

HOUSE BILL NO. 98

INTRODUCED BY F. GARNER

BY REQUEST OF THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PEACE OFFICER STANDARDS AND CERTIFICATION LAWS; REVISING CERTIFICATION LAWS FOR PEACE OFFICERS ON ACTIVE RESERVE STATUS; REVISING THE RULEMAKING AUTHORITY OF THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL; REVISING DUTIES OF APPOINTING AUTHORITIES; REVISING PENALTIES FOR A PEACE OFFICER WHOSE BASIC CERTIFICATE IS SUSPENDED; AND AMENDING SECTIONS 7-32-240 AND 7-32-303, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-32-240, MCA, is amended to read:

"7-32-240. Certification of Montana peace officer who leaves full-time or part-time employment to enter active reserve status in Montana -- definition. ~~A peace officer who leaves full-time or part-time employment and enters an active reserve status within 36 to 60 months retains basic certification status after entering reserve status for as long as the peace officer remains an active reserve officer.~~ (1) Except as provided in subsection (2), an officer who leaves full-time or part-time employment and enters an active reserve status within 36 to 60 months retains basic certification status after entering reserve status for as long as the peace officer remains an active reserve officer. has been issued a peace officer basic certification by the Montana public safety officer standards and training council or who is eligible for the certification and who becomes an active reserve officer in Montana may retain the officer's peace officer certification and return to full-time or part-time employment as a peace officer under the following circumstances:

(a) If 36 or more months have passed the reserve officer has not had a break in service of more than 3 years at any time since the peace officer's last date of employment as a full-time or part-time employment and the peace officer in Montana returns to full-time or part-time employment, the peace officer shall, upon return to retains the peace officer certification and may return to full-time or part-time employment, comply with 7-32-303(5)(c) as a peace officer from reserve status without attending an equivalency course or returning to the basic academy.

(b) If the reserve officer has had a break in service of more than 3 years at any time since the officer's last date of employment as a full-time or part-time peace officer in Montana, the officer must successfully

1 complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's
 2 most recent appointment as a full-time or part-time peace officer in Montana in order to maintain the officer's
 3 peace officer certification. If the officer fails the basic equivalency course, the officer must attend the peace officer
 4 basic course at the Montana law enforcement academy at the next available opportunity. The officer's agency
 5 may request an extension of time for the officer to meet the basic requirement pursuant to 7-32-303(9).

6 (c) If the reserve officer has had a break in service of more than 5 years at any time since the officer's
 7 last date of employment as a full-time or a part-time peace officer in Montana, the officer must successfully
 8 complete the peace officer basic course at the Montana law enforcement academy, as approved by the council,
 9 within 1 year of the officer's most recent appointment as a full-time or part-time peace officer in Montana in order
 10 to retain the officer's peace officer certification. The officer's agency may request an extension of time for the
 11 officer to meet the basic requirement pursuant to 7-32-303(9).

12 (2) (a) The provisions of subsection (1) do not apply to a peace officer who was last employed as a
 13 full-time or part-time peace officer outside of Montana, a peace officer who was last employed by a federal or
 14 United States military law enforcement agency, or to a reserve officer outside of Montana.

15 (b) Officers listed in subsection (2)(a) are subject to the provisions of 7-32-303(6) through (8).

16 (3) For the purposes of part 3 and this part, the phrase "break in service" means a continuous period in
 17 which the officer is not performing the duties of a peace officer in Montana, either as a full-time or part-time peace
 18 officer or as an active reserve officer."

19

20 **Section 2.** Section 7-32-303, MCA, is amended to read:

21 **"7-32-303. Peace officer employment, education, and certification standards -- suspension or**
 22 **revocation -- penalty.** (1) For purposes of this section, unless the context clearly indicates otherwise, "peace
 23 officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park
 24 ranger, campus security officer, or airport police officer.

25 (2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person authorized by
 26 law to appoint peace officers in this state may not appoint ~~any~~ a person as a peace officer who does not meet
 27 the ~~following~~ following qualifications provided in this subsection (2) plus any additional qualifying standards for employment
 28 promulgated by the Montana public safety officer standards and training council established in 2-15-2029. A
 29 peace officer must:

30 (a) be a citizen of the United States;

- 1 (b) be at least 18 years of age;
- 2 (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any
3 criminal record;
- 4 (d) not have been convicted of a crime for which the person could have been imprisoned in a federal or
5 state penitentiary;
- 6 (e) be of good moral character, as determined by a thorough background investigation;
- 7 (f) be a high school graduate or have been issued a high school equivalency diploma by the
8 superintendent of public instruction or by an appropriate issuing agency of another state or of the federal
9 government;
- 10 (g) be free of any mental condition that might adversely affect performance of the duties of a peace
11 officer, as determined after:
- 12 (i) ~~be examined by a licensed physician or, for the purposes of a mental health evaluation; performed by~~
13 ~~a person licensed physician or a mental health professional who is licensed by the state under Title 37, and who~~
14 ~~is acting within the scope of the person's licensure when performing a mental health evaluation, who is not the~~
15 ~~applicant's personal physician or licensed mental health professional, appointed and who is selected by the~~
16 ~~employing authority to determine if the applicant is free from any mental or physical condition that might adversely~~
17 ~~affect performance by the applicant of the duties of a peace officer; or~~
- 18 ~~(ii) (A) satisfactorily complete the physical examination required by subsection (2)(g)(i); and~~
19 ~~—— (B) complete a standardized mental health evaluation instrument determined by the employing authority~~
20 ~~to be sufficient to examine for any mental health conditions that might adversely affect the performance by the~~
21 ~~applicant of the duties of a peace officer if the instrument is scored by a mental health professional acting within~~
22 ~~the scope of licensure by any state and the mental health professional finds that the applicant is free of any such~~
23 ~~mental health condition;~~
- 24 (ii) satisfactory completion of a standardized mental health evaluation instrument determined by the
25 employing authority to be sufficient to examine for any mental conditions within the meaning of this subsection
26 (2)(g), if the instrument is scored by a licensed physician or a mental health professional acting within the scope
27 of the person's licensure by a state;
- 28 (h) be free of any physical condition that might adversely affect performance of the duties of a peace
29 officer, as determined after satisfactory completion of a physical examination performed by a health care provider
30 who is licensed by the state under Title 37 and acting within the scope of the person's licensure when performing

1 the physical examination, who is not the applicant's personal health care provider, and who is selected by the
 2 employing authority;

3 ~~(h)(i) have successfully complete~~ completed an oral examination conducted by the appointing authority
 4 or its designated representative to demonstrate the possession of communication skills, temperament, motivation,
 5 and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; ~~and~~

6 ~~(j) possess or be eligible for a valid Montana driver's license; and~~

7 (k) be certified or be eligible for certification as a peace officer by the council or become eligible for
 8 certification upon completion of the requirements contained in subsections (6) through (10).

9 (3) At the time of appointment, a peace officer shall take a formal oath of office. No other oath may be
 10 required.

11 (4) Within 10 days of the appointment, termination, resignation, or death of ~~any a~~ a peace officer, written
 12 notice of the event must be given to the Montana public safety officer standards and training council by the
 13 employing authority.

14 (5) ~~(a) Except as provided in subsections (5)(b) and (5)(c), it~~ It is the duty of an appointing authority in
 15 Montana to ensure that each peace officer appointed under its authority ~~to attend and successfully~~
 16 ~~complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified~~ has the basic
 17 training, including any training required in subsections (6) through (8), in addition to meeting all other
 18 requirements of peace officer certification promulgated by the Montana public safety officer standards and training
 19 council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as
 20 set forth in subsection (2) or who fails to complete the basic course ~~as required by this subsection (5)(a) training~~
 21 required by subsections (6) through (8) forfeits the position, authority, and arrest powers accorded a peace officer
 22 in this state.

23 ~~(b) A peace officer who has been issued a basic certificate by the Montana public safety officer~~
 24 ~~standards and training council and whose last date of employment as a peace officer was less than 36 months~~
 25 ~~prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic~~
 26 ~~educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer~~
 27 ~~was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace~~
 28 ~~officer may satisfy the basic educational requirements as set forth in subsection (5)(c).~~

29 ~~(c) A peace officer referred to in subsection (5)(b) or a peace officer who has completed a basic peace~~
 30 ~~officer's course that is taught by a federal, state, or United States military law enforcement agency and that is~~

1 reviewed and approved by the Montana public safety officer standards and training council as equivalent with
2 current training in Montana and whose last date of employment as a peace officer or member of the military law
3 enforcement was less than 60 months prior to the date of present appointment as a peace officer may, within 1
4 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy
5 the basic educational requirements by successfully completing a basic equivalency course administered by the
6 Montana law enforcement academy. The prior employment of a member of the military law enforcement must
7 be reviewed and approved by the Montana public safety officer standards and training council. If the peace officer
8 fails the basic equivalency course, the peace officer shall complete the next available appropriate basic course.

9 (6) Except as provided in subsections (7) and (8), a peace officer shall successfully complete the peace
10 officer basic course at the Montana law enforcement academy, as approved by the council, within 1 year of:

11 (a) the peace officer's initial appointment as a peace officer; or

12 (b) the peace officer's most recent appointment as a peace officer if the peace officer has had a break
13 in service as a peace officer of more than 5 years.

14 (7) (a) If a peace officer previously satisfied the requirement in subsection (6), is certified or is eligible for
15 certification as a peace officer in Montana or may become eligible for certification upon completion of the
16 probationary period in subsection (10), and has had a break in service as a peace officer of less than 3 years,
17 the peace officer is not required to satisfy the requirement in subsection (6) or to attend an equivalency course
18 prior to returning to work in Montana as a peace officer.

19 (b) If a peace officer previously satisfied the requirement in subsection (6), is certified or is eligible for
20 certification as a peace officer in Montana or may become eligible for certification upon completion of the
21 probationary period in subsection (10), and has been continuously employed as a peace officer outside of
22 Montana for no more than 3 years, the peace officer is not required to satisfy the requirement in subsection (6)
23 or to attend an equivalency course prior to returning to work in Montana as a peace officer.

24 (c) If a peace officer previously completed the peace officer basic course successfully, is certified or is
25 eligible for certification as a peace officer in Montana or may become eligible for certification upon completion
26 of the probationary period in subsection (10), and has been continuously employed as a peace officer outside
27 of Montana for more than 3 years or who has had a break in service as a peace officer for more than 3 years but
28 less than 5 years, the peace officer shall successfully complete the peace officer basic equivalency course, as
29 approved by the council, within 1 year of the peace officer's most recent appointment as a peace officer in
30 Montana. If the peace officer fails the basic equivalency course, the officer shall satisfy the requirement in

1 subsection (6) at the next available opportunity.

2 (d) If a person satisfied the requirement in subsection (6) prior to the person's appointment or
3 employment and is hired or appointed as a peace officer more than 3 years but less than 5 years after the date
4 that the person satisfied the requirement in subsection (6), the person shall successfully complete the peace
5 officer basic equivalency course, as approved by the council, within 1 year of the person's most recent
6 appointment or employment as a peace officer. If the person is not appointed or employed as a peace officer
7 within 5 years after the date of the person's successful completion of the requirement in subsection (6), the
8 person shall satisfy the requirement in subsection (6) within 1 year of the person's most recent appointment or
9 employment as a peace officer in Montana.

10 (8) (a) Except as provided in subsection ~~(8)(b)~~ (8)(C), if a peace officer has successfully completed a
11 peace officer basic course that is taught or approved by a federal, state, local, or United States military law
12 enforcement agency, that satisfies the peace officer basic training requirement for that agency, and that the
13 council has reviewed and approved as commensurate with the current peace officer basic course offered at the
14 Montana law enforcement academy, the peace officer shall successfully complete the peace officer basic
15 equivalency course, as approved by the council, within 1 year of the officer's initial appointment in Montana. If
16 the officer fails the basic equivalency course, the officer must satisfy the requirement in subsection (6) at the next
17 available opportunity.

18 (B) EXCEPT AS PROVIDED IN SUBSECTION (8)(C), IF A PEACE OFFICER HAS SUCCESSFULLY COMPLETED A PEACE
19 OFFICER BASIC COURSE THAT IS TAUGHT OR APPROVED BY A FEDERAL, STATE, LOCAL, OR UNITED STATES MILITARY LAW
20 ENFORCEMENT AGENCY AND THAT SATISFIES THE PEACE OFFICER BASIC TRAINING REQUIREMENT FOR THAT AGENCY AND
21 IF THAT PEACE OFFICER'S COMBINED TRAINING AND EXPERIENCE HAVE BEEN REVIEWED AND APPROVED BY THE COUNCIL
22 AS COMMENSURATE WITH THE CURRENT PEACE OFFICER BASIC COURSE OFFERED AT THE MONTANA LAW ENFORCEMENT
23 ACADEMY, THE PEACE OFFICER SHALL SUCCESSFULLY COMPLETE THE PEACE OFFICER BASIC EQUIVALENCY COURSE, AS
24 APPROVED BY THE COUNCIL, WITHIN 1 YEAR OF THE OFFICER'S INITIAL APPOINTMENT IN MONTANA. IF THE OFFICER FAILS
25 THE BASIC EQUIVALENCY COURSE, THE OFFICER MUST SATISFY THE REQUIREMENT IN SUBSECTION (6) AT THE NEXT
26 AVAILABLE OPPORTUNITY.

27 ~~(b)(C)~~ If the peace officer has had a break in service as a peace officer for more than 5 years, the officer
28 shall complete the requirement of subsection (6) within 1 year of the officer's initial appointment as a peace officer
29 in Montana.

30 ~~(6)(9)~~ The Montana public safety officer standards and training council may extend the 1-year time

1 requirements of subsections ~~(5)(a) and (5)(c)~~ (6) through (8) upon the written application of the ~~peace officer and~~
2 ~~the~~ appointing authority of the officer. The application must explain the circumstances that make the extension
3 necessary. Factors that the council may consider in granting or denying the extension include but are not limited
4 to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access
5 to the basic equivalency course, and an unreasonable shortage of personnel within the department. The council
6 may not grant an extension to exceed 180 days.

7 ~~(7)(10)~~ A peace officer who has successfully met the training, employment, and educational standards
8 ~~and qualifications and the educational requirements~~ of this section, has successfully met the training and
9 employments standards set by the council, and ~~who~~ has completed a 1-year probationary term of employment
10 must be issued a peace officer basic certificate by the council certifying that the peace officer has met all of the
11 basic qualifying peace officer standards of this state.

12 ~~(8)(11)~~ It is unlawful for a person whose basic certification as a peace officer, ~~detention officer, or~~
13 ~~detention center administrator~~ has been revoked or ~~suspended~~ denied by the Montana public safety officer
14 standards and training council for misconduct to act as a peace officer, ~~detention officer, or detention center~~
15 ~~administrator~~. It is unlawful for a person whose peace officer basic certification has been suspended by the
16 council to act or be appointed or employed as a peace officer in Montana during the period in which the
17 certification is suspended. A person convicted of violating this subsection is guilty of a misdemeanor, punishable
18 by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed \$500, or both."

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