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JAN 13 2 19 PM '00

WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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Senator Mike Ross, Co-Chairman  
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December 10, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: J. Norbert Federspiel  
Criminal Justice Services  
1204 Kanawha Boulevard, East  
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: Law Enforcement Training Standards, 149CSR2

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.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

Amendment to 149CSR2

By amending subsection 15.3, on page 48 at the end of the paragraph, after the word "courses" by adding a colon and the words "Provided, That persons appointed to the position of chief deputy shall be exempt from the physical ability test.";

And,

On page 50, subsection 16.5 after the word "may" by striking out the word "not";

And,

On page 51 by adding a new sentence at the conclusion of subsection 16.5 to read as follows:

"Employing agencies must report to the law enforcement training subcommittee, within 10 working days, all final judgments or settlements with a dismissal order entered against any certified officer for abuse or neglect of duty."

FILED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

JAN 11 2 44 PM '00

Staff Counsel: Rita A. Pauley  
 Date: January 7, 2000  
 Agency: Governor's Committee on Crime, ~~DEPARTMENT OF STATE~~ OFFICE OF WEST VIRGINIA  
 Correction  
 Subject: Law Enforcement Training Standards, 149 CSR 2

PERTINENT DATES

Filed for public comment: June 18, 1999  
 Public comment period ended: July 21, 1999  
 Filed following public comment period: August 4, 1999  
 Filed LEGISLATIVE RULE-MAKING REVIEW COMMITTEE: August 4, 1999  
 Filed as emergency: N/A  
 Fiscal Impact: None

ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The rule establishes standards for basic entry level training academies and the certification of law enforcement officers. It also establishes requirements for annual and bi-annual in-service training programs and the requirements for instructor certification. The rule outlines the medical and physical fitness standards which must be met in order to qualify for the basic training program. The requirements for continued and equivalent law enforcement certification are contained in the rule as well as standards for annual and supervisory level in-service training. Firearms qualification requirements and decertification requirements are addressed by the rule.

The proposed rule repeals and replaces a current rule. The following is a section by section synopsis of 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 is the definition section. There are definitions contained in other sections of the rule which should be moved to the definition section.

Section 3 contains the standards for academy facilities. This section contains detailed requirements for the location of training academies. It includes such things as classroom size, lighting requirements, seating requirements, restroom and parking requirements as well as what supplies must be provided to trainees. It also covers food service and provision of medical services to trainees.

Section 4 deals with academy staffing. It provides for the appointment of a director of training, it lists the director's duties and responsibilities for conducting and overseeing training. This section also provides that law enforcement and firearm instructors are governed by the regulations or guidelines of the agency for which training is being conducted.

Section 5 deals with the certification of instructors. All law enforcement instructors must meet the requirements of this rule in order to be certified as instructors. The standards include requirements for education and experience as a police officer and 40 hours of instructor development training. Instructors must teach at least one 2 hour course every 24 months or attend a 4 hour program on teaching or other types of training in their subject areas in order maintain their certification as instructors. Firearms instructors must meet the initial qualifications for law enforcement instructors as well as complete firearms instructors school and have extensive experience in the area of firearms.

The Governor's Committee on Crime, Delinquency and Correction may revoke an instructor's certification if they are no longer qualified, have been terminated or asked to resign. If an applicant falsified or omitted information required on an application for instructor certification or the employer recommends the revocation, the Committee may revoke certification.

Section 6 establishes basic training academy policies in such areas as attendance, grades, dismissal, salary and payment of cost for training.

Section 7 provides requirements for the academy's training curriculum. A minimum of 600 hours of basic training is required for certification as a law enforcement officer. The core curriculum must be approved by the Governor's Committee on Crime, Delinquency and Correction. In addition to the core curriculum, the employing agency is responsible for providing training in other areas such as local ordinances, department policies and procedures and use and care of motor equipment.

Section 8 deals with in-service training facilities. The rule provides that in-service training facilities must meet standards similar to those for basic training. Classrooms must be of sufficient size and have adequate lighting to meet the needs of the trainees. Seating must be comfortable, there must be adequate writing surfaces and display areas or chalkboards of sufficient size to permit adequate viewing. Adequate restrooms and parking space must also be provided.

Section 9 sets forth the requirements for annual in-service training curriculum. Annual in-service training funded by the Governor's Committee must contain 8 classroom hours exclusive of firearms training and qualification. Subject matter for the training must include the majority of subjects included in the basic training curriculum or other subjects of a specialized nature.

Section 10 provides the requirements for supervisory level in-service training. Supervisors must also receive a minimum of 8 hours classroom training exclusive of firearms refresher or qualification courses. Supervisor training should include such subjects as the role of the supervisor, leadership, decision making, discipline, motivation, reporting, interpersonal communication, the supervisor as trainer, budgeting and management by objectives.

Section 11 sets forth the requirements for in-service training staff.

Section 12 sets forth the academy entry standards. All applicants for acceptance into a basic entry level training program must demonstrate an ability to perform all of the essential tasks and functions required of an active police officer. Applicants must also submit a completed application form including criminal history and fingerprints as well as meeting required medical standards and passing physical ability tests. This section contains an excruciatingly detailed job description of a entry level law enforcement officer. It is unclear from the rule whether the applicant for training must be able to fulfill the requirements of the job description or if these are areas that they will trained on and should be able to fulfill once training is completed.

Section 13 contains the requirements for certification of law enforcement officers. This section needs to be completely reorganized so that it begins with who is certified, how certification is obtained and then goes through the process of revocation of certification or non-renewal. Essentially, once the basic training academy has been completed, the individual officers

apply to the Governor's Committee for certification. The director of the training academy is responsible for supplying the Committee with the names of the officers who have successfully completed or failed to complete the basic training program. Once an officer is certified, the certification is renewed by the Governor's Committee on an annual basis to assure that all requirements of the law are being met. Certification may be revoked or not renewed if any law enforcement officer fails to attend in-service training programs.

Section 14 provides for equivalent certification for officers who have previously completed an approved basic entry level training program, been employed at least 1 year as a law enforcement officer, have not been convicted of any crimes or shown a general disregard for the law and have completed basic entry level courses within 12 months of the date they are hired as a West Virginia law enforcement officer.

Section 15 contains re-certification requirements for law enforcement officers who have been separated from their employment for more than 24 months and who are certified under the provisions of West Virginia Code §30-29-5. The sets forth the basic entry level courses which an applicant for re-certification must take within 12 months of being re-employed as a law enforcement officer.

Section 16 contains the requirements for suspension, revocation or denial of certification of a law enforcement officer and refused to admit an applicant into a basic entry level training program. These adverse actions may be taken for conduct or a pattern of conduct unbecoming an officer or activities that would disrupt, diminish or otherwise jeopardize public trust in law enforcement. Conduct which would justify denial suspension or revocation of certification or denial of admission into a training program include such things as willful falsification of any information submitted or relied upon to obtain certification; a physical or mental condition which would prohibit an officer from performing his or her duties; conviction of a felony or other crimes; failure to attend required in-service training; and revocation, suspension or denial of certification of a law enforcement officer by another standard or training commission. Officers whose certification has been suspended, revoked or denied, or an applicant who has been denied admission a training academy may not continue their employment as a law enforcement officer and may not exercise any authority as a law enforcement officer until they obtain proper certification.

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**AUTHORITY**

Statutory authority: W.Va. Code, §30-29-3, which provides, in part, as follows:

(f) Promulgate standards governing the qualification of law-enforcement officers and the entry level law-enforcement training...

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**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?

Yes. The proposed rule has been significantly improved over last year's version, but there are areas which need to be substantially revised in order to make them meaningful and understandable.

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 PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.