

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE
2400 BOARD OF EXAMINERS OF CONSTABLES
Statutory Authority: 10 Delaware Code, Chapter 27 (10 **Del.C.** Ch. 27)
24 **DE Admin. Code** 2400

FINAL

ORDER

2400 Board of Examiners of Constables

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to:

- Rule 3.0 Criminal Offenses, and
- Rule 5.0 Firearms Policy

the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to:
 - Give the definitions of moral turpitude, and
 - Define the training requirements and add another weapon

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will:
 - Give the definitions of moral turpitude, and
 - Define the training requirements and add another weapon
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to
 - Give the definitions of moral turpitude, and
 - Define the training requirements and add another weapon

Conclusion

7. The proposed rule was published by the Board in accord with the statutory duties and authority as set forth in 10 **Del.C.** §2701 et seq. and, in particular, 10 **Del.C.** §2702(b).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 10 **Del.C.** §2701 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts this amendment pursuant to 10 **Del.C.** §2702(b) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be November 11, 2015.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 24th day of September 2015.

BOARD OF EXAMINERS OF CONSTABLES:

Chief William E. Bryson

Ralph K. Durstein, III, Esquire

Lt. Colonel Monroe B. Hudson, Jr.

Captain Douglas Merrill

Mr. John F. Tharan

2400 Board of Examiners of Constables

1.0 Licensing

- 1.1 All applicants must submit written testimony from five (5) reputable citizens attesting to good character, integrity, and competency.
- 1.2 All applicants shall be required to submit an application and their fingerprints to the Professional Licensing Section on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.
- 1.3 A constable shall not be a member or employee of any Delaware law enforcement organization, as defined by the Council on Police Training or a member or employee of a law enforcement organization of any other state or federal jurisdiction.
- 1.4 All applicants who were not prior law enforcement, in any jurisdiction, must meet the minimum training standards as established by the Board. They must also submit to either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position that the applicant is psychologically fit to function as a competent Constable.
- 1.5 Applicants, who were prior law enforcement officers in any jurisdiction in the State of Delaware, and have been away from active law enforcement under five years, will be considered for commissions on a case-by-case basis. Applicants who were prior law enforcement outside the State of Delaware will be required to take, and pass, a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. If the test is failed twice, the applicant will be required to take the full training course.
- 1.6 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five years, will be required to take an MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory), under the conditions noted in Rule 1.4, and pass a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. If the test is failed twice, the applicant will be required to take the full training course.
- 1.7 Applicants who are retired military law enforcement, corrections officers, or probation & parole shall take the class and submit to the MMPI/PAI.
 - 1.7.1 At the discretion of the Board, for good cause shown, the class may be waived.
- 1.8 If an applicant wishes to work for more than one agency, they must submit an application and be approved by the Board for each agency. All other requirements do not need to be submitted as they are already on file in the Professional Licensing Section.
- 1.9 All applicants seeking a new commission as a constable shall be required to submit a \$200.00 licensing fee.
- 1.10 All applicants seeking a commission renewal as a constable shall be required to submit a \$100.00 renewal licensing fee and shall accompany each re-application thereafter.
- 1.11 All commissions will expire on December 31st, two years from the year the commission was first issued. Any commissions needing to be adjusted will be charged a pro-rated fee.

Adopted 09/10/86

Amended 05/16/00

13 DE Reg. 677 (11/01/09)

18 DE Reg. 971 (06/01/15)

2.0 Suspensions, Revocations and Appeals

- 2.1 The Director of the Professional Licensing Section shall have the power to suspend or revoke the commission of any individual issued a commission under 10 **Del.C.** Ch. 27 who violates the Chapter or the promulgated Rules and Regulations.
- 2.2 The Director of the Professional Licensing Section may issue an emergency suspension of any individual issued a commission, under 10 **Del.C.** Ch. 27, who has been arrested where that arrest could result in the conviction of any misdemeanor or felony that violates the Chapter or the promulgated Rules and Regulations.
- 2.3 Any individual whose commission has been placed on emergency suspension, suspended, revoked, or denied may, within 30 days of such notice, submit a written request of the appeal to the Director of the Professional Licensing Section.
- 2.4 A hearing before the Board will be convened on a date determined by the Board to resolve the appeal.
- 2.5 The Board decision, in writing, will be mailed to the applicant within 10 working days after the hearing.

Adopted 09/10/86

3.0 **Reserved Criminal Offenses**

3.1 For the purposes of 10 Del.C. Ch. 27, the Director of the Professional Licensing Section may deny an application, suspend or revoke a commission if the applicant or commissioned individual has been convicted of a misdemeanor crime involving moral turpitude. A misdemeanor crime involving moral turpitude includes, but is not limited to, the following crimes in the Delaware Code (or similar crimes under the laws of other jurisdictions):

3.1.1 Title 11 Crimes and Criminal Procedures Ch. 5 Specific Offenses:

- 3.1.1.1 §763 Sexual Harassment;
- 3.1.1.2 §764 Indecent Exposure 2nd Degree;
- 3.1.1.3 §765 Indecent Exposure 1st Degree;
- 3.1.1.4 §766 Incest;
- 3.1.1.5 §767 Unlawful Sexual Contact 3rd Degree;
- 3.1.1.6 §781 Unlawful Imprisonment 2nd;
- 3.1.1.7 §840 Shoplifting;
- 3.1.1.8 §861 Forgery;
- 3.1.1.9 §871 Falsifying Business Records;
- 3.1.1.10 §881 Bribery;
- 3.1.1.11 §907 Criminal Impersonation;
- 3.1.1.12 §1101 Abandonment of a Child;
- 3.1.1.13 §1102 Endangering the Welfare of a Child;
- 3.1.1.14 §1105 Crime Against a Vulnerable Adult;
- 3.1.1.15 §1106 Unlawfully Dealing with a Child;
- 3.1.1.16 §1107 Endangering Children;
- 3.1.1.17 §1245 Falsely Reporting an Incident;
- 3.1.1.18 §1341 Lewdness;
- 3.1.1.19 §1342 Prostitution;
- 3.1.1.20 §1343 Patronizing a Prostitute; and
- 3.1.1.21 §1355 Permitting Prostitution.

3.1.2 Title 16 Health and Safety Ch. 11 Nursing Facilities and Similar Facilities:

3.1.2.1 §1136 Violations.

3.1.3 Title 31 Welfare Ch. 39 Adult Protective Services:

3.1.3.1 §3913 Violations.

3.2 Anyone applying for commission under 10 Del.C. Ch. 27 shall not be issued a commission if they have any pending criminal charge(s) for any crimes listed in this Chapter.

3.3 The Director of the Professional Licensing Section may suspend anyone commissioned under 10 Del.C. Ch. 27 who has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in this Chapter.

Adopted 10/16/96

Amended 05/16/00

12 DE Reg. 977 (01/01/09)

13 DE Reg. 677 (11/01/09)

18 DE Reg. 971 (06/01/15)

4.0 **Reserved**

Adopted 05/16/00

12 DE Reg. 977 (01/01/09)

18 DE Reg. 971 (06/01/15)

5.0 **Firearm's Policy**

- 5.1 Section 5.0 shall apply only to individuals licensed under 10 Del.C. Ch. 27, while such individuals are acting in the performance of their duties as a constable.
- 5.12 No ~~person~~ individual licensed under 10 Del.C. §2703 Ch. 27 shall carry a firearm unless that ~~person~~ the individual has first passed an approved firearms course of instruction and an initial qualification administered by a ~~Board~~ an approved certified firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement). The initial qualification course may be used to fulfill one day and one low light requirement during the first year; however an additional day shoot must be completed at least 90 days after the date of initial certification, within the calendar year.
- 5.23 In order to carry a firearm, individuals licensed to carry a firearm under 10 Del.C. Ch. 27 must shoot a minimum of three (3) qualifying shoots per ~~constable~~ calendar year, scheduled on at least two (2) separate days, with a minimum 90 days between scheduled shoots. Of these three (3), there will be one (1) mandatory "low light" shoot and may be combined with a day shoot. Two day shoots shall not be completed on the same date. Simulation is permitted and it may be combined with a daylight shoot. The initial qualification shot may be used to fulfill one day and one low light requirement during the first year.
- 5.2.4 A constable year shall be June 1st to May 31st.
- 5.2.25.3.1 An individual not meeting the minimum qualifications set forth in 5.2 subsection 5.3 may have their firearms license ~~be~~ suspended from carrying a firearm while acting in the performance of their duties as a constable until such time that they meet the minimum three (3) qualifying shoots within the ~~constable~~ calendar year.
- 5.34 Firearms – approved caliber of weapons Only the handguns with the following calibers are permitted:
- 5.34.1 9mm;
- 5.34.2 .357;
- 5.34.3 .38;
- 5.34.4 .40;
- 5.4.5 .45; or
- 5.4.6 .357 SIG.
- 5.45 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 5.56 Under no circumstances will anyone under this Rule be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- 5.67 All individuals must qualify meet the minimum qualifications set forth in [subsection] 5.3 with the same make/model/caliber of weapon that he/she will carry.
- 5.78 All ammunition ~~will~~ must be factory fresh (no re-loads).
- 5.89 The minimum passing score is 80%.
- 5.910 All licenses/commissions are valid for a period of ~~one (1) constable year~~ two years, subject to proof of compliance of Section 5.0 by submission of shoot certification or re-certification forms to the Professional Licensing Section, by January 15th of each year for the previous calendar year.
- 5.101 Firearms Instructors providing instruction under Section 5.0:
- 5.101.1 Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), ~~and/or~~ another professional firearms training institution as a "certified firearms instructor".
- 5.101.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified ~~shotgun~~ handgun instructor may only instruct and qualify individuals with the ~~shotgun~~ handgun.)
- 5.101.3 All firearms instructors must be approved by the ~~Board~~ Professional Licensing Section before they are authorized to instruct or qualify ~~licensed/commissioned~~ individuals-licensed under 10 Del.C. Ch. 27.

Adopted 05/20/02

12 DE Reg. 977 (01/01/09)

13 DE Reg. 677 (11/01/09)

16 DE Reg. 996 (03/01/13)

6.0 **Baton, Nightstick, Pr24, Chemical Spray, and Handcuffs**

- 6.1 To carry the above weapons/items a constable must have completed a training program on each and every weapon/item carried and all certifications must be on file in the Professional Licensing Section to be valid to

carry/use. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Professional Licensing Section.

6.2 Weapon/Item Instructors

6.2.1 All weapon/item instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.

18 DE Reg. 971 (06/01/15)

7.0 Electronic Control Device (ECD)

7.1 In order for a constable to carry/use an electronic control device (ECD), he/she must complete a training program approved by the Board and all certifications or re-certifications must be on file with the Professional Licensing Section.

7.2 ECD Instructors

7.2.1 All ECD instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.

18 DE Reg. 971 (06/01/15)

8.0 Canine

8.1 In order for a constable to use a canine, he/she, and the canine, must complete a training program approved by the Board and all certifications or re-certifications must be on file with the Professional Licensing Section.

8.2 Canine Instructors

8.2.1 All canine instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 10 **Del.C.** Ch. 27.

18 DE Reg. 971 (06/01/15)

19 DE Reg. 425 (11/01/15) (Final)