



Minnesota Board of Peace Officer Standards and Training

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Advisory Committee on Post Board Rules Overhaul March 8, 2022 1 p.m. - 4 p.m.

1. Welcome/Housekeeping/Roll Call
2. Agenda Approval
3. Minutes February 15, 2022
4. Advisory Committee Report to Board
5. Prioritized Draft V14
6. Adjournment

Next meetings:

March 29, from 1-4 pm

April 19 from 1-4 pm

May 10, from 1-4 pm

May 31, from 1-4 pm

June 21, from 1-4 pm

**MINNESOTA BOARD OF
PEACE OFFICER STANDARDS AND TRAINING**

**Advisory Committee on POST Board Rules Overhaul Meeting
Minutes
Electronic Meeting via Microsoft Teams
February 15, 2022**

Members Present

Michelle Gross
Elisabeth Lee
Bryan Litsey
Tracy Stille
David Bicking
Pat Nelson
Steven Soyka
Theresa Paulson
Aaron Suomala-Fokerds
Elliot Butay
Craig Enevoldsen
Sherisse Truesdale-Moore
Mark Fahning
Sara Edel

Members Absent

Vincent Do
Bill Bolt
Gwen Degroff-Gunter
Jack Serier
Raj Sethuraju
Jean Cemensky

Staff Present

Rebecca Gaspard

Others Present*

*Invitation to listen to the live meeting was listed on the website.

Note: Due to ongoing COVID-related restrictions for state meetings and CDC guidelines, this meeting was held online. A link to observe the meeting was posted on the POST website.

Gaspard began the meeting at 1:03 pm.

Approval of the Agenda: The committee accepted the agenda with moving the Minnesota Specific Training to follow the review of the draft.

Approval of January 25, 2022 Meeting Minutes: The committee accepted the minutes as drafted.

Updates: Gaspard reported that there were two additional meetings before the Board meets to review and approve the rules draft.

Draft Committee Report: Gaspard reviewed the purpose of the report, which will recommend adoption of the rules draft with the exception of areas where the committee could not reach consensus. A compilation of bios from committee members will be distributed so that members may adjust their bio if they want to add more or less to their own bio. The format to report areas where consensus was not reached was reviewed and accepted.

Prioritized Draft V13: The following discussions are based on the V13 version of the draft.

6700.0100 Subp. X Seasonal: Consensus approval was reached on this definition: "Seasonal Position" means a position of no more than 16 weeks and is necessary due to annual fluctuations in staffing needs.

6700.0100 Subp. X Temporary: Consensus approval was reached on this definition: “Temporary position” means a short term of employment with a designated end date of six months or less that may not exceed 300 hours in a year.

6700.0670 Background Investigations.

Consensus approval was reached on amending Subp. 2B(2) to:

- (2) the applicant remains currently employed in Minnesota as a peace officer by a different agency as verified in writing by the current employing agency.

6700.0675 Psychological Screening. The committee accepted the same amendment to exceptions to the screening requirement as verified in writing by the current employing agency.

6700.0700 Minimum Selection Standards, Subp. 1:

Committee members identified the requirement on citizenship and age as areas where no consensus was reached.

6700.1600 Standards of Conduct:

The committee accepted by consensus the edits to the first paragraph.

Item A: consensus approval reached to add these disqualifications:

- 5 obstructing legal process 609.50;
- 6 fleeing by means other than a vehicle 609.487 Subd.6;
- 7 carrying a pistol while under the influence 624.7142 ; or

Item F: consensus approval reached on amending item to include maliciously procuring a search warrant:

F. Misuse a peace officer’s authority by:

- 1) 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
- 2) committing misconduct under MN Statutes sections [609.43](#); or
- 3) maliciously procuring a search warrant, exceeding the officer’s authority in executing a search warrant, or executing it with unnecessary severity under Minnesota Statutes [626.22](#);

Item H: There was much discussion about the draft wording, and it was noted that there were concerns that persons who couldn’t support the current language were not necessarily disagreeing with the idea that a white supremacist should not be a peace officer; and that the disagreement will be explained in the Advisory Committee’s report to the Board.

H1. Consensus was not reached.

H2. Consensus approval reached

H3. Consensus was not reached

Items J and K: Consensus was reached to remove the proposed standard of any violation of any model policy would be a standards violation, and to remove the reference to MN Statutes section 626 in Item K .

6700.2700 Police Pursuits through 6700.2703 Copies of Procedures: Consensus was reached to repeal rule provisions related to the pursuit model policy.

6700.xxxx Required Agency Policies: Consensus approval of the new language was not reached.

Advisory Committee Report: There were 5 rule sections where the committee did not reach consensus. The report will list each member's decision on each of those 5 sections as to whether the member supported either approval or disapproval of the rule language.

Minnesota Specific Training Subcommittee: Nelson reviewed the document on the subgroup's work. The committee discussed the provisions and the possible application of the Minnesota Specific Training in rule amendments regarding reciprocity requirements and possibly in renewing expired or inactive licenses.

The meeting was adjourned at 3:59.

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. 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. Appointments included both new and experienced law enforcement officers (sheriff, chief, retired LEOS, 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 A. The Advisory Committee Charter is 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 1st.

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 in the Revisor's draft dated x-x-2022.

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.

Consensus Approval of Revisor's draft RD4641 dated x-x-2022.

Through discussion, the committee sought to reach consensus on the draft provisions. The committee recommends adoption of the draft 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, Sethuraja

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 peaceofficers: 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 US 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 **US 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 US 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.¹

- 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.²

Proponents 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.³

E. Reasons for Keeping the Citizenship Requirement

IADLEST remains committed to continuing a citizenship requirement as part of their minimum 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."⁴ 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:

- 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).
- Limit non-citizen officers to those who have served in the military and have completed the military naturalization process (see Section H).
- Allow non-citizens to serve as Auxiliary, Reserve or Community Police.
- 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 naturalization 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.

6700.0700 MINIMUM SELECTION STANDARDS.

Subpart 1. **Selection standards.** A person eligible to be licensed shall meet the following minimum selection standards before being appointed to the position of peace officer. The appointing authority may affirm that the applicant has already completed certain of these standards, but the affirmation must be documented pursuant to subpart 2.

A. The applicant shall be a citizen of the United States or obtained a lawful permanent residency (LPR) status in the United States.

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.

Note to committee: Stille’s report came in a PDF with many footnotes. In the process of exporting to Word, cutting and pasting into this document, some footnotes were lost. Please see the accompanying original document for footnotes.

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

Rationale:

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

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 20.¹ 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.

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*

¹ 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 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.

- 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 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.1 and Subpart 3 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

Missing Litsey Truesdale

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

X Members Opposing Rule Language: Stille, Fahning, Bolt, Cemensky, Soyka
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](#)

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 626.8473](#). 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 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.

US Citizenship Requirements for MN Police Officers
Minimum selection standards 6700.0700 Subpart 1. A

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 US 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 **US 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 US 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.¹

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

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.²

Removing the Requirement Would Not Result in Instability

Proponents 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.³

E. Reasons for Keeping the Citizenship Requirement

IADLEST remains committed to continuing a citizenship requirement as part of their minimum 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.”⁴ 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

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>

⁴ https://www.iadlest.org/our-services/model-standards#_Toc31025315

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.
- 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.

- **6700.0700 MINIMUM SELECTION STANDARDS.**

Subpart 1. **Selection standards.** A person eligible to be licensed shall meet the following minimum selection standards before being appointed to the position of peace officer. The appointing authority may affirm that the applicant has already completed certain of these standards, but the affirmation must be documented pursuant to subpart 2.

A. The applicant shall be a citizen of the United States or obtained a lawful permanent residency (LPR) status in the United States.

Required Agency Policies
6700.XXXX Subpart 1. and 2.

A. Should the MN POST Board be allowed to mandate non-statutorily required policies for MN law enforcement agencies?

The MN POST Board is proposing the addition of a new rule 6700.XXXX - Required Agency Policies. The proposed language is outlined below:

“Each agency must adopt, implement, and enforce policies listed below that are based on a board’s model policy. An agency may incorporate additional agency specific requirements or more stringent requirements in its adopted policy but must include the specific provisions of the board’s model policy. The board is not responsible for enforcing any agency specific provisions of a required policy.”

The MN POST Board has proposed to add language to this proposed rule as outlined in 16) of subpart 1: Required Policy as outlined below:

“16) Any other required agency policy as established by the legislature or the board addressing critical public safety and law enforcement procedures.”

The MN POST Board has proposed to add an additional non-statutorily required policy, “Public Assembly/First Amendment Activity Policy” as proposed in 8) of Subpart 1: Required Policy as outlined below:

“6) Public Assembly/First Amendment Activity Policy”

Additionally, as included in Subpart 2 of the proposed rule change, the MN POST Board has proposed to add additional rule language as outlined below:

“Subpart 2: Chief Law Enforcement Officer. The chief law enforcement officer must ensure that:

- A. the current version of each required policy is posted on the law enforcement agency’s website. If the agency does not have a website, the policy must be posted in the public area of the agency’s physical premises;
- B. a copy of the current version of each required policy is provided on request by an individual or organization;
- C. a copy of the current version of each required policy is provided to each peace officer employed by the agency;
- D. each required policy is reviewed at least annually with each officer;
- E. the agency’s adopted policy is enforced at all levels of the agency;
- F. violations of a required policy are reported to the Board; and
- G. the policy and training compliance form provided by the board is completed and submitted to the board no later than March 1 of each year .”

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.

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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](#)

C. 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 626.8473](#).

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](#):

MODEL POLICIES

1. **Use of Force Model Policy** ([doc](#)) ([pdf](#))
[MN STAT 626.8452](#), Subd.1 (1)(a)
Yearly training for each peace officer based on the [In-service Use of Force Learning Objectives](#) is required.

2. **Eyewitness Identification Procedures Model Policy** ([doc](#)) ([pdf](#))
MN STAT 626.8433
3. **Allegations of Misconduct Model Policy** ([doc](#)) ([pdf](#))
MN RULES 6700.2200
4. **Professional Conduct of Officers (Conduct Unbecoming) Model Policy** ([doc](#)) ([pdf](#))
MN STAT 626.8457
5. **Domestic Abuse Model Policy** ([doc](#)) ([pdf](#))
MN STAT 629.342
6. **Avoiding Racial Profiling Model Policy** ([doc](#)) ([pdf](#))
MN STAT 626.8471
7. **Investigation of Sexual Assault Model Policy** ([doc](#)) ([pdf](#))
MN STAT 626.8442
8. **Public Assembly/First Amendment Activity Model Policy** ([doc](#)) ([pdf](#)) Suggested Best Practices policy adopted by POST Board July 22, 2021
9. **Response to Reports of Missing & Endangered Persons Model Policy** ([doc](#)) ([pdf](#))
MN STAT 626.8454 (see also MN STAT 299C.51-299C.5655, and 390.25)
10. **Predatory Offender Registration Community Notification Model Policy** ([doc](#)) ([pdf](#))
Minnesota Session Laws 1996, Chapter 408, Art. 5, Sec. 7
11. **Vehicle Pursuit and Emergency Vehicle Operations Model Policy** ([doc](#)) ([pdf](#))
MN STAT 626.8458, Sub. 2
MN RULES 6700.2700 thru 6700.2704
All officers not declared exempt on the Police Pursuit Training Exemption Form must complete an 8-hour course based on In-Service Police Pursuit & Emergency Vehicle Operation Learning Objectives every 5 years.
12. **Criminal Conduct on School Buses Model Policy** ([doc](#)) ([pdf](#))
MN STAT 169.4581
13. **Lighting Exemption of Law Enforcement Vehicles Model Policy** ([doc](#)) ([pdf](#))
MN STAT 169.541
14. **Procession of Property for Administrative Forfeiture Model Policy** ([doc](#)) ([pdf](#))
Required agency policy must be approved by board
MN STAT 609.531
15. **Supervision of Part-time Licensed Peace Officers Model Policy** ([doc](#)) ([pdf](#))
Required policy if agency employs a part-time officer
MN RULES 6700.1110
Note: Part-time peace officers are those licensed before 1978 and who were grandfathered in as licensed officers. This does not apply to peace officers licensed after 1978 who are employed on a part-time basis.

16. Automated License Plate Reader Policy

Required policy to be developed by law enforcement agency if agency uses plate readers
– no model policy

MN STAT 626.8472

17. Portable Recording Systems Adoption

Required policy to be developed by law enforcement agency if agency uses such systems
– no model policy

MN STAT 626.8473

18. Use of Unmanned Aerial Vehicles Policy

Required policy to be developed by law enforcement agency if agency uses UAVs and
posted on website – no model policy

MN STAT 626.19

D. 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 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 everchanging 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.

E. 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.