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WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

WEST VIRGINIA  
SECRETARY OF STATE

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November 13, 2001

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Captain B.D. Gore  
State Police, West Virginia  
725 Jefferson Road  
South Charleston, WV 25309

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **WV State Police Professional Standards Investigations, Employee Rights, Early Identification System, Psychological Assessment and Progressive Discipline, 81CSR10**

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

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2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
 

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3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
 

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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.
 

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5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.
 

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SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** West Virginia State Police

**Subject:** West Virginia State Police Professional Standards Investigations, Employee Rights, Early Identification System, Psychological Assessment and Progressive Discipline, 81CSR10

PERTINENT DATES

Filed for public comment: June 14, 2001  
Public comment period ended: July 16, 2001  
Filed following public comment period: July 25, 2001  
Filed LRMRC: July 25, 2001  
Filed as emergency:

Fiscal Impact: None

FILED  
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OFFICE OF THE  
SECRETARY OF STATE  
WEST VIRGINIA

ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The following is a section-by-section synopsis of the substantive amendments made by the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 relates to the Professional Standards Section organization and responsibilities. It places the Professional Standards Section under the command of the Officer-in-Charge. It requires the OIC to cause all complaints to be recorded in a central log; send a letter to the complainant acknowledging receipt of the complaint; provide written notification to the employee concerning the nature of the complaint; send closing letters to all concerned parties upon completion of each investigation; and prepare an annual statistical report concerning the Section's

activities. It requires investigators to forward a complete report to the OIC within 30 working days of receiving the investigation, unless an extension is granted by the OIC.

Section 4 relates to incidents to be investigated. It requires the State Police to investigate, through internal investigation or inquiry, all complaints received by the section. The OIC is required to immediately notify the Superintendent of any complaint received alleging the commission of a serious misdemeanor or felony by an employee.

Section 5 relates to complaint filing procedures. It requires any state police employee to accept a complaint. The employee accepting the complaint is required to fill out a Personnel Complaint Form containing certain specified information.

Section 6 relates to record retention. It requires the Section to retain, in a secured environment, records and documents associated with complaints for 10 years from the completion of the investigation. It states that all case files are considered confidential.

Section 7 relates to operational procedures. It requires the OIC to notify the Superintendent when an investigation leads to information indicating that criminal charges could be filed and allows the Superintendent to authorize a separate criminal investigation.

This section sets forth requirements regarding an investigation including the recording of the complainant's statement and interviews as well as witness statements and interviews; the gathering of physical evidence; notations regarding employees' cooperation; and the allowable dispositions of the investigation and submission of the report to the OIC. The OIC is required to formulate recommendations for final disposition of the complaint and forward the case file with recommendations to the Superintendent for final disposition.

Section 8 relates to employee rights and conduct during an internal investigation or inquiry. It sets forth information which must be given to an employee prior to the employee's interview; requires interviews to be conducted at reasonable times and places; requires the taping of interviews; states that an employee has no right to counsel and no right to avoid self-incrimination; requires that an employee be advised of the "Administrative" or "Garrity"

warnings; requires interviews to be of reasonable duration; generally limits polygraph examinations to those cases in which the allegations are relatively serious; sets forth conditions regarding polygraph examinations; and authorizes requiring an employee to submit to certain tests and procedures.

The OIC is required to notify the employee when the investigation is complete. An employee who is subject to disciplinary action has 10 calendar days to review the case file and may appear before the Superintendent to present a defense in the matter. Information from an employee who did not waive his or her Miranda rights may not be used in a subsequent criminal investigation.

Section 9 relates to the early identification system. It requires the Section to maintain an early identification system. It sets up an Internal Review Board to review and evaluate employees who are identified by the system. It requires the system to produce reports for review by the Board naming employees who have entered the system based upon complaints or use of force incidents. It also provides for supervisory review of employees.

Section 10 relates to the psychological assessment program. The program provides a process for mandatory psychological review of employees in situations where an employee's job performance or actions may be detrimental to the state police's mission and cause the employee's psychological fitness for duty to be in question. It sets forth the circumstances under which an employee is considered to be psychologically fit for duty and those under which his or her fitness may be in question. It sets forth the procedure for dealing with employees whose psychological fitness is in question. It also sets forth the responsibility of the employee and the psychotherapist.

Section 11 relates to progressive discipline. It sets forth standards of conduct to which employees are expected to adhere. It divides offenses into three groups and lists the various actions which constitute offenses. It sets forth time periods for which offenses remain active.

#### AUTHORITY

Statutory authority: W.Va. Code, §15-2-25, which provides, in part, as follows:

Subject to the written approval of the governor and the provisions of this article, the superintendent may make and promulgate proper rules and regulations for the government, discipline and control of the division of public safety, and shall also cause to be established proper rules and regulations for the examinations of all applicants for appointment thereto...

#### ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.