



Honorable Brian P. Kemp  
Governor

## Department of Public Safety

Post Office Box 1456  
Atlanta, Georgia 30371-1456  
Phone: (404) 624-7423  
Fax: (404) 624-7788

Colonel Mark W. McDonough  
Commissioner

### NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE THAT on October 22, 2019, at 10:00 a.m. in the Media Room at the Department of Public Safety, 959 United Avenue, S.E., Atlanta, Georgia, a public hearing will be held for the presentation of the proposed administrative rule changes which are attached and incorporated by reference.

The chapter affected by the proposed rule & regulation change is listed below:

#### **Rules of the Department of Public Safety Chapter 570-9, Off-Duty Police Employment**

All interested persons are hereby advised of the opportunity to submit data, views or arguments, orally or in writing. Oral comments will be limited to ten minutes per person. Anyone needing more than ten minutes should request additional time by contacting Legal Services, P. O. Box 1456, Atlanta, Georgia 30371, in writing, or calling (404) 624-7423, 24-hours prior to the hearing.\*

Citizens wishing to comment in writing on any of the proposed changes should do so on or before October 22, 2019. Comments may be faxed to (404) 624-7788, emailed to [kward@gsp.net](mailto:kward@gsp.net), or mailed to Georgia Department of Public Safety, Attn: Legal Services, P. O. Box 1456, Atlanta, Georgia 30371.

Comments from written and public testimony will be provided to the Board of Public Safety prior to November 14, 2019. The Board will vote on the proposed changes on November 14, 2019.

This <sup>19<sup>th</sup></sup> day of September 2019.

A handwritten signature in black ink, appearing to read "Mark W. McDonough".

Colonel Mark W. McDonough  
Commissioner

\*Anyone with a disability needing assistance should contact the Legal Services Division at (404) 624-7423, three days prior to the hearing.

Attachment

## **RULES OF THE DEPARTMENT OF PUBLIC SAFETY**

### **SYNOPSIS OF PROPOSED GEORGIA DEPARTMENT OF PUBLIC SAFETY RULES CHAPTER 570-9 (OFF-DUTY POLICE EMPLOYMENT)**

**Purpose:** The rules of the Department of Public Safety pertaining to Off-Duty Police Employment will be amended to clarify certain definitions and modify the conditions and rules pertaining to off-duty police employment by sworn DPS members.

**Main Features:** The main features of these amendments are:

- The total number of weekly hours a sworn DPS member may work while on-duty or performing off-duty police employment or any combination thereof will be reduced from 72 to 64, with limited exceptions.
- The term “DPS officer” shall be changed to “sworn member” to clarify the meaning of the term and to avoid confusion with other chapters of these rules, DPS policy, and state law.
- Added to the definition of the term “off-duty employment coordinator” is the responsibility of overseeing the approval process for the use of a Department motor vehicle in off-duty employment.
- The requirement that a supervisor or Post Commander must authorize the adjustment of a work schedule in order to accommodate off-duty police employment will be modified so that such authorization is not required to be in writing.
- Added to the exclusions for off-duty police employment is the exclusion of any sworn member on modified duty or leave from the Department for personal illness or injury, including worker’s compensation and FLSA.
- Use of a Department motor vehicle for off-duty police employment will be up-dated for consistency with O.C.G.A. § 35-2-15, particularly concerning liability coverage for the sworn member.
- Other non-substantive changes will be made to increase the clarity of the rules, update references, and correct internal inconsistencies, grammar, and typographical errors.

**Proposed Adoption of Rule:** Board of Public Safety Meeting, November 14, 2019.

**Proposed Time and Place of Public Hearing:** 10 a.m., October 22, 2019 in the Media Room of the Georgia Department of Public Safety, 959 United Avenue SE, Atlanta, Georgia 30315

# RULES OF THE DEPARTMENT OF PUBLIC SAFETY

## Chapter 570-9 Off-Duty Police Employment

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### 570-9-.01 Definitions

For the purposes of this chapter, the term

- (1) "Sworn member": shall mean any person employed by the Department of Public Safety in a sworn law enforcement capacity.
- (2) "Off-duty police employment" shall mean employment with an entity other than the Department of Public Safety which entails actual or potential use of police authority and requires vested police powers as a condition of employment. Off-duty employment may be either by private or public entities.
- (3) "Large off-duty police detail" shall mean a police detail requiring more than twelve sworn members.
- (4) "Off-duty employment coordinator" shall mean an individual designated by the Commissioner of the Department of Public Safety to coordinate requests to work off-duty employment, to provide names of eligible sworn members to prospective employers, to maintain employer information, and to oversee the approval process for use of Departmental vehicles for off-duty police employment.

*Authority: O.C.G.A. §§ 35-2-3, 35-2-15, 16-10-3*

### 570-9-.02 Approval

- (1) Prior to accepting off-duty police employment, a sworn member must obtain permission from the Commissioner or the Commissioner's designee. Requests for permission must be made on a form prescribed by the Department of Public Safety and must be sent to the off-duty employment coordinator. If the proposed employment conflicts with the sworn member's state employment or with any policy, rule, or regulation, of the Department of Public Safety or the State Personnel Board, the request shall be disapproved. Approval will only be granted if there is no conflict of interest, the proposed employment does not interfere with the sworn member's primary duties, and the proposed employment is within the duties and responsibilities a sworn

member performs or is reasonably expected to perform as part of his or her job duties and responsibilities. The Commissioner or his designee has the discretion to approve or disapprove any request.

- (2) If approval is granted, a copy of the request form marked "approved" shall be maintained by the off-duty employment coordinator. The off-duty employment coordinator shall provide notice to each approved employer.
- (3) In the event a request is made for emergency approval to work off-duty police employment, oral authorization may be granted by the Commissioner or his designee. Emergency approval will only be considered when the request from the employer is made 72 hours or less prior to the date of the off-duty police employment. If oral approval is granted, a written request, as provided above, must be prepared and forwarded on the form prescribed by the Department, through the chain of command, within 72 hours of the approval being granted.
- (4) Approval for off-duty police employment may be suspended at any time that a conflict is found to exist, the employment interferes with the sworn member's primary duties, departmental procedures are violated, or otherwise in the discretion of the Troop Commander or above, in consultation with the Georgia State Patrol Commanding Officer or Commissioner. During the course of the employment, the Department may make reasonable inquiries of a sworn member to ensure that no conflict or violation of the Department's policy exists.
- (5) Approval for off-duty police employment may be revoked at any time at the discretion of the Commissioner.

*Authority: O.C.G.A. §§ 35-2-3, 35-2-15.*

#### **570-9-.03 Eligibility**

The following sworn members shall not be approved for off-duty police employment:

- (a) Sworn members on suspension with or without pay;
- (b) Sworn members assigned administrative duties for the purpose of investigation;
- (c) Sworn members during the first six months of employment in a law enforcement capacity with the Department of Public Safety;
- (d) Sworn members with an overall performance management assessment of "1" or "2"
- (e) Sworn members approved for modified duty due to being physically or mentally incapable of performing his or her job duties;
- (f) Sworn members who do not meet any required physical fitness or physical agility standards set forth by the Department of Public Safety;
- (g) Sworn members on worker's compensation, sick leave, and/or FMLA; and
- (h) Sworn members on any type of leave due to their own personal illness or injury.

*Authority: O.C.G.A. §§ 35-2-3, 35-2-15*

#### **570-9-.04 General Provisions**

- (1) Sworn members desiring to work off-duty police employment shall arrange such employment with the understanding that all matters related to the off-duty police employment shall be

conducted at a time when the sworn member is not on duty.

- (2) No scheduling, arranging employment, replacements, delivering paychecks, or any other off-duty police employment-related matters shall be performed while the sworn member is on duty with the Department of Public Safety; provided, however, that for off-duty police employment for which the DPS officer receives his pay through the Department, the prohibition against the delivery of paychecks shall not apply.
- (3) Sworn members are prohibited from leaving their assigned duty work zone for the purpose of off-duty police employment.
- (4) Sworn members are prohibited from visiting off-duty work sites while on regularly assigned patrol shifts.
- (5) Sworn members are prohibited from adjusting work schedules in order to accommodate off-duty police employment opportunities except when personally approved by the Post Commander or immediate supervisor.
- (6) Sworn members working off-duty police employment in plain clothes shall be governed by DPS Policy regarding outside employment.
- (7) Off-duty police employment is prohibited with a private employer when the employer is involved in a labor strike. In cases where a private employer becomes involved in a labor strike subsequent to approval by the Commissioner, the approval shall be considered immediately withdrawn.
- (8) All law enforcement decisions will be made by the sworn member and not by the off-duty police employer.
- (9) Use of a department vehicle for off-duty police employment requires written approval in advance by the Commissioner and the vehicle shall be used only in the manner and for the purpose approved.

*Authority: O.C.G.A. §§ 35-2-3, 35-2-15*

#### **570-9-.05 Unacceptable Employment**

Off-duty police employment which is not acceptable to the Georgia Department of Public Safety includes, but is not limited to:

- (a) Employment involving wrecker companies, bail bonding companies, private investigation services, paralegal services, adult entertainment establishments, employment in which the primary source of revenue is the sale of alcoholic beverages, employment at fast food establishments or retail sales establishments, and any employment that would require a sworn member to testify in court in opposition to another law enforcement agency. Approval may be granted on an individual basis when the sale and consumption of alcohol beverages is incidental to the primary function or purpose of the enterprise such as sports facilities and civic centers. During the course of the employment, the Department may make reasonable inquiries of the member to ensure that the continued outside employment does not constitute a conflict of interest.
- (b) Any other off-duty police employment determined by the Commissioner, in his or her discretion, to be inconsistent, incompatible, in conflict with or that would bring discredit upon the Georgia Department of Public Safety.

*Authority: O.C.G.A. §§ 35-2-3, 35-2-15, 16-10-3*

### **570-9-.06 Off-Duty Employer Responsibilities**

- (1)
  - (a) The Department will not be responsible for a sworn member's actions if the sworn member is acting in the scope of employment for the outside employer. Except as provided in this rule, state benefits and protection, including liability insurance coverage and workers compensation benefits for related injuries and disability, will not apply while the sworn member is performing off-duty police employment.
  - (b) If such employment is by another state department, that agency, rather than the Department of Public Safety, will be responsible for such coverage.
  - (c) If use of the department vehicle has been approved for use in off-duty police employment in accordance with O.C.G.A. § 35-2-15, the sworn member is deemed to be acting within the scope of his/her official duties and employment and shall be afforded liability coverage for claims arising out of such approved use of the vehicle.
- (2) Requests for employment by another state agency shall be in writing and shall conform to the requirements for Off-Duty Police Employment. In addition to the requirement stated in this policy, a release shall be provided by the sworn member which states:
  - (a) In the event that the hours worked for the Department and another state agency result in the sworn member being eligible for overtime, the overtime shall be the responsibility of the other agency up to the maximum hours worked by the other agency, and
  - (b) In the event the sworn member requests or becomes entitled to overtime pay as a result of working outside the Department for another agency, the outside employer or other state agency shall bear the expense or liability and must agree to such in writing.

*Authority: O.C.G.A. §§ 35-2-3, 35-2-15*

### **570-9-.07 Hours**

A sworn member may work a maximum of 64 hours of employment per workweek, whether the work is exclusively regular duty hours, or exclusively off-duty police employment, or a combination of regular duty hours and off-duty police employment. With supervisor approval, a maximum of 72 hours during one week of each 28-day roster may be worked. The Post Commander has authority to determine that an overage of the 64 hours was unavoidable. Any deliberate omission or misrepresentation by the sworn member of hours worked on off-duty police employment shall result in disciplinary action, up to and including termination of employment. Exceptions will be made in the event of a riot, natural disaster, emergency situation, or other exigent circumstances, as determined by the Commissioner. A sworn member working off-duty police employment shall provide a minimum of six hours for rest between off-duty employment and regular on-duty assignments.

*Authority: O.C.G.A. §§ 35-2-3, 16-10-3*

### **570-9-.08 Law Enforcement Action in Off-Duty Police Employment**

A sworn member engaged in off-duty police employment is expected to take appropriate law enforcement action when a serious violation or life-threatening situation occurs (such as the commission of a felony). A sworn member responding under these conditions is considered "on-duty" and shall be afforded all protection consistent with the position of a sworn member. Law enforcement decisions must be made in accordance with Georgia Department of Public Safety policies, procedures, training, rules and regulations.

*Authority: O.C.G.A. § 35-2-3*

#### **570-9-.09 Standards of Conduct and Supervision**

The off-duty police employer may make general assignment of duties, but has no authority to control law enforcement activities of sworn members. Sworn members engaged in off-duty police employment will be subject to the same policies, rules and regulations as on-duty officers. While wearing any uniform of the Georgia Department of Public Safety, sworn members shall conduct themselves as professional law enforcement officers and are held to the same high standard and code of conduct as while on duty.

*Authority: O.C.G.A. § 35-2-3*

#### **570-9-.10 Use of State Equipment in Off-Duty Police Employment**

- (1) When off-duty police employment is approved, the sworn member shall wear the Georgia Department of Public Safety uniform of the day, and may use Georgia Department of Public Safety equipment issued to the sworn member.
- (2) Sworn members are permitted to use the department vehicle as authorized by O.C.G.A. § 35-2-15, in the manner and for the purpose approved by the Commissioner prior to the use of the vehicle, and only in accordance with DPS policy.
- (3) The Commissioner may require reimbursement for the use of the vehicle by the off-duty employer pursuant to a Department-approved, written agreement between the Department and the off-duty police employer. The Commissioner's determination shall be made before the off-duty employment begins. The off-duty employer shall be responsible for furnishing lodging and meals to the sworn member if the assignment requires an overnight stay.
- (4) When operating a department vehicle which has been approved for off-duty police employment as authorized by O.C.G.A. § 35-2-15, the sworn member shall be acting within the scope of his or her official duties and employment, and shall be afforded liability coverage for claims arising out of such approved use of the vehicle.

*Authority: O.C.G.A. §§ 35-2-3, 35-2-15*

#### **570-9-.11 Recall to Duty**

A sworn member engaged in an off-duty police employment assignment must be available to be recalled to on-duty status. Notice of this requirement shall be given to the employer in accordance with departmental policy.

*Authority: O.C.G.A. § 35-2-3*

#### **570-9-.12 Large Off-Duty Police Details**

Large off-duty police details shall require sufficient sworn off-duty Department of Public Safety supervisors to supervise the detail. The Department of Public Safety standard for supervisors requires the following, unless an exception is approved in advance by the Commissioner or his designee:

- (a) One (1) NCO is required for every 12 sworn employees assigned to a large off-duty police detail.
- (b) One (1) Lieutenant or Captain is required for every two (2) NCO's assigned to supervise a large off-duty police detail.
- (c) One (1) Captain is required for every two (2) Lieutenants assigned to a large off-duty detail.

*Authority: O.C.G.A. §§ 35-2-3, 35-2-15*

### **570-9-.13 Rental Agreements**

- (1) Sworn members who have an agreement with a property owner or manager to pay a reduced amount of rent or no rent for merely residing at an apartment complex, house, or mobile home park are not considered to be engaged in off-duty police employment.
- (2) If any type of regularly scheduled service such as security checks are part of the agreement, sworn members are considered to be engaged in off-duty police employment. Each member with such an agreement, either written or oral, shall request approval as stated in this chapter.
- (3) The request for off-duty police employment in a rental agreement situation must clearly state the conditions of the agreement.

*Authority: O.C.G.A. §§ 35-2-3, 16-10-3*