

**Subpart D. LAW ENFORCEMENT MENTAL HEALTH**

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

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**Authority**

The temporary provisions of this Chapter 261 issued under 44 Pa.C.S. § 7204, unless otherwise noted.

**Source**

The temporary provisions of this Chapter 261 adopted March 19, 2021, effective July 14, 2021, expire in 2 years, 51 Pa.B. 1512, unless otherwise noted.

**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).

#### Cross References

This section cited in 37 Pa. Code § 261.4 (relating to duties of licensed mental health professional); and 37 Pa. Code § 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.

#### Cross References

This section cited in 37 Pa. Code § 261.3 (relating to duties of law enforcement agency); and 37 Pa. Code § 261.6 (relating to duties of Commission).

### § 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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