



Board of Peace Officer Standards and Training

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Amendments to Minnesota Rule
6700.1600; Peace Officer Standards of Conduct

Revisor Number 4850

February 20, 2024



Board of Peace Officer Standards and Training

General Information

1) The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Board's website: <https://mn.gov/post/boardscommittees/rules/currentrulemakingactivity/>

2) View older rulemaking records at <https://www.revisor.mn.gov/rules/status/>

3) Board contact information and supporting documents are available on the Board's website. <https://mn.gov/post/>

4) Upon request, the Statement of Need and Reasonableness (SONAR) can be made available in an alternative formats, such as large print, braille, or audio. To make an alternative format request, contact the agency staff member below.

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ACRONYMS

APA	Administrative Procedures Act
ALJ	Administrative Law Judge
MMB	Minnesota Management and Budget
MN	Minnesota
MPOTB	Minnesota Peace Officer Training Board
MORS	MN Office of the Revisor of Statutes
OAH	Office of Administrative Hearings
POST Board	Minnesota Board of Peace Officer Standards and Training
RFC	Request for Comments
SONAR	Statement of Need and Reasonableness

INTRODUCTION

In 1967, the Minnesota Peace Officer Training Board (MPOTB) was created by the legislature to regulate law enforcement training and practices. In 1968, MPOTB was tasked with regulating and standardizing the certification of law enforcement officers, agencies, and training programs. In 1977, the legislature abolished the MPOTB and replaced it with the Minnesota Board of Peace Officer Standards and Training (POST Board). The POST Board went on to create the first law enforcement occupational licensing system in the United States under Minnesota Rules, chapter 6700, Training and Licensing. The POST Board now regulates more than 11,000 (active and inactive) peace officers and over 400 law enforcement agencies across the state.

In 2020, the POST Board began a comprehensive review of Minnesota Rules, chapter 6700. These rules, which were first promulgated in the late 1970s, outline the education, training, and licensing requirements for peace officers within the State of Minnesota. Prior to 2020, the most recent comprehensive review of the rules took place more than two decades ago. The 2020-2023 review focused on rules related to peace officer background investigations, psychological screenings, minimum selection standards, and standards of conduct. When the 2020-2023 rules promulgated under Revisor Number 4641 (R4641) were finalized, a longstanding and important standard of conduct was inadvertently omitted from the rules package.

Since at least 1997, “violating any order of the board” has been a standard of conduct violation for peace officers subject to the Board’s authority. This rule was previously known as Rule 6700.1600, item H. The inadvertent omission of this rule negatively impacts the Board’s ability to enforce its orders by pursuing disciplinary action if a licensee, or peace officer, violates a Board order. The type of orders that may be issued by the Board include, but are not limited to, revocations, suspensions, license limitations/conditions, letters of censure, and cease and desist orders. The purpose of this rulemaking effort is to simply reinstate “failure to comply with any board order” as a standard of conduct violation as it is a necessary rule that allows the Board to exercise its regulatory authority and enforce its orders.

STATUTORY AUTHORITY

Minnesota Statutes, sections 626.843 and 626.845, authorize the POST Board to adopt rules related to the education, training, and licensing of peace officers. Under these statutes, the POST Board has the required statutory authority to adopt the proposed rule.

GENERAL STATEMENT OF NEED

Per Minnesota Statute, section 626.843, subdivision 1(6) the POST Board shall create and adopt into rule a list of minimum standards outlining conduct that may negatively affect an individual’s ability to perform their duties as a police officer. These standards of conduct are outlined in Minnesota Rule 6700.1600. Pursuant to this rule, peace officers, or licensees, are prohibited from committing certain acts such as sexual harassment, theft, prostitution, assault, intentionally mishandling evidence, engaging in unreasonable or excessive uses of force, failing to cooperate with a board investigation, and failing to comply with any other requirement within Minnesota Statute or Rule. When a licensee violates a standard of conduct listed in Rule

6700.1600, they may be subject to discipline by the Board. The Board may issue an order of revocation, suspension, censure, or implement license limitations as part of a disciplinary process pursuant to Rule 6700.1710. As the rules currently stand, as a result of the inadvertent omission noted above, the Board is not able to pursue additional disciplinary action against a licensee for failure to comply with any order issued by the Board. The proposed rule amendment restores a rule that had been in effect since at least the 90s before its inadvertent omission. Additionally, the proposed rule allows the Board to enforce its orders through additional disciplinary action against a licensee for violating a Board order.

Without restoration of this rule, the Board's options of recourse are limited against a licensee who fails to comply with any order issued by the Board. When the Board is unable to enforce its regulatory oversight over those subject to its authority, the Board's regulatory powers are greatly diminished. Limited or diminished regulatory powers then limit the Board's ability to actualize its statutory duty of overseeing peace officer licensees. For this reason, the rule is both needed and reasonable to allow the Board to carry out its regulatory functions and protect the safety of the public. The general need and reasonableness of the proposed amendment is also demonstrated in the fact that other licensing boards have statutes providing that violation of a board order is grounds for discipline. Specifically, among others, the Board of Medical Practice under Minnesota Statutes section 147.091, subdivision 1(f), the Board of Nursing under Minnesota Statutes section 148.261, subdivision 1(22), and the Board of Occupational Therapy Practice under Minnesota Statutes section 148.6448, subdivision 1(22) have authority to take disciplinary action against a licensee for violating a board order.

PUBLIC PARTICIPATION AND STAKEHOLDER INVOLVEMENT

Request for Comments

The POST Board published a Request for Comments (RFC) in the December 18, 2023, edition of the State Register. The RFC announced the POST Board's intent to make an amendment to Minnesota Rules, chapter 6700 regarding peace officer standards of conduct. Specifically, the RFC announced the Board's intent to restore "failure to comply with any order issued by the board" as a standard of conduct violation under Rule 6700.1600, subpart 1, item F. In addition to being published in the State Register, a notice about the RFC was published on the POST Board's website and emailed to licensees with an email address on file. Furthermore, per the Additional Notice Plan, the POST Board distributed notices of the RFC to individuals and organizations who may be impacted by the rules change as well as those on the Board's rulemaking notification list.

The Board received 13 comments during the open RFC period. One of the comments was from the Sheriff's Association's attorney and the rest were from sheriffs who submitted identical comments. In all the comments, commentators requested that the Board change the proposed rule to read "failure to comply with any *lawful* order issued by the Board." Commentators expressed their concerns over being punished for not following an order of the Board that may be found unlawful later in the process. This concern was brought up to the Board. The Board decided to keep the proposed language for the following reasons; (1) there are procedural processes in place with OAH to ensure the Board has the authority to discipline a peace officer, (2) if the peace

officer finds the Board's discipline to be unjustified, there is an appeal process licensees can participate in, (3) inserting the word *lawful* seems to imply the Board regularly issues orders that are unlawful, and (4) the Board's proposed language is more congruent with language used by other licensing boards which identify violation of a board order as grounds for discipline without referring to a "lawful" board order.

Advisory Committee

An advisory committee was not utilized in this process for the following reasons:

1. Prior to 2023, the proposed clause existed in rule as a standard of conduct for nearly 26 years. It was not the Board's intention to eliminate the clause from rule during the rulemaking process under R4641.
2. The scope of the rules process was limited to adding the clause that was inadvertently omitted from rule during the 2020-2023 rulemaking process under R4641.
3. The clause is necessary for the Board to exercise its regulatory authority and enforce its orders.

Listening Sessions

Listening sessions were not held during this rules process for the following reasons:

1. The Board did not believe this rulemaking process was controversial.
2. Prior to 2023, the clause existed in rule as a standard of conduct for nearly 26 years.
3. There were few if any known objections to the clause during the time it existed prior to its inadvertent omission in the previous rulemaking process under R4641.

Board and Board Committees

On November 30, 2023, at a properly noticed meeting, the POST Board passed a rulemaking resolution and directed staff to publish a Request for Comments (RFC) in the State Register. After passing the rulemaking resolution, the Board discussed different draft iterations of the possible rule amendment. The Board decided to add the proposed amendment to Rule 6700.1600, item F as subitem number (4) – moving the current subitem (4) to number (5). A copy of the rules draft was posted on the Board's website when the RFC was published on December 18, 2023.

On January 25, 2023, the Board passed a resolution authorizing staff to publish a Notice of Intent to Adopt without a Hearing in the State Register pursuant to Minnesota Statutes, section 14.22, subdivision 1. The notice was to be posted in the State Register after the 60-day RFC period ended. A rules draft was published with the notice in the State Register and remained on the POST Board's website for easy review. The Board chose to proceed without a public hearing because there were minimal comments received during the RFC period.

The POST Board meetings mentioned above were open to the public and recorded. The

recordings were subsequently posted on the POST Board's website for public review with electronic copies of the Board's meeting materials.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, state the SONAR must provide a regulatory analysis of the proposed rule. In the analysis, the SONAR must address the eight topic areas listed in this section.

“(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:

- Licensed peace officers and applicants for licensure
- Chief law enforcement officers/Sheriffs
- Members of the public served by licensed peace officers

Classes that will bear the costs of the proposed rules:

- The Board does not believe this rule will generate any additional monetary costs to those affected by the rule.

Classes that will benefit from the proposed rule:

- Community members seeking peace officer accountability

“(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 fiscal effects of the proposed rule on individuals, businesses, units of government, or the agency itself are negligible. In rare instances, the Board may accrue fiscal costs if a disciplinary hearing goes to the Office of Administrative Hearings where a court reporter is needed and the hearing lasts over the span of several days. However, cases like these do not come up often and are not the norm. This rule existed prior to 2023 for approximately 26 years and has to do with the Board's administrative process and disciplinary proceedings for failure to comply a Board order. This rule should not add additional monetary burdens on outside agencies or individual licensees.

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

The Board carefully considered the cost and burden the proposed rules may have on licensees and sought input from stake holders to see what, if any, concerns there were regarding the proposed rules. After their analysis, the Board concluded a less costly or intrusive method of achieving the Board's purpose did not exist. The expected cost of implementing the proposed rule is already negligible and the amendment itself is not intrusive to the entities under the Board's authority.

“(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.”

Other than placement within the text of part 6700.1600, there is not an alternative method for achieving the purpose of the proposed rule. To make the act of violating any order of the Board a standard of conduct violation, it must be placed in Rule 6700.1600. Given the current language of the rules, it inherently makes sense to place “failure to comply with any order issued by the Board” under item F. Item F states it is a standards of conduct violation to “fail to” comply with certain requirements prescribed by the Board. The requirements on that list are listed as subitems 1 through 4. The proposed rule will be subitem (4) on that list- moving the current subitem (4) to subitem (5). Other rule placement locations within part 6700.1600 were rejected because they made less logical and grammatical sense.

“(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.”

The cost of complying with the proposed rule is negligible to all parties affected.

“(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.”

The monetary cost of not adopting the rule is negligible. However, the consequence of not adopting the rule is severe. Without this rule, the Board’s ability to enforce its orders will be diminished because the Board will not be able to pursue further disciplinary action against licensees for failing to obey a Board order. The inability to pursue further disciplinary action after a licensee violates a Board order will ultimately reduce licensee accountability and Board oversight of those under its authority. In turn, the consequences of not adopting this rule could negatively impact public safety.

“(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 known differences between the proposed rule and any existing federal regulations.

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

This rule will reinforce and restore the Board’s authority to seek disciplinary action against a licensee who violates a Board order pursuant to Minnesota Statutes, section 626.8432 and Minnesota Rules, chapter 6700.1710. With that being said, the proposed rules change does not have a cumulative effect with any other federal or state regulations.

PERFORMANCE-BASED RULES

According to Minnesota Statutes, sections 14.002 and 14.131, the SONAR must 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.

One of the Board's regulatory objectives is to ensure licensees are adhering to the standards of conduct set forth in Rule 6700.1600. When a licensee violates a standard of conduct, it is within the Board's purview to take disciplinary action against the licensee via a Board order. The proposed rule allows the Board to enforce its orders and actualize the above-described regulatory objective while increasing flexibility. The increased flexibility lies in the fact that the proposed rule provides the Board additional options of recourse if a licensee violates an order issued by the Board.

Peace officers should not be allotted the flexibility to violate an order issued by the Board as it undermines the Board's regulatory authority and public safety. The proposed rules do not increase licensee flexibility, but it does not necessarily reduce peace officer flexibility either. As previously mentioned, this rule existed as a standard of conduct for 26 years prior to its inadvertent omission in R4641. It also makes logical sense that licensees should obey orders issued by the regulatory authority overseeing them. Licensees will maintain flexibility under Minnesota Statute, sections 14.57 and 14.62, in that they will still be able to request a hearing on matters of discipline prior to an order being issued.

NOTICE PLAN AND ADDITIONAL NOTICE PLAN

The Board's Additional Notice Plan was reviewed by the Office of Administrative Hearings (OAH) and approved by the Honorable Judge Ann C. O'Reilly on December 8, 2023. Per the Additional Notice Plan, the POST Board's website was updated, and stakeholders were notified of the Board's plans to take part in rulemaking activity via email/mail. These notices were sent out within days of or on the same day the Request for Comments was published in the State Register. Additional notices regarding the Request for Comments were sent to the following individuals/organizations:

- licensed law enforcement officers with a valid email address on file with the Board;
- individuals and organizations on the Board's rulemaking notification list;
- law enforcement associations and labor organizations including the Minnesota Chiefs of Police Association; Minnesota Sheriff's Association; St. Paul Police Federation; Law Enforcement and Labor Services (LELS); Minnesota Police and Peace Officers Association (MPPOA); Minnesota State Patrol Troopers Association; National Latino Police Officers Association- Minnesota Chapter; Police Officers Federation of Minneapolis; the Minnesota Association of Women Police, Minnesota Fraternal Order of Police, Minnesota Asian Police Officers Association, National Black Police Association (MN), and Association of Training Officers of Minnesota;
- community, professional, and civic organizations/associations including the NAACP Chapters- MPLS, St. Paul, Duluth, St. Cloud, Rochester, and Statewide Minnesota; League of Minnesota Cities; Association of Minnesota Counties; Minnesota Association

of County Attorneys; Black Lives Matter Twin Cities Metro; Council of American-Islamic Relations 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; Twin Cities Coalition for Justice for Jamar; Minnesota Transgender Alliance; Confederation of Somali Community; Minneapolis American Indian Center; Violence Free Minnesota; Voices for Racial Justice; Citizens League, Brooklyn Center Multicultural Advisory Committee and Community Police Partnership; Racial Justice Network; Black Lives Matter Minnesota; and Communities United Against Police Brutality;

- State Agencies and Tribal Governments including the Minnesota Board of Psychology; Bureau of Criminal Apprehension; Minnesota Department of Natural Resources; Minnesota Board of Public Defense; Minnesota Indian Affairs Council; Minnesota Council of Asian-Pacific Minnesotans; Council of Minnesotans of African Heritage; Minnesota Council on Latin Affairs; Bois Forte Band of Chippewa; Fond du Lac 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; Upper Sioux Community; Gichi-Onigaming/Grand Portage band of Lake Superior Chippewa; and White Earth Nation.

In the Order on Review of Additional Notice Plan, Judge O'Reilly made several recommendations. The recommendations were as follows:

1. include a hyperlink to the POST Board's website page for rulemaking activity in the Request for Comments and email service letter
2. include a copy of the Request for Comments with the email service; and
3. include a copy of the Request for Comments on the POST Board's website.

For recommendation number one, a link to the POST Board's website was added to the request for comments. As for the email service letter, the word "webpage" was hyperlinked and set up to bring readers to the POST Board's rulemaking website. This hyperlink may not have translated when the form was converted to PDF and submitted to the ALJ's for review. The email service letter also had a hyperlink to the State Register where readers could access the register publications by date and volume- satisfying recommendation number two. This hyperlink may also not have translated when altering the email service into PDF form for the ALJ's review. For recommendation number three, the Board's website will include a hyperlink option to take readers to the State Register's website so they can access the request for comments. The RFC itself was not added to the website to keep the content simple and non-duplicative.

When the email notices were sent out, some of the hyperlinks were not active- the reason for this is unknown. Therefore, when stakeholders reached out for clarification on the weblinks, new links were sent to them in a separate email to help them find what they were looking for.

In accordance with the Additional Notice Plan, the Board will take the follow steps during the rulemaking process:

- The Board will email/mail information regarding the Notice of Intent to Adopt Without a Hearing, along with webpage information as to where electronic copies of the notice,

proposed rules amendments, and SONAR can be viewed. This information will be sent to those mentioned above.

- The Board will post a notice of the Notice of Intent to Adopt Rules on the Board's website with links to the rules draft and SONAR before the notice is published in the *State Register*.

The Commissioner of Agriculture is not included in the Additional Notice Plan 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 Notice of Intent to Adopt and a copy of the SONAR will be mailed to the Legislative Reference Library. Additionally, notice of the Notice of Intent to Adopt with a hyperlink to the webpage where electronic copies of the notice, proposed rules amendments, and SONAR can be viewed, will also be emailed/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) to determine the fiscal impacts of the proposed rules on local governments. Before the Notice of Intent to Adopt Rules without a Public Hearing was published, MMB was sent the following documents to review:

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

The Board will submit copies of the correspondence and any responses received from MMB to the Office of Administrative Hearings for their review.

DETERMINATION ABOUT RULE 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 ordinances or other regulations to comply with the rules. The Board has determined that because the rules pertain to licensees, there will not be a need for local governments to amend or adopt any new ordinances or regulations.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Minnesota Statutes, section 14.127 requires the POST Board to consider whether the cost of complying with the proposed rules will exceed \$25,000 for small businesses or cities within the first year of adoption. It was determined the cost of complying with the proposed rule in the first year after it takes effect will not exceed \$25,000 for any small business or city because the rules do not affect businesses or municipal governments. While many small cities have police

officers that may be impacted by the proposed rules, compliance is not expected to increase operational costs.

LIST OF WITNESSES

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

- Luke Hennen (Sheriff), Board Chair
- Justin Terrell, Board Rules Committee Chair
- Erik Misselt, Executive Director
- Angie Rohow, Standards Coordinator Supervisor
- Alicia Popowski, Rules and Legislative Coordinator

RULE-BY-RULE ANALYSIS

This section discusses the proposed changes to Minnesota Rules, part 6700.1600, subpart 1, item F.

6700.1600 STANDARDS OF CONDCUT

Subpart 1. Standards.

F (3). The word “or” is removed from the end of subitem 3 as subitem 4 is no longer the last of the series. This is needed and reasonable because conjunctions are used before the last item on a list to indicate the conclusion of the series.

F (4). The previous text is moved to subitem five for formatting purposes. Licensees are not autonomous, they are subject to the Board’s authority, thus, it is reasonable that a licensee should be expected to obey an order issued by the Board. When a licensee fails to comply with an order issued by its regulatory authority, it is also reasonable that said licensee may face additional consequences because of their actions or lack thereof. This rule is needed to allow the board to take further disciplinary action, if needed or warranted, against licensees who do not comply with orders issued by their regulatory authority. Without this rule, the Board will have limited options of recourse to enforce its orders.

F (5). Text moved here from subitem four. Being the rule is the last in a series, its punctuation is amended to end in a period. This is needed and reasonable because the change makes the rule grammatically correct.

EXHIBITS

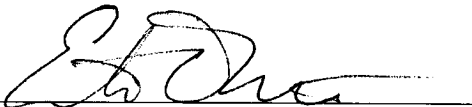
The following exhibits were submitted to OAH for review:

1. Request for Comments published in the State Register;

2. The certificate of mailing notice of the RFC to those on the agency's rulemaking notification list;
3. The certificate of mailing notice of the RFC to those on the additional notice plan and accompanying letters;
4. Certificate of accuracy for the agency's rulemaking notification list;
5. The proposed rule and Revisor's certificate to form;
6. The SONAR;
7. A certificate of mailing verifying that the agency sent a copy of the SONAR to the Legislative Reference Library;
8. The Notice of Intent to Adopt Without a Hearing published in the State Register;
9. Certificate of mailing the Notice of Intent to Adopt Without a Hearing to those on the Additional Notice Plan and the agency's rulemaking notification list with the accompanying letters;
10. Any written comments on the proposed rule received by the agency during the 30-day comment period;

CONCLUSION

Since at least 1997, "violating any order of the board" has been a standard of conduct violation for peace officers subject to the Board's authority. The proposed amendment, previously known as Rule 6700.1600, item H, was inadvertently omitted during the rulemaking project under R4641. The Board initiated this rules process to reinstate the above clause because the rule allows the Board to enforce its regulatory authority more fully. In this SONAR, the Board has established the need and reasonableness of the proposed amendments to Minnesota Rules, part 6700.1600, item F. The Board has provided appropriate notice to stakeholders about the proposed rule and has documented its compliance with all the applicable administrative rulemaking requirements prescribed in Minnesota Statute and Rules. Based on the reasons and information described herein, the proposed amendments are both needed and reasonable.



Erik Misselt
Executive Director
Minnesota POST Board

2/15/24
Date