

RULES AND REGULATIONS

Title 37—LAW

MUNICIPAL POLICE OFFICERS' EDUCATION AND TRAINING COMMISSION

[37 PA. CODE CH. 261]

Law Enforcement Mental Health Evaluations; Temporary Regulations

The Municipal Police Officers' Education and Training Commission (Commission), under its authority in 44 Pa.C.S. § 7204 (relating to regulations) enacted by the act of July 14, 2020 (P.L. 624, No. 59), adds Subpart D (relating to law enforcement mental health), Chapter 261 (relating to law enforcement mental health evaluations—temporary regulations) to read as set forth in Annex A. The Commission's temporary regulations will be added to Part IV (relating to Municipal Police Officers' Education and Training Commission).

Purpose of the Temporary Rulemaking

The purpose of this temporary rulemaking is to implement the provisions of 44 Pa.C.S. Chapter 72 (relating to mental health evaluations) as required under section 7204. The temporary regulations will expire 2 years from the date of publication. The Commission intends to use the 2-year period during which the temporary regulations are effective to test and refine the regulations to assure compliance in carrying out the purposes for which 44 Pa.C.S. Chapter 72 provides.

The provisions of 44 Pa.C.S. Chapter 72 require the Commission to promulgate regulations regarding the following topics:

1. Confidentiality of requests or recommendations for mental health evaluations (section 7204(c)(1)).
2. Confidentiality of mental health records produced by operation of Chapter 72 (section 7204(c)(2)).
3. Any other procedures deemed necessary by the Commission for implementation of Chapter 72 (section 7204(c)(3)).

Summary of Significant Provisions

Section 261.3 (relating to duties of law enforcement agency) sets forth procedures for a law enforcement agency when a law enforcement officer requests a mental health evaluation, when a police chief or other supervising law enforcement officer recommends a law enforcement officer have a mental health evaluation, or the law enforcement officer is involved in a lethal force incident.

Section 261.4 (relating to duties of licensed mental health professional) sets forth procedures for a licensed mental health professional to evaluate a law enforcement officer to determine if symptoms of post-traumatic stress disorder exist and whether the law enforcement officer is fit to perform essential job functions.

Sections 261.5 (relating to duties of law enforcement officer) sets forth the requirements of a law enforcement officer subject to a mental health evaluation under 44 Pa.C.S. Chapter 72.

Sections 261.6 (relating to duties of Commission) specifies the Commission will update a law enforcement officer's duty status when notified by a law enforcement agency. It also provides notice that the Commission may take action to suspend or revoke the certification of a law

enforcement officer who refuses to comply with a required mental health evaluation in accordance with the provisions of 37 Pa. Code Chapter 203 (relating to administration of the program).

Section 261.7 (relating to confidentiality) sets forth requirements for the confidentiality of records created in compliance with this chapter.

Affected Parties

This temporary rulemaking will affect county and municipal agencies that employ law enforcement officers.

Fiscal Impact

Commonwealth. This temporary rulemaking is not expected to have a fiscal impact on the Commission or other Commonwealth agencies. Commission expenditures for technological upgrades and staff workload increases will be minimal.

Political subdivisions. This temporary rulemaking will have a fiscal impact on political subdivisions of this Commonwealth which maintain a law enforcement agency.

Private sector. This temporary rulemaking is not anticipated to have a fiscal impact on the private sector.

General public. This temporary rulemaking is not anticipated to have a fiscal impact on the general public.

Paperwork Requirements

Several forms will be required for the uniform processing of mental health evaluations. The forms will be available on the Commission's public web site at mpoetc.psp.pa.gov at the time the temporary regulations become effective.

Effective Date

This temporary rulemaking will become effective July 14, 2021, in accordance with section 7204(b).

Public Comments

The Commission is seeking comments from the public and affected parties as to how this temporary regulation might be improved. Interested persons are invited to submit written comments, suggestions or objections regarding this temporary rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin* to Sergeant Leslie Barr, Policy and Legislative Affairs Office, Pennsylvania State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110 or by e-mail at lesbarr@pa.gov. Reference "#17-88, Chapter 72" when submitting comments.

Contact Person

The contact person for questions about this rulemaking is Sergeant Leslie Barr, Policy and Legislative Affairs Office, Pennsylvania State Police, lesbarr@pa.gov.

Regulatory Review

Under 44 Pa.C.S. § 7204, the Commission is authorized to promulgate temporary regulations which are not subject to sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240), (45 P.S. §§ 1201—1205), known as the Commonwealth Documents Law (CDL), sections 204(b) and 301(10) of the Commonwealth Attorneys Act (71 P.S. §§ 732-204(b) and 732-301(10)) and the Regulatory Review Act (71 P.S. §§ 745.1—745.14). These temporary regulations expire 2 years after publication in the *Pennsylvania Bulletin*.

Findings

In accordance with 44 Pa.C.S. Chapter 72 and with the approval of the Commission on February 4, 2021:

(1) The temporary regulations of the Commission, 37 Pa. Code, are amended by adding §§ 261.1—261.7 to read as set forth in Annex A.

(2) The temporary regulations are effective July 14, 2021.

(3) The temporary regulations will be posted on the Commission’s public web site and published in the *Pennsylvania Bulletin*.

(4) The temporary regulations are subject to amendment as deemed necessary by the Commission.

COLONEL ROBERT EVANCHICK,
Chairperson

Fiscal Note: 17-88. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

**PART IV. MUNICIPAL POLICE OFFICERS’
EDUCATION AND TRAINING COMMISSION**

**Subpart D. LAW ENFORCEMENT MENTAL
HEALTH**

**CHAPTER 261. LAW ENFORCEMENT MENTAL
HEALTH EVALUATIONS—TEMPORARY
REGULATIONS**

(Editor’s Note: The following temporary regulations are added and printed in regular type to enhance readability.)

GENERAL PROVISIONS

Sec.	
261.1.	Scope.
261.2.	Definitions.
261.3.	Duties of law enforcement agency.
261.4.	Duties of licensed mental health professional.
261.5.	Duties of law enforcement officer.
261.6.	Duties of Commission.
261.7.	Confidentiality.

GENERAL PROVISIONS

§ 261.1. Scope.

This chapter sets forth regulations for a law enforcement agency to provide a law enforcement officer with a mental health evaluation for post-traumatic stress disorder. This chapter is applicable to law enforcement agencies and law enforcement officers within the Commonwealth as identified in the act.

§ 261.2. Definitions.

In addition to the definitions contained in the act, the following words and terms, when used in this chapter, have the following meanings:

Act—44 Pa.C.S. Chapter 72 (relating to mental health evaluations).

Commission—The Municipal Police Officers’ Education and Training Commission.

Essential job functions of a police officer—The job functions and tasks essential to performing the full duties of a municipal police officer, including, but not limited to, the ability to effectuate arrests, proficiently handle firearms, operate a police vehicle and perform a variety of physical tasks, the ability to communicate effectively, both verbally and in writing, the ability to comprehend documents and apply rules, procedures, and precedent, and

other mental tasks, as well as perform rescue functions and other miscellaneous duties.

Fitness for duty evaluation—A formal, specialized psychological examination to determine whether a law enforcement officer is able to safely and effectively perform essential job functions of a police officer.

Lethal force—Force that directly causes the death of another person.

Licensed mental health professional—A licensed psychologist with education, training and experience in the diagnostic evaluation of mental and emotional disorders.

Mental health evaluation—An evaluation conducted by a licensed mental health professional to provide the licensed mental health professional with an impression of the way a person feels, reasons, thinks and remembers in order to diagnose mental health disorders.

Police Chief or supervising law enforcement officer—The agency executive, chief of police or officer in charge of a police department enumerated under the act, or the person or governing body exercising executive oversight of a police department enumerated under the act.

TACS—Training and Certification System—The web-based electronic database used to collect and retain information for programs managed by the Commission.

§ 261.3. Duties of law enforcement agency.

(a) In accordance with section 7203(a)(1) of the act (relating to mental health evaluations for law enforcement officers), a law enforcement agency shall provide a law enforcement officer employed by the law enforcement agency with a mental health evaluation for post-traumatic stress disorder when requested by a law enforcement officer.

(1) The law enforcement agency shall make a request for a mental health evaluation to a licensed mental health professional on a form promulgated by the Commission.

(2) The law enforcement agency shall schedule the mental health evaluation with a licensed mental health professional to occur within 10 calendar days of the request by the law enforcement officer.

(3) The law enforcement agency shall be responsible for costs associated with a mental health evaluation.

(4) The law enforcement agency shall notify the Commission within 5 calendar days, whenever the evaluation, diagnosis or treatment of a law enforcement officer, who requests a mental health evaluation under subsection (a), results in the officer being unable to perform the essential job functions of a law enforcement officer. This notification:

- (i) Shall be accomplished through TACS.
- (ii) Shall indicate only the new duty status.
- (iii) May not include any information concerning the evaluation, diagnosis or treatment of the law enforcement officer.

(b) In accordance with section 7203(a)(2) of the act, a law enforcement agency shall provide a law enforcement officer employed by the law enforcement agency with a mental health evaluation for post-traumatic stress disorder when a police chief or other supervising law enforcement officer recommends a mental health evaluation.

(1) The law enforcement agency shall make a request for a mental health evaluation to a licensed mental health professional on a form promulgated by the Commission.

(2) The law enforcement agency shall schedule the mental health evaluation with a licensed mental health professional to occur within 10 calendar days of the recommendation of the police chief or supervising law enforcement officer.

(3) The law enforcement agency shall be responsible for the costs associated with the mental health evaluation.

(4) The law enforcement agency shall notify the Commission within 5 calendar days, whenever the evaluation, diagnosis or treatment of a law enforcement officer, who is recommended for a mental health evaluation under subsection (b), results in the law enforcement officer being unable to perform the full duties of a law enforcement officer. This notification:

(i) Shall be accomplished through TACS.

(ii) Shall indicate only the new duty status.

(iii) May not include any information concerning the evaluation, diagnosis or treatment of the law enforcement officer.

(c) In accordance with section 7203(a)(3) of the act, a law enforcement agency shall provide a law enforcement officer employed by the agency with a mental health evaluation for post-traumatic stress disorder after being directly involved in an incident where lethal force was used in the course of law enforcement duties.

(1) The law enforcement agency shall make a request for a mental health evaluation to a licensed mental health professional on a form promulgated by the Commission.

(2) The law enforcement agency shall schedule the mental health evaluation with a licensed mental health professional to occur within 30 calendar days of the incident involving the use of lethal force.

(3) The law enforcement agency shall be responsible for the costs associated with the mental health evaluation.

(4) The law enforcement agency shall notify the Commission within 5 calendar days, whenever the evaluation, diagnosis or treatment of a law enforcement officer, who is provided a mental health evaluation under subsection (c), results in the officer being unable to perform the full duties of a law enforcement officer. This notification:

(i) Shall be accomplished through TACS.

(ii) Shall indicate only the new duty status.

(iii) May not include any information concerning the evaluation, diagnosis or treatment of the law enforcement officer.

(d) *Administrative duty.* A law enforcement officer shall be assigned to administrative duty if the law enforcement officer either:

(1) Fails to undergo a scheduled mental health evaluation as required under subsections (a), (b) or (c).

(2) Is not yet able to resume full duties as determined by a licensed mental health professional.

(e) *Notification.* The law enforcement agency shall provide written notification to the Commission when a law enforcement officer, who is required to participate in a mental health evaluation under this section, fails to comply with the requirements of § 261.5 (relating to duties of law enforcement officer).

§ 261.4. Duties of licensed mental health professional.

(a) Whenever a request for a mental health evaluation of a law enforcement officer is received, a licensed mental health professional shall:

(1) Schedule the mental health evaluation to occur within 10 days of the request made under § 261.3(a) or (b) (relating to duties of law enforcement agency).

(2) Schedule the mental health evaluation to occur within 30 days of the incident which prompted the request under § 261.3(c).

(3) Conduct a mental health evaluation, including a fitness for duty evaluation, clinical interview and objective testing, to determine if the law enforcement officer is both:

(i) Experiencing symptoms of post-traumatic stress disorder.

(ii) Fit to perform the essential job functions of a police officer.

(4) Conduct follow-up fitness for duty evaluations to determine if the law enforcement officer is fit to perform the essential job functions of a police officer if:

(i) The initial mental health evaluation is insufficient to determine if the law enforcement officer is experiencing symptoms of post-traumatic stress disorder.

(ii) The initial mental health evaluation is insufficient to determine if the law enforcement officer is fit to perform the essential job functions of a police officer.

(b) *Treatment.* If a licensed mental health professional determines during a mental health evaluation that a law enforcement officer has symptoms of post-traumatic stress disorder, the law enforcement officer shall be provided with treatment by a licensed mental health care professional until the licensed mental health care professional determines that the law enforcement officer is able to resume full duties.

(c) *Notification.* Upon completion of the mental health evaluation, a licensed mental health professional shall notify the law enforcement agency of the results of the mental health evaluation on a form promulgated by the Commission.

§ 261.5. Duties of law enforcement officer.

Whenever a law enforcement officer is subject to a mental health evaluation under § 261.3 (relating to duties of law enforcement agency), the law enforcement officer shall:

(1) Attend and participate in the scheduled mental health evaluation.

(2) Attend and participate in any follow-up evaluations.

(3) Notify law enforcement agencies that employ the law enforcement officer, when the law enforcement officer is employed by multiple law enforcement agencies and is placed on administrative duty by any of the employing law enforcement agencies.

(4) Notify an agency for which the law enforcement officer is employed as a peace officer, as defined in 18 Pa.C.S. § 501 (relating to definitions), when the law enforcement officer is employed by multiple agencies and is placed on administrative duty by any of the employing law enforcement agencies.

§ 261.6. Duties of Commission.

(a) Upon notice by a law enforcement agency of a change of duty status for a law enforcement officer, the Commission will ensure that the appropriate duty status is reflected in TACS.

(b) Upon written notice by a law enforcement agency of a law enforcement officer's failure to comply with § 261.5 (relating to duties of law enforcement officer), the Commission:

(i) Will provide the law enforcement officer with notice and an opportunity to be heard, as prescribed by 37 Pa. Code Chapter 203, Subchapter G (relating to notice and hearings).

(ii) May suspend or revoke the certification of that law enforcement officer, in accordance with 37 Pa. Code § 203.14 (relating to revocation of certification).

§ 261.7. Confidentiality.

(a) Any request or recommendation for a mental health evaluation of a law enforcement officer, made under this

chapter, whether verbal or written, shall be considered confidential. No person may divulge or discuss a recommendation or request made under this chapter, unless such communication is necessary to comply with this chapter.

(b) The results of any mental health evaluation of a law enforcement officer, conducted under this chapter, whether verbal or written, shall be considered confidential. All records kept, stored or otherwise retained by a law enforcement agency, the Commission or by a licensed mental health professional, which are generated as a result of an action under this chapter, shall be kept separate from other employment records. No person may divulge or discuss the results of any mental health evaluation of a law enforcement officer made under this chapter, unless such communication is necessary to comply with this chapter.

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