

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

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

- (a) be a citizen of the United States;
- (b) be at least 18 years of age;
- (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;
- (d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;

- (e) be of good moral character, as determined by a thorough background investigation;

- (f) be a high school graduate or have been issued a high school equivalency diploma by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If a peace officer previously completed the peace officer basic course successfully, is certified or is eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of the probationary period in subsection (10), and has been continuously employed as a peace officer outside 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 less than 5 years, the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the peace officer's most recent appointment as a peace officer in Montana. If the peace officer fails the basic equivalency course, the officer shall satisfy the requirement in subsection (6) at the next available opportunity.

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

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

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

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

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

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

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

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec. 1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part); amd. Sec. 1, Ch. 191, L. 1983; amd. Sec. 1, Ch. 714, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 9, Ch. 662, L. 1991; amd. Sec. 2, Ch. 437, L. 1993; amd. Sec. 12, Ch. 506, L. 2007; amd. Sec. 13, Ch. 2, L. 2009; amd. Sec. 1, Ch. 75, L. 2009; amd. Sec. 4, Ch. 55, L. 2015; amd. Sec. 1, Ch. 196, L. 2015; amd. Sec. 2, Ch. 140, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 140 substituted current section text for former text (see 2019 Session Law for former text). Amendment effective October 1, 2019.

2015 Amendments — Composite Section: Chapter 55 in (2)(f) substituted "have been issued a high school equivalency diploma" for "have passed the general educational development test and been issued an equivalency certificate". Amendment effective October 1, 2015.

Chapter 196 in (2)(f) substituted "have been issued a high school equivalency diploma" for "have passed the general educational development test and been issued an equivalency certificate"; in (2)(g)(i) near beginning after "licensed physician" inserted "or, for the purposes of a mental health evaluation, a person who is licensed by the state under Title 37 and acting within the scope of the person's licensure" and after "applicant's personal physician" inserted "or licensed mental health professional"; inserted (2)(g)(ii) concerning completion of physical examination and standardized mental health evaluation instrument; in (5)(c) at end substituted "next available appropriate basic course" for "appropriate basic equivalency course within 120 days of the date of the failure of the equivalency course"; in (7) near middle after "term of employment must" deleted "upon application to the Montana public safety officer standards and training council"; and made minor changes in style. Amendment effective April 8, 2015.

2009 Amendments — Composite Section: Chapter 2 in (2)(f) near beginning after "general" substituted "educational" for "education"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 75 in (5)(c) near beginning of first sentence substituted "course that is taught by a federal, state, or United States military law enforcement agency and that is reviewed and approved by the Montana public safety officer standards and training council as equivalent with current training in Montana" for "course in another state", after "employment as a peace officer" inserted "or member of the military law enforcement", near end after "successfully" substituted "completing" for "passing" and after "equivalency" substituted "course" for "test", and at end after "academy" deleted "and successfully completing a legal training course conducted by the academy", inserted second sentence requiring review and approval of prior employment of a member of the military law enforcement, and in third sentence near beginning substituted "equivalency course" for "equivalency test", substituted "complete the appropriate basic equivalency course" for "complete the basic course", and at end substituted "failure of the equivalency course" for "test"; in (6) in third sentence substituted "basic equivalency course" for

"basic course or the legal training course"; and made minor changes in style. Amendment effective October 1, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

2007 Amendment: Chapter 506 throughout section substituted reference to Montana public safety officer standards and training council for reference to board of crime control; in (6) in two places substituted "council" for "board"; in (7) near end before "certifying" substituted "council" for "board"; and made minor changes in style. Amendment effective July 1, 2007.

Saving Clause: Section 24, Ch. 506, L. 2007, was a saving clause.

1993 Amendment: Chapter 437 inserted (8) providing a penalty for acting as a peace officer, detention officer, or detention center administrator if certification has been suspended or revoked; and made minor changes in style.

1991 Amendment: In (1) inserted reference to park ranger. Amendment effective April 26, 1991.

1989 Amendment: In (1) changed "patrolman" to "patrol officer".

1985 Amendment: In (5)(b) inserted last sentence relating to last date of employment and training; and in (5)(c), near beginning inserted "under the provisions of subsection (5)(b) or a peace officer", substituted "60 months" for "36 months", and near middle before "initial employment", inserted "present employment or".

1983 Amendment: Substituted entire section (see 1983 Session Law for text) for "No sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance shall hereafter appoint as such special deputy, marshal, or policeman any person who does not meet the minimum qualifying standards for employment promulgated by the board of crime control."

Cross-References

Board of Crime Control — functions, 44-7-101.

Case Notes

DUI Conviction Upheld — Arresting Officer Allowed to Testify as Fact Witness — Compliance With Officer Qualification Statute Did Not Disqualify Testimony — Accidental Destruction of Detention Center Video Insufficient to Dismiss: The defendant was arrested on suspicion of driving under the influence. Prior to trial, the defendant argued that the arresting officer did not have probable cause to search his vehicle, the officer was not qualified to testify because the state could not prove that the officer received a mental health evaluation under 7-32-303, and the charge should be dismissed because the state failed to produce the detention center video of his arrest. The District Court determined that the search warrant application established probable cause, the arresting officer was qualified to provide testimony as compliance with 7-32-303 did not preclude the officer's testimony, the detention center video was accidentally overwritten, and the defendant failed to show that the video was material, of substantial use, or exculpatory. *St. v. Robertson*, 2019 MT 99, 395 Mont. 370, 440 P.3d 17.

Authority of Deputy Sheriff to Make Arrest Without Completing Training Within One Year of Appointment: Jess asserted that the Deputy Sheriff who arrested her for DUI lacked the authority to make the unsupervised arrest because the deputy had not completed basic law enforcement training as required in 7-32-303 and that because the deputy was unauthorized, Jess's suspended driver's license should be reinstated. The Supreme Court disagreed. Under 7-32-303, a deputy must complete basic training within 1 year of appointment. However, the deputy was appointed only 8 months prior to the arrest and was therefore within the 1-year pretraining period. The deputy had completed 280 hours of reserve training and 24 hours of DUI training and had made numerous arrests both with and without supervision and thus was sufficiently experienced to form a particularized suspicion of DUI. The District Court's denial of Jess's motion for license reinstatement was affirmed. *Jess v. St. ex rel. Records & Driver Control*, 2008 MT 422, 347 M 381, 198 P3d 306 (2008).

Attorney General's Opinions

Basic Training Course Completion Requirement — No Extension Based on Break in Service: Even if a peace officer has a break in service during the grace period granted under this section, the peace officer must successfully complete a basic training course within a 1-year period that commences with the officer's initial appointment, plus any additional time (up to 180 days) granted by the Public Safety Officer Standards and Training Council. Because the statutes do not contemplate an exception based on the

employment circumstances of an individual officer, the peace officer may not extend the officer's 1-year grace period by the length of the break in service, regardless of whether the break in service extends beyond the 1-year period described in this section. An officer whose break in service extends beyond the 1-year grace period may not be rehired or reappointed to allow the officer another grace period or an extension to the grace period by virtue of the rehiring or reappointment. Once the original grace period expires, the individual must complete basic training before resuming peace officer duties; however, the agency may employ the individual in another capacity until the individual completes the basic training. 54 A.G. Op. 8 (2012).

Only One Basic Training Extension Allowed: This section authorizes only one 180-day extension of the requirement that an appropriate peace officer basic training course, certified by the Board of Crime Control (now Montana Public Safety Officer Standards and Training Council), be attended and successfully completed by every peace officer within 1 year of the officer's initial appointment. 48 A.G. Op. 22 (2000).