

**LAW ENFORCEMENT PROFESSIONAL STANDARDS SUBCOMMITTEE**  
**Legislative Rules Retreat**  
**Stonewall Jackson Resort**  
**Maple Room**  
**Roanoke, West Virginia**  
**April 22-23, 2014**

**MEMBERS PRESENT:** Mayor Bob Newell  
Sheriff Tom McComas  
Retired Chief Steve Stephens  
Ms. Patti Hamilton

**MEMBERS REPRESENTED:** Colonel Jay Smithers by  
Captain David Lee  
Chief Ray Fridley by  
Chief Brad Rinehart  
Retired Sergeant J. L. Johnson for the  
WV Human Rights Commission

**MEMBERS ABSENT:** Colonel Dave Murphy  
Retired Lieutenant Dave Malcomb  
Retired Lieutenant Steve Walker  
Retired Lieutenant Terry Miller

**STAFF:** Retired Captain Chuck Sadler  
Ms. Kim Mason  
Ms. Judy Strickland

**GUESTS:** Secretary Joe Thornton, DMAPS  
Deputy Secretary Christy Morris, DMAPS  
Associate Deputy Attorney General Marty Wright

The April 22-23, 2014 meeting of the Law Enforcement Professional Standards (LEPS) Subcommittee addressing Legislative Rules Review for CSR149-1 and 149-2 was called to order by the Chair, Retired Chief Stephens at 1:00 p.m. with seven (7) members either present or represented. Sheriff McComas arrived at the meeting at 2:30 p.m. This meeting was held in the Maple Room of Stonewall Jackson Resort in Roanoke, West Virginia.

Retired Captain Sadler gave an overview of the Agenda for the rules review. He informed the Subcommittee that they would be looking at the current versions of 149-1 and 149-2 to determine revision, deletions or additions to the rules that the members would want to see addressed during the 2015 session of the legislature to enhance the training and certification of law enforcement officers within the state. As was also listed on the agenda he noted that there would be discussion concerning the certification review process and the makeup of the basic instructor development course.

As to the basic instructor development course material Retired Captain Sadler noted to the members that information had been sent to them concerning how similar programs were structured in other states. As there was still other information being sent in and Sergeant Portaro, who had recently been approved to handle this course presentation here in West Virginia, had not had an opportunity to fully review that material and the previous version of the program we use, Retired Captain Sadler asked that the discussion on this item be tabled to a later meeting. There was consensus agreement by the members present to table the discussion on the basic instructor development course content to a later date.

Retired Captain Sadler then initiated a discussion asking the members for direction on how they wanted a matter involving the entry of a provisional plea of guilty handled where the department who employed the officer involved had not terminated him and wanted him to return to work. Did the members want a certification review set on the matter to be made familiar with the circumstances or not. No specific details were given as to the offense, officer or agency. A discussion followed by the members present as to the status of the officer, whether the matter was a reactivation review question or a certification review to determine if any action was required. It was the consensus of those present that a certification review needed to be set to determine if a guilty plea had been entered and if so, how that plea impacted the officer's certification as an officer within the state. Retired Captain Sadler advised he would move to set the officer for a certification review.

Retired Chief Stephens and Retired Captain Sadler then began a review of 149-2 to determine the changes that the members felt needed to be proposed to be made. In lieu of going through the rule "line by line/word by word" they advised that such a detailed review was not required this year due to the work that the members had completed in previous years. They stated that they would be recommending consideration of certain specific sections of the rule for review and discussion. The first

section to be discussed would be the section addressing the medical standards set forth in the rule, 149-2-8.5

This section of the rule had been looked at and discussed during the review the year before. At that time the members had approved an expenditure from the LEPS Fund for a physician to review the rule and make recommendations as to any changes required. Such a review had not been completed as yet due to the complexities of identifying the best person to review this section of the rule in line with setting or changing criteria that would determine an individual's medical condition in terms of his or her ability to learn and complete the essential task required to be a law enforcement officer within the state. They will continue to work on identifying a process to determine and to retain a person qualified to complete such a review.

There was then a general discussion as to the consideration of while keeping the medical standards listed within section 8.5 as the medical standards to look at removing them from the rule in terms of the actual listing of each standard within the rule. As had been done with the PAT standards a few years back it was the consensus agreement of the members present that wording be developed to reference the standards, but to allow, by removing them from actual listing within the rule, modification of the standards by Subcommittee votes/actions at the regular meetings in lieu of having to go through the full legislative review process. The standards would be posted on the LEPS Program page on the DJCS website. The members present were in consensus agreement to make this change in where and how the medical standards were listed.

A discussion then followed as the process for individuals to make requests for accommodations to the listed rules and requirements as to the entry level training program. While there had been no specific problems with the rule as set forth the members wanted to make sure that the procedures set forth gave the person an adequate avenue to make such a request for the members to evaluate it properly. Upon completion of the discussion the members were in consensus agreement that the procedure set forth in the rule at this time adequately addressed the process for submission and evaluations of accommodation requests.

Break at 2:54 p.m.

Returned at 3:00 p.m.

Next discussion by the Subcommittee addressed the head of agency exemption from the certification requirement for all other officers. It was recognized that while issue involved some Sheriffs that the primary group exercising this option were small town chiefs of police. Members want to pursue a statute change within 30-29-5 of State Code to be followed in 2016 legislative session with applicable rule change to require Chiefs of Police to have to qualify and complete in-service training. If the individual does not comply with these minimum standards then they would have to law enforcement powers. Members of the Subcommittee will be contacting their respective

Boards/governing bodies to seek support/approval from each organization/association. Recommended change to code will come either from one of those entities or included in the legislative package submitted by the Governor.

Meeting broke at 3:55 p.m. to resume the next day, Wednesday, April 23, 2014 at 9:00 a.m.

9:03 am, 23 Apr 14

The Subcommittee members returned to the meeting from the break that they had begun at 3:55 p.m. the preceding day with the same individuals present from the day before.

The first item discussed was the firearms compliance requirements as set forth in the rule and how these sections were being adhered to within the state. This training year, with the oversight abilities offered by LEPSIS would be the first training year that officers would be flagged for not completing qualifications, the same as in past years for not completing in-service. Discussion covered how officers appeared to be doing and ways to continue to educate officers on this rule requirement.

Following the discussion of the firearms qualification requirements there was a discussion as to the process for how the Director of Training at the Academy should best review individuals as to whether they met medical standards or not. The current practice and procedures for such reviews was discussed. The members wanted the Director to continue to review officers as they had been. If a specific problem comes up that has not been dealt with before the Director could either make a decision based on his understanding of the rule or request direction from the Subcommittee members.

There was then a discussion concerning an overview of the rule making process and the general dates/time schedule as to what steps needed to be taken to have a rule considered during the 2015 legislative session.

Break at 11:00 a.m.

Returned to meeting at 11:15 a.m.

During this segment the members discussed adding language to 149-2-16 as to the items that they may consider as reasons to revoking or suspending an officer's certification. While it was recognized that the current listing was not a comprehensive one there was consensus agreement from the discussion that wording needed to be added that if a certified officer became unable to carry/possess a firearm, i.e. due to a domestic violence related matter, that his or her certification should be reviewed and appropriate action taken.

Before the lunch break there was also discussion concerning a recommendation to have a new section added to the rule clarifying and describing the appeal rights and

actions to be taken when an individual desires to appeal a decision made by the members. Supervisory Deputy Attorney General Marty Wright will work with Retired Captain Sadler on developing language to be meet this desire and need.

Lunch break at 11:45 a.m.

Returned from lunch at 12:35 p.m.

Retired Lieutenant Terry Miller representing the West Virginia Deputy Sheriff's Association and Retired Corporal Dave Gentry representing Retired Lieutenant Steve Walker of the West Virginia Fraternal Order of Police (FOP-State Lodge) had arrived to participate in the meeting during the lunch break.

On return from lunch Marty Wright reviewed the language and layout proposed to be put in paperwork to be sent to any individual who would be appearing before the Subcommittee members to serve as a guide for them as to what to expect and how the Subcommittee functioned. He reviewed the language in areas addressing:

1. Notice to appear
  - a. Format/timing
  - b. Continuances
2. Appearance before the members
  - a. Executive session
  - b. Legal counsel representation and role
  - c. Questions process
  - d. Witnesses
  - e. How/when a decision is made
3. Post appearance matters
  - a. Before the Subcommittee
  - b. Appeals
4. Miscellaneous items
  - a. Court reporters
  - b. Weapons
  - c. Appearance of officer

A draft copy will be finalized from the discussion during this meeting for review and consideration during a later meeting.

There was a discussion the private citizen tuition process. While the numbers of private citizens had decreased with the ability of former officers who had left the Academy for personal related reasons after two years there were still individuals requesting to attend as private citizens. The members discussed their tuition amount and how it was determined and used.

There was a discussion on whether and how to best handle individuals who were not truthful on paperwork submitted to either the Academy of the LEPS Unit staff for consideration in training or certification decisions. The LEPS Unit staff will review and

make recommendations as to any changes that need to be made as to how to best handle such instances. They are very limited but the members want to make sure the rule allows proper handling and review.

M Wright discussed the proposed changes to legislative rule 149-1. They were not as detailed as he had thought that they would need to be. Some wording changes as to organizations and to remove the sections addressing declaratory judgments under criteria set forth. The members were in consensus agreement to make the changes he recommended. Retired Captain Sadler will have these changes made and bring the rule back before the members at their May 29, 2014 meeting for review and approval.

The Chair asked if there was anything else that the members wished to address concerning 149-1 or 149-2. Hearing nothing else he asked if there was a motion to bring the rule review to a close. Retired Lieutenant Miller made a motion, seconded by Captain Lee, to close this rule review meeting. The motion was passed unanimously with no discussion.

The rules review meeting closed/adjourned at 1:49 p.m.

**LAW ENFORCEMENT PROFESSIONAL STANDARDS SUBCOMMITTEE  
Stonewall Jackson Resort  
Conference Center – Maple Room  
Roanoke, West Virginia**

**April 24, 2014**

**MEMBERS PRESENT:**

Mayor Robert Newell  
Sheriff Tom McComas  
Retired Chief Steve Stephens  
Retired Lieutenant Terry Miller  
Ms. Patti Hamilton

**MEMBERS REPRESENTED:**

Colonel Jay Smithers by  
Captain David Lee  
Chief Ray Fridley by  
Chief Brad Rinehart  
Retired Lieutenant Steve Walker by  
Retired Corporal Dave Gentry  
Retired Sergeant J. L. Johnson for the  
WV Human Rights Commission

**ABSENT:**

Retired Lieutenant Dave Malcomb  
Colonel David Murphy

**STAFF:**

Retired Captain Chuck Sadler  
Associate Deputy Director Leslie Boggess  
Ms. Kimberly Mason  
Ms. Judy Strickland

The April 24, 2014 meeting of the Law Enforcement Professional Standards (LEPS) Subcommittee, which took place in the Maple Room of the Conference Center, located at Stonewall Resort, was called to order at 9:00 a.m. by the Chair, Retired Chief Stephens. There were nine (9) members either present or represented at the start of the meeting.

The following actions were taken during this meeting in reference to the agenda items scheduled:

1. Agenda Item 1 – Notice of additional items to be added to agenda provided to Subcommittee Chair. There were none, no action required.
2. Agenda Item 2 – Motion made, Sheriff McComas, seconded, Retired Sergeant Johnson, to accept the minutes of the March 27, 2014 meeting as presented. The motion was approved unanimously with no discussion.
3. Agenda Item 3 – Retired Captain Sadler informed the Subcommittee that the LEPS Fund balance as of April 16, 2014, as reflected on page 1 of the agenda mailing packet, was \$742,855.27. Motion made, Sheriff McComas, seconded, Retired Sergeant Johnson, to accept the financial report as presented. The motion was approved unanimously with no discussion.
4. Agenda Item 4 – Motion made, Sheriff McComas, seconded, Retired Sergeant Johnson, for the approval of the applications for individuals to be approved as certified law enforcement instructors. The motion was approved unanimously with no discussion.
5. Agenda Item 5 – Motion made, Retired Lieutenant Miller, seconded, Retired Corporal Gentry, the approval of applications for additional areas of expertise to be approved for previously certified law enforcement instructors.
6. Agenda Item 6A – Motion made Captain Lee, seconded, Retired Sergeant Johnson that the classes listed in the agenda packet be approved for annual in-service credit. Sheriff McComas asked Retired Captain Sadler about the one (1) hour on-line webinar by Lorman Education Services. Retired Captain Sadler responded that the rule allowed for training to be approved as low as one hour and that webinar or on-line training could be taken to count towards four (4) hours of an officer's annual in-service requirement. The motion was approved unanimously without any further discussion. .
7. Agenda Item 6B – Motion made, Sheriff McComas, seconded, Retired Sergeant Johnson, that the listed classes be approved for supervisory in-service training credit. The motion was approved unanimously with no discussion.

8. Agenda Item 6C – Motion made, Sheriff McComas, seconded, Retired Sergeant Johnson, that the listed classes in the agenda packet be approved for personal in-service training credit. The motion was approved unanimously with no discussion.
9. Agenda Item 7 – Order to Stop Working. There were none, no action required.
10. Agenda Item 8 – Criminal Conviction Records as to Applicants for Entry Level Training Program. There were none, no action required.
11. Agenda Item 9 – Request to attend the Entry Level Training Program as a Private Citizen. There were none, no action required.
12. At the indication of Retired Chief Stephens that there were personnel related matters to be discussed under Agenda Items 10A, 10B, 10C, 11A, 11B, 12, 13, and 15 a motion was made by Sheriff McComas, seconded, Retired Sergeant Johnson, and approved unanimously without discussion, for the Subcommittee to go into executive session at 9:04 a.m. Motion made, Sheriff McComas, seconded, Retired Sergeant Johnson, and approved unanimously without discussion, for the Subcommittee to come out of executive session at 12:01 p.m.
13. Agenda Item 10A – Officer #1 – Motion made, Sheriff McComas, seconded, Retired Sergeant Johnson, that the West Virginia law enforcement certification of the involved officer be revoked as a result of his having plead guilty to obtaining money under false pretenses and that a Position Statement be prepared concerning this action. The motion was approved unanimously with no discussion.
14. Agenda Item 10B – Officer #2 – Motion made, Sheriff McComas, seconded, Retired Sergeant Johnson, that the West Virginia law enforcement certification of the involved officer be revoked as a result of his guilty plea to sexual abuse by a parent, guardian or custodian and that a Position Statement be prepared concerning this action. The motion was approved unanimously with no discussion.
15. Agenda Item 10C – Officer #3 – The chair advised that this matter had been presented for informational purposes as to a discussion of the issues involved and direction to the LEPS Unit staff on how the members wanted this matter handled. It was the consensus desire of the members present that this matter will be set on the agenda for the May 29, 2014 LEPS meeting as a certification review. Motion made, Sheriff McComas, seconded, Retired Sergeant Johnson, that DJCS staff will contact the Supreme Court to confirm this officer's ability to carry a fire arm. The motion was approved

unanimously. Motion made, Retired Lieutenant Miller, seconded, Sheriff McComas that a Stop Work Order be issued if the Supreme Court determines that this officer cannot carry a weapon. The motion was approved unanimously with no further discussion.

16. Agenda Item 11A – Motion made, Sheriff McComas, seconded, Retired Sergeant Johnson to approve the full reactivation of the law enforcement officers listed in the agenda and to amend WVSO to WVSP which is listed under new department for one of the previous Marion County Sheriff's Officers. The motion was approved unanimously with no discussion.
17. Agenda Item 11B – Motion made, Sheriff McComas, seconded, Retired Sergeant Johnson to table the action by the Subcommittee on this officer until the May 29, 2014 meeting in order for staff to determine if all charges against this officer have been dismissed or if there are additional charges pending against him. The motion was approved unanimously with no further discussion.
18. Agenda Item 12 – Motion made, Sheriff McComas, seconded Retired Sergeant Johnson to table the action by the Subcommittee on this officer until the May 29, 2014 meeting. The motion was approved unanimously without discussion.
19. Agenda Item 13 – Equivalent certification program reviews as to decisions made was presented for informational purposes only.
20. Agenda Item 14 – Review of officer's ability to enter and complete the entry level training program. There were none, no action required.
21. Agenda Item 15 – Copy of letter sent referencing subpoena for records was presented for informational purposes, no action required as such.
22. Agenda Item 16 – Motion made, Sheriff McComas, seconded, Retired Sergeant Johnson that the three funding requests listed within the agenda packet be approved and awarded from LEPS funding, those being:
  - a. Request from the WVSP for the following to be approved for funding: \$111,756 from the LEPS Fund for the operation of the 158<sup>th</sup> Basic Class which will run April 28, 2014 to August 15, 2014;
  - b. \$112,456 from the LEPS Fund for the operation of the 159<sup>th</sup> Basic Class which will run June 23, 2014 to October 10, 2014; and,
  - c. FY 2015 five (5) WVSP Civilian Salaries from the LEPS Fund from July 1, 2014 to August 30, 2015.Motion approved unanimously with no further discussion.

23. Agenda Item 17 – 2014 Legislative Session Update was presented by Retired Captain Sadler. He noted that the changes proposed to Legislative Rule 149-2 had recommended by the members in the review process had been approved by the Legislature. He further noted that the legislature had approved an interim study prior to the 2015 legislative session to examine the issues addressing the LEPS fund and its funding levels. Both items presented for informational purposes, no action required on either.
24. Agenda Item 18 – Retired Captain Sadler provided the Subcommittee with a LEPSIS Program Update. Work is continuing on the development and incorporation of the Type Ahead and One Class features for LEPSIS. Presented for informational purposes, no action required.
25. Agenda Item 19A – 159<sup>th</sup> Basic Class funding request was presented to the Subcommittee in Agenda Item 16 and was approved unanimously.
26. Agenda Item 19B – West Virginia State Police Academy Civilian Salaries funding request was presented and approved by the Subcommittee in Agenda Item 16.
27. Agenda Item 20 – Course schedule of the 64<sup>th</sup> Cadet Class, the first accelerated cadet training program for previously certified West Virginia law enforcement officers, being conducted at the Academy from March 24, 2014 to June 6, 2014 was presented for informational purposes to show daily schedule and course descriptions that these officers will be participating in. No action required as such.
28. Agenda Item 21A – There will be a wreath laying at the Fallen Partner Memorial Statute on Tuesday, May 13, 2014 at 7:00 p.m. Members asked to make their respective memberships aware of this. No action required.
29. Agenda Item 21B – Memorial observance on the Kanawha Boulevard side of the Capitol steps on Tuesday, May 13, 2014 at 8:00 p.m. Members asked to make their respective memberships aware of this. No action required
30. Agenda Item 24 – The next scheduled LEPS Subcommittee meeting is May 29, 2014 at the WVSP Academy Professional Development Center.

There being no further agenda items set for discussion a motion was made by Sheriff McComas, seconded, Retired Sergeant Johnson to adjourn this meeting. Meeting adjourned at approximately 12:23 p.m.