

***Joint Comments of Executive Directors Paul Gaspar and Kevin Anderson,
Tendered to the Board of Trustees of the Maine Criminal Justice Academy***

In Regards To;

**NOTICE TO ALERT INTERESTED PARTIES OF PUBLISHED DRAFT RULE PURSUANT TO
RULEMAKING
COMMENTS DUE BY AUGUST 11, 2024**

Friday August 9th, 2024

Members of the Board of Trustees,

For your consideration, we offer the following comments in my capacity as the Executive Director of the Maine Association of Police (“MAP”) and our membership of approximately 800 full time, municipal police officers and public safety dispatchers. We are also joined by the 400 full time members of the Maine State Law Enforcement Association (MSLEA), which represents full time members of state law enforcement departments outside of the Maine State Police.

After review of the proposed rules presented, MAP, MSLEA, our boards of directors, memberships and their families wish to express both alarm and concern for the impact these will have on the men and women of law enforcement throughout the state, regardless of their membership in our organizations.

We have also conferred with both our legal counsels which have reviewed the proposed rules as well. As with our organizations, they too, have concerns and questions as to the promulgation, process and ultimate mechanics of enforcement of these proposed rules.

As presented, these substantive changes serve to “shock the conscience” of the already established, clear statutes, regulations and processes that are already custom and practice and very much effective. These expansive changes will not only have an irrecoverable effect on the administration of due process for the regulation of individual certificates, but have also an instant chilling effect in the recruitment, and most notably the retention of certified law enforcement officers.

In the wake of an already palpable shortage of candidates, to the incredible number of vacant law enforcement positions and actual closures of smaller, unstaffed police departments, these changes will chart a course that cannot be altered or “stop the bleeding” we are currently experiencing in our ranks in any tangible or timely way.

Cloaked in vagueness, the proposed rules do not in any way establish or outline any determinate issues dealing with ultimate authority, due process, a clear and definitive process of appeal, nor a viable standard of proof with which to act as guard rails in any legitimate regulatory process. As written, the proposed rules engender both the complaint committee and board of trustees a veritably unchecked level of power which is engendered to chiefs of police statewide, in the form of criminal sanctions, to exercise this power by proxy. Current regulations outline a clear and concise matrix of authority, conduct and accountability, as well as an appeal process which are the hallmarks of any fair and judicious regulatory body. The proposed rules would be a serious departure from those of the Maine BAR, Medical Board, Insurance and Banking as well as legislative ethics bodies.

Without the benefit of these legal and procedural guidelines, these rules rob law enforcement officers of the basic rights afforded any individual under the United States and Maine Constitutions, as they relate to fair hearing and due process. To take these intrinsic rights from those who, with their

families, have taken on the mantle of responsibility under oath to protect these rights, it is drastic tack to take and appears that these rules represent legislation unrealized, versus a true and accurate accounting of what is needed to protect and model accountability in ALL our public trust positions.

This unbounded authority, in the absence of complete and sustained findings in processes protected by other governmental entities (such as the Judiciary in Giglio matters) or legal commitments to member rights in investigatory processes such as collective bargaining agreements, provides a clear path in circumventing an officer's rights under these tenets and replacing these with an expedient adjudicatory workaround in affecting the career, livelihood and professional reputations of affected officers. To have this undefined and surreptitious "shadow process" creates fertile ground for due process to be trampled underfoot of powerful and external influences including political, local and public opinion.

This wide net and direct, divertive action by the MCJA Complaint Committee and Board of Trustees, as well as the Chiefs the regulate will destroy any confidence of trust held by Maine law enforcement officers in their ability to receive full and fair credit, as well as due process with their right of appeal and will have no more professional accountability then afforded to them in the court of public opinion, the press, and the political bodies influenced by both. What is being represented in these rules, is actually a slippery slope to accountability through the proffering of weak anecdotal evidence and an expedient, retaliatory complaint process.

One of the largest concerns is that of equity and consistency in the complaint/adjudicatory process as it pertains to equity, consistency and timeliness; all hallmarks of due process. The wide net the proposed rules create will serve to burden, delay and obfuscate the policies and expectations of the complaint committee and the board of trustees. This will cause backlogs of hearings, delays in decisions and absence of final resolution during an appeal process, if one is even granted under these rules.

These rules set a clear tone, influenced by political/legislative efforts to continually change the representative makeup of the MCJA Board of Trustees and Complaint Committee to fit a non-professional oriented, agenda-based metric of accountability. Eliminating the discretion and experience-based process that is in place now destroys any confidence in the Academy's efforts and make it more akin to an adjunct of already existing state entities such as the Maine Human Rights Commission.

Finally, the proposed rules raise more questions than outlay a path to accountability. For example;

- **Without clear and concise general standards of conduct, it leaves the types and scope of conduct as possibly aspirational versus objective. For example, if someone could be sanctioned for allegedly treating someone without dignity, it creates an overly broad standard which is subjective and lacking in any definitive standard.**
- **In comparison to the current objective standards of criminality, under the new rules the tenet of unprofessional conduct is given a lessened burden that is not only unfair, but continues to be subjective, rather than objective.**
- **In allegations of harassment, the standards and definitions again are broad and subjective as to cast a wide net. As it does not have to be pervasive, merely an off-color joke told once can potentially expose an officer with decertification.**
- **In relation to trustworthiness or truthfulness, this unclear standard invokes concerns of conduct that is already covered by the US Supreme Court Case creating**

the Giglio determination of an officer's truthfulness determined by a member of the judiciary and representative attorneys. This unclear authority of the board not only subverts judicial scrutiny, but in the absence of a requirement for a final finding of any conduct through a legitimate investigative process, creates what is a subversion of judicial authority and what is tantamount to a "2nd bite of the apple" at the Academy.

- **Without a clear standard or standardized definition of what is inefficiency or lack of professionalism, it gives the Academy and its agents too broad and nonspecific a level of authority in its decisions.**
- **There is a broad over encompassing view of in the standard of marijuana possession. Its wide reach does not address this rule and its possible scope as addressed in any current law such as that of medical marijuana.**

Neither MAP's, or MSLEA's Board of Directors, or our affected members believe these concerns to be without merit or worth of mention or consideration. It is our fervent belief that if these concerns are among the over 1,200 members and their families that depend on their service, than it is assuredly the concern of all those who have taken the step to serve as a Maine Law Enforcement Officer.

Their oaths do not diminish their rights, OR their protections under a professionally regulated process to include fair and full hearings, due process, the right to appeal and the fair, consistent action of that regulatory body; in this case the Maine Criminal Justice Academy Board of Trustees and those members who represent the MCJA Complaint Committee as its Agent.

MAP and MSLEA, although critical of these proposed rules, understands the crushing responsibility that is placed on the Academy and its board. We respect and value the incredible mantle placed on the maintenance and furtherance of accountability among the Maine law enforcement profession and would welcome any opportunity to work cooperatively and in earnest with the board in addressing this, or any rulemaking process.

Thank You for your time and for the vital work that is before you,

Respectfully,

Paul D. Gaspar

Paul D. Gaspar
Executive Director
Maine Association of Police

Kevin Anderson

Kevin Anderson
Executive Director
Maine State Law Enforcement Association