



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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6/23/2023 2:17:09 PM

Office of West Virginia  
Secretary Of State

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**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Crime Delinquency And Correction TITLE-SERIES: 149-02

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Law Enforcement Training and Certification Standards

CITE STATUTORY AUTHORITY: W.Va. Code 30-29-3

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/24/2023 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule establishes standards for basic training academies with admission guidelines and the job description of an entry-level officer. This rule also outlines annual in-service and biennial in-service training, continued certification, re-certification and de-certification standards for law enforcement officers.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The filing date, effective date and sunset provision have been changed. Clarification to the definition of "Division" has been included in the rule. A change has been made regarding the amount of time the completed minimum number of verified training hours are needed in academic subject areas for law enforcement level 1 instructors certifications. A change has been made to update the maintenance requirements for law enforcement level 1 instructor certification. A clarification change has been made regarding training academy policies for any trainee resigning for voluntary reasons other than hardship. A code citation update was made regarding academy application requirements. Language regarding classroom amenities for annual in-service training facilities has been updated. An update has been made to the percentage of maximum training that can be completed online for annual in-service training and firearms qualifications. An update has been made to the percentage of maximum training that can be completed online for biennial supervisory level in-service training.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

0

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

0

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

0

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**Brandolyn N Felton-Ernest -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 149  
LEGISLATIVE RULE  
GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION

SERIES 2  
LAW ENFORCEMENT TRAINING AND CERTIFICATION STANDARDS

**§149-2-1. General.**

1.1. Scope. -- This legislative rule establishes standards for basic training academies with medical admission guidelines and the job description of an entry-level officer. This rule also outlines annual in-service and biennial in-service training, continued certification, re-certification and de-certification standards for law enforcement officers.

1.2. Authority. -- W. Va. Code §30-29-3.

1.3. Filing Date. -- ~~May 5, 2022.~~

1.4. Effective Date. -- ~~August 1, 2022.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2027.

**§149-2-2. Definitions.**

2.1. "Approved law enforcement training academy" means any training facility that is approved and authorized by the Law Enforcement Professional Standards Subcommittee, to conduct law enforcement training.

2.2. "Chief executive" means the superintendent of the West Virginia State Police; the chief Natural Resources Police officer of the West Virginia Division of Natural Resources; the sheriff of any West Virginia County; any administrative deputy appointed by the chief Natural Resources Police officer of the West Virginia Division of Natural Resources; the chief of any West Virginia municipal law-enforcement agency, or the chief of any campus police agency at state institutions of higher education.

2.3. "Conviction" means an adjudication of guilt or a plea in a criminal case in this state or any other municipal, federal, tribal, military or state jurisdiction. "Conviction," when used in this rule applies to convictions entered both before and after the effective date of this section.

2.4. "County" means any one of the fifty-five major political subdivisions of the state.

2.5. "Director" or "Director of Training" means the person appointed by the head of agency operating an entry level training academy to be the person in charge of the operation of that academy.

2.6. "Division" or "~~DJCS~~JCS" means the Division of Administrative Services (DAS) Justice and Community Services (~~DJCS~~) Section of the Department of ~~Military Affairs and Public~~

~~Safety (DMAPS)~~ Homeland Security.

2.7. “Exempt rank” means any noncommissioned or commissioned rank of sergeant or above as regarding the requirements set forth in this rule.

2.8. “Firearms Officer” means any individual who has successfully completed a Subcommittee approved Law Enforcement Firearms Handgun Instructor course but is not certified as a Firearms Instructor as defined in subsection 5.2 of this rule.

2.9. “Good standing” means any law enforcement officer that has not been denied certification or had his or her certification revoked or suspended by the Subcommittee pursuant to the provisions of this Rule; except that for the purposes of re-certification pursuant to section 149-2-15 of this Rule only, an officer is considered to be in good standing even if his or her certification was not renewed for failing to attend mandated in-service training because of his or her position as a law enforcement official.

2.10. “Governor’s Committee on Crime, Delinquency and Correction” or “Governor’s Committee” or “Committee” means the Governor’s Committee on Crime, Delinquency and Correction established as a state planning agency pursuant to W. Va. Code §15-9-1 with duties as set forth in W. Va. Code §30-29-3 and this Rule.

2.11. “Inactive” as it relates to certification means the status of a previously certified officer upon separation from employment and prior to reactivation by the subcommittee thereby placing the individual in a non-law enforcement status as provided for in subsection 2.13 of this section.

2.12. “Law enforcement officer” means any duly authorized member of a law enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality of the state, other than parking ordinances, including persons employed as campus police officers at state institutions of higher education, those persons employed by the Public Service Commission as motor carrier inspectors and weight enforcement officers, those persons employed as law enforcement officers at airport authorities and those persons employed as resort area rangers at resort area districts. Provided that, the term “law-enforcement officer” does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special natural resources police officer.

2.13. “Law enforcement official” means the duly appointed chief administrator of a designated law enforcement agency or a duly authorized designee.

2.14. “Law Enforcement Professional Standards Information System” or “LEPSIS” means the electronic database used to track law enforcement officer employment status, training, firearms qualification and certification.

2.15. “Level 1 Instructor” means those individuals that have met the criteria established in this rule to conduct entry level and in-service training programs.

2.16. “Level 2 Instructor” means those individuals that have met the criteria established in this rule to conduct instructor level training.

2.17. "Municipality" means any incorporated town, village or city whose boundaries lie within the geographic boundaries of the state.

2.18. "Non-law enforcement status" means an officer may not wear the uniform of that agency, may not be armed, and will not perform the duties of a law enforcement officer as defined in W. Va. Code §30-29-1 and subsection 8.3. of this Rule. An officer in non-law enforcement status shall not present himself or herself in any manner that a reasonable person would perceive him or her to be a law enforcement officer, except as provided for in state code. This Rule does not require an employing agency to create a non-enforcement position for applicants who are unable to complete the physical ability test for admission to an entry-level training program.

2.19. "Reactivation" as it relates to certification means having an officer's status reinstated from inactive status.

2.20. "Scholastic failure" means the failure of required graded academic examinations or evaluated skill courses.

2.21. "Subcommittee" or "law enforcement professional standards subcommittee" means the subcommittee of the Governor's Committee on Crime, Delinquency and Correction established pursuant to W. Va. Code §30-29-2 with duties as set forth in W. Va. Code §30-29-3 and this Rule.

2.22. "Trainee" means any individual attending an entry level related law enforcement certification training program.

2.23. "West Virginia law enforcement agency" means any duly authorized state, county or municipal organization including any campus police agency at state institutions of higher education, airport police authorities, resort area districts or park police authorities employing one or more persons whose responsibility is the enforcement of law of the state or any county or municipality of this state.

### **§149-2-3. Academy Facility Standards.**

3.1. Location. -- Basic training may be provided at a single central location or at a central location and one (1) or more regional locations. The standards outlined in this Rule apply to any facility where basic training will be conducted and shall insure that the training shall be carried out in an adequate and proper setting.

3.2. Facility. -- The facility may be a single building, a room or rooms in a building or more than one building, which provides adequate space to meet the needs of people undergoing training over a period of several weeks.

3.3. Need -- The Subcommittee is responsible for determining the need as to the number and type of entry level certification training academies/programs and their location.

3.4. Classrooms.

3.4.a. The classroom shall be large enough to comfortably accommodate the largest anticipated attendance. Minimum registration for any entry level training class funded by the Subcommittee is twenty-five (25) officers.

3.4.b. Artificial or day lighting shall provide good visibility at all times and permit the use of visual training materials.

3.4.c. Adequate ventilation and seasonal temperature control shall be provided. The system shall provide for individual classroom control if more than one classroom is used.

3.4.d. Acoustics shall be adequate to enable the speaker to be heard from any place in the classroom being used. A public-address system shall be provided if needed.

### 3.5. Classroom Amenities.

3.5.a. All desks shall have smooth tops and shall be of sufficient size to accommodate adult trainees.

3.5.b. Display surfaces shall be positioned to permit unobstructed viewing from the rearmost area of the classroom and shall be of an appropriate size to allow material displayed and/or writing to be viewed by all participants.

3.5.c. Each classroom, if necessary, shall be equipped with a lectern to accommodate lecture materials.

3.5.d. All appropriate audio and video equipment and training aids shall be available and operable at the beginning of each class.

3.6. Up-to-date court rulings as well as current copies of law enforcement related periodicals shall be made readily available when necessary.

3.7. Firearm Range. -- The firearm range shall meet or exceed all safety standards promulgated by the National Rifle Association.

3.7.a. The range shall be appropriate for the weapons training or certification being conducted and shall be located within reasonable driving distance from the academy site.

3.7.b. It shall permit sole occupancy by law enforcement agencies when in use by them for firearms training or qualification.

3.7.c. Curriculum firearms training time does not include travel time if the range is more than 15 minutes from the academy site.

3.8. Physical Training Room. -- Each facility shall include one room of sufficient size to accommodate trainees during physical fitness and defensive training.

3.9. Common Study Area -- Each facility shall include one room of sufficient size to accommodate study time.

3.10. Restrooms. -- Separate restroom facilities of sufficient size and number to accommodate the needs of both sexes shall be provided in close proximity to the classrooms.

3.11. Parking. -- Adequate and free parking space shall be provided. The parking area shall be within reasonable walking distance of all classrooms.

3.12. Supplies. -- Each trainee shall be furnished with the following supplies as needed:

3.12.a. Ammunition for firearms training;

3.12.b. An information Storage Device sufficient to accommodate all notes and handout materials;

3.12.c. Legal pads in a sufficient number to permit taking of detailed notes throughout the duration of the training program;

3.12.d. A current copy of all relevant West Virginia Code sections;

3.12.e. Writing instruments in a sufficient number to permit taking of detailed notes throughout the duration of the training program;

3.12.f. A copy of the course schedule;

3.12.g. A copy of the rules governing operation of the training facility; and,

3.12.h. Handout materials required by the instructors.

3.13. Food Services. -- Law enforcement training academies shall provide food service:

3.13.a. If in-house food service is available and provided, all food preparation and dining facilities shall be established and maintained in accordance with applicable state and local health department rules.

3.13.b. If commercial food services are used, these services should be located within a distance that would allow the trainee to leave, eat, and return to class within sixty (60) minutes.

3.14. Medical Facility. -- A medical facility within a reasonably close proximity to training site shall be identified.

#### **§149-2-4. Academy Staffing.**

4.1. Director of Training.

4.1.a. Appointment. -- The appointment of a Director of Training (Director) shall be made by the head of the law enforcement agency if the academy is under the control of a police agency. If under an academic institution the head of the department operating the academy may make the appointment under which the training will be provided.

4.1.b. Approval. -- The Director of an academy other than the West Virginia State Police Academy shall be approved by the Subcommittee based on a composite assessment of the candidate's education, training, administrative experience, and law enforcement experience.

4.1.c. Responsibilities. -- The Director has the overall responsibility for the operation of the training program and shall:

4.1.c.1. Ensure that all personnel comply with policies, procedures and regulations governing the training program;

4.1.c.2. Select qualified instructors;

4.1.c.3. Recommend and request the reassignment of training personnel;

4.1.c.4. Maintain the professional skills and abilities of personnel assigned to the training program;

4.1.c.5. Assign instructors only to areas in which they are qualified to teach and monitoring their quality of instruction through regular supervision;

4.1.c.6. Require all applicants to provide a medical examination that shows they meet the requirements for admission to a basic entry-level training program and successfully complete the physical fitness test battery for entry into an entry-level training program;

4.1.c.7. Exercise administrative and supervisory control over personnel;

4.1.c.8. Dismiss trainees;

4.1.c.9. Excuse absences of trainees; and,

4.1.c.10. Delegate authority.

4.1.d. Accountability. -- The Director is accountable to the appointing authority for the operation of the training academy or program in compliance with the policies and regulations of the agency or department conducting the academy. The Director shall keep the Subcommittee informed regarding the training program. At the request of the Subcommittee or as needed, the Director shall appear before the Subcommittee, to discuss the training program.

4.2. Law Enforcement and Firearms Instructors.

4.2.a. Instructors are accountable initially to a first-level supervisor if one exists. If there are no first-level supervisors, instructors are accountable to the Director.

4.3. The provisions of this section are applicable to instructors in a basic training academy, annual in-service or biennial in-service training programs.

#### **§149-2-5. Instructor Certification.**

5.1. Law Enforcement Level 1 Instructor Certification.

5.1.a. Standards. -- All law enforcement level 1 instructors' certifications are valid for four (4) years if the level 1 instructor has:

5.1.a.1. Current certification as a law enforcement officer in the State of West Virginia if applicable;

5.1.a.2. A high school diploma or its equivalent;

5.1.a.3. Three (3) years of experience as a police officer including a minimum of one (1) year, or for non-law enforcement officers a minimum of two (2) years of direct work experience in the occupation or area in which certification is desired;

5.1.a.4. Completed a minimum of sixteen (16) hours of verified training in each academic subject area within the ~~five~~ two (~~52~~) years preceding the application for which certification is desired; provided that certain training may require additional hours as required by the Subcommittee.

5.1.a.5. Forty (40) hours of instructor development training approved by the Subcommittee. The course content shall include topic areas such as communication, psychology of learning, techniques of instruction, use of instructional aids, preparation and use of lesson plans, and preparation and administration of tests; and,

5.1.a.6. Written recommendation if required from the applicant's agency head, or if a civilian, from a law enforcement agency head, training director or other recognized individual who knows the applicant's teaching abilities.

5.1.b. Maintenance Requirements. -- In order to keep their certifications active, certified law enforcement level 1 instructors shall:

5.1.b.1. Instruct at least eight (8) hours in a basic training program or a Subcommittee certified in-service program every ~~twenty-four~~ twelve (~~24~~12) months from the date of their original certifications; or,

5.1.b.2. Attend, at a minimum, eight (8) hours on teaching updates or additional training in subject areas in which they are certified to instruct, every ~~twenty-four~~ twelve (~~24~~12) months of the original level 1 instructor certification.

5.1.c. Inactive Instructor Status. -- Level 1 instructors placed on inactive status by the Subcommittee shall, within twenty-four (24) months of such placement, attend an eight (8) hour approved program in any inactive subject area; or teach eight (8) hours in a Subcommittee approved program in any inactive subject area under the direct supervision of an active, certified instructor. The Subcommittee shall revoke the level 1 instructor certification for failure to obtain or perform one of the above referenced acts in the time periods described.

5.2. Firearms Level 1 Instructor Certification.

5.2.a. Standards. -- Firearms level 1 instructors, in addition to qualifications required for law enforcement instructors set forth in subsection 5.1 of this rule, shall:

5.2.a.1. Have experience in the use, care and maintenance of a firearm; and,

5.2.a.2. Complete a law enforcement handgun firearms instructor school, of not less than forty (40) hours, approved by the Subcommittee.

5.2.b. Maintenance of Certification. -- In order to keep their certifications active, level 1 firearms instructors shall:

5.2.b.1. Instruct at least a two (2) hour block of firearms instruction in a department or committee recognized firearms certification program, either in a firearms associated classroom presentation or actually on the firearms range, every twenty-four (24) months from the date of their original level 1 instructor certifications; or,

5.2.b.2. Attend, at a minimum, a four (4) hour program on teaching updates or additional training in subject areas in which they are certified to instruct within twenty-four (24) months of original level 1 instructor certification date.

5.2.c. Inactive Instructor Status. -- Level 1 firearms instructors placed on inactive status by the Subcommittee shall within twenty-four (24) months of such placement, attend an eight (8) hour approved firearms training program or teach in a department recognized firearms program under the direct supervision of an active firearms instructor. The Subcommittee shall revoke the level 1 instructor certification for failure to obtain or perform one of the above referenced acts in the time periods described.

### 5.3. Law Enforcement Level 2 Instructor Certification.

5.3.a. Standards. -- All law enforcement level 2 instructors' certifications are valid for four (4) years if the level 2 instructor has:

5.3.a.1. Current certification as a law enforcement officer in the State of West Virginia;

5.3.a.2. A high school diploma or its equivalent;

5.3.a.3. Seven (7) years of experience as a certified police officer;

5.3.a.4. Four (4) years of experience as a level 1 instructor within the previous five (5) years;

5.3.a.5. Successfully completed an approved instructor/trainer course in the subject matter requested within the previous five (5) years;

5.3.a.6. Level 2 instructor applicants shall appear in person before the Subcommittee for approval.

5.3.b. Maintenance Requirements. -- In order to keep their certifications active, certified law enforcement level 2 instructors shall instruct at least eight (8) hours in a Subcommittee certified instructor-level program every twenty-four (24) months from the date of their original certifications.

5.3.c. Inactive Instructor Status. -- Level 2 instructors placed on inactive status by the Subcommittee shall, within twenty-four (24) months of such placement, teach eight (8) hours in a Subcommittee approved instructor program in any inactive subject area under the direct supervision of an active, certified level 2 instructor.

#### 5.4. Waiver of Standards for Certain Individuals.

5.4.a. Licensed members of the West Virginia State Bar, the medical profession and other similar professions; high school, community or junior college, college and university faculty members; certified emergency medical care or advanced first aid instructors; and employees of United States governmental agencies or of state or local agencies which have police regulatory power and whose training assignments are of such short duration as to make certification impractical, or are approved law enforcement instructors by other state or federal level law enforcement training and standards programs may apply to the Subcommittee for an exemption of the level 1 instructor certification process.

5.4.b. The Subcommittee may waive any of the requirements of this section if it finds a person, although not meeting all of the eligibility requirements, is otherwise qualified to be an instructor.

5.5. Validity of Certification. -- Law enforcement instructor certification is valid for a period of forty-eight (48) months from the date of approval in each area of expertise or firearm related area of expertise for instructors who have not had a revocation related action taken against their law enforcement instructor certification as set forth in subsection 5.6 of this Rule or their certification as a law enforcement officer as set forth in Section 16 of this Rule has not been suspended or revoked.

5.6. Revocation or Suspension. -- The Subcommittee may revoke or suspend an instructor's certification:

5.6.a. When an instructor is found to be no longer qualified;

5.6.b. When an instructor is separated from employment, as defined in subdivisions 17.2.c, 17.2.d, or 17.2.e of this rule;

5.6.c. When a recommendation to revoke or suspend certification is made by the director of a training program approved by the Subcommittee, or by the instructor's employer for failure to provide adequate or proper instruction; or,

5.6.d. For falsified or omitted information on any necessary paperwork required by the Subcommittee.

5.7. The provisions of this section are applicable to level 1 and level 2 instructors in all

Subcommittee approved training.

5.8. In the instance of the revocation or suspension of an instructor's certification the Subcommittee shall set the standards and requirements to be completed by the instructor for his or her certification to be made active once again.

#### **§149-2-6. Training Academy Policies.**

6.1. Attendance. -- Trainees shall attend all classes and class functions, including all items listed in the course curriculum, unless excused by the Director. Absences may be excused for illness or injury of the trainee or for other causes approved by the Director. An unexcused absence constitutes grounds for dismissal. Work missed while absent shall be made up.

6.2. Scholastic Grades. -- The minimum passing grade on an examination is seventy-five percent (75%). Trainees failing to obtain 75% on an examination may be allowed to retake the examination within five (5) days. In the event the trainee passes the make-up examination, he or she shall be retained in the training program. The scores of the original examination and the make-up examination will be recorded on the trainee's class record. Provided that trainees may retake a maximum of two (2) separate failed examinations during the course of the program. Any trainee failing to pass after the second examination shall be dismissed as a scholastic failure.

6.3. Skills Training -- Trainees will be given three (3) attempts to successfully complete all skills examinations pursuant to criteria approved by the Director of Training. Any trainee failing to pass any skill examination after three attempts shall be dismissed as a scholastic failure.

6.4. Reentry. -- Reentry to a subsequent basic training for trainees who have withdrawn from a program because of an injury, extended illness, hardship or circumstances beyond their control is at the discretion of the Director. If denied reentry by the Director the trainee, or his or her agency head, may appeal this denial to the Subcommittee.

6.5. Dismissal. -- The Director may dismiss a trainee for disobedience of staff orders, a flagrant or repeated violation of academy regulations, or misconduct.

6.5.a. The Director shall provide written notice to the head of the agency employing the dismissed trainee. The Director shall also provide a copy of the written notice to the affected trainee and to the Subcommittee.

6.5.b. Any trainee dismissed for reasons other than scholastic failure may appeal the dismissal to the Subcommittee. An appeal of the decision made by the Subcommittee will be as set forth in section of this rule.

6.5.c. Any trainee resigning for voluntary reasons, other than hardship, may not be appealed to the subcommittee.

6.6. Salary. -- The trainee's salary for a forty-hour work week while undergoing training and his or her travel costs to and from the training site are the responsibility of the employing agency. The cost of training uniforms, fatigues and other personal equipment required for training shall be paid for by the employing agency. The employing agency may be required by

the Subcommittee to provide proof of such salary or items payment.

6.7. Costs.

6.7.a. The cost for food, lodging and training materials for trainees attending a residential entry-level training academy may be paid by the Subcommittee.

6.7.b. The Subcommittee, upon submission of a grant application, shall review other costs relating to the operation and presentation of entry-level or in-service training programs. Costs approved by such review may be paid by the Subcommittee.

6.7.c. Awards for the payment of costs approved by the Subcommittee shall be from the special revenue account established by W. Va. Code §30-20-4.

**§149-2-7. Academy Training Curriculum.**

7.1. The objective of the curriculum is to provide all law enforcement officers with a minimum of eight hundred and fifty (850) hours of entry level training for certification.

7.2. The employing agency shall provide training in those areas not included in the core curriculum. Local ordinances and department policies and procedures are examples of training that shall be provided by each employing agency.

7.3. The core curriculum shall be amended, as necessary, to meet the needs of the largest possible number of law enforcement agencies. Changes in the core curriculum require approval of the Subcommittee. Recommendations for change shall be made in writing to the Subcommittee.

**§149-2-8. Academy Entry Standards.**

8.1. Entry standards for participation in an entry level certification training academy or program include, but are not limited to, an applicant's demonstration of his or her ability to perform, or be trained to perform, all of the essential tasks and functions contained in the job description and the ability to meet the required medical and physical ability standards as set forth in this Rule.

8.1.a. This Rule will insure that persons appointed to positions as police officers, in agencies subject to this rule, are medically fit to undergo the training requirements for the position, and to perform their essential tasks, at a minimal risk to themselves, their fellow officers, and the public.

8.1.b. All requests for reasonable accommodation concerning participation in an entry level certification training academy or program by a trainee or his or her employing agency head shall be made prior to its start and shall be approved by the Subcommittee. Each reasonable accommodation request may be reviewed by a panel of at least four (4) people appointed by the Chairman of the Subcommittee before a decision is made on the request by the Subcommittee. The panel shall use the job description and medical standards for entry into a basic entry-level training program as a basis of their decision on the request for reasonable accommodation.

## 8.2. Academy Application Requirements.

8.2.a. All newly hired and uncertified, by the Subcommittee, law enforcement officers shall apply for admission to an entry-level training program by submission of a completed and medically acceptable academy application packet within ninety (90) calendar days of their date of employment, whether the employment type is full or part time. Their employer shall provide written or electronically communicated notice to the Academy or the Subcommittee of this officer's employment, which shall include personal identification information, the date of employment and information as to whether the individual has worked as a law enforcement officer before as close as possible to the decision to employ the individual.

8.2.a.1. A completed application consists of an application sheet; a true and accurate medical history statement; a complete medical examination report; and federal and state fingerprint cards or other paperwork approved by the Subcommittee on recommendation of the Director.

8.2.a.2. For the purposes of this section uncertified refers to individuals not certified as a West Virginia law enforcement officer by the Subcommittee.

8.2.b. Any officer who fails to file or have filed on his or her behalf a completed application within the ninety (90)-calendar day period shall be immediately terminated as a law enforcement officer. Any officer terminated may apply to the Subcommittee as a private citizen for training and certification at his or her own expenses as provided for in W. Va. Code ~~§30-29-5~~ §§ 30-29-5(d)(1), 30-29-5(d)(2) or this Rule.

8.2.c. An applicant may file or have filed on his or her behalf a request for an extension of the ninety (90)-calendar day period. This request shall be filed prior to the end of the 90-calendar day period. The request is to be filed with the Subcommittee.

8.3. Entry Level Law Enforcement Officer Job Description: Under regular supervision, an entry-level officer performs basic police services in accordance with the mission, goals and objectives of the employing agency and in compliance with governing federal, state, and local laws. At the completion of an entry level training program, an officer should be able to perform the essential functions established by the Subcommittee of a law enforcement officer. These functions may be set based on job task analysis evaluations, law enforcement officer performance research and the experience of the Subcommittee members and law enforcement professionals and administrators. The functions so established by the Subcommittee will be available for review from the Subcommittee and will be posted on the website of the Division on the page supporting the Subcommittee.

8.4. Medical Standards. -- All applicants for entry into an entry-level training program shall submit to a medical examination by a licensed physician or a licensed medical employment testing company chosen by and at the expense of the employing agency. The applicants shall complete a comprehensive medical history questionnaire, as well as submit to a medical examination which shall include the following minimum requirements: A medical history; a medical examination; laboratory tests; blood chemistry; Complete Blood Count (CBC); urinalysis; Tuberculosis; Electrocardiogram (ECG); and drug screening. The criteria as to type and method of evaluation of any required laboratory tests shall be established by the

Subcommittee.

8.4.a. The medical examination shall consist of criteria aimed at identifying conditions that may potentially exclude an applicant from entry into a basic entry-level training program.

8.4.b. Applicants employed by a law enforcement agency that are required to meet medical requirements for firefighters (National Fire Protection Standards 1582 or its most current equivalent) as a condition of employment shall use that medical standard for entry into an entry-level training program (W.Va. Code §8-22-16).

8.4.c. The Medical History Statement and Medical Examination Report are valid for a one-year period, to be measured from the date of the examining physician's or testing company director's signature on the State of Condition page of the Medical Examination Report.

8.4.d. The examining physician or director of the medical employment testing center shall note if the applicant has any of the medical and physical conditions established by the Subcommittee which may interfere with the applicant's ability to perform the essential functions established by the Subcommittee for an entry level law enforcement officer. The conditions established by the Subcommittee shall be available for review and shall be posted on the website of the Division. These conditions may be cause to exclude an applicant from consideration for acceptance except where specifically noted in the listed conditions.

8.4.e. Any medical or physical condition established by the Subcommittee that may be cause to exclude an applicant from which requires further evaluation to determine the condition's impact upon the applicant's ability to perform the essential functions that an entry level law enforcement officer should be able to perform, shall be conducted at the applicant's expense.

8.4.f. For the purposes of this section the term licensed means a physician or medical employment testing company that is in good and active standing with the medical licensing board of the state in which he or she or it is operating.

#### 8.5. Physical Ability Standards.

8.5.a. All applicants for basic entry-level training are required to perform at the 40th percentile (Cooper Institute of Aerobics Research, Single Standard Norm) of ability as a pass or fail screening for admission into an entry-level training program.

8.5.b. The battery of screening elements, based on the significant work of the Cooper Institute for Aerobics Research, indicates an applicant's ability to satisfactorily perform the essential job tasks of the entry-level law enforcement officer as listed in this rule. Standards for successful completion of ability screening tests, where otherwise not set by this Section, may be established by the Subcommittee. The standards shall be posted to the Division website supporting the Subcommittee.

8.5.c. The three (3) elements of the test battery are designed to confirm the physical ability to perform entry-level training and perform the essential functions of an entry-level law enforcement officer as approved by the Subcommittee. They are not job task simulations, but rather are construct validation of the applicant's capacity to learn and perform essential physical

tasks. Applicants shall be given two attempts to obtain the 40th percentile on each test element. The retest (e.g. second attempt to obtain the 40th percentile on an element of the test battery successfully) shall be on different date, as set by the Director, to gain entry into the next available entry level training program. Each test element shall be passed before proceeding to the next test element. Applicants unable to attain the 40th percentile upon retest shall be placed in a non-law enforcement position until such time as the applicant can obtain the 40th percentiles on all elements of the test battery and enter an entry-level training program. An applicant who is waiting to retest shall insure that his or her medical examination, and its associated tests, was completed within one year immediately preceding the date of the retest.

8.5.d. The physical ability tests shall consist of:

8.5.d.1. Sit-ups (Muscular Endurance) - The score is the number of bent-leg sit-ups performed in one (1) minute.

8.5.d.2. Push-ups (Absolute Strength) - The score is the number of conventional push-ups performed in one (1) minute. A conventional push-up is defined as an exercise performed in the prone position by raising and lowering the body with the straightening and bending of the arms, while keeping the back straight and supporting the body on the hands and toes. The push-ups will be scored by one of the following two standards:

8.5.d.2.A. The counter will place his or her fist on the floor with the nails of their fingers to the floor. If done this way, the applicant's chest must touch the fist for the push-up to be complete; or

8.5.d.2.B. Using a block of wood, dimensions of which shall be set by the Subcommittee, on which the counter may place his or her finger. If done this way, the applicant's chest must touch the counter's finger for the push-up to be complete.

8.5.d.3. One and one-half mile run (Cardiovascular Capacity) - The score is the elapsed time in minutes and seconds required by the applicant to complete the run.

8.5.e. Applicants who successfully completed all three (3) elements of the physical ability test may use the passage of this test for entry into the entry-level training program.

8.5.f. Applicants who successfully completed all three elements of the physical ability test, whose agencies withhold them from entry into the first scheduled entry-level training program, shall retake and successfully complete all three elements of the physical ability test for entry into the next available basic entry-level training program.

8.5.g. Failure of any applicant to participate in an assigned physical ability testing shall be recorded as failure of the physical ability test. Applicants who, as the result of extenuating circumstances, are unable to attend and participate in a scheduled physical ability testing shall advise the Director in writing prior to the test date requesting rescheduling and explaining in detail the extenuating circumstances.

#### **§149-2-9. Annual In-Service Training Facilities.**

9.1. Standards for annual in-service and biennial supervisory level training facilities are similar to those for entry-level training but are less rigid because of the short duration and narrower scope of the training programs. All in-service programs approved by the Subcommittee shall be conducted in adequate and proper facilities.

9.2. Classrooms.

9.2.a. The classroom used shall be large enough to comfortably accommodate the maximum number of trainees attending and shall be approved by the Subcommittee in advance of the starting date.

9.2.b. Artificial or day lighting shall provide good visibility under normal environmental conditions and shall permit the use of audio-visual training aids.

9.2.c. Adequate ventilation and seasonal temperature control shall be provided in the classroom.

9.2.d. Acoustics shall be adequate to enable the speaker to be heard from any place in the used area of the classroom. A public address system shall be provided if needed.

9.3. Classroom Amenities

9.3.a. Seating shall be of comfortable design and of sufficient size to accommodate adults.

9.3.b. Desks or tables shall have smooth tops and shall be of a size as to comfortably permit note taking by adult trainees.

9.3.c. Display surfaces shall be sufficient in size and positioned to permit adequate viewing by trainees seated in the rearmost used area of the classroom.

9.3.d. The classroom shall be equipped with a lectern of some type if necessary and sufficiently large enough to accommodate lecture materials.

9.3.e. Audio visual training aids required to conduct any part of the training program shall be on hand and operable when needed.

9.4. Restrooms. -- ~~Separate~~ Restrooms for both sexes shall be available.

9.5. Parking. -- Adequate parking space shall be provided and be located within reasonable walking distance of the training location.

**§149-2-10. Annual In-Service Training and Firearms Qualifications.**

10.1. Annual in-service training required by the Subcommittee for continued certification shall consist of a minimum of sixteen (16) hours, exclusive of firearms qualification.

10.1.a. A maximum of ~~twenty five~~ fifty percent (~~25~~50%) of this training may be

completed as part of on-line or web-based training program.

10.1.b. Certified law enforcement instructors may receive up to a maximum of eight (8) hours of annual in-service training credit for teaching in a Subcommittee approved annual in-service training course.

10.2. Each law enforcement agency shall require, at a minimum, semi-annual firearms qualifications of all active officers, with the officer's primary duty weapon, which unless previously requested and approved by the Subcommittee shall be considered the officer's handgun, one of which will be a low light firing for qualification. All qualifications shall be separated by a minimum period of three (3) months.

10.2.a. Each duty weapon qualification shall:

10.2.a.1. Be with the individual's unmodified primary service duty weapon;

10.2.a.2. Be on a course of fire requiring a minimum of thirty two (32) rounds;

10.2.a.3. Range from a distance of no less than three yards to a minimum of fifteen yards with the number of rounds to be fired at each distance and whether dominant hand or non-dominant hand assisted or unassisted to be set and published by the Subcommittee;

10.2.a.4. Be on a target with a scoring area set and published by the Subcommittee on the website of the Division on the page supporting the Subcommittee; and

10.2.a.5. Be conducted by a subcommittee approved firearms officer or firearms instructor.

10.2.b. The required course of fire in subdivision 10.2.a.3. of this rule established by the Subcommittee shall be available for review from the Subcommittee and shall be posted on the website of the Division on the page supporting the Subcommittee.

10.2.c. The minimum passing score for qualification shall be set and published by the Subcommittee on the website of the Division on the page supporting the Subcommittee.

10.2.c.1. The employing agency shall submit the qualification scores for each officer to the Subcommittee. Any law enforcement agency failing to report firearms qualification shall be listed in the annual report of the Subcommittee addressing officer training, qualification and certification actions completed during a training year (fiscal year cycle) filed with the Governor and the President of the Senate and the Speaker of the House of Delegates of the West Virginia Legislature.

10.2.d. The guidelines listed in subdivisions 10.2.a and 10.2.c shall be considered minimum standards and do not prohibit any law enforcement agency from establishing more stringent qualification standards as an agency policy.

10.3. To qualify for funding or credit for continued certification, all in-service curricula shall be approved in advance by the Subcommittee.

10.3.a. The Subcommittee reserves the right to review or approve itself or through its designee, on a case-by-case basis, any curricula that was not approved in advance, as required by subsection 10.3. of this Rule.

10.4. The training is preferred to be given in two (2) hour minimums; Provided that, exceptions may be granted by the Subcommittee or its designee.

10.5. Subject matter shall include the majority of subjects included in the entry level training curriculum or other subjects of a specialized nature determined to be relevant for the use by an officer in completing his or her assigned duties as a law enforcement officer in this state. Successful completion, as defined by the sponsoring or presenting training organization, is required for the training to be credited against the training requirement set forth in subsections 10.1 and 11.2 of this Rule.

10.6. Requests for training funds or in-service training credit approval shall consist of the following:

10.6.a. a list of the program objectives;

10.6.b. the names, titles and agencies of the instructors;

10.6.c. the date and time at which the training is scheduled;

10.6.d. the facility at which the training will be conducted; and,

10.6.e. the name, title and agency of the person in charge of the training.

10.7. Regulations of the host agency shall govern the conduct of the training program; however, each officer is required to attend and complete the full program and, if examinations are given, attain at least a 75% on the examination.

#### **§149-2-11. Supervisory Level In-Service Training.**

11.1. Supervisory In-Service Training is applicable to those officers of exempt rank.

11.2. Supervisory level in-service training and firearms qualifications required by the Subcommittee for continued certification shall consist of the requirements as set forth in subsections 10.1 and 10.2 of this rule. In addition to the requirements in subsection 10.1 of this rule, supervisors are required to complete eight (8) hours in a Subcommittee approved supervisory level in-service training program within a 24 month period. A maximum of ~~twenty five~~ one hundred percent (~~25~~100%) of the training may be completed as part of an on-line or web-based training program.

11.2.a. Certified law enforcement instructors may receive up to a maximum of eight (8) hours of supervisory level in-service training credit for teaching in a Subcommittee approved supervisory level in-service training course.

### 11.3. Curriculum for Supervisory In-Service Training.

11.3.a. Curricula for supervisory training should include, but is not limited to, the following subject matter: the role of the supervisor, supervisor/subordinate relationships, leadership, decision making, discipline, motivating and improving, reporting, interpersonal communications, the supervisor as a trainer, productivity, job stress, morale, evaluation of employee performance, budgeting and management by principles.

#### **§149-2-12. In-Service Training Staffing.**

12.1. Instructors in all in-service training where training funds or in-service credit is desired shall meet the standards established by the Subcommittee for certification as set forth in section 5 of this Rule.

#### **§149-2-13. Certification of Law Enforcement Officers.**

13.1. Individual officers successfully completing an entry-level training program shall make written application to the Subcommittee requesting certification and shall demonstrate proof of the successful passage of the entry level law-enforcement examination set forth in subsection 13.7 of this Rule.

13.2. Individual officers who are certifiable via the equivalent certification provision of W. Va. Code §30-29-5 and section of this Rule shall make application to the Subcommittee for certification during the period that they are completing the training set forth in subdivision 14.1.e. of this Rule.

13.3. The Director of an approved academy shall promptly provide to the Subcommittee the names of officers and their agencies successfully completing or failing to complete an entry-level training program or the entry level law-enforcement examination.

13.4. The certification of each law enforcement officer is reviewed annually following his or her first certification by the Subcommittee or its designee and the head of the officer's employing West Virginia law enforcement agency to ensure employee compliance with the requirements set forth in this Rule.

13.5. Certification may be revoked or suspended if any law enforcement officer fails to complete the applicable in-service training and firearms qualification requirements set forth in sections 10 and 11 of this Rule.

13.6. As a requirement of certification, a law enforcement officer shall notify the Subcommittee within ten (10) days of being charged with a crime, excluding minor traffic offenses. A law enforcement officer who fails to notify the Subcommittee may have his or her certification revoked or suspended.

13.7. When required by W.Va. Code §30-29-5(b), each person requesting certification as a law-enforcement officer from the Subcommittee shall demonstrate that he or she has passed the entry level law-enforcement examination established in this section, which shall consist of the following:

13.7.a. Written testing requirements approved by the Subcommittee;

13.7.a.1. The minimum passing grade on the written test is seventy-five percent (75%).

13.7.a.2. Applicants failing to obtain 75% on the written test may be allowed to retake the written test within ten (10) days after notice of the failure to pass. Applicants will be allowed to take the examination a maximum of three (3) times, unless otherwise approved in the sole discretion of the Subcommittee for good cause shown.

13.7.a.3. In the event the applicant passes the second or third written test, he or she may proceed with the application process. The scores of the original written test and any subsequent written tests will be recorded on the applicant's record.

13.7.a.4. Any applicant failing to pass after the third written test is not eligible for certification, unless otherwise approved by Subcommittee for good cause shown.

13.7.b. Documentation that the person continues to meet the medical standards as set forth in subsection 8.4 of this Rule;

13.7.c. Performance of the physical ability standards as set forth in subsection 8.5 of this Rule; and

13.7.d. A background check demonstrating that the person is of good moral character.

**§149-2-14. Equivalent Certification.**

14.1. Applicants for certification as law enforcement officers in the State of West Virginia by the equivalent certification provision shall:

14.1.a. Have completed a Peace Officer's Standards and Training Commission (POST) approved basic entry-level training program or equivalent federal law enforcement training, excluding military police;

14.1.b. Have been certified as a law enforcement officer in the state where the entry-level training was completed or by the federal government, with the certification having had no revocation or suspension action taken against it.

14.1.c. Give notice, upon employment to the Subcommittee of his or her desire to seek and be granted equivalent certification as a West Virginia law enforcement officer.

14.1.d. Submit a completed application, as defined in paragraph 8.2.a.1. of this Rule, to the approved entry level training academy within ninety (90) calendar days of their date of employment via the equivalent training provision of the law which shows that they meet the requirements for admission into an entry-level training program; and,

14.1.e. Complete the following entry-level courses within twelve (12) months from the date of employment: Provided, that under extenuating circumstances the Subcommittee may

grant a waiver:

- 14.1.e.1. Firearms Training and Certification;
- 14.1.e.2. Emergency Vehicles Operations Course;
- 14.1.e.3. Defensive Tactics;
- 14.1.e.4. Laws of Arrest;
- 14.1.e.5. West Virginia Motor Vehicle Law;
- 14.1.e.6. Criminal Law;
- 14.1.e.7. Domestic Crimes; and,
- 14.1.e.8. Laws of Search and Seizure.

14.2. Applicants for equivalent certification who have had their certification revoked or suspended by a POST, and are ineligible for re-certification from that POST, may not make application for equivalent certification in the State of West Virginia.

14.3. During the training set forth in subdivision 14.1.e. of this Rule the applicant shall complete an application for certification to be submitted to the Subcommittee.

14.4. The Subcommittee shall form a review board which shall review all applications for equivalent certification. The equivalent certification review board shall determine if the applicant's prior law enforcement training is equivalent to the current training standards in West Virginia, and make a recommendation to the law enforcement training sub-committee as to whether the applicant is eligible for equivalent certification. One member of this review board shall be the Director, or his or her designee, of the West Virginia State Police Academy.

**§149-2-15. Re-certification Requirements.**

15.1. The purpose of this section is to establish guidelines for the retraining of certified law enforcement officers who have not performed the duties and essential functions of an entry-level law enforcement officer as defined in subsection 8.3. of this Rule and who have not obtained mandated in-service training as required by subsections 10.2 and 11.2. of this Rule or qualified with their weapon as required in subsection 10.2. of this Rule. For the purposes of this Section, "separated" means any absence from duty, regardless of remedies or status available to the officer, which results in the officer not performing the duties of an entry-level law enforcement officer in West Virginia. This may include, but is not limited to the following: extended active military service; injuries or illness which result in the officer receiving temporary disability, sick leave, or workers compensation benefits; suspensions from an agency regardless of the final outcome; placement of an officer on light duty which exceeds twenty-four months; termination; or resignation.

15.2. Law enforcement officers, or law enforcement officials who desire to re-certify as a

law enforcement officer, who have been separated from a law enforcement agency for twenty-four (24) months or less; who are in good standing; and who were certified under the provisions of W. Va. Code §30-29-5; and have been reappointed as a law enforcement officer or law enforcement official by a law enforcement agency; are not required to meet entrance level standards again if:

15.2.a. Within ninety (90) days from the date of employment the individual attends and completes the mandated in-service training for the period and rank; and,

15.2.b. Within ninety (90) days from the date of employment the individual qualifies with his or her duty weapon.

15.3. Law enforcement officers, or law enforcement officials who desire to re-certify as a law enforcement officer, who have been separated from a law enforcement agency for more than twenty-four (24) months, but less than sixty (60) months; who are in good standing; and who were certified under the provisions of W. Va. Code §30-29-5; and have been reappointed as a law enforcement officer or law enforcement official by a law enforcement agency; are required to either test for credit in lieu of attending any of the classes required for re-certification or, attend and successfully complete within twelve (12) months of the date of employment, the following courses: Provided, That the Subcommittee may grant a waiver under extenuating circumstances. The Subcommittee may, at its discretion, require a course to be completed and not allow a test for credit.

15.3.a. Firearms Training and Certification;

15.3.b. Emergency Vehicle Operations Course;

15.3.c. Defensive Tactics;

15.3.d. Laws of Arrest;

15.3.e. West Virginia Motor Vehicle Law;

15.3.f. Criminal Law Update;

15.3.g. Domestic Crimes; and,

15.3.h. Laws of Search and Seizure.

15.4. Law enforcement officers, or law enforcement officials who desire to re-certify as a law enforcement officer, who have been separated from a law enforcement agency in this state for more than sixty (60) months must first receive the approval of the Subcommittee to be re-certified as a law enforcement officer under the process set forth in subsection 15.3 of this section. The Subcommittee, on review of the entry level training and other training completed by a law enforcement officer who has had such a separation, may prescribe training to be completed in addition to the classes set forth in subsection 15.3 of this section. When determined necessary by the Subcommittee the amount of additional training required may require that the law enforcement officer attend the full entry level training program in effect at the time that the

review is being completed.

15.5. Within ninety (90) calendar days of their date of employment, re-certification applicants who meet the guidelines set forth in subsection 15.3 of this section shall submit a completed application to the academy which shows they meet the requirements for admission to an entry-level training program.

15.6. Applicants for re-certification by prior arrangement with the academy may test for credit in any of the classes required for re-certification. If applicable, the applicant passes both written and practical tests at the academy standard to receive credit for the class. If the applicant does not meet the academy standard on any written or practical test, the applicant shall attend and meet the academy standard for each of the entry level courses failed by the applicant.

**§149-2-16. Certification Denial, Suspension or Decertification.**

16.1. The Subcommittee may suspend, decertify, or deny the certification of a law enforcement officer or, if applicable, deny admission to a basic entry-level training program for activities that may include, but are not limited to the following:

16.1.a. Willful falsification of any information submitted or relied upon to obtain certified status;

16.1.b. Having a physical or mental condition affecting the officer's ability to perform his or her duties as described in subsection 8.3 of this rule;

16.1.c. Addiction to or unlawful sale, possession, or use of narcotics, drugs, or drug paraphernalia;

16.1.d. Having admitted the commission of or been convicted of a felony or any crime involving dishonesty, unlawful sexual conduct, physical violence, or driving under the influence of alcohol or drugs, or having been placed in or participated in any pretrial diversion or equivalent program for the same;

16.1.e. Failure to complete required in-service training;

16.1.f. Failure to complete required firearms qualifications ;

16.1.g. Legal prohibitions that prevent an officer from performing some or all of his or her required law enforcement duties. It is the responsibility of the officer to report any such legal prohibitions to the Committee within ten (10) days;

16.1.h. Failure to report legal prohibitions as required by subdivision 16.1.f of this rule;

16.1.i. His or her certification as a law enforcement officer has been suspended, denied or revoked by another state's Peace Officers Standards and Training Commission;

16.1.j. An inability to lawfully carry a firearm under state and/or federal statute;

16.1.k. Failure to have made or met court ordered child support obligations as set forth in W. Va. Code §48-15, *et seq.*; and

16.1.l. Any conduct or a pattern of conduct unbecoming to a law enforcement officer or law enforcement official or activities that would tend to disrupt, diminish, or otherwise jeopardize public trust and fidelity in law enforcement.

16.2. Employment by another agency or reinstatement of a law enforcement officer by his parent agency after termination, whether termination was voluntary or involuntary, does not preclude suspension, revocation or denial of law enforcement certification, if the law enforcement officer was terminated for any of the reasons contained in this section.

16.3. Termination of a law enforcement officer, whether voluntary or involuntary, does not preclude suspension, revocation or denial of law enforcement certification, if the officer was terminated for any of the reasons contained in this section.

16.4. An employing agency shall not seek de-certification of a law enforcement officer prior to or in lieu of termination.

16.5. Law enforcement officers whose certification has been suspended, revoked or if applicable an applicant who has been denied admission to a basic entry-level training academy may not exercise any authority as a law enforcement officer during the period for which their certification is suspended, revoked or denied.

#### **§149-2-17. Certified Law Enforcement Officers Separated from Employment.**

17.1 The certification of a law enforcement officer who is separated from his or her employment with any West Virginia law enforcement agency, shall immediately become inactive and remain inactive until the subcommittee authorizes reactivation of the officer's certification pursuant to the procedure set forth in this section.

17.1.a. For the purposes of this Section, "separated" means an absence from duty from any West Virginia law enforcement agency as a result of retirement, resignation, or termination.

17.1.b. A person whose law enforcement certification has become inactive and desires reactivation, shall apply to the subcommittee by proper application, to have his or her certification reactivated.

17.1.c. A person who is employed by multiple law enforcement agencies simultaneously who separates from employment from any of these agencies shall be considered to be separated as previously defined.

17.2 Whenever a law enforcement officer separates from a West Virginia law enforcement agency, the chief law-enforcement officer of that law enforcement agency shall notify the subcommittee, by a change of status form or electronic submission through the Law Enforcement Professional Standards Information System (LEPSIS), of the separation within ten days of the date of separation. Any law enforcement agency failing to submit a change in status form shall

be listed in the annual report of Law Enforcement Professional Standards filed with the West Virginia Legislature. The notification of the separation from employment shall include, with specificity, the following reason or reasons the officer is no longer employed:

17.2.a Retirement;

17.2.b Resignation;

17.2.c Retirement or resignation in lieu of termination;

17.2.d Retirement or resignation while under investigation or allegations of misconduct; or

17.2.e Termination

17.3 Request to reactivate an officer's law enforcement certification.

17.3.a. Upon receipt of an application for reactivation, the Chair of the Subcommittee shall review the notification of separation received from the law enforcement agency with which the applicant was most recently employed. The Chair of the Subcommittee may grant the applicant a temporary reactivation of his or her certification until a final determination is made pursuant to subsection 17.5 of this Rule. The Chair of the Subcommittee shall notify the Subcommittee of his or her actions and decisions.

17.3.b. Upon receipt of an application for reactivation, the Chair of the Subcommittee may request that the law-enforcement agency from which the applicant was most recently separated, to provide a copy of all information relevant to the applicant's separation from employment.

17.3.c. To allow for the completion of the actions set forth in subdivisions 17.3.a. and 17.3.b. of this Rule the Chair may empower an employee of the Division to act upon his or her behalf to ensure that these actions are completed.

17.4 Upon receipt of a request by the Subcommittee via certified mail or through electronic communications, the chief law-enforcement official of the law enforcement agency with which the applicant was most recently employed, or his or her designee, shall, within eight calendar days, provide the Subcommittee with a copy of information relevant to the applicant's separation of employment or other information requested by the Subcommittee.

17.4.a. An applicant is entitled to a copy of all documents or other materials submitted to the Subcommittee related to the application.

17.5 Within thirty (30) days of the receipt of any information provided by the law enforcement agency, the Subcommittee shall review the information and issue a final decision. The thirty (30) days begin upon the Subcommittee's receipt of all applicable documents, records, etc. requested or subpoenaed.

17.6 The Subcommittee shall approve an application for reactivation unless the Subcommittee affirmatively demonstrates, in writing, that the applicant has engaged in conduct that may result in his or her decertification, as provided in subsection 16.1 of this rule. Where information available to the Subcommittee indicates that the applicant has engaged in conduct that is in violation of this rule or other laws or rules, the Subcommittee may not grant the application for reactivation.

17.7 An applicant whose certification is not reactivated pursuant to a final decision of the subcommittee, may appeal the final decision of the Subcommittee pursuant to section of this rule and W.Va. Code §29A-4-1 et seq.

17.8 Nothing in this section shall be construed to require the rehiring of a person by a law enforcement agency from which he or she was separated, even though the Subcommittee authorizes his or her certification to be reactivated.

17.9 A law enforcement official, or appointing officer, or his or her designee, is immune from civil liability for providing to the Subcommittee any information required or requested by this section.

17.10 All information and materials collected as a result of this section shall be retained in a computer database.

17.10.a. The database shall be controlled by the Division and operated under rules and policies developed by the Division.

17.10.b. Information maintained in the database may be released to a law enforcement official based upon policies established by the Division and the Subcommittee.

#### **§149-2-18. Subpoena Power**

18.1 The Subcommittee may issue subpoenas for the attendance of witnesses and production of necessary evidence or documents in any proceeding, review or investigation relating to certification or hearing before it.

18.1.a. The Chair of the Subcommittee shall request that subpoenas be issued.

18.1.b. The Subcommittee may empower an employee of the Division to act on the Chair's and its behalf as to the issuance of such subpoenas, their delivery, the receipt of information called for, to prepare information for presentation to the Subcommittee and to report findings to the Subcommittee.

#### **§149-2-19. Certification Retention.**

19.1. Law enforcement officers certified under the provision of W.Va. Code §30-29-5 who have completed at least 60 months of full time employment as a certified law enforcement officer and who leave active law enforcement employment in good standing, as set forth in subsections 17.1 to 17.3 of this Rule, may continue their law enforcement certification in the active status by:

19.1.a. Completing an application for certification reactivation and approval for certification continuation prior to or no later than twelve months (365 days) after separation from active law enforcement employment;

19.1.b. Obtaining mandated in-service training as required for active officers under the rank of sergeant. Training periods are from July 1 of one year to June 30 of the next; and,

19.1.c. Qualifying with their weapon as required for active officers.

19.2. The individual shall provide the training and firearms qualification records to the Subcommittee during the appropriate training periods. In-service training and firearms qualifications must be maintained on an annual basis in order to retain law enforcement certification.

#### **§149-2-20. Appeal of a Decision of the Subcommittee**

20.1 An individual who has been denied entry into the entry level certification program, a trainee who has not been allowed to continue in the entry level training process an officer who has made application for his or her certification to be reactivated and that application has been denied, an officer or individual whose certification as a law enforcement officer or as an instructor has been denied, suspended or decertified pursuant to a final decision of the Subcommittee, may appeal that final decision of the Subcommittee to the Governor's Committee on Crime, Delinquency and Correction.

20.2 On receipt of such an appeal in a timely manner the Governor's Committee may designate the Executive Director of the Committee to hear the appeal. The Committee or Executive Director may appoint a hearing examiner to develop a record of the appeal by taking evidence on the matter and to make a recommended decision to the Committee or Executive Director pursuant to W. Va. C.S.R. § 149-1-1 *et seq* and W. Va. Code 29A-5-1 *et seq*.