

Legislative Analysis



REVISE REFERENCES TO MCOLES ACT

Phone: (517) 373-8080
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**Senate Bills 92, 93, 94, 866, and 867 as enacted
Public Acts 289 to 295 of 2016**

Sponsor: Sen. Tonya Schuitmaker

Analysis available at
<http://www.legislature.mi.gov>

**Senate Bills 95 and 96 as enacted
Public Acts 292 and 293 of 2016**

Sponsor: Sen. Margaret E. O'Brien

**Senate Bills 868 and 869 as enacted
Public Acts 296 and 297 of 2016**

Sponsor: Sen. Rick Jones

**House Bills 5497 and 5498 as enacted
Public Acts 301 and 302 of 2016**

Sponsor: Rep. Klint Kesto

**House Bill 5494 as enacted
Public Act 298 of 2016**

Sponsor: Rep. Vanessa Guerra

**House Bill 5499 as enacted
Public Act 303 of 2016**

Sponsor: Rep. Triston Cole

**House Bill 5495 as enacted
Public Act 299 of 2016**

Sponsor: Rep. Stephanie Chang

**House Bill 5500 as enacted
Public Act 304 of 2016**

Sponsor: Rep. Jim Tedder

**House Bill 5496 as enacted
Public Act 300 of 2016**

Sponsor: Rep. Peter J. Lucido

**House Bill 5501 as enacted
Public Act 305 of 2016**

Sponsor: Rep. Kathy Crawford

**House Committee: Judiciary
Senate Committee: Judiciary
Revised 3-29-19**

BRIEF SUMMARY:

Senate Bill 92 amends the Commission on Law Enforcement Standards Act. Among other things, the bill renames the act as the Michigan Commission on Law Enforcement Standards Act, codifies provisions from multiple Executive Reorganization Orders, and requires a license (instead of a certificate) to be granted to a person eligible for employment as a law enforcement officer.

Senate Bill 93 revises the use of the Michigan Justice Training Fund.

Senate Bill 94 allows the Michigan Commission on Law Enforcement Standards (MCOLES) to have access, for certain purposes, to a nonpublic record of a discharge and dismissal of a controlled substance violation maintained by the Department of State Police.

Senate Bills 95, 96, and 866 to 869 and House Bills 5494 through 5501 make complementary amendments to various laws to reflect and implement the changes made to statute by the other bills in the package.

The bills take effect January 2, 2017.

DETAILED SUMMARY:

The Michigan Commission on Law Enforcement Standards (MCOLES), a Type I agency within the Michigan Department of State Police, has statutory responsibilities under the Commission on Law Enforcement Standards Act and the Michigan Justice Training Commission Act. Among its duties, MCOLES prepares and publishes mandatory minimum standards for the recruitment, selection, training, licensing, and license retention for law enforcement officers in the state. MCOLES also administers two other statutes that involve licensing private security police agencies and commissioning railroad police, as well as administering the Public Safety Officers Benefit Act. Executive Reorganization Order (ERO) 2001-2 revised the name of the act and consolidated two commissions into one, and a later ERO (2008-19) expanded the membership of the commission.¹

Senate Bill 92 renames the Commission on Law Enforcement Standards Act (MCL 28.601 et seq.) as the *Michigan Commission on Law Enforcement Standards Act*. The bill also incorporates changes made by the 2001 and 2008 Executive Reorganization Orders. Significant other changes made by the bill are as follows:

- Increases the membership of MCOLES to include a representative of deputy sheriffs and a member of the general public.
- Requires MCOLES to promulgate rules governing law enforcement officer licensing standards, instead of establishing minimum standards.
- Requires MCOLES to grant a *license*, rather than certification, to a person who meets the standards and will be employed as a law enforcement officer. The definition of *license* includes a certificate issued under the act before the bill's effective date.
- Establishes separate licensure requirements for sheriffs, tribal law enforcement officers, locally appointed fire arson investigators, and private college security officers.
- Authorizes MCOLES to investigate alleged violations of the act or rules promulgated under it.
- Specifies that a petition for judicial review of a final decision or order of MCOLES could be adjudicated only in the Court of Claims, and MCOLES would have standing in that court for an action to compel compliance with the act.
- Revises provisions regarding police training academies.
- Requires a licensed law enforcement officer to inform MCOLES when he or she is charged with a particular offense or is subject to a personal protection order.
- Revises provisions related to the Law Enforcement Officers Training Fund, including the deposit of fees related to certain training and licensing fees, allowing money or assets from any source to be deposited in the fund, and requiring money in the fund at the close of a fiscal year to remain in the fund and not lapse to the general fund.

The bill also authorizes MCOLES to use money granted to it by the Department of State Police (MSP) from the Secondary Road Patrol and Training Fund to do the following:

- Reimburse law enforcement agencies for the reasonable costs they incur in providing education to their employees who were enrolled in law enforcement training academies for the purpose of being employed by the agencies as law enforcement officers licensed under the act.

¹ Information provided on the Michigan Commission on Law Enforcement Standards' website: <https://www.michigan.gov/mcoles>

- For fiscal years 2015-16 and 2016-17 only, pay the reasonable expenses of performing MCOLES's statutory functions authorized or required under the act.

MCOLES could not be granted or use, within a single fiscal year, more than 5.7% of the Secondary Road Patrol and Training Fund for any purpose.

The bill also repeals sections 4 and 16 of the act, which dealt with MCOLES members' terms of office and the act's original effective date.

Senate Bill 93 amends 1982 PA 302 (MCL 18.421 et seq.), which created the Michigan Justice Training Commission and the Michigan Justice Training Fund, to do the following:

- Delete and replace most of the provisions of the act regarding use of the Michigan Justice Training Fund.
- Require MCOLES to use the fund to make law enforcement distributions to law enforcement agencies, pay the reasonable expenses of providing MCOLES staff services and administering and enforcing the act and the MCOLES Act, and awarding grants.
- Specify that money in the fund that is not distributed in a fiscal year in which it was meant to be used for the purposes described above remains in the fund and may be used in future fiscal years for the designated purpose.
- Require MCOLES to conduct an annual registration of law enforcement agencies to verify each agency's roster of full-time and part-time officers and the number of hours for which they were compensated in the most recent calendar year.
- Require MCOLES annually to distribute 60% of the fund for law enforcement distributions, in two semiannual installments, on a per-full-time-equated basis to eligible entities based on the number of full-time equated officers employed.
- Cap the reported hours of compensation at 2,080 hours for any individual officer for purposes of the law enforcement distribution.
- Regulate an eligible entity's use of funds from a law enforcement distribution and limit the use of a distribution to certain training and educational purposes.
- Allow MCOLES to award grants for the provision of criminal justice in-service training for law enforcement officers.
- Prohibit MCOLES from awarding grants to a professional association.
- Regulate a grantee's use of funds from a grant award.
- Require criminal justice in-service training courses to be registered through the MCOLES Information and Tracking Network.
- Specify that the fund's books, records, and accounts may be subject to audit by the Auditor General every two years, instead of requiring an audit every two years.

Senate Bill 94 amends the Public Health Code (MCL 333.7411). The Code allows a court to defer the proceedings of certain controlled substance violations if the person has no prior drug-related convictions. Upon successful completion of probation, the court may discharge the person and dismiss the proceedings without adjudication of guilt. MSP must retain a nonpublic record of the discharge and dismissal. Access to the nonpublic record is restricted and allowed only for stated statutory purposes.

The bill requires the nonpublic record to also be open to MCOLES as follows:

- If the court placed the individual on probation after March 25, 2002.

- MCOLES can use the record to determine whether the individual meets the requirements for licensure as a law enforcement officer, if the individual is seeking licensure at the time of the request.
- MCOLES can use the record to determine whether the license or certification could be revoked, if the individual is licensed or certified as a law enforcement officer.
- MCOLES can use the record to determine whether the individual meets the requirements for admission to a law enforcement training academy, if he or she is seeking admission.
- MCOLES can use the record to determine whether the individual meets the waiver requirements regarding minimum training standards, if he or she is seeking a waiver from the law enforcement officer minimum standards for training requirements.

Senate Bill 95 amends the Revised Judicature Act (MCL 600.181) to revise citations to certain funds and the acts that created them.

Senate Bill 96 amends the Code of Criminal Procedure (MCL 763.11) to refer to MCOLES and the MCOLES Act.

Senate Bill 866 amends provisions of the Natural Resources and Environmental Protection Act (MCL 324.11701 et al.) that involve enforcement of criminal laws to refer to officers *licensed or certified* under the *Michigan* Commission on Law Enforcement Standards Act.

Senate Bill 867 amends the Police Officer's and Fire Fighter's Survivor Tuition Grant Act (MCL 390.1242), which provides for the waiver of tuition at Michigan community colleges and universities for the surviving spouse and children of police officers and firefighters killed in the line of duty, to refer to officers *licensed or certified* under the *Michigan* Commission on Law Enforcement Standards Act.

Senate Bill 868 amends sections of the Revised Judicature Act (MCL 600.2950 and 600.2950a) that govern personal protection orders (PPOs) in domestic violence and stalking situations and that require the petitioner for a PPO to notify the court of the respondent's occupation before a PPO is issued under certain circumstances to refer to officers *licensed or certified* under the *Michigan* Commission on Law Enforcement Standards Act.

Senate Bill 869 amends a section of the Michigan Penal Code (MCL 750.528a) that contains certain prohibitions regarding instruction in the use of a firearm or an explosive incendiary device and exempts an act of a law enforcement officer that is performed in the lawful performance of his or her official duties as a law enforcement officer to refer to a peace officer trained and *licensed or certified* under the *Michigan* Commission on Law Enforcement Standards Act.

House Bill 5494 amends the Public Body Law Enforcement Agency Act (MCL 28.586 and 28.587). The bill revises a requirement of law enforcement agencies created under the act to establish and abide by a written policy pertaining to the requirements of section 9d of the Commission on Law Enforcement Standards Act and also a requirement of public bodies that create law enforcement agencies under the act to comply with the requirements of section 9d. Instead, an agency must establish and abide by a written policy pertaining to the requirement to maintain employment history records, and a public body must comply with the requirement

to maintain employment history records for officers in its employ, under the Michigan Commission on Law Enforcement Standards Act.

House Bill 5495 amends the Wolf-Dog Cross Act (MCL 287.1002). The bill revises the definition of “law enforcement officer” to include a peace officer who is trained and licensed or certified under the Michigan Commission on Law Enforcement Standards Act.

House Bill 5496 amends the Michigan Unarmed Combat Regulatory Act (MCL 338.3633). The bill revises requirements of an “inspector” to include an individual who is licensed or certified, or previously licensed or certified by the Commission of Law Enforcement Standards, under the Michigan Commission on Law Enforcement Standards Act.

House Bill 5497 amends 1927 PA 372 (MCL 28.421 et seq.), which regulates handguns. The bill revises several references to a certificate issued under the Commission on Law Enforcement Standards Act to instead refer to a license or certificate issued under the Michigan Commission on Law Enforcement Standards Act.

House Bill 5498 amends 2006 PA 563 (MCL 15.391), which restricts the use and disclosure of certain statements made by law enforcement officers. In the definition of “law enforcement officer,” the bill refers to a person trained and licensed or certified under the Michigan Commission on Law Enforcement Standards Act.

House Bill 5499 amends the Legislative Sergeant at Arms Police Powers Act (MCL 4.382). The bill specifies that a sergeant at arms or assistant sergeant at arms commissioned as a police officer under the act is subject to the training and licensure or certification requirements under the Michigan Commission on Law Enforcement Standards Act.

House Bill 5500 amends the Michigan Vehicle Code (MCL 257.42 and 257.726c). The bill revises several references to a certificate issued under the Commission on Law Enforcement Standards Act to instead refer to a license or certificate issued under the Michigan Commission on Law Enforcement Standards Act.

House Bill 5501 amends the Large Carnivore Act (MCL 287.1102). The bill revises a reference to a certificate issued under the Commission on Law Enforcement Standards Act to instead refer to a license or certificate issued under the Michigan Commission on Law Enforcement Standards Act.

FISCAL IMPACT:

Senate Bills 92 to 96 would likely have a nominal fiscal impact on the state in the short term; however, they would create a funding shortfall for MCOLES, beginning during fiscal year (FY) 2017-18.

Since FY 2001-02, MCOLES has received approximately 5.6% of the annual revenue deposited into Secondary Road Patrol and Training Fund (SRPTF), which was expended for both administrative purposes and awarding training grants to local law enforcement agencies. A funding cap of 5.7% would likely have no immediate impact on how the MCOLES operates. However, due to decreasing appropriations from GF/GP and the Michigan Justice Training Fund, the proportion of the SRPTF that MCOLES expends for administrative purposes has increased, on average, by 7.0% per year since FY 2001-02. Prohibiting MCOLES from

expending money from the SRPTF for administrative purposes beginning in FY 2017-18 would result in an ongoing funding shortfall. In FY 2014-15, approximately \$491,000 of the \$9.8 million expended from the SRPTF was expended by MCOLES for administrative purposes.²

Senate Bills 93 to 96 and 866 to 869 would likely have no fiscal impact on state or local law enforcement agencies or state or local units of government.

House Bills 5494 to 5501 have no fiscal implications for state or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

² For more information on MCOLES funding, see the HFA memo “MCOLES Training Funds,” accessible at: http://www.house.mi.gov/hfa/PDF/StatePolice/MCOLES_Training_Funds_Memo.pdf