratories. With few exceptions, the Medicare and CLIA certification programs do not have employees specifically trained in toxicology to perform the on-site surveys and evaluations of the laboratories and the technologies employed in the laboratories. The Medicare and CLIA standards do not address issues such as cutoff limits for drug detection, grading criteria for the performance testing programs, blind performance testing requirements, specifications for the analytical techniques to be employed, types of drugs to be detected (including metabolites), and detailed outcome measures of performance such as requiring assays of quality control samples and a large number of performance test samples as an initial and ongoing requirement for certification.

The need to assure the protection of individual rights within the context of a drug testing program—linked to both employee assistance programs and the management potential for taking adverse action against an employee—makes essential the development of a separate laboratory certification program to respond to the unique requirements of the program mandated by the President and the Congress. These Guidelines set standards for such a certification program.

The Final Guidelines make clear that they do not apply to drug testing under any legal authority other than E.O. 12564, including testing of persons under the jurisdiction of the criminal justice system, such as arrestees, detainees, probationers, incarcerated persons, or parolees (see § 1.1(e)). The testing of persons in the criminal justice system is different than testing under E.O. 12564 for several reasons: (1) The overriding purpose of the criminal justice system is to protect community safety through the apprehension, adjudication, and punishment of law violators; (2) the incidence of drug use among those under the jurisdiction of the criminal justice system is high; and (3) the legal interests at issue in the criminal justice system, including liberty, privacy, and property interests, are different and, therefore, are subject to established practices, constitutional protections, and evidentiary rules specific to the criminal

justice system. The Guidelines also do not apply to military testing of service personnel or applicants to the military.

Response to Comments

Written comments to the Notice of Proposed Guidelines published August 14, 1987, were received from approximately 150 individuals, organizations, and Federal agencies. All written comments were reviewed and taken into consideration in the preparation of the Final Guidelines. This section summarizes major comments and the Department's response to them. Similar comments are considered together.

1. Several commenters requested that the Guidelines require a split sample technique in which a second sample or a portion of a sample could be saved for further testing. Although this possibility was considered, it is viewed as a cumbersome and expensive process involving the collection of two separate sets of samples and the retention of one for an indefinite period of time in some type of secured long term refrigerated storage. The use of a split sample was suggested as a mechanism to overcome perceived problems arising out of situations such as sample mixups, erroneous identification of samples, and lost samples. The Department does not agree that split or additional sample proposal would have any scientific advantage over the current system nor would they increase reliability. In fact, such a system could increase the risk of administrative error by doubling the labeling, initiating, storage, and accountability requirements. Furthermore, the Guidelines already include sufficient safeguards to eliminate the problems the use of split or additional samples are thought to address; e.g., detailed safeguards for labeling and chain of custody of the urine sample. Accordingly, we do not project any real scientific, chain of custody, or reliability benefits sufficient to justify placing the added requirement of collection and storage of split samples of Federal agencies and have rejected the split sample requirement. Furthermore, these Guidelines specifically reject allowing the tested employee or anyone else from presenting to the Medical Review Officer a split sample or private sample that does not fully comply with these Guidelines.

2. A number of commentors said that specific educational and experience requirements for laboratory directors and supervisors were too restrictive and that specific board certifications, experience, and degree requirements were also too restrictive and did not

provide any additional quality assurance. In many cases these individuals recommended that the current Medicare and CLIA personnel standards be used in place of the standards proposed in the Guidelines. Other individuals and organizations stated that the proposed personnel standards in the Guidelines were not stringent enough. Some recommended that specific standards also be adopted for the personnel performing the tests.

The Department carefully considered the comments about the personnel standards proposed in the Guidelines—most of which came from employees of clinical laboratories or organizations representing those employees—from the perspective of the intent of the Guidelines. It is not possible to reconcile the divergent viewpoint represented in the comments. In this connection it should be noted that credentialing standards for laboratory personnel have been an issue for a number of years in other laboratory programs administered by DHHS, as well as among those who commented on the Notice proposing these Guidelines.

The laboratory personnel requirements in the Guidelines are designated to assure that any individual responsible for test-review and result-reporting is qualified to perform the function and could appear as an expert witness in a court challenge of the results. This requires familiarity with a wide range of material related to test selection, quality assurance, interferences with various tests, maintenance of chain of custody, documentation of findings, interpretation of test results, validation and verification of test results, and the ability to testify as an expert in legal proceedings. The Guidelines set personnel requirements for the individuals responsible for day-to-day management and operation of laboratories engaged in urine drug testing for Federal agencies aimed at ensuring those competencies.

While a consultant may be able to carry out some of these specialized functions, it is essential that comprehensive oversight and control of the responsibilities cited above be exercised by those who are directly responsible on a day-to-day basis for the laboratory, who are accountable for the test results, and who may be called on to consult with the agency for which testing is performed as well as to appear at any legal proceeding to defend the quality of testing in the laboratory. Therefore, the Guidelines set functional employee qualification standards which are essential to the mission of a drug

testing laboratory and require that laboratory employees meet those standards. For the purpose of meeting laboratory personnel requirements, no provision is made for the use of consultants who are not involved in the day-to-day management or operation of the laboratory.

The Final Guidelines set functional requirements for individuals engaged in the day-to-day management and operation of laboratories engaged in urine drug testing for Federal agencies. They do not specify requirements for other personnel, including employees who perform the assays, but rather depend on the ability of those responsible individuals to select and oversee properly qualified employees in each specific laboratory, and they depend on outcome measures of laboratory performance such as performance testing. The individual responsible for day-to-day laboratory management is responsible for determining staffing needs and types of personnel required to perform particular functions in a specific facility. The individual responsible for day-to-day laboratory operations is responsible for supervision of analysts performing drug tests and related duties. Outcome measures will provide the responsible individual with feedback on the performance of laboratory employees. Within this framework, the Guidelines do not establish qualifications for additional laboratory positions.

The individuals who perform the tests are a vital part of any laboratory operation, and there is no intent to minimize their importance by omitting qualifications for them. However, by holding the appropriate laboratory officials responsible for review and certification of all test results before they are sent forward and by relying on various quality control and quality assurance measures, performance testing and on-site evaluations to provide direct measures of the quality of testing, the Department expects to ensure a standard of excellence in drug testing without setting additional personnel requirements. This reliance on the qualifications of the individuals responsible for the day-to-day management and operation of urine drug testing laboratories does not prohibit the laboratories themselves from setting additional employee standards which may include specific credentials, certifications, licenses, registries, etc., for specific functions.

However, once a laboratory is certified in accordance with these Guidelines, laboratory employees whose functions are prescribed by these

Guidelines are deemed qualified. These Guidelines establish the exclusive standards for qualifying or certifying these employees involved in urinalysis testing. Certification of a laboratory under these Guidelines shall be a determination that all appropriate qualification requirements have been met. Agencies may not establish or negotiate additional requirements for these laboratory personnel.

Some commentors felt that references to director, supervisor of analysts, certifying officials, and other analysts did not clearly distinguish between those positions. Other commentors criticized the establishment of specific position titles. We have clarified laboratory employee functions and dropped the use of specific position titles in 2.3 Laboratory Personnel. A laboratory engaged in urine drug testing for Federal agencies must have personnel to perform the following functions:

- Be responsible for the day-to-day management and for the scientific and technical performance of the drug testing laboratory (even where another individual has overall responsibility for an entire multispecialty laboratory).
- Attest to the validity of the laboratory's test reports. This individual may be any employee who is qualified to be responsible for the day-to-day management or operation of the drug testing laboratory.
- Be responsible for the day-to-day operation of the drug testing laboratory and for the direct supervision of analysts performing drug tests and related duties.

In response to those commentors who were concerned about the proposed requirement for a Ph.D. to qualify as a laboratory director, the Final Guidelines provide that the individual responsible for the day-to-day drug testing laboratory management may have education and experience in lieu of a Ph.D. to demonstrate an individual's scientific qualifications in analytical forensic toxicology (see 2.3(a)(2)(iii)). Together with the specific analytical forensic toxicology experience required in 2.3(a)(2)(iv), scientific qualifications may be demonstrated by showing "training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree and in addition have training and laboratory or research experience in biology, chemistry, and pharmacology or toxicology." This Ph.D. comparability provision eliminates the utility of the "grandfather" clause in the proposed guidelines, a clause which would have qualified incumbent laboratory directors who have a graduate degree in the

natural sciences followed by extensive experience (6 years postgraduate), in analytical forensic toxicology. Thus, the Final Guidelines omit the "Grandfather" clause.

The Ph.D. comparability provision, while not requiring specific research experience, recognizes research as one mechanism for demonstrating scientific competency to be responsible for day-to-day laboratory management. Lack of research experience does not disqualify an individual for that function if he or she has other appropriate training or experience. The Ph.D. comparability provision also makes explicit that a medical degree is an acceptable alternative to the Ph.D. for this purpose, provided, of course, that the M.D. has the other requisite training and experience.

The Final Guidelines do not require specific board certification for any laboratory employees. Some commentors were concerned particularly that individuals who supervise analysts would have to be on the registry of the American Society for Clinical Pathologists (ASCP). The proposed guidelines cited the ASCP registry, but only as an example of the type of experience and education that would qualify an individual to oversee the day-to-day operations of a urine drug testing laboratory, including the supervision of analysts. The important factors associated with day-to-day operation and supervision of analysts in a forensic toxicology laboratory are captured in 2.3(c). Therefore, the Final Guidelines omit any reference to a registry as a factor in qualifying an individual for this function. Likewise, the Guidelines do not refer to a registry for the individual responsible for day-to-day laboratory management or the individual responsible for attesting to the validity of the laboratory's test reports, but rely instead on education and experience qualifications set out in 2.3 (a) and (b), respectively.

Consistent with editorial revisions throughout the Final Guidelines, editorial changes in the personnel provisions are intended to clarify specific education, training, and experience requirements for individuals to carrying out vital laboratory functions, to simplify by adopting consistent terminology, and to eliminate the need to compare similar provisions by using identical provisions when appropriate. In this regard, the personnel provisions in Subpart B, which sets out the scientific and technical requirements, and in Subpart C, which sets out the standards for certification of laboratories, are identical: Subpart C

simply cross-references the personnel provisions in Subpart B.

3. A number of commentors said that it was unnecessarily restrictive to require that the screening and confirmation tests be performed at the same site. They believed that the majority of tests would be negative and that would reduce the number of samples that must be shipped to another site and would, in turn, prevent sample mixup and loss.

After having carefully reviewed this issue, the Department has determined that both screening and confirmatory testing must be performed at the same time (3.5). Although use of separate screening and confirmation laboratories may produce adequate results, Pub. L. 100-71 mandates that the Secretary set standards which "require . . . strict procedures governing the chain of custody of specimens collected for drug testing." Same-site screening and confirmation is the best method for maintaining such strict control in the chain of custody.

Requiring the two tests to be performed in the same laboratory will reduce problems inherent in having two test sites, such as problems maintaining chain of custody forms at two test sites; need for having two separate laboratory forms; possible mix-ups and loss of samples in transit between sites; potential delays in reporting results; and potential for having results reported only on the basis of an initial screening test.

Several commentors indicated that if screening were done on-site this would reduce the number of subsequent requirements for rescreening and result in fewer samples being sent to another site. The Federal work force testing program does not envision performing initial tests at the collection site. Therefore, considerations concerning on-site initial screening tests are not relevant to the current Federal testing program.

4. Several commentors indicated that a number of terms were not defined or that there was no single section defining terms used in the Notice of Proposed Guidelines. The Final Guidelines include a section to centralize the definitions that appeared in the proposed document and add definitions to several previously undefined terms (1.2). The term "proficiency testing" has been edited throughout to read "performance testing" as a more precise reflection of the nature of the testing with which these Guidelines are concerned.

5. A number of commentors said that the cutoff limits for the reporting of positive results should be higher or

lower than those proposed (see 52 FR 30641). There also were commentators who believed that the cutoff limits for the screening and confirmation tests should be set at the same level.

The initial immunoassay test cutoff is established at levels generally similar to those used by the Department of Defense and available with commercial immunoassays. These levels are consistent with detection of recent drug use.

The second set of cutoff levels is for the gas chromatography/mass spectrometry (GC/MS) confirmatory test, chosen so that the specimens determined to be positive by the first technique (screening technique) could be confirmed at a reasonable level of analytical accuracy.

The Final Guidelines retain all the proposed initial test cutoff values (2.4(e)). Confirmation of marijuana is changed by 5 ng/ml in accordance with DOD experience. Likewise, confirmation for amphetamines reflects the cutoff intended for the notice of proposed guidelines consistent with DOD levels. Cutoffs for specific opiates (morphine and codeine) and amphetamines (amphetamine and methamphetamine) are delineated for clarity (2.4(f)).

In finalizing both screening and confirmation cutoffs, among the matters considered were prevalence rate; cross-reactivity; state of the art in drug detection; and the experience of the Department of Defense and other groups in large-volume drug testing programs.

6. Several commentators indicated that alcohol should be included among the substances to be tested. The Department acknowledges the significance of alcohol and its use as well as its potential impact on performance in the workplace. In any event, alcohol is not an illegal substance, and Executive Order 12564, which these Guidelines implement, only authorizes testing for illicit drugs listed in Schedule I and Schedule II of the Controlled Substances Act. However, nothing in these Guidelines restricts the authority of agencies to test for alcohol under authorities other than E.O. 12564.

7. Several commentators indicated that photo identifications should be required at the testing site to ensure that the tested individual is properly identified. We concur that proper identification should be provided by the individuals at the test site to assure that the correct individual will be tested. Since most Federal agencies already issue photo identification cards to their employees and most employees have a driver's license with photo identification, it is not unreasonable to require this form of identification for individuals presenting

themselves for testing. In cases where the individual does not have a proper photo identification, the collection site person must get the employee's supervisor, coordinator of the drug testing program, or any other agency official who knows the employee to provide a positive identification (2.2(f)(2)).

8. Several commentators suggested that toilets, water faucets, and other sources of water which could be used as adulterants should be taped shut or sealed to prevent adulteration of the sample at the collection site. The Department acknowledges that sources of water should not be available which would enable an individual to adulterate the sample. However, there are also needs, such as hand washing, for a relatively convenient source of water. These Guidelines cannot anticipate the needs at each collection site and the hardship which would be imposed by sealing all sources of water at the site. However, the proposed and Final Guidelines do include in 2.2 precautions in specimen collection procedures to ensure the integrity and identity of the specimen. Because we have taken reasonable steps to ensure that specimens are not adulterated at the collection site and because there are practical reasons for having a convenient source of water, the Final Guidelines do not require that all sources of water be taped or sealed shut but rather require that precautions be taken to ensure that unadulterated specimens are obtained. Among the precautions included in 2.2(f) to ensure unadulterated specimens is a requirement to use a bluing agent so that the water in the toilet tank and bowl are colored blue and that there be no other source of water in the enclosure where the sample is given.

9. Several commentators requested more specific guidelines to define "unusual behavior" at the urine collection site which would give reason to believe a particular individual may alter or substitute the specimen to be provided which, in turn, would trigger the requirement to obtain a second specimen under direct observation of a same gender collection site person (see 2.2(f)(16)). The guidelines focus on whether there is "reason to believe" (see 1.2 for definition) that a sample is adulterated. Observations of unusual behavior may bear on whether there is a "reason to believe" and for that reason the Guidelines require such observations to be documented in the permanent record book. While it may be desirable to provide specific descriptions of or guidelines to identify "unusual behavior," the Department

cannot foresee or define every contingency which might occur. Thus, "unusual behavior" is not further defined in the Guidelines.

It should be noted, however, that other indicia of "reason to believe" are set out in 2.2(f). For example, 2.2(f)(12) and (13) require a temperature reading upon collection of the specimen and indicate those temperatures which would give rise to a reason to believe that a specimen may be altered or substituted. Elsewhere the Guidelines require the collection site person to inspect the sample for unusual color or other signs of contaminants (2.2(f)(14)). Likewise, if a collection site person sees unusual behavior which causes him or her to question the integrity of the sample such that it leads to a reason to believe that a particular individual may alter or substitute the specimen to be provided, the Guidelines require that such an observation be noted in writing in the permanent record book (2.2(f)(8)). The Final Guidelines also add a requirement that any "reason to believe" observation be concurred in by a higher level supervisor of the collection site person (2.2(f)(23)).

With regard to reason to believe that a particular individual may alter or substitute the specimen based on the specimen's temperature falling outside the acceptable range, the Final Guidelines permit an individual to volunteer to have an oral temperature reading to provide evidence that the temperature of the specimen was consistent with the individual's body temperature, i.e., an individual's fever could cause an elevation in the temperature of the specimen (2.2(f)(13)).

10. Several commentators said that if the first specimen is subject to a reason to believe that the particular individual may alter or substitute the specimen which would require a second specimen to be collected, the second specimen should be collected immediately. The Department concurs that the second specimen should be collected as soon as the need for it is established. Therefore, the Guidelines provide that the second specimen shall be collected as soon as possible whenever there is reason to believe that the particular individual may alter or substitute the specimen. (2.2(f)(16)).

11. Several commentators wanted to know the basis for the choice of cocaine and marijuana as the drugs required to be screened by all agencies. The requirement that all agencies screen for cocaine and marijuana was based on the incidence and prevalence of their abuse in the general population and the experiences of the Department of

Defense and the Department of Transportation in screening their work forces. The choice of cocaine and marijuana as the only substances for which all agencies must test takes into account that the predictive value of any positive diagnostic test is a function of prevalence in the tested population. . . . Agencies have also been authorized to test for phencyclidine, amphetamines, and opiates because their high incidence and prevalence in the general population may warrant testing of particular agency work forces for these illegal substances (2.1(a)).

Federal agency requests for screening drugs other than the five authorized in these Guidelines must be made in writing to the Secretary. The Secretary will review the requests on a case-by-case basis and make a determination of the acceptability of the plans, cutoff limits, and testing protocols. The Secretary's determination shall be limited to the use of appropriate science and technology and shall not otherwise restrict agency authority to test for drugs included in schedules I and II of the Controlled Substances Act (2.1(b)).

12. Several commentors wanted clarification of the procedures for the Medical Review Officer's (MRO's) protocols for performing the review function. They also wanted to know if individual employees would have an opportunity to discuss the Medical Review Officer's findings with him or her. Procedures for the conduct of the medical review function, including a handbook to cover the activities of the MRO, will be disseminated to all Federal agencies. While there is agreement that there should be an opportunity for some type of medical interview between the medical review officer and the employee prior to the MRO's final decision concerning a positive test result, a face-to-face interview may not always be feasible or possible. For example, they may be in widely distant geographic areas, and it may be more practical to arrange a telephone or teleconference interview than a direct meeting. Therefore, we have provided for flexibility in the mechanism for this communication and have stated at 2.7(c) that prior to making a final decision to verify a positive result, the MRO shall give the individual employee an opportunity to discuss the test result with him or her. The Medical Review Officer shall not, however, consider the results of urine samples that are not obtained or processed in accordance with these Guidelines.

13. Several commentors indicated that color blindness measurements for laboratory workers were not necessary

since none of the currently approved methodologies involved the use of visual color measurements. The requirement that laboratories maintain files which include information on employee color vision was originally proposed because some immunoassay systems have color-coded components and the reliable manipulation of such systems requires good color vision. In view of the methodologies currently approved in the Guidelines, we agree that an across-the-board requirement to maintain files on color blindness is not warranted. However, the Department has a more general concern that laboratories employ individuals who have the ability to perform any necessary test procedures. Therefore, the Guidelines generally provide at 2.3(f) that laboratory personnel files shall include results of any tests which establish employee competency for the position he or she holds and provide, as a specific example, a test for color blindness if the employee will be using color coded analytical systems. Similarly, the final Guidelines do not require that laboratories maintain any other medical data about employees unless that data would be necessary to show the employee's competency to perform a specific job function.

While these Guidelines do not require laboratories to maintain general health or medical information in employee files, they do not preclude a laboratory from maintaining such files. What 2.3(f) is intended to do is require laboratories to maintain sufficient files to show employee competency for the position he or she holds.

14. One commentor requested that the laboratory notify agency management officials of a positive result at the same time the Medical Review Officer is notified, so that individuals in sensitive positions or in positions where they could pose a hazard to other individuals or the public could be temporarily removed from these positions, with no punitive action, until after the Medical Review Officer had completed the review process. After considering both the safety implications and the employee rights in this type of notification, the Department has determined that it would be inappropriate to report a result before the Medical Review Officer has the opportunity to review the facts and circumstances and make a decision on the meaning of the test results. In instances where an agency determines that it has a need for immediate action or might have such a need based on its mission, the agency should develop a mechanism to expedite the review

process or allow the Medical Review Officer to require review of the individual's general fitness to continue performing a specific function. Circumventing the review system would abridge necessary protections for employees and could result in prejudging an individual employee's case (2.7).

15. Several commentors called for a medical review board instead of a single Medical Review Officer. A primary purpose of the Medical Review Officer position is to provide for the privacy and confidentiality of the employee's personal medical history during the course of reviewing positive test results. To call together a board which would be privy to that private information would increase the exposure of the employee's medical history to several other individuals. Furthermore, the Department views the physician in the Medical Review Officer's role in retaining overall responsibility for reviewing and interpreting positive test results. There is no restriction on the Medical Review Officer's seeking advice on an ad hoc or a continuous basis from an individual or group if he or she does not breach employee confidentiality during the course of the review and interpretation of the employee's test results. Because the Department is vitally concerned with maintaining confidentiality and privacy and because the Medical Review Officer is not now limited in seeking advice from persons who might have served on the proposed medical review board (e.g., the drug program coordinator, employee assistance program officials, or any other agency employee), the Guidelines will continue to call for review by a single medical officer rather than a board (2.7).

16. Several commentors requested that the term "inexpensive immunoassay" to describe the initial test be eliminated since cost should be left to the agency and the laboratory and techniques other than immunoassay should be used to test for certain drugs. The term "inexpensive" was not intended to set specifications for price; that is a matter for negotiation between the laboratory and the contracting Federal agency. It was meant to serve as part of a generic description of the procedure and purpose of a screening assay. The term "initial test" has been revised in 1.2 and does not use the word "inexpensive".

17. Several commentors indicated that more specific guidelines should be issued to assure the security of test results whether sent by mail or by electronic means. The Guidelines clarify

that the laboratory must ensure the security of data transmission and limit access to any data transmission, storage, and retrieval system (2.4(g)(4)).

18. Several commentors stated that individuals should have access to all records, data, and documents relating to their test results and the certification of the laboratory which performed the urine drug test. Section 503 of Pub. L. 100-71 provides that any Federal employee who is the subject of a drug test shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings. In response to this comment the provisions of the statute have been set out in a new paragraph at 2.9. The Department anticipates that individuals will be able to obtain information about their own test results from the agency's Medical Review Officer, employee assistance program, or other staff person designated by the agency. Any other relevant information will be made available in accordance with the statute.

19. Several laboratories indicated that the monthly statistical summary required of the testing laboratories would be costly and an excessive burden. The Department views the monthly data as necessary for several purposes including evaluating the laboratory testing program, gathering statistical data to evaluate the drug testing program's effectiveness, and providing demographic data on drug use by the Federal work force. The information will assist in making decisions concerning changes in policy or program implementation and identifying specific programs for attention. The Department anticipates that the cost of providing the data will be built into the contract the laboratory signs with each agency. Therefore, provision of the data will be a function for which the laboratory is duly compensated, not an undue cost or burden (2.4(g)(8)).

20. One commentor indicated that samples for which the initials on the specimen bottle and in the permanent record book do not match should not be rejected automatically, since that would provide an opportunity for individuals to attempt to have their specimens rejected when they knew the specimens would test positive. We have considered the fact that individuals might deliberately alter their initials in an attempt to have their samples rejected. However, we do not anticipate that samples should be thrown out solely on the basis of unmatched initials on the specimen

bottle and in the permanent record book. If unmatched initials provide reason to believe that a particular individual may have altered or substituted the specimen, both the proposed and the Final Guidelines provide that the specimen be forwarded for testing along with a second sample obtained as soon as possible after reason to believe the individual may have altered or substituted the specimen is established (2.2(f) (15) and (16)). The Final Guidelines ensure the identification of the person from whom the specimen is collected through the requirement for photo identification (see 2.2(f)(2)). In addition, a principal responsibility of the collection site person is to gather and verify information on site and to detect any problems with the identification of the specimen. Until experience in the program indicates that misidentified samples arising out of unmatched initials is a significant problem, the Guidelines will require that the individual initial the specimen bottle and sign the permanent record book to certify that the identified sample is the one collected from the individual.

21. One commentor asked if the Guidelines apply to Federal contract employees. The Guidelines do not apply to Federal contract employees; however, any agency may require a contractor to test its own employees following the procedures in the Guidelines by making the requirement a term or condition of the contract.

22. One commentor indicated that the proposed requirement for signing a procedure manual on an annual basis was in conflict with current DHHS efforts in the Medicare and CLIA programs to delete the annual signing requirement and replace it with a requirement that the manual be signed initially and whenever changes are made. We concur with the comment that the important factor is that the manual be signed by the responsible individual whenever a procedure is instituted or changed or whenever a new individual becomes responsible for the day-to-day management of the drug testing laboratory. The Guidelines do not require annual signing of the procedure manual.

The on-site review of the laboratory together with the assignment to an individual of the overall responsibility for the testing will assure that the procedures in the manual are current and followed. If the procedures in the manual are not current or followed, it is an indication that the responsible individual is not performing the

oversight function appropriate to the management of the laboratory.

We have also clarified that the individual responsible for the day-to-day management of the drug testing laboratory is the individual responsible for signing the manual (2.3(a)(5)). It is not appropriate for the individual who is responsible for day-to-day operations and supervision of analysts or for any other individual to be delegated this responsibility since the manual is the vehicle for selection of methodologies, and the approval of methodologies is a principal reason for requiring the individual responsible for day-to-day management of the drug testing laboratory to possess detailed knowledge in the area of toxicology.

23. One commentor indicated that laboratories should be notified when they may discard samples. We have reviewed the comment and concur that the agency should be able to notify the laboratory in writing if it determines that samples no longer need to be retained because no further action is pending which will require the samples. Both 2.4(g)(8) and 2.4(h) permit the agency to instruct or authorize storage for less than the period for which there is a storage requirement.

24. Several commentors indicated a discrepancy in the periods for maintenance of frozen samples in storage—1 year in the proposed guidelines and 6 months in Appendix B to the proposed guidelines. The time interval in the appendix was in error. The Final Guidelines consistently call for frozen storage of confirmed positive samples for 1 year (2.4(h)). Note that the Appendix has been omitted, although pertinent provisions from it are integrated in the Final Guidelines.

25. In response to concern that specimens may be misused to test for physiological states other than drug abuse (e.g., pregnancy), a provision has been added to the Final Guidelines to prohibit the specimens collected for urine drug testing from being used for any other types of analyses unless otherwise authorized by law. It is important to the integrity and goals of the President's program to achieve a drug-free work place that any specimens collected for that purpose not be analyzed or used for inappropriate purposes. To ensure that outcome, a paragraph has been added at 2.1(c) stating that specimens may be used only to test for those drugs included in the agency drug-free workplace plan and may not be used to conduct any other analysis or test unless the agency is authorized by law to perform other analyses.

26. One commentor indicated that the individuals permitted in the "secure test area" should include routine service and maintenance personnel and that these individuals should not require escorts. While providing escorts for all employees, including service and maintenance personnel, may cause considerable inconvenience, unless the facilities are secured at night and all materials locked away with no possible access, there is always the potential for tampering with the specimens or test results. The Guidelines make no provision for routine service and maintenance personnel to enter the secure test area without an escort (2.4(a)).

27. One commentor suggested that collection personnel be provided with gloves or other protective garments to prevent contamination of the personnel from the urine. The Department encourages a protected work environment for collection site personnel, including any necessary protective garments. Various State and Federal guidelines provide for the health and safety of employees. Collection agents are expected to be aware of and to comply with such provisions to safeguard their own health and the health and safety of employees. However, no requirement was added to the Guidelines to require provision of protective garments to collection personnel.

28. One commentor recommended that DHHS use its own personnel to investigate any quality assurance problems which arise with a particular laboratory instead of requiring each agency to have its own investigative staff. Other commentors viewed agencies as lacking the in-house expertise to perform this analysis, and it was not clear to them who in each agency should carry out such an investigation. The Final Guidelines reflect a decision that the Secretary (which might include a DHHS contractor or DHHS recognized certification program) shall assume this investigative responsibility and carry out the related coordinating activities. A coordinating mechanism within the National Institute on Drug Abuse (NIDA) will ensure that all agencies are aware of problems with any given laboratory. Conducting investigations and coordinating findings through DHHS will eliminate the need to provide a more complex mechanism for agencies to notify each other about laboratory performance (2.5(d)(4)).

29. Several commentors said that the format for reporting employee drug test results was not sufficiently clear and that while there was a discussion of the

mechanism for reporting performance test results, there was no comparable discussion on reporting employee test results. 2.4(g), Reporting Results, clarifies that laboratories will not report quantitation on test results but will report whether a result is positive or negative and that this is indicative of a result being above or below a particular cutoff limit. A negative report does not signify the absence of a particular drug or metabolite but only that the particular drugs or metabolites screened for were not detected at a specified concentration (i.e., cutoff level).

Quantitation will not be reported to the agency for confirmed positive reports in order to provide for identical reporting by the laboratory of performance test specimens and employee specimens. However, quantitation may be obtained by the Medical Review Officer on request from the laboratory. In the case of the opiates, we have indicated that the particular opiate to be reported will depend on the amounts of morphine and codeine detected by the confirmation test. We have included the reporting scheme in the scientific and technical requirements as well as in the revision of the requirements for reporting performance test results (2.4(g), 3.11 which cross-references 2.4(g), and 3.17(f)).

30. The Final Guidelines attempt to clarify the purpose of the certification program, since the comments reflect uncertainty as to what certification implies and what would be surveyed in the process of certifying a laboratory. Subpart C permits DHHS to recognize certification programs run by other organizations. These programs may be private accrediting organizations that are recognized by the Secretary to determine whether laboratories meet the Guideline requirements. Any laboratory accredited by these organizations in accordance with these Guidelines is deemed to be a certified laboratory, thus making it eligible to perform urine drug testing for Federal agencies. DHHS is contemplating publishing standards for recognition of private accrediting organizations in the near future.

The provisions of Subpart C apply to any laboratory which has or seeks a contract to perform, or otherwise performs urine drug testing for Federal agencies under a drug testing program conducted under E.O. 12564. Only certified laboratories will be authorized to perform urine drug testing for Federal agencies. However, in order to create a pool of qualified laboratories to bid on agency contracts to perform such testing, the Secretary may certify

laboratories as contract eligible that meet the requirements of Subpart C. This pool of qualified laboratories will lead to competitive pricing and better services for Federal agencies.

The certification process will be limited to the five classes of drugs (2.1(a) (1) and (2)) and the methods (2.4 (e) and (f)) specified in these Guidelines. The laboratory will be surveyed and performance tested only for these methods and drugs. Certification of a laboratory indicates that any test result reported by the laboratory for the Federal Government meets the standards in these Guidelines for the five classes of drugs using the methods specified herein. The Guidelines require that a certified laboratory must inform its non-Federal clientele when testing procedures are to be those specified by these Guidelines. Non-Federal purchasers are free to bargain with a certified laboratory for any standards they may deem appropriate.

31. The Guidelines delete the checklist in Appendix B of the proposed certification standards. The checklist was initially intended to provide a tool for the inspectors of laboratories to use in conducting their on-site inspections and to enumerate the standards contained in the section on the certification program published in the Federal Register. However, there was confusion regarding whether the checklist represented an additional or different set of requirements. Relevant portions of the checklist have been integrated in the Guidelines. The checklist itself will be revised to correspond to the requirements in the Guidelines and will be made available to laboratories by the DHHS-recognized certification program(s).

32. Several commentors asked that the specific criteria used by the group(s) who will perform the certification function for the Department be detailed in these Guidelines. In response, the Guidelines include a new section explaining how performance testing will be evaluated for initial certification as well as for previously certified laboratories (3.19 (a) and (b)). All major aspects of the certification program, including personnel and quality assurance and quality control requirements, are included in Subpart C of these Guidelines. With the addition of 3.19 (a) and (b), we believe the Guidelines are appropriately specific and there is no need to include additional detail in the Guidelines concerning the certification process.

33. Some commentors indicated that the number of blind performance test samples required to be run by the

laboratories (i.e., 1,000) for initial certification and (i.e., 250 per quarter) for continuing certification was excessive and would be too costly. The commentors also indicated that it was not clear whether the laboratory or the submitting organization would bear the cost of the samples and if it were necessary for each submitting organization to submit this number of samples to each laboratory. In response to the comments, we have revised this section to indicate that each agency shall submit blind performance test specimens to each laboratory it contracts with in the amount of at least 50 percent of the total number of samples submitted (up to a maximum of 500 samples) during the initial 90-day period of program implementation and a minimum of 10 percent of all samples (to a maximum of 250) submitted per quarter thereafter. The Final Guidelines also clarify that approximately 80 percent of the blind performance test samples are to be blank (i.e., certified to be drug free) and the remaining samples are to be positives (2.52(d)(3) and 3.7). The cost of the blind performance test samples will be borne by the submitting agency.

34. Several commentors requested corrective action and reanalysis of previously run specimens in the case of discovered laboratory administrative error. They also requested that the union and all employees who tested positive be notified of the error in writing. The recommendation was to notify all employees with positive results who were tested between the time of resolution of the error and the preceding cycle of correct results. In the case of an administrative error, there are no plans to automatically have all specimens retested. The decision on whether to retest will be dependent on the type and extent of the error. For example, if a single employee's test results were transcribed incorrectly, nothing would be gained from rerunning all the specimens in a given timeframe since it would not change the values attributed to the specimens. If an error occurred such that it was not clear whose specimen was being tested and which results belonged to which specimen, this would require retesting of the group for which the values were uncertain and for those analytes for which the values were uncertain. However, it would be unproductive to require the automatic retesting of all specimens for any error.

Agency policy under which individuals are notified of errors will depend on the circumstances. If the error is corrected before the results are reported to any employee, it is

unnecessary to notify each employee that an error was discovered and subsequently corrected. If a discovered error affects an employee after results have been reported, the Medical Review Officer will be notified and the affected employee will also be notified through the appropriate mechanisms established by each agency.

35. Several commentors indicated that the laboratory contract should be suspended if the laboratory committed the same administrative error twice and that the designated reviewing official's discretion to continue a laboratory in the program should be more limited or more clearly defined. The Department has reviewed the comments concerning the point at which a contract should be suspended because of an administrative error and submits that the current policy allows sufficient flexibility and protection to the employee and the laboratory and that it should not be changed. There are no circumstances under which administrative or human error can be entirely eliminated. The major assurance of accuracy in the overall program is the series of checks to assure that such errors are detected and corrected. The reviewing official has been given the necessary flexibility and definition of authority to make the appropriate technical and program judgments concerning the status of each facility and to assure that reasonable and responsible decisions are made. Nevertheless, the Final Guidelines add several features to put greater responsibility on the individual responsible for the day-to-day management of the drug testing laboratory for the quality assurance program and ensuring that quality assurance procedures are followed. These Guidelines also more clearly describe what constitutes a quality assurance and quality control program to detect and correct errors (2.5) and a program of performance testing (3.17-3.19).

We have chosen not to include a formal definition of administrative or clerical error in the Guidelines as was suggested. Among the errors to which either term refers are incorrect transcription of test results or errors in recording specimen identities, i.e., errors that are not due to the analysis of the specimens with regard to analytical accuracy, precision, interpretation of test results, or calibration of equipment. Clearly analytical errors are not considered "administrative." While it is not possible to write guidelines that cover every possibility, at no place in these Guidelines are incorrect analyses considered administrative error but

rather are consistently treated as a basis for prompt action against the laboratory by the responsible officials.

36. Several commentors indicated that laboratory inspections should be conducted unannounced and that union representatives should be permitted to accompany the inspection teams. The Guidelines neither require nor prohibit unannounced inspections. They contemplate that agencies will, through their contract with a certified laboratory, specify the terms and conditions of inspections in accordance with the requirements in the Guidelines. If individuals other than members of the inspection team were entitled to accompany the inspectors, it would significantly complicate coordination and conduct of the inspections. More importantly, we see additional participants in the inspection as inhibiting the laboratory's freedom to provide complete cooperation out of concern for protecting proprietary information. While some laboratories may be willing to provide escorted tours to union officials to illustrate the quality of their processes, the Guidelines do not establish a right for union officials to participate in inspections incident to certification of laboratories under these Guidelines (2.4(1) and 3.20).

37. One commentor indicated that any of the five general factors indicated in 3.13(b) as a possible basis for revocation in the certification requirements should inevitably lead to revocation without any further determination that the revocation is "necessary." The issue of how many potential grounds for revocation are necessary to determine that revocation of a laboratory is necessary was considered when the list of grounds was developed. The Department views the nature and seriousness of the facts concerning the grounds for revocation as factors to be weighed in deciding to revoke a certification. It is difficult and would not contribute to the maintenance of high quality testing standards to develop *a priori* statements about the magnitude of an offense or a combination of violations and to formulate necessary actions in response to each possible violation of the provisions of 3.13. All five factors listed are considered serious violations of these certification criteria, and it is not necessary for more than one factor to be violated to take action against a laboratory. However, the Guidelines retain the flexibility for the Secretary to determine that revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results (3.13(b)).

38. Several commentors indicated that when a laboratory fails a performance test it would be inordinately expensive (especially in high volume laboratories) to retest all samples since the last performance test the laboratory passed and to test for all analytes rather than for the one analyte for which the laboratory had failed performance testing. The reason for retesting all positive samples since the last successful performance test is that the quality of the test results has been called into question. In order to verify test results for the period between a successful performance testing and the failed testing, it will be necessary to retest all specimens tested positive for which an incorrect analysis may have been performed. It is not routinely necessary to retest for all analytes but only for those on which the laboratory failed its performance testing. However, the laboratory may be required to test for other analytes if the performance test failure reflects broader problems (3.19(b)(1)(v)).

39. Several commentors indicated that performance testing every other month is excessive and that quarterly testing would be sufficient to assure the quality of the testing. Others indicated that fewer challenges per shipment would be adequate to determine the quality of the laboratory. Still other individuals stated that the limits for acceptable performance on performance tests were too high in terms of the concentrations used. Others said that the grading criterion of failure based on one false positive was too strict. We have reviewed the concerns that bimonthly performance testing is excessive and maintain that the use of performance tests is a valid outcome measure of performance and will assist in the evaluation of quality of the laboratory performance. If future experience with the program indicates that a lesser frequency will assure the quality of the testing, we will revise the frequency and the number of specimens accordingly. Relatively frequent performance testing reduces the time period for which samples may have to be rerun in case of performance test failure (3.17).

To the extent that the Guidelines amended the cutoff limits for drugs for which employees may be tested for consistency with those currently used by the Department of Defense, it was necessary to modify the values of the various performance test samples correspondingly. We have clarified that a laboratory must achieve an overall grade of 90 percent on the first three cumulative shipments of performance tests and that if such a poor grade is

obtained on the first or second challenge that a laboratory cannot achieve an overall grade of 90 percent on the three successive performance test challenges, then the laboratory will fail at that point. Laboratories already in the program must achieve a grade of 90 percent on each shipment of performance testing. It was unclear in the proposed notice whether the grade of 90 percent referred only to the positive samples. We intend that the 90 percent refer only to positive samples, since any negative sample giving rise to a false positive would be the basis for automatic disqualification for initial certification. It also was unclear whether the 90 percent referred to performance on all drugs in the shipment, not on each drug tested. We have clarified the Guidelines in both these areas. We adopted a strategy requiring 90 percent for all drugs because it is not always feasible to have a sufficient number of challenges for each drug in each shipment to avoid a single failure on a drug leading to a failing grade of less than 90 percent (3.19(b)(2)).

40. Some commentors thought laboratories should be required to notify all users if their certification was revoked. Since the requirements in these Guidelines only apply to certification for Federal drug testing programs, it would be inappropriate to require laboratories to notify non-Federal users of revocation or suspension.

41. We have not adopted the recommendations that any changes in the Guidelines be accomplished by publication of a notice, review of comments, and then publication of final changes. (Section 503 of Pub. L. 100-71 required such steps for initial development of these Guidelines.) The time required for this process would not permit rapid adjustment to changes in technology. Accordingly, the Guidelines retain the provision permitting final revision of these Guidelines by publication of a notice in the *Federal Register* (1.3).

42. One commentor suggested that only positive tests be certified as to accuracy and validity before reporting. Although this practice would reduce paperwork, it does not reflect the potential impact on public safety of false negative results. The Guidelines continue to require that negative results be reviewed carefully and attested to by the proper officials in the same way as positive results (2.4(g)).

43. One commentor wanted us to specify the time the individual responsible for day-to-day management must spend in the laboratory. No change

has been made in the Guidelines. The critical factor here is the quality of the work and not the absolute number of hours spent. The Department views the use of outcome measures of performance for the laboratory as more effective in assuring accurate and reliable test results than attempting to set hours for the responsible individual particularly in view of the qualifications which the Guidelines set for the individual responsible for day-to-day management of the drug testing laboratory.

44. The criterion for retesting specimens (i.e., those being challenged) was clarified to indicate that in performing a retest the laboratory must confirm the presence of the substance but does not have to confirm that it is present above the cutoff level. Since the drug levels may deteriorate with time, it is only necessary to show that the drug (or its metabolite) is present to reconfirm its presence during retesting (2.4(i)).

45. A provision has been added to the Guidelines requiring that laboratories be capable of testing for at least the five classes of drugs specified in the Guidelines. The laboratories are being required to possess the flexibility to test for all the specified classes of drugs in order to assure that they have a sufficient range of capabilities to respond to the agencies' testing protocols, including testing for reasonable suspicion (3.4).

46. Several Federal agencies commenting on the proposed guidelines sought waivers of particular provisions in reliance on the original Scientific and Technical Guidelines issued February 13, 1987, which provided that, "Agencies may not deviate from the provisions of these Guidelines without the written approval of the Secretary, Health and Human Services or his designee." This waiver statement, which was not explicit in the proposed guidelines, is included at 1.1(f). Absent such a waiver, these Guidelines represent the exclusive standard for urinalysis testing and agencies may not deviate from these established procedures.

In order to clarify that the laboratory certification standards apply to laboratories which have or seek certification to perform urine drug testing for Federal agencies, a paragraph was added to the applicability section, 1.1(c), stating that Subpart C of the Guidelines applies to any laboratory which has or seeks such certification and that certification is required to perform urine drug testing for Federal agencies.

Section 4(d) of E.O. 12564 states that "agencies shall conduct their drug testing programs in accordance with . . . [scientific and technical] guidelines" promulgated by the Secretary of Health and Human Services. Since the Guidelines impose mandatory requirements on a Government-wide basis, they are exempt from the duty to bargain under section 7117(a)(1) of the Federal Service Labor-Management Relations Statute.

Information Collection Requirements

Information collection and recordkeeping requirements which would be imposed on laboratories engaged in urine drug testing for Federal agencies concern quality assurance and quality control; security and chain of custody; documentation; reports; performance testing; and inspections as set out in 3.7, 3.8, 3.10, 3.11, 3.17, and 3.20. To facilitate ease of use and uniform reporting, standard forms have been developed for chain of custody records and the permanent record books as referenced in 2.2(c) and (f).

The information collection and recordkeeping requirements contained in these Final Guidelines have been approved by the Office of Management and Budget under section 3504(b) of the Paperwork Reduction Act of 1980 and have been assigned control number 09300130, approved through April 30, 1989.

Date: April 1, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Date: April 1, 1988.

Otis R. Bowen,

Secretary.

These Final Mandatory Guidelines are hereby adopted in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71 as set forth below:

MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS

Subpart A—General

- 1.1 Applicability.
- 1.2 Definitions.
- 1.3 Future Revisions.

Subpart B—Scientific and Technical Requirements

- 2.1 The Drugs.
- 2.2 Specimen Collection Procedures.
- 2.3 Laboratory Personnel.
- 2.4 Laboratory Analysis Procedures.
- 2.5 Quality Assurance and Quality Control.
- 2.6 Interim Certification Procedures.
- 2.7 Reporting and Review of Results.
- 2.8 Protection of Employee Records.
- 2.9 Individual Access to Test and Laboratory Certification Results.

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

- 3.1 Introduction.
- 3.2 Goals and Objectives of Certification.
- 3.3 General Certification Requirements.
- 3.4 Capability to Test for Five Classes of Drugs.
- 3.5 Initial and Confirmatory Capability at Same Site.
- 3.6 Personnel.
- 3.7 Quality Assurance and Quality Control.
- 3.8 Security and Chain of Custody.
- 3.9 One-Year Storage for Confirmed Positives.
- 3.10 Documentation.
- 3.11 Reports.
- 3.12 Certification.
- 3.13 Revocation.
- 3.14 Suspension.
- 3.15 Notice: Opportunity for Review.
- 3.16 Recertification.
- 3.17 Performance Test Requirement for Certification.
- 3.18 Performance Test Specimen Composition.
- 3.19 Evaluation of Performance Testing.
- 3.20 Inspections.
- 3.21 Results of Inadequate Performance.

Authority: E.O. 12564 and sec. 503 of Pub. L. 100-71.

Subpart A—General

1.1 Applicability.

(a) These mandatory guidelines apply to:

(1) Executive Agencies as defined in 5 U.S.C. 105;

(2) The Uniformed Services, as defined in 5 U.S.C. 2101 (3) (but excluding the Armed Forces as defined in 5 U.S.C. 2101(2));

(3) And any other employing unit or authority of the Federal Government except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches.

(b) Any agency or component of an agency with a drug testing program in existence as of September 15, 1986, and the Departments of Transportation and Energy shall take such action as may be necessary to ensure that the agency is brought into compliance with these Guidelines no later than 90 days after they take effect, except that any judicial challenge that affects these Guidelines shall not affect drug testing programs subject to this paragraph.

(c) Except as provided in 2.6, Subpart C of these Guidelines (which establishes laboratory certification standards) applies to any laboratory which has or seeks certification to perform urine drug testing for Federal agencies under a drug testing program conducted under E.O. 12564. Only laboratories certified under these standards are authorized to perform urine drug testing for Federal agencies.

(d) The Intelligence Community, as defined by Executive Order No. 12333, shall be subject to these Guidelines only to the extent agreed to by the head of the affected agency.

(e) These Guidelines do not apply to drug testing conducted under legal authority other than E.O. 12564, including testing of persons in the criminal justice system, such as arrestees, detainees, probationers, incarcerated persons, or parolees.

(f) Agencies may not deviate from the provisions of these Guidelines without the written approval of the Secretary. In requesting approval for a deviation, an agency must petition the Secretary in writing and describe the specific provision or provisions for which a deviation is sought and the rationale therefor. The Secretary may approve the request upon a finding of good cause as determined by the Secretary.

1.2 Definitions.

For purposes of these Guidelines the following definitions are adopted:

Aliquot A portion of a specimen used for testing.

Chain of Custody Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an approved agency chain of custody form be used from time of collection to receipt by the laboratory and that upon receipt of the laboratory an appropriate laboratory chain of custody form(s) account for the sample or sample aliquots within the laboratory. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody.

Collection Site A place designated by the agency where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection Site Person A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals. A collection site person shall have successfully completed training to carry out this function.

Confirmatory Test A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability

and accuracy. (At this time gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Initial Test (also known as Screening Test) An immunosay screen to eliminate "negative" urine specimens from further consideration.

Medical Review Officer A licensed physician responsible for receiving laboratory results generated by an agency's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

Permanent Record Book A permanently bound book in which identifying data on each specimen collected at a collection site are permanently recorded in the sequence of collection.

Reason to Believe Reason to believe that a particular individual may alter or substitute the urine specimen as provided in section 4(c) of E.O. 12564.

Secretary The Secretary of Health and Human Services or the Secretary's designee. The Secretary's designee may be contractor or other recognized organization which acts on behalf of the Secretary in implementing these Guidelines.

1.3 Future Revisions.

In order to ensure the full reliability and accuracy of drug assays, the accurate reporting of test results, and the integrity and efficacy of Federal drug testing programs, the Secretary may make changes to these Guidelines to reflect improvements in the available science and technology. These changes will be published in final as a notice in the Federal Register.

Subpart B—Scientific and Technical Requirements

2.1 The Drugs.

(a) The President's Executive Order 12564 defines "illegal drugs" as those included in Schedule I or II of the Controlled Substances Act (CSA), but not when used pursuant to a valid prescription or when used as otherwise authorized by law. Hundreds of drugs are covered under Schedule I and II and while it is not feasible to test routinely for all of them, Federal drug testing programs shall test for drugs as follows:

(1) Federal agency applicant and random drug testing programs shall at a minimum test for marijuana and cocaine:

(2) Federal agency applicant and random drug testing programs are also authorized to test for opiates; amphetamines, and phencyclidine; and

(3) When conducting reasonable suspicion, accident, or unsafe practice testing, a Federal agency may test for any drug listed in Schedule I or II of the CSA.

(b) Any agency covered by these guidelines shall petition the Secretary in writing for approval to include in its testing protocols any drugs (or classes of drugs) not listed for Federal agency testing in paragraph (a) of this section. Such approval shall be limited to the use of the appropriate science and technology and shall not otherwise limit agency discretion to test for any drugs covered under Schedule I or II of the CSA.

(c) Urine specimens collected pursuant to Executive Order 12564, Pub. L. 100-71, and these Guidelines shall be used only to test for those drugs included in agency drug-free workplace plans and may not be used to conduct any other analysis or test unless otherwise authorized by law.

(d) These Guidelines are not intended to limit any agency which is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees or employees in its regulated industries.

2.2 Specimen Collection Procedures.

(a) **Designation of Collection Site.** Each agency drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory.

(b) **Security** Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(c) **Chain of Custody.** Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

(d) **Access to Authorized Personnel Only.** No unauthorized personnel shall

be permitted in any part of the designated collection site when urine specimens are collected or stored.

(e) **Privacy.** Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.

(f) **Integrity and Identity of Specimen.** Agencies shall take precautions to ensure that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle and in the record book can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There shall be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs.

(2) When an individual arrives at the collection site, the collection site person shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection site person shall contact the supervisor of the individual, the coordinator of the drug testing program, or any other agency official who can positively identify the individual. If the individual's identity cannot be established, the collection site person shall not proceed with the collection.

(3) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet.

(5) The individual shall be instructed to wash and dry his or her hands prior to urination.

(6) After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or

any other materials which could be used to adulterate the specimen.

(7) The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.

(8) The collection site person shall note any unusual behavior or appearance in the permanent record book.

(9) In the exceptional event that an agency-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., an accident investigation), a public rest room may be used according to the following procedures: A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10) Upon receiving the specimen from the individual, the collection site person shall determine that it contains at least 60 milliliters of urine. If there is less than 60 milliliters of urine in the container, additional urine shall be collected in a separate container to reach a total of 60 milliliters. (The temperature of the partial specimen in each separate container shall be measured in accordance with paragraph (f)(12) of this section, and the partial specimens shall be combined in one container.) The individual may be given a reasonable amount of liquid to drink for this purpose (e.g., a glass of water). If the individual fails for any reason to provide 60 milliliters of urine, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(11) After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not

contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed 4 minutes.

(13) If the temperature of a specimen is outside the range of 32.5°-37.7°C/90.5°-99.8°F, that is a reason to believe that the individual may have altered or substituted the specimen, and another specimen shall be collected under direct observation of a same gender collection site person and both specimens shall be forwarded to the laboratory for testing. An individual may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted in the permanent record book.

(15) All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.

(16) Whenever there is reason to believe that a particular individual may alter or substitute the specimen to be provided, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.

(17) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.

(18) The collection site person and the individual shall be present at the same time during procedures outlined in paragraphs (f)(19)-(f)(22) of this section.

(19) The collection site person shall place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the agency.

(20) The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter in the permanent record book all information identifying the specimen. The collection site person shall sign the permanent record book next to the identifying information.

(22) The individual shall be asked to read and sign a statement in the permanent record book certifying that the specimen identified as having been collected from him or her is in fact that specimen he or she provided.

(23) A higher level supervisor shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based on a reason to believe that the individual may alter or substitute the specimen to be provided.

(24) The collection site person shall complete the chain of custody form.

(25) The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage.

(26) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the specimen and custody form shall be taken with him or her or shall be secured. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, the specimen shall be packaged for mailing before he or she leaves the site.

(g) *Collection Control.* To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled. An approved chain of custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on an approved chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

(h) *Transportation to Laboratory.* Collection site personnel shall arrange to ship the collected specimens to the drug testing laboratory. The specimens shall be placed in containers designed to minimize the possibility of damage during shipment, for example, specimen boxes or padded mailers; and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the

container, the collection site supervisor shall sign and enter the date specimens were sealed in the containers for shipment. The collection site personnel shall ensure that the chain of custody documentation is attached to each container sealed for shipment to the drug testing laboratory.

2.3 Laboratory Personnel.

(a) Day-to-Day Management.

(1) The laboratory shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by the State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology, or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in (i), (ii), and (iii) above, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse, and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multispecialty laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their inservice training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in 2.4(n)(1).)

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the tests results provided are accurate and reliable.

(b) *Test Validation.* The laboratory's urine drug testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) *Day-to-Day Operations and Supervision of Analysts.* The laboratory's urine drug testing facility shall have an individual to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality

control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) *Other Personnel.* Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(e) *Training.* The laboratory's urine drug testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) *Files.* Laboratory personnel files shall include: resume of training and experience; certification or license, if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

2.4 Laboratory Analysis Procedures.

(a) *Security and Chain of Custody.* (1) Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of Federal agencies for which the laboratory is engaged in urine testing or on behalf of the Secretary, all authorized visitors and maintenance and service personnel shall be escorted at all times. Documentation of individuals accessing these areas, dates, and time of entry and purpose of entry must be maintained.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) *Receiving.* (1) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the agency's chain of custody forms attached to the shipment shall be immediately reported to the agency and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession.

(2) Specimen bottles will normally be retained within the laboratory's accession area until all analyses have been completed. Aliquots and the laboratory's chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests.

(c) *Short-Term Refrigerated Storage.* Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 8°C. Emergency power equipment shall be available in case of prolonged power failure.

(d) *Specimen Processing.* Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.

(e) *Initial Test.* (1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

	Initial test level (ng/ml)
Marijuana metabolites.....	100
Cocaine metabolites.....	300
Opiate metabolites.....	300
Phencyclidine.....	25
Amphetamines.....	1,000

¹ 25ng/ml if immunoassay specific for free morphine.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. Initial test methods and testing levels for other drugs shall be submitted in writing by the agency for the written approval of the Secretary.

(f) *Confirmatory Test.* (1) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

	Confirma- tory test level (ng/ ml)
Marijuana metabolite ¹	15
Cocaine metabolite ²	150
Opiates:	
Morphine.....	300
Codeine.....	300
Phencyclidine.....	25
Amphetamines:	
Amphetamine.....	500
Methamphetamine.....	500

¹ Delta-9-tetrahydrocannabinol-9-carboxylic acid.
² Benzoylcegonine.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. Confirmatory test methods and testing levels for other drugs shall be submitted in writing by the agency for the written approval of the Secretary.

(g) *Reporting Results.* (1) The laboratory shall report test results to the agency's Medical Review Officer within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, and the cutoff for each, the specimen number assigned by the agency, and the drug testing laboratory specimen identification number. The results (positive and negative) for all specimens submitted at the same time to the laboratory shall be reported back to the Medical Review Officer at the same time.

(2) The laboratory shall report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.

(3) The Medical Review Officer may request from the laboratory and the laboratory shall provide quantitation of test results. The Medical Review Officer may not disclose quantitation of test results to the agency but shall report only whether the test was positive or negative.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer a certified copy of the original chain of custody form signed by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports.

(6) The laboratory shall provide to the agency official responsible for coordination of the drug-free workplace program a monthly statistical summary of urinalysis testing of Federal employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

(i) *Initial Testing:*

(A) Number of specimens received;

(B) Number of specimens reported out; and

(C) Number of specimens screened positive for:

Marijuana metabolites
Cocaine metabolites
Opiate metabolites
Phencyclidine
Amphetamines

(ii) *Confirmatory Testing:*

(A) Number of specimens received for confirmation;

(B) Number of specimens confirmed positive for:

Marijuana metabolite

Cocaine metabolite
Morphine, codeine
Phencyclidine
Amphetamine
Methamphetamine

(7) The laboratory shall make available copies of all analytical results for Federal drug testing programs when requested by DHHS or any Federal agency for which the laboratory is performing drug testing services.

(8) Unless otherwise instructed by the agency in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

(h) *Long-Term Storage.* Long-term frozen storage (-20°C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Unless otherwise authorized in writing by the agency, drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive. Within this 1-year period an agency may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens under legal challenge for an indefinite period.

(i) *Retesting Specimens.* Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(j) *Subcontracting.* Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment unless otherwise authorized by the agency. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine, and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in these Guidelines.

(k) *Laboratory Facilities.* (1) Laboratory facilities shall comply with applicable provisions of any State licensure requirements.

(2) Laboratories certified in accordance with Subpart C of these Guidelines shall have the capability, at the same laboratory premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

(l) *Inspections.* The Secretary, any Federal agency utilizing the laboratory,

or any organization performing laboratory certification on behalf of the Secretary shall reserve the right to inspect the laboratory at any time.

Agency contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the agency to conduct unannounced inspections. In addition, prior to the award of a contract the agency shall carry out preaward inspections and evaluation of the procedural aspects of the laboratory's drug testing operation.

(m) *Documentation.* The drug testing laboratories shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2-year period may be extended upon written notification by DHHS or by any Federal agency for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall be required to maintain documents for any specimen under legal challenge for an indefinite period.

(n) *Additional Requirements for Certified Laboratories.*—(1) *Procedure Manual.* Each laboratory shall have a procedure manual which includes the principles of each test, preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of the methods, cutoff values, mechanisms for reporting results, controls, criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

(2) *Standards and Controls.* Laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: when received; when prepared or opened; when placed in services; and expiration date.

(3) *Instruments and Equipment.* (i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be

checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks and instructions for major trouble shooting and repair. Records shall be available on preventive maintenance.

(4) *Remedial Actions.* There shall be written procedures for the actions to be taken when systems are out of acceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) *Personnel Available To Testify at Proceedings.* A laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against a Federal employee when that proceeding is based on positive urinalysis results reported by the laboratory.

2.5 Quality Assurance and Quality Control.

(a) *General.* Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) *Laboratory Quality Control Requirements for Initial Tests.* Each analytical run of specimens to be screened shall include:

- (1) Urine specimens certified to contain no drug;
- (2) Urine specimens fortified with known standards; and
- (3) Positive controls with the drug or metabolite at or near the threshold (cutoff).

In addition, with each batch of samples a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Implementation of procedures to ensure that carryover does not contaminate the

testing of an individual's specimen shall be documented. A minimum of 10 percent of all test samples shall be quality control specimens. Laboratory quality control samples, prepared from spiked urine samples of determined concentration shall be included in the run and should appear as normal samples to laboratory analysts. One percent of each run, with a minimum of at least one sample, shall be the laboratory's own quality control samples.

(c) Laboratory Quality Control Requirements for Confirmation Tests. Each analytical run of specimens to be confirmed shall include:

- (1) Urine specimens certified to contain no drug;
- (2) Urine specimens fortified with known standards; and
- (3) Positive controls with the drug or metabolite at or near the threshold (cutoff).

The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall also be documented.

(d) Agency Blind Performance Test Procedures. (1) Agencies shall purchase drug testing services only from laboratories certified by DHHS or a DHHS-Recognized certification program in accordance with these Guidelines. Laboratory participation is encouraged in other performance testing surveys by which the laboratory's performance is compared with peers and reference laboratories.

(2) During the initial 90-day period of any new drug testing program, each agency shall submit blind performance test specimens to each laboratory it contracts with in the amount of at least 50 percent of the total number of samples submitted (up to a maximum of 500 samples) and thereafter a minimum of 10 percent of all samples (to a maximum of 250) submitted per quarter.

(3) Approximately 80 percent of the blind performance test samples shall be blank (i.e., certified to contain no drug) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the agency is testing.

(4) The Secretary shall investigate any unsatisfactory performance testing result and, based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory

performance test result. A record shall be made of the Secretary's investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individuals responsible for the day-to-day management and operation of the drug testing laboratory. Then the Secretary shall send the document to the agency contracting officer as a report of the unsatisfactory performance testing incident. The Secretary shall ensure notification of the finding to all other Federal agencies for which the laboratory is engaged in urine drug testing and coordinate any necessary action.

(5) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future; and, if there is reason to believe the error could have been systematic, the Secretary may also require review and reanalysis of previously run specimens.

(6) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the laboratory shall submit all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for day-to-day management of the laboratory's urine drug testing. The Secretary may require an on-site review of the laboratory which may be conducted unannounced during any hours of operations of the laboratory. The Secretary has the option of revoking (3.13) or suspending (3.14) the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

2.8 Interim Certification Procedures.

During the interim certification period as determined under paragraph (c), agencies shall ensure laboratory competence by one of the following methods:

(a) Agencies may use agency or contract laboratories that have been

certified for urinalysis testing by the Department of Defense; or

(b) Agencies may develop interim self-certification procedures by establishing preaward inspections and performance testing plans approved by DHHS.

(c) The period during which these interim certification procedures will apply shall be determined by the Secretary. Upon noticed by the Secretary that these interim certification procedures are no longer available, all Federal agencies subject to these Guidelines shall only use laboratories that have been certified in accordance with Subpart C of these Guidelines and all laboratories approved for interim certification under paragraphs (a) and (b) of this section shall become certified in accordance with Subpart C within 120 days of the date of this notice.

2.7 Reporting and Review of Results.

(a) Medical Review Officer Shall Review Results. An essential part of the drug testing program is the final review of results. A positive test result does not automatically identify an employee/applicant as an illegal drug user. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer prior to the transmission of results to agency administrative officials.

(b) Medical Review Officer—Qualifications and Responsibilities. The Medical Review Officer shall be a licensed physician with knowledge of substance abuse disorders and may be an agency or contract employee. The role of the Medical Review Officer is to review and interpret positive test results obtained through the agency's testing program. In carrying out this responsibility, the Medical Review Officer shall examine alternate medical explanations for any positive test result. This action could include conducting a medical interview with the individual, review of the individual's medical history, or review of any other relevant biomedical factors. The Medical Review Officer shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The Medical Review Officer shall not, however, consider the results of urine samples that are not obtained or processed in accordance with these Guidelines.

(c) Positive Test Result. Prior to making a final decision to verify a positive test result, the Medical Review Officer shall give the individual an opportunity to discuss the test result

with him or her. Following verification of a positive test result, the Medical Review Officer shall refer the case to the agency Employee Assistance Program and to the management official empowered to recommend or take administrative action.

(d) *Verification for opiates; review for prescription medication.* Before the Medical Review Officer verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence—in addition to the urine test—of illegal use of any opium, opiate, or opium derivative (e.g., morphine/codeine) listed in Schedule I or II of the Controlled Substances Act. (This requirement does not apply if the agency's GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine.)

(e) *Reanalysis Authorized.* Should any question arise as to the accuracy or validity of a positive test result, only the Medical Review Officer is authorized to order a reanalysis of the original sample and such retests are authorized only at laboratories certified under these Guidelines.

(f) *Result Consistent with Legal Drug Use.* If the Medical Review Officer determines there is a legitimate medical explanation for the positive test result, he or she shall determine that the result is consistent with legal drug use and take no further action.

(g) *Result Scientifically Insufficient.* Additionally, the Medical Review Officer, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the Medical Review Officer may request reanalysis of the original sample before making this decision. (The Medical Review Officer may request that reanalysis be performed by the same laboratory or, as provided in 2.7(e), that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with these Guidelines.) The laboratory shall assist in this review process as requested by the Medical Review Officer by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who has equivalent forensic experience in urine drug testing, to provide specific consultation as required by the agency. The Medical Review Officer shall report to the Secretary all negative findings based on scientific insufficiency but shall not include any

personal identifying information in such reports.

2.8 *Protection of Employee Records.*

Consistent with 5 U.S.C. 522a(m) and 48 CFR 24.101–24.104, all laboratory contracts shall require that the contractor comply with the Privacy Act, 5 U.S.C. 552a. In addition, laboratory contracts shall require compliance with the patient access and confidentiality provisions of section 503 of Pub. L. 100–71. The agency shall establish a Privacy Act System of Records or modify an existing system, or use any applicable Government-wide system of records to cover both the agency's and the laboratory's records of employee urinalysis results. The contract and the Privacy Act System shall specifically require that employee records be maintained and used with the highest regard for employee privacy.

2.9 *Individual Access to Test and Laboratory Certification Results.*

In accordance with section 503 of Pub. L. 100–71, any Federal employee who is the subject of a drug test shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

3.1 *Introduction.*

Urine drug testing is a critical component of efforts to combat drug abuse in our society. Many laboratories are familiar with good laboratory practices but may be unfamiliar with the special procedures required when drug test results are used in the employment context. Accordingly, the following are minimum standards to certify laboratories engaged in urine drug testing for Federal agencies. Certification, even at the highest level, does not guarantee accuracy of each result reported by a laboratory conducting urine drug testing for Federal agencies. Therefore, results from laboratories certified under these Guidelines must be interpreted with a complete understanding of the total collection, analysis, and reporting process before a final conclusion is made.

3.2 *Goals and Objectives of Certification.*

(a) *Uses of Urine Drug Testing.* Urine drug testing is an important tool to identify drug users in a variety of

settings. In the proper context, urine drug testing can be used to deter drug abuse in general. To be a useful tool, the testing procedure must be capable of detecting drugs or their metabolites at concentrations indicated in 2.4 (e) and (f).

(b) *Need to Set Standards; Inspections.* Reliable discrimination between the presence, or absence, of specific drugs or their metabolites is critical, not only to achieve the goals of the testing program but to protect the rights of the Federal employees being tested. Thus, standards have been set which laboratories engaged in Federal employee urine drug testing must meet in order to achieve maximum accuracy of test results. These laboratories will be evaluated by the Secretary or the Secretary's designee as defined in 1.2 in accordance with these Guidelines. The qualifying evaluation will involve three rounds of performance testing plus on-site inspection. Maintenance of certification requires participation in an every-other-month performance testing program plus periodic, on-site inspections. One inspection following successful completion of a performance testing regimen is required for initial certification. This must be followed by a second inspection within 3 months, after which biannual inspections will be required to maintain certification.

(c) *Urine Drug Testing Applies Analytical Forensic Toxicology.* The possible impact of a positive test result on an individual's livelihood or rights, together with the possibility of a legal challenge of the result, sets this type of test apart from most clinical laboratory testing. In fact, urine drug testing should be considered a special application of analytical forensic toxicology. That is, in addition to the application of appropriate analytical methodology, the specimen must be treated as evidence, and all aspects of the testing procedure must be documented and available for possible court testimony. Laboratories engaged in urine drug testing for Federal agencies will require the services and advice of a qualified forensic toxicologist, or individual with equivalent qualifications (both training and experience) to address the specific needs of the Federal drug testing program, including the demands of chain of custody of specimens, security, storage of positive specimens for later or independent testing, presentation of evidence in court, and expert witness testimony.

3.3 General Certification Requirements.

A laboratory must meet all the pertinent provisions of these Guidelines in order to qualify for certification under these standards.

3.4 Capability to Test for Five Classes of Drugs.

To be certified, a laboratory must be capable of testing for at least the following five classes of drugs: Marijuana, cocaine, opiates, amphetamines, and phencyclidine, using the initial immunoassay and quantitative confirmatory GC/MS methods specified in these Guidelines. The certification program will be limited to the five classes of drugs (2.1(a) (1) and (2)) and the methods (2.4 (e) and (f)) specified in these Guidelines. The laboratory will be surveyed and performance tested only for these methods and drugs. Certification of a laboratory indicates that any test result reported by the laboratory for the Federal Government meets the standards in these Guidelines for the five classes of using the methods specified. Certified laboratories must clearly inform non-Federal clients when procedures followed for those clients conform to the standards specified in these Guidelines.

3.5 Initial and Confirmatory Capability at Same Site.

Certified laboratories shall have the capability, at the same laboratory site, of performing both initial immunoassays and confirmatory GC/MS tests (2.4 (e) and (f)) for marijuana, cocaine, opiates, amphetamines, and phencyclidine and for any other drug or metabolite for which agency drug testing is authorized (2.1(a) (1) and (2)). All positive initial test results shall be confirmed prior to reporting them.

3.6 Personnel.

Laboratory personnel shall meet the requirements specified in 2.3 of these Guidelines. These Guidelines establish the exclusive standards for qualifying or certifying those laboratory personnel involved in urinalysis testing whose functions are prescribed by these Guidelines. A certification of a laboratory under these Guidelines shall be a determination that these qualification requirements have been met.

3.7 Quality Assurance and Quality Control.

Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process, including but not limited to

specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality control procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs as specified in 2.5 of these Guidelines.

3.8 Security and Chain of Custody.

Laboratories shall meet the security and chain of custody requirements provided in 2.4(a).

3.9 One-Year Storage for Confirmed Positive

All confirmed positive specimens shall be retained in accordance with the provisions of 2.4(h) of these Guidelines.

3.10 Documentation.

The laboratory shall maintain and make available for at least 2 years documentation in accordance with the specifications in 2.4(m).

3.11 Reports.

The laboratory shall report test results in accordance with the specifications in 2.4(g).

3.12 Certification.

(a) *General.* The Secretary may certify any laboratory that meets the standards in these Guidelines to conduct urine drug testing. In addition, the Secretary may consider to be certified and laboratory that is certified by a DHHS-recognized certification program in accordance with these Guidelines.

(b) *Criteria.* In determining whether to certify a laboratory or to accept the certification of a DHHS-recognized certification program in accordance with these Guidelines, the Secretary shall consider the following criteria:

- (1) The adequacy of the laboratory facilities;
- (2) The expertise and experience of the laboratory personnel;
- (3) The excellence of the laboratory's quality assurance/quality control program;
- (4) The performance of the laboratory on any performance tests;
- (5) The laboratory's compliance with standards as reflected in any laboratory inspections; and
- (6) Any other factors affecting the reliability and accuracy of drug tests and reporting done by the laboratory.

3.13 Revocation.

(a) *General.* The Secretary shall revoke certification of any laboratory certified under these provisions or accept revocation by a DHHS-recognized certification program in

accordance with these Guidelines if the Secretary determines that revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results.

(b) *Factors to Consider.* The Secretary shall consider the following factors in determining whether revocation is necessary:

- (1) Unsatisfactory performance in analyzing and reporting the results of drug tests; for example, a false positive error in reporting the results of an employee's drug test;
- (2) Unsatisfactory participation in performance evaluations or laboratory inspections;
- (3) A material violation of a certification standard or a contract term or other condition imposed on the laboratory by a Federal agency using the laboratory's services;
- (4) Conviction for any criminal offense committed as an incident to operation of the laboratory; or
- (5) Any other cause which materially affects the ability of the laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results.

(c) *Period and Terms.* The period and terms of revocation shall be determined by the Secretary and shall depend upon the facts and circumstances of the revocation and the need to ensure accurate and reliable drug testing of Federal employees.

3.14 Suspension.

(a) *Criteria.* Whenever the Secretary has reason to believe that revocation may be required and that immediate action is necessary in order to protect the interests of the United States and its employees, the Secretary may immediately suspend a laboratory's certification to conduct urine drug testing for Federal agencies. The Secretary may also accept suspension of certification by a DHHS-recognized certification program in accordance with these Guidelines.

(b) *Period and Terms.* The period and terms of suspension shall be determined by the Secretary and shall depend upon the facts and circumstances of the suspension and the need to ensure accurate and reliable drug testing of Federal employees.

3.15 Notice; Opportunity for Review.

(a) *Written Notice.* When a laboratory is suspended or the Secretary seeks to revoke certification, the Secretary shall immediately serve the laboratory with written notice of the suspension or proposed revocation by personal service or registered or certified mail, return

receipt requested. This notice shall state the following:

- (1) The reasons for the suspension or proposed revocation;
- (2) The terms of the suspension or proposed revocation; and
- (3) The period of suspension or proposed revocation.

(b) Opportunity for Informal Review.

The written notice shall state that the laboratory will be afforded an opportunity for an informal review of the suspension or proposed revocation if it so requests in writing within 30 days of the date of mailing or service of the notice. The review shall be by a person or persons designated by the Secretary and shall be based on written submissions by the laboratory and the Department of Health and Human Services and, at the Secretary's discretion, may include an opportunity for an oral presentation. Formal rules of evidence and procedures applicable to proceedings in a court of law shall not apply. The decision of the reviewing official shall be final.

(c) Effective Date. A suspension shall be effective immediately. A proposed revocation shall be effective 30 days after written notice is given or, if review is requested, upon the reviewing official's decision to uphold the proposed revocation. If the reviewing official decides not to uphold the suspension or proposed revocation, the suspension shall terminate immediately and any proposed revocation shall not take effect.

(d) DHHS-Recognized Certification Program. The Secretary's responsibility under this section may be carried out by a DHHS-recognized certification program in accordance with these Guidelines.

3.16 Recertification.

Following the termination or expiration of any suspension or revocation, a laboratory may apply for recertification. Upon the submission of evidence satisfactory to the Secretary that the laboratory is in compliance with these Guidelines or any DHHS-recognized certification program in accordance with these Guidelines, and any other conditions imposed as part of the suspension or revocation, the Secretary may recertify the laboratory or accept the recertification of the laboratory by a DHHS-recognized certification program.

3.17 Performance Test Requirement for Certification.

(a) An Initial and Continuing Requirement. The performance testing program is a part of the initial evaluation of a laboratory seeking

certification (both performance testing and laboratory inspection are required) and of the continuing assessment of laboratory performance necessary to maintain this certification.

(b) Three Initial Cycles Required. Successful participation in three cycles of testing shall be required before a laboratory is eligible to be considered for inspection and certification. These initial three cycles (and any required for recertification) can be compressed into a 3-month period (one per month).

(c) Six Challenges Per Year. After certification, laboratories shall be challenged every other month with one set of at least 10 specimens a total of six cycles per year.

(d) Laboratory Procedures Identical for Performance Test and Routine Employee Specimens. All procedures associated with the handling and testing of the performance test specimens by the laboratory shall to the greatest extent possible be carried out in a manner identical to that applied to routine laboratory specimens, unless otherwise specified.

(e) Blind Performance Test. Any certified laboratory shall be subject to blind performance testing (see 2.5(d)). Performance on blind test specimens shall be at the same level as for the open or non-blind performance testing.

(f) Reporting—Open Performance Test. The laboratory shall report results of open performance tests to the certifying organization in the same manner as specified in 2.4(g)(2) for routine laboratory specimens.

3.18 Performance Test Specimen Composition.

(a) Description of the Drugs. Performance test specimens shall contain those drugs and metabolites which each certified laboratory must be prepared to assay in concentration ranges that allow detection of the analyte by commonly used immunoassay screening techniques. These levels are generally in the range of concentrations which might be expected in the urine of recent drug users. For some drug analytes, the specimen composition will consist of the parent drug as well as major metabolites. In some cases, more than one drug class may be included in one specimen container, but generally no more than two drugs will be present in any one specimen in order to imitate the type of specimen which a laboratory normally encounters. For any particular performance testing cycle, the actual composition of kits going to different laboratories will vary but, within any annual period, all laboratories

participating will have analyzed the same total set of specimens.

(b) Concentrations. Performance test specimens shall be spiked with the drug classes and their metabolites which are required for certifications: marijuana, cocaine, opiates, amphetamines, and phencyclidine, with concentration levels set at least 20 percent above the cutoff limit for either the initial assay or the confirmatory test, depending on which is to be evaluated. Some performance test specimens may be identified for GC/MS assay only. Blanks shall contain less than 2 ng/ml of any of the target drugs. These concentration and drug types may be changed periodically in response to factors such as changes in detection technology and patterns of drug use.

3.19 Evaluation of Performance Testing.

(a) Initial Certification. (1) An applicant laboratory shall not report any false positive result during performance testing for initial certification. Any false positive will automatically disqualify a laboratory from further consideration.

(2) An applicant laboratory shall maintain an overall grade level of 90 percent for the three cycles of performance testing required for initial certification, i.e., it must correctly identify and confirm 90 percent of the total drug challenges for each shipment. Any laboratory which achieves a score on any one cycle of the initial certification such that it can no longer achieve a total grade of 90 percent over the three cycles will be immediately disqualified from further consideration.

(3) An applicant laboratory shall obtain quantitative values for at least 80 percent of the total drug challenges which are ± 20 percent or ± 2 standard deviations of the calculated reference group mean (whichever is larger). Failure to achieve 80 percent will result in disqualification.

(4) An applicant laboratory shall not obtain any quantitative values that differ by more than 50 percent from the calculated reference group mean. Any quantitative values that differ by more than 50 percent will result in disqualification.

(5) For any individual drug, an applicant laboratory shall successfully detect and quantitate in accordance with paragraphs (a)(2), (a)(3), and (a)(4) of this section at least 50 percent of the total drug challenges. Failure to successfully quantitate at least 50 percent of the challenges for any individual drug will result in disqualification.

(b) Ongoing Testing of Certified Laboratories.—(1) False Positives and Procedures for Dealing With Them. No

false drug identifications are acceptable for any drugs for which a laboratory offers service. Under some circumstances a false positive test may result in suspension or revocation of certification. The most serious false positives are by drug class, such as reporting THC in a blank specimen or reporting cocaine in a specimen known to contain only opiates.

Misidentifications within a class (e.g., codeine for morphine) are also false positives which are unacceptable in an appropriately controlled laboratory, but they are clearly less serious errors than misidentification of a class. The following procedures shall be followed when dealing with a false positive:

(i) The agency detecting a false positive error shall immediately notify the laboratory and the Secretary of any such error.

(ii) The laboratory shall provide the Secretary with a written explanation of the reasons for the error within 5 working days. If required by paragraph (b)(1)(v) below, this explanation shall include the submission of all quality control data from the batch of specimens that included the false positive specimen.

(iii) The Secretary shall review the laboratory's explanation within 5 working days and decide what further action, if any, to take.

(iv) If the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary may direct the laboratory to take corrective action to minimize the occurrence of the particular error in the future and, if there is reason to believe the error could have been systematic, may require the laboratory to review and reanalyze previously run specimens.

(v) If the error is determined to be technical or methodological error, the laboratory shall submit to the Secretary all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive by the laboratory from the time to final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for the day-to-day management of the laboratory's urine drug testing. Depending on the type of error which caused the false positive, this retesting may be limited to one analyte or may include any drugs a laboratory certified under these Guidelines must be prepared to assay. The laboratory shall immediately notify the agency if any result on a retest sample must be corrected because the criteria for a positive are not satisfied. The Secretary may suspend or revoke the laboratory's

certification for all drugs or for only the drug or drug class in which the error occurred. However, if the case is one of a less serious error for which effective corrections have already been made, thus reasonably assuring that the error will not occur again, the Secretary may decide to take no further action.

(vi) During the time required to resolve the error, the laboratory shall remain certified but shall have a designation indicating that a false positive result is pending resolution. If the Secretary determines that the laboratory's certification must be suspended or revoked, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or any recertification process is complete.

(2) *Requirement to Identify and Confirm 90 Percent of Total Drug Challenges.* In order to remain certified, laboratories must successfully complete six cycles of performance testing per year. Failure of a certified laboratory to maintain a grade of 90 percent on any required performance test cycle, i.e., to identify 90 percent of the total drug challenges and to correctly confirm 90 percent of the total drug challenges, may result in suspension or revocation of certification.

(3) *Requirement to Quantitate 80 Percent of Total Drug Challenges at ± 20 Percent or ± 2 standard deviations.* Quantitative values obtained by a certified laboratory for at least 80 percent of the total drug challenges must be ± 20 percent or ± 2 standard deviations of the calculated reference group mean (whichever is larger).

(4) *Requirement to Quantitate within 50 Percent of Calculated Reference Group Mean.* No quantitative values obtained by a certified laboratory may differ by more than 50 percent from the calculated reference group mean.

(5) *Requirement to Successfully Detect and Quantitate 50 Percent of the Total Drug Challenges for Any Individual Drug.* For any individual drug, a certified laboratory must successfully detect and quantitate in accordance with paragraphs (b)(2), (b)(3), and (b)(4) of this section at least 50 percent of the total drug challenges.

(6) *Procedures When Requirements in Paragraphs (b)(2)-(b)(5) of this Section Are Not Met.* If a certified laboratory fails to maintain a grade of 90 percent per test cycle after initial certification as required by paragraph (b)(2) of this section or if it fails to successfully quantitate results as required by paragraphs (b)(3), (b)(4), or (b)(5) of this section, the laboratory shall be immediately informed that its performance fell under the 90 percent level or that it failed to successfully quantitate test results and how it failed

to successfully quantitate. The laboratory shall be allowed 5 working days in which to provide any explanation for its unsuccessful performance, including administrative error or methodological error, and evidence that the source of the poor performance has been corrected. The Secretary may revoke or suspend the laboratory's certification or take no further action, depending on the seriousness of the errors and whether there is evidence that the source of the poor performance has been corrected and that current performance meets the requirements for a certified laboratory under these Guidelines. The Secretary may require that additional performance tests be carried out to determine whether the source of the poor performance has been removed. If the Secretary determines to suspend or revoke the laboratory's certification, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or until any recertification process is complete.

(c) *80 Percent of Participating Laboratories Must Detect Drug.* A laboratory's performance shall be evaluated for all samples for which drugs were spiked at concentrations above the specified performance test level unless the overall response from participating laboratories indicates that less than 80 percent of them were able to detect a drug.

(d) *Participation Required.* Failure to participate in a performance test or to participate satisfactorily may result in suspension or revocation of certification.

3.20 Inspections.

Prior to laboratory certification under these Guidelines and at least twice a year after certification, a team of three qualified inspectors, at least two of whom have been trained as laboratory inspectors, shall conduct an on-site inspection of laboratory premises. Inspections shall document the overall quality of the laboratory setting for the purposes of certification to conduct urine drug testing. Inspection reports may also contain recommendations to the laboratory to correct deficiencies noted during the inspection.

3.21 Results of Inadequate Performance.

Failure of a laboratory to comply with any aspect of these Guidelines may lead to revocation or suspension of certification as provided in 3.13 and 3.14 of these Guidelines.

DRUG FACT SHEETS

CANNABIS (Marijuana)

Effects

All forms of cannabis have negative physical and mental effects. Several regularly observed physical effects of cannabis are increase in heart rate, bloodshot eyes, dry mouth and throat, and hunger.

Use of cannabis may impair or reduce short-term memory and comprehension, alter sense of time, and reduce ability to perform tasks requiring concentration and coordination, such as driving a car. Research shows that knowledge retention may be lower when information is given while the person is "high." Motivation and cognition are altered, making the acquisition of new information difficult. Marijuana can also produce paranoia and psychosis.

Because users often inhale the unfiltered smoke deeply and then hold it in their lungs as long as possible, marijuana is damaging to the lungs and respiratory system. The tar in marijuana smoke is highly irritating and carcinogenic. Long-term users may develop psychological dependence and tolerance.

Type What is it called? What does it look like? How is it used?

Marijuana	Pot Grass Weed Reefer Dope Mary Jane Acapulco Gold	Dried parsley mixed with stems that may include seeds	Eaten Smoked
Tetrahydro- cannabinol	THC	Soft gelatin capsules	Taken orally Smoked
Hashish	Hash	Brown or black cakes or balls	Eaten Smoked
Hashish oil	Hash oil	Concentrated syrupy liquid varying in color from clear to black	Smoked—mixed with tobacco

Source: U.S. Dept. of Labor

INHALANTS

Effects

A variety of psychoactive substances have been inhaled as gases or volatile liquids. Many popular commercial preparations such as paint thinners and cleaning fluids are mixtures of volatile substances making it difficult to be specific about their various effects. There is no single "Inhalant Syndrome."

Immediate negative effects of inhalants may include nausea, sneezing, coughing, nose bleeds, fatigue, lack of coordination, and loss of appetite. Solvents and aerosol sprays may also decrease the heart and respiratory rates and impair judgement. Amyl and butyl nitrite cause rapid pulse, headaches, and involuntary passing of urine and feces. Long term use may result in hepatitis or brain damage.

Long-term use can cause weight loss, fatigue, electrolyte imbalance, and muscle weakness. Repeated sniffing of concentrated vapors over time can lead to permanent damage of the nervous system.

Type What is it called? What does it look like? How is it used?

Nitrous Oxide	Laughing gas Whippets Buzz bomb	Propellant for whipped cream in aerosol can Small 8-gram metal cylinder sold with a balloon or pipe	Vapors inhaled
Amyl-Nitrite	Poppers Snappers	Clear yellowish liquid in ampules	Vapors inhaled
Butyl-Nitrite	Rush Bolt Locker room Bullet Climax	Packaged in small bottles	Vapors inhaled
Chloro-hydro-carbons	Aerosol sprays	Aerosol paint cans Containers of cleaning fluid	Vapors inhaled
Hydro-carbons	Solvents	Cans of aerosol propellants, gasoline, glue, paint thinner	Vapors inhaled

COCAINE

Effects

Cocaine stimulates the central nervous system. Its immediate effects include dilated pupils, elevated blood pressure, increased heart rate, and elevated body temperature. Occasional use can cause stuffy or runny nose. Chronic use can cause ulceration of the mucous membrane in the nose. Injecting cocaine with unsterile equipment can transmit AIDS, hepatitis, and other infections. Preparation of freebase, which involves the use of highly volatile solvents, can result in fire or explosion. Cocaine can produce psychological dependency, a feeling that the user cannot function without the drug.

Crack or freebase rock, a concentrated form of cocaine, is extremely potent. Its effects are felt within ten seconds of administration. Physical effects include dilated pupils, increased pulse rate, elevated blood pressure, insomnia, loss of appetite, tactile hallucinations, paranoia, and seizures.

Cocaine use may lead to death through disruption of the brain's control of heart and respiration.

Type	What is it called? What does it look like? How is it used?		
Cocaine	Coke	White crystalline powder, often diluted with other ingredients	Inhaled through the nose
	Snow		
	Flake		Injected
	White		Smoked
	Nose Candy		
	Big C		
	Snow Bird		
Lady			
Crack or-cocaine	Crack	Light brown or beige pellets-or crystalline rocks that resemble coagulated soap; often packaged in small vials	Smoked
	Freebase rocks		
	Rock		

OTHER STIMULANTS

Effects

Stimulants can cause increased heart and respiratory rates, elevated blood pressure, dilated pupils, and decreased appetite. In addition, users may perspire, experience headache, blurred vision, dizziness, sleeplessness, and anxiety. Extremely high doses can cause rapid or irregular heartbeat, tremors, loss of coordination, and even physical collapse. An amphetamine injection creates a sudden increase in blood pressure that can result in stroke, very high fever, or heart failure.

In addition to the physical effects, users report feeling restless, anxious, and moody. Higher doses intensify the effects. Persons who use large amounts of amphetamines over a long period of time can develop an amphetamine psychosis that includes hallucinations, delusions, and paranoia. These symptoms usually disappear when drug use ceases.

Type	What is it called? What does it look like? How is it used?		
Amphetamines	Speed	Capsules	Taken orally
	Uppers	Pills	Injected
	Ups	Tablets	Inhaled through the nose
	Black Beauties		
	Pep Pills		
	Copilots		
	Hearts		
	Benzedrine		
	Dexadrine		
	Biphphetamine		
Methamphetamines	Crank	White powder	Taken orally
	Crystal Meth	Pills	Injected
	Methedrine	Resembles a block of paraffin	Inhaled through the nose
	Speed		
Additional Stimulants	Ritalin	Pills	Taken orally
	Cylert	Capsules	Injected
	Preludin	Tablets	
	Didrex		
	Pre-State		
	Voramil		
	Tenuate		
	Tepanil		
	Pondimin		
	Sandrex		
Plegine			

DEPRESSANTS

Effects

The effects of depressants are similar to those of alcohol in many ways. Small amounts can produce calmness and relaxed muscles, but larger doses can cause slurred speech, staggering gait, and altered perception. Very large doses can cause respiratory depression, coma, and death. The combination of depressants and alcohol can increase the effects of the drugs, thereby multiplying the risks.

The use of depressants can cause both physical and psychological dependence. Regular use over time may result in tolerance to the drug, leading the user to increase the quantity consumed. When regular users stop taking depressant drugs, they may develop withdrawal symptoms ranging from restlessness, insomnia and anxiety to convulsions and death.

Babies born to mothers who abuse depressants during pregnancy may be physically dependent on the drugs and show withdrawal symptoms shortly after they are born. Birth defects and behavioral problems have been associated with these children.

Type	What is it called? What does it look like? How is it used?		
Barbiturates	Downers	Capsules of many colors: Red, yellow, blue, or red and blue	Taken orally
	Barbs		
	Blue devils		
	Red devils		
	Yellow Jacket		
	Yellows		
	Nembutal		
	Seconal		
	Amytal		
	Tuinal		
Metha-qualone	Quaaludes	Tablets	Taken orally
	Ludes		
	Sopors		
Tranquilizers	Valium	Capsules	Taken orally
	Librium		
	Equanil		
	Miltown		
	Serax		
Tranxene			

Type	What is it called? What does it look like? How is it used?		
Barbiturates	Downers	Capsules of many colors: Red, yellow, blue, or red and blue	Taken orally
	Barbs		
	Blue devils		
	Red devils		
	Yellow Jacket		
	Yellows		
	Nembutal		
	Seconal		
	Amytal		
	Tuinal		
Metha-qualone	Quaaludes	Tablets	Taken orally
	Ludes		
	Sopors		
Tranquilizers	Valium	Capsules	Taken orally
	Librium		
	Equanil		
	Miltown		
	Serax		
Tranxene			

HALLUCINOGENS

Effects

Phencyclidine (PCP) produces behavioral alterations that are multiple and dramatic. Because the drug blocks pain receptors, violent PCP episodes may result in self-inflicted injuries. The effects of PCP vary, but users generally report a sense of distance and space estrangement. Time and body movement are slowed. Muscular coordination worsens and senses are dulled. Speech is blocked and incoherent.

Chronic users of PCP report persistent memory problems and speech difficulties. Mood disorders - depression, anxiety, and violent behavior - also occur. In later stages, chronic users often exhibit paranoid and violent behavior and experience hallucinations. Large doses of PCP may produce convulsions, coma, heart and lung failure, or ruptured blood vessels in the brain.

Lysergic acid (LSD), mescaline, and psilocybin cause illusions and hallucinations. The physical effects may include dizziness, weakness, tremor, nausea, and drowsiness.

Sensations and feelings may change rapidly. It is common to have a bad psychological reaction to LSD, mescaline, and psilocybin. The user may experience panic, confusion, suspicion, anxiety, and loss of control. Delayed effects, or flashbacks, can occur even after the use has ceased.

Type	What is it called?	What does it look like?	How is it used?
Phencyclidine	PCP	Liquid	Taken orally
	Angel dust	Capsules	Injected
	Loveboat	White crystalline powder	Smoked - can be sprayed on
	Hog	Pills	cigarettes,
	Killer weed		parsley, and marijuana
Lysergic Acid diethylamide	LSD	Brightly colored tablets	Taken orally
	Acid	Impregnated blotter paper	Licked off paper
	Green or red dragon	Thin squares of gelatin	Eaten
	White lightning	Clear liquid	Gelatin and liquid can be
	Blue heaven		put in eyes
	Sugar cubes		
Mescaline & Peyote	Mesc	Hard brown discs	Chewed,
	Buttons	Tablets	swallowed,
	Cactus	Capsules	smoked
Psilocybin	Magic mushrooms	Fresh or dried mushrooms	Taken orally

NARCOTICS

Effects

Narcotics initially produce a feeling of euphoria followed by drowsiness, nausea, and vomiting. Users may experience constricted pupils, watery eyes, and itching. An overdose may produce slow and shallow breathing, clammy skin, convulsions, coma, and death.

Tolerance to narcotics develops rapidly and dependence is likely. The use of unsterilized syringes may result in transmission of diseases such as AIDS, endocarditis, and hepatitis. Addiction in pregnant women can lead to premature, stillborn, or addicted infants.

Type What is it called? What does it look like? How is it used?

Heroin	Smack	Powder, white to dark	Injected
	Horse	brown	Inhaled through
	Brown sugar	Tar-like substance	the nose
	Junk		Smoked
	Mud Big H		
Methadone	Dolophine	Solution	Taken orally
	Methadose		Injected
	Amidone		
Codeine	Empirin	Tablets	Taken orally
	compound with codeine	Capsules	Injected
	Tylenol with co- deine	Dark liquid varying in thickness	
	Codeine in cough medicines		
Morphine	Pectoral syrup	White crystals	Injected
		Hypodermic tablets	Taken orally
		Solutions	Smoked
Meperidine	Pethidine	White powder	Taken orally
	Demerol	Solution	Injected
	Mepergan	Tablets	
Opium	Paregoric	Dark brown chunks	Smoked
	Dover's Powder	Powder	Taken orally
Other Narcotics	Percocet	Tablets	Taken orally
	Pecodan	Capsules	Injected
	Tussionex	Liquid	
	Fentanyl		
	Darvon		
	Talwin Lomotil		

DESIGNER DRUGS

Effects

Illegal drugs are defined in terms of their chemical formulas. To circumvent these legal restrictions, underground chemists modify the molecular structure of certain illegal drugs to produce analogs known as designer drugs. These drugs can be hundreds of times stronger than the drugs that they are designed to imitate.

The narcotic analogs can cause symptoms such as those seen in Parkinson's disease - uncontrollable tremors, drooling, impaired speech, paralysis, and irreversible brain damage. Analogs of amphetamines and methamphetamines cause nausea, blurred vision, chills or perspiration, and faintness. Psychological effects include anxiety, depression, and paranoia. As little as one dose can cause brain damage. The analogs of phencyclidine cause illusions, hallucinations, and impaired perception.

Type What is it called? What does it look like? How is it used?

Analogs of Fentanyl (Narcotic)	Synthetic heroin China white	White powder resembling heroin	Inhaled through nose Injected
Analogs of Meperidine (Narcotic)	Synthetic heroin MPTP (New heroin) MPPP PEPAP	White powder	Inhaled through nose Injected
Analogs of Amphetamines & Methamphetamines (Hallucinogens)	MDMA (Ecstasy, XTC, Adam, Essence) MDM STP PMA 2,5-DMA TMA DOM DOB	White powder Tablets Capsules	Taken orally Injected Inhaled through nose
Analogs of Phencyclidine (Hallucinogens)	PCPy PCE TCP	White powder	Taken orally Injected Smoked



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Alcohol, Drug Abuse and
Mental Health Administration
Rockville MD 20857

August 1, 1991

Dear Sir or Madam:

Enclosed is the most recent information on laboratories certified by the National Institute on Drug Abuse (NIDA) of the Department of Health and Human Services (HHS) to perform urine drug testing. These laboratories meet the minimum criteria established in the Mandatory Guidelines for Federal Workplace Drug Testing Programs, Subpart C, published on April 11, 1988 and have been certified by NIDA for HHS.

Also, there are numerous other laboratories at various applicant stages of NIDA's National Laboratory Certification Program (NLCP). It may be anticipated that many of these laboratories will be certified and added to future listings.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

The Federal Register listing will be updated and published on or about the first workday of the month. Please arrange to review future issues of the Federal Register to obtain this information. Should you have any questions regarding the list or the NLCP program, please contact me at (301) 443-6014.

Sincerely,

A handwritten signature in cursive script that reads "Donna M. Bush".

Donna M. Bush, Ph.D.
Chief, Drug Testing Section
Division of Applied Research
National Institute on Drug Abuse

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301)443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12584 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories

meet the minimum standards set forth in the Guidelines:

- Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54076, 808-627-8200
- American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408-727-5525
- American Medical Laboratories, Inc., 11081 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-891-9100
- Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119-5412, 702-733-7666
- Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-563-2787
- Bayshore Clinics Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-677-7016
- Bellin Hospital-Toxicology Laboratory, 2783 Allied Street, Green Bay, WI 54304, 414-496-2487
- Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312-800-8900
- Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617-547-8900
- Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810
- Center for Human Toxicology, 417 Wakara Way, Room 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117
- Columbia Biomedical Laboratory, Inc., 4700 Forest Drive, Suite 200, Columbia, SC 29206, 800-648-4245/803-782-2700
- Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500
- Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-8917
- CompuChem Laboratories, Inc., 3308 Chapel Hill/Neison Hwy., P.O. Box 12852, Research Triangle Park, NC 27709, 919-549-826/800-833-3964
- Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800-365-3840 (name changed; formerly Chem-Bio Corporation; CBC Clinilab)
- Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214-629-0535
- Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006
- Drug Labs of Texas, 15201 J 10 East, Suite 125, Channelview, TX 77530, 713-457-3764
- DrugScan, Inc., P. O. Box 2989, 1119 Mearns Road, Warminster, PA 18874, 215-674-8310
- Eagle Forensic Laboratory, Inc., 950 North Federal Highway, Suite 308, Pompano Beach, FL 33062, 305-646-4324
- Eastern Laboratories, Ltd., 65 Seaview Boulevard, Port Washington, NY 11050, 516-825-8600
- ElSohly Laboratories, Inc., 1215 1/2 Jackson Ave., Oxford, MS 38655, 601-236-2609
- General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-8267
- HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800-225-9414 (outside MI)/800-328-4142 (MI only)
- Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2872
- Laboratory Specialists, Inc., P. O. Box 4350, Woodland Hills, CA 91365, 818-718-0115/800-331-8670 (outside CA)/800-464-7081 (CA only), (name changed; formerly Abused Drug Laboratories)
- Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7901
- Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800-533-1710/507-284-3631
- Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412-931-7200
- MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515
- MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612-636-7466
- Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53228, 414-257-7439
- Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61638, 309-672-4928
- MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708-595-3888
- MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000
- MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191
- National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301-247-9100 (name changed; formerly Maryland Medical Laboratory, Inc.)
- National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800-749-3784 (name changed; formerly Med Arts Lab)
- National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703-742-3100/800-572-3734 (inside VA)/800-338-0391 (outside VA)
- National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A-15, Nashville, TN 37217, 615-380-3992/800-800-4522
- National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103-6710, 919-760-4820/800-334-8627 (outside NC)/800-642-0894 (NC only)
- National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492
- National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805-322-4250
- Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800-446-4728/619-694-5050, (name changed; formerly Nichols Institute)
- Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3381
- Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440-0972, 503-687-2134
- Parke DeWitt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708-480-4680
- Pathlab, Inc., 18 Concord, El Paso, TX 79908, 800-999-7284

Pathology Associates Medical Laboratories.
East 11804 Indiana, Spokane, WA 99206.
509-926-4400

PDLA, Inc., 100 Corporate Court, So.
Plainfield, NJ 07080, 201-789-8500
PharmChem Laboratories, Inc., 1505-A
O'Brien Drive, Menlo Park, CA 94025, 415-
328-8200/800-446-5177

Poisonlab, Inc., 7272 Clairemont Mesa Road,
San Diego, CA 92111, 619-279-2600

Precision Analytical Laboratories, Inc., 13300
Blanco Road, Suite #150, San Antonio, TX
78216, 512-493-3211

Regional Toxicology Services, 15505 NE, 40th
Street, Redmond, WA 98052, 206-882-3400

Roche Biomedical Laboratories, 1801 First
Avenue South, Birmingham, AL 35233, 205-
581-3537

Roche Biomedical Laboratories, 6370 Wilcox
Road, Dublin, OH 43017, 614-889-1061

The certification of this laboratory
(Roche Biomedical Laboratories, Dublin,
OH) is suspended from conducting
confirmatory testing of amphetamines.
The laboratory continues to meet all
requirements for HHS/NIDA
certification for testing urine specimens
for marijuana, cocaine, opiates and
phencyclidine. For more information,
see 55 FR 50589 (Dec. 7, 1990).

Roche Biomedical Laboratories, Inc., 1912
Alexander Drive, P.O. Box 13973, Research
Triangle Park, NC 27709, 919-381-7770

Roche Biomedical Laboratories, Inc., 89 First
Avenue, Raritan, NJ 08869, 800-437-4886

Roche Biomedical Laboratories, Inc., 1120
Stateline Road, Southaven, MS 38671, 601-
342-1286

S.E.D. Medical Laboratories, 500 Walter NE.,
Suite 500, Albuquerque, NM 87102, 505-
848-8000

Sierra Nevada Laboratories, Inc., 888 Willow
Street, Reno, NV 89502, 800-648-5472

SmithKline Beecham Clinical Laboratories,
506 E. State Parkway, Schaumburg, IL
60173, 708-885-2010 (name changed:
formerly International Toxicology
Laboratories)

SmithKline Beecham Clinical Laboratories,
400 Egypt Road, Norristown, PA 19403, 800-
523-5447 (name changed: formerly
SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories,
3175 Presidential Drive, Atlanta, GA 30340,
404-934-9205 (name changed: formerly
SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories,
8000 Sovereign Row, Dallas, TX 75247, 214-
638-1301 (name changed: formerly
SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories,
7600 Tyrone Avenue, Van Nuys, CA 91045,
818-376-2520

South Bend Medical Foundation, Inc., 530
North Lafayette Boulevard, South Bend, IN
46601, 219-234-4176

Southgate Medical Laboratory, Inc., 21100
Southgate Park Boulevard, 2nd Floor,
Maple Heights, OH 44137, 800-338-0180
outside OH/800-382-8913 inside OH

St. Anthony Hospital (Toxicology
Laboratory), P.O. Box 205, 1000 North Lee
Street, Oklahoma City, OK 73102, 405-272-
7052

St. Louis University Forensic Toxicology
Laboratory, 1205 Carr Lane, St. Louis, MO
63104, 314-577-8628

Toxicology & Drug Monitoring Laboratory,
University of Missouri Hospital & Clinics,
301 Business Loop 70 West, Suite 208,
Columbia, MO 65203, 314-882-1273

Toxicology Testing Service, Inc., 5428 NW,
79th Avenue, Miami, FL 33166, 305-593-
2260

Charles R. Schuster,

Director, National Institute on Drug Abuse.

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Model Policy

Effective Date May 1, 1989		Number	
Subject Drug Testing—Sworn Employees			
Reference		Special Instructions	
Distribution		Reevaluation Date April 30, 1990	No. Pages

I. PURPOSE

The purpose of this policy is to provide all sworn employees with notice of the provisions of the department drug-testing program.

II. POLICY

It is the policy of this department that the critical mission of law enforcement justifies maintenance of a drug free work environment through the use of a reasonable employee drug-testing program.

The law enforcement profession has several uniquely compelling interests that justify the use of employee drug-testing. The public has a right to expect that those who are sworn to protect them are at all times both physically and mentally prepared to assume these duties. There is sufficient evidence to conclude that the use of controlled substances, and other forms of drug abuse will seriously impair an employee's physical and mental health, and thus, their job performance.

Where law enforcement officers participate in illegal drug use and drug activity, the integrity of the law enforcement profession, and public confidence in it are destroyed. This confidence is further eroded by the potential for corruption created by drug use.

Therefore, in order to ensure the integrity of the department, and to preserve public trust and confidence in a fit and drug-free law enforcement profession, this department shall implement a drug-testing program to detect prohibited drug use by sworn employees.

III. DEFINITIONS:

- A. *Sworn Employee*—Those employees who have been formally vested with full law enforcement powers and authority.
- B. *Supervisor*—Those sworn employees assigned to a position having day-to-day responsibility for supervising subordinates, or who are responsible for commanding a work element.
- C. *Drug Test*—The compulsory production and submission of urine by an employee in accordance with departmental procedures, for chemical analysis to detect prohibited drug usage.
- D. *Reasonable suspicion*—That quantity of proof or evidence that is more than a hunch, but less than probable cause. Reasonable suspicion must be based on specific, objective facts and any rationally derived in-

ferences from those facts about the conduct of an individual that would lead the reasonable person to suspect that the individual is or has been using drugs while on- or off-duty.

- E. *Probationary Employee*—For the purposes of this policy only, a probationary employee shall be considered to be any person who is conditionally employed with the department as a law enforcement officer.

IV. PROCEDURES/RULES

A. *Prohibited Activity:*

The following rules shall apply to all applicants, probationary and sworn employees, while on and off duty:

1. No employee shall illegally possess any controlled substance.
2. No employee shall ingest any controlled or other dangerous substance, unless as prescribed by a licensed medical practitioner.
 - a. Employees shall notify their immediate supervisor when required to use prescription medicine which they have been informed has the potential to impair job performance. The employee shall advise the supervisor of the known side effects of such medication, and the prescribed period of use.
 - b. Supervisors shall document this information through the use of an internal memorandum and maintain this memorandum in a secured file.
 - c. The employee may be temporarily reassigned to other duties, where appropriate.
3. No employee shall ingest any prescribed or over-the-counter medication in amounts beyond the recommended dosage.
4. Any employee who unintentionally ingests, or is made to ingest a controlled substance shall immediately report the incident to their supervisor so that appropriate medical steps may be taken to ensure the officer's health and safety.
5. Any employee having a reasonable basis to believe that another employee is illegally using, or in possession of any controlled substance shall immediately report the facts and circumstances to their supervisor.
6. Discipline of sworn employees for violation of this policy shall be in accordance with the due process rights provided in the department's discipline and grievance procedures.

B. Applicant Drug-Testing:

1. Applicants for the position of sworn law enforcement officer shall be required to take a drug test as a condition of employment during a pre-employment medical examination.
2. Applicants shall be disqualified from further consideration for employment under the following circumstances:
 - a. Refusal to submit to a required drug-test; or
 - b. A confirmed positive drug-test indicating drug use prohibited by this policy.

C. Probationary Employee Drug-Testing:

1. All probationary employees shall be required as a condition of employment to participate in any unannounced mass/mandatory drug tests scheduled for the probationary period. The frequency and timing of such tests shall be determined by the chief or his/her designee.
2. In addition, where the probationary employee has a past history of drug use, he/she shall be required to submit to random-testing until the probationary period is successfully completed. The frequency and timing of such testing shall be determined by the chief or his/her designee.

D. Employee Drug Testing:

Sworn officers will be required to take drug tests as a condition of continued employment in order to ascertain prohibited drug use, as provided below:

1. A supervisor may order an employee to take a drug test upon documented reasonable suspicion that the employee is or has been using drugs. A summary of the facts supporting the order shall be made available to the employee prior to the actual test.
2. A drug test will be administered as part of any regular physical examination required by this department.
3. All sworn officers shall be uniformly tested during any unannounced, mass/mandatory testing required by the department.
 - a. The chief or his/her designee shall determine the frequency and timing of such tests.
 - b. Testing will be done on a unit by unit basis.
4. A drug test shall be considered as a condition of application to the specialized units within the department, and shall be administered as part of the required physical examination for that position.

E. Drug-Testing Procedures:

1. The testing procedures and safeguards provided in this policy to ensure the integrity of department drug-testing shall be adhered to by any personnel administering drug tests.
2. Personnel authorized to administer drug tests shall require positive identification from each employee to be tested before they enter the testing area.
3. A pre-test interview shall be conducted by testing personnel with each employee in order to ascertain and document the recent use of any prescription or non-prescription drugs, or any indirect exposure to drugs that may result in a false positive test result.
4. The bathroom facility of the testing area shall be private and secure.
 - a. Authorized testing personnel shall search the facility before an employee enters it to produce a urine sample, and document that it is free of any foreign substances.

- b. The employee to be tested shall disrobe before entering the bathroom facility, and be provided a light robe.
 - c. Testing personnel of the same sex as the employee shall observe production of the urine sample.
5. Where the employee appears unable, or unwilling to give a specimen at the time of the test, testing personnel shall document the circumstances on the drug-test report form. The employee shall be permitted no more than eight hours to give a sample, during which time he/she shall remain in the testing area, under observation. Reasonable amounts of water may be given to the employee to encourage urination. Failure to submit a sample shall be considered a refusal to submit to a drug-test.
 6. Employees shall have the right to request that their urine sample be split and stored in case of legal disputes. The urine samples must be provided at the same time, and marked and placed in identical specimen containers by authorized testing personnel. One sample shall be submitted for immediate drug-testing. The other sample shall remain at the facility in frozen storage. This sample shall be made available to the employee or his attorney should the original sample result in a legal dispute or the chain of custody be broken.
 7. Specimen samples shall be sealed, labeled and checked against the identity of the employee to ensure the results match the tested specimen. Samples shall be stored in a secured and refrigerated atmosphere until tested or delivered to the testing lab representative.
 8. Whenever there is a reason to believe that the employee may have altered or substituted the specimen to be provided, a second specimen shall be obtained immediately, under direct observation of the testing personnel.

F. Drug-Testing Methodology:

1. The testing or processing phase shall consist of a two-step procedure:
 - a. Initial screening test, and
 - b. Confirmation test.
2. The urine sample is first tested using the initial drug screening procedure. An initial positive test result will not be considered conclusive; rather, it will be classified as "confirmation pending." Notification of test results to the supervisor or other departmental designee shall be held until the confirmation test results are obtained.
3. A specimen testing positive will undergo an additional confirmatory test. The confirmation procedure shall be technologically different and more sensitive than the initial screening test.
4. The drug screening tests selected shall be capable of identifying marijuana, cocaine, and every major drug of abuse including heroin, amphetamine and barbiturates. Personnel utilized for testing will be certified as qualified to collect urine samples or adequately trained in collection procedures.
5. Concentrations of a drug at or above the following levels shall be considered a positive test result when using the initial immunoassay drug screening test:

	<i>Initial Test Level (ng/ml)</i>
Marijuana metabolite	100
Cocaine metabolite	300
Opiate metabolites	300*
Phencyclidine	25
Amphetamines	1000

* 25ng/ml if immunoassay specific for free morphine.

Concentrations of a drug at or above the following levels shall be considered a positive test result when performing a confirmatory GC/MS test on a urine specimen that tested positive using a technologically different initial screening method:

	<i>Confirmatory Test Level (ng/ml)</i>
Marijuana metabolite	15 (1)
Cocaine metabolite	150 (1)
Opiates:	
Morphine	*300
Codeine	*300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine	500
(1) Delta-9-tetrahydrocannabinol-9-carboxylic acid	
(2) Benzoylcegonine	

6. The laboratory selected to conduct the analysis shall be experienced and capable of quality control, documentation, chain-of-custody, technical expertise, and demonstrated proficiency in urinalysis.

7. Employees having negative drug test results shall receive a memorandum stating that no illegal drugs were found. If the employee requests such, a copy of the letter will be placed in the employee's personnel file.
8. Any employee who breaches the confidentiality of testing information shall be subject to discipline.

G. Chain of Evidence-Storage:

1. Each step in the collecting and processing of the urine specimens shall be documented to establish procedural integrity and the chain of custody.
2. Where a positive result is confirmed, urine specimens shall be maintained in secured, refrigerated storage for an indefinite period.

H. Drug-Test Results:

1. All records pertaining to department required drug tests shall remain confidential, and shall not be provided to other employers or agencies without the written permission of the person whose records are sought.
2. Drug test results and records shall be stored and retained in compliance with state law, or for an indefinite period in a secured area where there is no applicable state law.

BY ORDER OF

CHIEF OF POLICE

This model Drug-Testing policy was developed under the auspices of the Advisory Board to the LACP/BJA National Law Enforcement Policy Center.

This model policy is intended to serve as a guide for the police executive who is interested in formulating a written procedure to govern drug-testing. The police executive is advised to refer to all federal, state and municipal statutes ordinances, regulations, and judicial and administrative decisions to ensure that the policy he or she seeks to implement meets the unique needs of the jurisdiction.



IACP/BJA National Law Enforcement Policy Center



Model Drug-Testing Policy

Concepts and Issues Paper

May 1, 1989

I. PURPOSE OF DOCUMENT

Just as law enforcement has been the vanguard in the war on drugs, so must the law enforcement community now take a leadership role on the issue of the drug testing of its own members. No other group can better balance its employees' privacy rights against the unique and compelling interests of the law enforcement profession to determine the precise and proper scope of officer drug testing.

The goal of law enforcement drug testing must be to send a message that *any* drug use by officers, at any time, is unacceptable, and that each agency is prepared to enforce that philosophy by utilizing drug-testing technology to the fullest extent. Half measures are inadequate when the stakes are raised by the potentially corrupting influence of drugs on law enforcement.

The purpose, then, of the National Law Enforcement Policy Center Model Drug-Testing Policy is to take a leadership stance in the formulation of the proper scope of this employment practice for law enforcement officers.

The Law Enforcement Drug-Testing Concepts and Issues Paper was developed to accompany the Model Drug-Testing Policy promulgated by the IACP/BJA National Law Enforcement Policy Center. This document provides basic background information on drug testing, and identifies and discusses relevant issues, in order to aid each law enforcement executive in rendering appropriate decisions for this critical policy.

II. BACKGROUND

In the early 1980s, employee drug testing seemingly burst onto the scene, fast becoming one of the most controversial employment practices of the decade. The controversy stemmed not from the newness of this practice, but from its increased use, and adoption by employers that had not previously utilized drug testing as a means of screening employees.

The cause of this surge in employee drug testing can be directly traced to the dramatic increase in drug use in American society. It has been estimated that approximately 25 million people regularly use drugs. Employee drug use, in turn, costs employers an estimated \$33 billion per year in lost wages and

productivity. In order to counter this loss, employers turned to drug testing as a means of screening out high-risk job applicants and employees.

It is an unfortunate fact that the law enforcement profession has not remained immune to the drug problem. Indeed, the profession has been hit twice—by officer drug use and drug corruption.

No statistics are available as to how many law enforcement officers use controlled substances, or have become entangled in drug corruption. While many police executives argue that those officers using drugs represent a discrete minority, many argue that law enforcement is but a microcosm of society. Thus, the number of officers using drugs would mirror the high drug use in society as a whole. Some state that a higher than average number of officers use drugs, due to the increased contact with drugs inherent in police work. Whatever the number is, the eradication of drug use within the law enforcement profession is compelling and necessary for the protection of the public.

A. Explanation of Terminology

A preliminary explanation of several legal terms is necessary to enhance full comprehension of some of the language used by the courts and throughout this paper.

In determining whether a given drug test is an illegal search or not, the courts weigh the department's interests or justifications for conducting the drug test against the employee's right of privacy and the amount of intrusion on this right the drug test will present. While the department may have many such interests that it hopes to serve by conducting drug tests, not all such interests are "valid." A "valid interest" represents a judicial determination that the asserted interest is a reasonable and permissible one for the department to attempt to fulfill by means of drug testing. Those interests currently deemed valid for purposes of justifying police drug testing are discussed in the next section.

In addition, courts assign a symbolic weight to these interests by referring to them as "important," "significant," or "compelling" interests. A compelling interest signifies the highest qualitative weight used by courts.

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is also assigned an extremely high weight, due to its status as one of the fundamental rights guaranteed by the Constitution. The diminished expectation of privacy held by public employees somewhat lessens this weight. The ultimate goal in gaining judicial acceptance of a drug test is for the department's interests to outweigh the employee's interests.

Law enforcement executives deciding to implement a drug-testing program need to become familiar with these terms. Should the plan be challenged in court, the law enforcement agency bears the burden of justifying its use of drug testing. While courts are aware that legal phrases are not terms of common usage, the law enforcement executive will want to communicate his concerns in the manner that will gain the fullest impact. Stating that "we've got some pretty good reasons for drug-testing" will not convey the proper significance to the court. By contrast, stating that "we have several valid, and what we think are compelling interests that support departmental drug testing" immediately communicates to the judge that critical information is about to be imparted, that the department views these interests as crucial to the law enforcement mission, and that the speaker has a professional attitude toward drug testing and has taken some time to research it. While the judge will ultimately determine whether an interest is compelling, how the department characterizes its justifications can often play a large part in that determination.

B. Making a Decision to Implement a Drug-Testing Program

The law enforcement profession has several valid and compelling reasons that justify use of a strong employee drug-testing program. The most urgent concern is the threat to public safety and the destruction of the public trust that are posed by officer drug use. Drug use has been shown to adversely affect the physical senses and thought processes. The officer with impaired senses and decision-making skills presents a threat of unjustified shootings, or other misuses of force, and increased vehicular accidents. The public has a right to expect that its law enforcement personnel are both physically and mentally fit to assume their duties, and drug testing serves this expectation.

Public trust and confidence in the integrity of the law enforcement profession is threatened by officer drug use. The public expects officers to enforce the law in a fair and impartial manner. The specter of police involvement in drug corruption and illegal drug use has cast a shadow on this expectation.

The law enforcement profession has compelling internal reasons to diminish officer drug use through the practice of drug testing. The safety of each officer is threatened by the drug-impaired state of a fellow officer. Each department has a duty to protect its employees from such dangers. In addition, each department has the right to take necessary measures to protect the internal discipline and esprit de corps vital to carrying out the law enforcement mission. Just as public trust is eroded by officer drug use, so too is each officer's pride in his profession.

Finally, officer drug use impacts potential departmental civil liability, a matter of vital concern. Each

forestall litigation based on the negligent actions of a drug-impaired officer.

C. Pre-Drug Test Planning

1. Documentation of Drug Environment. The law enforcement executive considering implementation of drug testing for his agency is advised to do strategic planning well in advance of the actual implementation of drug testing.

The most important step is an analysis of the department itself. The size of a department is not always indicative of how much drug use occurs among officers. As drug use over the general population has expanded, small towns have increasingly found themselves in the middle of a drug problem. Shifting drug-dealing and drug shipment patterns have also affected previously "safe" areas such as the Midwest. For example, the increased use of drug dogs at airports on the traditional Miami to New York City drug shipment routes has forced drug dealers to find alternate routes and modes of transportation. This has led to the increased presence of drugs in areas where no airport drug dogs are used, or the law enforcement presence and alertness to drug dealing is *perceived* by dealers as minimal.

As drug dealers search for bigger profits, the natural response has been to increase the market area. Increased drug demand is also symptomatic in areas of high unemployment, notably in industrial towns hit by the closing of an automobile or other major factory.

The reasons for both drug use and the increase in drug use are so many and confusing that it is entirely consistent to hear of small or medium-sized law enforcement agencies with serious drug problems. Thus, each agency should take a serious look at the environment within which it operates. A written analysis of these external influences should be prepared as a foundation to the drug-testing program. Should the departmental drug-testing program be challenged, this analysis may be able to be used in court as evidence to support the dimensions of the potential drug problems within the agency.

A written analysis of potential employee drug use should also be prepared, based on those officers already exhibiting a problem or a potential drug problem. Courts have determined that there must be a demonstrable reason for drug testing. Written documentation of existing drug use is compelling evidence. Documentation of officer involvement in drug dealing, bribery, or other forms of drug corruption may also be used. The department need not show that a majority of the work force is involved in drug activity to justify drug testing of employees. However, more intrusive types of drug testing, such as random testing, would require a significant demonstration of employee drug use.

2. Consultation. The law enforcement executive should consult with various professional groups before implementing drug testing. Extensive legal assistance will be necessary from the beginning stages. A preliminary analysis of the permissible types of drug testing in the jurisdiction should be conducted before rendering the decision on who will be tested and when. The final written policy should be analyzed to ensure all legal requirements have been met, and that the policy is clear. Legal information should be shared with the officers,

although it may be readily available through the local union. However, department-provided information helps neutralize any negative feelings from the officers concerning management-initiated drug testing.

Medical personnel should be consulted for a full explanation of the various drug tests available and their capabilities. No existing drug test is infallible, although DNA testing appears to be highly accurate. The department should determine which drugs will be tested for, and which tests will best serve their specific need.

Finally, the department should work closely with any collective bargaining units of the employees to be tested. Several cases have held that drug testing may be a mandatory subject of bargaining.¹ While labor organizations have initiated much of the current litigation concerning police drug testing, the focus has generally been to ensure that the tests are fair and not an attempt to prohibit the drug-testing program. Thus, cooperation of all involved collective bargaining units in formulating department drug-testing provisions can ultimately gain vital employee acceptance of the program.

III. PRELIMINARY LEGAL ANALYSIS OF POLICE DRUG TESTING

The sudden profusion of compulsory employee drug testing caught lawyers as much by surprise as the tested employees. No clear body of case law existed to easily accommodate the sudden onslaught of drug-testing cases.

To date, the Supreme Court has not issued a decision on the legality of employee drug testing. However, several cases are currently docketed for decision or consideration over the next two years.² The drug-testing case law which does exist has, for the most part, developed region by region at the federal court level. While *some* measure of uniformity can be gleaned from these decisions, each federal district's decisions are only binding on that district. Thus, until the Supreme Court decides these cases, certain methods of drug testing may be permissible in one state, but not in another state. The law enforcement executive contemplating implementation of a drug-testing program is advised to consult local legal counsel to determine the specific decisions on drug testing for his jurisdiction.

Police drug-testing programs have been challenged on various legal grounds. To date, the most successful challenges have derived from Fourth Amendment and Fourteenth Amendment due process and equal protection analyses. A brief explanation of these legal theories is necessary to familiarize the executive with those legal standards that must be met before initiating a drug-testing program. A more detailed analysis of the validity of certain methods of testing or drug-testing procedures is contained in the appropriate section of this paper.

A. Fourth Amendment Analysis

Fourth Amendment analysis is initially applied to a drug-testing program to determine whether the test itself constitutes an illegal search, or a permissible intrusion on employee privacy rights based on significant governmental interests. The Fourteenth Amendment then ensures that the overall program is implemented in a fair and impartial manner.

The Fourth Amendment prohibits both unreasonable governmental searches and seizures into those areas in

which a person holds a societally recognized expectation.³ Not surprisingly, most courts have held that urine, and the act of urination, are entitled to such a societally recognized expectation of privacy.⁴

However, it is important to note the rationale behind this extension of a right of privacy, as vital employee concerns are implicated. As urine is routinely discharged from the body, some departments have argued that the plain view doctrine bars a drug test from being a search or seizure. However, this argument has failed, as it is felt that people do not expect other people to gather their urine for analysis. In addition, urine contains personal medical information such as evidence of pregnancy, epilepsy, and other medical conditions. It has been established that a person may have a right of privacy in this information and its nondisclosure.⁵ Legally unfettered drug testing would have the potential to allow a random governmental search into areas beyond drug use. The information gained could form the basis for unlawful termination.

The act of urination itself is vested with an expectation of privacy. It has been argued that men do not have this expectation, as they do have the option in public restrooms to urinate in front of other persons.

Aside from the obvious argument that women do not urinate in front of others, and equal protection rights would not allow women to have more privacy rights than men on such a thin social custom, a more sophisticated analysis has prevailed. No one urinating in front of another person expects the other person to watch them, under a compulsion to produce urine.⁶ A sense of fair play requires that urination be given the dignity of privacy rights protection.

Thus, courts have almost unanimously determined that a drug test is a search. And, as the officer is ordered to give a urine specimen or be terminated, a seizure of the urine occurs.⁷

As the Fourth Amendment only prohibits "unreasonable" searches or seizures, all drug-testing programs must be reasonable in order to be permitted. What constitutes a "reasonable" drug test lies at the heart of much controversy.

The parameters for discerning the reasonableness of a search of a public employee's workplace were first addressed by the Supreme Court in *O'Connor v. Ortega*.⁸ While *O'Connor* does not address the issue of drug-testing, it is currently being used in drug testing cases because it is the only applicable Supreme Court pronouncement on public employee searches.

Initially, *O'Connor* establishes that for the purpose of workplace searches, public employees retain some semblance of their Fourth Amendment rights. However, the extent of these rights is dependent upon the context in which they are asserted. Due to the nature of their work, public employees have a diminished expectation of privacy. In order to determine the scope of the privacy right, the governmental interest in conducting the search must be balanced against the intrusiveness of the search. Thus, a case-by-case approach will be used to determine the extent of the privacy right retained and the reasonableness of the search, based on such factors as the type of search to be conducted, the reasons for the search, the workplace environment, and the type of public employment involved.

work-related employee misconduct, *O'Connor* held that for the search to be deemed reasonable, it must have been both reasonable at its inception, and reasonable in scope. This test has been applied to drug tests of police officers, where conducted to detect the prohibited use of drugs.

Essentially, this test requires two conditions to be satisfied before approving a drug test as proper under the Fourth Amendment. First, the drug test must be reasonable at its inception. No warrant will be required before the department may order a drug test, as this would place an undue burden on the department. And, while warrantless searches generally require a probable cause foundation, certain limited exceptions to the probable cause requirement have been permitted. As employee searches for work-related misconduct are not ultimately aimed at criminal prosecution, the lesser standard of reasonable suspicion would suffice to support a warrantless search. Application of this crucial part of *O'Connor* is the basis for legal projections that drug testing will only be permitted upon reasonable suspicion by the Supreme Court. However, the case-by-case approach advised by *O'Connor* could prove this projection incorrect.

The *O'Connor* case left open for decision the question of whether reasonable suspicion requires an individualized suspicion that the particular person to be tested is using drugs, or whether a more generalized suspicion about employee drug use will suffice. This current ambiguity lies at the heart of the controversy as to when drug tests may be required.

Second, the *O'Connor* test would require that a drug-test "search" be reasonably executed. The drug test may only be used to search for prohibited controlled substance use, and must be conducted in a reasonable manner.⁹

While courts seem to overuse the word reasonable, and leave little guidance for those who must implement it, the key to drug testing is fairness. The law enforcement profession has especially compelling interests that may ultimately allow them to use drug testing in ways that other employers may not. Where possible, the employee should be extended as much dignity and protection as possible without compromising the test.

B. Due Process Requirements

The Fourteenth Amendment guarantees that no person shall be deprived of his liberty or property interests without due process of law.¹⁰ Law enforcement officers, unlike private sector employees, generally enjoy a property interest in their job. Any actions that will deprive them of their job, through suspension or termination, must comply with due process requirements that ensure that the actions are taken in a fair and evenhanded manner.¹¹

Employees also have a liberty and property interest in their reputations that is also protected by the due process clause. Employees have a right to be free from any unwarranted stigma attached to termination that would hurt their future employment chances.¹²

As applied to police drug-testing programs, due process essentially requires conformity with two principals. First, the drug test and drug-testing

given to the employee that a drug-testing program exists, when tests will be given, and how the test will be implemented. The test may not be administered based on individual discretion, or in an arbitrary and capricious manner.¹³ Second, termination for drug use should remain confidential. The department should not release to future employers, other police agencies, or newspapers information that confirms that the employee was fired for drug use.¹⁴

C. Miscellaneous Legal Challenges

Drug testing has been challenged as a Fifth Amendment violation, as the officer is being forced to produce evidence of his own misconduct. As the Fifth Amendment only applies to oral inculpatory evidence, drug testing is not a Fifth Amendment violation.

Termination for drug testing does not constitute cruel and unusual punishment under the Eighth Amendment. Termination is not considered excessive or unreasonable in light of the offense.¹⁵

Termination of drug addicts does not constitute a violation of the Federal Rehabilitation Act of 1973.¹⁶ While drug addiction is considered a handicap protected by the act, no violation occurs if the addiction substantially impairs the employee's ability to perform their job. The illegality of drug use and the debilitating effect of drugs constitute a substantial impairment of a police officer's ability to perform essential duties. The threat to public safety from drug use also constitutes substantial impairment.

Termination of drug users, but not alcoholics, does not constitute a violation of the Fourteenth Amendment Equal Protective clause, for similar reasons. Drug use is illegal; alcohol use is not.¹⁷

The most potent threat to police departments comes from private citizens. Where a department retains a drug-using officer who harms a citizen due to their drug use, the department can be sued for negligent retention of an employee.¹⁸

IV. MODEL DRUG-TESTING POLICY

A. Framework of Policy

1. *Necessity for Written Policy.* The need for a written policy is especially critical for those departments developing a drug-testing program for officers. The majority of courts deciding drug-testing cases has analyzed the soundness of drug-testing programs based on the amount of information the officer is given concerning department drug-testing procedures.¹⁹ Thus, the agency should develop a written drug-testing policy that will inform employees of all relevant information.

2. *Stated Governmental Interests.* Any policy that regulates an officer's conduct must be related to achieving a valid departmental interest. Where the policy regulates a fundamental right such as privacy, the policy must be more narrowly drawn, and related to achieving a significant, or compelling departmental interest.²⁰

The significant law enforcement interests that justify the use of employee drug testing were discussed earlier in this paper. These interests should be discussed in the written drug-testing policy. This will provide any court perusing the document with a clear picture of

Why the department is justified in generating a drug-testing program.

In addition, where the department explains in the policy why drug testing is important and necessary to the department, the practice itself is more palatable to the collective bargaining unit and the employee. Drug testing is reduced from the status of spying and interfering with the officer's life, to a tool to protect both the officer and the public.

For these reasons, the model policy places a discussion of the departmental interests justifying a drug-testing program in the policy statement. This immediately tells the reader, judge, or officer why this program is necessary, and describes those concerns it is meant to address.

3. Prohibited Activity. Law enforcement executives that favor lean, sparsely written policies and procedures are encouraged to suspend this practice when promulgating a drug-testing policy. As far as the courts are concerned, the more information provided to the officer, the more reasonable the policy. And, details which may seem obvious, and are thus omitted, may take on a startling importance and not be as obvious to courts reviewing the policy.

An excellent example of this is the prohibition against drug use in the model policy. As an officer cannot be terminated for nonprohibited behavior, termination for drug use pursuant to a positive drug test could be held impermissible where the policy manual does not state that drug use is prohibited.

Most departments prohibit drug use in their Rules of Conduct. However, it is important that when establishing a drug-testing policy, this rule is clearly worded to advise the officer of that activity which is prohibited.

For this purpose, the model policy provides clear instruction as to departmental prohibition of drug use. Two specific types of activity are prohibited. First, the model policy prohibits the ingestion of any controlled or other dangerous substance unless upon a doctor's orders. Ingestion covers all forms of introduction of drugs to the body such as *sniffing, injecting, inhaling, oral administration, or the placing of acid onto the eyeball.* Second, the model policy prohibits ingestion of prescription or over-the-counter drugs in amounts beyond the recommended dosage, where this would impair job performance. This section addresses abuse of drugs such as Percodan, cough syrup, decongestants, and tranquilizers. Increased dosages of such drugs can also impair the officer's perceptions and reactions and prove just as addictive as street drugs.

The model policy prohibits these uses of drugs whether the officer is on or off duty. Some departments may choose to prohibit drug use only for on-duty officers. Many courts and labor organizations protest limitations on off-duty conduct as an unacceptable privacy violation. However, the majority of courts have upheld the type of blanket drug use prohibition embodied in the model policy as a reasonable restriction on a police officer's rights of privacy.²¹ In reaching this conclusion, courts have based their decision on the lingering affects of drug use, and the illegal status of controlled substances.

Drug testing is not sophisticated enough to discern the intent with which drugs were used. The drug test

merely reports the presence in certain amounts of the drugs for which it screens. However, the practice of drug testing is only meant to discipline or terminate officers who intentionally use or abuse dangerous substances.

In order to protect innocent employees, the law enforcement executive should include in the written policy the following provisions found in the model policy. First, officers who have been taking prescribed medication that contains a narcotic base such as codeine should report this fact to their supervisor. In case of a subsequent positive drug test, or accusation of drug use, the officer will be protected from termination or suspension.

Another important provision relates to unintentional drug ingestion that can result in a positive drug test. In both the social and work environment, the officer may "passively inhale" drug smoke that could later register as a positive drug test. A narcotics unit officer may be forced ultimately to use a drug in a drug dealer's presence in order to establish credibility. Passive inhalation and unintentional use of a controlled substance should immediately be reported to the supervisor to avoid later misunderstandings.

The department is not looking for, and is not justified in punishing, an officer for these types of unintentional drug activity. Thus, as provided in the model policy, departments seeking to implement drug-testing policies should protect their officers by narrowly crafting the prohibited drug use provisions.

B. Scope of Testing

The amount of notice or information that an officer is provided pertaining to when he will be required to submit to a drug test is a key consideration in the overall determination of the reasonableness of a drug-testing program. Of similar importance, the policy must state who may order that an officer be required to take a drug test.

The model policy permits compulsory urinalysis in a number of clearly defined instances:

1. Applicant Drug Screening. The model policy requires that all applicants for the position of sworn police officer submit to a drug test during a preemployment physical as a condition of employment.

Preemployment drug screening has been approved by the courts as a valid means of ensuring fit, drug-free employees.²² As such, it is a valid condition of employment.

Stringent due process requirements are not generally applicable to applicants rejected on the basis of a positive drug test, or the types of drug tests permitted.²³ The applicant is not an employee of the agency with discernible rights. Submission to the drug test is considered to have been done and accepted on a voluntary basis.

A recent case rejected an argument that drug screening of police applicants disproportionately impacted minority populations.²⁴ Where the test is administered as part of a general preemployment physical administered by the municipal doctor, no doctor-patient confidentiality rights are triggered. The doctor is an employee of the administering entity.²⁵

Preemployment drug screening can be a strategically crucial means of assuring a drug-free work force. While

drug testing is not a perfect means of projecting which employees will use drugs in the future, it remains a powerful tool in detecting possible candidates—those currently using drugs on a regular basis.

An important issue that each agency must initially consider is how much past drug use it will accept in applicants. The Miami Police Department rejects all applicants with a past history of drug use. However, due to widespread drug use by society, many departments are finding it harder and harder to find applicants with no past drug use experience. Thus, some departments accept applicants with a minimal past history. This raises the issue of what is an "acceptable" past history of drug use. A law enforcement executive may want to delimit this based on type of drug used, frequency, and how long ago the drug use occurred. For example, the executive may decide that infrequent marijuana use is an acceptable condition, but infrequent heroin use is not. Once the department delimits acceptable past use standards, this standard must be applied equally to all applicants.

2. Probationary Employee Testing. Given the costs involved in drug testing, smaller agencies may wish to limit testing to the applicant stage. This plan has a potential drawback. It has been argued that an applicant can beat a drug test by refraining from use of drugs for a specified period before the test. As the goal of applicant screening is to eliminate persons with drug problems, such subterfuge undermines the process.

In order to prevent this potential subterfuge, the model policy additionally permits mandatory testing of all probationary employees throughout the probationary period prescribed by the department. Mandatory or mass testing requires that all persons be tested an equal number of times in a testing period. This is often accomplished by testing the entire group on one day. The model policy requires that the chief or his designee determine the timing and frequency of the mandatory testing of probationary officers.

Finally, the model policy permits random testing of probationary individuals throughout the probationary stage where the individual has a past history of drug use. This is necessary to ensure that the probationary employee does not continue his habit after becoming a law enforcement officer.

It is important to ascertain the legal status of the recruit or probationary officer under state law or pertinent collective bargaining agreements before using these more legally complex testing methods. Important due process rights may be involved that must be considered in planning the drug test.

3. Reasonable Suspicion. The model policy permits the department to administer a compulsory drug test upon reasonable suspicion that an officer is currently using, or has been using, drugs.

The vast majority of federal courts has clearly held that law enforcement is constitutionally limited to drug testing upon reasonable suspicion.²⁶ While making the choice easier for agencies seeking to implement drug testing, it should be noted that this type of testing is the most difficult to implement. A drug-testing program that requires testing only upon reasonable suspicion may still hold legal pitfalls for agencies in the following areas:

Implementation of general testing may only be done upon reasonable suspicion of drug use. As discussed earlier in this paper, it is unclear whether reasonable suspicion must be founded upon individualized or generalized suspicion. The model policy has chosen to use a definition of reasonable suspicion based on a particularized suspicion. This complies more closely with Fourth Amendment guidelines. However, some departments may choose to incorporate the generalized suspicion for their policy. This choice presents a legal pitfall for departments should the Supreme Court decide this issue in the opposite way than the department may have chosen.

- **What Evidence Constitutes Reasonable Suspicion?** The second danger in reasonable suspicion testing is one familiar to law enforcement—whether the facts that instigated the decision to test an officer amounted to reasonable suspicion. The generally accepted definition of reasonable suspicion, as reflected in the model policy, is "specific and objective facts about the conduct of an individual, and any rational inferences that would cause the reasonable police officer to believe that the individual has been using drugs."

In assessing reasonable suspicion, law enforcement personnel are given great leeway due to their status as trained observers. As police are trained to assess drug use in citizens, their observations concerning drug use by a fellow employee are considered fairly trustworthy.²⁷ However, to ensure validity of the drug-testing program, it is suggested that departments either state in the policy, or circulate to employees, a list of observable characteristics of drug use.

Reasonable suspicion can also be formulated from nonobserved information about the officer suspected of drug use.²⁸ Again, law enforcement is considered to have a tremendous intelligence-gathering and investigational edge over other industries that will allegedly immediately net information about officer drug use. In calculating reasonable suspicion, informants' tips and citizen complaints concerning an officer's drug use or involvement in drug dealing may provide an adequate basis for a drug test.²⁹

Finally, less direct information can be considered in determining reasonable suspicion. Increased absenteeism, use of force incidents, accidents, or disciplinary problems may indicate drug use. Evidence that an officer is clearly living beyond his means may bolster other evidence that the officer may be involved in drug activity.

Aside from eyewitness observation of drug use, each of these factors alone may not be enough to amount to a reasonable suspicion. Where, as in the model policy, an individualized suspicion standard is to be used, a balancing test suggested by courts in several recent decisions may prove useful in instructing employees on reasonable suspicion. This test suggests that before requiring a drug test, the department assess the quality of its reasonable suspicion by weighing (1) the nature of the tip or information; (2) the reliability of the informant or information; (3) the degree of corroboration; and (4) any other facts contributing to the presence, or lack thereof, of reasonable suspicion.³⁰ This analysis may aid employees in separating a mere hunch from the actual proof needed.

● *Incident Testing as Reasonable Suspicion?* Some drug-testing plans, notably those adopting a generalized reasonable suspicion standard, include "incident testing" as a type of testing for reasonable suspicion. Incident testing refers to compulsory testing of an officer after an accident, use of force, or similar critical incident to determine whether it was caused by drug use. The incident alone is considered reasonable suspicion. While incident testing has been strongly upheld in cases concerning the transportation industry, it is unclear at this point whether the case-by-case approach to employee searches discussed in *O'Connor* would support it for police officers. In addition, it is important to note that drug tests can not adequately be used to determine if an accident or use of force can be attributed to drug use. The drug test will show if drugs were used, but it cannot tell when they were used. Thus, an officer with a positive drug test after a critical incident may not have been drug impaired at the time of the incident. The model policy would only permit a drug test here if additional factors tended to prove that the incident was caused by drug use.

● *When Can a Test be Ordered?* It is especially critical to formulate clear procedures for reasonable suspicion testing in order to ensure that employees are not subjected to arbitrary or biased testing. In order to circumvent these problems, the model policy requires that testing may only be initiated upon documented evidence, and at the order of a supervisor. Any employee observing potential drug use characteristics should immediately notify his supervisor. The supervisor should then begin the documentation and investigation process.

Where there are strong indications of current on-the-job drug use, the supervisor may temporarily relieve the employee of his duties and order an immediate drug test. Where evidence of drug use is ambiguous or weak, more investigation and documentation are prudent.

Departments may wish to include more supervisory layers in the reasonable suspicion review process in order to provide better checks and balances. For example, some departments require the chief to give final approval to order a drug test after analysis of the documented suspicion and investigation by several successive supervisors. Another method often used is to only permit employee observations to serve as a basis for a test when corroborated by other employees. This prevents an officer from being tested wrongfully due to a spiteful co-worker.

Procedures detailing when an officer may be tested upon reasonable suspicion must be narrowly crafted in order to eliminate the possibility of arbitrary testing. The department must ensure that testing is not conducted on ambiguous evidence of drug use, a mere hunch, or as a result of personal vendetta, but upon meaningful evidence of drug use.

4. *Physical Exams.* The model policy permits a drug test as part of a regularly scheduled physical examination required by the department.

To date, drug screening during a departmentally required general physical examination has received strong support from those courts examining such practices.³¹ No expectation of privacy can be asserted, as the officer is submitting his body for medical analysis

for any conditions. Thus, the governmental interest in ensuring healthy, fit police officers outweighs any negligible employee interests.

The crucial consideration in determining test validity is whether the physical is truly a regularly scheduled physical exam. The exam cannot be a thinly veiled excuse to do drug testing. There must be a clear connection between the physical exam and the employer's legitimate safety concerns.³² Thus, a provision requiring a six-month checkup by city doctors that only involved urinalysis would probably be prohibited.

Department practices concerning physical examinations vary due to their expense. Some departments require an annual physical, while others base the timing of the required exam on the officers age or upon promotion. For example, officers over 35 may be required to have annual exams, while officers under 35 may only be required to be examined every other year. However, law enforcement has begun to place increased emphasis on fitness and medical exams in order to reduce potential employee cardiorespiratory problems. Thus, drug testing may be conducted during these regularly scheduled physical examinations.

Some departments have required a general physical examination that incidentally requires a drug test, after certain incidents. For example, in *Wrightsell v. City of Chicago*, the court upheld the use of compulsory physical exams that included drug tests: (1) to identify the cause of an officer's illness or incapacitation; or (2) where an officer has excessive sick leave; or (3) where an officer has been ordered to submit to a psychiatric examination; or (4) the officer is returning to work after a 30-day leave of absence due to suspension, to receive extra training, re-employment pursuant to court order, or any other reason. Thus, the focus of the test is on the officer's general health, and is not primarily a broad-based general search to ascertain any prohibited drug use.

Where departments choose to initiate drug testing as part of a physical exam, this should be clearly stated in the policy. The policy should explain the connection between the exam and the department's concern for the officer's general health and fitness.

5. *Specialized Unit Tests.* Finally, the model policy requires a drug test as a condition of application and acceptance to specialized units within the department. This section would apply to such units as the narcotics, organized crime, SWAT, or bomb squad units.

Drug testing of specialized unit members is merited by the inherent nature of these assignments. In units where great technical expertise, split-second timing, and decision-making ability are required, drug use by unit members presents a heightened potential of danger for both the unit members and the public. In narcotics and organized crime units, drug testing may prove especially critical. It has been speculated that the continual exposure to drugs and the drug culture has often led to drug use by narcotics unit members. In addition, these officers are particularly vulnerable to forms of drug corruption by members of organized crime.

Specialized unit litigation generally has focused on narcotics unit testing. For the reasons cited above, the majority of courts have upheld drug tests of all applicants to specialized units, where conducted as a condition of application and acceptance.³³ In addition,

is made on a voluntary basis by the officer. Thus, applicants are deemed to have knowingly and freely consented to be tested.

In order to ensure the continuing integrity of narcotics or other specialized units, some department drug-testing plans have contained a provision requiring random drug tests of all unit members at specified intervals after acceptance in the unit. The case law on random testing of narcotics unit members is particularly unclear.³⁴ The seminal case of *Caruso v. Ward*, which originally produced the spate of cases prohibiting random testing of narcotics unit members as unconstitutional, was recently reversed. Random testing was upheld because unit membership was voluntary, thus the members had a choice to submit to drug testing.³⁵ In addition, applicants were not penalized if they withdrew their application rather than submit to a drug test or random testing.

By contrast, cases prohibiting this type of random testing have stated that testing upon reasonable suspicion, and police observation and intelligence techniques, provide more than adequate means of determining potential unit member drug use, without the intrusiveness.

The Supreme Court will have an opportunity to determine the constitutional parameters of special unit testing this term in *National Treasury Employees Union v. Von Raab*.³⁶ This case concerns the testing of Customs officials applying for positions with increased exposure to drugs. Before implementing random or mandatory testing of specialized unit members then, the law enforcement executive is urged to consult state case law, and watch for the decision of this case.

6. Mass/Mandatory Testing. Finally, the model policy permits mandatory or mass testing of officers. The timing and frequency of such tests should be determined by the chief or his designee.

Mandatory or mass testing requires that all officers undergo a drug test, whether on one specified date or within a certain period of time. The model policy suggests that testing be conducted on a unit-by-unit basis until all officers have been tested. At present, the majority of courts have not permitted this type of testing because it is initiated on no articulable suspicion that any particular officer is involved in prohibited drug activity.³⁷ Instead, it is a far-reaching search to find out just this information. However, some courts have suggested that more intrusive measures such as mandatory testing may be permitted where there is evidence that the drug problem cannot be adequately addressed through such measures as internal investigations, citizen complaints, and employee observation.

As stated in the introduction to this paper, law enforcement executives must play a leadership role in eliminating drugs from the law enforcement profession. Use of mandatory testing is a necessary and effective tool in achieving this goal. It strikes the correct balance between employer and employee rights. Employees have no right to use drugs and endanger others.

Mandatory testing allows the department to quickly ascertain which employees are using drugs. Given the insidious effects of drugs on the law enforcement profession, time is of the essence. Ordinary means of discovering officer drug use have come too late to

prevent corruption and accidents caused by drugs, and cannot be said to have begun to identify all drug users. Thus, use of mandatory testing is advocated as the only means to eliminate officer drug use, while providing consideration for employee rights.

B. Random Testing

The model policy prohibits random drug testing of sworn officers. For the purpose of this paper, a distinction is made between mandatory and random testing, although courts often use the terms interchangeably to denote drug tests conducted without any basis for belief that the person to be tested has used or is using drugs.

Random drug testing, as first discussed in *Shoemaker v. Handel*,³⁸ can take several different forms. Obviously, the person to be tested is chosen at random. However, in a classic random test, no attempt is made to test all officers equally over a specified period. While each officer has an equal chance to be tested at each draw, unless the names of those already tested are withdrawn, officers can be subjected to double testing or no testing. Random drug testing of law enforcement officers has been almost unanimously prohibited by the courts as an unconstitutional search and seizure and a violation of due process.³⁹ As with mandatory tests, random tests are considered a prohibited "general" search because the officer is tested without any actual suspicion of drug use.

As discussed earlier, an important question in drug testing concerns the nature and quality of the suspicious evidence upon which a drug test must be founded. This ambiguity may provide a means to approve random testing at a future date. Several courts ruling against random drug testing of police have noted that they would approve a random testing plan if the department could prove that officer drug use had reached such proportions that testing upon reasonable suspicion and normal police intelligence and investigative techniques to detect officer drug use were no longer a viable option.⁴⁰

Random drug testing has generally been upheld only for heavily regulated industries such as the horse-racing and nuclear power industries.⁴¹ While each police drug-testing case has argued that law enforcement qualifies as a regulated industry due to statutory and internal restrictions, this argument has been rejected in all but one case.⁴²

Due process objections to random testing have focused on the selection procedures. Random choice may permit an official to target for testing an officer who is disliked. It has been held that any approved random test must be set up to eliminate human intervention and prejudices. Thus, where random testing has been permitted, a computer-generated random program has been used to eliminate arbitrary official discretion.

C. Testing Procedures

1. Chain of Custody. The most critical part of the drug test itself is maintenance of a strict chain of custody for the urine specimen. Where it may be shown that a positive drug test could have resulted from human error or tampering or a broken chain of custody, the courts may invalidate any disciplinary action taken as a result of the positive drug test. Thus, urine specimens

should be subject to the same chain of custody procedures as any other piece of evidence. Preservation of the chain of custody should begin before the test itself is administered. The first step is to ensure the reliability of personnel responsible for the administration of the test and the analysis of the specimens. Some departments have the capacity to perform the drug test and analysis in-house. However, the majority of departments hire an outside lab to either conduct both steps, or the analysis only, after department personnel oversee the taking of the specimen.

Careful and thorough training should be given to any departmental personnel involved in administration or analysis of drug tests. Proper chain of custody procedures should be emphasized, as well as confidentiality and compassion.

The model policy requires that the agency choose an experienced and reliable laboratory to conduct analysis of the urine specimen. Given law enforcement budget constraints, the temptation is to choose the lowest bidder for the job, and trust that they are competent. The department should carefully scrutinize the laboratory's procedures for documentation and handling of the specimen, and request references to determine the reliability of the laboratory.

The model policy further protects the integrity of the drug test by requiring that the room in which the specimen is given be searched for foreign substances and documented as secure. Departments should be warned that employees have proven ingenious in creating ways to circumvent drug tests. The sale of "clean" urine has prompted many employers to require that the employee be searched before the specimen is given.

The urine specimen should be given in a private, medical setting. The safest procedure is to have a "dry" room, with no running water available from the sink or toilet. This prevents contamination of the specimen with water. Certain chemicals or dyes may be placed in toilet bowl water to show that a specimen has been tampered with, where it is not practical to use a dry room. The room should have nothing in it where an employee could hide contaminants. For example, an employee could carry contaminating liquid or clean urine in a body cavity and hide it in a waste paper basket, Kleenex box, or other place for use by a fellow employee to be tested at a later time.

Each step of the test should be carefully documented. As required in the model policy, specimen containers should be clearly marked with the employee's identifying number and the date and time the specimen was submitted. The employee giving the urine sample should provide positive identification before giving a sample.

Prior to the test, the employee should be given a questionnaire concerning recent drug use. This asks the employee to list those medications or passive exposures to drugs that may trigger a positive test.

2. Employee Comfort. The model policy requires that the urine specimen be collected in a manner that will not embarrass, demean, or cause physical discomfort to employees.

Most drug-testing policies require that the employee disrobe before entering the bathroom to produce a specimen. This ensures that no items will be carried

in to contaminate the sample. The employee should be provided a light robe to wear into the testing area, and be given a light pat-down search to ensure these items have not been placed in the robe.

Use of witnesses to the act of urination has been upheld by courts as necessary to ensure the integrity of the test. However, the amount of actual visual observation of the act is up to the department. The more demeaning the procedure, the higher the chance it will be held unreasonable. For this purpose, it is suggested that medical personnel be used to monitor the proceedings.

The observer must be of the same sex as the employee. While it is perfectly proper to have the observer watch the urine being discharged, some departments permit the observer to turn their back or avert their eyes in order to permit the employee some privacy. Where the employee has been searched before entering the collection site, and the observer is able to listen for any abnormal sounds that may indicate sample falsification, visual scrutiny may be unnecessary.

Where department personnel will be observing the urine discharge, personal concerns should be taken into account. Where the department has knowledge that certain employees do not like each other, one employee should not be permitted to observe the other while urinating. A supervisor should not be required to submit to observation by one of his employees. Command staff should be given observers of their own rank or the next highest rank.

The employee should be made as comfortable through the entire process as possible. While a natural body function, it is not uncommon for an employee to "freeze up" upon being presented with a specimen cup with orders to fill it. However, it should be noted that such "freezes" may be an attempt to stall, in hopes the test will not be administered. Extra time also provides the employee a better chance that the body will be naturally erasing signs of drug use.

The policy should set a certain period, such as eight hours, in which the urine specimen must be given. The time period should be a reasonable one, as time pressures can worsen the sudden inability to urinate. Consideration should be shown where the observer feels that his presence is probably causing the freeze. Failure to produce a specimen should be considered refusal to submit to the drug test.

3. Sample Splitting. The model policy permits sample splitting, as long as the samples are collected at the same time, and marked immediately. Sample splitting permits the employee to have a urine sample divided and stored for future analysis. In cases where the initial sample is lost or shows a positive result, the employee can challenge the positive result if the split sample remainder shows negative for drug use. It is unclear at this point whether due process absolutely requires that sample splitting be permitted. However, a sense of fairness dictates that the employee be able to use what means are available to defend against a false positive result. As the rest of the sample remains refrigerated, this practice costs the department little.

After a specimen is given, it must be immediately sealed, labeled, and refrigerated until tested. The model policy requires that each step in the collection and processing of the sample be documented in order to

refrigerator. Access to this refrigerator should be limited to those personnel testing the samples, or those who must retrieve samples from it.

D. Screening of Urine Samples

The model policy requires that a urine sample taken as part of a compulsory drug test be subjected to two technologically different drug-screening methods in order to ensure the accuracy of a positive drug-test result. While this may seem to impose an expensive and repetitious burden on the law enforcement agency, this requirement results from the state of drug-screening technology, and can actually prove cost effective in the long run.

There are several types of drug-screening processes currently in use. These processes differ based on cost, accuracy, sensitivity, the way the process detects the presence of drugs, and the types of drugs that can be detected by the process. Not surprisingly, the cheaper screening processes are less accurate, less sensitive, and may not be able to detect the full range of drugs. An agency may wish to screen for in its drug-testing program.

No drug-screening process currently in use is completely accurate in detecting the presence of drugs. While early statistics on drug screening by DNA analysis from body hair have been impressive, this technique has not yet been fully proven.

The most common combination of drug tests are the immunoassay tests, confirmed by the gas chromatography/mass spectrometry (GC/MS) technique. The immunoassay-type tests are cheaper, and fairly reliable, but not reliable enough to be used alone. Thus, many agencies use the immunoassay or radioimmunoassay techniques initially, to isolate only the positive test results. Then, the more expensive and sensitive GC/MS method will only be needed for a few specimens. It is important to use a technologically different and more sophisticated screening method to ensure the accuracy of a positive result, and cross-check the sample.

Drug-screening methods can produce different types of inaccurate results. A "false positive" result means that the test indicated that certain drugs were present, when they actually were not. False positives can be caused by human error, faulty procedures, and the technology itself. In addition, false positives can be created by cross-reactivity. Cross-reactivity occurs when certain non-prescriptive drugs or substances interact to create a positive test result for a drug that is not actually there.

By contrast, "false negatives" report the presence of no drugs, when drugs are actually present. False negatives can occur due to the addition of certain substances to the urine, or where the urine goes stale due to age.

Finally, false negatives may occur due to the cut-off levels of a screening method. Cut-off levels are the concentration of drugs in the urine that will reliably be detected by the drug-screening method. Naturally, the smaller the amount desired to be detected, the lower the reliability factor. Manufacturers usually set cut-off levels for their tests. Thus, if a person has a lower concentration of a drug in their system than the cut-off level, it will register as negative for drug use, although drugs may have actually been used.

currently prescribed by the federal government as an example.⁴³ Each department should carefully study the drug-screening methods available, and determine which drugs they need to test for and the appropriate cut-off levels.

E. Confidentiality

The model policy requires that all records pertaining to an applicant's or employee's drug-test history remain confidential. This applies to pre-test consent forms, interviews containing lists of prescribed drugs used, preliminary test results, and any other written documentation of the drug test.

These documents cover the type of personal employee information that is considered confidential under most state public record laws. In addition, the stigmatizing aura of drug testing, given for any reason, provides a basis for a due process deprivation of reputation suit, should the information be released. Thus, the model policy specifically states that an employee's drug-testing information cannot be passed on to future employers. To enhance this, release of such information is a disciplinable offense.

All drug-testing records should be kept in a separate, secure file area, in order to ensure confidentiality. The records should be retained as required by state law. Access to the records should be strictly limited to those personnel with an absolute need to know.

V. ACCREDITATION STANDARDS

No accreditation standards on drug testing are available at this time.

Endnotes

¹*Railway Labor Executives v. Long Island R. Co.*, 651 F. Supp. 1284 (E.D.N.Y. 1987); *Fraternal Order of Police (Miami Lodge No. 20) v. City of Miami* Case No. CA-85-041, Public Employees Relations Commission, Florida.

²E.g., *Copeland v. Philadelphia Police Department*, No. 88-66; *NTUE v. Von Raab*, No. 86-1879.

³U.S. Const. Amend. IV.

⁴*Lovorn v. City of Chattanooga*, —F.2d—, 3 IER Cases 673 (No. 86-6281, May 23, 1988).

⁵*Feliciano v. City of Cleveland*, 661 F. Supp. 578 (N.D. OH. 1987).

⁶*Id.* at 588.

⁷*Chappelle v. Rice*, —F. Supp.—, 3 IER Cases 1372 (No. 87-C 4494, April 19, 1988).

⁸—U.S.—, 107 S. Ct. 1492 (1987).

⁹*Id.*

¹⁰U.S. Const. Amend. XIV.

¹¹*Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532 (1985).

¹²*Board of Regents v. Roth*, 408 U.S. 564 (1972).

¹³*Capua v. City of Plainfield*, 643 F. Supp. 1507 (D.N.J. 1986).

¹⁴*Copeland v. Philadelphia Police Department*, 840 F. 2d 1139 (2nd Cir. 1988).

¹⁵*Bostic v. McClendon*, 650 F. Supp. 245 (N.D. Ga. 1986).

¹⁶*Copeland*, 840 F. 2d at 1149.

¹⁷*Id.* at 1147.

¹⁸*Cf.*, *Bonsignore v. City of New York*, 521 F. Supp. 394 (S.D. N.Y. 1981).

¹⁹*Capua*, 643 F. Supp. at _____.

²⁰16A McQuillan, *Municipal Corporations*, Sec. 45.07C (3rd ed.).

²¹*City of Palm Bay v. Bauman*, 475 So. 2d 1322 (Fla. Dist. Ct. App. 1983).

²²*Id.* at 1325.

²³*Cardona v. Ward*, 673 F. Supp. 120 (S.D. N.Y. 1987); *Chappelle*, 3 IER Cases at 1375.

²⁴*Shield Ciuo v. City of Cleveland*, 647 F. Supp. 274 (N.D. Oh. 1986) (toxicologist's theory that high concentration of melanin in members of Negro race may invalidate drug tests not proven sufficiently to support adverse impact argument).

²⁵National Institute of Justice, *Police Drug Testing* (May 1987).

²⁶See, e.g., *Turner v. Fraternal Order of Police*, 500 A. 2d 1005 (D.C. App. 1985).

²⁷*Capua*, 643 F. Supp. at _____.

²⁸*Allen v. Passaic County*, 219 N.J. Super. 352 (1986).

²⁹*Lovvorn*, 647 F. Supp. at 883.

³⁰*Copeland*, 840 F. 2d at 1144.

³¹*Wrightsell v. City of Chicago*, 678 F. Supp. 727 (N.D. Ill. 1988).

³²*Id.*

³³*Cf.*, *National Treasury Employees Union v. Von Raab*, 816 F. 2d 170 (5th Cir. 1987), *cert. granted*, 108 S. Ct. 1972 (1988).

³⁴Compare, *Caruso v. Ward*, —N.Y. 2d —, No. 216, Slip op. (Oct. 25, 1988) (random testing of narcotics unit members permissible due to their voluntary transfer to position) with *Fraternal Order of Police v. City of Newark*, 216 N.J. Super. 461

(1987) (reasonable suspicion testing only constitutionally permitted type of test).

³⁵*Caruso v. Ward*, —N.Y. 2d at —.

³⁶Supra at note 33.

³⁷E.g., *Penny v. Kennedy*, —F.2d —, 3 IER Cases 692 (No. 86-6280, May 23 (1988)).

³⁸*Shoemaker*, 795 F. 2d 1136 (3rd Cir. 1986), *cert. den.* —U.S. —, 107 S. Ct. 577.

³⁹*Guiney v. Roache*, —F. Supp. —3 IER Cases 598 (D. Mass., May 18, 1988).

⁴⁰*City of East Point v. Smith*, 258 GA, Ill. 365 S.E. 2d 432 (1988).

⁴¹*Shoemaker*, Supra at note 41.

⁴²*Policemen's Benev. Assn. of N.J. v. Washington Tp.*, 672 F. Supp. 779, *rvsd*, 3 IER Cases 699 (No. 87-5793, June 21, 1988).

⁴³*Mandatory Guidelines for Federal Workplace Drug-Testing Programs*, 53 Fed. Reg. 11970 (April 11, 1988). These guidelines were promulgated pursuant to President Reagan's Executive Order No. 12564, in which he called for a drug-free America.

Drug Detection Periods

Drug	Category	Detection Period*
Amphetamines	Stimulants	
Amphetamine		2-4 days
Methamphetamine		2-4 days
Barbiturates	Sedative Hypnotics	
Amobarbital		2-4 days
Butalbital		2-4 days
Pentobarbital		2-4 days
Phenobarbital		Up to 30 days
Secobarbital		2-4 days
Benzodiazepines	Sedative Hypnotics	
Diazepam (Valium®)		Up to 30 days
Chlordiazepoxide (Librium®)		Up to 30 days
Cocaine	Stimulants	
Benzoyllecgonine		12-72 hours
Cannabinoids (Marijuana)	Euphoriant	
Casual Use		2-7 days
Chronic Use		Up to 30 days
Ethanol	Sedative Hypnotics	Very short†
Methadone	Narcotic Analgesics	2-4 days
Methaqualone (Quaalude®)	Sedative Hypnotics	2-4 days
Opiates	Narcotic Analgesics	
Codeine		2-4 days
Hydromorphone (Dilaudid®)		2-4 days
Morphine (for Heroin)		2-4 days
Phencyclidine (PCP)	Hallucinogens	
Casual Use		2-7 days
Chronic Use		Up to 30 days

* Detection periods vary; rates of metabolism and excretion are different for each drug and user. Detection periods should be viewed as estimates. Cases can always be found to contradict these approximations.

† Detection period depends on amount consumed. Alcohol is excreted at the rate of approximately one ounce per hour.

Source: PharmChem Laboratories

against insurance companies and individuals; conduct regulatory activities; and, conduct background investigations of applicants for insurance licenses. Five investigators assigned to the Financial Analysis Section conduct investigations of insurance licensees who request changes of existing licenses. They also gather intelligence information regarding insurance fraud and monitor the conduct of some licensees.

The Bureau of Fraudulent Claims includes 56 peace officer Fraud Investigator positions which are described in Penal Code Section 830.3(i). These positions are required by law to focus on potential criminal violations of Insurance Code Section 1871.1 which involve fraudulent claims against automobile, workers' compensation, and health insurance.

Insurance Commissioner John Garamendi recently reorganized the Enforcement Division to place both investigative units within one division, responsible to the same division manager. He has articulated an increasingly important role within the Department for investigative and enforcement activities.

METHODOLOGY OF THE STUDY

POST staff interviewed Insurance Commissioner Garamendi, the chief of the Enforcement Branch and the chief of the Enforcement Division, the two bureau managers, and selected supervisors and investigators in the Bureau of Investigation.

Staff visited offices in San Francisco, Los Angeles, and Sacramento. In addition, operating policies and procedures, statistical data, the Department annual report, and case files were reviewed.

ANALYSIS OF STUDY DATA

The review of active cases for investigation for 1991 revealed approximately 5,000 case numbers issued. The case control system in the Bureau of Investigation assigns a case number to each individual and company that is involved in the investigation. A case number, therefore, does not identify a unique, specific investigation. Discussions with the manager of the Bureau of Investigation produced the estimate that the 5,000 case numbers represent approximately 1,250 separate cases opened for investigation.

Using 1,250 cases as a base, staff reviewed 282 (23%) individual active cases, covering a eight month period from June 1991 through February 1992.

- o 46 (16%) of the sample cases were initially classified as including potential criminal violations;

- o 107 (38%) of the sample cases were initially classified as including potential criminal violations with administrative disposition;
- o 128 (45%) of the sample cases were initially classified as non-criminal administrative, regulatory, or background investigations matters;
- o Ten (3.5%) of the sample cases were referred for prosecution;
- o Eight search warrants were issued and served; and,
- o Eight arrest warrants were issued and served.

Approximately 7% (138) of 1,970 cases closed during 1991 were also reviewed. The disposition of those cases approximates the disposition of open cases described above.

The review of investigative cases was complicated because the bureau does not collect case disposition data; does not collect criminal prosecution data related to individual cases; nor, use a case control system that identifies individual cases and the classification and disposition of each.

The case review determined that nearly all of the individuals who are the subject of these investigations are persons directly associated with the insurance industry who do not have a criminal background.

Staff determined that peace officer assistance required by the insurance investigators to serve arrest and search warrants is provided, upon request, by local law enforcement agencies. The peace officer investigators assigned to the Bureau of Fraudulent Claims do not normally assist in investigations outside the bureau.

The interviews, data collection, and case review did not identify any incidents of assault or violent confrontation involving the positions which are the focus of this study.

CONCLUSIONS AND RECOMMENDATION

Conclusion

After the review and analysis of the current and proposed duties and responsibilities, the field law enforcement responsibilities, and workload of the insurance investigator positions which are the focus of this study, staff conclude:

- o the non-peace officer investigators perform functions that are integral to the effective operation of the Department and consistent with the direction of the Commissioner;
- o the current and proposed duties and responsibilities of the insurance investigator positions assigned to the Investigation Bureau do not regularly nor frequently require peace officer authority; and,
- o peace officer positions, described in Penal Code Section 830.3(i), already exist within the Department and are assigned to the Bureau of Fraudulent Claims.

Whenever peace officer authority is required in an investigation assigned to a non-peace officer insurance investigator, that authority and assistance should be available from the existing peace officer positions within the Department.

Accordingly, the designation within the same agency of two different categories of peace officers, with the same powers and authority but somewhat different responsibilities, appears to be unnecessary.

Finally, staff concludes the insurance investigator position should not be designated as a peace officer. If the peace officer authority of the fraud investigator positions within the Department is not available to assist the insurance investigators, an alternative may be considered.

The Department may consider legislative action to add the insurance investigator positions to Penal Code Section 830.11. Section 830.11 grants peace officer authority to arrest, serve search warrants, and receive criminal offender record information to specified positions, with the limited scope of employment, but does not designate those positions as peace officers.

Recommendation

If the Commission concurs, direct the Executive Director to submit the completed feasibility report, including the recommendation, to the Legislature and the California Department of Insurance.

Any necessary and appropriate modifications identified as being outside the scope of the contract will be individually evaluated and costs associated with completing any modifications will be identified. The costs associated with the courseware modifications generally involve programming or graphics generation labor costs. Also, additional sets of courseware at a substantial reduction in costs will be evaluated and may be included in any proposed contract modification.

Many of the suggested modifications have fallen within the scope of the contract work, and have already been changed by the contractor. It is crucial to the integrity of this courseware that anything that is instructionally unsound be corrected, and the courseware result in the Commissions best effort to produce a quality program.

RECOMMENDATION

Approve necessary or appropriate modifications and costs as identified at the March 27, 1992 meeting, to enable the completion of the Law Enforcement Driver Training interactive courseware.

COMMISSION AGENDA ITEM REPORT

Agenda Item Title Field Survey Regarding Fiscal Year 92/93 Expenditures		Meeting Date April 9, 1992
Bureau Standards and Evaluation	Reviewed By	Researched By John Berner <i>[Signature]</i>
Executive Director Approval <i>[Signature]</i>	Date of Approval 3-24-92	Date of Report March 24, 1992
Purpose: <input checked="" type="checkbox"/> Decision Requested <input type="checkbox"/> Information Only <input type="checkbox"/> Status Report		Financial Impact: <input checked="" type="checkbox"/> Yes (See Analysis for details) <input type="checkbox"/> No

In the space provided below, briefly describe the ISSUE, BACKGROUND, ANALYSIS, and RECOMMENDATION. Use additional sheets if required.

ISSUE

Should the Commission conduct a statewide survey to determine the preferences of law enforcement with respect to the expenditure of fiscal year 92/93 POTF revenues?

BACKGROUND

When the Commission acted last November to suspend salary reimbursement, it did so in the hope that the decline in POTF revenues would be temporary. Fiscal year 92/93 POTF revenues are projected to approximate those of 1990/91. Given current uncertainties, it seems prudent to plan for the possibility that actual revenues and may fall far short of this level. In light of these circumstances, it is proposed that a survey be conducted to learn the views of law enforcement concerning the most appropriate use of POTF revenues during fiscal year 92/93.

ANALYSIS

A draft survey questionnaire which has been prepared for this purpose is attached. An earlier draft of the questionnaire was reviewed by the Finance Committee on March 23. The Finance Committee will review the current draft at its scheduled April 8 meeting.

It is proposed that the questionnaire be distributed to three major groups: (1) chief administrators from agencies in the POST reimbursable program, (2) leaders of local rank-and-file associations from the same agencies, and (3) the leaders of various statewide law enforcement associations.

If approved by the Commission, results of the survey will be available for review at the July Commission meeting.

RECOMMENDATION

Authorize staff to conduct the proposed statewide survey to assess the preferences of California law enforcement with regard to the expenditure of fiscal year 1992/93 POTF revenues.

DEPARTMENT OF JUSTICE

DANIEL E. LUNGREN, Attorney General

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING1601 ALHAMBRA BOULEVARD
SACRAMENTO, CA 95816-7083GENERAL INFORMATION
(916) 739-5328EXECUTIVE OFFICE
(916) 739-3864

BUREAUS

Administrative Services
(916) 739-5354*Center for Leadership
Development*
(916) 739-2093*Compliance and Certificates*
(916) 739-5377*Information Services*
(916) 739-5340*Management Counseling*
(916) 739-3868*Standards and Evaluation*
(916) 739-3872*Training Delivery Services*
(916) 739-5394*Training Program Services*
(916) 739-5372*Course Control*
(916) 739-5399*Professional Certificates*
(916) 739-5391*Reimbursements*
(916) 739-5367*Resource Library*
(916) 739-5353

April 13, 1992



Dear:

As you know, recent legislation changed the penalty assessment system and added the State General Fund as a recipient. These changes and other factors have led to a serious shortfall in POST revenues. Earlier this year the POST Commission suspended salary reimbursement to accommodate this shortfall. Even though revenues are still down, some salary money may be available this year because training volumes have dropped off.

POST is now approaching fiscal year 1992/93. The Governor's proposed budget supports a \$42.9 million budget and a \$3.1 million supplement from forfeiture money. However, the budget has not yet been approved by the Legislature, and even if approved as proposed, actual revenues may be less than projected.

If POST is faced with a legislatively reduced budget for the upcoming year, or if revenues fall short of projection, the Commission will need to choose among the following options:

1. Suspend or reduce reimbursement (e.g., salary, travel, per diem, tuition, or some combination thereof); or
2. Suspend or reduce some portion of POST's existing training programs or services ; or
3. Some combination of the two.

The Commission recognizes that law enforcement agencies and organizations are working to encourage legislative support of POST's 1992/93 budget and corrective changes

to the State Penalty Fund. However, to prepare for all contingencies, the Commission needs to begin formulating and considering alternatives now.

Because these decisions will affect all of us, it is important that the Commission know the thoughts of the law enforcement community concerning the most appropriate use of POST revenues during this time of decreasing resources. The enclosed survey questionnaire has been developed for this purpose.

To provide the Commission with the survey results in a timely manner, we ask that you personally complete the questionnaire and return it in the enclosed envelope no later than **Friday, May 1**. Individual responses will be kept confidential.

If you have any questions about the questionnaire, please call the Standards and Evaluation Services Bureau at (916) 739-3872.

Thank you for your assistance.

Sincerely,

NORMAN C. BOEHM
Executive Director

Enclosures

POST 1992 FIELD SURVEY

--	--	--	--	--	--	--	--

Do Not Write In This Space

BACKGROUND INFORMATION

Department: _____

Title/Rank: Chief Sheriff
 Marshal D.A. Chief Investigator
 Captain Lieutenant
 Sergeant Investigator
 Officer Deputy Sheriff
 Deputy Marshal Other (Specify): _____

DRAFT

Time in current position: ___ years ___ months

Experience as a California peace officer: ___ years ___ months

INSTRUCTIONS FOR COMPLETING THE SURVEY

Listed on the following pages are a series of options currently being considered by the Commission in light of the possibility that current POTF revenue shortfalls may continue into the next fiscal year. Please indicate the extent to which you favor or oppose each option by using the rating scale which appears at the top of each page. Record your ratings in the boxes provided. Your responses will be kept confidential.

The enclosed insert describes how POTF funds were distributed in fiscal year 90/91 (the last full year for which figures are available). Reference to this information may prove useful when making your ratings.

Please return your completed questionnaire in the enclosed envelope **no later than Friday, May 1, 1992.**

Thank you for your assistance.

Response Scale				
Strongly Oppose	Oppose	Unsure/No Opinion	Favor	Strongly Favor
1	2	3	4	5

Assuming that the revenue shortfall continues through fiscal year 1992/93, to what extent would you favor or oppose each of the following actions?

Maintaining current reimbursement practices (i.e., making no changes to the reimbursement system, with the amount of salary reimbursement, if any, contingent upon revenues remaining after reimbursement for all other expenses).

Reducing all categories of reimbursement by a like percentage, rather than reducing salary reimbursement rate alone.

Reducing all categories of reimbursement for optional training in order to maximize reimbursement levels for mandated training (i.e., Basic Course, Advanced Officer Course, Supervisory Course, Management Course, and statutory requirements).

Eliminating all categories of reimbursement for optional training in order to maximize reimbursement levels for mandated training

Increasing revenues available for all categories of reimbursement by:

Reducing expenditures for delivery of specific training programs (e.g., Institute of Criminal Investigations, Supervisory Leadership Institute, Command College, satellite training).

Comments: _____

Reducing administrative costs by cutting back on services (e.g., Area Consultant services, selection and training standards development, selection and training testing programs, training development activities, course certification activities, management consulting services, training program evaluation activities).

Comments: _____

Response Scale				
Strongly Oppose 1	Oppose 2	Unsure/No Opinion 3	Favor 4	Strongly Favor 5

Assuming that the revenue shortfall continues through fiscal year 1992/93, to what extent would you favor or oppose increasing salary reimbursement by:¹

Reducing reimbursement for training tuition costs.

Eliminating reimbursement for training tuition costs.

Note: Total FY 90/91 reimbursement for tuition was \$5,641,000²; with approximately 56% going to technical skills and knowledge training; 19% to basic training; 6% to mandated management training; and 19% to other non-mandated training.

Reducing subsistence reimbursement.

Eliminating subsistence reimbursement.

Note: Total FY 90/91 subsistence reimbursement was \$9,138,000; with approximately 58% going to technical skills and knowledge/training; 16% to basic training; 10% to mandated advanced officer, supervisory, and management training; and 16% to other non-mandated training.

Reducing travel reimbursement.

Eliminating travel reimbursement.

Note: Total FY 90/91 reimbursement for travel was \$3,398,000; with approximately 51% going to technical skills and knowledge training; 20% to basic training; 15% to mandated advanced officer, supervisory, and management training; and 14% to other non-mandated training.

Reducing reimbursement for commuter meals.

Eliminating reimbursement for commuter meals.

Note: Total FY 90/91 reimbursement for commuter meals was \$1,383,000, with approximately 60% going to basic training; 20% to technical skills and knowledge training; 19% to mandated advanced officer, supervisory, and management training; and 1% to other non-mandated training.

¹Salary reimbursement is currently provided for mandated courses. Salary reimbursement rate is increased approximately 2% for every additional \$1,000,000 in revenues.

²Includes tuition costs (i.e., presentation costs) paid via training contracts.

Response Scale				
Strongly Oppose	Oppose	Unsure/No Opinion	Favor	Strongly Favor
1	2	3	4	5

Assuming that the revenue shortfall continues through fiscal year 1992/93, to what extent would you favor or oppose increasing salary reimbursement by:

Providing travel and subsistence reimbursement only for training received at the closest available site (i.e., withholding reimbursement when an individual could have attended the same course at a location closer to the individual's agency).

Comments: _____

Reducing the number of POST-certified courses of non-mandated training, thereby reducing the number of training events for which all categories of reimbursement would be available.

Comments: _____

For those persons who are subject to the continuing professional training requirement (i.e., persons below the rank of first-level middle management), placing a limit on the number of hours of training reimbursed each year for attendance at non-mandated courses. (For example, 12 hours each year, consistent with the requirement that all such persons receive at least 24 hours of training every two years.)

Comments: _____

Please describe any fundamental changes you would like to see in the way POTF revenues are allocated to support law enforcement training.

In the space remaining, please describe any specific actions or general directions you believe the Commission should be taking with regard to POST programs and services during the coming years.

Thank you for completing the survey.

Historically, approximately 75% of revenues into the POTF have been used to reimburse local agencies for training, with the remaining 25% of the revenues used to contract directly for the delivery of training (approximately 8%) and for general staff support to administer all POST programs (approximately 17%). During fiscal year 1990/91, the last full year for which figures are available, total reimbursements by reimbursement category were as shown in Table 1 below. Final salary reimbursement rates were 25% for the Basic Course and 35% for all other salary reimbursable courses:

Table 1
Amount and Percent of Total
Reimbursements by Reimbursement Category
(Fiscal Year 1990/91)

Reimbursement Category	Amount Reimbursed	Percent of Total
Salary	\$14,138,000	44%
Residence Subsistence	9,138,000	29%
Tuition	4,236,000	13%
Travel	3,398,000	10%
Commuter Meal Allowance	1,383,000	4%
TOTAL	\$32,293,000	100%

Table 2 shows how the total amount reimbursed was distributed among the major categories of training.

Table 2
Amount and Percent of Total Reimbursements
by Major Training Categories
(Fiscal Year 1990/91)

Training Category	Amount Reimbursed	Percent of Total
Basic Course*	\$12,783,000	40%
Technical Skills & Knowledge Courses	9,939,000	31%
AO Course (Mandated)*	4,621,000	14%
Supervisory Seminars & Courses	1,157,000	3%
Supervisory Course (Mandated)*	1,146,000	3%
Management Seminars & Courses	1,075,000	3%
Management Courses (Mandated)*	567,000	2%
Other Salary Courses	499,000	2%
Executive Development	353,000	1%
Team Building Workshops	241,000	<1%
POST Special Seminars	216,000	<1%
Executive Seminars & Courses	73,000	<1%
Approved Courses	12,000	<1%
Field Management Training	11,000	<1%
TOTAL	\$32,293,000	100%

*Eligible for salary reimbursement

FINANCE COMMITTEE MEETING
April 8, 1992 - 8:00 A.M.
Red Lion Hotel
Sonoma Room
7450 Hazard Center Drive
San Diego, CA 92108
(619) 297-5466

A. CALL TO ORDER

Members of the Committee: Robert Wasserman, Chairman, Commissioners Hunt, Lowenberg, Montenegro, and Rutledge

B. Third Quarter 1991/92 Financial Report

Quarterly financial reports are provided to show the fiscal status of the Commission's reimbursement program. The report summarizes revenue receipts, training volumes, and reimbursement expenditures during the fiscal year. Data contained in the reports are reviewed by the Finance Committee to assess resources available in considering program modifications. Inasmuch as data required to prepare the report is not available until the end of the fiscal quarter, the report will be provided at the meeting.

C. Reinstatement of Salary Reimbursement

To date the training volume, reimbursement, and revenue receipts suggest that sufficient resources may be available to resume some level of salary reimbursement retroactive to November 1, 1991. This possibility was discussed at the March 23 Finance Committee meeting in Orange County. Third quarter revenue and expenditure data contained in the Financial Report and a projection of the training volume for the remainder of the year will be available for further review and discussion, and provide the basis for a recommendation to the Commission.

D. Field Reimbursement Survey

At the March 23 meeting, the Committee was provided a draft Field Survey designed to solicit input from law enforcement agencies and associations regarding their views on prioritizing training and reimbursements. After review and discussion, several suggestions were made to modify the survey instruments. The Committee requested that the final instrument be again reviewed prior to a recommendation to the Commission.

E. Approval of Contracts

The Finance Committee met on January 22, 1992 and recommended that the Commission authorize the Executive Director to negotiate a number of contracts. The Commission

accepted the Finance Committee recommendations. The contracts have been negotiated and are back before the Finance Committee for review at this meeting. Among the Committee's purposes is formulation of recommendations on these contracts for FY 1992/93 to be presented for approval and authorization to sign at the Commission meeting. An overview of each of the contracts is under this tab.

F. ADJOURNMENT

MEMORANDUM

To : POST Commissioners Date: March 26, 1992

From : Robert Wasserman, Chairman
Finance Committee
COMMISSION ON PEACE OFFICER TRAINING AND STANDARDS

Subject : MINUTES OF FINANCE COMMITTEE MEETING - MARCH 23, 1992
SHERATON NEWPORTER - ORANGE COUNTY

The Finance Committee met on Monday, March 23 in Orange County. Present were Chairman Robert Wasserman and Commissioners Lowenberg, and Rutledge. Absent were Commissioners Hunt and Montenegro.

Guests Present:

Bob Berry, San Francisco Police Department
Barbara Harrison, San Diego Police Department
Greg Kyritsis, San Bernardino County Sheriff's Dept.
Carly D. Mitchell, Rio Hondo Community College/CADA
Frank Patino, Rio Hondo Community College/CADA
Tom Sams, Los Angeles Sheriff's Department
Steven Selby, Los Angeles Sheriff's Department

Staff Present:

Norman C. Boehm, Executive Director
Glen Fine
Tom Liddicoat
Otto Saltenberger
Vera Roff, Secretary

The following items were discussed:

Status of Revenue and Reimbursements

The Committee reviewed the status of current revenue receipts and training reimbursements. At this time, projections indicate that there may be sufficient revenue for the Commission to consider reinstatement of salary reimbursement at some level this year at its April meeting.

Status Report on the Efforts to Restore POST Revenue

The Committee was provided a status report on the efforts underway to restore POST revenue. The work with OCJP and STC and others to develop proposed legislation was discussed, along with the fact that unfortunately the

efforts have not been successful. However, meetings with the POST Chairman and leaders of CPCA, CSSA, CPOA, and PORAC appear to have resulted in a proposal that \$3.1 million from the asset forfeiture fund be added to the POST 92/93 budget.

Training Reimbursement Alternatives

The Governor's budget for next year contains a POST budget of \$42.9 million. This figure would be increased to \$46 if POST receives the \$3.1 million in asset forfeitures. The budget levels would provide either \$9.3 or \$12.4 million in funds available for salary reimbursement next year. To maintain the budget levels, however, requires sufficient revenue receipts.

The Committee discussed the possibility of a continued revenue shortfall and the advisability of soliciting input from law enforcement agencies and associations regarding their views on prioritizing training and reimbursements. A survey instrument was reviewed and it was the Committee's consensus that it be finalized for presentation to the Commission for action.

ADJOURNMENT - The Finance Committee will meet again on April 8 prior to the Commission meeting. The purpose of the meeting is to review third quarter revenue and expenditures, and if possible to recommend reinstatement of a salary reimbursement rate for FY 91/92. Also, the Committee will review and make recommendations on contracts contained in the Commission agenda.

RECOMMENDATION

Authorize the Executive Director to enter into contract agreements with the five contractors to present 22 presentations of the Management Course during fiscal year 1992/93 not to exceed total contract costs of \$327,448.

Chiefs and sheriffs continually request management and executive training seminars on a variety of contemporary issues. New seminars were developed in fiscal year 1991/92 in response to training needs for contract city commanders, narcotics function administration, large city commanders, and the second-in-command for small agencies. These seminars are part of our on-going training for executive and management personnel.

The total Command College and executive training contract for 1992/93 is \$445,731, a 1.7 percent decrease from the 1991/92 contract of \$453,618. This is due in part to moving the program from Cal Poly to another less costly facility.

The Executive Development Course contract for fiscal year 1991-92 totalled \$121,555 for five presentations. By including the Executive Development Course costs in the San Diego contract and POST assuming the role of presenter, the indirect costs can be reduced from the 15 percent currently charged to 10 percent charged by San Diego.

The total contract cost for five presentations of the Executive Development Course for fiscal year 1992/93 under the San Diego contract is \$116,435, a 4.2 percent decrease, which covers costs for instructors, coordination, facilities, and materials as allowed by tuition guidelines.

The combined total contract maximum cost for the Command College, management and executive training seminars, and the Executive Development Course is \$562,166.

RECOMMENDATION

Authorize the Executive Director to enter into a contract with the San Diego Regional Training Center to provide support for the Command College, management and executive training seminars, and Executive Development Course at a maximum cost of \$562,166 for fiscal year 1992/93.

1. The Contractor agrees to provide for the Commission on Peace Officer Standards and Training (POST) faculty, facilitators, management consultants, materials and training sites for seminars, workshops, and development of courses as described in Attachment A (Description of Services and Budget) pages 1-3, which by reference is incorporated and made a part of this agreement. The Contractor and POST will identify the above; however, final selection will be made by POST.
2. The total amount of this agreement shall not exceed \$562,166. Indirect costs for general administration of the agreement by the Contractor shall not exceed ten percent (10%) of the total direct costs of \$511,060.
3. Compensation for services to POST pertaining to this agreement shall include consultant/faculty fees and reimbursement for travel and per diem (at rates set in accordance with the State Administrative Manual, Section 1243). Individual fees and consulting service contracts require prior POST approval before any funds are expended.
4. Invoices for payment shall be submitted, to the attention of the project coordinator, Commission on POST, 1601 Alhambra Boulevard, Sacramento, CA 95816-7083. The Contractor is entitled to recover actual costs only. With prior POST approval, individual line item costs shown on Attachment A may be exceeded by no more than ten percent (10%) without requiring a contract amendment, providing funds are available within the total agreement amount.
5. The project coordinator at POST is Beverley Short.
6. The term of this agreement shall be July 1, 1992 through June 30, 1993 except that either party may cancel the agreement upon thirty (30) days prior written notice.
7. This agreement may be amended by mutual written consent.
8. By signing this agreement, the Contractor swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a Federal Court which orders the Contractor to comply with an order of the National Labor Relations Board (Public contract Code Section 10296).
9. Attachment B (Nondiscrimination Clause) is by reference incorporated and made a part of this agreement.

10. This agreement is valid and enforceable only if sufficient funds are made available by the Budget Act of 1992 for the Fiscal Year 1992-93, for the purposes of this program. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Legislature and contained in the Budget Act or any other statute which may affect the provisions, terms, or funding of this agreement in any manner.
11. Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of by compromise shall be decided by POST, who shall reduce its decision in writing and mail or otherwise furnish a copy thereof to the Contractor. The Contractor has fifteen (15) calendar days after receipt of such a decision to submit a written protest to POST specifying in detail in what particulars the agreement requirements were exceeded. Failure to submit such a protest within the period specified shall constitute a waiver of any and all right to adjustment in agreement terms and POST's decision shall be final and conclusive. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of this agreement, upon receipt of written order from POST to do so.
12. The Contractor shall maintain books, records, documents, and other evidence pertaining to the reimbursable costs of this agreement and hold them available for examination and audit by the State (e.g., the Auditor General) for a period of three years after final payment under this agreement (Government Code Section 10532).
13. In accordance with provisions of the State Administrative Manual, Section 1218, the Contractor's performance under this agreement will be evaluated. The evaluation will be prepared by POST within 30 days after completion of the agreement.
14. The Contractor shall give priority consideration in filling vacancies in positions funded by this agreement to qualified recipients of aid under Chapter 2 commencing with Section 11200 of the Welfare and Institutions Code, in accordance with Article 3.9 commencing with Section 11349 of the welfare and Institutions Code. (Public Contract Code Section 10353.)

SAN DIEGO REGIONAL TRAINING CENTER

DESCRIPTION OF SERVICES AND BUDGET

1. Contractor will provide Command College workshops, faculty, facilitators, training sites, student independent study advisors, faculty intersession project graders, independent study project faculty reviewers and graders, and continuous development costs for executive training programs and Command College, Classes 15 through 20. There are twenty-one (21) workshops scheduled for the Command College between July 1, 1992 and June 30, 1993.

A. Command College Workshops

Costs

Defining the Future

Class 18, July 19-24, 1992

Class 19, January 31-February 5, 1993

Class 20, May 23-28, 1993

\$7,500 x 3 =

\$ 22,500

Human Resources Management I

Class 18, October 19-23, 1992

Class 19, April 26-30, 1993

\$7,300 x 2 =

14,600

Human Resources Management II

Class 17, July 6-10, 1992

Class 18, December 14-18, 1992

Class 19, June 28-July 2, 1993

\$7,000 x 3 =

21,000

Hi-Technology and Entrepreneurial

Class 17, August 31-September 4, 1992

Class 18, February 22-26, 1993

\$6,000 x 2 =

12,000

Futures Forecasting and Analysis

Class 17, October 26-30, 1992

Class 18, April 19-23, 1993

\$7,800 x 2 =

15,600

Strategic Planning

Class 17, January 25-29, 1993

\$6,700 x 1 =

6,700

	Strategic Decision Making and Transition Mgmt. Class 16, August 24-28, 1992 Class 17, April 12-16 1993 \$8,500 x 2 =	17,000
	Independent Study Methodology Class 16, November 17-19, 1992 Class 17, June 22-24, 1993 \$4,000 x 2 =	8,000
	Independent Study Project Proposal Review Class 15, August 12-13, 1992 Class 16, January 20-21, 1993 \$2,500 x 2 =	5,000
	Project Presentations and Futures Seminar Class 15, January 11-15, 1993 Class 16, January 7-11, 1993 \$2,780 x 2 =	5,560
		<u>SUB-TOTAL</u> \$127,960
B.	Conference Site Facilities (Cal-Poly) 21 x \$1,000 per workshops	21,000
C.	Independent Study Project Final Grading Class 15 and 16	13,000
D.	Assessment Center 2 Command College Assessment Centers @ 11,000 Monitor Validity Study @ \$2,500	22,000
E.	Independent Study Project Advisors Up to 20 hours per student \$40 per hour Classes 15 and 16	35,200
F.	Faculty Graders for Intersession papers (homework) For classes 16 through 19	12,000
G.	Redesign, upgrade instruction, develop new case studies, new instructor material development, continuous course development	35,350
H.	Training for Independent Study Project Advisors (annual)	10,000
I.	Lead Faculty Meetings 2 @ \$5,000	10,000
		<u>SUB-TOTAL</u> \$158,550

San Diego Regional Training Center
92-011-01

Attachment A

2.	Development and presentation of two-to-four day executive seminars for chiefs, sheriffs, and senior managers	
	45 seminars x \$2,500	118,700
	(Includes Grads Update @ \$6,200)	
3.	Presentation of the five Executive Development Courses	
	5 courses x \$21,170	105,850
	<u>TOTAL</u>	<u>\$511,060</u>
	INDIRECT COSTS @ 10%	51,106
	<u>CONTRACT TOTAL</u>	<u>\$562,166</u>

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

COMMISSION AGENDA ITEM REPORT		
Agenda Item Title Supervisory Leadership Contract Fiscal Year 1992/93		Meeting Date April 9, 1992
Bureau Center for Leadership Development	Reviewed By <i>DeW. Zachary</i> (for Thomas)	Researched By Tom Hood
Executive Director Approval <i>Morgan C. Behm</i>	Date of Approval 3.24.92	Date of Report February 25, 1992
Purpose: <input checked="" type="checkbox"/> Decision Requested <input type="checkbox"/> Information Only <input type="checkbox"/> Status Report		Financial Impact: <input checked="" type="checkbox"/> Yes (See Analysis for details) <input type="checkbox"/> No
In the space provided below, briefly describe the ISSUE, BACKGROUND, ANALYSIS, and RECOMMENDATION. Use additional sheets if required.		
<p><u>ISSUE</u></p> <p>The Supervisory Leadership Institute contract for fiscal year 1992/93 is presented to the Commission for review and final approval. The total maximum cost is \$403,873.</p> <p><u>BACKGROUND</u></p> <p>The Commission expanded the Supervisory Leadership Institute from four classes to six classes in fiscal year 1990/91. The cost for six classes in fiscal year 1991/92 was \$391,684. Classes 8 through 13 completed the program and classes 14 through 19 began the eight-month program in 1991. Each class of the Institute is eight months in length with eight three-day workshops presented at monthly intervals.</p> <p>The fiscal year 1992/93 contract in the amount of \$403,873 again provides for six classes to run throughout the year.</p> <p><u>ANALYSIS</u></p> <p>The Supervisory Leadership Institute continues to receive widespread support from law enforcement. The number of applications, awaiting class assignment, is over four hundred. Applications continue to arrive weekly. If other factors permitted, a case could be made for expanding the number of presentations.</p> <p>The six classes will continue to provide law enforcement with a cadre of first line supervisors who have an opportunity to incorporate and practice the qualities and principles of leadership within their respective agencies.</p> <p>During the transition from four classes to six classes in fiscal year 1990/91, two three-day workshops fell within that year and were not included in the 1991/92 fiscal year contract. The three percent increase in contract costs for fiscal year 1992/93 is attributable to the increase of two three-day workshops over fiscal year 1991/92.</p>		

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RECOMMENDATION

Authorize the Executive Director to enter into a contract with the CSU, Long Beach Foundation to provide administrative services for the Supervisory Leadership Institute. These services include instructors, facility rental, coordination, instructor development, supplies and equipment at a maximum costs of \$403,873 for fiscal year 1992/93.

COMMISSION ON PEACE OFFICER
STANDARDS AND TRAINING

SUPERVISORY LEADERSHIP INSTITUTE

PROPOSED BUDGET - FY 1992-93

SERVICES

Instruction

Sixteen Institutes, July 1, 1992 - June 30, 1993 - 72 three-day workshops (See Attachment A).

\$50 per hour @ 2 instructors @ 24-hours = \$2400
@ 72 workshops = \$172,800

\$10 per hour @ 1 instructor @ 24 hours = \$240
@ 36 workshops = \$8640

Instructor Development Seminar - 10 instructors
@ 16 hours = 160 @ \$30 = \$4800

Curriculum Development Seminar - 10 instructors
@ 16 hours = 160 @ \$30 = \$4800

Clerical - 384 hours @ \$10 per hour = \$3840

CSU Coordinator - Off Site Coordination \$1800

Printing/Reproduction - 87,823 pages @ \$.07 per
page (avg. 52 pages per student per workshop) = \$6148

SUB-TOTAL \$202,828

SUPPLIES

Twelve paperback books @ \$100 @ 250 students = \$25,000

Notebooks @ \$5.75 @ 250 students = \$1438

Certificates/Covers - \$7.35 @ 250 Students = \$1838

Office Supplies - (Avg. \$230 X 12 Months) \$2800

SUB-TOTAL \$31,076

EQUIPMENT/MAINTENANCE

Blank Video Tape - \$5.00 each @ 150 Students =	\$750
Purchase/replacement of miscellaneous equipment and teaching aids (video tapes) =	\$1000
Maintenance of audio/visual equipment	\$1280
SUB-TOTAL	<u>\$3030</u>

TRAVEL AND PER DIEM

CSU Coordinator Off-Site =	\$1000
Instructor Travel - 72 Workshops @ \$220 =	\$15,840
Instructor Per Diem - 3.5 days @ \$110 = \$385 @ 2 Instructors = \$770 @ 72 Workshops =	\$55,400
Instructor Development Seminar Travel 10 @ \$150 (Average) =	\$1500
Instructor Development Seminar Per Diem 10 @ \$90 @ 2 Days =	\$1800
Curriculum Development Seminar Travel 10 @ \$150 (Average) =	\$1500
Curriculum Development Seminar Per Diem 10 @ \$90 @ 2 Days =	\$1800
SUB-TOTAL	<u>\$78,840</u>

MISCELLANEOUS

Facility Rental - \$125 per day per 3-day Workshop = \$375 @ 72 Workshops =	\$27,000
Instructor Development Seminar Facility Rental \$175 per day @ 2 Days =	\$350
Curriculum Development Seminar Facility Rental \$175 per day @ 2 Days =	\$350
Mailing & Telephone @ \$20 per student @ 386 Students (Sixteen Institutes) =	\$7720
SUB-TOTAL	<u>\$35,420</u>

BUDGET SUMMARY

SERVICES	\$202,828
SUPPLIES	\$31,076
EQUIPMENT/MAINTENANCE	\$3030
TRAVEL AND PER DIEM	\$78,840
MISCELLANEOUS	\$35,420

SUB-TOTAL	\$351,194
INDIRECT COSTS @ 15%	\$52,679
TOTAL	\$403,873

A summary of the proposed changes from last year are:

1. Reduction in the number of offerings and/or maximum number of students in the **Commander Vice/Narcotics/Intelligence, Crime Analysis-Expanded Applications, Electronic Surveillance, and Skills and Knowledge Modular Courses**
2. Reduction in the number of certified hours of the **Investigation of Officer-Involved Shootings Course.**
3. Addition of one presentation each of the **Criminal Intelligence, Dignitary Security, and Homicide Investigation Courses.**
4. Increase in the maximum number of students in the **Basic Elements of Criminal Intelligence Course.**

Proposed changes are described in Attachment A and projected presentation costs are detailed in Attachment B

RECOMMENDATION

Authorize the Executive Director to enter into an interagency agreement with the Department of Justice to present the described training courses for an amount not to exceed \$928,109.

ATTACHMENT A

DOJ CONTRACT FOR FISCAL YEAR 1992/93
DESCRIPTION OF PROPOSED CHANGES

<u>COURSE TITLE</u>	<u>CURRENT STATUS</u>	<u>PROPOSED CHANGE</u>	<u>1991/92 CONTRACT</u>	<u>1992/93 PROPOSED</u>
Advanced Financial Investigation	32 hrs/2 classes 24 students/class 48 total trainees	NONE	\$14,947	\$13,224 <u><-\$ 1,723></u>
<u>Basic Elements of Criminal Intell.</u>	36 hrs/4 classes 24 students/class 96 total trainees	Increase to 30 students per class	\$28,629	\$30,052 <u>(+\$ 1,423)</u>
CAMP Supervision and Field Ops	53 hrs/1 class 24 students/class 24 total trainees	NONE	\$7,390	\$7,390 NO CHANGE
Clandestine Lab Investigation	32 hrs/6 classes 30 students/class 150 total trainees	NONE	\$40,866	\$44,268 <u>(+\$ 3,402)</u>
<u>Commander (Vice/Narcotics/Intell)</u>	36 hrs/4 classes 24 students/class 96 total trainees	Reduce to 3 classes of 20 students	\$35,729	\$23,112 <u><-\$12,617></u>
<u>Crime Analysis, Expanded Applic.</u>	36 hrs/4 classes 24 students/class 96 total trainees	Reduce to 3 classes of 20 students	\$40,759	\$26,469 <u><-\$14,290></u>
<u>Criminal Intelligence</u>	72 hrs/1 class 24 students/class 24 total trainees	Add one Presentation	\$12,108	\$18,514 <u>(+\$ 6,406)</u>
<u>Dignitary Security</u>	36 hrs/4 classes 24 students/class 96 total trainees	Add one Presentation Increase to 28 students per class	\$44,520	\$49,855 <u>(+\$ 5,335)</u>

Drug ID/Influence (11550)	32 hrs/6 classes 50 students/class 300 total trainees	NONE	\$53,260	\$54,078 (+\$ 818)
Economic Crime Investigation	36 hrs/3 classes 24 students/class 72 total trainees	NONE	\$26,683	\$23,349 <u><-\$ 3,334></u>
<u>Electronic Surveillance</u>	24 hrs/4 classes 24 students/class 96 total trainees	Reduce to 2 classes of 24 students	\$24,571	\$10,642 <u><-\$13,929></u>
Financial Invest/ Asset Forfeiture	36 hrs/8 classes 30 students/class 240 total trainees	NONE	\$76,270	\$90,120 (+\$ 13,850)
Informant Development	32 hrs/8 classes 24 students/class 192 total trainees	NONE	\$65,028	\$54,720 <u><-\$10,308></u>
<u>Investigation of Homicide</u>	36 hrs/3 classes 30 students/class 90 total trainees	Add one Presentation Reduce to 24 students/class	\$28,465	\$35,100 (+\$ 6,635)
<u>Investigation of Officer-Involved Shootings</u>	36 hrs/10 classes 30 students/class 300 total trainees	Reduce to 32 hr program	\$100,588	\$86,430 <u><-\$14,158></u>
<u>Modular Training (Various Topics)</u>	8 hrs/30 classes 30 students/class 900 total trainees	Reduce to 20 classes of 30 students	\$39,355	\$22,480 <u><-\$16,875></u>
Narcotics Investigation	80 hrs/12 classes 24 students/class 288 total trainees	NONE	\$220,766	\$228,900 (+\$ 8,134)
Narcotics Invest- Training for Trainers	60 hrs/4 classes 20 students/class 80 total trainees	NONE	\$57,391	\$71,088 (+\$13,697)
Specialized Surveillance Equipment	36 hrs/7 classes 16 students/class 112 total trainees	NONE	\$33,908	\$38,318 (+\$ 4,410)

CURRENT CONTRACT
AMOUNT 1991/92

\$953,081

PROPOSED CONTRACT FOR
FISCAL YEAR 1992/93

\$928,109

NET DIFFERENCE

<-\$24,972>

POST CONTRACT - FISCAL YEAR 1992/93

ATTACHMENT B

	NBR	INSTRU	GENERAL	PRESEN	CLERIC	PRINTG	SUPPLI	EQUIP	COOP. TRAVEL	INST. TRAVEL	MISC	SUB TOTAL	11% IND	PER PRES	TOTAL COST
ADV. FINANCIAL INV	2	1816	200	640	500	432	306	100	493	1070	400	5957	655	6612	13224
BASIC ELEMENTS	4	1680	250	720	500	454	698	75	687	1205	500	6769	744	7513	30052
CAMP SUPERVISION	1	1000	400	1060	1000	84	284	0	1830	0	1000	6658	732	7390	7390
CLAN DRUG LAB.	6	1814	200	640	500	910	608	0	440	1335	200	6647	731	7378	44268
COMMANDER	3	2018	250	720	500	160	185	100	618	1890	500	6941	763	7704	23112
CRIME ANA-EX.APP	3	2846	250	720	500	240	25	133	618	2117	500	7949	874	8823	26469
CRIMINAL INTELLIG	2	2720	400	1440	1000	200	510	0	50	1120	900	8340	917	9257	18514
DIGNITARY SECURITY	5	3600	250	720	500	140	259	400	770	1364	980	8983	988	9971	49855
DRUG IDENT. & DI	6	1554	200	640	500	665	1363	0	740	1858	600	8120	893	9013	54078
ECONOMIC CRIME IN	3	2016	200	720	500	432	438	100	607	1499	500	7012	771	7783	23349
ELECTRONIC SURV.	2	1136	150	480	400	192	438	25	407	1266	300	4794	527	5321	10642
FINAN. INVEST./D	8	1999	250	720	500	2988	464	75	700	1953	500	10149	1116	11265	90120
INFORMANT DEV & M	8	1680	200	640	500	200	241	187	798	1317	400	6163	677	6840	54720
INV. OF HOMICIDE	4	2020	250	720	500	1255	278	100	670	1613	500	7906	869	8775	35100
INV. OF OFFICER INV	10	2020	250	720	500	1320	758	120	673	926	500	7787	856	8643	86430
MODULAR TRAINING	20	400	50	0	120	70	248	0	0	125	0	1013	111	1124	22480
NARCOTIC INVEST.	12	8499	500	1600	1000	917	306	0	462	3298	603	17185	1890	19075	228900
NARC. TRNG.-T4T	4	3486	375	1200	1000	5830	2650	0	20	1250	200	16011	1761	17772	71088
SPEC. SUR. EQUIP.	7	1351	250	720	500	475	580	300	26	730	0	4932	542	5474	38318

TOTAL POST CONTRACT AMOUNT

928109

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

COMMISSION AGENDA ITEM REPORT		
Agenda Item Title: Request for Contract Authority to Produce Case Law Update Satellite Programs		Meeting Date: April 9, 1992
Bureau: Training Program Svcs.	Reviewed By: Ken O'Brien <i>[Signature]</i>	Researched By: Bill Masters
Executive Director Approval: <i>Monahan C. Boehm</i>	Date of Approval: 3.20.92	Date of Report: February 28, 1992
Purpose: <input type="checkbox"/> Decision Requested <input type="checkbox"/> Information Only <input type="checkbox"/> Status Report		Financial Impact: <input type="checkbox"/> Yes (See Analysis for details) <input type="checkbox"/> No
In the space provided below, briefly describe the ISSUE, BACKGROUND, ANALYSIS, and RECOMMENDATION. Use additional sheets if required.		
<p><u>ISSUE</u></p> <p>Should the Commission authorize the Executive Director to enter into contracts with Alameda County District Attorney's Office and Golden West College, for an amount not to exceed \$52,000, to produce twenty-four Case Law Update training programs each during Fiscal Year 1992-93.</p> <p><u>BACKGROUND</u></p> <p>At its April 18, 1991 meeting, the Commission approved \$52,000 for contracts with Alameda County District Attorney's Office and Golden West College for the production of twenty-four Case Law Update training programs each during 1991-92. Sixteen programs from each producer have been included in monthly POST videotape training broadcasts so far, with eight from each producer scheduled for use during the remainder of this fiscal year. The reaction to the new segments has been favorable, and the Commission has been encouraged to continue this program.</p> <p><u>ANALYSIS</u></p> <p>Case Law Updates were added to POST satellite broadcasts to provide current information on recent court decisions to all California law enforcement agencies. The presenters include three Assistant District Attorneys and an Orange County Superior Court Judge. The subject matter has been coordinated by POST staff to avoid duplication of production efforts. Cases chosen are recent and applicable to the needs of the law enforcement community. The addition of these updates has greatly increased the effectiveness of the videotape training broadcasts.</p> <p><u>RECOMMENDATION</u></p> <p>It is recommended that the Executive Director be authorized to negotiate new contracts with Alameda County District Attorney's Office and Golden West College for the production of twenty-four Case Law Updates each during the 1992-93 Fiscal Year.</p>		

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

COMMISSION AGENDA ITEM REPORT		
Agenda Item Title Contract for Administration of POST Proficiency Examination		Meeting Date April 9, 1992
Bureau Standards & Evaluation	Reviewed By	Researched By John Berner <i>YBS</i>
Executive Director Approval <i>Norman C. Bohm</i>	Date of Approval 3-20-92	Date of Report February 26, 1992
Purpose: <input checked="" type="checkbox"/> Decision Requested <input type="checkbox"/> Information Only <input type="checkbox"/> Status Report		Financial Impact: <input checked="" type="checkbox"/> Yes (See Analysis for details) <input type="checkbox"/> No
In the space provided below, briefly describe the ISSUE, BACKGROUND, ANALYSIS, and RECOMMENDATION. Use additional sheets if required.		
<p><u>ISSUE</u></p> <p>Continuation of the POST contract with Cooperative Personnel Services (CPS) to administer the POST Proficiency Examination.</p> <p><u>BACKGROUND</u></p> <p>Penal Code Section 832(b) requires POST to develop and administer a basic training proficiency test to all academy graduates. POST has contracted with Cooperative Personnel Services (CPS) for the administration of the examination each of the last nine years.</p> <p><u>ANALYSIS</u></p> <p>CPS has done an acceptable job of administering the POST Basic Course Proficiency Examination. Moreover, CPS can administer the examination for less than it would cost if POST staff were to assume this function.</p> <p>The amount of the fiscal year 1991/92 contract is \$33,800. The proposed contract for fiscal year 1991/92 is not expected to exceed this amount.</p> <p><u>RECOMMENDATION</u></p> <p>Authorize the Executive Director to enter into a contract with CPS for administration of the POST Proficiency Examination during fiscal year 1992/93 for an amount not to exceed \$33,800.</p>		

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

COMMISSION AGENDA ITEM REPORT

Agenda Item Title Contract for Administration of POST PC 832 Written Exam		Meeting Date April 9, 1992
Bureau Standards & Evaluation	Reviewed By	Researched By John Berner <i>[Signature]</i>
Executive Director Approval <i>Norman C. Bohm</i>	Date of Approval 3-20-92	Date of Report February 26, 1992
Purpose: <input checked="" type="checkbox"/> Decision Requested <input type="checkbox"/> Information Only <input type="checkbox"/> Status Report		Financial Impact: <input checked="" type="checkbox"/> Yes (See Analysis for details) <input type="checkbox"/> No

In the space provided below, briefly describe the ISSUE, BACKGROUND, ANALYSIS, and RECOMMENDATION. Use additional sheets if required.

ISSUE

Continuation of POST contract with Cooperative Personnel Services (CPS) to administer the POST PC 832 written examination.

BACKGROUND

Penal Code Section 832(a), which went into effect July 1, 1989, requires that persons must pass a POST-developed or POST-approved examination to successfully complete the PC 832 course. POST has contracted with CPS to administer the PC 832 written examination each of the last three years.

ANALYSIS

CPS has done an acceptable job of administering the examination. The amount of the 1991/92 fiscal year contract is \$78,560. The proposed contract for fiscal year 1991/92 is not expected to exceed this amount, and assumes that testing volume will remain unchanged from the current fiscal year. (If volume decreases, actual contract costs will also decrease.)

RECOMMENDATION

Authorize the Executive Director to enter into a contract with CPS for administration of the POST PC 832 written exam during fiscal year 1992/93 for an amount not to exceed \$78,560.

M E M O R A N D U M

To : POST Commissioners Date: March 24, 1992

From : Ronald E. Lowenberg, Chairman
Long Range Planning Committee
Commission on Peace Officer Standards and Training

Subject : REPORT OF THE LONG RANGE PLANNING COMMITTEE

The Committee met at the Los Angeles Sheriff's Department on February 27, 1992. Attending were myself and Commissioners Sherman Block and Robert Wasserman. Also present were Executive Director Norman Boehm, Deputy Director Glen Fine, Bureau Chief Ken O'Brien, and Frank Grimes, LAPPL.

Committee members received a status report on the POST revenue situation and reviewed the following issues:

Use of Videotapes to Satisfy CPT Requirements

The Committee received a staff report describing a number of issues and options concerning this subject. Consensus of the Committee is that video tapes of POST telecourses and other training films remain a low cost/high quality means of delivering training. Extension of CPT credit for stand alone viewing of such training tapes is seen as a logical pay off of the investment in production. Staff is continuing to work on this subject and will submit a report to the Commission in the near future.

Policy on Marketing/Royalty Agreements

There was review and discussion of the varied approaches taken in the past to provide for royalty arrangements when POST has contracted for technology development. The most recent contract (with ITC for First Aid/CPR IVD program) provides for POST ownership of the product, and marketing/royalty issues to be addressed separately following project completion. There was consensus that this approach is preferable for most projects, but that flexibility should continue with case-by-case Commission review as now occurs.

Policy on Review of Video Tapes Used in POST-Certified Courses

The Committee discussed potential liability that can accrue to both POST and law enforcement agencies for inappropriate content of training tapes shown to peace officer trainees. A staff report describing several options was reviewed. One option would be to require presenters to review all training videos prior to use. Review would be made following POST guidelines developed for the purpose. Members of the Committee were also interested in the feasibility of a notification by POST to law enforcement administrators whenever a commercially available video is known to include controversial content. There was consensus that staff continue to explore and report back on feasibility of guidelines for presenters.

Basic Course Study

A status report was received regarding an on-going review of the Basic Course. This study has been somewhat expanded in order to consider all that is required to prepare the new officer - from basic training through field training and probation. A final report with proposed directions for change will be ready for consideration by the Commission at the July meeting.

Canine Standards

The Committee also discussed preliminary results of inquiry into the potential need for guidelines for departments to use for officer/canine teams. A report will be submitted to the Long Range Planning Committee at its next meeting.

ADJOURNMENT - 1:30 P.M.

MEMORANDUM

To : POST Commissioners Date: March 25, 1992

From : Ronald E. Lowenberg, Chairman
Ad hoc POST/LABOR Committee Meeting
Commission on Peace Officer Standards and Training

Subject : REPORT OF THE AD HOC POST/LABOR COMMITTEE

Commissioners Hall-Esser, Leduc, Maghakian, Rutledge, and I met on March 11, 1992 with representatives of eight law enforcement labor organizations. Minutes summarizing discussion and outcomes are included with your agenda.

This meeting was requested by law enforcement labor leaders who have been concerned that the Commission has become too management-oriented and non-responsive to rank and file concerns. The meeting provided opportunity to discuss those concerns. There appears to be a general commitment to work positively to strengthen areas where Commission's and labor's interests coincide.

The following directions were discussed at the meeting and are brought forward now for the Commission's consideration.

1. With the Commission's concurrence, POST would be well advised to establish an ad hoc Commission committee to meet periodically and as needed with law enforcement labor associations.
2. I also recommend that the Commission approve exploration of the feasibility and desirability of establishing an Institute for Labor/Management Relations to provide a permanent forum for communications, problem solving, and cooperative approaches.

The Committee to do an exploratory study would consist of three labor people, representatives from Chiefs or Sheriffs, and POST staff. Their purpose would be to form a charter and purpose of any potential labor/management institute and bring back the report at an early Commission meeting.

3. Assign the Commission's Advisory Liaison Committee to consider labor's request to expand the POST Advisory Committee to include additional labor representatives.
4. I have asked staff to work with representatives of labor organizations to review the recent certificate revocation action, on a step-by-step basis, and report on it, if indicated.
5. Assign staff to prepare a report on State Correctional Peace Officers' interest in POST program participation.

ADJOURNMENT - 3:40 P.M.

AD HOC LABOR/COMMISSION MEETING
March 11, 1992
Clarion Hotel - Brannon Room
16th and H Streets
Sacramento, California

MINUTES

The meeting was called to order at 10:00 a.m. by Commission Chairman Ronald E. Lowenberg.

Chief Donald L. Forkus led the flag salute.

COMMITTEE MEMBERS

Present:

Ronald E. Lowenberg, Chair, POST Commission Chairman
Don Brown, COPS
Steve Fournier, CCPOA
Donald L. Forkus, POST Advisory Committee Chairman
Jody Hall-Esser, POST Commissioner
Marcel L. Leduc, POST Commissioner
Edward Maghakian, POST Commissioner
Roger Mayberry, State Marshals' Association
Shaun Mathers, ALADS
Wendell Phillips, CAL-Cops
Art Reddy, POPA
Cecil Riley, CAUSE
Devallis Rutledge, POST Commissioner
Bud Stone, PORAC

Absent:

Frank Grimes, LAPPL
Robert Wasserman, POST Commissioner

Staff Present:

Norman C. Boehm, Executive Director
Glen Fine
Hal Snow
Vera Roff, Secretary

Visitor's Roster

Al Davila, CAHP
Richard Gregson, Sacramento PD
Roy Harmon, Yuba City CPCA
Bill Hemby, COPS
Monty Mauney, Huntington Beach PD POA

Randy Perry, PORAC
Rodney Pierini, CPOA
Dean Rewerts, CAUSE
Tom Simms, Roseville PD, CPCA
Richard Wright, Huntington Beach PD POA
Tim Yaryan, ALADS

ROLE OF POST

There was a discussion concerning the role of POST. It was pointed out that the Commission has the responsibility in law to raise the level of law enforcement by setting minimum training and selection standards, doing management counseling, and providing reimbursement. Though compliance inspections are essential and while there is a regulatory aspect to POST, the sense of the Commission is to be service-oriented in providing outstanding training programs and to work with all of law enforcement to accomplish the overall goal of raising the level of law enforcement in California as set forth in legislation. Discussion of this issue touched upon a variety of labor concerns described elsewhere in these minutes.

COMMISSION MEMBERSHIP

There was discussion concerning the Commission membership, which currently has only one rank and file member. Law enforcement groups are seeking legislation to add two additional rank and file positions to be appointed by the Governor. It was noted that the Commission changed last year from an "oppose" to a "neutral" position. Representatives of labor asked that the Commission consider going favorable on that legislation. The Chairman said the request would be referred to the Legislative Committee. Commissioner Marcel Leduc was appointed by Chairman Lowenberg to the Commission's Legislative Committee to assure that labor perspectives are present on that committee.

ADVISORY COMMITTEE MEMBERSHIP

There was a suggestion to expand the membership of the Advisory Committee to include more labor organizations. The Chairman will refer the suggestion to the Advisory Liaison Committee for action.

CERTIFICATE REVOCATION

Concern was expressed over the Commission's action last year in the face of opposition from rank and file to expand the provisions for revoking certificates. Labor representatives expressed apprehension that the Commission intends to move into areas involving internal discipline. It was made clear that Commission action on this issue is the single most important issue that has brought law enforcement labor groups together in

opposition to the Commission. There was a request that the Commission reconsider the action taken on revocations last July. After some discussion, there was consensus that POST staff and representatives from labor (Cecil Riley/Roger Mayberry/Wendell Phillips) will review all aspects of that action on a "frame by frame" basis so there could be an objective review of the history, reasons for proceeding, and reasons for objectives laid out in a clear and concise format. The emphasis will be on facts rather than on perceptions. A report will be brought back to the Commission.

ASSOCIATION AFFILIATION

Labor representatives observed their feelings that POST is too much associated with management, particularly with CPOA, noting that a number of Commissioners and the Executive Director serve on the CPOA Board of Directors. Labor views CPOA as management. While it is true that Commissioners have affiliation with other associations such as CPOA, it was explained that such membership is not exclusive and Commissioners can belong to a variety of associations and "wear different hats."

Commissioners pointed out that the Commission conducts business as a body and that the role of the Commission and the role of the associations are not commingled.

This labor concern was in part in context with certain training which is certified to CPOA, such as legislative updates. It was clarified that labor organizations could bid on legal update training contracts. The same is true with other training issues that labor has interest in. POST staff would be pleased to work with associations interested in course certification to go over Commission guidelines and requirements for presenters to be certified. Peer counseling was cited by labor as an example of the type of training labor associations may be in a position to present.

TRAINING ISSUES

The range of training issues was discussed, including leadership training, and specifically focusing on the Command College. During the discussion, it was pointed out that the Commission's goals and hopes are that a strong training program for all segments of law enforcement could be sustained. Sergeants and above represent approximately 20% of law enforcement and currently receive approximately 14% of the training resources, including the Command College.

The Executive Director observed that the underlying values for a balanced training program are that POST provides assistance in the selection process, and once people are selected, POST sustains training for developing the skills, attitudes, and

behaviors necessary to be an officer. Leadership training is to help ensure that the officers will have a good working environment in which to practice their services to the public. The Commission has long held that there needs to be a balance of all those values in the training program and this balance is worthy of being maintained.

Labor representatives indicated a desire to review curriculum of the Command College and SLI. Of concern, was the view that some Command College papers are anti-labor.

SUSPENSION OF SALARY REIMBURSEMENT

The Commission was questioned about the decision to suspend salary reimbursement which was perceived as the Commission abandoning the Basic Course while still continuing leadership and other training. It was pointed out that POST still reimburses all travel, tuition, and per diem expenses associated with the Basic Course and for all other qualifying courses. The travel, tuition, and per diem expenses probably most closely affect the officers individually and the Commission chose not to change that part of the formula. The Commission still supports the Basic Course and devotes a good deal of financial and staff resources to operating a successful Basic Course program in the state. POST also supports many other in-service training courses for which travel, per diem, and tuition are still provided.

When asked what cut-backs other than salary had been made to try to balance the budget, it was noted that the Commission had to delay inauguration of the Institute on Criminal Investigation which would provide high quality in-depth training for line level investigators. Also a number of POST staff positions have not been filled. The Commission also deferred action on a proposal to reimburse for satellite antennas to bring training directly to departments.

The Commission took the approach that suspending salary reimbursement would be the least disruptive in the short run. If funds are not forthcoming in the new year, then clearly the Commission is going to have to look at priorities and carefully consider how available resources might be allocated in the future.

POST has the best training program in the United States and this in part reflects the leadership position that California law enforcement has earned deservedly over the years. Commissioner Rutledge observed that Rodney King was newsworthy in part because of California law enforcement's high reputation generally.

Several in attendance urged that all involved should work, not only to retain the leadership the professional training programs have attained, but to improve upon them. It was the consensus

that effort should be made to ensure that the critical training funds are available in the future.

LABOR/MANAGEMENT ISSUES

As the meeting progressed a consensus emerged that there is great value in labor and management working together to move the profession forward. There was an almost simultaneous and mutual suggestion that the process of fostering labor/management issues be formalized in some way.

There was consensus that a report be developed on the feasibility of POST establishing an Institute on Labor/Management Issues. Representing labor on this study group will be Art Reddy, Shaun Mathers, and Bud Stone. They will work with POST staff and representatives of Chiefs and Sheriffs to explore what the charter of such an Institute might be. A report on this will be brought to the Commission as soon as it is completed.

ACTION ITEMS

- o Chairman to direct the Advisory Liaison Committee to review the proposal to expand the membership of the POST Advisory Committee to include more rank and file representatives. The Committee recommendation will be presented at the July Commission meeting.
- o Establish an ad hoc Labor/Management Committee consisting of those attending the March 11, 1982 meeting. The Committee will meet on an as needed basis. Any member of the Committee may request the convening of a meeting at any time. The next regularly scheduled meeting will be October 14, 1992.
- o Establish a Committee to review the Commission action to expand certificate revocation provisions taken last year. Members of the Committee will include POST staff Glen Fine and Frederick Williams along with Roger Mayberry, Wendell Phillips, and Cecil Riley.
- o Explore the feasibility of developing an Institute of Labor/Management Issues. Members of the Committee will include Shaun Mathers, Bud Stone, and Art Reddy, representatives of the Chiefs and Sheriffs, as well as POST staff representatives. A report on this will be made to the Commission.
- o Assign POST staff to prepare a report on the history of correctional peace officers' efforts to be included in the POST program. This is in response to a request expressing CPOA's interest in peace officer standards and training.

CLOSING REMARKS

There was general agreement that this meeting was a very productive beginning for improving communications, perceptions and relationships. Although the basis of some of the concerns were clarified, there continues to be much room for improvement.

ADJOURNMENT - 3:40 p.m. to October 14, 1992 when a second meeting of this ad hoc Committee will be held:

Commission on Peace Officer Standards and Training
MEETING OF POST COMMISSIONERS AND POLICE LABOR LEADERS

Wednesday, March 11, 1992
Red Lion Inn, Yuba River Room
2001 Point West Way, Sacramento, CA

Agenda

10:00 a.m.

WELCOME BY COMMISSION CHAIRMAN LOWENBERG

FLAG SALUTE

INTRODUCTIONS

PURPOSE OF MEETING

FORMAT FOR ADDRESSING DISCUSSION ISSUES

DISCUSSION ISSUES:

1. Issues Surrounding POST, Labor and Management
 - a. Role of POST
 - b. Commission position on additional rank and file representation on Commission
 - c. Relationship between POST and CPOA
 - d. POST distribution of information divisive between labor/management (4 X 10 Plans)

2. Relationship Between POST and Labor Groups
 - a. Communications Between POST and Individual Labor Unions
 - b. Labor Input Into POST Activities
 - c. Labor representation on the POST Advisory Committee

3. Commission Plans for Additional Changes in POST Certificates Requirements

4. Training Issues

- a. Impact of the Command College and executive level training on the training of line officers
- b. POST training for line officers
- c. POST Course Certification to Labor Unions
 - Peer Counseling
 - Stress Training
 - Leadership Training
 - Collective Bargaining

5. Legislative Coordination

- a. Process used for POST proposed legislation
- b. Need for closer coordination
- c. Labor support of POST issues

6. Professionalism in Law Enforcement

- a. Professionalism goals in law enforcement that we all can support

FOLLOWUP ACTION NEEDED

SUMMARIZING COMMENTS

3:00 p.m.

ADJOURNMENT

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
Legislative Review Committee Meeting
Thursday, April 9, 1992, 8:30 a.m.
Red Lion Inn - Yuba River Room
San Diego, CA

AGENDA

Attachment

1. New Legislation of Interest to POST

A

Attachment A provides an analysis of new legislation of interest to POST.

- a. ACR 93 (Woodruff) Requests Community Colleges to Present Sufficient State Mandated Public Safety Training Courses
- b. SB 1283 (Ayala) Commission Composition: Adds Two Members
- c. SB 1335 (Torres) Peace Officer Training: Cultural Awareness
- d. SB 1408 (Torres) Peace Officer Training: Hate Crimes and Cultural Differences
- e. SB 1645 (Calderon) Adds Penalty Assessment on Vehicle Code Violations
- f. AB 2308 (Cannella) Controlled Substances: Exempts Narcotics and Canine Trainers from Uniformed Controlled Substances Act
- g. AB 2311 (Katz) Drug Asset Forfeiture Revenue: Deletes POST
- h. AB 2409 (Isenberg) Penalty Assessments: Establishes Percentage Formulas
- i. AB 3407 (Klehs) Peace Officer Training: Hate Crimes
- j. AB 3614 (Epple) Peace Officer Status: Investigators of Student Aid Commission and Dept. of Toxic Substances Control

2. Status of POST Supported Legislation

B

Attachment B provides an update on POST proposed legislation for 1992.

- a. Restoration of POST Funding
- b. Law Enforcement Agency Accreditation (SB 1126) Presley
- c. Revenue from Civil Awards/Settlements

3. Status of Active Legislation

C

Attachment C is a chart identifying the status of bills for which the Commission has taken positions.

4. Status of Informational Legislation

D

Attachment D is a chart identifying the status of bills that are outside the scope of the Commission's interest in taking positions but are followed for their potential impact upon POST. The Committee may wish to receive a briefing on these.

5. Status of Court Litigation

E

Attachment D provides an update on the status of court litigation of interest to the Commission.

- a. Santa Clara County v. Deputy Sheriffs Assn.
- b. Soroka, et al. v. Dayton Hudson Corporation:
Target Stores

BILL ANALYSIS

State of California Department of Justice
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1601 Alhambra Boulevard
Sacramento, California 95816-7083

TITLE OR SUBJECT Requests Community Colleges To Present Sufficient State- Mandated Public Safety Train- ing Courses	AUTHOR Assemblyman Woodruff	BILL NUMBER ACR 93
	RELATED BILLS AB 990 of 1991	DATE LAST AMENDED 2-20-92

SPONSORED BY
Sheriff Dick Williams, San Bernardino County

BILL SUMMARY (GENERAL, ANALYSIS, ADVANTAGES, DISADVANTAGES, COMMENTS)

General

1. This is an Assembly Concurrent Resolution, with the Senate concurring, that requests California community colleges to offer sufficient public safety training courses to satisfy state-mandated training requirements, participate in regional consortiums of community colleges in order to minimize duplication of training courses, and make training programs more readily available.

Analysis

The resolution takes recognition of the fact community colleges are the primary institutions offering these state-mandated public safety training courses. The resolution also identifies the severe financial problems that community colleges are experiencing resulting in curtailment of public safety courses and thus hardships in meeting state-mandated training requirements.

AB 990 of 1991 passed the Legislature but was vetoed by the Governor would have required the Chancellor's Office of the California Community Colleges to study exempting such courses for the growth cap placed by the State. ACR 93 is instead an advisory measure that could assist some of the community college programs as leverage in securing budget and course approvals.

Comment

Even though ACR 93 will not end course curtailments brought on by the recession and state funding shortfalls, it may assist some training programs.

Recommend "Support".

OFFICIAL POSITION

ANALYSIS BY <i>John Snow</i>	DATE 3-24-92	REVIEWED BY	DATE
EXECUTIVE DIRECTOR <i>Monica C. Belton</i>	DATE 3-24-92	COMMENT	DATE

BILL ANALYSIS

State of California Department of Justice
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1601 Alhambra Boulevard
Sacramento, California 95816-7083

TITLE OR SUBJECT Commission Composition Adds two Members	AUTHOR Senator Ayala	BILL NUMBER SB 1283
	RELATED BILLS SB 811 (1991)	DATE LAST AMENDED 1-13-92

SPONSORED BY CAUSE - Calif. Association of Union of Safety Employees

BILL SUMMARY (GENERAL, ANALYSIS, ADVANTAGES, DISADVANTAGES, COMMENTS)

General

SB 1283 would:

1. Increase the size of the POST Commission from 12 (11 members appointed by the Governor and the Attorney General serving as an Ex Officio member) to 14 members by providing that two more members be appointed by the Governor from the category of peace officers of the rank of sergeant or below with a minimum of five years' experience.
2. Expands the category from which the total of three members are required to be selected to include a marshal or state-employed peace officer.

Analysis

Existing Penal Code Section 13500, which defines the size and composition of the POST Commission, specifies that the peace officer member of the rank of sergeant or below with a minimum of five years' experience must be a deputy sheriff or a city police officer.

S.B. 811 of 1991 was similar proposed legislation but was vetoed by the Governor because he was satisfied with present efforts and make-up of POST and saw no reason for change. Furthermore, SB 811 was vetoed because "it would be inappropriate for the Legislature to name appointees to what has historically been an executive branch commission." Unlike SB 1283, SB 811 would have these additional members appointed by the Assembly Speaker and Senate Rules Committee. The Commission's position on SB 811 was "neutral" because the Commission was created by the Legislature and as such should have the prerogative to change its size and composition. Labor representatives have requested the Commission consider a "support" position.

OFFICIAL POSITION

ANALYSIS BY <i>[Signature]</i>	DATE 3-17-92	REVIEWED BY	DATE
EXECUTIVE DIRECTOR <i>[Signature]</i>	DATE 3-20-92	COMMENT	DATE

With regard to expanding the peace officer category to include at least one appointee from a marshal or state-employed peace officer, some questions could be asked including:

1. Why should state peace officers be singled out for representation when the Commission does not have specific statutory authority for their standards? Management level state peace officers are not eligible, and state peace officers receive no reimbursement from the POTF.
2. Why should marshals be singled out for representation when many other peace officer groups are not represented, e.g., school district, community college, district attorney, coroner, etc., and there is no management-level representation from marshals?

It would appear far more preferable to have the two additional peace officer members to be appointed from "any peace officer group for whom the Commission sets standards" thus providing representation to all peace officer groups.

Two additional members should pose no significant administrative problems but would nominally increase POST travel, per diem and miscellaneous costs by \$6,000 annually.

Comments

Recommend "neutral" position.

BILL ANALYSIS

State of California Department of Justice
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1601 Alhambra Boulevard
Sacramento, California 95816-7083

TITLE OR SUBJECT Peace Officer Training: Cultural Awareness	AUTHOR Senator Torres	BILL NUMBER SB 1335
	RELATED BILLS SB 1408	DATE LAST AMENDED 3-4-92

SPONSORED BY
Senator Torres

BILL SUMMARY (GENERAL, ANALYSIS, ADVANTAGES, DISADVANTAGES, COMMENTS)

GENERAL

1. Requires Judicial Council to develop a standardized form for law enforcement agencies to use to take a citizen's complaint of the commission of a crime by a peace officer.
2. Requires law enforcement officers and the Office of Citizen Complaint to use the standardized form when receiving a citizen's complaint.
3. Requires the standardized forms to be made available at city and county offices, county libraries, etc.
4. Requires each county to create an office of citizen complaint, headed by an ombudsperson (a volunteer attorney chosen by the County Bar Association). The office shall review citizen's complaints to refer felony offenses to the Department of Justice and misdemeanor offenses to the employing agency for investigation.
5. Law enforcement agencies have 90 days to investigate and file a report. Failure to do so would give complainants grounds for civil action against the agency.
6. Authorizes civilian review boards established by charter to issue subpoena duces tecum to access to peace officer personnel records for purposes of investigating citizens' complaints against officers.
7. Prohibits a peace officer from using more force than is reasonable, under the circumstances known to the officer, to effect an arrest, to prevent escape, or to overcome resistance.
8. Requires law enforcement agencies to adopt a written policy prohibiting the use of excessive force.
9. Requires each agency to submit a copy of its written policy to the Department of Justice by January 1, 1994.

OFFICIAL POSITION

ANALYSIS BY <i>Hal Snow</i>	DATE 3-12-92	REVIEWED BY	DATE
EXECUTIVE DIRECTOR <i>Norman C. Bohus</i>	DATE 3-20-92	COMMENT	DATE

10. Requires POST to develop and disseminate guidelines and training for all law enforcement officers described in subdivision (a) of Section 13510 of the Penal Code and who adhere to the standards approved by the commission, on the racial and cultural differences among the residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.
11. Requires the basic training course, no later than August 1, 1993, include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups. The bill requires POST, in developing the training, to consult with appropriate groups and individuals having an interest and expertise. For purposes of this subdivision, cultural diversity is defined to include, but not be limited to, gender and sexual orientation issues.
12. The sum of \$50,000 is appropriated from the Peace Officer Training Fund to POST for the purpose of developing the training required by this act.

ANALYSIS

Because the Commission's policy is to consider only legislation within its responsibilities, this analysis will only address law enforcement training issues raised by this bill.

The law enforcement training issues described in items 10-12 above are identical to those in SB 1075 (Roberti) of 1991 that was vetoed by the Governor for reasons unrelated to law enforcement training. Last year, POST's position on SB 1075 was "support" for only those aspects related to law enforcement training. This position reflected POST's intended direction in developing further cultural related training building upon SB 2680 (Boatwright) of 1990. SB 2680 required POST to develop optional law enforcement training and guidelines on racial and cultural differences among residents of this state. The course or courses of instruction and guidelines were required to stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying law enforcement duties in a racially and culturally diverse environment.

The primary differences between SB 2680 and this bill (SB 1335) is that it mandates the training for the Basic Course. As implemented, the training developed pursuant to SB 2680 was directed to inservice officers and presented by each law enforcement agency.

COMMENTS

Recommend "support" for the law enforcement training aspects.

BILL ANALYSIS

State of California Department of Justice
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1601 Alhambra Boulevard
Sacramento, California 95816-7083

TITLE OR SUBJECT Peace Officer Training: Hate Crimes and Cultural Differences	AUTHOR Senator Torres	BILL NUMBER SB 1408
	RELATED BILLS	DATE LAST AMENDED 2-6-92

SPONSORED BY
Senator Torres

BILL SUMMARY (GENERAL, ANALYSIS, ADVANTAGES, DISADVANTAGES, COMMENTS)

GENERAL

1. This bill would require POST to implement, by 7-1-93, standard police training procedures for basic academy training, field training, advanced officer, and management training on cultural differences and hate crimes as specified.
2. This bill also requires POST to certify advanced officer and management courses to include classes on human relations which stress the cooperation and promotion of positive interaction among pupils from different racial, religious, and ethnic groups.
3. This bill requires POST to develop curriculum in consultation with appropriate groups and individuals having an interest and expertise in the field of hate violence. At least two of the persons selected shall be former victims of hate crimes.
4. Local law enforcement agencies are encouraged to include, as part of their basic academy training, field training, advanced officer and management training programs, periodic updates on hate crimes, bias-related incidents, and bigotry. The bill requires POST to assist these agencies with this. "Law enforcement agencies" includes any officers or employees of a local police or sheriff's office or the California Highway Patrol.
5. This bill requires the training on cultural differences and hate crimes to be included not later than 7-1-93.
6. This bill requires all law enforcement officers and law enforcement dispatchers who have received their basic training before 7-1-93 to participate in supplementary training on hate crimes, bias-related incidents, and bigotry as prescribed and certified by POST. The training required by this subdivision shall be completed not later than 7-1-95.

OFFICIAL POSITION

ANALYSIS BY <i>[Signature]</i>	DATE 3-26-92	REVIEWED BY	DATE
EXECUTIVE DIRECTOR <i>[Signature]</i>	DATE 3-26-92	COMMENT	DATE

ANALYSIS

Existing POST training requirements for the basic course include curriculum on cultural differences and hate crimes which mitigate the need for this legislation. Furthermore, POST is currently reviewing its curriculum requirements in light of the Rodney King incident to determine if changes are needed.

Contrary to what this bill suggests, POST establishes suggested guidelines for the content and operation of law enforcement agency field training programs. POST also approves agency field training programs if they meet the minimum guidelines. Currently 160 agencies have POST approved field training programs. Presumably, the proposed training required under SB 1408 would be included only where departments have voluntarily established a POST approved field training program. This would mean that most law enforcement agencies (approximately 373 police and sheriffs department) would not include hate crime and cultural differences in their field training programs if they have such programs.

The curriculum specified for the training area (basic, field, advanced officer, and management) is entirely too specific and includes subjects that are outside that needed, e.g., knowledge of Fair Employment and Housing laws. There is not evidence of need for peace officers to have training on legal aspects beyond the relevant criminal laws in the Penal Code, which is already a POST requirement. Nor is there evidence of need for such subjects as evaluating evidence and offense reports to determine whether crimes are appropriately classified, to ensure that all physical remains of the crime are removed, to identify training needs relative to responding to hate crimes, since these are not duties associated with field officers.

The idea of having the subjects of hate crimes and cultural differences as a permanent part of every advanced officer course ignores the fact that this course is repeatedly taken by officers every two years and the curriculum content is intended to change regularly to meet changing and local training needs. SB 1408 would cause future loss of flexibility and force unnecessary and redundant training.

Law enforcement managers are assigned to a variety of assignments, including managing units of field assigned officers. It is questionable whether such managers should be required to undergo detailed training on hate crimes and cultural differences as required under SB 1408. It is also questionable whether such training should be required of dispatchers in view of their limited responsibilities.

No funding provisions are included in the bill to accommodate POST's increased costs for research and development nor is there funding for law enforcement agencies for increased training costs.

There is no question hate crimes are receiving increasing media attention. Law enforcement training on this subject and cultural differences deserve further POST review, and perhaps strengthening. SB 1408, however, goes too far and would have to be amended considerably before it could become acceptable. Two other bills appear to be better approaches, including SB 1335 (Torres) on cultural differences training and AB 3407 (Klehs) on hate crime training.

COMMENTS

This bill should be opposed unless amended.

BILL ANALYSIS

State of California Department of Justice
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1601 Alhambra Boulevard
Sacramento, California 95816-7083

TITLE OR SUBJECT Penalty Assessments: Vehicle Code	AUTHOR Senator Calderon	BILL NUMBER SB 1645
	RELATED BILLS AB 2409	DATE LAST AMENDED 2-19-92

SPONSORED BY
Senator Calderon

BILL SUMMARY (GENERAL, ANALYSIS, ADVANTAGES, DISADVANTAGES, COMMENTS)

General

1. This bill would provide for an additional assessment of \$12.50 upon every fine, penalty, fee, or forfeiture imposed and collected for a violation, or violations, of the Vehicle Code, except parking offenses. The assessment would be deposited by the county treasurer in a special account for transfer to the city or county of jurisdiction.

Analysis

The author's office indicates the purpose of the bill is to offer an incentive to local law enforcement to increase traffic enforcement. It was suggested that under the revised fine and assessment system enacted in 1991 there is reduced financial incentive for cities and counties to vigorously enforce traffic offenses, and the recently reduced incidence of traffic citations is evidence of this according to the author's office. Presumably, the revenue would go into a fund to induce more officers to be assigned traffic enforcement.

There have been reports of complaints from citizens, courts, and others about the high costs of penalty assessments under existing laws, which can have the state and local assessments 170% of the fine itself. SB 1645 would appear to aggravate this situation and expand the purpose of penalty assessments. It would also appear to be questionable public policy to have law enforcement so directly benefit from traffic enforcement.

Because this bill is in the early stages of the legislative process and will undoubtedly be amended along the way, it may be prudent to closely watch it without taking a position at this time.

Recommendation

Watch.

OFFICIAL POSITION

ANALYSIS BY <i>J. Snow</i>	DATE 3-10-92	REVIEWED BY	DATE
EXECUTIVE DIRECTOR <i>Morgan C. Boehm</i>	DATE 3-20-92	COMMENT	DATE

BILL ANALYSIS

State of California Department of Justice
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1601 Alhambra Boulevard
Sacramento, California 95816-7083

TITLE OR SUBJECT Controlled Substances: Substance Abuse or Canine Training	AUTHOR Assemblyman Cannella	BILL NUMBER AB 2308
	RELATED BILLS	DATE LAST AMENDED 1-9-92

SPONSORED BY
Assemblyman Cannella

BILL SUMMARY (GENERAL, ANALYSIS, ADVANTAGES, DISADVANTAGES, COMMENTS)

General

1. This bill provides immunity from prosecution, under the Uniform Control Substances Act, to all duly authorized peace officers while providing substance abuse training to law enforcement or the community or while providing canine drug detection training in the performance of their official duties, and to any person working under their immediate direction, supervision, or instruction.
2. This bill also allows any sheriff, chief of police, or state or local drug task force commander to provide controlled substances in his or her possession and control to any duly authorized peace officer or civilian drug detection canine trainer, provided the controlled substances are no longer needed as criminal evidence and provided the person receiving the controlled substances possesses a current and valid Drug Enforcement Administration permit which specifically authorizes the recipient to possess controlled substances while providing the above training.

Analysis

Current law authorizes possession of controlled substances only while investigating violations of the Uniform Controlled Substances Act by a peace officer or any person working under direct supervision. The author's office indicates there is no specific authorization in law to possess controlled substances for the training of law enforcement or the community or while providing canine drug detection training. The author's office is unable to cite any instances where officers have been prosecuted for such training but was introduced at the request of some narcotic officers for their protection. POST courses related to narcotics investigation and detection are currently using controlled substances in the training process. It is also likely that many law enforcement agencies using dogs for drug detection also use controlled substances for training purposes.

Comment

Recommend support position.

OFFICIAL POSITION

ANALYSIS BY <i>[Signature]</i>	DATE 2-25-92	REVIEWED BY	DATE
EXECUTIVE DIRECTOR <i>[Signature]</i>	DATE 3-24-92	COMMENT	DATE

BILL ANALYSIS

State of California Department of Justice
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1601 Alhambra Boulevard
Sacramento, California 95816-7083

TITLE OR SUBJECT Drug Asset Forfeiture Revenue: Deletes POST	AUTHOR Assemblyman Katz	BILL NUMBER AB 2311
	RELATED BILLS	DATE LAST AMENDED 1-13-92

SPONSORED BY

BILL SUMMARY (GENERAL, ANALYSIS, ADVANTAGES, DISADVANTAGES, COMMENTS)

GENERAL

AB 2311 would:

1. Delete existing provisions of law that authorizes POST to receive revenue from the state portion of drug asset forfeitures for drug related training and instead distribute 50% to the State Department of Mental Health and 50% to the county Office of Education of the county from which the funds are received to fund grants and administer the Gang Risk Intervention Pilot Program (GRIP).

ANALYSIS

In 1988, law was amended to give the POTF 85% of the state's portion of drug asset seizure revenue after statutory obligations were met in providing revenue to the State Department of Mental Health and the Los Angeles County Office of Education to fund GRIP programs. The revenue to POTF, anticipated to be \$2 million/year, was directed toward drug related training. POST has never received any revenue from this source because other legislation each year has diverted the revenue to the General Fund. The GRIP program was intended to be a one-year pilot program but has been extended each year by the Legislature. The existing distribution formula sunsets 1-1-94.

POST experiences every year considerable training costs in the form of training contracts and reimbursement to cities and counties for narcotics related training which is estimated to exceed \$1 million. With recently experienced revenue shortfall, AB 2311 provides potential for further erosion in POST's ability to meet law enforcement's training needs.

RECOMMENDATION

"Oppose" position.

OFFICIAL POSITION

ANALYSIS BY <i>[Signature]</i>	DATE 3-25-92	REVIEWED BY	DATE
EXECUTIVE DIRECTOR <i>[Signature]</i>	DATE 3-25-92	COMMENT	DATE

BILL ANALYSIS

State of California Department of Justice
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1601 Alhambra Boulevard
Sacramento, California 95816-7083

TITLE OR SUBJECT Penalty Assessments: Establishes Percentage Formulas	AUTHOR Assemblyman Isenberg	BILL NUMBER AB 2409
	RELATED BILLS	DATE LAST AMENDED 3-10-92

SPONSORED BY
Assemblyman Isenberg

BILL SUMMARY (GENERAL, ANALYSIS, ADVANTAGES, DISADVANTAGES, COMMENTS)

GENERAL

AB 2409 would:

1. Delete existing penalty assessment formula (\$7 for every \$10 or fraction thereof for county assessments and \$10 for every \$10 or fraction thereof for state assessments) and substitutes 70% and 100% of fine formula for county and state assessments on criminal and Vehicle Code offenses.

ANALYSIS

AB 2409 is a spot bill to deal with most needed changes to the 1991 Trial Court Funding and Realignment Act including providing the 1992/93 state allocations for trial courts. Assemblyman Isenberg's office is not at liberty at this time to identify all the contemplated changes. Most will be introduced and considered at the Budget Conference Committee which will begin meeting in April.

With regard to revising the penalty assessment formula to percentages, the author's intent is to reduce penalty assessments somewhat because fines and assessments have become too onerous. The author's office is unable to provide any statistical data as to how much of a reduction in penalty assessments revenue but is considered nominal. As evidence of fines and assessments becoming too onerous for offenders, the author's office cites the fact that court surveys show there has been an increase use of community service punishment in lieu of fines from 20% to more than 35%.

The author's office believes that penalty assessments as a revenue source has exceeded its limits and is looking for alternative funding sources for some of the existing beneficiaries. It has advised POST to consider looking for alternative funding sources. It is difficult to contest the view that penalty assessments have exceeded their limits as a revenue

OFFICIAL POSITION

ANALYSIS BY <i>Hal Snow</i>	DATE 3-20-92	REVIEWED BY	DATE
EXECUTIVE DIRECTOR <i>Thomas C. Beckers</i>	DATE 3-20-92	COMMENT	DATE

source. It is equally difficult to oppose AB 2409 in its present form because of the undeterminable small reduction in revenue to the POTF. But, this bill deserves close observation for other amendments that may be detrimental to POST.

RECOMMENDATION

Watch and oppose any amendments detrimental to revenue for the POTF.

BILL ANALYSIS

State of California Department of Justice
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1601 Alhambra Boulevard
Sacramento, California 95816-7083

TITLE OR SUBJECT Peace Officer Training: Hate Crimes	AUTHOR Assemblyman Klehs	BILL NUMBER AB 3407
	RELATED BILLS SB 1408	DATE LAST AMENDED 2-21-92

SPONSORED BY
Assemblyman Klehs

BILL SUMMARY (GENERAL, ANALYSIS, ADVANTAGES, DISADVANTAGES, COMMENTS)

General

1. This bill would require POST to develop, on or before 12-31-93, guidelines and a training course of instruction for law enforcement officers who are employed as peace officers or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. Hate crime is defined in the proposed legislation. In addition to requiring maximum use of audio and video communication and other simulation methods, the bill requires the course and guidelines to contain: (a) Indicators of hate crimes; (b) Impact of these crimes on the victim, the victim's family, and the community; (c) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes; (d) Law enforcement procedures, reporting, and documentation; and (e) Techniques and methods to handle incidents of hate crimes in a noncombative manner.
2. AB 3407 requires every law enforcement agency in the state to develop and distribute a brochure on hate crimes to victims of these crimes and the public. The bill requires these brochures be made available in multiple languages and be carried by peace officers. The bill recognizes that this requirement is subject to the provisions of the State Mandated Local program.

Analysis

Some of what this bill would require in the way of course content for the Basic Course is already required by POST, e.g., laws related to hate crimes. The remainder would have to be developed and added. Although not clear, the bill implies this training should be made available to inservice officers. It appears this bill would in effect mandate the training for the Basic Course.

Guidelines presumably are directed to law enforcement agencies and/or individual officers.

OFFICIAL POSITION

ANALYSIS BY <i>John Snow</i>	DATE 3-24-92	REVIEWED BY	DATE
EXECUTIVE DIRECTOR <i>Norman C. Becken</i>	DATE 3-24-92	COMMENT	DATE

The brochure on hate crimes is outside the scope of POST legislative interest, but law enforcement organizations may have some problems with this aspect.

Recently, there has been increased media attention to hate crimes that undoubtedly has prompted this bill along with SB 1408.

Comments

The Commission has a legislative policy to oppose or seek modification of proposed legislation which would impose by law programs which the Commission is now legally empowered to establish administratively. Adding the additional curriculum related to hate crimes to the Basic Course could have the impact of increasing the course length which has already, in the judgment of some, reached a point of diminishing returns in terms of students' abilities to absorb additional knowledge and skills in one course. Yet, it would appear the content proposed for the training has considerable face validity.

Recommend "neutral" position.

BILL ANALYSIS

State of California Department of Justice
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
1601 Alhambra Boulevard
Sacramento, California 95816-7083

TITLE OR SUBJECT Peace Officer Status: Investigators of Student Aid Commission and Dept. of Toxic Substances Control	AUTHOR Assemblyman Epple	BILL NUMBER AB 3614
	RELATED BILLS	DATE LAST AMENDED 2-21-92

SPONSORED BY
CAUSE - California Assoc. of Union Safety Employees

BILL SUMMARY (GENERAL, ANALYSIS, ADVANTAGES, DISADVANTAGES, COMMENTS)

General

AB 3614 would:

1. Grant peace officer status to investigators of the Student Aid Commission and the Department of Toxic Substances Control under Penal Code Section 830.3.

Analysis

As required by Penal Code Sections 13540-42, the California Student Aid Commission requested, in March 1990 and POST provided in October 1991, a peace officer feasibility study regarding the designation of peace officer status. The study concluded that peace officer status is not required to conduct Student Aid Commission investigators. Nevertheless, it was recognized in the report that investigators have occasional need to use arrest and search warrant authority to complete their investigations. the investigators also require occasional access to criminal offender record information. Accordingly, POST recommended the California Student Aid Commission consider legislative action to extend to the investigators the limited authority that is described in Penal Code Section 830.11. AB 3614, on the other hand, seeks to confer peace officer status. Even though this bill is inconsistent with the recommendation of the feasibility study, POST Commission policy is to remain neutral on such legislation.

With regard to granting peace officer status to investigators of the Department of Toxic Substances Control, no peace officer feasibility study has been requested nor performed contrary to the requirements of Penal Code Sections 13540-42. Past POST Commission legislative policy is to oppose bills that fail to meet these requirements.

Comments

Recommend "Oppose" position as it relates to granting peace officer status on investigators of the Department of Toxic Substances Control.

OFFICIAL POSITION

ANALYSIS BY <i>Hal Snow</i>	DATE 3-16-92	REVIEWED BY	DATE
EXECUTIVE DIRECTOR <i>William C. Beckus</i>	DATE 3-20-92	COMMENT	DATE

Memorandum

: POST Commissioners

Date , March 24, 1992

Norman C. Boehm, Executive Director

From : Commission on Peace Officer Standards and Training

Subject: STATUS OF POST-SUPPORTED LEGISLATION

The following is a status for POST-supported legislation:

Restoration of POST Funding

Since Governor Wilson agreed in December to support corrective legislation restoring POST funding, staff has worked closely with staff of OCJP in drafting language acceptable to the Governor's Office and the Department of Finance. Numerous legislative proposals have been developed, considered, and rejected by the Department of Finance and Governor's Office. In early March, word was received that the Governor's Office would not support any legislative solutions to POST's funding shortfall, at least for this year. The attachment identifies the sequence of events that have led up to the Governor's Office refusing to support corrective legislation.

On March 10, 1992, Chairman Lowenberg met with the heads or representatives of CPOA, CPCA, CSSA, PORAC and the POST Advisory Committee. The group wanted information on POST funding issues because of the high priority their associations have given the matter. The associations agreed among themselves to support both a long- and short-term corrective legislation. Efforts to amend existing bills and find willing authors subsequently failed. Therefore, no corrective legislation is possible this year.

The Governor's Office has requested of the Legislature a \$3.1 million augmentation of the 1992-93 proposed budget of POST from drug asset forfeiture revenue coming to the state. The request permits these dollars to be directed to general reimbursement rather than narcotics training. It is uncertain whether the Legislature will approve of this request as there are competing proposals for these dollars.

The associations also agreed to communicate with the Legislative Joint Budget Committee and the Governor in support of POST's budget.

Commission on Peace Officer Standards and Training
Historical Events Leading to Present Problems With POST Revenue Shortfall

- August 1991 - Revenue short fall appears
- October 31 - Commission acts to suspend salary effective 11-1-91 for mandated training
- Dec. 1991 - Governor at a meeting with law enforcement leaders commits to support/sponsor corrective legislation
- January 1992 - OCJP assigned to draft corrective legislation
- OCJP indicated Gov. would not support short term legislative solution, only long term
- Jan-Feb. - Several long term legislative bills developed and rejected by Governor's Office and Dept. of Finance
- Feb. 21 - Last day for bills to be introduced in Legislature
- Feb. 28 - Governor's Office rules out long term legislation, But would consider short term corrective legislation
- March 2 - Governor's Office rules out support for any corrective legislation this year
- March 3 - Governor supported SB 1118 to transfer \$3 million from General Fund to OCJP passes Assembly Public Safety Committee
- March 16 - Governor instructs Dept. of Finance to request \$3.1 augmentation of POST 1992-93 budget from drug asset forfeiture revenue

Law Enforcement Agency Accreditation

On Behalf of CPOA, Senator Robert Presley has agreed to amend his SB 1126 (formerly dealing with giving peace officer status to private university police) to include POST's proposed language to create a Law Enforcement Agency Accreditation Program within POST. (See Attachment for SB 1126.)

Revenue from Civil Awards/Settlements

CPOA was requested to sponsor this legislation that would call for POST to receive a small percentage of the civil awards/settlements against cities/counties/officers for actions of peace officers. CPOA was unable to find a willing author for three reasons: 1) expected opposition by attorneys' groups, 2) preoccupation of legislators with reapportionment and budget, and 3) reduced capability of legislators to carry bills because of reductions in staff brought about by Proposition 140. It is uncertain whether this proposal would have a better chance for success next legislative year.

Commission on Peace Officer Standards and Training
 Summary of Informational Bills of Interest to POST

<u>Bill</u>	<u>Author</u>	<u>Description</u>
ACR 67	Tucker	Urges Mayor of Los Angeles and others to adopt and implement the recommendations of the Christopher Commission
AB 183	Ferguson	Prohibits law enforcement officers from using pain compliance techniques upon a passive nonviolent protestor
SB 189	Dills	Appropriates \$21,236,000 from the Driver Training Penalty Assessment Fund to the State Dept. of Edu. to reimburse school districts for driver training
AB 198	Dills	Appropriates \$13,000,000 from the Driver Training Penalty Assessment Fund to the State Dept. of Edu. to reimburse school districts for driver training
AB 761	Horcher	Authorizes counties to levee an additional 50 cents for every \$10 or fraction thereof on criminal fines for the county's DNA identification system
SB 998	Rosenthal	Requires the establishment of a civilian board for each law enforcement agency to monitor implementation of procedures to investigate citizen's complaints against police
SB 1014	Calderon	Would authorize the interception of electronic communications for additional drug offenses
SB 1118	Presley	Transfers \$3,000,000 from the General Fund to the Victim-Witness Fund for the 1991-92 fiscal year
AB 1180	Murray	Authorizes the Director of Consumer Affairs to establish rules for the qualifications of private investigators and their employees to carry firearms and rules for the Director to issue concealed weapons permits

AB 1301 Klehs (Spot Bill) Requires POST to develop a course of training addressing prejudice-based incidents. This bill has been incorporated into AB 3407

AB 1364 Cortese Broadens authority of Fish and Game Director to designate any department employee as peace officer instead of designated members of the Wildlife Protection Branch

SB 1366 Leslie Authorizes a Nevada correctional officer or Nevada Division of Forestry crew supervisory authority when performing conservation-related projects or fire suppression duties within California to retake any inmate escaping

AB 1394 Speier Requires state agencies issuing any license, certificate, permit, registration, etc. to routinely provide names to State Department of Social Services for checks into failure to support family

SB 1566 Hill Proposes to establish the Correctional Peace Officers' Standards and Training Commission for CYA and CDC correctional peace officers

AB 1761 Knowles Requires the Attorney General to operate a telephone hotline to be available for use by school students 24 hours per day, 7 days per week to report drug activity

AB 1871 Burton Increases the size of Board of Corrections from 11 to 17, to include the Director of the Parole and Community Services Division of CDC, 4 public members, a director of a local substance abuse treatment program, a director of county substance abuse program from a county over 700,000 population

SB 1949 Greene Repeals existing law that allows a peace officer to bring a civil action against an individual who has filed a false complaint with law enforcement about misconduct, criminal conduct or incompetence

AB 2067 Floyd Would make substantial changes to the Public Safety Officers Procedural Bill of Rights Act

AB 2288 Isenberg Would establish the Commission on California Fiscal Affairs who would select the Legislative Analyst

AB 2291 Boland Authorizes county parole officer to exercise the powers of arrest of peace officer but not designated as a peace officer

AB 2337 Conroy Requires a peace officer who arrests a person for an act of domestic violence to notify the designated judge regarding the arrest if there is not a valid protective order in effect and require the judge to decide as to whether to issue emergency protective order

AB 2611 Burton Makes technical changes to the Public Safety Officers Procedural Bill of Rights Act

AB 3603 Umberg Would move parole officers of CYA and CDC from PC 830.5 to 830.2 thus giving them authority any place in the state without express restrictions provided their primary duty is conditions of parole or probationer

AB 3807 Hughes (Spot Bill) Repeats Penal Code Section 830.11 which grants certain peace officer powers

Memorandum

Legislative Review Committee

Date : Feb. 21, 1992

Norman C. Boehm, Executive Director

From : Commission on Peace Officer Standards and Training

Subject: STATUS OF COURT LITIGATION

The following is an update on the status of court litigation that is of interest to the Commission:

Santa Clara County v. Deputy Sheriffs' Association

The Committee will recall that direction was given at the January 23 Commission meeting to request the Attorney General's Office on behalf of POST to file an amicus brief with the California Supreme Court in the matter of Santa Clara County v. Deputy Sheriffs' Association. The Attorney General's Office has filed a brief. This action was the result of an Appellate Court decision upholding a Santa Clara County Superior Court decision giving the County of Santa Clara the right to confer limited peace officer status to correction officers assigned to the jail operated by the County Department of Corrections.

Soroka, et al. v. Dayton-Hudson Corporation: Target Stores

The California Supreme Court on January 31, 1992, granted the petition for review in Soroka V. Dayton-Hudson, which concerns the impact of the constitutional and statutory privacy protection upon psychological testing of applicants by employers and which may have impact upon peace officer psychological testing pursuant to Government Code Section 1031. The committee will recall that POST requested the Attorney General's Office to file a request with the Court urging the Court to grant the petition for review. The effect of the Court's decision to grant the petition for review is that it makes the previous Appellate Court decision null and void and instead indicates the Supreme Court will issue its own decision. See Attachment A.

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE



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January 6, 1992

JAN 8 8 35 AM '92

CALIFORNIA SUPREME COURT
303 2nd Street, South Tower, 8th Flr.
San Francisco, CA 94107

SOROKA, et al. v. DAYTON HUDSON CORPORATION, dba TARGET STORES
California Supreme Court Case No. A052157

Dear Clerk:

Pursuant to California Rules of Court, Rule 14(b), the Attorney General urges this Court either to grant the petition for review or file in this matter, or in the alternative to decertify the opinion of the Court of Appeal herein. Review is appropriate because although the Court of Appeal opinion focusses upon the impact of constitutional and statutory restrictions upon inquiries by private employers of job applicants, it also creates an ambiguity regarding the impact of those constitutional and statutory provisions upon psychological testing required of peace officers by Government Code section 1031(f).

In its decision the Court of Appeal held, apparently as a matter of law, that a private employer's requirement that job applicants submit to psychological tests used to determine emotional stability and which contain questions regarding religious beliefs and sexual orientation violates the applicants' constitutional right of privacy and statutory protections against impermissible inquiries. The Court of Appeal noted that the psychological tests at issue have been used to screen out emotionally unfit applicants for public safety positions such as police officers and correctional officers. Indeed, Government Code section 1031(f) requires that peace officers shall be found free from any emotional or mental condition which might adversely affect the exercise of the powers of a peace officer, and that emotional and mental condition shall be evaluated by licensed physician and surgeon or by a licensed psychologist. The court also noted, in a footnote, that it viewed the duties and responsibilities of these public safety personnel to be substantially different from those of store security officers, the job position at issue. However, by holding that private employers may not use psychological tests which have been used to screen out emotionally unfit applicants for public safety peace officer positions, the Court of Appeal decision creates an ambiguity

CALIFORNIA SUPREME COURT

January 6, 1992

Page 2

regarding the continued permissible use of such psychological testing to screen peace officers, notwithstanding its perceived distinction between the duties of security officers and peace officers. This Court should review the appellate decision to eliminate that ambiguity.

For the foregoing reasons, the Attorney General urges this Court to grant the petition for review in this matter or in the alternative to decertify the opinion of the Court of Appeal herein.

Sincerely,

DANIEL E. LUNGREN
Attorney General

VINCENT J. SCALLY, JR.
Deputy Attorney General

VJS:tf

**COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING**1601 ALHAMBRA BOULEVARD
SACRAMENTO, CALIFORNIA 95816-7083

Commission on Peace Officer Standards and Training
Advisory Committee Meeting
April 8, 1992 - 10 a.m.
Red Lion Hotel, Ballroom #4
San Diego, CA 92108
(619) 297-5466

AGENDA

- | | | |
|----|---|---------------|
| A. | Call to Order | Chair |
| | o Roll Call | |
| B. | Approval of Minutes of January 22, 1992 Meeting | Chair |
| C. | Review of Commission Meeting Agenda | Staff |
| D. | Report on Meeting Between Commissioners and
Police Labor Leaders | Chair |
| E. | Report on Use of Force | Staff |
| F. | Report on Basic Course Revision Project | Staff |
| G. | Report on Cultural Awareness Training | Staff |
| H. | Advisory Committee Member Reports | Members |
| I. | Old and New Business | Members |
| J. | Commission Liaison Committee Remarks | Commissioners |
| K. | Adjournment | Chair |

**COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING**1601 ALHAMBRA BOULEVARD
SACRAMENTO, CALIFORNIA 95816-7083POST Advisory Committee Meeting
January 22, 1992 - 10 a.m.
Bahia Hotel - Del Mar Room
998 West Mission Bay Drive
San Diego, California**MINUTES****CALL TO ORDER**

The meeting was called to order at 10:00 a.m. by Chairman Don Forkus.

ROLL CALL OF ADVISORY COMMITTEE MEMBERS

Present: Charles Brobeck, California Police Chiefs' Association
Don Brown, Calif. Organization of Police and Sheriffs
Cois Byrd, California State Sheriffs' Association
Jay Clark, California Association of Police Training Officers
Joe Flannagan, Peace Officers' Research Assoc. of California
Donald Forkus, California Peace Officers' Association
Jack Healy, California Highway Patrol
Derald Hunt, California Association of Administration of Justice Educators
Ernest Leach, California Community Colleges
Joe McKeown, Calif. Academy Directors' Assoc.
Carolyn Owens, Public Member
Cecil Riley, California Specialized Law Enforcement
John Beddow, Representing Public Member Judith Valles

Absent: Dolores Kan, Women Peace Officers' Assoc. of Calif.
Judith Valles, Public Member

Commission Advisory Liaison Committee Member present:

Commissioner Edward Maghakian

POST staff present:

Norman C. Boehm, Executive Director
John Berner, Bureau Chief, Standards & Evaluation
Glen Fine, Deputy Executive Director
Ken O'Brien, Bureau Chief, Training Programs Services
Hal Snow, Assistant Executive Director
Ken Whitman, Senior Consultant
Imogene Kauffman, Executive Secretary

INTRODUCTIONS

Newly appointed Advisory Committee Members Jack Healy, California Highway Patrol, and Dr. Ernest Leach, California Community Colleges, were introduced and welcomed.

APPROVAL OF MINUTES

The minutes of the October 30, 1991 meeting were approved as distributed.

REVIEW OF COMMISSION MEETING AGENDA

Staff reviewed the January 23, 1992 Commission meeting agenda and responded to questions and discussion on the issues.

Following discussion on Agenda Item E, "Recommendation to Approve Additions, Deletions, and Changes to the Regular Basic Course Performance Objectives", there was consensus that everyone who had been involved in this major undertaking be complimented, i.e., the members of the Basic Course consortium, Basic Course Academy Directors and POST staff.

Agenda Item G, "Recommendation to Initiate Contracts for Tactical Communications Training", was discussed and action taken.

MOTION - Brown, second - Byrd, carried unanimously that it be strongly recommended to the Commission that this program be supported and that all sworn members in a department attend the Verbal Judo program presented by Dr. George Thompson.

There was a request that in one year there be a follow-up report to the Advisory Committee on the success of this program. It was also requested that the academy directors be allowed to attend the Verbal Judo training.

As part of the Commission agenda review, Agenda Item F, "Progress Report and Demonstration - Law Enforcement Driver Training Interactive Courseware" was presented. It was reported that General Physics (the contractor), POST staff, and subject matter experts have completed the majority of tasks necessary to fully develop the courseware. Final programming, graphics generation, and the study booklet/reference manual are nearing completion. Final testing of the courseware is scheduled to be completed during the week of February 3, 1992. The courseware is scheduled to be delivered to the Commission during March 1992.

MINIMUM EDUCATION STANDARDS FOR EMPLOYMENT

A proposal presented by Joe Flannagan, PORAC, at the previous Advisory Committee meeting, discussed the minimum education standards for employment and the fact that candidates cannot pass

the basic English skills and comprehensive exams at the 12th grade level. In response to the proposal that POST develop a pre-screening plan that would mandate the current high school or GED, it was stated that POST regulations require that all California peace officers "be able to read and write at levels necessary to perform the job of peace officer as determined by the use of the POST Entry-Level Law Enforcement Test Battery" or other job-related tests of reading and writing ability. In the staff analysis responding to the memo, the following concepts were discussed:

1. Counseling and Referral: Persons who fail to demonstrate minimally acceptable skill levels should be referred to remedial education courses.
2. Certificates of Achievement: The certificate can be taken to prospective employers. This approach proved popular at a recent one-year pilot.
3. "Bonus Points" and Affirmative Action: Awarding "bonus points" for successfully completing remedial instruction represents a practice over which POST would have no jurisdiction. Staff is constantly suggesting to users of the POST test battery that scores on the test be combined with other selection information for purposes of ranking candidates on an employment list (rather than scoring the test pass/fail and ranking candidates on other information). By doing so, greater use is made of the predictive power of the test.

The issue of establishing a program for those candidates who do not have a 12th grade reading level was discussed with the PORAC Board of Directors and training officers in the Los Angeles County area. The biggest concern was - are the standards high enough? POST feels they are for right now. If an agency desires to adopt higher reading and writing standards than POST's minimums, that is within the agency's purview.

REVIEW OF CALIFORNIA COMMUNITY COLLEGES COMMISSION ON INNOVATION

Dr. Leach reported on the Commission on Innovation which the Board of Governors and the Chancellor of the California Community Colleges has established. The Commission will develop specific recommendations that will assure cost-effectiveness as well as access, retention, completion, and transfer for the diverse students expected to enroll in the coming decades. The work of the group will be developed into a state action plan as well as a book that will provide guidance for community colleges in other states facing a changing student demography. The Board of Governors asked the Commission and its task forces, made up primarily of community college professionals and national experts, to develop specific recommendations and strategies in three areas:

1. Educational Instruction and Delivery Techniques
2. Facilities Planning and Accommodation of Enrollment
3. Management and Organizational Efficiency.

A second phase of the project will concentrate on implementation.

The Commission has had its first meeting and there will be another one next month. The advisory groups will be reporting back to the Commission during the next 18 months.

Dr. Leach was asked to keep the Advisory Committee apprised of the progress of the Commission on Innovation.

STATUS OF BASIC COURSE REVIEW PROJECT

Staff reported on the two separate, but integrated, projects in the Training Programs Services Bureau. A special Consultant, Rick Baratta, has been hired to work specifically on the Basic Course Review to update it with any constructive and content changes that may be justified, such as integration with the Field Training Program. He is doing a great deal of research with recent graduates of our basic academies. Based on that information, he has prepared a report on how to give some in-house direction as to how we are going to change or adjust the current basic course and perhaps pursue a more active and dynamic Field Training Program as well.

STATUS OF SYMPOSIUM ON TRAINING ISSUES

A Management Fellow has been hired to review the recommendations that emerged from the Symposium on Training Issues. The first action taken was to develop a goal statement, and develop the objectives on what will be accomplished in the next nine months. The 100 recommendations were reviewed and categorized to various groups. Studies on use of force were reviewed. A predominant theme was in the area of training and the field training program and supervision. A number of contacts have been made throughout the U.S. who will be good resources, including Dr. Staub who spoke at the Symposium. He is very much interested in "Bystandership" and has agreed to consult with the group.

A committee is being formed which will have its first meeting in February to examine existing courses that deal with the use of force and supervisory techniques. Video presentations are one alternative being examined to improve more consistency in content and result.

ADVISORY COMMITTEE MEMBER REPORTS

Calif. Organization of Chiefs and Sheriffs - Don Brown reported that C.O.P.S. will be holding their annual endorsement conference at the Holiday Inn, Capitol Plaza, Sacramento April 13-16. The emphasis will be on watching for proposed laws to impact the PERS money.

California Community Colleges - Dr. Ernest Leach reported on projects that will help improve the use of technology in community colleges. One was to acquire the inter/active video disc equipment that involves \$50,000 allocated from vocational funds at four institutions. It will be recommended to the Board of Governors that three additional projects, out of vocational money, be approved:

1. The expansion of the interactive video which will be about \$90,000;
2. A pilot program for an advanced technology classroom which will be about \$70,000; and
3. Establish a correctional science curriculum for about \$30,000, together with federal funds, the local college and resources from POST. These are subject to approval of the Board of Governors and the availability of federal money.

Calif. Assoc. of Administration of Justice Educators - Derald Hunt announced that CAAJE's annual conference is scheduled for May 1-2, in Sacramento. The program will focus on computer-assisted instruction. The new Scholarship Fund drive is going well and it is hoped there will be enough funds to start granting scholarships this fall.

Survey forms for the Public Safety Curriculum study have been distributed. The dual purpose of this study is to establish a consensus on how public safety education should be provided and to establish clearer articulation guidelines.

Calif. Assoc. of Police Training Officers - Jay Clark reported that CAPTO continues to monitor the issues of distant learning as promoted in the ACR 58 report. Many of those who are responsible for training are also double slotted in positions dealing with background investigations and other employment screening phases. The finalized POST Medical Screening Manual for California Law Enforcement will be of vital importance. The current efforts to bring that document to the final form for distribution is supported. With Training Needs Assessments still being completed throughout the state and the severe financial impact being felt throughout the state, the availability of distant learning will help fill training needs.

Calif. Highway Patrol - Jack Healy reported on what was being done by the CHP in response to S.B. 198 which deals with accidents and illness in the work place. A retired annuitant was brought in to review all the state and federal laws dealing with accidents and injuries to try to ensure compliance with the law. The final charge was to report the "how to do it" safety plans. Commanders at all levels were directed were directed to develop their safety plans. It was found that the CHP was in about 3/4 compliance with the regulations that exist. Information was

received from CALOSHA. CALOSHA has several brochures which tell what the plan entails and what the legal requirements of the plan are. These brochures are available from CALOSHA.

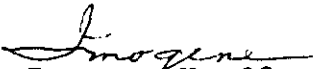
Calif. Assoc. of Academy Directors - Joe McKeown stated that CADA has been heavily involved in attempting to come up with some solutions for the funding problems that POST faces, i.e., agencies and the community colleges. In an attempt to come up with a plan, a number of CADA members met recently in San Jose. It was agreed that it is going to take a long time so it is still being studied.

Calif. Police Chiefs Assoc. - Charles Brobeck reported that the CPCA annual conference will be held the first week in February and will focus on partnerships with one's spouse. He also conveyed that CPCA is overwhelmingly in support of the verbal judo concept.

Calif Peace Officers' Assoc. - Don Forkus reported that CPOA had very successfully concluded their satellite program of Legislative Update training which will hopefully be continued.

Adjournment

There being no further business to come before the Committee, the meeting was adjourned at 1315 hours.


Imogene Kauffman
Executive Secretary

Memorandum

: POST Commissioners

Date : March 20, 1992

Ronald E. Lowenberg, Chairman

From : **Commission on Peace Officer Standards and Training**

Subject: STATUS REPORT ON ACCREDITATION

The Standards Development Committee, created to begin drafting standards for the law enforcement agency accreditation program, met in January and February.

The committee includes Ted Mertens (chair) and Jerry Galvin, representing CACP, Bill Heafey and Don McDonald (CSSA), Bob Bandurraga and Armand Mulder (CPOA-middle management), and Ron Lompart and Skip Murphy (vice-chair) representing PORAC.

The committee is charged with the definition of the content and format of accreditation standards, and the preliminary drafting of specific standards.

The committee met in January, in San Diego, and in February, in Sacramento. The third meeting is scheduled for May 7-8, 1992 in Los Angeles.

The committee has initially decided standards are appropriate for the broad areas of Organization, Operations, Support Services, and Administration. Standards for Detention/Corrections will refer only to compliance with existing, pertinent California law and standards. The committee believes standards are not appropriate for court services, civil and coroner functions.

The committee estimates that between 200 and 300 standards will be required initially; a significant reduction from the more than 900 standards that are included in the nationwide program operated by the Commission on Accreditation of Law Enforcement Agencies (CALEA).

At the February committee meeting, individual members were assigned responsibility for the first draft of standards in selected areas. The draft standards and the drafting process will be reviewed and discussed in detail at the May meeting.

March 20, 1992
Page 2

The committee plans to meet several more times in 1992, working independently on the standards between meetings. A preliminary review of the draft standards by the Accreditation Advisory Committee is tentatively planned for early 1993.



POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO
HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103

WILLIS A. CASEY
CHIEF OF POLICE

Norm Boehm
Commission on Peace Officer
Standards and Training
1601 Alhambra Blvd.
Sacramento, CA 95816-7083

03/11/92

Dear Mr. Boehm:

The purpose of this letter is to convey my serious concern regarding the continuation of suspension of reimbursements for costs incurred by agencies that provide state mandated law enforcement training courses.

Due to their relatively large number of new and tenured members, large law enforcement agencies must provide such in house training in order to remain in compliance with state law and with standards set forth by the POST Commission.

Historically, the ability to provide such training has been made possible by the creation of the Peace Officers' Training Fund (POTF), which equally allocated aid to cities, counties and districts for training expenses.

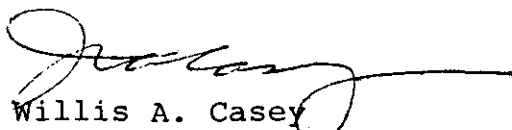
While the action taken on November 1st to suspend such reimbursement in order to make up for an immediate revenue shortfall to the POTF is understandable, the continuation of that suspension causes severe hardships on large agencies that must continue to provide mandated training.

I can assure you that my training priorities are to continue to provide basic and advanced training in order that members of my department develop high levels of competence.

As the POST Commission will soon be deciding on budgeting priorities for the next fiscal year, I ask your assistance in restoring an adequate and equitable method of funding mandated training as soon as possible.

I remain available to assist in any way possible.

Sincerely yours,


Willis A. Casey
Chief of Police

cc: POST Commissioners

DEPARTMENT OF JUSTICE

DANIEL E. LUNGREN, Attorney General

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

1001 ALHAMBRA BOULEVARD
 SACRAMENTO, CA 95816-7083



GENERAL INFORMATION
 (916) 739-5328

EXECUTIVE OFFICE
 (916) 739-3864

BUREAUS

Administrative Services
 (916) 739-5354

Center for Leadership
 Development
 (916) 739-2093

Compliance and Certificates
 (916) 739-5377

Information Services
 (916) 739-5340

Management Counseling
 (916) 739-3868

Standards and Evaluation
 (916) 739-3872

Training Delivery Services
 (916) 739-5394

Training Program Services
 (916) 739-5372

Course Control
 (916) 739-5399

Professional Certificates
 (916) 739-5391

Reimbursements
 (916) 739-5367

Resource Library
 (916) 739-5353

March 24, 1992

Willis A. Casey, Chief of Police
 Police Department, City and County of
 San Francisco
 Hall of Justice
 850 Bryant Street
 San Francisco, CA 94103

Dear Chief Casey:

Thank you for your March 11 letter regarding suspension of salary reimbursement for costs of state mandated law enforcement training courses. The Commission reluctantly took that action effective November 1, 1991 because of a projected 43% shortfall in revenue. The Commission retained full reimbursement for travel, per diem, and tuitions on all courses.

As noted in POST Bulletin #91-16, the Commission stated that salary reimbursement might be resumed if revenues and training volumes permitted. Revenues have since picked up to a projected 33% shortfall and training volumes are down. This will enable the Commission at its April meeting to consider a small percentage of salary reimbursement retroactive to November 1, 1991 for this fiscal year.

It appears likely that revenue will not be fully restored this year. However, the Governor's proposed budget for 1992-93 fiscal year projects total revenue at approximately \$43 million which should allow a restoration of salary reimbursement for state-mandated courses in the year beginning July 1, 1992.

The key to the long term health of the POST programs as we know it lies with the Legislature. Recent legislative changes put the General Fund into the same State Penalty Fund from which POST revenues are drawn. Law enforcement and other organizations may wish to communicate with their state legislators and with Senators Alfred Alquist and Frank Hill, and Assemblypersons John Vasconcellos and Cathie Wright (members of the Joint Budget Committee) to support POST's 1992/93 budget and to reject the Legislative Analyst's "option" to abolish POST and transfer its revenue to the General Fund.

We appreciate your input on this important issue.
Please call me at (916) 739-3864 if you have further
questions on this matter.

Sincerely,

Norman C. Boehm

NORMAN C. BOEHM
Executive Director



January 30, 1992

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

MAR 13 8 47 AM '92

Daniel E. Lungren
Attorney General
State of California
Department of Justice
1515 K Street, Suite 511
Sacramento, CA 94244-2550

Dear Attorney General Lungren:

I recently had the opportunity to serve as a consultant with the Commission on Peace Officer Standards and Training during the revision of the Medical Screening Manual for California Law Enforcement. The meeting was organized and conducted by Shelley Weiss Spilberg, Ph.D. (Personnel Selection Consultant).

I'm writing you to offer the highest possible accolades to Dr. Spilberg and the Commission. The meeting was superbly organized, the consultants prepared, the agenda closely followed, and a consensus expediently achieved. I was not only impressed (dazzled) by Dr. Spilberg's knowledge and insights into this process, but was equally impressed by the information provided (at her request) by Robert Goldberg, M.D. of the Occupational Health & Safety Division of the City of Los Angeles. Steve Weyers, M.D. of the California State Personnel Board had an obviously comprehensive grasp of the issues and also contributed significantly to our deliberations.

I have had opportunities in the past to deal with similar organizations and charges and, without exception, these have been onerous experiences. Dealing with Dr. Spilberg and her panel was not only a pleasant and educational experience but also, when the meeting was over, left all of us with a feeling of significant accomplishment.

I have little opportunity to deal with State agencies, but wanted to write you and tell you that, if the Commission on Peace Officer Standards and Training is indicative of the manner in which the Attorney General's office is run, I would be delighted to deal with any of your people in the future. It is an almost exhilarating experience to see tax dollars working to accomplish something infinitely more expeditiously than I have seen in the private sector or anywhere else.

Sincerely,

James G. Garrick, M.D.

JGG/bc

1145

FEB 09 1992

Post Office

1515 K STREET, SUITE 511, SACRAMENTO, CA 94244-2550

File Support
415 923 4721

415 923 4798

Primary Case Physicians

415 923 4721

415 923 4798

415 923 4721

415 923 4798

Medical

415 923 4721

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Medical

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415 923 4721

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Saint Francis Memorial Hospital
900 Hyde Street
San Francisco, CA 94109
415 923 4721 FAX 415 923 4798

San Francisco Bay Club
1555 Mt. Diablo Blvd., Suite 110
Bellevue Creek, CA 94516
415 924 0806 FAX 415 924 0672

San Francisco Bay Club
200 Lombard Street
San Francisco, CA 94111
415 923 4721 FAX 415 923 4798



State of California

Office of the Attorney General

Daniel E. Lungren
Attorney General

March 2, 1992

Dr. James G. Garrick
Center for Sports Medicine
Saint Francis Memorial Hospital
900 Hyde Street
San Francisco, CA 94109

Dear Dr. Garrick:

Thank you for your recent letter of commendation in regard to the services provided by Shelley Weiss Spilberg, Ph.D. and the Commission on Peace Officer Standards and Training (P.O.S.T.).

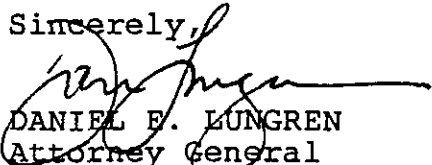
According to your correspondence, Dr. Weiss organized and conducted the Commission on Peace Officer Standards and Training's meeting on the revision of the Medical Screening Manual for California Law Enforcement in a professional and exemplary manner. Your positive comments and perspective about the services rendered at the meeting are appreciated.

As an Ex-Officio Member of the Commission, I am pleased to learn that your interaction and consultation experience with the Commission was rewarding. I was especially pleased to read your comparison of P.O.S.T. services to the efficiency usually attributed to the private sector; that was truly refreshing!

I believe that it is very important that the Chairman and Executive Director of P.O.S.T, Mr. Norm Boehm, be made aware of your accolades and praise for the services provided by the Commission. Therefore, I am taking the liberty of forwarding copies of your correspondence and this letter to Mr. Boehm for his information.

Again, thank you for your feedback and praise of the services provided by the Commission on Peace Officer Standards and Training.

Sincerely,


DANIEL E. LUNGREN
Attorney General

cc: Norm Boehm ✓

March 2, 1992

COMMISSION ON POST

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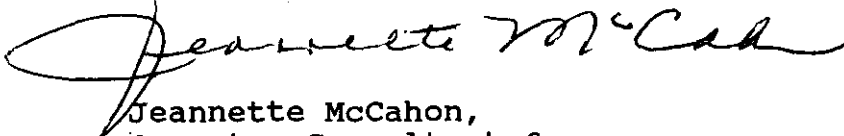
Norm E. Boehm
Executive Director
Commission on Post
1601 Alhambra Boulevard
Sacramento CA 95816

RE: KEN WHITMAN'S CAMPUS VISIT ON FEBRUARY 26, 1992
FOR OVERVIEW OF THE POST INTERACTIVE MULTIMEDIA
PC832 COURSEWARE FOR IMPLEMENTATION FALL-1992

Ken's presentation of the Law Enforcement IVD Training Courseware to our review committee was excellent. It has resulted in plans to implement the PC832 Interactive IVD Training Program during the FALL-1992 Semester in a parallel teaching/test mode. Plans have been made to install ten (10) IVD teaching stations.

Thank you for Post's assistance in helping our school to try to effectuate changing the presentation of PC832 from a lecture-based teaching delivery to a Computer-Based-Training environment.

To effectively train staff at a 80-85% mastery level, while at the same time to spread the teacher's span-of-control by 50-100%, has been accomplished in this past year on our campus. For us to be able to attempt this training technique on the PC832 course for students is an exciting challenge. We thank you for this opportunity.



Jeannette McCahon,
Computer Consultant for
Training and Instruction



DEDICATED TO EXCELLENCE IN LAW ENFORCEMENT
THROUGH EDUCATION AND TRAINING.

MAR 23 9 13 AM '92

March 16, 1992

Mr. Norm Boehm, Executive Director
California Commission on Peace Officer
Standards and Training
1601 Alhambra Boulevard
Sacramento, CA 95816-7083

Dear Norm:

May I take this opportunity to express my appreciation to you and your staff for meeting with members of the California Academy Directors Association (C.A.D.A.), in Newport Beach to discuss matters of mutual concern. Discussion continued at our statewide C.A.D.A. meeting in San Diego and concluded with a request from our members that I convey our concerns with this letter.

At our meeting in Newport Beach, C.A.D.A. members shared with you our belief that while research and development programs are important to the future of law enforcement, and should be continued, during times of fiscal exigency our top priority must be state mandated training and the financial support needed to insure delivery. The suspension of reimbursement from the Peace Officer Training Fund for costs incurred for providing state mandated training has placed agency presenters in a precarious position. Agency presenters provide training for approximately half of the peace officers of this State and have relied upon the Peace Officer Training Fund to support this effort. Without this support an unfair burden is placed upon agency presenters to continue to provide mandated training without equitable share of the revenues intended to defray costs for providing such training.

The critical issue is that since State law mandates certain training, law enforcement agencies who are unable to provide or obtain that training for their employees, regardless of reason, are in violation of the law and hence negligent per se. This liability issue is of great importance to us and making certain types of training mandatory by State law but not paying for the cost of its delivery is a position we feel is untenable.

We have attempted and will continue to try and work within the system and be creative in the methods we use to accommodate training needs while waiting for the budget situation to become rectified. Unfortunately, our efforts are not solving the problem and we apparently face even greater fiscal cutbacks.

Some agency presenters have attempted to secure support from community colleges, but due to caps on growth and other fiscal restrictions, community colleges are often unable to accommodate agency presenters, particularly in the way of mandatory in-service training.

Norm, we respectfully request your assistance to address our concerns with members of the Finance Committee on March 23rd and with P.O.S.T. commissioners at their slated meeting on April 9, 1992. We are confident that our concerns are also your concerns based upon your comments at the Newport Beach meeting.

In closing, together we believe that the impact of this fiscal problem can be resolved, but it will not happen without a concerted cooperative effort. You summed it up during our recent telephone conversation, "these are difficult times," and I totally agree. Our mutual responsibility is to meet the challenge and provide a solution. Your ongoing concern and effort regarding this matter is appreciated.

Sincerely,



Robert Kristic, Chairman
California Academy Directors Association
Director, Redwoods Regional Law Enforcement Training Center
College of the Redwoods

cc: P.O.S.T. Commissioners ✓