



ASSOCIATION OF ORANGE COUNTY DEPUTY SHERIFFS

April 8, 2022

Commission on POST
Attention: Rulemaking
860 Stillwater Road, Suite 100
West Sacramento, CA 95605-1630
kirk.bunch@post.ca.gov

Re: Public Comment and Request for Public Hearing by AOCDS re Changes to POST Requirements for District Attorney Investigators

Dear Sir/Madam,

The instant correspondence is sent on behalf of the Association of Orange County Deputy Sheriffs (AOCDS) which represents approximately 4,200 active and retired peace officers, including Orange County District Attorney Investigators (Investigators). AOCDS previously submitted its opposition to the Initial Statement of Reasons (ISR) which sought to amend Regulation 1005 in order to allow District Attorney Investigators to complete the Specialized Investigator's Basic Course rather than the Regular Basic Course. POST recently submitted an Addendum to the ISR, and AOCDS hereby submits its opposition to both the ISR and the Addendum.

REQUEST FOR PUBLIC HEARING:

AOCDS hereby requests a public hearing regarding the changes to reduce the training requirements for sworn Investigators set forth at POST Commission Regulation 1005(1).

PUBLIC COMMENT:

As discussed below, we strongly oppose the proposed changes to reduce the training requirements for sworn Investigators. The training that Investigators currently receive from the Regular Basic Academy (RBC) is vital to ensure they can perform the basic duties necessary for the position. The Specialized Investigator's Basic Course (SIBC), which POST is seeking to add as an option, is an abbreviated academy that does not qualify for general law enforcement. It is not designed for Investigators; rather, its focus is on peace officer specialists and limited-authority peace officers with a narrow scope of investigation. Every District Attorney's office, Sheriff and Police Department, and the Chief Investigative Officers for these agencies oppose the proposed amendment to regulation 1005(a).

The premise for the Addendum is both legally and factually flawed. First, the Addendum states that DAIs are not general law enforcement officers, and as such, the training provided by the RBC is unnecessary. As explained below, this is wrong on both counts. Second, the Addendum ignores legal obstacles that statutorily cannot be overcome.

REQUIRED PEACE OFFICER TRAINING

The legislature (through requirements in Penal Code § 832) and POST (through regulation) have a shared role in defining what initial basic training is required for each peace officer classification in the State of California, dependent on both the level of peace officer authority and the level of specialization. Training within the range of specifications includes the minimum 64-hour Powers of Arrest course for very limited-authority peace officers and non-peace officers with peace officer powers of arrest, the minimum 591-hour Specialized

Investigator's Basic Course for specialized and limited-authority peace officer investigators, and the minimum 664-hour Regular Basic Course.

The Specialized Investigator Basic Course (SIBC) is designed for peace officer specialists - generally limited-authority peace officers who have a very narrow scope of investigative responsibility (welfare fraud, alcoholic beverage law, horseracing law, social services, or child support). The title of the course reflects that it is for the "Specialized Investigator," not the investigative generalist.

Based on POST's minimum requirements, the SIBC is 591 hours, while the Regular Basic Course (RBC) is 664 hours (though most RBC police academies exceed this by at least 300 hours). Within its 591 hours, the Specialized Basic does include 80 hours in courses specific to investigation that are not included in the Regular Basic Course but omits 153 hours of necessary training that is included in the Regular Basic Course minimum requirements.

ROLE OF THE DISTRICT ATTORNEY INVESTIGATOR AS A GENERAL LAW ENFORCEMENT OFFICER

District Attorney Investigators are generalists who perform additional investigations on all types of cases, most of which are submitted by police departments and sheriff's offices. To perform further and more detailed investigation on the vast variety of case-types that are submitted, the DA Investigator must have generalized training, and the generalized experience of a Police Officer or Sheriff's Deputy is highly desirable in a candidate. POST Learning Domains (LDs) necessary for the competency of District Attorney Investigators are omitted from the Specialized Investigator's Basic Course.

CRITICAL LEARNING NEEDS THAT ARE OMITTED FROM THE SIBC CURRICULUM

The following learning needs fulfill critical areas of knowledge for the District Attorney Investigator, and are omitted from the training specifications for the Specialized Investigator's Basic Course:

Knowledge of General Police Procedures

One of the paramount duties of the District Attorney Investigator is the investigation of peace officer misconduct, in-custody deaths, and officer involved shootings. As such, the District Attorney Investigator must have training in general police and custody procedures.

Necessary courses in patrol techniques (LD 21) and custody (LD 31) are not included in the curriculum of the Specialized Investigator's Basic Course.

Missing Persons Law and Investigative Techniques

District Attorney Investigators are legislatively required (Family Code § 3130) to investigate child abduction. Additionally, Part 4, Title 12 of the California Penal Code specifies mandatory actions that certain law enforcement agencies, specifically including District Attorney's Offices, must take when investigating missing persons cases. Specific mention of requirements for the District Attorney regarding missing persons appears seven (7) times in Title 12 (PC§§ 14200, 14202, 14205, and 14212).

The investigation of Missing Persons cases requires significant training in specific investigative techniques. It is expected that a qualified candidate for the classification of District Attorney Investigator would have this training. The necessary training in Missing Persons (LD 27) is not included in the Specialized Investigator's Basic Course.

General Law Enforcement Functions

As full-authority (PC§ 830.1(a)) County Peace Officers, and as the enforcement component of the County's top law enforcement official, District Attorney Investigators are pressed into service as mutual aid regularly and handle everything from general patrol functions, to handling all manner of criminal investigations for smaller police departments that lack investigative resources, to responding to civil unrest. The expectation is, that as full-authority peace officers, they have received the training necessary to effectively, legally, and safely perform these duties.

The Specialized Investigator's Basic Course omits a number of learning domains that are necessary for the performance of these general law enforcement and investigative functions, including: Patrol Techniques (LD 21), Vehicle Pullovers (LD 22), and Handling Disputes/Crowd Control (LD 24).

Traffic Collision Investigation

District Attorney investigators regularly investigate traffic collision-related crimes ranging from Felony DUI to Vehicular Homicide. They provide investigative assistance to local agencies, perform collision reconstruction, analyze skid-mark and other technical evidence, and testify as experts.

Training in traffic collision investigation is a critical training component for the District Attorney Investigator, and this learning domain (LD 29) is excluded from the Specialized Investigator's Basic Course.

Note Regarding Training Unique to the Specialized Investigator's Basic Course

Although the Specialized Basic Course does include investigative training that is not included in the Regular Basic Course (surveillance, case management, sources of information, computer crimes), these topics are already included in training specifications of the mandatory District Attorney Investigator Transition Course required by 11 CCR§ 1005 (a)(2). Therefore, this is duplicative.

LEGAL CONSIDERATIONS IGNORED BY THE ADDENDUM

California Penal Code Section 830.1(a)

Recognizing that District Attorney Investigators are law enforcement generalists, the Legislature granted them peace officer authority under PC § 830.1(a), along with police officers, deputy sheriffs, and other local full-authority law enforcement generalists. Peace Officers who are eligible to serve with the Specialized Investigator's Basic Course are granted more limited peace officer authority in subsequent Penal Code sections.

Lowering the training standard for District Attorney Investigators would make them unique in that they would be the sole full-authority peace officers in PC§ 830.1(a) permitted to serve with the minimal training of the Specialized Investigator's Basic Course. Not only does this weaken and confuse PC§ 830.1(a), it could also potentially trigger legislation lowering of the level of authority of District Attorney Investigators, ultimately placing them in a subsequent Penal Code section along with limited-authority local peace officers permitted to serve with the lesser Specialized Investigators Basic Course requirement.

California Penal Code Section 832.4(b)

The California Commission on Peace Officer Standards and Training allows peace officers to apply for certain professional certificates (11 CCR § 1011). These certificates are awarded based on training, experience, and education. The certificates available for peace officers below the supervision level are as follows:

- Advanced Certificate
- Intermediate Certificate
- Basic Certificate
- Specialized Advanced Certificate
- Specialized Intermediate Certificate
- Specialized Basic Certificate
- Coroner's Advanced Certificate
- Coroner's Intermediate Certificate
- Coroner's Basic Certificate

It should be noted that POST differentiates between the certificates by title, depending on whether a peace officer completed the Regular Basic Course or the Specialized Investigators Basic Course (11 CCR§ 1011(a)(2)(A)). It is impossible for someone who completed the SIBC to earn the Basic Certificate, the Intermediate Certificate, or the Advanced Certificate. They may only earn the Specialized versions, noting that they did not complete the full police academy (Regular Basic Course).

California Penal Code Section 832.4(b) requires that all peace officers listed in subdivision (a) of Section 830.1, including District Attorney Investigators, obtain the Basic Certificate upon completion of probation, but in no case later than 24 months after his or her employment, in order to continue to exercise the powers of a peace officer. This requirement is unique to full-authority law enforcement generalists, and no similar Penal Code section exists for other peace officer classifications. There is no exception that allows for obtaining the Specialized Basic Certificate to meet this legal requirement.

RECOMMENDATION

It is my recommendation that the Commission, and the Office of Administrative Law, reject this proposed regulatory action.

Reducing the amount of training required for Investigators is not in the best interest of the public that they serve. For example, an Investigator that attends the SBIC, rather than the RBC, may have no prior experience working crimes-against-person cases if they promoted from clerical to Welfare Fraud Investigator (aka Public Assistance Investigator) and now qualify as a homicide investigator. How can they be expected to do their job correctly without adequate training or experience in general law enforcement? The answer, of course, is that they cannot.

Judging from the reported 46 letters the Commission received and attached to its September 1, 2021, meeting agenda, every District Attorney's office, Sheriff and Police Department, and the Chief Investigative Officers for these agencies oppose the proposed amendment to regulation 1005(a). Indeed, our understanding is that as of September 1, 2021, the Commission had not received a single letter in favor of the amendment to Regulation

1005(a), and we are not aware of any letters of support to date.

Moreover, wasn't this same or a similar proposed regulatory change proposed to the Commission a few years ago and rejected? What, if anything, has changed that requires us to address the same issue? Nothing. Purportedly, the purpose of this regulatory change is to provide a District Attorney's Office with the ability to hire individuals who have completed the SIBC or maintain the current training requirement of the RBC. However, no District Attorneys that we know of support this change. In fact, Orange County DA Todd Spitzer has publicly opposed it.

Further, adoption of the proposed regulation will supposedly neither create nor eliminate jobs. But it plainly does create jobs for SIBC certified applicants at the expense of those with RBC credentials. Taking things to their logical conclusion, the less qualified will become eligible to supplant the more qualified for the same number of available jobs. This alone should trigger the Commission's duty to prepare an economic impact assessment on the proposed regulatory amendment's effect on the creation or elimination of jobs within the state. (Gov. Code § 11346.3(b)(1)(A).)

The Addendum claims that the proposed regulatory change will increase the effectiveness of law enforcement standards for peace officers in preserving the peace and protecting public health and safety and the welfare of California. What is this based upon? This assertion of a supposed benefit is contrary to common sense and the very purpose for imposing high training and testing requirements for investigators. Reducing, or in this case, equating those who meet lower training and testing standards as equivalent to those who have met more stringent ones is sure to decrease the effectiveness of law enforcement in protecting public safety. Both certificates overlap in some ways, but they also differ in important respects, which is why the Commission long ago established both distinct categories. If these arguments made sense, then the Commission should consider eliminating the SBIC certification.

Importantly, the hiring authority for District Attorney Investigators (the California District Attorney Association and as well as the California Chief Investigations Association) is adamantly against the proposed change to the regulation. Any reasonable person would think it very "odd" that POST on its own accord would initiate a change of policy that directly contradicts the recommendation of the District Attorneys and hiring authority.

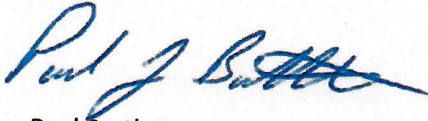
Finally, we should take a minute to ask ourselves, what is the real purpose of the proposed regulation? Clearly, it is not to help District Attorneys, all of whom have thus far expressed opposition to it. More likely, it is designed to help those with a lesser skill set at the expense of the public that they serve.

Now is not the time to decrease any training requirements. I urge you NOT to adopt the proposed changes to POST Commission Standard 1005(1). It is imperative that POST preserve the level of training and experience necessary for the safety of the position and our community.

Kirk Bunch – Letter regarding Regulation 1005
April 8, 2022
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If you have additional questions or would like to discuss my concerns, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul J. Bartlett", with a stylized flourish at the end.

Paul Bartlett
AOCDS Executive Director

CC:

senator.atkins@senate.ca.gov
assemblymember.rendon@assembly.ca.gov
Senator.wilk@senate.ca.gov
assemblymember.gallagher@assembly.ca.gov
assemblymember.stone@assembly.ca.gov
senator.umberg@senate.ca.gov
senator.borgeas@senate.ca.gov
assemblymember.cunningham@assembly.ca.gov
Assemblymember.cooper@assembly.ca.gov
kenneth.pogue@oal.ca.gov
assemblymember.jones-sawyer@assembly.ca.gov
assemblymember.lackey@assembly.ca.gov
senator.bradford@senate.ca.gov
senator.ochoabogh@senate.ca.gov