March 9, 2001

OPINION NO. 2001-008

Vernon Chenevey
Executive Director
Ohio Peace Officer Training Commission
1650 S.R. 56
London, Ohio 43140

Dear Executive Director Chenevey:

We have received your request for an opinion concerning peace officer training. Your question is whether the specialized training that is mandated when a peace officer experiences a break in service may be provided by means of videotape instruction outside of a basic training school setting. Such training relates to the areas of crisis intervention, missing children, and child abuse and neglect cases.

The proposed videotape instruction program would consist of videotapes prepared by the Ohio Peace Officer Training Academy, approved by the Ohio Peace Officer Training Commission, and made available to requesting law enforcement agencies. It is anticipated that the chief executive officer of a requesting law enforcement agency would provide the videotapes to the appropriate staff in any manner that the chief executive officer chose, and that the chief executive officer would verify to the Ohio Peace Officer Training Academy that the training was conducted.

Your question has arisen because of statutes providing that, when peace officers undertake new employment, they must meet certain training requirements that have become effective since they received their last mandatory training. We are informed that the proposed videotape instruction program would be made available both to officers who have experienced a break in service and prospectively to officers who will require the training if they experience a break in service. However, as discussed more fully below, the training requirements connected with a break in service do not become mandatory until the break in service occurs. To address your question, it is helpful to begin with an overview of peace officer training requirements.

In order to receive an original appointment as a peace officer[1] on a permanent basis, a person must have a certificate of satisfactory completion of a state, county, municipal, or Department of Natural Resources peace officer basic training program approved by the executive director of the Ohio Peace Officer Training Commission (OPOTC). R.C. 109.77(B)(1); *see* R.C. 109.73(A)(1); R.C. 109.75(A) and (D); 2 Ohio Admin. Code 109:2-1-07(A). OPOTC is required to establish and conduct a training school for law enforcement officers of any political subdivision of the state or of the State Public Defender's Office, and by statute that school is known as the Ohio Peace Officer Training Academy (OPOTA). R.C. 109.79(A). The executive director of OPOTC is empowered to approve peace officer training schools administered by the state, counties, municipal corporations, and the Department of Natural Resources, and to issue certificates to approved schools. R.C. 109.75(A); 2 Ohio Admin. Code 109:2-1-04; *see also* R.C. 109.73(A)(1) and (2).

A person who is appointed to a position as a peace officer on a basis other than permanent must, within the time prescribed by rule, complete the basic training program for temporary or probationary officers or forfeit the position. R.C. 109.77(B)(2); *see also* R.C. 109.73(A)(4) and (5). Existing rules provide that "[n]o person shall, after January 1, 1989, be permitted to perform the functions of a peace officer" unless the person is certified as having successfully completed the basic course. 2 Ohio Admin. Code 109:2-1-12(A)(2). Exceptions to the training requirements are provided for certain persons who were peace officers or state highway troopers on January 1, 1966. R.C. 109.77(H); 2 Ohio Admin. Code 109:2-1-12(A)(3).

The basic training program is a course that has been approved by the executive director as meeting or exceeding the minimum standards of training prescribed by rule. 2 Ohio Admin. Code 109:2-1-02(D). The course content and curriculum of the peace officer basic training program are established by recommendation of OPOTC and upon approval of the Attorney General, and they must comply with statutory requirements. 2 Ohio Admin. Code 109:2-1-16; *see* R.C. 109.73; R.C.109.74. By statute, the basic training program must include at least six hours of crisis intervention training, which is "training in the use of interpersonal and communication skills to most effectively and sensitively interview victims of rape." R.C. 109.71(C); *see* R.C. 109.77(B)(3); *see also* R.C. 109.73(A)(4) and (5); R.C. 109.742; R.C. 109.79. However, this requirement does not apply to a person who was serving as a peace officer on April 4, 1985 (the date when that training requirement became effective, *see* 1983-1984 Ohio Laws, Part II, 3804, 3808-09 (Sub. H.B. 435, eff. Apr. 4, 1985)), unless that person terminates employment and "subsequently is hired as a peace officer by the same or another law

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[1] R.C. 109.71(A) contains a detailed definition of "[p]eace officer" applicable to R.C. 109.71 through R.C. 109.77. The training requirements of R.C. 109.77 apply to a variety of officials listed in R.C. 109.77(B)(1) and (2), including county, municipal, and township peace officers, but not to all the peace officers included in the definition. For purposes of this opinion, the term "peace officer" is used to encompass any officer who is subject to the training requirements in question.

enforcement agency." R.C. 109.77(B)(3). If the person thus takes a new job, the person becomes subject to the training requirement and must "complete the six hours of training in crisis intervention" within the time prescribed by rule. *Id.*; *see also* 1983-1984 Ohio Laws, Part II, 3804, 3804 (Sub. H.B. 435, eff. Apr. 4, 1985) (including among its purposes "to require new peace officers and peace officers who change employment to receive such training"). The acceptance of new employment that makes crisis intervention training mandatory is commonly known as a break in service.[2]

Under other statutory provisions, a break in service also activates requirements for training in the handling of missing children and child abuse and neglect cases. No person who is appointed as a peace officer of a county, township, or municipal corporation on or after April 9, 1985, "shall serve" as such a peace officer unless the person "has received training in the handling of missing children and child abuse and neglect cases from an approved state, county, township, or municipal police officer basic training program or receives the training within the time prescribed by rules adopted by the attorney general pursuant to [R.C. 109.741]." R.C. 109.77(I); *see* 1983-1984 Ohio Laws, Part I, 1192, 1200 (Am. Sub. S.B. 321, eff. Apr. 9, 1985). Thus, the appointment of an individual to a position as peace officer of a county, township, or municipal corporation brings into force the requirement that, if the individual was not trained in handling missing children and child abuse and neglect cases as part of a basic training program, the individual must receive such training within the time prescribed by rule. *See also* R.C. 109.73(A)(4) and (5); R.C. 109.741; R.C. 109.79.

Provisions of rule governing training requirements when there is a break in service appear in 2 Ohio Admin. Code 109:2-1-12. The break in service requirements apply to two groups of peace officers – persons who were previously appointed as peace officers and have certificates of completion of basic training, and persons who are exempt from the certification requirement because they were employed by a county, township, or municipal corporation on January 1, 1966, and have completed at least sixteen years of full-time active service.[3] The rule

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[2] The term "break in service" is defined by rule as follows:

> The term "break in service" applies to any person who has previously been awarded a certificate of completion of basic training by the executive director or any peace officer as described in paragraph 109:2-1-12(A)(2) of this rule who is appointed to any new or concurrent peace officer position described in [R.C. 109.71(A)] unless the concurrent appointment is to a multi-jurisdictional task force and the original appointment continues.

2 Ohio Admin. Code 109:2-1-02(J) (footnote omitted).

[3] The statute also excludes persons who were serving as state highway troopers on January 1, 1966, from the certification requirement. R.C. 109.77(H). Rule 109:2-1-12 does not

provides generally that these peace officers maintain their eligibility for reappointment for up to one year following the termination of appointment. If specialized training is mandated between the original appointment and the reappointment date, that training must be completed within one year of reappointment. 2 Ohio Admin. Code 109:2-1-12(D)(1) and (F). If the period between termination and reappointment is between one and four years, the person must complete a refresher course within one year of the date of reappointment. 2 Ohio Admin. Code 109:2-1-12(D)(2) and (F). If reappointment takes place more than four years after termination, the person must complete the basic training course prior to performing the functions of a peace officer. 2 Ohio Admin. Code 109:2-1-12(D)(3).

Let us now consider the manner in which peace officer training must be provided. The statutes and rules do not prescribe with precision the manner in which training must be provided in the areas of crisis intervention, missing children, and child abuse and neglect cases for peace officers who experience breaks in service. The statutes, however, do seem to contemplate that peace officers accepting employment following breaks in service must receive the same training received by peace officers who take basic training programs prior to their certification and initial appointment on a permanent basis. For example, the statute governing training in crisis intervention sets forth the basic training program requirement and then states that an officer experiencing a break in service "shall complete *the six hours of training in crisis intervention*" within the time prescribed by rule, thereby indicating that the same six hours of training is to be undertaken in a break in service situation as in a basic training course. R.C. 109.77(B)(3) (emphasis added); *see also* R.C. 109.742 (requiring that rules "specify six or more hours of … training [in crisis intervention] for the satisfactory completion of basic training programs at approved peace officer training schools, other than the Ohio peace officer training academy").

The language governing training in missing children and child abuse and neglect cases similarly contemplates a single type of training for both basic training and break in service situations, providing that a person appointed as a peace officer of a county, township, or municipal corporation or after April 9, 1985, may not serve "unless the person has received training in the handling of missing children and child abuse and neglect cases from an approved state, county, township, or municipal police officer basic training program or receives *the training* within the time prescribed by [rule]." R.C. 109.77(I) (emphasis added); *accord* R.C. 109.741 (providing that rules governing the training of peace officers in the handling of missing children and child abuse and neglect cases "shall specify the amount of that training necessary for the satisfactory completion of basic training programs at approved peace officer training schools, other than the Ohio peace officer training academy and the time within which a peace officer is required to receive that training, if he receives his appointment as a peace officer before receiving that training").

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expressly exclude them from the certification requirement, but it does allow credit to be granted for prior equivalent training or education, including training or education certified by the State Highway Patrol. 2 Ohio Admin. Code 109:2-1-12(B)(1).

It is specified that the refresher course required of persons who have not been appointed for one to four years "shall meet the criteria … for the conduct of a basic training course." 2 Ohio Admin. Code 109:2-1-12(D)(2).[4] Although that requirement is not applied directly to the specialized training required upon a break in service, the rule does provide that an individual experiencing a break in service "shall be required to successfully complete *the mandated specialized training* within one year of re-appointment as a peace officer." 2 Ohio Admin. Code 109:2-1-12(D)(1) (emphasis added). The clear implication is that the same specialized training is mandated for all persons to whom the specialized training requirement applies, both those initially taking a basic training course prior to certification and those fulfilling the mandate because of a break in service, whether they receive the training before or after the break in service occurs.[5]

It is the evident intention of the statutory provisions governing peace officer training that training received in a break in service situation be sufficient to give a peace officer training that meets the standards currently being met by peace officers who are entering service. To satisfy this intention, the training provided in a break in service situation must be the same as that provided in basic training programs. The Ohio statutes do not provide for different levels of mandatory peace officer training. Rather, they are designed so that, when an individual receives training that is mandated by statute, the individual will receive training that meets all the criteria established for basic training programs, whether the training is undertaken prior to the initial commencement of work as a peace officer or in connection with a break in service situation. This result is supported by the fact that the only approved training authorized by statute is that provided by certified peace officer training schools, through their certified commanders[6] and

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[4] The refresher course itself does not contain the mandated specialized training in crisis intervention, missing children, and child abuse and neglect cases. *See* 2 Ohio Admin. Code 109:2-1-12(D)(2). An officer with a break in service of more than one year and less than four years must complete both the refresher course and any specialized training required since the officer's original appointment. *Id.* Anyone completing basic training after 1985 will have taken the mandated specialized training as part of the basic curriculum. Thus, an officer who completed basic training after 1985 and has a break in service of more than one year and less than four years would be required to complete the refresher course only.

[5] The provisions governing break in service training do not specifically provide for officers to take the training prior to a break in service, but they appear to allow such an arrangement. The language requiring training within a prescribed period appears to require that training be concluded no later than the specified deadline and does not prevent an officer from completing the training at an earlier time. *See* R.C. 109.77(B)(3) and (I); 2 Ohio Admin. Code 109:2-1-12(D)(1).

[6] The "commander" is "the director or other head of a peace officer training school." 2 Ohio Admin. Code 109:2-1-02(B); *see also* 2 Ohio Admin. Code 109:2-1-05 (establishing minimum qualifications for certification of commander).

instructors.[7] R.C. 109.75; *see also* R.C. 109.73(A)(1), (2), and (3). Thus, under existing statutes and rules, the training in crisis intervention, missing children, and child abuse and neglect cases mandated under R.C. 109.741, R.C. 109.742, and R.C. 109.77(B)(3) and (I) for peace officers who experience a break in service must be provided by a certified peace officer training school and must meet the standards of an approved basic training program for peace officers.

It has been generally established that a governmental body that has authority to administer a statutory program has discretion to administer that program in any reasonable manner that is consistent with the statutory provisions. Further, courts give deference to an agency's reasonable interpretation of statutes that it administers and rules that it adopts. *See, e.g., Hocking Valley Ry. Co. v. Public Utilities Comm'n*, 92 Ohio St. 362, 110 N.E. 952 (1915); *McAuliffe v. Board of Pub. Employees Ret. Sys.*, 93 Ohio App. 3d, 353, 360, 638 N.E.2d 617, 621 (Franklin County 1994); 1997 Op. Att'y Gen. No. 97-035, at 2-207; 1994 Op. Att'y Gen. No. 94-059, at 2-289 to 2-290; 1989 Op. Att'y Gen. No. 89-008, at 2-33. The courts have recognized that OPOTC has a great deal of discretion in establishing and implementing peace officer training in accordance with the relevant provisions of R.C. Chapter 109. *See State v. Lovell*, No. 97-CR-057 (C.P. Holmes County Apr. 10, 1998). Current rules governing peace officer basic training are consistent with the statutory construction outlined above.

Let us turn now to the question whether the requirements governing training in the areas of crisis intervention, missing children, and child abuse and neglect cases that are applicable to officers who experience breaks in service may be satisfied by means of the viewing of a videotape presentation, either before or after the break in service occurs. *See* note 5, *supra*. By rule, it is "clearly understood that the basic course … is designed as an absolute minimum program." 2 Ohio Admin. Code 109:2-1-03(D)(1); *see also* 2 Ohio Admin. Code 109:2-1-16(E) ("[i]t is understood that the units, topics, hours, and student performance objectives recommended by the Ohio peace officer training commission and approved by the attorney general are established as mandatory minimum for obtaining certification"). Schools, commanders, and instructors are encouraged to exceed the mandatory minimum, and rules that establish higher standards are permitted. 2 Ohio Admin. Code 109:2-1-03(D); 2 Ohio Admin. Code 109:2-1-16(E). Thus, it must also be understood that no approved training program, including one for break in service situations, may provide less than the minimum required for the basic course.

A basic training program may be offered only by an approved peace officer training school, in accordance with the certification granted to the school. R.C. 109.73; R.C. 109.75. An approved peace officer training school must have an approved commander, must have sufficient

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[7] Qualifications required for certification as an instructor are set forth in 2 Ohio Admin. Code 109:2-1-06.

approved instructors, and must meet other requirements, including submission of training calendar and enrollment information. 2 Ohio Admin. Code 109:2-1-04 to 109:2-1-06. It also must have adequate physical facilities available. 2 Ohio Admin. Code 109:2-1-08. Those facilities include a classroom with adequate heating, lighting, ventilation, and restroom facilities; a chalkboard and chalk, or equivalent; tables and chairs suitable for writing, or seats with an arm for writing; a lectern, stand, or table for the instructor; and a large indoor area with appropriate equipment for teaching physical skills. *Id.*

A basic training program must be offered in a proper setting – that is, a setting that has equipment and facilities which comply with relevant provisions of rule and with the approval granted by the executive director of OPOTC. *See, e.g.*, 2 Ohio Admin. Code 109:2-1-04 and 109:2-1-08; *see also* R.C. 109.73(A)(2). By rule, the term "school" is synonymous with the basic training program certified by the executive director. 2 Ohio Admin. Code 109:2-1-02(F). The statutes and rules do not specify that all training must occur in a particular building or site. Rather, the required facilities must be "available" for use in appropriate training sessions. 2 Ohio Admin. Code 109:2-1-08. Thus, it appears that a basic training program may be offered by a certified peace officer training school in any setting that is approved by the executive director as satisfying the appropriate standards.

Attendance is required at all sessions of the basic course. Although a limited amount of absence may be excused for some purposes, "[t]here shall be no excused absences from the … crisis intervention, missing, abused and neglected children … portions of the basic course." 2 Ohio Admin. Code 109:2-1-09(C). The commander is responsible for maintaining an accurate record of attendance. 2 Ohio Admin. Code 109:2-1-09(D).

That videotape instruction may be included in the peace officer basic training program is evident from the fact that each school must have audio visual equipment available and from the fact that each certified unit instructor must complete an instructor training program that includes instruction in the use of audio-visual aids. 2 Ohio Admin. Code 109:2-1-06(A)(3) and 109:2-1-08(D). An instructor has discretion to use reasonable teaching methods, which may include the use of videotapes. 2 Ohio Admin. Code 109:2-1-16(E) ("[r]easonable latitude shall be granted to instructors to deliver the material in a manner deemed most effective and to permit the use of instructional methods and material deemed to be the most appropriate and useful, provided the approved material is covered in its entirety").

Whether an entire subject course may be offered through videotape observation alone is subject to question, however. The statutes and rules governing peace officer training contemplate that training will always be conducted by a certified instructor who is present to assure that the material is presented effectively. *Id.*; *see also* 2 Ohio Admin. Code 109:2-1-06.[8]

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[8] OPOTC is required to prepare, conduct, and score a final examination for each person completing the basic course. To pass, a student must achieve a specified minimum score. 2

The rules require certain conditions for basic training. At a minimum, basic training must be provided by a certified instructor, attendance must be monitored, and an approved setting must be provided. To assure that statutory standards are satisfied, these basic training requirements must apply also to mandated specialized training received in a break in service situation. Therefore, if a certified peace officer training school offers mandated specialized training for break in service situations by means of videotape instruction, the training must be provided by a certified instructor, in an approved setting, and with attendance monitored, in accordance with Chapter 109:2-1 of the Ohio Administrative Code. Under such an arrangement, a certified instructor will be available to present the videotapes, supervise the students as they view the videotapes, respond to questions, and assure that attendance requirements are satisfied.

Statutory provisions also authorize rules governing advanced in-service training programs for peace officers, which may include training in crisis intervention and in the handling of missing children and child abuse and neglect cases. R.C. 109.73(A)(6). It appears, however, that such advanced in-service training programs are separate from the basic training required in those areas. *See generally* 2 Ohio Admin. Code 109:2-1-03(D) (basic course is absolute minimum; a commander, the civil service commission, or other appointing authority is permitted to require a higher standard of training); 2 Ohio Admin. Code 109:2-1-16(E) (schools, school commanders, and instructors are encouraged to exceed mandatory minimums). We are aware of nothing that would prohibit a rule authorizing local law enforcement agencies to use a videotape, by itself, to provide advanced in-service training. However, the viewing of a videotape in those circumstances would not constitute compliance with the basic training requirement or the mandated specialized training requirement.

Therefore, it is my opinion, and you are hereby advised, that under existing statutes and rules, the training in crisis intervention, missing children, and child abuse and neglect cases mandated under R.C. 109.741, R.C. 109.742, and R.C. 109.77(B)(3) and (I) for peace officers who experience a break in service must be provided by a certified peace officer training school and must meet the standards of an approved basic training program for peace officers. If a certified peace officer training school offers mandated specialized training for break in service situations by means of videotape instruction, the training must be provided by a certified instructor, in an approved setting, and with attendance monitored, in accordance with Chapter 109:2-1 of the Ohio Administrative Code.

Ohio Admin. Code 109:2-1-11; *see also* 2 Ohio Admin. Code 109:2-1-10. We are informed that no examination is proposed to cover the specialized subjects for which training is required when a break in service occurs.

Respectfully,

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Attorney General

March 9, 2001

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SYLLABUS: 2001-008

Under existing statutes and rules, the training in crisis intervention, missing children, and child abuse and neglect cases mandated under R.C. 109.741, R.C. 109.742, and R.C. 109.77(B)(3) and (I) for peace officers who experience a break in service must be provided by a certified peace officer training school and must meet the standards of an approved basic training program for peace officers. If a certified peace officer training school offers mandated specialized training for break in service situations by means of videotape instruction, the training must be provided by a certified instructor, in an approved setting, and with attendance monitored, in accordance with Chapter 109:2-1 of the Ohio Administrative Code.