



Peace Officer Standards and Training Board

June 21, 2022

Legislative Reference Library  
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**Re: In The Matter of the Proposed Rules of the Board of Peace Officers Standards and Training  
Governing the Education and Licensing of Law Enforcement Officers;  
Revisor's ID Number 4641**

Dear Librarian:

The Minnesota Board of Peace Officer Standards and Training intends to adopt rules relating to the education and licensing of law enforcement officers. We will publish a Dual Notice of Intent to Adopt Rules in the June 20, 2022, State Register.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Board is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-201-7781.

Yours very truly,  
Rebecca Gaspard

Rules and Legislative Coordinator  
Peace Officer Standards and Training Board  
[Rebecca.w.gaspard@state.mn.us](mailto:Rebecca.w.gaspard@state.mn.us)

Attachment: Statement of Need and Reasonableness



Board of Peace Officer Standards and Training

## STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Amendments to Minnesota Rule Chapter 6700  
Governing the Training and Licensing of Peace Officers

Revisor's # R-04641

June 2022

General information:

- 1) Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), the Advisory Committee on POST Board Rules Overhaul Report to the Board, and the proposed rule will be available during the public comment period on the Board's website:  
<https://dps.mn.gov/entity/post/Pages/statute-rules.aspx>
- 2) View older rulemaking records at <https://www.revisor.mn.gov/rules/status/>
- 3) Board contact for information, documents, or alternative formats:

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact:

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## ACRONYMS

ADL	Anti-Defamation League
APA	Administrative Procedures Act
BIPOC	Black, Indigenous, People of Color
Board	Peace Officer Standards and Training Board
CFR	Code of Federal Regulations
CLEO	Chief Law Enforcement Officer
EMR	Emergency Medical Responder
EPEICRAC	Ensuring Police Excellence and Improving Community Relations Advisory Council
FBI	Federal Bureau of Investigation
FOIA	Freedom of Information Act
IACP	International Association of Chiefs of Police
LBGTQIA	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, & Asexual.
LEA	Law Enforcement Agency
LEO	Law Enforcement Officer
MMB	Minnesota Management and Budget
OAH	Office of Administrative Hearings
PAA	Police Accountability Act
PPOE	Professional Peace Officer Education
POST	Minnesota Board of Peace Officer Standards and Training
RFC	Request for Comments
SONAR	Statement of Need and Reasonableness
SPLC	Southern Poverty Law Center

## INTRODUCTION

In 2020, the Minnesota Board of Peace Officer Standards and Training (POST) began the process of a comprehensive review of the current rules governing the Board's regulatory responsibilities in Minnesota Rules chapter 6700. The rules were first promulgated in the 1970s, and significant portions of the rules remain untouched since that time. The review and overhaul is necessary to provide a cohesive response across all the areas of the Board's responsibilities to address requirements related to the training, education, licensing, of law enforcement officers.

By late 2021, the work was nearly completed on the first portion of rules to be revised. Because the Board anticipated it would be several more years before the completing the review, the Board proposes to move forward with the portion of completed work. The proposed rule amendments focus on the minimum selection standards for applicants for peace officer positions, and the standards of conduct which delineate acceptable and nonacceptable conduct of Minnesota's law enforcement officers. In the meantime, the Board is moving forward to complete the review of the remaining portions of the rules chapter.

In 1967, the legislature created the Minnesota Peace Officer Training Board (MPOTB). The Board's main responsibility was to certify agencies offering police academy training so that police training would become standardized across the state. In 1977, the legislature abolished the MPOTB and replaced it with the Minnesota Board of Peace Officer Standards and Training (POST). The board established licensing and training requirements and set standards for law enforcement agencies and officers.

Under Minnesota Statutes, section [214.01](#), subdivision 3, the POST Board is considered a "non-health-related licensing board" and is subject to the applicable provisions of that statute.

The Board continues to advance public safety through the development and enforcement of standards for the education, licensing, training, and conduct of peace officers (law enforcement officers) in Minnesota. The Board licenses and regulates more than 12,800 (active and inactive) peace officers and 418 state, county and local law enforcement agencies. Peace officers are law enforcement officers (LEOs). LEOs include state troopers who are part of the Minnesota State Patrol; conservation officers with the Department of Natural Resources; county sheriffs and sheriff's deputies; and police officers.

## STATUTORY AUTHORITY

Minnesota Statutes, section [626.843](#) authorizes the POST Board to adopt rules and standards relating to the education, training, and licensing of peace officers. Under the statute, the POST Board has the necessary statutory authority to adopt the proposed rules.

## GENERAL STATEMENT OF NEED

The proposed rule amendments are necessary to address the lack of clarity regarding basic requirements in the selection of law enforcement officers; fully carry out the Board's regulatory authority regarding the misconduct of law enforcement officers; and simplify administration and compliance reviews of law enforcement agencies regarding required policies. The proposed rules also provide increased transparency regarding licensure procedures; eliminate outdated rule language; clarify existing procedures; remove unnecessary or confusing requirements and restrictions; and establish procedural requirements to allow the Board to effectively perform its regulatory functions, protecting the health and safety of licensees and the public.

## PUBLIC PARTICIPATION AND STAKEHOLDER INVOLVEMENT

### Request for Comments:

The POST Board published a Request for Comments (RFC) on August 3, 2020 in the State Register. The RFC was also published on the POST Board's website<sup>1</sup> at, and emailed to licensees with an email address on file. Additionally, the POST Board sent the RFC to the Board's rulemaking notification list and various individuals and organizations that might be impacted by proposed amendments. The RFC announced the Board's intent to review and amend the rules governing law enforcement officers in Minnesota Rules, chapter 6700 in order to simplify language, reorganize rules to make it easier to find information, remove unnecessary requirements, provide for better administration of the rules, clarify unclear passages, and to update the rules in the entire chapter.

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<sup>1</sup> <https://dps.mn.gov/entity/post/Documents/rfc-4641-7-23-20.pdf>

### Advisory Committee:

The RFC included notice that the Board intended to appoint an advisory committee as provided for under Minnesota Statutes, section [14.101](#), subdivision 2 of the Minnesota Administrative Procedures Act, inviting interested parties to apply. The Advisory Committee was designed to include representatives from community, law enforcement professionals, schools, and other parties affected by or interested in rules administered by the POST Board. The Board also sent specific invitations to apply to serve on the Advisory Committee to community and law enforcement organizations. The Board received more than 50 applications to serve on the Advisory Committee. In October 2020, the Board appointed 20 persons to the Advisory Committee on POST Board Rules Overhaul. Committee members were selected to provide the broadest representation of stakeholders, including law enforcement officers, academic interests, community activists, local and state organizations and affinity groups.

The Advisory Committee met twenty-one times between October 2020 and March 2022 to complete its work on this first section of rules. Meetings and meeting materials are posted on the Board's website<sup>2</sup> and were livestreamed for public viewing. Meeting materials and recordings of meetings are maintained on the website to maximize accessibility for interested parties.

The Advisory Committee's Report to the Board, which includes the Committee's charter and biographical information on committee members, is found in Appendix A.

Unless otherwise noted in the rule-by-rule analysis section below, the twenty member Advisory Committee reached consensus approval on each of the proposed rule amendments. The Advisory Committee continues working on the remainder of rules in the chapter that are not included in this rulemaking process.

### Listening Sessions:

In March 2022, the Board held seven online listening sessions for the purpose of encouraging participation in and education about the rulemaking process. The sessions provided background information on the rulemaking process, emphasizing the anticipated publication of the Notice of Intent and the comment period, as well as introducing the topics of the proposed rule amendments. Licensees and entities on the rulemaking list were specifically invited, and approximately 240

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<sup>2</sup> See <https://dps.mn.gov/entity/post/meetings/Pages/advisory-committee-post-board-rules-overhaul.aspx>



persons registered to attend. The sessions were also livestreamed, and recordings were posted on the website<sup>3</sup>

### Board and Board Committees

On July 23, 2020, at a properly noticed meeting, the POST Board passed a motion and directed staff to initiate rulemaking proceedings and to publish the Request for Comments.

The possible rules were discussed at properly noticed meetings of the Board’s Rule Committee beginning in 2021 and continuing through April 2022, and at properly noticed meetings of the Board beginning in 2021 and continuing through April 2022. Meetings of the Rules Committee and the Board were livestreamed, and recordings maintained on the POST website<sup>4</sup>.

On April 21, 2022, at a properly noticed meeting, the POST Board passed a resolution authorizing the actions necessary to adopt rules, including authorization of the publication of the Dual Notice of Intent to Adopt Rules with or Without a Hearing pursuant to Minnesota Statutes, section 14.22, subdivision 2.

## REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR.

*“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”.*

### Classes most likely to be affected by the proposed rule changes

- Members of the public, including members of the BIPOC and LGBTQIA communities, immigrants, religious minorities and other members of protected classes who are served by law enforcement.
- Applicants for licensure and applicants for law enforcement officer positions
- Law enforcement officers
- Law enforcement agencies

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<sup>3</sup> <https://dps.mn.gov/entity/post/Pages/statute-rules.aspx>

<sup>4</sup> <https://dps.mn.gov/entity/post/meetings/Pages/default.aspx>

Classes that will bear the costs of the proposed rule:

- Law enforcement agencies may have minimal costs and the POST Board will bear the cost of the proposed rule change.

Classes that will benefit from the proposed rule:

- Members of the public will benefit because of higher selection standards and a higher standard of conduct and more accountability for law enforcement officers will be implemented. Community members will benefit from the increased transparency of law enforcement agency policies and procedures. The proposed rules should, over time, increase the public's trust in law enforcement.
- Law enforcement officers will benefit from the increased clarity of procedures and standards of conduct, and from increased community trust and respect for law enforcement.
- Chief law enforcement officers (CLEOs) will benefit from clearly established requirements regarding selection procedures, mandated policies, and responsibilities.
- Law enforcement agencies will benefit as community trust improves.

*“(2) the probable cost to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”.*

- The probable cost to the board is related to standards of conduct which would expand the areas of officer conduct to be addressed by the Board's disciplinary process. This increase makes jurisdictional public complaints regarding officer conduct that were previously not included as part of the Board's jurisdiction. The anticipated increase in complaints is primarily based on the inclusion of unreasonable or excessive use of force complaints. The Board's best estimate, based on experiential evidence, is that an anticipated increase in complaints will require 5-8 additional staff at an estimated annual cost of \$130k each.
- The probable costs to law enforcement agencies (LEAs) are expected to be negligible except for the LEAs who do not already provide emergency medical responder training for officers that would be required under the amended rules. If an agency does not already provide the EMR training, and if the agency is hiring an out of state applicant who does not have the training, the training cost is estimated at \$500 - \$700 if the agency chooses to provide the training at the agency's expense. Agencies do not need

to provide EMR training for applicants who have completed the Minnesota professional peace officer education program because that program includes the EMR training.

- The proposed rules are not anticipated to have any effect on state revenues.

*“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”.*

- The Board has carefully considered any cost and burden of the proposed rules, and has sought input from interested parties, including advisory committee members. There were no methods found that were less costly or less intrusive which would achieve the purposes of the proposed rules.

*“(4) a description of any alternative methods for achieving the purpose of the proposed rule that would seriously be considered by the agency and the reasons why they were rejected in favor of the proposed rule”.*

- The Board considered alternatives to the minimum selection proposed requirement of an age of 18 or older. The discussion regarding the alternatives is found on page 27 under 6700.0700, Subp. 1, Item M.
- The board considered alternatives to the minimum selection proposed new requirement of emergency medical responder training. The discussion regarding the alternatives is found under 6700.0700, Subp. 1, Item L on page 26.
- The board considered alternatives to allowing persons eligible to work in the United States as a minimum selection requirement. The discussion is found on page 22.

*“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses or individuals”.*

- Applicants from other states who are applying for law enforcement positions may not have the required emergency medical responder training, which is a new requirement under the proposed rules. The cost of this training, which may be borne by the applicant or the hiring law enforcement agency, is estimated to be \$500 to \$700.
- Costs of proposed amendments to rules on background investigations are not new costs, as background investigations are currently required under rule. The cost of a background investigation is impacted by whether the law enforcement agency has internal staff who conduct the investigation or whether the investigation is conducted by a vendor. The cost is also impacted by the age of the person under investigation. An

18 year old applicant has significantly less history to explore compared to a 40 year old applicant. The proposed requirements codify existing best practices of background investigations. It is possible that some agencies whose background investigations have been less rigorous may see an increase in cost compared to investigations conducted previously. A CLEO of a metropolitan law enforcement agency estimated that it was possible that the specifications under the proposed rule might increase the time required to complete the investigation by an hour or two, at \$60 an hour for internal staff completing the investigation. The proposed rules are not anticipated to significantly increase the cost of currently required background investigations.

- Costs of proposed amendments to rules on psychological screening are not considered as new costs, since psychological screenings are currently required under rule. The proposed rules are not expected to increase the cost of a psychological evaluation.

*“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories or affected parties, such as separate classes of government units, businesses, individuals”.*

Probable costs to law enforcement agencies, the state, and taxpayers of not adopting the rules may be:

- Continued litigation and settlement costs related to the use of force or First Amendment violations during law enforcement response to demonstrations and crowd events (Public Assembly/First Amendment required policy).

Consequences for not adopting the proposed rule may be:

- Continued erosion of the public’s trust of law enforcement officers and agencies because unreasonable or excessive use of force, discriminatory conduct, and officer participation in hate groups is not addressed.
- Continued numbers of law enforcement leaving the profession over public scrutiny and hostility or negative attitudes towards officers because the public’s trust has been broken by the events of 2020 and 2021. The eroding public trust would not be addressed through the standards of conduct or the policy on Public Assembly/First Amendment activities.
- Continued delegation/abdication of the Board’s authority to regulate licensed officers to individual law enforcement agencies.

*“(7) an assessment of any differences between the proposed rule and existing federal regulation and a specific analysis of the need for and reasonableness of each difference”.*

There are no differences between the proposed rule changes and existing federal regulations because there are no federal regulations pertaining to the selection of Minnesota law enforcement officers or the standards of conduct established for those officers as addressed by the rule changes.

*“(8) an assessment of the cumulative effect of the rule with other federal and state regulation related to the specific purpose of the role”.*

There is no cumulative effect of the proposed rule changes with other federal and state regulations as the purposes of the rule changes relate only to the State of Minnesota’s training and licensing standards for law enforcement officers. No other state or federal agency has regulations pertaining to licensing of Minnesota law enforcement officers.

## PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require the SONAR to describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

The board considered performance-based standards by strengthening the minimum selection standards, and the standards of conduct governing law enforcement officers. This emphasizes superior achievement because it will enhance the mission of protecting the health and safety of the public, and increasing accountability in the law enforcement community.

## NOTICE PLAN AND ADDITIONAL NOTICE PLAN

The Board’s Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved by Administrative Law Judge Eric. L. Lipman on June 8, 2022.

On or near the day the proposed rule amendments are published in the *State Register*, the Board will:

- Email the Dual Notice of Intent to Adopt With or Without a Hearing, along with hyperlinks to the webpage where electronic copies of the Notice, proposed rule amendments, and SONAR can be viewed to:
  - All licensed law enforcement officers who have an email address with the Board.  
Approximately 93% of the Board’s 12,618 licensees have provided an email address.
  - All “eligible to be licensed” candidates (approximately 950 individuals);
  - All schools offering the Professional Peace Officer Education (PPOE) programs
  - All PPOE coordinators;
- Post the Dual Notice of Intent to Adopt Rules on the Board’s website with hyperlinks to the draft rules and SONAR before the Notice is published in the *State Register*.
- Mail the Dual Notice of Intent to Adopt Rules with a hyperlink to the webpage where electronic copies of the Notice, proposed rule amendments, and SONAR can be viewed; or email the Dual Notice of Intent to Adopt Rules, along with hyperlinks to the draft rules and SONAR to:
  - Individuals and organizations on the Board’s rulemaking notification list
  - Law enforcement associations and labor organizations:
    - Minnesota Chiefs of Police Association
    - Minnesota Sheriff’s Association
    - Saint Paul Police Federation
    - Law Enforcement Labor Services
    - Minnesota Police and Peace Officers Association (MPPOA)
    - Minnesota State Patrol Troopers Association
    - National Latino Police Officers Association – Minnesota Chapter
    - National Black Police Association – Minnesota Chapter
    - Police Officers Federation of Minneapolis
    - Minnesota Association of Women Police
  - Community, Professional, and Civic Organizations and Associations
    - Communities Against Police Brutality,
    - NAACP Chapters: MPLS, St. Paul, Duluth, St. Cloud, Rochester, and NAACP Statewide Minnesota
    - League of Minnesota Cities
    - Association of Minnesota Counties
    - Minnesota Association of County Attorneys
    - Black Lives Matter Twin Cities Metro
    - Black Lives Matter Minnesota
    - Racial Justice Network
    - Twin Cities Coalition for Justice for Jamar

- Council on American-Islamic Relations (CAIR-Minnesota)
- Families Supporting Families Against Police Violence
- Minnesota Justice Coalition
- Minnesota Justice Research Center
- National Association of Mental Illness- Minnesota
- Minnesota Indian Women’s Resource Center
- Minnesota Transgender Alliance
- Brooklyn Center Multicultural Advisory Committee and Community Police Partnership
- Confederation of Somali Community
- Minnesota American Indian Center
- Violence Free Minnesota
- Voices for Racial Justice
- Citizens League

- State Agencies and Tribal Governments

- Minnesota Board of Psychology
- Minnesota State Patrol
- Bureau of Criminal Apprehension
- Minnesota Department of Natural Resources
- Minnesota Board of Public Defense
- Minnesota Indian Affairs Council
- Minnesota Council on Asian-Pacific Minnesotans
- Council for Minnesotans of African Heritage
- Minnesota Council on Latino Affairs
- Bois Forte Band of Chippewa
- Fond du Lac Band of Lake Superior Chippewa
- Grand Portage Band of Lake Superior Chippewa
- Leech Lake Band of Ojibwe
- Lower Sioux Indian Community
- Mille Lacs Band of Ojibwe
- Prairie Island Indian Community
- Red Lake Nation
- Shakopee Mdewakanton Sioux Community
- White Earth Nation

- The Additional Notice Plan does not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.
- As required by Minnesota Statutes, section 14.116, a copy of the Dual Notice and a copy of the SONAR will be mailed to the Legislative reference Library, and a copy of the Notice of Intent and hyperlinks to the SONAR and draft rules will be mailed to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules.

## CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board will consult with Minnesota Management and Budget (MMB). The Board sent MMB copies of the documents sent to the Governor's Office for review and approval on or near the same day we sent them to the Governor's Office and before publication of the Notice of Intent to Adopt. The documents included:

- the Governor's Office Proposed Rule and SONAR Form;
- the proposed rules; and
- the SONAR.

The Board will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to the Office of Administrative Hearings at the hearing or with the documents submitted for Administrative Law Judge review.

## DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the POST Board has considered whether the proposed rule will require a local government to adopt or amend any ordinance or other regulation in order to comply with the rule. The Board has determined that because the rules pertain to applicants and licensees, and do not pertain to local government regulations, there will be no need to amend or adopt an ordinance or regulation.

## COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by Minnesota Statutes, section 14.127, the POST Board has considered whether the cost of complying with the proposed rule in the first year after the rule takes effect will exceed \$25,000 for any small business or small city. It was determined the cost of complying with the proposed rule in the first year after the rule takes effect will not exceed \$25,000 for any small business because the rules do not affect businesses. While many small cities have police departments that will be directly impacted by the



proposed rules, the Board has determined the cost of complying with the proposed rules will not exceed \$25,000.

## LIST OF WITNESSES

If a public hearing is required, the following individuals will be available to testify in support of and answer questions regarding the reasonableness of the rules;

1. Kelly McCarthy, Chair of POST Board
2. Justin Terrell, Chair of Board Rules Committee
3. Erik Misselt, Executive Director, Minnesota Board of Peace Officer Standards and Training
4. Rebecca Gaspard, Rules and Legislative Coordinator, Minnesota Board of Peace Officer Standards and Training
5. Angie Rohow, Standards Coordinator, Minnesota Board of Peace Officer Standards and Training

## RULE-BY-RULE ANALYSIS

This section discusses each proposed change. Some rule parts are self-explanatory and thus necessary and reasonable on their face and, therefore, only explained briefly. Others are discussed in more detail to provide guidance in future rule application.

Repealed rule parts are identified by ~~stricken~~ text.

## 6700.0100 DEFINITIONS

Subp. 26. Discriminatory Conduct. This term is included in three rule parts (6700.0670 Background Investigations, 6700.0700 Minimum Selection Standards, and 6700.1600 Standards of Conduct). The definition is necessary to provide clarity, and to limit the application to instances related to protected class status.

Subp. 27. Seasonal Position. This term is reasonably defined to establish a criteria to identify positions which would qualify for exceptions to background investigation requirements in part 6700.0670 and requirements for psychological screenings in part 6700.0675.

Subp. 28. Temporary Position. This term is reasonably defined to establish a criteria to identify positions which would qualify for exceptions to background investigation requirements in part 6700.0670 and requirements for psychological screenings in part 6700.0675.

## 6700.0601 EXAMINATION STANDARDS

### Subpart 1. Grounds for denial.

Item G: This part is amended to be consistent with the proposed changes to the minimum selection standards in part 6700.0700.

### ~~Subp. 2. Disciplinary proceedings.~~

This rule part is repealed as it is unnecessary to repeat statutory requirements of the Administrative Procedure Act.

### ~~Subp. 3. Suspension or revocation of license.~~

This rule part is repealed as both unnecessary and inaccurate regarding disciplinary procedures.

## 6700.0670 BACKGROUND INVESTIGATION

This new rule part identifies the requirements for background investigations. Minnesota Statutes, section [626.87](#) requires background investigations be completed before any applicant, licensed or not, may be employed by a law enforcement agency as a law enforcement officer.

Unlike most occupational licenses issued by the state of Minnesota, a license is not issued until an applicant for licensure has accepted a position as a peace officer or law enforcement officer with a law enforcement agency. The Board determines whether the applicant has met prerequisite training, education, and testing requirements and is therefore eligible for licensure. The eligible applicant applies to a law enforcement agency, who then determines whether the applicant has met the minimum selection requirements identified in part 6700.0700. The application for the license comes from the applicant after the law enforcement agency has offered a position as a law enforcement officer.

The minimum selection requirements include a background investigation of the applicant after a law enforcement agency has made a conditional offer of employment to an unlicensed or a currently licensed applicant. Background investigations assess whether applicants have the integrity, character,

and ability to serve as a law enforcement officer. It is needed and reasonable to establish statewide standards for background investigations to provide a consistent screening process for law enforcement candidates across the state and without regard to the law enforcement agency's type, size or location. A statewide standard would also aid the Board in its responsibility under Minnesota Statutes, section [626.8459](#) to conduct compliance reviews of LEAs, and benefit the agencies by providing clear requirements.

By consensus, the Advisory Committee recommended the adoption of these proposed rules on background investigations, including the subparts.

Because a background investigation is already required in current rule and in statute, there is no new or additional cost to law enforcement agencies.

#### Subp. 1. Applicants

Item A. This rule part identifies six areas of information or information releases that applicants are required to provide. The information is necessary to enable the completion of the background check, and does not impose an undue burden on the applicant.

Item B. This item reasonably requires an applicant to enable an agency to review the applicant's social media accounts and activities, while specifying that the applicant does not have to release log in information. Access to an applicant's social media presence is necessary to assist the investigator in developing a profile of the applicant, and is a reasonable way to identify potential areas of concern.

Item C. The proposed rule reasonably requires applicants who are currently or previously licensed as a law enforcement officer to complete information releases of their personnel records at law enforcement agencies. Contacting former employers is a standard practice in reviewing job applicants, and given the powers and authority of law enforcement officers, a release of personnel records is a reasonable screening precaution. This is necessary for an agency to make a fully informed decision.

Item D. This proposed rule reasonably requires applicants who have been licensed as law enforcement officers to identify any potential impeachment issues or Brady-Giglio impairments<sup>5</sup>. These may affect the applicant's qualifications for a law enforcement position.

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<sup>5</sup> Brady-Giglio refers to a string of United States Supreme Court cases holding that due process requires the prosecution to turn over evidence favorable to the accused and material to the accusations. *Brady v Maryland*, 373

This is necessary to preserve the integrity of law enforcement officers as well as the judicial process.

Subp. 2. Requirements for background investigation.

Item A. This rule part includes a current requirement that a background investigation is completed before a law enforcement agency employs a law enforcement officer, as required by Minnesota Statutes, section [626.87](#). The requirement for a background investigation applies to both licensed and unlicensed applicants.

Because background investigations take time (weeks to months) and may have an associated financial cost, law enforcement agencies sometimes ask whether it is required to do another background check if another agency has completed a background check on an applicant. The proposed rule clarifies that a completed background investigation is valid for up to six months which allows for sufficient time for the hiring process to be completed and the applicant to begin employment before the investigation is no longer valid. The six month limitation also recognizes that changes, including changes in driving records, criminal history, social media posts, etc. can occur at any time after the investigation. For this reason, the Board determined that it is reasonable to allow the use of a background investigation for 6 months and no longer, such that critical changes in the applicant's status are not missed when an older investigation is used.

It should be noted that agencies typically obtain any background investigations completed by other agencies, further investigate to address any concerns identified in the file, and address the subsequent time period after the last background investigation was completed.

The proposed rule repeats a statutory requirement of the Minnesota Human Rights Act in Minnesota Statutes, section [363A.08](#), subd. 4(a)(1) which states the chief law enforcement officer or anyone involved in the selection of applicants for the open position may not conduct the background investigation. This is included in rule because many chief law enforcement officers and law enforcement agencies are unfamiliar with this statutory requirement, and including it in the background investigation rule requirements will aid in necessary compliance.

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U.S. 83 (1963); United States v. Giglio, 405 U.S. 150 (1972); U.S. v. Bagley, 473 U.S. 667 (1985); Kyles v. Whitley, 514 U.S. 419 (1995); Strickler v. Green, 527 U.S. 263 (1999). This requirement includes evidence that may be used to impeach the prosecution's witnesses, including police officers. Brad-Giglio further requires police offices to make prosecutors aware of any evidence that may be favorable to the accused.

Items A (1) through A (13). This proposed rule lists the specific areas that must be addressed by the background investigation. These areas of inquiry include citizenship status, criminal history, driving records, drug and alcohol use, education, employment history, military history, references, a personal interview, residential history, general records checks and financial information. These are standard areas covered in background checks for law enforcement officers, not only in Minnesota but across the nation as well.

Three sub-items on the list warrant further discussion. A(1) on citizenship, A(5) on discriminatory conduct, and A(13) on checks with the local prosecutor's office regarding potential impeachment impairments.

A (1) reasonably requires the investigation to verify the applicant's status regarding citizenship or for non-citizens, whether the applicant is legally entitled to work in the United States. Citizenship is a current rule requirement for licensure, and A(1) references the change in citizenship requirement reflected in the proposed amendments to minimum selection standards in part 6700.0700. The rule-by-rule analysis on the proposed change in the citizenship requirement is found on page 22.

A (5) requires the investigation to explore whether the candidate has any history of discriminatory conduct. Most experienced background investigators indicate that while many investigators will note any indications of bias or discriminatory conduct, it is not an area that investigators always make a point to inquire about during their investigations. The Board believes that it is important and necessary to specify discriminatory conduct as a criterion to be addressed in order to screen out applicants whose bias would interfere with the applicant's ability to fairly serve all members of the community. In recent years, the legislature has found the issue of implicit bias<sup>6</sup> in law enforcement to be of sufficient concern as to require periodic training of all officers on the topic as noted in Minnesota Statutes, 626.8541, subd. 1 (required bias training), 626.8469, subd. 1 (mandatory cultural diversity training including implicit bias), [626.847](#) (training is compulsory), 626.5531 (mandatory reporting of bias crimes). The U.S. Dept. of Health and Human Services defines implicit bias: "Implicit bias is a form of bias that occurs automatically and unintentionally, that nevertheless affects judgments, decisions, and behaviors." Implicit bias is the result of

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<sup>6</sup> For an overview and reviews of recent research, see the *State of the Science: Implicit Bias Reviews* produced annually by the Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, found at <http://kirwaninstitute.osu.edu/researchandstrategicinitiatives/implicit-bias-review/>

sociological conditioning regarding certain groups.

Consider how conscious bias would impact an officer's conduct. An officer whose personal beliefs are discriminatory based on person's protected class status may profess to ignore those beliefs while on the job. However, it is unreasonable to expect that such acknowledged bias does not enter into the officer's on-the-scene assessment and response. Officers are often required to make instantaneous decisions; assessing the likelihood of danger, criminal behavior, and whether or not a suspect intends to flee or inflict harm. Officers also hold discretionary power in many interactions with the public – whether to initiate a traffic stop, arrest a person, etc. An officer's negative beliefs about women, persons of color, immigrants, LGBTQIA+ community members, etc. will necessarily influence the officer's actions and it is recognized that even implicit bias does so as well.

A (13). This sub-item applies to applicants who have been previously licensed as a law enforcement officer, either in Minnesota or elsewhere. It reasonably requires checking with the prosecutors in jurisdictions and law enforcement agencies where the applicant has served as an officer to determine whether the officer has any potential impeachment disclosures or Brady-Giglio impairments.

Item B. This proposed rule provides an exception to the requirement for a full background investigation. When an agency is employing a currently licensed and currently employed officer in a temporary or seasonal position, the exception reasonably allows the agency to limit the background investigation to a criminal history check and driving records check. This exception is needed and reasonable for several reasons.

The burden of a full background investigation is heavier for small law enforcement agencies employing short term supplemental law enforcement staff. Small agencies with fewer than 10 officers represent 38% of the approximate 415 Minnesota law enforcement agencies, and 15% of the agencies have 5 or fewer officers. There may be a limited number of staff available to conduct the investigation given the prohibition against the chief law enforcement officer or anyone involved in the selection process participating in the investigation. The cost of outside vendors conducting the investigation may be prohibitive.

Law enforcement agencies, particularly smaller agencies (approximately 62 agencies in Minnesota have 5 or fewer officers), may have an urgent need to replace an officer temporarily unavailable for reasons such as illness or injury, deployment, or administrative leave. A

background investigation will generally take weeks, if not months, and smaller agencies may not have the capacity to cover an open position while waiting for a full background investigation.

Some smaller city agencies may have seasonal populations with substantial seasonal population increases during certain months, when the normal agency roster may not be large enough to address public safety needs. It is not uncommon for such agencies to supplement their force with county deputies or other officers who pick up additional shifts for the season, and it is not uncommon for the supplemental officers to return each season for additional work.

The limited background check of a criminal history and driving record check can easily be completed in a day or two, and focuses on critical aspects of the background investigation.

Item C. This rule simply identifies the retention period for background investigations. Retention will aid in the compliance reviews of law enforcement agencies required under Minnesota Statutes, section [626.8459](#).

### Subp.3. Chief law enforcement officer

Item A. This requirement for the chief law enforcement officer (CLEO) to notify the Board when conducting a background investigation is based on Minnesota Statutes, section [626.87](#), subd. 5. The statute requires the notification to be “upon initiation” of a background investigation and the proposed rule clarifies that the notification should occur within 10 days.

A (1). The proposed rule mirrors the statutory requirement that the notification to the Board includes identifying information about the subject of the investigation.

A (2). The proposed rule reasonably requires the CLEO to notify the Board when the investigation finds a bar to licensure under the minimum selection standards. A current rule, 6700.0701, which is proposed for repeal, requires the CLEO to report when the investigation finds a conviction that would bar licensure. The provision is moved here, and expanded to include reporting investigations that find not only a conviction that would bar licensure, but any finding that would bar licensure. The notification to the Board allows the Board to address the applicant’s eligibility to be licensed status in light of the new information.

For a currently licensed officer, the CLEO is required to report any violation of standards of conduct identified in the background investigation. It is reasonable and needed to report

this information so that the Board may initiate a complaint review process to review the eligibility of the candidate, or the license status of the officer.

Item B. Here, the proposed rule clarifies that the Board will notify the law enforcement agency employing an officer when a background investigation reveals the officer has a disqualifying offense or standards violation.

## 6700.0675 PSYCHOLOGICAL SCREENING

Current rule requirements in the part 6700.0700 Minimum Selection Standards simply require a psychological screening conducted by a licensed psychologist that must include an oral interview. This new rule part reasonably establishes a statewide standard for a psychological screening to provide consistency and an appropriate screening. The Board and the Advisory Committee consulted with practicing psychologists who are experienced in conducting employment screening of law enforcement officer candidates in developing the requirements for the psychological screening.

The Advisory Committee approved by consensus the proposed rules on psychological screening.

Because psychological screenings are already required in rule, there is no new or additional cost to this requirement.

Item A. The proposed rule clarifies that the screening must be conducted after a conditional job offer, and by a licensed psychologist. Because some law enforcement agencies border other states, a provision is added to allow psychologists licensed where the psychologist practices. This allows agencies located on the border to take advantage of nearby licensed psychologists across the state line who are substantially closer than psychologists in Minnesota, and to avoid potential travel and overnight costs.

A (1). The Board considered identifying specific psychological test batteries that could be used for the screening, but learned that psychologists become familiar and develop expertise in administering and interpreting certain tests. Limiting the assessment to one specific test could therefore result in screenings conducted by psychologists who may be unfamiliar with that particular test, which could reduce the validity of the result. Thus, the proposed rule reasonably requires a psychological test that conforms with the screening criteria established by the law enforcement agency.



A (2). This rule reasonably allows the interview with the candidate to be in person or virtual. Most psychologists would likely require the interview to be in person, but the option for a virtual interview is available when necessary.

A (3). This rule would require the psychologist to address the likelihood of the applicant to engage in discriminatory conduct, which as described above, is necessary to protect the integrity of law enforcement. There is no particular psychological assessment that definitively establishes an applicant's likelihood to engage in discriminatory conduct, but the psychologists who consulted with the Board indicated that the topic can be addressed and there may be findings that may be indicative. Members of the Advisory Committee and the Board's rule committee also inquired about the possibility of tests that would measure an applicant's cultural competency, but the Board did not find any such assessment measures or psychological tests.

A (4). This proposed rule reasonably expands on the current rule requirement to assess emotional or mental conditions that might affect the duties of an officer. Because the resiliency of an officer's mental state of mind is crucial, (the high rate of debilitating mental conditions among experienced officers is a threat to officers), it is reasonable and necessary to include an assessment of the officer's ability to handle the psychological demands of an officer's duties.

Item B. This proposed rule clarifies that the screening must comply with the American with Disabilities Act.

Item C. This rule establishes that the screening is only valid for a year. A year is a reasonably sufficient time for the starts and stops of some hiring processes, but also establishes a reasonable expiration point such that the screening does not become outdated due to the applicant's life experiences.

Item D. This proposed rule establishes the same retention schedule for psychological screenings as for background investigations.

Item E. This proposed rule provides an exception to the requirement for a psychological screening when hiring a currently licensed and currently employed officer for a temporary or seasonal position. When an agency is employing a currently licensed and currently employed officer in a temporary or seasonal position, the exception reasonably allows the agency to

forego a psychological screening of the licensed applicant who is currently employed, if the agency so chooses. Currently licensed applicants were previously evaluated through a psychological screening and are currently successful in their law enforcement position. It is needed and reasonable to provide for an exception for short-term and temporary positions for the same reasons a similar exemption is provided for background investigations under part 6700.0670, Subp. 2, Item B.

## 6700.0700 MINIMUM SELECTION STANDARDS

The language in this rule part is simplified and unnecessary language is removed. The Advisory Committee recommended by consensus the adoption of the rules in this section, except as noted below.

### Subpart 1. Selection standards.

The proposed rule amendments clarify that the selection standards apply to applicants who have met prerequisite training, education, experience and testing requirements but are not yet licensed, as well as currently licensed law enforcement officers.

Item A. This amendment to the current citizenship requirement adds persons who are legally entitled to work in the United States but are not yet citizens as eligible for licensure. The Advisory Committee did not reach consensus on the change.

Members supporting the change noted that an individual law enforcement agency could decide to only hire citizens, as noted in Subp. 4 which specifically provides that a law enforcement agency may use more stringent selection standards than established in rule. Supporters also noted that the change would allow law enforcement agencies to hire DACA recipients or Dreamers<sup>7</sup>.

Members dissenting suggested “*further analysis and evaluation of citizenship/residency requirements before a final rule change decision is reached*” and provided a discussion of current and past practices in other states, immigration statuses, military requirements regarding citizenships status, weapons permits, etc. The dissenting members concluded that they would support a change that would allow legal permanent residents to be eligible for licensure.

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<sup>7</sup> Dreamers are young people without legal status brought to the United States as children.

The Board considered these issues carefully, and determined that the proposed language of “persons eligible to work in the United States under federal requirements” is the most reasonable and appropriate. Given the promises of immigration reform on the federal level, a legitimate concern of the Board is avoiding language that is unclear or likely to be outdated. Immigration statuses in law and the associated language may change over time regarding who is eligible to work and under what circumstances. The term or the requirements for “permanent resident” may change, and the wording proposed by the Board is most appropriate.

Agencies, as part of the required background check, would investigate the employment eligibility status of non-citizen applicants to determine whether the applicant was eligible to work in the U.S., and whether the status would lend itself to meeting the LEA’s needs for an employee.

Licensed law enforcement officers are entitled, regardless of citizenship status, to carry weapons without a permit under Minnesota Statutes, section [624.714](#). On the federal level, under [18 U.S.C. § 926B](#), a law enforcement officer licensed by the Board, regardless of citizenship status, would be entitled to carry concealed firearms, assuming the other federal qualifications (which do not include citizenship) were met. The Board has not found any restriction on the federal level that would prevent a non-citizen licensed law enforcement officer from carrying a service weapon.

Other states and localities have expanded the eligibility for a law enforcement license to include non-citizens who are legally authorized to work in the United States, using a variety of terminology and criteria. A thorough discussion on this topic is found in the [Law Enforcement Immigration Task Force's 2021 paper](#)<sup>8</sup>.

The proposed rule expanding licensure eligibility to include qualified applicants who are legally authorized to work in the United States allows law enforcement agencies to broaden their applicant pool, and to employ officers who may share language and culture with communities served by the agency. The rule also expands the applicant pool at a time when fewer students are enrolling in PPOE programs, and when LEAs are finding a shortage of qualified applicants.

Item B. The language regarding the current rule for a driver’s license is simplified, and the Advisory Committee approved the change by consensus.

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<sup>8</sup> <https://leitf.org/wp-content/uploads/2021/08/LPR-Hiring-Of-Law-Enforcement.pdf>

Item C. The current requirement for a psychological screening is retained, and approved by the Advisory Committee by consensus.

Item D. The current requirement for a background investigation is retained, unnecessary language is removed, and a reference to the new rule requirements on background investigations in part 6700.0670 is added. The Advisory Committee approved the language by consensus.

Item E. The listing of convictions which would be a bar to licensure is reorganized and expanded as explained below. The Advisory Committee approved the language by consensus.

E (1). Felony convictions remain a licensure bar. Minnesota Statutes, section [626.8431](#) requires the revocation of a license held by an officer who has a felony conviction.

E (2). This rule part includes the current rule on non-felony convictions that would disqualify an applicant for licensure, and adds new convictions to the disqualifying list. The added convictions are those that would reflect poorly on the applicant's character; indicate a likelihood that the applicant might abuse the authority of a law enforcement officer; suggest an inability to manage anger or respect others; or point to a significant failure to observe the law including complying with orders for protection and restraining orders. Because a law enforcement agency may impose stricter standards, an agency may reject an applicant who has a non-felony conviction that is not included in this list or elsewhere in the minimum selection standards.

Item F. This rule part identifies applicants whose law enforcement license or certification in other jurisdictions is revoked as persons who are not eligible for licensure. The Advisory Committee approved the rule part by consensus.

Item G. This rule part adds a new requirement that an applicant be free of any indication of discriminatory conduct which is addressed in the background investigation. The new requirement is needed and reasonable, as discussed in the rule-by-rule analysis of part 6700.0670 Background Investigation, subpart 1, Item A(5) on page 17. The Advisory Committee approved the rule part by consensus.

Item H. This new rule part would prohibit licensure of applicants involved with a hate or extremist group. Such individuals are generally sorted out by law enforcement agencies through the background investigation, but are specifically included here to establish a statewide standard. Participation in hate groups by law enforcement officers is discussed thoroughly in the rule-by-

rule analysis of part 6700.1600 Standards of Conduct, subpart 1, Item H on page 36, and the discussion establishes the need and reasonableness of this standard. The Advisory Committee approved the rule part by consensus.

Item I. The current requirement for fingerprinting of applicants is retained, and the language simplified. Unnecessary language is removed. The Advisory Committee approved the rule part by consensus.

~~Former Item J.~~ The current requirement that a job-related examination demonstrating physical skills has been conducted is repealed. The rule is not enforceable, as the Board would need to determine whether any physical skill exam conducted by a LEA was job-related.

Law enforcement officers include a wide range of job positions, including state patrol officers, conservation officers, investigators, patrol officers, detectives, training and field officers, supervisory positions, SWAT team members, negotiators, school resource officers, and other positions. LEAs also operate in a continually changing environment where technological advancements may impact or reduce various physical requirements. The state cannot properly identify the changing physical demands for every type of position in Minnesota's law enforcement agencies. Additionally, any legitimate physical requirement required when a person becomes licensed should still be applicable 10 and 20 years later. The Board has no plans to institute on-going physical requirements, particularly in recognition that there are experienced officers who are performing to the satisfaction of their employing LEA who would not likely be able to pass such a physical skills test. Each LEA may make their own determination of regarding any physical requirements and tests that the agency believes are necessary for agency positions, and each LEA has their own responsibility for any accommodations that may be appropriate. A single statewide physical skill standard applicable to all law enforcement positions is inappropriate and unlikely to withstand legal challenges. The Advisory Committee approved the proposed repeal of this rule by consensus.

Item J. The current requirement for a physical exam is retained, and the language regarding the provider of the exam is updated to include licensed medical professionals. The exam is not a skill assessment, and simply establishes whether there are any physical issues that may compromise the safety of the officer in performing the duties of the position. While some agencies may combine the physical health exam with physical fitness assessments, the requirement here is limited to the health assessment. The Advisory Committee approved the rule part by consensus.

~~Former Item K.~~ The previous requirement for an oral exam to demonstrate communication skills is repealed as unnecessary. Applicants who successfully complete the prerequisite training and education requirements for a license have sufficient communication skills to become an officer. The currently required “oral exam” conducted by LEAs generally takes the form of an interview for the open position, and is not a necessary licensing requirement. An interview with the applicant is also part of the required background check. The Advisory Committee approved removing the oral exam requirement by consensus.

Item K. This rule retains the current requirement for a psychological screening examination, and does not add any new costs to the screening and hiring of law enforcement officers. Given the power and authority granted to law enforcement officers, a psychological exam is part of an essential screening for licensure fitness for officers. The Advisory Committee approved this by consensus.

Item L. This new rule reasonably requires the applicant to have completed emergency medical response (EMR) training, or to complete that the training within the first 6 months of employment. Applicants who complete the PPOE program have received this training, but applicants from other states may not have ever been trained on emergency medical response. It is entirely reasonable and necessary to ensure that those applicants are as equally qualified as applicants from Minnesota’s training and education programs.

The Advisory Committee and the Board’s Rules Committee both discussed alternatives to the EMR training requirement. Alternatives included continuing to not require any training, to require only basic first aid and CPR training, or require emergency medical technician training. The Board previously determined that the emergency medical responder training was a necessary part of the Minnesota professional peace officer education programs, and that simple first aid and CPR was insufficient.

Some law enforcement agencies, such as the state patrol, require emergency medical responder training. Other agencies, particularly metro area agencies, may choose instead to rely on paramedics and emergency medical technicians because of a belief that medical assistance is readily available.

The Advisory Committee and the Board’s rules committee both determined that emergency medical responder training was the best option and is needed for these reasons:

- First aid and CPR training is insufficient to provide appropriate care for persons suffering major trauma such as gunshot wounds or severe injuries from traffic accidents.
- It is reasonable to require that an officer be able to provide such immediate emergency medical care as officers are often first on scene. An officer's ability to render care is important because the first seconds and minutes of a medical emergency are critical for survival and that time may be lost waiting for the arrival of emergency medical services.
- While emergency medical responders and emergency medical technicians may be only minutes away in metropolitan areas, in more remote or rural areas of the state such care is often not readily available.
- There may be multiple persons needing medical care in a mass casualty situation, extreme weather event, or other emergency. Responding medical personnel may be overwhelmed and officers may actually outnumber the paramedics and emergency medical technicians responding to the emergency. The ability of officers on scene to immediately begin to render care may be crucial to victims' survival.
- An additional consideration is the impact of repeated exposure to trauma on officers, affecting the officer's emotional resilience. The mental health of officers is at risk due to the accrued exposure to on-the-job trauma. Being able to provide care until other aid arrives may ameliorate the trauma to some extent.

Item M. This new rule establishes a minimum age for licensure as a law enforcement officer. Establishing a minimum age is reasonable given the increasing number of high school programs incorporating post-secondary classes in their programs which may allow the near completion of a post-secondary degree while still in high school, or at least accelerate the completion of a post-secondary degree.

Persons completing the PPOE programs are typically 20-24 years old, so the minimum age will primarily affect those students who utilize the accelerated high school or home school programs. Such students may have accelerated their academic learning at the expense of their social development and general life experience. Without a minimum age established in rule, the Board is unable to reject licensure solely based on the applicant's young age when the applicant is otherwise qualified and has completed the education and training requirements.

The Advisory Committee did not reach consensus on minimum age requirements for licensure, with 5 members dissenting. Members who dissented cited recognized studies that indicate the

brain doesn't fully mature until age 25; the prevalence of age requirements older than 18 for other types of licenses; and noted that 30 states have a licensing requirement for law enforcement officers of 19 or older (27 states have a minimum of 21 years of age).

The Board considered the dissenting members' opinions and determined that a minimum age of 18 is reasonable and appropriate. The Board does not dispute that an older person may have commensurately more life experience and may be better equipped to handle the types of situations an officer must address. However, the Board has no evidence based on its experience with licensing persons younger than 21 that would support a requirement that excludes younger adults.

#### Subp. 2 Documentation.

This rule amendment removes an exemption that refers to the previously repealed subp. 3. It also establishes a retention period for the current requirement regarding documentation of the agency's compliance with the minimum standards described in subp. 1. Adding a retention clause reasonably allows for better enforcement of the minimum selection standards.

#### Subp.3 More rigid standards.

The proposed amendment simplifies the language and makes no new requirement.

### 6700.0701 NOTIFICATION OF CONVICTION

This rule part is proposed for repeal because the requirement was moved to 6700.0670, Subp. 3 for reasons of better organization and clarity.

### 6700.1400 INACTIVE STATUS OF PEACE OFFICER LICENSES

#### ~~Subp. 3. Selection standards.~~

This rule subpart is proposed for repeal because it is no longer accurate and conflicts with proposed rules on minimum selection standards.



## ~~6700.1500 STANDARDS OF CONDUCT FOR PEACE OFFICERS~~

The Board proposes the repeal of the three subparts of this rule part (on statutory authority, scope, and purpose) because the rule parts are superfluous. The clarification in Subpart. 2 regarding enforcement of stricter standards is addressed in the proposed amendments to part 6700.1600 Standards of Conduct.

## 6700.1600 STANDARDS OF CONDUCT

Minnesota Statutes, section [626.843](#), subd. 1(6) requires the Board to establish rules with respect to “minimum standards of conduct which would affect the individual's performance of duties as a peace officer”. While law enforcement agencies bear the responsibility to address employment performance issues with their employees, POST bears the responsibility of addressing standards of conduct and fitness for licensure for law enforcement officers. The current rule addresses conduct on a very limited basis, does not address many areas of egregious conduct, and fails to identify the full scope of serious conduct that would reasonably call into question an officer’s fitness for licensure and ability to faithfully perform the duties of an officer.

It is needed and reasonable to amend the standards to enable the Board to better address its regulatory responsibilities. The Board must fully address conduct of law enforcement officers that jeopardizes the health, safety, and welfare of the public and conduct that interferes with the officer’s ability to fairly protect and serve all of their communities. The proposed amendments expand the areas of officer conduct that impact the officer’s performance of law enforcement duties. The amendment also reorganizes the rule part for better clarity and accessibility.

In general, the proposed amendments to this rule part focus on officer conduct, not criminal conviction. The Board considered continuing to use a conviction standard for criminal offenses, but determined that maintaining the current conviction standard was inappropriate and unreasonable for these reasons:

- Minnesota Statutes, section [626.843](#), subd. 1(6) requires the Board to develop standards of conduct “which would affect the individual's performance of duties as a peace officer.” This is not limited to criminal convictions. Thus, in order to comply with this statutory mandate, it is necessary to expand the minimum standards of conduct beyond criminal conduct for which an officer is convicted. A law enforcement officers must behave both on and off duty in a manner that reflects high standards consistent with both the authority granted to officers and the expectations of the communities served by law enforcement.

- Licensing boards, including the POST Board, are subject to the requirements set out in statute. Minnesota Statutes, sections [214.10](#), subd. 10 and 11 contains specific provisions regarding the Board’s regulatory responsibility in addressing complaints that allege a violation of a statute or rule that the Board is empowered to enforce. The disciplinary standard for the POST Board identified in this statute is whether “reasonable grounds” are found to believe that a violation of the standards of conduct occurred. A criminal conviction standard of “beyond a reasonable doubt” is substantially higher than the reasonable grounds standard the Board is directed to use in statute.
- Finally, criminal behavior does not always lead to charges, and charges do not always lead to convictions, regardless of whether or not the conduct actually occurred. A conviction standard fails to address the circumstances surrounding the conduct when a criminal charge is not brought or is dismissed, or when an individual accepts a plea to a lower charge.
- It is important to note that an officer’s due process rights are protected through the Board’s complaint investigation processes and statutorily protected under Minnesota Statutes, section [214.10](#), regardless of whether the conduct in question was criminal, whether criminal charges were filed, or whether a criminal conviction resulted.

It is needed and reasonable to amend the standards of conduct to comply with the statutory standards by including officer conduct that would call into question the officer’s fitness to serve as a law enforcement officer, and any conduct that would have barred the officer from licensure had that conduct occurred prior to licensure application. The POST Board affirms that all of the proposed revisions to the standards of conduct are needed and reasonable. Each rule subpart is further discussed below.

Subp. 1 Standards.

The proposed amendment to this part clarifies that discipline may result from a violation of the standards of conduct.

Item A. The Advisory Committee reached consensus approval of the eight conduct areas in this rule part. The eight areas include conduct described in felony, gross misdemeanor, and lower-level criminal offenses that are inappropriate for an officer of the law. The Board proposes three new areas of conduct described in criminal offenses that would call into question the officer’s fitness for duty. These three areas of conduct (obstruction of justice, fleeing from law enforcement on foot, and carrying a pistol while under the influence) are included in Items A(5),

(6),and (7). It is necessary to include the three new areas because such conduct demonstrates a serious lack of judgement and reasonably calls into question the officer's fitness for duty and fidelity to the principles of law enforcement.

Item B. This proposed amendment reasonably adds law enforcement agencies and courts as entities that an officer may not provide false information to without violating the standards of conduct.

The proposed rule also clarifies that any conduct that may lead to an impeachment disclosure or a Brady-Giglio impairment is a violation of standards of conduct. Under Brady-Giglio requirements, information about a witness, including a law enforcement officer, must be disclosed to the defense when their testimony could be impeached for allegations of misconduct regarding truthfulness and withholding of exculpatory evidence (among other reasons).

When an officer could be impeached as a witness in a criminal trial, the prosecution can no longer rely on the officer's testimony as evidence in proving its case. In some cases, an officer may have the only firsthand account of a crime. Officer reports and other documents prepared by the officer would be considered inadmissible hearsay unless the officer could testify at the trial. Without the testimony of the officer with the most knowledge of the facts, the prosecution would likely find it difficult to prove their case.

It is reasonable and needed to establish truthfulness as a standard of conduct as the word of a law enforcement officer must be relied upon in law enforcement activity and is an integral part of the judicial process.

The Advisory Committee approved Item B by consensus.

Item C. Item C represents a current standard of conduct, and continues to identify cheating on exams or the licensing process as a standards violation. The Advisory Committee approved Item C by consensus.

Item D. This proposed rule amendment adds to the current conduct standard regarding the unauthorized use of deadly force. Because current standards address only lethal force, the Board currently has no jurisdiction regarding use of force complaints when the force used was less than lethal but was unnecessary or excessive. It is needed and reasonable to include unreasonable or excessive use of less than lethal force.

The amendment also adds the new statutory requirements in Minnesota Statutes, section [626.8475](#) regarding specific responsibilities for officers to intercede and report on inappropriate or illegal use of force violations by other officers.

The Advisory Committee approved Item D by consensus.

Item E. This item contains four requirements grouped here for better organization.

E (1). This new rule requires officers to comply with existing statutory requirements on reporting bias crimes. It does not impose any new requirement on officers but reasonably holds officers accountable for compliance with the statute.

E (2). This current requirement in part [6700.1610](#), subp. 2 is moved to standards of conduct to create awareness among licensees. The types of conduct to be reported are clarified, and a reporting time period is identified. These changes remove any confusion regarding the reporting requirement and should result in better compliance and enforcement of the rule. The changes are needed and reasonable as it is not uncommon for unreported conduct to turn up during background checks on currently employed officers. Specifically identifying the reporting requirement in standards of conduct may aid officers in compliance.

E (3). Failing to cooperate in a board investigation is part of the current standards of conduct (former Item M.) and is moved to this section.

E (4). This proposed rule part is a general requirement to comply with provisions in rule or statute and is reasonable in order to establish potential disciplinary consequences.

The Advisory Committee approved Item E by consensus.

Item F. The conduct identified in this proposed rule relates to the abuse of power and the misuse of an officer's authority. It is needed and reasonable to establish such conduct as antithetical to the integrity required for a law enforcement officer, given the powers and authority of law enforcement officers. The Advisory Committee approved Item F by consensus.

Item G. This proposed rule item establishing discriminatory conduct as a standard violation was approved with consensus by the Advisory Committee.

A definition of discriminatory conduct is proposed under part 6700.0100, subp. 26.

It is needed and reasonable to establish discriminatory conduct as a violation of standards of conduct. A history of discriminatory conduct is a bar to licensure. Background investigations of

licensure candidates are thorough, and consider the character and history of a candidate to determine fitness for licensure. Discriminatory conduct is a specific area of investigation under the proposed rule part 6700.0670 subp. 2(A)(5). Officers experienced in background investigations report that candidates that express through words or actions an aversion to or bias against a protected class group do not pass background investigations. Conduct that would prevent a person from licensure is equally unacceptable after a person is licensed, as law enforcement officers must uphold the state laws and serve all members of their community fairly.

The [Minnesota Human Rights Act](#)<sup>9</sup> (Minnesota Statutes, section 363a) prohibits discriminatory conduct by law enforcement officers in the performance of their duties. Officers are frequently required to instantaneously assess situations and individuals, and respond accordingly when answering service calls or otherwise carrying out their responsibilities. It is unreasonable to expect that demonstrated bias does not enter into the officer's on-the-scene assessment and response. It has been established that unconscious or implicit bias can impact a person's actions. Conscious bias would have a greater impact. Implicit bias is discussed in greater detail in the rule-by-rule analysis of part 6700.0670, Item A(5) on page 17. The need for the Board to address bias in law enforcement officers is exemplified in the April 2022 Minnesota Department of Human Rights report on their investigation of the Minneapolis Police Department<sup>10</sup> where race related bias in policing is discussed thoroughly.

The consequences of discriminatory conduct makes it imperative to address officer conduct for these reasons:

- On or off duty discriminatory conduct of officers reduces community trust. A community's trust in law enforcement is fundamental to effective protection of persons and property. Trust improves community interactions, enhances communication, and promotes shared responsibility for addressing crime and disorder. When trust in law enforcement is lacking, crime rates rise because community members

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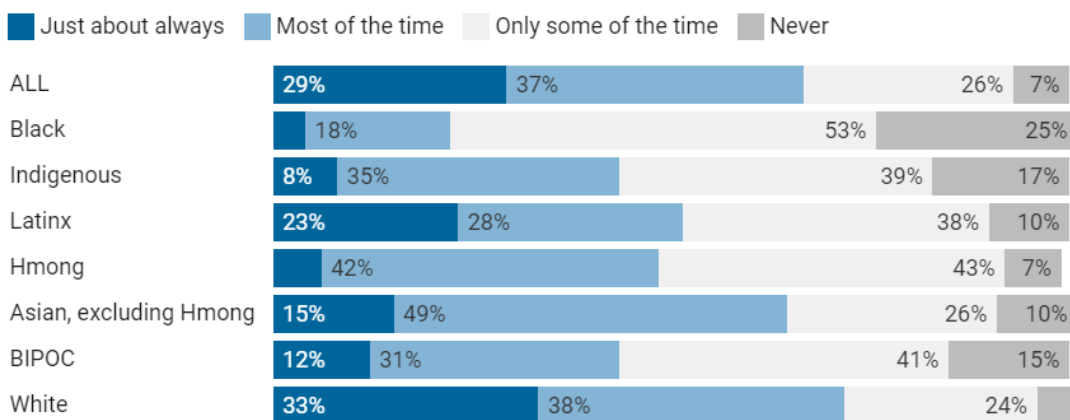
<sup>9</sup> Minn. Stat. § 363A.12, subd. 1 (prohibiting discrimination in public services); City of Minneapolis, et al. v. Richardson, 307 Minn. 80 (1976) (holding that racially discriminatory policing is unlawful under the Minnesota Human Rights Act in a case brought by the Minnesota Department of Human Rights against the Minneapolis Police Department).

<sup>10</sup>[https://mn.gov/mdhr/assets/Investigation%20into%20the%20City%20of%20Minneapolis%20and%20the%20Minneapolis%20Police%20Department\\_tcm1061-526417.pdf](https://mn.gov/mdhr/assets/Investigation%20into%20the%20City%20of%20Minneapolis%20and%20the%20Minneapolis%20Police%20Department_tcm1061-526417.pdf)

are less likely to contact police regarding criminal activities or to respond and cooperate with law enforcement requests for information or witnesses. A lack of community trust therefore impacts an officer’s duties.

BIPOC communities have substantially less trust in law enforcement than white communities as demonstrated in numerous studies and polls. A 2021 poll of Minnesotan BIPOC respondents demonstrated the current lack of trust in Minnesotan law enforcement.

## White respondents nearly three times more likely to just about always trust police compared to BIPOC respondents



Question: “Generally speaking, how much of the time do you think you can trust the police in Minnesota to do what is right?” Note: Percentages may not sum to 100 due to rounding or omission of “don’t know” and “refused” responses. Source: APM Research Lab’s Minnesota’s Diverse Communities Survey, April 26-June 14, 2021. N = 1,532 Minnesotans age 18 or older; the maximum overall margin of error is ±4.8 percentage points.

Chart: APM Research Lab • [Get the data](#) • Created with [Datawrapper](#)

The disproportionately high rate of distrust in law enforcement found among Black Americans and in Black Minnesotans is reflected in the 2021 Minnesota Justice Research Center report on [Trust in Policing: The Role of White Supremacy](#)<sup>11</sup>.

<sup>11</sup> [https://mn.gov/mdhr/assets/Trust%20in%20Policing%20The%20Role%20of%20White%20Supremacy\\_tcm1061-471173.pdf](https://mn.gov/mdhr/assets/Trust%20in%20Policing%20The%20Role%20of%20White%20Supremacy_tcm1061-471173.pdf)

A community cannot be expected to trust an officer who exhibits on or off duty behavior or communication that demonstrates the officer's bias against community members based on a protected class identified in state law. Minneapolis Police Chief Arradondo testified at a 2021 arbitration<sup>12</sup> hearing on an officer who was terminated for anti-Muslim Facebook posts *"...In this profession, we are being held to a higher standard, as we should be. But anytime that we have an employee that engages in conduct that strikes to the heart of that issue of dignity, respect, are we being discriminatory in our words, thoughts, or actions; are we expressing thoughts on social media which seem to pick out Muslim-Americans, African-Americans, and then to expect us to put this uniform back on the next day and say, well, no, that's not how I'm going to treat you when I deal with you professionally, that a reasonable person would not think that is the case."*

A lack of trust results in negative interactions between civilians and law enforcement, and creates a downward spiral. A person who lacks trust in an officer may be less forthcoming, less cooperative, and even hostile; influencing the officer's assessment of the person. This may cause the officer in turn to be suspicious of the person, who reacts negatively to that suspicion, creating a chain reaction with the interaction as a whole spiraling down.

- On or off duty discriminatory conduct of officers may lead to Brady-Giglio impairments. An officer who engages in discriminatory conduct, on or off duty, creates a potential Brady-Giglio<sup>13</sup> impairment. Under Brady-Giglio, prosecutors must disclose evidence that could lead to the impeachment of law enforcement officer. This includes any findings or allegations of untruthfulness, bias, or withholding evidence that may be favorable to the accused. Bias includes both personal bias towards an individual, and bias towards a group in which the individual in question is a member or perceived to be a member. Any testimony from an officer known to have engaged in discriminatory conduct against certain groups would likely be impeached in criminal cases against a member of that group.

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<sup>12</sup> <https://mn.gov/bms/documents/BMS/247553-21PA0177%20-%20City%20of%20Minneapolis.pdf>

<sup>13</sup> *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 154 (1972); U.S.A.M. 9-5.001(B).

Prosecutors are not able to rely on an impeached officer's testimony. Not only would the prosecutor be unable to use the officer to testify to facts in a criminal case, the prosecutor would also likely be unable to use the officer's reports and other documents without the officer's testimony

The Brady-Giglio impact of discriminatory officers was illustrated in Philadelphia and St. Louis after the [Plainview Project](#)<sup>14</sup> released data on offensive or discriminatory Facebook posts by more than 300 Philadelphia officers, and 43 St. Louis officers. In Philadelphia, prosecutors pulled cases where the identified officers were expected to testify, specifically reviewing cases involving Muslim, Black, immigrants, and other defendants where disclosure related to the officers' bias would be required. In St. Louis, the prosecutor placed 22 officers identified by the Plainview Project on a list of officers who would not be called to testify, and stated warrants would not be issued on any case involving any of the officers<sup>15</sup>.

- On or off duty discriminatory conduct adds to the concerns addressed above regarding implicit bias.

Item H. This rule part identifies the support, advocacy, or participation in white supremacist, hate or extremist groups or criminal gangs (hate group) by licensed officers as a violation of the standards of conduct.

The [IACP standards of conduct](#)<sup>16</sup> model includes this statement: "Officers shall not knowingly join or participate in any organization that advocates, incites, or supports criminal acts or criminal conspiracies or that promotes hatred or discrimination toward racial, religious, ethnic, or other groups or classes of individuals protected by law."

A number of states are moving to address officer involvement in white supremacy and other hate groups as are the various branches of the U.S. military. It is reasonable and needed to specifically identify white supremacy in the proposed rule because white supremacists are the domestic terror group identified in the [FBI 2006 report](#)<sup>17</sup>, in a 2021 regional FBI analysis<sup>18</sup>, and

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<sup>14</sup> <https://www.plainviewproject.org/>

<sup>15</sup> <https://abcnews.go.com/US/wireStory/prosecutor-adds-22-st-louis-officers-exclusion-list-63810965>

<sup>16</sup> <https://www.theiacp.org/sites/default/files/2020-06/Standards%20of%20Conduct%20June%202020.pdf>

<sup>17</sup> [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White\\_Supremacist\\_Infiltration\\_of\\_Law\\_Enforcement.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White_Supremacist_Infiltration_of_Law_Enforcement.pdf)

<sup>18</sup> <https://abcnews.go.com/US/white-supremacists-seek-affiliation-law-enforcement-goals-internal/story?id=76309051>



in recent congressional hearings as infiltrating law enforcement. An FBI 2015 *Counterterrorism Policy Directive and Policy Guide* report<sup>19</sup> advised that “domestic terrorism investigations focused on militia extremists, white supremacist extremists, and sovereign citizen extremists often have identified active links to law enforcement officers.” The U.S. Dept. of Homeland Security identified white supremacist extremists as the most persistent and lethal threat among domestic violence extremists in the U.S. in a DHS [2020 report](#)<sup>20</sup>.

The Board gave careful consideration to First Amendment rights of freedom of speech and association, which protect an individual’s right to join various groups. The 2006 FBI assessment notes that “Although the First Amendment’s freedom of association provision protects an individual’s right to join white supremacist groups for the purposes of lawful activity, the government can limit the employment opportunities of group members who hold sensitive public sector jobs, including jobs within law enforcement, when their memberships would interfere with their duties.”

The issues discussed in Item G above consider how a law enforcement officer’s discriminatory conduct negatively impacts the ability of law enforcement to address crime and protect the public by reducing community trust and creating Brady-Giglio impairments which leave the officer unable to testify in some criminal cases. The issues of community trust and Brady-Giglio impairments also apply to an officer’s support, advocacy and participation in white supremacist, hate or extremist groups, or criminal gang (hate group). Further, as discussed above, being a part of such a hate group interferes with an officer’s duties by contributing to conscious bias and undermining the integrity of law enforcement activities.

Items H (1), H (2), and H (3). The Advisory Committee and Board wrestled with the issue of how to determine whether any particular group was a hate group. When a committee member requested that Black Lives Matter be identified as a hate group, and worried that their church could be considered a hate group because of the church’s discriminatory views on women and the LGBTQIA+ communities, it became clear that the proposed rule must include criteria to define a hate group.

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<sup>19</sup> [White Supremacist Extremism JIB - DocumentCloud](#)

<sup>20</sup> [https://www.dhs.gov/sites/default/files/publications/2020\\_10\\_06\\_homeland-threat-assessment.pdf](https://www.dhs.gov/sites/default/files/publications/2020_10_06_homeland-threat-assessment.pdf)

The Board considered using lists of hate groups developed and tracked by the [Southern Poverty Law Center](#)<sup>21</sup> (SPLC) since 1990, but determined that the lists could not be relied on as the sole determiner. SPLC identified 9 hate groups in Minnesota active in 2021. While the presence of a group on the SPLC list is telling, the absence of a specific group on an SPLC list does not necessarily mean that the SPLC has determined that the group is not a hate group. Groups evolve, splinter off, and change names, making any list of groups potentially outdated shortly after creation.

ADL tracks hate incidents but not hate groups. The ADL [H.E.A.T. Map](#)<sup>22</sup> shows 163 incidents in Minnesota in 2021 of hate activity, of which 159 involved white supremacist incidents.

The Board also considered the [FBI](#)<sup>23</sup> as a possible source, however, FBI lists of hate groups are not readily accessible. While historical data on hate groups may be available by submitting an information request through the [Vault](#)<sup>24</sup>, the FBI's FOIA (Freedom of Information Act) library, FOIA requests are not always answered in a timely manner.

While SPLC, ADL, and the FBI may provide limited information on established hate groups and hate activity, the Board reasoned that establishing criteria for what constitutes a hate group would allow officers to assess a group before engaging. Criteria would also provide the Board with the means to assess newly formed hate groups and address splinter groups as well. To answer the question of whether a specific group is a white supremacist, hate, extremist group or criminal gang, a set of three criteria were developed as indicated in sub items 1, 2, and 3. A group that meets one or more of the three specific criteria is by definition a hate group.

The proposed language distinguishes between a group, such as the committee member's church which adheres to discriminatory beliefs for their followers, and a group, such as a hate group, which works to harm an individual or group.

The Advisory Committee could not reach consensus to approve or disapprove Item H (see Appendix A for the committee's report to the Board). While the entire committee

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<sup>21</sup> <https://www.splcenter.org/states/minnesota>

<sup>22</sup> <https://www.adl.org/education-and-resources/resource-knowledge-base/adl-heat-map>

<sup>23</sup> <https://www.fbi.gov/about/fags/does-the-fbi-investigate-hate-groups-in-the-united-state>

<sup>24</sup> [https://vault.fbi.gov/gangs-extremist-groups?b\\_start:int=0](https://vault.fbi.gov/gangs-extremist-groups?b_start:int=0)

supported addressing hate and bias in the law enforcement profession, roughly half of the committee identified concerns that prevented consensus.

- Some members objected to specifically identifying “white supremacist” in the rule because it is a subgroup of hate or extremist groups. The Board considered this, but chose to specifically identify white supremacist groups. It is the white supremacist groups that are recognized as a the most lethal domestic terrorist threat, constituting a significant national security threat and are the only hate or extremist group identified as using infiltration of law enforcement tactics. White supremacist activity in Minnesota exceeds any other type of hate activity as reported by ADL. Specifically calling out white supremacist groups is appropriate because there can be no confusion about the seriousness of the threat that white supremacist groups represent to our communities and to law enforcement officers themselves. It is important to make plain the Board’s intent to support law enforcement agencies and all Minnesotan communities by addressing this significant issue.
- Some Advisory Committee members suggested replacing “supporting, advocating, or participating in the activities of” with “actively engaging in material support or direct action in conduct that the officer knows or reasonably should know is to carry out harmful and/or derogatory activities of”. The qualifiers “material” and “direct” unreasonably suggest that some level of support or action is permissible and lowers the standard. The Board considered this suggestion but finds the Board’s draft language less subject to interpretation, given that Item I provides clarification on activities that constitute “supporting, advocating, or participating”.
- Item H is reasonable and necessary because officer involvement in hate groups is disruptive to the overall operation of law enforcement. Such involvement impacts close-working relationships and may lead to impairment of officer judgement on the job. Specifically, officer involvement in hate groups has a serious and deleterious impact of on community trust; is expected to result in Brady-Giglio impairments which limit officer’s ability to perform essential functions of a law enforcement position; lowers the equal justice and fairness standard expected of law enforcement officers; and contributes to the bias concerns addressed above. These issues are discussed thoroughly in the rule-by-rule analysis of Item G regarding discriminatory conduct.

As the conduct at issue is disruptive, Item H is reasonable and necessary because an officer's rights to engage in First Amendment activity<sup>25</sup> is outweighed by the State's interest in promoting fair and consistent public services by law enforcement officers who uphold the laws. That interest cannot be served by officers who do not accept that all persons in Minnesota, regardless of protected class status, are entitled to basic civil rights and fair law enforcement. First Amendment rights also do not protect unlawful activity, so to the extent that a hate group's advocacy is directed at inciting or producing imminent lawless action and is likely to incite or produce such action, an officer's involvement with that hate group may not be protected regardless of the government's interests<sup>26</sup>.

Item I. This proposed rule part clarifies conduct that constitutes support, advocacy, or participation in a hate group.

The Advisory Committee did not reach consensus on approving or disapproving Item I. (see Appendix A for the committee's report to the Board).

- Some members objected to the list of conduct in Item I on the basis that the conduct identified as support, advocacy, and participation was not a "direct action" or "do not demonstrate active engagement in harmful activities". The Board considers the support, advocacy and participation in a hate group to be the harmful activities/direct action that would constitute a standards violation.
- Other members were concerned that an officer might simply happen upon an event not knowing it was a hate group event. It is important to note that officers who are the subject of a complaint on violating the standards of conduct are afforded due process, and have the opportunity to defend themselves. The complaint investigation committee will determine, given the specific circumstances and the totality of the evidence including the officer's explanations and statements, whether there are reasonable grounds to believe that a violation of the standards of conduct occurred. Should the Board impose discipline on an officer, the due process includes the right to an administrative hearing through the Office of Administrative Hearings.
- Some members suggested adding a qualifier to each of the four examples in Item I(1)-(4) such that the action must promote the use of threats, force, violence or

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<sup>25</sup> Pickering v. Board of Education, 391 U.S. 563 (1968); and Gordon v. City of Kansas City, M), 241 F.3d 997 (2001)

<sup>26</sup> Brandenburg v. Ohio, 395 U.S. 444 (1969).

criminal activity to be considered support, advocacy, or participation. In other words the suggestion is that the action must actively promote the use of threats, force, violence, or criminal activity in order for it to constitute supporting, advocating, or participating in a hate group. The Board disagrees with the suggestion. The intent of the rule is to identify methods of support, advocacy or participation in a hate group (which, under the definition proposed in Item H, promote the use of threats, force, violence, or criminal activity), not to identify an officer's individual use of threats, force, violence, or criminal activity. Such behavior is addressed elsewhere in the proposed standards of conduct. To add the qualifier suggested by some committee members would unreasonably allow an officer to:

- represent themselves as a hate group member;
- distribute or post meeting notices of the local chapter of a hate group because as long as the notice itself did not promote threats, etc., it would be permissible.
- Wear insignia, flash white power signs, or wear shirts with swastikas, because the threat is implied, not articulated.
- Financially support a hate group as it would be near impossible to determine whether the funds went to meeting refreshments or weapons used in an assault;
- Participate in marches and meetings as long as there was no promotion of threat, force, violence, or criminal activity in that singular event.

In all these examples of support, advocacy, and participation in a hate group, the officer's affiliation with the hate group reduces community trust, creates Brady-Giglio impairments, and contributes to the bias concerns addressed above.

Using the qualifiers suggested would not serve the purpose of the rule, which is to identify ways of demonstrating the support, advocacy or participation in the hate group.

- Some members disagreed with the provision in I(f) stating that "*There does not need to be a broad catchall clause, if any of the activities fall outside of A-E, then they need to be addressed directly under a different section*". The Board disagrees. Although the most common ways of engagement in a hate group are listed for the

purpose of clarity, it is not possible nor reasonable to enumerate or identify every possible manner of supporting, advocating for, or participating in a hate group.

Item J. This rule part provides a necessary exception to an officer's involvement with a white supremacist, hate or extremist group, or criminal gang when the involvement is part of the officer's duties.

Item K. This rule part is part of the current standards of conduct, and is retained here. It continues to be needed and reasonable to enable discipline for an officer whose law enforcement licensure in another jurisdiction was subject to discipline.

#### Subp. 2. Incapacitation

This existing rule is part of the current standards of conduct and is moved to this subpart. It continues to be needed and reasonable to address the licensing status of an officer where a court adjudication calls into question the officer's ability or fitness to continue to serve as a law enforcement officer.

### 6700.1610 REPORTING OBLIGATIONS AND COOPERATION

The Advisory Committee recommended adoption of this rule part by consensus approval.

#### Subp. 1. Reporting conduct violation.

The proposed amendment to this part adds "unlicensed" to qualify who *may* report conduct violations, and to clarify that only unlicensed individuals have the option of deciding whether or not to report violations. Licensed individuals must, under part 6700.1600, report violations to the Board.

#### Subp. 2. Licensee reporting requirement.

This part makes a plain language change, substituting "must" for "shall".

#### Subp. 3. Report submittal requirement.

This change reduces the reporting time requirement from 90 days to a more reasonable 10 days, consistent with a more focused reporting requirement in the standards of conduct.

#### Subp. 4. Cooperation by licensee.

This part makes a plain language change, substituting “must” for “shall” and clarifies the requirement applies only to Board investigations and not to investigations of other entities.

#### ~~6700.1700 COMPLAINT COMMITTEE~~

This rule part is repealed because it is obsolete and no longer applicable. Minnesota Statutes, section [214.10](#), Subdivision 11 supersedes the requirements in this part.

~~Subp. 1. Definition.~~ This subpart is a definition, for a phrase that no longer appears in rule.

~~Subp. 2 [Repealed, 26 SR 181]~~

~~Subp. 3. Complaint Committee membership.~~ This rule part is repealed because it identifies the membership of the Board’s complaint committee, which is contraindicated in statute.

~~Subp. 4. Complaint Committee Quorum.~~ This rule part is repealed as it discusses a Board committee quorum which is addressed in the Board’s bylaws and unnecessarily identified in rule.

#### ~~6700.2700 POLICE PURSUITS~~

This rule part is repealed as it is philosophical in nature and is not a rule.

#### ~~6700.2701 ESTABLISHMENT OF POLICE PURSUIT PROCEDURES~~

This part is proposed for repeal because the language is outdated and does not reflect current technology or practices.

#### ~~6700.2702 TRAINING REQUIREMENTS~~

This part is proposed for repeal as it is unnecessary.

#### ~~6700.2703 COPIES OF PROCEDURES~~

The requirements in this part are replaced by 6700.1615, Subp. 2.

#### ~~6700.2704 AFFIRMATION OF COMPLIANCE~~

This rule part is proposed for repeal because it is obsolete.

#### 6700.1615 REQUIRED AGENCY POLICIES

This new rule part outlines requirements for required agency policies, previously referred to as “model policies”, in one place. Law enforcement agencies are required by statute to adopt policies on 18 topics,

of which 15 are applicable to every agency. The remaining 3 policies apply only if the agency utilizes the equipment or technology addressed by the policy.

The Board, in response to a recommendation from the [Ensuring Police Excellence and Improving Community Relations Advisory Council](#)<sup>27</sup> (EPEICAC), added a 19<sup>th</sup> policy on Public Assembly/First Amendment Activity. It is reasonable and necessary to establish a statewide policy on public assembly so that law enforcement and the public, including media, have shared expectations on law enforcement conduct and response to crowd events.

EPEICAC was established by statute in 2020. Minnesota Statutes, section [626.8435](#) Subd. 2 provides that “The purpose of the council is to assist the Board in maintaining policies and regulating peace officers in a manner that ensures the protection of civil and human rights. The council shall provide for citizen involvement in policing policies, regulations, and supervision. The council shall advance policies and reforms that promote positive interactions between peace officers and the community.” The Board is required by statute to consider the recommendations of the council, and to report annually to the legislature “...on how the board acted on those recommendations.”

At the April 2021, Board meeting, the Board approved a recommendation from EPEICAC that a policy be developed and adopted to address officer response to public assemblies, and that a rule requiring the policy be promulgated by the Board. The Board appointed a working group to develop the policy, following the Board’s established practice of ensuring stakeholder involvement in required policy development. Both law enforcement and community organizations were represented in the working group, which included two members of EPEICAC, two members of the Advisory Committee, and two additional persons with special expertise.

The Board adopted the resulting Public Assembly/First Amendment Activity policy<sup>28</sup> in July 2021 as a recommended best practice until a rule establishing the policy as a required policy could be promulgated.

The Advisory Committee did not reach consensus to approve or disapprove the proposed rules on required agency policies. Of the 20 committee members, 6 objected to including the policy on Public Assembly/First Amendment Activity as a required policy. In the committee’s report to the Board, the dissenters cite the fact that previous required policies have been mandated by statute, argued that the

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<sup>27</sup> <https://dps.mn.gov/entity/post/meetings/Pages/advisory-council.aspx>

<sup>28</sup> <https://dps.mn.gov/entity/post/model-policies-learning-objectives/Pages/default.aspx>



Board has no statutory authority to mandate policy, and asserted that local government must “...have authority to develop and implement individual policies in the best interest of their communities and in regard to availability of law enforcement and other resources”.

The Board disagrees. The Board regulates standards for law enforcement statewide. Both officer conduct and the use of force are regulated by the Board, and are addressed in the policy regarding officer conduct in response to demonstrations and protests, spontaneous gatherings after the wins or losses of sports teams, and other events necessitating law enforcement presence. The policy sets standards for the use of force in a crowd control environment, requires crowd warnings before use of force is initiated, requires local authorization of use of force, outlines officer conduct at events, requires visible officer identification on the uniform or helmet, and addresses First Amendment issues including the presence of media.

And the Board has authority to “perform such other acts as may be necessary or appropriate to carry out the powers and duties of the board under sections 626.841 to 626.863.” Minnesota Statutes, section 626.843, subd. 3(4); *see also* Minnesota Statutes, section 626.845, subd. 1(8).

The Board sets statewide standards for law enforcement. It is reasonable and necessary to establish a statewide policy on public assembly so that law enforcement and the public, including media, have shared expectations on law enforcement response to crowd events.

The need for the statewide Public Assembly/First Amendment Activity policy was demonstrated in the unprecedented events related to the George Floyd and Daunte Wright protests. Law enforcement response involved eight other law enforcement agencies in the joint force known as Operation Safety Net organized by the Minnesota Department of Public Safety. A statewide policy on public assembly would have been useful. The response to the protests resulted in injuries to protestors, bystanders, and members of the media, and the detention and arrests of journalists. As a result, organizations sought and were granted temporary restraining orders prohibiting law enforcement from attacking or arresting journalists covering the arrests<sup>29</sup>. In February 2022, the Minnesota State Patrol settled resulting litigation by paying \$825 thousand to an injured journalist, and the preliminary injunction was converted into a monitored 6 year injunction<sup>30</sup>. Minneapolis also settled claims from a protestor who suffered an

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<sup>29</sup> <https://www.cnbc.com/2021/04/18/minnesota-police-promise-not-to-detain-pepper-spray-journalists-covering-protests.html>

<sup>30</sup> <https://www.courthousenews.com/wp-content/uploads/2022/02/journalists-police-settlement.pdf>

eye injury after less than lethal force was used without warning<sup>31</sup>, and other legal claims are outstanding.

The Board asserts that law enforcement agencies have always had the ability to adjust required policies to reflect the operating conditions of the agency. This has been necessary to accommodate the differences in command structure, community partners, staffing levels, equipment variations, etc. The committee members concerned about local control should be assured that under the proposed rules, the agency's ability to adopt a policy that is adjusted for local conditions will continue.

Subp. 1: Required Policy.

There are currently 18 policies required by Minnesota Statutes, section 626. The proposed rules answer frequently asked questions about the policies, and collate requirements expressed in 18 or more citations in statute. This will make it easier for the chief law enforcement officer of each law enforcement agency to comply and to easily locate the specific requirements.

Item A. The proposed rule clarifies that agencies may adopt more stringent policies and must include the provisions of the model policy. The policies are listed, and a provision is made to include future policies that would be subject to the same requirements identified in Subp. 2.

Item B. This proposed rule addresses the policies that are related to specific equipment types, and provides that the policies apply to agencies only if the agency uses that specific equipment.

Subp. 2: Chief Law Enforcement Officer.

The proposed rule addresses the responsibilities of the CLEO of each agency in reference to the required policies.

Item A. This rule part requires the posting of the policies on the agency's website or alternatively, in the public area of the physical premises. Public access to the policies provides transparency and can reassure the public regarding the operational practices of an agency. For example, a shared understanding between the public and officers regarding the use of force policy can prevent misunderstandings.

Item B. This item continues the emphasis on transparency with a reasonable requirement that a copy of any required policy must be provided on request by individuals or entities.

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<sup>31</sup> <https://www.mprnews.org/story/2021/01/27/minneapolis-settles-suit-over-mpd-response-to-unrest>

Item C. This requirement ensures that each law enforcement officer has the current version of each policy. This is necessary and reasonable as officers must be able to refer to the policies as needed during the performance of their duties.

Item D. This item reasonably requires that the agency reviews each policy with each officer on at least an annual basis. An annual review is needed to ensure that officers remain familiar with the procedures and expectations of each policy, and provides an opportunity to address any modifications related to new technology, new case law, or new procedures in the agency.

Item E. This item clarifies that the policy must be enforced at all levels of the agency. The proposed rule is reasonable, given that larger metropolitan agencies have many divisions and departments, and multiple physical locations.

Item F. The proposed rule codifies a requirement that a CLEO report any violation of a required policy as is required in the new POST Misconduct Report Database<sup>32</sup>. This database was created after the Police Accountability Act (PAA) was passed by the Minnesota Legislature and signed into law by Governor Walz in August 2020. The PAA required the Board to establish a data base to capture information on officer misconduct. The PAA also required CLEOs, as of July 1, 2021, to report to the Board data as identified by the Board. The legislature intended the database to be used to (1) evaluate the effectiveness of required training, (2) to assist EPEICRAC in its duties, and (3) to identify behavior patterns suggesting an officer is in crisis or likely to violate a required policy. In compliance with the PAA (Minnesota Statutes, [626.8457](#) subd. 3), the Board determined that necessary data to accomplish the stated end results of the database included information on officer violations of required policies. The proposed rule codifies the requirement that a CLEO report any violation of a required policy.

Item G. This item relates to required policies which have associated mandatory training requirements for officers. The rule reasonably requires the CLEO to report on an annual basis the officers that have completed the training, and to report any updates to any of the required policies. This annual report is needed to aid the Board in its compliance audits of agencies as required under Minnesota Statutes, section [626.8459](#).

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<sup>32</sup> See the User Guide to the POST Misconduct Report Database for a summary of the program [https://dps.mn.gov/entity/post/Documents/POST%20Misconduct%20Report%20Database%20User%20Guide%20\(pdf%20version\)%20\(1\).pdf#search=Benchmark](https://dps.mn.gov/entity/post/Documents/POST%20Misconduct%20Report%20Database%20User%20Guide%20(pdf%20version)%20(1).pdf#search=Benchmark)

## CONCLUSION

In this SONAR, the Board has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, chapter 6700. The Board has provided the necessary notice and, in this SONAR, documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules. Based on the forgoing, the proposed amendments are both needed and reasonable.

Signed by: Erik Misselt, Executive Director

Dated:

Advisory Committee on POST Board Rules Overhaul

Report to the Board

April 2022

*Note: The Advisory Committee completed their report before the Revisor's final draft was available. Discussions of Standards of Conduct may use slightly different rule item letters than are used in the final Revisor's draft.*

# **Advisory Committee on POST Board Rules Overhaul RD4641 Report to Board April 2022**

## **Introduction**

In August, 2020, the Board published a Request for Comments as a first step in the process of updating and amending Minnesota Rules Chapter 6700, which addresses the standards and training of peace officers. The published notice announced the Board's intent to establish an Advisory Committee under Minnesota Statutes 14.101 Subd. 2. to aid the Board in developing and amending rules. The Board also invited applicants to apply for appointment to the Advisory Committee by sending information to law enforcement associations and labor organizations, peace officer education programs, community organizations, state councils, police advisory committees, and others.

In October, 2020, the Board appointed 20 individuals to the committee, representing a diverse group of community members, organizations, academic programs and law enforcement officers. The Advisory Committee Charter is found in Appendix A.

Appointments included both new and experienced law enforcement officers (sheriff, chief, retired LEO's, patrol officer) from agencies of all sizes in both metro and rural areas. Professors, representatives of professional peace officer education programs, lawyers, mental health professionals, the general public, and the BIPOC and LGBTQAI communities are also represented among committee members. Additional representation from community organizations includes the NAACP, League of Minnesota Cities, NAMI MN, and Communities United Against Police Brutality (CUAPB). A complete list of members and biographical information can be found in Appendix B.

## **Advisory Committee Work**

Beginning in October, 2020, the committee met regularly, with 3 meetings in 2020, 13 meetings in 2021 and 5 meetings in 2022 as of April 1, 2022.

The committee's work on Background Investigations, Psychological Screenings, Minimum Selection Standards, and Standards of Conduct formed the basis for much of the proposed rule amendments.

While the board is proceeding with rule promulgation on those topics, the committee's work continues on rule sections related to complaints, continuing education, professional peace officers education, reciprocity and military licensing, license renewal and other topics.

## **Advisory Committee Recommendation**

Through discussion, the committee sought to reach consensus on the draft provisions. The committee recommends adoption of the rule amendments reflected in draft (V13 as reviewed by the committee on February 15, 2022) with the following exceptions where consensus was not reached.

## **Exceptions to Consensus Approval of Proposed Rules**

### **1. Minimum Selection Standards: Citizenship**

*6700.0600 Minimum Selection Standards, Subpart 1. The applicant must:*

*A. be a citizen of the United States or eligible to work in the United States under federal requirements;*

7 Members Approving Rule Language: Bicking, Lee, Butay, Gross, Nelson, Edel, Degroff- Gunter

**Support Rationale:** We support the language as written for the following reasons:

- Some departments would like to be able to hire Dreamers and others who are eligible to work in the United States, but who are not yet US Citizens. This language opens that possibility to expand the candidate pool.
- We prefer the more general language of “Eligible to Work in the United States Under Federal Requirements” rather than citing a specific immigration status. By using less specific language, the rule will not need to be updated whenever the federal government changes the names of various immigration statuses.
- There is nothing to prevent a department from having a citizenship requirement if they choose.

13 Members Opposing Rule Language: Do, Litsey, Paulson, Stille, Truesdale, Soyka, Suomala Folkerds, Enevoldsen, Fahning, Bolt, Cemensky, Serier, Sethuraju

### **Dissent Rationale:**

**A. Should the MN POST Board Change the Citizenship Requirements for Licensure?** The below MN statute and rule addresses the current citizenship requirements of peace officers:

- The statute reads that the POST board must set a rule regarding citizenship [626.843 Subd. 1 \(11\)](#).
- The POST rule that implements that statute as requiring US citizenship is at [6700.0700\(1\)\(A\)](#).

The MN POST Board Rules Advisory “Committee” was recently asked to discuss a proposed rule change that would expand those eligible to be licensed as police officer from those that are a “citizen of the United States” to those that are “Lawful Permanent Residents (LPR)” and/or those that are “Authorized to Work in the United States”.

This memorandum is intended to provide legal and historical background relevant to the issue. It is not intended to be an exhaustive list of legal authority, precedent, or current operations of other state licensing schemes. Rather, the information and conclusions contained in this memorandum should be used by the Committee and MN POST Board for further analysis and evaluation of citizenship/ residency requirements before a final rule change decision is reached.

### **B. Background**

Under the Supreme Court case [Foley v. Connelie](#) a citizenship requirement for police officers is constitutional, because under the political doctrine function police officers are non-elected officials who are tasked with executing the law.

Historically, police departments across the nation have included a U.S. citizenship as a requirement to become a police officer. Over the past few years, several states have allowed those individuals who have been granted a lawful permanent residency status to become police officers. Other states have attempted to include those residents who have been granted an “Authorized to Work in the United States” status, although those decisions have run into problems and concerns as included within this memorandum.



Thirty-seven states require police officers to be U.S. Citizens. The law enforcement community defines lawful permanent residents as green card holders. The United States Citizenship and Immigration Services assess whether a prospective lawful permanent resident will be a threat to public health, public safety, and national security through rigorous background checks.

Employment with a Federal Law Enforcement Agency does require the applicant to be a US Citizen or U.S. National. While the Immigration Reform and Control Act (IRCA) of 1986 establishes that discrimination on the basis of an individual's "citizenship status" is generally unlawful, a broad exception to the prohibition permits citizenship requirements for many government positions and private-sector positions where the employer interfaces with federal, state, or local governments. The exception permits the longstanding practice of passing laws that favor or mandate citizenship in public- sector positions across all levels of government. Accordingly, most law enforcement agencies currently require hires to be U.S. citizens.

Approximately thirteen states allow for **Permanent Residents** to serve as police officers. Additional restrictions may include the requirement that permanent residents have applied for citizenship and, in [California](#) for example, expect to be naturalized within a set amount of time. The laws of Tennessee and Maryland also allow for noncitizen military veterans who were honorably discharged to serve in local and state law enforcement. See [The Tennessean](#) and see [Maryland Code](#). One recent example that may be informative is the state of New Hampshire which is currently considered lifting the citizen requirement for police applicants in order to allow green card holders or those with permanent residency status to become police officers. The New Hampshire Police Standards and Training Council empaneled a special committee to consider revising the rule although it appears no final decision has been reached.

The change is being contemplated at a time when police forces are struggling to fill open positions and reflect the state's changing demographics. The police standards officials researched the citizenship requirements in nearly every state and found a "hodgepodge", citing concerns with the legality of non-citizens taking an oath and the difficulty of completing a background investigation on someone that has been in the U.S. for only a few years. Additionally, there are concerns as to whether a person should be granted authority as a police officer to take away the freedom of a citizen when that person is not a citizen. See [Police1](#)

### **C. Permanent Residency Status vs. Authorized to Work in the United States**

#### Lawful Permanent Residency Status

This residency status includes green card holders (I-551 or I-151 card) who have obtained their permanent residency status (resident alien status). A Green Card holder (permanent resident) is someone who has been granted authorization to live and work in the United States on a permanent basis. Permanent residents continue to hold citizenship of another country. Permanent residents have made a long-term commitment to the United States and have undergone extensive background checks.

Permanent residents may use their green card to prove employment eligibility and apply for a social security card. Permanent residents are not allowed to vote in the federal elections although may vote in local elections where United States citizenship is not required. Permanent residents must file U.S. income tax returns as a resident. After a certain length of time – five years in most cases, permanent residents may apply to become a U.S. citizen through a process called naturalization. A lawful permanent resident may not work in some jobs that require a U.S. citizen due to security concerns.

#### Authorized to Work in the United States

This residency status includes those residents who are “authorized to work” in the U.S. but are **not permanent residents nor U.S. Citizens** ( I-765 or I-766 EAD card). Those authorized to work in the U.S. file a petition for either a temporary or permanent worker visa to obtain an immigration status that allows them to work only in certain occupations.

If a non-citizen or non-permanent resident wishes to work in the United States, they have to obtain work authorization. This is a document in the form of a card that allows a non-citizen or someone who isn't a permanent resident to legally obtain a job in the United States. The card is also known as [EAD](#), which is short for an [employment authorization document](#). It will be available for one year, and when it expires, it has to be renewed. It gives an individual temporary legal status and is neither a permanent resident nor U.S. citizenship status. The United States Citizenship and Immigration Services (USCIS) is tasked with determining what level of scrutiny an application will undergo.

There are also several categories of non-citizen immigrants who may not be eligible for police officer licensure, but this area of law is very complicated, and it is impossible to anticipate the specific facts of each situation. For example, there are certain categories of immigrants, like those with employment authorization under the Deferred Action for Childhood Arrivals (DACA) program or other individuals who may lack lawful status in the United States to be eligible for police officer licensure.

See [Seattle Times](#). See [8 U.S.C. § 1621\(a\) and \(c\)](#), [8 U.S.C. § 1641](#)

#### **D. Reasons to Allow Non-Citizen Officers that Are Lawful Permanent Residents (LPR)**

##### Allowing Non-Citizen Officers Will Mitigate the Recruitment Challenge

There are long-standing concerns about the difficulty of generally recruiting applicants to police departments, and these concerns are only exacerbated with respect to qualified female and ethnically diverse candidates. In the wake of high-profile cases of abuse of power, recruitment has only gotten more difficult—particularly in the BIPOC community. This is at a time when there are a growing number of officers retiring, significant competition from both the military and private security, and a younger generations’ expectation that they will move between locations and careers more often than previous generations. Proponents argue that allowing **permanent residents** would increase the recruitment pools and therefore ease this shortage of officers.<sup>1</sup>

##### Improved Relationship with Immigrant Communities

The [Law Enforcement Immigrant Task Force](#), which advocates to **allow lawful permanent residents to serve in law enforcement** argue that while officers have a unique and powerful role in their communities, there is no real reason why a **lawful permanent resident** would not fulfill that role, especially as it would allow officers a valuable link to the immigrant communities they protect. It would likely increase the number of multilingual officers, allowing agencies to better serve communities with limited English.<sup>2</sup>

##### Removing the Requirement Would Not Result in Instability

Proponent’s further point out that hiring **lawful permanent residents** would be subject to the same requirements as any other officer and becoming a police officer is not trivial. Just removing the barrier to entry wouldn’t ensure a flood of lawful permanent residents wanting to become officers.<sup>3</sup>

#### **E. Reasons for Keeping the Citizenship Requirement**

IADLEST remains committed to continuing a citizenship requirement as part of their minimum

1 <https://leitf.org/wp-content/uploads/2017/06/LPR-6.14.17.pdf>

2 <https://leitf.org/wp-content/uploads/2017/06/LPR-6.14.17.pdf>

3 <https://leitf.org/wp-content/uploads/2017/06/LPR-6.14.17.pdf>

standards to be a police officer. IADLEST argues that “officers are expected to enforce the laws and constitution of the United States and are among the few persons who can deprive a U.S. citizen of their freedom. This power should be vested in officers that are loyal citizens, committed to support the laws of the United States and of the state and locality of their employment. In addition, by being a citizen, an officer will be more familiar with the rights afforded to all citizens.”<sup>4</sup> The [2020 IADLEST Minnesota POST Audit](#) appears to support the MN citizenship requirement in comparing the State of MN to the states of Kansas, Florida, Arizona, Oregon, and Pennsylvania (all of whom currently require U.S. citizenship). See the [2020 IADLEST Minnesota POST Audit](#).

#### [2.0.6 Citizenship - IADLEST Model Standards](#)

*State law or commission regulation should require all sworn police and corrections officers to be U.S. citizens. In order to encourage the cultural diversity which has enriched our nation over the years, foreign nationals who are becoming citizens should be encouraged to consider law enforcement careers if they can be employed by criminal justice agencies without exercising arrest powers until obtaining full citizenship.*

***Commentary** Police officers are expected to enforce the laws and constitution of the United States and are among the few persons who can deprive a U.S. citizen of their freedom. This power should be vested in officers that are loyal citizens, committed to support the laws of the United States and of the state and locality of their employment. In addition, by being a citizen, an officer will be more familiar with the rights afforded to all citizens.*

#### **F. How to Involve Lawful Permanent Residents (LPR) in Minnesota Policing**

*Suggested approaches:*

1. Remove the citizenship requirement and allow **permanent residents** due to the reasons outlined in D as well as the restrictions on dual citizenship of some countries (see G below).
2. Limit non-citizen officers to those who have served in the military and have completed the military naturalization process (see Section H).
3. Allow non-citizens to serve as Auxiliary, Reserve or Community Police.

<sup>4</sup> [https://www.iadlest.org/our-services/model-standards#\\_Toc31025315](https://www.iadlest.org/our-services/model-standards#_Toc31025315)

4. Allow non-citizens to enter police academies and/or the Minnesota's Professional Peace Officer Education (PPOE) program and require them to have a pending citizenship application on file with the federal government, and then help them to complete the naturalizations process to become permanent residents or U.S. citizens.

**G. Countries that Do Not Allow Dual Citizenship with the US**

Andorra; Austria; Azerbaijan; Burma; Bahrain; Botswana; Brunei; Chile; China; Ecuador; Estonia; Fiji; India; Indonesia; Iran; Japan; Kazakhstan; Kiribati; Korea; Kuwait; Latvia; Lithuania; Malaysia; Mauritius; Myanmar; Netherlands; Nepal; Norway; Papua New Guinea; Peru; Romania; Singapore; Slovakia; Solomon Islands; United Arab Emirates (UAE); Venezuela; Zimbabwe;

**H. Citizenship Requirements to be in the U.S. Military**

For comparison, many law enforcement agencies across the United States have looked at the citizenship requirements of the U.S. Military for their own law enforcement agencies. The U.S. Military requires that applicants be **U.S. Citizens or Legal Permanent Residents** (people who have valid alien registration form, I-551 or green card, from the US Immigration and Citizenship services). Properly documented non-citizens may enlist from Guam, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Marshall Islands and Palau, although opportunities are limited. The U.S. Military does offer a fast track to U.S. Citizenship thru **military naturalization** (N-400) that many foreign-born citizens do utilize. This naturalization process is only available to military members that have served the United States with honor after one year of military service.

## **I. Allowance to Carry a Firearm**

One final issue to keep in mind is that under Minnesota state law [624.714, Sub. 2](#) only citizens or permanent residents are eligible to carry a firearm. Other states, including [Washington](#) and [Colorado](#) have run into this barrier when attempting to hire DACA recipients as police officers. Under Colorado state law, the state requires U.S. citizenship to carry a firearm (MN currently requires citizenship or permanent resident status). DACA recipients cannot be hired as law enforcement officers in Washington state because of a similar law that says that a person must be a U.S. citizen to carry a firearm. See [Seattle Times](#) and Washington State Legislature [RCW 41.12.070](#) and [WAC 139-07-020](#).

In most states, law enforcement officers are exempt from concealed weapons laws although this is again complicated as many states restrict the carrying of a firearm to citizens or permanent residents. [The Law Enforcement Officers Safety Act \(LEOSA\)](#) does appear to federally extend concealed weapons privileges to active-duty law enforcement officers nationwide.

Under [United States Code, title 18, section 922\(g\)\(8\) or \(9\)](#), it is unlawful for a person to ship or transport in [interstate or foreign commerce](#), or possess in or affecting commerce, any [firearm](#) or [ammunition](#); or to receive any [firearm](#) or [ammunition](#) which has been shipped or transported in [interstate or foreign commerce](#) who being an [alien \(B\)](#) except as provided in subsection (y)(2), has been admitted to the [United States](#) under a [nonimmigrant visa](#) (as that term is defined in section 101(a)(26) of the [Immigration and Nationality Act \(8 U.S.C. 1101\(a\)\(26\)\)](#)). This federal statutory language appears to further complicate the issue of allowing those immigrants who are only “authorized to work” in the United States from possessing or carrying a firearm as a police officer, which is another factor to consider.

## **J. Conclusion and Supporting Language Change**

Currently, Minnesota Administrative Rule 6700.0700, Subpart 1 (A), states that “the applicant shall be a citizen of the United States”, before being appointed to the position of peace officer.

We support opportunities to recruit and hire qualified peace officers from a diverse pool of candidates who reflect the communities they serve. We further support expanding the candidate pool to include a broad range of individuals who are authorized to serve under state and federal law. However, there are many issues and practicalities created by adding “authorized to work in the United States” to

the minimum selection standards of the revised rule. We encourage careful evaluation and further analysis before recommending the currently proposed rule language. We further encourage additional research beyond the information and background provided in this memorandum to help guide the Committee and the MN POST Board on this important and multifaceted issue.

This committee does support a language change to the current rule as included below that would add candidates who have obtained lawful permanent residency (LPR) status, which should result in an increase of those eligible for peace officer licensure and add to a community's success on many levels in the future.

*6700.0600 Minimum Selection Standards, Subpart 1. The applicant must:*

*A. be a citizen of the United States or ~~eligible to work in the United States under federal requirements~~; or obtained a lawful permanent residency (LPR) status in the United States.*

## **2. Minimum Selection Standards: Minimum Age**

*6700.0600 Minimum Selection Standards, Subpart 1. The applicant must:*

*M. be at least 18 years old.*

15 Members Approving Rule Language: Soyka, Suomala Folkerds, Enevoldsen, Fahning, Bicking, Litsey, Lee, Gross, Stille, Edel, Bolt, Cemensky, Nelson, Serier, Do

5 Members Opposing Rule Language: Butay, Truesdale, Paulson, Degroff-Gunter, Sethuraju

**Dissent Rationale:** We are opposed to the minimum age requirement of 18 for developmental and life experience reasons. Neuropsychology has long shown that the frontal cortex does not fully develop in adolescents until at least the age of 25. A 2016 fact sheet from the American Academy of Adolescent and Child Psychiatry states:

“Based on the stage of their brain development, adolescents are more likely to act on impulse, misread or misinterpret social cues and emotions, get into accidents of all kinds, get involved in fights, (and) engage in dangerous or risky behavior. Adolescents are less likely to think before they act, pause to consider the consequences of their actions, (and) change their dangerous or inappropriate behaviors”

The positive skills listed above are *essential* for safe policing in our communities. Even the difference between an 18-year-old and a 21-year-old in terms of life experience is significant. It is difficult to imagine a teenager who may have never lived independently responding to situations like domestic violence, mental health crises, or traumatic experiences. The impact of trauma on the job is another reason to delay patrol officers until the age of 21, which arguably would lead to a stronger and more sustainable workforce in the future.

We have heard the legitimate concerns that delaying the age to 21 may cause difficulty building an already struggling workforce. Teenagers may be lost to other professions if they are ready to be licensed but have to wait years before being employed. To retain young prospective officers, it seems reasonable that the profession could create a track and find alternative roles for candidates to gain essential experience before interacting with the community on the level of patrol officer.

Finally, the majority of states in the U.S. require applicants to be 21 to be licensed. We were able to research rules and statutes in 44 states and found 27 of those states had an age requirement of 21 and 3 states required applicants to be 19 or 20.<sup>5</sup> Additionally, the National Conference of State Legislators has kept a database of professional licensing requirements around the nation and many other professions in different states have older age requirements than 18 including bus drivers, massage therapists, social workers, private detectives, EMTs, truck drivers, electricians, general contractors, teacher's assistants, unarmed security guards, home inspectors and the list goes on. Just in Minnesota children's residential staff, funeral service directors, and nursing home administrators must be 21, and land surveyors must be 25. The most important point is that none of those professions have legal authority to use deadly force.

<sup>5</sup> Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Maryland, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New



### **3. Standards of Conduct: White Supremacist, Hate and Extremist Groups, Criminal Gang**

6700.1600 Standards of Conduct. Subpart 1. It is a violation of standards of conduct to:

*H 1. Undermine or jeopardize public trust in law enforcement, establish a Brady-Giglio impairment, or disrupt the cohesive operation of law enforcement by supporting, advocating, or participating in the activities of a white supremacist, hate or extremist group; or criminal gang that:*

- a) promotes derogatory or harmful actions against others based on a person's perceived race, color, creed, religion, national origin, disability, sex, sexual orientation, gender identity, public assistance status or any protected class as defined in Minnesota Statutes, or federal law;*
- b) promotes the use of threats, force, violence, or criminal activity:*
  - i. to attempt to deprive or deprive a person or persons of civil rights under the Minnesota or United States Constitution; or*
  - ii. to further goals that are political, religious, discriminatory, or ideological in nature; or*
- c) promotes seditious activities, threats or violence against local, state or U.S. Government.*

10 Members Approving Rule Language: *Litsey, Bicking, Lee, Butay, Gross, Edel, Truesdale, Serier, Degroff, Sethuraju*

10 Members Opposing Rule Language: *Enevoldsen, Bolt, Nelson, Paulson, Stille, Soyka, Cemensky, Do, Fahning, Suomala Folkerds*

**Dissent Rationale:** We would like to clarify that none of the committee members who oppose this rule language as presented endorse or advocate that peace officers should be active, engaged members who carry out harmful activities for any identified hate group. We do advocate for addressing bias and hate in the profession. We are concerned about the broad inclusive language and how the changing definitions of those groups could cause unintentional violations of this rule by a peace officer.

Although there has been 1<sup>st</sup> Amendment freedom of association concerns regarding the rights of public employees, there are several United States Supreme Court cases that have addressed these concerns and the legal rule is that there needs to be a balance between the employee's free association interest against the government's interest in the effective operation of its office.

Mexico, Ohio, Oklahoma, Oregon, South Dakota, Utah require applicants to be 21 to begin POST training. Alabama's age requirement is 19 and New York and North Carolina are 20.

We specifically object to the broad language and activities that are identified in Rule 6700.1600 Subpart 1, H.1 that does not demonstrate active engagement in harmful activities. Specifically, we object to the following language:

*6700.1600, subpart 1, H.3....disrupt the cohesive operation of law enforcement by **supporting, advocating, or participating in the activities** of a **white supremacist, hate or extremist group, or criminal gang***

The terms support, advocate or participate are very broad and can include activities that do not directly tie to any activities that are considered derogatory or harmful.

- A peace officer may attend an event or activity where ideologies are shared that could be considered derogatory or discriminatory in nature without taking further action. Technically, as this rule is written, a peace officer could be sanctioned by the POST board for being at that event. Since the identification of groups are fluid depending on the current ideology, actions, and political climate, groups that are identified as hate or extremist groups, as well as gangs, fluctuates.
- Support and advocating can be as broad as liking a Social Media post, even though a peace officer has not taken any further material action to promote an organizations mission.
- White Supremacist is a very narrow group, we feel hate and extremist groups cover white supremacist groups.

**Suggested wording:**... *disrupt the cohesive operation of law enforcement by ~~supporting, advocating, or participating in the activities~~ of a ~~white supremacist~~, actively engaging in material support or direct action in conduct that the officer knows or reasonably should know is to carry out harmful and/or derogatory activities of any a white supremacist, hate or extremist group, or criminal gang that:*

## 4. Standards of Conduct: Support, Advocate or Participate

6700.1600 Standards of Conduct. Subpart 1. It is a violation of standards of conduct to:

*H3. For the purposes of this item, "supporting, advocating or participating" means:*

- a) dissemination of extremist material;*
- b) cyber or social media posts, chats, forums, and other forms of promotion of the group's activities or ideology;*
- c) display or use of insignia, colors, tattoos, hand signs, slogans, or codes;*
- d) financial contributions;*
- e) physical or cyber presence in the group's events; or*
- f) other conduct that could reasonably be considered support, advocacy, or participation*

8 Members Approving Rule Language: Bicking, Lee, Butay, Edel, Gross, Truesdale, Paulson, Sethuraju

13 Members Opposing Rule Language: Litsey, Enevoldsen, Fahning, Nelson, Soyka, Stille, Suomala  
Folkerds, Bolt, Cemensky, Serier, Degroff, Do

**Dissent Rationale:** We would like to clarify that none of the committee members who oppose this rule language as presented endorse or advocate that peace officers should be active, engaged members who carry out harmful activities for any identified hate group. We do advocate for addressing bias and hate in the profession. We are concerned about the broad inclusive language and how the changing definitions of those groups could cause unintentional violations of this rule by a peace officer.

Although there has been 1st Amendment freedom of association concerns regarding the rights of public employees, there are several United States Supreme Court cases that have addressed these concerns and the legal rule is that there needs to be a balance between the employee's free association interest against the government's interest in the effective operation of its office.

We specifically object to the broad language and activities that are identified in Rule 6700.1600, Subpart 1, H.3. that does not demonstrate active engagement in harmful activities. Specifically, we object to the following language:

6700.1600, Subpart 1, H. 3. : *For the purposes of this clause, "support, advocate or participate" means:*  
*H3. For the purposes of this item, "supporting, advocating or participating" means:*

a) *dissemination of extremist material;*

- This is a very broad definition and the identification of what is extremist material can vary and fluctuate depending on the person and political climate.

b) *cyber or social media posts, chats, forums, and other forms of promotion of the group's activities or ideology;*

- Very broad and could include activities that do nothing to support, participate, or advocate for the group.

c) *display or use of insignia, colors, tattoos, hand signs, slogans, or codes;*

- Again, a little broad and can include things not related specifically to participating or supporting. Remember, the thin blue line has been used by some extremist and hate organizations as well as used in law enforcement to memorialize fallen officers.

d) *financial contributions;*

- Broad again, this needs to be narrowed down. This could include membership fees in organizations without supporting activities. For example, Hamas is both a recognized terrorist organization and also a recognized political party in Palestine. If someone donated to the political party to help with relief aid, according to the way this rule is written, it would be supporting an extremist organization.

e) *physical or cyber presence in the group's events; or*

- The terms that are highlighted above are broad and do not indicate active engagement in harmful activities. Until there is a common definition of extremist material, this material could cover anything and will be a changing definition.
- Cyber or social media interactions are a very broad category and as written, even liking a social media post would be a possible violation of the standards of conduct.
- Physical or cyber presence in the group's events again is broad and does not necessarily indicate active, engaged support.

f) *other conduct that could reasonably be considered support, advocacy, or participation*

- We believe this broad catchall should not be included at all, conduct needs to be clearly defined.

**Suggested wording:**

H3. For the purposes of this item, "supporting, advocating or participating" means that an officer should know, or reasonably know, means:

- a) dissemination of extremist material that promotes the use of threats, force, violence, or criminal activity;
- b) cyber or social media posts, chats, forums, and other forms of promotion of the use of threats, force, violence, or criminal activity to further the group's activities or ideology;
- c) display or use of insignia, colors, tattoos, hand signs, slogans, or codes that an officer should know, or reasonably know promotes the use of threats, force, violence, or criminal activity to further the group's activities or ideology ;
- d) financial contributions to promote, support, publicize, or advocate the use of threats, force, violence, or criminal activity. ;
- e) Direct action and/or engagement in activities that promote the use of threats, force, violence, or criminal activity at physical and/or cyber presence in the group's events; or
- f) ~~other conduct that could reasonably be considered support, advocacy, or participation~~

We advocate for the complete removal of Letter F. There does not need to be a broad catchall clause, if any of the activities fall outside of A-E, then they need to be addressed directly under a different section.

**5. Required Policy: Public Assembly/First Amendment Activity Policy**

6700.XXXX Required Agency Policies. Subpart 1

14 Members Approving Rule Language: Bicking, Enevoldsen, Butay, Gross, Nelson, Edel, Paulson, Suomala Folkerds, Lee, Degroff-Gunter, Serier, Do, Sethuraju, Truesdale

6 Members Opposing Rule Language: Stille, Fahning, Bolt, Litsey, Cemensky, Soyka, Enevoldsen

**Dissent Rationale:**

This memorandum is intended to provide background and other relevant information to encourage the MN POST Board and its Rules Committee to reconsider its position on this matter. It is not an exhaustive list of relevant legal authority or policy arguments.

## **A. Background - Authority of MN Board of Peace Officers Standards and Training**

The current authority of the MN Board of Peace Officer Standards and Training is outlined in [Minnesota Rule 6700.0200](#) with statutory authority under MSS 626.843. This rule states that the Board of Peace Officer Standards and Training, which operates pursuant to Minnesota Statutes, is authorized to adopt rules and standards relating to the selection, training, and licensing of peace officers and part-time peace officers in Minnesota.

### **6700.0200 STATUTORY AUTHORITY.**

The Board of Peace Officer Standards and Training, which operates pursuant to Minnesota Statutes, sections [626.84](#) to [626.863](#), is authorized to adopt rules and standards relating to the selection, training, and licensing of peace officers and part-time peace officers in Minnesota. The following rules are adopted pursuant to Minnesota Statutes, sections [214.12](#), [626.843](#), and [626.863](#).

*Statutory Authority: MSS [626.843 - Rules, Standards; Executive Director](#)*

Under [Minn. Stat. Section 626.843](#), the POST Board also has the authority to adopt rules related to certification of educational programs for peace officer education, minimum physical and mental health standards, standards of conduct, citizenship requirements, and “Such other matters as may be necessary to stay consistent with sections 626.84 to 626.863.” See [Minn. Stat. Section 626.843 Subd. 1\(1\)-\(13\)](#). The POST Board also has the authority to “perform such other acts as may be necessary or appropriate to carry out the powers and duties of the board.” [Minn. Stat. Section 626.843 Subd. 3\(4\)](#).

Currently, the administrative rule related to standards of conduct for licensed peace officers allow political subdivisions to maintain broad discretion to set their own, internal standards for officer conduct. See Minn. Admin. Rule Section [6700.1500](#). The administrative rules adopted in Chapter 6700 relate specifically to licensing, standards of conduct, and disciplinary actions. POST Board rules are primarily focused on the administrative practices of licensing (educational standards, license renewal, reporting obligations) and not on individual decision-making and conduct by officers in the field.

A proposed rule must be related to the POST Board’s core purpose. In the rule making process a proposed rule will be rejected by the presiding judge if the rule is not rationally related to the agency's objective or the record does not demonstrate the need for or reasonableness of the rule; or if the rule exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by, its enabling statute or other applicable law. See [Minnesota Administrative Rule 1400.2100](#)

## B. Past Practice - Required Agency Policies

As guidance to MN law enforcement agencies, the MN POST Board has historically posted the statutorily required model policies on their website, inclusive of 17 statutorily mandated policies.

Recently, the MN POST Board added a “suggested best practices policy”#8 adopted by the Board July 22, 2021, “Public Assembly/First Amendment Activity Model Policy”. It is currently not a statutorily mandated policy.

Additionally, as outlined in the [2020 IADLEST Minnesota POST Audit](#), regarding the MN POST Board’s jurisdiction over agency operations, the IADLES Audit team found that “Statute requires certain statewide model policies. Agencies must certify that they have adopted a written policy in compliance with the model policy provided by POST Board.” Minn. Stat. Chapter 626, which governs peace officers, has several sections specifically related to officer conduct. See [Minn. Stat. Section 626.8469](#) (requiring in-service training for crisis intervention, conflict resolution, and implicit bias training); [Minn. Stat. Section 626.8434](#) (prohibiting “warrior-style” training). However, Chapter 626 includes statutory back-up for model policies that the POST board has adopted. See [Minn. Stat. Section 626.8433](#) (requiring the POST board to adopt a model policy related to eyewitness identification policies, and that each state and local law enforcement agency adopt a policy “Substantially similar” to the model policy). As such, the only instance of a state-wide, mandated POST policy is one that was enumerated in statute instructing the POST Board to adopt a model policy “in consultation with stakeholders”. There is not currently a similar statute related to public assembly/first amendment activity.

The complete list of the **statutorily required policies** are outlined in the In-Service Training, Policy and Reporting section of the [Law Enforcement Administrator’s Manual](#) for Peace Officer Hiring and Licensing prepared by the Minnesota Board of Peace Officer Standards and Training (November 2018). Additionally, the newly proposed additional requirements for the chief law enforcement officer as outlined in Subpart 2: Chief Law Enforcement Officer, are requirements that have previously been outlined in statute and not rule. For example, see [Minn. Stat. Section 626.8433](#).

The statutorily required model policies, including a newly created “suggested best practices guide” are outlined below as currently posted on the [MN POST Board website](#):

## **Legislature and Local Control**

It is questionable whether the MN POST Board has a rule authority to create and mandate law enforcement policies that are not required in statute. In the past, the mandated policies have been approved by the Minnesota legislature as included in the statutes as outlined in section C. [See also AGO Board Manual 2020.](#)

There have been numerous examples numerous examples of proposed legislation that has been debated in the MN legislature, including recent legislation in 2017 - 2021. See below link as an example.

### [Legislative Efforts to Silence Dissent: The Rise and Fall of Minnesota's Anti-Protest Bill](#)

The unilateral process of mandated policies by the MN POST Board through rule making should not be permitted as it should be reserved for the MN legislature and local governing bodies. The addition of the suggested best practices policy on public assembly/first amendment activity as a mandated policy is an example of this practice that should not be permitted. The MN POST Board should only be requiring policies that have been approved by the MN legislature. To create a rule that requires a mandated policy on any subject matter that has been debated in the legislature or any governing body circumvents the legislative process.

The development and implementation of non-statutorily required model policies needs to be reserved for the state, county, and city law enforcement agencies and is rooted in local control to determine how best to respond to the ever changing needs of a citizenry. Local governments must have the authority and flexibility to meet the challenges of governing and providing citizens with public services, including the required law enforcement policies for their jurisdictions.

The increasingly complex and costly requirements necessary for cities to provide services to their citizens would benefit from a strong partnership between federal, state, and local governments. This partnership should be based upon a shared vision for Minnesota and should allow individual communities to tailor that vision to the unique needs of their citizens without mandates and policy restrictions imposed by state and federal policy makers.

The state should recognize that local governments, of all sizes, are often the first to identify problems and inventive solutions to solve them and should encourage further innovation by increasing local control. The state should not enact initiatives that erode the fundamental principle of local control in cities across Minnesota.



## **Conclusion**

There is no clear authority granted to the MN POST Board to mandate non-statutorily required law enforcement policies by rule and such authority is not explicitly included in statutorily defined authority under [MSS 626.843](#). The process of statewide mandates involving law enforcement policies needs to be reserved for the MN legislature. Local governing bodies must also continue to have authority to develop and implement individual policies in the best interest of their communities and in regard to availability of law enforcement and other resources.



# Minnesota Board of Peace Officer Standards and Training

## APPENDIX A

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St. Paul, MN 55104-3825  
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[www.post.state.mn.us](http://www.post.state.mn.us)

### Advisory Committee on POST Board Rules Overhaul CHARTER

This document discusses the Advisory Committee's role, responsibilities, and provides a summary of the rulemaking process.

#### **The Rulemaking Process, Documents, and Time Line.**

The rulemaking process is governed by Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400. This short summary describes the main parts of the process, important documents, and time line for developing and adopting rules. If you have questions about the process, ask Rebecca Gaspard at 651-201-7781 or [rebecca.w.gaspard@state.mn.us](mailto:rebecca.w.gaspard@state.mn.us).

- **Request for Comments.** The Request for Comments begins the formal rulemaking process. For this project, we published the Request in the August 3, 2020 *State Register* and e-mailed it to our rulemaking mailing list.
- **Proposed Rules.** We are beginning the process of revising MN Rules chapter 6700. During the next 12 months or so, we expect a draft of the rule changes will be developed with input from the Advisory Committee, the Board's Rules Committee, and the Board. The Revisor of Statutes will review the rules draft and edit, as necessary, for form and style. The proposed rules must be consistent with the authority granted to the Board in statute (Minnesota Statutes, chapter 626).
- **Statement of Need and Reasonableness.** The POST Board must justify that each proposed rule requirement is needed and reasonable. "Needed" means that there are problems or a legislative directive that requires us to adopt or amend rules. "Reasonable" means that a proposed requirement is a reasonable solution to a problem. The Board's explanation of why each proposed rule change is needed and reasonable is stated in the Statement of Need and Reasonableness (SONAR).
- **Notice of Intent to Adopt Rules.** When we have finished writing the proposed rule changes, received the Governor's approval and the approval of the Revisor's Office, we will publish a Notice of Intent to Adopt Rules in the *State Register*. We will also publish the proposed rules. In addition, we will mail both the Notice and proposed rules to everyone on the Board's rulemaking list, all licensees, interested persons and to certain legislative committees.
- **30 Day Comment Period.** After the Notice of Intent to Adopt Rules is published, there is a 30 day comment period, during which persons can submit written comments on the proposed rules. Persons can also request a hearing on the rules during the 30 day comment period.
- **Rules Hearing.** If there are 25 hearing requests, the POST Board must hold a hearing on the rules in front of an Administrative Law Judge (ALJ). We are expecting there will be a hearing.
- **Review by Administrative Law Judge.** Whether there is a hearing or not, an ALJ reviews the proposed rules, the SONAR, all the comments received about the proposed rules, the Board's response to those comments, and other documents. The Board may change the proposed rules after considering comments received. The ALJ will approve the rules if the Board has statutory authority for the rules, has shown the rules to be needed and reasonable, has given proper

notice of the proposed rules, and has complied with all other rulemaking requirements.

- **Governor Veto.** After the rules are approved by the judge, and adopted by the Board, the Governor has 14 days to review them. The Governor may veto the rule amendments or let them become effective.
- **Notice of Adoption.** After the Governor's review period, the Board will publish a Notice of Adoption in the *State Register*.
- **Effective Date.** The amendments to the rules become effective five working days after the Notice of Adoption is published, unless the new rules provide a later effective date.
- **Time Line.** This process of drafting revisions to the rules is open-ended, although we hope to complete the rules draft by late 2021. Once the rules draft is approved by the Board and the Governor's office, the Notice of Intent to Adopt Rules is published. It can take another 3-6 months after that before the rules can be adopted.

### **The Role of the Advisory Committee.**

- **Advice, not voting.** The role of the Advisory Committee is to advise the Board on the development of these rules. The Advisory Committee does not have voting authority on what will go in the rules; the Board makes any final decisions. The Advisory Committee does, however, have the power of persuasion and the power that comes from having the information needed to make these rules workable.
- **Represent your interest group.** Each of you likely represents an interest group in one way or another, be it community activists, social justice organizations, advocacy groups, licensed peace officers, cities and counties, law enforcement agencies, and so on. We encourage you to maintain communication with others who share your interests.
- **Consensus.** Our goal is to achieve consensus on as many issues as possible. Even where there is disagreement on some issues, we hope to make the rules as workable as possible for those who have to comply with them.
- **Reasonable comments and suggestions.** We will carefully consider all comments and suggestions about the rules. You will have the most success persuading the Board with your comments and suggestions if you give the reasons behind your thinking, along the same lines as how the Board has to justify the need for and reasonableness of everything in the rules.
- **Advisory Committee Report to the Board.** When the draft of rules is completed, the Advisory Committee will issue a report to the Board, identifying issues and recommendations where there is consensus among committee members.

**Regulatory Analysis.** Minnesota Statutes, section 14.131, lists eight factors that an agency must analyze when it adopts or amends rules. We will look to you for advice and information as we analyze these factors.

**From Minnesota Statutes, section 14.131.** The SONAR "must include the following to the extent the agency, through reasonable effort, can ascertain this information:

- (1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- (2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- (3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- (4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
- (5) the probable costs of complying with the proposed rule, including the portion of the total

costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;

(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;

(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference; and

(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

**Cost to Small Businesses and Small Cities.** Minnesota Statutes, section 14.127, requires the agency to determine whether, in order to comply with proposed rules during the first year after they become effective, any small business or small city would have to spend over \$25,000. A small business is defined as a business (either for profit or nonprofit) with less than 50 full-time employees. A small city is defined as a city with less than ten full-time employees. We will look to you for information about the cost of compliance for small businesses and cities.

#### **Performance-Based Rules.**

- Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the Board’s regulatory objectives and maximum flexibility for the regulated party and the Board in meeting those goals.
- The Board will look to you for advice and information on how we can make the rules work better for you, while still meeting our goals for these rules.
- Are there any special situations that we should consider in developing the rules?
- Are there any ways to reduce the burdens of the rules?
- Do you have any other insights on how to improve the rules?

#### **Additional Notice.**

- When the Board publishes the proposed rules and the Notice of Intent to Adopt Rules, we also have to “provide additional notification to persons or classes of persons who might be affected by the proposed rule or must explain why these efforts were not made.”
- The Board will look to you to help us identify all interested persons and to come up with ways to let them know about the rules. This includes both likely supporters and opponents of the rules.

#### **Local Government Impact**

- The Board has to evaluate the fiscal impact and benefits of proposed rules on local governments. As part of this, the Board has to consult with the Department of Minnesota Management and Budget (MMB).
- In addition to consulting with MMB, the Board will look to you to help us identify the fiscal impact and benefits of the proposed rules on local governments, including law enforcement agencies.

## Biographical Statements of Advisory Committee on POST Board Rules Overhaul

### **Bicking, David**

Dave Bicking has been a Board member of Communities United Against Police Brutality (CUAPB) since 2012. He specializes in obtaining and analyzing data and other research on police policy, training, and accountability. With other CUAPB leadership, Dave has met bi-monthly with Minneapolis Chief Arradondo to advocate for improved policies, training, and discipline, as well as to share information. Dave served on the POST Board Continuing Education Working Group in 2018. He has also served on the Minneapolis PD Early Intervention System Working Group and on the Legislative Task Force on Body Worn Cameras.

Dave was an appointed volunteer on the Minneapolis Civilian Review Authority from 2008 to 2010, and chaired its Policy Committee. Since then, he has attended nearly every meeting of the CRA and its successor, the Police Conduct Oversight Commission, bringing information and advocacy to those bodies.

He ran (unsuccessfully) for Minneapolis City Council in 2005 and 2009 on a platform of police accountability. Through those campaigns and in his outreach work since, he has spoken with many hundreds of community members about their encounters with police officers. Since his Council campaigns, Dave has continued to engage regularly with the Minneapolis City Council to advocate for reform.

### **Bolt, Bill**

Bill Bolt is the Chief of Police with the Minnesota Police Department. Chief Bolt has over 22 years of policing experience with 17 years in police leadership. Added to this, Chief Bolt has over 24 years of experience as an EMT (EMR/EMT instructor) as well as working for an ambulance service and 3 years as a fireman. Chief Bolt has been involved in the hiring, training, and mentoring of police officers for 17 years along with policy writing. Chief Bolt also is a recognized instructor by the Minnesota POST Board for Use of Force and Firearms training. In addition to being part of this committee, he has also participated in the DPS advisory group for best practice response to the changes in the deadly force law, a previous POST board advisory group regarding Use of Force, and is currently on an advisory group with the Minnesota Chiefs of Police Association working to establish best practices for mental health/crisis response.

Chief Bolt's desire to participate in this group was to ensure that any changes or additions to the rules are reasonable and that they can be implemented at the street level and by all agencies in Minnesota. "Change for the sake of change is never a good idea and statewide change based upon a crisis reaction to a particular event or agency is dangerous to officers and the community whom they serve. For real change to occur implementation must be a primary consideration along with reasonable and tangible results. We need to be viewing all changes through the eyes of those tasked with implementing the changes as well as those who will be living with the consequences (community members) of the change."

### **Butay, Elliot**

Elliot Butay is the Criminal Justice Coordinator at NAMI Minnesota (National Alliance on Mental Illness) and advocates for best practices in the criminal legal system for youth and adults living with mental illnesses. Elliot conducts research, coordinates with community stakeholders, and educates policy makers to promote policy changes. They have a BA in music and a background working in faith communities and engaging leaders through community organizing. They have served on the Minnesota State Taskforce on Law Enforcement Education Reform and have advocated for several years at the Minnesota Legislature to increase standards for mental health training for law enforcement and

increase access to mental health crisis teams through Travis' Law. Their passion for building a transformative justice system arises from their lived experience and family members living with mental illnesses, and the stories of all those who have suffered harm in the system.

### **Cemensky, Jean**

Jean Cemensky is a Commander for the Minnesota State Patrol with 27 years of work experience as a peace officer in Minnesota. She previously worked in training with the federally funded Police Corps program, the State Patrol Academy and the Minnesota State Patrol's Law Enforcement Training Opportunity (LETO) program. She also worked as a district field supervisor and supervisor for the agency's Commercial Vehicle section. She holds a Master's Degree in Police Leadership from Concordia University.

### **Degroff-Gunter, Gwen**

Gwendolyn DeGross-Gunter is a retired Minneapolis Police Lieutenant. She served the citizens of Minneapolis for twenty years in a variety of positions including Public Housing Narcotics Officer, School Resource Officer, Juvenile Investigator, Child Abuse Investigator, Domestic Assault Investigator, and Commander of the Family Violence Unit. She has a BS in Psychology with an emphasis on Child Psychology, from the University of Illinois at Chicago. During her 20-year police career, Gwen worked extensively with Hennepin County Child Protection, Ramsey County Child Protection, Hennepin County Attorney's Office, and various other law enforcement agencies. She has also worked closely with many community groups as such The Kingfield Neighborhood, Jordan Area Community Council, Minneapolis Urban League, TheLink, The Bridge for Run Away Youth and Twin Cities Pride.

Gwen retired from the police department in 2012 and began working at Avenues for Homeless Youth and YouthLink, where she was able to utilize her skill set to interact directly with youth in need. In these new roles she assisted youth with creating résumés, finding and securing housing, completing work applications and helping youth navigate their respective county social service networks. In 2015 Gwen began working for the Metro Transit Police Department as a civilian Juvenile Outreach Coordinator. She worked with community-based organizations to provide youth with vital information regarding their safety on trains and buses and how to navigate police encounters. Gwen retired from Transit in 2020 and began her career as a Senior Law Enforcement Advisor for International Criminal Investigative Training Assistance Program (ICITAP) for the US Department of Justice, Nepal Mission. She will be traveling to Nepal to assist their law enforcement personnel with reorganization.

### **Do, Vincent**

Vincent has been a police officer since September 2020 and is currently serving with the Winnebago Police Department located in rural south-central Minnesota. Prior to entering law enforcement, he worked full time in healthcare security at Allina Health, primarily at Abbott Northwestern Hospital, for several years. During his time at Allina Health, he observed and was a part of many interactions between those in crisis, law enforcement, and healthcare professionals and saw the need for more mental health resources for not only the community but also for law enforcement. He also witnessed firsthand the destruction of the community during the height of civil unrest in Minneapolis. It was a very painful and sobering experience that played a hand in why he wanted to be a part of this Advisory Committee. He has a Bachelor of Arts Degree from the University of St. Thomas and a Minnesota Law Enforcement Skills Certificate from Alexandria Technical and Community College.

As a part of the POST Board Rules Advisory committee, he brings his perspective as the son of Vietnamese immigrants, a rural police officer just starting his career, and as an advocate for better mental health resources and training.

### **Edel, Sara**

Sara Edel is a faculty member in criminal justice and law enforcement at Century College. She is also the Professional Peace Officer Education (PPOE) Coordinator at Century College.

She previously served as a licensed MN Peace Officer for 26 years, where she worked as a Special Agent at the MN Bureau of Criminal Apprehension from 1997 to 2010, a Deputy Sheriff at Ramsey County Sheriff's Office from 1984 to 1997, and a Police Officer for Preston Police Department in 1984.

She has previous teaching experience as a Visiting Lecturer at Hamline University in 2019 and 2020, as an adjunct faculty at University of St. Thomas in 2019, and as a Community Faculty at Metropolitan State University from 1995 to 2019.

Her education includes a Ph.D. In Criminal Justice from the University of North Dakota in 2018, a M.A. in Human Resource Management with a Training and Development Certificate from University of St. Thomas in 1994, and a B.A from St. Cloud State University in 1983.

### **Enesvoldsen, Craig**

Craig is the Police Chief of Brooklyn Park, a very diverse city in the NW metro area, with a population of roughly 80,000. He has served that community for over 31 years and has served in numerous capacities, becoming the chief in 2013. Two of the departments' primary missions are the reduction of crime and diversification of their workforce. Overall crime in Brooklyn Park was at an all-time low at the end of 2021 although they did experience a spike in violent crime, much like many communities across the country. Through their cadet program and enhanced hiring practices, the department has nearly doubled their diversity in staff in the past ten years.

### **Fahning, Mark**

Mark Fahning - retired. Minnesota State Patrol 28 years (5 years Minneapolis station 23 years Mankato station). I was a Background Investigator, Field Training Officer, Instructor in technology at the State Patrol Academy and statewide updates, Commercial Vehicle Inspector, Staff Officer at two recruit classes, Legislative Trooper at two legislative sessions. River Falls (WI) Police Department 6 years, St. Croix County Sheriff's Office (part-time) Deputy 4 years. Licensed in Wisconsin 1993, Minnesota 1990. Minnesota Post Board Member, April 2009 to June 2020.

### **Gross, Michelle**

Michelle Gross has been involved in police accountability work for 34 years and is founder and president of Communities United Against Police Brutality, an all-volunteer Minnesota non-profit. She is a retired health care manager and educator, now working as a paralegal.

### **Lee, Elisabeth**

Elisabeth Samson Lee is a citizen representative on the rules advisory group. She has firsthand experience with the POST Board complaints process and has consistently advocated for greater transparency and accountability since she was sexually assaulted by a colleague while working in a Minnesota sheriff's office. Lee is focused on standards of conduct, disciplinary action, and improving the complaint process itself to ensure better and more just outcomes for all Minnesotans.

### **Litsey, Bryan**

My tenure as a police officer in Minnesota spanned nearly 37 years. The majority of this time was spent with the South Lake Minnetonka Police Department, where I advanced through the ranks to serve as Chief of Police and Emergency Management Director for my last 16 years with the Department. During this time, I also taught several courses at Minnesota State University, Mankato as an adjunct professor in the Law Enforcement Program and served on the Chanhassen City Council.

Upon retiring my badge on November 30, 2014, I took a few days of leisure before starting a new full-time adventure with Metropolitan State University on December 3, 2014. I am currently part of the resident faculty in the Law Enforcement Program. My current duties include teaching and advising assignments as Assistant Professor; serving as Director of Professional Peace Officer Education and Training; and overseeing the Law Enforcement Licensing Certificate Program.

My academic pursuits include a Bachelor of Science degree in Criminal Justice from Bemidji State University and a Master of Arts degree in Public Safety Education and Administration from the University of St. Thomas. I also had the good fortune to attend the F.B.I. National Academy in Quantico, Virginia. This has been supplemented by hundreds of hours of in-service training covering a variety of criminal justice topics.

I continue to maintain my Peace Officer License in Minnesota and stay connected to the profession through such organizations as the Minnesota Chiefs of Police Association and the Minnesota Board of Peace Officer Standards and Training. I also remain in touch with my law enforcement colleagues which helps keep me in the loop on current issues and emerging trends in law enforcement.

### **Nelson, Pat**

Pat Nelson is a Professor in the Department of Criminal Justice at Minnesota State University, Mankato. She has a BS in Law Enforcement and a Masters in Public and Non-Profit Administration from Metro State University (MN), and a PhD in Public Policy and Administration from Walden University (MN). She has served as the Department Chair and Law Enforcement Program Director. Her research interests include peace officer communications, de-escalation, social networks, terrorism, and anti-radicalism strategies.

Prior to joining MSU Mankato, she served as an officer and sergeant for the Minneapolis (MN) Police Department for 17 years.

### **Paulson, Theresa**

Theresa R. Paulson is a child protection defense and criminal defense attorney in Saint Paul, Minnesota. She has represented parents in Child Protection matters as Court Appointed counsel in Ramsey County, Minnesota for the last four years. Ms. Paulson works in private practice as a criminal defense attorney in matters ranging from misdemeanor to felony cases, including representing water protectors in Cass, Aitkin, and Hubbard Counties during 2021.

Ms. Paulson also represents victims of domestic violence in Order for Protection Cases, and represented victims of sexual assault and human trafficking for Civil Society from 2016 -2018. As part of her criminal practice, she has apprenticed for a Municipal Prosecutor.

Ms. Paulson has served as the President of the 19th District Bar Association from 2016-2019, and President of the Washington County Bar Association in 2019. Prior to starting her practice, Ms. Paulson served as a member of the End Revenge Porn Now Legislative Task Force in 2016, volunteered as a Judge for MSBA Mock Trials, worked as a Guardian Ad Litem in Stillwater, Minnesota, and served as law clerk in Ramsey County Criminal and Juvenile Courts. During Law School, Ms. Paulson clerked for a prosecutor's office, the Public Defenders Office, and externed for a District Court Judge in Washington County, Minnesota.

Prior to becoming an attorney, Ms. Paulson worked as a 911 Operator and Police Dispatcher for the Saint Paul Police Department/Ramsey County Emergency Communications Center from 2005 - 2015. While employed there, Ms. Paulson organized and led a group to build the RCECC's first website, and served as a Member for the Saint Paul Police Commendations Review Board from 2006 - 2009.

### **Serier, Jack**

Jack Serier is the Training Commander for the Saint Paul Police Department and past Sheriff of Ramsey County with 30 years' experience as a peace officer in Minnesota. He holds a doctoral degree in Leadership, Policy, and Administration and has taught in professional development and higher education for over 20 years.

### **Sethuraju, Raj**

dr. raj

he/him/they

recovering criminologist



associate professor, Metropolitan State University

raj is a recovering criminologist, alcoholic, and survivor of sexual abuse, with over 20 years of community-based activism as a researcher and educator. Inspired by our youth's resilience and the men in our prison systems, he trains school staff, probation agents, community members, and justice personnel on restorative practices, trauma and healing, value-centered leadership, community building, and unpacking implicit biases. He believes in raising consciousness utilizing the restorative circle process. In his latest work, raj explores our justice system's depths and creates a framework in which knowledge, critical consciousness, and heart become the root of our practices.

[https://zoom.us/rec/play/xAeqqRXhsbkqyLWxqoJG85drXxlCFI7xV9WZ-gGCIWp0B4Zf-pc4yNdDpkkTpfCgX\\_MpGyRmoKrDrixm.fBESfJCFzUdVJvW3](https://zoom.us/rec/play/xAeqqRXhsbkqyLWxqoJG85drXxlCFI7xV9WZ-gGCIWp0B4Zf-pc4yNdDpkkTpfCgX_MpGyRmoKrDrixm.fBESfJCFzUdVJvW3) (raj moderated a panel on healing and racial

justice work)

<https://www.youtube.com/watch?v=QC6Z2lwQuSs> (overcoming childhood trauma)

<https://www.newsy.com/stories/minnesota-s-police-oversight-board-in-transition/>

<https://vimeo.com/533787348> (environmental and racial justice)

[https://www.facebook.com/watch/live/?v=4267053966662462&ref=watch\\_permalink](https://www.facebook.com/watch/live/?v=4267053966662462&ref=watch_permalink) ( peace conference panel)

[https://drive.google.com/file/d/1bnOUj9HYcCTUGkBIACyGSM7BWFHhB\\_Rv/view](https://drive.google.com/file/d/1bnOUj9HYcCTUGkBIACyGSM7BWFHhB_Rv/view) (MLK keynote at Lewis and Clark College, 2021)

<https://www.youtube.com/watch?v=d5FlkKvcYJw> (implicit bias)

<https://www.youtube.com/watch?v=n9FIWon3Hkc> ( race ambassador award)

<https://www.youtube.com/watch?v=d5PfnOB5Z7g> (TEDxUMN)

<https://video.tpt.org/video/aftermath-of-thurman-blevins-shooting-31124/> (TPT show)

<https://www.mnchiefs.org/metro-state-walk-in-someone-elses-shoes> (healing )

<https://cmrsmn.org/session/exploring-restorative-justice-with-raj/> (training flyer)

<https://www.mprnews.org/story/2018/05/29/racial-bias> (MPR)

<https://www.stpaul.gov/DocumentCenter/View/81444.pdf> (training volunteers for ACLU)

<https://mcpa.memberclicks.net/assets/documents/WEBSITE/3.5%20minutes.pdf> (police training)

<https://mnipl.org/2020/01/tickets-now-live-for-climate-justice-night-2020/>

<https://metrocatalyst.wordpress.com/tag/awards/>

<https://www.facebook.com/hellepanke/videos/324880185208810> (interview by German socialist media)

### **Soyka, Steve**

NAME: Steve Soyka

TITLE: Sheriff, Stearns County, MN

EXPERIENCE: Employed in Law Enforcement for the past 30 years. Employed by 2 different Sheriff Office's during that time. Held several positions within these agencies including patrol, narcotics investigator, SWAT team commander, detective/medical examiner, Violent Offender Task Force, Sergeant and elected to Stearns County Sheriff in Jan. 2019.

COMMUNITY INVOLVEMENT: As Sheriff, entered into a Community Policing agreement between the Sheriff Office and several members of church, civic and community based groups within the minority communities of Stearns County. Formed a Community-Sheriff Engagement Team that conducts and holds several public related events each year.

COMMUNITY ORGANIZATIONS: Board Member of Whitney Senior Center (regional Senior Center) Member of local Lions club, Fraternal Order of Police Lodge, Volunteer at both. As such, work numerous events related to these organizations such as Fish Frys, meat raffles, Special Olympics polar plunge and torch run, city events and representation.

-B.A. degree in Criminal Justice from St. Cloud State University

-Graduate of the 116<sup>th</sup> class of the National Sheriff Institute

-Graduate of Bureau of Criminal Apprehension Supervision and Management Program

-Graduate of Bureau of Criminal Apprehension Senior Management Program

**Stille, Tracy**

Tracy Stille is the Public Safety Project Coordinator with the League of Minnesota Cities Insurance Trust (LMCIT) in St. Paul, MN. He has worked for over 40 years in Minnesota public safety and risk management - as a public safety specialist with the League and as a police officer with several cities in Minnesota, most recently as a police captain with the City of Maple Grove in Hennepin County. He holds a bachelor's degree in law enforcement from Mankato State University and a master's degree in criminal justice from St. Cloud State University, where he has also taught as an adjunct professor of criminal justice. He is also a graduate of the School of Police Staff and Command thru Northwestern University and is a certified emergency manager in Minnesota.

**Suomala Folkerds, Aaron**

Rev. Dr. Aaron Suomala Folkerds works full time as an Assistant Professor of Graduate Counseling at Minnesota State University-Moorhead and is a part-time wellness coordinator with the Moorhead Police Department. He has a B.A. in psychology from the University of MN-Morris (2000), an M.Div. degree from The Lutheran School of Theology at Chicago (2007), an MS degree in Mental Health Counseling from Minnesota State University-Mankato (2012) and an Ed.D. in Counselor Education and Supervision also from Minnesota State University-Mankato (2019). He studied theology at a seminary in Brazil for a year, trained as a hospital chaplain on the south side of Chicago and is a Nationally Registered Emergency Medical Technician (NREMT). He is also an ordained Lutheran pastor in the ELCA and a Licensed Marriage and Family Therapist (LMFT) in the state of MN.

**Truesdale-Moore, Sherrise**

Dr. Sherrise Truesdale-Moore is a professor of criminal justice and teaches primarily in the corrections program at Minnesota State University, Mankato. She holds a PhD from Howard University with a concentration in criminology and urban sociology, a Masters' in criminal justice from Coppin State University, and two Bachelor of Science Degrees – in paralegal studies from Steven University and in Marketing from Hampton University. She has over 29 years of professional criminal justice and legal experience, including the professorate in higher education, supervision over federally funded Maryland correctional vocational program for adjudicated youth, United State Attorney's Office, and criminological, legal, and legislative research. Her research interests include re-entry issues, race, cultural competency, and criminal justice education. Dr. Truesdale-Moore teaches juvenile delinquency, correctional counseling, and cultural competency in corrections and is a master trainer for the Youth Level Service inventory 2.0. She conducts cultural competency and YLS 2.0 trainings both in Minnesota and nationally. Not only has Dr. Truesdale-Moore been a member of the MSU, Mankato for 18 years, she has taught on every level of education – in 4-year university, community college, and in secondary education. She is a member of the Academy for Criminal Justice Education, American Society of Criminology, Minnesota Corrections Association, and is a board member for the Blue Earth County Community Corrections.