

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WEST VIRGINIA STATE POLICE TITLE NUMBER: 81

CITE AUTHORITY W. Va. Code 15-2-25

AMENDMENT TO AN EXISTING RULE: YES NO

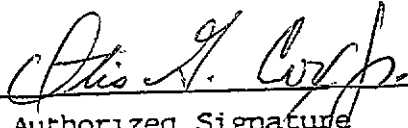
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: ADMINISTRATIVE RULES

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

\$6.00

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JAN 23 11 51 AM '98

TITLE 81
LEGISLATIVE RULES
~~DEPARTMENT OF PUBLIC SAFETY WEST VIRGINIA STATE POLICE~~

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 1
ADMINISTRATIVE REGULATIONS RULES

§81-1-1. General.

1.1. Scope. -- These rules govern the administration of the ~~Department of Public Safety West Virginia State Police.~~

1.2. Authority. -- W. Va. Code §15-2-25 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of former rule - This legislative rule repeals and replaces 81CSR1 et seq., "Administrative Regulations" filed on July 25, 1984 and effective July 25, 1984.

~~§81-1-1~~ §81-1-2. Mission And Operation, of the West Virginia Department Of Public Safety State Police.

~~2.1. This section relates to West Virginia Code section twelve, article two, chapter fifteen.~~

~~2.2.2.1. The Department of Public Safety shall have Policy and procedure governing the internal management and operation of the mission of statewide enforcement of criminal and traffic laws with emphasis on providing basic enforcement department shall be contained within the department's Operational Policy and citizen protection from criminal depredation throughout the state and maintaining the safety of the state's public streets, roads and highways Procedure Manual.~~

~~2.3.2.2. Policy and procedure governing Each member of the internal management and operation of the Department West Virginia State Police shall be contained within the Department's issued a copy of the Operational Policy and Procedure Manual.~~

~~2.4.2.3. Each member of the Department of Public Safety shall be issued a copy of the General Orders Manual and If any portion of the Operational Policy and Procedure Manual is amended, each member shall be issued a copy of the amendment.~~

~~2.5.2.4. If any portion of the General Orders Manual or the Operational Policy and Procedure Manual is amended, each member shall be issued a copy of the amendment to ensure that his or her Operational Policy and Procedure Manual contains all current operational policies and procedures.~~

~~2.6.2.5. Each member shall ensure that his General Orders Manual and Operational Policy and Procedure Manual contain all current general orders and the continued efficient operation of the organization, a department memorandum or teletype issued by authority of the Superintendent may temporarily amend or rescind any operational policies and procedures policy or procedure until a revised draft is issued. Department memoranda shall be issued at the direction of the Superintendent.~~

~~2.7.2.6. To ensure the continued efficient operation of the organization, a department memorandum or teletype issued The enlistment, permanent transfer, promotion, demotion, suspension or discharge of members of the West Virginia State Police shall be effected by authority of the Superintendent may temporarily amend or rescind any general department special order or operational policy or procedure until a revised draft is issued. Department memoranda special orders shall be issued by at the direction of the Superintendent.~~

~~2.8. 2.7. The enlistment, permanent transfer, promotion, demotion, suspension or discharge of members of the Department of Public Safety shall be effected by department special order. Department special orders shall be issued by the direction of the Superintendent.~~

~~Information to members may be disseminated either by department memorandum or department notice.~~

~~2.9.2.8. Transfers All members of the West Virginia State Police shall adhere to all policies, procedures, and rules governing the operation of the department. See Section 7 of these rules Failure to adhere to any specified policy, procedure, or rule may be punishable by counseling, reprimand, demotion, suspension with pay, suspension without pay or discharge.~~

~~2.10. Information to members may be disseminated either by department memorandum or department notice.~~

~~2.11. All members of the Department of Public Safety shall adhere to all policies, procedures, rules and regulations~~

~~governing the operation of the Department. Failure to adhere to any specified policy, procedure, rule or regulation may be punishable by reprimand, demotion, suspension with pay, suspension without pay or discharge.~~

§81-1-3. Organizational Structure And Duties.

3.1. This section relates to ~~West Virginia Code sections two, three and four, article two, chapter fifteen W. Va. Code §§15-2-2, 3 & 4.~~

3.2. The Superintendent shall serve as the executive and administrative head of the ~~Department of Public Safety State Police~~. The Superintendent shall hold the rank of Colonel and shall be entitled to all rights, benefits and privileges of regularly enlisted members.

3.3. The Superintendent shall appoint from the enlisted membership of the ~~Department of Public Safety State Police~~ a Deputy Superintendent who shall hold the rank of Lieutenant Colonel and be next in authority to the Superintendent.

3.4. The term Executive Office shall encompass the following: (1) Superintendent; (2) Deputy Superintendent; (3) Chief Officer in Charge of Staff Support Services; (4) Chief Officer in Charge of Field Operations; (5) Inspector; and (6) such other offices as the Superintendent deems necessary.

3.5. The Deputy Superintendent shall serve as the principal coordinator of department field operations and staff support services functions. The Deputy Superintendent shall perform other duties as may be assigned by the Superintendent.

3.6. If the Superintendent is unable to discharge the powers and duties of his office, due to illness, disease, injury or any other cause or is absent from the geographical boundaries of West Virginia, the order of succession is as follows:

(a) Deputy Superintendent;

(b) The senior member of the Executive Office if the Superintendent and Deputy Superintendent are absent.

Whenever the Deputy Superintendent or the senior member succeeds to the Office of the Superintendent he shall exercise all the powers, functions, duties and responsibilities of the Superintendent.

3.7. The Superintendent shall appoint from the enlisted membership of the Department the number of officers and members necessary to operate and maintain the Executive Office.

3.8. The Chief Officer in Charge of Staff Support Services shall be responsible to the Superintendent for the coordination of all staff support services functions and the correlation of activities and duties of staff support services with those of field operations. The Chief Officer in Charge of Staff Support Services shall perform other duties as assigned by the Superintendent and/or Deputy Superintendent.

3.9. The Chief Officer in Charge of Field Operations shall be responsible to the Superintendent for the planning, conducting and monitoring of all field operations and the correlation of activities and duties of field operations with those of staff services. The Chief Officer in Charge of Field Operations shall perform other duties as assigned by the Superintendent and/or the Deputy Superintendent.

3.10. The Inspector shall be responsible to the Superintendent for ensuring that all members and civilian employees adhere to all policy and procedure governing the operation of the Department; the inspection of all Department owned, leased, rented or maintained structures; and, the inspection of all departmental records and reports. The Inspector shall serve as the Superintendent's principal point of contact regarding complaints filed against Department members or civilian employees. The Inspector shall submit to the Superintendent recommendations regarding the disposition of complaints. The Inspector shall perform other duties as assigned by the Superintendent.

~~3.11. The Department of Public Safety shall consist of the number of companies, districts and detachments as are required for the proper administration of the Department. Each company, district or detachment shall be composed of the number of officers and members the Superintendent deems necessary for the efficient operation of the Department.~~

~~3.12.~~ ~~3.11.~~ Each Company Headquarters Staff shall consist of the Company Commander; Company Executive Officer; Company Logistics Officer; and other members and civilian employees the Superintendent deems necessary.

~~3.13.~~ ~~3.12.~~ Each Company Commander shall be responsible for the planning, conducting and monitoring of all field operations occurring within his company. Each Company Commander shall be responsible for the correlation of the

activities and duties of members and civilian employees assigned to his command with those of staff services.

~~3.14.~~ ~~3.13.~~ Each Company Executive Officer shall perform duties assigned by his or her Company Commander. In the absence of the Company Commander, the Company Executive Officer shall serve as the Acting Company Commander and exercise all the powers, functions, duties and responsibilities of the Company Commander.

~~3.15.~~ ~~3.14.~~ Each Company Logistics Officer shall perform duties assigned by his Company Commander. In the absence of the Company Commander and the Company Executive Officer, the Company Logistics Officer shall serve as the Acting Company Commander and shall exercise all the powers, functions, duties and responsibilities of the Company Commander.

~~3.16.~~ ~~3.15.~~ Each District Headquarters Staff shall consist of the District Commander and other members and civilian employees the Superintendent deems necessary.

~~3.17.~~ ~~3.16.~~ Each District Commander shall be responsible for the planning, conducting and monitoring of all field operations occurring within his district. Each District Commander shall be responsible for the correlation of the activities and duties of members and civilian employees assigned to his command with those of staff services. Each District Commander shall perform duties as assigned by his or her Company Commander.

~~3.18.~~ ~~3.17.~~ Each Detachment Headquarters Staff shall consist of the Detachment Commander and other members and civilian employees the Superintendent deems necessary.

~~3.19.~~ ~~3.18.~~ Each Detachment Commander shall be responsible for the planning, conducting and monitoring of all field operations occurring within his or her detachment's area of operations. Each Detachment Commander shall be responsible for the correlation of the activities and duties of members and civilian employees assigned to his command with those of staff support services. Each Detachment Commander shall perform duties assigned by his or her District Commander.

~~3.20.~~ ~~The Superintendent shall appoint, from the enlisted members of the Department, the number of officers and members he deems necessary to operate and maintain a scientific laboratory; keep records relating to crimes and criminals; coordinate traffic safety activities; maintain a system of supplies and accounting; and, perform other necessary services.~~

~~§81-1-4. Rank Structure.~~

~~4.1. This section relates to West Virginia Code sections four and ten, article two, chapter fifteen.~~

~~4.2. The rank structure within the membership of the Department of Public Safety shall be as follows: Colonel; Lieutenant Colonel; Major; Captain; Lieutenant; Master Sergeant; First Sergeant; Sergeant; Corporal; Trooper First Class; and Trooper.~~

~~4.3. The Superintendent may appoint from the membership of the department eleven (11) principal supervisors who shall receive the compensation and hold the temporary rank of Lieutenant Colonel, Major or Captain at the will and pleasure of the Superintendent. Such appointments shall be exempt from any merit standards established by the Promotion Evaluation Board. Any person appointed to a temporary rank shall retain his permanent rank and shall remain eligible for promotion if his permanent rank is below that of Captain. Upon termination of his temporary appointment, the member shall be entitled to the full rights and privileges of his permanent rank and shall remain eligible for subsequent appointment to a temporary rank.~~

~~4.4. The appropriate insignia shall be as follows: Colonel -- Silver Eagle; Lieutenant Colonel -- Silver Oak leaf; Major -- Gold Oak Leaf; Captain -- Two Silver Shoulder Bars; Lieutenant -- One Silver Shoulder Bar and Noncommissioned Officers -- Black Chevrons of the Appropriate Rank~~

~~4.5. All members of the Department shall, while in uniform, wear the insignia appropriate to his rank.~~

~~§81-1-5. Powers Of The Superintendent, Officers And Member.~~

~~5.1. This section relates to West Virginia Code section twelve, article two, chapter fifteen.~~

~~5.2. The Superintendent, each officer and each member of the Department of Public Safety is empowered to:~~

~~(a) Make arrests anywhere within the state of any persons charged with the violation of any law of this State or of the United States, and when a witness to the perpetration of any offense or crime or to the violation of any law of this State or of the United States, may arrest without warrant; to arrest and detain any persons suspected of the commission of any~~

~~felony or misdemeanor whenever complaint is made and warrant is issued thereon for such arrest, and any person so arrested shall be forthwith brought before the proper tribunal for examination and trial in the county where the offense for which any such arrest has been made was committed;~~

~~(b) Serve criminal process issued by any court or magistrate anywhere within this State; and~~

~~(c) Cooperate with local authorities in detecting crime and apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor or offense against the law of this State or of the United States or of any ordinance of any municipality in this State; and to take affidavits in connection with any application to the Department of Highways, Department of Motor Vehicles, and Department of Public Safety of West Virginia for any license, permit or certificate that may be lawfully issued by these departments of state government.~~

~~5.3. Members of the Department of Public Safety are created forest patrolmen and game and fish wardens throughout the state to do and perform any duties and exercise any powers of such officers.~~

~~5.4. Members of the Department of Public Safety shall at any time be subject to the call of the West Virginia Alcohol Beverage Control Commissioner to aid in apprehending any persons violating any of the provisions of chapter sixty of the Code of West Virginia.~~

~~5.5. Members of the Department of Public Safety shall be empowered to serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly constituted authority, and shall exercise all of the powers conferred by law upon a sheriff except no member shall serve civil process or exercise any of the powers of such officer in civil matters.~~

~~5.6. Any member of the Department of Public Safety knowing or having reason to believe that anyone has violated the law may make complaint in writing before any court or officer having jurisdiction and procure a warrant for such offender, execute the same and bring such person before the proper tribunal having jurisdiction.~~

~~5.7. Members of the Department of Public Safety may execute any summons or process issued by any tribunal having jurisdiction requiring the attendance of any person as a~~

~~witness before such tribunal and make return thereon as provided by law and any return by a member showing the manner of executing such warrant or process shall have the same force and effect as if made by a sheriff.~~

~~5.8. Each member of the Department of Public Safety, when called by the sheriff of any county or when the Governor by proclamation so directs, shall have full power and authority within such county, or within the territory defined by the Governor, to direct and command absolutely the assistance of any sheriff, deputy sheriff, chief of police, policeman, game and fish warden and peace officer of the state, or of any county or municipality therein, or of any able-bodied citizen of the United States, to assist and aid in accomplishing the purposes expressed in article two, chapter fifteen of the West Virginia Code.~~

~~5.9. The Superintendent may assign members to perform police duties on any turnpike or toll road, or any section thereof, operated by the West Virginia Turnpike Commission.~~

~~§81-1-6. Limitations Upon Members.~~

~~6.1. This section relates to West Virginia Code sections five, twelve, thirteen and eighteen, article two, chapter fifteen.~~

~~6.2. Each member of the Department, except the Superintendent, shall execute before entering upon the discharge of his duties a bond with security in the sum of five thousand dollars (\$5,000) payable to the state of West Virginia, conditioned upon the faithful performance of his duties. Such bond shall be approved as to form by the Attorney General and to sufficiency by the Governor.~~

~~6.3. No member of the Department of Public Safety shall serve civil process.~~

~~6.4. No member of the Department of Public Safety shall:~~

~~(a) In any way interfere with the rights or property of any person except for the prevention of crime;~~

~~(b) In any way become active or take part in any political contest or at any time participate in any political party caucus, committee, primary, assembly or convention, or in any general or special election, except to cast his ballot. (See Sections 10.23, 10.24 and 10.25 of these rules for specific prohibitions).~~

~~(c) Be detailed or ordered to duty at or near any voting precinct (polling place) where any election or convention is held on the day of such election or convention; nor shall any member thereof remain in, about, or near such voting precinct (polling place) or place of convention, except to cast his vote; (See Sections 10.23, 10.24 and 10.25 of these rules for specific prohibitions).~~

~~(d) Act as an election official (See Sections 10.23, 10.24 and 10.25 of these rules for specific prohibitions); or~~

~~(e) In any labor trouble or dispute between employer and employee, aid or assist either party thereto, but shall in such cases see that the statutes and laws of this State are enforced in a legal way and manner.~~

~~6.5. No officer or member of the Department of Public Safety shall hire himself to any person, firm or corporation to guard his private property or demand or receive from any person, firm or corporation any money or other thing of value as a consideration for the performance of, or the failure to perform, his duties under the regulations of the Superintendent and the provisions of article two, chapter fifteen of the West Virginia Code.~~

~~6.6. A retired member of the Department of Public Safety shall not, while in retirement status, act under authority of law and specifically those relating to the Department or exercise any of the powers conferred upon active members.~~

~~§81-1-7. §81-1-4 Transfer.~~

~~7.14.1. This section relates to West Virginia Code section twenty, article two, chapter fifteen.~~

~~7.24.2. Definitions. -- For purposes of this section:~~

~~(a) TransferIntercompany means assignment from one (1) detachment to another detachmenta different company.~~

~~(b) PermanentIntracompany means more than sixty (60) dayswithin the member's company.~~

~~(c) TemporaryInvoluntary transfer means sixty (60)a transfer that is not at the request or less than sixty (60) dayswith the consent of the member.~~

~~(d) Intracompany means within the member's companyOperational needs - shall encompass; consideration of~~

officer safety, the department's ability to provide services, the member's performance and ability, supervisory evaluation of member's suitability, change in mission or within Department Headquarters mission priority, department resources and budget management, and/or other reasonable factors.

(e) Intercompany Permanent means to a different company, into or out of Department Headquarters more than sixty (60) days.

7.3(f) Temporary means sixty (60) or less than sixty (60) days.

When any member of the Department is to be permanently transferred, the member shall be notified in writing of the proposed transfer at least fifteen (15) calendar days prior to the effective date of such transfer.
(g) Transfer means assignment from one (1) field operation station to another field operation station.

The Superintendent shall not be required to give notice if the transfer is
(h) Voluntary transfer means a transfer at the request of or is waived by with the consent of the member who is to be transferred.

4.3. To meet operational needs, when any member of the department is to be involuntarily and permanently transferred, the member shall be notified in writing of the proposed transfer at least fifteen (15) calendar days prior to the effective date of such transfer. The Superintendent shall not be required to give notice if:

(a) the transfer is voluntary; or

(b) the result of a promotion to a supervisory rank; or

(c) the result of a member's request for appointment to a support specialist position; or

(d) at the request of or is waived by the member who is to be transferred.

The day the notice is given shall not be counted in the fifteen (15) days' notice requirement. Oral notification shall suffice to temporarily transfer a member inter or intracompany; oral notification shall be confirmed in writing. The Superintendent may transfer members to meet the operational needs of the Department. A transfer may not be made as a

~~disciplinary measure. Company commanders are authorized to initiate intracompany temporary transfers.~~

~~7.44.4. A department special order shall be used to effect a permanent transfer. Department special orders shall be issued byat the direction of the Superintendent.~~

~~7.54.5. Any nonprobationary member of the Department of Public Safety shall have the right to appeal any permanentIf a transfer is grieved pursuant to CSR 8 et seq.~~

~~7.6, the transfer under consideration shall not occur prior to the decision of level III grievance evaluator, or if appealed from level III, the level IV hearing examiner.~~

~~If any appeal is initiated, the transfer under consideration shall not occur prior to the rendering of the decision of the Department Appeal Board convened in regard to determining the merits of the involved member's appeal4.6. The Department Appeal Board shall be convenedIf the grievance is denied by either the level III grievance evaluator, or in accordance with the provisions of West Virginia Code section sixthe case of an appeal to level IV hearing examiner, article two, chapter fifteen the transfer shall be effective upon the issuance of the grievance evaluator's or hearing examiner's decision.~~

~~7.74.7. If the transfer is upheld by the Department Appeal Board, such transfer shall be effective upon the issuance of the Appeal Board's decision. Either party aggrieved by the Appeal Board's decision may appeal the decision to the Circuit Court of Kanawha County within sixty (60) days of receipt of a copy of the Board's decision.~~

~~7.8. Whenever any member of the Department is transferred in excess of sixty (60) calendar days, reasonable and necessary transportation expenses actually incurred in moving the household furniture and effects of the member and his immediate family shall be paid by the Department. Such moving expenses shall be encumbered in compliance with special orders. The provisions of this subsection shall apply if the transfer is requested by the member.~~

~~7.94.8. If the member transferred owns and resides in a mobile home, the Department shall pay reasonable and necessary transportation expenses actually incurred in moving such mobile home: **Provided,** That such expenses do not exceed the amount which would have been paid for moving an equivalent amount of household furniture and effects had the member not owned and~~

resided in a mobile home. The provisions of this subsection shall apply if the transfer is requested by the member.

7.104.9. If a transfer for a period in excess of sixty (60) calendar days necessitates the relocation of the involved member's family, the member shall be entitled to a relocation allowance of three hundred dollars (\$300) which shall be paid by the Department. When a member relocates from state owned or leased property to state owned or leased property such payment shall not be made.

7.114.10. Members of the Department shall not be restricted from residing in a county other than that in which they are stationed except that the Superintendent may promulgate by appropriate written regulation to be applied uniformly throughout the Department a restriction as to either the number of miles distant from his station which a member may reside or the time necessary under ordinary traffic conditions for a member to travel between his residence and station.

~~§81-1-8. Reserved.~~

~~§81-1-9. Promotion Evaluation Board.~~

~~9.1. This section relates to West Virginia Code section nine, article two, chapter fifteen.~~

~~9.2. The Superintendent shall appoint a Promotion Evaluation Board representative of the commissioned and noncommissioned officers within the Department.~~

~~9.3. The Promotion Evaluation Board shall consist of not fewer than three (3) members. The highest ranking member shall serve as the board chairman. Each member shall have equal voting privileges and all actions of the Board shall be by majority decision. The chairman shall appoint a nonboard member to serve as a nonvoting recorder.~~

~~9.4. Before the Promotion Evaluation Board assumes its duties, the Superintendent shall administer the following oath to each board member:~~

~~"I, _____, do solemnly swear (or affirm) that I will, without prejudice or partiality, perform the duties hereby imposed upon me and further that I will not divulge the proceedings or results of this Promotion Evaluation Board except by proper authority."~~

~~The chairman shall administer the afore oath to the recorder.~~

~~9.5. The Superintendent shall furnish the Promotion Evaluation Board with a list of positions to which recommended eligible members will receive promotional consideration. The Superintendent will also inform the board of current and projected operational needs of the Department and any specialized skills and/or knowledge deemed necessary to the proper fulfillment of the duties and responsibilities of the position(s) under consideration as well as any other guidelines deemed appropriate under the circumstances of each position.~~

~~9.6. The Promotion Evaluation Board shall prescribe and record merit standards for promotion.~~

~~9.7. In regard to field promotions, the Promotion Evaluation Board shall transmit to each company commander a list of field positions under consideration and prescribed merit standards. Each field company commander shall submit to the Promotion Evaluation Board the names of members recommended in accordance with applicable merit standards for promotional consideration to the field positions of Trooper First Class, Corporal, Sergeant, First Sergeant and Lieutenant. Headquarters senior staff may also submit recommendations for field promotion. Recommendations shall be accompanied by written justification.~~

~~9.8. In regard to staff services and/or headquarters promotions, the senior staff shall submit to the Promotion Evaluation Board the names of members recommended in accordance with applicable merit standards prescribed by the Promotion Evaluation Board as pertaining to staff services and/or headquarters positions. Recommendations shall be accompanied by written justification.~~

~~9.9. The Promotion Evaluation Board shall evaluate recommended eligible members according to the prescribed merit standards and submit to the Superintendent a ranked listing of members recommended and eligible for promotional consideration. Said ranked listing shall be affirmed as follows:~~

~~"The Promotion Evaluation Board, acting under oath and having considered the operational needs of the Department; applicable specialized skills and/or knowledge required of the position(s) under consideration; and the individual merits of members recommended and eligible for promotional consideration, finds, by majority decision, the member(s) named on the attached ranked listing(s) best qualified to assume the duties~~

~~and responsibilities of the position(s) indicated and recommend said member(s) be considered for promotion to the indicated position(s)."~~

~~9.10. The Promotion Evaluation Board shall be dismissed, either orally or in writing, by the Superintendent.~~

~~9.11. Pursuant to the provisions of West Virginia Code section nine, article two, chapter fifteen, the Superintendent shall promote one (1) of the top three (3) candidates from the list(s) established by the Promotion Evaluation Board to the position(s) under consideration. Said list so established shall expire by order of the Superintendent or upon filling the positions under consideration.~~

~~§81-1-10. Rules Of Conduct.~~

~~10.1. This section lists activities or conduct prohibited to Department members. This section relates to West Virginia Code section twenty-five, article two, chapter fifteen. If a section of the West Virginia Code more specifically relates to a subsection, such section will follow the subsection.~~

~~10.2. Using any weapon which has not been authorized for use. Subsection (b), section ten, article two, chapter fifteen of the West Virginia Code.~~

~~10.3. Using any law-enforcement equipment which has not been authorized for use. Subsection (b), section ten, article two, chapter fifteen of the West Virginia Code.~~

~~10.4. Alter or change any issued equipment without proper authority.~~

~~10.5. Serving civil process. Subdivision (2), subsection (b), section twelve, article two, chapter fifteen of the West Virginia Code.~~

~~10.6. Aiding or assisting either party in any labor trouble or dispute between employer and employee except for the enforcement in a legal way and manner, the statutes and laws of West Virginia. Section thirteen, article two, chapter fifteen of the West Virginia Code.~~

~~10.7. No member may in any way interfere with the rights or property of any person, except for the prevention of crime. Section thirteen, article two, chapter fifteen of the West Virginia Code.~~

~~10.8. No member shall refuse to obey a lawful order of his superior officer, irrespective of whether such superior officer shall be a commissioned officer, noncommissioned officer or member of the Department senior to himself. Refusal is defined as follows:~~

~~(a) Violating or failing to obey any lawful order or regulation;~~

~~(b) Failing to obey any lawful order or regulation which it is his duty to perform; or~~

~~(c) Being derelict in the performance of any lawful order or regulation.~~

~~10.9. Except as authorized by regulation, law or in the performance of their duty, no member will use, possess, sell, transfer, manufacture, deliver or possess with intent to manufacture or deliver any of the controlled substances listed in chapter sixty-a of the West Virginia Code or Section 812, Title 21 of the United States Code.~~

~~The prohibitions contained in this subsection shall also apply to counterfeit substances. The definition of counterfeit substance contained in chapter sixty-a of the West Virginia Code will apply to this subsection.~~

~~10.10. No member shall knowingly and intentionally violate the laws of the United States or the State of West Virginia or municipalities.~~

~~10.11. Drinking an alcoholic beverage while in uniform.~~

~~10.12. While in uniform having the odor of an alcoholic beverage on his breath.~~

~~10.13. Appearing for or while on duty being under the influence of alcohol.~~

~~10.14. Misusing or abusing: Any controlled substance which a member is legally in possession of; or an over-the-counter type medication or drug to a degree which renders the member incapable of performing his duty.~~

~~10.15. Negligent performance of duty. -- Negligent performance of duty includes the following:~~

~~(a) Failure to notify a commander or superior officer that the member did not perform a certain duty;~~

~~(b) Failure to perform an assigned or required duty promptly, efficiently and properly;~~

~~(c) Negligently damaging, destroying or losing Department or West Virginia state property. Section twenty-one, article two, chapter fifteen of the West Virginia Code.~~

~~(d) Allowing a prisoner, arrestee, suspect or anyone under a member's control and custody to escape.~~

~~10.16. Willful failure to perform duties. -- The omission is willful when the failure is with full knowledge of the duty and an intention not to perform it.~~

~~10.17. Malingering. -- Malingering means feigning illness, physical disability, mental lapse or derangement, or intentionally inflicting self-injury for the purpose of avoiding work, duty or service.~~

~~10.18. Accepting gratuities. -- Members will not solicit, demand or receive or agree to receive any money, thing of value or gratuity from any person, partnership, firm or corporation as a consideration for the performance of or the failure to perform his duties under provisions of law, Department regulations, memoranda, policies and/or procedures. Section eighteen, article two, chapter fifteen of the West Virginia Code.~~

~~10.19. No member shall convert property of the State of West Virginia through a negligent or willful act. Convert means:~~

~~(a) To sell or otherwise dispose of;~~

~~(b) To willfully or negligently damage, destroy or lose;~~

~~(c) To suffer to be lost, damaged, destroyed, sold or wrongfully disposed of.~~

~~10.20. No member shall be employed by any person, firm, partnership, corporation or business entity as a personal guard or to guard private property. Section eighteen, article two, chapter fifteen of the West Virginia Code.~~

~~10.21. Absent without proper authority. -- Absent means every instance in which a member of the Department is, through his own fault, not at the place where he is required to be or not performing the duties he is required to perform, at a prescribed time. Section twenty-one, article two, chapter~~

~~fifteen of the West Virginia Code.~~

~~10.22. Except as provided by law, regulation and in the necessary discharge of official duties, members will not release or divulge to any individual, firm, partnership, corporation, business entity, federal or state agency, their employees, or agents, photographs, fingerprints, records, documents or other information obtained during a criminal investigation. Section twenty-four, article two, chapter fifteen of the West Virginia Code.~~

~~10.23. No member may be detailed or ordered to duty at or within 60 feet of any polling place where an election or convention is held on the day of the election or convention, nor shall any member remain in or within 60 feet of the polling place or place of convention, except to cast his vote. After voting the member shall forthwith retire from such voting precinct. The prohibitions contained in this subsection may be suspended only by the Superintendent, Acting Superintendent, a Company Commander or Acting Company Commander for the purpose of protecting life, property or enforcing federal or state law. No member may act as an election official. Section thirteen, article two, chapter fifteen of the West Virginia Code.~~

~~10.24. No member of the Department may at any time participate in any political party caucus, committee, primary, assembly or convention, or in any general or special election, except to cast his ballot. Section thirteen, article two, chapter fifteen of the West Virginia Code.~~

~~10.25. No member of the Department may in any way become active or take part in any political contest. Thus the following political activities are prohibited:~~

- ~~(a) Holding a party office;~~
- ~~(b) Working at the polls;~~
- ~~(c) Acting as a party paymaster for other party workers;~~
- ~~(d) Organizing a political party or club;~~
- ~~(e) Actively participating in fund-raising activities for a partisan candidate or political party;~~
- ~~(f) Becoming a partisan candidate for, or campaigning for, an elective public office;~~
- ~~(g) Actively managing the campaign of a partisan candidate~~

~~for public office;~~

~~(h) Initiating or circulating a partisan nominating petition or soliciting votes (i.e., campaigning) for a partisan candidate for public office; and~~

~~(i) Serving as a delegate, alternate or a proxy to a political party convention. Section thirteen, article two, chapter fifteen of the West Virginia Code.~~

~~10.26. No member shall abuse the authority vested in him by law, order or regulation. Abuse of authority means:~~

~~(a) Failure to deal with the public in a courteous, kind, patient and respectful manner;~~

~~(b) Failure to discharge duties in an impartial manner;~~

~~(c) Knowingly and willfully disclosing confidential business of the department to individuals not authorized to receive such information;~~

~~(d) Signing any record, return, regulation, order, or other document, knowing it to be false; or~~

~~(e) Knowingly making any false statement.~~

~~10.27. No member shall strike, draw or lift up any weapon or offer any violence against a member of the Department, except in self-defense.~~

~~10.28. Conduct unbecoming an officer. -- (a) On-duty conduct; (b) which specially relates to and affects the administration of the Department; and (c) which is of a substantial nature directly affecting the rights and interests of the public. See Appendix A.~~

~~10.29. Gross misconduct. -- (a) Misconduct which occurs off-duty; (b) is of a substantial nature; and (c) affects directly the rights and interests of the public by bearing directly in a substantial manner on the duties which the employee is required to discharge.~~

~~Thus, a member is protected against frivolous, trivial and inconsequential charges; or charges based on conduct which has no rational nexus with the duties to be performed or the rights and interests of the public.~~

~~§81-1-11. Penalties For Misconduct.~~

~~11.1. This section relates to West Virginia Code sections twenty-one and twenty-five, article two, chapter fifteen.~~

~~11.2. The Superintendent may issue a letter of reprimand, suspend with or without pay, demote in rank, or discharge from the service any member of the Department of Public Safety in accordance with the applicable section of article two, chapter fifteen of the West Virginia Code and any applicable rule(s) or regulation(s).~~

~~11.3. A member may appeal the order of suspension, demotion in rank or discharge in accordance with the provisions of section six, article two, chapter fifteen of the West Virginia Code.~~

~~§81-1-12. §81-1-5 Overtime Compensation.~~

~~12.15.1. This section relates to West Virginia Code section five, article two, chapter fifteen.~~

~~12.25.2. The standard work month for the Department of Public Safety West Virginia State Police members who are exempt from overtime pursuant to the provisions of the Federal Fair Labor Standards Act shall consist of one hundred eighty-one (181) hours.~~

~~12.35.3. Members of the Department of Public Safety West Virginia State Police, with the exception of the Superintendent and civilian employees, shall receive the following percentages of the maximum supplement for the equivalent number of hours worked in excess of the standard work month:~~

EXCESS	TOTAL MONTHLY	
1-5 hours	182 to & incl.	186 25%
6-10 hours	187 to & incl.	191 50%
11-15 hours	192 to & incl.	196 75%
16 or more hours	197 or more	100%

~~12.4~~

~~5.4. Credit for a normal workday of 8.58 hours shall be given in computing the number of hours worked per month for any legal holiday (HOD) or compensatory day (CDO) in lieu thereof; any day of annual leave (AWL), sick leave (SIQ), work related disability leave (DL), or administrative leave (AAL), as defined in West Virginia State Police Operational Policy and Procedure, taken within the month for which the computation is~~

made. Credit for a normal workday of 8.5 hours shall also be given in computing the number of hours worked per month for any compensatory day (CDO) taken in lieu of a day off duty lost in either of the two (2) months immediately preceding the month for which the compensation is made. Credit for a normal workday shall not be given for customary days off duty (DOD) or for any make up days (MUD) in lieu thereof.

12.55.5. Personal knowledge and/or individual monthly activity reports shall serve as the basis for the Superintendent's monthly certification of those members who are eligible for receipt of the monthly supplement set forth above.

~~APPENDIX A The following are examples of conduct which justified disciplinary action.~~

~~(1) A deputy sheriff used offensive language in the presence of members of an ambulance service wholly without justification; unnecessarily threatened to impose criminal penalties upon the driver of the ambulance; and, the deputy used excessive physical force and personal abuse in the arrest of an individual initially stopped for an alleged traffic violation. (Deputy dismissed)~~

~~(2) Deputy sheriff: Kicked and knocked down a handcuffed subject; hit an individual with a slap across the side of the face and the head. (Deputy dismissed)~~



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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

January 12, 1998

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Frst. Sgt. S. W. Cogar
West Virginia State Police
725 Jefferson Road
South Charleston, WV 25309

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: *Administrative Regulations (81CSR1)*

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.