

**MONTANA Public Safety Officer Standards and Training Council
Committee Meeting Agenda ~ January 22, 2020
Business Plan/Policy Committee Meeting 10:00 a.m. ~ 11:00 a.m.
Montana Law Enforcement Academy, Maple Conference Room
2260 Sierra Road East, Helena, Montana**

Dial-in Participant Information

Dial-in number: (866) 576-7975
Access code: 612394

- I. 10:00 a.m.** ~ Call meeting to order, roll call, identify and welcome guests.
- II. 10:05 a.m.** ~ Public Comment
- III. 10:10 a.m.** ~ Current ARMs ~ **(Pgs. 1-13)**
- IV. 10:25 a.m.** ~ 2020 ARMs ~ **(Pgs. 14-15)**
- V. 10:35 a.m.** ~ Legislation ~ **(Pgs. 16-24)**
- VI. 10:50 a.m.** ~ Attorneys
- VII. 11:00 a.m.** ~ Adjourn

* Executive Sessions are closed to the public in order to protect the privacy rights of individuals.

Times are approximate; actual times may vary depending on presentation/discussion time.

BEFORE THE PUBLIC SAFETY OFFICERS
STANDARDS AND TRAINING COUNCIL
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 23.13.102, 23.13.206,) PROPOSED AMENDMENT
23.13.207, 23.13.208, 23.13.209,)
23.13.210, 23.13.212, 23.13.215,)
23.13.702, and 23.13.703 pertaining)
to the certification of public safety)
officers)

TO: All Concerned Persons

1. On December 18, 2019, at 10:00 a.m., the Public Safety Officers Standards and Training (POST) Council will hold a public hearing in Rooms 213 and 214 of the Karl Ohs Building of the Montana Law Enforcement Academy, 2260 Sierra Road East, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The POST Council will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the POST Council no later than 4:00 p.m. on December 11, 2019, to advise us of the nature of the accommodation that you need. Please contact Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.13.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) through (5) remain the same.

(6) "Director" or "executive director" means the ~~executive director~~ bureau chief of the public safety officer standards and training ~~council~~ bureau.

(7) through (13) remain the same.

(14) "Misdemeanor probation/pretrial services officer" means a public safety officer who regularly performs the following functions as part of their work assignment:

(a) gathers information about pretrial defendants or misdemeanants through interviews and records checks;

(b) reports information regarding pretrial defendants or misdemeanants to a judge so the judge can determine the propriety of pretrial supervision, detainment, or sentence revocation;

(c) monitors pretrial defendants' or misdemeanants' compliance with court-ordered pretrial release or misdemeanor probation conditions;

(d) provides information and resources to pretrial defendants or misdemeanants to help prevent violations of court-ordered conditions; and
(e) reports violations of court-ordered conditions to the court.
(14) through (26) remain the same but are renumbered (15) through (27).

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: The 2019 Legislature enacted HB 684, which created a Public Safety Officer Standards and Training Bureau under the Department of Justice and provided for a "bureau chief" rather than an "executive director." This amendment is necessary to reflect the statutory change.

On October 2, 2019, the POST Council created a new discipline, misdemeanor probation/pretrial services officer. This amendment is necessary to define the new discipline. Historically, the Department of Corrections provided a Probation and Parole basic training, which POST required misdemeanor probation and pretrial services officers to attend. The Department of Corrections recently informed POST that it will no longer provide this training to any non-Department of Corrections employees. POST therefore created this discipline to provide misdemeanor probation and pretrial services officers with training relevant to their duties.

23.13.206 REQUIREMENTS FOR THE BASIC CERTIFICATE (1) through (1)(c) remain the same.

(d) misdemeanor probation/pretrial services officer;

(d) through (f) remain the same but are renumbered (e) through (g).

(2) remains the same.

(3) An officer meeting the qualifications outlined above will be issued a basic POST certificate. The discipline of the basic POST certificate will correspond to the basic training course the officer attended. POST will consider the completion of the above requirements to constitute the officers application for a POST basic certificate. However, if an officer wishes to fill out an application form, then POST will also consider that application. POST will not reissue a basic certificate merely to change the discipline listed.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: On October 2, 2019, the POST Council created a new discipline, misdemeanor probation/pretrial services officer. The amendment to ARM 23.13.206(1)(d) is necessary to ensure that the existing requirements for the award of a basic certification apply to the new discipline.

In 2017, this rule was amended to identify the disciplines in which POST would issue a basic certificate. However, that amendment did not address how POST would handle certificates issued before 2017 that did not fall under one of the listed disciplines. Some officers have requested that POST reissue their certificates to

align with one of the listed disciplines, even though their basic training was not in the listed discipline. This amendment to ARM 23.13.206(3) is necessary to clarify that the discipline listed on a POST basic certificate corresponds to the basic training course the officer attended. This practice helps ensure that POST's internal tracking of trainings attended and certificates issued remains consistent. This amendment is also necessary in light of the creation of the new discipline, misdemeanor probation/pretrial services officer. The amendment notifies misdemeanor probation/pretrial services officers who attended a Probation and Parole basic training under the Department of Corrections that POST will not reissue their certificates merely to change the discipline from probation/parole officer to misdemeanor probation/pretrial services officer.

23.13.207 REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) through (1)(c) remain the same.

(d) misdemeanor probation/pretrial services officer;

(d) remains the same but is renumbered (e).

(2) remains the same.

(3) In addition to ARM 23.13.204 and 23.13.205, a detention/corrections officer or a misdemeanor probation/pretrial services officer who is an applicant for an award of the intermediate certificate:

(a) through (5) remain the same.

(6) A misdemeanor probation/pretrial services officer who possessed a probation and parole basic certificate before [effective date of this rule] meets the requirement of (3)(b).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: Before the POST Council created the misdemeanor probation/pretrial services officer discipline, POST required officers serving the function of a misdemeanor probation officer and/or a pretrial services officer to attend the Department of Corrections' Probation and Parole basic academy. Due to this practice, a number of officers who have been working in misdemeanor probation/pretrial services have Probation and Parole certifications. These amendments are necessary to allow these officers to qualify for the misdemeanor probation/pretrial services officer certification without attending a basic academy again.

23.13.208 REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADVANCED CERTIFICATE (1) through (1)(b) remain the same.

(c) probation and parole officer; and

(d) misdemeanor probation/pretrial services officer; and

(d) remains the same but is renumbered (e).

(2) remains the same.

(3) In addition to ARM 23.13.204 and 23.13.205, a detention/corrections officer or a misdemeanor probation/pretrial services officer who is an applicant for an award of the advanced certificate:

(a) through (5) remain the same.

(6) A misdemeanor probation/pretrial services officer who possessed a probation and parole intermediate certificate before [effective date of this rule] meets the requirement of (3)(a).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See the Reasons under ARM 23.13.207.

23.13.209 REQUIREMENTS FOR PUBLIC SAFETY OFFICER SUPERVISORY CERTIFICATE (1) through (1)(b) remain the same.

(c) probation and parole officer; and

(d) misdemeanor probation/pretrial services officer; and

(d) remains the same but is renumbered (e).

(2) through (4) remain the same.

(5) A misdemeanor probation/pretrial services officer who possessed a probation and parole intermediate certificate before [effective date of this rule] meets the requirement of (2)(a).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See the Reasons under ARM 23.13.207.

23.13.210 REQUIREMENTS FOR PUBLIC SAFETY OFFICER COMMAND CERTIFICATE (1) through (1)(b) remain the same.

(c) probation and parole officer; and

(d) misdemeanor probation/pretrial services officer; and

(d) remains the same but is renumbered (e).

(2) through (3) remain the same.

(4) A misdemeanor probation/pretrial services officer who possessed a probation and parole supervisory certificate before [effective date of this rule] meets the requirement of (2)(a).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See the Reasons under ARM 23.13.207.

23.13.212 INSTRUCTOR CERTIFICATION REQUIREMENTS (1) through (6) remain the same.

(7) A misdemeanor probation/pretrial services officer who possessed a probation and parole basic certificate before [effective date of this rule] meets the requirement of (3)(b).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: See the Reasons under ARM 23.13.207.

23.13.215 FIREARMS PROFICIENCY STANDARDS (1) through (4) remain the same.

(5) Before carrying a firearm or making an arrest, a misdemeanor probation/pretrial services officer must successfully complete the firearms proficiency requirements provided in this rule. The officer must successfully complete the firearms proficiency requirements provided in this rule at least once a year.

AUTH: 2-15-2029, MCA

IMP: 7-32-303, 44-4-403, MCA

REASON: The 2019 Legislature amended 46-23-1005, MCA, to provide arrest authority to publicly employed misdemeanor probation officers. Similarly, 46-9-505, MCA, provides arrest authority for all pretrial services officers. On October 2, 2019, the POST Council created a new discipline, misdemeanor probation/pretrial services officer. This amendment is necessary to ensure that officers in the new discipline receive training before making arrests and carrying firearms. The council recognizes that many misdemeanor probation or pretrial services agencies are relatively new and small and do not have the resources to provide field training on arrest and use of force. This amendment ensures the safety of the misdemeanor probation/pretrial services officers and of the public by requiring all misdemeanor probation/pretrial services officers to be firearms proficient, without requiring the agencies to provide field training.

23.13.702 GROUNDS FOR DENIAL, SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) remains the same.

(2) The public safety officer's employing authority must report to the executive director any potential ground for denial, sanction, suspension, or revocation of POST certification as enumerated in (3).

(2) through (2)(d) remain the same but are renumbered (3) through (3)(d).

(e) conviction of a misdemeanor or felony, or an offense which would be a misdemeanor or felony if committed in this state;

(f) remains the same.

(g) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations, or criminal law when such action or inaction, committed in the officer's capacity as an officer or otherwise, reflects adversely on the officer's honesty, integrity, or fitness as an officer or is prejudicial to the administration of justice;

(h) remains the same.

(i) other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession, whether committed in the officer's capacity as an officer or otherwise, is prejudicial to the administration of justice or reflects adversely on the employing authority's integrity or the officer's honesty, integrity, or fitness as an officer;

(j) and (k) remain the same.

~~(l) acts that are reasonably identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the employing authority's or officer's reputations, or to the public's confidence in the profession;~~

(m) through (o) remain the same but are renumbered (l) through (n).

(3) remains the same but is renumbered (4).

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: At a special council meeting in April 2019, employing authorities and public safety officers expressed concerns that the current grounds for denial, sanction, suspension, or revocation are vague and overbroad, for example because they would include an officer failing to refuel a vehicle at the end of a shift. The employing authorities also expressed ongoing confusion about what to send POST when reporting grounds for denial, sanction, suspension, or revocation. Some also expressed their belief that they are not required to report to POST at all. These amendments are necessary to clarify that an employing authority must report violations to the council and to clarify that only certain violations fall under the scope of the rule. These amendments are also necessary to ensure consistency with the public safety officers' Code of Ethics set forth in ARM 23.13.203.

23.13.703 PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR (1) through (3) remain the same.

(4) Within 30 days of being notified of the allegation, or in making its own allegation of misconduct, the employing authority must give POST a notice of the employing authority's investigation, action, ruling, finding, or response to the allegation, in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question, and a recommendation from the employing authority regarding whether POST should impose a sanction. If the employing authority recommends POST impose a sanction, the employing authority must state what sanction the employing authority deems reasonable. POST shall consider but is not bound by the recommendation of the employing authority. If available, a copy of the initial allegation made to the employing authority and the employing authority's written response must be forwarded to the director. The employing authority may make a written request to the director for additional time to respond. Such a request must provide good cause as to the reason more time is required. The director may grant or deny requests for additional time at ~~his~~ the director's discretion.

(5) through (5)(b)(iii) remain the same.

~~(iv) the remedy sought, including a recommendation for a denial, sanction, suspension, or revocation of the officer's POST certification;~~

(c) through (11) remain the same.

AUTH: ~~2-4-201~~, 2-15-2029, MCA

IMP: ~~2-4-201~~, 2-15-2029, 44-4-403, MCA

REASON: At a special council meeting in April 2019, employing authorities indicated that they do not make recommendations regarding sanctions because they do not believe POST would consider such recommendations. These amendments are necessary to clarify that POST will in fact consider recommendations.

In May 2019, officers expressed concern that complainants may recommend sanctions when some lesser action may be acceptable. The amendments are also necessary to allow complainants to recommend something other than a sanction, such as an apology or an investigation.

As part of the periodic review of its administrative rules, POST is proposing to substitute gender neutral terms for gender specific language. POST has determined that reasonable necessity exists to amend ARM 23.13.703(4) at this time.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov, and must be received no later than 5:00 p.m., January 3, 2020.

5. Kristina Neal, Attorney at Law, has been designated to preside over and conduct this hearing.

6. The council maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the council has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Hannah Tokerud
Hannah Tokerud
Rule Reviewer

Sheriff Tony Harbaugh
Chairman
Public Safety Officers Standards
and Training Council

By: /s/ Perry Johnson
Perry Johnson
Executive Director

Certified to the Secretary of State October 29, 2019.

Comments 1-5: Steve Ette of Gallatin Court Services provided written comment regarding the proposed changes to ARM 23.13.102. Andrea Lower of Gallatin Court Services testified concerning the proposed changes to ARM 23.13.102. Gloria Soja of Lewis and Clark County Criminal Justice Services Department testified and provided written comment jointly with Kellie McBride of Lewis and Clark County Criminal Justice Services Department regarding the proposed change to ARM 23.13.102. Jon Metropoulos of Missoula Correctional Services, Inc. also provided testimony concerning the proposed changes to ARM 23.13.102. All individuals commented that “Misdemeanor Probation Officer” and “Pretrial Services Officer” should be separately defined because they have different jobs. Additionally, they commented that the discipline should be renamed “pretrial services/misdemeanor probation officer” in ARMs 23.13.206 through 23.13.215 to avoid confusion regarding whether pretrial services officers supervise pretrial felony defendants. Representatives from Lewis and Clark County Criminal Justice Services Department and Gallatin Court Services provided proposed language for the definitions of “Misdemeanor Probation Officer” and “Pretrial Services Officer.”

Response to Comments 1-5: “Misdemeanor Probation Officer” has already been defined in statute. The terms “Misdemeanor Probation Officer” and “Pretrial Service Officer” do not appear individually in POST’s rules, and therefore the terms require no definition for the purposes of reading POST’s rules. POST is not attempting to define specific types of officers in a discipline, but the discipline as a whole. For example, POST has not provided definitions for “deputy sheriff” or “game warden,” because these types of officers fall under the overarching discipline of “peace officer” although their jobs are likely quite different.

Comments 6-8: Sue Wilkins, Dan Cederberg and Jon Metropoulos of Missoula Correctional Services, Inc. provided written comment regarding POST’s proposed changes to ARM 23.13.215. Mr. Metropoulos also provided testimony regarding POST’s proposed changes to ARM 23.13.215. Missoula Correctional Services, Inc. opposes POST requiring Pretrial Service and Misdemeanor Probation Officers to qualify on firearms annually to make an arrest.

Response to Comments 6-8: Officers with arrest authority are granted the authority to use any force necessary to effect an arrest. This includes the use of firearms. While Missoula Correctional Services, Inc. feels that their officers can safely affect an arrest without the use of such force, the Council recognizes that situations involving arrest can quickly become violent and that any officer making an arrest can be armed, whether they are or not.

Comments 9-14: Frank DiFonzo, Chief of the Sidney Police Department, Deputy Chief Mark Kraft of the Sidney Police Department, Steve Crawford, Chief of the Bozeman Police Department and representative for the Montana Association of Chiefs of Police, and Jon Metropoulos of Missoula Correctional Services provided testimony in opposition to the proposed changes to ARM 23.13.702. Deputy Chief Kraft, Chief Crawford, Mr. Metropoulos, Justin Jenness, Chief of the Lewistown Police Department, and Sergeant Rick Miller of the Livingston Police Department provided written comment in opposition to the

proposed changes to ARM 23.13.702. Chief Crawford opposes a requirement that minor traffic offenses be reported to POST. Chief DiFonzo testified that only felony convictions should be required to be reported. Chief Jenness and Sgt. Miller commented that POST is exceeding its authority by requiring agencies to report misconduct. Deputy Chief Kraft commented that the employing agencies should be trusted to determine what should happen to its officers and that it should not be decided by POST.

Response to Comments 9-14: Statute provides that POST “shall... provide for the ... suspension or revocation of certification of public safety officers.” The Council has been granted the authority to adopt rules to implement this statutory obligation. The employing authorities in Montana have the statutory responsibility to apply the Montana POST Council’s standards. The Council finds that reporting violations of its standards is the responsibility of the employing authority.

DRAFT

Option 1: Rule as Proposed

23.13.702 GROUNDS FOR SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) The executive director or the council will consider any legitimate allegation made against any public safety officer that may result in the denial, sanction, revocation, or suspension of that officer's certification.

(2) The public safety officer's employing authority must report to the executive director any potential ground for denial, sanction, suspension, or revocation of POST certification as enumerated in (3).

~~(2)~~ (3) The grounds for denial, sanction, suspension, or revocation of the certification of public safety officers are as follows:

(a) willful falsification of any information in conjunction with official duties, or any single occurrence or pattern of lying, perpetuating falsehoods, or dishonesty which may tend to undermine public confidence in the officer, the officer's employing authority, or the profession;

(b) a physical or mental condition that substantially limits the officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated or overcome by reasonable accommodation;

(c) engaging in substance abuse as defined in these rules;

(d) unauthorized use of or being under the influence of alcoholic beverages while on duty, or the use of alcoholic beverages in a manner which tends to discredit the officer, the officer's employing authority, or the profession;

(e) conviction of a misdemeanor or felony, or an offense which would be a misdemeanor or felony if committed in this state;

(f) conviction of any offense involving unlawful sexual conduct or unlawful physical violence;

(g) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations, or criminal law when such action or inaction, committed in the officer's capacity as an officer or otherwise, reflects adversely on the officer's honesty, integrity or fitness as an officer or is prejudicial to the administration of justice;

(h) willful violation of the code of ethics set forth in ARM 23.13.203;

~~(i) other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession, whether committed in the officer's capacity as an officer or otherwise, is prejudicial to the administration of justice or reflects adversely on the employing authority's integrity or the officer's honesty, integrity or fitness as an officer ;~~

(j) failure to meet the minimum standards for appointment or continued employment as a public safety or peace officer set forth in these rules or Montana law;

(k) failure to meet the minimum training requirements or continuing education and training requirements for a public safety or peace officer required by Montana law and these rules;

~~(l) acts that are reasonably identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the employing authority's or officer's reputations, or to the public's confidence in the profession;~~

~~(m)~~ (l) operating outside or ordering, permitting, or causing another officer to operate outside of the scope of authority for a public safety or peace officer as defined by 44-4-401, 44-4-404, or 7-32-303, MCA, or any other provision of Montana law regulating the conduct of

public safety officers;

~~(n)~~ (m) the use of excessive or unjustified force in conjunction with official duties; or
~~(o)~~ (n) the denial, sanction, suspension, or revocation of any license or certification equivalent to a POST certification imposed by a board or committee equivalent to POST in any other state.

~~(3)~~ (4) It is a defense to an allegation of substance abuse, as defined in these rules, if the officer shows by a preponderance of the evidence that the officer's substance abuse has been eliminated or overcome by reasonable treatment.

Option 2: Make no Changes, Rule reverts to previous version

23.13.702 GROUNDS FOR SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) The executive director or the council will consider any legitimate allegation made against any public safety officer that may result in the denial, sanction, revocation, or suspension of that officer's certification.

(2) The grounds for denial, sanction, suspension, or revocation of the certification of public safety officers are as follows:

(a) willful falsification of any information in conjunction with official duties, or any single occurrence or pattern of lying, perpetuating falsehoods, or dishonesty which may tend to undermine public confidence in the officer, the officer's employing authority, or the profession;

(b) a physical or mental condition that substantially limits the officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated or overcome by reasonable accommodation;

(c) engaging in substance abuse as defined in these rules;

(d) unauthorized use of or being under the influence of alcoholic beverages while on duty, or the use of alcoholic beverages in a manner which tends to discredit the officer, the officer's employing authority, or the profession;

(e) conviction of a felony, or an offense which would be a felony if committed in this state;

(f) conviction of any offense involving unlawful sexual conduct or unlawful physical violence;

(g) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations;

(h) willful violation of the code of ethics set forth in ARM 23.13.203;

(i) other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession;

(j) failure to meet the minimum standards for appointment or continued employment as a public safety or peace officer set forth in these rules or Montana law;

(k) failure to meet the minimum training requirements or continuing education and training requirements for a public safety or peace officer required by Montana law and these rules;

(l) acts that are reasonably identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the employing authority's or officer's reputations, or to the public's confidence in the profession;

(m) operating outside or ordering, permitting, or causing another officer to operate outside of the scope of authority for a public safety or peace officer as defined by 44-4-401, 44-4-404, or 7-32-303, MCA, or any other provision of Montana law regulating the conduct of public safety officers;

(n) the use of excessive or unjustified force in conjunction with official duties; or

(o) the denial, sanction, suspension, or revocation of any license or certification equivalent to a POST certification imposed by a board or committee equivalent to POST in any other state.

(3) It is a defense to an allegation of substance abuse, as defined in these rules, if the officer shows by a preponderance of the evidence that the officer's substance abuse has been eliminated or overcome by reasonable treatment.

Option 3: Attempt to limit misdemeanors

(2) The public safety officer's employing authority must report to the executive director any potential ground for denial, sanction, suspension, or revocation of POST certification as enumerated in (3).

(e) conviction of a misdemeanor which is punishable by a term of incarceration or a felony, or an offense which would be a misdemeanor punishable by a term of incarceration or a felony if committed in this state;

Option 4: List of violations which must vs. may be reported

(2) The public safety officer's employing authority may report to the executive director any potential ground for denial, sanction, suspension, or revocation of POST certification as enumerated in (3). The public safety officer's employing authority must report to the executive director any potential ground for denial, sanction, suspension, or revocation of POST certification as enumerated in (3)(a), (e), (f), (h), (n) or (o).

23.13.201 MINIMUM STANDARDS FOR THE APPOINTMENT AND CONTINUED EMPLOYMENT OF PUBLIC SAFETY OFFICERS (1) All public safety officers must be certified by POST and meet the applicable employment, education, and certification standards as prescribed by the Montana Code Annotated.

(2) In addition to standards set forth in the Montana Code Annotated, including but not limited to 44-4-404, MCA, all public safety officers must:

- (a) be a citizen of the United States or may be a registered alien if unsworn;
- (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 they could have been imprisoned in a federal or state penitentiary or a crime involving unlawful sexual conduct;
- (e) be of good moral character as determined by a thorough background check;
- (f) be a high school graduate or have been issued an equivalency certificate by the Superintendent of Public Instruction, or by an appropriate issuing agency of another state or of the federal government;
- (g) successfully complete an oral interview and pass a thorough background check conducted by the appointing authority or its designated representative;
- (h) be in good standing with POST and any other licensing or certification boards or committees equivalent to POST in any other state such that no license or certification similar to a POST certification has been revoked or is currently suspended in any other state;
- (i) possess a valid driver's license if driving a vehicle will be part of the officer's duties;
- (j) abide by the code of ethics contained in ARM 23.13.203; and
- (k) complete, within every two calendar years, 20 hours of documented agency in-service, roll call, field training, or POST-approved continuing education training credits, which include but are not limited to a professional ethics curriculum covering the following topics and any additional topics required by the council:
 - (i) a review of the Code of Ethics ARM 23.13.203 and Grounds for Denial, Sanction, Suspension, and Revocation ARM 23.13.702;
 - (ii) review of the annual POST integrity report;
 - (iii) discussion involving core values of each employing agency which may include integrity, honesty, empathy, sympathy, bravery, justice, hard work, kindness, compassion, and critical thinking skills;
 - (iv) review of agency policy and procedure regarding ethical and moral codes of conduct;
 - (v) discussion of the similarities and differences between agency and POST consequences for actions that violate policy or rule.

(3) Every public safety communications officer, as a part of the training required in (2)(k), must complete every two calendar years, a telephone cardio-pulmonary resuscitation (TCPR) course. The required TCPR training shall follow evidence-based, nationally recognized guidelines for high quality TCPR which incorporates recognition protocols for out-of-hospital cardiac arrest (OHCA) and continuous education. The training must cover the following topics:

- (i) Anatomy & physiology of the circulatory and cardiovascular system;
- (ii) Relationship between circulatory, respiratory, and nervous system;
- (iii) Signs and symptoms of acute coronary syndrome (ACS);
- (iv) Signs of life recognition;

- (v) Early recognition of the need for CPR;
- (vi) Agonal respirations;
- (vii) Hypoxic seizures and sudden cardiac arrest;
- (viii) Pathophysiology of sudden cardiac death/cardiac arrest;
- (ix) The role of T-CPR in cardiac arrest survival;
- (x) The importance of minimizing disruptions when T-CPR is in progress;
- (xi) Physiology behind the performance of the instructions;
- (xii) AEDs and the role they play in resuscitation;
- (xiii) Explanation, with practical training exercises, for different T-CPR instructions, including: adult, child, infant, neonate, pregnant patients, obese patients, and stoma patients;
- (xiv) Critical Incident Stress Management; and
- (xv) Unusual circumstances posing challenges to the delivery of T-CPR instructions, such as: patients with DNR orders, patient's on ventilators, post-op patients, obvious DOA, electrocution, drowning, strangulation, two rescuers- ventilations, cardiac arrest from trauma, and DNR/POLST orders

(4)(3) The POST Council is not responsible for maintaining records of continuing education hours acquired to satisfy the requirements of (2)(j), ~~and (2)(k)~~, and (3). The employing agency must maintain records of the administration of the oath and the continuing education hours acquired to satisfy (2)(j) and (2)(k). Agency records maintained under this rule are subject to audit by the executive director during normal business hours upon reasonable notice to the agency.

HOUSE BILL NO. 96

INTRODUCED BY F. GARNER

BY REQUEST OF THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE REQUIREMENT FOR THE BOARD OF CRIME CONTROL TO HEAR APPEALS FROM DECISIONS MADE BY THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL; AND AMENDING SECTIONS 44-4-403 AND 44-7-101, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-4-403, MCA, is amended to read:

"44-4-403. Council duties -- determinations -- appeals. (1) The council shall:

- (a) establish basic and advanced qualification and training standards for employment;
- (b) conduct and approve training; and
- (c) provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.

(2) The council may waive or modify a qualification or training standard for good cause.

(3) A person who has been denied certification or recertification or whose certification or recertification has been suspended or revoked is entitled to a contested case hearing before the council pursuant to Title 2, chapter 4, part 6, ~~except that a decision by the council may be appealed to the board of crime control, as provided for in 44-7-101.~~ A decision of the ~~board of crime control~~ council is a final agency decision subject to judicial review.

(4) The council is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining and retaining confidential criminal justice information, as defined in 44-5-103, regarding public safety officers in order to provide for the certification or recertification of a public safety officer and for the suspension or revocation of certification of a public safety officer. The council may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979 provided for in Title 44, chapter 5."

Section 2. Section 44-7-101, MCA, is amended to read:



HOUSE BILL NO. 97

INTRODUCED BY F. GARNER

BY REQUEST OF THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL LAWS; REVISING THE DEFINITION OF "PUBLIC SAFETY OFFICER"; REVISING COUNCIL DUTIES AND RULEMAKING AUTHORITY; ALLOWING THE COUNCIL TO DELEGATE CERTAIN RESPONSIBILITIES TO STAFF; REVISING LAWS RELATED TO THE SUSPENSION OR REVOCATION OF A PUBLIC SAFETY OFFICER'S CERTIFICATION; REVISING DUTIES OF APPOINTING AUTHORITIES; PROVIDING A PENALTY FOR A VIOLATION OF CERTAIN PUBLIC SAFETY OFFICER CERTIFICATION REQUIREMENTS; AND AMENDING SECTIONS 44-4-401, 44-4-403, AND 44-4-404, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-4-401, MCA, is amended to read:

"44-4-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Council" means the Montana public safety officer standards and training council established in 2-15-2029.

(2) "Public safety officer" means:

(a) a corrections officer who is employed by the department of corrections, established in 2-15-2301, and who has full-time or part-time authority or responsibility for maintaining custody of inmates in a state correctional facility for adults or juveniles;

(b) a detention officer who is employed by a county and who has full-time or part-time authority or responsibility for maintaining custody of inmates in a detention center, as defined in 7-32-2241, or a youth detention facility, as defined in 41-5-103;

(c) a peace officer, as defined in 46-1-202;

(d) a department of transportation employee appointed as a peace officer pursuant to 61-12-201;

(e) a ~~law enforcement officer~~ or reserve officer, as ~~the terms are~~ defined in 7-32-201;

(f) a public safety communications officer, as defined in 7-31-201;

(g) a probation or parole officer who is employed by the department of corrections pursuant to



1 46-23-1002;

2 (h) a person subject to training requirements pursuant to 44-2-113 or 44-4-902; and

3 (i) a sheriff, except that nothing in this part may be construed to require an elected sheriff to possess a
4 certificate issued by the council or be eligible for certification;

5 (j) a coroner with the duties described in 7-4-2911 or a deputy coroner appointed pursuant to 7-4-2901,
6 except that nothing in this part may be construed to require an elected coroner to possess a certificate issued
7 by the council or be eligible for certification;

8 (k) a publicly employed misdemeanor probation officer as described in 46-23-1005;

9 (l) a pretrial services officer who meets the training requirements described in 46-23-1005 and who is
10 employed by a pretrial services agency; and

11 ~~(h)(m)~~ any other person required by law to meet the qualification or training standards established by the
12 council."

13

14 **Section 2.** Section 44-4-403, MCA, is amended to read:

15 **"44-4-403. Council duties -- determinations -- appeals.** (1) The council shall:

16 (a) establish through administrative rule the basic and advanced qualification and continuing training and
17 employment standards for employment, including professional conduct standards for all public safety officers in
18 Montana;

19 (b) ~~conduct and approve~~ or review the training necessary to satisfy standards established pursuant to
20 subsection (1)(a) for all public safety officers in Montana; and

21 ~~(c) provide for the certification or recertification of public safety officers and for the suspension or~~
22 ~~revocation of certification of public safety officers~~ determine an individual's eligibility or ineligibility for certification
23 as a public safety officer in Montana;

24 (d) provide for a minimum of basic certification for a public safety officer who meets the qualification,
25 training, and employment standards for the discipline in which the officer is currently employed; and

26 (e) sanction, suspend, revoke, or deny the certification of public safety officers who violate or fail to meet
27 standards established by the council.

28 (2) The council may waive or modify a qualification or training standard set in administrative rule for good
29 cause.

30 (3) ~~(a) A person who has been denied certification or recertification or whose certification or recertification~~

1 has been sanctioned, suspended, or revoked, or denied based on misconduct or who has been declared
 2 ineligible for certification by the council is entitled to a contested case hearing before the council pursuant to Title
 3 2, chapter 4, part 6, and administrative rules established by the council that are consistent with Title 2, chapter
 4 4, part 6, except that a decision by the council may be appealed to the board of crime control, as provided for in
 5 44-7-101. A decision of the board of crime control is a final agency decision subject to judicial review.

6 (b) The revocation or suspension of a public safety officer's basic certificate in any discipline automatically
 7 revokes or suspends for the same period all other public safety certificates held by the officer. A person may not
 8 be appointed or employed as a public safety officer if the person has ever had a public safety officer basic
 9 certificate revoked or if the person currently has a public safety officer basic certificate suspended.

10 (4) The council is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose
 11 of obtaining and retaining confidential criminal justice information, as defined in 44-5-103, regarding public safety
 12 officers in order to ~~provide for the certification or recertification of a public safety officer and for the suspension~~
 13 ~~or revocation of certification of a public safety officer~~ fulfill the duties specified in subsections (1)(d) and (1)(e).
 14 The council may not record or retain any confidential criminal justice information without complying with the
 15 provisions of the Montana Criminal Justice Information Act of 1979 provided for in Title 44, chapter 5.

16 (5) The council may delegate decisions related to the grant or denial of equivalent credit or the duties
 17 listed in 7-32-303(5) and subsection (1)(b) of this section to the council's staff or executive director as long as the
 18 council reviews any decision that adversely affects the rights of an individual pursuant to Title 2, chapter 4, part
 19 6."

20
 21 **Section 3.** Section 44-4-404, MCA, is amended to read:
 22 **"44-4-404. Appointing authority responsible for applying standards.** (1) A public safety officer in
 23 Montana must meet the applicable qualification, training, and employment standards for the discipline in which
 24 the officer is currently employed and must be certified in that discipline by the council or eligible for the
 25 certification after the completion of a 1-year probationary period.

26 (2) It is the responsibility of a public safety officer's appointing authority to ~~apply~~ ensure that every public
 27 safety officer the authority employs meets the ~~training and~~ employment standards ~~and training criteria~~ established
 28 by the council pursuant to this part, including but not limited to:

29 (a) requiring the ~~successful completion of minimum training standards~~ that the public safety officer be
 30 certified by the council in the discipline in which the officer is currently employed or be eligible for the certification

1 within 1 year of the public safety officer's hire date; and

2 (b) terminating or suspending the employment of a public safety officer for failure to meet the minimum
3 standards established by the council pursuant to this part whose certification has been suspended, revoked, or
4 denied or who has been declared ineligible for certification until the officer has obtained a valid certification from
5 the council in the appropriate discipline.

6 (3) It is unlawful for a person whose basic certification as an officer in any discipline has been revoked
7 or denied by the council for misconduct or who has been declared ineligible for certification by the council based
8 on misconduct to act, be appointed, or be employed as a public safety officer in any discipline in Montana. It is
9 unlawful for a person whose basic certification has been suspended by the council to act, be appointed, or be
10 employed as a public safety officer in any discipline in Montana during the period for which the certification is
11 suspended. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of
12 imprisonment not to exceed 6 months in the county jail or by a fine not to exceed \$500, or both.

13 (4) Within 10 days of the appointment, termination, resignation, or death of a public safety officer, the
14 officer's employing authority shall give written notice of the event to the council."

15 - END -



SIDNEY POLICE DEPARTMENT

FRANK DiFONZO
Chief of Police



Bus: (406-433-2210)

Richland County Law & Justice Center
300 12th Ave. NW, Suite #5
Sidney, Montana 59270

Fax: (406-433-6990)

December 18, 2019

Montana Public Safety Officer Standards and Training Bureau
2260 Sierra Road East
Helena, Montana 59602

RE: Remarks for Public Comment Hearing on Proposed ARM changes, December 18, 2019.

Good Morning. I'd like to thank Council staff for the opportunity to speak on this matter today. My name is Mark Kraft and I am the Deputy Chief for the Sidney Police Department. My agency consists of 13 sworn officers and we service a community of about 7000 people, so right around the same size as Laurel, Livingston, Whitefish... I am here today to voice opposition to the proposed ARM changes, specifically, the changes to 23.13.702. While I disagree with the proposed changes at face value, which I will get into momentarily, I see this as yet another symptom of a bigger and much more serious problem, that being POST's slow, but deliberate efforts to enhance and consolidate its own authority at the expense of each employing authority's autonomy.

Now, I want to get a couple housekeeping matters out of the way before I continue.

First, I know there have been explanations from Council members and/or the executive director in previous meetings that POST is strictly dealing with an officer's certificate, a certificate which is owned by POST, and that POST is not trying to insert itself into employee/employer relationships. However, statute (7-32-303(k)) requires that peace officers in this state be certified by POST, which means you can't, in any meaningful way, have one without the other. You can't have an officer without a certificate. The two are inextricably linked, and sanctions on a certificate directly impact that officer's employability.

Secondly, in no way am I calling or advocating for anything less than the rigorous application of our code and canon of ethics. I would challenge anyone to examine my record both as an officer and as an administrator. I hold those ideals dear and expect adherence to those high standards from anyone who pins on a badge, and I have and will hold anyone's feet to the fire, so to speak, who fails to adhere to those standards.

However, what I am advocating for is that it is the agencies and their administrators and NOT POST who are in the best position to apply those high standards to their workforce and ensure that those standards are met. Again, it is the agencies and their administrators who are in the best position to take the most appropriate action against an officer who has failed to meet those standards, as they are the ones with the vested interest in that officer and who possess the full spectrum of knowledge about that officer...NOT POST. At a meeting earlier this year there was some comment about how some at POST see things more black and white than others. Now our business is human behavior, both out on the street and inside our agencies, and while there are behaviors that certainly fall in the black or the white, those are the two ends of the spectrum. The various shades of gray fall in that area under the bell curve, where the vast majority

of human behavior exists, and where we as administrators often have to use our discretion, experience, and best judgment when making a decision. To look at things as only black or white is to grossly over simplify them.

Getting to the specific proposed changes, On 23.13.702(2) I disagree with mandating, with requiring, that employing authorities MUST report to the executive director ANY potential ground for denial, sanction, suspension, or revocation of POST certification as enumerated in (3). We, meaning the agencies and administrators out here in Montana are not beholden to POST, and we have our own people that we are accountable to, our city councils, our county commissions, our citizenry, and we do NOT need POST looking over our shoulder to make sure we are on the up and up. This potential change reads like a vote of no confidence by POST in the agency administrators of this state...as if they can't handle disciplining their own officers or maintaining our high ethical standards without POST's oversight. I, on the other hand, have every confidence that the chiefs and sheriffs across this state not only can handle it, but do so every day. And mandated reporting, specifically the mandated reporting of "any potential ground", as proposed, only serves to interfere with and undermine their autonomy. Let's keep in mind that of the four states surrounding Montana, only one has a mandatory reporting requirement relating to officer misconduct in their POST administrative rules, and that is Idaho, whose POST council is attached to their state police. And, frankly, their rules seem a little draconian to me. But why not Wyoming, or North Dakota, or South Dakota? Because the authority and duty lies with the local agencies to handle their business and maintain the standard.

On 23.13.702(3)(e), I disagree with the proposed change as it is written. I know that the Council and the ARM committee have attempted to clarify what should be reported to POST, as there was confusion about whether every minor infraction or policy violation needed to be reported. However, as this subsection is written, this would require that we report to POST anytime an officer is convicted on a speeding ticket, or running a stop sign, or a turn signal violation, or a right of way violation, or a basic rule violation, or any number of other MISDEMEANOR traffic violations. While it is my earnest hope that this was simply an oversight, because these are exactly the kind of violations that have no business being reported to POST, if it wasn't, then this is as clear an example of overreach as there is.

As mentioned before, I know that the present proposed changes, specifically to subsections 3g and 3i, are the result of the ARM committee's attempts to clarify what exactly should be reported to POST, however, the language, while better than before, is still rather ambiguous and open to interpretation. That's dangerous. I spoke with Mr. Johnson in his office back in March and expressed some of my concerns then, and was assured that it was not POST's intention or desire to get involved in every little thing that goes on with an officer, and that well may be the truth. However, that requires us to trust that Perry will be true to his word, and, of course, I'm sure we have no reason to doubt that, but Perry Johnson will not always occupy that position, and who is to say that the next person will interpret these rules or apply the same discretion as Perry did. A law or rule written in such a way that it requires the "trust me" provision needs to be re-written. And that is still the case here; there needs to be more work done.

As I mentioned earlier, I see these proposed ARM changes as just part of a bigger problem. POST's slow but deliberate efforts to enhance and consolidate its authority at our expense. Let's take a look at Montana Code Annotated 44-4-403 and 44-4-404 which define the duties of the POST Council and the responsibilities of the appointing authority. 44-4-403 subsection (1) states, "The council shall: (a) establish basic and advanced qualification and training standards for employment; (b) conduct and

approve training; and (c) provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers. Pretty clear; pretty basic. 44-4-404 states, "It is the responsibility of a public safety officer's appointing authority to apply the employment standards and training criteria established by the council pursuant to this part, including but not limited to the successful completion of minimum training standards within 1 year of the public safety officer's hire date and terminating the employment of a public safety officer for failure to meet the minimum standards established by the council pursuant to this part. Now that is some pretty clear language. It is the responsibility of the appointing authority, the law enforcement agencies of this state, to apply the employment standards, NOT POST.

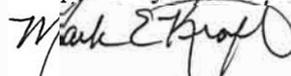
Now late last year HB97 was introduced and made its way to the House Judiciary Committee where it fortunately died in process. But HB97 fundamentally redefined those two statutes...it substantially enhanced the authority and duties of the POST council, it allowed for delegating additional responsibilities to POST staff, and diminished the authority and responsibilities of the appointing authorities. Essentially it put the power in POST's hands and relegated the local agencies to little more than spectators. That is unacceptable. Now I said that this bill died in process, so why all the hub-bub? Well, the reason I am still concerned is because Mr. Johnson is on record as saying, "Actually, everything in here is pretty non-controversial", and indicated that he believes it to be a good bill draft that should be revisited in the future. Regarding delegating authority, we all know that this is not the first time this has come up. The POST council has already delegated authority to staff before, albeit for what at face value appeared to be relatively innocuous matters, but when you step back and look at the big picture you can't help but see a pattern emerging...the enhancement and consolidation of authority while chiseling away at the authority and autonomy of the local agencies. And I, for one, will oppose this at every turn.

To wrap up, I want to clarify that I am not some hardliner, and I am not advocating some extremist point of view. I will and I do follow the law, I only want the law to be clear and fair. I want to have a good working relationship with the POST Council and its staff, with faith and trust in the process. I would like to see a relationship between the local agencies and POST based on equality and mutual respect, with clearly defined roles and responsibilities, and neither entity exerting authority over the other. And I would like to see clearly and narrowly defined remedial procedures should either party fail to do their duty. What happened to Chief St. John, though, should never happen again.

I hope and pray that this is what you are trying to accomplish, but I see some troubling things happening that need to be spoken about and addressed. The stakes are high with nothing less than the public trust hanging in the balance.

Thank you.

Respectfully submitted,



Mark E. Kraft, Deputy Chief
SIDNEY POLICE DEPARTMENT