

Questions Concerning The Interim Chief of Police



BACKGROUND

At the River City Police Department (a fictitious department), the position of chief of police becomes vacant. The vacancy may be the result of retirement, termination, illness, death, or administrative action. The vacancy may be unplanned and occur suddenly, or be anticipated as a planned action. The River City Council and City Manager wish to designate an individual to fill the vacancy as interim chief of police until a permanent chief is appointed.

Several options are available to the city to designate an interim chief of police:

1. Designate a member of the department as the acting chief of police,
2. Execute a contract with another law enforcement department for the services of a member of that department to serve as the interim chief of police, or,
3. Execute a contract with a former police officer to serve as the interim chief of police. Typically, the individual is a retired command level officer or chief of police who has not been employed as a peace officer for a period of time.

LAWS

The law specifically describes the position of chief of police within municipal government, establishes that position as a peace officer, and establishes both selection and training standards for the position. As POST staff understands the law, every person appointed to the position of chief of police, either as an interim or permanent appointment, is a peace officer and must satisfy all the applicable peace officer selection standards. In addition, as a condition of continued employment, a chief of police must obtain the POST Basic Certificate within two years of appointment, if the individual does not possess the certificate.

The applicable law is summarized below. The sections provided hereafter are only the most common and are not a complete or comprehensive summary of all laws pertaining to the position of chief of police.

Government Code § 36501 The government of a general law city is vested in:

- (d) A chief of police (charter cities are generally subject to this provision of law).

Government Code § 38630

- (a) The police department of a city is under the control of the chief of police.
- (b) In municipalities which provide for police and other emergency services through a consolidated public safety agency which includes traditional law enforcement, fire protection, and other emergency services, the chief, director, or chief executive officer of such an agency shall control the agency. The chief, director, or chief executive officer of a consolidated public safety agency is a peace officer, and shall meet all of the same requirements imposed by law, regulation, or POST guidelines and recommendations as a chief of police, and he or she shall have all the same rights, responsibilities, and privileges as does a chief of police. No one who fails to meet all of the above requirements of a chief of police and peace officer shall be appointed to the position of chief, director, or chief executive officer of a consolidated municipal public safety agency.

Government Code § 1029

- (a) Except as provided in subdivision (b), (c), or (d), each of the following persons is disqualified from holding office as a peace officer or being employed as a peace officer of the state, county, city, city and county or other political subdivision, whether with or without compensation, and is disqualified from any office or employment by the state, county, city, city and county or other political subdivision, whether with or without compensation, which confers upon the holder or employee the powers and duties of a peace officer:
 - (1) Any person who has been convicted of a felony.
 - (2) Any person who has been convicted of any offense in any other jurisdiction which would have been a felony if committed in this state.

- (3) Any person who, after January 1, 2004, has been convicted of a crime based upon a verdict or finding of guilty of a felony..., or upon the entry of a plea of guilty or nolo contendere to a felony. This paragraph shall apply regardless of whether, pursuant to subdivision (b) of Section 17 of the Penal Code, the court declares the offense to be a misdemeanor or the offense becomes a misdemeanor by operation of law.
- (4) Any person who has been charged with a felony and adjudged by a superior court to be mentally incompetent....
- (5) Any person who has been found not guilty by reason of insanity of any felony.
- (6) Any person who has been determined to be a mentally disordered sex offender....
- (7) Any person adjudged addicted or in danger of becoming addicted to narcotics, convicted and committed to a state institution...

Government Code § 1031 Each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards:

- (a) Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.
- (b) Be at least 18 years of age.
- (c) Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record.
- (d) Be of good moral character, as determined by a thorough background investigation.
- (e) Be a high school graduate, pass the General Education Development Test or other high school equivalency test approved by the State Department of Education that indicates high school graduation level, pass the California High School Proficiency Examination or have attained a two-year, four-year, or advanced degree from an accredited college or university...
- (f) Be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer.
 - 1. Physical condition shall be evaluated by a licensed physician and surgeon.
 - 2. Emotional and mental condition shall be evaluated by either of the following: (specifications follow).
- (g) This section shall not be constructed to preclude the adoption of additional or higher standards, including age.
- (h) This section shall become operative on January 1, 2005.

Penal Code § 830.1

- (a) Any sheriff, undersheriff, or deputy sheriff employed in that capacity, of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency... is a peace officer.

Penal Code § 832.3

- (a) Except as provided in subdivision (e), any sheriff, undersheriff, or deputy sheriff of a county, any police officer of a city,... who is first employed after January 1, 1975, shall successfully complete a course of training prescribed by the Commission on Peace Officer Standards and Training before exercising the powers of a peace officer... Each police chief, or any other person in charge of a local law enforcement agency, appointed on or after January 1, 1999, as a condition of continued employment, shall complete the course of training pursuant to this subdivision within two years of appointment.

The laws provided above are the basis for the policy and practices that are described in the following Frequently Asked Questions.

FREQUENTLY ASKED QUESTIONS

1. **What is an interim chief of police?**

An interim chief of police is a temporary position that is designated for a limited period of time between the departure of a permanent chief of police and the appointment of a succeeding permanent chief of police. The objective of the appointment is to provide an experienced law enforcement administrator to manage the operations of the department until a permanent chief of police is appointed. Generally, the interim chief of police is an individual from outside the department, either a peace officer employee of another law enforcement department or a former peace officer who satisfies the peace officer selection standards.

2. **What is an acting chief of police?**

An acting chief of police is generally a peace officer member of the department that is designated to serve temporarily as the chief of police and manage the department until the appointment of a permanent chief of police is appointed. Often, the terms acting and interim chief of police are used interchangeably.

3. **Must the interim chief of police be a peace officer?**

Yes. As POST understands the applicable law (PC §830.1 [a], above) an individual that occupies the position of chief of police, by operation of law, is a peace officer. Peace officer status is conferred by the appointment to the position. There is no provision in the law for a non-peace officer to occupy the position of chief of police, regardless of the tenure in that position.

4. **Can any city employee be an interim chief of police?**

A city employee who satisfies the peace officer selection standards may be appointed as an interim chief of police. In addition, such an individual is required to complete the prescribed basic training course to exercise peace officer powers or have access to confidential information. As a matter of practicality, however, only an individual with peace officer experience will have the knowledge and training that is necessary to direct the day-to-day operations of the police department.

5. **The city manager “runs” the city and all departments. Can the city manager be the interim chief of police and run the department until a new permanent chief is appointed?**

No. As POST understands the applicable law, the chief of police, not the city manager, controls the police department (GC §38630[a], above). Further, at least one opinion of the Attorney General has declared “The positions of police chief and city manager....are incompatible public offices.” [81 Ops. Cal. Atty. Gen 304(1998)].

6. **If a current peace officer member of the department is designated as the acting chief of police, are the background investigation, medical, and psychological examinations required?**

No. A peace officer member of the department is already an employee of the city and is not a new appointment to a peace officer position. As such, the processes that are necessary to satisfy the peace officer employee selection standards have been met and do not need to be repeated. That is also the case for a peace officer employee of another law enforcement agency that is provided to the department to serve as the interim chief of police pursuant to a contract for services between the two agencies. That peace officer remains an employee of the contractor department and is not a new employee of the contracting city.

7. **Must an interim chief of police from outside the department have a background, medical, and psychological exam?**

Yes. Every appointment to a peace officer position, regardless of rank or expected tenure in the position, is predicated upon the satisfaction of the selection standards that are prescribed in Government Codes Sections [1029-1031](#), and further described in POST Commission Regulations [1950-1955](#). The law does not provide an exemption for an interim chief of police. All of the selection standards must be satisfied prior to the appointment of a peace officer, including an interim chief of police.

8. Why are the background investigation and medical and psychological examinations necessary when the individual previously served as a peace officer and retired honorably?

The law, as described earlier, requires these processes prior to the appointment of each new peace officer. Equally important is the protection the processes provide to the city and police department. When an individual leaves a peace officer position, the individual becomes a “private citizen” whose activities are not subject to the same scrutiny as a peace officer. As a result, a variety of conditions may develop that disqualify an individual from holding a peace officer position. For example, an individual may suffer a disqualifying felony or other crime conviction, or a medical or psychological condition may develop. None of these conditions may be known and would not be discovered without the required background investigation and other examinations.

9. Can an individual who retired from a peace officer position with a medical disability serve as an interim chief of police?

POST’s authority and responsibility is to determine whether the selection standards (background investigation, medical and psychological examinations) have been satisfied. Each employment decision, including a decision involving a former peace officer with a medical disability, is the responsibility of the employing jurisdiction based on information concerning the ability of an individual to perform the duties of the peace officer position.

10. If a background investigation was completed last year when an individual was an interim chief of police at another department, do we have to duplicate it for our department?

At their October 2017 meeting, the POST Commission approved proposed changes to Regulation 1953 that would streamline the background process for hiring interim chiefs. If approved by the Office of Administrative Law, effective April 1, 2018, hiring authorities will be able to conduct a background update of an interim chief, rather than a complete background, if the interim chief had undergone a complete background at a previous department within the past five years and the individual had served as an interim chief within the last 24 months. The initial background file must have been deemed compliant by POST at the previous department and must be reviewed by the new hiring authority. Additionally, the initial background file and the updated background must be maintained by the new hiring authority.

Regulation 1953 in part now states:

(1) Eligibility

- (A) If a peace officer candidate was initially investigated in accordance with all current requirements and the results are available for review, a background investigation update, as opposed to a complete new background investigation, may be conducted for either of the following circumstances:
1. The peace officer candidate is being reappointed to the same POST-participating department. Per Regulation 1950(c)(1)(C), a background investigation update on a peace officer who is reappointed within 180 days of voluntary separation is at the discretion of the hiring authority.
 2. The peace officer candidate is transferring, without a separation, to a different department; however, the new department is within the same city, county, state, or district that maintains a centralized personnel and background investigation support division.
- (B) At the discretion of the hiring authority, if an interim police chief was initially investigated by a California POST participating department in accordance with all current requirements and the background file has been deemed compliant by POST, an updated background investigation, as opposed to a complete new background investigation, may be conducted provided the following three conditions are met:
1. The results of the initial background investigation are available and have been reviewed by the hiring authority,
 2. The background was conducted within the past five years, and
 3. The individual has served as an interim chief within the last 24 months. The retention of all background investigation records, including the initial and updated background investigations, shall be the responsibility of the hiring authority.

NOTE: The previous agency may or may not turn over the background packet in question to the hiring agency. The medical and psychological clearance letters are part of the background investigation.

If the hiring agency is unable to obtain the background packet, they will need to complete a full background investigation on the interim chief candidate.

11. Is there any other requirement for an interim chief of police?

Yes. If the individual that is appointed as the interim chief of police has not been employed as a peace officer for three years or more (a “break in service”), a requalification training requirement will apply.

If the individual who is or will be the interim chief of police was previously issued a POST Basic Certificate and that individual has not been a peace officer for three years or longer, the individual must satisfy the requalification training requirement prescribed by Commission Regulation [1008](#).

To satisfy that requirement, the individual may:

- (A) Complete the POST Requalification Course, or
- (B) Request an exemption of the requalification course requirement from the Executive Director of POST because the individual is re-entering service at the executive level.

The POST Senior Consultant who serves the department can provide assistance concerning the requalification training requirement.

12. Does a city have to notify POST about the appointment of an interim chief of police?

Yes. The police department is required to notify POST of all new peace officer appointments, terminations, and changes of status, including the appointment of an interim chief of police (Regulation [1003](#)).

13. Does POST check the background, psychological, and medical examination for an interim chief of police?

Yes. The police department is required to notify POST of all new peace officer appointments and changes of status, including the appointment of an interim chief of police (Regulation [1003](#)).

The POST Senior Consultant who serves the department is notified of the appointment. That consultant is available to answer any questions to assist the department as the background is completed. In addition, the consultant will review the file of the interim chief of police to ensure that the background, psychological, and medical examinations meet standards during the annual compliance inspection of the department.

14. There seems to be a lot of paperwork involved, how can I simplify the process?

Many individuals who are interested in employment as an interim chief of police have collected and organized the appropriate documents as a preparatory “package” for the next prospective employer. The package usually contains a POST Personal History Statement with supporting documents such as educational transcripts. The package is usually updated as necessary to incorporate the most recent employers and other appropriate training, education, and activities. The package can be presented to a prospective employer to “jump start” the background process.

The POST Personal History Statement can be downloaded from the POST website, <https://post.ca.gov/forms.aspx>. When completed, it can be saved in electronic format and updated electronically by the individual, as necessary, to provide current information from which to begin the background process.

15. Why doesn't POST maintain a list of qualified individuals so a city will know if the background and examinations have been verified and are acceptable?

POST is not able to create or maintain a list of “qualified” candidates for this position for three reasons:

1. That function and list is beyond the scope of the authority and responsibility of the POST Commission;
2. The background and examinations for an individual who is not a peace officer only describe a condition at the point in time when they were completed. POST does not have the ability, or the authority, to ensure the eligibility of an individual to hold a peace officer position at some future time,

and

3. The hiring decision rests solely with the hiring authority, which decision includes the responsibility to assess eligibility and suitability.

16. Does an individual gain any POST benefits from serving as an interim chief of police?

No. No special benefits from POST accrue to an individual who occupies the position of interim chief of police. The interim chief of police may attend training courses and participate in other POST-sponsored activities, in the appropriate manner for all active peace officers, during the limited period of service. However, the time an individual serves as an interim chief of police does not accumulate to satisfy the requirements for a professional certificate, including the Executive Certificate (Commission Regulation 1011).

17. If an individual is coming from an out of state law enforcement agency, is their training equivalent to California law enforcement?

Under POST Regulation 1008. Basic Course Waiver and Requalification Requirement

- (1) An individual who has completed training comparable to a POST certified Regular Basic Course or Specialized Investigators’ Basic Course may request a waiver of the basic course training requirement specified in Regulation 1005(a) or 1007(a). The application, evaluation, and testing processes are described in PAM Section D-11, Basic Course Waiver Process.
 - (A) A basic course waiver is valid for three years from the date it was granted. After three years, the requirements for requalification apply as specified in subsection 1008(b).
 - (B) A waiver of the Regular Basic Course training requirement will also satisfy the Specialized Investigators’ Basic Course training requirement. However, a waiver of the Specialized Investigators’ Basic Course training requirement does not satisfy the Regular Basic Course training requirement.

| BACKGROUND MATRIX | | YES | NO |
|-------------------|---|-----|----|
| 1) | Is the interim chief candidate being reappointed to the same POST-participating agency within 180 days of voluntary separation? If “yes,” then a background investigation is at the discretion of the hiring authority. | | |
| 2) | Is the interim chief candidate transferring without separation, to a different department that is within the same city, county, state, or district that maintains a centralized personnel and background investigation support division? If “yes,” then a background investigation update will suffice at the discretion of the hiring authority. | | |
| 3) | An updated background may be conducted on an interim chief candidate who has had a complete background at a previous department, if the following criteria have been met: | | |
| a) | Was the complete background investigation conducted within the past five years? | | |
| b) | Has the interim chief candidate served as an interim chief within the past 24 months? | | |
| c) | Was the initial background deemed compliant by POST? | | |
| d) | Are the results of the initial background investigation available and have they been reviewed by the hiring authority? | | |