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## MINNESOTA BOARD OF PEACE OFFICER STANDARDS AND TRAINING

### STATEMENT OF NEED AND REASONABLENESS

#### 4 MCAR § 13.040 Investigation and Resolution of Misconduct Allegations

##### Introduction

In the last legislative session, the POST Board was directed to adopt rules with respect to:

The establishment, and use by any political subdivision or state law enforcement agency which employs persons licensed by the board of procedures for investigation and resolution of misconduct by persons licensed by the board. The procedures shall be in writing and shall be established on or before October 1, 1984.

Laws of 1983, Ch. 269, §3. The Board's powers and duties were amended as well to include the following clause:

To assist and cooperate with any political subdivision or state law enforcement agency which employs persons licensed by the board to establish written procedures for the investigation and resolution of allegations of misconduct of persons licensed by the board, and to enforce licensing sanctions for failure to implement such sanctions.

Laws of 1983, Ch. 269, §4.

This rule-making process is undertaken for the purpose of complying with that legislative mandate. The Legislature, in all aspects of law enforcement officer licensing, has recognized the need for some responsibility and supervision at the state level. At the same time, it has recognized that in most areas there is a need for a balance of state and local responsibility and supervision over law enforcement officers. The statutes, and this proposed rule, attempt to maintain that balance by requiring that general procedures be established to investigate allegations of misconduct by law enforcement officers, but leaving the discretion for the specific form of these procedures to the local units of government.

The need for flexibility in the form of procedures for resolution of allegations of misconduct is clear from an examination of those agencies which will be affected by the rule. There are approximately 625 law enforcement agencies which will be required to establish these procedures. Those agencies employ any number from one to over 700 persons licensed by the Board. Eighty-seven of the agencies are sheriffs' departments, and three are state law enforcement agencies. The remaining number are city or township law enforcement agencies.

Since there exists this wide variety of agencies to be affected, it is not surprising that many of these agencies currently use widely varying methods for dealing with allegations of peace officer misconduct. Some licensees may be subject to disciplinary procedures by a local civil service commission; others may answer to the city manager, mayor or city council. Some law enforcement officers may come under the jurisdiction of the local police commission, and still others may be governed by the provisions of union collective bargaining agreements.

The legislation mandating this rule does not direct adoption a new statewide uniform system through which investigations into allegations of misconduct will be effected. Rather, the legislation indicates that this new procedure can be incorporated into existing investigative and disciplinary systems. The focal point of the legislation, and of the corresponding proposed rule, is that of local responsibility: local law enforcement agencies must establish standards and procedures, which they deem appropriate for their unique situations, in the area of discipline and supervision of peace officers.

#### Specific Provisions of the Rule

The definitions of the terms "data" and "misconduct" which appear in Section A are necessary to clarify the use of the terms throughout the rule. They also make the rule easier to read.

The definition of the term "misconduct" is of substantive significance to the rule, because it vests the local agency with the authority to determine acts or omissions which may result in disciplinary action. The reasonableness of allowing such authority may be illustrated by the following example.

Some agencies have policies which prohibit two or more officers from dining together while on duty. This policy results from the judgment that allowing such conduct reduces the level of police coverage during the time the officers are in the restaurant together. Conversely, other agencies may encourage officers to dine together to a reasonable extent. Such acts may be seen as desirable in a public relations sense. In addition, the activity may foster communication between officers regarding the detection of criminal activity.

It is clear that the choice between these conflicting policies is not one which directly affects the protection and safety of the public. Both policies have merit; it must be left to the local unit of government to determine which approach best suits its needs.

Section B relates to the scope of the rule and the Board's enforcement authority. This statement is needed to clarify the Board's jurisdiction to the licensee, the citizen, the appointing authority, and the law enforcement agency. It reinforces the legislative mandate that the system be developed and implemented at the local government level. This rule is reasonable in that it eliminates the potential for misinterpretation of the Board's authority. It is clear that procedures may be implemented at the local government level without state intervention.

Section C specifies the elements which must be included in the written procedures required by this rule and the date by which the procedures must be established. The specification of these elements is necessary to provide officers and the public notice of the rules of conduct and how the system operates. The licensee needs to know the standards to which she will be held and the process by which she may defend against allegations of misconduct. The citizen must know the conduct which the local government unit views as inappropriate and the process by which he may have such inappropriate actions reviewed. Both the citizen and the licensee need to know the date on which the procedures will take effect.

This section of the rule is reasonable. The elements which must be included in the written procedures are recognized as minimum elements of personnel policies throughout the country. [The Board has compiled a bibliography of materials dealing with such personnel policies. The bibliography is available upon request.]

Section D requires each agency to submit an affirmation of compliance with section C to the Board not later than October 15, 1984, or 15 days after the agency begins operation, whichever is later. The requirement is necessary in order for the Board to fulfill its role in insuring that a system is adopted and utilized by each agency.

An affirmation of compliance is the only feasible means for the Board to monitor the establishment of the required procedures. Requiring the agency to submit its procedures in each case would require an unreasonable amount of paperwork and storage space on the Board's part. Additionally, this type of documentation requirement is the common practice of the Board in other areas of peace officer licensing. The agency is required to maintain the written procedures which are to be made available to the Board at its request.

Approximately five new agencies begin operations each year. It is reasonable to require that an affirmation of compliance be submitted within 15 days of the beginning of their operations to insure compliance with the rule.

Section E relates to the availability of copies of the written procedures to the public and, in effect, specifies that they are public documents. It is necessary that the procedures be available to the public in order that citizens may know the conduct which is proscribed and the procedure through which allegations of misconduct will be reviewed. It is also necessary and reasonable that licensees be provided copies of the written procedures so that they may know the standards to which they will be held.

Section F relates to the documentation which must be maintained by agencies on specific allegations of misconduct. This section is necessary as a clarification to the local law enforcement agency. There is a great deal of confusion among local agencies with regard to the status of internal affairs data and the length of time for which it must be maintained. This section serves as a clarification that the Data Practices Act applies to the information referred to in this rule, and that retention schedules must be developed for that information.

This section deals only with data which is classified as public. The rule does not affect the dissemination of data which is classified as private or confidential.

Section G is the primary enforcement provision of this rule, holding the chief law enforcement officer responsible for the development, implementation and application of the required procedures. It is necessary, indeed, it is legislatively mandated, for the Board to enforce licensing sanctions for failure to implement the required procedures. It is reasonable, then, for the chief law enforcement officer to be held responsible for failure to comply with this rule. That individual is responsible for the operation of the agency and the highest ranking official over whom the Board has jurisdiction. The practice of holding the chief responsible is common for the Board. In 4 MCAR § 13.028 A., for example, the chief law enforcement officer is required to notify the Board of the appointment of any person to the position of peace officer before the first day of the officer's employment. The chief law enforcement officer is also required to maintain documentation regarding the completion of selection standards and various other requirements for licensing.

There is also, of course, clear case law holding chief law enforcement officers civilly liable for the acts of their officers. This concept of liability stems from the fact that those who supervise have the greatest level of control or ability to control the acts of the supervised. That concept applies in the case of procedures for allegations of misconduct as well.

#### Conclusion

This rule is proposed as a necessary and reasonable means of implementing Chapter 269 of the 1983 Laws. In addition, agencies should find a good deal of assistance, should they need it, in developing the required procedures. POST is cooperating with the Bureau of Criminal Apprehension in the development of training courses on the development of procedures. POST also offers its assistance to individual agencies who have problems meeting the requirements of the statute and the rule.