

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2346
(Senators Traynor, Lyson, Robinson)
(Representatives Carlisle, DeKrey, Grande)

AN ACT to create and enact three new sections to chapter 12-63 of the North Dakota Century Code, relating to membership on the peace officers standards and training board, temporary suspensions, and cost of prosecution; to amend and reenact sections 12-62-01, 12-62-01.1, 12-62-02, 12-62-07, 12-62-10, 12-63-01, 12-63-02, 12-63-03, 12-63-04, 12-63-05, 12-63-09, 12-63-10, and 12-63-12 of the North Dakota Century Code, relating to training responsibilities, statistics collection, and the peace officers standards and training board; to repeal sections 12-62-03, 12-62-05, 12-62-06, and 12-62-09 of the North Dakota Century Code, relating to law enforcement training; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-62-01 of the North Dakota Century Code is amended and reenacted as follows:

12-62-01. Criminal justice training and statistics division - Personnel - Purpose. ~~A criminal Criminal justice training and the collection of statistics division is created under the must be conducted by the office of attorney general. The division shall consist of a director and such other personnel as may be designated by the attorney general. The attorney general shall supervise the criminal justice training and statistics division. It~~ The office of attorney general shall ~~be the purpose of the criminal justice training and statistics division to certify and~~ conduct the training of peace officers, local correctional officers, and sheriffs, ~~to conduct training for state's attorneys and defense attorneys, and to~~ gather, analyze, and disseminate information regarding the state's criminal justice system.

SECTION 2. AMENDMENT. Section 12-62-01.1 of the North Dakota Century Code is amended and reenacted as follows:

12-62-01.1. County and city officials to furnish crime statistics to director. ~~In an effort to~~ To assist in controlling crime in the state through the use of reliable statistics relating to crimes and criminal activity, the ~~director, with the approval of the attorney general; may call upon and obtain from the clerks of district courts, municipal courts, sheriffs, police departments, and state's attorneys~~ criminal justice agencies all information ~~that the director may deem~~ attorney general deems necessary ~~in ascertaining to ascertain the condition status of crimes and criminal activity in North Dakota. It is the duty of the officials to furnish any such the information so requested by the director~~ attorney general on whatever forms or in whatever manner the ~~director~~ attorney general may prescribe.

SECTION 3. AMENDMENT. Section 12-62-02 of the North Dakota Century Code is amended and reenacted as follows:

12-62-02. Powers and duties. ~~The powers and duties of the criminal justice training and statistics division shall be~~ To ensure adequate training for law enforcement and to ensure the comprehensive collection of crime statistics the attorney general shall:

1. ~~To determine~~ Determine the specialized training needs of peace officers and conduct such training.
2. ~~To conduct training for peace officers which will meet their specialized needs.~~
3. ~~To prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools.~~

- ~~4. To certify curriculum, instructors, schools, and officers that have met the training certification criteria.~~
- ~~5. To establish the curriculum for basic and advanced peace officer training.~~
- ~~6. To prescribe minimum standards of sidearm training for peace officers prior to carrying a sidearm, and to certify officers who have met the established standards.~~
- ~~7. To conduct and certify training for local correctional officers.~~
- ~~8. To conduct training which meets the approved coursework requirements for continuing legal education credit for state's attorneys and their assistants, and for defense attorneys.~~
- ~~9. To develop and maintain a manpower, training, and certification information system.~~
- ~~10. To develop and maintain a jail information system.~~
- ~~11. To analyze data available from the division's information system and other criminal justice related information systems and to compile appropriate periodic reports based on that data.~~
- ~~12. To assist state and local criminal justice agencies in the development of record systems and information systems.~~
- ~~13. To coordinate the utilization of data which is generated by state and local record information systems~~ Develop and maintain a staffing, training, and certification information system.
3. Analyze criminal justice data and compile appropriate periodic reports.
4. Coordinate the utilization of data generated by state and local record information systems.
- ~~14. 5. To conduct~~ Conduct research projects designed to respond to criminal justice system needs and executive, judicial, or legislative branch requests.
- ~~15. 6. To accept~~ Accept and administer gifts, or grants, or contracts with persons or organizations, including the federal government, on such terms as may be beneficial to the state.

SECTION 4. AMENDMENT. Section 12-62-07 of the North Dakota Century Code is amended and reenacted as follows:

12-62-07. Sheriffs - Training. Every newly elected or appointed sheriff shall attend within the first year of employment a course of training on civil duties conducted by the ~~division~~ office of attorney general. The curriculum, location, and dates shall be determined by the ~~division~~ office of attorney general in cooperation with the sheriff's association. ~~Such~~ The course shall be open to all sheriffs and deputies.

SECTION 5. AMENDMENT. Section 12-62-10 of the North Dakota Century Code is amended and reenacted as follows:

12-62-10. Rulemaking power. The attorney general may adopt rules to carry out the powers and duties ~~assigned to the criminal justice training and statistics division~~ designated in this chapter. All rules adopted by the attorney general and appeals therefrom shall be in accordance with chapter 28-32.

SECTION 6. AMENDMENT. Section 12-63-01 of the North Dakota Century Code is amended and reenacted as follows:

12-63-01. Definitions. ~~In sections 12-63-01 through 12-63-14, unless the context or subject matter otherwise requires~~ As used in this chapter:

1. "Board" means the peace officer standards and training board.
2. ~~"Director" means the director of the division.~~
3. ~~"Division" means the training section of the bureau of criminal investigation.~~
4. "Peace officer" means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law.

SECTION 7. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

Peace officer standards and training board - Membership - Duties. The peace officer standards and training board consists of nine members including the director of the law enforcement training center, six peace officers, one county government representative, and one city governmental representative. With the exception of the director of the law enforcement training center, all members must be appointed by the attorney general and serve staggered two-year terms. With the exception of the county government representative, the city government representative, and the director of the law enforcement training center, a member may not serve more than three consecutive terms. The attorney general shall also appoint the chairman of the board. The office of attorney general shall provide support staff to the board, including an employee to serve as the secretary of the board and as an ex officio nonvoting member of the board.

SECTION 8. AMENDMENT. Section 12-63-02 of the North Dakota Century Code is amended and reenacted as follows:

12-63-02. License required. An individual may not perform peace officer law enforcement duties in this state unless the individual is licensed ~~under sections 12-63-01 through 12-63-14~~ as required in this chapter.

SECTION 9. AMENDMENT. Section 12-63-03 of the North Dakota Century Code is amended and reenacted as follows:

12-63-03. Persons and practices not affected. ~~Sections 12-63-01 through 12-63-14 do~~ This chapter does not prevent or restrict the practice of peace officer duties or activities of:

1. Auxiliary personnel such as members of organized groups for purposes such as posse, search and rescue, and security at dances, if the group operates as adjunct to the police or sheriff's department, and does not have arrest powers or peace officer authority delegated to its members by the department.
2. A reserve officer such as an individual used by a municipal, county, or state law enforcement agency to provide services to that jurisdiction on a nonsalaried basis and who is granted full arrest authority.
3. A person who provides private investigative services in this state.
4. A person doing private security work or any private security agency.
5. A person performing peace officer duties in an official capacity as a federal officer.

SECTION 10. AMENDMENT. Section 12-63-04 of the North Dakota Century Code is amended and reenacted as follows:

12-63-04. Board - Powers - Duties - Authority. The board shall administer, coordinate, and enforce ~~sections 12-63-01 through 12-63-14~~ the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under ~~sections 12-63-01 through 12-63-14~~ this chapter.

1. The board shall:
 - a. Prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools;
 - b. Certify curriculum, instructors, schools, and officers that have met the training certification criteria;
 - c. Establish the curriculum for basic and advanced peace officer training; and
 - d. Prescribe minimum standards of sidearm training and certification for peace officers before they may carry a sidearm.
2. The board shall keep records and minutes necessary to carry out its functions. The board may:
 1. a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating ~~sections 12-63-01 through 12-63-14~~ the provisions of this chapter or rules adopted by the board.
 2. b. Examine, under oath, any applicant for licensing.
 3. c. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.
 4. d. Adopt rules ~~that relate~~ relating to the professional conduct ~~or carry out the policy of~~ sections 12-63-01 through 12-63-14 of peace officers and to implement the requirements of this chapter, including rules relating to professional licensure, continuing education, and ~~to establishment of~~ ethical standards of practice, for persons holding a license to practice peace officer duties.

SECTION 11. AMENDMENT. Section 12-63-05 of the North Dakota Century Code is amended and reenacted as follows:

12-63-05. Fees. The board shall prescribe by rule the fee for application for examination, for an initial license, for renewal of a license, and for late renewal of a license. The board shall administer fees received under ~~sections 12-63-01 through 12-63-14~~ this chapter in accordance with section 54-44-12.

SECTION 12. AMENDMENT. Section 12-63-09 of the North Dakota Century Code is amended and reenacted as follows:

12-63-09. Limited license. Pending successful completion of the written examination required ~~by sections 12-63-01 through 12-63-14~~ in this chapter, the board may grant a limited license to a person who has completed the education, medical, and psychological examination requirements and has been qualified to carry a sidearm. The limited license allows the person to practice peace officer duties in accordance with rules of the board. Except as otherwise provided, the limited license is valid for no longer than the earlier of the expiration of the next available training session, until the person is issued a license under section 12-63-10, or until the limited license is suspended or revoked by the board. After being employed but before taking the written examination, the person shall attend the first available basic training program recognized by the board. The limited license may be renewed one time if the person has failed the examination. On terms and conditions prescribed by the board, the limited license is limited to the jurisdiction in which the person is employed.

SECTION 13. AMENDMENT. Section 12-63-10 of the North Dakota Century Code is amended and reenacted as follows:

12-63-10. Issuance of license. The board shall issue a license to any person who meets the requirements of ~~sections 12-63-01 through 12-63-14~~ this chapter and who has paid the prescribed license fee.

SECTION 14. AMENDMENT. Section 12-63-12 of the North Dakota Century Code is amended and reenacted as follows:

12-63-12. Adverse license action - Appeal.

1. The board may deny a license, refuse to renew a license, suspend a license, or revoke a license, or may impose probationary conditions if the person:
 - a. Has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in any state, or before any court, of an offense determined by the board to have a direct bearing upon a person's ability to serve as a peace officer, or the board determines, following a conviction or adjudication, that the person is not rehabilitated under section 12.1-33-02.1.
 - b. Has used unjustified deadly force in the performance of the duties as a peace officer as described in section 12.1-05-07.
 - c. Has made a false material statement under oath to the board.
 - d. Has made a false material statement to the board while obtaining or renewing a license or permit.
 - e. Has violated ~~sections 12-63-01 through 12-63-14~~ this chapter.
2. Denial, refusal to renew, suspension, revocation, or imposition of probationary condition on a license may be ordered by the board after a hearing in a manner provided by rules adopted by the board. An application for reinstatement may be made to the board one year from the date of the refusal to renew or the revocation of the license. The board may accept or reject an application for reinstatement and may hold a hearing to consider the reinstatement. In the case of a denial of an application, the applicant may not reapply for a period of one year from the date of the order of denial.
3. An appeal from the final decision of the board to refuse to issue, to not renew, to suspend, or to revoke a license may be made to the district court. Venue is the county in which the aggrieved person resides. The appeal must be made within ninety days from the service of the decision on the person.

SECTION 15. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

Temporary suspension - Appeal.

1. The board may order a temporary suspension of a peace officer's license ex parte if the board finds, based on verified evidence, probable cause to believe that:
 - a. A peace officer has violated this chapter or a rule of the board;
 - b. Continued performance of peace officer law enforcement duties would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending; and

- c. Immediate suspension of the peace officer's license is required to reasonably protect the public from that risk of harm.

For purposes of this section, evidence is verified if sworn to before an officer authorized to administer oaths or equivalent affirmations.

2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.
3. The board shall set the date of a full hearing on the cause and grounds for discipline regarding the license at a time not later than sixty days after the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order, the board shall serve the peace officer with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
4. The peace officer may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition. Unless otherwise ordered by the district court, an appeal by the peace officer of the ex parte temporary suspension order does not stay the effectiveness or validity of the ex parte temporary license suspension.

SECTION 16. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

Costs of prosecution - Disciplinary proceedings. In a disciplinary proceeding in which disciplinary action is imposed against a peace officer, the board may direct the peace officer to pay the board a sum not to exceed the reasonable and actual costs of the case, including reasonable attorney's fees incurred by the board or its authorized representatives in the investigation, prosecution, resolution, and hearings, whether held before the board, a hearing officer, or administrative law judge. When applicable, the peace officer's license may be suspended until the costs are paid to the board. A peace officer may challenge the reasonableness of any cost in a hearing under chapter 28-32. The administrative law judge may approve, deny, or modify any cost, and determination of the judge is final. If requested, the hearing must occur before the peace officer's license may be suspended for nonpayment.

SECTION 17. REPEAL. Sections 12-62-03, 12-62-05, 12-62-06, and 12-62-09 of the North Dakota Century Code are repealed.

SECTION 18. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2346 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 0 Absent 2

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 81 Nays 11 Absent 2

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at ____ o'clock _____ M.

Secretary of State