



Criminal Justice Standards and Training Commission

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February 19, 2016

CRIMINAL JUSTICE STANDARDS AND TRAINING COMMISSION TECHNICAL MEMORANDUM 2016-02

TO: Criminal Justice Agency Administrators
Criminal Justice Training Center Directors
Criminal Justice Selection Center Directors

FROM: Director Dean Register *DR*
Criminal Justice Professionalism Division

SUBJECT: United States Department of Justice, Office for Civil Rights Inquiry and the Use of Basic Abilities Test Results in Employee Selection Processes

The Florida Department of Law Enforcement (FDLE) is the State Administering Agency for Florida's Edward Byrne Memorial Justice Assistance Grant (Byrne/JAG) Program. Additionally, FDLE employs the Criminal Justice Standards and Training Commission (CJSTC) staff responsible for the Basic Abilities Test (BAT) program.

Commission staff, on behalf of the CJSTC, sends this Technical Memorandum to affirm its guidance on the use of BAT results and to notify criminal justice agencies, training centers, and selection centers of concerns raised by the U.S. Department of Justice, Office for Civil Rights (OCR). These concerns relate to compliance with the civil rights requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as enforced by the OCR.

The OCR recently conducted an inquiry into the CJSTC's law enforcement BAT program. During the course of the inquiry, the OCR raised concerns about potential misuse of BAT results by criminal justice agencies when evaluating applicants for law enforcement officer positions. In particular, the OCR was concerned about the use of BAT scores to rank order or eliminate job applicants. While the OCR's inquiry and requests are at this time limited to the law enforcement BAT, we want to emphasize that the principles underlying the OCR's concerns also apply to the corrections BAT.

In accordance with Chapter 943.17, Florida Statutes, the BAT is developed to be a screening instrument for admission into law enforcement and corrections basic recruit training programs. The intent of the BAT is to minimize the number of recruits who fail to meet the minimum academic requirements of the program. Any other use falls outside the scope of the test. Further, neither FDLE nor the CJSTC has validated the BAT for use as an employment selection instrument. Any such use may therefore violate state and federal regulations of employee selection procedures. Commission staff reiterates its recommendation that agencies rely on properly validated employee selection tests rather than the BAT for employment decisions. Such validated tests are commonly available, including additional tests developed by the current BAT providers.

CJSTC TECHNICAL MEMORANDUM 2016-02

February 19, 2016

Page Two

The OCR subsequently requested actions be taken to reduce the risk of criminal justice agencies using BAT scores for employee selection purposes.

The first action requested by the OCR is the removal of numeric scores from BAT grade reports. Upon implementation, BAT grade reports will show only a pass/fail result as determined by the Commission. Each BAT provider is currently implementing this action. Printed grade reports will remain unofficial documents provided to test takers for their reference only. The only official BAT results are the electronic records stored in the Automated Training Management System (ATMS). These official records are reported as pass/fail only.

Additionally, the OCR has directed FDLE's Office of Criminal Justice Grants (OCJG) to notify all subrecipients of the state Byrne/JAG Grant Program to immediately cease any use of BAT scores for rank ordering of candidates, or for any employment purposes other than the pass/fail indicator the BAT is intended to provide. This notification was distributed to subrecipients on February 4, 2016, and requires any subrecipient agency using BAT scores to implement procedural changes and notify the OCJG in writing of their progress no later than March 18, 2016. The OCJG has also modified the questionnaires and tools used for monitoring grant subrecipients to include questions on this matter.

Byrne/JAG subrecipients determined to be out of compliance with this requirement without sufficient remedial action in writing may have a withholding of federal funds placed on all subawards until the agency is back in compliance.

FDLE is further required to notify the OCR if subgrant monitoring finds a subrecipient out of compliance without sufficient written corrective action. The OCR may then conduct a compliance review of the subrecipient agency's selection practices or take other actions as authorized under the Safe Streets Act or its regulations. These notifications will be handled by OCJG through the submission of all final monitoring reports of Byrne/JAG subrecipients to the OCR for review.

If you have any questions or concerns regarding this Technical Memorandum, please contact Training & Research Manager Roy Gunnarsson at roygunnarsson@fdle.state.fl.us or (850) 410-8672.

DR/rgg

cc: Criminal Justice Standards and Training Commission