



MCOLES

Michigan Commission on Law Enforcement Standards

MEMORANDUM

DATE: September 9, 2020

RE: Process for the Reactivation of Inactive and Lapsed Law Enforcement Officer Licenses under the MCOLES Act

In 2016, the Michigan Commission on Law Enforcement Standards Act, MCL 28.601-MCL 28.615 (the MCOLES Act) underwent a significant legislative update. The amended statute became effective January 2, 2017¹. The intent of this memorandum is to highlight some of the enhancements to the statute relating to the licensure process.

I. Employment vs. Licensing ⇒ Two Separate Concepts

The language of the amended MCOLES Act clarifies the distinction between *licensing* and *employment*.

- The status of an individual law enforcement officer's MCOLES license is distinct from the employment relationship.
- The Commission is responsible for licensing law enforcement officers.
- Although the MCOLES Act's reporting mandates include personnel transactions – these mandates are for *licensing* purposes.
- The Commission is not a party to collective bargaining agreements governing terms of employment. As such, the Commission is not a party to post-separation grievance proceedings.
- Reinstatement of employment through an appeal process does not reactivate the MCOLES license.

II. MCOLES Licensing ⇒ License Status Matters

The amended statutory language also illustrates that the status of a law enforcement officer license in Michigan is *not static*. Licensure is dependent upon being authorized through an

¹ History: Pub Acts 1965, No. 203, § 1, imd eff July 16, 1965, by § 16 eff January 1, 1966; amended by Pub Acts 1998, No. 237, imd eff July 3, 1998; Pub Acts 2016, No. 289, effective January 2, 2017.

oath of office, conferred by a law enforcement agency employing the individual, and verification of compliance with mandated MCOLES Standards.² The MCOLES law enforcement officer license is always subject to Commission oversight. In this way MCOLES professional licenses differ from most professional licenses.³

Review of an MCOLES law enforcement officer license by the Commission is triggered by certain events defined by the MCOLES Act. For instance when a law enforcement officer is subjected to an adjudication of guilt for a statutorily mandated revocable offense and the Commission must undertake mandatory revocation proceedings.

The Commission review is also triggered when a law enforcement officer is separated from employment with a law enforcement agency for any reason. This is because upon separation, that officer no longer possesses law enforcement authority therefore the license becomes inactive and the individual may no longer exercise law enforcement authority. MCL 28.609(14) provides:

- (14) An individual licensed under this section shall not exercise the law enforcement authority described in the laws of this state under which the individual is employed if any of the following occur:
 - (a) The individual's license is rendered void by a court order or other operation of law.
 - (b) The individual's license is revoked.
 - (c) *The individual's license is rendered inactive.*
 - (d) The individual's license is rendered lapsed

A. Inactive Licenses

An MCOLES law enforcement officer license is rendered inactive immediately upon separation from employment and remains inactive for either one or two years, depending on the length of time the individual worked as a licensed law enforcement officer.

Notably, an inactive license is not automatically reactivated if the individual is subsequently hired by another law enforcement agency or when an appeal results in reinstatement of employment with a previous law enforcement employer. The MCOLES Act requires the Commission to review all requests for reactivation of an individual's law enforcement officer license for compliance with the standards set forth in the MCOLES Act.

B. Lapsed Licenses

² The MCOLES Act defines "law enforcement agency" as "an entity that is established and maintained in accordance with the laws of this state and is authorized by the laws of this state to appoint or employ law enforcement officers." MCL 28.602(e).

³ For example, an attorney licensed in the State of Michigan can hold a license in good-standing regardless of employment status.

The license of an officer who has worked an aggregate of less than 2080 hours is in a status of Inactive for a period of one year, after which it becomes lapsed. The license of an officer who has worked an aggregate of 2080 or more hours is in a status of inactive for a period of two years, after which it becomes lapsed.

C. Inactive Licenses vs. Lapsed Licenses

The 2016 amendment (effective January 2, 2017) to the MCOLES Act added the statutory language distinguishing an inactive license from a lapsed license. Although neither licensing status (inactive or lapsed) confer law enforcement authority, there is a difference in the process for reactivating the license and returning the individual to a fully empowered status.

The process for license reactivation differs between inactive and lapsed licenses. An individual whose license is lapsed must participate in re-training by successfully completing either a full academy session or the Recognition of Prior Basic Training and Experience (RPTE) program and passing the law enforcement officer licensing exam to become eligible to be licensed by the Commission.

An individual whose license is inactive is eligible to enter the licensing process without additional training. However, as noted above, an inactive license is not automatically reactivated if the individual is subsequently hired by another law enforcement agency or when an appeal process results in reinstatement of employment with a previous law enforcement employer.

D. Reactivation of an Inactive MCOLES Law Enforcement Officer License by the Commission

When a law enforcement agency is seeking to employ and license an individual with an inactive license the agency must follow the licensure process set forth in the MCOLES Act. MCL 28.609(3)(a) requires an agency to verify the individual to whom the oath of office will be administered complies with the licensing standards.

The Commission reviews requests for reactivation of an individual's law enforcement officer license on a case by case basis for compliance with the standards. This includes screening for character fitness as determined by a background investigation.

If the commission makes a preliminary determination the individual does not comply with the licensing standards, a detailed notice of the intent to deny is issued to the individual and the agency. This notice provides the individual an opportunity to appeal and provide additional information for consideration. After review of any additional submissions a final determination is made and notice is sent to the individual and agency. MCL 28.609(5)(d).