

Variance Request on POST Board Rules MN Chapter 6700

Date of Board meeting: September 30, 2021

Requestor Name: Garrett L. Dietman

Variance Sought for Rule: 6700.0501 Subp. 3

Summary of Request (also see actual request, transcripts, and application form included in meeting materials):

Mr. Dietman was awarded a BS degree in Criminal Justice and Sociology at the University of North Dakota in 2012, completed the Federal Law Enforcement Training Center-U.S. Indian Police Academy in New Mexico (558.5 hours) in 2018, and has been employed by the Red Lake Police Dept since May, 2017. He is currently a criminal investigator at the department.

Mr. Dietman is seeking eligibility to take the Reciprocity Licensing Exam. Mr. Dietman does not meet the current eligibility requirements to take the exam because his experience as a tribal law enforcement officer does not meet the definition of a law enforcement officer in 6700.0500 Subp. 3 (see below). That definition refers only to persons licensed in another state as a LEO, or to federal officers and is silent on tribal law enforcement.

Mr. Dietman meets the other eligibility requirements because he possesses a postgraduate degree, basic police education, and three years of experience as a law enforcement officer within the past 6 years.

6700.0501 RECIPROCITY LICENSING EXAMINATION.

Subpart 1. Scope. For the purposes of this part, the terms defined have the meanings given to them.

Subp. 2. Basic police education. "Basic police education" means:

- A. a basic course recognized by a state council, state commission, state board, or state agency which leads to licensing or basic certification as a law enforcement officer where the appointing authority is located; or
- B. a basic course sponsored by the federal government for its law enforcement officers, including but not limited to, the basic Drug Enforcement Administration's agent school, the Federal Bureau of Investigation's basic agent school, or the Federal Law Enforcement Training Center's uniformed patrol course or basic investigators course.

Subp. 3. Law enforcement officer. "Law enforcement officer" means a person appointed or employed as a peace officer in another state, or a federal law enforcement employee, who has full powers of arrest, authority to carry a firearm, and is classified in a law enforcement position by the office of personnel management, not including any time served in the United States armed services.

Subp. 4. [Repealed, 30 SR 903]

Subp. 5. Postsecondary degree. "Postsecondary degree" means an academic title awarded by a postsecondary institution which is accredited by a member of one of the six regional accrediting associations and authorized to award degrees including, but not limited to, Associate of Arts (A.A.) degrees, Associate of Science (A.S.) degrees, Bachelor of Arts (B.A.) degrees, and Bachelor of Science (B.S.) degrees.

Subp. 6. Years of experience. "Years of experience" means the total number of years the applicant has been employed as a law enforcement officer since completing the basic police education course.

Subp. 7. Qualifications. A person who has completed a postsecondary degree, who has had three years of employment as a law enforcement officer after completing basic police education, who has served as a law enforcement officer during the past six years, and who has not had a peace officer license, certificate, or the federal equivalent suspended or revoked shall qualify for the reciprocity examination; or a person who has five years of employment as a law enforcement officer after completing basic police education, who has served as a law enforcement officer during the past six years, and who has not had a peace officer license, certificate, or the federal equivalent suspended or revoked shall qualify for the reciprocity examination.

Board Worksheet on Variance Request

- can ask questions or request additional information from petitioner
- can't waive statutory requirements

1. Does the application of the rule, as applied to the circumstances of the petitioner, serve any of the purposes of the rule? If no, this is a mandatory variance and must be granted. If yes, go to Step. 2.
 - a. identify any conditions needed to that ensure the variance protects the public health, safety and the environment.
 - b. determine how long should the variance be in effect.
 - c. make a motion

Sample motion: "The Board approves the request for a variance of Minnesota Rule [redacted] because application of the rule in this instance does not serve any of the purposes of the rule. The variance is granted for/until _____ (with these conditions....)"

2. If this is a discretionary variance, the board may grant it *only* if the board determines that *all* three are true:
 - i. Application of the rule would result in hardship or injustice to name of requestor
 - ii. It would be consistent with public interest
 - iii. It would not negatively impact the legal or economic rights of others

3. Make a motion to grant or deny the request for a variance

To **grant** a discretionary variance:

- a. identify any conditions needed to that ensure the variance protects the public health, safety and the environment.
- b. determine how long should the variance be in effect.
- c. make a motion:

Example motion:

"The Board approves [redacted]'s request for a discretionary variance of Minnesota Rule [redacted]"

This variance is granted because:

- a. Application of the rule would result in hardship or injustice to _____
 - b. It would be consistent with public interest
 - c. It would not negatively impact the legal or economic rights of others and ensures the protection of public health, safety, and the environment.
- The variance is granted for/until _____ (with these conditions.....)

To **deny** a discretionary variance, make a motion

Example motion:

"The Board denies the request of [redacted] for a variance of Minnesota Rule [redacted] because

(List all of the following that are true – at least one must be true to deny the variance)

- a. Application of the rule would result in hardship or injustice to _____
- b. It would not be consistent with public interest;
- c. It would negatively impact the legal or economic rights of others.

Basic Legal Requirements for Variances on a Rule

If an individual or entity asks for an exemption from a rule in MN Rules Chapter 6700, the board must apply the requirements outlined in Minnesota Statutes, section 14.055 and 14.056. The Request for Variance of a Rule form is used to apply for a variance, and outlines the information required in order for the Board to consider the request.

There are two types of variances: mandatory and discretionary.

A **mandatory variance** is when the board determines that “the application of the rule, as applied to the circumstances of that petitioner, would not serve any of the purposes of the rule.” – MN Statutes 14.055 Subd. 3. The board *must* grant the variance in these circumstances.

A **discretionary variance** *may* be granted by the board, if the board finds these 3 statements to be true:

- 1) application of the rule to the petitioner would result in hardship or injustice;
- (2) variance from the rule would be consistent with the public interest; and
- (3) variance from the rule would not prejudice the substantial legal or economic rights of any person or entity.

- MN Statutes 14.055 Subd. 4

Parameters for rule variances under statute are:

- (1) the agency may attach any conditions to the granting of a variance that the agency determines are needed to protect public health, safety, or the environment;
- (2) a variance has prospective effect only;
- (3) conditions attached to the granting of a variance are an enforceable part of the rule to which the variance applies; and
- (4) the agency may not grant a variance from a statute or court order.

Once the board makes a decision on the request, the Assistant Attorney General representing the board will draft the order and a signed order is sent to the requestor within 5 days. The Board is required to maintain a record of variance requests, sorted by the rule citation involved.

Requests for Variances are brought to the board after the requestor has provided the required information. Once a request is received, the board has 60 days to respond, unless the requestor agrees to a later date. Failure to meet the deadline means that the request for the variance is automatically granted. If the next scheduled board meeting is more than 60 days in the future, it is explained to the requestor that the board would like to consider the variance at the next scheduled board meeting. If the requestor agrees to the delay, the requestor confirms in writing that they agree to their request being heard at the next board meeting on (date). If the requestor refuses to agree to a later date, a special board meeting is called to hear the variance request and comply with the statutory timeline.