
Michigan Commission on Law Enforcement Standards
Commission Workshop Minutes
February 24, 2009
Bay Valley Resort & Conference Center, Bay City, Michigan

MCOLES MEMBERS PRESENT:

Mr. John Buczek, representing the Fraternal Order of Police
Sheriff James Bosscher, representing the Michigan Sheriffs' Association
Chief James Barren, Detroit Police Department
Mr. Marty Bandemer, representing the Detroit Police Officers Association
Professor Ron Bretz, representing the Criminal Defense Attorneys of Michigan
Mr. Thomas Cameron, representing Attorney General Mike Cox
Mr. Jim DeVries, representing the Police Officers Association of Michigan
Chief Richard Mattice, representing the Michigan Association of Chiefs of Police
Chief Doreen Olko, representing the Michigan Association of Chiefs of Police
Mr. David Morse, representing the Prosecuting Attorneys Association of Michigan
Trooper Michael Moorman, representing the Michigan State Police Troopers Association
Colonel Peter C. Munoz, Michigan State Police
Sheriff Robert Pickell, representing the Michigan Sheriffs' Association
Lt. David LaValley, representing Chief James Barren, Detroit Police Department
Sheriff Gene Wriggelsworth, representing the Michigan Sheriffs' Association
Mr. Fred Timpner, representing the Michigan Association of Police
Mr. Rich Weiler, representing the Police Officers Labor Council
Lt. Colonel Timothy Yungfer, representing Colonel Peter C. Munoz, Michigan State
Police
Mr. Raymond Beach, Executive Director
Mr. John Szczubelek, Commission Counsel

COMMISSION MEMBERS EXCUSED:

Director Kurt Jones, representing the Michigan Association of Chiefs of Police

COMMISSION STAFF PRESENT:

Ms. Cheryl Hartwell	Mr. David King
Ms. Hermina Kramp	Mr. Gary Ruffini
Mr. Patrick Hutting	

GUESTS (signing in):

Dr. Linda Forsberg, Psychologist
Dr. Bob Wolford, Psychologist, Michigan State Police

CALL TO ORDER:

The Commission Workshop was called to order by Chairman John Buczek at 2:00 p.m., at the Bay Valley Resort & Conference Center, in Bay City, Michigan. He welcomed Lt. David LaValley representing Chief Barren of the Detroit Police Department and Colonel Munoz of the Michigan State Police.

INTRODUCTIONS:

Chairman Buczek asked all present to introduce themselves.

PUBLIC FORUM/COMMENT:

There was no public comment.

ADDITIONS/CHANGES TO THE AGENDA:

There were no additions to the agenda.

NEW BUSINESS:

Psychological Standard – Dr. Linda Forsberg/Dr. Robert Wolford – Mr. Szczubelek stated that Dr. Forsberg and Dr. Wolford will discuss the current MCOLES psychological standard and possible changes to the standard. He explained the current MCOLES standard and outlined all of the objectives related to the psychological standard.

Dr. Forsberg and Dr. Wolford explained each of their backgrounds. They stated that the current MCOLES standard requires that an individual be free of mental and emotional instabilities which may impair the performance of the essential job functions of a law enforcement officer or which might endanger the lives of others or the law enforcement officer. Dr. Forsberg explained that the current MCOLES standard is a low standard in psychological terms and basically means that an individual doesn't have any serious psychological problems. The next level of an evaluation would be to determine if the individual is suited for the job as a law enforcement officer. The third level of evaluation would be whether or not the individual is fit for a specific department. The main question is what should the MCOLES standard be and who should be able to administer the standard. The current standard allows the determination concerning mental and emotional instabilities to be made by a licensed physician, a board certified

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psychiatrist, or a licensed psychologist. The biggest problem with a licensed physician being able to verify this standard is the fact that a licensed physician may or may not have had training in psychology.

The Commission can authorize specific tests, procedures, and qualifications to determine if an individual meets the standard. Dr. Forsberg explained the events in a pre-employment psychological evaluation of a potential police officer. This evaluation is a specialty and not every psychologist has knowledge in this area. The APA recently acknowledged the evaluation of a police officer as a specialty. In addition, the IACP psychology services section has set guidelines for pre-employment psychological examination guidelines. The guidelines prescribe who should conduct these types of psychological evaluations. The guidelines state that except as allowed or permitted by law, only licensed or certified psychologists trained and experienced in psychological test interpretation and law enforcement psychological assessment techniques should conduct psychological screening for public safety agencies. There are also guidelines for specific tests and procedures to administer a psychological standard to a potential police officer. The guidelines state that a test battery including objective, job-related, validated psychological instruments should be administered to the applicant. It is preferable that test results be available to the evaluator before screening interviews are conducted. Written tests selected should be validated for use with public safety candidates. The proper way to administer the battery of tests is to have the individual complete the written tests and then have a face-to-face structured interview that is job-related before completing a final evaluation report.

The written tests are not pass/fail on any one specific test. If a department gives testing as a pre-offer test then the interview may or may not be completed. If it is done at the point of a conditional offer of employment, then you must provide the interview as a follow-up to the testing. There are legal cases where organizations administered tests only to select candidates without an interview. The courts have ruled that you cannot make a determination on tests only.

An individual could be determined not to be fit for the job at the time, due to issues of maturity, but may return at a later time and be successful in completing the test battery. A psychological evaluation is only good for a period of one year to 18 months as people change and outside forces influence them.

The average cost for this type of testing for an entry level law enforcement officer would be within a range of \$350 – \$600. Should a specific testing process be mandated, the field will be concerned about the cost. Should the choice be made that the testing is done at a pre-offer stage there would be a slightly different battery of tests that may cost

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slightly less. The Americans with Disability Act limits the tests that can be given before a conditional offer of employment is made. When an agency has given a conditional offer of employment a different, more extensive test battery, can be administered.

The Commission asked whether there is more that MCOLES could be doing in the academies that would enhance or address potential officer screening ultimately assisting law enforcement agencies. Should MCOLES be doing more monitoring of the process? Dr. Forsberg replied that possibly MCOLES could provide training for academy staff to enable them to recognize potential problem individuals during the academy, and develop protocols to address these matters. Without some type of training, only the most severe cases will be recognized.

There are a number of companies that are marketing on-line testing for employers. There is a question of whether or not this type of testing has any validity. Law enforcement agencies may be faced with having to evaluate for use more of these types of products as the economic conditions continue to deteriorate.

Dr. Wolford stated that there is no psychological instrument that will determine the psychological fit for a specific department. Passing the test batteries doesn't always demonstrate that an officer is fit for a specific department. It depends upon how the department operates. Clinicians have expertise that can assist with this type of fit evaluation. Some test batteries are not suited to make a determination for a specific department, but can determine suitability for performance in the profession. To determine that an officer is fit for a specific department would require a tremendous amount of additional testing and evaluation by a clinician familiar with the specific department.

Dr. Forsberg stated that the most common issues seen in an individual who has been rejected are elevated indicator(s) of depression, anger, paranoia, or elevated stress. It is uncommon to see an abnormal MMPI as it is rare in an entry level evaluation. If this occurs, then Dr. Forsberg looks into the information that an agency may have on the officer. She also looks at the use of alcohol or drugs.

One of the areas in which Dr. Forsberg may see a failure to meet the requirements would be based upon maturity and responsibility. The job is the same regardless of the age or maturity of an individual officer.

Mr. Szczubelek stated that from the discussions he is hearing, the MCOLES standard should incorporate the following into the MCOLES standard. A person administering the test should be a licensed or board certified psychologist, preferably a psychologist that is specialized in law enforcement. This however, may limit the number of licensed clinical

NEW BUSINESS Continued:

psychologists available to administer the test within the state of Michigan. The specialization would involve a lower number of available clinicians. MCOLES may also want to require that the psychologist be familiar with the position of law enforcement officer. The assessment has to include an oral interview with the individual. The written test battery could be administered by an individual who is trained to administer the test with the interpretation of the test results and an oral interview completed by a licensed or board certified psychologist.

Dr. Forsberg recommends that there be two tests, a stability test such as the MMPI or other similar test, and a second test to measure character and personality traits such as the CPI. She cautioned the Commission by saying that these are two tests that can be given, but to look at 5 to 6 tests that would be acceptable to use as a re-evaluation. MCOLES may want to provide a list of tests that can be used at the discretion of the licensed or board certified psychologist, and that have been normed based upon administrations to police officer applicants.

The Commission needs to look at who is interpreting the test and who is signing the document. However, Dr. Wolford would caution against having the requirements be too limited so that agencies may not have an adequate pool of clinicians to administer the standard. Currently most departments who are administering the standard are giving a test instrument and an interview. The only change discussed here is the administration of two test instruments. Dr. Forsberg would recommend that the interview be "semi structured" so that each interview can be modified a little bit based upon the test results. The average time of testing is 4 hours for the written test battery and then 30 to 40 minutes for the interview.

Mr. Szczubelek provided a copy of a letter that Mr. Rothenberger received regarding an opinion from the MCOLES' consultant occupational physician on the MCOLES standard. He suggested that staff draft language to address possible changes to the MCOLES standard and return to the Commission for review and action at a future meeting.

Mr. Buczek stated that there is consensus that there should be minimum criteria established that can be referred to by potential law enforcement employers, and that is in the best interest of law enforcement. However, development of the standard should be mindful of the cost that is associated with administering the standard. Possibly this cost could be born by the individual prospective officer through an application process. The costs may be tolerated if the new officer pays a portion of the evaluation fee.

Mr. Buczek stated that if any Commissioner had additional information for consideration they should forward the information to Mr. Szczubelek.

NEW BUSINESS Continued:

Color Vision Protocol Changes – Mr. Szczubelek stated that staff met with Dr. Mark Swan to discuss the problems with the Farnsworth D-15. As was presented at a previous meeting, there is evidence to indicate that individuals with color vision issues have developed a method to complete the test with a passing score even though they have a color vision deficiency. Mr. Szczubelek further explained that this was the case with Mr. McGraw, as Mr. McGraw acknowledged to MCOLES that he had practiced the D-15 test either using the D-15 or perhaps through access on-line. This is something that was not readily available in the past, but now anyone can take the D-15 on-line. MCOLES also has information from our optometry expert who says that this is a problem with the D-15 that has been noted in the research and in the field.

Mr. Szczubelek stated that MCOLES research indicates that the Hardy-Rand-Rittler (HRR) test is a test that is impossible for individuals to memorize and pass. This test is better than the Isahara test. The HRR is a more definitive way to determine passing of the MCOLES color vision standard.

Final Review of Section 9 Recommendations for Revision of PA 203/302 – Mr. Szczubelek stated that the great majority of the revisions are minor revisions, updating the language of the statute to add terms such as licensure and remove terms like certification and add a couple of definitions that generally combine Acts 203 and 302 more seamlessly. There are a few provisions that have required great attention and multiple revisions. He asked the Commission to make a mental note of these sections. The first one is Section 602 definitions, which starts on page two. The major areas of this section are helping to define the regulatory scope of the Commission by defining the term law enforcement officer. This language will provide for a more clear definition as to who is to be regulated and licensed under the MCOLES requirements rather than having to refer to a number of Attorney General Opinions. Mr. Szczubelek gave a number of examples where this area has been a problem in the past.

Section 609(b) expands the revocation authority of the Commission for other offenses that deal with violations of the Commission's core values and ethics. Certain offenses are listed in the language as being revocable offenses and there are other offenses that are listed that demonstrate a lack of fitness for the position. This section more clearly defines the Commission's authority. There is also a provision that grants the Commission discretion to make case by case decisions on revocations for certain offenses that are punishable by less than two years. There are also provisions for mandatory and permissive suspensions for officers under certain conditions. These provisions were looked at very carefully by the Ethics Committee. Mr. Szczubelek stated that we may want to add to this section a provision that gives additional revocation authority where an

NEW BUSINESS Continued:

officer has obtained licensure through error, clerical error, administrative errors, or the like based upon events in a recent matter. Mr. Szczubelek explained the specifics of the matter that has most recently developed, which is also related to the color vision standard.

One of the new sections deals with the disclosure of an employee's background during a background investigation. The intent is to provide for the most complete disclosure of information that is relevant to law enforcement employment. Another area of discussion that came up during the drafting of this language is that some law enforcement agencies have collective bargaining contracts that provide for agreements that may allow for suppressing of information regarding disciplinary action. The new language provides immunity to an employer that discloses substantiated disciplinary action information to another law enforcement agency during a background investigation for law enforcement employment. However, upon additional review, Mr. Szczubelek stated that the proposed language mirrors almost word for word the same immunity protection that is afforded to all governmental agencies under the State Governmental Tort Liability Act. Therefore, Mr. Szczubelek felt that it was unnecessary to have a second layer of immunity protection under the language of the MCOLES statute. Mr. Szczubelek stated that every law enforcement agency in Michigan, except private railroad companies, who hire police officers have that governmental immunity and employees of these agencies also have qualified immunity which would cover them in the vast variety of these types of situations. So instead of having a second redundant layer of immunity, he drafted language which would put the parties on notice that those governmental entities have immunity under state law and also give the parties notice that they are at liberty, if they choose to waive the rights and obligations that they have under those agreements that they enter into.

Mr. Szczubelek stated that he has been working on new language to deal with the agreements to suppress disciplinary action between a collective bargaining unit and an employer. He stated that under the section that deals with authorization and release on page 29, section 6, he is recommending adding the following language to this section: "this subsection applies only for the purpose of ensuring proper disclosure to prospective law enforcement agency employers from whom an applicant seeks employment. This subsection does not require disclosure to authorized representatives, employees, and agents of a law enforcement officer's current employer."

After a lengthy discussion, it was determined that the Ethics Committee will meet this evening to review the disclosure language. The final recommended language resulting from the committee meeting can be brought to the Commission meeting on Wednesday so as not to delay getting the language to the legislature to move this effort forward.

NEW BUSINESS Continued:

2009 Michigan Justice Training Competitive Grant Awards Process Review – Mrs. Hartwell stated that as part of the final process for the 2008 grant awards, staff reviewers were brought together to debrief the process. As a result of the debriefing session the following recommendations were made: in the event of calculation errors the previous policy of going with the lowest amount will be strictly enforced; develop and publish more specific requirements relating to e-learning projects; expand the information provided to practitioners prior to the review session, strengthen the funding priority to in-state vendors over out-of-state vendors unless the program provided is substantially different and documented as such; refine the consortium definition to include structure and collaborating efforts, restrict the printing and mailing of materials with a preference for the use of electronic media; and streamline the staff presentations during the October meeting.

Commissioner Morse stated that staff does an excellent job reviewing the grants and refining their concerns for presentation to the Commission. He further stated that this is an important responsibility of the Commission and Commissioners should take this responsibility seriously and allow adequate time for review and analysis prior to making final award decisions.

Mrs. Hartwell stated that the Prioritized Training List for 2010 is currently being updated and will be presented to the Commission along with the updated Grant Guidelines at the April meeting for action.

OLD BUSINESS:

Implementation of the 520 Hours Worked Standard – Mr. King explained that the regular employment standard is the linkage between law enforcement authority and law enforcement employment. The definition of regular employment has been at issue for a good number of years. Mr. King explained that there have been a number of Attorney General Opinions that have addressed this definition in different ways depending upon the situation using language such as temporarily engaged, substantially perform, etc.

To give proper guidance to the law enforcement community, the Attorney General asked the Commission resolve this issue. The research began using internal records that gave a picture of how much part time law enforcement employment was being utilized in Michigan. A survey of the field was then conducted to determine the degree to which part time officers are utilized. In 2007, the MCOLES held town hall meetings to gather information on the number of hours part time officers work and the type of training they

OLD BUSINESS Continued:

receive. Based upon the information gathered, the Commission developed a standard that was then taken back to the field. There was an initial push back from the field and modifications to the standard were made.

During the Michigan Association of Chiefs of Police meeting this past February, MCOLES staff met with a group of law enforcement agencies who were in opposition to the 520 hour standard to discuss their concerns. A meeting has been scheduled for Wednesday, March 11, 2009, with a workgroup to develop an acceptable remediation for officers who do not meet the 520 hour requirement. In the meantime, Senator Cameron Brown's office announced he would be holding a hearing on March 3, 2009, at 1 pm to take testimony on the MCOLES regular employment standard. Staff will keep the Commission updated as this matter progresses.

Dedicated Funding - Chairman Buczek stated that there is no new information on this effort.

PA 330 Issues - The Legislative Committee discussed this program during the meeting this morning and may pursue an avenue to move this responsibility from MCOLES. Currently, MCOLES does not have any legislative authority to administer this program and the program does not involve licensed law enforcement officers. The Department of State Police is considering submitting a request to the Governor's office to move this program from MSP to the Department of Energy, Labor, and Economic Growth through an Executive Order.

MISCELLANEOUS:

Mr. King stated that the photographer will be available in the morning to take pictures of the new Commission members. He further stated that any Commissioner who would like their pictures can also have them taken at this time.

PUBLIC COMMENT:

There was no public comment.

NEXT MEETING:

Date: Wednesday, February 25, 2009 – 9:00 am

Location: Bay Valley Resort & Conference Center

ADJOURNMENT:

A **MOTION** was made by Sheriff Bosscher and supported Mr. Bretz to adjourn the meeting.

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

The meeting was adjourned at 5:48 pm.

APPROVED BY JEB ON 4/22/09

WITNESSED BY JRL ON 4-22-09