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July 6, 2011

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Governor's Committee on Crime, Delinquency and Correction

RULE: Amendment, 149CSR2 Law Enforcement Training Standards

DATE FILED AS AN EMERGENCY RULE: June 2, 2011

DECISION NO. 6-11

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 6-11)

AGENCY: Governor's Committee on Crime, Delinquency and Correction
RULE: Amendment, 149CSR2, Law Enforcement Training Standards
FILED AS AN EMERGENCY RULE: June 2, 2011

- par. 1 The Governor's Committee on Crime, Delinquency and Correction (Committee) has filed the above amendment to an existing rule as an emergency rule.
- par. 2 W. Va. Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Committee filed this emergency rule with supporting documents with the Secretary of State June 2, 2011 and with the LRMRC June 2, 2011.
- par. 7 It is the determination of the Secretary of State that the Committee has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §30-29-3 reads:

*§30-29-3. Duties of the Governor's committee and the subcommittee.
Upon recommendation of the subcommittee, the Governor's committee shall, by or pursuant to rules proposed for legislative approval in accordance with article three, chapter twenty-nine-a of this code:*
(a) Provide funding for the establishment and support of law-enforcement training academies in the state;
(b) Establish standards governing the establishment and operation of the law-enforcement

training academies, including regional locations throughout the state, in order to provide access to each law-enforcement agency in the state in accordance with available funds;

(c) Establish minimum law-enforcement instructor qualifications;

(d) Certify qualified law-enforcement instructors;

(e) Maintain a list of approved law-enforcement instructors;

(f) Promulgate standards governing the qualification of law-enforcement officers and the entry-level law-enforcement training curricula. These standards shall require satisfactory completion of a minimum of four hundred classroom hours, shall provide for credit to be given for relevant classroom hours earned pursuant to training other than training at an established law-enforcement training academy if earned within five years immediately preceding the date of application for certification, and shall provide that the required classroom hours can be accumulated on the basis of a part-time curricula spanning no more than twelve months, or a full-time curricula;

(g) Establish standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula;

(h) Certify organized criminal enterprise investigation techniques with a qualified anti-racial profiling training course or module;

(i) Establish standards governing mandatory training to effectively investigate organized criminal enterprises as defined in article thirteen, chapter sixty-one of this code, while preventing racial profiling, as defined in section ten of this article, for entry level training curricula and for law-enforcement officers who have not received such training as certified by the Governor's committee as required in this section;

(j) Establish, no later than July 1, 2011, procedures for implementation of a course in investigation of organized criminal enterprises which includes an anti-racial training module to be available on the internet or otherwise to all law-enforcement officers. The procedures shall include the frequency with which a law-enforcement officer shall receive training in investigation of organized criminal enterprises and anti-racial profiling, and a time frame for which all law-enforcement officers must receive such training: Provided, That all law-enforcement officers in this state shall receive such training no later than July 1, 2012. In order to implement and carry out the intent of this section, the Governor's committee may promulgate emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code;

(k) Certify law-enforcement officers, as provided in section five of this article;

(l) Seek supplemental funding for law-enforcement training academies from sources other than the fees collected pursuant to section four of this article;

(m) Any responsibilities and duties as the Legislature may, from time to time, see fit to direct to the committee; and

(n) Submit, on or before September 30 of each year, to the Governor, and upon request to individual members of the Legislature, a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account establish pursuant to section four of this article.

par. 9

It is the determination of the Secretary of State that the Committee has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Committee are as follows:

The reason that the proposed changes to CSR 149-2 et al have been filed under an emergency status request are to allow the changes to take effect in conjunction with the statutory changes made to West Virginia Code 30-29-5 addressing the certification of law enforcement officers in West Virginia. If the proposed changes are not approved under an emergency status, and thereby not allowed to take effect until the standard legislative review process (which will be followed as well) is completed during the 2012 Session of the West Virginia Legislature, there will be individuals allowed to remain certified as law enforcement officers within the state whose actions would warrant the removal of their certification.

The changes to the legislative rule as an emergency request will allow the intent and desire of the legislature as to the 2011 session changes to WV Code 30-29-5 to be carried out at this time. The rule changes will allow the Law Enforcement Professional Standards Subcommittee, a subcommittee of the Governor's Committee on Crime, Delinquency and Correction, to take direct action now when necessary to remove officer's certification. To not have the ability to remove these officer's certification until the legislative rule changes would be approved under the standard approval process would allow a certain number of "bad" law enforcement officers to continue to work as officers in this state.

The actions of these "bad" officers while they are allowed to continue to work would directly put the public's safety at risk individually and collectively as well as place the agencies they are working for at risk as to vicarious liability. The approval of the emergency rule request would stop this threat of risk from occurring.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare" and "to prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 6-11 or ERD 6-11 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Governor's Committee on Crime, Delinquency and Correction, the Attorney General and the Legislative Rule Making Review Committee.


NATALIE E. TENNANT
Secretary of State

Entered _____

CLERK
SECRETARY OF STATE

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