

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE
5500 BAIL ENFORCEMENT AGENTS
Statutory Authority: 24 Delaware Code, Section 5503(d) (24 **Del.C.** §5503(d))
24 DE Admin. Code 5500

FINAL

ORDER

5500 Bail Enforcement Agents

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Bail Enforcement Agents ("Board") hereby issues this Order. The proposed change was published in the Delaware *Register of Regulations* on March 1, 2018 (Vol. 21, Issue 9). Following notice and a public hearing on the proposed adoption of amendments to Rule 5.0 Baton, Inflammatory Agent Sprays, Chemical Sprays and Handcuffs, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to eliminate the approval of those instructors by Professional Licensing.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will eliminate the approval of those instructors by Professional Licensing.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to eliminate the approval of those instructors by Professional Licensing.

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §5503 et seq. and, in particular, 24 **Del.C.** §5503(d)(2).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §5503 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** §5503(d)(2) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be October 11, 2018.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 30th day of August, 2018.

Major Melissa A. Zebley, Chairman
Director John Yeomans
Ms. Robin David
Mr. Michael J. Dellose
Alexander W. Funk, Esquire (absent)

Mr. Jack McGhee, II (absent)
Mr. Brandon Habron (absent)
Kevin Hamilton, Bail Bondsman
Mr. Harry O. Jennings (absent)

August 30, 2018

5500 Bail Enforcement Agents

1.0 Licensing

- 1.1 A bail enforcement agent (BEA) identification card, license and badge shall not be issued if the applicant has not complied with the provisions set forth in 24 **Del.C.** Ch. 55 and the regulations set forth herein. Moreover, no identification card, license and badge shall be issued if charges are pending under 24 **Del.C.** §5507.
- 1.2 The individual BEA applying for an identification card, license and badge under 24 **Del.C.** Ch. 55 must also meet the following qualifications:
 - 1.2.1 Must complete the training qualifications set forth in Section 6.0; and
 - 1.2.2 If carrying a weapon, must meet and maintain the qualifications set forth in Sections 4.0 and 5.0.
- 1.3 The individual BEA applying for licensure under 24 **Del.C.** Ch. 55 must submit the following for approval:
 - 1.3.1 A fee of \$75 for a four (4) year ID card license and badge; and
 - 1.3.2 Any and all applications required by the Professional Licensing Section.
- 1.4 The identification cards, licenses and badges are the property of the Delaware State Police.
 - 1.4.1 Any BEA that has been issued an identification card, license and badge and does not return the items to the Professional Licensing Section within 30 days of expiration, termination, suspension or revocation may be subject to penalties under 24 **Del.C.** Ch. 55.
- 1.5 There shall be no reciprocity with any other state regarding the issuing of an identification card, license and badge to a BEA.
- 1.6 The individual BEA re-applying for an identification card, license and badge under 24 **Del.C.** Ch. 55 must submit the following for approval:
 - 1.6.1 A fee of \$50 shall be for the re-application of the ID card, license and badge, which shall be valid for another four (4) years; and
 - 1.6.2 Proof of completion of the continuing education set forth in Section 7.0; and
 - 1.6.3 Any and all applications required by the Professional Licensing Section.
- 1.7 Any individual seeking re-licensure within three (3) years after their expiration shall be required to take the current continuing education class before they can be re-instated. Any individual seeking re-licensure after three (3) years of their expiration shall be required to take the initial classroom training again.

19 DE Reg. 318 (10/01/15)

2.0 Badges, Patches, Advertisements

- 2.1 No individual licensed under 24 **Del.C.** Ch. 55 shall use any type of uniform or other clothing items displaying logos, badges, patches, or any other type of writing without first being approved by the Board. Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.
 - 2.1.1 All BEA's shall at all times during the lawful performance of their duties pursuant to 24 **Del.C.** Ch. 55 and the regulations set forth herein use or display the following:
 - 2.1.1.1 Their assigned badge on the front of the outer most garment; and
 - 2.1.1.2 Wearing of a ballistic vest; and
 - 2.1.1.3 "Bail Enforcement Agent" must be displayed on the back of the outer most garment, the use of "BEA" only is NOT acceptable.
- 2.2 All advertisements, including vehicle markings, or other forms of publication, subsequent to their use, are subject to review by the Board for potential misrepresentation. If the Board does not approve the advertisement or publication, the concerns shall be forwarded to the licensee. Failure to correct the advertisement or publication shall be considered a violation of these Rules & Regulations.
- 2.3 The use of auxiliary lights or sirens on vehicles is prohibited.

20 DE Reg. 61 (07/01/16)

21 DE Reg. 49 (07/01/17)

3.0 Use of Animals

The use of animals is prohibited in the performance of any BEA activity.

18 DE Reg. 578 (01/01/15)

4.0 Firearms Policy

- 4.1 Section 4.0 shall apply only to individuals licensed under 24 **Del.C.** Ch. 55, while such individuals are acting in the performance of their duties as a BEA.

- 4.2 No individual licensed under 24 **Del.C.** Ch. 55 shall carry a firearm unless that individual has first passed an approved firearms course of instruction and an initial qualification administered by an approved firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement). If waived, they must show proficiency and qualify a day and low light shoot with an approved firearms instructor. The initial qualification course shall be used to fulfill one day and one low light requirement during the first year; however an additional day shoot must be completed at least 90 days after the date of initial certification, within the calendar year.
- 4.3 In order to open carry a firearm while in the performance of their duties, individuals licensed to carry a firearm under 24 **Del.C.** Ch. 55 must shoot a minimum of three qualifying shoots per calendar year, scheduled on at least two separate days, with a minimum 90 days between scheduled day shoots. Of these three, there will be one mandatory "low light" shoot which may be combined with a day shoot. Two day shoots shall not be completed on the same date. These qualifying shoots will be administered by an approved firearms instructor.
- 4.3.1 An individual not meeting the minimum qualifications set forth in subsection 4.3 may have their firearms license suspended until such time that they meet the minimum three qualifying shoots within the calendar year.
- 4.4 Only the handguns with the following calibers are permitted:
- 4.4.1 9mm;
- 4.4.2 .357;
- 4.4.3 .38;
- 4.4.4 .40;
- 4.4.5 .45; or
- 4.4.6 .357 SIG.
- 4.5 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 4.6 Under no circumstances will anyone under this Section be allowed to carry any type of weapon that is not described herein.
- 4.7 All individuals must meet the minimum qualifications set forth in subsection 4.3 with the same make/model/caliber of weapon that he/she will carry.
- 4.8 All ammunition must be factory fresh (no re-loads).
- 4.9 The minimum passing score is 80%.
- 4.10 All firearms licenses are valid for a period of one year, subject to proof of compliance of Section 4.0 by submission of shoot certification or re-certification forms to the Professional Licensing Section, by January 15th of each year for the previous calendar year.
- 4.11 If an individual requests to carry a different approved weapon, while in the performance of their duties as a BEA, other than the one on file with the Professional Licensing Section, he/she must have approval from the Director of Professional Licensing after submitting certification of a day and low light qualification with the new weapon. Upon approval, the individual can begin to carry the new weapon and the prior qualification of a different weapon will become void. Another day shoot with the new weapon must take place after 90 days, during the same calendar year. Individuals will only be authorized to carry the weapon they last qualified with and provided the shoot certifications to the Professional Licensing Section.
- 4.11.1 An individual may not change weapons after September 30th, of the current calendar year, without prior approval of the Director of Professional Licensing, after submitting a request to the Professional Licensing Section. If approval is granted, the individual must be certified and submit certification of a day and low light qualification to the Professional Licensing Section prior to carrying the weapon.
- 4.12 Firearms instructors providing instruction under Section 4.0:
- 4.12.1 Firearms instructors must be certified by the National Rifle Association as a Law Enforcement Instructor or through a law enforcement training and standards commission (i.e. C.O.P.T.). Certification by another professional firearms training institution as a "certified law enforcement firearms Instructor" must be approved by the Board. Instructors approved by the Board through another professional firearms training institution will have reciprocity approval with any other Board under Department of Safety and Homeland Security, Division of State Police, Professional Licensing Section.
- 4.12.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified handgun instructor may only instruct and qualify individuals with the handgun.)

- 4.12.3 All firearms instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify licensed individuals.

18 DE Reg. 318 (10/01/14)

19 DE Reg. 318 (10/01/15)

20 DE Reg. 473 (12/01/16)

5.0 ~~Baton, Nightstick, Pr24, Chemical Spray, and Handcuffs~~

- 5.1 ~~To carry the above weapons/items a BEA must have completed a training program on each and every weapon/item carried and all certifications must be on file in the Professional Licensing Section to be valid to carry/use. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Professional Licensing Section.~~
- 5.2 ~~Weapon/Item Instructors~~
- 5.2.1 ~~All weapon/item instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 24 Del.C. Ch. 55.~~

5.0 Baton, Inflammatory Agent Sprays, Chemical Sprays, and Handcuffs

- 5.1 Anyone licensed under 24 Del.C. Ch. 55 wishing to carry law enforcement style batons, inflammatory agent sprays, chemical sprays, and handcuffs, while in the performance of their duties as a BEA under 24 Del.C. Ch. 55, must have completed a training program on each and every weapon/item. The carrying of these weapons/items is only authorized after the BEA completes the appropriate training program with a certified instructor as required by the manufacture of the weapon/item and all certification and re-certifications are provided to the Professional Licensing Section.
- 5.1.1 Under no circumstances would a person be permitted to carry any other type weapon/item, while in the performance of their duties as a BEA under 24 Del.C. Ch. 55, unless first approved by the Director.
- 5.1.2 Any person registered in 24 Del.C. Ch. 55 who fails to provide a valid certification for any of the above weapons, if carried while in the performance of their duties as a BEA under 24 Del.C. Ch. 55, will be subject to disciplinary actions consistent with the law.
- 5.2 The Board shall have the right to deny any certification or re-certification from an instructor or training program that is deemed to be not within generally accepted practices for the weapon/item. Any denial may be appealed by submitting a request to the Professional Licensing Section and addressing the Board of Examiners.

18 DE Reg. 318 (10/01/14)

6.0 Training Requirements For Issuance of a License

- 6.1 All individuals applying for licensure under 24 Del.C. Ch. 55 must complete a minimum of eight hours of training in 6.1.1 prior to the issuance of an identification card, license and badge. This initial eight hours will fulfill the first year of the required continuing education. Must pass the test with a minimum score of 75%. Any failed test may be taken again within two weeks of the class. A second failed test will require the individual to take the classroom training again at the next scheduled class.
- 6.1.1 Courses in Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Use of Deadly Force, and the Rules & Regulations of Bail Enforcement Agents; and any other training as deemed pertinent by the Board.
- 6.1.2 All classroom training and testing must be given by a Board approved facility.

19 DE Reg. 318 (10/01/15)

20 DE Reg. 299 (10/01/16)

7.0 Continuing Education and Training

- 7.1 Continuing education/training shall be every year. Odd years will be done by completing an on-line modular and test and even years will be eight hours of classroom training. All training and testing must be given by a Board approved facility.
- 7.2 All continuing education/training courses must be approved by the Board.
- 7.3 Failure to complete the training every year shall be grounds for suspension or revocation of a current identification card, license and badge or the rejection of a renewal application. Any licensed Bail Enforcement Agent (BEA) not obtaining the continuing education for a given year by the last class offered shall be placed on emergency suspension immediately. Any training missed, or not completed, by a BEA must be completed before the emergency suspension may be administratively lifted. On-line training must be made up on-line and

classroom instruction must be made up in person in the classroom. Notwithstanding the foregoing, the Board may consider extenuating circumstances for reinstatement at its discretion.

- 7.4 Any continuing education test must be passed with a minimum score of 75%. Any failed test may be taken again within two weeks of the first test. A second failed test will require the individual to take the training again.

17 DE Reg. 652 (12/01/13)

18 DE Reg. 973 (06/01/15)

20 DE Reg. 299 (10/01/16)

8.0 Apprehension Procedures

- 8.1 All BEA's licensed under 24 **Del.C.** Ch. 55 are required to notify the Public Safety Answering Point (PSAP) for the appropriate jurisdiction prior to making any attempt at an apprehension or surveillance. This notification must occur prior to responding to the address of the attempt/surveillance. Notification shall be made to the same PSAP when clearing the address of the attempt/surveillance. If notification cannot be made to the PSAP of jurisdiction, the BEA shall contact the Regional Center for the County - Recom, Kentcom, or Suscom.

- 8.2 Upon successful apprehension, if the BEA transports the subject to the law enforcement agency in the jurisdiction in which the apprehension occurred, transfer of custody to the law enforcement agency shall take place at that time.

- 8.2.1 A failure of a police agency to accept custody of the fugitive shall be immediately documented by the BEA and reported to the Professional Licensing Section.

- 8.3 Failure to follow the procedures as described in this section could result in the suspension or revocation of the BEA identification card, license, and badge.

18 DE Reg. 578 (01/01/15)

20 DE Reg. 299 (10/01/16)

21 DE Reg. 49 (07/01/17)

9.0 Conducted Electrical Weapon (CEW)

- 9.1 In order for a BEA to carry/use a conducted electrical weapon (CEW), he/she must complete a training program approved by the Board and all certifications or re-certifications must be on file with the Professional Licensing Section.

- 9.2 CEW Instructors

- 9.2.1 All CEW instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify individuals licensed under 24 **Del.C.** Ch. 55.

18 DE Reg. 578 (01/01/15)

18 DE Reg. 610 (02/01/15)

20 DE Reg. 819 (04/01/17)

10.0 Suspensions and Revocations

- 10.1 The Director of the Professional Licensing Section shall have the power to invoke the intent to suspend or revoke any individual issued an identification card, license and badge under Title 24 Chapter 55 that violates the Chapter or the promulgated Rules & Regulations.

- 10.2 The Director of the Professional Licensing Section may issue an intent to suspend or revoke any individual issued an identification card, license and badge under 24 **Del.C.** Ch. 55, that has been arrested and that arrest could result in the conviction of any misdemeanor or felony that violates the Chapter or the promulgated Rules and Regulations.

- 10.3 Any individual whose identification card, license and badge has been suspended, revoked, or denied shall be granted a full hearing, by the Board at their next quarterly meeting, provided that the violating party requests such a hearing, in writing, to the Director of the Professional Licensing Section within 30 days of the suspension. Such individual shall be entitled to an appeal of the Board's decision to the Department of Safety and Homeland Security if a written appeal is filed within ten (10) days from the date of the Board's decision.

18 DE Reg. 578 (01/01/15)

11.0 Criminal Offenses

- 11.1 For the purposes of 24 **Del.C.** Ch. 55, the Director of the Professional Licensing Section may deny an application, suspend, or revoke an identification card, license and badge if the applicant or licensee has been convicted of a misdemeanor crime involving moral turpitude. A misdemeanor crime involving moral turpitude

includes, but is not limited to, the following crimes in the Delaware Code (or similar crimes under the laws of other jurisdictions):

11.1.1 Title 11 Crimes and Criminal Procedures Ch. 5 Specific Offenses:

- 11.1.1.1 §763 Sexual harassment;
- 11.1.1.2 §764 Indecent exposure in the second degree;
- 11.1.1.3 §765 Indecent exposure in the first degree;
- 11.1.1.4 §766 Incest;
- 11.1.1.5 §767 Unlawful sexual contact in the third degree;
- 11.1.1.6 §781 Unlawful imprisonment in the second degree;
- 11.1.1.7 §840 Shoplifting;
- 11.1.1.8 §861 Forgery;
- 11.1.1.9 §871 Falsifying Business Records
- 11.1.1.10 §881 Bribery
- 11.1.1.11 §907 Criminal Impersonation
- 11.1.1.12 §1101 Abandonment of a Child;
- 11.1.1.13 §1102 Endangering the Welfare of a Child;
- 11.1.1.14 §1105 Crime Against a Vulnerable Adult;
- 11.1.1.15 §1106 Unlawfully Dealing with a Child;
- 11.1.1.16 §1107 Endangering Children;
- 11.1.1.17 §1245 Falsely Reporting an Incident;
- 11.1.1.18 §1341 Lewdness;
- 11.1.1.19 §1342 Prostitution;
- 11.1.1.20 §1343 Patronizing a Prostitute; and
- 11.1.1.21 §1355 Permitting Prostitution

11.1.2 Title 16 Health and Safety Ch. 11 Nursing Facilities and Similar Facilities

- 11.1.2.1 §1136 Violations.

11.1.3 Title 31 Welfare Ch. 39 Adult Protective Services:

- 11.1.3.1 §3913 Violations.

18 DE Reg. 973 (06/01/15)

12.0 Prohibited Acts

No one issued an identification card, license or badge under 24 **Del.C.** Ch. 55 shall be impaired, by drugs or alcohol, while performing the duties of a BEA.

5 DE Reg. 1523 (01/01/02)

7 DE Reg. 1782 (06/01/04)

8 DE Reg. 1316 (03/01/05)

8 DE Reg. 1626 (05/01/05)

15 DE Reg. 1356 (03/01/12)

17 DE Reg. 652 (12/01/13)

18 DE Reg. 318 (10/01/14)

18 DE Reg. 578 (01/01/15)

18 DE Reg. 610 (02/01/15)

18 DE Reg. 973 (06/01/15)

19 DE Reg. 318 (10/01/15)

20 DE Reg. 61 (07/01/16)

20 DE Reg. 299 (10/01/16)

20 DE Reg. 473 (12/01/16)

20 DE Reg. 819 (04/01/17)

21 DE Reg. 49 (07/01/17)

22 DE Reg. 306 (10/01/18) (Final)