

AV15a Draft for Committee Review Sept 2021

Topics:

Background Investigations
Psychological Screenings
Minimum Selection Standards
Standards of Conduct

CAUTION: This rules draft is a preliminary internal document for the use of the Board Rules Committee and the Advisory Committee on POST Rules Overhaul, and represents ongoing discussion and potential suggested rule amendments to MN Rules Chapter 6700. **The POST Board has not approved this draft.**

When an actual proposed draft is approved by the Governor's office, the Revisor's office, and the POST Board, that draft will be published for public review to allow for comment and suggested changes. The POST Board will consider those comments and may make changes in the proposed rules as a result.

Before any rules changes may be adopted, the final draft of proposed rules must be approved by the Governor's office, the Revisor's office, the POST Board, and an Administrative Law Judge and the Office of Administrative Hearings. For more information on the legal requirements that must be met before the POST Board may change current rule, please review the Minnesota Administrative Procedures Act in MN Statutes, section [14](#).

To be notified when there is an actual draft of proposed rules published, email Rebecca.W.Gaspard@state.mn.us with your email address.

NOTE: For greater ease in reading, this draft does not distinguish between new proposed language and current rule language. The draft does not show old rule language which is stricken. Refer to the AV15 draft to see both new and old verbage.

6700.x670 BACKGROUND INVESTIGATION.

A background investigation is intended to disclose the existence of any criminal record or conduct that would disqualify an applicant for licensure, to identify factors that may adversely affect the performance by the applicant of peace officer duties, and to evaluate the applicant's suitability for employment by the law enforcement agency conducting the background investigation.

- A. Before appointing an applicant or licensed peace officer to a peace officer position, the law enforcement agency must complete a background investigation on the applicant. The background investigation must comply with the requirements in MN Statutes 363a.08 Subd. 4(1). Exceptions to this requirement are noted under **part xxxx**. The background investigation must be completed no earlier than 6 months prior to the agency's appointment to a peace officer position. The investigation must include, but is not limited to, investigation into the following:
 - 1) Citizenship. If the applicant is not a citizen, verification that the applicant is eligible to work in the United States under federal requirements.
 - 2) Criminal history and arrests by means of electronic data transfer, criminal records, histories, and warrant information through current state and federal systems such as the Minnesota Crime Information System and the National Instant Criminal Background Check System.

Note: Ch 11, Special Session 1, 2021 enabled background checks for currently employed LEOs

- 3) MN Driver Vehicle Service (DVS) records and other states' driving records as applicable;
 - 4) Drug and alcohol use;
 - 5) Behavior indicative of discriminatory conduct as defined in part xxx;
 - 6) Education verification;
 - 7) Employment history;
 - 8) Military history verification;
 - 9) Personal and professional references, including but not limited to friends, associates, family members, and neighbors;
 - 10) Personal Interview. Personal interviews may occur both before and after the investigation, and may be used to discuss any arrest or conviction records and to clarify any discrepancies or concerns raised in the investigation;
 - 11) Residential history. Applicants with less than five years residence in the United States may be disqualified by the law enforcement agency.
 - 12) Records checks, which include, but are not limited to, open sources or social media, as permitted by law; and financial information, as permitted by law.
- B. Each individual being considered for employment must provide a personal history statement. The statement must include, but is not limited to:
- 1) Verification of the background information referred to in item 1;
 - 2) A complete list of all law enforcement agencies an individual has applied to in the previous 36 months;
 - 3) A signed declaration acknowledging under penalty of perjury that all of the information the applicant has provided during the background investigation and in the personal history statement is true and correct to the best of the applicant's knowledge; and
 - 4) A signed release allowing background investigation information to be shared with other law enforcement agencies on request by the agency.
- C. Results of the background investigation must be retained by the law enforcement agency for the duration of any resulting employment, or for 6 years if the applicant is not employed by the agency.
- D. Background investigations are required for all new applicants, including applicants previously licensed or employed by other law enforcement agencies, except as noted in part **xxxx**.
- E. The background investigation may not be conducted by the chief law enforcement officer or by anyone involved in selection of applicants for peace officer positions as required by *Minn. Stat. § 363A.08 subd. 4(1)*.
- F. The chief law enforcement officer must notify the board prior to as soon as possible but no later than 10 days after the initiation of the background investigation as follows:
- 1) when a background investigation is initiated, giving the candidate's full name, date of birth; and the candidate's peace officer license number, if applicable;
 - 2) when a background investigation search required by this chapter reveals
 - a) a disqualifying offense under the minimum selection standards in part **6700.0700**, and must identify the specific offense(s).
 - b) for a currently licensed peace officer, a violation of standards of conduct under part **xxxx**;
- G. The board will notify the employing law enforcement agency when a background investigation of a currently licensed peace officer reveals a disqualifying offense.

6700.x675 PSYCHOLOGICAL SCREENING.

A. A psychological screening must be conducted after a conditional job offer by a law enforcement agency and must be conducted only by a psychologist licensed in Minnesota or the state in which the psychologist practices. The screening must include:

- (1) A written psychological test battery relevant to the pre-employment psychological screening criteria established by the law enforcement agency.
- (2) An in-person interview conducted by the psychologist;
- (3) To the extent possible as determined by the psychologist, an evaluation of a predisposition on the part of the applicant to engage in discriminatory conduct as defined in part xxx; and
- (4) A written report provided by the psychologist in the manner requested by the law enforcement agency.

B. The psychological screening must conform to applicable standards of the Americans with Disabilities Act (ADA) Title 42 USC 1210.

C. Psychological screenings older than one year are no longer valid for the purpose of satisfying the pre-employment psychological screening requirement.

6700.0700 Minimum Selection Standards

Subpart 1. Certified applicants not yet licensed.

An applicant certified by the board as having met the preliminary licensing requirements may apply for a peace officer position by with a law enforcement agency (LEA). Prior to employment, the LEA must establish and document that the following minimum selection standards are met by the applicant. The applicant must:

- A. be a citizen of the United States or eligible to work in the United States.
- B. possess a valid Minnesota driver's license; or when residing in another state, a valid driver's license from that state;
- C. submit to a psychological screening meeting the requirements of **part xxx**
- D. provide a complete personal history using a form provided by the law enforcement agency and submit to a thorough background search investigation conducted by the agency meeting the requirements of **part xxxx**;
- E. never have been convicted in this state or in any other jurisdiction of the same or similar offenses identified here:
 - 1) a felony;
 - 2) any offense in any other state or federal jurisdiction ~~which~~ that would have been a felony if committed in Minnesota;
 - 3) any of the following non-felony offenses:
 - a) assault in the 5th degree **609.224**; *Rules committee thinks this could be too harsh as there is a low threshold for this, could get tagged even if didn't do much. Is in current rule but NOT statute. Could leave this to agency to decide after reviewing incident*
 - b) bias crimes, including assaults motivated by bias **609.2331 Subd.4** and criminal damage to property **609.595 Subd.2(b)**;
 - c) domestic assault **609.2242**;
 - d) violation of domestic abuse no contact order **629.75 Subd. 2**;
 - e) violation of an order for protection **518B.01 Subd. 14** ;
 - f) harassment or stalking **609.749**;

- g) violation of harassment restraining order [609.748 Subd. 6](#) ;
- h) sexual extortion, [609.3458](#) *no hyperlink, CH 11 2021 session law not in revisors site yet 8/27/21*
- i) any offense that would require the applicant to be registered as a predatory offender under Minnesota Statutes, section [243.166](#) or [243.167](#);
- j) criminal sexual conduct in the fifth degree [609.3452](#);
- k) any mistreatment of a vulnerable adult, including under *sections* [609.2231](#), [609.231](#), [609.2325](#), [609.233](#), [609.2335](#), [609.234](#) [609.72](#) subdivision 3;
- l) patrons of prostitution [609.324, Subd. 3](#); *Note: Board's Rules Committee April 2021 approves limiting to patrons*
- m) making false claims for profit to a public body or officer [609.465](#);
- n) attempting medical assistance fraud [609.466](#); or
- o) theft under [609.52](#), except that misdemeanor theft of movable property valued at \$500 or less is not an automatic disqualification;
- p) interference with an emergency call [609.78 Subd. 2.\(1\)](#);
- q) non-consensual dissemination of private sexual images [617.261](#);
- r) interference with privacy [609.746](#);
- s) malicious punishment of child [609.377](#);
- t) mistreating animals [343.21](#);
- u) misconduct of a public officer or public employee [609.43](#);
- v) any narcotics or controlled substance law, excluding any non-felony marijuana possession offenses. *Note: Board's Rules Committee April 2021 excluded non-felony marijuana as a bar to licensure (leaves it up to the LEA)*

F. not be listed on the National Decertification Index (NDI), or have had a law enforcement license; certification, or authorization to serve as a law enforcement officer in any jurisdiction revoked or rescinded;

G. be free of any indication of discriminatory conduct that would cause a reasonable person to call into question the applicant's ability to impartially serve and protect members of protected groups consistent with the Minnesota Human Rights Act and MN Statutes section 323a and federal law.

H. have no record or indication of participation or support of an extremist group as defined in part x G H. be fingerprinted for the purpose of disclosure of any criminal convictions and the fingerprints must be forwarded by the agency to the Bureau of Criminal Apprehension and the Federal Bureau of Investigation.

~~H.~~ I. be free from any physical condition that might adversely affect the performance of peace officer duties, as established through an exam by a licensed medical professional (*see definition of licensed medical professional*)

~~I.~~ J. be capable of withstanding the psychological demands inherent in a peace officer's responsibilities and free from any emotional or mental condition that might adversely affect the performance of peace officer duties as established by a psychological screening that meets the requirements of [part xxxx](#).

~~J.~~ K. ~~The applicant shall pass a job-related examination of the applicant's physical strength and agility to demonstrate the possession of physical skills necessary to the accomplishment of the duties and functions of a peace officer.~~

~~K.~~ L. successfully complete an oral examination conducted by or for the agency to demonstrate communication skills necessary to the duties and functions of a peace officer.

~~L~~ M. current registration as an emergency medical responder; emergency medical technician; or certification in first aid training and CPR, unless the CLEO attests that the peace officer's position will not include operating a police vehicle.

~~M~~ N. be at least 21 years old. *-No consensus – POST staff suggest 21 min age*

~~N~~ O. submitted documentation of any legal name change(s) since birth.

6700.1500 STANDARDS OF CONDUCT FOR PEACE OFFICERS.

~~Subpart 1. Statutory authority.~~

Subp. 2. Law Enforcement Agency. Nothing in this chapter prevents any law enforcement agency (LEA) from adopting rules, policies, or procedures that exceed the minimum standards identified here. When a LEA has adopted more stringent standards, the LEA and not the Board is responsible for enforcing the portion(s) of any standard that exceed the minimum standard identified in this part. ~~The responsibility for enforcing any rules, policies, or procedures which are more comprehensive than the following minimum standards of conduct remains with the law enforcement agency.~~

~~Subp. 3. Purpose.~~

Subp. 4. Standards of Conduct. A peace officer is subject to discipline by the board under **part 6700.0710** when the board finds that the officer has violated a standard of conduct. It is a violation of standards of conduct to:

- A.** Be convicted or receive a stay of adjudication in any jurisdiction for any offense:
 - 1) that would bar licensure under the minimum selection standards identified in part 6700.0700 Subp. 1 E;
 - 2) for theft, prostitution, or controlled substance offenses that are not automatic bars to licensure under minimum selection standards;
- B.** Falsify or knowingly provide false information to the board, a law enforcement agency, or a court;
- C.** Fail to cooperate with an investigation of the board as required by part **6700.1610, subpart 4;**
- D.** Fail to comply with reporting requirements for officers and chief law enforcement officers in this **chapter;**
- E.** Fail to report crimes of bias or alleged crimes of bias as required under Minnesota Statutes, section **626.5531.**
- F.** Engage in on or off duty discriminatory conduct based on a perception of a person's race, color, creed, religion, national origin, disability, sex, sexual orientation, marital status, status with regard to public assistance, age, or any other protected class as defined by the Minnesota Human Rights Act in MN Statutes, section 363a, local jurisdiction, or federal law;
- G.** Undermine public trust in law enforcement by supporting or participating in any form, unless sanctioned as part of official duties, in the activities of an extremist group. An extremist group advocates any of the following:
 - 1) hatred or intolerance based on a person's perceived race, color, creed, religion, national origin, disability, sex, sexual orientation, marital status, status with regard to public assistance, age, or any other protected class as defined by the Minnesota Human Rights Act in MN Statutes, section 363a, or federal law;
 - 2) Creating, supporting, or engaging in discrimination based on those protected classes;
 - 3) Promotion of the use of force, violence, or unlawful means to deprive individuals of their rights under the Minnesota or United States Constitution;

- 4) unlawful violence or force to achieve goals that are political, religious, discriminatory, or ideological in nature;
- 5) a duty to engage in violence against the government in support of an extremist cause;
- 6) Activities promoting or teaching the overthrow of the local, state or U.S. Government by force or violence, or seeking to alter the form of government by unconstitutional means (sedition).

Support includes:

- advocacy of white supremacist, or any extremist doctrine, ideology, group, organization, or cause as defined in **6700.0100 Subp. x**;
- advocating or participating in illegal discrimination;
- advocating or participating in the use of force, violence, or criminal activity in efforts to deprive individuals of their civil rights;
- advocating or participating in violence against the government or seditious activities.

Advocacy or participation in an extremist organization's activities includes:

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

H. Engage in sexual harassment, as defined by Minnesota Statutes, section **363A.03**, subd. 43;

I. Commit misconduct of a public officer under MN Statutes sections **609.43**;

J. Misuse of a peace officer's authority including

- the use or attempted use of one's position or authority as a peace officer to obtain a benefit, avoid a detriment or harm another; or
- exceeding the officer's authority in executing a search warrant or executing it with unnecessary severity under Minnesota Statutes **626.22**;
- unnecessary and/or excessive use of force against a person in custody; and
- unnecessary and/or excessive use of force resulting in an injury requiring documented medical treatment.

K. be the subject of revocation, suspension, or surrender of a peace officer license or certificate in resolution of a complaint or other adverse action relating to licensing or certification in another jurisdiction;

L. Fail to comply with the requirements of maintaining a peace officer license in **part 6700.x**; or

M. Violate a board required mandatory policy; *only if conflicts with professional conduct policy and officer misconduct are resolved, otherwise may require board to address employment issues that do not rise to the level of licensure fitness*

Subpart 5. Disciplinary Actions. The board must revoke a license when the Board finds that a licensed peace officer has violated the critical standards listed here:

- A. a conviction or a stay of adjudication in any jurisdiction for any offense that would bar licensure under the minimum selection standards identified in part 6700.0700 Subp. 1 E.;
- B. a conviction or a stay of adjudication in any jurisdiction for theft, prostitution, or controlled substance offenses;

- C. a conviction or a stay of adjudication in any jurisdiction for any offense that would constitute misconduct of a public officer or public employee as identified in MN Statutes section [609.43](#);
- D. a discharge from employment as a peace officer for any of the following reasons:
 - 1) Dishonesty;
 - 2) Sexual harassment or sexual assault;
 - 3) Discriminatory conduct;
 - 4) Excessive, unnecessary, or unlawful use of force;
 - 5) Violation(s) of board required mandatory policies;
 - 6) Conduct that meets the criteria of misconduct of a public officer under MN Statutes section [609.43](#); *note: this is covered under minimum selection standards, repeated here*
 - 7) Conduct that reduces public trust in the agency;
 - 8) intentional conduct performed under the color of office to:
 - a) Obtain a false confession;
 - b) Make false arrests;
 - c) Create or use falsified evidence, including false testimony, or to destroy evidence to create a false impression;
 - d) Compel, or attempt to compel a person to abstain from doing, or to do, any act that the person has a legal right to do or abstain from doing;
 - e) Deprive, or attempt to deprive, another person or persons of their legal rights;
 - f) Gain advantage for personal gain or for a law enforcement agency ;
 - g) Discriminate against a person based on the peace officer's perception of that person's race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age, status with regard to public assistance, or any protected class as defined by state or federal law.
- E. If an officer has been discharged, but is appealing the discharge decision, the Board may suspend the license pending the resolution of the grievance.
- F. In cases where there has been an arbitrator's opinion related to the peace officer's employment, the Board will proceed as follows:
 - 1) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the Board will proceed with review of the case pursuant to this rule.
 - 2) If the arbitrator's opinion finds that underlying facts did not support the allegations of misconduct, the Board will dismiss the case, unless the Board has or discovers additional information that would lead an objectively reasonable person to conclude that the peace officer violated Board established employment, training, or licensure standards.
 - 3) If the arbitrator has ordered employment reinstatement after a separation of employment without a finding related to whether the misconduct occurred, the Board will proceed with review of the case pursuant to this rule.

**Possible Additions to Draft Amendments to Rules
on
Minimum Selection Standards and Standards of Conduct
R4641**

To be reviewed at the September 2021 meetings of the Board Rules Committee and the Advisory Committee on POST Board Rules Overhaul

1. 609.33 DISORDERLY HOUSE.

Subdivision 1. Definition. For the purpose of this section, "disorderly house" means a building, dwelling, place, establishment, or premises in which actions or conduct habitually occur in violation of laws relating to:

- (1) the sale of intoxicating liquor or 3.2 percent malt liquor;
- (2) gambling;
- (3) prostitution as defined in section 609.321, subdivision 9, or acts relating to prostitution; or
- (4) the sale or possession of controlled substances as defined in section 152.01, subdivision 4.

Subd. 2. Prohibiting owning or operating disorderly house. No person may own, lease, operate, manage, maintain, or conduct a disorderly house, or invite or attempt to invite others to visit or remain in the disorderly house. A violation of this subdivision is a gross misdemeanor.

Subd. 3. Mandatory minimum penalties.

(a) If a person is convicted of a first violation of subdivision 2, in addition to any sentence of imprisonment authorized by subdivision 2 which the court may impose, the court shall impose a fine of not less than \$300 nor more than \$3,000.

(b) If a person is convicted of a second violation of subdivision 2, in addition to any sentence of imprisonment authorized by subdivision 2 which the court may impose, the court shall impose a fine of not less than \$500 nor more than \$3,000.

(c) If a person is convicted of a third or subsequent violation of subdivision 2, in addition to any sentence of imprisonment authorized by subdivision 2 which the court may impose, the court shall impose a fine of not less than \$1,000 nor more than \$3,000.

2. 609.377 MALICIOUS PUNISHMENT OF CHILD.

Subdivision 1. Malicious punishment. A parent, legal guardian, or caretaker who, by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances is guilty of malicious punishment of a child and may be sentenced as provided in subdivisions 2 to 6.

Subd. 2. Gross misdemeanor. If the punishment results in less than substantial bodily harm, the person may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

Subd. 3. Enhancement to a felony. Whoever violates the provisions of subdivision 2 during the time period between a previous conviction or adjudication for delinquency under this section or sections 609.221 to 609.2231, 609.224, 609.2242, 609.342 to 609.345, or 609.713, and the end of five years following discharge from sentence or disposition for that conviction or adjudication may be sentenced to imprisonment for not more than five years or a fine of \$10,000, or both.