



Commission Resolution 2010-04
To Recommend Revisions to 1965 PA 203 Pertaining to Ethics

WHEREAS, the Michigan Commission on Law Enforcement Standards recognizes a need to enhance standards of ethical conduct for licensed law enforcement officers; and

WHEREAS, 1965 PA 203 authorizes the Michigan Commission on Law Enforcement Standards to make recommendations to the Legislature on matters pertaining to qualification and training of law enforcement officers; now

THEREFORE, BE IT RESOLVED, that Section 9b of 1965 PA 203, concerning license revocation and suspension, be amended to provide as follows:

(1) The commission shall promulgate rules requiring mandatory revocation of a law enforcement officer license for 1 or more of the following:

(a) Obtaining a law enforcement officer license because the law enforcement officer or another person made a materially false oral or written statement or committed fraud in an affidavit, disclosure, or application to a law enforcement training school, the commission, or a law enforcement agency at any stage of recruitment, selection, appointment, enrollment, training, or licensure.

(b) An adjudication of guilt for any violation of a penal law, including attempt, of this state, another state, a military court, a tribal court, a political subdivision of this state or another state, the United States, or another country, that is punishable by a sentence of more than 2 years.

(2) The commission shall promulgate rules that may allow revocation of a law enforcement officer license for an adjudication of guilt for any violation of a penal law, including attempt, of this state, another state, a military court, a tribal court, a political subdivision of this state or another state, the United States, or another country, for which:

(a) An element of the offense is dishonesty, false statement, or theft;

(b) An element of the offense is assault, battery, or threatening, intimidating, or harassing behavior directed toward an individual;

(c) An element of the offense is an act or omission causing personal injury to an individual;

(d) An element of the offense is use, possession, or any conspiracy to use or possess, any schedule 1 or 2 controlled substance as defined in the Public Health Code, 1978 PA 368, MCL 333.7212, 333.7213, and 333.7214;

(e) An element of the offense is willful neglect of duty as a law enforcement officer;

(f) An element of the offense is resisting or obstructing a law enforcement officer or other public official in the discharge of his or her duty;

(g) Registration as a sex offender under the Sex Offender Registration Act, 1994 PA 295, MCL 28.721 *et seq.*, is required.

(3) An adjudication of guilt includes:

(a) Entry of a judgment or verdict of guilty or guilty but mentally ill following a trial;

(b) Entry of a plea of guilty or nolo contendere;

(c) Entry of a verdict or plea of guilty in conjunction with the following:

(i) An order entered under section 771.1 of the Code of Criminal Procedure, MCL 771.1, or any other order delaying sentence;

(ii) An assignment to the status of youthful trainee under the Holmes Youthful Trainee Act, section 762.11 of the Code of Criminal Procedure, MCL 762.11;

(iii) Probation under section 333.7411 of the Public Health Code, MCL 333.7411;

(iv) Probation under section 769.4a of the Code of Criminal Procedure, MCL 769.4a.

(4) The commission shall initiate administrative license revocation proceedings, including but not limited to issuing an order of summary suspension and notice of intent to revoke, upon being given notice of facts warranting revocation as provided in subsection (1) and may initiate license revocation proceedings, including but not limited to issuing an order of summary suspension and notice of intent to revoke, upon being given notice of facts warranting revocation as provided in subsection (2).

(5) The commission need not delay or abate license revocation proceedings based on an adjudication of guilt where an appeal is taken from the adjudication of guilt.

(6) The commission shall promulgate rules requiring the suspension of a law enforcement officer's use of the law enforcement information network in the event the law enforcement officer wrongfully discloses information from the law enforcement information network.

(7) The commission shall promulgate rules that may allow suspension of a law enforcement officer license for one or more of the following:

(a) Being charged with a criminal offense that is punishable by more than 2 years and being deemed by the commission to pose a threat to public health, safety, and welfare.

(b) Seeking, obtaining, or maintaining employment with a different law enforcement agency, after being suspended by a law enforcement agency with which he or she is employed as a result of being charged with one or more designated offense enumerated in subsections (1) or (2).

(8) In making the determination described in subsection (7), the commission may regard decisions made by a court regarding pre-trial release under MCR 6.106 or any successor provision, including conditions of bond, if any, as prima facie evidence of a threat to the public health, safety, and welfare.

(9) An order of suspension issued by the commission shall specify the conditions under which the license will be reinstated.

(10) If the commission issues a final decision or order to revoke or suspend the license of a law enforcement officer, that decision or order is subject to judicial review as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, except as to venue, which shall be in the circuit court for Ingham county. A summary suspension issued under subsection (4) is not a final decision or order for purposes of this subsection.

(11) The commission may issue a subpoena in a contested case to revoke or suspend a law enforcement officer's license. The subpoena shall be issued as provided in section 73 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.273.

BE IT FURTHER RESOLVED, that 1965 PA 203 be amended by adding a new section, concerning notification of criminal charges and personal protection orders, that provides as follows:

(1) A licensed law enforcement officer shall promptly inform the commission in writing if he or she is charged with any offense for which a law enforcement officer license may be revoked or suspended under section 9b.

(2) A licensed law enforcement officer shall promptly inform the commission in writing if he or she is the subject of a personal protection order that has been issued after a judicial hearing under sections 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950, or 600.2950a, or under the laws of a foreign jurisdiction.

(3) A law enforcement agency that has knowledge that a licensed law enforcement officer it employs has been charged with an offense specified in subsection (1) or has become the subject of a personal protection order specified in subsection (2) shall promptly report this information to the commission in writing.

(4) A prosecutor that has knowledge that a licensed law enforcement officer has been charged with an offense specified in subsection (1) or has become the subject of a personal protection order specified in subsection (2) shall promptly report this information to the commission in writing.

BE IT FURTHER RESOLVED, that 1965 PA 203 be amended by adding a new section, concerning maintenance of documentation of compliance with licensing standards, that provides as follows:

(1) A law enforcement agency shall collect, verify, and maintain documentation establishing that an applicant for employment as a law enforcement officer met or exceeded the minimum selection and employment standards under R 28.14203 and R 28.14204 at the time the applicant commenced employment with the agency.

BE IT FURTHER RESOLVED, that 1965 PA 203 be amended by adding a new section, concerning standards for background investigations, that provides as follows:

(1) The commission shall promulgate rules establishing minimum standards for conducting employer background investigations. The rules shall specify a form that employing agencies may use to document the findings of background investigations. Before employing an applicant, the employing agency shall conduct a thorough background investigation in accordance with the rules promulgated by the commission. The background investigation shall include information setting forth facts and reasons for any of the applicant's previous separations from private employment, public employment, or appointment, as represented by the applicant. For purposes of this subsection, the term "separation from employment" includes any firing, termination, resignation, retirement, or voluntary or involuntary extended leave of absence from any salaried or non-salaried position. The employing agency shall maintain documentation of the background investigation for a period consistent with applicable record retention schedules and such documentation shall be signed by the administrator of the employing agency or his or her designee.

(2) Prior to the employment of an applicant, an authorized representative of the employing agency shall execute and maintain an affidavit of compliance on a form provided by the commission, attesting to compliance with the rules promulgated by the commission concerning comprehensive background investigations. The affidavit shall include conspicuous language that intentional false execution of the affidavit by the agency's authorized representative constitutes perjury.

BE IT FURTHER RESOLVED, that 1965 PA 203 be amended by adding a new section, concerning standards for disclosures of information used in the employment of law enforcement officers, that provides as follows:

(1) Prior to conducting a background investigation, an employing agency shall require an authorization and release from an applicant. The employing agency shall use a commission approved authorization and release form that:

(a) Authorizes the applicant's current or former employers to disclose, in good faith, any substantiated unprofessional conduct by the applicant and to provide to the requesting party copies of all documents in the employee's personnel record maintained by current or former employers relating to good faith disclosures of substantiated unprofessional conduct;

(b) Releases the current or former employers, and employees acting on the behalf of the current or former employers, from any liability for good faith disclosures of substantiated unprofessional conduct, and waives written notice required under the Bullard-Plawecki Employee Right to Know Act, PA 397 of 1978, MCL 423.501 *et seq.*

(2) An employer shall not employ an applicant who refuses to sign the authorization and release.

(3) Not later than 45 calendar days after receiving a request under subsection (1), an employer shall provide the information requested and make available copies of all documents in the employee's personnel record relating to substantiated unprofessional conduct as defined in this act. An employer, employee, or agent acting on behalf of the employer, who discloses information under this section in good faith is immune from civil liability for the disclosure. Good faith is presumed unless a preponderance of the evidence establishes that the employee knew the information was false or misleading, or it was disclosed with a reckless disregard for the truth, or the disclosure was prohibited by state or federal law.

(4) Information received under this section shall be used only for the purposes of determining suitability for law enforcement employment and licensure, and shall not be disclosed to any person not directly involved with the employer or the commission in the evaluation process, unless disclosure is required by law or an order of a court.

(5) "Substantiated unprofessional conduct" means on or off-duty conduct by an MCOLES licensed law enforcement officer that, if established, could warrant revocation or suspension under section 9b.

(6) "Substantiated unprofessional conduct" does not include either of the following:

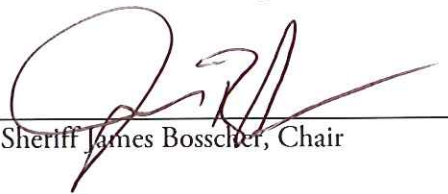
(a) Conduct that is subsequently determined to be unsubstantiated by the employer, or an arbitrator or court exercising jurisdiction over the law enforcement officer;

(b) Conduct described in documents or other recorded media that have been expunged by an arbitrator or court exercising jurisdiction over the law enforcement officer.

(7) This section does not supersede or abrogate any provisions contained in the Bullard-Plawecki Employee Right to Know Act, PA 397 of 1978, MCL 423.501 *et seq.*

(8) Reasonable fees may be charged to cover actual costs of the employer in copying and furnishing documents to a law enforcement agency conducting a background investigation on an applicant for employment as a law enforcement officer.

Adopted by the Michigan Commission on Law Enforcement Standards on April 21, 2010



Sheriff James Bosscher, Chair