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**Michigan Commission on Law Enforcement Standards**  
**Commission Working Session Minutes**  
**February 15-16, 2007**  
**The Shack**  
**Jugville, Michigan**

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**COMMISSION MEMBERS PRESENT:**

Sheriff Gene Wriggelsworth, representing the Michigan Sheriffs' Association  
Mr. John Buczek, representing the Fraternal Order of Police  
Mr. Jim DeVries, representing the Police Officers Association of Michigan  
Lt. Col. Timothy Yungfer, representing the Michigan State Police  
Mr. Bill Dennis, representing the Attorney General  
Chief Doreen Olko, representing the Michigan Association of Chiefs of Police  
Sheriff James Bosscher, representing the Michigan Sheriffs' Association  
Trooper Michael Moorman, representing the Michigan State Police Troopers Association  
Officer Richard Weaver, representing the Detroit Police Officers Association  
Deputy Chief Deborah Robinson, representing the Detroit Police Department  
Mr. Raymond Beach, Executive Director  
Mr. Tom Furtaw, Commission Counsel

**COMMISSION MEMBERS EXCUSED:**

Director Kurt Jones, representing the Michigan Association of Chiefs of Police  
Prof. Ron Bretz, representing the Criminal Defense Attorneys of Michigan  
Chief James St. Louis, representing the Michigan Association of Chiefs of Police  
Sheriff Robert Pickell, representing the Michigan Sheriffs' Association  
Mr. David Morse, representing the Prosecuting Attorneys Association of Michigan

**COMMISSION STAFF PRESENT:**

Ms. Theresa Hart	Ms. Hermina Kramp
Mr. Gary Ruffini	Ms. Cheryl Hartwell
Mr. John Steele	Mr. Dale Rothenberger
Mr. David King	Mr. Dan Furniss
Mr. Wayne Carlson	

## **CALL TO ORDER:**

The Commission Working Session was called to order by Sheriff Gene Wriggelsworth on February 15, 2007, at 1:00 p.m. at The Shack in Jugville, Michigan.

## **ADDITIONS TO THE AGENDA:**

The following items were added to the agenda:

- 2007 Internal Organization Agreement Between MSP and MCOLES
- Special Use and Grant Adjustment Requests
- Addendum to December 13, 2006, Minutes – Patrol Rifle Curriculum Module

## **AGENDA ITEMS:**

**2007 Internal Organization Agreement Between MSP and MCOLES** – A copy of the 2007 agreement was provided to the Commission members. Mr. Beach explained that a meeting had been held with Colonel Munoz and no changes were made to the agreement from the previous year. The copy supplied has been signed by both Sheriff Wriggelsworth and Colonel Munoz. Mr. DeVries asked if there was an employment contract for the Executive Director as referenced in item four. Sheriff Wriggelsworth explained that there currently is not a contract and it will be discussed at Mr. Beach's next review.

## **PUBLIC FORUM/COMMENTS:**

There was no public comment.

## **AGENDA ITEMS Continued:**

**Addendum To December 13, 2006, Minutes – Patrol Rifle Curriculum Module** - Mr. Beach will have staff present again the language in the area of Patrol Rifle. To implement this item, the current curriculum was reduced by twelve hours in a variety of areas, and increased by twelve hours in the firearms area. He asked staff to explain where the reductions and increases were made and requested a motion be made to amend the record from the December meeting minutes to reflect the approval of the reduction and increase effective June 1, 2007.

**Addendum To December 13, 2006, Minutes - Continued:**

Ms. Kramp explained that at the December meeting when the Patrol Rifle Curriculum module was presented, a lot of material was reviewed and discussed. The three things that were approved at the last meeting were the mandate for the module, the recommendation that all of the training sites immediately implement as much of the curriculum as they can beginning after January 1, 2007, on a non pass/fail basis, and a mandate that training directors and primary firearms instructors participate in an orientation session conducted by staff. The orientation took place last week with excellent attendance.

At the December 13, 2006, meeting there was a motion to adopt the recommendations of the subject matter expert group and staff as specified in the Final Report and Implementation Plan. However, in order to fully implement the adopted changes, the actual changes to the hours of training in the specified curriculum units must be adopted.

When staff conducted the Job Task Analysis, they identified the core items and reviewed the curriculum over the past years to assess the needed hours. That is where the recommendations in reductions and moving of hours came from. The list of recommended reductions were reviewed with the Commission as follows:

Court Functions & Civil Law	I.E.1	reduced from 6 to 4 hours
Cultural Diversity	II.B.3	reduced from 12 to 8 hours
Patrol Checks	II.C.2	reduced from 6 to 4 hours
Observation & Monitoring Traffic	V.B.2	reduced from 3 to 2 hours
Field Sketching	V.E.5	reduced from 6 to 4 hours
Roadway Surface	V.E.6	reduced from 5 to 4 hours

This results in a net reduction of twelve (12) hours of mandated training in these areas. These twelve (12) hours must be moved to Functional Area IV Police Skills, Subject Area B Firearms, and become Module 4 Patrol Rifle. The Patrol Rifle module will then become IV.B.4 and will consist of 12 hours of mandated training.

Staff asked that the Commission adopt two motions as follows:

1. Reduce those designated modules by the hours specified.
2. Mandate the Patrol Rifle Module as a new twelve (12) hour curriculum module in Functional Area IV., Subject Area B as IV.B.4 Patrol Rifle.

Mr. DeVries asked if the 562 hour curriculum was capped at that level so as not to add anymore hours.

Ms. Kramp explained the reason staff did not add hours at this time is that based on the research there was room in the current 562 hours by making reductions in other areas.

**Addendum To December 13, 2006, Minutes - Continued:**

Mr. Beach explained that any future changes made to the curriculum due to the Job Task Analysis will likely mean hours added.

A **MOTION** was made by Sheriff Bosscher and supported by Mr. Buczek to reduce the MCOLES basic training curriculum modules as outlined by staff totaling 12 hours.

A **VOTE** was taken. The **MOTION** carried.

A **MOTION** was made by Sheriff Bosscher and supported by Mr. Buczek to mandate the Patrol Rifle Module as a new twelve (12) hour curriculum module in Functional Area IV, Subject Area B as IV.B.4, Patrol Rifle as outlined by staff.

A **VOTE** was taken. The **MOTION** carried.

**APPROVAL OF THE DECEMBER 13, 2006, MEETING MINUTES:**

A **MOTION** was made by Mr. DeVries and supported by Deputy Chief Robinson to accept the minutes of the December 13, 2006, meeting minutes with the amendments to Patrol Rifle as noted.

A **VOTE** was taken. The **MOTION** carried.

**AGENDA ITEMS Continued:**

**MCOLES Budget** – Mr. Rothenberger explained that on February 8, 2007, the Governor introduced her recommended budget for 2008. For the Commission it is a continuation budget. A table was provided and reviewed with the Commission comparing the 2007 MCOLES budget with the Governor’s recommended budget for 2008. He pointed out that there was an economic increase to the general fund to cover salary and fringe benefit increases of staff. The decrease shown under the Justice Training Fund was to bring it in line with the actual revenue that is collected.

Several concerns were expressed on the under funding of the Public Safety Officer Benefit Program. This program is currently at zero due to the number of deaths over the past several years. Mr. Rothenberger stated that on the average there are nine deaths each year. The House and Senate have been put on notice that this program is under funded. To fund the program fully, the money would need to be taken from another line item

**MCOLES Budget - Continued:**

within the department or the Commission would need to request a supplemental. Sheriff Wriggelsworth suggested that each faction of the Commission contact the legislature regarding additional funding for this program.

He explained that Executive Directives 2007-01 through 2007-09 were recently issued by the Governor and affect the current year budget. A copy of these directives were provided to the Commission.

Executive Order 2007-01 regarding spending for the rest of the fiscal year was voted down by the Senate on February 14, 2007. It was intended to address an estimated \$900 million deficit in the current budget year.

Mr. Beach explained that the Governor's recommended budget for 2008 is based on taxes and fees to be implemented. The Commission has a continuation budget based on the Governor's proposal.

Public Safety Funding Coalition – Sheriff Wriggelsworth stated that the Coalition met on Tuesday, February 13<sup>th</sup> and is in the process of moving ahead on putting together legislation. The Department of Information Technology (DIT) attended the meeting and felt that there were gaps in the proposal. They have a proposal for funding through a cell phone surcharge that also includes the funding coalition white paper. A copy of their proposal from Karoub and Associates was provided to the Commission.

Mr. Lynn Owen from the Governor's office attended the meeting and indicated that they know the Commission is moving ahead and were comfortable with it. He stated that in June or July the Governor's Office will be looking for general fund savings and the Public Safety Funding proposal includes those savings. The Coalition put together a small group that will meet next week in Lansing to draft some proposed legislation and move forward.

A copy of the white paper was provided to the Commission and Mr. King explained that it was the most updated copy. He reviewed the updates with the Commission which included additions and corrections to the information for fire services. Mr. Beach stated that fire will justify their \$17 million need at the next meeting through documentation. Deputy Chief Robinson also stated that they need to clarify who is included in their funding request.

Mr. Beach stated that after the first publication of the white paper in mid-December, he received a letter from the Fire Coalition asking for their information to be retracted from

**MCOLES Budget – Continued:**

the white paper. This led to a meeting with the five organizations and they agreed to be part of the Public Safety Funding Coalition.

Sheriff Wriggelsworth explained that the Commission was also provided with a copy of a resolution forwarded to the Governor's office from CJIS with some requests. Mr. Beach stated that also included was a document from Chief Jim Valentine that the CJIS group had looked at the potential of one dollar on each homeowner's insurance policy.

**Strategic Plan Update** – Mr. Rothenberger explained that the strategic plan was adopted by the Commission in 2002 following two series of Town Hall meetings held across the state. The Commission identified eight objectives and added the ninth, secure dedicated funding, in 2003 making it the highest priority. In addition, they split the objective of modernize training and testing into two, making a total of ten. He reviewed each of the items and its progress to date.

- Secure Dedicated Funding – this effort is ongoing and a report was given on this in the previous agenda item.
- Review and Update Administrative Rules – the idea was to modernize the rules to reflect the changes and the operations of MCOLES programs. The PSOB rules became effective in December of 2005, Justice Training Program Rules in 2006, Standards and Training Rules Parts 1, 2, 4, 5, 6, and 7 in 2006, and part 3 is currently under informal review prior to forwarding to SOAHR.
- Review and Update of Employment Standards – This was done in conjunction with the administrative rules. The revised standards become law with the filing of the Standards and Training rules.
- Implement the MCOLES Information and Tracking Network – The system has been fully implemented since 2004. Since 2005, the annual registration has been conducted through the MCOLES Network. A 3-year maintenance contract was signed in January 2007 with an option for two one-year extensions.
- Implement Academy Accreditation – In January 2006 an inspection plan for academies was developed and a skill area documentation audit was conducted at each site. An academy operating proposal contract was approved by the Commission at their December 2006 meeting. The signed contracts were due on January 31, 2007.
- Implement Graduated Licensing – This has been placed on hold indefinitely, legal authority does not exist that would allow the implementation of this item.
- Recognition of Prior Training and Experience Program – Skill testing will now be done prior to the licensing exam and a pilot firearms remediation class was completed. The results will be presented to the Commission in March.

**Strategic Plan Update – Continued:**

Two sites are currently administering the program, Kirtland and Macomb Colleges.

- Modernization of Training – This initiative was a major focus of the IADLEST conference co-sponsored by MCOLES in December. Also, the Job Task Analysis (JTA) that was completed in 2006 to update the validity and job-relatedness of the current training is providing guidance for future improvements. Working instructional prototypes were created and field tests were conducted at select academies to determine how higher order thinking can best be taught. These have been implemented in the basic training curriculum and some in-service training programs.
- Modernization of Testing – The automation of the licensing exam has been completed. A long-term contract is being pursued for administration of all MCOLES cognitive exams. Research into performance assessment using Rasch measurement methodology was completed and has verified the efficacy of the approach. The preliminary results of the research have been published for peer review.
- Implement Mandatory In-service Training – The development and pilot testing of an Active Duty Firearms standard consisting of a decision-making component and a course of fire has been completed. The results of the JTA were analyzed to ensure the needs of the profession were addressed. Meetings with law enforcement leadership and labor groups were held to introduce the standard.

Mr. Rothenberger also explained the summary status report chart that outlines each initiative and the timeline assigned to each.

Mr. Beach explained that staff is at a point where they need to normalize some of these strategic initiatives. Some of them were completed despite the lack of resources. If you look at the strategic planning efforts, it is time to revalidate future direction, taking credit for what has been completed. He suggested that the Commission re-publish the 2002 Strategic Plan and take credit for the things that have been accomplished. He recommended coinciding its publication with going out into the field for items such as regular employment, using it to solicit input for additional areas that may need attention.

Sheriff Wriggelsworth directed Mr. Beach and staff to draft the described publication and bring it to the Commission for approval at the June meeting.

**Fitness Test Development/Legal Review** – Mr. Carlson described the development of the MCOLES physical fitness test. As a first step, he explained that staff looked at the Job Task Analysis for job relatedness. He explained that the development of the current four-event test was done in conjunction with the Cooper Institute. He also reviewed the pilot testing process. Performance distributions based on data obtained from the pilot testing were created for both males and females. The pilot test results were brought back to a group of subject matter experts which included a testing expert and a fitness consultant and they were asked what was reasonable for a cut (passing) score. It was determined that applicants must display an average fitness level in order to attend an academy.

A spreadsheet was provided to the Commission outlining the physical fitness testing processes in all other states along with the FBI and the Federal Law Enforcement Training Center. Of the 52 agencies, 32 have some type of pre-employment physical fitness testing with 66% having age and gender norming for the testing methodology.

Mr. Furtaw explained that Proposal 2 is a state amendment to the constitution. The Commission was supplied with a copy of this amendment. There is a provision that if there are any federal monies attached to a program that might be jeopardized as a result of proposal 2, then the proposal does not count. There is also a compliance provision that talks about the Federal law. This proposal is not designed to supplant federal law.

Otherwise, Proposal 2 bans affirmative action and preferential treatment based on race or gender. The Governor has ordered a statewide review of all state programs now that proposal 2 is recognized as law. She issued an Executive Order and a copy was supplied to the Commission. It orders the Department of Civil Rights to undertake a compliance audit of state programs identified as having proposal 2 implications. The MCOLES fitness testing is one of those programs under review. She states in her Executive Order that the Civil Rights Commission shall propose legislative changes necessary to serve the purpose of promoting diversity in Michigan to the fullest extent possible while complying with any restrictions imposed by this proposal. The statewide review is underway now and the 90 day time frame has already been exceeded.

In 2001, MCOLES was sued under the Elliot-Larsen Civil Rights Act in the *Alspaugh* case. It was found in that case that MCOLES does not discriminate on the basis of gender. The goal of the MCOLES fitness test is to assess overall general fitness of both men and women. In order to have a valid assessment, norming is necessary. The same general fitness test is applied to both men and women. It creates a broader candidate pool where more women will be eligible to be hired as opposed to excluding individual men. There is no threshold number that the staff looks at to ensure certain goals are met.



**Fitness Test Development/Legal Review – Continued:**

The court, in the *Alsbaugh* case, gave an analysis about a program relevant to proposal 2. No men are excluded from becoming eligible because of gender norming. Instead, it brings a large number of women into the eligibility pool. If the Commission were to decide to go to one standard, it would exclude significant numbers of women.

Is our gender norming program defined or reasonably interpreted as affirmative action? Mr. Furtaw felt it is not. Under all the case law, it's always a response to an identified problem whether done under disparate impact or broader policy reasons relating to diversity, say, at the University levels. If it identified a specific problem and put a program in place to address that problem, it does not describe gender norming as it relates to physical fitness. Someone may try to claim that it is preferential treatment but the fact remains that they are not excluded from becoming a candidate for employment based on the fact that there is gender norming.

Mr. Furtaw's analysis was that this issue will not be a high priority at this time with the Attorney General's Office. The real issue will be ethnic based affirmative action in higher education, contracting, and government employment. He felt it was reasonable to believe that the Commission is in compliance but they can still expect to be challenged.

Sheriff Wriggelsworth referred to paragraph five of the proposal that refers to bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment.

Mr. Furtaw stated that "bona fide qualifications" is recognized terminology in constitutional and labor law and refers to, for example, women guards at all female prisons as opposed to the MCOLES type of gender norming program.

Sheriff Wriggelsworth asked if an academy allows forty people in and 15 were women could a man make a complaint that he didn't get in because he couldn't do enough push-ups but a woman who was required to do less was let in? Mr. Furtaw felt this program is defensible, and is good public policy. If it comes to the point that compliance or litigation is an issue, he will seek guidance from the Attorney General.

**Active Duty Firearms Standard** – Mr. Carlson stated that instead of a presentation he was asking for feedback from the Commission. Direction is needed on how to proceed with an active duty firearms standard. As an introduction to the discussion, Mr. Carlson explained that a group of subject matter experts was empanelled who came up with a standard based upon input from research nationwide, statewide and from the field. A

### **Active Duty Firearms Standard – Continued:**

table summarizing the introduction and implementation activities to date was provided and reviewed with the Commission.

A formal pilot test process is being implemented to ensure it functions properly statewide before bringing it back to the Commission for approval and implementation. Several questions are being asked by the field such as will this be mandatory, advisory, and what happens when an officer fails?

Sheriff Wriggelsworth asked if there were Headlee implications with the implementation of this standard. Mr. Beach stated that the authority of MCOLES to set standards pre-dates Headlee. Mr. Furtaw thought that this would not be an issue.

The following opinions/ideas were expressed:

- If MCOLES establishes a standard and a department does not adopt it, they can be sued later on.
- If it isn't mandatory, most agencies will choose not to do it.
- If it's mandatory, there should be penalties for not meeting the standard.
- Put it out there and call it a guideline and it would be judged as a defacto standard.
- If you publish a standard how do you deal with failures, etc?
- There are agencies that haven't had their employees qualify with a weapon since academy graduation.
- Some agencies qualify using the basic training firearms standard.
- Cost could be an issue for small agencies.
- Would more agencies qualify if it were mandatory than if it were not.
- How often would an officer need to qualify?
- If you fail is there a retest and how often.
- Will the departments be required to allow opportunity for the officers to practice and provide the equipment.
- There should be waivers for such things as worker's compensation, sick leave, military leave, layoff, and light duty.
- Is there a penalty to the officer that fails or the employer who fails to give them time to practice or give them the test?
- Penalty to the employer for failure to adhere to the standard.
- Is an officer at risk of losing their license because the employer fails to test them.
- An officer should be required to qualify once a calendar year at a minimum.
- It should be required once a year with the stipulation that an officer not be disciplined if their department does not provide the training for it.

**Active Duty Firearms Standard – Continued:**

- It should be mandatory and the agency is responsible for the discipline of their officers if they don't qualify.
- When an officer returns from FMLA or military leave they should be required to qualify immediately.
- Suspend license for a period of time until they can pass.
- Could hold 302 funds if not in compliance.
- What is the culpability of the Commission if it sets a standard and does not enforce it?
- A check-off could be added to annual registration that the officer(s) complied with the active-duty standard and what the consequences are.

When staff pilot tests this standard, they will get an idea of how departments can comply with the knowledge component.

The Commission consensus was to make the standard mandatory, once a year, and apply it to all active licensed law enforcement officers. All issues such as light duty, retests, practice time, etc., are departmental prerogatives. They can go above and beyond the MCOLES standard if they wish. The sanction part would be departmental. The Commission will formalize a statement regarding a waiver for light duty, FMLA, military, etc.

LEOSA – Mr. Furtaw provided the Commission with a copy of the draft language for implementation of LEOSA that was forwarded to Representative Jones' office. Staff tried to build in as much reasonable regulatory authority as they could given the express pre-emption of HR 218. Most of the language was drafted from the concealed pistol act. He reviewed the sections of the proposed language with the Commission.

This would give a retired officer broader authority than a CCW does, allowing them to carry their weapon out of state. HR 218 gives a retired officer the right to go to their department to get a photo ID and meet whatever standard is in place there and they are eligible. The Michigan Municipal Risk Management Authority is struggling with their obligation in doing this.

Mr. Buczek stated there is some national amendment language. One of the things they are looking at is coming up with an ID if the department doesn't issue one, trying to pass language that would allow agencies similar to MCOLES to issue a picture ID.

**Active Duty Firearms Standard – Continued:**

Mr. Beach stated that IADLEST will be sending a letter to the senator who is taking up the amendments on HR 218 suggesting universal acceptance to the CCW which would simplify this issue.

**Regular Employment** – In Sheriff Pickell’s absence, Mr. Beach provided the Commission with an update on this item. He asked Mr. Furtaw to provide information on the legal research that has been conducted in this area.

Mr. Furtaw explained that in Public Act 203 a law enforcement officer is defined as a regularly employed member of a law enforcement agency authorized and established pursuant to law. MCOLES sets standards for selection, employment, training, licensing, and revocation of law enforcement officers. Regular employment is not defined anywhere and the Commission is looking at the circumstances behind a roster designation. Once they are on the roster and represented as employed, that has been accepted for purposes of licensing. He explained the eligibility time frames in Act 203 of an officer not actively employed with an agency. The legislature did not contemplate an individual who only works one week out of a year for five consecutive years when determining eligibility time frames. The legislature has acknowledged that regular employment has meaning in that case. Regular employment is not defined in the MCOLES statute and has not been defined by the agency. Under the Fair Labor Standards Act minimum wage is required to be paid (unless voluntary or sporadic in nature) and under the code of Federal regulations you do not have to pay overtime if you employ someone who is irregular. There is a court of appeals case that is referenced in an Attorney General (AG) opinion that looks at worker’s compensation with the following language, required where there is a pattern or course of conduct that constitutes more than a casual work agreement.

There are four primary Attorney General Opinions that look specifically at the question of regular employment. In 1973, Attorney General Frank Kelley looked at an issue of a constable that was historically recognized constitutionally as a peace officer. The question was, are they CCW exempt (fully recognized as a police officer). The AG said if they are regularly employed and paid by an agency. That would mean work that is substantial rather than occasional. If the police work constitutes a large part of their daily activity (in the case where a constable has other responsibilities) that will constitute regular employment.

In 1978, it was looked at again in the context of a sheriff’s posse or police auxiliary which are emergency officers available to sheriff’s and police chiefs under limited

**Regular Employment – Continued:**

circumstances. By definition in the statute they are only temporarily engaged. If they are regularly employed, they fall under the jurisdiction of the Commission. The AG says this means a pattern of conduct not occasional or incidental work. Temporarily engaged by definition means that they are not regularly employed.

In 1980, a question came up in the case of reserve police officers. Reserve police officers are an evolving unit of agencies with different powers, titles, and traditions depending on the department. The question was whether they were CCW exempt. The AG determined they would fit under the peace officer exemption if they were substantial rather than occasionally employed with the agency.

The Attorney General Granholm addressed the same issue as it related to reserve and regular police officers, when are they CCW exempt. They are CCW exempt if they perform substantial work that constitutes a large part of the officer's daily activity. The AG then contacted staff and stated that this is an issue that the Commission needed to look at.

The county gun board is a quasi-judicial body in a county and the AG is saying that regular employment will be determined on a case by case basis. Ultimately, you could have different definitions and circumstances in other counties.

You could have a circumstance where an MCOLES license is in conflict with the determination of a county gun board. The gun board could say the individual is not regularly employed, or fully recognized and would need a CCW. The AG is saying that the gun board will decide whether or not an officer is regularly employed. If you don't meet the definition, you may be subject to a criminal sanction. This could create litigation questions for the Commission.

Regular employment is recognized in labor law and an AG opinion as meaning something more than casual or infrequent. The courts will eventually define regular employment if MCOLES does not.

Mr. Beach stated that the Regular Employment Committee is made up of the following members: Sheriff Pickell, Chair, Chief Olko, Mr. DeVries, Sheriff Bosscher, and Chief Jones. They approved survey instrument that was sent out to the field with a deadline for submission of December 1, 2006, the response rate was approximately 80%. Public hearings were then held in January to discuss this issue.

Mr. Furniss provided a PowerPoint presentation of the findings of the survey. 343 agencies reported using part time officers in the 2005 annual registration. There was a

**Regular Employment – Continued:**

78% return rate on the surveys, 59% of the respondents indicated they utilize part time officers (269 agencies). Only 26% of those departments require a minimum number of hours for the part time officers, the average being 456 hours per year. The remainder of the results were reviewed with and provided to the Commission. The individual surveys were brought to the meeting and shared with those members that wanted to review specific results. Out of all the comments, there was only one negative response asking MCOLES not to meddle in something that wasn't broken.

Mr. DeVries asked if it would be possible to break up the data by counties and cities using part-timers more prevalently. Also on dual employment, average hours of dual and determine whether full-time officers are working part-time elsewhere. Mr. Furniss will break that out by the end of March when the annual registration information is in and run a comparison.

Mr. Beach provided an overview of the public hearings held on regular employment. They were held in Auburn Hills, Escanaba, Gaylord, and Lansing. There was a final hearing held at the Michigan Association of Chiefs of Police Conference in Grand Rapids. The comments and hearings were very positive. Some agencies asked that the Commission stay out of setting a number of hours requirement and instead focus on an in-service training requirement. There was a good representation of small and large agencies that employ part time officers in attendance. Staff is in the process of establishing an official record of the hearings to be shared with the field along with the survey results.

Chief Olko stated that she had attended two of the hearings. At those hearings, small agencies spoke about the importance of part time officers and that they are awaiting a recommendation for the number of hours to be announced.

Mr. DeVries attended the hearing in Grand Rapids and they were guarded about speaking out but he felt they were looking for guidance on part-time officers.

Sheriff Bosscher attended three of the hearings. The Upper Peninsula is using almost exclusively, new academy graduates and employing them full-time. It appears that in Lower Michigan agencies are employing retirees part time in order to retain their licenses. He suggested that the Commission start with a relatively low number of required hours to begin with and raise it up over time. If it is reasonable, the field will support it.

Deputy Chief Robinson attended two of the hearings and was concerned with part-time officers employed by more than one department. Does the other department have

**Regular Employment – Continued:**

knowledge and where does the liability lie? At both hearings it was stated that the Commission will see more activity when an actual number of hours is identified. There is a lot of support for standards and the Commission looking at a minimum number of hours for part-time officers.

Mr. Beach stated that Sheriff Pickell would like the Regular Employment Committee to meet again in March to analyze the feedback from the public hearings. Any additional information for the Committee to consider should be forwarded to him. Once the Commission finds a solution to this, public hearings will be held again to share the information with the field. Mr. Beach suggested this be done in conjunction with the strategic plan in the fall. A recommendation will be brought back to the Commission at their September meeting.

Sheriff Wriggelsworth asked if staff had looked at the processes of other states in addressing part-time officers.

Mr. Beach explained that most states have mandatory training requirements. Some states set a specific threshold and they put a cap on part-time hours because they do not train at the same level as a full-time officer. A majority of states don't have requirements for part-time officers.

**Ethics** – Mr. Beach explained that this initiative has been underway over the past two years. It was necessitated by action of the Commission in June of 2004 regarding a revocation. The Commission's proposal for decision accepted the fact that there was the conviction of a felony and supported revocation of the officer's law enforcement license. The Commission allowed the attorney, the individual, and others to make comments on the officer's behalf prior to making a final decision. The individual had committed a felony, as defined for Commission action, but it was a crime of no intent. The Commission acted against the advice of legal counsel and did not revoke the individual's law enforcement license. They directed Mr. Tom Boyd, legal counsel at that time, to study the issue because they felt there should be individual discretion within the statute to be able to deal with these types of issues.

Mr. Boyd began research into the issue and a statewide committee was impaneled. The first meeting was held in 2005 and the initial results were reported back to the Commission in January of 2006. This was identified as an area that should be looked at proactively before having to react to the legislature. At the time of that decision, the Commission was also faced with concerns of chiefs, sheriffs, and the media over certain high profile cases that were pled down to fall outside the scope of the Commission.

**Ethics – Continued:**

Some cases such as pornography or pedophilia were pled to lesser offenses and given probation. Law enforcement agencies wanted the Commission to be able to take action on these licenses even though they had been pled down to a misdemeanor.

The group was re-empanelled to pursue this area and bring back their recommendations to the Commission on whether there should be discretion such as suspension in lieu of a lifetime revocation.

The workgroup met in September of 2006 during which time they were asked to make recommendations on ethical issues that would be confronted by MCOLES on a routine basis. Those recommendations were discussed at their most recent meeting held on February 9, 2007, and were outlined for Commission discussion. Mr. Beach asked that Mr. Furtaw give a legal overview of this issue.

Mr. Furtaw explained that Public Act 203 in section 609 states that minimum standards for law enforcement shall include physical, educational, mental and moral fitness. In addition, that section says those standards shall cover selection, appointment, and certification. In the promulgated rules under pre-licensing it states an individual may not have any prior felony convictions which include expungements. The rules also state that as a condition of licensing you must possess good moral character, which is determined by a favorable comprehensive background investigation.

Currently, MCOLES jurisdiction over a license is limited by a narrow legal event. MCOLES has jurisdiction when someone is convicted of a felony, defined in our statute as anything greater than one year of incarceration, or titled as a felony regardless of the penalty, there is no discretion. In addition, the Commission can revoke when there is a material misrepresentation in the application process. In the cases of negligent homicide, there is varying prosecutorial discretion. He explained there are several felonies that don't necessarily deal with character. In addition, he reviewed several misdemeanors such as child abuse that the Commission has no jurisdiction over.

Sheriff Wriggelsworth asked if the Commission could determine that child abuse in the fourth degree is morally reprehensible and revoke them. Mr. Furtaw explained that the Commission does not have the authority or jurisdiction over an individual's license unless they are convicted of a felony or there was a material misrepresentation during the licensing process.

Mr. Rothenberger explained that at the first meeting of the Ethics Committee in January of 2005 a facilitated discussion of issues such as ethics, good moral character, sanctions,



**Ethics – Continued:**

etc., took place. This 40 member work group consisted of chiefs, sheriffs, prosecutors, risk management, and labor groups. When they met again in September of 2006, exercises were conducted where they were presented with specific questions and asked for recommendations. As a result of that meeting, the recommendations were put together and taken back to them at the meeting last week. The discussion points covered were provided to the Commission.

The discussion points were organized into two major categories. The issue of background checks was discussed in two contexts – a candidate coming into an agency that is not licensed and a current licensed officer. They discussed a background investigation manual to assist them as a tool along with a check-off form they can submit to MCOLES as documentation. They recommended that there be a comprehensive background check on licensed law enforcement officers when they are changing employment and that it be mandated by the MCOLES Act. Anyone coming into an agency for employment as a law enforcement officer would have to go through a background check whether they are holding an inactive license or are a new candidate. They wanted law enforcement agency access to prior employer work records and personnel files. This would force disclosure by an agency.

Other issues discussed were MCOLES' jurisdiction over law enforcement licenses, felonies of no intent, misdemeanors impacting core values, expanded jurisdiction, and MCOLES authority. He explained that any changes to the Act regarding this issue would need to go through the legislative process. Since the Commission received the authority to revoke a license in 1998, it has been for life.

Mr. Carlson asked for the Commission's feedback on what was discussed in the Ethics Committee meetings. He asked the Commission how they felt on the flexibility of granting discretion to choose those types of offenses that come before them instead of being locked into felonies only. Jurisdiction could be expanded to include other crimes that have core value connection but don't rise to the level of a felony. Should those types of offenses that come before the Commission because of the narrow definition be eliminated, such as negligent homicide where there is no intent.

Mr. DeVries had an issue with taking the license away from an officer convicted of negligent homicide in the case where he is doing his job. In addition, he had concerns with officers convicted of a misdemeanor winning their jobs back through arbitration and not being allowed back in through waiver because of good moral character.

**Ethics – Continued:**

Lt. Col. Yungfer stated that the Commission should only deal with permanent revocations and not for a lesser specific amount of time; this should be left up to the employer. A specific list of offenses could be listed. Regarding employer notification, the State Police will allow an employee to resign but if they apply for a safety sensitive position, all information will be given to that employer. He was in favor of hearing cases that are a gross violation of public trust.

Chief Olko felt the Commission should not be dealing with suspensions since employers have their own due process. She was in favor of expanding to include misdemeanors that are a violation of public trust.

Officer Weaver agreed with looking at misdemeanor crimes with intent that violate public trust.

Trooper Moorman felt that those misdemeanors need to be narrowly defined as to what they are.

Mr. Buczek felt the Commission should stay away from suspensions and they should be handled by the employer. He felt the Commission should look at revocation for some misdemeanors.

Deputy Chief Robinson and Mr. Dennis agreed with the other Commission members' recommendations.

Mr. Carlson reiterated that the consensus was the Commission decided on two choices, revoke for life or no revocation at all.

Mr. Carlson stated the Committee had also talked about expansion in the area of jurisdiction to incidents, arrests and charges. This would be short of a conviction.

The consensus of the Commission was not to broach that issue and let them have their day in court.

Mr. Furtaw asked if the Commission would like to broaden their duty in cases where the defendant is formally charged and arraigned and the judge makes a finding on bond dealing with safety and threat to the community.

**Ethics – Continued:**

Trooper Moorman recommended that the Chair appoint a small work group of the Commission to bring back a draft recommendation for review that takes into consideration the consensus of the discussions.

Mr. Carlson discussed the background investigation manual and candidate waiver form that would be a tool for agencies and not a mandate. He explained the committee's discussion of licensed officers and the need for a comprehensive background check when changing employment, access to prior employment personnel files, legal actions and arbitration, MCOLES maintenance of records and who gets access.

Mr. Carlson stated the consensus of the Commission, revoke or not revoke, expand on the jurisdiction, and further discussion on the health, safety and welfare issue can be conducted with the workgroup.

Sheriff Wriggelsworth appointed an Ethics Committee to further discuss this issue consisting of: Chief Olko (Chair), Deputy Chief Robinson, Lt. Col. Yungfer, Mr. Morse, Sheriff Pickell, Trooper Moorman, and Mr. Buczek. He asked that the Committee report back to the Commission at the September meeting.

The meeting adjourned for the evening at 8:30 p.m.

**February 16, 2007**

The meeting reconvened at 8:30 a.m. on February 16, 2007

**Private Security Business and Security Alarm Act (PA330)** – The Commission was provided with a copy of the minutes from the PA 330 Committee meeting held on February 7, 2007. Mr. Ruffini explained that effective October 1, 2002, most of the duties associated with Public Act 330 were transferred to the Department of Labor and Economic Growth (DLEG). The oversight and licensing of the arrest authority agencies (Private Security Police) remained statutorily assigned to the Michigan State Police. The Commission was asked to take on the responsibility and administrative oversight duties by the Director of the State Police.

In 2004, a sunset change in the fee structure took effect dropping the fees along with the number of license holders; this has proven to not be enough to fund the supporting staff.

**Private Security Business and Security Alarm Act (PA330) – Continued:**

There is also the issue of getting the legislative authority to properly oversee the program and promulgate rules. For staff to effectively operate the program would require a legislative change giving MCOLES the authority to administer that portion of PA 330 of 1968.

The need for an updated curriculum and a recent federal court decision in “Romanski v Detroit Entertainment, LCC,” are other concerns. This ruling by the court stated that when the Private Security Police were acting to restrain and hold an elderly person for questioning they were acting as state actors.

On February 7, 2007, the appointed committee met to discuss the PA 330 issue and what direction should be taken concerning the maintenance of this program. The committee discussed the various issues and problems along with options they feel were available to the Commission.

The committee recommended that staff develop a survey instrument to send to the current license holders to attempt to determine their law enforcement needs. Once the results of that survey are compiled, a meeting will be scheduled between the committee and license holders for discussion and educational purposes.

Mr. Furtaw added that the University of Detroit Mercy sought an injunction in the court of appeals and are proposing legislation allowing them to have full law enforcement authority. They are dissatisfied with the low level of training required under PA 330.

Sheriff Wriggelsworth said that he, Mr. Beach, and Mr. Furtaw would be meeting with the Attorney General on the issue of the University of Detroit Mercy on February 27<sup>th</sup>.

Mr. Ruffini will update the Commission on the progress of this issue at the April meeting.

**2007 MCOLES Grant Process Review** – Ms. Hartwell explained that the 2007 Grant Contract Workshops were held during the week of January 8, 2007. To date, there are seven outstanding contracts with a due date of March 7<sup>th</sup>. Following the completion of the workshops, a meeting was held with the staff grant reviewers to consider the recently completed grant process and identify issues and make suggestions for 2008. The following recommendations were made:

- Rename the field review process “Practitioner Review” because it more accurately reflects the expertise of the reviewers and their contribution to the process.

**2007 MCOLES Grant Process Review –Continued:**

- Currently a consortium is defined as “a formal organization or group that has been established to facilitate training for multiple agencies within a specific geographic region. Law enforcement agencies employing more than 100 MCOLES licensed law enforcement officers can be considered a consortium by definition. Law enforcement consortiums require a financial commitment from their member agencies.” During the October Commission review of the applications, notice was taken that some law enforcement applicants did not fit into the definition of consortium. For example; Lake Superior State University, Michigan State University and Delta Community College do not meet the definition of a consortium; however, they did submit grants to fund training that would be of considerable value to law enforcement statewide.

A possible solution for this issue is to maintain the definition of consortium. The definition could include that “while preference will be given to consortiums for funding, other worthwhile training can be considered to be eligible for funding.”

- For the first time this year the analysis completed by the staff for each grant application was provided to the applicant following the Commission review of the grants in October. A suggestion was made that identifying the specific reviewers could affect the reviewer’s ability to effectively perform other job responsibilities in the field. A possible solution to this issue is to provide the analysis to the applicant but remove the identification of the reviewer.

A recommendation will be brought to the Commission for action at the April meeting following the training needs survey.

**Paperless Commission Meeting Transition** – Ms. Kramp explained that in an effort to reduce costs and provide greater efficiency in the delivery of meeting materials to Commissioners, a transition to paperless Commission meetings was researched. This effort coincided with the return of twenty-five laptop computers purchased with Michigan Justice Training Funds which allowed greater flexibility in developing a transition plan. Staff conducted a survey to determine if the Commission would be in favor of paperless meeting materials. The response was favorable with only a couple of members who preferred the mailing.

A secure web page is being created on the MCOLES website which will house the meeting agenda with live links to agenda items, reports and other supporting documents. All of the supporting documents will be created in PDF format which will allow easy

**Paperless Commission Meeting Transition – Continued:**

downloading in advance of meetings, as well as live interaction during meetings in locations where internet access is available. This secure link will be emailed to the Commission members a week prior to the meeting. Commissioners who prefer to work from paper documents during a meeting will have electronic files available in advance for printing and review. Documents that are revised after first publication and documents that are not available until just before the start of meetings, will be created electronically and distributed directly to Commissioners on a CD at the meeting or pre-loaded on the provided laptops.

Since the Commission has access to a number of computers, these will be set up prior to the start of each meeting and loaded with all of the relevant materials. In the future, as sites with wireless internet access become available, Commissioners will have access directly to the web site even at meetings. Commissioners who prefer to use their personal laptops may do so easily by downloading the materials in advance or also by connecting to the MCOLES web site during the meeting.

Ms. Kramp reviewed the cost-benefit analysis of transitioning to a paperless environment that was conducted. It was determined there is a cost savings of \$630.34 per meeting day. This results in an annual savings of \$8,824.76 based on a minimum of 14 meeting days.

All archived meeting material could be stored and archived on a CD Rom.

CD's were provided to the Commission with material from the prior meeting with links to demonstrate how the information would be put out onto the website. A Commission member asked if the download could be provided with one link on the website. Ms. Kramp will check into the feasibility of a single-click download.

The first paperless meeting will take place on March 14, 2007.

**Wayne County Sheriff's Office** – Mr. Steele introduced Chief Robert Dickerson from the Wayne County Sheriff's Office (WCSO). At the June 2006 Commission meeting, Chief Dickerson presented a proposal requesting approval for an alternative basic training session. This session would allow the WCSO to train approximately 30 in-service recruits during their off hours and on weekends, while they still maintained their assignments as corrections deputies. The academy session ran from July 10, 2006, through December 13, 2006.

**Wayne County Sheriff's Office – Continued:**

The Commission approved this pilot program with the specific instructions given to the staff to closely monitor the session and report the progress. The Commission also requested that staff analyze the data generated from both the WCSO flex academy and the full-time academy whose sessions operated concurrently.

Chief Dickerson explained that the part-time academy was a huge cost savings to the department. A regular full-time academy costs approximately \$900,000 which includes overtime and backfilling the positions of the attendees. The part-time academy required no backfilling and was completed at a cost of just over \$100,000.

There were no attendance or discipline issues with employees while attending. The union agreed to the proposal and negotiated a clause in the collective bargaining agreement to allow for the flex academy.

Mr. Steele explained that he and Mr. Darnell Blackburn inspected the program on several occasions. The class performed as well as the full-time class running at the same time. The only complaint from students was the frequent weekend training and the worry that if class ran over they would be late for their shift. After reviewing the closeout report regarding the weekend training schedule, the academy administration decided to modify the schedule so the recruits would attend classes every other weekend instead of 3 out of 4 weekends a month. This will increase the class time to approximately 27 weeks. The class sizes will be approximately 30 students in each session.

The Wayne County Sheriff's Office is seeking approval to continue training under the Flex Academy delivery system. They are proposing to run two classes for the calendar year of 2007. The proposed next flex class is scheduled to begin during the first quarter of 2007 (March or April). If approved, another flex session would be scheduled for the second quarter of 2007.

A **MOTION** was made by Trooper Moorman and supported by Mr. Buczek approving the Wayne County Sheriff's Office to continue the flex-time academy training program.

A **VOTE** was taken. The **MOTION** carried.

**Commission Bylaws Review** – Mr. Furtaw reviewed the current Commission bylaws and a copy was provided to all in attendance. He explained that a question had been raised on the nominations of the Chair and Vice-chair of the Commission.



**Commission Bylaws Review – Continued:**

He explained that the current bylaws require annual elections of a Commission chairperson and vice chairperson by a majority vote. Each may be re-elected to their respective position, but are not eligible for a period of re-election of one year after serving two terms consecutively. The bylaws are silent regarding the procedure in which to nominate and hold elections.

In the past an ad-hoc nominations committee has been formed to explore and recommend nominees for the positions of chairperson and vice chairperson. Ad hoc committees are provided for in the bylaws. Nothing in the bylaws prohibits an individual member of the committee, or any other Commission member, from nominating an individual for either position. The chairperson opens the floor to nominations following the report of the ad hoc committee.

Continuing to use an ad hoc committee, and then formally opening the floor for additional nominations following the time in which the ad hoc committee presents their report will satisfy the requirements of the bylaws and parliamentary procedure. No “second” is required for a nomination, so all nominees will be presented for full consideration. Also, nominations can be reopened by a majority vote of the Commission.

If the chair or vice-chair leaves the Commission during their term, the Commission would appoint someone to fill the vacancy. Trooper Moorman asked that the term of office be clarified. The bylaws do not state whether this is a calendar year term or what month the elections should take place. In addition, Mr. Furtaw will look at a procedure in the case of a tie vote.

The Commission agreed that the elections should be on a calendar year, held in October and effective January 1<sup>st</sup>. Mr. Furtaw will draft the proposed changes and clarifications to the bylaws for Commission review at the March meeting.

**Public Safety Officer Benefit (PSOB) Disability Investigation Strategies – Mr.**

Rothenberger explained that in an effort to obtain guidance on a process to use for disability cases, staff discussed this issue with the Executive Committee on November 7, 2006. Two proposed models were discussed with the Committee and direction was given to conduct additional research and make a proposal at the February meeting.

A revised application form and an investigation protocol have been developed. The form and protocol follow the federal model, although it has been downsized and made more user friendly. A medical consultant has been identified who is willing to review the

**Public Safety Officer Benefit (PSOB) Disability Investigation Strategies – Continued:**

medical information. The consultant has done work for the Commission and is very qualified and reasonably priced.

Sheriff Wriggelsworth directed staff to put a recommended procedure together for presentation at the March meeting.

**MCOLES Legislative Priorities** – Mr. Buczek explained the funding issue with the Public Safety Officer Benefit Act. When this was researched, the numbers were based on law enforcement deaths only. The Act itself includes firefighters and corrections officers killed in the line of duty causing a shortage in funding. In addition, the Commission was asked to look at funding for healthcare to families of officers killed in the line of duty.

Other Commission priorities include the merging of Acts 203 with 302, and the Public Safety Officer Benefit with the Officer Survivor Tuition Program. Contact was made from Rep. Rick Jones', co-chair of the Law Enforcement Caucus, and he will work with Mr. Buczek in assembling MCOLES priorities. He asked that Ray and John attend a meeting of the caucus to review these priorities. Mr. Buczek has already met with Senator Mike Bishop to explain the Fraternal Order of Police and MCOLES priorities.

**PA 203/302** – Mr. Rothenberger explained that Public Act 203 of 1965 and Public Act 302 of 1982 are the two main acts for which MCOLES is responsible. These acts have not been revised to reflect the consolidation of the two commissions, MLEOTC and MJTC, or the many changes in the way business practices have changed and are now conducted.

An initial proposed draft was developed, presented, and reviewed for consideration by the Commission.

**PSOB/OSTP** – Mr. Rothenberger explained that Public Act 46 of 2004 (Public Safety Officer Benefit (PSOB) Act) and Public Act 195 of 1996 (Officer Survivor Tuition Program (OSTP) Act) are two acts for which MCOLES is responsible. These acts were passed eight years apart and are in great need of revision.

Staff was charged with drafting a proposal for revision and consolidation of the two acts into one. An initial draft was developed, and presented for consideration by the Commission. Some included suggestions were the possibility of a college or university waiving tuition costs for a survivor in lieu of MCOLES reimbursing the college. The

**MCOLES Legislative Priorities – Continued:**

money provided for in OSTP could then be moved to PSOB to cover death benefits. The draft language also includes a law enforcement agency maintaining health insurance coverage on the family of a public safety officer who dies in the line of duty.

Mr. Beach explained that in the next few months, the Legislative Committee will meet to discuss the proposed changes to the Acts and formulate statutory recommendations for change/modifications to bring back to the full Commission for final consideration.

**Special Use and Grant Adjustment Requests** – Mr. Beach explained that recent activity on special use and grant adjustments were provided to the Commission in their packets. If there are any questions, please contact him.

**MISCELLANEOUS:**

There were no miscellaneous items to report.

**NEXT MEETING:**

DATE: March 14, 2007

LOCATION: Kettering University, Flint Michigan – Co-hosted by Sheriff Pickell and Ms. Vida Fisher

**ADJOURNMENT:**

A **MOTION** was made by Mr. DeVries and supported by Trooper Moorman to adjourn the meeting.

A **VOTE** was taken. The **MOTION** carried.

The meeting adjourned at 11:55 p.m.

APPROVED BY \_\_\_\_\_ ON \_\_\_\_\_

WITNESSED BY \_\_\_\_\_ ON \_\_\_\_\_