

**IN THE MATTER OF THE PROPOSED
ADOPTION OF THE BOARD OF PEACE
OFFICER STANDARDS AND TRAINING
AMENDMENTS TO RULES GOVERNING
THE LICENSING, EDUCATION AND
STANDARDS FOR PEACE OFFICERS
AND PART-TIME PEACE OFFICERS,
MINNESOTA RULES, PARTS 6700.0100
TO 6700.1800.**

**MINNESOTA BOARD OF PEACE
OFFICER STANDARDS AND TRAINING**

**STATEMENT OF NEED
AND REASONABLENESS**

GENERAL STATEMENT

The Minnesota Board of Peace Officer Standards and Training (POST) was established in 1978. The duties of the Board include promulgation of education and training standards for peace officers and part-time peace officers. The Board was also charged with promulgating standards of conduct for those engaged in the practice of law enforcement. The Board's rules, chapter 6700, were originally adopted in 1978. Since that time the rules have been amended on several occasions to implement various directives of the Legislature. The rules were last amended in 1989.

The amendments currently proposed include those necessary to fulfill the Legislative directive requiring the Board to develop rules regarding part-time peace officer supervision and documentation of hours worked. Additional amendments reflect changes in Board policy to make the rules consistent with contemporary methods of practice and sound public policy.

On June 22, 1992, the Board published in the State Register a Notice Of Solicitation Of Outside Information Or Opinion regarding the development of rules related to part-time peace officers, as well as other administrative rules contained within chapter 6700. Over the next six months, the Board and its staff met with numerous interested parties to discuss development of the rules. For example, staff held several meetings with a discussion group composed of representatives of law enforcement associations, such as the Minnesota Chiefs of Police Association, the Minnesota Sheriffs Association, the Minnesota Police and Peace Officers Association, and the Minnesota Association of Part-Time Peace Officers. Also participating in these meetings were representatives of the League of Minnesota Cities, the Association of Minnesota Counties, the League of Small Cities, and Law Enforcement Labor Services. Further, staff conducted four meetings in various regions of the state where law enforcement officers were invited to comment on the proposed rules. Staff also solicited and received numerous letters and calls with advice and comment on the proposed rules.

On March 30, 1993, the proposed rules were presented to the Board's Executive Committee. At this time, the Executive Committee heard testimony from representatives of the law enforcement associations and other members of the law enforcement community.

On April 22, 1993, the Board took testimony regarding the proposed rules from representatives of law enforcement associations, as well as from police chiefs and part-time peace officers. At this meeting the Board approved going forward with the formal adoption of the rules. The Board authorized its Executive Director to give notice of the Board's intent to adopt the rules.

STATUTORY AUTHORITY

The Board is charged with the authority to regulate the practice of law enforcement by peace officers and part-time peace officers in Minnesota, under Minnesota Statutes, sections 626.8426 to 626.863. The proposed rules are specifically authorized by Minnesota Statutes, section 626.843, subdivision 1(m), as amended by 1992 Minnesota Laws, chapter 571, article 15, section 13. The statute requires the Board to adopt rules with respect to supervision of part-time peace officers and requirements for documentation of hours worked by part-time peace officers on active duty. Section 626.843 also gives the Board the implicit authority to amend existing rules.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, section 14.115, requires that the Board consider the impact of the rules on small business. The proposed rules will have no direct impact on small business.

DEPARTMENTAL CHARGES IMPOSED BY THE RULES

In accordance with Minnesota Statutes, section 16A.1285, pertaining to departmental earnings from charges for goods and services, licenses, or regulation, the rules were submitted to the Commissioner of Finance for the Commissioner's review and comment on the charges established or adjusted in these rules. The Commissioner of Finance's comments are attached to this Statement.

In accordance with Minnesota Statutes, section 16A.1285, subdivision 4, paragraph (c), the Board has reported any board earnings, charges or adjustments to the Chairs of the Senate Committee On Finance and the House Ways And Means Committee. This was done by sending a copy of the Notice Of Intent To Adopt and the Rules to the Committee Chairs prior to submitting the Notice to the State Register.

NOTICE TO THE CHAIRS OF LEGISLATIVE COMMITTEES

In accordance with Minnesota Statutes, section 16A.128, subdivision 2a, the Board sent a copy of the Notice Of Intent To Adopt Rules and a copy of the proposed rules the Chairs of the House Ways and Means Committee and the Senate Finance Committee prior to submitting the notice to the State Register.

FISCAL IMPACT

Minnesota Statutes, section 14.11, subdivision 1, requires that if the adoption of a rule by an

agency will require an expenditure of public money by local public bodies, the appropriate notice of the agency's intent to adopt a rule shall be accompanied by a written statement giving the agency's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule if the estimated total cost exceeds \$100,000 for either of the two years.

Calculating the cost of implementation of these rules is difficult, given the diversity of the areas covered. However, the area certain to have some fiscal impact is the implementation of the rule regarding part-time peace officer supervision.

Agencies are presently under an obligation to supervise their part-time peace officers. Because this obligation existed prior to the proposed rules, no increase in cost to local agencies will arise from a rule which repeats this requirement to provide the supervision they were already providing prior to the proposed rules.

However, in requiring that part-time peace officers maintain the ability to directly contact the designated supervising officers, some agencies may have to incur the expense of purchasing a portable radio for use by the designated supervising officer. Since it is not known how many agencies will need to make such a purchase to augment their radio communication capabilities, an estimate of cost will be based on the assumption that all agencies who utilize part-time peace officers will need to purchase a portable radio.

Therefore, the fiscal impact analysis was calculated by multiplying the estimated cost of a new portable radio, including accessories, by the number of agencies which utilize part-time peace officers. Since the cost of portable radios and accessories varies widely, depending on the quality and features, the highest cost estimate, \$950.00, was used. The total estimated cost, when multiplied by 247, which is the number of agencies using part-time peace officers, is \$234,650.00. It is important to note that this estimate may be substantially less than \$234,650.00. We believe many of the 247 agencies either already have a portable radio or would purchase one in the near future regardless of the rule. We also believe that many of the agencies that do purchase radios will buy ones that cost less than the most expensive models.

IMPACT ON AGRICULTURAL LAND

Minnesota Statutes, section 14.11, subdivision 2, requires the agency to follow the requirements of sections 17.80 to 17.84 if the proposed rules have a direct and substantial impact on agricultural land. The rules proposed by the Board have no such effect.

WITNESSES

The witnesses listed below may testify on behalf of the Board in support of the need and reasonableness of the rules. The witnesses will be available to answer questions about the development or content of the rules.

William R. Carter, III
Executive Director
Minnesota Board of Peace Officer Standards and Training

George P. Wetzel, Jr.
Standards Coordinator
Minnesota Board of Peace Officer
Standards and Training

Dave Orren
Rules Coordinator
Department of Public Safety

Mary J. Theisen
Special Assistant Attorney General
Minnesota Attorney General's Office

SPECIFIC RULE PROVISIONS

The above entitled rules are affirmatively presented by the Board in the following narrative in accordance with the provisions of the Minnesota Administrative Act, Minnesota Statutes, chapter 14, and the rules of the Attorney General's Office.

Constables. Constables, as they were once known, no longer exist. This term is now archaic and confusing. It is reasonable, therefore to delete the term "constable" and all related requirements from the rules. The term "constables" and requirements related to constables appear in a number of places throughout the rules. This explanation will serve as the justification for the deletion of all such references and will not be repeated throughout this document. This change occurs in parts 6700.0100, subparts 2, 3 and 4; 6700.1000, subparts 1, 3, 5 and 10; 6700.0200; 6700.0900, subparts 1, 2, 9, and 10; 6700.1000, subparts 1 and 3 and 6700.1800 subparts 1, 2, 4, and 6.

6700.0100. DEFINITIONS.

Subp. 1. Scope.

The reference to "parts 6700.0100 to 6700.1900" was changed to "chapter 6700" because the scope of the definitions extends to the entire rules chapter. This change in reference does not change the substance of any provisions in chapter 6700.

Subp. 2. Agency.

The definition of "agency" was changed to coincide with the statutory definition. The change is reasonable because it eliminates any conflict between the use of the term in the statutes and in the rules.

Subp. 4. Appointment.

The present language of the rule does not make clear that agencies must give to the Board notice of appointment. The proposed change is reasonable because it provides a more specific and concrete meaning to the term "appointment."

Subp. 6. Board or POST Board.

This is an editorial change suggested by the revisor.

Subp. 8. Chief law enforcement officer.

The Board believes it is necessary that all law enforcement agencies be headed by a licensed peace officer. This is because a chief law enforcement officer is responsible for hiring, training, and supervising other peace officers and part-time peace officers. The Board believes that a professionally educated person is in the best position to effectively discharge these duties. This change will eliminate the potential for a part-time peace officer or non-licensed individual to direct the law enforcement duties of peace officers. This change is reasonable because it accomplishes the Board's purpose of ensuring that law enforcement agencies are managed by licensed peace officers.

Subp. 10. Coordinator.

The academic component and the skills component of the Professional Peace Officer Education Program are being combined as part of the new integrated law enforcement program. It is reasonable to change this definition to reflect this.

Subp. 11. Eligible to be licensed.

The term "law enforcement officer" is not defined either in statute or in rule. The change is reasonable because it substitutes for that term the term "peace officer" which is defined in statute.

Subp. 13. Firearms training course.

The repeal of this subpart is necessary because the Board no longer seeks to limit the number of continuing education hours available for firearms training. Thus, since the term "firearms training course" will no longer be utilized within the rules, it is reasonable to eliminate the term.

Subp. 21. Conviction of a felony.

This subpart is being repealed because a new and more encompassing definition of conviction of a felony is proposed in subparts 26 and 27.

Subp. 25. Classroom discrimination.

The changes in this subpart merely clarify the term "classroom discrimination" and do not change the meaning of the term.

Subp. 12a. Felony and Subp. 9a. Conviction.

For the purpose of clarity, subparts 12a and 9a are discussed together. The Board's experience in licensing has shown that licensees who are convicted of felonies may escape the Board's jurisdiction through continuance for dismissal or expungement of the record. Thus, a conviction of a felony is not entered on the record as such. The reasons for keeping such convictions from being entered on a person's record do not relate to the seriousness of the offense or the person's fitness to serve as a peace officer. It is necessary to change the definition of felony conviction because the Board does not presently assume jurisdiction over and review the fitness of persons whose criminal acts may adversely affect their ability to perform law enforcement functions. The new definition will allow the Board jurisdiction over applicants and licensees who have pled guilty to felony level offenses, regardless of the final disposition of the record. This is reasonable because the Board has a duty to ensure that licensees charged with the enforcement of the law are themselves law abiding.

6700.0200 STATUTORY AUTHORITY.

The changes in this subpart are needed because the numbering of the statutes has changed.

6700.0300 PROFESSIONAL PEACE OFFICER EDUCATION.

Subp. 1. Subject areas.

Minnesota Statutes, section 626.843, subdivisions 1(a) and 1(h), give the Board the authority to prescribe and regulate the curriculum for delivery of professional peace officer education. Professional peace officer education is a post-secondary academic program of study which is directly related and built upon general education and elective coursework. This change provides for this unification or integration of the professional peace officer education. It will eliminate the artificial distinction of academic and clinical skills and the confusion associated with a bifurcated system. Also, it will enhance the student's learning and permit the college or university which admits the students into the program to have full responsibility of ensuring the students receive all of the education in a seamless process and without unnecessary delay. Lastly, this change will provide more flexibility for college and universities in curricula development. This will also assist in the learning process. The importance and need for the integration of professional peace

officer education is also contained in the Peace Officer Legislation of 1991, 1991 Laws of Minnesota chapter 356 article 6.

The deadline date is reasonable because the certified schools have known about the Board's position on integration since 1991, and the deadline date provides ample time for schools to integrate their programs. Additionally, the higher education board offices have been working with campus officials to finalize integration and most certified schools have made the required arrangements.

Certified schools determine the process by which curriculum components will be delivered when those components are not available on the certified school's campus. This is reasonable because educational institutions are in the best position to make these decisions.

Subp. 4. Learning Objectives.

The Board is authorized to certify schools to deliver professional peace officer education under Minnesota Statutes, section 626.843, subdivision 1(a). The Board periodically issues and revises learning objectives applicable to professional peace officer education because it is required to do so by Minnesota Statutes, section 626.843, subdivision 1(b). The amendment to subpart 4 requires that these learning objectives be incorporated into peace officer education. This is reasonable because all schools delivering this education are required to base the instruction on the Board's learning objectives.

Subp. 5. Participation requirements.

Item A.

Item A is deleted because under the integrated program, "skills" is no longer a separate component of the professional peace officer education process. The new item A removes this language. The schools are required to develop admission standards so that students who are academically or physically unprepared for the professional peace officer education program are not admitted. This is reasonable because admitting individuals who do not have the knowledge or skills to complete the program is unfair to the individual who pays for the education. Also, due to the limited number of spots available, only those individuals with some chance of successfully completing the program should be admitted.

Item B.

The Board is empowered to establish the content of the courses offered by certified schools under Minnesota Statutes, section 626.843, subdivision 1(h). Many of these courses require students to engage in potentially dangerous activities, such as firearms exercises, high speed driving, and simulated attack and street combat exercises. Because of the potential for harm that such exercises pose, the Board believes it is necessary to set minimum health and safety

standards for admission to the professional peace officer education program. The admission standards are reasonable because they eliminate students who pose a threat to others or whose criminal background indicates that they would be unfit to engage in such exercises. Furthermore, the admission standards will prevent those individuals who would not be eligible to become licensed peace officers from enrolling in a professional peace officer education program. This is reasonable because it preserves spots for those who can become licensed and keeps out of the programs those who may be prevented by law from possessing a firearm

Item C.

Item C is amended to delete obsolete language and change initial references as a result of earlier changes.

Item D.

The proposed amendment is needed because students should know the minimum licensure standards they will have to meet upon completion of the program. Students need to be advised of this before they start the program so that they do not pursue the program if they will be prohibited from being licensed as peace officers. It is reasonable to require written notice of these standards to ensure that students are provided with the information.

Subp. 6. Certified school's responsibilities.

The Board certifies schools to deliver the professional peace officer education program. Schools which do not comply with the requirements of the Board risk losing their certification. Therefore, the Board believes that the school as an institution, and not the individual coordinator, should be responsible for complying with the Board's rules. This change is necessary because the Board has no jurisdiction to seek recourse against an individual coordinator who fails to comply with directives; however, the Board can take action against a school's certification. The change is reasonable because it clearly reflects the fact that the school will be held accountable for complying with these rules.

Item A.

Item A is changed to reflect the change of responsibility as outlined above.

Item B.

It is necessary to ensure documentation of program content in the event of litigation or challenge of certification. Item B is reasonable because it requires retention for only five years. Note: The lettering sequence of former items B and C is changed to items C and D because of the addition of this new item B.

Item C.

The Board requires schools to submit affirmative action plans to ensure schools are actively recruiting women and people of color. Presently, the coordinator is responsible for submitting the plan. However, the Board believes that the plan is the responsibility of the school. Moreover, the Board can take no action against a coordinator who fails to file the plan, only against the certification of the school. Therefore, it is reasonable to make the filing of the plan the responsibility of the certified entity, and not the individual who coordinates the law enforcement program. It is necessary to require the signature of the chief executive officer of the school because this person is ultimately responsible for the school and its certification.

Subp. 8. Safety policies required.

Items A through E.

It is necessary that certified schools develop formal safety policies to protect students participating in their programs. The requirements of items A to E are reasonable because they would serve to create a safe learning environment.

Subp. 9. Policies provided.

It is necessary that safety policies are known by both students and instructors in certified schools. It is reasonable to require the dissemination of these policies as a way to ensure that they are known to program participants and that they are effectively applied.

Subp. 10. Documentation of completion.

It is necessary that certified schools retain documentation of successful completion of the educational program, and the manner in which completion is accomplished. It is reasonable to require an official transcript for each student because it is a common practice for educational institutions to document and retain this information.

6700.0400 CERTIFICATION OF SCHOOLS.

Subp. 1. Application.

It is necessary to ensure that the system board office of each college or university seeking approval and the Higher Education Coordinating Board (HECB) have reviewed and supported the application for certification. It is reasonable to require this as the system board office is the body which is fiscally responsible for conducting these programs. Also, the system board office and the HECB are responsible for reviewing and approving new academic programs. It is reasonable for the POST Board to know that all applications have fulfilled the policy and statutory requirements before it would take any action. Lastly, because of this review process, the original

application may be amended and it is reasonable for the POST Board to act upon a final application.

Subp. 3. Certification.

Item B.

It is necessary to change this language as programs are not always conducted within a school campus, but may be delivered at a "site" other than a campus.

Item C.

It is necessary to ensure that the system board office of each certified school, and the Higher Education Coordinating Board have reviewed and supported the application for certification. It is reasonable to require this as the system board office is the body which is fiscally responsible for conducting these programs. Also, the system board office and the HECB are responsible for reviewing and approving new academic programs. It is reasonable for the POST Board to know that all applications have fulfilled the policy and statutory requirements before it would take any action. Lastly, because of this review process, the original application may be amended and it is reasonable for the POST Board to act upon a final application.

6700.0500 PEACE OFFICER LICENSING EXAMINATION.

Subp. 3. Eligibility for examination.

Completion of professional peace officer education is a prerequisite to taking the peace officer licensing exam, pursuant to this subpart. The only way to determine with certainty that a person has completed professional peace officer education is to examine the official transcript from the school where the education was offered. It is reasonable to require an official certified transcript to ensure that those who apply for the exam have completed the necessary education.

Subp. 5. Reinstatement of eligibility.

The Board believes that individuals who have not been licensed to practice within three years of taking the licensing exam should re-take the exam. This is reasonable because those who have not been engaged in the practice of law enforcement have not been required to attend continuing education courses. Therefore, the only way to determine if they have the requisite level of knowledge to continue as eligible to be licensed is to require those individuals to re-take the licensing exam.

6700.0600 LICENSING EXAMINATIONS

Subp. 1. It is necessary that administration of the exam be done in as orderly a manner

as possible. Considerable experience with administration of the peace officer licensing examination has shown that a deadline is necessary in order to give the Board enough time to notify applicants that their application has been approved and to notify them as to the date and time of the examination. This experience has shown that a two week deadline is reasonable.

Subp. 5. Reinstate eligibility.

In light of the Board's experience with the one-year period of applicant eligibility, it is necessary to clarify exactly when this one-year period begins. The rule as previously worded was ambiguous. The proposed change is reasonable because it is clear and because it gives the applicant a longer period than if the date of mailing the application was used.

6700.0601 EXAMINATION STANDARDS.

Subpart 1. Grounds for denial.

Item 1.

This change is needed to bring the standards of conduct requirements for eligibility to take the peace officer examination into line with those for eligibility to be licensed. There is no point in allowing ineligible individuals to take the examination when the Board could not subsequently license these individuals. The proposed amendment is reasonable because to allow people to take the exam who would not be eligible to be licensed is a waste of the state's resources and a waste of time for the ineligible person.

6700.0700. MINIMUM SELECTION STANDARDS.

Subpart 1. Selection standards.

It is necessary to substitute the word "affirm" for "certify, because the term "certify" is used in reference to academic institutions in another part of the rule. Using the term in this part causes confusion as to the meaning of the term. It is reasonable to substitute the term "affirm" because it has substantially the same meaning and yet does not cause confusion.

Subpart 2. Documentation.

Subpart 2 is changed to refer to part 6700.0500, subpart 3, instead of subpart 1. This corrects the incorrect reference to subpart 1, which has been repealed.

Subpart 3. Requirements.

It is necessary to delete this portion of the rule because it was often misconstrued as meaning

that applicants were not required to meet all of the minimum selection standards in order to be licensed.

6700.0701 NOTIFICATION OF CONVICTION.

It is necessary that an agency notify the Board when the agency discovers an applicant has been convicted of a crime listed in the rules so that the Board may take action against the eligibility status of the applicant. It is reasonable to require the agency to contact the Board because the agency performs the background investigations.

6700.0800 LICENSING OF PEACE OFFICERS.

Subpart 1. Board appointees; notification.

The substitution of the word "any" for "and" corrects a grammatical error. The last sentence was added to ensure that the Board receives the notification form before the person is allowed to practice. This is reasonable because until the Board receives the notification, there is no way to know whether or not the person is really eligible to be licensed.

Subpart 4. Licensing fee.

It is necessary to change the licensing fee structure because it was confusing to applicants and resulted in mistakes and delay in application. It is reasonable to use the amended fee structure because it makes the system less confusing and because it will save time, effort and expense for the Board as well as the applicant.

6700.1000 LICENSE RENEWAL.

Subpart 1. Validity of licenses and renewal dates.

The changes in this subpart are grammatical and make the rule more understandable.

Subpart 3.

Items B, C and D.

Minnesota Statutes, section 626.8452 requires all peace officers to receive instruction in use of force and deadly force on an annual basis. This instruction must be based on the Board's learning objectives for use of force and deadly force training. Prior to 1992, no such requirement existed. The rule must be changed because typically this instruction involves more than two hours of time. It is reasonable to allow this training time to count toward continuing education credit since the training is mandated by statute and also because it provides meaningful educational and training experiences.

Subpart 5. Expiration of license.

The Board often receives questions about the meaning of the term "lapse," as it is used regarding licenses. The term, which essentially means "expire," has proved confusing to licensees. The term "expire" is substituted for the term "lapse" to avoid this confusion. The change is reasonable because it makes the rule more clear. The same rationale exists for the changes set forth in subparts 6, 7, and 8.

Subpart 10. Continuing education after license is restored.

The on line shooting time restriction is deleted for the same reason as set forth for subpart 3, items B, C, and D.

6700.1101 PART-TIME PEACE OFFICERS

Subp. 2. Minimum selection and training standards.

The word "certify" is replaced by "affirm" for the same reason as set forth in part 6700.0700, subpart 1.

Subp. 4. Notification of appointment of a part-time peace officer.

This change provides that the appointed part-time peace officer may not exercise powers until a notification form is received by the Board. This change is necessary because part-time peace officers are often appointed and employed without the appointing agency providing a Personnel Notification form to the Board. Requiring a Personnel Notification form is reasonable because it is the Board's method of ensuring that those individuals who are appointed by local units of government are in fact licensed or eligible to be licensed.

Subp. 6. Issuance of part-time peace officer license.

This change strikes language which sets up several schedules for assessing licensing fees. It further establishes the effective term of the license. The change eliminates language which is confusing. The changes are reasonable because they make the rules easier to understand and provide more concrete direction with regard to the term of the validity of the license.

Subp. 7. Inactive status of part-time peace officer license.

This rule states that an individual who possesses an inactive part-time peace officer license has no part-time peace officer power or authority. This rule is necessary because staff has encountered numerous situations in the past where individuals who possess inactive part-time peace officer licenses were performing law enforcement duties. The change is reasonable

because it makes clear that individuals who are not acting as authorized agents of a local government may not exercise powers reserved for such agents.

PART-TIME PEACE OFFICERS: FORWARD

Considerable effort went into developing the proposed rules on part-time peace officers. Because of the technical nature of the rule, and the controversy surrounding the rule, some background is in order.

A part-time peace officer is defined in Minnesota Statutes section 626.84, subdivision 1(f), as "an individual licensed by the Board whose services are utilized by law enforcement agencies no more than 20 hours per week, not including time spent on call when no call to active duty is received, calculated on an annual basis, who has either full powers of arrest or authorization to carry a firearm while on active duty" However, Minnesota Statutes, section 626.8461, which establishes the Legislature's policy on part-time peace officers, provides that the legislature "finds that part-time peace officers are most effectively utilized as a supplement to regular, fully trained and licensed, peace officers and does not encourage the use of part-time peace officers when needs for service would otherwise justify the use of peace officers." Furthermore, part-time peace officers may only exercise powers and duties under the supervision of a licensed peace officer, as set forth in Minnesota Statutes, section 626.8465, subdivision 1.

Thus, part-time peace officers may be distinguished from peace officers in several respects. First, they are not required to complete the professional peace officer education program prior to licensure. In fact, under part 6700.1101, subpart 1, the training of a part-time peace officer is the responsibility of the chief law enforcement officer for whom the part-time peace officer works. Second, the part-time peace officer may work only while supervised by a fully licensed peace officer, designated by the chief law enforcement officer. Third, the part-time peace officer may work no more than 20 hours per week, calculated on an annual basis.

The Board has authority to promulgate rules regarding supervision and hours worked by part-time peace officers. Thus, the training issue is beyond the scope of the proposed rules. The issue of supervision of part-time peace officers brought the most comment from concerned parties. Since there is no definition of the term supervision in the statutes, there were varied interpretations as to what constitutes supervision of part-time peace officers. Some agencies only utilize part-time peace officers when they are in the direct presence of another peace officer. Other agencies utilize part-time peace officers while no peace officer is immediately available. Because under either scheme, an argument can be made that the part-time peace officer is supervised, there is no uniformity as to how agencies supervise part-time peace officers.

The Board's staff, in conjunction with a discussion group, considered several proposals for defining supervision. One such proposal was to leave the definition of supervision to the local agency. The Board rejected this idea because it believed that, given the minimal training standards imposed upon part-time peace officers, some form of meaningful supervision by a trained peace officer was necessary. The Board also considered requiring direct presence of a

peace officer, or continuous monitoring of the part-time peace officer by a peace officer. However, the Board backed away from these definitions after hearing objections from smaller agencies who said that such a stringent requirement for supervision would cause a great economic burden.

The Board finally decided upon a definition of supervision that requires the part-time peace officer to have the ability to directly contact the supervising officer, and also requires the supervisor to have the ability to respond within a reasonable time. The Board believed that this definition created some latitude for smaller agencies in providing supervision, but did not go so far as to make the requirement for supervision meaningless. The Board believes that any definition which is less restrictive with regard to supervision would ignore the public's interest in safe and effective law enforcement.

The Board believed that to give practical effect to the new rule on supervision, law enforcement agencies should be required to memorialize their processes for supervising part-time peace officers in the form of policy. The requirement for policy would encourage agencies to develop meaningful plans for providing part-time peace officer supervision. The policy requirement would also require agencies to ensure that part-time peace officers are aware of the identity of the supervisor, and that the designated supervising officer is aware of the responsibility to provide supervision.

6700.1105 DEFINITIONS.

Subpart 1. Scope.

Subpart 1 sets out the scope of the definitions in this part.

Subp. 2. Active duty status.

Part-time peace officers are limited in the number of hours which they may work on active duty status, pursuant to Minnesota Statutes, section 626.84, subdivision 1(f). Thus, in order to ensure that officers work no more than the number of hours provided under section 626.84, subdivision 1(f), it is necessary to define which hours count toward that limit. The definition is reasonable because it defines as active duty status those times when the part-time peace officer is acting as an agent of the local government.

Subp. 3. Designated peace officer.

A definition of "designated peace officer" is necessary because Minnesota Statutes, section 626.8465, subdivision 1, requires that part-time peace officers be supervised by a peace officer designated by the chief law enforcement officer. The definition is reasonable because it allows the chief law enforcement officer the latitude to designate another as a supervisor.

Subp. 4. Hours worked.

Minnesota Statutes, section 626.84, subdivision 1(f), provides that part-time peace officers may work no more than an average of 20 hours per week calculated on an annual basis. Because the proposed rules will attempt to implement a system for calculating the number of hours worked, it is necessary to define the term. The definition is reasonable because it requires that only the actual number of hours served on active duty status be calculated.

Subp. 5. Supervision of part-time peace officers.

This subpart is necessary because at present, there is no definition as to what constitutes the supervision of a part-time peace officer. Supervision of part-time peace officers is required by Minnesota Statutes, section 626.8465, subdivision 1. The amendment is reasonable because it defines supervision in broad terms which merely require that the part-time peace officer and designated officer can directly contact one another and can achieve direct personal contact within a reasonable time. Such a requirement is reasonable because part-time peace officers are allowed to practice without meeting the same educational or training requirements as those imposed upon peace officers and because this is the least restrictive definition of supervision that the Board considers meaningful.

6700.1110. SUPERVISION OF PART-TIME PEACE OFFICERS.

Subpart 1. Scope.

Subpart 1 establishes the individuals and agencies to whom the rules apply. Subpart 1 is reasonable because it indicates that the rule applies only to those agencies which employ, appoint or otherwise utilize the services of part-time peace officers.

Subp. 2. Agency using a part-time peace officer.

This subpart is needed because the Board believes that agencies should establish policies which outline the parameters for employment of part-time peace officers. The Board believes written policies best accomplish this goal, because they require the agency drafting the policy to give serious thought to the issue, to commit to a position on the issue, and to memorialize this position so that it remains uniform. Requiring a written policy is reasonable because it provides a medium by which peace officers, part-time peace officers and the public can be made aware of a department's philosophy with regard to use of part-time peace officers.

Item A.

Minnesota Statutes, section 626.843, subdivision 1(m), requires the Board to adopt rules

regarding hours worked by a part-time peace officer on active duty. Agencies must define when the part-time peace officer is on active duty in order for the part-time peace officer to know which hours count against the annual restriction. This requirement is reasonable because it allows agencies to determine those hours which count toward the hour restriction imposed under Minnesota Statutes, section 626.84, subdivision 1(f).

Item B.

It is necessary that a part-time peace officer be aware of the means by which he or she can contact the designated supervising officer. This is reasonable because absent such notification, neither the part-time peace officer nor the designated peace officer would be aware of the existence or active duty status of the other. Such a situation would in effect make supervision non-existent.

Item C.

It is necessary that an agency specify how the supervision is to be effected so that the person providing the supervision, and the person being supervised are aware of their duties and responsibilities. It is reasonable because it simply requires agencies to establish a plan for properly supervising part-time peace officers, and supervision cannot be meaningfully accomplished absent such a plan.

Item D.

The designated officer needs to receive notice as to when responsibility for supervision has terminated by virtue of the fact that the part-time peace officer has left active duty status. It is reasonable because it requires the subordinate to give notice to the supervisor of the subordinate's activity.

Subp. 3. Agency providing supervision for part-time peace officer.

It is necessary for the agency utilizing a part-time peace officer to give affirmative notice to the designated peace officer that the designated peace officer is responsible for supervision of the part-time peace officer, so that the designated officer knows when this duty arises. It is reasonable to require notice because without notice, the designated officer would have no way of knowing that he or she is responsible for supervision.

Item A.

It is necessary that the agency have a plan for how the designated peace officer is to be notified that he or she is responsible for supervision. This is reasonable because without such a provision, an individual could be designated as a supervising officer without ever having actual knowledge of that status and responsibility.

Item B.

It is reasonable to advise designated officers of the duties and responsibilities they assume as designated officer, so that they can fully discharge these duties. Without such notice, the designated supervising officer would be unaware of what is expected of him or her as a supervisor.

Item C.

It is reasonable for the designated officer to learn how the part-time peace officer will notify the designated peace officer as to the part-time peace officer's active duty status, so that the designated officer can be available in anticipation of such notice.

Item D.

It is reasonable to state how the designated officer is to be notified when he or she is no longer responsible for supervision because the part-time peace officer is no longer on active duty status, so the designated officer does not continue under the impression that he or she is responsible for supervising an officer who is no longer on duty. The supervising officer is entitled to be made aware of the point in time at which the supervisory responsibilities are no longer required.

Subp. 4. Supervision of part-time peace officers by designated peace officer in a different agency.

It is a common practice in the law enforcement community for officers from one agency to supervise part-time peace officers employed by another agency. It is important that these relationships be accompanied by the same policies as would be required for an agency which utilizes part-time peace officers.

Item A.

This requirement is reasonable for the same reasons set forth under subpart 3.

Item B.

This amendment is reasonable for the same reason as set forth under subpart 3.

Item C.

Departments which supervise officers for other departments need to have information as to the duties and responsibilities for doing this. Item C is reasonable because it requires that the essential elements of an agreement (effective date, liability and indemnification, and terms by

which the agreement may be altered) must be placed in writing before agencies may exercise supervision for individuals who are not employees or appointees of the supervising agency.

Item D.

Absent a joint powers agreement, an officer from an agency has no authority nor jurisdiction to direct or otherwise supervise an employee of another agency. The requirement for a joint powers agreement is reasonable because it is the statutory method by which agents of one unit of local government may exercise authority within the jurisdiction of another unit of local government.

6700.1115 HOURS WORKED BY PART-TIME PEACE OFFICER.

Subpart 1. Limitation.

The hour limitation in the rules comes from Minnesota Statutes, section 626.84, subdivision 1(f). Stating the requirement in the rule makes clear the Board's interpretation of the statute.

Subpart 2. Documentation.

Minnesota Statutes, section 626.84, subdivision 1(f), restricts the number of hours a part-time peace officer can work. It is necessary to ensure compliance with the statutory requirement. Requiring record keeping of the part-time peace officer's time is a reasonable way to ensure compliance because without such records, there would be no way to show compliance with the hour restriction.

Subpart 3. Reporting.

It is a common practice for part-time peace officers to work for more than one law enforcement agency. However, Minnesota Statutes, section 626.84, subdivision 1(f), provides that they may only work a total of 1040 hours per year. Thus, part-time peace officers reporting the numbers of hours worked will ensure compliance with the statute. It will also ensure that the chief law enforcement officer does not plan and schedule to utilize a part-time peace officer who has reached the hour limitation. It is reasonable to require reporting because it is the only way that an agency can track the number of hours worked by a part-time officer who works for multiple agencies. The requirement of monthly reporting is reasonable because it is no more burdensome than requiring reporting on a weekly or semi-annual basis.

Subpart 4. Record retention.

Records must remain available so that the Board can investigate complaints which may be received at a later time. It is reasonable to require the part-time peace officer to maintain these records since he or she is responsible for filling out the records. It is reasonable to require that the records be retained for five years because it imposes little burden on the part-time peace officer and because the Board frequently receives complaints of violations which are several

years old or of violations which have been ongoing for several years.

6700.1120. AGENCIES

Many agencies do not presently report the utilization or employment of part-time peace officers. It is necessary that the Board be made aware of which agencies utilize part-time peace officers, so that the policy and supervision requirements of the rule can be monitored. It is reasonable because agencies are the only entities which possess this information.

6700.1125. POLICY DISTRIBUTION.

It is necessary to require agencies to inform both the part-time peace officer and the designated officer as to their duties under the policies adopted by the department so that these officers are aware of what the policies say. The rule is reasonable because the agency is in the best position to provide the policy to its employees.

6700.1130. TERMINATION OF PART-TIME PEACE OFFICERS.

At present, agencies often discontinue the use of an individual part-time peace officer without ever serving notice to the individual that his or her authority to act as an agent of the city has been revoked. Thus, individuals erroneously believe that they have the authority to act in the name of the municipality, when in fact such authority no longer exists. It is necessary that these individuals be made aware of their employment status. The amendment is reasonable because it simply requires local government to give notice to an employee that the employee is no longer authorized to act as an agent of that unit of government.

6700.1300. TRANSITION FROM PART-TIME PEACE OFFICER.

Subp. 2. Eligibility.

Item C.

The Board believes that those individuals seeking a waiver under this provision should be actively pursuing a peace officer license through enrollment in a professional peace officer education program. This rule is necessary to give effect to the Board's position. This is reasonable because documentation of enrollment in such a program is the only way the Board can ensure that the individual is actively pursuing a license.

Subp. 3. Declaration of intent.

In order to declare intent to request permission for transition from part-time peace officer to peace officer, a local unit of government must demonstrate compelling need. However, under the present rule, compelling need is not defined. It is necessary to define compelling need so that agencies are aware of the standard which must be met before petitioning the Board for

waiver and transition. The definition is reasonable because it requires the agency to show it is forced to ask for a waiver, and "compel" means "to force."

Subp. 4. Removal of hour restriction.

This amendment is needed because the Board believes that waivers of the hour restriction should be of a limited duration. This rule accomplishes that by shortening the length of time during which the hour restriction for part-time peace officers may be exceeded. At present, the one year exemption would allow a part-time peace officer to work for two years without obtaining a peace officer license. The rule is reasonable because it accomplishes the Board's purpose of restricting the time available for practice under the waiver. It is reasonable to restrict this time because it encourages individuals to complete the professional peace officer education program.

Subp. 5. Specialized training school.

This provision of the rule is repealed since specialized training schools no longer exist.

Subp. 6. Skills school.

This subpart is repealed because skills schools as they were once known no longer exist.

Subp. 7. Eligibility for licensing.

This subpart is repealed because skills examinations are no longer offered.

Subp. 8. Eligibility for licensing.

It is necessary to establish that transition from part-time peace officer to peace officer demands that the requirements of the professional peace officer education program are met. It is reasonable since the professional peace officer program contains those components deemed necessary for an individual to effectively function as a peace officer.

6700.1400 INACTIVE STATUS OF PEACE OFFICER LICENSES.

Subp. 4. Inactive status. No peace officer authority.

This amendment is necessary because individuals placed on inactive status often erroneously believe that they still possess the power and authority of a peace officer. It is reasonable to include this amendment so that individuals whose licenses are placed on inactive status have affirmative notice that they are divested of peace officer authority.

6700.1600. VIOLATIONS OF STANDARDS OF CONDUCT.

Item E.

This amendment establishes that a violation of any rule set forth in chapter 6700. is grounds for disciplinary action. This is reasonable because the Board is empowered to promulgate and enforce such rules under Minnesota Statutes, section 626.843.

Item G.

This amendment allows the Board to take action against a licensee who was convicted of theft in another state. Conviction of theft under Minnesota law constitutes grounds for license revocation. The amendment is reasonable because similar charges bought in other states should similarly affect the licensee.

Item H.

This amendment is necessary because under Minnesota Statutes, chapter 214, all licensing Boards are required to seek sanctions against individuals who have been convicted of the enumerated offenses. The amendment is reasonable because it places into the rule the requirement which exists in statute.

6700.1800 REIMBURSEMENT TO LOCAL GOVERNMENT

Subpart 5. Signing of application forms.


The first amendment in this subpart eliminates the requirement that an application form must be signed by a designated official. This signature is often inadvertently omitted by the applicant agency, which omission results in a delay in providing reimbursement until the error can be corrected. This signature is not important in ensuring the accuracy of the form. It is reasonable to make this change because it simplifies the process.

The second part of this subpart requires that forms be submitted within 30 days rather than 60 days. This is reasonable because the agencies will receive their funds sooner and the reimbursement account will be closed earlier each year.

CONCLUSION

Based on the foregoing, the Board's proposed rule amendments are both necessary and reasonable.

08-23-93
Date


William R. Carter, III
Executive Director

STATE OF MINNESOTA

Department: of Finance

Office Memorandum

Date: August 20, 1993

To: George Beck, Administrative Law Judge Supervisor
Office of Administrative Hearings

From: Michelle Harper *ah*
Budget Operations

Phone: 296-7838

Subject: Departmental Earnings Rate Change Response - Peace Officer Licensing

Pursuant to provisions of Laws 1993, sec. 56, subd. 5 (M.S. 16A.1285), the assigned Executive Budget Officer with the Department of Finance has reviewed and approved the attached departmental earnings proposal submitted by Public Safety for the Peace Officer Standards and Training Board on 8/18/93. If you have any questions or concerns, please call me at the above number.

cc: Frank Ahrens, Public Safety
Dwight Pederson
Patricia S. Nolte, Attorney General

Post-It™ brand fax transmittal memo 7671		# of pages ▶
To: <i>Dave Orsen</i>	From: <i>Tom H. Martin</i>	
Co.	Co.	
Dept.	Phone #	
Fax # <i>17-7313</i>	Fax #	

(\$1,000,000 = 1,000)

Part B: Fiscal Detail

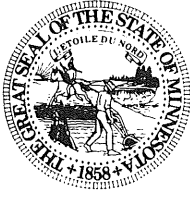
APID: 21509:99-10		AID:939181		Rev. Code(s): 300 & 310		Dedicated <input checked="" type="checkbox"/> Non-Dedicated	
Item	F.Y. 1991	F.Y. 1992	F.Y. 1993	F.Y. 1994 As Shown in Biennial Budget	F.Y. 1995 As Shown in Biennial Budget	F.Y. 1994 As Currently Proposed	F.Y. 1995 As Currently Proposed
Revenues:							
USER/SERVICE CHARGE	32	33	32	33	33	33	33
OCCUPATN'L LICENSE	53	45	47	45	45	49	49
Expenditures:							
Direct	62	66	70	72	76	72	76
Indirect	6	6	7	7	7	7	7
Total	68	72	77	79	83	79	83
Current Deficit/Excess	17	6	2	(1)	(5)	3	(1)
Accumulated Excess/Deficit* (17)	-0-	6	8	7	2	11	10

As necessary, attach detailed schedule/listing of proposed changes in departmental earnings rates.

Agency Signature: 

* F.Y. 1991 beginning accumulated balance to include amount of accumulated excess/deficit (if any) carried forward from F.Y. 1990.

SENT BY: 8-20-93 15:47 MN DEPT. OF FINANCE MN Public Safety: 2



**Minnesota Board
of Peace Officer
Standards and Training**

1600 University Avenue
Suite 200
St. Paul, MN 55104-3825
(612) 643-3060
TDD (612) 297-2100

August 23, 1993

Ms. Maryanne V. Hruby, Executive Director
Legislative Commission to Review Administrative Rules
55 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter Of The Proposed Rules Of The Minnesota Board Of Peace
Officer Standards And Training Governing The Licensing, Education, And
Standards For Peace Officers And Part-Time Peace Officers

Dear Ms. Hruby:

The Minnesota Board of Peace Officer Standards and Training intends to adopt rules governing the licensing, education, and standards for peace officers and part-time peace officers. We plan to publish a Notice Of Intent To Adopt Rules in the September 7, 1993, State Register.

As required by Minnesota Statutes, sections 14.131 and 14.23, the Board has prepared a Statement of Need and Reasonableness which is now available to the public. Also as required, a copy of this Statement is enclosed with this letter.

For your information, we are also enclosing a copy of the Notice Of Intent To Adopt Rules and a copy of the proposed Rules in this matter.

If you have any questions about these rules, please contact me at 643-3060.

Yours very truly,

George Wetzel by Deo

George Wetzel

enclosures: Statement of Need and Reasonableness
 Notice Of Intent To Adopt Rules
 Rules

