

1 HOUSE BILL NO. 802
2 INTRODUCED BY S. KERNS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO REVOKING PEACE OFFICER
5 CERTIFICATION; PROVIDING THAT A PEACE OFFICER'S CERTIFICATION MAY NOT BE REVOKED
6 SOLELY ON THE BASIS OF A MENTAL ILLNESS; AND AMENDING SECTION 7-32-303, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 7-32-303, MCA, is amended to read:

11 **"7-32-303. Peace officer employment, education, and certification standards -- suspension or**
12 **revocation -- penalty.** (1) For purposes of this section, unless the context clearly indicates otherwise, "peace
13 officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park
14 ranger, campus security officer, or airport police officer.

15 (2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person
16 authorized by law to appoint peace officers in this state may not appoint a person as a peace officer who does
17 not meet the qualifications provided in this subsection (2) plus any additional qualifying standards for
18 employment promulgated by the Montana public safety officer standards and training council established in 2-
19 15-2029. A peace officer must:

- 20 (a) be a citizen of the United States;
- 21 (b) be at least 18 years of age;
- 22 (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose
23 any criminal record;
- 24 (d) not have been convicted of a crime for which the person could have been imprisoned in a
25 federal or state penitentiary;
- 26 (e) be of good moral character, as determined by a thorough background investigation;
- 27 (f) be a high school graduate or have been issued a high school equivalency diploma by the
28 superintendent of public instruction or by an appropriate issuing agency of another state or of the federal

1 government;

2 (g) be free of any mental condition that might adversely affect performance of the duties of a
3 peace officer, as determined after:

4 (i) a mental health evaluation performed by a licensed physician or a mental health professional
5 who is licensed by the state under Title 37, who is acting within the scope of the person's licensure when
6 performing a mental health evaluation, who is not the applicant's personal physician or licensed mental health
7 professional, and who is selected by the employing authority; or

8 (ii) satisfactory completion of a standardized mental health evaluation instrument determined by
9 the employing authority to be sufficient to examine for any mental conditions within the meaning of this
10 subsection (2)(g), if the instrument is scored by a licensed physician or a mental health professional acting
11 within the scope of the person's licensure by a state;

12 (h) be free of any physical condition that might adversely affect performance of the duties of a
13 peace officer, as determined after satisfactory completion of a physical examination performed by a health care
14 provider who is licensed by the state under Title 37 and acting within the scope of the person's licensure when
15 performing the physical examination, who is not the applicant's personal health care provider, and who is
16 selected by the employing authority;

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

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

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

23 (3) At the time of appointment, a peace officer shall take the formal oath of office prescribed in
24 Article III, section 3, of the Montana constitution. No other oath may be required.

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

28 (5) It is the duty of an appointing authority in Montana to ensure that each peace officer appointed

1 under its authority has the basic training, including any training required in subsections (6) through (8), in
2 addition to meeting all other requirements of peace officer certification promulgated by the Montana public
3 safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to
4 meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic training
5 required by subsections (6) through (8) forfeits the position, authority, and arrest powers accorded a peace
6 officer in this state.

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

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

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

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

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

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

1 a peace officer in Montana. If the peace officer fails the basic equivalency course, the officer shall satisfy the
2 requirement in subsection (6) at the next available opportunity.

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

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

19 (b) Except as provided in subsection (8)(c), if a peace officer has successfully completed a peace
20 officer basic course that is taught or approved by a federal, state, local, or United States military law
21 enforcement agency and that satisfies the peace officer basic training requirement for that agency and if that
22 peace officer's combined training and experience have been reviewed and approved by the council as
23 commensurate with the current peace officer basic course offered at the Montana law enforcement academy,
24 the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the
25 council, within 1 year of the officer's initial appointment in Montana. If the officer fails the basic equivalency
26 course, the officer must satisfy the requirement in subsection (6) at the next available opportunity.

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

1 peace officer in Montana.

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

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

13 (11) The Montana public safety officer standards and training council may not revoke a peace
14 officer's certification solely on the basis of a peace officer's mental illness.

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

21

- END -