



Georgia Peace Officer Standards and Training Council

Manual for Background Investigators



This page left intentionally blank

Preface

O.C.G.A. § 35-8-8 requires a pre-employment background investigation for peace officers, jailers and communications officers.

The POST *Background Investigation Manual: Guidelines for the Investigator* is intended to provide guidance to assist in satisfying these requirements and in otherwise ensuring that the background investigations of Georgia officers are thorough, lawful and effective.

Although these guidelines are detailed and comprehensive, this manual is intended as a resource rather than a replacement for adequate training and other needed forms of agency support for background investigators.

KEN VANCE
Executive Director

This page left intentionally blank

Acknowledgements

Sincere gratitude to the California Commission on POST for the basis of this manual.

Ryan Powell, Director of Operations
Georgia POST Council

Mitch Jones, Director of Certification and Training
Georgia POST Council

This page left intentionally blank

Contents

Chapter One: Introduction	<u>Page -1-</u>
Focus of the Manual	<u>Page -1-</u>
The Role of Post	<u>Page -3-</u>
Chapter Two: Peace Officer, Jailer, and Public Safety Dispatcher	
Background Investigation Dimensions	<u>Page -5-</u>
Table 2-1: Summary of Post Background Investigation Dimensions for Peace Officers, Jailer, and Public Safety Dispatchers	<u>Page -7-</u>
Moral Character	<u>Page -8-</u>
Integrity	<u>Page -8-</u>
Impulse Control/attention to Safety	<u>Page -10-</u>
Substance Abuse and Other Risk-taking Behavior	<u>Page -11-</u>
Stress Tolerance	<u>Page -12-</u>
Confronting and Overcoming Problems, Obstacles, and Adversity	<u>Page -13-</u>
Conscientiousness	<u>Page -14-</u>
Interpersonal Skills	<u>Page -17-</u>
Decision-making and Judgment	<u>Page -19-</u>
Learning Ability	<u>Page -20-</u>
Communication Skills	<u>Page -20-</u>
Chapter Three: Legal Qualifications and Statutory Framework	<u>Page -23-</u>
Overview of Pre-employment Screening Requirements	<u>Page -23-</u>
Peace Officers	<u>Page -23-</u>
Jailers and Public Safety Dispatchers	<u>Page -23-</u>
Council Procedure: Background Investigations	<u>Page -24-</u>
Council Requirements for Medical and Psychological Suitability Examinations	<u>Page -24-</u>
Employment Discrimination Laws and Regulations	<u>Page -24-</u>
Privacy and Confidentiality Laws	<u>Page -26-</u>
Disability Discrimination Laws and Regulations: the Americans with Disabilities Act (Ada)	<u>Page -26-</u>
Who Is Protected	<u>Page -27-</u>
Who Is <i>Not</i> Protected	<u>Page -27-</u>
Essential Job Functions	<u>Page -28-</u>
Reasonable Accommodation	<u>Page -28-</u>
The Pre-employment Process and the Conditional Offer of Employment	<u>Page -29-</u>
The Pre-conditional Offer Stage: Specific Areas of Investigation	<u>Page -29-</u>
Employment History	<u>Page -29-</u>
Substance Abuse	<u>Page -29-</u>
The Post-conditional Offer Stage	<u>Page -31-</u>
Background Investigation Laws and Regulations	<u>Page -31-</u>

Peace Officers	<u>Page -31-</u>
Jail Officer	<u>Page -43-</u>
Public Safety Dispatchers	<u>Page -45-</u>
Chapter Four: The Background Investigation Process	<u>Page -49-</u>
Prior to Initiating the Investigation	<u>Page -49-</u>
The Background Steps	<u>Page -50-</u>
Figure 4-1. The Background Investigation Process	<u>Page -51-</u>
Step 1: Preparation of the Packet	<u>Page -52-</u>
Step 2: Meet with Candidate to Explain the Packet	<u>Page -53-</u>
Step 3: Review the Personal History Statement and Other Completed/returned Materials	<u>Page -53-</u>
Document Analysis	<u>Page -53-</u>
Step 4: the Initial Background Interview	<u>Page -54-</u>
Interviewing	<u>Page -56-</u>
Preplanning	<u>Page -56-</u>
Beginning the Interview	<u>Page -56-</u>
Posing Questions	<u>Page -57-</u>
Question Phrasing	<u>Page -57-</u>
Follow-up/probing	<u>Page -58-</u>
Interviewers' Nonverbal Behavior	<u>Page -58-</u>
Deception in the Interview	<u>Page -59-</u>
Step 5: Collect and Submit Candidate Fingerprints	<u>Page -59-</u>
Step 6: the Investigative Process	<u>Page -60-</u>
Cyber-investigations: Internet Searches and Search Engines	<u>Page -60-</u>
Step 7: Detection of Deception Examinations	<u>Page -61-</u>
Step 8: Discrepancy Interview	<u>Page -61-</u>
Step 9: Report and Background Packet Preparation	<u>Page -61-</u>
Step 10: Conditional Offer of Employment Extended	<u>Page -64-</u>
Step 11: Medical and Psychological Examinations and Background Investigation Followup	<u>Page -64-</u>
Medical and Psychological Examination Documentation	<u>Page -65-</u>
Step 12: Final Evaluation - Formal Offer of Employment	<u>Page -65-</u>
Chapter Five: Areas of Investigation and the Post Personal History	
Statements	<u>Page -67-</u>
Section 1: Personal	<u>Page -67-</u>
Verifying Identity	<u>Page -68-</u>
Discrepancies in Names - Use of an Alias	<u>Page -68-</u>
Citizenship	<u>Page -68-</u>
Social Security Number	<u>Page -69-</u>
Physical Description and Photographs	<u>Page -69-</u>
Section 2: Relatives and References	<u>Page -69-</u>
Family Members	<u>Page -70-</u>
Marital Status	<u>Page -70-</u>
Former Spouse(s)/former Registered Domestic Partner(s)	<u>Page -70-</u>
Children	<u>Page -71-</u>
Other References	<u>Page -71-</u>
Table 5-1: Sample Authorization/advisement to Conduct a Preemployment Peace Officer Background Investigation	<u>Page -73-</u>

Table 5-2: Sample Cover Letter and Questionnaire for Reference Checks	<u>Page -74-</u>
Section 3: Education	<u>Page -76-</u>
Verifying Minimum Requirements	<u>Page -76-</u>
Section 4: Residence	<u>Page -77-</u>
Table 5-3: Sample Cover Letter and Questionnaire to Landlords	<u>Page -78-</u>
Section 5: Experience and Employment	<u>Page -80-</u>
General Areas of Employment History Inquiry	<u>Page -80-</u>
Supervisors and Co-workers	<u>Page -81-</u>
Periods of Unemployment	<u>Page -81-</u>
Reason for Leaving a Job	<u>Page -81-</u>
Table 5-4: Sample Letter to Be Used with Peace Officer Candidates Who Are <u>Not</u> Currently Employed as Peace Officers	<u>Page -82-</u>
Table 5-5: Sample Authorization to Release Information for Employment of Peace Officer Candidates	<u>Page -83-</u>
Table 5-6: Sample Cover Letter and Questionnaire to past Employers and Supervisors	<u>Page -84-</u>
Current Employer	<u>Page -86-</u>
Rejection from Another Peace Officer Position	<u>Page -86-</u>
Section 6: Military	<u>Page -86-</u>
Selective Service Registration	<u>Page -87-</u>
Military Service History	<u>Page -87-</u>
Dd-214	<u>Page -88-</u>
Re-entry Codes	<u>Page -88-</u>
Type of Discharge/character of Service	<u>Page -88-</u>
Current Military Status	<u>Page -89-</u>
Military Discipline	<u>Page -89-</u>
Contact past Commanding Officers or Military Acquaintances	<u>Page -89-</u>
Section 7: Financial	<u>Page -89-</u>
Source of Income	<u>Page -90-</u>
Expenditures	<u>Page -90-</u>
Bankruptcy	<u>Page -91-</u>
Bills Turned over for Collection and Repossessions	<u>Page -91-</u>
Garnishments	<u>Page -91-</u>
Tax Delinquencies	<u>Page -91-</u>
Financial Credit Reports (Support Document)	<u>Page -92-</u>
Consumer Credit Reporting Agencies	<u>Page -92-</u>
Practical Considerations	<u>Page -92-</u>
Table 5-7: Sample Advisement to Candidates Regarding the Use of Credit Information for Employment Purposes	<u>Page -94-</u>
Section 8: Legal	<u>Page -95-</u>
Legal History Search Guidelines	<u>Page -95-</u>
Felony Convictions	<u>Page -96-</u>
Misdemeanor Convictions	<u>Page -96-</u>
Practical Considerations	<u>Page -97-</u>
Civil Court Action	<u>Page -97-</u>
Restraining or Temporary Protective Order	<u>Page -97-</u>
Diversion Programs	<u>Page -97-</u>
Fingerprinting	<u>Page -97-</u>
Illegal Drug and Alcohol Use	<u>Page -98-</u>

Section 9: Motor Vehicle Operation	<u>Page -98-</u>
Driver's License	<u>Page -99-</u>
Driver's License Refused	<u>Page -99-</u>
Driving Record	<u>Page -100-</u>
Revoked or Suspended License	<u>Page -100-</u>
Refused Auto Liability Insurance	<u>Page -100-</u>
Section 10: General Topics	<u>Page -100-</u>
Tattoos	<u>Page -101-</u>
Additional Resources	<u>Page -103-</u>
Background Investigation	<u>Page -103-</u>
Employment Legislation	<u>Page -103-</u>

Chapter One

INTRODUCTION

The pre-employment background investigation satisfies two goals: (1) assuring compliance with all applicable minimum standards for appointment and (2) screening out candidates who, based on their past history or other relevant information, are found unsuitable for the positions in question. The express purpose of this manual is to assist background investigators – especially but not exclusively new investigators – in conducting investigations that satisfy both of these goals.

Backgrounds are among the most important investigations that a law enforcement agency will ever conduct. The manner in which a background investigation is conducted can make the difference between hiring an individual who will truly protect and serve versus someone who may cause harm to oneself, the agency, and society.

Background investigations are also among the most challenging investigations to conduct. They must be comprehensive if they are to lead to informed hiring decisions. Past misconduct and other signs of unsuitability must be uncovered so that dangerous or otherwise unfit candidates are screened out. At the same time, inquiries into past performance must stay within the tight parameters of fair employment practices.

Furthermore, the areas investigated – and the evaluation of the resulting information – must be treated consistently across all candidates. Background investigators must therefore be knowledgeable about all applicable local, state, and federal fair employment laws. They must be conversant in the legal requirements for appointment to the positions in question. They must heed all agency policies, practices, and operational limitations. They must base their inquiries and evaluations on candidate behaviors that have a direct relationship to the requirements and demands of the position, and they must do so with consistency and without bias. They must be able to articulate the information gathered from a wide variety of sources and how it is used in determining candidate suitability.

This manual is intended to assist background investigators in accomplishing this challenging task. The procedures and guidance presented here explain what information to gather, and how that information should be considered in determining candidate suitability.

FOCUS OF THE MANUAL

1. “Screen-out” vs. “Select-in” Orientation

POST has the responsibility for developing standards and assuring compliance with those standards for peace officers and public safety professionals. POST regulations

mandate what must be done in order to satisfy the *minimum* standards for appointment. Therefore these guidelines are written from a “screen-out” rather than a “select-in” perspective; that is, they are designed to assist in identifying and weeding out the unfit, rather than distinguishing excellent candidates from those who just meet minimum qualifications.

Agencies have the right to increase these standards as well as require additional standards.

2. Target Readership: Background Investigators

This manual was written expressly for background investigators. Although it may prove useful to others besides investigators, it is not intended as a comprehensive resource document for administrators, legal counsel, or others who are not directly involved in the conduct of background investigations.

3. Target Jobs: Peace Officer, Jailer and Public Safety Dispatcher

Georgia law requires the completion of pre-employment background investigations for peace officers, jailers, and public safety dispatchers. Background investigations must be conducted on **all** candidates for these three classifications prior to sending in an application for certification. It is also highly recommended for new hires, re-appointments, laterals, and those who are internally reclassified to a peace officer status requiring higher training and appointment standards.

As POST has been charged with the responsibility for developing selection standards for peace officers and criminal justice professionals, the focus of this manual is therefore limited to the conduct of background investigations on candidates for certification. Local agency policy or regulation may require the completion of a pre-employment background on a host of other classifications of employment (e.g., secretarial support staff, records personnel, community service officers). Although some principles discussed here may be relevant regardless of classification, caution must be exercised when applying this guidance to classes of employment outside the mandate given POST. Agencies are urged to work in close consultation with their legal counsel.

4. Not a Substitute for Training

This manual is not intended to serve as a substitute for competent, professional training. Although there is no background investigator training requirement, the proper training of employees is an employer’s legal responsibility; furthermore, effective training of background investigators can greatly improve the quality of an agency’s candidates.

5. Not Legal Advice

Although the manual contains discussions of the many pertinent employment laws and their impact on the conduct of the investigation, the information presented here should not be treated as legal research, legal opinion, or legal advice. Background investigators are strongly encouraged to consult, work closely with, and abide by the advice of their agency's legal counsel.

THE ROLE OF POST

POST serves a variety of functions with respect to the background investigation process. These functions include establishing selection standards, certifying training, providing technical assistance, and conducting compliance inspections.

1. Selection Standards

In response to specific mandates from the State Legislature, POST has been charged with the responsibility to develop selection standards for peace officers, jailers, and public safety dispatchers. Georgia regulatory agencies, such as POST, establish regulations in accordance with the Administrative Procedures Act. Once properly adopted, these regulations appear in the Georgia Secretary of State's Rules (Chapter 464)) and the POST Administrative Manual. As authorized by the State Legislature, these regulations carry the force of law and often seek to clarify or expand upon specific legislative enactments (laws), for example in the Criminal or Government Codes.

2. Compliance Inspections

The Legislature has charged POST with the responsibility to conduct compliance inspections to verify that persons appointed as peace officers were selected in accordance with the selection standards. POST Investigators make regular visits to the agencies in their jurisdictions to inspect the background investigations completed on those who have been hired since the last audit. If deficiencies are detected, they work with the agency by suggesting methods for correction and establishing a timetable for correction. A follow-up visit may be scheduled to assure that the deficiencies are corrected.

POST VS. AGENCY CANDIDATE SCREENING CRITERIA

The selection standards imposed by state statutes and POST regulations are *minimum standards*. Agencies are free to establish more rigorous selection criteria, as long as they are job-related and legally defensible. For example, agencies may choose to require peace officers to be at least 21 years of age, even though state law permits their appointment at age 18. It is also not uncommon for agencies to require peace officer candidates to have earned some college credits, although none is specified

under the law.

Verifying most of the statutory and regulatory minimum qualification standards, such as age, citizenship, and absence of felony convictions, is relatively clear-cut. However, O.C.G.A. § 35-8-8(a)(6) also requires all peace officer candidates to be screened for “good moral character.” What prior conduct constitutes good moral character (or, more importantly, the absence thereof)?

The POST background dimensions, presented in the next chapter, are intended to assist agencies and investigators in answering this question by identifying and detailing the attributes underlying moral character and other qualities essential to the jobs of peace officer and public safety dispatcher. Nevertheless, it is ultimately up to each agency to establish its own clearly articulated legally defensible standards of conduct.

ORGANIZATION OF THE MANUAL

The remainder of this manual is divided into five sections. The next chapter - Peace Officer, Jailer and Public Safety Dispatcher Background Dimensions - provides a common set of peace officer and dispatcher attributes that should be assessed during the background investigation. Chapter 3 - Legal Qualifications and Statutory Framework - details the statutory and regulatory requirements surrounding background investigations. The next two chapters approach the background investigation from different perspectives: Chapter 4 – The Background Investigation Process - describes the chronology of the investigation, while Chapter 5 – Areas of Investigation and POST Personal History Statements - presents a topic-by-topic explanation of the process, using the Personal History Statement as its framework.

Chapter Two

PEACE OFFICER, JAILER, AND PUBLIC SAFETY DISPATCHER BACKGROUND INVESTIGATION DIMENSIONS

Job-relatedness is the cornerstone of every lawful, effective candidate screening procedure. The demonstrated necessity of every pre-employment inquiry for evaluating the skills, abilities, and attributes required for effective job performance is critical to ensuring that those selected are qualified, and serves as a strong defense against allegations of unfairness or discrimination.

Job relatedness, or “validity,” is characteristic of selection procedures that are derived from an analysis of the job and its requirements and demands. POST has conducted repeated statewide job analyses on both peace officers, jailers, and public safety dispatchers. In conjunction with the creation of this manual, job analytic data on these positions were re-analyzed in order to derive a new set of essential attributes of peace officers and public safety dispatchers. Many sources of information were reviewed and re-analyzed for the development of POST Background Investigation Dimensions.

Based on these analyses, one common set of background dimensions was created for these classifications of officers. These ten dimensions are listed in Table 2-1. The dimensions are organized into five major categories (Moral Character, Handling Stress and Adversity, Work Habits, Interactions with Others, and Intellectually-Based Abilities).

Although these background investigation dimensions were selected based on their specific amenability to assessment during the background investigation, a number of them are also evaluated elsewhere in the selection process. For example, “Integrity” is assessed at several other pre-employment stages, such as during the hiring interview and psychological screening. This redundancy is intentional, as it serves to highlight the interdependence of these selection criteria as well as enhance the measurement accuracy of important peace officer and public safety dispatcher character attributes.

Each dimension includes a behaviorally based definition and description, along with a set of indicators for use by background investigators in evaluating candidates against these attributes. Note, however, that specific thresholds of acceptability (e.g., number of allowable moving violations) are not included. The establishment of tolerance levels is an agency’s prerogative, and may well vary between peace officers and public safety dispatchers.

Agencies are strongly encouraged to establish standards associated with such issues as criminal convictions, thefts, illegal drug use and other criminal conduct, and driving history. If these issues have not been addressed, background investigators are faced with the need to continuously consult the chain of command every time they encounter negative information. This slows the process and may expose the department to liability

in the event that inconsistent and/or inappropriate standards are applied.

Investigators must also exercise caution not to impose their own personal beliefs and/or prejudices as the benchmark against which to measure character, especially if the agency has not defined its own standards. To be defensible, agency standards must be job-related and consistent with business necessity; moreover, overly demanding selection requirements further reduce an already-shrinking applicant pool.

No amount of standard-setting, however, will eliminate the need to make case-by-case judgments based on specific facts presented by each candidate's background. Rarely is one fact a sufficient basis for disqualifying an individual; rather, it is generally necessary to investigate the circumstances surrounding each fact in order to make an educated assessment of the candidate's suitability, taking into consideration such factors as:

- The patterns of past behavior and specific combinations of fact and circumstances,
- The consequences if past undesirable behavior occurs again or becomes generally known,
- The likelihood of recurrence of the undesirable behavior,
- The relevance of the past behavior to the job demands and requirements,
- The length of time between the particular undesirable act and the application for employment, with consideration given to the intervening behavior of the candidate, and
- The legal rights of the candidate.

The use of these dimensions in organizing and supporting the investigators' observations and findings is discussed in "Report and Background Packet Preparation" (Step 9) in Chapter 4: The Background Investigation.

Table 2-1: SUMMARY OF POST BACKGROUND INVESTIGATION DIMENSIONS FOR PEACE OFFICERS, JAILER, AND PUBLIC SAFETY DISPATCHERS

MORAL CHARACTER	<p>1. Integrity</p> <ul style="list-style-type: none">• Honesty• Impartiality• Trustworthiness• Protection of Confidential Information• Moral/Ethical Behavior <p>2. Impulse Control/Attention to Safety</p> <ul style="list-style-type: none">• Safe Driving Practices• Attention to Safety• Impulse/Anger Control <p>3. Substance Abuse and Other Risk-Taking Behavior</p>
HANDLING STRESS AND ADVERSITY	<p>4. Stress Tolerance</p> <ul style="list-style-type: none">• Positive Attitude and Even Temper• Stress Tolerance and Recovery• Accepting Responsibility for Mistakes <p>5. Confronting and Overcoming Problems, Obstacles, and Adversity</p>
WORK HABITS	<p>6. Conscientiousness</p> <ul style="list-style-type: none">• Dependability/Reliability• Personal Accountability and Responsibility• Safeguarding and Maintaining Property, Equipment, and Belongings• Orderliness, Thoroughness, and Attention to Detail• Initiative and Drive• General Conscientiousness

INTERACTIONS
WITH OTHERS

7. Interpersonal Skills

- Social Sensitivity
- Social Interest and Concern
- Tolerance
- Social Self-Confidence/Persuasiveness
- Teamwork

INTELLECTUALLY BASED
ABILITIES

8. Decision-Making and Judgment

- Situation/Problem Analysis
- Adherence to Policies & Regulations
- Response Appropriateness
- Response Assessment

9. Learning Ability

10. Communication Skills

- Oral Communication
- Written Communication

MORAL CHARACTER

1. Integrity. This involves maintaining high standards of personal conduct. It consists of attributes such as honesty, impartiality, trustworthiness, and abiding by laws, regulations, and procedures. It includes:

- ✓ Not **abusing the system** nor using one's **position for personal gain**; not yielding to temptations of bribes, favors, gratuities, or payoffs
- ✓ **Not bending rules** or otherwise trying to **beat the system**
- ✓ Not sharing or releasing **confidential information**
- ✓ Not engaging in **illegal or immoral activities** - either on or off the job
- ✓ **Honest and impartial** in dealings with others both in and outside the agency
- ✓ Not condoning or ignoring **unethical/illegal conduct in others**
- ✓ **Truthful and honest** sworn testimony, affidavits, and in all dealings with others

INDICATORS:

- Dishonesty in the hiring process, including:
 - deliberately misstating or misrepresenting identifying information or qualifications, whether orally or in writing
 - misleading any person involved in the pre-employment screening

- process by misstating, misrepresenting, or failing to completely answer questions
 - inaccuracies or deliberate omissions in applications, Personal History Statements, or any other documentation required as part of the preemployment process used to help determine the candidate's suitability for employment
 - any other act of deceit or deception
- Lying about past mistakes or oversights
- Fraudulently reporting or other abuses/misuses of employer leave policies (e.g., sick leave, vacation, bereavement leave)
- Abuses privileges and benefits of the job (e.g., overtime, use of supplies, equipment, internet access)
- Involved in the sale or distribution of illegal drugs
- Engages in inappropriate sexual activity (e.g., prostitutes, sex with minors, etc.)
- Evidence of perjury, signing of false affidavits in any criminal or civil proceeding, falsification of official reports including statements, narratives, property documents, evidentiary documents, giving incomplete or misleading information to supervisors
- Cheating, plagiarism, or other forms of academic dishonesty
- Attempting to induce others to give false information
- Association with those who commit crimes or otherwise demonstrate unethical/immoral behavior
- Commits illegal or immoral activities that would be offensive to contemporary community standards of propriety
- Commits crimes against employers - arson, burglary, stealing (goods, money, or services) – which would amount to a felony
- Conviction(s) of any criminal offense classified as a misdemeanor under Georgia Law, especially as an adult
- Having an outstanding warrant of arrest at time of application for job or throughout the hiring process
- Admission of having committed any act amounting to a felony under Georgia

Law, as an adult

- Admission of any criminal act, whether misdemeanor or felony, committed against children, including, but not limited to: molesting or annoying children, child abduction, child abuse, lewd and lascivious acts with a child, indecent exposure (except acts of consensual unlawful intercourse accomplished between two minors, unless more than four years difference in age existed at the time of the acts)
- Actions resulting in civil lawsuits against the candidate or his/her employer
- Committing acts that, had they been detected, would have resulted in prosecution and conviction and would have automatically disqualified the candidate.

While employed in a position of public trust:

- Conviction of any offense classified as a misdemeanor under Georgia Law while employed as a peace officer (including military police)
- Admission of administrative conviction of any act while employed as a peace officer, including military police, involving lying, falsification of any official report or document, or theft
- Admission of administrative conviction or criminal conviction for failure to properly report witnessed criminal conduct committed by another law enforcement officer
- Accepting or soliciting any bribe or gratuity while in a position of public trust
- Embezzlement of money, goods or services while in a position of trust

2. Impulse Control/Attention to Safety. Avoiding impulsive and/or unnecessarily risky behavior to ensure the safety of oneself and others. It includes thinking before acting, taking proper precautions, keeping one's impetuous, knee-jerk reactions in check, and behaving in conscious regard for the larger situation at hand.

INDICATORS:

Unsafe Driving Practices

- Receipt of multiple moving violations (especially for potential life-threatening acts such as reckless driving, speed contest, etc.)

- Driver in multiple chargeable collisions. Numerous moving and non-moving violations, at-fault accidents
- Instances of road rage, driving recklessly and/or at excessive speeds

Inattention to Safety

- Fails to take proper precautions to minimize risks associated with hazardous activities
- Takes unnecessary, foolish risks
- Disregards risk to self or others

Poor Impulse/Anger Control

- Overreacts when challenged or criticized
- Unnecessarily confrontational in interactions with others
- Reacts childishly or with anger to criticism or disappointment
- Disciplined by any employer as an adult for fighting in the workplace
- Admission of any act of domestic violence as an adult
- Use of verbal or physical abuse or violence toward others
- Violent assault upon another, including spousal battery, sexual battery, or other acts of violence
- Admission of administrative conviction or criminal convictions for any act amounting to assault under color of authority or any other violation of federal or state civil rights laws
- Instances of reprimands, counseling, terminations, suspensions for poor behavioral control at work

3. Substance Abuse and Other Risk-Taking Behavior. This involves engaging in behavior that is inappropriate, self-damaging, and with potential adverse impact on the agency, and includes alcohol and drug abuse, domestic violence, sale of drugs and gambling.

INDICATORS:

- Illegal use or possession of a controlled substance while employed in any law enforcement capacity, including military police
- Drug test of the candidate, during the course of the hiring process, where illegal controlled substances are detected
- Illegal or unauthorized use of prescription medications
- Illegal use or possession of a controlled substance while a student enrolled in college-accredited courses related to the criminal justice field
- Manufacturing, cultivating, transporting, brokering, or selling any controlled substances
- Record of alcohol or drug-related incidents, including driving under the influence or such charge reduced to reckless driving, violation of open container laws or transporting open containers
- History of other problems associated with drug and/or alcohol use
- Perpetrator of domestic violence incidents
- Missed work due to alcohol use
- Alcohol use while on the job (where prohibited)
- Arriving at work intoxicated/smelling of alcohol or hung-over
- Gambling to the point of causing harm to oneself

HANDLING STRESS AND ADVERSITY

4. Stress Tolerance. Maintaining composure, particularly during time-critical emergency events and other stressful situations, weathering negative events and circumstances and maintaining an even temperament and positive attitude. Accepting criticism without becoming overly defensive or allowing it to hamper behavior or job performance.

INDICATORS:

Negative Attitude and Uneven Temperament

- Worries excessively; enters into new situations with considerable apprehension

- Overly suspicious and distrusting in dealing with others
- Argumentative; antagonistic towards others; bully
- Commonly behaves with hostility and anger
- Behavior-impairing mood swings
- Badmouths employers and others
- Unnecessarily confrontational and aggressive
- Disrupts/undermines authority (fails to successfully carry out directives; shows signs of contempt by eye rolling, excessive exhaling, etc.)

Stress Tolerance and Recovery

- Comes “unglued,” freezes, or otherwise performs ineffectively when feeling overloaded or stressed
- Uncontrollable reaction to verbal abuse from others
- Reacts childishly or with anger to criticism or disappointment
- Allows personal problems and stressors to bleed into behavior on the job

Not Accepting Responsibility for Mistakes

- Does not accept responsibility for actions and mistakes; routinely makes excuses or blames others for own shortcomings
- Becomes excessively defensive or otherwise overreacts when challenged or criticized
- Minimizes the importance of past mistakes or errors
- Refuses to accept responsibility for mistakes or improper actions

5. Confronting and Overcoming Problems, Obstacles, and Adversity. This involves willingness and persistence in confronting problems and personal adversity. It includes taking control of situations, as necessary and demonstrating hustle and drive in reaching goals.

INDICATORS:

- Displays submissiveness and insecurity when confronted with challenges, threatening situations, or difficult problems
- Fails to take action or change behavior to resolve problems or mistakes
- Multiple personal bankruptcies, having current financial obligations for which legal obligations have not been satisfied; or any other flagrant history of financial instability
- Allows debts to mount; evades creditors, collection agencies, etc.
- Past due accounts, discharged debts, late payments, collection accounts, civil judgments, and/or bankruptcy
- Fails to meet obligations (for example, auto insurance, auto registration, selective service registration, IRS requirements, child support obligations)
- Fails to exercise fiscal responsibility commensurate with income

WORK HABITS

6. Conscientiousness. Diligent, reliable, conscientious work patterns; performing in a timely, logical manner in accordance with rules, regulations, and organizational policies.

INDICATORS:

Undependability/Unreliability

- Fails to meet commitments to work, school, family, volunteer, or community activities
- Poor attendance – takes time off from work unnecessarily (e.g., on/near weekends)
- History of being late to work, meetings, appointments
- Misses scheduled appointment during the process without prior permission
- Excessively long breaks, returning from lunch late, leaving work early
- Fails to comply with instructions or orders
- Fails to properly prepare for meetings

Poor Personal Accountability and Responsibility

- Is not accountable for his/her performance
- Blames others for improper actions
- Fails to analyze prior mistakes or problems to improve performance
- Disciplined by any employer (including military) for gross insubordination, dereliction of duty, or persistent failure to follow established policies and regulations
- History of involuntary dismissal (for any reason other than lay-off)
- Conducts unauthorized personal business while on duty
- Failure to exercise fiscal responsibility commensurate with income
- Past due accounts, discharged debts, late payments, collection accounts, civil judgments, and/or bankruptcy
- History of flagrant financial instability, such as multiple personal bankruptcies, financial obligations for which legal judgments have not been satisfied, etc.
- Failure to meet obligations (for example, auto insurance, auto registration, selective service registration, IRS requirements, child support obligations)

Failure to Safeguard and Maintain Property, Equipment, and Belongings

- Fails to safeguard property entrusted to him/her
- Fails to maintain equipment
- Loses valuable information

Lack of Orderliness, Thoroughness, and Attention to Detail

- Pattern of disorganization in work, school, etc.
- Fails to attend to details (e.g., typos, missing/incorrect information)
- Fails to attend to all aspects of projects and activities to be sure they are completed

- Motor vehicle collisions due to inattentiveness
- Overlooks or misinterprets instructions on PHS and other documents
- Fails to properly recall instructions/directions provided previously
- Cannot properly recall pertinent/important details related to personal history
- Problems at school, work, driving due to poor attention/vigilance

Lack of Initiative and Drive

- Gives up in the face of long hours or other difficult working conditions
- Fails to keep current on new rules, procedures, etc.
- Does not initiate proper action unless given explicit instructions
- Fails to ensure that the job is performed correctly
- Procrastinates
- Watches the clock rather than attending to task accomplishment
- Gives up or cuts corners when faced with obstacles
- Performs job duties in a perfunctory manner, expending minimum amount of effort

General Conscientiousness

- Resigns without notice (except where the presence of a hostile work environment is alleged)
- Resigns in lieu of termination (except where a hostile work environment is alleged)
- Holds multiple paid positions with different employers within a relatively brief period of time (excluding military, and students who attend school away from their permanent legal residence)
- Reprimanded or counseled for poor work performance (including military service)
- Terminated or suspended from work

- Other than honorable discharge from military
- Released from probationary employment status except for reduction in force
- Poor record of academic achievement

INTERACTIONS WITH OTHERS

7. Interpersonal Skills. This involves interacting with others in a tactful and respectful manner, and showing sensitivity, concern, tolerance, and interpersonal effectiveness in one's daily interactions.

INDICATORS:

Social Insensitivity. The ability to "read" people and awareness of the impact of one's own words and behavior on others.

- Provokes others by officious bearing, gratuitous verbal challenge, or through physical contact
- Antagonizes others
- Uses profanity and other inappropriate language
- Incidents of domestic violence, use of verbal or physical abuse, or violence toward others
- Use of physical force to resolve disputes
- Demonstrated overreaction to criticism

Lack of Social Interest and Concern. Interest and concern for others.

- Baiting people; takes personal offense at comments, insults, or criticism
- Evidence of inability to get along with others in work or personal life
- Makes rude and/or condescending remarks to or about others
- Source of customer/citizen complaints
- Argumentative; loner; bully

Intolerance. Lack of tact and impartiality in treating all members of society.

- Makes hasty, biased judgments based on physical appearance, race, gender, or other group membership characteristics
- Refuses to listen to explanations of others
- Inability to recognize how one's own emotions/behavior affect situations and others
- Having been disciplined by any employer (including the military and/or any law enforcement training facility) for acts constituting racial, ethnic, or sexual harassment or discrimination
- During the hiring/background process, uttering any epithet derogatory of another person's race, religion, gender, national origin, or sexual orientation
- Makes inappropriate comments to or about others regarding personal characteristics as well as derogatory comments about specific groups (racial, gender, sexual orientation, proficiency with the English language, immigrant status, HIV/AIDS infection, religion, transgender, social status)
- Evidence of the use of derogatory stereotypes in jokes or daily language
- Sexual harassment/hostile work environment incidents

Poor Social Self Confidence/Lack of Persuasiveness. Inability and discomfort approaching individuals, and in confronting and reducing interpersonal conflict.

- Avoids confrontations at all costs
- Intimidated by others
- Minimizes or avoids interactions with others
- Escalates situations by overreacting
- Fails to diplomatically offer ideas or persuade others to adopt desired course of action
- Disruptive/challenging to authority
- Use of harassment, threats, or intimidation to gain an advantage
- Succumbs to peer pressure

Poor Teamwork. Inability to work effectively as a member of a team.

- Resents successes and accomplishments of team members
- Does not assist or request assistance from team members
- Alienates colleagues by dominating interactions and activities
- Gossips, criticizes, and backstabs colleagues and coworkers
- Fails to achieve or maintain trust with peers, supervisors, and clients

INTELLECTUALLY-BASED ABILITIES

8. Decision-Making and Judgment. The ability to make timely, sound decisions, especially in dangerous, pressure-filled situations, and/or where information is incomplete and/or conflicting. Able to size up situations quickly to determine appropriate action. It also involves the ability to sift through information to glean that which is important and, once identified, to use that information effectively.

INDICATORS:

Situation/Problem Analysis

- Unable to step into a situation and figure out what probably led up to that point in time, as well as what is likely to happen as the situation unfolds
- Tunnel vision; does not see the big picture when analyzing information
- Fails to identify patterns and implications when analyzing information
- Failure to consider available information or appropriate options
- Naive, overly trusting, easily duped
- Spends too much time on minor issues - unable to set priorities

Poor Adherence to Policies and Regulations

- Failure to consider organizational policies and regulations when making decisions
- Fails to use appropriate judgment and discretion in applying regulations and policies; cannot distinguish between the letter and the spirit of rules and laws
- Rigid adherence to rules without consideration of alternative information; needs directives to be in black and white

Poor Response Appropriateness

- Poor judgment in knowing when to confront—and when to back away from — potentially volatile situations
- Overbearing approach to resolving problems
- Escalates problems by under or over-reacting
- Uses force when unnecessary or inappropriate
- Indecision or poor decisions when options are not clear-cut
- Paralyzed by uncertainty or ambiguity; insecure about making a decision

Poor Response Assessment

- Unable or unwilling to make “midcourse corrections” on initial course of action when presented with new information or when circumstances change
- Fails to apply lessons learned from past mistakes

9. Learning Ability. Ability to comprehend and retain a good deal of information, to recall factual information, and to apply what is learned.

INDICATORS:

- Dismissal or probation from school, or other indication(s) of poor academic performance
- Dismissal from a POST-certified Basic Academy, and no subsequent effort to improve in the deficient areas
- Pattern of making repeated mistakes when faced with similar problems and negative situations, in and outside of learning environments

10. Communication Skills. Ability to make oneself understood, both orally and in writing.

INDICATORS:

Oral Communication

- Speech is difficult to understand

- Responses to questions are rambling, confused, and/or disorganized
- Expresses thoughts and emotions inappropriately through facial gesture and body language
- Discussions of topics are incomplete, inappropriate, and/or filled with a lot of unnecessary/irrelevant details
- Fails to understand both explicit and implied messages and responds accordingly
- Does not listen well, thereby missing the point of what others are saying

Written Communication

- Illegible handwriting
- Poor grammar, punctuation, and/or spelling
- Written communications are incomplete, disorganized, unclear, and/or inaccurate
- Written responses to Personal History Statement items are inappropriate, incomplete, or otherwise difficult to decipher

This page left intentionally blank

Chapter Three

LEGAL QUALIFICATIONS AND STATUTORY FRAMEWORK

The background investigation of officers is one part of a larger pre-employment screening process dictated by Georgia law and POST regulations. In addition to the background investigation, the process must include a written examination, hiring interview, medical examination, and (for peace officers) a psychological examination. The statutory and regulatory requirements – particularly those that have an impact on the conduct of background investigations – for screening peace officers and public safety dispatchers are reviewed here.

OVERVIEW OF PRE-EMPLOYMENT SCREENING REQUIREMENTS

The selection standards for officers are summarized below. The codes and regulations are provided and annotated in Table 3-1 (located at the end of this chapter).

Peace Officers

O.C.G.A. § 35-8-8 establishes minimum selection standards for peace officers. It includes minimum criteria on citizenship, age, and education. It also requires that applicants be fingerprinted as part of the search of local, state, and national files to disclose any criminal record, be found of good moral character as determined by a thorough background investigation, and be found free of any physical, emotional, or mental condition based on a medical examination. These specific requirements are further defined in **POST Rules 464-3**.

O.C.G.A. § 35-8-8(a)(4) stipulates that individuals who have been convicted of a felony are prohibited from becoming peace officers. Similarly, **U.S. Code Title 18 § 922(d)(9)** stipulates that individuals who have been convicted of crimes involving domestic violence cannot possess a firearm.

Jailers and Public Safety Dispatchers

The same laws and rules apply to jailers and public safety dispatchers with the exception of the POST Entrance Examination.

BACKGROUND INVESTIGATIONS OF OFFICERS

The background investigation of peace officers, jailers and public safety dispatchers must include (1) a DDS record check, (2) a fingerprint check, and (3) documentation that these checks do not demonstrate behavior incompatible with the performance of the duties of the position being sought. There are additional statutory minimum requirements for peace officers but *not* public safety dispatchers, including those that deal with age,

education, citizenship, or legal history (e.g., felony convictions), and the conduct of a physical examination.

Background investigations must be conducted on all candidates for these officer classifications who are seeking basic certification. Local agency policy cannot override this requirement.

Council Procedure: Background Investigations

This document details the nature and scope of the background investigation and the required sources of information for all officer classifications.. However, these recommendations reflect the importance of conducting a complete, thorough, and legally defensible background for all applicants, despite the minimal statutory requirements for this position. Nevertheless, since these are recommendations rather than requirements, agencies must decide to what degree their background investigations will exceed the minimums required by law.

State stipulates that the background investigations must be completed prior to appointment, that it begin with the applicant's completion of a personal history questionnaire, and that the background investigator submit documentation of the investigation. Please note that the employer shall not make any medical or other inquiries prior to a conditional offer of employment in violation of the Americans with Disabilities Act and the Georgia Fair Employment and Housing Act.

Council Requirements for Medical and Psychological Suitability Examinations

The Council provides guidance on the conduct of mandatory medical screening and optional psychological screening in the application for certification. Medical and psychological examinations must be conducted *after* a conditional offer of employment has been extended (in contrast to the background investigation, which is primarily conducted pre-offer). As discussed in Chapter 4: The Background Investigation Process, the background investigator, examining physician, and examining psychologist can and should work cooperatively, as necessary, to ensure that each has complete information upon which to make their respective assessments of the applicant.

EMPLOYMENT DISCRIMINATION LAWS AND REGULATIONS

There are ever-increasing numbers of laws and regulations – both federal and state - that govern the personnel practices of all employers, including Title VII of the Civil Rights Act (CRA) of 1964 (as amended), the Age Discrimination in Employment Act (ADEA) of 1967, and the Americans with Disabilities Act (ADA) of 1990). They all share a common purpose: to prohibit *unfair discrimination* in employment and provide equal opportunity for all.

Unfair discrimination occurs when employment decisions are based on any *protected*

class, including race, gender, religion, ethnicity, national origin, or ancestry, age, disability, political affiliation, (and in Georgia) pregnancy, medical condition, marital status, and sexual orientation, rather than on job-relevant knowledge, skills, abilities, and other characteristics.

Unfair discrimination can take two forms: *Disparate Treatment* or *Disparate Impact*.

Disparate treatment occurs when an applicant from a protected class is treated differently than other applicants during the hiring process. Employers are vulnerable to allegations of disparate treatment when their selection inquiries and practices are inconsistent and irrelevant to the applicant's ability to perform the job. In *Weiner v. County of Oakland*, for example, the court ruled that the questions asked specifically of a female applicant for a correctional officer position were inappropriate, such as whether she could work with aggressive young men, whether her husband approved of her working, and whether her family would be burdened if she needed to change her normal household chores as a result of the job. In another case, the female applicant for a position in the all-male Hampton Beach Meter Patrol was asked whether she had experience using a sledgehammer, and if she could participate in stake-outs and make unassisted arrests. Not surprisingly, the court could find no relationship between the questions asked and the job of writing citations and collecting money from parking meters.

Background investigators should carefully evaluate the relevance of their inquiries, especially those that focus on or single out individuals based on their protected class status. For example, asking applicants questions such as "What is your religion?" "What church do you attend?" "What is your political affiliation?" "Are you a homosexual?" "What is your race?" "Are you pregnant?" "Do you plan to have children? If so, when?" invite charges of intentional, disparate treatment. Although there are certain statutory allowances for screening peace officer applicants, questions in even these areas are ill advised unless they are sufficiently related to an essential job function.

Disparate impact occurs when a seemingly neutral standard or practice results in a substantially different rate of selection that works to the disadvantage of members of a protected class. For example, a height standard can disqualify a disproportionate percentage of women and certain minorities; standards related to credit history or arrest records tend to target certain minorities in disproportion to their percentage of the population. Any selection procedure that causes disparate impact may only be used if it can be demonstrated that it is **job-related and consistent with business necessity** (i.e., essential to the safe and efficient operation of the agency).

Although these laws impose restrictions on the types of information that can be collected, the timing of investigations, and the manner in which decisions can be made and justified, it is important to remember that no federal or state statute, court decision, or binding public policy requires an employer to hire unqualified persons or to lower job relevant, legitimate employment standards. The most important way to ensure that the background investigation process is legally acceptable is to focus only on that which is

necessary for determining if a candidate meets lawful position requirements and standards. Background investigators must therefore be fully familiar with and able to articulate all aspects of the peace officer job and the relationship to their inquiries.

Agency policy should ensure consistency in the manner in which background information is collected and evaluated, yet allow flexibility to handling each applicant individually, as necessary.

PRIVACY AND CONFIDENTIALITY LAWS

Article 1 of the Georgia Constitution grants the citizens of the state the right of privacy. As a result, prospective employers are specifically prohibited from asking for unnecessarily intimate or personal information; they are also required to use the least invasive means necessary to gather any intrusive information that can be justified as necessary. Generally, the more intimate or personal the information, the more justified is the expectation that it will not be subject to public scrutiny.

Despite privacy protections, courts have paid great deference to the need for intrusive questioning of law enforcement applicants - and peace officer applicants in particular - in light of the serious and often dangerous nature of the job and the inherent responsibility for carrying a firearm and protecting the public.

In addition to limiting information to only that which is necessary, agencies must also establish procedures and precautions to prevent unwarranted disclosure of private and otherwise sensitive information. All information provided by the applicant in the Personal History Statement and throughout the background investigation is **private** and should be treated as **confidential**. No portion of the investigation should be revealed to persons other than those who are specifically authorized to receive and evaluate the results. O.C.G.A. § 35-8-15 titled *Preparation and maintenance of employment records by law enforcement units and council; release of records* states that:

(a) Each law enforcement unit shall prepare duplicate records on any candidate or peace officer employed under this chapter as may be prescribed by the rules and regulations of the council. One copy of the records shall be maintained in the headquarters of the law enforcement unit; the second copy shall be forwarded to the council and shall be maintained by the council.

(b) The contents of the records provided for in subsection (a) of this Code section, except for court proceedings, shall be considered as confidential and shall be released only to the candidate or peace officer to whom they pertain or to a law enforcement unit considering the candidate or peace officer for employment.

DISABILITY DISCRIMINATION LAWS AND REGULATIONS: THE AMERICANS WITH DISABILITIES ACT (ADA)

Confidentiality is never more important than when dealing with medical and disability related information. In fact, the manner in which disability-related information is acquired, evaluated, and treated is the focus of the federal Americans with Disabilities Act (ADA) of 1990. The statute's purpose is to prohibit discrimination against qualified individuals with disabilities in hiring and any other aspect of employment.

While a full explanation of these laws and their implications for employment procedures in general is far beyond the scope of this manual, a brief description of the ADA and how it may affect the conduct of background investigations is provided below.

However, a list of recommended ADA resource documents is provided in Additional Resources. In addition, background investigators are urged to consult with their legal consul and/or ADA Coordinator whenever disability-related issues arise. Federal and state disability laws differ in terms of who is considered "disabled" (and therefore protected), what can be asked after a conditional job offer is extended and in other ways.. Where there are differences between the two laws, the one that provides the most protection to the disabled prevails, and it will be those provisions that are discussed below with respect to their impact on background investigations.

Who Is Protected

To be protected by ADA, individuals must be: (1) disabled, **and** (2) "otherwise qualified" to perform the essential functions of the job (with reasonable accommodation, if necessary). Individuals are "disabled" if they have a physical or mental impairment that limits one or more major life activities, a record of such an impairment, or are regarded as having an impairment. Current users of illegal drugs are not protected; however, individuals who have a history of drug addiction/dependence are. Both current and past alcoholism are protected conditions.

Who Is *Not* Protected

Not all impairments, no matter how disabling, are considered disabilities in the eyes of these laws. The following conditions are expressly **not** protected under ADA:

- Physical attributes (e.g., height, weight not related to a medical condition)
- Personality characteristics (e.g., poor judgment)
- Temporary conditions
- Current drug use, or past casual drug use
- Sexual conditions (e.g., homosexuality, bisexuality, transvestitism, transsexualism)
- General stress due to job pressures
- Compulsive gambling
- Kleptomania
- Pyromania

No matter how disabled, applicants must also be *otherwise qualified* in order to be protected by these statutes. To be otherwise qualified, applicants must first meet all statutory and other minimum qualifications. Law enforcement agencies also are well within their rights to require applicants to have law-abiding histories.

To be otherwise qualified, individuals must also be able to do the job, with or without reasonable accommodation. They must be able to do that job without posing a *direct threat*, which is defined as a significant risk of substantial harm to themselves or especially to others (and the threat cannot be reduced by reasonable accommodation).

The determination as to whether someone poses a direct threat must be based on medical facts of the situation, rather than merely fear or speculation.

Essential Job Functions

Doing the job is defined as being able to perform the *essential job functions*. Essential functions are those duties that are considered fundamental (as opposed to marginal) to the position. Employers have the right and the responsibility for identifying the essential functions of the job position to serve as the basis for determining applicants' suitability for employment. It is therefore imperative that agencies create and maintain accurate job descriptions, and that background investigators become familiar with these descriptions so that there is a shared, explicit understanding of what it takes to be able to do the job.

In addition to agency job descriptions, POST has conducted analyses of both the peace officer, jailer, and public safety dispatcher jobs. Based in part on these analyses, POST identified attributes and characteristics critical to the safe, effective job performance of both peace officers, jailers, and public safety dispatchers, and amenable to assessment in the background investigation. The resulting POST background dimensions are fully described in Chapter 2

Reasonable Accommodation

A reasonable accommodation is defined as "any change or adjustment to a job or work environment that permits an otherwise qualified, disabled applicant to compete for and perform the essential functions of the job." Reasonable accommodation can take many forms, ranging from allowing extra time on a written test, providing regular breaks to allow an employee to take medications, to allowing a student to use a light or smaller handgun.

Reasonable accommodation is one of the cornerstones of ADA, but it is a legally complicated concept. Therefore, should an applicant request reasonable accommodation, a background investigator is well-advised to contact the agency's ADA coordinator or other appropriate personnel. It is sufficient here to emphasize that: (1) providing reasonable accommodation is a statutory obligation of employers, unless the accommodation would cause an undue hardship to the operation; and (2) decisions

surrounding the choice and implementation of any accommodation should be based on individualized assessment, resulting from a constructive discussion with the disabled individual and, when necessary, an appropriate healthcare professional.

THE PRE-EMPLOYMENT PROCESS AND THE CONDITIONAL OFFER OF EMPLOYMENT

Another cornerstone of the ADA is the separation of the pre-employment process into two stages, punctuated by a *conditional offer of employment*. A conditional offer of employment (COE) is a written, bona fide job offer that deems the candidate qualified on all assessments conducted to that point, and details the remaining screening steps in the hiring process.

Prior to extending the applicant a COE, no disability-related inquiries can be asked on forms or in interviews, nor can such information be sought from third parties (e.g., past employers, references). Disability-related questions include asking applicants if they have had a particular disability or suffered from a mental condition. Questions about a history of worker's compensation claims or job-related injuries are also forbidden pre-offer, since these types of questions may elicit disability-related information. General questions that are likely to elicit disability-related information are also prohibited pre-offer, such as, "*What impairments do you have?*" "*Have you ever been hospitalized?*" or "*What medications do you take?*"

The Pre-Conditional Offer Stage: Specific Areas of Investigation

EMPLOYMENT HISTORY

It is acceptable at any time to ask applicants about employment history, including questions about the circumstances of any gaps or sudden departures of employment. This is permitted even if the applicant was unemployed or terminated because of disability related reasons. It is also permissible to ask pre-offer questions about previous attendance records (e.g., "*How many days were you absent from your last job?*"). Although it is not permissible to ask pre-offer questions about the number of days an applicant missed work in a previous job due to illness, it is legal to ask questions involving abuse of leave (e.g., "*How many Mondays and Fridays were you absent last year other than approved time off?*").

SUBSTANCE ABUSE

A history of drug addiction or dependence is considered a disability; therefore, questions that could reasonably be expected to elicit this information are prohibited, such as "*Have you ever been addicted to drugs?*" or "*Have you ever been treated for drug addiction?*" Questions that address extent of past drug use are also prohibited, such as "*How many times have you used illegal drugs in your life?*" or, "*How often did you use illegal drugs in the past?*"

Current drug use does not fall under the protection of the ADA; however, there is no clear-cut definition of “current;” rather, the EEOC merely states that “current is to be considered “...recently enough to justify an employer’s reasonable belief that involvement with drugs is ongoing.” POST uses six months as a benchmark for questions on current illegal drug use; however, this time frame is intended as a rule of thumb rather than a legally sanctioned standard.

Individuals with a past history of recreational or casual drug use also fall outside the protection of the law. Therefore, narrowly-defined questions about past drug use that do not address frequency or extent of use are permissible pre-offer. Any additional pre-offer questions on this topic should not be considered without the input of legal counsel.

Unlike illegal drug use, current *and* past alcoholism are protected. Therefore, alcohol tests are prohibited prior to the COE. No pre-offer questions may be asked regarding the extent of the applicant’s use of alcohol or other aspects of alcoholism. For example, applicants may not be asked pre-offer how much they drink. However, questions about *social* use of alcohol are permissible, as are inquiries about their (job-relevant) behavior, even if that behavior was a result of drunkenness. For example, it is legal to ask about DUIs pre-COE, as well as whether they have been late to or absent from work because of alcohol (or drug) use.

WHY CAN’T THE BACKGROUND INVESTIGATION SIMPLY BE DEFERRED UNTIL AFTER A COE HAS BEEN EXTENDED?

For the COE to be considered “bona fide” (i.e., real), employers must evaluate all relevant non-medical information that they reasonably can obtain and analyze prior to extending the offer. Although there are certain background inquiries that touch on disability-related issues (e.g., extent of illegal drug use, alcoholism), most inquiries made during the course of the investigation do not. Therefore, **most of the background investigation should be collected prior to a COE in order to determine whether the applicant is otherwise qualified.** However, the COE itself should state that the applicant has *provisionally* passed the background investigation, and that additional background information may be investigated at the post-offer stage which could, if warranted, result in the withdraw of the job offer.

WHAT IF THE APPLICANT OR OTHER INDIVIDUALS VOLUNTEER DISABILITY-RELATED INFORMATION AT THE PRE-OFFER STAGE?

The background investigator may discover protected information pre-offer, either because an applicant or others volunteer disability-related information, or in the course of record reviews. If disability-related information is discovered pre-offer, background investigators may document the information and follow-up and/or disclose it to the appropriate person after a COE is extended. It is unlawful to use that information as a reason for not hiring the person unless the employer can provide a legal defense.

The Post-Conditional Offer Stage

After a COE has been extended, medical and disability related inquiries and examinations are permissible. However, all such questions must be job-related and consistent with business necessity, and all applicants must be subjected to the same basic inquiries. Note that a job offer revoked at this stage may be assumed to be due to disability-related reasons; therefore, an employer may be required to show that the applicant is unqualified or poses a direct threat.

Medical and other disability-related information must be treated with extreme confidentiality. Screening physicians, psychologists and even background investigators should only disclose such information to others involved in the hiring process (including each other) on a need-to-know basis.²⁴ This information must be kept confidential and stored in a separate, secure medical file -- not with the employee's regular personnel file.

Access by others should be strictly limited. The law allows access to this type of information by only a few selected individuals, including: (1) supervisors or managers, who may be informed about necessary restrictions on the work or duties of an employee and necessary accommodations; (2) first-aid and safety personnel, who may be informed if a disability will require emergency treatment; (3) government officials investigating compliance with ADA; and (4) state workers' compensation fund employees or representatives of insurance companies.

BACKGROUND INVESTIGATION LAWS AND REGULATIONS

PEACE OFFICERS

O.C.G.A. § 35-8-8

35-8-8. Requirements for appointment or certification of persons as peace officers and pre-employment attendance at basic training course.

Statute text

(a) Any person employed or certified as a peace officer shall:

- (1) Be at least 18 years of age;
- (2) Be a citizen of the United States;
- (3) Have a high school diploma or its recognized equivalent;
- (4) Not have been convicted by any state or by the federal government of any crime the

punishment for which could have been imprisonment in the federal or state prison or institution nor have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law, provided that, for purposes of this paragraph, violations of traffic laws and other offenses involving the operation of motor vehicles when the applicant has received a pardon shall not be considered;

(5) Be fingerprinted for the purpose of conducting a fingerprint based search at the Georgia Bureau of Investigation and the Federal Bureau of Investigation to determine the existence of any criminal record;

(6) Possess good moral character as determined by investigation under procedure established by the council;

(7) Be found, after examination by a licensed physician or surgeon, to be free from any physical, emotional, or mental conditions which might adversely affect his or her exercising the powers or duties of a peace officer; and

(8) Successfully complete a job related academy entrance examination provided for and administered by the council in conformity with state and federal law. Such examination shall be administered prior to entrance to the basic course provided for in Code Sections 35-8-9 and 35-8-11. The council may change or modify such examination and shall establish the criteria for determining satisfactory performance on such examination. Peace officers who do not perform satisfactorily on the examination shall be ineligible to retake such examination for a period of six months after an unsuccessful attempt. The provisions of this paragraph establish only the minimum requirements of academy entrance examinations for peace officer candidates in this state; each law enforcement unit is encouraged to provide such additional requirements and any preemployment examination as it deems necessary and appropriate.

(b) Any person authorized to attend the basic training course prior to employment as a peace officer shall meet the requirements of this Code section.

History

(Ga. L. 1970, p. 208, § 8; Ga. L. 1973, p. 539, § 1; Ga. L. 1976, p. 1563, § 1; Ga. L. 1976, p. 1684, §§ 3, 4; Ga. L. 1977, p. 712, § 1; Ga. L. 1977, p. 1180, §§ 1, 2; Ga. L. 1982, p. 3, § 35; Ga. L. 1987, p. 3, § 35; Ga. L. 2004, p. 986, § 2; Ga. L. 2008, p. 237, § 2/SB 373.)

Annotations

The 2004 amendment, effective July 1, 2004, substituted the present provisions of paragraph (a)(5) for the former provisions which read: "Be fingerprinted and a search made of local, state, and national fingerprint files to disclose any criminal record;"; inserted "or her" in paragraph (a)(8); and substituted the present provisions of subsection (b) for the former provisions which read: "Notwithstanding the citizenship requirements provided for in paragraph (2) of subsection (a) of this Code section, the council may adopt procedures and requirements whereby an applicant for certification as a peace officer who possesses unique talents and skills in the training and handling of police dogs and who is not a citizen of the United States may be certified as a peace officer if he shall be otherwise qualified."

The 2008 amendment, effective May 6, 2008, deleted former paragraph (a)(7), which read: "Have an oral

interview with the hiring authority or its representative to determine the applicant's appearance, background, and ability to communicate;"; redesignated former paragraphs (a)(8) and (a)(9) as present paragraphs (a)(7) and (a)(8), respectively; and, in subsection (b), deleted "with the exception of paragraph (7) of subsection (a) of this Code section" following "Code section" at the end.

Cross references. - Qualifications of firefighters, § 25-4-8.

JUDICIAL DECISIONS

Prohibition against felons running for office of sheriff. - Georgia Const. 1976, Art. IX, Sec. I, Para. IX (see Ga. Const. 1983, Art. IX, Sec. I, Para. III) authorizes the General Assembly to prohibit a convicted felon from running for office of sheriff even if the felon obtains full pardon. Georgia Peace Officer Stds. & Training Council v. Mullis, 248 Ga. 67, 281 S.E.2d 569 (1981).

Constitutional prohibition against convicted felon's holding appointment of honor or trust, such as position of deputy sheriff, unless pardoned, in no way prevents General Assembly from imposing as a qualification for peace officer that the individual not have been convicted of a felony. Georgia Peace Officer Stds. & Training Council v. Mullis, 248 Ga. 67, 281 S.E.2d 569 (1981).

Cited in Campbell v. State, 136 Ga. App. 338, 221 S.E.2d 212 (1975); Davis v. State, 143 Ga. App. 329, 238 S.E.2d 289 (1977); Mason v. State, 147 Ga. App. 179, 248 S.E.2d 302 (1978); Lemley v. State, 245 Ga. 350, 264 S.E.2d 881 (1980); Carnes v. Crawford, 246 Ga. 677, 272 S.E.2d 690 (1980); Knowles v. State, 159 Ga. App. 239, 283 S.E.2d 51 (1981); Jefferson v. State, 159 Ga. App. 740, 285 S.E.2d 213 (1981); Davis v. State, 165 Ga. App. 231, 295 S.E.2d 131 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Sheriff as registered peace officer must meet requirements under § 15-16-1. - A sheriff who is a registered peace officer under Ga. L. 1977, p. 1180, §§ 1 and 2 (see O.C.G.A. § 35-8-8) but did not complete two years of service as sheriff prior to January 1, 1980, must meet the requirements of former Code 1933, § 24-2801 (see O.C.G.A. § 15-16-1). 1980 Op. Att'y Gen. No. 80-148.

Agencies may hire those 18 years old. - This section allows, but does not necessarily require, law enforcement agencies to hire those as young as 18 years of age. 1973 Op. Att'y Gen. No. 73-130 (see O.C.G.A. § 35-8-8).

Appointment of investigators. - O.C.G.A. § 35-8-6(c), which authorizes the Executive Director of the Georgia Peace Officer Standards and Training Council to appoint investigators with the power of arrest, allows for the appointment of officers exempted from the certification requirements by the grandfathering provisions in O.C.G.A. § 35-8-10(c) whose registrations have remained in effect, and who are in compliance with their training requirements. 1989 Op. Att'y Gen. No. U89-9.

Individual cannot be employed as police officer prior to obtaining high school diploma or equivalent; an individual may not be employed as a peace officer with the understanding that the individual must obtain the high school diploma or its equivalent prior to being certified. 1970 Op. Att'y Gen. No. 70-152.

Single felony conviction disqualifies individual from employment or certification. - In order for an individual to be disqualified from employment or certification under this chapter, the individual's single conviction would have to have been for a felony and not a misdemeanor. 1971 Op. Att'y Gen. No. 71-191 (see O.C.G.A. Ch. 8, T. 35).

Imprisonment in "prison" or "penitentiary" same. - Since paragraph (a)(4) uses the word "prison" and not the word "penitentiary," it should be noted the two are interchangeable and the variation, therefore, is

legally insignificant. 1971 Op. Att'y Gen. No. 71-191 (see O.C.G.A. § 35-8-8).

Possible that convicted individual does not serve time. - The word "could" in paragraph (a)(4) refers to the possibility that an individual convicted of a felony might not, and often does not, serve time on the sentence, i.e., the sentence might be probated or suspended. 1971 Op. Att'y Gen. No. 71-191 (see O.C.G.A. § 35-8-8).

Educational and medical prerequisites apply to all law enforcement officers certified by the council; the council may not certify officers who do not meet the certification requirements specified in this chapter. 1970 Op. Att'y Gen. No. 70-209 (see O.C.G.A. Ch. 8, T. 35).

O.C.G.A. § 35-8-7.1. Authority of council to refuse certificate to applicant or to discipline certified peace officer or exempt peace officer; grounds; restoration of certificate; emergency suspension of certification.

Statute text

(a) The council shall have authority to refuse to grant a certificate to an applicant or to discipline a certified peace officer or exempt peace officer under this chapter or any antecedent law upon a determination by the council that the applicant or certified peace officer or exempt peace officer has:

(1) Failed to demonstrate the qualifications or standards for a certificate provided in this chapter or in the rules and regulations of the council. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the council that he meets all requirements for the issuance of a certificate;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of being a peace officer or in any document connected therewith or practiced fraud or deceit or intentionally made any false statement in obtaining a certificate to practice as a peace officer;

(3) Been convicted of a felony in the courts of this state or any other state, territory, country, or of the United States. As used in this paragraph, the term "conviction of a felony" shall include a conviction of an offense which if committed in this state would be deemed a felony under either state or federal law without regard to its designation elsewhere. As used in this paragraph, the term "conviction" shall include a finding or a verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon. However, the council may not deny a certificate to an applicant with a conviction if the adjudication of guilt or sentence is withheld or not entered thereon;

(4) Committed a crime involving moral turpitude, without regard to conviction. The conviction of a crime involving moral turpitude shall be conclusive of the commission of such crime. As used in this paragraph, the term "conviction" shall have the meaning prescribed in paragraph (3) of this subsection;

(5) Had his certificate or license to practice as a peace officer revoked, suspended, or annulled by any lawful certifying or licensing authority; or had other disciplinary action taken against him by any lawful certifying or licensing authority; or was denied a certificate or license by any lawful certifying or licensing authority;

(6) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimal standards of acceptable and prevailing practice of a peace officer;

(7) Violated or attempted to violate a law, rule, or regulation of this state, any other state, the council, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which law, rule, or regulation relates to or in part regulates the practice of a peace officer;

(8) Committed any act or omission which is indicative of bad moral character or untrustworthiness;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction, within or outside this state;

(10) Become unable to perform as a peace officer with reasonable skill and safety to citizens by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition; or

(11) Been suspended or discharged by the peace officer's employing law enforcement unit for disciplinary reasons.

(b) (1) When the council finds that any person is unqualified to be granted a certificate or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the council may take any one or more of the following actions:

(A) Refuse to grant a certificate to an applicant;

(B) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the peace officer;

(C) Suspend any certificate for a definite period;

(D) Limit or restrict any certificate;

(E) Revoke any certificate; or

(F) Condition the penalty, or withhold formal disposition, upon the peace officer's

completing such care, counseling, or treatment, as directed by the council.

(2) In addition to and in conjunction with the foregoing actions, the council may make a finding adverse to the applicant or peace officer but withhold imposition of judgment and penalty or it may impose the judgment and penalty but suspend enforcement thereof and place the peace officer on probation, which probation may be vacated upon noncompliance with such reasonable terms as the council may impose.

(c) In its discretion, the council may restore and reissue a certificate issued under this chapter or any antecedent law to a peace officer and, as a condition thereof, may impose any disciplinary or corrective measure provided in this chapter.

(d) Upon arrest or indictment of a peace officer for any crime which is punishable as a felony, the executive director of the council shall order the emergency suspension of such officer's certification upon the executive director's determination that the suspension is in the best interest of the health, safety, or welfare of the public. The order of emergency suspension shall be made in writing and shall specify the basis for the executive director's determination. Following the issuance of an emergency suspension order, proceedings of the council in the exercise of its authority to discipline any peace officer shall be promptly scheduled as provided for in Code Section 35-8-7.2. The emergency suspension order of the executive director shall continue in effect until issuance of the final decision of the council or such order is withdrawn by the executive director.

History

(Code 1981, § 35-8-7.1, enacted by Ga. L. 1985, p. 539, § 2; Ga. L. 1987, p. 3, § 35; Ga. L. 1993, p. 91, § 35; Ga. L. 2008, p. 237, § 1/SB 373.)

Annotations

The 2008 amendment, effective May 6, 2008, added subsection (d).

JUDICIAL DECISIONS

Agreement in violation of section void. - A purported agreement between a police officer and county human resources director that the officer would withdraw an appeal of the officer's termination if disciplinary materials were removed from the employee file to preserve the officer's Peace Officer Standards and Training Council (P.O.S.T.) certification was void and unenforceable because it would have violated not only the P.O.S.T. Council's regulations but also the record-keeping requirements of O.C.G.A. § 35-8-15 and the prohibition of O.C.G.A. § 35-8-7.1(a)(2). *Maner v. Chatham County*, 246 Ga. App. 265, 540 S.E.2d 248 (2000).

Judicial immunity. - Based on the statutory scheme as to Georgia Peace Officer Standards and Training Council's power to certify or discipline a police chief and its investigative powers under O.C.G.A. §§ 35-8-7.1 and 35-8-7.2, and the chief's remedies under Georgia's Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., the Council's members and investigators had absolute immunity via quasi-judicial immunity, and thus, the chief's civil rights action against the Council members and investigators, alleging through 42 U.S.C. §§ 1983 and 1985(3), violations of the chief's first and fourteenth amendment

substantive due process rights, was dismissed. *Evans v. Ga. Peace Officer Stds. & Training Council*, F. Supp. 2d (N.D. Ga. Mar. 29, 2006).

Peace officer's right against self-incrimination did not extend to administrative inquiry into job performance. - Because a peace officer's invocation of a right against self-incrimination could not shield that officer from an inquiry into the effect of that assertion on the officer's job performance, and because the record supported an administrative decision that the officer's refusal to cooperate in an investigation provided sufficient grounds for the Georgia Peace Officer Standards and Training Council to enter an order of decertification, the superior court erred in reversing an administrative law judge's decision upholding the decertification and finding that the officer's actions amounted to unprofessional conduct. *Ga. Peace Officers Stds. & Training Council v. Anderson*, 290 Ga. App. 91, 658 S.E.2d 840 (2008).

RESEARCH REFERENCES

ALR. - Nonsexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying police officer's demotion or removal or suspension from duty, 19 ALR6th 217.

35-8-7.2. Administrative procedure; hearings; review.

Statute text

(a) Except as otherwise provided in subsection (b) of this Code section, proceedings of the council in the exercise of its authority to issue any certificate or discipline any peace officer under the terms of this chapter shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In all such proceedings the council shall have authority to compel the attendance of witnesses and the production of any book, writing, or document upon the issuance of a subpoena therefor. In any hearing in which the fitness of a peace officer or applicant is in question, the council may exclude all persons from its deliberation of the appropriate action and may, when it deems necessary, speak to the peace officer or applicant in private. All final determinations, findings, and conclusions of the council under this chapter are final and conclusive decisions of the matters involved.

(b) Proceedings for review of a final decision of the council shall be instituted by filing a petition within 30 days after the service of the final decision of the council or, if a rehearing is requested, within 30 days after the decision thereon. The petition shall be filed in the superior court of the county of residence of the petitioner.

History

(Code 1981, § 35-8-7.2, enacted by Ga. L. 1985, p. 539, § 2.)

Annotations

Code Commission notes. - Pursuant to Code Section 28-9-5, in 1985, "superior court" was substituted for "Superior Court" in subsection (b).

JUDICIAL DECISIONS

Judicial immunity. - Based on the statutory scheme as to Georgia Peace Officer Standards and Training Council's power to certify or discipline a police chief and its investigative powers under O.C.G.A. §§

35-8-7.1 and 35-8-7.2, and the chief's remedies under Georgia's Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., the Council's members and investigators had absolute immunity via quasi-judicial immunity, and thus, the chief's civil rights action against the Council members and investigators, alleging through 42 U.S.C. §§ 1983 and 1985(3), violations of the chief's first and fourteenth amendment substantive due process rights, was dismissed. *Evans v. Ga. Peace Officer Stds. & Training Council*, F. Supp. 2d (N.D. Ga. Mar. 29, 2006).

Cited in *Ga. Peace Officers Stds. & Training Council v. Anderson*, 290 Ga. App. 91, 658 S.E.2d 840 (2008).

35-8-17. Effect of peace officer's failure to comply with chapter generally; civil actions against noncomplying peace officers and law enforcement units.

Statute text

(a) Any peace officer so employed who does not comply with this chapter shall not be authorized to exercise the powers of a law enforcement officer generally and particularly shall not be authorized to exercise the power of arrest.

(b) The council is authorized to bring a civil action against any peace officer who does not comply with this chapter to enjoin the peace officer from performing any and all functions of a peace officer, including the power of arrest, until the officer shall meet the certification or registration requirements of this chapter.

(c) The council is authorized to bring a civil action against any law enforcement unit which employs or appoints any peace officer who fails to meet the certification or registration requirements of this chapter to enjoin the law enforcement unit from allowing the peace officer to perform any and all peace officer functions, including exercising the power of arrest, until such time as the peace officer shall comply with the certification or registration requirements of this chapter.

History

(Ga. L. 1970, p. 208, § 15; Ga. L. 1975, p. 1165, § 11; Ga. L. 1977, p. 713, § 8; Ga. L. 1977, p. 1180, § 3.)

JUDICIAL DECISIONS

Noncompliance with the conditions of this chapter renders an arrest unauthorized. The noncomplying peace officer, however, may be authorized to effect an arrest, under certain circumstances, as a private citizen. *Mason v. State*, 147 Ga. App. 179, 248 S.E.2d 302 (1978); *Williams v. State*, 171 Ga. App. 807, 321 S.E.2d 386 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 966, 83 L. Ed. 2d 970 (1985) (see O.C.G.A. Ch. 8, T. 35).

Defendant's arrest by a DEA special agent for giving a false name to a law enforcement officer was not illegal merely because at the time of the arrest no writing existed making the agent a county sheriff's deputy as required by O.C.G.A. § 35-9-15(b) nor had the agent complied with the requirements of the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq. *Fajardo v. State*, 191 Ga. App. 295, 381 S.E.2d 560 (1989).

Objecting to legality of arrest insufficient to question officer's power to arrest. - The trial court did not err in refusing to give two requested charges on O.C.G.A. § 35-8-17, specifically on the principle that a law

enforcement officer who has not been certified pursuant to this O.C.G.A. Ch. 8, T. 35 does not have authority to exercise the power of arrest, since, although defendant made an issue at trial of the legality of defendant's arrest, no issue was made of the arresting officer's authority to exercise arrest powers generally. *Gay v. State*, 179 Ga. App. 430, 346 S.E.2d 877 (1986).

Certification requirements. - Where arresting officer met all requirements of O.C.G.A. § 35-8-8 and had successfully completed the course required by O.C.G.A. § 35-8-9, the arresting officer was not disqualified to make arrests on ground that the arresting officer had not yet been certified under O.C.G.A. § 35-8-7. *Davis v. State*, 164 Ga. App. 312, 295 S.E.2d 131 (1982).

Evidence seized by uncertified officer suppressed. - Noncompliance with the conditions of O.C.G.A. Ch. 8, T. 35 renders the exercise of any powers of a law enforcement officer unauthorized. Thus, due to an officer's lack of certification, the officer had no authority to apply for a search warrant, and the evidence seized pursuant to the execution of the illegal warrant should have been suppressed. *Holstein v. State*, 183 Ga. App. 610, 359 S.E.2d 360, cert. denied, 183 Ga. App. 906, 359 S.E.2d 360 (1987).

Evidence seized by uncertified officer not suppressed. - Trial court erred in suppressing contraband seized by arresting officer who failed to maintain certification under the Georgia Police Officer Standards and Training statute, codified at O.C.G.A. § 35-8-17(a), as the legislature did not intend to invalidate, nullify or otherwise make such arrest illegal. After defendant was speeding in the officer's presence, the officer could conduct a search and after finding defendant possessed marijuana, the officer could arrest defendant. *State v. Pinckney*, 255 Ga. App. 692, 566 S.E.2d 325 (2002).

The indictment, trial, and conviction of a defendant is not "proceeding under" an arrest. It is inconceivable that the legislature intended to absolve an individual of all guilt of a crime charged merely because the individual's arrest was illegal. *Hunt v. State*, 134 Ga. App. 761, 216 S.E.2d 354 (1975).

Private civil action not available. - Although a city that formerly employed a police officer failed to disclose the safety violations that the officer committed, which were in the officer's personnel file, to a hiring city, the parents of a child who was fatally shot by the officer's service weapon due to the officer's possible safety negligence could not assert a private cause of action against the former city for violations of the requirements of the Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., as no such civil liability was provided, pursuant to O.C.G.A. § 35-8-17(b) or (c). *Govea v. City of Norcross*, 271 Ga. App. 36, 608 S.E.2d 677 (2004).

Cited in *Tucker v. State*, 131 Ga. App. 791, 207 S.E.2d 211 (1974); *Rogers v. State*, 133 Ga. App. 513, 211 S.E.2d 373 (1974); *Campbell v. State*, 136 Ga. App. 338, 221 S.E.2d 212 (1975); *Davis v. State*, 143 Ga. App. 329, 238 S.E.2d 289 (1977); *Lemley v. State*, 245 Ga. 350, 264 S.E.2d 881 (1980); *Harvey v. State*, 165 Ga. App. 7, 299 S.E.2d 61 (1983); *City of Pembroke v. Hagin*, 194 Ga. App. 642, 391 S.E.2d 465 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Authority of "registered" or "exempt" peace officers. - A "registered" or "exempt" peace officer who is in compliance with the requirements for certification under the Georgia Peace Officer Standards and Training Act, O.C.G.A. Ch. 8, T. 35, has the same authority and limitations as that of a "certified" peace officer in all respects relevant to law enforcement duties, including the ability to apply for a search warrant. 1999 Op. Att'y Gen. No. 99-7.

U.S. Code Title 18 § 922(d)(9)

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or

ammunition to any person knowing or having reasonable cause to believe that such person ... has been convicted in any court of a misdemeanor crime of domestic violence.

(g) It shall be unlawful for any person ...who has been convicted in any court of a misdemeanor crime of domestic violence ... to possess any firearm or ammunition.

**RULES
OF
GEORGIA PEACE OFFICER
STANDARDS AND TRAINING COUNCIL**

**CHAPTER 464-3
OFFICER CERTIFICATION**

464-3-.01 Application for Certification. Amended. Every person required or permitted to be certified shall make application on forms furnished by the Council, and in connection therewith shall, under oath, answer all questions, supply all information, and furnish all certificates, affidavits, waivers to obtain information and other supporting data as required. The written application for certification shall be a permanent record which the officer must maintain current. The application for certification shall be valid for only eighteen (18) months from date of application. Should the applicant not be certified within said period, the applicant will be required to make a new application and in connection therewith; shall answer all questions, supply all information, and furnish all certificates, affidavits, and other supporting data as required. An application for certification shall be on file with the Council prior to the applicant's employment or appointment as an officer. Any untrue, misleading or omitted statement contained in any such application shall be cause for denial, and if any registration has been granted, it shall be cause for the revocation of same.

464-3-.02 Qualifications for Certification: Pre-Employment Requirements. Amended.

(1) When initially accepted for employment or appointment by a law enforcement unit or communications agency, any candidate seeking certification under these Rules shall:

- (a) Be at least eighteen (18) years of age as evidenced by a certified copy of said candidate's birth certificate or other proof of birth acceptable to the Council.
- (b) Be a citizen of the United States or a repatriated or naturalized citizen of the United States as of the date employment commences as evidenced by a certified copy of said candidate's birth certificate or other certified proof of citizenship acceptable to the Council.
- (c) Have a high school diploma or its recognized equivalent or an approved college degree indicating successful completion of high school. A recognized equivalent means a diploma awarded by any state on the basis of a General Education Development (GED) Test.
- (d) Complete two (2) applicant fingerprint cards prior to commencement of

employment as a peace officer in a law enforcement unit. All fingerprint cards shall be processed by the Georgia Crime Information Center (GCIC) and the National Crime Information Center (NCIC) and the results returned to the Council.

- (e) Be found, after examination by a licensed physician or surgeon, to be free from any physical, emotional, or mental conditions which might adversely affect his/her exercising the powers or duties of a peace officer.
- (f) Successfully complete a job related academy entrance examination provided for and administered by the Council in conformity with state and federal law (where applicable).
- (g) Not have been convicted by any state or by the federal government of any crime the punishment for which could have been imprisonment in the federal or state prison or institution nor have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law, provided that, for purposes of this paragraph, violations of traffic laws and other offenses involving the operation of motor vehicles when the applicant has received a pardon shall not be considered.
- (h) Possess good moral character as determined by investigation under procedure established by the Council.
- (i) Have an oral interview with the hiring authority or its representative to determine the applicant's appearance, background, and ability to communicate.

464-3-.03 Qualifications for Certification, Training Requirements. Amended. No candidate shall be certified under these Rules unless and until the school director of the school where said candidate has satisfactorily completed the basic course established in accordance with these Rules, shall have submitted verification in such form as the Council may require, that the candidate has met the training requirements set forth in this Chapter.

464-3-.04 Applications to be Permanent Records: Responsibility to Keep Current. All certification applications under these Rules shall be a permanent record. Should any change occur after certification that would require a different answer to any question in the application, to include change of address, or any supporting document that is made as part of the application, such change must be reported, by the officer, as an amendment to the application within thirty (30) days of the date of the occurrence of such change.

464-3-.05 Notification of Disciplinary Action. Any applicant/candidate for certification or person certified pursuant to O.C.G.A. Title 35, Chapter 8, who has disciplinary action taken against him/her by any agency, organ, or department of this State, a subdivision or municipality thereof, or federal, shall notify the Council within fifteen (15) days of said action. For purposes of the fifteen (15) day time limit, evidence that notification was mailed within fifteen (15) days shall be sufficient. Disciplinary action as used herein means any action taken by any municipal, county, state or federal agency against a certified officer, which meet any of the following criteria:

- (a) arrest by local, state, or federal authorities;
- (b) suspensions, in totality, of thirty (30) days or longer for singular incidents of misconduct, demotions (other than for administrative purposes), termination by employing agency, or resignations in lieu of terminations;
- (c) indictments of presentments in any local, state or federal courts;
- (d) conviction or bond forfeiture, in any local, state or federal court. The term "conviction" shall include a finding or verdict of guilt, plea of guilty, or a plea of nolo contendere, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon;
- (e) minor traffic citations written to a certified officer need not be reported to the Council.

464-3-.06 Notification Required by Employing Agency. Amended. Employing agencies suspending for thirty (30) days or longer, demoting (other than for administrative purposes) , discharging an applicant/candidate for certification or certified officers for disciplinary reasons or accepting resignations in lieu of termination shall inform the Council in writing within fifteen (15) days of such action and records concerning the disciplinary action shall be made available to an investigator with POST Council.

464-3-.07 Inquiries to Determine Compliance. The Council shall have the authority to initiate inquiries to determine compliance with the Peace Officer Standards and Training Act by an individual officer or employing agency of State and local government. The officer's waiver signed upon application shall authorize the Council to obtain documents and other information necessary for the inquiry.

464-3-.08 Notification of Disciplinary Action. The Council shall notify all officers by mail or hand delivery of any disciplinary action or a hearing to determine if disciplinary action is appropriate. For purposes of notification, mailing by delivery confirmation or certified mail to the last address specified on the application or the last known address of the officer shall constitute proper service.

464-3-.09 Notification of Long Term Medical Disability.

- (a) Employing agencies receiving notice of a change in the medical condition, for other than a short-term condition, of any applicant, candidate for certification, or person certified that prohibits the applicant, candidate, or officer from performing required duties, shall inform the Council in writing within ten (10) days of such action. As used in this section, the term short-term condition means a medical condition which, in the judgement of a licensed physician, surgeon or doctor of optometry, expressed in writing, will not persist for more than 180 days, or such other period as may be specified by the Council, in its' judgement.
- (b) Any applicant, candidate, or person certified, pursuant to O.C.G.A. Title 35, Chapter 8, who has a change in medical condition, on or after the effective date of this rule, for other than a short-term condition, and is terminated, voluntarily resigns, resigns in lieu of dismissal, demoted, suspended, or retires as the result of a change in medical condition

which prohibits the applicant, candidate, or officer from performing required duties shall notify the Council in writing within fifteen (15) days of such action.

- (c) A change in medical condition shall cause a review of the applicant, candidate, or officer's certification status by the Council as provided in O.C.G.A. § 35-8-7.1(a)(10). If, as a result of this review, the Council determines that the applicant, candidate or officer is believed to be unable to perform the duties of an officer with reasonable skill and safety to citizens due to this change in medical status, the Council may take action as provided in O.C.G.A. § 35-8-7.1(b)(1).
- (d) The affected applicant, candidate, or officer shall be notified via certified mail of the Council's action and of the affected party's right to request a hearing as provided in Section 464-8 as amended of P.O.S.T. Council Rules.
- (e) The employing agency of the affected applicant, candidate, or officer shall also be notified of Council's action by forwarding a copy of the notice to the employing agency via U.S. Mail.
- (f) If the affected applicant, candidate, or officer fails to request a hearing as provided in P.O.S.T. Rules, the decision of the Council shall become final.

JAIL OFFICER

35-8-24. Training requirements for jail officers and juvenile correctional officers.

Statute text

- (a) (1) Any person employed or appointed as a jail officer six months after January 1, 1999, shall not be authorized to serve as a jail officer in any detention facility after a certain date as provided in subsection (b) of this Code section unless such person has successfully completed a training course for jail officers approved by the Georgia Peace Officer Standards and Training Council.
- (2) Any person employed or appointed as a juvenile correctional officer six months after January 1, 1999, shall not be authorized to serve as a juvenile correctional officer in any juvenile correctional facility after a certain date as provided in subsection (b) of this Code section unless such person has successfully completed a training course for juvenile correctional officers approved by the Georgia Peace Officer Standards and Training Council.
- (b) Any person employed or appointed as a jail officer or juvenile correctional officer six months after January 1, 1999, shall have a period of six months from the date of initial employment to complete the required training course successfully. Any person who fails to complete such training course successfully within six months of the date of initial employment or appointment as a jail officer or as a juvenile correctional officer shall be

prohibited from working as a jail officer in a detention facility or as a juvenile correctional officer in a juvenile correctional facility.

(c) Applicants and persons certified under this Code section shall be subject to the powers and authority of the Georgia Peace Officer Standards and Training Council applicable to peace officers as defined in this chapter and shall be required to fulfill all requirements of a peace officer, except the requirements of paragraph (8) of subsection (a) of Code Section 35-8-8 and peace officer training requirements applicable to peace officers only.

(d) Persons employed or serving as jail officers or juvenile correctional officers whose employment or service commences prior to and continues on January 1, 1999, are exempt and excused from compliance with the certification provisions of this Code section.

(e) Jail officers or juvenile correctional officers exempt from the certification provisions of this Code section are required to register with the council. The registration shall remain in effect for the period of time said person is employed as a jail officer or as a juvenile correctional officer.

(f) Any registration granted in this Code section shall not become invalid upon termination of employment or appointment as a jail officer or juvenile correctional officer if subsequent employment or appointment as a jail officer or juvenile correctional officer is commenced within 12 months of such prior termination as a jail officer or a juvenile correctional officer.

(g) Any jail officer or juvenile correctional officer exempted from mandatory compliance with this Code section may choose to be certified under this Code section. If so, the council shall have the authority to recognize instruction received by such jail officer or juvenile correctional officer as equivalent to all or part of the instruction required for certification under this Code section.

History

(Code 1981, § 35-8-24, enacted by Ga. L. 1995, p. 880, § 2; Ga. L. 2008, p. 237, § 3/SB 373.)

Annotations

The 2008 amendment, effective May 6, 2008, in subsection (c), substituted "paragraph (8)" for "paragraph (9)".

Code Commission notes. - Pursuant to Code Section 28-9-5, in 1998, "January 1, 1999," was substituted for "the effective date of this Act" in paragraphs (a)(1) and (a)(2), subsection (b), and subsection (d).

JUDICIAL DECISIONS

Cited in *Grier v. State*, 262 Ga. App. 777, 586 S.E.2d 448 (2003).

PUBLIC SAFETY DISPATCHERS

O.C.G.A. § 35-8-23. Basic training course for communications officers; certification requirements; duties of council; rules and regulations.

Statute text

(a) As used in this Code section, the term "communications officer" means and includes any person employed by a local governmental agency to receive, process, or transmit public safety information and dispatch law enforcement officers, firefighters, medical personnel, or emergency management personnel.

(b) Any person employed on or after July 1, 1995, as a communications officer shall satisfactorily complete a basic training course approved by the council. Persons who are employed on July 1, 1994, shall register with the council and may be certified by voluntarily complying with the certification process. Any person who fails to comply with the registration or certification process of the council shall not perform any duties of a communications officer and may have his or her certificate sanctioned or revoked.

(c) The council shall conduct administrative compliance reviews with respect to the requirements of this Code section. The council shall be authorized to promulgate rules and regulations to facilitate the administration and coordination of standards, certification, and compliance reviews consistent with the provisions of this Code section.

(d) On and after July 1, 1998, the basic training course for communications officers shall include training in the use of telecommunications devices for the deaf (TDD's), and no person shall on or after that date be certified by the council under this Code section unless such person has satisfactorily completed such training.

History

(Code 1981, § 35-8-23, enacted by Ga. L. 1994, p. 1355, § 2.1; Ga. L. 1997, p. 1488, § 7; Ga. L. 1998, p. 540, § 1.)

This page left intentionally blank

**RULES OF
GEORGIA PEACE OFFICER
STANDARDS AND TRAINING COUNCIL**

**CHAPTER 464-14
CERTIFICATION OF COMMUNICATIONS OFFICERS**

464-14-.01 Application for Certification as Communications Officer. Every person required or permitted to be certified as a communications officer shall make application on forms furnished by the Council, and in connection therewith shall, under oath, answer all questions, supply all information, and furnish all certificates, affidavits, waivers to obtain information and other supporting data as required. The written application for certification shall be a permanent record which the communications officer must maintain current. The application for certification shall be valid for only eighteen (18) months from the date of application. Should the applicant not be certified within said period, the applicant will be required to make a new application and in connection therewith; shall answer all questions, supply all information, and furnish all certificates, affidavits, and other supporting data as required. An application for certification shall be on file with the Council prior to the applicant's employment or appointment as a communications officer.

464-14-.02 Qualifications for Certification: Pre-employment Requirements.

- (1) When initially accepted for employment or appointment by a Sponsoring Agency, any candidate seeking certification under these rules shall:
 - (a) Be at least eighteen (18) years of age as evidenced by a certified copy of said candidate's birth certificate or other proof of birth acceptable to the Council.
 - (b) Be a citizen of the United States or a repatriated or naturalized citizen of the United States as of the date employment commences as evidenced by a certified copy of said candidate's birth certificate or other certified proof of citizenship acceptable to the Council.
 - (c) Have a high school diploma or its recognized equivalent or any approved college degree indicating successful completion of high school. A recognized equivalent means a diploma awarded by any state on the basis of a General Education Development (GED) Test.
 - (d) Be fingerprinted and a search made of local, state, and national fingerprint files to disclose any criminal record;
 - (e) Not have been convicted by any state or by the federal government of any crime the punishment for which could have been imprisonment in a federal or a state prison or institution nor have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law, provided that, for purposes of this paragraph, violations of traffic laws and other offenses involving the operation of motor vehicles when the applicant has received a pardon shall not be considered;
 - (f) Possess good moral character as determined by investigation under procedure established by the Council;
 - (g) Be found, after examination by a licensed physician or surgeon, to be free from any physical, emotional, or mental conditions which might adversely affect his/her exercising the duties of a communications officer, and;
 - (h) Have an oral interview with the hiring authority or its representative to determine the applicant's appearance, background, and ability to communicate.

This page left intentionally blank

Chapter Four

THE BACKGROUND INVESTIGATION PROCESS

PRIOR TO INITIATING THE INVESTIGATION

Before beginning the investigation, the investigator should be fully familiar with the laws and regulations associated with the conduct of backgrounds.

Investigators also need to understand local policies and ordinances, agency standards, and their agency's needs and philosophy regarding the background investigation process. They need the ground rules regarding the resources (both human and other) committed to this process, and a full understanding of what is expected of background investigators.

Agency procedures, resources, and priorities will have a significant impact on the manner in which background investigations can be conducted, including:

1. The amount of time available to complete the investigation,
2. The resources available for conducting background investigations,
3. Whether background investigations are a full-time assignment or an ancillary duty,
4. The extent to which the agency has clearly defined background and hiring policies,
5. Availability of clerical support,
6. The agency's policy regarding interactions between the background investigator and others involved in the hiring process (i.e., the truth detection examiner, psychologist, or medical doctor), and
7. The background investigator's role in the hiring decision.

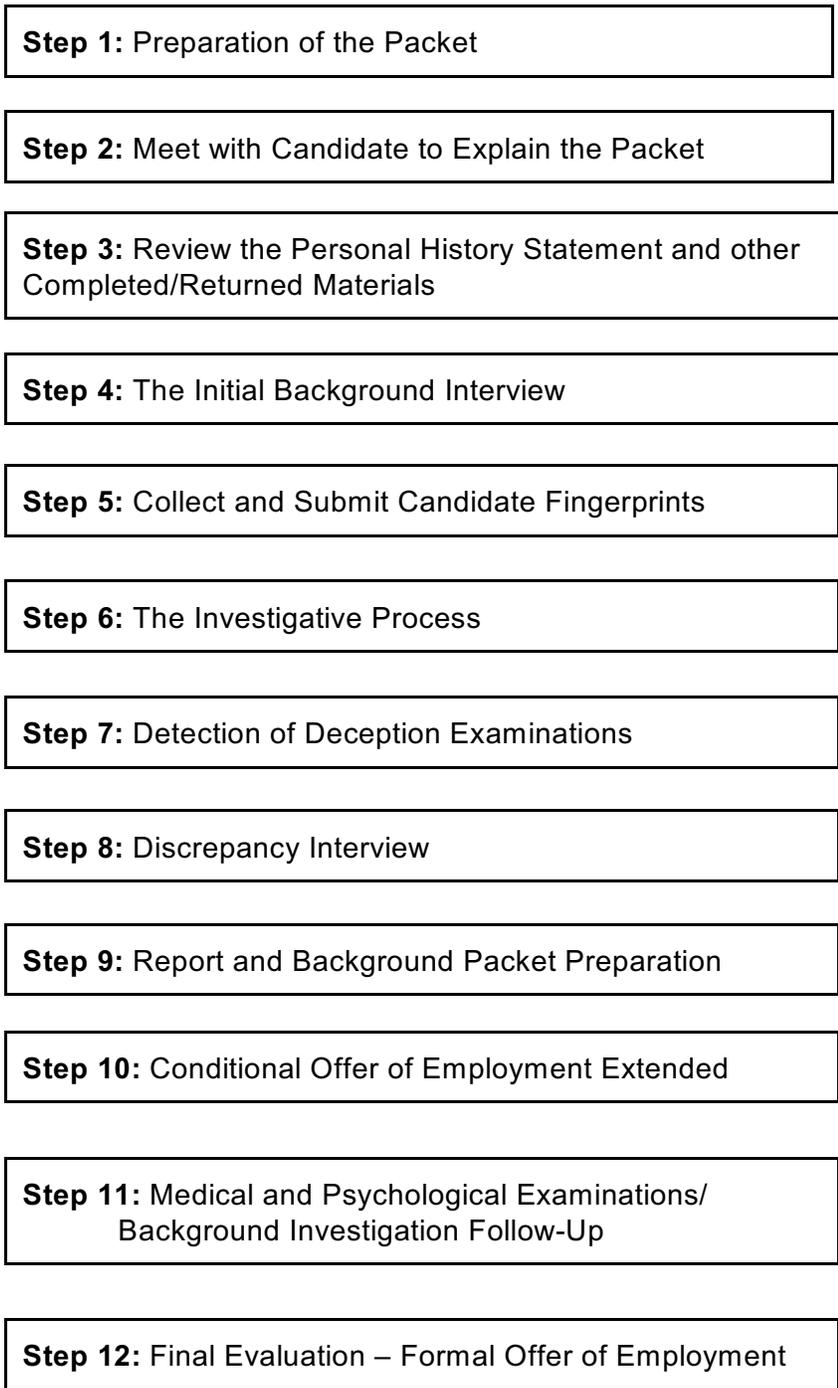
Investigators must also balance agency resources against the value of the background information to be gained. Geography, logistics, staffing, funding, and urgency all have an impact on available resources. The fewer resources available, the more important it is to choose wisely when investing time and effort in a specific situation. Careful planning is critical; investigators must learn to maximize the available time and personnel resources. For example, driving halfway across the state to speak with a manager at the local fast food restaurant where a candidate worked eight or nine years ago may not be a very productive use of time.

THE BACKGROUND STEPS

The background investigation phases or “steps” are graphically represented in Figure 4-1. These steps pertain to the investigations of all officer classifications; however, the scope, depth, and necessity of a particular step may vary between the specific job classification.

Agencies have considerable latitude in how these steps are ordered and implemented, and even whether certain steps (e.g., discrepancy interviews) are performed at all. However, federal and state laws do restrict when certain of these steps must be conducted. As discussed in the previous chapter, medical and psychological examinations must be conducted post-offer. Although most of the background investigation must be conducted pre-offer, specific background topics that touch on medical, psychological, and other disability-related issues should be deferred until a conditional job offer has been extended.

Figure 4-1. THE BACKGROUND INVESTIGATION PROCESS



Step 1: Preparation of the Packet

The precise composition of a background packet will vary from agency to agency, based on department policies, guidance from the agency's legal counsel, and consultation with the agency's human resources or personnel department. At a minimum, the package should include:

- Agency-specific information - hiring requirements and policies, detailed instructions, etc.
- A personal history questionnaire, developed by the agency, that the candidate is expected to complete and return
- A list of documents (birth certificates, high school transcripts, etc.,) that the candidate is expected to furnish (and how and when they are to be furnished)
- Multiple waivers and authorization forms, such as:
 - o advisements regarding false statements
 - o authorization forms for release of information

(Actual agency advisements and forms should be on current department letterhead, reviewed by legal counsel, and notarized as necessary)

- [Credit Advisement Form \[to comply with the Fair Credit Reporting Act \(15 USC §1681\)\]](#)
- If a contract investigator is to be used, appropriate Investigative Consumers Reporting Agencies Act (ICRA) forms should be included. (Note: This is a legally complex subject. Investigators should **never** attempt to devise the forms for this specific use without very careful guidance from their agency's legal counsel.)
- Additional forms (e.g., blank supplementary questionnaires, child abuse and adult abuse reporting statements, drug policies, etc.)

Applicants are entitled to copies of all application documents that they are required to sign. Investigators are unlikely to be charged with the responsibility for developing a background packet. Departmental forms, including blank waivers, are important documents which require the review and concurrence of the chain of command and the agency's legal counsel. Even the format/layout of official correspondence is commonly specified by the department head. However, investigators must bear responsibility for ensuring that departmental information is current and contains up-to-date contact information.

It is useful to maintain complete background packets for potential candidates. More efficient still, these packets can be placed on-line or on a CD-ROM. There are many

advantages to electronic packets. First, needed changes can be effected quickly and the warehousing of blank packets is minimized. (Note that the POST forms are on-line.) Copies of these forms for candidates can easily be reproduced from this packet. Second, maintaining electronic packets allows the investigator to personalize each packet. By simply "searching and replacing," proper dates, gender, names, and other needed identifying data can be inserted. Third, keeping a master packet in the computer minimizes the likelihood that a needed form will be overlooked or misplaced from a hard-copy file. Fourth, if changes occur in the law, it is simple to update the file, rather than engage in the tedious process of replacing outdated items in an already-printed inventory.

Step 2: Meet with Candidate to Explain the Packet

It is a good idea to meet with the candidate to present the background package personally. By explaining each item in the packet, communication between the candidate and the investigator is fostered and confusion can be avoided. Investigators who question the need for this step do well to remember their own surprise when, as a candidate, they were first handed a background packet. Candidates for employment may never have been confronted with such a comprehensive application document. At this initial meeting, agency-specific requirements or policies can be discussed and each section of the Personal History Statement can be reviewed, emphasizing the need to be honest, thorough, and complete. The list of required documents should be reviewed as well. An agreed upon time can be established for the candidate to return the completed documents. The investigator and candidate should exchange telephone numbers, including cell phone numbers and e-mail addresses.

Step 3: Review the Personal History Statement and other Completed/Returned Materials

Once the candidate has completed a background packet, the investigator should review the submitted materials. The completed Personal History Statement should be reviewed to establish that there are no immediately disqualifying factors (e.g., felony conviction for peace officer candidates, lack of position-appropriate citizenship, admitted current illegal drug use, etc.). Notes should be made of responses and issues that require attention in the earliest steps of the investigation, including during an initial background interview.

It is permissible to make copies of passports, Certificates of Naturalization, and other official documents to include in the background investigation file (Note: only copies made with the intent to defraud are prohibited by law). Copies should include a notation that the original or certified copy was inspected, the date of inspection, and the signature of the investigator.

DOCUMENT ANALYSIS

A typical background investigation may include 50 or more pages of documents,

ranging from the Personal History Statement to copies of various releases to vital statistics documents, transcripts, credit reports, criminal histories, etc. The verification of all these documents can be challenging at best. The analysis of original documents is far preferable to facsimile reproductions. The candidate should be required to bring original documents (or, in some cases, certified copies) to the investigator. If necessary, duplicates can be made and the originals returned to the individual. If copies are made, the investigator should make a note that the originals were reviewed.

In general, there are three issues that must be addressed when analyzing a document:

1. Is it authentic? Does it look real?
2. Is the information consistent with other claims made by the candidate, and the information already submitted or uncovered in the background?
3. Is it sufficient, that is, does it provide legally acceptable proof?

If in doubt about a given document, the best advice is to check with the originating source. Virtually any official document can be verified by the agency or institution of issuance. However, this can be a *very* time-consuming process; therefore, there are a few checks that investigators can initially do themselves. For example, (1) the social security number provided can be matched against the number on the college transcripts, credit report, and fingerprint, (2) the information on the driver license can be checked against the information on the official driving record, and (3) the selective service registration number can be matched against the number obtained on-line.

Most documents submitted by candidates are what they say they are. The most common types of deficiencies involve documents that, although genuine, are not legally sufficient. Examples include:

- ceremonial birth certificates from hospitals that, although real, are not legal birth certificates;
- school transcripts, although genuine, from unaccredited educational institutions;
- credit reports that are real, but over one year old;
- automobile liability insurance cards that are real but expired, or that do not name the candidate as an insured

Step 4: The Initial Background Interview

It is advisable to meet with the candidate to review the information. This interview may

take place either during or after the review of the information by the investigator. This initial background interview allows the investigator to:

- affirm with the candidate that documents are true, correct, and up-to-date,
- explore reasons or explanations for curious, suspicious, or incomplete responses,
- correct truly inadvertent errors or oversights and,
- get an overall feel for the candidate.

If corrections are necessary, they can be made in one of several ways: (1) on a separate working copy, thereby preserving the original; (2) on the original document, but only in a different color of ink, or (3) by having the candidate submit supplementary sheets explaining each correction.

Available time and investigator's/department's preference dictate which of these options is best. Agency policy will dictate the treatment and disposition of inaccurate or incomplete information. Some agencies have a zero tolerance for such error, insisting upon a correct and complete document the first time; others are more lenient.

Candidate responses that are vague, suspicious, or incomplete should be the focus of further questioning. This process will provide valuable insight into where the likely problems are to be found, thus allowing the investigator to begin prioritizing the focal points of the investigation. It is recommended that this interview and all others be tape-recorded. Tape recordings can be a valuable back-up to the investigator's memory, especially in the event that a single investigator is handling multiple backgrounds. It also provides solid proof of what was asked and the content and manner of the answers. *Candidates must be informed that interviews are being recorded.* The initial background interview is also an ideal time to have candidates execute all the necessary release and authorization forms.

A signed, notarized, comprehensive, and valid authorization for the release of information can offset the reluctance of contacts and references to answer questions about others. Sample releases are provided in Chapter 5, Areas of Investigation, and the POST Personal History Statements; however, it is critical that the agency's legal counsel play an active role in the design, approval, and/or use of these forms.

Unless otherwise specified, authorizations for release of information may only be valid for 30 days. There may be circumstances where time or distance simply will not permit a face-to-face meeting between the investigator and the candidate. In this case, a telephone follow-up with the candidate may be the only means available.

INTERVIEWING

A very substantial part of the background investigation process consists of making contact with a wide variety of individuals, including the candidates and their relatives, references, acquaintances, teachers, neighbors, employers, military acquaintances and others. All these individuals need to be interviewed, whether in writing, by telephone interview, or as a result of a face-to-face meeting.

The background process can be intimidating and intrusive to these interviewees, especially to the many candidates who have never experienced this depth of interrogation. Although candidates must cooperate fully and openly with a lawful background investigation, investigators are wise to remember that the best candidates are likely to have many choices - law enforcement and otherwise. The interview should be seen as an opportunity to represent the agency favorably in addition to uncovering job-relevant information.

With certain narrow exceptions, others who are contacted during the process are under no obligation to cooperate; investigators must rely upon their good will to gather the needed information. Unlike a criminal investigation, many people contacted in the course of a background have no idea that they were going to be interviewed, nor do they have expectations regarding the nature of the investigation. Many will be reluctant to answer questions about others. The investigator's skill in gaining the cooperation of others is critical. The style and manner in which these individuals are approached and interviewed will very often make the difference between success and failure.

There are many useful publications and resources dealing with the subject of interviewing, as well as a POST-certified course on Interviewing and Interrogation. It is beyond the scope of this manual to provide an in-depth discussion of effective interviewing. Presented below is a brief overview of some of more important aspects of interviews that have the most direct bearing on the conduct of background investigation.

PREPLANNING

By taking the time to prepare and ask job-related questions and focus the interview on candidate qualifications, investigators maximize the use of the time spent in the interview and send a powerful message to interviewees that they are serious about evaluating candidates carefully and selecting the best person for the job. This positive message reflects well upon the agency, and can prove to be both an effective recruitment device, as candidates appreciate employment practices that are thorough, job-related, and even-handed.

BEGINNING THE INTERVIEW

ESTABLISHING RAPPORT. Creating an accepting, open environment helps relieve

the interviewees' anxiety, which in turn allows them to feel comfortable giving honest, candid answers. Therefore, building rapport can enhance the effectiveness of the interview by yielding more complete and accurate candidate information.

Open the interview session by greeting the individual with a sincere smile, lots of eye contact, and a firm handshake. Providing information about the background investigation can both serve as an icebreaker as well as ensuring that interviewees understand the process and what is expected of them. Interviewees must be informed if an audio recording device is used. They should be encouraged to respond candidly and completely to all questions, to provide specific examples of past behavior, when appropriate, and to ask for clarification if a question is unclear.

POSING QUESTIONS

OPEN VS. CLOSED QUESTIONS. Questions can vary by the type of response required of the candidate, ranging from simple "yes" or "no" to an in-depth answer. In general, answers to **closed questions** - for example "*Have you ever worked the night shift?*" - are often so short that they do not provide interviewers with sufficient, useful information. The result is that interviewers end up doing more talking in the interview than the candidate does. A "yes or no" question, for example, may require 15 to 20 words to ask, but only elicit a 1-3 word response. Therefore, questions that are open-ended are generally preferable.

Although they should be used sparingly, closed-ended questions do have their place in the background investigation. During the interview, they are useful for verifying facts, eliciting specific details, addressing questions arising from responses in the candidates' application blank, or for checking minimum qualifications.

Open questions require candidates to provide specifics, details, and other information. These questions are useful in finding how well the candidates organize their thoughts and sometimes they can reveal attitudes and feelings critical to effective job performance. They are generally more effective than closed-ended questions at developing insight into a candidate's experience and abilities.

QUESTION PHRASING

Regardless of format, all questions must be worded **clearly, simply and concisely**. The candidate must understand what is being asked without having to second-guess or read between the lines.

Interviewers can have a significant influence over the responses of candidates based on the specific wording chosen to communicate the question. **Leading questions** indicate to the candidate the response that the interviewer wants. Leading questions include those in which the correct answer is fairly obvious ("*How important is it for a peace officer to have integrity?*") or implied by the way the question is phrased or

delivered (“*Would you be willing to use deadly force, if necessary?*”).

FOLLOW-UP/PROBING

Follow-up questions can serve three important functions: clarification, elaboration, and verification.

CLARIFICATION. Follow-up questioning may be necessary if the interviewee’s response was vague or confusing, or indicates that he did not understand the question. Investigators should ask clarifying questions if they find themselves needing to make inferences or assumptions to fill in the gaps in the information provided. Sometimes clarifying questions may be as simple as repeating the initial question. Otherwise, clarifying follow-up questions typically begin with phrases such as “*Could you explain again...*,” “*Help me understand,*” or “*What do you mean ...*.” It may also be appropriate to paraphrase what the individual said: “*If I heard you correctly here is what you said...*”

ELABORATION. An individual may provide a brief answer that needs to be expanded. In these situations, follow-up questions can be used to obtain more details. Sometimes a simple pause – saying nothing – will elicit a further response. Otherwise, probes such as “*Tell me more about..*,” “*Walk me through...*” or “*Could you expand on...*” or “*Please provide an example*” can prompt additional, necessary information. Even if the response was complete, at times it may be useful to request another example or other additional information to ensure a complete picture of the individual.

VERIFICATION. In an effort to present themselves in the best possible light, candidates may provide impressive but not necessarily complete and accurate responses. Asking follow-up questions to obtain details about how, who, when, and where will help interviewers separate what is being said from how it is being said, to ensure that they are not unduly influenced by candidate presentation skills alone. Pressing candidates and others for specifics allows the investigator to retain control of the interview by ensuring that the answers provided are complete, accurate and in line with information the investigator sought.

INTERVIEWERS’ NONVERBAL BEHAVIOR

Nonverbal behavior – eye movements, changes in posture, facial expressions - can communicate as much information to the individual as the questions themselves. An investigator’s body language can either encourage or discourage information. There are several steps investigators can take to ensure that their nonverbal behavior creates an atmosphere in which the candidate will relax and talk more freely:

- Keep your eyes opened and focused on the individual, especially when asking questions or when a candidate seeks clarification.

- Maintain an open, interested posture: face the person, do not cross your arms; lean forward when listening to candidate responses.
- Keep a cheerful expression: smile, never frown, grimace or show confusion, disapproval, boredom or impatience.
- Nodding your head indicates that you find the information useful and encourages the individual to continue, as does giving short verbal approval, such as “mm-hmm.”
- Speak at a reasonable, steady pace, using variation in voice loudness and tone to emphasize important points or requests and to keep communications sounding fresh and genuine.

DECEPTION IN THE INTERVIEW

Avoidance of eye contact, rapid blinking, and nervous body movements are commonly interpreted – particularly by experienced law enforcement officers -- as signs of deception. However, research has demonstrated that nonverbal behaviors are unreliable indicators of lying. For example, while some individuals do look away while lying, others increase their degree of eye contact. Fidgeting and other nervous body movements can be natural behavior for some and a natural reaction to the stress of the interview for others. Therefore, investigators should avoid drawing conclusions about an individual’s deceptiveness or other motives based on nonverbal behavior alone.

Step 5: Collect and Submit Candidate Fingerprints

Agencies differ as to when fingerprints are obtained and submitted to the Federal Bureau of Investigation (FBI) and the Georgia Crime Information Center (GCIC). Although Livescan responses may return in 24 hours or less, problem records can take upwards of 30 days. For peace officer candidates, there will be two documents returned to the agency: (1) the criminal record return from GCIC and (2) the FBI criminal record return document.

Each one of the documents must be reviewed carefully to ensure that there is a clearance on the return document, as error messages transmitted to the employer via email look very similar to actual Livescan reports. Therefore, investigators must carefully inspect these returns to avoid potential problems. Any indication of criminal activity or a negative return must be thoroughly reviewed to determine compliance with POST and agency selection standards.

Step 6: The Investigative Process

Each background investigation may take 40 or more working hours of an investigator's time. The investigative hours are likely to be spread out over many weeks, depending upon the candidate. Type of history, length of history, number of candidates, geographical history, available resources, and even competing demands on the investigator's time all have an impact on the length of time required.

Investigators should be aware of the available resources before embarking upon the investigation. Resource realities will dictate whether the investigation will focus on mailed inquiries, phone calls, face-to-face interviews, or some combination thereof. Regardless of the manner in which references are contacted, the investigator must determine who and how many individuals to contact. The following general guidelines may help:

- Rather than using a "shotgun approach" (i.e., contacting everyone to ensure completeness), assess the expected value of the comments from a particular reference against the resources expended to get the information.
- Begin in the areas that appear to be the most time-consuming or an area which, if explored, is most likely to reveal information that will disqualify the candidate from further consideration. The areas will vary from candidate to candidate.
- Contact a diverse group of persons who know the candidate across a variety of contexts (home, school, work, socially, the military). Often, the point of diminishing returns is reached when this type of diverse group echoes the same information about the candidate, both positive and negative. If significantly different information is revealed, or the contacts only know the candidate in a very limited context, more interviews are probably appropriate.

CYBER-INVESTIGATIONS: INTERNET SEARCHES AND SEARCH ENGINES

Internet searches may provide quick and convenient access to many public records not easily inspected in-person, provide background information on individuals who appear in the local media or other internet sources, and even assist in locating individuals and/or their employers when information furnished on a Personal History Statement is incomplete or out-of-date. However, the lure of cybersearching can easily result in countless valuable hours surfing for information of marginal use.

An investigator must continuously balance the time available for the investigation against the potential value of information to be gained as a result of such searches. It is also quite easy to spend excessive amount of time and resources searching on

subscription search engines (e.g., Lexis-Nexis, Equifax, Autotrak, WestLaw). When using commercial search engines, it is wise to identify the focus of the search beforehand and narrow inquiries to information that will be of maximum value (and not otherwise reasonably available at a lower cost). This practice is advisable even when accessing free search engines (e.g., Google, Yahoo, MSN).

While the internet generally provides for the quick and inexpensive transmission of information, it is not secure. Background investigators are generally in possession of huge amounts of highly personal and sensitive data concerning their candidates, and care must be exercised before this information is transmitted over the internet.

Step 7: Detection of Deception Examinations

The administration of pre-employment “detection of deception” examinations (i.e., polygraph, voice stress analysis) is *not* a POST requirement; rather, their use is a matter of agency discretion.

Agencies electing to conduct a detection of deception examination should do so based on a full understanding of the advantages and limitations associated with this procedure. The placement of the examination within the pre-employment screening process should be decided in consideration of federal and state disability statutes. The ADA statutes prohibit pre-offer inquiries involving medical or psychological disabilities, including history of drug use and current or past alcoholism. This prohibition applies even if the agency outsources this step in the process. Agencies should carefully review the provisions of Georgia law and relevant case law with respect to the use and permissibility of such examinations.

Step 8: Discrepancy Interview

A discrepancy interview may be held if inconsistencies or other issues arise during the conduct of the investigation that impact a candidate’s employment eligibility. It is recommended that the investigator prepare for the meeting by writing a description of each issue to be discussed. At the start of the interview, the candidate should be provided with a copy of the written description of each discrepancy, and given ample opportunity to provide a complete explanation for each identified issue. This interview is not the place to make any commitment to the candidate as to the outcome of the background investigation process.

It is highly recommended that all discrepancy interviews be audio or video recorded, with the knowledge of the candidate. As discussed previously, this prevents misinterpretation or misrepresentation of what was said.

Step 9: Report and Background Packet Preparation

The heart of the background investigation is the narrative report. Excellent investigative

work needs to be competently, clearly, and defensibly documented. The report must clearly address all required areas of inquiry as they relate to the essential attributes as defined in the background dimensions. A completed report that is poorly organized or difficult to understand is unfair to the candidate, a waste of the investigator's time, and a waste of the agency's resources.

There are two essential styles of documenting background investigations: a "One-Write" and "Two-Write" System. **One-Write** systems are often the choice of agencies that have a very high volume of backgrounds to complete. In a One-Write system, the background report is primarily a compilation of the documents collected and created by the investigator, including the "raw" notes and commentary from interviews, checklists, etc.

The primary advantage of the One-Write system is that it is relatively easy to create: the report itself need only be prepared once and no editing is required. However, without editing and revisions, every file will be different in length and composition, and there are few guarantees that unedited information will be uniformly useful, relevant, and easy to digest. One-Write systems may also make it more difficult to redact confidential or privileged information in the event of subsequent discovery proceedings.

The goal of the **Two-Write** system is to separate confidential information from routine documentation. Using this system, the narrative report is created from original notes into another approved format. Through editing and recomposing information into an understandable form (without altering its factual content), the length, style, composition, and relevance can more easily be controlled and made uniform. This technique can provide an efficient way to shelter confidential information should a background package have to be released. However, *all parts of the narrative report need to be retained in the background package for inspection by POST in order to verify that all mandated areas of inquiry were thoroughly addressed.*

In creating a report under the two-write system, Part A could include those documents that are less confidential, such as a "sanitized" narrative (i.e., one in which names have been removed). It may also contain an executive summary (if completed by an outside investigator), the investigator's checklist,³² all applicant-furnished materials, and supporting documents such as birth certificates, marriage documents, educational records, military records, financial, legal and motor vehicle records, and clearance letters from the psychologist and the medical examiner.

Part B could contain information of a significantly more confidential nature: the investigator's executive summary (if prepared by an internal agency investigator), actual interviews of the persons contacted, transcripts, returned questionnaires, and the investigator's notes. The actual psychological and medical reports are not included in Part B, but rather kept separate, per the confidentiality provisions of ADA. Part B information is exempt from the general disclosure provisions of the Public Records Act and certain other provisions of confidentiality found in other sections of law. However,

the accessibility as well as the maintenance of these files should be based on the advice of the agency's legal counsel.

Whichever system is used, background investigators are wise to incorporate a checklist.

Cautionary note: Where samples of prior backgrounds are to be made available for review by a newly assigned investigator to model, the agency must ensure that the privacy of current employees or candidates will not be breached by sharing such highly sensitive information with another employee.

Below are some general guidelines for writing effective reports:

1. Write for the reader! If the report cannot be understood, is too long, poorly written, or too confusing, it will not be read and nothing is gained.
2. Do not bury critically important information.
3. Assume that everything in the report might be ultimately subject to discovery. Avoid including information that cannot be supported with facts or corroboration.
4. Impressions count. While investigators should avoid injecting personal bias in any official action, their ability to assess the credibility and/or motives of others is key to a successful background.
5. If it cannot be documented, it did not happen. Never put the agency in a position of having to defend something that is not documented.
6. Always keep in mind the visibility and importance of the background report and the investigation itself. The decisions resulting from this report will affect the quality of the agency's workforce. Their safety and effectiveness may well depend upon how well the investigation has been conducted and documented.

REPORT SUMMARIES AND RECOMMENDATIONS. The typical completed background package includes the narrative, the results of interviews, the PHS, copies of relevant supporting documents, and the completed background report. These documents should be organized in a consistent, systematic manner. POST offers a set of tabbed dividers to assist in the organization of peace officer, jailer and public safety dispatcher background reports.

Agency policy will generally dictate whether the investigator is required to prepare a summary document (sometimes nothing more than a pre-printed form) or offer a recommendation. However, POST assumes that the investigator is not the final decision maker:

“The results of the investigation must be reduced to writing and made available to the department head for the purpose of evaluation to determine whether the candidate is suitable.” It is recommended that background investigators not include recommendations in their report, as they could place the agency in the potentially embarrassing position of having to explain a decision to hire in the face of the investigator’s negative recommendation, or failing to hire in the event of the investigator’s positive recommendation.

Rather than recommendations, investigators are strongly encouraged to summarize their findings – especially negative information - around the POST background dimensions³⁶. Doing so can greatly aid the agency hiring authority’s review and evaluation of the information contained in the larger report. An executive summary, if used, is an excellent location for expressing the results and findings of the investigation in terms of their impact on these critical attributes.

RECORD RETENTION. While POST has no specific record retention requirements for those who are not hired, POST recommends all personnel files – including background information - must be retained for a minimum of two years after the files were initially created in the case of non-hires, and for two years after separation from the agency in the case of employees. If notified that a verified complaint has been filed against it, an agency must preserve all records and files until the final resolution of the complaint.

Step 10: Conditional Offer of Employment Extended

Once the background package is completed, it should be forwarded to the appropriate individual(s) to decide the candidate’s suitability for employment. Candidates who are found suitable are notified by a conditional offer of employment (COE).

At a minimum, the job offer must be conditioned on the successful completion of the medical and psychological examinations.

Step 11: Medical and Psychological Examinations and Background Investigation Followup

Medical examinations are required for all officer classifications. It is permissible - and often advisable – for background investigators to follow-up on personal history topics that could not be fully investigated at the pre-offer stage, such as extent or frequency of past illegal drug use, current/past alcohol abuse, and behavior issues or performance problems associated with medical or psychological conditions. A request for any information or explanations that the applicant may have lawfully withheld at the pre-offer stage can be included with the conditional offer of employment itself.

During the course of the background investigation, the investigator may uncover information indicating that a candidate may be unfit for physical, emotional, or mental

reasons. In such cases, the investigator should refer the information to the appropriate professional for evaluation. Furthermore, it is not uncommon for an examining physician or psychologist to seek information from the background investigator that might bear on a particular aspect of the candidate's medical or psychological condition. There may also be times when the physician or psychologist uncovers information unknown to but relevant for the background investigator. This information should be forwarded to the background investigator for evaluation and additional investigation if appropriate. In general, the psychologist, physician and background investigator should work cooperatively as long as the information – especially that from the psychologist or physician to the background investigator – is provided on a strictly “need to know” basis.

MEDICAL AND PSYCHOLOGICAL EXAMINATION DOCUMENTATION

Findings of the psychological and medical suitability evaluations must be reported in writing to the appointing authority for use in the hiring decision. The document should include:

- Date of examination
- A statement that the examination was conducted in accordance with POST regulations
- An indication as to whether the candidate meets these requirements
- Signature, license number and contact information for the examiner. This document may also include information regarding the candidate’s need for reasonable accommodation, as necessary. Documentation of medical/psychological clearance is intended to be kept in the individual’s background file; however, the actual report and other documents that include medical and/or psychological information must be kept separately and securely.

Step 12: Final Evaluation - Formal Offer of Employment

At this time, the hiring authority should have a completed background report, including any required follow-up investigation. All documentation should be secured in the file, the narrative report of the background investigation completed, all medical and psychological screening requirements conducted, and any discrepancies resolved. The appointing authority is now ready to make a final hiring decision.

Once a formal offer of employment has been offered for a previously certified officer, a Change of Status form (POST Form C-11) must be submitted to POST within 30 days of appointment. **If the candidate is to attend basic training, then the entire application for certification must be completed.**

This page left intentionally blank

Chapter Five

AREAS OF INVESTIGATION AND THE POST PERSONAL HISTORY STATEMENTS

Any thorough background investigation requires the collection of many documents from varying sources. POST Council provides the suggested sources of information for background investigations of all officer candidates. The ten sources of investigation are:

1. Personal identifying information
2. Relatives and other references
3. Educational history
4. Residential history
5. Employment history
6. Military history
7. Financial history
8. Legal history
9. Driving history
10. Other topics related to assessing moral character

THE POST PERSONAL HISTORY RELEASE (PHR)

Candidates should complete a personal history questionnaire before the onset of the background investigation. Any form used to meet this requirement should include questions in the ten areas of inquiry listed above.

POST offers a Personal History Release to assist in the conduct of background investigations. This form can be downloaded from the POST website (www.gapost.org).

It is strongly recommended that, prior to using a personal history questionnaire; agencies submit the form(s) to their legal counsel for concurrence. The questionnaire is divided into ten sections that parallel the required areas of investigation. Each section/area of investigation is discussed below.

Section 1: Personal

This section requests information on:

- Name (current, past and nicknames)
- Address (residential and mailing)
- Contact information (phone numbers and e-mail address)
- Citizenship status/eligibility for employment
- Birthplace and birth date
- Social Security Number

- Driver's License
- Physical Description

This information is to be used to verify the candidate's identity, obtain contact information, determine that the candidate meets statutory requirements, and to enable fingerprinting and the accurate acquisition of documents required to successfully conduct the background investigation.

VERIFYING IDENTITY

Establishing identity is a first critical step in the background investigation process. An original birth certificate or certified copy should at least be examined, a copy of which can be made for the investigator's records. If a birth certificate cannot be located (or is in a foreign language), an original U.S. passport will suffice. Candidates can be assigned the responsibility for obtaining these documents, as well as all other personal documents.

Both the parents' and the candidate's name should be verified on these documents. Any discrepancies should be explained. It is permissible to make copies of official documents; only duplicates made with the intent to defraud are prohibited by law.

DISCREPANCIES IN NAMES - USE OF AN ALIAS

Name changes can occur for a variety of legitimate reasons, including marriage, adoption, or naturalization. The law permits individuals to use any name as long as the change of name is not for fraudulent purposes. However, the candidate should be able to produce documents that reflect these changes. Use of other names for fraudulent or other illegal purposes speaks directly to the individual's suitability for law enforcement.

CITIZENSHIP

Every employer in the United States is required by law to show that anyone hired since June 1, 1986 is legally eligible to be employed in the U.S. This is true for native-born citizens, as well as naturalized citizens and resident aliens. **U.S. Department of Homeland Security's Form I-9** must be completed by the employer for every employee, which requires that the employer be provided with proof of legal authorization for U.S. employment.

Officers must, at a minimum, be United States citizens. All individuals born within the contiguous 50 states and the territories of Guam, Puerto Rico, American Samoa, and a portion of the Virgin Islands are citizens of the United States. All other individuals need to provide documentation that they are "Naturalized" citizens.

Proper evidence of citizenship is a valid birth certificate documenting birth in the United States, or a valid document from the Department of State documenting birth to an

American citizen in a foreign country, such as a child of parents in the United States military or in other foreign service. Such documents are issued by the State Department. Other evidence of citizenship is a valid United States passport or Certificate of Naturalization.

SOCIAL SECURITY NUMBER

A Social Security number is collected to obtain credit records, Employment Development Department employment histories, employment files and other information (including POST Peace Officer, Jailer and Public Safety Dispatcher Profile Records). Care must be taken to ensure that this information is not shared with unauthorized individuals and is otherwise kept private.

PHYSICAL DESCRIPTION AND PHOTOGRAPHS

Photographs, as well as a physical description of the candidate (e.g., height, weight, hair color, eye color) can be very useful for positive identification purposes during the background investigation. The photograph should be taken when the candidate meets with the background investigator to start the background process. There are some candidate protection rules regarding use of photographs:

- Photographs are not permitted at time of initial application and may not be used as a basis for employment discrimination.
- Candidates cannot be made to pay for their own photograph.

Section 2: Relatives and References

This section requests contact information on:

- Parents (including step-parents and in-laws)
- Spouses/Former Registered Domestic Partners (current and former)
- Siblings (including half, step, foster, etc.)
- Children (including natural, adopted, step, and foster)
- References other than family members of individuals listed elsewhere should be made, within practical limits, background investigators contact the references supplied by the candidate, and other references supplied by these initial contacts, to determine whether the candidate has exhibited behavior incompatible with the position sought. Anyone who knows the candidate is a potential source of information. Typically, different types of personal associations with the candidate will lead to familiarity with different facets of the candidate's background. These individuals' greatest value may be

as sources of information for secondary references; that is, other individuals who know the candidate but were not listed as such by the candidate. Sometimes secondary references prove to be more candid than primary references supplied by the candidate.

FAMILY MEMBERS

Family members often have the most long-term and in-depth knowledge of the candidate. Relatives may be able to provide information about the candidate's traits and temperament, academic problems and learning ability, legal misconduct (e.g., arrests and/or lawsuits), as well as names of others who are familiar with the candidate. That longstanding relationship with the candidate may, however, affect the objectivity of the information provided. Investigators must judge the completeness and accuracy of that information on a case-by-case basis.

It is recommended that the investigator inquire into whether the candidate has had serious interpersonal problems, including whether the candidate has had any marital problems or any problems with physical or psychological abuse. This does not mean, however, that the investigator should examine every minor family disagreement and dispute, nor unnecessarily violate a family's privacy. The purpose, rather, is to inquire into problems that are of sufficient severity to affect job performance and therefore the candidate's qualifications.

The investigator should be aware that attitudes of the spouse or other close personal relations regarding the candidate joining the department might affect that person's ability to objectively evaluate the candidate's qualifications. The investigator may find it useful to ascertain those attitudes.

Officers have been known to be susceptible to the influence of unprincipled relatives or acquaintances; therefore, such information uncovered during the investigation should be examined. However, having relatives or acquaintances with a criminal or unsavory past should not be an automatic basis for disqualification. Instead, the investigator should focus on the candidate's behavior regarding such relatives or acquaintances and the degree of the candidate's susceptibility to such influence.

MARITAL STATUS

An individual's marital status is prohibited as a basis for employment discrimination. No judgments should be made about the candidate's current marital status (i.e., married, single, separated, or divorced), nor should routine inquiry be made into the facts surrounding the candidate's decision to marry or remain single.

FORMER SPOUSE(S)/FORMER REGISTERED DOMESTIC PARTNER(S)

Peace officer candidates must show proof of dissolution of marriage if they have subsequently remarried. Although a copy of the final judgment is sufficient, an

inspection of the full file has the benefit of indicating any current or past restraining orders. The final judgment should be inspected to ensure that a final date of dissolution (not merely a request for final judgment) is entered. For candidates who were divorced outside of the United States while they were a citizen of another country, proof of marriage dissolution is often easier to establish by reviewing their Certificate of Naturalization, rather than attempting to translate and verify the legal sufficiency of a foreign document.

Former spouses or domestic partners can be the source of very useful information for a wide variety of uses, including employment history, residences, financial problems, drug use, and other facts. The reason for the break-up itself can provide useful information. The given reasons should be confirmed, whenever possible, by obtaining a copy of the dissolution of marriage or domestic partnership, or checking the civil filing index of the court in order to uncover further information. The investigator should also confirm that child support, if any, is up-to-date.

Any information gathered from a prior spouse/partner should be carefully evaluated and corroborated. Ill feelings generated by a dissolution can cause hostility towards the candidate, which can affect the honesty of the information provided. However, if serious acts of wrongdoing are alleged, every effort should be made to verify those claims through additional sources. For example, if acts of domestic violence are claimed, the investigation should include determining whether police reports were filed and/or court restraining orders were sought.

CHILDREN

Generally, the behavior of the candidate's offspring should not be used in evaluating the candidate's acceptability. Exceptions would be the situations in which the candidate knowingly supported or contributed to the delinquent behavior of the offspring, or there is evidence of abuse or neglect. Support of dependents is a separate question, which is addressed in the Financial section.

OTHER REFERENCES

Anyone who has lived with or has had a relationship with the candidate is a potential source of relevant information, depending upon the nature of their relationship and how recently that relationship existed. Therefore, the context, frequency of contact, and length of the candidate's relationship with the relative, reference, or acquaintance should be investigated. However, no judgments should be made based on the mere fact of the gender of the individual with whom the candidate has resided.

Some references, even those supplied by the candidate, will be quite reluctant to provide disparaging information about the individual. It is critical that a valid authorization form from the candidate be provided along with an explanation of the protection afforded to the information they provide. An example authorization form for

peace officer candidates is included in Table 5-1.

The background investigator is encouraged to solicit secondary references from the relative, reference, or acquaintance. The secondary and other references can often provide the investigator with valuable insight and information that listed references may not be willing to furnish.

References should be asked about the candidate's participation in illegal or unethical conduct, as well as their reputation for honesty and integrity. Specific instances of illegal or unethical activity should be corroborated whenever possible. Other useful topic areas include candidate drug use, financial difficulties, racial or ethnic biases, strength and weaknesses, and their understanding of the reasons underlying their interest in a career in law enforcement.

Ideally, relatives and references should be interviewed in person. However, if the individuals to be contacted are not within a geographical area that makes personal interviews feasible, contacts may be made by telephone or letter. A sample questionnaire is provided in Table 5-2.

**Table 5-1: SAMPLE AUTHORIZATION/ADVISEMENT TO CONDUCT A
PREEMPLOYMENT PEACE OFFICER BACKGROUND INVESTIGATION**

INFORMED CONSENT RELEASE AND
HOLD HARMLESS FOR CONFIDENTIALITY
OF PRE-EMPLOYMENT BACKGROUND INVESTIGATION DATA

I fully recognize that under Georgia law, individuals must clearly demonstrate their personal, medical, and psychological fitness to serve in the position of a peace officer. I further recognize that an employing agency has both a legal and a moral obligation to make every reasonable effort to ensure that any person employed by them as a peace officer will conform to the very highest standards.

I understand that I am authorizing an intensive investigation into all aspects of my personal, medical, and psychological fitness, and that such investigation will include contacting persons and/or organizations who have information relating to my fitness, including if I am or have been a peace officer in Georgia.. I further understand that this background investigation includes a credit check and that negative credit information may be considered as part of this process. I understand that under the law I am entitled to a copy of the credit report. I also understand that those persons and/or organizations may feel inhibited, intimidated, or otherwise reticent about furnishing information concerning my fitness unless confidentiality of their information can be guaranteed on a permanent basis.

I further recognize that although some of the information contained in this report is a matter of public record, or would otherwise be accessible to me, this information will be inextricably interwoven with other confidential data to which I otherwise would not be privy. I have also been informed that because this background investigation is either mandated by law, responses from persons contacted, whether solicited or unsolicited, may enjoy absolute privilege under Georgia Law.

Therefore, I exonerate, release, and discharge both my prospective employer, their officers, agents, or assigns, from any claim or damages, whether in law or in equity, on behalf of myself, my heirs, agents, or assigns, for their refusal to make available any and all information contained in this pre-employment investigation declared confidential pursuant to law, including but not limited to the identity of any person or organization who may have supplied information in the course of this investigation, as well as the substance of any such information supplied which might identify that person.

I have had adequate time to review this form, I understand its meaning and purpose and have been furnished a copy of it.

Dated this _____ day of _____, 20____, in the County of _____, State of Georgia. (This release is valid for 120 days from the date of signature).

Signature of Candidate

Signature of Witness

Table 5-2: SAMPLE COVER LETTER AND QUESTIONNAIRE FOR REFERENCE CHECKS

Dear _____ :

(Name of Candidate) has applied for a position in this department. We are informed that you may be able to furnish information of value concerning the candidate's qualifications. Please assist us by expressing your opinion of this individual and answering the questions on the attached questionnaire. Your responses are absolutely privileged under the law. We rely upon well-informed individuals to assist us in the selection of personnel who are qualified for public service training and who will maintain high standards of performance in law enforcement.

Your cooperation and an early reply in this matter will be appreciated.

Very truly yours,
(Name)
(Title)
(Police Department)

Reference Check Letter
Page 1 of 2

Concerning the application of _____

1. How do you know this candidate?

2. How long have you known the candidate?

3. Do you feel the candidate will be effective in a job where helping other people is a key responsibility? Explain your answer:

4. Do you consider the candidate to be an honest person?

Yes _____ No _____ Explain your answer:

5. How does the candidate deal with difficult problems or emergencies?

6. How well does the candidate keep his/her commitments on time and as agreed?

7. Does the candidate presently engage in illegal drug use?

Yes _____ No _____ Explain:

8. Has the candidate expressed or displayed any bias or prejudice towards others?

Yes _____ No _____ Explain:

9. Would you trust this candidate with your own personal safety or that of your family?

Please provide any other information about the candidate that you feel might be relevant to the background investigation: List other personal references we may contact regarding the candidate:

Name: _____

Name: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Email: _____

Email: _____

Name: _____

Address: _____

Phone: _____

Email: _____

Reference Check Questionnaire

Page 2 of 2

Section 3: Education

This section requests information on secondary and post-secondary education, including:

- Degrees and certificates
- Dates attended and units completed
- Trade, vocational, or business schools/institutes attended
- Attendance at a POST Basic Academy/Public Safety Dispatcher Basic Course
- History of academic discipline, suspension, or expulsion

All candidates must have achieved a high school diploma or equivalent.

VERIFYING MINIMUM REQUIREMENTS

O.C.G.A. § 35-8-8 established the following education standards for officers; however, this does not preclude an agency from establishing higher, job-related postsecondary education requirements. All **officers** must have attained one of the following:

- graduated from an acceptable United States high school, or
- passed the General Education Development (GED) test, or
- attained a two-year or four-year degree from an accredited college or university.

U.S. public high schools are acceptable if they meet the high school standards set by the state in which the school is located. The status of a public high school, as well as many private schools, can be checked by contacting that state's Department of Education, or the local school district itself. A list of state education departments can be accessed at <http://www.ed.gov/about/contacts/state/index.html?src=ln> .

To comply with State Law, nonpublic high schools as well as all post-secondary institutions must be accredited by an accrediting agency recognized by the U.S. Department of Education. There are six regional accrediting associations:

- [Middle States Association of Colleges and Schools](#)
- [New England Association of Schools and Colleges](#)
- [North Central Association of Colleges and Schools](#)
- [Northwest Association of Schools and Colleges](#)
- [Western Association of Schools and Colleges](#)
- [Southern Association of Colleges and Schools](#)

In addition to these regional accrediting associations, a list of nationally recognized accrediting agencies is provided on the U.S. Department of Education's Office of Post-Secondary Education website: <http://ope.ed.gov/accreditation/Search.asp> . This site can be checked to establish the accreditation status of any U.S. post-secondary institution. Note that this site *cannot* be used to check the accreditation status of

specific high schools, as the U.S. Department of Education's accreditation focus is on post-secondary institutions. However, the acceptability of a nonpublic high school's accrediting association can be checked against the list of associations provided on this site. Accredited U.S. Department of Defense (DOD) high schools are also recognized. The status of a DOD school can be checked at www.dodea.edu.

Official transcripts are the only authoritative means of verifying a person's educational background. Transcripts from accredited institutions will bear the regional accreditation stamp. Some candidates may be reluctant to furnish original transcripts because of the fees involved or the steps necessary to arrange for them. Not uncommonly, however, the reason that candidates fail to furnish original transcripts is because their academic records have been impounded for payment of fees or loans still due the school, a fact that may serve as another legitimate area of concern.

Section 4: Residence

This section requires candidates to detail their residential history for the past 10 years (or since the age of 15), including:

- Addresses
- Dates resided
- Contact information for property manager, rent collector, or owner
- Roommate/housemate contact information
- Reasons for moving
- History of being evicted or asked to leave a residence
- History of leaving a residence owing rent

The background investigation should include inquiries made of the "candidate's present neighborhood and, where practicable, neighborhoods where the candidate may have previously resided, to determine whether the candidate has exhibited behavior incompatible with the position sought." An investigation of residential history facilitates local police record inquiries, as well as providing information about the candidate from neighbors, landlords, roommates and others acquainted with the candidate.

When interviewing neighbors, the background investigator should inquire into how well the neighbor is acquainted with the candidate, whether there have been any incidents requiring a law enforcement response at the candidate's residence, and how the candidate interacts with others in the neighborhood. Contacts with landlords and property managers should include inquiries into the candidate's timeliness in paying rent, complaints from other neighbors or tenants about the candidate, and whether the property was vacated with the proper notice and left in good repair.

Information gleaned from these interviews should be maintained in the narrative background report.

If personal interviews with landlords are not feasible, inquiries may be made by letter. Table 5-3 includes a sample background questionnaire for landlords.

Table 5-3: SAMPLE COVER LETTER AND QUESTIONNAIRE TO LANDLORDS

<p>Dear _____:</p> <p>_____ (Name of Candidate) _____</p> <p>who was a tenant at _____</p> <p>from _____ to _____</p> <p>is a candidate for a position as a peace officer/public safety dispatcher in this agency.</p> <p>We are asking your assistance in helping us to determine his/her qualifications for the position. Please do so by completing the attached questionnaire. Your responses enjoy absolute privilege under the law</p> <p>.</p> <p>Thank you for your assistance.</p> <p>Sincerely,</p> <p>(Name) _____</p> <p>(Title) _____</p> <p>(Police Department) _____</p> <p style="text-align: right;">Landlord Cover Letter Page 1 of 2</p>

Concerning the application of _____

1. How long did you/have you rented to the candidate?

2. Do/did you know the candidate other than as a tenant?

3. Did the candidate pay his/her rent on-time/as agreed? Yes ___ No ___ Explain:

4. Did the candidate have any problems with other tenants/neighbors? Yes ___ No ___

Explain: _____

5. Would you rent to this candidate again?

6. Did the candidate leave your property in good/satisfactory condition?

Yes ___ No ___ Explain: _____

7. Would you recommend the candidate for a position of public trust such as police officer?

8. Please give any additional pertinent facts that may occur to you.

Signature: _____ Date: _____

Printed name: _____

Address: _____

Landlord Questionnaire
Page 2 of 2

Section 5: Experience and Employment

Information about the candidate's past work behavior and performance is of tremendous value when determining the individual's suitability for employment. POST recommends an investigation of a peace officer candidate's employment history for a minimum of the past 10 years; however, you may require candidates to document their entire employment history. Information inquiries include:

- Employer name, location, and dates and status of employment
- Job titles and duties
- Name and contact information for supervisors and coworkers
- Reasons for leaving (or wanting to leave)
- Dates and reasons for periods of unemployment
- History of counterproductive work behavior, including
 - o Disciplinary actions
 - o Being fired, released from probation, or asked to resign
 - o Workplace violence
 - o Resignation in lieu of termination
 - o Subject of written complaints or counseling for poor performance
 - o Subject of discrimination accusations
 - o Attendance problems
 - o Unsatisfactory performance reviews
 - o Misuse of confidential information
 - o Misuse of sick leave
 - o Poor performance as a result of drug/alcohol consumption
- History and status of applications to other law enforcement agencies

GENERAL AREAS OF EMPLOYMENT HISTORY INQUIRY

At a minimum, investigators should:

- Contact past employers and co-workers
- Inquire into the reason(s) for the candidate's having had no prior employment or extended gaps in employment
- Inquire into whether the candidate has ever been fired or asked to resign from any place of employment and the circumstances surrounding the termination or

resignation.

- Inquire into a candidate's reason for leaving a job if that reason is other than being fired or being asked to leave.
- Inquire into the facts that formed the basis for rejection of the candidate from another position requiring peace officer powers.
- Inquire into whether the candidate has ever received unemployment insurance, workers compensation, or other state or federal assistance through fraudulent means.

SUPERVISORS AND CO-WORKERS

Current and past co-workers and supervisors can serve as useful sources of information, as well as a source of leads to additional co-workers, friends, and other useful contacts. As with all references, the relevance and usefulness of the information provided by these individuals depends upon how recently they worked with the candidate, for how long, and the nature of their working relationship. Any information provided by supervisors and co-workers - positive or negative - should be carefully evaluated and corroborated.

If past employers and supervisors cannot be interviewed personally, contact may be made by letter or by telephone. A sample letter and questionnaire that can be used to contact the past and present employers is found in Table 5-4.

PERIODS OF UNEMPLOYMENT

A well prepared questionnaire requires candidates to indicate all periods of unemployment and reason for the unemployment, choosing from five categories: student, between jobs, leave of absence, travel, and other. As discussed in the section on disability discrimination, medical inquiries are prohibited prior to a conditional offer of employment. However, it is permissible to question any gaps or sudden departures of employment per se, even if it may elicit information about a medical condition or disability. Medical information volunteered in response to this line of questioning should not be pursued until and unless the candidate receives a conditional job offer.

REASON FOR LEAVING A JOB

While inquiring into the reasons for the candidate's leaving a job is recommended, caution must be exercised. Limited employment opportunity is a valid and acceptable reason for terminating an employment relationship, as are hostile work environments, unlawful terms of employment, relocation, and other explanations.

Table 5-4: SAMPLE LETTER TO BE USED WITH PEACE OFFICER CANDIDATES WHO ARE NOT CURRENTLY EMPLOYED AS PEACE OFFICERS

Dear _____:

_____ (Name of Candidate) _____ who was employed by your agency from _____ to _____ is a candidate for a position of peace officer in this department. We are asking your assistance in helping to determine his/her qualifications for the position by supplying us with employment information regarding this individual.

We would appreciate your cooperation in providing the above employment information regarding _____, and we are accompanying this request with a notarized authorization releasing you from civil liability. We would be glad to cover any costs you incur in copying and furnishing these documents to us. Of course, your responses are absolutely privileged under the law.

Very truly yours,

(Name) _____

(Title) _____

(Name of Hiring Agency) _____

Table 5-5: SAMPLE AUTHORIZATION TO RELEASE INFORMATION FOR EMPLOYMENT OF PEACE OFFICER CANDIDATES

As a candidate for a position with the [insert employer's name], I am required to furnish information for use in determining my qualifications. For this purpose, I authorize release of any and all information you may have concerning me, including but not limited to, information of a confidential or privileged nature, or any data or materials that have been sealed or agreed to be withheld pursuant to any prior agreement or court proceeding involving disciplinary matters.

I hereby acknowledge that I have been advised that the records or information contained therein may be considered confidential. By signing this form, I hereby authorize the disclosure of all records to which, as an employee, the undersigned would have or did have access.

I hereby release, discharge, and exonerate the agency, their agents, representatives and/or any person furnishing information, from liability arising out of the furnishing and/or inspection of records and/or other **truthful**, even though potentially embarrassing, information.

It is further understood, acknowledged, and agreed to, that any information secured pursuant to this statutorily required background investigation, which would negatively reflect on my fitness for duty, will be forwarded to my current law enforcement employer.

This release shall be binding on my legal representatives, heirs, and assigns.

This release shall expire 120 days from the date signed.

(Signature)

(Date)

(NOTARIZATION RECOMMENDED)

Table 5-6: SAMPLE COVER LETTER AND QUESTIONNAIRE TO PAST EMPLOYERS AND SUPERVISORS

Dear _____ :

_____ (Name of Candidate) _____

who was employed by your firm/department from _____ to _____ is a candidate for a position of _____ in this department.

We are asking your assistance in helping to determine his/her qualifications for the position.

Would you please help us by answering the questions on the enclosed questionnaire? Your responses are absolutely privileged under the law.

If you prefer to speak with us by telephone, please call me, (Name of Officer) at (Telephone Number). My normal work hours are _____.

Your cooperation is greatly appreciated.

Very truly yours,

(Name) _____

(Title) _____

(Law Enforcement Agency) _____

**Past Employers and Supervisors Cover Letter
Page 1 of 2**

Concerning the application of _____

1. Why did the candidate leave your employ?
2. Was the candidate punctual and dependable?
3. How did the candidate get along with other employees?
4. How did the candidate deal with difficult problems or emergencies?
5. Was the candidate honest and truthful?
6. Did the candidate have any problems following/adhering to company or agency policies?
7. Did the candidate have any extended work absences? (Please do **not** include periods of disability or legitimate illness, including maternity leave).
8. Would you re-hire or recommend the candidate for rehire?
9. Can you think of any reason why the candidate might not be qualified to work in a law enforcement agency?
10. If you know of other persons who may be able to furnish information about the candidate, please give their names and addresses.

Name _____

Name _____

Address _____

Address _____

Phone _____

Phone _____

E-mail _____

E-mail _____

Signature _____ Date _____

Address _____

Past Employers and Supervisors Questionnaire
Page 2 of 2

CURRENT EMPLOYER

A current employer or supervisor may present a biased or inaccurate picture of the candidate in order to encourage (or discourage) employment of the candidate elsewhere. The investigator must exercise caution and ensure that any information, either positive or negative, is carefully evaluated and corroborated.

The investigator should avoid deliberately placing a candidate's present job in jeopardy. If on the questionnaire, the candidate indicated that there would be a problem if the current employer were contacted, it is lawful to defer contact with that employer until after a conditional offer of employment has been extended. In this case, the investigator should contact the present employer only after all other candidate screening steps have taken place.

REJECTION FROM ANOTHER PEACE OFFICER POSITION

The investigator should inquire into the facts surrounding the rejection for any other position requiring peace officer powers. Resulting information must be carefully verified and evaluated; it should not automatically be assumed that the previous investigation was unbiased, thorough, and complete. Furthermore, different agencies may have different minimum standards (including age, education, drug use, residency, etc.); therefore, the investigator should assess whether the reasons for such a rejection are relevant to the present employer. Another employer's reason for rejection is not automatically relevant. Agencies should reject unsuitable candidates based on their own job-relevant criteria and not those of another agency (especially if those reasons have not been independently verified or deemed irrelevant, outdated, or otherwise inapplicable).

Section 6: Military

POST Procedure requires that the background investigation of peace officer candidates include an evaluation of military records in the service of the United States, jurisdictions therein, or foreign government, to determine the quality of the individual's service and proof of selective service registration where required by law.

This section of the questionnaire requires candidates to detail their military history, including:

- Selective Service registration (if applicable)
- Branch of service and dates
- Type of discharge
- Current status as a reservist

- Disciplinary actions, judicial and non-judicial
- Security clearance problems

The candidate's participation in the National Guard or a reserve component of the armed services is protected by the Military and Veterans Code Section 394. It is a misdemeanor to discriminate against a reservist in any aspect of employment.

SELECTIVE SERVICE REGISTRATION

In July 1980, Congress restored the selective service registration, requiring all males (excluding the sons of foreign diplomats) born on or after January 1, 1960 to register within 30 days of their 18th birthday, and up to the age of 26 they are required to notify the Selective Service of changes in name, address, or telephone number. 53 (Note: Federal law gives the employer the power to determine the penalty, if any, for a willful failure to register for Selective Service).

Information on the candidate's compliance with current registration requirements can be obtained from the Selective Service System at their website (www.sss.gov). If proof of registration is not available on the website, a letter should be written to the Selective Service System.

Note that since 1973, the military uses the individual's social security number for identification purposes.

MILITARY SERVICE HISTORY

Military service records should be requested on candidates who have served in the military.

Military records can be obtained by using either a Standard Form 18054 or an equivalent form developed by the agency. Information on how to obtain military service records can be found by matching the candidate's service history with the records repositories listed on the back of the SF 18054. To ensure that complete information is received, a letter, signed by the candidate, can be submitted that specifies the exact information requested, including:

- copies of personnel records,
- copies of DD-214s,
- eligibility for reenlistment,
- records of judicial and non-judicial punishments,

- performance ratings and other records.

DD-214

Candidates who have been in the military are almost always issued a report of separation each time they are released/discharged from active duty. Individuals may have one or more such reports, depending on their military history.

There are two versions of the DD-214 - a short form (Copy 1) and a long form (Copy 4). Investigators should examine the long form (Copy 4), as it contains the candidate's reentry code.

Separation code and separation authority. Investigators should always examine an original document.

RE-ENTRY CODES

Although re-entry codes reflect a variety of things, a "1" or "2" generally indicates that there were no problems. A "3" indicates some substantial issue that needs to be explored because re-enlistment would require a waiver by the service branch. A "4" indicates that re-enlistment would be prohibited and must be carefully explored.

TYPE OF DISCHARGE/CHARACTER OF SERVICE

The DD-214 will list one of five possible entries under "character of service" (type of discharge):

1. Honorable
2. General, under honorable conditions (less than full honorable)
3. Other than honorable conditions (OTH or UD)
4. Bad conduct discharge (BCD) - resulting from a special court martial
5. Dishonorable discharge - resulting from a general court martial. No longer considered a veteran.

Because reason for separation, type of discharge and re-enlistment codes appear only in predetermined combinations on genuine DD-214s, a local armed forces recruiter can help if assistance is needed in interpreting the meaning of these or other codes. However, federal privacy laws prohibit identifying the service member when discussing the form.

CURRENT MILITARY STATUS

The questionnaire asks the candidate to indicate any current military obligations (military reserve or National Guard program). When the candidate indicates a current military obligation, the current unit, co-workers, and supervisors should be treated no differently than a civilian job.

MILITARY DISCIPLINE

Inquiry into judicial and non-judicial military disciplinary action may reflect upon the candidate's suitability. Such information should be explained in the questionnaire and verified through military records (i.e., DD-214 or other available records), or through contact with military acquaintances or commanding officers.

CONTACT PAST COMMANDING OFFICERS OR MILITARY ACQUAINTANCES

When interviewing commanding officers and military acquaintances, the investigator might ask questions such as:

- When or how long ago did you know the candidate?
- How well did you know the candidate?
- Was the candidate ever the subject of any disciplinary action?
- Do you know if the candidate got along well with others?
- Can you think of any reason why the candidate might not be qualified to work in a law enforcement agency?

Section 7: Financial

Council recommends that a credit check be performed on all peace officer candidates, to assess the individual's ability and willingness to effectively manage financial responsibilities, as a measure of dependability and integrity. Agencies whose jail officers and public safety dispatchers have money-handling responsibilities or other high-risk duties may wish to justify a similar check for this class of employment as consistent with business necessity.

This section requires the candidate to provide an estimate of his/her income and expenditures, and to respond to specific questions associated with history of fiscal responsibility, including:

- Bankruptcy filings

- Contact by collection agencies
- Repossessions
- Wage garnishments
- Delinquencies, failure to pay, or cheating on taxes
- Employment bond refusals
- Defaulting or avoiding repayment on loans
- Debts due to gambling
- Expenditures on illegal activities
- Failure to make court-ordered payments
- Bad checks

Although an important area of investigation, the evaluation of a candidate's behavior regarding the handling of finances must be careful and judicious. In some instances, outwardly negative information may involve legal rights and even factors that are completely outside of the candidate's control. Financial opportunities can be limited as much by race, gender, marital status, and even geography as by willful acts of the candidate. It is therefore *critically important* to understand the full circumstances surrounding any apparently negative financial information.

SOURCE OF INCOME

Investigators are permitted to inquire into the source of any income reported by the candidate, including wages, salary, or money earned by other means. Provided that the source of income is lawful, investigators should not draw conclusions about a candidate merely based on the amount of money earned.

EXPENDITURES

It is permissible to inquire into the amount of money a candidate claims to spend on a monthly basis. However, assuming that the expenditures are for a lawful purpose, how a candidate chooses to spend money is generally not relevant. Instead, the focus should address the following questions: Does the reported income support the expenditures that a candidate claims? Do the reported expenditures correspond with the obligations appearing on the credit report? Does the candidate meet the obligations that he or she has agreed to assume?

BANKRUPTCY

Individuals have three essential avenues in which bankruptcy may be pursued: Chapter 7 (discharge of debt), Chapter 11 (business-related protection from creditors), and Chapter 13 (individual reorganization of debt).

Bankruptcy is a legal right. Absent any evidence of fraud, the mere fact that a candidate has undergone bankruptcy cannot be the sole basis upon which employment is denied. Investigators may inquire into the circumstances that led up to bankruptcy, including the examination of supporting court records regarding reported assets and liabilities at the time when the bankruptcy petition was filed. Once filed with the United States District Court, these are public records.

State law forbids a consumer/credit reporting agency from reporting any fully discharged bankruptcy that is more than ten years old

BILLS TURNED OVER FOR COLLECTION AND REPOSSESSIONS

In many cases, collection activity and repossessions are indicative of problem behavior. Investigators should take care to assure that the bill in collection is, in fact, the responsibility of the candidate against whose credit it has been reported and that any repossession reported similarly applies to the candidate. Investigators should then inquire as to why the bill had to be turned over to collection or why repossession was necessary.

GARNISHMENTS

At one time, garnishments were almost always indicative of a candidate's failure to meet obligations. Today, however, as in the case of child support obligations, many courts automatically garnish wages, even where there has been no history of delinquencies. In some cases, tax payment plans can, for the convenience of the taxpayer, be automatically garnished from wages and frequently involve liens against the taxpayer's credit record.

TAX DELINQUENCIES

The failure to satisfy lawful tax obligations may have a significant financial impact on a candidate's suitability. However, the reasons for the delinquencies may be more important than the delinquencies themselves. Unforeseen tax liabilities (wild fluctuations in company stock options, non-liquid inheritances, liquidation of property forced by marriage dissolution, criminal activities by a spouse or former spouse, and even changes in tax law) may or may not reflect upon a candidate. This is a legally complex area. Investigators may be best served by conducting a case-by-case review of a candidate's situation and should be open to authoritative interpretations by tax professionals.

FINANCIAL CREDIT REPORTS (SUPPORT DOCUMENT)

Recognizing that credit reports are frequently inaccurate, both the U.S. Congress and the Georgia Legislature have imposed procedural safeguards to reduce the likelihood that an individual can be unwittingly denied employment based upon erroneous credit information.

Background investigators may subject their agencies to unnecessary civil liability in the event that they fail to follow the disclosure rules present in the Fair Credit Reporting Act (15 United States Code 1681).

A sample credit data advisement form is provided in Table 5-7. This form (and all other forms provided in this manual) should only be used in consultation with the agency's legal counsel.

CONSUMER CREDIT REPORTING AGENCIES

A great deal of financial information is obtainable from consumer credit reporting agencies, and they often provide a timely and inexpensive means by which to assemble summary credit information.

Information obtained from a credit-reporting agency may include name, age, spouse's name, number of dependents, former addresses, occupation, employer, monthly income, paying habits, number of accounts maintained, balances on accounts, and case history of accounts. However, caution should be exercised when reviewing credit information. It is possible that these credit reports may contain some erroneous information. *All credit reports should be verified for accuracy, and candidates **must** be furnished a free copy of that report if it is to be used contrary to their interests.* Any circumstance surrounding any negative information should be evaluated on its own merits. Title 15 USC 1681 § 604(b), effective September 30, 1997, supersedes the provisions of Georgia Law regarding an employer's use of credit information. Candidates must be notified that a prospective employer may consider credit history in evaluating suitability for appointment. Under the law, candidates must be informed of their rights under the Fair Credit Reporting Act (FCRA) before any adverse decision can be made.

PRACTICAL CONSIDERATIONS

Investigators should take heed of the following:

- Financial data is extremely sensitive. Take steps to safeguard it.
- Always be wary of the accuracy of financial data, whether furnished by the candidate or by some other source. It is notoriously inaccurate.

- Whenever conducting a credit check of candidates for employment purposes, a candidate's signed consent is necessary.
- Whenever credit reports are used for adverse employment purposes, the candidate is entitled to a free copy of any such report under federal law.
- Whenever a candidate for employment is rejected from employment, in part or in whole, based upon credit information, the candidate must be informed.
- The mere fact of bankruptcy cannot be the sole basis upon which a candidate is denied employment.
- Concentrate on whether a candidate's income and expenditures are lawful, properly reported, and satisfied in a timely manner.
- Absent fraud or conspiracy, financial data pertaining to the candidate's family, business partners, and even spouses (in some cases) are generally irrelevant and not permitted.
- Candidates who are self-employed may need to produce documents such as financial statements from an accountant or even tax returns to support their claimed income.

Investigators should not, however, collect such sensitive documents unless necessary.

Table 5-7: SAMPLE ADVISEMENT TO CANDIDATES REGARDING THE USE OF CREDIT INFORMATION FOR EMPLOYMENT PURPOSES

The U.S. Fair Credit Reporting Act (FCRA) of 1996 (15 U.S. Code 1681, Section 604(b) requires that you be notified separately of your rights before any prospective employer may use credit data as part of an employment decision.

You are hereby notified that your prospective employer intends to use credit data as **part** of its decision-making process for the position for which you have applied. The **Credit Reporting Agency (CRA)**, which will furnish this data, will be _____ located at _____. Their telephone number is _____. You will automatically be furnished a copy of this report, but before any adverse actions are taken as a result of this document, you are advised of the following:

1. Access to your file is limited to persons recognized by the FCRA;
2. Your consent is required for reports that are provided to employers or that contain medical information;
3. You can find out what is in your file, although some information, such as “risk sources” or “credit scores” may be lawfully withheld;
4. You have been informed of the name, address, and telephone number of the CRA which is furnishing this data;
5. You can dispute inaccurate information with the CRA;
6. Inaccurate information must be corrected or deleted;
7. Outdated information may not be reported (seven years for most information, ten years for bankruptcies);
8. You may choose to exclude your name from the CRA list for unsolicited credit and insurance offers;
9. You may seek damages from violators, and;
10. The complete text of this act may be found at www.ftc.gov.

CERTIFICATION: I certify that _____ has my consent to obtain a copy of my credit report for the limited purpose of my pre-employment background investigation; that I have been furnished with the name, address, and telephone number of the CRA, I have been informed that I will receive a copy of my credit report and that I have been informed in summary form of my rights under the FCRA.

Dated: _____ Signed: _____

Section 8: Legal

POST requires or recommends that the background investigation include a review of specific sources of information, including:

- Criminal records of the Georgia Crime Information Center
- All police files in jurisdictions where the candidate has resided, worked or frequently visited
- The Federal Bureau of Investigation records
- The State Department of Motor Vehicles, Division of Drivers Licenses

This PHS section requires the candidates to detail their history of involvement with legal authorities, as well as to recount illegal but undetected activities. This includes:

- Arrests, detentions, diversion programs and convictions
- Probation
- Civil lawsuits
- Referrals to Child Protective Services
- Home visits by law enforcement officers
- Being the subject of emergency protective and related court orders
- Filing of fraudulent claims (e.g., welfare, worker's compensation)
- Misdemeanor-level acts (past seven years)
- Felony-level acts (lifetime)
- Current illegal drug use and history of recreational drug use

LEGAL HISTORY SEARCH GUIDELINES

Checks of all local agencies where a peace officer candidate has lived, worked, or frequented should be conducted to locate any relevant criminal history that does not **appear on a GCIC or FBI Rap Sheet.**

The circumstances surrounding any candidate's arrest/conviction record, whether adult or juvenile, should be investigated. The conduct that led to an arrest or conviction is in

many cases as relevant (if not more) than the presence or absence of an arrest. The facts surrounding the candidate's present or past involvement in any civil court action should be researched. This requirement applies to peace officer and public safety dispatchers.

Arrest reports and court records should be obtained for both peace officer candidates, jailers, and public safety dispatcher candidates for law enforcement agencies.

FELONY CONVICTIONS

Any person convicted of a felony is prohibited from employment as a Georgia peace officer (O.C.G.A. § 35-8-8)

Proceedings under juvenile court are generally *not* considered to be a criminal conviction under Georgia law unless the individual was certified, tried and convicted as an adult. Therefore, juvenile convictions are not included as a legal bar to appointment as a peace officer. However, the conduct surrounding the offense should certainly be considered as part of the overall background.

MISDEMEANOR CONVICTIONS

Misdemeanor convictions are not, in and of themselves, automatically disqualifying either for peace officers, jailers, or for public safety dispatchers. However, **any** conviction should be carefully examined with regard to its relevance to the candidate's suitability for appointment, especially the impact on eligibility to possess a firearm pursuant to Title 18 U.S. Code 922(d) and (g).

Some persons convicted of offenses have undergone legal proceedings either to seal or even to expunge a criminal conviction. Investigators need to check any returned Rap Sheets for the full details, and it may be necessary to obtain "Minute Orders" from the court of record to determine the factual outcome.

Department policy will largely govern the response to involvement in criminal activity, detentions, arrests, convictions, diversion programs, and even probation. While the questionnaire covers a wide array of detected and undetected illegal activity - including illegal use of controlled substances - the decision regarding their impact on hiring rests with the agency.

Agencies may be tempted to deal with each issue and admission on a case-by-case basis; however, this approach can result in claims of disparate treatment, especially against individuals in protected classes (i.e., race, gender, age, sexual orientation, marital status, disability, political affiliation, etc.). A well thought-out and articulated policy in advance of the decision may assist in minimizing the likelihood of accusations and litigation.

PRACTICAL CONSIDERATIONS

In dealing with legal issues, it is important to consider:

- The seriousness of the offense itself
- The age of the candidate at the time of the offense/conduct
- How recently the offense/conduct occurred
- The occupation/career path of the candidate at the time of the offense
- Any mitigating circumstances
- The impact, if any, upon the candidate's potential credibility as a witness in a court of law

CIVIL COURT ACTION

The investigation of a candidate's involvement as a plaintiff or defendant in any civil court action can prove to be very informative. The investigator may want to go so far as to check the civil filing index of the superior courts of counties where the candidate has resided.

RESTRAINING OR TEMPORARY PROTECTIVE ORDER

Behavior that led to a restraining order placed on a candidate can directly relate to the applicant's suitability for the job. Both the behavior and the circumstances should be thoroughly investigated. An "active" restraining order typically prohibits an individual from possessing a firearm or dangerous weapons.

DIVERSION PROGRAMS

There are many forms of court-ordered diversion programs. Peace officer candidates must report such diversions. Investigators should consult the specific section of law authorizing the diversion in order to determine whether that proceeding must be reported.

FINGERPRINTING

The submittal of fingerprints is required for all applicants for certification. Throughout Georgia, paper fingerprint cards have been replaced by Livescan. Agencies that do not have their own Livescan terminal should contract with another agency to provide this service.

Although Livescan responses may return in 24 hours or less, problem records can take upwards of 30 days. Investigators should carefully read each fingerprint return, as quite often problem records require resubmission or other further action.

A copy of the return should be retained in the candidate's personnel record, and State Law mandates that a search be made of state and local records. POST will require a copy of the NCIC and GCIC fingerprint response prior to authorizing the individual attending basic training.

ILLEGAL DRUG AND ALCOHOL USE

As discussed in Chapter 3, Legal Qualifications and Statutory Framework, it is unlawful to make disability-related inquiries prior to making a conditional offer of employment (COE). Protected disabilities include a *history* of drug addiction or dependence. Therefore, questions that can be expected to elicit this type of information are prohibited pre-offer. This would include questions such as “Have you ever been treated for drug addiction?” or “How many times in your life have you used illegal drugs?”

The questionnaire should include questions on current and past illegal drug use. The latter question asks candidates to indicate if they: (a) never used any drug recreationally, or (b) tried or used drug(s), but only under **limited** circumstances (e.g., parties, concerts, etc). Candidates who check box (b) are asked to provide details about their drug use, including drug(s) used, most recent date used, and circumstances.

Note that if neither box (a) or (b) is checked, it may be assumed (after ruling out carelessness) that the candidate may have used illegal drugs under more than limited circumstances. However, in compliance with the prohibition on pre-offer disability inquiries, investigating the extent and nature of past illegal drug use should be deferred until the post-offer stage.

Alcoholism – past and current – is a protected disability; therefore, questions about how much a candidate drinks, etc., are not allowable prior to a COE. However, inquiries about job-relevant behavior are permissible, even if that behavior was a result of drunkenness. For example, it is permissible to ask about DUIs, or attendance problems at work because of alcohol use.

Section 9: Motor Vehicle Operation

The POST Act mandates checking the DDS records of peace officer, jailer, and public safety dispatcher candidates to determine their driving record and adherence to the law. Although a review of a candidate's driving history is required, the operation of a motor vehicle is neither a state nor a POST requirement for either public safety dispatchers, jailer, or peace officers. Rather, the review of driving history is intended to provide information regarding the candidate's impulse control/attention to safety,

conscientiousness, and other related character attributes. A current driver license is required of peace officers since they will be required to participate in driver training as part of the basic law enforcement training course.

The questionnaire should require candidates to provide information on their driving history, including:

- Driver's license number, state, expiration date, and name under which license was granted
- License refusals, revocations, etc.
- Traffic citations (excluding parking citations)
- Refusal or revocation of automobile liability insurance
- Automobile insurance
- Liability coverage (peace officers only)
- Motor vehicle accidents in the past seven years (peace officers only)

DRIVER'S LICENSE

As mentioned above, possession of a valid driver's license is not a requirement for either peace officer, jailer, or public safety dispatcher employment, and therefore should not be a condition of employment unless this is an express agency qualification standard (since some peace officers, and many public safety dispatchers are not required to drive a vehicle).

Information on driving records and the status of licenses in Georgia can be obtained by contacting DDS. Under prevailing Georgia Department of Driver Services policy, Georgia Law Enforcement Telecommunications Systems subscribing agencies **may** access DDS records via the GCIC terminal for candidates.

If the candidate lived or worked outside of Georgia, out-of-state agencies may be contacted for records, although virtually all states have purge criteria that may limit driving history information. The amount of time that information remains on a DMV record may be influenced by the driving record itself.

DRIVER'S LICENSE REFUSED

A driver's license may be refused for a number of reasons that may or may not have relevance to suitability for employment as a peace officer, jailer, or public safety dispatcher. Investigators should inquire into the reason for the refusal of any state to

grant a driver's license to the candidate.

DRIVING RECORD

The candidate's driving record, in particular the nature and number of moving violations and the number of accidents, can provide useful information about the individual's driving ability as well as other job relevant personal characteristics. An individual's history of automobile accidents is less likely to be of critical importance for jailers and public safety dispatcher candidates, and is therefore may not included on the questionnaire.

In a routine investigation, inquiries should not be made into the number of parking citations the candidate has received, since no precise number of parking citations can be established as being job relevant. Parking citations are also extremely difficult to track, as many agencies have contracted this function to private organizations. However, the investigator should look into any illegal abuses of the citation process or warrants issued as a result of parking citations.

REVOKED OR SUSPENDED LICENSE

A revoked or suspended driver's license can be very relevant to candidate suitability, especially where such a suspension or revocation resulted from other willful misconduct (i.e., failure to appear, failure to pay a fine).

REFUSED AUTO LIABILITY INSURANCE

The driving history of a candidate who has been refused auto liability insurance must be carefully investigated to determine why the insurance was refused. A candidate's insurability is critical for those agencies where driving is an essential function of the position.

Section 10: General Topics

The questions in this section ask about a history of physical violence, gang membership, and other behavior associated anger control problems and anti-social tendencies. Specifically, these items include:

- Denial of a concealed weapons permit
- Membership or association with criminal enterprises, gangs, or other groups that advocate violence, racism or other forms of bigotry
- Having a tattoo associated with a criminal enterprise, gang, or other group that advocates violence, racism or other forms of bigotry
- History of physical violence
- History of domestic violence

TATTOOS

The questionnaire limits inquiries about tattoos to those that signify affiliation with or membership in criminal enterprises, street gangs or other groups that advocate violence and/or bigotry. No other questions about tattoos in general should be asked unless they can be shown to be relevant to performing the job. Tattoos that are covered by uniforms, or are never exposed to the public while on duty, should not be the basis for adverse employment actions, absent concurrence with an agency's legal counsel

This page left intentionally blank

Additional Resources

BACKGROUND INVESTIGATION

Buck, Kelly R. *Guidelines for Improved Automated Criminal History Record Systems for Effective Screening of Personnel*. International Association Of Chiefs Of Police Defense Personnel Security Research Center. Alexandria, VA: International Association Of Chiefs Of Police, 2004.

<<http://www.siacinc.org/documents/iacppslc%20documents/guide%20for%20criminal%20history%20checks.pdf>>

Furtado, Harold, and Zampa, Rick. *Preparing For the Background Candidate Preparation for Law Enforcement Background Investigations*. Pleasanton, CA: Preferred Investigations & Consulting Services, Inc., 2003.

Moriarty, Anthony R, and Field, Mark W. *Police Officer Selection: A Handbook For Law Enforcement Administrators*. Springfield, IL: Charles C. Thomas, 1994.
National Directory of Law Enforcement Administrators, 41st Ed. National Public Safety Information Bureau, 2005.

<www.safetysource.com>

Public Employment Law Report And Deskbook Encyclopedia Of Public Employment Law - 15th Edition. Malvern, PA: Center For Education And Employment Law 2005.

Sankey, Michael, and Weber, Peter J. *The Sourcebook to Public Record Information, Seventh Edition (Sourcebook to Public Record Information)*. BRB Publications, 2005.

Smith, Sid. *Public Safety Background Investigation Sourcebook, 2d Edition*. Designs In Modern Learning, 2004.

<www.backgroundinvestigators.com>

EMPLOYMENT LEGISLATION

“*ADA From A To Z: Everything You Need To Know About The Americans With Disabilities Act.*” Anne H. Williams, M Lee Smith Publishers, LLC, 2002.

Center, Claudia, and Kristen, Elizabeth. “*Privacy In The Workplace: Employer Medical Inquiries Under State And Federal Law.*” *CPER Journal*, June 2005

<<http://services.bepress.com/cper/no172/5>>

Employment Discrimination Law Update and Federal Laws Prohibiting Employment Discrimination - 8th Edition. Malvern, PA: Center For Education And Employment Law, 2005.

“Medical Inquiries And Employment References: When Does An Employer Cross The Line?”
Adele Rapport, Jami Statham Presentation At The Annual Meeting Of The American Bar Association. Atlanta, GA: August, 2004.

“Questions And Answers: The Americans With Disabilities Act And Hiring Police Officers.”
U.S. Department Of Justice, 1997.
<www.usdoj.gov/crt/ada/copsq7a.htm>

“Questions And Answers: Enforcement Guidance On Disability-Related Inquiries And Medical Examinations Of Employees Under The Americans With Disabilities Act (ADA).” U.S. EEOC, 1995.
<www.eeoc.gov/policy/docs/qanda-inquiries.html>