

## **CHAPTER 12-63**

### **PEACE OFFICER STANDARDS, TRAINING, AND LICENSING**

#### **12-63-01. Definitions.**

As used in this chapter:

1. "Board" means the peace officer standards and training board.
2. "Part-time peace officer license" means a license issued to an individual authorized by law or appointed by a criminal justice agency of this state on a salaried or nonsalaried basis to enforce the law and to conduct or engage in investigations of violations of the law for no more than an average of twenty hours per week, not including time spent on call when no call to active duty is received, calculated on an annual basis.
3. "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.
4. "Reserve peace officer license" means a license issued to an individual authorized by law or appointed by a criminal justice agency of this state on a salaried or nonsalaried basis to enforce the law and to conduct or engage in investigations of violations of the law within the scope of the reserve peace officer's training.

#### **12-63-01.1. 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 government 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.

#### **12-63-02. License required.**

An individual may not perform peace officer law enforcement duties in this state unless the individual is licensed as required in this chapter.

#### **12-63-02.1. Part-time peace officer license.**

1. Except as provided in this section, all provisions of this chapter apply to part-time peace officer licenses. Except as limited by this section, a part-time licensed peace officer of this state has the authority of a licensed peace officer of this state.
2. The board shall issue a part-time license to any individual appointed by a criminal justice agency who meets the requirements of this chapter and the rules of the board for a part-time peace officer license.
3. A criminal justice agency may appoint part-time licensed peace officers to supplement and assist licensed peace officers. A criminal justice agency may not appoint a part-time licensed peace officer unless the part-time licensed peace officer acts under the direct or indirect supervision of a licensed peace officer designated by the criminal justice agency.
4. A part-time licensed peace officer may not exercise peace officer duties, including the exercise of arrest authority, when off duty.
5. Unless the part-time licensed peace officer has a valid North Dakota concealed weapons license, a part-time licensed peace officer may not carry a duty weapon or concealed weapon when off duty.
6. The board shall establish criteria for part-time licenses, including training curriculum, examination requirements, weapon training and certification, licensing requirements, and continuing education requirements.

7. The board shall adopt rules to implement part-time peace officer licenses and shall establish by rule fees for application for examination, initial licensing, renewal and late renewal, and reinstatement of part-time peace officer licenses.

#### **12-63-02.2. Tribal police officers.**

1. A tribal police officer of a federally recognized Indian tribe in this state who meets the requirements of this chapter and the rules adopted by the board is eligible for a peace officer license or part-time peace officer license. The board may waive the training program required for licensure for a tribal police officer.
2. The board shall issue a peace officer license or part-time peace officer license to a tribal police officer who is eligible for a peace officer license or part-time peace officer license under this section and who has paid the prescribed license fee if:
  - a. The tribal police officer has been appointed as a special deputy in accordance with section 11-15-02;
  - b. The tribal police officer is employed by the state or a political subdivision;
  - c. There is an agreement between the state or a political subdivision and the tribe for tribal police officers to perform law enforcement services; or
  - d. The tribal police officer has completed the training program unless waived by the board.
3. A tribal police officer who is a member of a police force of a tribal government and who is licensed under this section may exercise the powers of a peace officer of this state within the exterior boundaries of the reservation, or off the reservation, in accordance with the terms and conditions of the special deputy appointment, the employment agreement, or the agreement between the state or political subdivision and the tribe.
4. A tribal police officer who has a peace officer license under this section is subject to this chapter and the rules adopted by the board, including requirements for license renewal or reinstatement, annual sidearm qualification, and continuing education.
5. The state or political subdivision is not liable for any act or omission of a tribal police officer exercising peace officer powers authorized by an agreement between the state or a political subdivision and a tribe.
6. Notwithstanding section 12-63-02, a tribal police officer is not required to be licensed in this state to provide emergency law enforcement services or to provide mutual aid to a law enforcement officer of the state or a political subdivision within the exterior boundaries of the reservation or off the reservation.
7. This section does not diminish or expand the jurisdiction of any tribe or the state.

#### **12-63-02.3. Reserve peace officer - License.**

1. Except as otherwise provided in this section, all provisions of this chapter apply to licensed reserve peace officers.
2. The board shall issue a reserve peace officer license to an individual who is appointed by a criminal justice agency and meets the requirements of this chapter and the rules established by the board.
3. A criminal justice agency may appoint a licensed reserve peace officer to supplement and assist a licensed peace officer. If a criminal justice agency appoints a licensed reserve peace officer, the licensed reserve peace officer must be under the supervision of a licensed peace officer designated by the criminal justice agency.
4. A licensed reserve peace officer may not exercise reserve peace officer functions when off duty.
5. The board shall establish criteria for reserve licenses.

#### **12-63-03. Persons and practices not affected.**

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 personnel operate as adjunct

- to the police or sheriff's department, and do not have arrest powers or peace officer authority delegated to the personnel by the department.
- 2. A person who provides private investigative services in this state.
- 3. A person doing private security work or any private security agency.
- 4. A person performing peace officer duties in an official capacity as a federal officer.

#### **12-63-04. Board - Powers - Duties - Authority.**

The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under 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:
  - a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter or rules adopted by the board.
  - b. If the board deems an examination to be in the best interest of public safety, require, with cause, any licensed peace officer complete a physical or psychological examination, or both, by a psychologist, licensed physician, or other qualified evaluation professional selected by the board to determine mental and physical competency.
  - c. Examine and review any medical or psychological records, including test results relative to the examination or treatment of the licensed police officer under subdivision b. A written request from the board is legal authorization to release medical and psychological information pertinent to peace officer licensure. The medical or psychological information provided to the board is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
  - d. Examine, under oath, any applicant for licensing.
  - e. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.
  - f. Adopt rules relating to the professional conduct of peace officers and to implement the requirements of this chapter, including rules relating to professional licensure, continuing education, and ethical standards of practice, for persons holding a license to practice peace officer duties.
  - g. Expend funds to sponsor training for instruction of licensees, including up to fifty thousand dollars annually from fees collected by the board.
3. The board shall adopt rules relating to the professional conduct of licensed peace officers involved in confidential informant agreements under chapter 29-29.5, and shall receive complaints and make determinations if an officer's conduct violated the protections provided in chapter 29-29.5. Annually, the board shall conduct an audit evaluating the effectiveness of confidential informant training requirements.
4. The board shall establish penalties and enforce violations of protections provided in chapter 29-29.5. The penalties established must be formulated based on the nature, severity, gravity, and recurrence of violations. The board may deny, suspend, or revoke a license or may impose probationary conditions, including remedial training.
5. The board may issue certifications indicating whether law enforcement agencies comply with requirements for grant funding purposes.

**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, for suspension of a license, for reinstatement of a license after revocation, for a duplicate license, for a late sidearm qualification, for late instructor renewal, and for late renewal of a license. The board shall administer fees received under this chapter in accordance with section 54-44-12.

**12-63-06. Application for license.**

An applicant for a license as a peace officer shall file a written application provided by the board showing to the satisfaction of the board that the applicant:

1. Is of good moral character.
2. Possesses a high school diploma or general education equivalency certificate.
3. Has had a complete background investigation conducted by the parent agency or the division.
4. Has passed a medical and psychological examination approved or prescribed by the board.
5. Has successfully completed a training program recognized by the board.
6. Has passed an examination as provided in section 12-63-07 or has arranged to take such an examination and is eligible for a limited license under section 12-63-09.
7. Has complied with rules of the board.

**12-63-07. Examination for license.**

1. Only a person satisfying the requirements of subsections 1 through 5 of section 12-63-06 may apply for examination. The application must be filed in the manner the board prescribes and be accompanied by the fee prescribed under section 12-63-05. The fee is nonrefundable. A person who fails an examination may apply for re-examination upon payment of the prescribed fee.
2. Each applicant for licensing must be examined by written examination as established by the board.
3. Applicants for licensing must be examined at a time and place and under supervision as the board requires.
4. Applicants may obtain their examination scores and may review their papers in accordance with rules adopted by the board.

**12-63-08. Exception from training requirement - Issuance of certain licenses as of right.**

Repealed by S.L. 2013, ch. 101, § 3.

**12-63-09. Limited license.**

1. The board may grant a limited license to an individual who has completed the education, medical, psychological examination, criminal history background investigation, and sidearm requirements of the board and this chapter.
2. The limited license allows the individual to perform peace officer duties in accordance with the rules of the board.
3. After becoming employed as a peace officer, the individual shall attend the first available basic full-time peace officer training course authorized by the board in accordance with the rules of the board.
4. The limited license is limited to the jurisdiction in which the person is employed and is valid until:
  - a. The individual has completed the first available basic full-time peace officer training course authorized by the board; and
  - b. The individual has completed the licensing examination and has been issued a peace officer license by the board.
5. The limited license may be renewed one time if the individual has failed the licensing examination.

6. The limited license is subject to section 12-63-12.

#### **12-63-10. Issuance of license.**

The board shall issue a license to any person who meets the requirements of this chapter and who has paid the prescribed license fee.

#### **12-63-11. Renewal of license.**

1. A license expires three years from the date of its issuance and must be renewed in the manner prescribed by the board and on payment of a renewal fee and on a show of proof that the individual has met the requirements established by the board for continuing education. The board may provide for the late renewal of a license on payment of a late fee, but a late renewal of a license may not be granted more than one year after expiration of the license.
2. On request, the board shall grant inactive status to a licensee who does not perform the duties of a peace officer or is no longer employed by a criminal justice agency. A licensee may retain inactive status indefinitely if the licensee maintains continuing education requirements and renews the license in accordance with board requirements. A licensee on inactive status shall meet the same qualifications, testing, and insurance requirements as are required by law and rule for a licensee on active status.

#### **12-63-12. Grounds for denial, revocation, or suspension of license - Adverse license action - Appeal.**

1. The board shall deny a license, refuse to renew a license, suspend a license, revoke a license, or impose probationary conditions if the individual has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in any state, or before any court, of a felony offense.
2. 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 individual:
  - 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 involving domestic violence or violation of a domestic violence restraining order, an offense involving child abuse or neglect, an offense involving firearms under title 12.1 or title 62.1, or another criminal offense determined by the board to have a direct bearing upon an individual's ability to serve as a peace officer, or the board determines, following a conviction or adjudication, that the individual 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 a psychological or physical condition and the individual is deemed unable to safely and competently perform the duties of a peace officer.
  - f. Has violated a provision of this chapter or a rule of the board.
3. Denial, refusal to renew, suspension, revocation, or imposition of probationary condition on a license may be ordered by the board after a hearing in accordance with chapter 28-32. 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. The board may require an applicant complete a physical or psychological examination, or both, by a psychologist, licensed physician, or other qualified evaluation professional selected by the board before reinstatement. The board may examine and review any relevant medical or psychological records associated with the applicant's examination. A written request from the board is legal

authorization to release medical or psychological information pertinent to peace officer licensure. The board shall deny licensure or reinstatement of an applicant if the applicant refuses to release requested medical or psychological information. The medical or psychological information provided to the board is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. 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.

4. 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 individual resides. The appeal must be made within thirty days from the service of the decision on the individual.

#### **12-63-13. Notice and hearing on adverse license action.**

The board may, on a verified complaint of any person setting forth facts which, if proven, would constitute grounds for refusal, suspension, nonrenewal, or revocation of a license, investigate the actions of any person holding or claiming to hold a license. Before taking the adverse action, the board shall, at least ten days before the date set for the hearing, give written notice to the subject of the adverse action of any charges made and shall afford that person an opportunity to be heard in person or by counsel on the matter. The written notice may be served by personal service or by registered mail. If service cannot be made by personal service or registered mail, then service may be made by publication in the county of residence specified by the person in the person's last communication with the board. At the time and place fixed in the notice, the board shall conduct the hearing on the charges. Both the accused person and the complainant are entitled to ample opportunity to present in person or by counsel, statements, testimony, evidence, and argument pertinent to the charges or to any defense. The board may continue the hearing from time to time.

#### **12-63-14. Penalty.**

Any person who willfully violates this chapter is guilty of a class B misdemeanor.

#### **12-63-15. 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.

**12-63-16. 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.