
Michigan Commission on Law Enforcement Standards
Commission Meeting Minutes
February 12, 2020
Lansing, Michigan

COMMISSION MEMBERS PRESENT

Chief David Molloy, representing the Michigan Association of Chiefs of Police
Major Greg Zarotney, representing the Michigan State Police
Mr. David Tanay, representing Attorney General Dana Nessel
Mr. Duane Smith, representing the Police Officers Labor Council
Mr. Arthur Weiss, representing the Criminal Defense Attorneys of Michigan
Mr. Thomas Adams, representing the Public
Deputy Matthew Hartig, representing Deputy Sheriff's Association of Michigan
Sheriff Matthew Saxton, representing the Michigan Sheriffs' Association
Sheriff Gregory Zyburt, representing the Michigan Sheriffs' Association
Ms. Linda Broden, representing the Detroit Police Officers Association
Mr. Michael Kunath, representing the Michigan Association of Police
Chief Donald Mawer, representing the Michigan Association of Chiefs of Police
Mr. Michael Sauger, representing the Fraternal Order of Police

COMMISSION MEMBERS EXCUSED

Chief Karianne Thomas, representing the Michigan Association of Chiefs of Police
Sheriff Timothy Donnellon, representing the Michigan Sheriff's Association
Mr. Michael Wendling, representing the Prosecuting Attorneys Association of Michigan
Trooper Nate Johnson, representing the Michigan State Police Troopers Association
Mr. Ken Grabowski, representing the Police Officers Association of Michigan
Asst. Chief James White/Commander Mark Bliss, representing the Detroit Police Department

STAFF PRESENT

Mr. Timothy Bourgeois, MCOLES Executive Director
Ms. Hermina Kramp, MCOLES Deputy Executive Director
Ms. Lauryl Scott, Commission Counsel
Mr. David Lee, MCOLES Staff
Mr. Joe Kempa, MCOLES Staff
Mr. Danny Rosa, MCOLES Staff
Mr. Ben Zyber, MCOLES Staff

GUESTS SIGNING-IN

Sgt. Shannon Hampton, representing the Detroit Police Department (non-voting)

CALL TO ORDER

The Commission meeting was called to order by Chair David Molloy on February 12, 2020 at 10:30 AM. The meeting was held at the MCOLES Office, 927 Centennial Way, Lansing, Michigan.

INTRODUCTIONS

Chair Molloy introduced himself. He then asked the remaining commissioners, staff, and audience members to do the same.

ACCEPTANCE OF THE NOVEMBER 6, 2019 COMMISSION MEETING MINUTES

A **MOTION** was made by Commissioner Saxton and supported by Commissioner Zyburt to approve the November 6, 2019 Commission Meeting Minutes as written.

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

ADDITIONS/CHANGES TO THE AGENDA

There were no additions or changes to the Agenda.

CHAIR'S REPORT

LEO Population Report – Chair Molloy advised the LEO population report for the month of January was made available to the commissioners. There was some fluctuation in the number of officers and positions due to annual registration and the reporting of delinquent transactions.

Special Use Request – Chair Molloy also stated the Special Use Request report was provided to the Commissioners electronically.

Nominating Committee (Chair and Vice-Chair) – Chair Molloy called on Major Zarotney. The Major stated that he, Commissioner Zyburt and Commissioner Johnson comprised the Nominating Committee. He added that he reviewed the rules and found that the Chair and Vice-Chair can serve for two consecutive years. Major Zarotney stated that the Commission has been using this method for several years and the Committee decided to continue the practice.

Major Zarotney advised the Commission that the Committee was nominating Commissioner Molloy as the Chair.

Chair Molloy then opened the floor for any other nominations. He proceeded to ask three times for nominations, none were received.

A **MOTION** was made by Commissioner Saxton and supported by Commissioner Sauger to re-elect Commissioner David Molloy as the Chair for the Commission.

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

Chair Molloy called on Major Zarotney again. The major stated that again the Nominating Committee continued the practice of serving for two years and advised they were nominating Commissioner Timothy Donnellon for Vice-Chair.

Chair Molloy then opened the floor for any other nominations. He proceeded to ask three times for nominations, none were received.

A **MOTION** was made by Commissioner Saxton and supported by Commissioner Hartig to re-elect Commissioner Timothy Donnellon as the Vice-Chair for the Commission.

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

DIRECTOR'S REPORT

New MCOLES Employee – Director Bourgeois introduced David Lee and requested he introduce MCOLES's newest staff member. Mr. Lee introduced Ben Zyber as the new fiscal analyst for MCOLES. He added that Mr. Zyber is responsible for monitoring MCOLES' appropriations and expenditures as well as other financial transactions.

Mr. Zyber thanked Mr. Lee for the introduction. He stated that he graduated from Grand Valley State University in December 2018 with a finance degree. He worked for Huntington Bank for ten months prior to coming to MCOLES. He has been here for three months and is continuing to learn the job.

2020 Commission Meeting Dates – Director Bourgeois advised that due to the Commission not meeting in December the dates for the meetings in 2020 were never finalized. He asked if there were any changes needed. No changes were requested. He added that the dates were published on the MCOLES website.

Discussion with DHHS on Behavior Health Training – Director Bourgeois stated that Behavioral Health Training for law enforcement officers is currently a topic of interest to many. He added he was contacted by the Michigan Mental Health Diversion Council. They advised that they had approximately \$600,000 of funding that they wanted to use as a grant for MCOLES to facilitate Behavioral Health and Crisis Response Training for licensed officers. Discussions are on-going.

COMMITTEE REPORTS

Executive Committee – Chair Molloy advised the Executive Committee met that morning prior to the Commission meeting. He stated that committee members discussed the following issues:

- Behavioral Health Training
- Proposed Budget
- Reserve Committee

Armed Reserve Committee – Director Bourgeois reminded the Commission that the Reserve Committee members were Commissioner Mawer, Commissioner Grabowski and Vice-Chair Donnellon. He added that MCOLES staff member Joe Kempa was working with the Committee. This Committee was tasked with developing proposed standards for armed reserves. Director Bourgeois reported the Committee could not complete draft standards until an armed reserve's legal authority/status is more precisely determined as it is not in statute. The Committee is gathering a small legal SME group to work on these standards so the project can move forward.

CONSENT AGENDA – None

NEW BUSINESS

Commission Resolution 2020-01 – Chair Molloy read into record Commission Resolution 2020-01 honoring fallen Lovells Fire Department Firefighter Robert Jack Stott, Jr. and extending Public Safety Officer Benefits.

A **MOTION** was made by Commissioner Adams and supported by Commissioner Saxton to approve Commission Resolution 2020-01 honoring Fallen Firefighter Robert Jack Stott, Jr. and extending Public Safety Officer Benefits.

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

Commission Resolution 2020-02 – Chair Molloy read into the record Commission Resolution 2020-02 honoring fallen Officer Glenn Doss, Jr. of the Detroit Police Department and extending Public Safety Officer Benefits.

A **MOTION** was made by Commissioner Broden and supported by Commissioner Adams to approve Commission Resolution 2020-02 honoring Fallen Officer Glenn Doss and extending Public Safety officer Benefits.

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

Justice Training Fund Grant Process – Director Bourgeois introduced section manager David Lee. He advised that MCOLES was going to re-establish the Michigan Justice Training Fund

(MJTF) competitive grant program for 2021.

Mr. Lee provided background on the grant process. He explained how the revenue is generated and added that the MJTF is administered by MCOLES under 1982 PA 302. He advised the Commission the MJTF is used for the following three purposes:

- a) The Law Enforcement Distribution (LED) as provided by this act,
- b) Paying the reasonable expenses of providing staff services to the Commission for administering and enforcing the statutory requirements of this act and administering and enforcing the statutory requirements of the Michigan Commission on Law Enforcement Standards, and
- c) The competitive grants process as provided for by this act when funds remain at the conclusion of a fiscal year.

Mr. Lee advised that the revenue from this fund has been decreasing (\$7.2 million in 2006 to \$4.7 million in 2019) and the administrative costs have been increasing. This has caused the balance of the fund after sections (a) and (b) above, to be insufficient to award competitive grants for calendar years 2017, 2019, and 2020. This trend was expected to continue, resulting in no grant awards for calendar year 2021.

However, independent of the MJTF, MCOLES received an appropriation in fiscal year 2019 of \$2,500,000 from the Medical Marijuana Regulatory Fund (MMRF). As a revenue-based fund the appropriation amount is merely an upper bound and not a true indication of available funds. Late in fiscal year 2019 MCOLES was made aware that MMRF revenue would be available, which allowed for a shift of administrative expenses from the MJTF to the MMRF. This resulted in a savings of approximately \$2.2 million in the MJTF that carried forward into fiscal year 2020. The majority of the carry-forward became available for soliciting grant applications during 2020 for calendar year 2021 award.

In prior years the amount of available funds for the competitive grant process was a projection since current fiscal year revenue was not determined until after state's year-end closeout was completed. With this new process there is a known amount of available funds and this results in the timeline being adjusted as follows:

1. March -Application workshops held
2. May - Grant applications due
3. June through August - Staff review of the applications
4. September Commission Meeting - Commissioners vote on staff recommendations
5. October - Grants awarded to recipients

Mr. Lee advised the Commissioners that in previous grant cycles the Commission adopted a resolution to set a priority list for applications being considered. The priorities were determined by surveys of the criminal justice community.

The grants are open to Courts, Prosecutors, Defense and Law Enforcement. In 2017, for law enforcement grant applications the Commission adopted the MCOLES mandatory and advisory in-service training standards as its priorities for funding. These standards include the following:

- Active Duty Firearms
- Legal Update
- Subject Control
- Emergency Vehicle Operators
- Officer Safety
- Response to Persons with Mental Disorders

The priorities for other criminal justice components remained from prior surveys.

While the MMRF revenue continues to be available in FY 2020 for MCOLES administrative expenses, allowing for MJTF revenue to be used for competitive grant programs in calendar year 2022, the future of MMRF revenue is uncertain as a result of the passage of recreational marijuana use. The MMRF revenue is anticipated to decrease, as it will be less expensive to obtain licenses to produce and sell recreational marijuana and the potential market is the entire adult population rather than just those with medical cards. As the MMRF revenue declines, administrative expenditures will begin to shift back to the MJTF, reducing funds available for competitive grants.

Director Bourgeois explained there is a consensus that MMRF funds will eventually decrease as the more recently approved recreational marijuana sales/use increases. The statute passed via petition and referendum for recreational sales makes it an easier and less costly business model than medical sales and the potential market is larger. The new recreational statute does not allow license fees to support other entities or initiatives such as MCOLES like the medical statute did. Due to a lack of MJTF and general fund revenues, MCOLES had to leave several positions open in FY 2019. We are looking to fill those positions as soon as possible with MMRF funds while they remain available.

A **MOTION** was made by Commissioner Sauger and supported by Commissioner Hartig to approve retaining the priority list for the 2020 grant application process for calendar 2021 grant programs.

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

Law Enforcement Distribution (LED) Investigations – Director Bourgeois called on Deputy Director Kramp to discuss these investigations. Deputy Director Kramp began with providing some background information on the distributions. Public Act 302 of 1982 (1982 PA 302) created the Michigan Justice Training Fund (MJTF). A section of the act requires the semi-annual distribution of 60% of the revenue deposited to the MJTF to law enforcement agencies for the training of MCOLES licensed law enforcement officers employed by law enforcement agencies. These distributions are subject to audit by the Office of the Auditor General (OAG) bi-annually.

Deputy Director Kramp advised that during the 2019 OAG audit of the MJTF, the auditor identified a concern related to the verification of the hours worked reporting completed by agencies. Public Act 203 of 1965 (1965 PA 203) requires law enforcement agencies to report via the MCOLES Information and Tracking Network (MITN) all personnel transactions within three days. These personnel transactions could be the licensing of a recruit or a previously licensed law enforcement officer, the removal of an individual's law enforcement authority for various reasons,

or the separation of an individual from employment with the agency. The LED audit is to ensure that the funds are being used for in-service training and the hours reported are tied to the hours worked as a fully empowered law enforcement officer.

During the 2019 audit the OAG suggested that MCOLES collect all payroll documentation from law enforcement agencies for its licensed officers in order to verify the number of paid hours worked for the purpose of calculating each agency's distribution. This methodology is inappropriate for the purpose intended.

In some separation cases an individual's law enforcement authority is removed prior to the actual date of separation from agency employment. It is from the authority removal date forward that an individual is no longer functioning as a law enforcement officer. However, due to contractual agreements many of these officers are still being paid by the agency while under investigation.

Deputy Director Kramp continued by saying that to address the concerns of the OAG, a process has been established which allows MCOLES to easily identify law enforcement agencies that had a separation or a law enforcement authority removal during the reporting year which requires further investigation to ensure the reported hours worked comply with the requirements of 1982 PA 302.

The process is listed below:

- 1) When an agency reports the removal of law enforcement authority or the separation of an individual, the agency is flagged and monitored.
- 2) At the conclusion of the annual registration cycle a report will be created that identifies the agencies with individuals flagged and requiring verification of the reported hours worked.
- 3) These inspections will be assigned to staff for follow-up.
- 4) Corrections to the hours worked will be completed.
 - a) If before the distribution is made – hours will be reduced where appropriate, or
 - b) If after the distribution is made – the agency will be billed for the overpayment of LED funds based on the number of ineligible hours reported.
- 5) Corrective action will be documented in MITN.
- 6) Final results will be reported to the Commission upon completion of the inspection cycle.

Deputy Director Kramp stated that the auditor wanted MCOLES to look closer at the records and provide more documentation to verify the hours worked by the agencies. She feels this new process will allow staff to do both of those things.

A question was raised by Commissioner Zyburt about the cost effectiveness of spending this amount of staff time reviewing the amount of detail being reported when the maximum yearly distribution per FTE is between \$180 and \$190. Deputy Director Kramp advised this was discussed with the auditors but remained a major point. MCOLES was directed to follow through. It was also pointed out by the Commission that the amount of funds distributed is severely insufficient to provide for any meaningful training to occur and since the training is post separation only licensed officers are being trained with the funds being distributed.

Report on License Relinquishments – Director Bourgeois introduced MCOLES legal counsel,

Lauryl Scott, to address license relinquishments. Ms. Scott started by providing background information. She said that the Michigan Commission on Law Enforcement Standards Act, (1965 PA 203) establishes the authority of the Michigan Commission on Law Enforcement Standards to set

and enforce standards for the selection, training, employment, licensing, re-licensing and revocation of law enforcement officers.

She added that in addition to these essential regulatory responsibilities, the Commission is also statutorily mandated to increase professionalism in Michigan's law enforcement community. It is the mission of MCOLES to provide leadership through setting professional standards in education, selection, employment, licensing, license revocation, and funding in law enforcement and criminal justice, in both the public and private sectors.

The Commission's responsibility to revoke a law enforcement license when warranted is fundamental to meeting its goals and mandates.

Ms. Scott added that the Commission must revoke the license of an individual who has committed a felony and certain misdemeanors. Once the Commission becomes aware of facts warranting license revocation, the Commission must begin the process. She then outlined the revocation process:

- 1) The Commission serves an Order of Summary Suspension and Notice of Intent to Revoke the licensee.
- 2) The Commission files a formal request for a hearing with the Administrative Hearing System to ensure that the licensee is afforded fundamental due process.
- 3) The Commission is presented with the Proposal for Decision. If the hearing substantiated that the licensee was convicted of a listed offense, the Commission must revoke the license of the law enforcement officer.
- 4) A final decision and Order revoking the individual's license is signed by the Commission Chair and made an official part of the record.

Keeping in mind that this procedure is both costly and time consuming, MCOLES began an effort to encourage the use of voluntary relinquishments as an alternative. This process is addressed in 1965 PA 203 in which it states that in lieu of participating in a contested case, an individual may voluntarily and permanently relinquish his or her law enforcement officer license by executing before a notary public an affidavit of license relinquishment prescribed by the commission.

Ms. Scott stated that use of a voluntary relinquishment can be a useful tool for the prosecuting entities charged with prosecuting crimes committed by law enforcement officers as a bargaining tool in obtaining guilty pleas or in sentencing agreements. The prosecutor may reduce charges to a non-revocable charge if the licensee will then voluntarily relinquish their license.

To establish this procedure, MCOLES has made the following efforts:

- Upon becoming aware of pending criminal charges involving an MCOLES licensed officer, contact is made with the investigative and/or prosecuting agency
- Commission counsel is reaching out to individual prosecutors to create partnerships and to

create awareness of the MCOLES licensing process and relinquishment.

- MCOLES Commission counsel and investigators are identifying public integrity units that focus on prosecuting public officials and licensed law enforcement officers
- Commission counsel is offering to speak at PAAM/PACC conferences or provide other resources

Ms. Scott concluded the discussion by saying that in addition to increasing efficiency and saving money, she believes this effort will increase MCOLES' overall visibility with the public and broader law enforcement community. The process aids the Commission in actively working to increase the level of professionalism and accountability in law enforcement.

A question was raised concerning MCOLES involvement in the plea bargains obtained. Ms. Scott advised that the discretion to use the relinquishment process was completely with the prosecuting attorney. MCOLES is providing the document and using the opportunity to educate the prosecution on the MCOLES Act.

2021 Budget Recommendation – Executive Director Bourgeois reminded the commissioners that he sent out material to them last week about the 2021 budget. He wanted to provide some further information regarding this topic.

The background information he provided was that in April 2019, Governor Whitmer appointed a bipartisan Michigan Joint Task Force on Jail and Pretrial Incarceration to evaluate the justice system in the state and develop recommendations to expand alternatives to jail, safely reducing admissions and length of stay, provide services and support to crime victims, and improve the efficiency and effectiveness of the Michigan justice system.

The task force made eighteen recommendations in January. The Governor's Office decided to act on two of the recommendations, number 7 which is Behavioral Health Training and number 17 which dealt with Victim's Services.

Regarding Behavioral Health Crises one of the key recommendations of the task force is to appropriately deflect and divert individuals with behavioral health needs away from the criminal justice system. The task force recommends development of statewide standards for behavioral health crisis intervention training which will help protect public safety officers through safer interactions and direct individuals to appropriate behavioral health services. MCOLES has been tasked with developing and delivering the training to law enforcement and first responders across the state in the area of behavioral health. The Governor is recommending that MCOLES receive \$3 million in the FY 2021 budget.

The Governor also recommends MCOLES receive \$4.2 million in the FY 2021 budget to be used for the development of specialized training, including the use of best practices, for responding to calls related to domestic violence. This was recommendation 17 from the Joint Task Force. They highlighted the need to better support crime victims interacting with the criminal justice system in these situations.

The \$7.2 million total recommended for the Michigan Commission on Law Enforcement Standards is estimated to cover the first 50% of the costs to institute these trainings for all academy recruits and in-service officers.

OLD BUSINESS - None

MISCELLANEOUS

Executive Director Bourgeois again reminded the Commissioners that annual registration ends March 8. He encouraged everyone to have their agencies complete the registration as soon as possible and not wait until the end of the time period. He also said that the Help Desk is available if any agency needs assistance.

Sheriff Matthew Saxton advised the Commission that this would be his last meeting. He has been chosen as the CEO and Executive Director of the Michigan Sheriff's Association (MSA). He added that MSA will be submitting names to the Governor's Office for his replacement on the Commission.

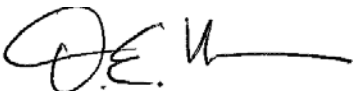
PUBLIC COMMENT - None

NEXT MEETING

Date: April 8, 2020 at 10:30 AM
Lansing

ADJOURNMENT:

A **MOTION** was made by Commissioner Adams and supported by Commissioner Mawer to adjourn the meeting.

APPROVED BY  ON APRIL 15, 2020

WITNESSED BY  ON APRIL 15, 2020