

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.** Section 10118(b)(1)-(7), the Board of Examiners of Constables ("Board") hereby issues this Order. The proposed change was published in the *Delaware Register of Regulations* on April 1, 2020 (Vol. 23, Issue 10). Following notice and a public hearing on the proposed adoption of amendments to rule 7.0 *Conducted Electrical Weapon (CEW)*, 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 *require training for a conducted electrical weapon to be consistent with manufacturer recommendations, and to have records maintained by the Constable's entity.*

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 *require training for a conducted electrical weapon to be consistent with manufacturer recommendations, and to have records maintained by the Constable's entity.*
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 *require training for a conducted electrical weapon to be consistent with manufacturer recommendations, and to have records maintained by the Constable's entity.*

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 *August 11, 2020.*
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the *21st day of May, 2020.*

Lt. Colonel Melissa A. Zebley
William H. Leonard, Esquire
Captain Diane Smith

Mr. Jeffrey Horvath
Mr. John F. Tharan

May 21, 2020

2400 Board of Examiners of Constables

1.0 Licensing

- 1.1 All applicants must submit written testimony from five 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. Proof that the evaluation has been completed shall be provided, with the initial application for constable commission, to the Professional Licensing Section unless there is a documented issue, in which case the complete evaluation will be provided for review by the Board.
 - 1.4.1 Applicants, who were previously commissioned as a constable approved by the Board, and have not been active within the last five years, will be considered for commissions on a case-by-case basis. Applicants, who were a prior constable approved by the Board, and have not been active for over five years, will be required to take an MMPI or the PAI, under the conditions noted in subsection 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. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the full Academy course.
- 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. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the full Academy course.
- 1.6 Applicants, who have been law enforcement officers in the past, within or outside the State of Delaware, but have been away from active law enforcement for more than five years, will be required to take an MMPI or the PAI, under the conditions noted in subsection 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. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the full Academy course.
- 1.7 All prior law enforcement applicants must take an approved Constable Orientation Overview session and test, approved and administered by a Board approved facility. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the full Academy and test.
- 1.8 Applicants who are retired military law enforcement, corrections officers, or probation & parole shall take the Academy and submit to the MMPI or PAI.
 - 1.8.1 At the discretion of the Board, for good cause shown, the Academy may be waived.
- 1.9 If an applicant wishes to work for more than one agency, they must submit an application. All other requirements do not need to be submitted as they are already on file in the Professional Licensing Section. Any commissioned constable currently employed with an approved entity may, with the approval of the Director, be commissioned to work with any other approved entity for the purpose of new or secondary employment as a constable. The constable will be allowed to work for the new entity upon such approval and receiving their new commission and identification card. Any approval must be affirmed and voted on by the Board at the next scheduled meeting.
- 1.10 All applicants seeking a new commission as a constable shall be required to submit a \$200.00 licensing fee.
- 1.11 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.
- 1.12 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)

20 DE Reg. 472 (12/01/16)

22 DE Reg. 70 (07/01/18)

22 DE Reg. 685 (02/01/19)

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

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

3.0 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)

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

4.0 Badges and Vehicle Markings

- 4.1 No person licensed under 10 **Del.C.** Ch. 27 shall wear or display any uniform, patch, badge, seal, vehicle and the markings, letterhead, business card, advertisement, or other form of publication unless first approved by the Board of Examiners.
- 4.2 Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests without proper authorization.
- 4.3 No such items will be approved by the Board if the item will mislead the public by confusing the entity and/or the constables with official law enforcement agencies and/or personnel.
- 4.4 All persons licensed under 10 **Del.C.** Ch. 27 shall wear or display their assigned badge visibly on the outermost garment.
- 4.5 Vehicle Identification
- 4.5.1 No vehicle utilized for purposes covered by 10 **Del.C.** Ch. 27 shall have an appearance that creates a reasonable likelihood of confusion with a police vehicle used by the Delaware State Police or a law enforcement agency of any state or governmental subdivision. The Board of Examiners shall have discretion to review the appearance of vehicles, and to make comparisons with known law enforcement vehicles, in order to enforce this Section.
- 4.5.2 In the event that a vehicle is not approved by the Board of Examiners pursuant to Section 4.0, the Board may indicate what changes to the vehicle appearance would be sufficient to satisfy the standards and criteria set forth above.
- 4.5.3 Auxiliary lights on vehicles, used for patrol, shall be amber and/or white only. Other color lights must be approved by the Secretary of Safety and Homeland Security. Use of sirens is prohibited.

Adopted 05/16/00

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

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

21 DE Reg. 500 (12/01/17)

5.0 Firearms 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.
- 5.2 No individual licensed under 10 **Del.C.** Ch. 27 shall carry a firearm unless that individual has first passed an approved firearms course of instruction and an initial qualification administered by an approved 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). If waived, they must show proficiency and qualify a day and low light shoot with an approved firearms instructor. The initial qualification course shall 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. Should the initial qualification course occur after September 30th and before December 31st, a waiver of the 2nd day qualifier may be obtained through a petition to the Director.
- 5.3 In order to open carry a firearm while in the performance of their duties, individuals licensed to carry a firearm under 10 **Del.C.** Ch. 27 must shoot a minimum of three qualifying shoots per calendar year, scheduled on at least two separate days, with a minimum 90 days between scheduled day shoots. Of these three, there will be one mandatory "low light" shoot which may be combined with a day shoot. Two day shoots shall not be completed on the same date. These qualifying shoots will be administered by an approved firearms instructor.

- 5.3.1 An individual not meeting the minimum qualifications set forth in subsection 5.3 may have their firearms license suspended until such time that they meet the minimum three qualifying shoots within the calendar year.
- 5.4 Only the handguns with the following calibers are permitted:
- 5.4.1 9mm;
 - 5.4.2 .357;
 - 5.4.3 .38;
 - 5.4.4 .40;
 - 5.4.5 .45; or
 - 5.4.6 .357 SIG.
- 5.5 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.
- 5.6 Under no circumstances will anyone under this Section be allowed to carry any type of weapon that is not described herein.
- 5.7 All individuals must meet the minimum qualifications set forth in subsection 5.3 with the same make/model/caliber of weapon that he/she will carry.
- 5.8 All ammunition must be factory fresh (no re-loads).
- 5.9 The minimum passing score is 80%.
- 5.10 All firearms licenses are valid for a period of one year, subject to proof of compliance of Section 5.0 by submission of shoot certification or re-certification forms to the Professional Licensing Section, within 30 days of the date of the qualification shoot.
- 5.11 If an individual requests to carry a different approved weapon, while in the performance of their duties as a constable, other than the one on file with the Professional Licensing Section, prior to making any change, he/she must first seek approval from the Director of Professional Licensing by submitting a request in writing of the make, model, and caliber of the firearm that the individual or organization is seeking to change to. If approved, the individual must submit certification of a day and low light qualification with the new weapon. Once completed, the individual can begin to carry the new weapon and the prior qualification of the previous weapon will become void. Another day shoot with the new weapon must take place after 90 days, during the same calendar year. Should the day and low light qualification with the new weapon occur after September 30th, a waiver of the 2nd day qualifier may be obtained through a petition to the Board. Individuals will only be authorized to carry the weapon they last qualified with and provided the shoot certifications to the Professional License Section. Proof of compliance with Section 5.0 by submission of shoot certification forms to the Professional Licensing Section, must be received within 30 days of the date of the qualification shoot.
- 5.12 Firearms Instructors providing instruction under Section 5.0:
- 5.12.1 Firearms instructors must be certified by the National Rifle Association as a Law Enforcement Instructor or through a law enforcement training and standards commission (i.e. C.O.P.T.). Certification by another professional firearms training institution as a "certified law enforcement firearms Instructor" must be approved by the Board. Instructors approved by the Board through another professional firearms training institution will have reciprocity approval with any other Board under Department of Safety and Homeland Security, Division of State Police, Professional Licensing Section.
 - 5.12.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified handgun instructor may only instruct and qualify individuals with the handgun.)
 - 5.12.3 All firearms instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify commissioned individuals.

Adopted 05/20/02

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

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

20 DE Reg. 472 (12/01/16)

23 DE Reg. 226 (09/01/19)

6.0 Baton, Inflammatory Agent Sprays, Chemical Sprays and Handcuffs

- 6.1 Anyone commissioned under 10 **Del.C.** Ch. 27 wishing to carry law enforcement style batons, inflammatory agent sprays, chemical sprays and handcuffs must have completed a training program consistent with the manufacturer's standards, on each and every weapon/item. All certifications/re-certifications must be on file with the Constable's entity and available to the Professional Licensing Section for inspection.

6.1.1 Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director.

6.2 The Board shall have the right to deny any certification or re-certification from an instructor or training program that is deemed to be not within generally accepted practices for the weapon/item. Any denial may be appealed by submitting a request to the Professional Licensing Section and addressing the Board of Examiners.

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

22 DE Reg. 70 (07/01/18)

7.0 Conducted Electrical Weapon (CEW)

~~7.1 In order for a constable to carry/use a conducted electrical weapon (CEW), 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 CEW Instructors~~

~~7.2.1 All CEW 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.~~

7.0 Conducted Electrical Weapon (CEW)

7.1 Anyone commissioned under 10 Del.C. Ch. 27 wishing to carry/use a conducted electrical weapon (CEW), while in the performance of their duties as a Constable under 10 Del.C. Ch. 27, must first complete a training program with an instructor certified by the manufacturer of the CEW. All certifications and re-certifications must be on file with the Constable's entity and available to the Professional Licensing Section for inspection.

7.1.1 All individuals certified to carry/use a CEW, while in the performance of their duties as a Constable under 10 Del.C. Ch. 27, must be recertified in a timeframe consistent with the manufacturer and by an instructor and recertification program approved by the CEW's manufacturer.

7.1.2 The board shall have the right to deny the carrying of any CEW that is found to not be within accepted industry standards or unsafe for the purposes of performing their duties as a Constable under 10 Del.C. Ch. 27.

7.2 The Board shall have the right to deny any certification or re-certification from an instructor or training program that is deemed to not be within generally accepted practices for the manufacturer of the CEW. Any denial may be appealed by submitting a request to the Professional Licensing Section and addressing the Board of Examiners.

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

19 DE Reg. 426 (11/01/15)

8.0 Canine

8.1 Anyone commissioned under 10 Del.C. Ch. 27 wishing to use a canine, both the constable and the canine must have completed a training program consistent with canine law enforcement standards. All certifications/re-certifications must be on file with the Constable's entity and available to the Professional Licensing Section for inspection.

8.1.1 Under no circumstances would a person be permitted to substitute one canine for another, unless first approved by the Director.

8.2 The Board shall have the right to deny any certification or re-certification from an instructor or training program that is deemed to be not within generally accepted practices for the canine standards. Any denial may be appealed by submitting a request to the Professional Licensing Section and addressing the Board of Examiners.

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

22 DE Reg. 70 (07/01/18)

9.0 Minimum Training Standards and In-Service Training

9.1 The Constable Academy, administered through a Board approved facility, shall instruct applicants in the minimum training standards established by the Board. The Academy shall be a minimum of 180.5 hours and include, but is not limited to the following courses:

Introduction to law enforcement and constables; constitution and bill of rights; other police agencies/fire departments/ambulance jurisdictions; basic defensive driving; traffic investigations; criminal investigations; sex crimes; criminal code; handling person with disabilities; interventions with people suffering with mental health and substance abuse; civil disobedience; labor disputes (crowd control); active shooter; courtroom

procedure and demeanor; cultural diversity and community relations; domestic violence; basic first aid; CPR; AED; NIMS 700; ICS 100; information systems – communications, report writing, DELJIS; interview/interrogation techniques; manual traffic control; juvenile procedures; laws of evidence and search and seizure; laws of arrest; police communication and crisis intervention; police discipline and ethics; baton/nightstick/pr24/chemical spray/handcuffing; officer survival/defensive techniques; patrol procedures; drug identification and controlled substances; canine; and 4th amendment.

- 9.2 Applicants attending the Academy must take and pass the test with a minimum score of 75%. Any failed test may be taken again within two weeks of the first test. A second failed test will require the applicant to take the Academy again.
 - 9.2.1 Applicants wishing to attend the Academy must be employed and sponsored by an approved constable entity for acceptance into the Academy, with the exception of the provision in subsection 9.2.2.
 - 9.2.2 Other attendees, not affiliated with a constable entity, must be approved by the Director, by showing the cause and need to attend such training/Academy. The Director can only consider attendees who are currently employed by a local, state or federal government entity.
- 9.3 In-service training shall be completed every year through a Board approved facility. Odd years will be eight hours of classroom instruction. Even years will be done by completing an on-line modular and test.
 - 9.3.1 All in-service training courses must be approved by the Board.
 - 9.3.2 Failure to complete the in-service training every year shall be grounds for suspension or revocation of a current commission. Any commissioned individual not obtaining the in-service training for a given year by the last class offered shall be placed on emergency suspension immediately. Any training missed, or not completed, by a commissioned individual must be completed before the emergency suspension may be administratively lifted. On-line training must be made up on-line and classroom instruction must be made up in person in the classroom. Notwithstanding the foregoing, the Board may consider extenuating circumstances for reinstatement at its discretion.
 - 9.3.3 Any in-service training test must be passed with a minimum score of 75%. Any failed test may be taken again within two weeks of the first test. A second failed test will require the individual to take the training again.

Adopted 09/10/86

Amended 05/16/00

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

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

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

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

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

19 DE Reg. 652 (01/01/16)

20 DE Reg. 472 (12/01/16)

21 DE Reg. 500 (12/01/17)

22 DE Reg. 70 (07/01/18)

22 DE Reg. 685 (02/01/19)

23 DE Reg. 226 (09/01/19)

24 DE Reg. 180 (08/01/20) (Final)