I. 9:00 a.m. ~ Call meeting to order, roll call, identify and welcome guests.

II. 9:05 a.m. ~ Pledge of Allegiance and Invocation

III. 9:10 a.m. ~ Approval of minutes for April 7, 2021, Council meeting ~ pp. 1-51

IV. 9:15 a.m. ~ Public Comment/Guest Issues

V. 9:30 a.m. ~ Contested Case Arguments
   A. Tyler Sennett ~ pp. 52-63
   B. Chance Hildebrand ~ pp. 64-74
   C. Richard Smith ~ 75-83
   D. Patrick Crisswell ~ 84-118

VI. 10:30 a.m. ~ Break

VII. 10:45 a.m. ~ Old Business
   A. Legislative Update
      1. HB 28 – Effective July 1, 2021
      2. HB 693 – Effective June 30, 2021
   B. ARM Update – Effective May 29, 2021
   C. Safe Policing Executive Order Update – May 19, 2021
   D. Military Deployment Discussion
      1. Recommendation – Business Plan/Policy Committee Meeting
   E. Marijuana Discussion
   F. Attorney General’s Opinion Letter ~ pp. 119-124

VIII. 11:15 a.m. ~ New Business
   A. PSC Basic Course Content Discussion ~ p. 125
B. Course Curriculum Application Discussion - ARM 23.13.302 ~ pp. 126-128

C. Committee Reports ~ p. 129
   1. Curriculum ~ Conner Smith
   2. ARM ~ Leo Dutton
   3. Case Status ~ Jim Thomas ~ pp. 130-132
   4. Business/Policy ~ Kimberly Burdick
   5. Coroner ~ Leo Dutton

D. Director’s Report
   1. Budget ~ pp. 133-141
   2. Certificates Awarded ~ 277
   3. Training Approved ~ Officers-3,065, Courses-620, Hours- 46,371.75
   4. Equivalency Granted ~ 21
   5. Extension Granted ~ 28
   6. Contact List ~ Council Members & Staff ~ pp. 142-144
   8. Coroner Training Discussion
   9. Officer Involved Shooting Training – Funding
   10. Office Updates

E. 2022 Council Meeting Schedule
   1. 2022 Calendar ~ p. 148

IX. 12:00 p.m. ~ Meeting Adjourned

* Executive Sessions are closed to the public in order to protect the privacy rights of individuals. Times are approximate, except for public comment; actual times may vary depending on presentation/discussion time.
MONTANA POST COUNCIL MEETING
APRIL 7, 2021
BASEMENT CONFERENCE ROOM
MONTANA DEPARTMENT OF TRANSPORTATION
HELENA, MT

Council members present: Jesse Slaughter -
Council Chair, Kimberly Burdick, Jim Thomas,
Kristine White, Conner Smith, Bill Smith, Jess
Edwards

Council members present by phone: Tia Robin,
Matt Sayler

Council Members Not Present: Lee Dutton, Ryan
Oster

Staff Members Present: Perry Johnson, Executive
Director; Mary Ann Keene, Administrative Officer;
Katrina Solger, Paralegal/Investigative.

POST Legal Counsel:
Michael Fanning, Esq.

WHEREUPON, the following proceedings were
had and testimony taken, to wit:

* * * * *
CHAIRMAN SLAUGHTER: Are we ready to
call the meeting to order. Anybody we're waiting
on?
MR. JOHNSON: I would suggest that we
just go ahead, and as they trickle in, we'll be
good.
CHAIRMAN SLAUGHTER: Okay. So do you do
the roll call, Perry?
MR. JOHNSON: Certainly. Jesse
Slaughter.

CHAIRMAN SLAUGHTER: Present.
MR. JOHNSON: Let me do this then.
First of all, this is the POST Council meeting
that's been scheduled for April 7th, 2021. The
time is 9:00. And Jesse just called the meeting
to order. There's just a couple ground rules
before we get started, if I can.
CHAIRMAN SLAUGHTER: Please.
MR. JOHNSON: Whenever you speak, make
sure that you please don't speak over someone
else. This meeting is being transcribed, and our
transcriptionist, or Court Reporter in this case,
is Laurie Crutcher, and she's right over in the
corner of the room. And it will help her a lot if
when you begin to speak you say, "This is Perry."
and then make your comment. So "This is Conner,"
or "This is Kristine," or whoever, and then Laurie
will put that into the record.

This is a new system, so we kind of
really struggled with our last meeting, and we
lost some of our recording. And so this is our
effort to move into the next phase of the POST
Council. We want to capture these things.
So one at a time; identify yourself when
you speak; and speak loudly enough that you'd be
like you're talking to Laura. So Jesse
Slaughter.

CHAIRMAN SLAUGHTER: Present.
MR. JOHNSON: Bill Smith.
MR. BILL SMITH: Present.
MR. JOHNSON: Kimberly Burdick.
MR. BURDICK: Present.
MR. JOHNSON: Lee Dutton.

(No response)
MR. JOHNSON: Lee reached out to me
yesterday and told me that he has a commitment
with the head of the Department of Homeland
MR. JOHNSON:  You have a quarrel.

CHAIRMAN SLAUGHTER:  Okay.  Thank you, Perry.  At this point in time I guess what we will do is we'll reach out and ask any guests in the room to introduce themselves.  I'll start with -- as I tell him -- Sheriff Goetkin.

MR. GOETKIN:  Brian Goetkin, DOC Director.

MR. JOHNSON:  Good morning, Brian.

MR. DAN SMITH:  Dan Smith, Montana Police Protective Association.

MS. ROBB:  Jennifer Morris, Criminal Justice Services.

MR. STINSON:  Glen Stiner, Montana Law Enforcement Academy.

MR. SHEER:  Kelly Sherman, Montana Law Enforcement Academy.

MS. SOJA:  Gloria Soja, Criminal Justice Services.

MR. SYWASS:  Nick Sywassink, Dawson Community College.

MR. FANNING:  I'm Mike Fanning, Contested Cases Counsel.

CHAIRMAN SLAUGHTER:  Thank you.  Thank you all for being here.  Is there anybody on the phone?  Any guests on the phone?

MR. GALT:  Brian Galt, Glasgow Police Department.

CHAIRMAN SLAUGHTER:  Thanks for joining, Brian.  Who else?  There was someone else on there.

MR. SAYLER:  Matt Sayler.

CHAIRMAN SLAUGHTER:  Matt, you're on?

MR. JOHNSON:  Good morning, Matt.

CHAIRMAN SLAUGHTER:  Anybody else on the phone?

MR. KRAFT:  Chief Hank Kraft, Sidney Police Department.

CHAIRMAN SLAUGHTER:  Anybody else?

MR. STINSON:  Curt Stinson, Helena Police Department.

CHAIRMAN SLAUGHTER:  Anybody else?

(No response)

CHAIRMAN SLAUGHTER:  At this point in time, since we've introduced all the guests, let's rise and do the Pledge of Allegiance.  Please.

(Pledge of Allegiance)

CHAIRMAN SLAUGHTER:  Would you please remain standing, and Perry Johnson, would you please lead us in prayer.

(Prayer)

CHAIRMAN SLAUGHTER:  Please be seated.

Thank you, Perry.  So at this time we'll approve the December 9th, 2020 minutes from the Council meeting.  Any discussion on the -- we need to have a motion first.  Motion to approve the minutes.

MR. EDWARDS:  I'll move.

CHAIRMAN SLAUGHTER:  Jess Edwards.

MR. BILL SMITH:  I'll second.

CHAIRMAN SLAUGHTER:  Any discussion about the minutes, corrections or anything?

(No response)

CHAIRMAN SLAUGHTER:  All in favor, signify by saying aye.

(Responses)

CHAIRMAN SLAUGHTER:  Opposed, same sign.

(No response)

CHAIRMAN SLAUGHTER:  Okay.  Motion carries.  So at this time, we will go to public comment and guest issues, so I will start in the room, and just kind of go around the horn.  So to speak.  I'll start with Sheriff Goetkin, if you have any issues or anything at all.
MR. GOOTKIN: No. I'm just the new guy, old new guy.

CHAIRMAN SLAUGHTER: Anybody else?

(No response)

CHAIRMAN SLAUGHTER: Anybody on the phone? Any public comment or guest issues that we need to bring up on the phone?

(No response)

CHAIRMAN SLAUGHTER: Okay. All right, Perry. I guess at this time we're going to go to contested case arguments on the Taver Holl stipulation.

MR. JOHNSON: Mr. Chairman, I would suggest that we move into old business. I think that the way that we have this scheduled is it's scheduled for 9:30, and I think that we want that to occur at 9:30 in case there's some kind of interaction between --

MS. GOLDSMITH: Justina Goldsmid with Alternatives in Billings.

CHAIRMAN SLAUGHTER: Thank you. Thank you for being here.

MR. JOHNSON: That would be a good opportunity if Justina had some --

CHAIRMAN SLAUGHTER: Justina, do you have any public comment or anything you'd like to make? We just passed that section right after you signed on, so the floor is yours if you need --

MS. GOLDSMITH: I apologize. No, I'm just here to listen regarding the pretrial supervision and misdemeanor probation POST curriculum.

CHAIRMAN SLAUGHTER: Okay. So we'll move then to -- we're going to jump over the contested case argument for now, so that that happens right at 9:30, and we're going to move into old business, and we will start with the legislative update. Perry, do you want to take the lead on that.

MR. JOHNSON: Certainly. So what I think I'd like to do is just make sure that we set the table here a little bit. This is a dance, right? These Council meetings have been static for so long that now we've got a new Chair, and we've got some other new members, too, so the dance changed.

I'm not sitting next to Tony Barbaugh anymore. I'm sitting next to Jesse Slaughter. I'm honored to be up here, and I'm honored to be in the room with all of you guys. So we've got some new Council members. It's going to take a little while probably to make sure that the process, you know, continues and that it's smooth.

And today there may be a few hiccups because it's been awhile since we met, right? We haven't been together since back in December, and so we're going to break some ground today. So if we stumble and fall a little bit, that's the process. That's how we're going to learn, and that's how we're going to get better.

So I'll direct your attention to begin with Page 13, and this is a Legislative update on House Bill No. 28. This is a house bill -- I think let me work my way through this a little bit. 13, 14, 15, and 16 are the House Bill itself. The bill actions you'll find on 17 and 18. So you can see what the votes were in regards to this.

This is a piece of legislation that we've actually been up at the Capitol I think for the last two or three sessions, two for sure, but I think three. And the first time we attempted this, this was part and parcel with another piece of legislation, and the whole bill failed at that time.

Then we went back and we took another bite a couple of years ago. We passed some other legislation. This one never did until this session.

So what this did was effective the first of July, it eliminates the oversight of the Board of Crime Control over any decision by the POST Council, so the POST Council decision now becomes the final agency action.

It used to be we would come into the room, we would make a decision -- this Council would -- they would either affirm or not affirm what's the word I'm looking for here -- reverse the decision of the Case Status Committee or the Director, and then it could be appealed to the Board of Crime Control.

What this bill did was it eliminated that. The reason that it used to be like that was because it was an artifact of the way that POST Council was prior to 2007. The POST Council was a subcommittee of the Board of Crime Control. So that group would meet; they would look at an allegation of misconduct; they would make a decision, and then it would go to the Board of Crime Control membership themselves, instead of
that subcommittee.

So now what it does is your Director and
your Case Status Committee make decisions, they
work through the MARA process -- and Mike Fanning
represents the Director in all of those
discussions or all of those hearings even. In
fact, yesterday we met, I think we went over 66
different allegations. Jim Thomas is our
committee chair, and the last man standing, I
suppose.

So those decisions that we make there
would come to you, and it would either be a
revocation, a suspension, or something like that:
you would affirm it or reverse it; and then it
would go to the Board of Crime Control.

This bill eliminates that. I'll defer
to Katrina or Mike. I don't think that we have
much exposure anymore to that process between now
and the first of July. I don't think that we'll
enjoin any decisions from this Council that far.

Am I right?

MR. FANNING: I believe that's correct.
This is Mike Fanning. I don't believe that
there's going to be any cases that make that
detour apart perhaps from this one, and that I

tracking 113 cases, and there is no more staff,
and there's no more legal oversight than what we
had before.

And I'll tell you this, at least in my
opinion, and as I'm old guy, and I think it means
something -- I don't think we've ever been
represented as well as we are today. We're really
in a good position. So any questions or comments
about House Bill 20?

(No response)

MR. JOHNSON: Hearing none. Then I'll
continue then to Pages 10 through 32. This one is
a little more cryptic. So I think I'll point you
to Page 31 Section 11. So I'll read it into the
record, what it says here. Section 23, Chapter
456, Laws of 2019 is amended to read: "Section
23, Termination, Section 3 and 4, terminate June
30th, 2021, add 2023."

So in 2019, the Legislature removed the
administrative attachment of the POST Council to
the Department of Justice, so we were no longer a
stand alone agency, we were no longer independent,
and this Section 11 did that. And what it did was
it created POST as a bureau of the Department of
Justice.

I don't expect to happen, the case that's before you
today. So I think that that era is coming to a
close.

MR. JOHNSON: Thank you. So that's
exactly what you've got in front of you today.
When Mike talked about that as an era, it's been a
long time. That process has been intact for a
long time. And so it moved it to where it should
be.

The Board of Crime Control and the POST
Council were separated back in 2007 during that
legislative session, when POST was created as an
administratively attached agency, and at that time
I guarantee it was the smallest agency in Montana
because they assigned one person to it. A couple
years later they assigned another one; a couple
years later three. And so since about 2012, we've
had some amount of staff.

And just because I probably am going to
talk until I think of something good to say, for
the Council, and especially the new members,
seven-and-a-half years ago when this group came
together, and you hired Perry Johnson as the
Director, you had about two dozen allegations
outstanding, officer allegations; and today we're

So the Council was no longer autonomous.
I'm sorry. I said that wrong. The staff was no
longer autonomous. The staff became staff members
of the Attorney General. So the Director, the
Paralegal Investigator, the Administrative
Officer, those three staff members became DOJ
staff members, and they no longer were staff
members of an independent agency, the POST
Council.

The POST Council by that legislation
remained autonomous. They still have that
quasi-judicial oversight over the procedures, and
the approval of training, the certification of
officers, and the sanction of officers.

And what the legislation said was the
staff now that belongs to the Department of
Justice, with the oversight being provided by the
Attorney General, will provide support to the
Council. So you retained your autonomy, but you
no longer had your own staff.

And just to speak to that, I would tell
you that it's been pretty smooth. You know, there
was a couple hiccups along the way. There was
some real spirited conversations once in a while
between your POST staff and the Department of
Justice, and well there should be. That's how you move into new territory.

So when they did that in 199 it, they put a sunset on it. They said at the end of 2021, that legislation goes to bed, and POST reverts back to an autonomous independent agency. And what this does, even though it doesn't say that, it extends that sunset two more years. So we remain under the Department of Justice for another couple years, and maybe forever. It depends on what they do with this, because I think the first bill draft that we saw of this actually did remove the sunset, and it would have left POST under that umbrella of the Department of Justice.

Any questions about that?

(No response)

MR. JOHNSON: I guess I look at Jim Thomas. And his committee, or that committee, the Case Status Committee, is the most active of all of the committees just because the POST Council is actually a couple of businesses now. Right? So our business model provides for us to certify officers. We certify officers. We approve training.

we're moving in the right direction. And Bill Smith pointed out to me, "Man, I read that material you gave me, and that's some pretty dry reading." Without a doubt. It is pretty dry.

So it's pretty hard to get anybody excited about coming to our meetings and sitting with us. But the thing about it is I really feel this way. And I think Jesse and I have had some really heart to heart conversations about this, too.

We should be an asset to the law enforcement community, public safety community in Montana. This should be a negative relationship at all. It should be a real positive outreach program. We should, and I really believe that we do have good customer service, but I think there's always room for improvement.

And I think that if we spend another couple years with the Department of Justice, good. If we spend another 20 years with them, good, as long as we don't lose sight of that customer service side of the equation.

So that's what that does. Any questions about that?

(No response)

And that's the people in the room today, that's what we're going to do. Kelly Sherman, and Gloria Soja, and Rick Kisselink back there, these folks have all come to us with a curriculum that they want us to take a look at and to approve. So that's part of our business model.

The second part of our business model is certifying officers, and looking at the sanction side of that. And just this week we've had conversations with the Case Status Committee, with the staff inside the office, and I think that that, like any other business model, should be fluid and dynamic.

And I think we're going to come back to the Business Plan Committee, and sit down with them, and maybe spend a day taking a look at what we've done for the last seven-and-a-half years, and look to see what we might be able to do in regards with our stakeholders to make it a more -- maybe to give them more ownership into what we're doing, to get them to come to the table.

Because today I think we've got three people that have come into our meetings -- which is great. We used to didn't get any. We used didn't get anybody in the gallery either. So

CHAIRMAN SLAUGHTER: I was surprised no one had questions on that.

MR. JOHNSON: I'm never surprised. I think they were just grateful that I quit talking.

You know, I've been at a lot of those MSPOA meetings where Brian Goethin looked across the room at me and said, "Wrap it up," and I mean I just introduced myself.

So I kind of hate to get started into anything other than that contested case argument, because the time is 9:25. Jess, I would suggest that if we would take five minutes, if you need to use the bathroom real quick, or grab another cup of coffee, we come back and we reuse Mike Fanning, and work our way through that.

CHAIRMAN SLAUGHTER: Let's take five. (Recess taken)

(Trevor Well oral argument transcript bound separately)

(Mr. Fanning not present)

CHAIRMAN SLAUGHTER: So we're good to move on. We'll move on to the ARM report. So again, I'll turn it over to Lewis. So this is what page?

MR. LEWIS SMITH: We start on Page 33.
And with regard to this matter, the Council has proposed and put forward amendments to go ahead and change definitions; to make changes to the minimum standards for the appointment and continued employment of Public Safety Officers in 23.13.201; to Firearms proficiency standards in 23.13.215; to Public Safety Officer employment, education, and certification standards in 23.13.216; qualifications for approval of Public Safety Officer training courses in 23.13.301; the basic courses in 23.13.304; procedure for making and receiving allegations of officer misconduct for informal resolution of those allegations by the Director in 23.13.713.

And a public hearing was held on February 24th of 2021. That meeting was held by Zoom. There were several people that did participate, either by watching, and some by offering comment both pro and con to the proposals.

As you can tell from the range of amendments that we were making, the primary one was that we got comment on were the use or training of communications officers to be proficient in explaining to people how to do CPR over the phone; and the other primary one was dealing with the use of secondary firearms in the training process for that.

The comments that were received, the rationales for these was attached from Pages 33 through 38 to 39. We then have the comments, written comments, that were received. And the transcript of the proceeding starts on Page 49 through 79.

And then we have the -- I bypassed that. We also have our recommendation with regard to -- the explanation with regard to the comments that were received.

MR. JOHNSON: That would begin on 77.

MR. LEWIS SMITH: So the Notice of Adoption of Amendment begins on Page 77. The public comment closed on March 12th of 2021.

There were additional comments received after the hearing, and the response from the POST Council staff begins on Page 77. The first one was response to Ms. Amanda Cahill with the American Heart Association, was supportive of the amendment to -- she, and Joel Gerstic (phonetic), Kimberly Burdiak, all had favorable and supportive comments to the amendment to ARM 23.13.201.

With regard to comments one through three, we agree with these statements, and that with the TCFP training, Public Safety Communications Officers can assist untrained callers in providing CPR, and remind CPR trained callers how to provide high quality CPR. It was felt that this will improve the services provided for the safety and well-being of the citizens of Montana.

I do not believe that there were any negative comments with regard to that change.

Comment 4, Mark Kraft, Chief of the Sidney Police Department, provided oral testimony in support of POST's proposed changes. He believed that this was a common sense change, would reduce some of the burden, and time, and expense associated with agencies providing firearms instruction.

POST agreed with those comments, and determined it was unreasonable for officers to be subject to the same firearms proficiency standards for the backup as primary handgun. POST further determined that the new standards will adequately protect the public, while ensuring fair standards for officers.

Comment 5 was from Sheriff Ken in Stillwater County. He provided opposition to the rule, feeling that the better option would be for the local jurisdiction to have their own process, as not all officers carry the backup firearms; and that he felt that the following language would be appropriate: "Secondary or backup handgun must qualify once a year on a course of fire approved by the officer's agency head."

And the response from POST was that it did not agree with Sheriff Ken's interpretation, thinking it would be better to have uniform standards for the secondary firearms across all of the state, and to ensure that all of the necessary standards were required, and to see that they were met by all the officers.

Comments 6 and 7, Laurie Little Dog and Amanda Martin provided oral testimony in opposition to the amendment. This was to a different ARM than the secondary firearms. This is ARM 23.13.703. Ms. Little Dog expressed concern regarding the change to Subsection (4), stating that the agency should be required to provide the recommendations to streamline the process.
She also expressed concern to the amendment of Subsection (9), which provides officers more outs with regards to complaints. She believes that finding a complaint to be false is a high bar to meet, and that the public should have the ability to contest POST findings. Ms. Martin was supportive of the comments by Ms. Little Dog.

Response by POST to Comment 6 and 7, POST disagrees with the comments made by Ms. Little Dog and Ms. Martin, since POST submitted Subsection (4) to this rule to allow the employing authority to make a recommendation regarding the action POST should take in the officer's case of the accused misconduct.

They've argued that POST may not take action on their certification without a recommendation from the employing authority, and POST did not intend that the recommendation be required by the employing authority, and the absence of such a recommendation barred POST from taking action.

The amendments to Subsection (9) of this rule are necessary to enter an accurate findings about any given allegation. POST does not intend

to give an officer an out, but instead sees these findings as necessary to accurately reflect the facts of an incident, and POST receives cases in which there is video or other conclusive evidence which directly contradicts the statements of the complainants.

The request for public recourse goes beyond the scope of this rulemaking, and that any mechanism for public recourse that would require another rule change could not be accomplished in the current proceedings in this amendment.


These opponents testified at the hearing about officers' use of excessive force when dealing with members of the public, and specifically about a case of force incident that resulted in a woman's arm being broken.

The response by POST to Comments 8 through 10, POST finds that these comments are irrelevant to the current proposed rule change.

POST has adopted minimum training standards for Public Safety Officers which include training in use of force, de-escalation techniques, and other relevant subjects.

Those are the public comment and the response by POST. At this point in time, the floor should be opened up for members of the Council to go ahead and make any comments they have with regard to the amendments, or to any comments that were received with regard to the matter.

(No response)

MR. LEWIS SMITH: Seeing nobody jumping to put their hand up here in the room, we'll go ahead and move on, and so it would be time for a motion from the Council to either adopt or to reject the amendments. It could be to all of them together, or individually, to be broken out individually as well.

CHAIRMAN SLAUGHTER: Do I have a motion?
MR. BILL SMITH: Bill Smith. I make a motion to accept the amendments as per that.
MR. THOMAS: Jim Thomas. I second.
CHAIRMAN SLAUGHTER: Any discussion?
(No response)

CHAIRMAN SLAUGHTER: All those in favor, signify by saying ayes.
(Responses)
CHAIRMAN SLAUGHTER: Opposed, same sign.
(No response)
CHAIRMAN SLAUGHTER: Motion carries.

Thank you. Do we have anything else with the ARMs report that we need to go over?

MR. JOHNSON: Yes. This is Perry. And I think at this point I would just ask Katrine to have a conversation with the Council now to what our next step is. So can you just -

MS. DOLGER: Yes. So procedurally the next step that we're going to go through is I'll be getting with the DOJ rule reviewer, who is Hannah Tuk.FindAsync. She and I have already gone through this document, so it shouldn't take too long. But we will go through that, and she, and Perry, and Jesse will then submit that, and certify it to the Secretary of State's Office, along with an order which basically is very annoying -- looks like an Excel spreadsheet that says when rules were amended, changed, whatever.

And then once that is filed in the Montana Administrative Register, which is
published every two weeks, these are active and effective rules.

They usually aren't posted to the Secretary of State's website that quickly. So I think we'll probably send out updates to people's binders with those changes in their pages, so that they have them absent them being on the website. So that's procedurally our next steps, and that will be the end of it.

CHAIRMAN SLAUGHTER: Thank you, Katrina. Anything else on that or questions? Concerns? Comments? Anybody?

(No response)

CHAIRMAN SLAUGHTER: Anybody on the phone?

(No response)

MR. LEWIS SMITH: Just a comment. It was interesting in going through this process, trying to keep everything on track to what we had before us, that was being presented at that hearing, and something we'll try to work on in the future going forward to try and keep people directed to the comments relevant to what's there.

But to a certain extent, also once you open that up, you're going to get whatever people want to talk about. Trying to keep it to a dull rear sometimes -- or back on track is a bit difficult sometimes without flat out telling people. "I'm sorry. You can't talk right now," which usually doesn't go over too well publicly. So you usually end up with a little bit of extra fluff and chaff in the process.

CHAIRMAN SLAUGHTER: I agree, and I think one of the things that's an issue is from meetings I think we are creating a little bit of weird public comment issues, and I think that's also part of it. I think people tend to not do that as much when they sit face-to-face with people. So I think that's a difficult challenge. Really it is.

MR. LEWIS SMITH: It does point out some of what people are seeing and thinking out there, and what the issues are that the public has with what we do in this Council.

CHAIRMAN SLAUGHTER: Great. Thank you.

MR. JOHNSON: Mr. Chair, this is Perry. If I can just build on that conversation just a little bit.

I think that these comments that we saw here are kind of an artifact of the profile that your Council has right now, and I think that people are a little more aware of what your function is as a Council, just in regards to vetting a complaint, or the process to get it in front of an agency.

And I think that that's reflected in these comments. I think that we dealt with this yesterday during our Case Status Committee meeting. That's a real structured agenda. We go through 64 cases in two-and-a-half hours yesterday, two hours actually.

So that committee gets 500 pages -- and maybe Jim can speak to that -- gets 500 pages a week or two beforehand to review all of these allegations, and they sit down, and they look at it, and when they come to the table, they're ready to sit down and talk about it. And that's why we're able to do that. We front load those meetings.

The same, though, is true with these Administrative Rules. People think that whatever POST is doing, they can speak to anything, and that's okay, I think. I think it's okay that they come to us and say, "Hey, there's some real problems with this disparity in policing in this community to this one," or the use of force that's being trained versus the use of force that's on the ground.

And I think that at least my analysis of these conversations is they're just looking for somebody to talk to. They want to be at somebody's table, and maybe that's us. Maybe at some point it is.

And I don't feel lonesome because I can look at Brian, and I already know he's getting mad. Aren't you? You are. There's a new Administration there. You're going to start to hear stuff that that old Administration at DOC were talking about, and DOJ is going to be the same way. People are going to come forward and they'll say, "Those guys didn't do anything. Will you?"

And I don't know how to skin that cat, and I don't know that we necessarily need to skin that cat, but we need to be available, and I think that we need to be approachable.

And so those two things are going to send this business model that maybe there's going to be some other stakeholders in the room with us. Maybe our committee meetings are going to have Chiefs, and Sheriffs, and Wardens, and
Administrators; that we look at this instead of as a silo process, that maybe we actually come into a room and say, "Hey, how can we actually do this as a community," rather than POST, or rather it's DOJ, or DOC.

So I think that maybe we're moving into that area, and I bring that up because it's all about our asset. Right? We've got three people. We've got two contract attorneys, and we've got an interim employee at the office that are answering the phones, but we're pretty tiny, and for us to try to facilitate that, we're going to need some help.

But I think it's okay, and I think it's kind of like the next topic on the agenda is, you know, did we have to do that? No. Should we do it? I think so. That's why we did it.

MS. DOLGE: Mr. Chair, this is Katrina. One of the things that was brought up when I was dealing with the rule reviewer over at DOJ regarding these comments, and how to deal with these that are irrelevant, her suggestion was anytime you have an Administrative Rule hearing, there's nothing that says you can't have a period for just general public comment that don't necessarily go to the rules, where they can come and they can talk about anything they want to, and have their five minutes, and then we get into the testimony.

And so that may be something that we can tweak in our process for future ARN hearings to make it more clear.

CHAIRMAN SLAUGHTER: Absolutely. This is Jesse. I think the big thing that we as POST have to look at -- and we're going to get to the new membership with myself, and Bill, and Conner, as we move forward -- is having served on this Council before, and now coming back a few years later, I think the need for the public to be a part of the accountability piece to our profession is becoming more and more important.

Back when I was on the Council before, it was mainly some decertification issues here and there. We weren't nearly as swamped, Jim, as you are now. And then on top of that, there's a lot of training. We were ironing out what curriculum were going to look like.

I remember Reserve Deputy Sheriff was weeks, you know, stuff like that, LEOSA stuff, different things like that. And now I think that burden shifted a lot.

The problem as I perceive it, Katrina, is that public comment section is great, but we have to do outreach to make sure that they know that it's available. Otherwise it's going to not appear transparent. It's going to appear like we have secret meetings, but we don't want the public to come. Do you know what I mean?

So we're going to have to -- and by "we," I'm pointing at myself and the board members -- we're going to have to do a better job of helping the POST Council do public outreach to make them aware of what that is. Otherwise I just don't think it has the meaning that we would intend for it to have.

MS. DOLGE: I think that certainly, as Perry said, there are people who are just trying to get into the room with somebody, and so they do make these comments that are not necessarily relevant, and I think that providing that information and education for the public as well is going to be a big deal. There are always ways for us to improve.

CHAIRMAN SLAUGHTER: Absolutely. Any more on that, on the ARM discussion?
And it really works good, because that’s who needs these. We want these on people’s desks. We want to a ring binder because in regards to an update, when we put the comb binding on it, we couldn’t send an update. Now we can. We can put 150 envelopes in the mail and say, “Hey, take out pages, you know, in Subsection (2), and replace them with this,” and we could keep them updated even through the mail.

So I think that is a good outreach program, but the bottom line is — Bill and I had this conversation -- dry as reading that is, it’s important. And we’re in them every day. These are on Mary Ann’s desk, and Katrina’s desk, and my desk, and we’ll start to have a conversation, and we’ll say, “Hey, just a minute. We’ve got to go back and read it,” because we want to make sure we understand it.

And we’ve been through ARM edits. We’ve been aggressively editing the ARM in seven-and-a-half years. Five times?

Ms. Bolger: I lost track.

Mr. Johnson: And you know what, I’ve been in the room with Brian where he says, “Hey, you’re doing a lot of this stuff,” to Kim, his comment was, “Is it even necessary?” Well, we think it is. We really believe that the Administrative Rules, you shouldn’t need your County Attorney to read them for you. You know, Lewis is an old County Attorney. I’m an old Sheriff. You know, we’ve got a couple old Sheriffs.

The bottom line is your guys ought to be able to read them and say, “Oh, I get it.” But here, you know, I’ll tell you how stupid I am.

You know, when I took over I didn’t know where to find them. When I took over POST, I didn’t know where to find the Administrative Rules.

And I should be embarrassed to say that, but the bottom line is, man, when you’re a sheriff, it doesn’t matter. When you’re a Captain with the Highway Patrol, it doesn’t matter if you can find them or not. You’re going to keep responding to calls, aren’t you? So I think we’ve got to make it as easy as we can, but we’ve got to get that community involvement.

You know, we’ve got Dan Smith with his hand up in the back of the room, and I’m glad he’s in the room, because there’s 600 or 700 officers out there that should know where to find Section 23, you know, ARM 23.13.700.e. So Dan’s got his hand up.

Chairman Slaughter: Okay, Dan.

Mr. Dan Smith: Dan Smith with the HPFA. I have a quick question. Do you track those changes? Is there a way where I could find that all of the ARM changes track since when you guys took over to present date?

Ms. Bolger: This is Katrina. I can help you find those on the Secretary of State’s website, but they are all available to the public just through their website.

Mr. Dan Smith: Okay. And so what I’m looking for is not just the current language, but the language before.

Ms. Bolger: Yes, you can pull all the past versions up from 1994 forward.

Mr. Dan Smith: Thank you.

Chairman Slaughter: And Katrina. This is Jesse. As a point of clarification for that, it’s just like NCA, is they’re all tracked because it all has to do with what was — You have to track it to what was the current ARM at that current time, as that affects if someone made a past complaint, correct? So it has to be properly --

Ms. Bolger: Yes. So everything is documented through the Montana Administrative Register. There are a little bit difficult to navigate. It’s easier if you just want to see 2014’s version versus 2021’s version to pull up the prior versions of the ARM itself, because the MAR does not say which agencies are under which issue, if that makes sense.

Mr. Lewis Smith: With the statutes, at the bottom of the statute it gives you the times it’s been amended, and I know with our copy in the book, it doesn’t have that for the ARM.

Ms. Bolger: It’s on the Secretary of State’s website.

Mr. Lewis Smith: When you look at the ones on the Secretary of State’s website, it will tell you when it was amended last, and the prior amendments when those were done, so you can at least -- If you look at it on their website, there’s nothing at the bottom, then it hasn’t been amended since it was adopted.

Ms. Bolger: Dan, this is Katrina again. Go ahead and just come talk to me, and I can show just how to pull those up.
MR. DAN SMITH: Thank you.

CHAIRMAN SLAUGHTER: Thank you. Are we ready to move on to safe policing, executive order.

MR. JOHNSON: We are. There is no page number next to this because this is just an update. During our last Council meeting we talked about that presidential executive order that agencies, in order to be eligible for application for federal funds, needed to make sure that their policies addressed some use of force issues.

The US Attorney designated, for Montana, designated POST as the agency to assure that those agencies did that. And during our last meeting in December, the conversation was: Can POST do that?

Do we have the ability or the resources in order to do that?

And we did do it. We did send out to every agency in Montana the executive order; we defined what the policy change, or the policy must contain. And many agencies in Montana changed some policies. Many agencies in Montana right now are going with lesspol, which is a vendor from outside of Montana, but who creates policies all over the United States, and they were able to facilitate that change.

Facilitate that change.

So just in regards to Montana then, the deadline for all of that information was the end of January of this year, January 2021. We started in December with a clean slate. No agencies had been certified as being in compliance with the policy. And by January 31st -- actually I think that was on Sunday or something -- by January 29th, we were over 95 percent of the agencies in Montana had responded and requested us to certify them because their policies met those use of force standards.

So we were very successful. And since that time, a few more have been able to go in front of their city council, or the Sheriff himself changed policies in order to comply with that.

So we expected on the first of February we would be required to report that to the feds, because they're the ones that are controlling the money that's tied to those policies. And since that time -- so we're into April.

Since that time, the feds are not prepared to accept that information. We haven't been able to report our success to them, because they haven't been allowed to receive that information by the new administrations that have come into office.

I don't know what that means, but I felt we were really successful. I felt like our stakeholders really were invested in making sure that their policies were current, and up to date, and that they wanted to participate and continue to be eligible for those federal funds. So that's the update that I bring you on the executive order. It's still safely unsequested in POST Council offices, and ready for delivery whenever the feds are ready to accept it.

CHAIRMAN SLAUGHTER: Thank you to Glen Stinar, too, because you kind of helped us all set that up, and you were the facilitator of that whole discussion. I thought it went really fast. I thought we did a good job.

The next thing is most everybody in Montana was pretty much 90 percent there, so it wasn't a big leap for most organizations. It was pretty quick. So thanks for doing that.

Anything else on that, on the executive order? I imagine that it's subject to change.

We're just anticipating what that's going to look like. Okay. So we'll move on to military deployment discussion.

MR. JOHNSON: This is Barry again. I would direct your attention to a memo that's in the front of each of your books. It's got a blue top to it, a Lewis Smith memo.

At our last Council meeting we discussed the timeline for an officer, and so I'll just use an example. I hire a Deputy Sheriff today, he works for me for a month, and he's deployed for a year. And the question to Lewis was: Does the clock stop? Then the other question was: Does the probation -- how does that affect probation?

And I'm not going to read this to you because I know that you all can read, but I think that Lewis did a real good job of saying to us, "It doesn't provide for accommodation for extended probation, and it doesn't provide for stopping the clock."

So those are the questions that were in front of us, and the reason that it impacts us is the guy that gets hired on January 1st, works for a couple of months, deployed the first of March, comes back the first of March the next year, as soon as he goes through the Academy he's eligible.
for Basic certification. So he comes back and works three months. At the end of those three months he’s got over a year in service, and he’s successfully completed the Academy, and he’s eligible for a Basic certificate.

And our question was this guy has only worked five months, but he’s been deployed for twelve, or some of them are deployed even longer. And that’s why we asked the question. The bottom line is we got an answer. We’re going to certify them, and that is what we’ve been doing.

The other question was about the agencies, the probation side of that. They’ve asked us, "Why can’t we do that? Because we don’t even have time to analyze that officer. We want to do an analysis of his skillset during that one year probation to make sure that he’s capable of performing the duties required of an officer."

And the bottom line is -- that was actually their question. They could have sought their own legal advice. But I think for our purposes, we’re kind of a conduit for information. And I really appreciate, Lewis, that you gave us the analysis that you did, because we get those calls from agencies. They want to know. "How does that work?" So I think we kind of cleared it up.

MR. LEWIS SMITH: This is Lewis.

Basically we’ve got two tracks going on, you’ve got the employer’s track and you’ve got the POST track. And while they’re generally moving in the same direction, there are a few things that they do not track the same on.

And probation is different with the employer. They’re required to -- they have the option to go ahead and put a person back on probation when they come back from military service, but their time of service still continues to keep running.

And so on our end our statutes don’t allow that to keep happening, so we’re out here. When that officer hits the one year time frame, they start over as far as the POST certification goes. And so to fix that would require a legislative fix, and we’re a little late in the game this time around to be able to do that.

And so it’s something that’s probably for you guys to take back to your agencies and talk with them about. It’s going to affect DOC and all of the different law enforcement agencies out there. At this point, we don’t have a lot of activity out there, but who knows what will happen in the future with that situation or at any time.

And what’s interesting is if there is a provision that if they go through and attend a military law enforcement training program, that can qualify. So if they go to an MP, that can qualify as equivalent to the Law Enforcement Academy training. So that’s something to be aware of, if you’re -- depending on what they did in the military when they’re there can affect what you can do.

MR. JOHNSON: I would just expand on that a little bit. Not all military police is equivalent. There are some military police training syllabuses that really mirror what we do at MLEA, but those are really specific to those officers that are performing law enforcement duties on a base community. So they’re not necessarily responding to military issues, they’re responding to family issues, and family law, and disturbance calls, and thefts on bases.

And we’ve looked at those syllabuses, and my analysis has given us the framework, the national organization, to show us what’s equivalent in which state, and which federal law enforcement training would be equivalent within every state as well. So that’s a nice asset or resource to have.

CHAIRMAN SLAUGHTER: Brian, are you seeing a lot of that? I am. I’m seeing guys get hired and go on military leave. Are you seeing it?

MR. GOOTKin: I wasn’t at the Sheriff’s Office. I have no clue right now at Department of Corrections.

CHAIRMAN SLAUGHTER: It’s mostly on our detention center, because they’re literally -- they get hired, and they drop papers and they say, “I’m going.” Sometimes it’s right after the Academy, sometimes it’s not. So I didn’t think it was a thing. I hadn’t seen it in my career before, but now it seems like it’s a thing. So it’s probably going to become super important down the road.

MR. LEWIS SMITH: It does create a situation. If the facts fall right, congratulations, he’s employable by you, but he can’t be certified as a Public Safety Officer. So then what do you do? I don’t know that I have a
right answer for you on that. It may get involved
with your own personal policies and that type of
thing.

CHAIRMAN SLAUGHTER: So just a question,
spitting a question here. So if they deployed,
and they came back, and they went right into the
Academy, as long as they didn't work, they'd be
fine, correct?

MR. JOHNSON: Yes.

CHAIRMAN SLAUGHTER: As long as they
didn't work.

MR. JOHNSON: Yes.

CHAIRMAN SLAUGHTER: But if they
couldn't work.

MR. JOHNSON: Well, here's the real
world. The right answer is exactly what Lewis
just said. Yes, if they do. But the real world
is some of these agencies don't have that ability.
They come back a year later, and they've got a
five man agency, or they've got a fifteen man
agency, or they've got a hundred man agency, but
there's no capacity right then to put that guy
into the Academy.

So what do they do with them? I know
Perry Johnson did with them 25 years ago. He put
them on the street. And so is he working outside
of the scope of the law? Yes, I did that, because
guess what, I had shifts to fill, and that limited
resource only goes so far.

So that isn't good business, but that's
the way that it goes. If they can get in there
when they get back, and they don't do any public
safety work, I think they're okay. I really think
that they are. They're employed, they're Public
Safety Officers, but they're in training.

But that interim -- there's some
agencies. Maybe Brian, maybe Jesse, maybe you
have the ability to say. "Hey, I can't put you in
the car, but I'm going to put you in the evidence
room. I'm going put you -- I'm going to have you
look at a cold case, or I'm -- (inaudible) --
until I get you a chair," and that's ideal if you
can do that, but if you can't --

MR. LEWIS SMITH: In Harlowton you're
going to have a hard time finding a spot for them.

MR. JOHNSON: That's right.

CHAIRMAN SLAUGHTER: Perry, would it
behave us to look to forward to the next session
at like military exception fix to this? Would it
behave us to look at a legislative fix at the

next session so that this isn't problematic down
the road?

MR. JOHNSON: I think that it would be
good to look at, and I think I'm going to look at
Kimberly and say I think that's probably one of
those areas that when we have a Business Plan
meeting, that's usually where our legislation
comes out of.

We're analyzing our work at our
meetings, and our daily activity, and that's where
we make these decisions about what value can we
add to anybody's operation. How can we make sure
that some of these areas that are really gray, how
do we fix them? And I don't think we can fix them
all, but I think we can talk about that, and bring
it back to the next meeting, because I think a
Business Plan Committee is imminent I think
between now and then. I think we'll have one, if
Kimberly is up to it. If I can talk her into it.
So I think that there's several things that we
look at for legislation.

CHAIRMAN SLAUGHTER: Okay. How is the
time before the next session, right?

MR. JOHNSON: Yes.

CHAIRMAN SLAUGHTER: Any more questions

on military deployment discussion?

(Mr. Glaze)

MR. GLAZE: This is Wyatt Glaze. I
don't have any questions. I just want to make
sure you all know I'm here -- (inaudible) --

CHAIRMAN SLAUGHTER: It's Wyatt Glaze
from Custer County, Custer County Attorney. And
Wyatt, you've been on since ten, you said?

MR. GLAZE: Yes, sir.

CHAIRMAN SLAUGHTER: Thanks, Wyatt.

Welcome. So let's do a five minute break because
we're right there anyway. We're just five minutes
ahead. Let's take a quick five minute break and
then we'll come back and get into new business.

(Recess taken)

CHAIRMAN SLAUGHTER: We'll get started
so we can end at a decent time because I know
everyone has got a busy day. So we'll start now
with new business. And I guess right now at this
point in time we'll welcome new POST Council
members to the POST Council. So we'll start with
Bill Smith. Do you want tell us a little bit
about yourself?

MR. BILL SMITH: Sure. So I'm Bill
Smith. I've been with the Flathead Country
Sheriff's Office for 22 and a half years working in the detention center. I've held a number of roles there with Flathead County, from line officer, Sargent, Chief Detention Officer, Facilities Administrator: currently Assistant Chief Detention Officer there.

I'm from Montana, native of Montana. My wife and I will celebrate our 25th anniversary this year, and we have three wonderful children. So it's an honor to be here on the Council, and it's been a learning process. I have read the material. My comment on it has been covered pretty well.

MR. JOHNSON: We'll give you a gold star next time.

CHAIRMAN SLAUGHTER: Thank you, Bill. Thank you for serving. We really appreciate you.

Conner Smith, Montana Highway Patrol Captian.

MR. CONNER SMITH: Yes, thank you. Conner Smith. So I have been with the Highway Patrol for seventeen years. Most of the last -- for seven years, I've been doing training, worked a lot with the Academy, and with Stiver, and Jim years ago. So it's been a pretty good career there.

Before that I did six years in the Navy; actually just completed four years in the Navy Reserves, and got to work for NCIS, so that was a little bit of educating also. And now I'm the Captain of Professional Standards, which is everything training wise, and also internal affairs, and other projects as assigned, and so that keeps me busy.

I have two wonderful little girls, and happily married, so it's been a good life. I like to be here, and pleased to serve however we can. Thank you.

CHAIRMAN SLAUGHTER: Thanks, Conner. He's being very humble. Conner is also very astute with use of force issues, instructing many disciplines, correct?

MR. CONNER SMITH: Yes.

CHAIRMAN SLAUGHTER: He's very, very wise when it comes to that, and you're going to probably be a subject matter expert for us on a lot of things, so we're really happy to have you on that.

MR. CONNER SMITH: Thank you.

CHAIRMAN SLAUGHTER: So I guess myself. Jesse Slaughter. I'm the most blessed person in the world. I'm very blessed to be the Sheriff. I am a baby Sheriff, as Sheriff Gothin calls me, and very appropriate. I've been extremely fortunate early on in my career to be given way too much responsibility, more than I probably should have ever had -- self-admitted.

I applied to be on the Council, and the Governor's Office thought that I should be the Chair. Greatly blessed and honored; probably a little over my head, but greatly blessed and honored to serve with all of you amazing wonderful people.

I'm the father of three. I have two biological children, Annie and Jake, 15 and 13, and then I have a little one year old foster baby that we are taking care of right now, hopefully adopting someday.

My wife Christi works for Sheriff/Director Gothin, and is a Probation and Parole Officer in Great Falls, so we have a very, very crazy, chaotic household. Literally my household runs 24/7. I'm not kidding. It's not uncommon for life to be on all hours of the day, and it's a very, very busy place. We're both really passionate about public safety, law enforcement.

It's just a huge honor to be here. I can't say enough about -- I'll say a little bit about me, and I'll say a little bit about me and my style, because as the Chair, you guys are going to deal with me, and I'll be really up front and frank with you.

Your silence in my opinion is permissive, so I will move on, and please don't ever take an offense to that. That's just if there's silence, I move on. I don't ever mean for it to be that I don't care about your opinion or whatever.

Obviously I know that Katrina and Perry will keep me in line if I'm supposed to ask for something, and I've asked them to help me and make sure that I do everything the correct way because I want to do everything the correct way; but I'm kind of like, 'Okay. If there's no more questions, we're going to move on, as you guys probably have kind of seen. Please don't take any offense to that.

And sometimes I talk too much, like I'm doing right now. Please don't be afraid to say --

MR. GOTHIN: Wrap it up.
CHAIRMAN SLAUGHTER: Thank you. Right on cue. So that’s about all I’ve got. So anything else, Barry?

MR. JOHNSON: I would just add that Kimberly, and Jim, and Lee were also just reappointed, and Kimberly I think starts her third term. Jim, third for you?

MR. THOMAS: My name once said there are three types of people in this world: People who are good at arithmetic, and people who are not. So I think —

MR. JOHNSON: So we have always had such good involvement, and it takes a little while just to break the ice for people to get to know each other, but this is a pretty collegial group. And alas, I don’t get to use ‘collegial’ every day, so I’m glad I got to.

So Mr. Chairman, with your permission, I would ask if we might be able to change the agenda a little bit. And I apologize to the folks in the back of the room. I certainly wish that I would have queued you up sooner. I would ask that we allow them to make presentations and interact with the Council at this point.

CHAIRMAN SLAUGHTER: Yes, I feel that would be very appropriate. So we’re at syllabus changes, correct?

MR. JOHNSON: We are, and I would suggest that we start with maybe Pretrial Services, go to Correctional Detention, and then we’ll come back to Probation.

CHAIRMAN SLAUGHTER: So Pretrial Services. Who is running that show?

MR. SOJA: I’ll start.

MR. JOHNSON: Just for you guys, there is an extra sheet here. It’s got some color coding on it that Gloria had prepared and brought to the meeting.

CHAIRMAN SLAUGHTER: Okay, Gloria, the floor is yours.

MR. SOJA: Okay. Gloria Soja, Criminal Justice Services. I’m here today to talk to you about Pretrial Services and Misdemeanor Probation Officer Basic.

As the Council is aware, we had initiated a new Academy two years ago. The first one was rapid fire put together, was essentially the Probation and Parole Basic with a few slight modifications.

After reviewing the evaluations from that course, we worked with Rich Syvassink from Dawson County Community College on developing a new curriculum. The first one was presented, we held the second Basic, and after that, worked with staff, worked with criminal justice services staff and a team of people from across the state. And I would, with your permission, share that I share who that committee was for the record, because I think their participation should be acknowledged.

We had Maria McLean from Missoula, Justina Goldsah from Billings, Andrea Larrow from Gallatin County, Stacy Colburn from Rosebud, Michelle Drakoerski (phonetic) from Gallatin, Sherry Kean (phonetic) from Custor, Wyatt Glade from Custor, and then of course criminal justice services staff from Lewis & Clark County.

And that group of people has been meeting monthly, and we’ve been working with Rich to develop a new curriculum.

What you see in front of you with the color and a little bit of identification on it, we put this together to help illustrate where the different courses came from.

We wanted to make sure that we showed you that we’ve included the courses from the original Probation and Parole Basic, anything that we felt was pertinent. All of those courses are being reviewed to ensure that their focus is on Pretrial Services and Misdemeanor Probation, because that’s very different from what the Department of Corrections does. And so that has been reviewed.

There are a few new courses. Of course Pretrial Services Misdemeanor Probation Overview is new. We decided to put in courses specifically on how to work with the Office of Public Defenders, and the County Attorney’s Office. A lot of the folks that we anticipate attending a Pretrial Service Academy, Misdemeanor Probation Academy, we anticipate getting a lot of new people to the field, so we wanted to make sure they understood how to work with those folks, and also what the expectations of law enforcement are. Most of the Pretrial Services Misdemeanor Probation folks won’t be carrying.

There are a couple agencies in Montana that do require them to carry. The rest of us rely on our local law enforcement partners to do arrests and things like that, so we wanted to make sure we included course material in there, what’s the...
expectation of law enforcement if they come to your site, or if they come to a residence to affect an arrest, and things like that.

That's our curriculum. I'll let Rick talk about the site and the facility that this is going to be held at.

MR. SWASSINK: Do you guys have any questions on any of these? I know we're laying this in front of you kind of quickly, but there's been some changes. I want to say one thing. This has been a great group to work with. Gloria pulled this all together, and she can do all this fancy stuff with the computer. I can do stuff on paper and pen. We're okay.

But it's been great, and it's been a really equal input from everybody, not just this county, everybody. Justin's group in Billings, you know, Custer County, all of the places, Gallatin. We've had good input from everybody.

So this is a good quality curriculum, and I deal with curriculum a lot. I see no problems with it. And we're putting it all together. We will have everything -- everything is being put together as far as syllabi and course materials and stuff, because a lot of us

just want to instructor school not too long ago. So we've learned how to do all of that, put that together properly.

The other group I want to thank very much, too, really. Glen and Perry have real helped, stepped up and helped us with this, because we want to track and make sure we do it right. This is a different group. A lot of us old timers -- and I don't put the Sheriff in that. He's a young pup yet, so we're okay. Baby Sheriff, is that it?

CHAIRMAN SLAUGHTER: Baby. Six and a half pounds.

MR. SWASSINK: Seriously, this is a whole new area that I think a lot of people just wasn't quite sure, and the input from my students from this first Academy we had over there, just phenomenal. They really got into it. They were engaged. Perry and Glen were over, and they were engaged from day one, and it really helped us quite a bit.

We're going to put the Academy on June 7th through the 30th at Dawson Community College. We have a new institute, which you'll all be getting a little letter about that that I've put together, and you'll also get your free T-shirts while we're at it. Administration costs and everything will be coming out in the next week or so. But we're going to put this on.

We have, last I know, it was about ten. We had seven last year. I think we've got ten officers this year, which is nice. And we might have more by that time. I haven't sat down and really do -- I wanted to take care of this with Gloria and get this approved, and then I can move forward with the administrative stuff as far as putting it on. But we've provided thumb drives just like just last year, the whole course, rather than two three inch three-ring binders, we've got them on a little thumb drive we'll give them.

Our reviews of our facilities and so forth, which I think on August 11th we're scheduled to bring to the POST board over to our campus up on top of the mountain out there. We would really like to have you come over and see our new institute, meet the Administration, meet the President. But we've got a lot to look forward to, and we're really looking forward to putting it on and putting it together for everybody. So that's kind of it in a nutshell.

from our side. Any questions?

CHAIRMAN SLAUGHTER: Any questions from the Council? Anybody on the phone? Can they hear okay? Anybody have any questions?

(No response)

MS. ROBBIN: No questions here.

MR. SWASSINK: I wish I could do that good with my students. Usually I don't get any questions from them because they're all asleep in the morning at 8:00, you know, so that's kind of the way that falls together. But we're thinking forward to putting this on, and it's going to go well, and we'll report back to you after it's all over with.

CHAIRMAN SLAUGHTER: I think that looks good. I think that's why you're not getting any questions.

MR. SWASSINK: I'm kind of like you.

If there's no questions, we just move on.

CHAIRMAN SLAUGHTER: Great.

MR. SWASSINK: So we're good.

CHAIRMAN SLAUGHTER: Perry, do you want to go to --

MR. JOHNSON: I would like to add something to this, if I can, just that Gloria kind
of gave a little history on this. This program
started a couple of years ago because the
Legislature empowered them as Public Safety
Officers to fall under this training requirement.
And Glen Stainer, Kevin Olson, and Jim
Thomas came up with that initial syllabus, and at
no point did they ever claim that they were
subject matter experts. They’re educators. And I
think that what they started with was a real rough
draft, and I think it was a good spot to start.
But I want to make sure that it goes
into the record today that you recognize that
there’s no limit from this Council that I’ve ever
heard in regards to the amount of training that
you may want to offer in a Basic Academy class.
They started with 140 hours, right? And I see
that you’ve maintained 140. You don’t have to.
If you want it to be 160, it can be.
I want to make sure that we point out,
that of those 20 hours that were online,
they’ve integrated them into face-to-face training
with the exception of two hours, PREA training,
right? And PREA is really kind of outside the
scope of what Misdemeanor Probation or Pretrial
does, but it’s good to know about it. I think
that we could make it longer. We did at one point
have it up to I think like 170 hours, and then we
made some decisions, because one of the things we
had talked about is do we include CIT as part of
the Crisis Intervention Training -- as part of the
Basic: do we include the NAPTHA certification, the
National Association of Pretrial Services
Professionals: do we include that as a mandatory
requirement to get your Basic certificate.
And after discussions with Perry and
after discussions with our working group, the
decision was made to keep CIT and NAPTHA
certification as agency specific, so that it
wouldn’t -- so that their basic certification
wouldn’t hinge upon them having those, and allow
agencies, similar to firearms qualifications,
allow agencies to make those decisions.

MR. JOHNSON: So we’re at the point
right now, I think, Mr. Chairman, that we need a
motion to accept this new curriculim from the
Council.

CHAIRMAN SLAUGHTER: Okay. So at this
point in time I’ll ask for a motion for the
Pretrial Services and Misdemeanor Probation
Officer Basic course to be approved by the POST
Council, as written here in this document.

MR. JOHNSON: It would be on Page 97.


MR. CONNER SMITH: Conner Smith. I’ll
start a motion to approve the Pretrial Services
and Misdemeanor Probation Officer Basic course.

MR. EDWARDS: Jess. I’ll second.

CHAIRMAN SLAUGHTER: Jess Edwards
seconds. Any discussion?
(No response)

CHAIRMAN SLAUGHTER: All those in favor,
signify by saying aye.
(Response)

CHAIRMAN SLAUGHTER: Opposed, same sign.
(No response)

CHAIRMAN SLAUGHTER: All right. Motion
carries.

MR. STARRLING: Thank you, folks.

Ms. SOJA: Thank you.

CHAIRMAN SLAUGHTER: Perry, we’re going
to move to Probation and Parole Basic, or do you
want to do Corrections?

MR. JOHNSON: Yes.

CHAIRMAN SLAUGHTER: All right.
Correction and Detention Basic Academy.
MR. JOHNSON: Now, I’ve got to make
sure. I want to make sure that — I put this as
an agenda item on the syllabus change. It’s not.
This is not a syllabus change. This is actually a
change in the delivery of the same Basic Academy
material, so I apologize for that. Glen, was
there anything else that I needed to update them
on?

MR. STINAR: (Shakes head) Good
morning. Once again, for the record, my name is
Glen Stinar, the Administrator at the Montana Law
Enforcement Academy.

With me today is Kelly Sherman. Kelly
has been leading this project. By way of
background for Kelly, she has two masters degrees,
one in adult education, one in communications; has
been an Assistant Dean at a community college; and
also a subject matter expert in Moodle, and
previously worked in another DOJ capacity.

We were fortunate enough to see an
opportunity, and brought her on to work with us in
this project, and she will continue as we roll
forward, in that we are drafting an MOU with
Dawson Community College, whereby she will be an
employee there, working half-time for the college
and half-time for us. So we’ve sort of secured
what I think is the personnel relationships that
we need for sustainability.

You should have some hand-outs here. As
Perry mentioned, you as a Council have an interest
in two things, one of which is curriculum as
delivered to Montana’s Public Safety community,
and our job is to brief you on a change in how
that will occur, and then provide you with maybe
some vision of where we see this going.

So by way of the information I have
provided for you, a bit of background. So last
year, as if we weren’t busy enough, this thing
called COVID came around, and really what it
allowed us to do is stop, I think quite being so
busy, and start looking for better ways to do
things.

So as we got our COVID feet under us,
and our new training battle rhythm sort of
developed, we had a conversation with our staff
about, you know, what can we do better for the
long term, and there are some things that we
wanted to address, and they’re really on the front
page here.

So in a typical year, some of you may or

may not know, we run six classes. Each has 30 to
40 students in it, and if all goes well, everybody
graduates, so we’re graduating about 200 students
a year. We have a significant wait list. You
know, there’s a finite capacity for us to conduct
training. These conversations, we always have
them, we always try and do better, and things are
always as they are.

So we thought with the addition of
Kelly, maybe what can we do a little different.
So the areas we wanted to address were listed
there, one through seven.

Obviously, you know, smaller class sizes
reduced the risk of spread of not only COVID, but
what we have seen particularly in the last year
with the smaller class sizes, the increased
sanitation, that kind of thing, we just don’t have
as many noses, and I think that’s a huge benefit.

So there’s the sanitation, disinfectant,
health things, combined with smaller classes. I
think there is not only a better health
environment for the students, but also a better
training environment, because those class sizes
are small.

So our first concern was obviously for

the health and welfare of the students and staff.
Second was how do we whack away at those wait
lists, and provide more predictability for
agencies and students sending in their folks.

If we could reduce the cost for
agencies, we wanted to do that, too. Obviously
students, whether it’s two weeks, four weeks, or
twelve weeks, spend time away from work and away
from home, and that has an impact on their
personal lives, so could we help them with that.

I think we have sort of been regimental
in the way we conduct training. I think there’s,
as 21st Century adult learning tells us, there are
different models that we could use, so we kind of
dove into that.

And then we obviously wanted to train
more people. If we could do all those things, you
know, we thought we would have something worth
sharing, and we were able to create that. So what
we landed upon, as you go through the hand-outs,
particularly Page 4, you’ve got the four boxes
with the different colors.

What we were able to do with that, Kelly
and Rebecca -- (inaudible) -- and Rebecca is one
of our Correction Detention Basic course managers
-- is between really November of last year.
October, November of last year, and now February,
we were able to convert 80 hours of what was
residential training to an online Moodle platform.
And Kelly has got the list of courses up
there for you. So we did not add or take away, we
simply moved some of the courses from the
traditional classroom platform to the online
Moodle platform.
And what our vision moving forward will
be for the training is that we will have -- for
example, let's go with Correction Detention Basic
Course 165. It will have two groups, group one
and two. So each group will have 24 students in
it. All will register to take the online portion
in it, so we will have 48 students taking the
online portion in the 80 hours, and I will explain
how that works in a little bit.
So once they all start together, they
will all finish together. Then Group A will
report for two weeks of the residential portion;
we will have a week's break to reset; then Group B
will report for their two weeks.
So really the benefits are the smaller
class sizes. Each group will have 24 in it on

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73

So within eight months, six to eight
months of the agency contacting us that they have
somebody to register for a class, we will have
them out the back and with their certificate, and
we think that's pretty important.
So as I mentioned then, none of the
curriculum has changed, so the same amount of
hours, same classes. What we have done -- and
Kelly will show you -- is that each block of
instruction has an interactive requirement, so if
you've ever taken a class online, you know that
you look at some stuff, you watch some stuff, and
then you have to respond to some chat features,
which they will be able to do, then there'll be
quizzes periodically as well.
So there's sort of the -- because
sometimes classroom instruction, when you convert
it to online, there's some condensing of learning
material there; but by building back the chat
features, the course material will be online for
them to download, so they'll have to chat, they'll
have to read, they'll have to interact and test,
so we've built out. The hours will be the same,
thanks to Kelly and Rebecce.
A couple of the classes -- you'll see

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76

campus instead of 30 to 40. We will run five
classes per year at the Academy, one through
Dawson Community College, and we will have the one
traditional course in the summer, the four week
residential, if for some reason someone cannot
complete the online training, or there's some
issue, so we'll kind of catch those folks.
So our plan is if we can make this
happen, we'll be able to train 300 people through
a year, instead of 200. And the predictability
will be when a student -- Obviously this depends
on how quickly the agencies notify us they've
hired somebody.
So as soon as we get the call, they'll
be scheduled in both section, in both components
of the class. So they'll receive their start date
for the Moodle, the online training portion, as
well as their seat date for the residential thing,
so everybody will know when it is going to be.
And we think that we've built in
capacity where we can have every new employee in
the state through within about eight months, so
that's our target date. Obviously no plan
survives execution intact, but we think that's a
pretty realistic place to start.

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MS. SHERMAN: They're going to start on May 24th, so this is when the first beta group will start, May 24th. Each two weeks a new block will roll out, and we have them color coded, and that corresponds with the handout that you have in front of you, so it makes it a little bit easier to understand.

So this beta Class I starts on the 24th, Block 1 ends, Block 2 starts, Block 2 ends, so forth, and then it actually ends on the 16th of July, and then they actually start their boots on the ground session two weeks later, which would be August 3rd. And as Glen said, they'll know about those start dates right away.

And then that second group starts here as well. This is the second beta group. So it starts on the 5th of July, and then they'll have their two week blocks rolling out, and then they'll actually start their boots on the ground portion over here on August 8th.

MR. STINAR: So as we mentioned, we wanted to keep these two groups smaller, just to see if it really works the way we thought it was going to work. You know, Kelly and Rebecca have built in help desk features, so students, if they have questions, they'll be able to contact the help desk, which goes directly to Kelly and Rebecca. It's not some third party IT thing, it goes directly to them.

Also there's an introduction to Noodle that the students will have to take, and then there's those 24 online courses.

So the reason for those four blocks, as we saw on the other slide, were the students -- each block represents two weeks worth of work. So students will have 60 days to complete this. It's really eight weeks of training.

Our intent is they do it at work. Obviously it's up to the agency, but you know, we're not -- they can do this on any workplace computer that has internet, to include a CJIN terminal. So our vision is that it does not have to be all at once, so if there's a four hour block on there on use of force, they can do an hour here and an hour there, and it really just depends.

So we're giving -- but we want students to start and complete each block together, so that on the back side, Rebecca and Kelly can track progress. So if a student fails one of the quizzes within that two week block, they have to contact either one of those two to get it reset.

So we want everybody to sort of stay on track.

The other feature, as I mentioned, they have to interact with each other, like respond to Glen's conversation on whatever it is. So we require them to make at least one post and three comments.

MS. SHERMAN: Two comments.

MR. STINAR: Two comments. And you know, this is not a masters level course, so we don't want dissertations, but we want something more than, "You've got it," or "That's cool." So we just want some interaction. And then Kelly and Rebecca will get on there and sort of spur that on.

So the idea is to slow it down, so each two week block they'll start, finish, and then we'll have 60 days for the student to complete it, so I think we've built in enough time to where they can do this at work.

And what we will do is with these courses, we'll send surveys to the students and the agencies to say, "Did this work on your end, like we thought it was going to work on our end?" just kind of make sure that's going for them.

So thanks, Kelly. Let's go to the weeks one and two then.

MS. SHERMAN: I think weeks one and two is just part of the handout.

MR. STINAR: Let's go to the handout, the last two pages.

So when they come to the Academy, what are they going to do? So what we felt were important, you know, if we had -- Obviously classroom learning is bit different than online because there's real interaction with real people.

So what we wanted to do is the impressions we wanted to leave with the students when they left were that they could communicate effectively with persons in their care and custody, and as well as make good use of force decisions.

Those I think are the things that the world that we live in, those folks live in anyway, is how do we have conversations with people every day in our custody, and sometimes we have to use some level of force to get them to do what we want them to do. So if we could spend our time at the MLRA focusing on those things, I think at least conceptually we think they'll walk away with a
little better grasp of the two high risk/high liability areas that maybe agency administrators face.

And as I mentioned, some of the topics that we have online, we'll revisit, but not in great detail. So that's kind of where we -- the discussion we had, the work that Kelly and certainly Rebecca and our staff. You know, keep in mind, we had to take traditional lesson plans, and just kind of dump them in a box at Kelly and Rebecca's front door and say, "Here you go. Do what you do," and I think it's been a great staff project.

And the benefits really for this, a couple I mentioned at first was that each Moodle course is stand alone, and can be taught as an in-service training. The other is that, as I mentioned, Dawson Community College, is that we will facilitate the two weeks, the Moodle, the online portion, but that residential portion can really be taught anywhere where they use academy approved lesson plans, and group instructors.

So I think our partnership will certainly, with whoever does it, will continue, but Rick at Dawson, I think we'll see then do a

basic class for the folks on the east side of Montana; I think certainly for the prison, the MSP. There's an opportunity to conduct that two weeks at the prison with your staff and our lessons plans.

So I think we've created a model that has some expansion capability that meets the needs of the agencies as well the Academy. And staffing, it's easy for the ideas and work to outrun the staff capacity, but I think as long as we keep Kelly around, and Rebecca, and some other folks, we'll have the -- this will work.

So that's the briefing, and where we're at, and where we're going, and if you have any questions, I'd be happy to answer those before Kelly shows you what the course looks like.

MR. SWASSING: I'm just going to make one quick comment, Glen.

They put out a test program, and Kelly is going to grill about this, because she knows where I'm going to go. I'm technologically challenged. This program -- I was one of the crash test dummies they sent this out to do a course. It's user friendly. If I can get through it, anybody can get through it.

And really it was very -- it covered the ground that it needed to cover for that particular topic; it was user friendly. And we had problems, but it wasn't actually something I did, it was a technological problem. These guys solved that in the matter of just a couple hours. It's a really good program. I think, and my hat's off to you guys who wanted to go out and do this, because I think it's going to make a big difference.

MR. STINAR: And thanks, Rick, for reminding me. So Katrina was part of the test group, too, so we had about a dozen folks that we sent out one of the courses to. Most were from the jail commanders group. So Rebecca is in Lewistown today briefing the jail commanders on the same briefing that you're getting today.

So we've developed it, we've had folks test drive it, made the corrections based on their feedback, so I think we've kind of checked the boxes that we feel we needed to.

So are you ready, Kelly?

MR. SHERMAN: Yes.

MR. GOOTKIN: Can you put that back up for a second? I just have a question. Rick, are you the one that came up with these charts and

boxes, being technologically challenging?

MR. SWASSING: Yes. Thank you.

MR. GOOTKIN: I don't think I've ever seen that before.

MR. SWASSING: I colored them, stayed in the lines, but outside of that, she put them up together.

MR. STINAR: So by way of maybe better explanation, what that gives you is the timeline of execution between when the students are first notified and receive their welcome packets, and the requirement to sign in, and as well as when those two week blocks start, and so that was our attempt to show you in a way Rick would understand what we're doing.

CHAIRMAN SLAUGHTER: Administrator

Stinar, I just had one question, because I don't want to -- I think this is really awesome, and I don't want to ask a bunch of questions until this presentation is over, but I want to make sure I understand your timeline correctly.

So they go for two weeks online Moodle, correct? And a week off, and then they go to the Academy in two weeks?

MR. STINAR: Thank you for the question,
Sheriff. So what will happen is the 60 hours is broken down into four different sections, each consisting of two week blocks. So that's what that is right there. So the students will have 60 days to complete -- basically this is four weeks of stuff, so they'll start and finish, start and finish, so they'll start and finish each two week block. So it would be two weeks, two weeks, and that's two, four, six, eight, right?

So the timeline will be preprogrammed when they start and finish. So 60 hours of online Moodle training will be delivered over 60 days, 60 actual work days. So once that 60, that online 60 days is complete, and it will be relatively soon, they will report for the residential portion. So I think it's within 30 days or so that will happen.

So the goal, obviously we've got to kind of keep this cranking to get folks in and out. So the idea is they'll finish, and right away they'll come for the residential portion.

CHAIRMAN SLAUGHTER: Okay. Thank you.

MS. SHERMAN: So I'm Kelly Sherman once again. So what we did was we sent a test course out to a group of individuals. Like Glen said, we that would apply to your actual job?"

The next one was, "Overall, how would you rate the course?" And so when we're talking about the course, we're talking about when we sent the survey out to a group of individuals, it's going to be the whole course, the whole curriculum that you took. In this instance it's just the one course that they took. 50 percent said they rated highly or very well.

MR. STIMAR: That was report writing, right, Kelly?

MS. SHERMAN: Yes, it was report writing. Thank you. And we sent that one specifically because it was a shorter course.

Some of our courses are longer. So then we asked for some specific feedback, some specific responses to the questions that we had. We had things like, "It was very easy." "I'd like to see the finished product." "The online portion was very successful." "The online portion was very successful." things of that nature. We had a couple other ones that were kind of funny, and I didn't know the crowd, whether I should bring them or not, so I kind of edited them.

But on the whole everyone felt confident, comfortable using it. They thought it would work well for their particular programs. So those are just a few of the comments right there.

What I want to do now is if you'll just hear with me a second, I want to flip over to the actual Moodle, and show you very quickly, take you through the courses, show you what it looks like, show you how easy it is to actually navigate in it, show you some of the content.

One thing that Glen said that I just want to reiterate is: The courses that we put online are the exact same courses that have already been used in the training program.

Nothing changed other than we updated some of the videos, we caught a typo here and there maybe in a power point, things of that nature, but none of the curriculum has changed. It's the same thing.

And we were very careful and cognizant when we did it that we didn't just curriculum dump, and everyone here knows what that is. Just take a bunch of things, and just throw it into the format, and call it good.

So we were very conscious about how we did it, is it relevant, is it something that's going to be very significant for the people taking
It, and how user friendly is it. And so we've
tested it extensively.

And like Glen said, we're lucky enough
to have our own help desk that was created by our
awesome web developers, and so that's really kind
of unique, and the best part is it's free, as well
as Moodle. The Moodle system is free also.

And so with that, we're able to very
quickly respond to issues that people had. We
created that help desk with the idea that we're
going to make it obsolete, and we're going to make
it obsolete within a few months, and what that
means is we're going to catch all of the issues,
problems, and concerns very quickly in regards to
both the Moodle system, and actual technology, and
then make it obsolete so people no longer even
need it anymore. It will be that user friendly.

So just bear with me one second while
I'll pull up Moodle, and I'll take you on a
wonderful tour.

MR. STIGMAR: So while Kelly is doing
that, a couple things I can chime in on is not
only -- we've created a Moodle app for smart
phones, so not only would the student be required
to sit at a laptop somewhere, but if they've got

smart phone, they can download the app and take
these classes anywhere. So very portable.

MS. SHERMAN: And the Moodle app, I'll
be happy to show you that afterwards if you'd like
take a look at it. It's free to download on your
phone as well. And it will work anywhere. I
actually was in the hospital in Havre, and was
able to pull it up and test it on my phone there,
and it worked just great. So it's available for
anyone anywhere.

So what's going to happen is you are
going to receive a 30 day packet 30 days before a
projected start time. We're going to send you
information, we're going send you the link, we're
going to send you electronic hand-outs, anything
that you would need in order to prepare the people
that you're going to have for the program.

Once that roster is completed, we will
send them out the link. And so what they will see
when they first log in is this screen. And so
I've already created a user profile, which is put
over there, so I'm no longer a new user, but
everyone that takes it for the first time is a new
user.

Very easy to create your user profile.

You've simply put it on "create a new account."

You are able to put in your own user name, your
own password, so that way you don't forget. So
it's not assigned to you. If you forget it, it's
very easy, you just click on 'Forgot password,'
and right away it's reset for you, so you're able
to reset it and go in.

Here's our help desk link. We have that
plastered and posted everywhere, so if people are
having a problem at any point in time, just click
on that, and immediately go in.

So this is what you're going to see once
you log in. This is going to look a little bit
different for the new student for the first time.
I left here all of the courses that we've
completed. So if you can imagine, this is a
bookcase, and everything you're looking at here
are books in the bookcase or the individual
courses.

So I just left them up here visible, so
that you can see all of them that we've created,
just kind of get a visual. So the student is very
quickly, very easily able to just click on the new
hyperlink to go into any of these courses, gives
them a brief one sentence description of what they
are.

But keep in mind when they first log in
they're only going to be seeing a block of
courses, a first block of courses. So they'll
only see the first five, six, whatever is in that
particular block of courses.

This is the Moodle course training Glen
was talking about. All students are required to
take this. It's approximately a 20 minute course.
It just shows them how to move through Moodle, how
to navigate in it, what things look like, how to
move around, things of that nature. Kind of the
most frequently asked questions.

So let me just show you a real short
course. This is the one that we sent out to
everyone to take so we could get feedback on.
Once again, it's very easy to get input. All you
have to do is just click on that link, you'll go
right to the course.

So we were very particular how we set up
our courses, and all of our courses are ranged
exactly the same way. So once the student
completes one course, they feel extremely
confident in being able to move around. They know
exactly where everything is, what it looks like,
where to find it, and that was with particular intent. This is going to look a little bit different because I have the admin. side screen set up, so that I can show you some of the features that you wouldn't see if I logged in as a student, but it's very similar. You're just going to see some things like turn editing on that have administrative functions as I go through this.

Over to the left is the menu, so at any point in time a person can click over here, and go into these individual things. In every training course there are topics. In each training course there is a discussion for the most part. There is also the lesson, there's a topic quizess afterwards, and then there's a final quiz. So I'm just kind of quickly scrolling through this so you can just see some of the content.

We also have, once again, the help desk link inside the course. Once they're in there -- they're lost, they're confused -- they can click on that and get into it right away.

Important information. So by clicking on that, once again, any blue hyperlink is that easy to move around in here. All they have to do is click on it, "important information," will take them to important information for this course.

So in each course, we welcome them, we tell them who to contact, how to contact them, we show them how to get the Moodle app, just by clicking on that gives them information to download it, so they can put it on their devices right away. We give them a quick user guide, once again, if they're lost, confused, want something paper they can print out to look at it.

And then we have our discussion expectations, and I'll get into that in just a little bit. So like Glen said, we don't want the discussion to be a free-for-all. We don't want them exchanging emotions. We don't want them doing the thumbs up. We want them to actually engage with each other and build that relationship. So once they get boots on the ground at our facility, they already have a relationship built via these online courses.

So you can either click down here on the resources, you can click on the "jump to" option, or you can go over here to the menu -- I hope everyone can see what I'm talking about -- over here to the menu, and click on this. Multiple ways of doing it.

What's really great is if a person only has an hour to do the training, they jump into the course, they can only do a couple of things, once they leave that course, that course shows them exactly where they left off when they go back in, so they don't have to restart from the beginning, they can just jump around, they can go in and out. And I'll show you kind of another neat feature about that in just a minute.

So here let's go back to topic one. This one is kind of funny. That's kind of why I chose it is to kind of lighten the mood a little bit. But in this particular exercise, we have a discussion question. We ask the students to take a look at these particular little signs here. We ask them to look at this statement.

So this is an actual statement from an actual report. The statement is, "I then found a silver paper clip taped to the inside of the bed frame by the wall on the left hand side on the right hand side on the inside of the bed frame wall."

So we asked the students, "What does this mean? What do you think about this person that wrote this report? Would you put faith and trust in them? Do you feel like it's valid? Do you feel like it's professional?" And so that spurs the discussion.

So for each discussion we have, we have a specific prompt. We ask them to address that prompt, and then that starts the discussion. Like Glen said, we lead the discussions. We will go in, we will make comments, we will check, so that way they know that someone is active in that discussion watching what they're saying.

We have ability to delete discussions. If they go off topic, if something inappropriate is said, we can delete it. We also have the option of being able to go in and add to the discussion if it's kind of stalled out.

So in each topic we also have lessons and lesson plans. This is how easy it is to actually do the lesson. All you have to do is just click on the hyperlink, and now you are into the actual lesson.

So this particular lesson, all a student has to do is just scroll down and read the content. And like I said, if they're called away for some reason, they can leave, it will come
right back to that exact same screen when they log back in. By clicking on "next," it takes them to the next page of the lesson.

Once again, they're just scrolling down, reading the lesson. They can screen shot this to save it for use later. They can print it out if they need it. Some people are still old school and like paper, create little binders of information. They're able to do that.

At the end of the lesson it will actually tell them, "Congratulations. You've reached the end of the lesson." Now, this is significant because if they are jumping in and out of the lesson -- there's the statement I'm talking about -- they're not sure if they've completed it or not.

What happens after you complete the whole course, these different contents of it, they receive a badge, and in a few minutes I'll show you what that actually means. That fulfills the millennials kind of need for game-ification. They like to have that reward, that stamp at the end, and it also kind of spurs them to want to try to gain more badges. They'll walk by, see someone else's screen up, "Oh, you have five of them. I

wanna five. How did you get them," and so that spurs them to want to drive to have this healthy kind of competition to get more training.

The last part of this particular first lesson is they will then go to topic questions. Now, we decided that it was not essential to grade these topic questions with a monetary grade. Our intent was to give them opportunities to go back and look at the information. Maybe they didn't understand it fully; maybe they have reading comprehension issues where they need to look at it several times before it makes sense.

We didn't want to have an "Ah-hah" tricky moment, where it frustrated students. We wanted to make it so that they had the opportunity to actually learn the content before they moved on to the next section of content, and that was really important to us.

So they're able to have two opportunities on each question. If they fail the question the first time, they can always go back and look at the content before they redo the question. So they will feel confident when they finish this topic they know the material, and we will feel confident that they know the material as

well.

I won't take you through each one, but I'll just show you the final quiz because I'm sure everyone is curious about that.

So we really went through this, and studied, and came up with a lot of great ideas, we think, on how to have a cheat-free quiz online, which is very, very difficult to do, as you can imagine.

But one thing that we came up with and we managed to do was we put a time constraint on the quiz, and the time constraint is only 20 minutes, and that stops students from going back through content, copying content, calling their friends for the answer to the million dollar question, whatever the case may be. So it's 20 minutes. They have to keep moving forward very quickly.

I didn't know the content until I actually put the content online, and so I was a newbie going through and taking the quiz, testing it, and 20 minutes is more than enough time to get through the actual quiz.

It can only be taken in one setting, so they can't go in and out on that quiz. They have to be seated taking that quiz. They don't have an opportunity to revert the course content, so in other words, it's closed book; and they must pass with a score of 70 percent or better.

Questions are worth ten points. Now, in the longer courses, we have 20 questions. In the shorter courses we have ten questions. Once again, that's the time constraint issue.

If for any reason a student fails to pass a test, and these test are graded, they have to contact Babson or I. The reason behind that is we want to catch students right away. We want to give them every tool we can think of to help them to succeed. So if they're blasting through courses right and left and failing them, they aren't succeeding. It is going to bail up and hit them eventually.

So what we want to do is catch them right away with each one, find out why they are not succeeding in that course. Are they having problems with reading, with reading comprehension? Are they not getting enough time to actually do the coursework? Or can we go in and look, and if they're blasting through the course in five minutes, we know that they're not really reading

~25~
content and learning content.
The other good thing about them having
to actually read in this course is they can't do
the trick that everyone does, when they have to do
training, and they don't want to do, is put it on,
listen to the person talk to them, in the back
ground, and they can go on and multi task and do
other things. This actually has them be involved
where they have -- they are responsible for the
content of the material, learning the material.
The questions are multiple choice.
There's some true and false. There's a few
matching. Once again, there's no big "we gotcha"
questions. All of the content is relevant, and it
applies to the content that was within that
particular course.

Let me just show you one other concept
of this, and then I'll just get really close to
wrapping up here.

MR. STIKAR: So regarding the quizzes,
there's a reshuffle feature. So if the student
has to retake a test, there'll be different
questions or in a different order, so they're not
going to get the same questions with the same
answers. So that's an automatic feature. If they
have to retake a test, it will not look the same.

MS. SHERMAN: Thank you. The other
great thing about that is if they're trying to be
tricky and do screen shots of the quiz, and then
pass them on to other people, it's not going to be
applicable. We have a question bank, so it pulls
from that bank every single time that quiz is
taken a different time, so it's different
questions.

The other part of that is with the
shuffling. So say they try to tell you -- they
pass the list onto someone else, and they say
question No. 1 is "C," it may not be question No.
The next time, it might be question No. 7, and the
answer might be "A." So it does shuffle pretty
significantly each and every time they take it.
The other great thing about -- we were
so happy when that happened. So the other great
thing about this course is, and about putting our
curriculum online, is we can very easily update
content.

So what you're looking right here is
resources for writers. These would have normally
been hand-outs that in training would have been
made and would have been passed out to people. So
to update hand-outs, we would have had to find the
owner of the hand-out in order to update it, and
then make copies of it.

This way we can very quickly, by
clicking on "Resources" -- and we can do this at
any point in time -- we can change the content of
hand-outs. The student is also able to print out
the hand-out.

So here's the top ten grammatical errors
in this particular hand-out. We can post manuals
on here; we can post books on here; we did a
fingerprinting course, and we had three different
manuals complete with pictures: all kinds of
things.

And so it really helps, not only with
cost, but for the students as well. If they don't
want to print stuff out, they don't have to be
carrying around binders of printed material. The
new age, they like just saving it electronically
on a thumb drive and having access to it.

The other thing is we have each course
open for two months after they complete it, so
they can go back at any point in time and say,
"Oh, I wish I would have printed out that manual
then." They can go back in two months and print
it out at that particular point in time if they
still want to or need to.

So let me just show you one other
awesome feature about this particular thing. So
we are able to run all kinds of reports in Moodle.
Students are also able to run reports about
themselves in Moodle. So let me just show you
what I'm talking about.

So on a student's profile page, they are
able to set up blocks, and that's what these are
right here. They can set up blocks any way they
want to. They can even change the language of the
course for them if they desire. They can run
individual reports, so they can run their own
individual reports on who just responded to their
discussion topic, what did they say, did I respond
to all my discussion topics. So that's a really
great feature in regards to this.

They can pull their own grade. They can
provide that to you if you're wanting to know if
they completed the course, what kind of grade they
got.

The other thing is, once again, the
badges. So once you've completed a course, you
will receive a badge. The badges appear on your
courses they’ve taken, and how far they are in completion to it, so that’s kind of a great feature. The sky is the limit really with this.

And so we were actually super thrilled to do it, and to see it come to fruition, and I was so excited to be able to come here today and share that with all of you, and I hope you guys get as excited about Moodle as I am, and Glen is, and the rest of us. So if you have any questions, please feel free to ask. I’m more than happy to answer them.

MR. STINAR: Something that Kelly did not mention was that if a student falls behind, the agency will be notified. Obviously there’s a time commitment here. So if a student gets behind or it becomes obvious that they’re run out of time, that the agencies will be notified. So hopefully we’ll be able to keep that rolling.

The last thing I think I did not specifically mention was costs. We charge $125 per week for any Basic course at the Academy. That’s meals and lodging. Statutorily that’s all we can do. So obviously a four-week residential course would be $500, two weeks is $250, so we’re saving an agency $250 by having them do this. So doing Adobe with LEGB?

MR. STINAR: Two years.

MR. JOHNSON: And how that been accepted?

MR. STINAR: Well.

MR. JOHNSON: I just had a couple of questions. When do you look to push this out to Dawson?

MR. STINAR: Next year?

MR. SWASSINE: Yes. Whenever you call me and say, ’Let’s get started.’

MR. STINAR: Right. You know, Rebeca is building the calendar for 2022, and it will include an opportunity for Dawson. If not, then we’ll just absorb that. So I think from a lefty rightsy perspective, I think the first one will be a cooperative effort out there. You know, Dawson has a window of opportunity in the summers I think basically. Rick? Is that sort of our understanding?

MR. SWASSINE: Yes.

MR. STINAR: So tentatively we’ll kind of put a marker on the calendar for summer of 2022, we’ll try one out there, and it will be a combination of their staff and ours, and --

I think over time, that means a lot certainly.

As I mentioned to begin with, we had several things that we wanted to do if this was going to work. I thank thanks to Kelly, and Rebeca, and our staff at the Academy, we were able to get all those things out of motion, and we look forward to this new adventure.

MR. JOHNSON: Glen, are you doing it already with LEGB?

MR. STINAR: So we have LEGB -- the Law Enforcement Officer Basic course -- there are 24 hours of online, which is Adobe. One of the things we have found is that with Adobe and Moodle resting on the same Department of Justice platform, that every time Moodle updates there is an effect on Adobe.

So what we hope Kelly will agree to -- if I make her -- is look at that Adobe, and so the bookshelf will have a law enforcement shelf and a corrections, so we’ll put that Adobe.

And you know, I think there’s opportunities to include other things as well. We just -- let’s get this working and see where we go.

MR. JOHNSON: How long have you been
CHAIRMAN SLAUGHTER: Hey, Glen, so how it's supposed to work is they basically would be at work. They'd get weeks one and two which is 17 hours of instruction they'd have to complete in those weeks. So during their work day, we just block out that time.

Can they do everything all at once? Like can they sit down in three days and knock out all their stuff, and go back to work, or is it designed to not do that?

MR. STINAR: It's designed -- Remember, there's the interactive chat feature. So they could, technically that 17 hour block, they could sit down and crank through it all at once if they wanted to. However, they would have to return later on in that two weeks, and respond to other posts.

CHAIRMAN SLAUGHTER: I think that's going to be a really important thing to understand, just because like we have a training division, and you know how people are. "Well, let's just get this done," do you know what I mean?

MR. STINAR: Right.

CHAIRMAN SLAUGHTER: And that's not necessarily the right way for adult learning, I mean as you know probably better than anyone. So I think like that explanation that this is something that needs to be done over a period -- because 17 hours in two weeks is very doable, even -- what do you have -- the most you have is 23.5 in two weeks. That's very, very doable, especially considering that we don't lose those people during that time. I mean they're busy doing this, too, but they're there.

MR. STINAR: We'll make sure that's clear.

CHAIRMAN SLAUGHTER: I like it. I really do. And I think you guys did a great job of getting outside the box, and coming up with something super creative to accomplish all these goals that you said you wanted to accomplish.

The other thing I think is it appears to be very scalable. So if the demand were to change for you guys, there's a little bit of scale-ability in there, it appears. I don't know for sure how true that is, but from my perception it does. I think it's great.

MR. STINAR: I appreciate that. And really you're talking about who does the work. I think that Kelly and Rebecca really -- it's a large project to conceptualize, and bring to reality in I think it was relatively 100 days, 102 days?

MR. SHERMAN: 103 days. 24 classes in 103 days.

MR. STINAR: All this got done. So nice job.

CHAIRMAN SLAUGHTER: That's awesome.

MS. SHERMAN: It was fun.

CHAIRMAN SLAUGHTER: And so 2023 is when this will roll out?

MR. STINAR: It will roll out in May of this year.

MR. STASSHILL: Glen, the other thing you want to remember is we're going to open that campus -- and going up there up tomorrow -- up to Lewistown, so we're going to have another site that we can service like you guys up in the north end of the state, make it a little more palatable for you.

CHAIRMAN SLAUGHTER: Absolutely.

MR. JOHNSON: So would ask you, Glen -- because I'm a selfish son of a gun -- is there an opportunity there for POST to piggy back into a program there where we might create an ethics module that would be available through Needle for any agency that just wants to say, "Hey, you're working a ten to six shift. Why don't tonight why don't you get on there, and take this 30 minute ethics program?" Is there an opportunity there?

MR. STINAR: Right. As an example, you know, at DCF we built one for our agents, which it's on Share Point, but it's in the same, similar format. So the short answer is yes, absolutely. We have -- I think as we talked about partnerships, and I think the Academy staff certainly in conjunction with POST, because we're sort of already partners anyway, you know, it would be just a pretty simple thing for us to do that.

MR. JOHNSON: As long as we've got you here, is there an opportunity for you to kind of fill the Council in on your relationship now with the DOC and staffing there?

MR. STINAR: We have -- as you probably know, Director Gootkin -- we have a staff, a training staff assigned to us. So Tanya Raiki is her name. So the DOC did some restructuring of their training bureau, and we were fortunate
enough to gain a DOC trainer who works primarily with the Corrections.

This is what really enabled us to do this — was that Rebeccas had been that traditional classroom trainer, and we needed her to really become the expert in translating that classroom material to this. So Tonya was able to pick up and backfill some of those classes, and now she does some things for the Law Enforcement Basic course, too.

So really we've always had a great partnership with DOC. This was just sort of the next logical thing that we were able to do with them.

MR. JOHNSON: Thanks, Glen. As long as we've got -- and I think if it's okay with Brian, Brian intends to, as the DOC Administrator, you intend to become a Council member. And I know that you're not, and I don't mean to put you on the spot.

But for years we had a tremendous relationship with your DOC training cadre. Glen just referenced it, so it kind of -- we're going to pull the trigger on that. Do you have any intention, Brian? Do you see at some point where you'll reevaluate that -- or maybe that's the wrong word -- but you might reinstate some of that training cadre?

MR. GOOTEIN: Too soon to tell. I'm still evaluating everything, so --

MR. JOHNSON: You know, it's funny, but for years I recognized the amount of opportunity that was with that group. And just for firearms instructor, for example, they've backfilled some of the -- sometimes those classes get filled, and so I could reference, "Hey, these guys are running that class, too."

So that's why I asked. We get those questions. And I think we're building out more capacity. That's my impression. And that we've got a lot better feel for maybe what the potential need is, but I always --

We really had a lot of respect with what they did, the game that they brought that kind of did backfills. Instructor development, firearms instructor, just some of those courses that they moved around a little bit, too, that made it a nice market for those agencies that maybe were in different locations that just didn't have time to travel and stuff. So no pressure.

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115

MR. GOOTEIN: We'll continue to be a great partner. Just let me know what you need.

MR. JOHNSON: If you could just fire that up again, that would be great. Thanks, Glen.

MR. STINAR: Thanks for your time.

CHAIRMAN SLAUGHTER: Do we need to do anything?

MR. JOHNSON: No. So was just talking about the delivery. The syllabus stayed the same.

CHAIRMAN SLAUGHTER: I think that was really awesome, guys. Thank you. So now we are at Probation and Parole Basic Academy.

MR. JOHNSON: That would be on Pages 91 through 98. For the purpose of the Council, I wish that I could tell you what changed in this. I don't know. But there were some subtle changes, and they wanted this opportunity for us to review this. And this one we will need a motion on to approve this curriculum that are found on these pages for the Probation and Parole Basic Academy.

So that Basic Academy class at one time was 480 hours -- I'm sorry. No, 400 hours. It was a ten week class, and now it's -- yeah, it was a ten week class. Then it was an eight week class. And I see this one now is 375 hours, so it would be nine weeks and 15 hours. Right?

So that's the reason it's on your radar today. This Basic Academy class is probably going to pull the trigger on this pretty soon, I suppose, Brian?

MR. GOOTEIN: Sure.

MR. LEWIS SMITH: Is that a correct time on No. 2, the check-in orientation from 2:00 to 5:00 a.m.?

CHAIRMAN SLAUGHTER: That's not right.

MR. LEWIS SMITH: Dedicated. Either that or you just got off, you know, headed from the bar to orientation.

CHAIRMAN SLAUGHTER: That's probably p.m. Isn't that a Sunday?

MR. JOHNSON: Katrina has just pointed out that she said she doesn't see POST on here. Oh, yeah. It's on Line 20. Hey, Brian, would you make another note?

MR. GOOTEIN: Sure.

MR. JOHNSON: I've asked this of Kevin Olson before, and I never got a response. So I would ask you to look at Line 20. That's the POST Council. We get an hour to present. And on Line 40, KIMH (phonetic) gets two hours. And I've
asked for 30 minutes of that before, and I never
got it. Because anybody that’s in the room -- and
Glen will tell you this -- we bump their staff all
the time because an hour, if we get any
interaction at all between the participants at
that briefing for POST, the ANA discussion, the
statute discussions, and if we could get that 30
minutes, we'd take it.

MR. GOOTKIN: Okay.

MS. KEUNE: Perry, this is Mary Ann. It
does say from 8:00 to 9:30.

CHAIRMAN SLAUGHTER: It does. It says
an hour.

MS. KEUNE: I don't know if it means
actually an hour and a half or --

MR. JOHNSON: Maybe we're okay then. I
don't know. We'll look at it, Brian. Why don't
you just leave it alone, and I'll talk with
Timothy and see that we're okay.

MR. GOOTKIN: Okay.

MR. CONNER SMITH: I've got a question.
Conner Smith here. So does anybody know what
this, for defense tactics, NFRG, control
principles, 46 and 49? Does anybody know what
that actually stands for? It's not familiar --

before we do that. Do you have any questions with
anything in here that we need to address besides
the definition? Are you good with everything?

MR. GOOTKIN: Yes.

MR. JOHNSON: I would just add to that,
that conversation that I just directed or had with
Brian. This training cadre is excellent. They do
a good job, and our interaction with them has been
really very positive, and they're responsive. If
we've got questions, they're pretty good about it.

CHAIRMAN SLAUGHTER: Timothy Aired
(phone) is a rock solid guy.

MS. SOJA: I was just going to share.
This is Gloria Soja. NFRG is Human Factor
Research Group. It's an organization that it's
they're training.

MS. WHITE: This is Kristina. NFRG is

CHAIRMAN SLAUGHTER: So do we have any
more discussion about this before we -- can we ask
for a motion to approve this?

MR. GOOTKIN: When is the next Basic?

MR. JOHNSON: I don't know.

MS. DOLGER: Summer.

MR. JOHNSON: Summer probably.

MS. KEUNE: What line is it?

MR. CONNER SMITH: 46 and 49.

MR. JOHNSON: This is Perry. I don't
know what that is. I don't know Andrew Garner
(phone) either, but he's apparently a 20-2, so
they must have a program that they're comfortable
with.

MR. CONNER SMITH: That's a new one in
my books. I'm just curious.

MR. JOHNSON: This is Perry again then.
I'm not trying to task anybody with anything, but
would you mind reaching out to Andrew, and being
able to tell us at the next meeting maybe what
that program looks like?

MR. CONNER SMITH: I'll look into it.

CHAIRMAN SLAUGHTER: So Perry, are we
making a motion? Because this is going to be the
new Academy curriculum at the next Academy, so
they need a motion to move forward; is that right?

MR. JOHNSON: Yes.

CHAIRMAN SLAUGHTER: Obviously Director
Gootkin will probably maybe in the future change
it again, because you're still in the process of
looking into everything. So I guess, Brian, I'm
going to defer to you for a question real quick

CHAIRMAN SLAUGHTER: So I'll ask for a
motion to approve Probation and Parole Basic
Academy 6-5 syllabus, and the syllabus is dated 2/18
of 2021 for the upcoming year and upcoming Basic.

MR. BILL SMITH: Bill Smith. I make a
motion to accept the changes as presented here.

CHAIRMAN SLAUGHTER: Do I have a second?

MR. THOMAS: This is Jim. I second.

CHAIRMAN SLAUGHTER: Any discussion on
that?

(No response)

CHAIRMAN SLAUGHTER: Anybody on the
phone with discussion?

(No response)

CHAIRMAN SLAUGHTER: All those in favor,
signify by saying yes.

(Responses)

CHAIRMAN SLAUGHTER: Opposed, same sign.

(No response)

CHAIRMAN SLAUGHTER: Motion carries.

MS. KEUNE: This is Mary Ann. Did
anyone -- did we talk about Kevin Olson’s
resignation?

CHAIRMAN SLAUGHTER: That's next.

MS. KEUNE: I didn't know. I was out of
the room. I wasn't sure.

Chairman Slaughter: We jumped ahead to
take care of our guests, because they were here,
and if they had somewhere else they had to be,
they could go.

So next on the agenda is the resignation
letter of Kevin Olson. And Director, if you don't
mind, I'll just turn it over to Director Gootkin
to maybe talk about Kevin's resignation, and what
the future holds; and also I think this would be
the appropriate time, because you intend to be on
the Council, to kind of introduce yourself and
talk about yourself.

Mr. Gootkin: Sure. So Kevin Olson, 41
years, law enforcement -- for those of you that
don't know -- Savre Chief of Police, MLEA
Director, and then Probation and Parole Bureau
Chief for I believe it was seven years. And just
a great guy.

He came in and visited with me, and told
me 41 years is enough. And he's earned it, so
good for him. And he and his wife will enjoy
retirement.

So if the Governor so chooses, then I
will take his place on the board, on the Council,
and work with you guys. It's up to the gov.

Chairman Slaughter: That's awesome.

Mr. Johnson: Just on that note, Brian
pointed out already that people in his position
previously have served on the Council as well, and
I think it really brings a lot of added value to
us to have you here. So I really appreciate that
you would do that, and give me the opportunity to
tell you to wrap it up.

But really I think Kevin was just a
really strong advocate for the POST Council, and a
tremendous partner. He was supportive of all of
our efforts, and in last seven-and-a-half years it
hasn't always been like this. It hasn't always
been a collegial group. We've bumped heads. And
I think the result has just been a better product
all along, so we'll just keep moving forward.

Chairman Slaughter: Absolutely. He was
great for historical perspective, too, because he
was the former Administrator of the Academy, so it
was nice because he tied the DOG and DOC
perspective together in like one sentence. So
he'll be greatly missed, and we thank him for his
service. And thanks, Sheriff Gootkin, for your

Chairman Slaughter: Comments as well, and what your future plans are.

So okay. We'll jump into committee
reports, so we should probably start with
committee assignments which, Perry, what page are
those?

Mr. Johnson: Well, why don't go to Page
77. Mary Ann, tell me where we're at just in
regards our meal schedule.

Ms. Keene: Well, it's here. Is that
what you mean?

Mr. Johnson: So Mr. Chairman, I would
just ask you what you would prefer to do.

Chairman Slaughter: What have we got
left? We've got Director's report. We've got
enough left. Let's take a quick break, grab our
food, we'll come back when I see that
everybody is done eating.

(Lunch recess taken)

Chairman Slaughter: Tie, are you still
on?

Mr. Johnson: Tie needed to leave at
noon.

Chairman Slaughter: Matt is still on.

Matt. Wyatt, are you still on?

(No response)
CHAIRMAN SLAUGHTER: Leave that one alone?

MR. JOHNSON: I would.

CHAIRMAN SLAUGHTER: Sounds good.

Curriculum Review, there's a vacant Chairman spot. Jim Thomas and Glen Stinar sit on that one. And I'm going to ask Perry a question. Is there an ideal, or is more ideal on that particular --

MR. JOHNSON: Curriculum seldom meets, and the reason there's a vacancy there is Kevin Olson was the Chair of that, so we had that former MLA Administrator, and then the current one, and then Jim Thomas, another previous MLA employee. That was kind of a nice configuration for that.

But I think anybody that would really be not seriously interested in spending a lot of time on a committee assignment, this is your spot right here.

MR. GOTTIN: (indicating)

CHAIRMAN SLAUGHTER: Gottkin will be your new Chairman.

MR. GOTTIN: I defer to the other two that chair it definitely.

MR. THOMAS: The Case Status Committee takes up a lot of my time, and I'm wondering if

Smith is the chair, Brian Gottkin, and Bill Smith, and then Glen Stinar is a non-member on that.

Does that sound good? For Curriculum Review, for the record.

So next is Case Status. Perry, are we static there?

MR. JOHNSON: We are as far as I'm concerned. But I think I would ask you to formally appoint Jim Thomas as the Chairman, because he's the only Council member on that committee anymore.

CHAIRMAN SLAUGHTER: Jim, are you still interested in serving on that as the Chair?

MR. THOMAS: Yes.

CHAIRMAN SLAUGHTER: Awesome. We would really like to have you on there. And then the last time we met, Tony and John are good on being members of that committee?

MR. JOHNSON: They are, yes.

CHAIRMAN SLAUGHTER: I guess just to kind of point it out. Perry talked to me right after I was appointed. We talked about this committee. And with all of the changes on the POST Council, we thought that the important work this committee does, that they should remain to be

the same people for continuity for awhile.

And then I think our hope is if we make a change, we do it kind of one at a time in the future. That's kind of the goal, right? So there's not a big shake-up. Then you guys are very familiar with it, do a good job.

MR. JOHNSON: We didn't talk about this yesterday, and this is a good opportunity to bring this up. There's only one Council member on that now, and just in regards to looking at the end of our headlines, and what's beyond that, Jim, I would ask you. Do you think there's a benefit to building another Council member into that, with the idea that that would be leaning towards a succession plan when someone else decides to walk away?

MR. THOMAS: The short answer is yes. The long answer is that -- and I don't mean this to sound like a warning -- but we've already mentioned the 46 cases we went through yesterday, over 500 pages of documents. And I set aside anywhere from four to eight hours before we have our meeting, usually after Katrina sends out the documents, and even yesterday we had to look at a video. But it takes a lot of prep.
1 I mean we went through all that over 500
2 pages, and all that stuff, in about two hours, and
3 there's two reasons we were able to do it that
4 fast. One is the great job that Perry and Mary
5 Ann and Katrina do putting all this stuff together
6 for us to go through, very easy to go through.
7 But the other thing is I always felt
8 like Tony, and John, and I always did our
9 homework. We didn't come to the meetings -- we
don't come to those meetings saying, "Oh, what's
10 this? Who's this? What did they do?" We've
11 already read it, and we've already looked at it.
12 And so again, the long answer. If
13 you're interested, I do think we could use someone
14 on there, but just be forewarned you'd better have
15 the ability to carve out some time -- with what I
16 call my homework -- to do your homework before you
17 show up for that.
18 MR. DOLGER: This is Katrina. Another
19 point of clarification, too. This particular
20 committee does not vote. This is an advisory
21 committee for Perry. Under the Administrative
22 Rules the Director makes those decisions. He
23 looks for concurrence from that committee, but
24 they don't actually make motions and vote on
25
26 So I would really like to be more involved with
27 that. As the only non-administrative member of the
28 Counsel, I'm probably the one that represents the
29 most people who are under investigation anyway, so
30 it's definitely something I'd be interested in.
31 CHAIRMAN SLAUGHTER: Okay. Thank you,
32 Matt. I think that's a yes, correct? So Matt is
33 on there. And then just as a point of
34 clarification, does that mean he will just --
35 we'll just have four members?
36 MR. JOHNSON: Yes.
37 CHAIRMAN SLAUGHTER: I just wanted to
38 make sure I understood. Okay. Moving on to
39 Coroner. Sheriff Dutton could not be with us here
40 today, but he is the Chairman. Is there any
41 reason to believe he doesn't want to be the
42 Chairman anymore?
43 MR. JOHNSON: No.
44 CHAIRMAN SLAUGHTER: Good enough. We
45 have a vacancy. We have Kristine, and we have
46 Wyatt on there as well. Anybody interested in
47 being on the Coroner Committee?
48 MR. JOHNSON: Bill?
49 MS. REEVE: It doesn't meet very often
50 either.
51 130
52 anything.
53 MR. JOHNSON: Well, with that in mind, I
54 would recommend to this Council that you start to
55 look at -- if there's nobody that feels that they
56 want to participate in this today, we should
57 consider it at the next meeting, and people should
58 -- I was thinking personally that it should be
59 probably a younger member, because we want that
60 kind of respect, if we get old guys, you know, and
61 I'm an old guy. Jim's an old guy.
62 MR. THOMAS: Who are you calling old?
63 MR. JOHNSON: The guy looking at me over
64 the top of his glasses over there. So I'm going
65 to say this, that I would -- if it's okay with
66 you, I would ask Matt Baxley if he's interested,
67 and if he'd even have the time and the ability to
68 participate in that committee.
69 CHAIRMAN SLAUGHTER: Matt, did you hear
70 all that?
71 MR. SATLER: Yes, I did. Actually that
72 was one of the things I wanted to speak about,
73 because over the last several months I've been
74 getting a couple different calls from Chiefs and
75 officers who are being investigated to ask me
76 questions that I don't always know the answers to.
77 131
78 132
79 MR. BILL SMITH: Absolutely I'll do it.
80 MR. JOHNSON: I'm going to like this
81 guy.
82 CHAIRMAN SLAUGHTER: Lastly we have ARM
83 Committees, and it looks like that has no
84 vacancies. Is that committee running pretty well,
85 Jess? I'll defer to you.
86 MR. EDWARDS: Yes.
87 CHAIRMAN SLAUGHTER: Tia is off, right?
88 MR. JOHNSON: Yes.
89 CHAIRMAN SLAUGHTER: Matthew, do you
90 want to stay on ARM?
91 MR. SATLER: I'd move to keep that. If
92 you'd rather have somebody new on the ARM, I'm
93 open to that as well. I don't mind being there,
94 but if you want to spread it around a little bit,
95 I'm open to anybody else on the Council would be
96 there, too.
97 MR. DOLGER: This is Katrina. That's
98 one of our more active committees, as far as
99 Business Plan Policy meets, and then oftentimes
100 the ARM.
101 CHAIRMAN SLAUGHTER: If everyone's okay
102 with it, I'll volunteer for that, because I'm not
103 on a committee, and that would probably be one
104
105
that I'd probably need to keep up on anyway. So if you guys are okay with that, I'll replace Matthew on that. Does that sound fair? Matthew, is that good with you? I'll replace you on the ARMY?

MR. SATLER: Yes, that's fine. That's perfect.

CHAIRMAN SLAUGHTER: Thank you.

MR. JOHNSON: Conner, was there anything else that you were interested in?

MR. CONNER SMITH: The Case Status would be the only other one I think that would -- but if they're full, that's fine. I'll handle the curriculum for now.

MR. JOHNSON: I would say this, that I could see at some point where what Jim just talked about there, you know, the three people who are on there are retired guys, and it is exhaustive. It's once a month, or once every six weeks. And at some point I can see a couple of those guys looking at it and saying, "Hey, let's hand them reins over," so that's a good one to keep your eyes on.

MR. CONNER SMITH: You guys just let me know if you need a fill in, and I'll do it.

CHAIRMAN SLAUGHTER: Okay. Are we good to move on?

MR. JOHNSON: Yes.

CHAIRMAN SLAUGHTER: So I believe because we did the syllabus changes already, we'll move to the Director's report.

MR. JOHNSON: We've got committee reports. So I think --

CHAIRMAN SLAUGHTER: Did I skip that?

MR. JOHNSON: Yes.

CHAIRMAN SLAUGHTER: I'm sorry. I got so far into the weeds on that. So committee reports. I guess we'll start with Curriculum.

MR. JOHNSON: The new Chair of the Curriculum is Conner Smith. Do you have a report?

MR. CONNER SMITH: Did a bus just hit me?

MR. GOOTHIN: That's an easy one. No report.

MR. CONNER SMITH: No report.

MR. JOHNSON: He decided he wanted a position.

CHAIRMAN SLAUGHTER: Jim, is there anything that needs to be reported?

MR. THOMAS: Page 85, 89, and 90 are the Case Status Committee report. I'm not going to read all that out. I'll say we've been busy. And it's been busy, and I think we're doing good stuff, though.

CHAIRMAN SLAUGHTER: Very busy.

MR. THOMAS: Does anybody have any questions on any of that stuff? I'll give you a minute here to look it over.

MR. KEUKE: They can't ask too much.

MR. THOMAS: Oh, that's right.

MS. BOLGMAN: This is Katrina. On the cases that are closed, those are fine to talk about. Active cases, we can talk generally.

MR. THOMAS: I know these numbers a lot of times -- When I first started on this committee, I'd see a number of these things, and I'm like holy cow, but then I think Perry reminded me this is only a fraction of the public safety people that work in this state.

So I think one of the things, one of the reasons I think law enforcement -- I'll say law enforcement in Montana is held in such high regard is we do -- it's not just lip service to say we police our own. I think there was an article in one of our meetings here from Utah or some other state where they were just kind of sweeping things
under the rug, and I can assure you nothing gets swept by the rug in the Case Status Committee meetings. So anyway, another long answer.

CHAIRMAN SLAUGHTER: That's great. And I would agree with you, Jim. I very much agree with you. Okay. Is there any more on Case Status?

(No response)

CHAIRMAN SLAUGHTER: So Business and Policy.

MS. BURDICK: Kimberly Burdick. Nothing to report.

CHAIRMAN SLAUGHTER: You should probably have a meeting here between the next two meetings.

MS. BURDICK: Maybe.

CHAIRMAN SLAUGHTER: Coroner. Kristine, you're the only one in the room. Anything?

MS. WHITE: We've never met.

CHAIRMAN SLAUGHTER: And ANH, I guess I'll turn it over to Joe. Leo is not here, so --

MR. EDWARDS: Nothing to report.

CHAIRMAN SLAUGHTER: Sounds good.

Matthew, you're no longer on there, but you were. Anything on ANH that you need to report?

MR. SATLER: I don't think so. I think what we needed to be covered was covered earlier under the ANHs.

CHAIRMAN SLAUGHTER: All right. Now Director's report.

MR. JOHNSON: That will take you to Page 98. You'll see your budget summary there. Like everybody's budget, most of it is personnel services.

Our operating budget is -- actually all of our budget is in very good shape. This has been kind of a funny year, you know. COVID kind of shut down our operation for awhile, but I think that we're hitting on all cylinders right now, and I think that we are projecting to finish again with surplus funds, so I feel pretty good about where we're at. Any questions about the budget?

(No response)

MR. JOHNSON: Hearing none, if it's okay with you then, Mr. Chairman, I would point you to Pages 118 through 135.

Just as a summary, training has been approved for 1,639 officers since December, 564 courses, 16,540 hours. So this is all -- When we talk about this training, this is all documents that are handled several times in our office.

They come in as training applications; they're printed, and time stamped out; I review them for completeness, approve them, and they go right back to Tina Cranmer, who is our other staff member that's been doing a tremendous job with data entry, and going through and actually even scanning some other documents in her off time.

But we are extremely active training. Approving training, and a tremendous amount of training anymore is online. These vendors have come into Montana -- PoliceOne, Lexipol, Helias, Virtual Academy -- and then the training delivery and the training itself is just really exceptional.

So I think that these agencies have really endorsed it, and have really handed it off to us, so we're tracking that, and I think that's going to be the wave of the future, and I think we just saw it there with Glen, when we spent thirty minutes with his Moodle training there. So I think that's a big deal.

If there's no questions on that, I direct your attention to Pages 136 through 138.

MR. REUKE: Excuse me, Perry. Did you want to put in the record about the certificates?

MR. JOHNSON: Oh, yes. I'm sorry. I skipped right over. You know, I outrun my headlights at every meeting. So Pages 99 through 118 are certificates approved. So since that meeting in December, you can see what certificates were awarded, but there were 252 of them.

Once again, this is an application process. The only certificate that an officer ever gets in Montana anymore is their Basic. So we track, from the time they're hired to their first year we track that, and if they have successfully completed their Basic Academy by that time, we automatically issue a Basic certificate.

We still get an application once in a while for somebody, and they still can apply, but they don't need to. Often by the time they get through this conversation we started earlier, by the time they leave the Basic Academy, they're eligible for their Basic certificate because they have been working for a year before they ever hit the Academy, and the day they walk out they're eligible for a certificate.

I think just this last week I issued or I signed a couple of those certificates where the guy was at the year, and he was POST certified.
MS. REUKE: Right, then. Actually

MR. JOHNSON: Oh, this last one, and

That's just this week. We signed them on Monday.

So we're doing certificates every month now. Mary

Ann puts them all in a package, I review all the

Applications, we push them out once a month.

And so the council historically would

Wait and approve those applications during a

Council meeting, but several years ago, I think it

Was in 2015, they delegated the authority to the

Director to be able to review those applications, and

Approve them, and pass them out.

So I still get guys that call in and

Say, "Hey, when is the Council going to meet?

When are we going to get certificates?" And I'm

Able to say to them, "Hey, we process them every

Month. If you're in the queue, you're going to

Get them this month."

And very once in a while we'll miss one.

Once in a while we're looking at like basic

Certificate in a day or two months, or an application that's been there for six

Months instead of every -- you know, we didn't

catch it in the queue, but I think we're on top of

it pretty much.

MS. REUKE: Pretty good. When they jump

Around to another agency before their year is up, then sometimes that's hard to catch.

MR. JOHNSON: Right. It's a funny thing

to me. I didn't realize out of these 5,500 or

6,000 Public Safety Officers, I really didn't ever

Identify how much movement there is between

Agencies in Montana, and it's a tremendous amount.

And I didn't really ever identify how much

turnover there is.

When we talk about 6,000 officers, in

Any given year, a thousand of them might have

Started and quit, and another thousand started in

Their place, and that's a funny thing because

There's a lot of people out there that have either

Been a cop or a dispatcher, or a detention

Officer, that never will again.

But hundreds and hundreds. Some days

We'll get 40 or 50 termination notices, and we'll

Get 60 or 70 notices of appointments, and that's

All data that has to be entered. So it's just

Phenomenal how much turnover there is that we

Never anticipate.

So now I think I'm back where I needed

to be. We looked at equivalency granted, 136

Through 138.

MR. BOLGER: Perry, this is kratins. On

The equivalency, I just want to note that these

Are the officers that actually make it into our

Database. We have several equivalency requests

That come through, that go through the background

Investigation and approval process, and the

Officers don't get appointed, for whatever reason

It is. Maybe they don't accept the position, or

They decide to back out before they start, or

Something like that.

So when you see 33 equivalency requests

That were approved, that actually isn't

Necessarily reflective of how many were done.

CHAIRMAN SLAUGHTER: Are we on to

Extensions granted?

MR. JOHNSON: Yes. Pages 139 through

141. Glen referenced this during his conversation

With the Council. The way that they're filling

Classes now is I think it's much more effective

And efficient.

Sometimes we don't get a notice of

Appointment for a year, and about the time we get

a notice of appointment is because we reach out to

An agency that has put somebody into a basic

Academy class, and never notified POST that they

Were even an officer. So they're already there

For a year, and now they want to go to a basic

Academy.

And it used to be first in/first out.

So if your application was in on the first day

That you're hired, then you were at the top of

List to go to Basic Academy. And then his and his

Staff have worked really hard to say, 'Hey, if

You've been working for eight months, and this guy

Has been working for a month, let's get that guy,'

So that we're not bumping that one year, and we're

Not asking for extensions.

The reason that you're seeing the number of

Extensions that you're seeing right now is

Covid. People were short staffed, people couldn't

Send people to training, and for that reason -- we

Did twenty in a block one time, didn't we?

MS. REUKE: Sorry. I was chatting.

MR. GERTZ: She wasn't listening to

You, Perry.

MS. REUKE: Sometimes that happens.

MR. JOHNSON: This is getting just a
little bit too informal now.

MS. REEDE: What did you need to know, Director?

MR. JOHNSON: I don't know.

MS. BOLGER: There were nineteen extensions from HAP that all went out at the same time.

MS. REEDE: Oh, yes. Exactly.

MR. JOHNSON: They didn't send people because of COVID, but they had the National Guard there, too.

So that brings us to discuss minimum standards for appointment, and that's just a general conversation that I would like to have with the Council, and just in regards to a real specific area. And we could turn to it if you want to.

But one of the general standards for appointment for a peace officer you could not be convicted of a felony. Lewis and I have looked at this a little bit, and our consensus or meeting of the minds was that means you can't ever have been convicted of a felony.

So you're eighteen years old, you get convicted of burglary. You've got a felony on your record. Now you're 25 years old and you get it expunged. What does that mean?

MS. BOLGER: And this is Katrina. The Council has adopted a definition about that.

MR. JOHNSON: That's right. So let's go to our book, and I would direct you to Subsection (2).

MS. BOLGER: Three.

MR. JOHNSON: First I want to make sure that we look at 7-32-303, and that's found on Page 25, 26, 27 and 28. But on Page 26 -- No. I'm sorry. On Page 25 under Subsection (2) under 7-32-303 Sub (2) Sub (d). It says, "not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary." So that's that felony.

And then Katrina would have us look at our definitions 23.13.102. So it's in Subsection (3) Page 1, 23.13.102 Sub (4). "Conviction means a judgment or sentence entered upon a guilty or nolo contendere plea, or upon a verdict or finding of guilty rendered by a legally constituted jury, or by a Court of competent jurisdiction authorised to try the case without a jury, without regard to the sentence imposed, or whether the charge is

later dismissed."

So the question that I have, or the conversation that I would like to have with you guys is: Are you comfortable with saying that our definition in conjunction with the statute means that if you were convicted and had an expunged record or a dismissed record later on, does that still preclude you from being a Public Safety Officer?

MR. CONNER SMITH: Yes.

MR. JOHNSON: I'm looking at the attorney sitting next to you.

MR. CONNER SMITH: Based on this definition that I'm looking at.


MS. WHITE: I think if it's dismissed, that would be different than expunged.

CHAIRMAN SLUDDERT: I agree. I think as written, as written, there's room for interpretation.

MR. JOHNSON: Well, here's what I come back to, and I'm just going to read it again. "A peace officer must not have been convicted," and I struggle with: Where is the wiggle room in that?

It doesn't say "not have been convicted because it was expunged," it says "not have been convicted."

And where I'm going with this is I'm wondering if we could have a conversation, because there might be a question about that expungement, if we could have a conversation about asking for an Attorney General's opinion.

And to do that, the Council Chair would have to reach out to the Attorney General and say, "We want to know this," and that letter to the Attorney General would be the result of the conversation between Lewis, and Katrina, and Jesse, and I.

CHAIRMAN SLUDDERT: I don't think it's a bad idea, and the reason I think that it's probably a good idea right now is you've got Watson and Watson in Boscman -- not to pick on you -- in Boscman that have the $420. "We'll expunge your marijuana convictions," and I think that's going to be a big trend.

And there's people with felony possession of marijuana, or distribution, or whatever, they're all going to be trying under the law to get them expunged. So we may see a bunch more of this, so it might be a good time to go
down that road.

MR. LEWIS SMITH: This is Lewis, and part of the issue I see with this language is "not have been convicted," and we've got a definition of conviction, but that is definition going to stand up when we get ourselves in front of a District Court Judge, or the Supreme Court out there; and by having the opinion from the Attorney General's Office, that gives us a little bit more backing as to the position we take and where we're going with it.

If it's been expunged, as far as the record goes, there's no -- in theory there's no conviction. And we've had probably I think three cases like that that we've had to deal with in the last year. And as Perry mentioned, the eighteen year old kid that goes out with his buddies, and they break into somebody's house, and they do damage, or they take things, they commit a burglary, and other than that, no record.

And the Judge and the prosecutor look at it and say, "Okay. You were eighteen years old. You were stupid. You were drunk. So we're going to go ahead and give you a deferred sentence on this thing." You have to plead guilty to get this person was a peace officer, not this person -- I'm just saying a Judge, the County Attorney, and CJIN all agreed, "No. That's what we need to give you access." So based on what you say and my experience with that, I would say we need it.

MR. JOHNSON: My opinion is I think that it's important enough -- this is just my opinion -- that I know that that has been interpreted for other professions. This is a profession that these guys serve you. They can take a member of your family right out of your house.

And I think that that's the reason that this is in here, and that if the standard for a Peace Officer is the same, the expungement of the record is the same for a peace officer as it is for the kid at Dairy Queen, then I want to know, because I think the standard should be higher.

That's just what I think.

MR. CONNER SMITH: I think there is a precedent that you can hold Peace Officers to a higher account. There's a precedent for that.

MR. JOHNSON: That's what I think, too, but see, I think that as a Council you guys have to decide whether that's important enough to reach out to see, because it doesn't matter what I think. Jim might not be old, but I am an old, and my world is black and white. That's the way it is, and I like it like that. That's me. So --

CHAIRMAN SLAUGHTER: So Perry, the thing for me it's not important, and the reason it's not important is in our background investigations, we're going to find it, we'll dig deep enough, we're going to find it, we'll knock you out anyway just in the background investigation. However, it doesn't mean that everybody is going to work that hard to dig that deep on a background investigation.

And I'm just saying I'm not, personally I'm not overly concerned about it, but as a Council member, I think we need the opinion.

MR. THOMAS: This is Jim. This is for appointment to this Council, right?

MR. JOHNSON: No. As a Peace Officer.

MR. THOMAS: Okay.

MR. LEWIS SMITH: Just in the past six to nine months, we've had two cases that Perry has referred to me where we've got officers being hired by either a Police Department or a Sheriff's Office in rural counties where they're already in the door, and the question is, "Can we continue to
hiring this guy?" and here's what we're dealing
with.

MR. BOLGER: This is Katrina. I guess
it comes down to -- and just kind of building on
what Conner had brought up about being held to a
higher standard and that kind of thing. Our
Administrative Rules and our standards for
somebody to be appointed are sort of conduct
oriented as opposed to technical.

And so for somebody to engage in conduct
that violates the law, despite the fact that it
was expunged previously, when you're a Public
Safety Officer as opposed to a barber, how is the
analysis different, and I think that's what we're
trying to figure out.

MR. OOTKIN: So I'm a little grayer
than Perry, especially now that I'm in charge of
15,000 convicted felons.

But I know a kid in Bozeman who got into
trouble, and got his charges expunged, joined the
Army, and saved his fellow troops' lives, and I'll
never forget that kid, and that he had that second
chance to join the military. I look at it the
same way.

And I also look at it as a Sheriff for

And for the record, I know there's great
guys out there. I know there are. But our
experience with this Case Status Committee is we
know there's a tremendous amount of them out there
that aren't, and we're the gatekeepers for that,
and I think we've got that responsibility to make
sure that we analyze it, and get that input, so
that if we're going to sign a certificate, if
you're going to ask me to sign a certificate as
POST Director, and Jesse as the Chairman, that I
just want to make sure that we're on solid ground.
That's what I want.

CHAIRMAN SLAUGHTER: Perry, this is
Jesse. Correct me, for the attorneys in the room,
please correct me if I'm wrong, but the point of
an expungement is to give a person the full access
to all their constitutional rights for a second
chance.

And I've even, sitting through some of
those hearings, I've even seen the Judge --
they're not easy. They're not easy to get.
They're really hard to get. The circumstances of
the case have to be so much that the Judge feels
compelled, and Judge will actually even --

I've even seen a Judge say things, like

eight years and in the Sheriff's Office for 27
years, and as a Sheriff, I didn't like anyone
telling me who I can hire, and what I can do. So
I mean if I knew that kid, and I knew that family,
and I wanted to give that kid a chance.

So I'm torn, because you know, Perry, I
absolutely agree we are a higher standard, period.
We always have to. I just don't know. It doesn't
mean that that kid is not a good person and can't
be an awesome law enforcement officer.

MR. JOHNSON: Well, and I don't think
this is about the employment side of it so much as
for me, because I guess I feel like Jesse, that
that guy wouldn't have got through my door, but
the bottom line is the statute tells the Sheriff
who you can hire, because it says, "A Sheriff may
not hire someone that did this." "A Chief, or a
Mayor, or a Colonel may not." So the statute --

The Legislature already told us that the
issue isn't the employment for me. The issue is
signing a certificate that you guys own. It
doesn't have anything to do with any Sheriff, or
any Chief, or any Colonel in Montana. That
certificate only belongs to this POST Council, and
you guys are going to certify them.

warn, "You are aware that this person now will
retain all these rights again." There's nothing
that the Court or anybody else can do about it.

And I think, I guess my thing from a
constitutional perspective is is that a place we
can go. And I guess I'm deferring to the
attorneys in the room, because that's my
understanding, is that's what you're getting when
you're getting an expungement.

MR. WHITE: The expungement statute -- I
had it used against me in one of my cases -- it is
mandatory on the Judge. As long as the person
meets the criteria, they put it forward to the
Judge, and the Judge has no discretion because it
says, "Upon application, the Judge shall do this."
There's no discretion left to the Judge whether or
not they can do it as long as the criteria have
been met. So it's pretty much --

CHAIRMAN SLAUGHTER: So again, though,
the Legislature has said if all this criteria is
met, then these people get their rights back. And
I'm the same as Brian, I guess. I'm torn.

MR. BOLGER: This is Katrina. Lewis and
I did some research on this, and he can speak to
it, but there is no constitutional right to a POST
certificate, and that's what the case law boils down to as far as I understand. Lewis can get into that more. But I think the language is something to the effect of we all have a right to pursue employment, but not unfettered access without any state regulation when it comes to public health and safety.

MR. LEWIS SMITH: Part of my concern is the language in the statute, "not have been convicted of a crime for which a person could have been imprisoned in a federal or state penitentiary." Once you're convicted, you're convicted.

But then what is the impact of an expungement on that, where it comes in and says, you know, this is gone. You still have been convicted at some point in time, but that record has been expunged. So that's one gray area in this statute that we've got here.

And then with regard to whether our definition of a conviction, we've gotten pretty broad with this as far as if you've ever pled guilty to a crime that you could be sentenced to -- you know, a conviction where you've pled guilty, you have been found guilty, any way that

that would be a deferred imposition and a dismissal upon satisfaction of those requirements the Court set out. But if you're a misdemeanor, you'd go in and apply for the expungement.

MR. LEWIS SMITH: A misdemeanor is not going to land you in the state prison.

MR. WHITE: Right, so it's a different standard. So really we're dealing with the felony deferred imposition.

MR. CONNER SMITH: So with the felony thing in mind, then is it still relevant to what we're talking about regarding the definitions of conviction? Is that still relevant, or do we still need clarification of a conviction, the definition that we have, based on what you just said, regarding the difference between the felony standard?

MR. LEWIS SMITH: I think the issue comes from when you get the deferred imposition of sentence, you can plead guilty, and then you're given the opportunity to go ahead and change your plea, and it then goes in as a not guilty plea, and it's dismissed.

So the issue is that at one point in time you have been found, you have admitted to

you're ended up being guilty in a case, regardless of whether that is later dismissed or not, is a conviction.

So that's -- I think we need somebody a little higher up the food chain than ourselves to tell us, "Yes, we are on solid ground here," and without having to go run in front of a District Court Judge and get possibly clobbered, or maybe a bell that yes, we are good.

MR. THOMAS: Chairman slaughter, do you need a motion to direct the staff to request an opinion from the AG?

CHAIRMAN SLAUGHTER: I think so.

MR. WHITE: I just have one more comment. I think expungements work with misdemeanors, but then for felonies you have to have deferred imposition of sentences, because -- so if you're saying any to go to a state penitentiary, then you wouldn't be talking about an expungement at all. You'd be talking about a deferred imposition of sentence.

So I think you have to be kind of careful. I think if you're wanting to say you can't be given a certificate because you have a prior felony conviction, then the only remedy for

being guilty, and then now you are not.

MR. CONNER SMITH: Do you know whether it shows up when the criminal history is conducted on it? Does it show up as a conviction or as no conviction?

MR. WHITE: Well, it normally shows -- it's like you get the cycles, and it will show you like the original charge, it will say -- I'll just say maybe it's a homicide -- and for whatever reason, the Judge is going to give you a deferred imposition, and it will say, in the judgment it will say deferred, and maybe give you the years. And then after that period has been done, if it's been erased or dismissed, it will come back down in the second portion of that and it will say dismissed.

There's been concern when they were trying to do the -- you can only get one deferred, how are we going to know if they take it off your record. Well, it still shows on your criminal history. So that way we know they've already had the benefit of one, they don't get a second one, but it will still show on their criminal history if they had one. It doesn't clear it off of that.

MR. JOHNSON: That's kind of a good
point, because I've actually talked with agencies -- and maybe it was Highway Patrol. I can't remember -- where a person has applied, signed the release, they've done the background, and said, "No criminal history." They run the triple "I," and they get that felony. And the response to the agency was, "Well, that was expunged, and I don't have to tell you that." And their form says you have to tell us any arrest that you've had, or any conviction; not just the ones that weren't expunged, but all of them.

So I think we'vebeat this up more than you guys want to, but I really would rather get this done before we go to Court.

MS. BOLGER: This is Katrina. I think it's also interesting that the statute says if you could have been imprisoned, meaning over before if you could have been.

MR. CONNER SMITH: And reading it, to me, it looks like the statute is still going towards the moral integrity of a person, and not just the legal conviction. "Well, you did this," but that's that moral ground. You're being held to that higher standard as a law enforcement officer, and not just the actual solid conviction that we're looking at. Because as Katrina said, you may have -- it's possible you could go to prison for it.

MR. BAYLER: This is Matt Bayler. I would add that I do believe that we still charge -- even if it's a first offense, like on a misdemeanor or a FMEA -- we still charge you with second or subsequent offense the second time around. It still counts for those purposes.

MR. JOHNSON: That's a good point.

CHAIRMAN SLAUGHTER: So this is Jesus.

Jim, to your question -- and Kristine, help me with this -- if we were to make a motion to get an AG opinion on this, and you're saying that if it's a felony then it's deferred, but if it's a misdemeanor it's an expungement, I think we need to address both, because we have partner family member assaults that are by definition in almost every agency an offense that you cannot work law enforcement for.

So I think we just ask an opinion on both, because I think they would both be applicable. So I guess as a point of order, would it be Lewis who would draft the request for the opinion?

MR. JOHNSON: It would be for your signature. You would be asking the Attorney General for an opinion.

CHAIRMAN SLAUGHTER: But it would be Lewis who would draft it?

MS. WHITE: No, you draft it.

MR. LEWIS SMITH: I'm with her.

MS. BOLGER: I draft it.

CHAIRMAN SLAUGHTER: Sounds good in me.

MR. LEWIS SMITH: To be really honest, Katrina gets to --

CHAIRMAN SLAUGHTER: So could we have a motion, if everyone feels okay, because we can discuss it when we move forward, that we seek an Attorney General's opinion on deferred imposition of prosecution on felony cases and expungements on misdemeanors or cases on 72.13.102 as it relates to Subsection (4) as to the definition of a conviction. And obviously Katrina will write it a lot better than that. But can we have a motion about that.

MR. JOHNSON: But it would also include that question about 7-32-303.

MR. LEWIS SMITH: As they apply to 7-32-303.
MR. JOHNSON: Office updates. I just want to touch base with you as POST Council members.

We're getting quite a few questions about officers and marijuana use. I've always kind of just hung my hat on the fact that we must as Public Safety Officers obey all federal, state, and local laws. So marijuana is still illegal federally, and my response has always been to everyone, "It's an illegal substance in federal law, so there's no threshold of use for a Public Safety Officer."

But I guess what I'm doing is I'm seeking affirmation that that is our position as a Council; and if it's not our position, I need to know what is. So maybe I'm seeking forgiveness rather than permission now.

MR. CONNER SMITH: I think it's going to be a big discussion over the next year. It's started in our agency regarding how we're going to handle it. If we have troops that decide to partake in that, do we handle it like alcohol? Do we develop some kind of testing procedure? We're actually thinking about maybe a policy for mandating drug testing to cover that.

question. I don't know.

Keeping in mind, our experience has been when we ask in April, we're going to get a response in April next year maybe. Sometimes we get something a little quicker than that. I know that it takes time for stuff to get processed, but I know that it's going to be out there.

CHAIRMAN SLAUGHTER: Dan, did you have a question?

MR. DAN SMITH: I just had a comment real quick, if I may. During this session there's been several bills brought to the legislative community that would limit a peace officer's ability to enforce federal statutes, so I think it would be wise of the Council to get an AD's opinion on that, and maybe a ruling on that, or we adopt some sort of rule locally, because I think trying it to a federal statute and saying just because it's a federal statute, we must enforce, we're seeing there's been push-back on that statewide assessment.

MR. CONNER SMITH: Dan, do you know if any of those passed yet?

MR. DAN SMITH: No, not yet.

And we're talking about the federal statutes, too, so it's definitely a gray area all over with the mix between federal and state statute. To not give you an answer.

MR. KATER: Perry, this is Matt. I just want to let you know. We had this discussion from a contractual obligation at one point. I think it was New York City had an officer that went to Vegas, used marijuana there, came back, and they found about it -- (inaudible) -- and through the process they were found out. It was ruled by the Court that because he didn't break the law in the city where he was actually to obey all laws in that city, they couldn't enforce anything against him. So I think ours would be different, but it's kind of a precedent to look at.

CHAIRMAN SLAUGHTER: Is that the "leave your jurisdiction" law? Crazy.

MR. JOHNSON: Well, and I don't know the right answer here, and I don't know, again, if that's something that because it's going to affect every agency in Montana, if that's something that we want the AD to give the law enforcement community direction on, and that we could ask that...
right now is to wait until the Legislature's done, to see if there is anything that needs to be addressed in that, and then we're going to go talk with the Attorney General's Office to get guidance from them to see how they want us to start handling it regarding policies, procedures. So we're kind of in a holding pattern right now until we figure out what the final say of the Legislature is going to be, if they do address it at all.

CHAIRMAN SLAUGHTER: Connor, what about the other -- So you've got California, Oregon, and Washington in the Ninth Circuit that have legalized it. Have we figured out what they're anchoring theirs to?

MR. CONNER SMITH: I'm not sure. I can talk to Kurt Sager about it. I know he's been in touch with most of the departments regarding the drug issues, so he would probably have a better answer than I would. He and I have discussed it.

We're still kind of -- His take, too, is we're still going to wait until the Legislature is done, and then have some discussions with the Attorney General's Office.

CHAIRMAN SLAUGHTER: Should we do the hearing process. We've got summary judgment motions in front of the Hearing Examiner; I think that we're well positioned, even if we go to hearing, to prevail. That's my opinion, but it always is, because I think that the actions that the Council takes in regards to things is pretty well a solid foundation for them.

But specifically then, anything that goes to hearing would come to this now, and I just want to make sure that we all recognize that this will be the final agency action for anything else from now on. So that Board of Crime Control dynamic is gone after this meeting. We don't go there again, and all appeals will go to District Court.

And the appeal is limited to the record that's been created in the hearing. So it's not like there's a new hearing. That process is well defined, and the side boards on it are well defined as well. So our exposure right now are well contained. We're in good shape.

So with that, that's my Director's report to the Council.

CHAIRMAN SLAUGHTER: Okay. Do we need to discuss Council member terms, or just for everyone's view, everyone check out on Page 142.

Director, do you want to read them in?

MR. JOHNSON: No, I think that that's --

CHAIRMAN SLAUGHTER: Okay. Then the 2021 calendar which Perry addressed, it looks like our next meeting is August 11th in Glendive; and then December 8th in Kalispell. So in Glendive, we'll get the tour, the Dawson tour?

MR. JOHNSON: Yes. I would speak to that to this group, though, because now you've got the new Council, and we've got some new faces here, and this is your schedule now. You guys get to build this. This is your vote. This is the schedule that these guys back in December made.

If you want it different, you've got to make it different. It belongs to you. It's your product.

So if you want to go to Glendive, that's where we should go. If you want to go to Kalispell, that's where we should go. If you want to be in Helena, we should be here. There's some advantage to going on the road. We know that from experience. We get different people in the back of the room. If we're Glendive, we're going to get some Sheriffs from over in eastern Montana.

If we're in Lewistown, we're going to get some
Sheriffs off the Highline. If we're in Bellapoll, we're going to get some Chiefs, because there's a lot of Chiefs over there. And we're going to get some different Highway Patrol guys. We used to get quite a few of them, or several, when we'd go on the road.

But this is yours. It belongs to you.

These are suggestions at this point. We've got four months to decide. Our next meeting is four months out, so we've got plenty of time to create any venue we want, but this looks like a good venue to me, but I want to make sure that you know it's yours. You get to go where you want to go.

Any discussion on that? Anybody got anything else in mind? Do you want to do something different?

MR. CONNER SMITH: I'm good with Glendale.

CHAIRMAN SLAGGERT: I'm good with it, too. I think it's great. It gives us a chance to --

MS. REUVE: We could go to Hawaii.


I like it. I like going on the road. I think it's great. All those agencies that don't get to ask questions and be face-to-face can do that, so I think it's good.

MR. JOHNSON: We'll leave it static then for the December meeting in Bellapoll?

CHAIRMAN SLAGGERT: Yes.

MR. JOHNSON: For the good of the cause.

CHAIRMAN SLAGGERT: Anybody got anything else?

(No response)

CHAIRMAN SLAGGERT: Can I get a motion to adjourn.

MR. EDWARDS: Motion.

MR. DILL SMITH: Second.

CHAIRMAN SLAGGERT: Discussion.

(No response)

CHAIRMAN SLAGGERT: All in favor, say "aye."

(Responses)

CHAIRMAN SLAGGERT: Same.

(No response)

CHAIRMAN SLAGGERT: We're adjourned.

(The proceedings were concluded at 1:40 p.m.)

* * * *
STATE OF MONTANA
BEFORE THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

IN THE MATTER OF
TYLER SENNETT'S CERTIFICATE REVOCATION

Case No. 20-34

NOTICE OF POST ACTION AND OPPORTUNITY FOR HEARING

To: Tyler Sennett
3621 Hayden Drive
Billings, MT 59102

PLEASE TAKE NOTICE THAT: The Montana Public Safety Officer Standards and Training (POST) Bureau has determined that you have committed the following violations of the POST Council’s ARMs:

- That you mishandled and improperly disposed of evidence;
- That you left pertinent information out of a report regarding the mishandled evidence; and
- That you lied about whether a NIK kit was available to you for testing the evidence.

The Bureau Chief of the POST Bureau has revoked your POST certification.

This revocation is based upon the facts and law stated in this notice. POST certification is required to serve as a public safety officer in Montana. ARM 23.13.201. As of the date of this notice, you do not have POST certification and it is therefore unlawful for you to act as a public safety officer in Montana.

ASSERTIONS OF FACT

1. Tyler Sennett was appointed by the Yellowstone County Sheriff’s Office (YCSO) as a Reserve Officer on July 2, 2014.
2. On October 5, 2015, the Montana Department of Transportation appointed Mr. Sennett as a Motor Carrier Services Enforcement Officer (MCS Officer).

3. On July 15, 2016, Mr. Sennett Resigned his MCS Officer position.

4. On July 20, 2016, Mr. Sennett was appointed by the YCSO as a Deputy Sheriff. Mr. Sennett resigned his position as a YCSO Reserve Officer on the same date.

5. On January 25, 2019, POST issued Mr. Sennett a Peace Officer Basic certificate.

6. On July 22, 2020, POST received a letter from YCSO Undersheriff Sam Bofto regarding Mr. Sennett. In the letter, Undersheriff Bofto stated that Mr. Sennett had recently been disciplined by the YCSO for violating YCSO policies.

7. On July 28, 2020, the undersigned sent an emailed request to Undersheriff Bofto for additional information regarding the issues concerning Mr. Sennett.

8. On July 31, 2020, POST received a 94-page document from Undersheriff Bofto. The first page was a cover memorandum to the undersigned from Undersheriff Bofto. The memo indicated the documents were YCSO’s investigation file regarding Mr. Sennett. The memo also stated that Mr. Sennett was grieving his discipline.

9. POST Paralegal/Investigator Katrina Bolger reviewed the documents from Undersheriff Bofto and learned the following:

   a. On May 14, 2020, Mr. Sennett was working patrol and was involved in a pursuit with a vehicle after he initiated a traffic stop. During the pursuit, the suspect driver intentionally ran into Mr. Sennett’s patrol vehicle. The suspect only stopped driving after the vehicle became disabled. The suspect then fled on foot before being apprehended in the area.

   b. After the driver was arrested, Mr. Sennett processed her for Driving Under the Influence of alcohol or drugs (DUI). During processing, the suspect provided a breath sample with a result of .146 BAC.
c. Mr. Sennett charged the suspect with two counts of felony Criminal Endangerment, Fleeing from a Peace Officer, and Reckless Driving.

d. The suspect was taken to the Booking area of the YCSO detention facility. YCSO Detention Officer Shalan Crenshaw conducted a pat-down of the suspect. During the pat-down, DO Crenshaw located a pink marijuana grinder\textsuperscript{1} containing a small amount of what appeared to be marijuana. The grinder was located in the suspect's bra. DO Crenshaw provided the grinder and its contents to Mr. Sennett.

e. As Mr. Sennett exited the detention facility, he put the grinder and suspected marijuana in a garbage can inside of the detention facility vehicle sally port. A sally port is commonly a secure area of a law enforcement facility often used for ingress and egress to/from a facility by officers and persons in custody.

f. YCSO Sergeant Gary Burke learned that DO Crenshaw had located suspected drugs and paraphernalia on the suspect when she was remanded into the detention facility. Sgt. Burke contacted Mr. Sennett and inquired how much suspected marijuana was recovered. Mr. Sennett stated that there was a "negligible" amount.

g. Upon initial review of Mr. Sennett's report, Sgt. Burke instructed Mr. Sennett to document the grinder and suspected marijuana in his report. Mr. Sennett stated that he would not do so, as he did not have a NIK kit\textsuperscript{2} to test the substance and Mr. Sennett would not charge the suspect for the small amount which was located. Sgt. Burke stated that he had a NIK kit in his vehicle and that he could give it to Mr. Sennett to test the substance. Sgt. Burke told Mr. Sennett

\textsuperscript{1} Marijuana grinders are containers that are commonly used by individuals to grind marijuana into smaller pieces for marijuana use.

\textsuperscript{2} NIK kits are used by law enforcement to test substances in order to determine whether the substance is likely an illegal drug.
multiple times to make sure that, in his report, he documented the suspected marijuana and the paraphernalia. Sgt. Burke also told Mr. Sennett to document that it had been placed in evidence. Mr. Sennett did not obtain a NIK kit from Sgt. Burke. Mr. Sennett resubmitted his report and ended his shift.

h. Sgt. Burke reviewed Mr. Sennett’s report and found that Mr. Sennett did not document any information regarding the grinder or the suspected marijuana as Sgt. Burke had ordered him to do.

i. Sgt. Burke then spoke to another YCSO deputy during an unrelated call. That deputy indicated that Mr. Sennett likely threw the grinder and suspected marijuana away. Sgt. Burke asked the deputy why he believed this, and the deputy stated that Mr. Sennett said he was going to throw it away, and the deputy saw Mr. Sennett approach a garbage can in the detention facility sally port and make a motion toward it with his hand.

j. Sgt. Burke returned to the detention facility and located the evidence in the garbage can.

k. YCSO conducted an investigation of the above, and Mr. Sennett claimed that he didn’t have a NIK kit to test the substance in the grinder. This is in direct contradiction to Sgt. Burke’s statement that he offered to give Mr. Sennett a NIK kit and Mr. Sennett did not get a NIK kit from Sgt. Burke.

l. YCSO suspended Mr. Sennett without pay for 80 hours.

10. On August 18, 2020, the undersigned sent a letter to Mr. Sennett. The purpose of the letter was to outline the allegations against Mr. Sennett and to request a response from Mr. Sennett.

11. On September 14, 2020, POST received a response from Mr. Sennett, along with a release of information for Mr. Sennett’s personnel file. Mr. Sennett responded to the allegations as follows:
a. Mr. Sennett admitted that his actions of throwing away the grinder and suspected marijuana were "incorrect." Mr. Sennett stated that the "location" was not correct with policy. Mr. Sennett stated that he threw away the substance because he didn't have a NIK kit and the evidence was not an element to any crime being charged.

b. Mr. Sennett stated that he left the information about the discovery of the grinder and suspected marijuana out of his report because he "did not feel at the time that it was pertinent to the crime. The substance did not have a bearing on the case and was not essential for any elements of the crimes charged." He also stated that he left the information out of his report because the possession of marijuana is a misdemeanor.

c. Mr. Sennett denied that he lied about the availability of a NIK kit. Mr. Sennett stated that he didn't have a NIK kit and the cover officer didn't have a NIK kit. Mr. Sennett claimed the Sgt. on shift directed Mr. Sennett to obtain a NIK kit from evidence and that Mr. Sennett was unable to locate one there.

12. On September 22, 2020, Ms. Bolger forwarded Mr. Sennett's personnel file release to Undersheriff Bosto. On September 28, 2020, Ms. Bolger received and reviewed the requested information. The information in Mr. Sennett's personnel file included documentation that Mr. Sennett dismissed his grievance regarding his 80-hour suspension.

13. On November 19, 2020, the undersigned and Ms. Bolger spoke to Yellowstone County Sheriff Mike Linder. Sheriff Linder indicated that there may be video relevant to the allegations and stated that he would look into it. On November 24, 2020, Sheriff Linder emailed the undersigned and stated that there was no longer any video, as it had been recorded over.
14. On January 13, 2021, the undersigned and Ms. Bolger interviewed Sgt. Burke via telephone. Sgt. Burke recalled the incident on May 14, 2020. He stated that Mr. Sennett had been preparing his report when Sgt. Burke became aware of the suspected drugs/paraphernalia. He did discuss the issue with Mr. Sennett and told Mr. Sennett to put the information in his report. He also stated that he offered to get a NIK kit from his vehicle, but that by the time Sgt. Burke got to his vehicle, Mr. Sennett had departed. Sgt. Burke recalled that he located the evidence in the garbage can.

15. On February 1, 2021, POST issued Mr. Sennett an Instructor certificate.

16. On February 11, 2021, the undersigned and Ms. Bolger interviewed Mr. Sennett via telephone. Mr. Sennett provided a statement similar to his written response.

17. Based upon the investigation, the evidence substantiated the allegation by a preponderance of the evidence that Mr. Sennett mishandled and improperly disposed of evidence; that he omitted pertinent information regarding the mishandled evidence from his report; and that he lied about whether a NIK kit was available to him for testing the evidence.

**ASSERTIONS OF LAW**

The assertions of fact detailed above implicate the following provisions of the Montana Code Annotated and Administrative Rules of Montana.

1. The POST Council properly exercises jurisdiction in this matter. Section 44-4-403, MCA.

2. A “public safety officer” includes a peace officer. Section 44-4-401(2), MCA.

3. The POST Council is responsible for providing “for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.” Section 44-4-403(1)(c), MCA.
4. The POST Council "has the power to recall, sanction, suspend, or revoke any or all certificates upon good cause based on a preponderance of the evidence." ARM 23.13.204(3).

5. The failure of a public safety officer to refrain from any of the prohibited conduct stated in ARM 23.13.702(3) constitutes grounds for sanction of the officer's POST certification.

6. ARM 23.13.702(3) sets forth prohibited conduct as including the following:

(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;

... 

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

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

(h) conduct which, 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;

...

7. All public safety officers must abide by the code of ethics in ARM 23.13.203(3) which includes the following:

(a) My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged;

...

(i) I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession.
8. Mr. Sennett's conduct, as outlined above, constitutes prohibited conduct under the provisions of ARM 23.13.702 and constitutes grounds for revocation of his POST certification.

9. Mr. Sennett's POST certification is revoked. ARM 23.13.703(9)(d).

OPPORTUNITY FOR HEARING

You have the right to contest the revocation of your POST certification. This includes the right to a hearing under the provisions of the Montana Administrative Procedure Act (Title 2, chapter 4, part 6, MCA). You have the right to be represented by an attorney, at your own expense, during this process. To request a hearing, you must submit a written hearing request within 30 days of the date of this notice. Hearing requests must be submitted to:

DeeAnn Cooney
Hearing Examiner
P.O. Box 7775
Helena, MT 59604-7775

In your hearing request, please identify by paragraph number the specific assertions of fact and/or law with which you disagree.

By requesting a hearing, you are not waiving the ability to resolve this matter by settlement. If you wish to discuss a settlement, or for any other questions regarding this case, please contact contested case legal counsel for POST:

Michael L. Fanning
Assistant Attorney General
Montana POST Bureau
2260 Sierra Road East
Helena, MT 59602
(406) 444-1995
mikefanning@mt.gov

If you request a hearing and a settlement is not reached, the matter will proceed to a contested case hearing. Absent an order from the Hearing Examiner, your POST
certificate remains revoked during the pendency of the case, which makes you ineligible for employment as a public safety officer in Montana. ARM 23.13.719(6).

**POSSIBILITY OF DEFAULT**

Failure to submit a written hearing request within 30 days of the date of this notice constitutes a waiver of your right to a hearing to contest revocation of your POST certificate. Additionally, failure to otherwise appear, respond, or contest POST's action throughout any contested case hearing process you request, may result in a default order being entered against you. It is your responsibility to maintain valid contact information with POST legal counsel and the Hearing Examiner.

DATED this 19th day of May, 2021.

Perry Johnson, Bureau Chief
Montana POST Bureau

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing Notice of POST Action and Opportunity for Hearing to be sent to:

Tyler Sennett
3621 Hayden Drive
Billings, MT 59102

DATED: 05/19/2021

NOTICE OF POST ACTION AND OPPORTUNITY FOR HEARING PAGE 9
STATE OF MONTANA
BEFORE THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

IN THE MATTER OF
TYLER SENNETT’S CERTIFICATE REVOCATION

Case No. 20-34

ORDER ON RESPONDENT’S REQUEST FOR WITHDRAWAL OF HEARING REQUEST

This matter is before the Hearing Examiner on POST’s Notice of POST Action and Opportunity for Hearing dated May 19, 2021. That Notice alleged Respondent Tyler Sennett, as a Yellowstone County Sheriff’s Deputy, committed certain sanctionable misconduct in violation of specified administrative rules and the Public Safety Officers’ Code of Ethics. Those facts and legal conclusions are incorporated here. As a result of POST’s factual findings and legal conclusions, POST revoked Mr. Sennett’s POST certificate.

Mr. Sennett timely requested a MAPA contested case hearing.

By Order Setting Telephonic Scheduling Conference dated June 22, 2021, the undersigned ordered the parties to appear to establish a trial date and the routine pretrial deadlines.

The parties appeared at the appointed time for the Scheduling Conference. POST was represented by contested case counsel, Michael L. Fanning. Mr. Sennett appeared pro se. Each party represented it was prepared to proceed.

After the undersigned described the aims of a scheduling conference, Mr. Sennett volunteered an announcement withdrawing his request for a contested case hearing to
challenge POST's revocation. Mr. Sennett reported that just minutes before the
Scheduling Conference a development occurred in his Yellowstone County Sheriff's
Office employment grievance. Though he did not describe that event, Mr. Sennett
reported the development in his employment grievance has undone his decision to contest
POST's certification revocation. Mr. Sennett, on the record, formally withdrew his
request for a contested case hearing.

Upon further factual development by both the Hearing Examiner and counsel for
POST, Mr. Sennett confirmed he understood withdrawing his request for a hearing will
result in entry of POST's Notice as the final findings of fact, conclusions of law, and
sanction in this matter. Mr. Sennett confirmed he understood POST may enter a final
order which will remain of record as the disposition of this case. With those
understandings, Mr. Sennett withdrew his request for a contested case hearing.

BASED ON THE FOREGOING, the Hearing Examiner finds Mr. Sennett has:

1) Made a knowing withdrawal of his request for a hearing;
2) Waived his right to a MAPA contested case hearing and all of the rights
attendant to such a hearing; and
3) Consented to entry by default of a Final Agency Action in POST's favor
consistent with POST's Notice of Post Action and Opportunity for Hearing.

IT IS THEREFORE ORDERED,

1) Respondent Tyler Sennett's withdrawal of his request for a contested case
hearing is deemed under Mont. R. Civ. P. 55(a) a voluntary default for failure to defend;
2) This contested case action is closed; and

///

ORDER ON RESPONDENT'S REQUEST FOR WITHDRAWAL
OF HEARING REQUEST
PAGE 2
3) This matter is remanded to POST for entry of a Final Agency Action consistent with the Notice of Post Action. DATED this 13th day of July, 2021.

Dee Ann Cooney
Hearing Examiner

cc:  Mike Fanning, Montana POST Bureau, 2260 Sierra Road East, Helena, MT 59602
     Tyler Sennett, 3621 Hayden Drive, Billings, MT 59102

ORDER ON RESPONDENT’S REQUEST FOR WITHDRAWAL OF HEARING REQUEST PAGE 3
This matter is before the Hearing Examiner on POST’s motion for summary judgment filed February 8, 2021. By e-mail of March 2, 2021, filed with the Hearing Examiner and served on POST, Mr. Hildebrand, through Counsel, tendered his concession to entry of summary judgment in POST’s favor. Given Mr. Hildebrand consented to the Hearing Examiner’s order granting summary judgment and POST’s motion for summary judgment is unopposed,

The Hearing Examiner enters the following

FINDINGS OF FACT

1. Chance Hildebrand (Mr. Hildebrand) was appointed by the Livingston Police Department (LPD) as a Police Officer on August 1, 2015. Chance Hildebrand’s
2. On October 7, 2016, POST issued Mr. Hildebrand a Peace Officer Basic certificate. *Id.*

3. On September 5, 2019, POST issued Mr. Hildebrand a Peace Officer Intermediate Certificate. *Id.*

4. On November 1, 2019, POST received a Notice of Termination from LPD which indicated that Mr. Hildebrand resigned under investigation. Discovery Responses at p. 3, Response No. 6; Bolger Aff., ¶ 6; Affidavit of Dale Johnson (Johnson Aff.), ¶ 14; Exhibit 2, Notice of Termination (Ex. 2).

5. There was a four-page “Internal Investigation Findings Report” attached to the November 1, 2019, Notice of Termination. *Id.* *See also,* Affidavit of Lisa Lowy (Lowy Aff.), ¶¶ 10-12; Exhibit 3, Internal Investigation Findings Report (Ex. 3).

6. HR and Administrative Services Director Lisa Lowy’s (Director Lowy’s) report (Ex. 3) reflected that the Livingston City Attorney became aware that Mr. Hildebrand had a sexual relationship with a woman whom Mr. Hildebrand had arrested and that the woman’s criminal charges were still pending. Based upon this and another allegation regarding unrelated conduct, an informal investigation was opened. *Id.*

7. Livingston Chief of Police Dale Johnson (Chief Johnson) conducted an interview with the female arrestee, CC. During that interview, CC produced a photograph she had of Mr. Hildebrand in his home which had a metadata stamp of September 10, 2019. Discovery Responses at pp. 4-5, Response No. 10; Johnson Aff., ¶ 7; Lowy Aff., ¶ 5.
8. CC also claimed to have Facebook private messages and Snapchat correspondence on her phone which she would share with Chief Johnson. Discovery Responses at pp. 4-5, Response No. 10; Johnson Aff., ¶ 7; Lowy Aff., ¶ 5.

9. On October 9, 2019, Chief Johnson and Director Lowy interviewed CC a second time. CC showed Chief Johnson and Director Lowy the social media messages between CC and Mr. Hildebrand. Discovery Responses at pp. 4-5, Response No. 10; Johnson Aff., ¶ 8; Lowy Aff., ¶¶ 5-6.

10. Chief Johnson and Director Lowy observed that CC initiated contact with Mr. Hildebrand, who reminded CC that he had arrested her. Chief Johnson and Director Lowy observed that there were several instances of sexual conversations and arrangements for meetings. CC asserted that she and Mr. Hildebrand had sexual contact on at least 10 occasions with the most recent being on October 4, 2019, and provided detail regarding those encounters. Bolger Aff., ¶ 20; Death Certificate of CC; Discovery Responses at pp. 4-5, Response No. 10; Johnson Aff., ¶ 8; Lowy Aff., ¶ 6.

11. Based upon the information which Chief Johnson and Lisa Lowy had obtained from CC, a formal investigation was opened. Discovery Responses at pp. 4-5, Response No. 10; Johnson Aff., ¶ 9; Lowy Aff., ¶ 7.

12. In 2018, Mr. Hildebrand received a formal verbal counseling about issues of dating within the community. This counseling was in response to Mr. Hildebrand dating an ex-girlfriend of a gentleman with whom LPD had extensive contact. Johnson Aff., ¶ 5; Lowy Aff., ¶ 11.

13. For a period of time in 2017, Chief Johnson ceased having Mr. Hildebrand do bar walkthroughs on regular patrol. This was due to Chief Johnson hearing from a number of sources that Mr. Hildebrand was inappropriate with female patrons and made them uncomfortable. Rather than doing a formal investigation and discipline, Chief
Johnson felt it was best to just keep Mr. Hildebrand out of the bars while on patrol. Johnson Aff., ¶ 4; Lowy Aff., ¶ 11.

14. On October 21, 2019, Director Lowy and Chief Johnson interviewed Mr. Hildebrand. Mr. Hildebrand admitted having sexual contact with CC. Mr. Hildebrand further acknowledged having had several conversations and coaching with supervisors about maintaining professional contacts in the community. Discovery Responses at pp. 4-5, Response No. 10; Johnson Aff., ¶ 11; Lowy Aff., ¶ 9.

15. The criminal charges against CC were dismissed. See Bolger Aff., ¶ 25; Johnson Aff., 10; Lowy Aff., ¶¶ 8, 10; State v. CC, TK19-0296, Order of Dismissal, dated October 16, 2019.

16. Based upon her investigation, Director Lowy found that Mr. Hildebrand had violated LPD R&R 5.03 regarding Unbecoming Conduct; that Mr. Hildebrand had compromised an official investigation; that Mr. Hildebrand had violated R&R 5.13 Associations; and that Mr. Hildebrand had violated R&R 5.31 regarding Off Duty Behavior. Lowy Aff., ¶¶ 10-11.

17. On January 8, 2020, the Case Status Committee of the POST Council met and discussed the allegations against Mr. Hildebrand. Mr. Hildebrand attended the meeting. Bolger Aff., ¶¶ 9-11; Exhibit 4, January 8, 2020, Case Status Committee Meeting recording (Ex. 4) at 07:00-07:15, 07:30-15:15.

18. During the January 8, 2020 Case Status Committee Meeting, Mr. Hildebrand availed himself of the opportunity to address the committee. Mr. Hildebrand admitted to having a “sexual relationship” with a woman who he had arrested. He stated that he had arrested her in June, and that they began exchanging messages around September. He indicated that they did send sexual messages to each other before a one-time “hook up” where they had sexual contact. Bolger Aff., ¶ 9-11; Ex. 4 at 09:35-12:30.
19. On January 13, 2020, Bureau Chief Johnson sent a letter to Mr. Hildebrand and requested a response to the allegations that he engaged in a sexual relationship with a woman after he arrested her and while her criminal case was pending. Discovery Responses at pp. 4-5, Response No. 10; Bolger Aff., ¶ 12; Exhibit 5, January 13, 2020 Letter from Bureau Chief Johnson to Mr. Hildebrand (Ex. 5).

20. On January 23, 2020, POST received a written response letter from Mr. Hildebrand, along with a Release of Information for Mr. Hildebrand’s personnel file. Discovery Responses at pp. 4-5, Response No. 10; Bolger Aff., ¶ 13; Exhibit 6, January 17, 2020 response from Mr. Hildebrand (Ex. 6). In his letter, Mr. Hildebrand did not deny any of the allegations and stated that he “violated the public’s trust as stated in the code of ethics,” and that his actions were a “violation of the professional code of conduct and public trust.” Id.

21. On February 18, 2020, the Case Status Committee of the POST Council met and discussed Mr. Hildebrand’s case. Mr. Hildebrand attended the meeting. The committee determined that POST would continue its investigation. Bolger Aff., ¶ 16; Exhibit 7, February 18, 2020 Case Status Committee Meeting recording (Ex. 7) at 58:08-01:00:00.

22. On April 1, 2020, POST Bureau Chief Perry Johnson and Paralegal/Investigator Katrina Bolger interviewed Chief Johnson. Bolger Aff., ¶ 17; Exhibit 8, April 1, 2020 Interview of Chief Johnson (Ex. 8).

23. On April 2, 2020, POST Bureau Chief Perry Johnson and Paralegal/Investigator Katrina Bolger interviewed Director Lowy. Bolger Aff., ¶ 18; Exhibit 9, April 2, 2020 Interview of Director Lowy (Ex. 9).

24. During the course of POST’s interviews with Chief Johnson and Director Lowy, POST learned that the electronic messages exchanged between Mr. Hildebrand
and CC had not been preserved by the City of Livingston. Bolger Aff., ¶¶ 17-18; Johnson Aff., ¶ 8; Lowy Aff., ¶ 6; Ex. 9.


26. POST was unable to contact CC for an interview and later learned that CC had died in a long-term care facility on June 25, 2020. Bolger Aff., ¶¶ 19-20; Death Certificate of CC.

27. On July 9, 2020, the Case Status Committee of the POST Council met and discussed Mr. Hildebrand’s case. Bolger Aff., ¶ 23; Exhibit 11, July 9, 2020 Case Status Committee Meeting recording (Ex. 11) at 35:15-46:18. Mr. Hildebrand attended the hearing via telephone. Id.

28. During the July 9, 2020 meeting, Mr. Hildebrand again admitted that the allegations were true. Id.

29. On August 20, 2020, POST received a letter from Mr. Hildebrand. Discovery Responses at pp. 4-5, Response No. 10; Bolger Aff., ¶ 24; Exhibit 12, August 16, 2020 Letter from Mr. Hildebrand (Ex. 12). In an apparent departure from his statements in his January 17, 2020, letter (Ex. 6), Mr. Hildebrand claimed in his August 16, 2020, letter that, “While my actions relative to this matter were not exemplary, they were within the Code of Ethics....” Discovery Responses at pp. 4-5, Response No. 10; Bolger Aff., ¶ 24; Ex. 6; Ex. 12.

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CONCLUSIONS OF LAW

Legal Issues Regarding Summary Judgment.

1. Summary judgment is permissible in administrative contested cases and is proper in this matter. ARMs 23.13.705(3), 713(2)(g); Matter of Peila, 249 Mont. 272, 815 P.2d 139 (1991).

   “Summary judgment is proper under M. R. Civ. P. 56(c) if ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.’” Runstrom v. Allen, 2008 MT 281, ¶ 11, 345 Mont. 314, 191 P.3d 410 (citing Fabich v. PPL Montana, LLC, 2007 MT 258, ¶ 9, 339 Mont. 289, 170 P.3d 943).


3. After the moving party has met its burden, the burden then shifts to the party opposing the motion, here Mr. Hildebrand, to establish the existence of a genuine issue of material fact. Sprunk v. First Bank System, 252 Mont. 463, 466, 830 P.2d 103, 104 (1992). By his concession, Mr. Hildebrand has opted not to attempt to set out any issue of material fact. Therefore, this matter is ripe for summary judgment.

POST’s Authority and Legal Standards.

5. The Montana POST Council is a quasi-judicial board administratively attached to the Department of Justice. Mont. Code Ann. § 2-15-2029. The POST Council has a legislative mandate to “provide for the certification or recertification of
public safety officers and for the suspension or revocation of certification of public safety officers” in Montana. Mont. Code Ann. § 44-4-403(1)(c). The Montana POST Bureau’s statutory purpose is to “provide staff support” to the Council. Mont. Code Ann. § 2-15-2028. The POST Council has also enacted administrative rules to effectuate its legislative mandates, including specific rules regarding contested cases. ARM 23.13.101 to .721.

6. Administrative Rule of Montana 23.13.702 (2018)1 states the “Grounds for Sanction, Suspension, or Revocation” of POST Certification applied to Mr. Hildebrand’s conduct in relation to the revocation of his POST certificates. ARM 23.13.702(2)(a) (2018) states that “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” is a ground for revocation of certification. Subsection (2)(g) states that “neglect of duty or willful violation of orders or policies, procedures, rules, or regulations” is an additional ground for revocation of POST certification. Subsection (2)(h) of ARM 23.13.702 also provides that “willful violation of the code of ethics set forth in ARM 23.13.203” is a ground for revocation of POST certification. ARM 23.13.702(2)(i) provides that “other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession;” is grounds for revocation of POST certification. Subsection (2)(l) of ARM 23.13.702 states that “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

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1 POST has amended ARM 23.13.702, which took effect on March 28, 2020. We use the current procedural ARMs to govern this proceeding, but the substantive ARMs that were in effect at the time of Mr. Hildebrand’s violations to analyze whether his certification should be sanctioned based upon misconduct. Saint Vincent Hosp. & Health Ctr. v. Blue Cross & Blue Shield, 261 Mont. 56, 60-61 (1993) (use substantive law in effect at the time and current procedural law).
reputations, or to the public’s confidence in the profession;” is grounds for revocation of POST certification.

7. The Code of Ethics to which ARM 23.13.702(2)(h) refers is found in ARM 23.13.203(3) (2018). Subsection (a) of the Code of Ethics states “My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged.” ARM 23.13.203(3)(i) provides “I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession.”

8. Violation of any one of the subsections of ARM 23.13.702(2) or engaging in conduct which violates any portion of the Code of Ethics in ARM 23.13.203 constitutes “Grounds for Sanction, Suspension, or Revocation” of Mr. Hildebrand’s POST certificates.

9. Administrative Rule of Montana 23.13.713(6) provides that a hearing examiner may inspect POST’s Integrity Report for guidance on the POST Council’s past actions and sanctions imposed. Of particular import in this matter, POST’s Integrity Report 2013-Current (attached hereto) contains a myriad of cases involving similar misconduct which led to an officer’s loss of certification. See, e.g., POST’s Integrity Report 2013-Current Case Nos. 14, 16, 24, 25, 28, 29, 33, 37, 40, 80, 83, 90, 113, 120, 124, 130, 147, 164, 173, and 186./

Summary Conclusions.

10. Mr. Hildebrand violated ARM 23.13.702(2)(g) by his willful violation of policies, procedures, rules or regulations regarding engaging in an inappropriate relationship with a woman who he had arrested.
11. Mr. Hildebrand violated ARM 23.13.702(2)(h) by engaging in conduct violative of ARM 23.13.203(3)(a) (b), (f) and (i). Mr. Hildebrand did not serve the community, safeguard lives and property, protect the innocent, or keep the peace by engaging in a sexual relationship with an arrestee, causing her charges to be dismissed. Mr. Hildebrand did not treat CC equally and he allowed his personal feelings to influence his official conduct, which ultimately resulted in charges being dismissed and prevented justice from being served. Mr. Hildebrand accepted gifts, favors, gratuities or promises which could be interpreted as favor or cause him to refrain from performing his official duties. Mr. Hildebrand also did not ensure that his character and conduct were admirable by his actions, and certainly discredited the profession of public safety by his actions.

12. Mr. Hildebrand himself stated that he violated the public’s trust (Ex. 6) as stated ARM 23.13.702(2)(i). Mr. Hildebrand’s actions prevented the administration of justice, and placed a stain on the reputation of the profession.

13. Mr. Hildebrand has violated subsection (2)(l) of 23.13.702. By almost all of his actions outlined the Findings of Fact, Mr. Hildebrand has harmed his reputation as an officer.

14. Any sexual contact between Mr. Hildebrand and CC that occurred on or after October 1, 2019, the effective date of Sen. Bill No. 261, Ch. 133 L. 2019, codified at Mont. Code Ann. § 45-5-501(1)(b)(xi), was potentially chargeable as a crime. As of that date, a person such as CC, under investigation of a crime, was legally incapable of consent to sex with an officer investigating that crime. The Hearing Examiner is not concluding such a violation occurred. Rather, the Hearing Examiner observes this law serves as a clear standard of professional conduct which Mr. Hildebrand breached.

15. Mr. Hildebrand’s sexual act with an arrestee violated his oath:

To treat all with “with courtesy, consideration, and dignity;”
To not engage in “criminal activity;” and
To “ensure that [his] character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession.”

Public Safety Officer Code of Ethics, Admin. R. Mont. § 23.13.203(3).

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner enters the following

**PROPOSED ORDER**

1. POST’s motion for summary judgment is GRANTED.
2. POST is granted the relief sought in its Notice of POST Action and Opportunity for Hearing.
3. Chance Hildebrand’s POST certificate(s) are REVOKED.

DATED this ___ day of March 2021.

______________________________

Dee Ann Cooney
Hearing Examiner

cc: Mike Fanning, Montana POST Bureau, 2260 Sierra Road East, Helena, MT 59602
    W. Wayne Harper, P.O. Box 506, Butte, MT 59701
STATE OF MONTANA
BEFORE THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

IN THE MATTER OF
RICHARD SMITH’S CERTIFICATE SANCTION

ORDER ON MOTION FOR SUMMARY JUDGMENT

CASE NO. 19-44

This matter is before the undersigned Hearing Examiner on a motion for summary judgment filed by POST which is fully briefed. Discovery in the matter ended on September 30, 2020 and the hearing is set for May 21, 2021.

FACTUAL BACKGROUND

The factual background in this matter is derived solely from the Statement of Undisputed Facts, supported by evidence, which POST set forth in its Brief in Support of Summary Judgment.

Mr. Smith resigned from DCI on July 13, 2018. (SUF 1)

Subsequently, on July 30, 2019, Montana POST Bureau received email addressed to Bureau Chief Perry Johnson, with several attachments which contained allegations of misconduct by Mr. Smith. Bureau Chief Johnson forwarded the to POST Paralegal/Investigator Katrina Bolger. (SUF 2)

The email letter and attached documents (SUF 3) set out the following information:
On January 18, 2018, Mr. Smith was on duty and working with Montana Highway Patrol Trooper Barry Kilpela. Prior to January 18, 2018, a gentleman named Stevan Williams confronted Mr. Smith’s wife at a basketball game.

Mr. Smith and Trooper Kilpela were riding together in Trooper Kilpela’s marked patrol vehicle. Mr. Smith forgot his jacket, and he made arrangements with his wife to meet her at the school to get it. Trooper Kilpela drove to the school for Mr. Smith to meet his wife.

While at the school, Mr. Smith saw Mr. Williams in his vehicle, pointed him out to Trooper Kilpela, and informed Trooper Kilpela that Mr. Smith wanted to speak to that person if he stops somewhere. *Id.*

Mr. Williams did stop at a taco stand, and Mr. Smith and Trooper Kilpela saw him. Trooper Kilpela pulled over next to Mr. Williams’ vehicle and Mr. Smith got out to speak to Mr. Williams. *Id.*

Mr. Smith was wearing his duty belt and had his firearm in a leg holster when he exited Trooper Kilpela’s marked patrol vehicle and approached Mr. Williams. Mr. Smith proceeded to tell Mr. Williams not to threaten his wife. Mr. Smith was seen in Trooper Kilpela’s in-car video, pointing at Mr. Williams. Subsequent to this interaction, Mr. Williams filed a complaint with MHP and DCI, indicating his belief that Mr. Smith used his position and authority to intimidate Mr. Williams. (SUF3)

Bureau Chief Johnson sent a letter to Mr. Smith dated August 27, 2019. The purpose of the letter was to outline DCI’s allegations against Mr. Smith and to provide him
an opportunity to respond to the allegations (SUF 4). POST received a written response from Mr. Smith which was dated September 24, 2019. In his response, Mr. Smith stated:

I believe the date was January 17, 2018, my wife was attending a basketball game when a former family friend got in my wife’s face and threatened her with bodily injury. Witness testified to this fact in a later court hearing. The individual was mad at my wife because she testified for this individual [sic] spouse during their divorce on the physical abuse this individual did to the spouse and children in front of my spouse. My wife has a permanent no contact order issued by Judge Spalding in this matter against the individual. The threats to my wife were the catalyst for the events that occurred on January 18, 2018 (the day after he had threatened my wife). I was in a marked Highway Patrol vehicle as a passenger preparing to conduct interdiction operations in Stillwater County with MHP when I had observed the individual. I ask the Trooper to see if the individual stopped in town, that I would like to have a conversation with him. I have been in Law Enforcement long enough to know we are held to a much higher standard that everyone else is when it comes to how we handle ourselves professionally. The individual did stop at a public place and I had a what I believe to be a consensual conversation with the individual, I am sure my stress level was up and I was elevated, but still believe I handled the situation without threats or violence. The individual is deaf, I even tried to use sign language to converse at some point. This individual knows that I am a police officer, carry a gun from dinners and conversations at my house where he and his family attended on numerous occasions. He was intimidated not because I was a police officer but the fact that I am a man and that he had threatened my wife. My leadership at DCI did not feel my actions were professional and I can see their point of view. I stand by my action and how I handled the situation believing I had deescalated further violence towards my family. (SUF 5-6)

On December 16, 2019, Bureau Chief Johnson and Ms. Bolger interviewed Mr. Smith. During his interview with POST, Mr. Smith provided a statement similar to his written statement. Mr. Smith stated he spoke to Columbus Chief of Police Jacob Ward about the conversation with Stevan Williams, and Mr. Smith also stated that he told his
supervisor about the exchange as well. Mr. Smith also acknowledged that it was "wrong" to have his interaction with Mr. Williams "on duty time." (SUF 8-9)

**LEGAL STANDARD**

**Summary Judgment**

Summary judgment is available in this administrative proceeding. ARM 23.13.705(3), 713(2)(g); Matter of Peila, 249 Mont. 272, 815 P.2d 139 (1991). The purpose of summary judgment is to encourage judicial economy through the prompt elimination of questions not deserving of resolution by trial. Harland v. Anderson, 169 Mont. 447, 450, 548 P.2d 613, 615 (1976). “Summary judgment is proper under M. R. Civ. P. 56(c) if ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.’” RUNstrom v. Allen, 2008 MT 281, ¶ 11, 345 Mont. 314, 191 P.3d 410 (citing Fabich v. PPL Montana, LLC, 2007 MT 258, ¶ 9, 339 Mont. 289, 170 P.3d 943).

The initial burden of proof is on the moving party, here POST, to establish that no genuine issues of material fact exist. Westmont Tractor Co. v. Continental I, Inc., 224 Mont. 516, 521, 731 P.2d 327, 330 (1986). After the moving party has met its burden, the burden then shifts to the party opposing the motion, here Mr. Smith, to establish the existence of a genuine issue of material fact. Sprunk v. First Bank System, 252 Mont. 463, 466, 830 P.2d 103, 104 (1992). Mr. Smith must present facts of a “substantial nature”

To meet this burden, Mr. Smith must present “substantial evidence, not mere denial, speculation, or conclusory statements.” *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1266 (1997). The “facts must be material and of a substantial nature, not fanciful, frivolous, gauzy, nor merely suspicions.” Mr. Smith “has an affirmative duty to respond by affidavits or other sworn testimony containing material facts that raise genuine issues; conclusory or speculative statements will not suffice.” *Id.* A “mere disagreement about the interpretation of a fact or facts does not amount to genuine issues of material fact.” *Sprunk*, 252 Mont. at 466, 830 P.2d at 104.


**POST’s Laws and Rules**

POST Council has also enacted administrative rules to effectuate its legislative mandates, including specific rules regarding contested cases. ARM 23.13.101 through 23.13.721.

Administrative Rule of Montana 23.13.702 (2018)\(^1\) states the “Grounds for Sanction, Suspension, or Revocation” of POST Certification applied to Mr. Smith’s conduct in relation to the revocation of his POST certificates. Subsection (2)(g) states that “neglect of duty or willful violation of orders or policies, procedures, rules, or regulations” is an additional ground for revocation of POST certification. Subsection (2)(h) of ARM 23.13.702 also provides that “willful violation of the code of ethics set forth in ARM 23.13.203” is a ground for revocation of POST certification. ARM 23.13.702(2)(i) provides that “other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession;” is grounds for revocation of POST certification. Subsection (2)(l) of ARM 23.13.702 states that “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;” is grounds for revocation of POST certification.

The Code of Ethics to which ARM 23.13.702(2)(h) refers is found in ARM 23.13.203(3) (2018). Subsection (a) of the Code of Ethics states “My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are

\(^1\) POST has twice amended ARM 23.13.702, which took effect December 22, 2018 and on March 28, 2020. We use the current procedural ARMs to govern this proceeding, but the substantive ARMs that were in effect at the time of Mr. Smith’s violations to analyze whether his certification should be sanctioned based upon misconduct. *Saint Vincent Hosp. & Health Ctr. v. Blue Cross & Blue Shield*, 261 Mont. 56, 60-61 (1993) (use substantive law in effect at the time and current procedural law).
not abridged.” ARM 23.13.203(3)(i) provides “I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession.”

Violation of any one of the subsections of ARM 23.13.702(2) or engaging in conduct which violates any portion of the Code of Ethics in ARM 23.13.203 constitutes “Grounds for Sanction, Suspension, or Revocation” of Mr. Smith’s POST certificates.

**DISCUSSION**

POST has presented undisputed facts, supported by evidence, that Mr. Smith engaged in an intimidating behavior towards a personal acquaintance while he was on duty. Mr. Smith did not present any sworn evidence to establish a genuine issue of material fact. In response to the undisputed facts established by POST, Mr. Smith offered that he would present testimony, at hearing, that will demonstrate his actions did not violate POST rules and provide context for the personal conversation in which he engaged with the citizen. (Mr. Smith email response to the Request for Summary Judgment dated 2/24/2021.)

Mr. Smith’s response, that he could establish issues of material fact at hearing, is not sufficient to defeat POST’s properly supported Motion for Summary Judgment. “[i]n order to defeat a motion for summary judgment properly made and supported, the opposing party must set out specific facts showing a genuine issue for trial by affidavits or as otherwise provided by Rule 56. M. R. Civ. P. 56(e)(2).” Victory Ins. Co. v. Mont. State Fund, 2015 MT 82, ¶ 27, 378 Mont. 388, 344 P.3d 977, quoting Malpeli v. State, 2012 MT 181, ¶ 12, 366 Mont. 69, 285 P.3d 509.
The undersigned hearing examiner is cognizant of the difficulties a pro se litigant may have navigating litigation. Latitude is therefore extended wherever possible, as it was in this case, relevant to scheduling, pleadings, and briefing. However, while a certain amount of latitude can be expected, it cannot be so wide as to prejudice the other party; and it is reasonable to expect all litigants, including those acting pro se, to adhere to procedural rules.” Greenup v. Russell, 2000 MT 154, ¶ 15, 300 Mont. 136, 3 P.3d 124.

POST has properly made and supported its motion for summary judgment. Mr. Smith has failed to meet his affirmative burden to demonstrate there are genuine issues of material fact that prohibit summary judgment.

CONCLUSION

POST has provided uncontroverted evidence that Mr. Smith engaged in an intimidating manner towards a personal acquaintance while he was on duty.

Based on that event, POST sanctioned Mr. Smith’s POST certification. The Notice of POST Action was based on violations of ARM 23.13.702(2)(g) [“neglect of duty or willful violation of orders or policies, procedures, rules, or regulations” is an additional ground for revocation of POST certification.]; ARM 23.13.702(2)(h), [willful violation of the Code of Ethics set forth in ARM 23.13.203.]; ARM 23.13.702(2)(h), [a willful violation of the Code of Ethics set forth in ARM 23.13.203(3) which included a violation of (a) [My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged]; and a violation of ARM 23.13.203 (3)(i) [I will at all times ensure
that my character and conduct is admirable and will not bring discredit to my community, my agency or my chosen profession]; ARM 23.13.702(2)(i) [conduct which tends to significantly undermine public confidence in the profession]; and ARM 23.13.702(2)(l) [acts that are identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the employing authority or officer’s reputation.]

The undisputed facts on the record support the action taken by POST in sanctioning Mr. Smith’s POST certification. Mr. Smith has not established any genuine issues of material fact which require resolution at a hearing; and there is no basis on which to deny POST’s Motion for Summary Judgment.

Based on the discussion set out above, the Hearing Examiner rules that summary judgment should be granted to POST. The hearing scheduled in this matter is therefore cancelled.

DATED this ___ day May 2021.

[Signature]
DeeAnn Cooney, Hearing Examiner

pcs: Mike Fanning, 2260 Sierra Road East, Helena, MT 59602
Richard Smith 564A Countryman Creek Rd. Columbus, MT 59019-7356
STATE OF MONTANA
BEFORE THE PUBLIC SAFETY OFFICER STANDARDS
AND TRAINING COUNCIL

IN THE MATTER OF PATRICK CRISWELL’S CERTIFICATE REVOCATION

ORDER ON MOTION FOR SUMMARY JUDGMENT

Case No. 19-58

This matter is before the undersigned Hearing Examiner on a motion for summary judgment filed by POST which is fully briefed. Discovery in the matter ended on January 15, 2021 and the hearing is set for May 6, 2021.

FACTUAL BACKGROUND

This matter arose on July 30, 2019. Montana Highway Patrol Trooper Patrick Crisswell was involved in a motor vehicle crash when he backed his patrol-issued vehicle into his wife’s vehicle. While the crash resulted in minimal damage to Crisswell’s patrol vehicle, the damage to his wife’s car was significant. Although patrol policy required that a trooper immediately notify Dispatch and the trooper’s district commander at the time of any crash, Mr. Crisswell did not report the crash until the following day. (SUF 6.)

When he contacted Montana Highway Patrol Dispatcher Sydney Bangerter on July 31, 2019, he reported that the crash “... actually happened last night,” and he stated further, “I didn’t see anything, but now that I can see it in the daylight, I do have a little bit of damage to my patrol car.” (SUF 14.)

On October 8, 2019, POST received a Notice of Termination from MHP which indicated that Mr. Crisswell resigned under investigation. (SUF 4.)
There was a one-page document, entitled “Patrick Crisswell POST Supplemental Information” attached to the October 8, 2019 Notice of Termination, from MHP Lt. Col. Hildenstab which provided supplemental information that Mr. Crisswell had been in a motor vehicle collision. Mr. Crisswell was driving his patrol car, and he backed into his wife’s parked car. The supplemental information indicated that Mr. Crisswell violated MHP policies by failing to report the collision, that he lied about the damage, and provided false information to Dispatch when he reported the motor vehicle crash the day after the crash occurred. Id.

In a letter dated November 25, 2019, POST Bureau Chief Perry Johnson contacted Mr. Crisswell about the incident and requested a response to the allegations that:

he failed to properly report his motor vehicle accident;

he failed to provide pertinent information to his supervisor about the crash; and

he provided false information to Dispatch when he did report the crash. (SUF 7.)

On December 26, 2019, POST received a written response from Mr. Crisswell, along with a Release of Information for Mr. Crisswell’s personnel file. In his response, Mr. Crisswell did not deny any of the allegations and stated that he was “ashamed and disappointed” in himself. (SUF 8.)

On December 30, 2019, POST Paralegal/Investigator Katrina Bolger requested a copy of Mr. Crisswell’s personnel file. POST subsequently requested the investigative information regarding Mr. Crisswell’s motor vehicle crash and his related conduct, which was not included with the personnel file. Lt. Col. Hildenstab delivered the investigative
information to POST on February 27, 2020. The information included a review of the in-car video dated July 30, 2019 which depicts the motor vehicle crash in which Mr. Crisswell backed into his wife’s vehicle in their driveway. (SUF 9, 11-12.)

The following provides a sequence of events with the video timestamps recorded (SUF 12):

It appears to be daylight in the video, which was recorded at approximately 19:43:00 (7:43 p.m.) The patrol vehicle’s rear passenger side bumper appears to come into contact with a parked vehicle. The patrol vehicle then pulls forward to where it was parked before the collision.

From 19:44:00 to 19:44:03, Mr. Crisswell can be seen bending down toward the rear passenger side bumper of his patrol vehicle. He can then be seen walking from his patrol vehicle to the parked vehicle, and he opens and closes the front driver’s side door of the vehicle from approximately 19:44:08 to 19:44:10.

At 19:44:13, Mr. Crisswell can be seen walking back toward his patrol vehicle before walking around the back of his vehicle, headed toward a house. At approximately 19:45:00, Mr. Crisswell returns into view of the back camera, and he is followed by another person, a female. From 19:45:00 until about 19:48:00, Mr. Crisswell and the other individual examine the damage to both vehicles, opening and closing the door to the other vehicle at least two more times. At 19:48:26, Mr. Crisswell’s vehicle again is in motion, backing out of the driveway. The elapsed time from the collision to Mr. Crisswell’s departure is approximately five minutes and twenty-six seconds. (SUF 12(a)-(h).)
An audio recording of Mr. Crisswell’s call to Dispatch on July 31, 2019 was also included in the investigation information. During his call to Dispatch, Mr. Crisswell described the accident he had on July 30, 2019, and stated, “this actually happened last night, and I didn’t see anything, but now that I can see it in the daylight, I do have a little bit of damage to my patrol car.” (SUF 13-14.)

On December 20, 2019, Mr. Crisswell sent a text message to Dispatcher Bangerter, apologizing for lying to her during his July 31, 2019 call. (SUF 15.)

On March 3, 2020, Mr. Crisswell was interviewed by POST Bureau Chief Perry Johnson and Ms. Bolger. Ex. 23. During his interview Mr. Crisswell stated that, at the time of the accident, he was on the phone regarding a stolen vehicle. He stated that after the accident occurred, he got out and checked the damage. “The damage to my patrol car was cosmetic. I mean I had like a four-inch scratch.” He stated the damage to his wife’s car was greater and that he “cave[d] in” the door “pretty good.” He did not report the incident at the time but stated during the interview, “So later that night, kind of after things had calmed down, I got to thinking about it, and I’m like, ‘You know what, I probably should really tell somebody about this.’” (SUF 17, 18 (a)-(b).)

He stated he did contact Dispatch the next day at the beginning of his shift and admitted that he gave the Dispatcher a “BS excuse” about why he had not called in the accident sooner. (SUF 18 (c).)

POST issued a Notice of POST Action which revoked Mr. Crisswell’s POST certification on October 6, 2020.
LEGAL STANDARD

Summary Judgment

Summary judgment is available in this administrative proceeding. ARM 23.13.705(3), 713(2)(g); Matter of Peila, 249 Mont. 272, 815 P.2d 139 (1991). The purpose of summary judgment is to encourage judicial economy through the prompt elimination of questions not deserving of resolution by trial. *Harland v. Anderson*, 169 Mont. 447, 450, 548 P.2d 613, 615 (1976). "Summary judgment is proper under M. R. Civ. P. 56(c) if 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.'" *Runstrom v. Allen*, 2008 MT 281, ¶ 11, 345 Mont. 314, 191 P.3d 410 (citing *Fabich v. PPL Montana, LLC*, 2007 MT 258, ¶ 9, 339 Mont. 289, 170 P.3d 943).

In order to meet this burden, Mr. Crisswell must present "substantial evidence, not mere denial, speculation, or conclusory statements." *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1266 (1997). The "facts must be material and of a substantial nature, not fanciful, frivolous, gauzy, nor merely suspicions." *Klock*, 284 Mont. at 174, 943 P.2d at 1266 (*citing Fleming v. Fleming Farms*, 221 Mont. 237, 241, 717 P.2d 1103, 1105 (1986)). Mr. Crisswell "cannot rest upon mere allegations in the pleadings, but 'has an affirmative duty to respond by affidavits or other sworn testimony containing material facts that raise genuine issues; conclusory or speculative statements will not suffice.'" *Klock*, 284 Mont. at 174, 943 P.2d at 1266 (*quoting Groshelle v. Reid*, 270 Mont. 443, 893 P.2d 314, 316 (1995)); additionally, "mere disagreement about the interpretation of a fact or facts does not amount to genuine issues of material fact." *Sprunk*, 252 Mont. at 466, 830 P.2d at 104.

At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a "genuine" dispute as to those facts. Mont. R. Civ. P. 56(c); *Scott v. Harris*, 550 U.S. 372, 380 (2007) (*cited in Fasch v. M.K. Weeden Constr., Inc.*, 2011 MT 258, ¶¶ 19-20, 362 Mont. 256, 262 P.3d 1117). The United States Supreme Court has emphasized that "[w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. ... Where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Scott*, 550 U.S. at 380 (*quoting Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)). The "mere existence of some alleged factual dispute between the parties
will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Scott*, 550 U.S. at 380 (*quoting Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original). Instead, when “opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott*, 550 U.S. at 380.

**POST's Laws and Rules**


Administrative Rule of Montana 23.13.702 (2018) states the “Grounds for Sanction, Suspension, or Revocation” of POST Certification that were applied to Mr. Crisswell’s conduct in relation to the revocation of his POST certificates. ARM 23.13.702(2)(a) (2018) states that “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” is a ground for revocation of certification. Subsection (2)(g) states that “neglect of duty or willful violation of orders or policies, procedures, rules, or regulations” is an additional ground for revocation of POST certification. Subsection (2)(h) of ARM 23.13.702 also provides that “willful violation of the code of ethics set forth in ARM 23.13.203” is a ground for revocation of POST certification. ARM 23.13.702(2)(i) provides that “other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession” is a ground for revocation of POST certification. Subsection (2)(l) of ARM 23.13.702 states that “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;” are grounds for revocation of POST certification.

The Code of Ethics to which ARM 23.13.702(2)(h) refers is found in ARM 23.13.203(3) (2018). Subsection (a) states “My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged.” ARM 23.13.203(3)(i) provides “I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession.”
Violation of any one of the subsections of ARM 23.13.702(2) or engaging in conduct which violates any portion of the Code of Ethics in ARM 23.13.203 constitutes “Grounds for Sanction, Suspension, or Revocation” of POST certificates.

DISCUSSION

POST has presented undisputed facts, supported by evidence, which establish that Mr. Crisswell provided false information to Dispatch regarding the details of his July 30, 2019 motor vehicle accident. While the accident occurred at approximately 7:42 p.m., there are long hours of daylight in July. The in-car video of the incident reveals, beyond question, the accident happened in the daylight. The video also indicates that Mr. Crisswell spent approximately five minutes examining both vehicles, and even had another individual come out of his home and view the damage with him.

When he reported the accident the following day, Mr. Crisswell told Dispatch, “this actually happened last night, and I didn’t see anything, but now that I can see it in the daylight, I do have a little bit of damage to my patrol car.” In stating that he did not see any damage “last night,” but could now see it in the daylight, Mr. Crisswell clearly suggested it was too dark to discern what he could see the next day “in the daylight.”

In response to POST’s Motion for Summary Judgment, Mr. Crisswell has argued that the following represent disputed issues and facts which preclude summary judgment:

1. Material issue to this matter is whether Mr. Crisswell lied or was untruthful, which rises to an integrity violation.
2. Whether Mr. Crisswell’s statements made after September 24, 2019 are reliable considering that he was misled to believe that he had lied to Dispatch.

3. Due to being called out on a call (BOLO) to locate an individual in a stolen vehicle known to Mr. Crisswell to be a dangerous person, Mr. Crisswell did not have a significant amount of time to view the damage to his patrol vehicle.

4. Mr. Crisswell did notice a visible mark on his vehicle and whether this is classified as a “scuff” or a “scratch” should be considered a matter of semantics, not a dispute of whether there was a visible mark on Mr. Crisswell’s patrol vehicle.

5. After Mr. Crisswell completed the search for the BOLO, he attempted to look at his vehicle more closely.

6. Mr. Crisswell used the term “last night” as a general term to describe that the incident occurred the previous evening - but he did not say “dark” or that it was “dark outside,” and it was never intended that anyone would conclude that by using the term “last night” Mr. Crisswell was implying it was dark outside at the time of the incident.

7. Mr. Crisswell was led to believe by his superiors that he had lied in his July 31, 2019 call to Dispatch, and he was not provided the opportunity to review the entire Dispatch call that was provided in Exhibit 14 until the recording was provided to Mr. Crisswell in the discovery process through this matter.

8. Upon Mr. Crisswell’s listening to the entire audio recording to his July 31, 2019 call to Dispatch, Mr. Crisswell knew that he had not lied to Dispatch.
9. On September 24, 2019 Mr. Crisswell was led to believe that he had lied to Dispatch since only a small portion of the audio recording was played at his disciplinary hearing. Mr. Crisswell will testify to his reasoning behind accepting fault for something he now knows he did not do.

Mr. Crisswell cites his response to POST’s Discovery Requests as evidence in support of his Statement of Disputed Facts.

The undersigned Hearing Examiner finds that Disputed Facts 3 and 5, which relate to a “BOLO” call to which Mr. Crisswell was responding, are not material to the outcome of this case. The call to which he was responding has no bearing on his statement to Dispatch and the outcome of this case. Similarly, whether the mark on his car was a scuff or a scratch (Disputed Fact 4) is not material to the content of his statement or the resolution of this case.

Only genuine disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. A dispute is “genuine” if the evidence is such that a reasonable fact finder could return a verdict for the nonmoving party. Where the material facts are undisputed, the court must simply identify the applicable law, apply it to the uncontroverted facts, and determine who prevails. *Broadwater Dev., L.L.C. v. Nelson*, 2009 MT 317, ¶ 15, 352 Mont. 401, 408, 219 P.3d 492, 499–500, citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986).
The issue in this case is whether Mr. Crisswell was untruthful in his statement to Dispatch when he reported the crash following the event, the timing of which itself was a violation of policy.

The undersigned Hearing Examiner finds that Mr. Crisswell does not raise genuine of issues of material fact in response to the Undisputed Facts established by POST, which include Crisswell’s own statements and admissions.

Mr. Crisswell’s Disputed Facts 6 through 9 are simply his current denial or explanation of the statements he made, and which were recorded, at or near the time this event and the subsequent investigation occurred. The Disputed Facts as set forth by Mr. Crisswell are not sufficient to create a genuine issue of material fact which requires a hearing. “A ‘material’ fact is a fact that ‘involves the elements of the cause of action or defenses at issue to an extent that necessitates resolution of the issue by a trier of fact.”’ Arnold v. Yellowstone Mountain Club, LLC, 2004 MT 284, ¶ 15, 323 Mont. 295, 100 P.3d 137 (citing Mountain West Bank, N.A. v. Mine and Mill, 2003 MT 35, ¶ 28, 314 Mont. 248, 64 P.3d 1048); Williams v. Plum Creek Timber Co., 2011 MT 271, ¶ 14, 362 Mont. 368, 371, 264 P.3d 1090, 1093.

Mr. Crisswell relies on his responses to interrogatories, which assert denials and conclusions, to establish the existence of a material fact. He asserts that he used the term ‘last night’ as a general term which was not intended to be understood that he was implying it was dark outside at the time of the accident. However, in the call to Dispatch on July 31, he specifically reports that “this actually happened last night, and I did not see anything,
but now that it is daylight ...” This description of the lighting is not an accurate report of the circumstances, captured on the vehicle video, and there is no reasonable conclusion other than the report was misleading. Mr. Crisswell’s statement to Dispatch directly belies his present-day assertion that he did not intend to imply it was dark. There is only one reasonable way to interpret this statement as to what he could see when it was daylight as opposed to not seeing it “last night”. Mr. Crisswell’s attempt to “clarify” the statement does not create a genuine issue of fact for consideration by a fact finder.

Similarly, he argues he was misled by his superiors into believing that he had lied to Dispatch. Mr. Crisswell asserts that, upon hearing the entire audio recording of the July 31, 2019 Dispatch call, he knew he had not lied, and he will testify as to why he accepted fault for something he now knows he did not do. Disputed Facts 2, 7, & 8. These contentions do not create a genuine issue of material fact. He simply concludes he was misled. He does not provide any facts or discussion as to how he was misled and by whom, what portion of the fairly short, recorded statement caused him to be misled or how the remaining portion of the statement revealed he had not lied. Mr. Crisswell was required to “respond by affidavits or other sworn testimony containing material facts that raise genuine issues; conclusory or speculative statements will not suffice.” Klock, 284 Mont. at 174, 943 P.2d at 1266. He cannot rely on his “disagreement about the interpretation of a fact or facts...” Sprunk, 252 Mont. at 466, 830 P.2d at 104.

The evidence of the audio recording of Mr. Crisswell’s report to Dispatch speaks for itself. For purposes of summary judgment, he cannot overcome the clear evidence on
the recording by simply positing, after the fact, that it doesn’t say what it says, or can be interpreted differently, particularly without providing any discussion or evidence other than his statement. His argument that he did not lie, that he was misled, or that the audio recording supports a different interpretation than the plain words is undermined by his texted apology to Sydney Bangerter on December 26, 2019, months after the incident occurred and after he had resigned while MHP conducted an investigation.

It is undercut further by Mr. Crisswell’s response to POST’s allegations that he failed to report the crash the night it happened, lied to Dispatch as to why he did not call it in at the time, and failed to provide pertinent information to his supervisor. In his response to these allegations, Mr. Crisswell admitted he did not properly report the accident by immediately notifying his supervisor. He admitted that he realized his mistake and was embarrassed, and though he was truthful as to the time and circumstances of the accident, he had a “lapse of judgment and lied to the dispatcher” as to why he did not call it in when he was supposed to. He admitted he omitted pertinent information as to the extent of the damage to his wife’s car because he was hoping the whole situation would blow over. POST Exhibit 20.

Finally, he admitted during in an interview with POST personnel that he gave Dispatch a BS excuse as to why he did not call the incident in until the following day and stated again that he did not tell his captain about the damage to his wife’s car because the captain did not ask, and he was “kind of hoping that the whole thing would blow over, so I just let it ride.”
POST has provided uncontroverted evidence of Mr. Crisswell’s false statement. His simple denial and conclusion now, that he was misled into admitting and taking responsibility for something he did not do, fail to create a disputed material fact.

While the accident itself was a minor event, Mr. Crisswell’s dishonesty about it created the issue he now faces. Sworn officers have an enormous amount of power and discretion over the public. They have a corresponding responsibility to act with unshakable integrity. As Mr. Crisswell acknowledged in his statement to the POST Counsel, his momentary lack of judgment cost him the trust of his supervisors, a critical component in law enforcement.

The video evidence of the accident and the audio recording of Mr. Crisswell’s call to Dispatch can only lead to one reasonable conclusion.

CONCLUSION

By Notice of POST Action revoking Mr. Crisswell’s certificate, POST alleged that, by his failure to properly report the car accident and his dishonesty when he did make the report, Mr. Crisswell violated:

ARM 23.13.702(2)(a), by his willful falsification of information in conjunction with official duties or any single occurrence or pattern of lying, perpetuating falsehood, or dishonesty which may tend to undermine public confidence in the officer, the officer’s employing authority, or the profession;

ARM 23.13.702(2)(g), by his willful violation of policies, procedures, rules or regulations;
ARM 23.13.702(2)(h), by a willful violation of the Code of Ethics set forth in ARM 23.13.203;

ARM 23.13.702(2)(i), by his conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession; and

ARM 23.13.702(2)(l), by 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. By his actions as outlined in the discussion above, Mr. Crisswell harmed his reputation as an officer.

The question before the Hearing Examiner is whether there is any factual question as to the existence of good cause for the revocation of Mr. Crisswell’s certificate.

The undisputed facts as discussed above reflect that Mr. Crisswell failed to report the crash immediately as he was required to do, then lied to Dispatch about the circumstances of the crash and his discovery of the damage when he did report the crash, and omitted details relating to the damage to his wife’s vehicle when he initially spoke to his captain. Mr. Crisswell suggests that a hearing needs to be held to interpret the facts and his actions from a perspective he gleaned after hearing the whole Dispatch audio of his report. However, his denial or reinterpretation of the events cannot overcome the evidence from the video of the crash, the audio of his report to Dispatch, or his specific statements regarding the crash.

There are no disputed facts which would support a denial of POST’s request for summary judgment as to the allegations set forth in the Notice of POST Action.
Based on the above, the Hearing Examiner rules that summary judgment should be granted to POST. The hearing scheduled in this matter is therefore cancelled.

DATED this 23rd day April 2021.

DEEANN COONEY, Hearing Examiner

pcs: Mike Fanning, 2260 Sierra Road East, Helena, MT 59602
     Beckie Williams, 214 W. Main, Suite 207, Lewistown, MT 59497
COMES NOW, Patrick Crisswell, by and through his attorney of record, Beckie Williams, and hereby takes exception to the Administrative Law Judge’s Order on Motion for Summary Judgment, pursuant to ARM 23.13.719(2). Mr. Crisswell respectfully requests that the POST Council review for error contained in the Order on Motion for Summary Judgment on the grounds detailed below.

1. **Summary Judgment is not Appropriate.**

In this case, POST filed their Motion for Summary Judgment indicating “that there are no genuine issues of material fact in the case and POST is entitled to judgment as a matter of law.” (POST’s Motion for Summary Judgment Page 1). Mr. Crisswell responded to POST’s Motion for Summary Judgment and also filed his Disputed Issue and Facts arguing that the material issue whether Mr. Crisswell lied or was untruthful which rises to an integrity violation was still very much at issue. Mr. Crisswell also set forth eight additional material
facts in his *Disputed Issue and Facts* which are explained and supported by his Discovery Responses. On April 23, 2021, the Administrative Law Judge ("ALJ") before the Public Safety Officer Standards and Training Council issued the *Order on Motion for Summary Judgment* granting POST’s request for summary judgment. The ALJ determined that the “Disputed Facts as set forth by Mr. Crisswell are not sufficient to create a genuine issue of material fact which requires a hearing.” (Order p. 12 Lines 9-11). The ALJ also indicated that Mr. Crisswell was required to “respond by affidavits or other sworn testimony containing material facts that raise to genuine issues...”. Mr. Crisswell believes that the ultimate material issue regarding whether Mr. Crisswell was untruthful in his reporting is absolutely still at issue, that he satisfactorily provided sworn statements detailing the material facts that were still at issue and that summary judgment was not appropriate in this matter.

The parties previously set forth their arguments addressing whether summary judgment is appropriate. For brevity, I will refer the reader to the parties’ previous filings instead of restating each parties’ respective legal arguments in their entirety. Mr. Crisswell acknowledges that the Montana Supreme Court has routinely held, which the ALJ also references in her *Order*, that, “to demonstrate that disputed issues of fact exist, the opposing party may not rest upon mere allegations in the pleadings but has an affirmative duty to respond by affidavit and other sworn testimony containing material facts that raise genuine issues, conclusory or speculative statements will not suffice.” *Kloch v. Town of Cascade*, 284 Mont 167, 174, 943 P2d 1262, 1266 (1997). Mr. Crisswell believes that his statements contained in his Discovery Responses which were provided in his *Response to Motion for Summary Judgment* satisfy this requirement as his Discovery Responses were a sworn
statement and signed as such. The ALJ asserted that “Mr. Crisswell simply concludes he was misled. He does not provide any facts or discussion as to how he was misled and by whom, what portion of the fairly short recorded statement caused him to be misled or how the remaining portion of the statement revealed he had not lied.” (Order Page 13 Lines 11-16).

Mr. Crisswell’s Discovery Responses provided the following that provide the facts and discussion on how Mr. Crisswell was misled and by whom:

**Discovery Request No. 6(part 4):**

Admit in part and Deny in Part. I admit that October 8, 2019 is the date that POST appears received the Notice of Termination according to POST Exhibit #2 and agree that supplemental information was attached to the Notice of Termination. I deny that the Supplemental Information is an accurate summary of events. I acknowledge that I backed into my wife’s vehicle while driving my patrol vehicle. I acknowledge that this incident occurred in my driveway on real property owned by me. I acknowledge that I did not immediately notify my supervisor of the incident, but this was due to being called out on a call (BOLO) to locate an individual in a stolen vehicle and this person was known to be a dangerous person. I did notice a scuff on my patrol vehicle, however, due to the urgency of the call to locate the individual and stolen vehicle, I did not have a lot of time to really look at the area. After I had completed my search for the BOLO, I attempted the look at my vehicle closer, but it was dark at that time. The next day I did perform a more thorough look at my patrol vehicle and realized that the scuff could be considered more of a scratch. I wanted to error on the side of caution and make a report. When I called dispatch to file the CAD/patrol note, I was forthcoming that I had backed into my wife’s vehicle. I used the term “last night” as a general term to describe that the incident occurred the previous evening but I did not say “dark” or that it was “dark outside” and it was never intended that anyone would conclude that by using the term “last night” that I was implying it was dark outside at the time of the incident. In my call to dispatch, I communicated an appropriate approximated time that the incident occurred. I communicated that the incident occurred “about 19:30” and in review of the dash camera footage, the incident occurred at 19:43.

During a disciplinary hearing that was held on September 24, 2019, Colonel Butler and Sergeant Grover played only a brief excerpt of my July 31, 2019 call to dispatch (POST Exhibit 14). I recall that the portion of the dispatch call that was played at the September 24, 2019 hearing ended approximately at timestamp 2:25 to 2:29 and I was not able to listen to the full dispatch call that was provided in Exhibit 14. The first time I was able to listen to the full dispatch call was when it was
provided to me through this discovery process. During the September 24, 2019 disciplinary hearing, I was led to believe by all my supervisors that I had lied to dispatch. When that accusation was made, I was in shock and in disbelief as that is out of character for me. When only a portion of the dispatch audio call was played at the hearing and due to the tone and context of the conversations regarding their accusations, I was further misled into believing that I had lied to dispatch regarding the July 30, 2019 incident where I backed into my wife’s vehicle with my patrol vehicle. Upon listening to the full audio recording of my call to dispatch, I now know that I did not lie to dispatch in any way.

**Discovery Request No. 6-part 6:**
I did provide a response to the November 25, 2019 letter, but again on September 24, 2019 I was led to believe that I had lied to dispatch since only a small portion of the audio recording was played. If I do something wrong, I admit my errors and take steps to address those errors head on. In writing my December 26, 2019 response letter, I was trying to accept responsibility since I was led to believe I was untruthful in my call to dispatch. However, in my full review of the audio recording of my call to dispatch, I did not lie to dispatch.

In the October 8, 2019 POST Supplemental Information (POST Exhibit 18) that the ALJ also references in her Order on Page 2, Lines 1-7 stated:

> The day after the crash, he contacted the Communications Center to create a call for service. He reported the crash as having occurred during the evening and he wasn’t able to see damage to either vehicle due to it being dark outside. (emphasis added)

This is a misrepresentation of Mr. Crisswell’s call to the Communications Center.

This misrepresentation has only been perpetuated by POST throughout this matter and this misrepresentation caused Mr. Crisswell to say that he had lied to dispatch. Mr. Crisswell never said to the Dispatcher that he did not see damage to his wife’s vehicle, he only addressed the minor damage to his patrol vehicle during the call. See POST Exhibit 14.

> “Summary Judgment is an extreme remedy which should never be substituted for a trial if a material factual controversy exists.” Montana Metal Buildings, Inc v. Shapiro (1997)
Mr. Crisswell believes that summary judgment is not appropriate in this matter since a material factual controversy still exists regarding whether Mr. Crisswell was untruthful in the reporting of the vehicle accident.

2. Mr. Crisswell was not afforded the opportunity to cross-examine witnesses and information presented against him.

The Montana Administrative Procedure Act (MAPA) codified in Title 2, Chapter 4 of Montana Code Annotated sets forth the process and rules that govern contested case proceedings while recognizing one’s due process safeguards. Mont. Code Ann. §2-4-101(2)(b). Mont. Code Ann. §2-4-612 provides:

(1) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(5) A party shall have the right to conduct cross-examination required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

Due to the issuance of the *Order on Motion for Summary Judgment* Mr. Crisswell was not afforded the right to conduct a cross-examination of POST’s witnesses which they relied upon in their claim that there was an integrity violation.

3. Misinterpretation of Facts

Mr. Crisswell acknowledges that the primary issue in this matter is whether an integrity violation has occurred, which he vehemently denies. Mr. Crisswell also notes that there is misrepresentation of a fact to which he wishes to note exception. Mr. Crisswell denies that
his use of “last night” was used to imply it was dark outside at the time of the incident. He used that term to reference the time at which the incident occurred. Mr. Crisswell properly noted in his log the time (POST Exhibit 16), the approximated time the accident occurred and properly reported the approximated time that the accident occurred when he made the report to the Communication Center.

4. Mr. Crisswell’s “admissions” were not reliable evidence.

Mr. Crisswell’s “admissions” that he had lied to dispatch are unreliable as he was not provided the opportunity to review the entire dispatch call prior to his admissions. POST continued to claim to Mr. Crisswell that he reported to dispatch, “the crash as having occurred during the evening and he wasn’t able to see damage to either vehicle due to it being dark outside.” (POST Exhibit 18). The ALJ relies heavily upon Mr. Crisswell’s admissions as undisputed evidence, when these admissions were made prior to Mr. Crisswell being able to review the entire evidence against him.

5. Conclusion

Mr. Crisswell respectfully requests that the determination by the Administrative Law Judge be reviewed and that it respectfully be reversed or modified on the grounds as set forth above.

Dated this 19th day of May, 2021.

[Signature]
Beckie Williams,
Attorney for Patrick Crisswell
Certificate of Service

This is to certify that on the 19th day of May, 2021, I sent a true and correct copy of the foregoing by email and regular mail upon:

Michael L. Fanning
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Beckie Williams
STATE OF MONTANA
BEFORE THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

IN THE MATTER OF
PATRICK CRISSEWELL’S
CERTIFICATE REVOCATION

Case No. 19-58

POST’S RESPONSE TO PATRICK CRISSEWELL’S NOTICE OF EXCEPTIONS

I. INTRODUCTION.

This matter is before the POST Council upon Respondent Patrick Crisswell’s exceptions to the Hearing Examiner’s proposed order. The Hearing Examiner has entered a proposed order granting summary judgment to POST. Now POST Council’s function is to review the record and to enter a final agency action.

Because summary judgment is proper, POST Council should enter its Order adopting the Hearing Examiner’s findings of fact, conclusions of law and proposed order as the Council’s Final Agency Action.

II. STATEMENT OF THE CASE.

Patrick Crisswell formerly held peace officer basic and intermediate certificates. Mr. Crisswell was a trooper with the Montana Highway Patrol from 2013 to 2019 when
he resigned while under investigation by MHP. MHP’s investigation concerned the circumstances of a collision at Mr. Crisswell’s home between Mr. Crisswell’s patrol vehicle and a parked personal vehicle. Mr. Crisswell did not immediately report the collision as required by MHP policy. Additionally, Mr. Crisswell misrepresented the facts of the collision when he later reported the matter.

After completing his investigation, POST Bureau Chief Perry Johnson revoked Mr. Crisswell’s POST certification. As required by the Montana Administrative Procedure Act (MAPA), Bureau Chief Johnson issued his Notice of POST Action and Opportunity for Hearing on October 20, 2020. Through legal counsel, Mr. Crisswell requested an administrative contested case hearing under MAPA.

The administrative case was assigned to Hearing Examiner DeeAnn Cooney who conducted a scheduling conference on November 16, 2020. Following that hearing, Hearing Examiner Cooney issued a scheduling order. Her order of November 23, 2020, established a discovery schedule; set a deadline for prehearing motions, including motions for summary judgment; and set a contested case trial date on May 6, 2021.

POST tendered a set of discovery to Mr. Crisswell on November 13, 2020. That discovery included interrogatory questions, requests for production of documents, and requests for admission. Among the requests for admission was one seeking Mr. Crisswell’s agreement that a set of 12 named exhibits were authentic and admissible at the coming hearing. Mr. Crisswell supplied his discovery responses on December 16, 2020.

Summary judgment is appropriate when there are no disputes of material fact that require a contested case trial. POST’s motion for summary judgment collected undisputed facts from a number of sources: Mr. Crisswell’s discovery answers; Affidavits of POST paralegal Katrina Bolger, MHP Lt. Col. Jason Hildenstab, MHP IT
specialist Calvin Schock, and MHP POST-certified dispatcher Sydney Bangerter; Plus undisputed documents, a dash cam video recording of the accident and events immediately following the accident, an audio recording of Mr. Crisswell’s self-report to dispatch, and Mr. Crisswell’s text to the dispatcher. Together with the parties’ pleadings and other documents, these items make up the record in this case. M.C.A. § 2-4-614. Based on all of the foregoing, POST argued there are no material issues of disputed fact and moved for summary judgment in its favor.

Mr. Crisswell resisted POST’s motion for summary judgment. Mr. Crisswell denied any “integrity violation” and offered what he called disputed facts. Mr. Crisswell argued the Hearing Examiner should deny POST’s motion for summary judgment and the case should proceed to trial. Mr. Crisswell will make the same arguments to the POST Council.

The Hearing Examiner agreed with POST’s position. In her April 23, 2021, Order on Motion for Summary Judgment, the Hearing Examiner compiled an exhaustive list of undisputed facts. After agreeing summary judgment is allowed under MAPA, and after reviewing POST’s laws, rules, and ethical standards, the Hearing Examiner wrote, “there are no disputed facts requiring a trial.” Order at 16. The Hearing Examiner’s sound reasoning is summed up in one paragraph:

The undisputed facts as discussed above reflect that Mr. Crisswell failed to report the crash immediately as he was required to do, then lied to Dispatch about the circumstances of the crash and his discovery of the damage when he did report the crash, and omitted details relating to the damage to his wife’s vehicle when he initially spoke to his captain. Mr. Crisswell suggests that a hearing needs to be held to interpret the facts and his actions from a perspective he gleaned after hearing the whole Dispatch audio of his report. However, his denial or reinterpretation of the events cannot overcome the evidence from the video of the crash, the audio of his report to Dispatch, or his specific statements regarding the crash.

Hearing Examiner Cooney’s Order on Motion for Summary Judgment at 16.
Under MAPA, a party may enter “exceptions” to a hearing examiner’s proposed decision, identifying errors that party believes are found in the decision. M.C.A. § 2-4-621(1). POST now files its response to Mr. Crisswell’s exceptions. The matter will be presented to POST Council for its review. POST Council’s options upon review are taken up in the next section.

III. POST COUNCIL’S OPTIONS UNDER MAPA.

POST Council’s duty and the administrative procedure are set out in MAPA. Each party may submit a brief on Mr. Crisswell’s exceptions to the Hearing Examiner’s decision. A.R.M. § 23.13.719(2). POST Council will hear oral argument at its August 11, 2021, Council meeting. M.C.A. § 2-4-621. Following that argument, the Council may:

a) Adopt the Hearing Examiner’s decision as written; OR
b) Reject or modify the legal grounds for that decision;
c) Alter the proposed findings of fact, but only in very limited circumstances; AND/OR
d) Accept or reduce the penalty or increase the penalty in very limited circumstances.

The complete text of the applicable statute follows:

(3) [a] The agency may adopt the proposal for decision as the agency’s final order. The agency in its final order [b] may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but [c] may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency [d] may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

M.C.A. § 2-4-621(3) (emphasis and reference lettering added).
POST Council is entitled to examine and consider the entire "record" of the case. The record is defined in M.C.A. § 2-4-614 and includes the pleadings and motions. In this case, the motions include a considerable collection of discovery and affidavits POST submitted in support of its motion for summary judgment. All of that material is before the Council.

Each member of the Council should carefully study the material, but if the Council intends to reject or modify findings of fact or if the Council intends to increase the proposed sanction each member of the Council first must have reviewed the complete record. § 2-4-621(3). In that event, the parties may ask for a poll of the Council to assure that each member has reviewed the entire record before altering findings of fact or before increasing the sanction.

Altering a finding of fact is more difficult than correcting a conclusion of law. The POST Council may "correct a Hearing Examiner's incorrect conclusions of law" in a final order without having to review the entire factual record. *Mont. Dept. of Transp. v. Mont. Dept. Labor and Industry*, 2016 MT 282, ¶ 23, 385 Mont. 274, 384 P.3d 49; M.C.A. § 2-4-621(3). However, the POST Council cannot discard a Hearing Examiner's factual findings without reviewing the entire record. *Mayer v. Bd. of Psychologists*, 2014 MT 85, ¶¶ 7, 27-29, 374 Mont. 364, 321 P.3d 819.

"Under MAPA, an agency may reject a hearing officer's findings of fact only if, upon review of the complete record, the agency first determined that the findings were not based upon competent substantial evidence." *Blaine County v. Stricker*, 2017 MT 80, ¶ 25, 387 Mont. 202, 394 P.3d 159 (internal quotation marks omitted; citing *Moran v. Shotgun Willies*, 270 Mont. 47, 51, 889 P.2d 1185, 1187 (1995); M.C.A. §2-4-621(3)).

"In reviewing findings of fact, the question is not whether there is evidence to support different findings, but whether competent substantial evidence supports the findings"

Changes to findings of fact may be done with great care after a review of the complete record. “An agency abuses its discretion if it modifies the findings of a hearing officer without first determining that the findings were not supported by substantial evidence.” Stricker, ¶ 25. “[A]n agency’s rejection or modification of a hearing officer’s [factual] findings cannot survive judicial review unless the court determines as a matter of law that the Hearing Examiner’s findings are not supported by substantial evidence.” Stricker, ¶ 25.

In Stricker, the Montana Supreme Court offered this definition of substantial evidence:

Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. It consists of more [than] a mere scintilla of evidence but may be less than a preponderance. The evidence is viewed in the light most favorable to the prevailing party when determining whether findings are supported by substantial credible evidence.

Stricker, ¶ 26 (internal citations and quotations omitted); see also, Mayer, ¶ 27.

Council members may look at any portion of the record to decide whether findings of facts are supported by “substantial evidence.” If the Council determines factual findings are not so supported, all voting Council members must review the entire record before modifying any of the Hearing Examiner’s findings.

II. ARGUMENT

A. POST Council Should Reject Crisswell’s Exceptions Arguments Because He Raises No Issues of Material Fact.

Mr. Crisswell agrees summary judgment is allowed in POST disciplinary cases, but argues he established that there are fact disputes that must be resolved by a trial. The Hearing Examiner considered and rejected that assertion. POST Council should reject it as well.
Mr. Crisswell’s exceptions attempt to muddy the issue of his misconduct by charging his MHP supervisors misled him months later. Mr. Crisswell argues that during MHP’s September 2019 disciplinary hearing, MHP only played a portion of his call to dispatch to report accident. Mr. Crisswell claims hearing a portion of the audio compelled him to admit violations that he did not actually commit.

The error of that claim – one the Hearing Examiner obviously understood – is this: POST’s allegations are based on what Mr. Crisswell did and failed to do in July 2019: his delay in reporting the accident and his misleading statements and omissions about the circumstances of the accident. POST’s case, and the Hearing Examiner’s ruling, were not dependent on admissions to MHP Mr. Crisswell volunteered later. POST Council should disregard the contrived “dispute” about what may have occurred during the MHP inquiry in September 2019. The Hearing Examiner was only concerned with events in July 2019 and Mr. Crisswell’s statements to POST.

Summary judgment is proper when there are no genuine issues of material fact. Mont. R. Civ. P. 56(c). Mr. Crisswell’s exceptions must fail because any claim about what may have occurred in September 2019 is not material to Mr. Crisswell’s misconduct in July of that year.

The Hearing Examiner properly limited her review to the undeniable material facts perfectly preserved in a dashcam video recording, an audio recording, and his text confession to the dispatcher – all of which is bolstered by POST’s discovery and affidavits. The Hearing Examiner carefully reconstructed the facts by a close study of the dash cam video and recorded dispatch call. Order at 3-4. Additionally, the Hearing Examiner relied upon admissions Mr. Crisswell made directly to POST during its investigation. The United States Supreme Court has tossed aside claims of fact disputes where a video recording exists, establishing what actually occurred. Scott v. Harris, 550

Mr. Crisswell’s brief attempts to magnify the significance of a comment in an MHP supplemental note which remarks about damage to both vehicles. Crisswell Exceptions Brief p.4, l.12 to 16. Admittedly, the Hearing Examiner’s proposed findings makes mention of that supplemental note. See Order at 2. Though there is mention of the document generally, neither POST nor the Hearing Examiner relied upon MHP’s “damage to either vehicle” passage about which Mr. Crisswell complains. Since the Hearing Examiner did not rely upon that passage, and since there is no finding of fact on that point, Mr. Crisswell’s exception is unfounded.

B. The Hearing Examiner Correctly Ruled That The Undisputed Facts Prove Sanctionable Violations.

Mr. Crisswell violated ARM 23.13.702(2)(a) when he provided false information to dispatch regarding the conditions of his July 30, 2019, motor vehicle accident. The in-car video of the incident shows the accident happened in the daylight. The video also shows that Mr. Crisswell spent approximately five minutes examining both vehicles, and even had another individual, believed to be Mr. Crisswell’s wife, come out of his home and view the damage with him. Mr. Crisswell was a Montana Highway Patrol Trooper with over six years of experience and has received hundreds of hours of training, including numerous hours specifically in crash investigation.

The day after the accident, Mr. Crisswell told dispatch, “this actually happened last night, and I didn’t see anything, but now that I can see it in the daylight, I do have a little bit of damage to my patrol car.” That characterization is not an accurate report of what occurred and was intended to mislead. Stating he saw no damage “last night,” Mr.

POST’S RESPONSE TO PATRICK CRISWELL’S NOTICE OF EXCEPTIONS PAGE 8

~115~
Crisswell plainly suggested it was too dark to discern what he could see the next day "in the daylight." Mr. Crisswell knew full well the extent of the damage to both vehicles. Yet he falsified the facts in his call to dispatch.

The Hearing Examiner properly found that the video evidence conclusively establishes the time of day, lighting conditions, and the time elapsed from the collision until Mr. Crisswell's departure. As the Hearing Examiner stated in her Proposed Order at page 15, "The video evidence of the accident and the audio recording of Mr. Crisswell's call to Dispatch can only lead to one reasonable conclusion." The conclusion, fairly and justifiably drawn from undisputed facts, is that Mr. Crisswell falsified his report of the incident. Due to his willful falsification of information in conjunction with official duties, Mr. Crisswell's POST certification is revoked.

Mr. Crisswell violated ARM 23.13.702(2)(g) by his willful violation of policies, procedures, rules, or regulations when he failed to immediately report his accident involving his patrol vehicle. In addition, § 61-7-108, MCA requires immediate notification to law enforcement when an accident occurs which involves property damage which exceeds $1,000. Due to Mr. Crisswell's violations of policies and laws, he has violated this rule.

Mr. Crisswell violated ARM 23.13.702(2)(h) by engaging in conduct in violation of ARM 23.13.203(3)(a) and (i). Mr. Crisswell did not serve the community, safeguard lives and property, protect the innocent, or keep the peace by failing to properly report his accident, and then lying when he finally did report the accident. Mr. Crisswell also did not ensure that his character and conduct were admirable by his actions, and certainly discredited the profession of public safety by his actions.

Mr. Crisswell violated the public's trust by his actions as stated ARM 23.13.702(2)(i).
Mr. Crisswell has violated subsection (2)(l) of 23.13.702. By almost all of his actions outlined in the Statement of Undisputed facts, Mr. Crisswell has harmed his reputation as an officer.

The purpose of summary judgment is to encourage judicial economy through the prompt elimination of questions not deserving of resolution by trial. Harland v. Anderson, 169 Mont. 447, 450, 548 P.2d 613, 615 (1976). It is obvious that Mr. Crisswell’s behavior violates the standards of conduct for public safety officers in Montana.

IV. CONCLUSION.

The Hearing Examiner carefully reviewed an extensive record and found multiple violations which support sanctioning Mr. Crisswell. The Hearing Examiner correctly determined, based on her Findings of Fact, that the appropriate sanction for Mr. Crisswell’s violations is revocation of his POST certification. Mr. Crisswell’s exceptions have no support in either the law or the facts and should be rejected altogether. The POST Council should adopt the Hearing Examiner’s Proposed Order in its entirety as the POST Council’s Final Agency Action.

DATED this 28th day of May, 2021.

MICHAEL L. FANNING
CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing to be sent to:

Beckie Williams
Law Office of Beckie Williams
214 W. Main Street, Ste. 207
Lewistown, MT 59457

DATED: 05/28/2021
June 8, 2021

Attorney General Austin Knudsen
Office of the Attorney General
215 N. Sanders Street
P.O. Box 201401
Helena, MT 59620-1401

Re: Attorney General Opinion Request

Dear Attorney General Knudsen:

On behalf of the POST Council, I am writing to request an Attorney General Opinion to address:

Does the POST Council’s definition of “Conviction,” in Administrative Rule of Montana 23.13.102(4) comport with the provisions of Mont. Const., Art. II, § 28?

Does the POST Council’s definition of “Conviction,” in Administrative Rule of Montana 23.13.102(4) exceed the Council’s statutory authority to adopt rules for the purpose of establishing basic and advanced qualification and training standards for employment of public safety officers?

A legal memorandum with POST’s research and conclusion is attached for your reference. Thank you for your assistance with this issue.

Sincerely,

[Signature]

Jesse Slaughter
POST Council Chair

Enc.
MEMORANDUM

TO: Attorney General Austin Knudsen

FROM: Jesse Slaughter, POST Council Chair

RE: POST Council ability to deny certification for individuals who have prior felony convictions or who have plead guilty to felony offenses, regardless of later dismissal pursuant to a deferred sentence.

DATE: June 7, 2021


Question Presented: Does the POST Council’s definition of “Conviction,” in Administrative Rule of Montana 23.13.102(4) comport with an individual’s constitutional right to pursue employment and to have his rights restored upon completion of a criminal sentence?

Short Answer: Yes. The Supreme Court has stated that there is no right or property interest in any particular job or employment, and that the fundamental right to pursue employment is still subject to the State’s police power to protect the public health and welfare. Mont. Cannabis Indus. Ass’n v. State, 2012 MT 201, ¶¶ 18-19, 366 Mont. 224, 286 P.3d 1161 (citations omitted).

Second Question Presented: Does the POST Council’s definition of “Conviction,” in Administrative Rule of Montana 23.13.102(4) exceed the Council’s statutory authority to adopt rules for the purpose of establishing basic and advanced qualification and training standards for employment of public safety officers?

Short Answer: No. Based on the statutory authority granted to POST, the Council and public safety agencies may preclude employment of an individual who has a prior conviction, whether or not it still remains upon their record. Because the provisions of Mont. Code Ann. § 37-1-203 do not apply to boards administratively attached to the Department of Justice, POST need not determine that the felony offense related to the public health, welfare, and safety, nor must POST conduct an investigation to determine whether an individual has been sufficiently rehabilitated.

~120~
Discussion:

STATUTORY AUTHORITY:
Montana Code Annotated Section 2-15-2029 provides in (2) that the Montana POST Council may adopt rules to implement the provisions of Title 44, Chapter 4, Part 4.

Montana Code Annotated Section 44-4-403 identifies the Council’s statutory duties. Subsection (1)(a) mandates that the Council establish basic and advanced qualification and training standards for employment of public safety officers.

Montana Code Annotated Section 7-32-303 (2019) provides in Subsection (2)(d) that in order to be appointed as a peace officer, a person “must not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary.” Subsection (5) further provides that appointing authorities have a duty to ensure that all peace officers meet POST’s requirements for certification.

Montana Code Annotated Sections 45-2-101(16) and 46-1-202(7) define Conviction as: “a judgment of conviction and sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

ADMINISTRATIVE RULE:
The Montana POST Council in interpreting and enforcing these statutes, has adopted a rule defining what constitutes a conviction. ARM 23.13.102(4) provides: “Conviction means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, without regard to the sentence imposed or whether the charge is later dismissed.” The difference between the Statutory and Administrative definitions of “Conviction” is the addition by POST of the last phrase addressing what sentence is imposed and whether or not the conviction is later expunged or dismissed.

POST Council Analysis:
Recently the POST Council has had several cases where local law enforcement agencies have sought to hire persons who have plead guilty or been found guilty of a felony crime and later had that conviction dismissed pursuant to Mont. Code Ann. § 46-18-204, whereby the court has found them to be guilty of the felony offense. After completing a period of probation, the person has been allowed to have the guilty plea withdrawn and a plea of not guilty entered and the charge dismissed. However, they have either admitted to having committed the felony or been found guilty of having committed the felony, which would preclude them from being appointed as a law enforcement officer pursuant to the Administrative Rule.
Restoration of Rights: A primary concern of the POST Council is the applicability of the Montana Constitutional requirement that, after a convicted person has completed the supervision portion of their sentence, they be restored all of their Constitutional Rights (Mont. Const., Art. II, § 28), including the right to pursue employment under Mont. Const. Art. II, § 3. The Montana Supreme Court has examined the issue of the State’s ability to restrict professions. As was provided above, in Mont. Cannabis Indus. Ass’n., the Court found that Art. II, § 3 does not “grant a right or property interest in any particular job or employment.” Mont. Cannabis Indus. Ass’n., ¶ 18 (quoting Wadsworth v. State, 275 Mont. 287, 301, 911 P.2d 1165, 1173 (1996) (emphasis in original)). The Court went on to state that, in Wiser v. State, 2006 MT 20, ¶ 24, 331 Mont. 28, 129 P.3d 133, they observed, “[t]he Constitution is clear. While it granted the fundamental right to pursue employment, it also circumscribed that right by subjecting it to the State’s police power to protect the public health and welfare.” Mont. Cannabis Indus. Ass’n., ¶ 19 (emphasis removed). Here, as the Board in Wiser, the Montana POST Council has exercised its power to protect the public health, safety, and welfare by creating a clear standard that public safety officers may never have been convicted of a felony offense, regardless of whether the conviction was later dismissed.

Statutory Authority
The rationale behind the POST Rule is that the public’s safety, health, and welfare are dependent on public safety officers being trustworthy and of “good moral character” such that they have not engaged in felonious conduct. Mont. Code Ann. § 7-32-303(2)(e). In reaffirming officers’ have a diminished expectation of privacy in Montana, the Montana Supreme Court has recognized that public safety officers in Montana are in a unique position such that “the public health, safety, and welfare are closely tied to an honest police force. The conduct of our law enforcement officers is a sensitive matter…. ” Unidentified Police Officers 1, 2, & 3 v. City of Billings, 2019 MT 299, ¶ 11, 398 Mont. 226, 454 P.3d 1205 (quoting Great Falls Tribune Co. v. Cascade Ct. Sheriff, 238 Mont. 103, 107, 775 P.2d 1267, 1269 (1989). Regardless of the posture of an individual’s felony conviction, they cannot erase the underlying conduct in which they engaged. The Rules for Lawyer Disciplinary Enforcement have a similar provision in Rule 8 B. “Acquittal of a charge of crime, plea bargain, conviction of a lesser crime, or dismissal of a charge of crime after deferred imposition of sentence shall not constitute a bar to lawyer discipline for that act, nor shall conviction in a criminal proceeding be a condition precedent to the institution of disciplinary proceedings for that act.” Emphasis added.

The counter argument that has been presented in dealing with these cases has been that Mont. Code Ann. § 7-32-303(2)(d) does not apply, as the person no longer has a felony conviction on their record and thus is eligible for employment in Montana as a public safety officer. POST’s response to this argument is to go to the plain language of the statute, that it applies to a person who “has been convicted” of a felony, and not whether or not they still have a felony conviction on their record. (“Language that is clear and unambiguous, using words’ plain and ordinary meanings, requires no further

Finally, the provisions of Mont. Code Ann. § 37-1-203 are inapplicable to boards administratively attached to the Department of Justice. Pursuant to Mont. Code Ann § 37-1-130(2), a “Board” is defined as “a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.” (Emphasis added.) In turn, Mont. Code Ann. § 37-1-130(4) defines “Department” as “the department of labor and industry established in 2-15-1701.” POST is allocated to the Department of Justice. Mont. Code Ann. § 2-15-2029(1)(a). Therefore, POST need not determine that an individual’s felony offense related to the public health, welfare, and safety, nor must POST conduct an investigation to determine whether an individual has been sufficiently rehabilitated.

The POST Council views its role in overseeing hiring decisions by public safety agencies as that of the gatekeeper, to ensure that only persons of high moral character are allowed to police its streets and communities and to carry firearms and use lethal force in doing so. POST recognizes the consequences for state and local public safety agencies in having persons in these positions who have exhibited poor decision making in the past. There is an increased liability issue for these agencies if they hire persons who have prior felony criminal records and for POST if they certify them.

CONCLUSION
POST’s definition of “Conviction” in ARM 23.13.102(4) does not violate a person’s constitutional rights under Mont. Const. Art. II, §§ 3, 24. The Legislature has forbidden appointment of peace officers who have been convicted of a felony in Mont. Code Ann. § 7-32-303(2)(d). The POST Council, has appropriately exercised its statutory authority over the employment qualifications and standards for public safety officers, by adopting an Administrative Rule which disallows appointment of any person who has been convicted of a felony offense, regardless of whether or not the conviction has been dismissed based upon a deferred imposition of sentence. POST’s definition of “Conviction” in ARM 23.13.102(4) does not violate Montana Law.
The following Statutes and Montana Supreme Court Cases have been reviewed in preparation of this Request for a Legal Opinion.

LEGAL REFERENCES

**Montana Constitution**
- Article II, Section 3
- Article II, Section 24

**Montana Code Annotated**
- § 1-2-106
- § 1-2-107
- § 2-15-121
- § 2-15-124
- § 2-15-2029
- § 7-32-303
- § 37-1-130
- § 37-1-203
- § 44-4-403
- § 45-2-101
- § 46-1-202
- § 46-18-204

**Montana Supreme Court Cases**
- *Mont. Indep. Living Project v. City of Helena*, 2021 MT 14, 403 Mont. 81, 479 P.3d 961
- *Unidentified Police Officers 1, 2, & 3 v. City of Billings*, 2019 MT 299, 398 Mont. 226, 454 P.3d 1205
Good Morning Sheriff,

I'd like to introduce myself before proceeding into why I'm contacting you. My name is Tim Martindale. I'm the Director of Gallatin County 911. I have been here for a little over 1 ½ years. I previously held the position of Director for PACC in Washington State. I was heavily involved in trying to pass statewide certification for dispatchers in Washington. I was very excited to learn, prior to moving to Montana, that dispatchers in the state have to be certified through POST.

The reason for this email is that I'm running into an issue with certifying our staff. We currently send all of our dispatchers to POST for the 2 week certification course. Our issue is that the last week of the course is focused on Emergency Medical Dispatch through Criteria Based Dispatch. We currently use Priority Dispatch for eMD and EFDD. By sending our staff to get certified through the state we are wasting a week of their training. They get trained in CBD and then return to our center to spend a week training in EMD. We (like many across the state) are short staffed and that extra week means a lot to us.

I've asked the question about getting an exemption because our staff is receiving EMD training and certification outside of POST. Everyone I've talked to has advised me that POST is unable to give exemptions and/or is unable/unwilling to change their stance on EMD training. As the chair of the Council I was hoping you could point me in the right direction or give some guidance to this issue. I have spoken with Billings about how and why they don't send their dispatchers to POST to be certified. I look at that as a last option and something I don't want to do but I'm getting to the point that I don't want to continue wasting our time and finances on a week of frivolous training. Some guidance would be appreciated.

Best Regards,

Tim Martindale Jr  RPL, CMCP
Director

O: (406)582-2055  C: (406) 548-5733  E: tim.martindale@gallatin.mt.gov
Address: 1705 Vaquero Parkway, Bozeman, MT 59718
Director Young,


After speaking to Perry, we will place this on the agenda for the council’s review in August.

Katrina Bolger, ACP
Advanced Certified Paralegal – Discovery
Montana Public Safety Officer Standards and Training Council
2260 Sierra Road East
Helena, MT 59602
Phone: 406-444-9974
Fax: 406-444-9978
Office Hours: Mon.-Fri, 8:00-4:00
Texas) indicating that lesson plans/materials are considered proprietary and thus will not be provided and (3) an outline lacking course learning objectives, times or other such information that would elucidate the content and structure of the program. I’ve attached all these documents as well as a redacted version of the email from the Sheriff’s Dept. in response to my request.

My understanding of the basic POST certification requirements is that a course must consistent with generally recognized best practices; comport with Montana law and court decisions and contain content that has been reviewed and approved by the agency hosting the training. Further, my understanding is that material must be provided that shows the course content, including an agenda, syllabus and lesson in addition to the advertisement, and that such records are subject to audit.

With the very limited information available, it’s hard to imagine how a determination could be made that the course is consistent with the requirements outlined in rule 23.31.301. We remain especially concerned, given that the Constitutional Sheriffs & Peace Officers Association is an anti-government extremist group with the goal of spreading anti-government extremist ideology (of the “patriot” movement kind) among law enforcement, especially county sheriffs. Richard Mack is a former sheriff who has a long history of anti-government extremism, including being one of the founding members of the Oath Keepers, many of whom were recently involved in the storming of the Capitol.

Is there a process through which an audit, such as is described in rule 23.31.301, can be initiated?

Best,

Angelic Young
Director of Professional Development, Law Enforcement Programs
ayoung@adl.org(cell) 202-431-5085

ADL.
From: Johnson, Perry <PJohnson@mt.gov>
Sent: Thursday, July 1, 2021 3:15 PM
To: Bolger, Katrina <KBolger@mt.gov>
Subject: Fwd: [EXTERNAL] Request for information about training/training requirements

Please respond

---
Sent from Workspace ONE Boxer [whatisspaceone.com]

---------- Forwarded message ----------

From: Young, Angelic <AYoung@adl.org>
Date: July 1, 2021 at 3:00:09 PM MDT
Subject: [EXTERNAL] Request for information about training/training requirements
To: Johnson, Perry <PJohnson@mt.gov>

Director Johnson,

I hope this message finds you well. By way of introduction, my name is Angelic Young, and I lead the ADL’s law enforcement professional development and education programs. I’ve been working with law enforcement for 20 years providing training, assistance and advisory support.

I’m reaching out regarding a course understand to be offered and POST-certified in Montana called “Constitutional Training,” with the instructor of record listed as Richard Mack. Is it possible to see a copy of the course materials submitted to POST for review? The information contained in schedule quite brief, so it’s hard to get a sense of what’s covered in the program – what the core learning objectives are or what concepts are addressed. Would you be able to assist me in finding out more information?

Thanks much in advance for any help you can provide,

Angelic Young
Director of Training, Law Enforcement Programs
ayoung@adl.org(cell) 202-431-5085
POST Council Committees 5/29/19

BUSINESS PLAN/POLICY
Kimberly Burdick – Chairman
Tia Robbin
Ryan Oster
Jess Edwards
EJ Clark

CURRICULUM REVIEW
Conner Smith – Chairman
Jim Thomas
Bill Smith
Brian Gootkin
Glen Stinar

CASE STATUS
Jim Thomas – Chairman
Tony Harbaugh
John Strandell
Matt Sayler

CORONER
Leo Dutton – Chairman
Bill Smith
Kristine White
Wyatt Glade

ARM
Leo Dutton – Chairman
Jess Edwards
Tia Robbin
Bill Smith
Jesse Slaughter
August 6, 2021

To: POST Council

From: Jim Thomas, Case Status Committee Chair

Subject: Closure of Cases

This is the Committee’s written report setting forth the circumstances and resolution of cases. After consultation with legal counsel and meeting of the Case Status Committee of the POST Council, the following cases have been closed:

2016: No Cases from 2016 were closed

There are 2 open cases from 2016. Both officers are serving a sanction.

2017: No Cases from 2017 were closed

There is one open case from 2017. That case is in district court.

2018: No cases from 2018 were closed

There are 3 open cases from 2018. In two cases, the officer is serving a sanction, and one case is an active investigation.

2019: Three cases from 2019 were closed

19-54 was closed. An officer was alleged to have lied about a conviction during his hiring process. POST entered a stipulated sanction with the officer. The officer violated his agreement with POST and has been revoked.

19-59 was closed. An officer became highly intoxicated and engaged in offensive behavior in the community. POST has closed this case without sanction due to the officer’s actions to avoid the same issue.

19-43 was closed. An officer was involved in an accident after drinking alcohol. The officer fled the scene and refused to respond to officers who arrived at his home. POST entered a stipulated agreement with the officer for his certification to be on probation for 3 years. However, POST became aware of additional misconduct involving alcohol and the officer’s certificates were revoked in 20-45, below.
There are 13 open cases from 2019. Seven officers are serving a sanction, four cases are active investigations, and two cases are in the contested case hearing process.

2020: Seven cases from 2020 were closed

20-45 was closed. After POST investigated allegations in 19-43, but prior to the stipulated agreement initiating, the officer became intoxicated while on call and engaged in offensive behavior in public. POST revoked his certification when he did not respond to the new allegations.

20-08 was closed. An officer became involved in a romantic relationship with a subordinate in the department, which eventually became disruptive in the workplace. The officer became intoxicated and went to the department. He became intoxicated and law enforcement were called to a disturbance between him and his wife and for a welfare check. Prior to entering into an agreement for a sanction, law enforcement were again called to the officer’s residence due to another disturbance between the officer and his wife. The officer was again intoxicated during this event. POST revoked his certification.

20-38 was closed. An officer was charged with a felony sexual offense. The officer was acquitted at trial and POST dismissed its case.

20-40 was closed. An officer engaged in a sexual relationship with a dispatcher while on duty and in the dispatch center. POST revoked his certification when he failed to respond.

20-39 was closed. An officer was involved in a use of force incident. The officer was not found to have used excessive force, but he was unprofessional and angry. POST dismissed the case, finding that the agency and the officer responded appropriately to the issue.

20-32 was closed. An officer was terminated for various performance issues. The officer and POST entered into a formal stipulated agreement, which the Council approved at its last meeting.

20-43 was closed. A dispatcher was involved in a romantic relationship with a deputy while on duty and in the dispatch center. The dispatcher voluntarily surrendered her certification.

There are 17 open cases from 2020. Three cases are on hold pending other matters, in eight cases the officers are serving a sanction, two cases are in the contested case process and four cases are active investigations.

2021: Eight cases from 2021 were closed

21-02 was closed. The officer was found sleeping on duty. The officer and POST entered into a stipulated agreement for a stayed suspension period if the officer ever returns to public safety.
21-37 was closed. An officer was having an inappropriate, romantic relationship with an inmate. The officer voluntarily surrendered her certification.

21-10 was closed. An officer was involved in a motor vehicle accident while he was highly intoxicated. The officer’s certification was revoked when he failed to respond to POST’s allegations.

21-14 was closed. After his assigned vehicle was seen at a subordinate’s house, the officer admitted that he was having a relationship with the subordinate. The officer agreed not to return to public safety.

21-17 was closed. An officer was alleged to have made inappropriate, discriminatory statements to a subordinate during a performance evaluation. The officer agreed not to return to law enforcement.

21-31 was closed. The officer was alleged to have repeatedly lied to officials in his department. The officer voluntarily surrendered his certification.

21-12 was closed. An officer used excessive and unnecessary force on an individual within seconds of arriving on a scene. The officer voluntarily surrendered his certification.

21-13 was closed. An officer was convicted of felony theft and possession of dangerous drugs. The officer’s certification was revoked when he failed to respond to POST’s allegations.

There are 32 open cases from 2021. Of those, 29 cases are active investigations and three officers are serving a sanction.

Since the last Council meeting, POST has closed a total of 18 cases.

POST currently has 39 active investigations.
POST currently has 4 cases which are in the MAPA process.
POST currently has 1 case on judicial review.
POST currently has 11 new allegations to present to case status.
POST currently has 18 cases awaiting information from agencies.
POST currently has 3 investigations on hold pending other matters.

POST has a total of 76 cases which it is currently working on.

POST currently also has 22 cases in which officers are serving sanctions.
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| **TOTAL** | 61000 Personal Services | 44,873.39 | 343,304.59 | 343,304.59 |            |                        |

| **TOTAL** | 62100 Other Services | 9,157.03 | 56,272.98 | 56,272.98 |            |                        |

| **TOTAL** | 62200 Supplies & Materials | 3,583.88 | 32,757.60 | 32,757.60 |            |                        |

| **TOTAL** | 62300 Communications | 2,288.78 | 4,713.91 | 4,713.91 |            |                        |

| **TOTAL** | 62407 In-State Meals | 34.00 | 34.00 |            |            |                        |
### PART-A ACTUAL EXPENSE ACCOUNT SUMMARY

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|         | TOTAL FUND 01100 General Fund |       |       |         | 10,297.57 | 10,297.57 | 100.00-|

|         | TOTAL SUB-CLS 195H1 CRIMINAL INVESTIGATE DIVISION |       |       |         | 975.48   | 975.48- | 97.54-|
|         | TOTAL FUND 02546 MT Law Enforcement Academy |       |       |         | 975.48   | 975.48- | 97.54-|

| 61100   | Salaries | 02546 | 2021 | 195H1   | 188,710.19 | 248,405.86 | 59,695.67- | 132 |
| 61400   | Employee Benefits | 02546 | 2021 | 195H1   | 77,078.81 | 95,112.83 | 18,034.02- | 123 |
|         | TOTAL 61000 Personal Services |       |       |         | 265,789.00 | 343,518.69 | 77,729.69- | 129 |
| 62100   | Other Services | 01100 | 2021 | 195H7   | 24.19     | 24.19-   | 24.19- |
|         | TOTAL 62100 Other Services |       |       |         | 24.19     | 24.19-   | 24.19- |
| 62200   | Supplies & Materials | 02546 | 2021 | 195H1   | 15,578.00 | 32,757.60 | 17,179.60- | 210 |
| 62300   | Communications | 02546 | 2021 | 195H1   | 6,998.00  | 4,713.91 | 2,284.09- | 67 |
| 62400   | Travel | 02546 | 2021 | 195H1   | 31,019.00 | 10,337.91 | 20,681.09 | 33 |
| 62500   | Rent | 02546 | 2021 | 195H1   | 10,427.00 | 3,041.63 | 7,385.37 | 29 |
| 62700   | Repair & Maintenance | 02546 | 2021 | 195H1   | 24.19 | 231.21 | 18.79 | 92 |
| 62800   | Other Expenses | 02546 | 2021 | 195H1   | 8,622.00 | 1,896.21 | 6,725.79 | 22 |
|         | TOTAL 62000 Operating Expenses |       |       |         | 205,869.00 | 109,092.51 | 96,776.49 | 53 |
|         | TOTAL SUB-CLS 195H7 STATE ITSD (RST) |       |       |         | 24.19 | 24.19- | 24.19- |
|         | TOTAL FUND 01100 General Fund |       |       |         | 24.19 | 24.19- | 24.19- |
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|         | TOTAL FUND 02016 Criminal Justice Info Network |       |       |         | 24.19 | 24.19- | 24.19- |

<p>|         | TOTAL SUB-CLS 195H1 CRIMINAL INVESTIGATE DIVISION |       |       |         | 471,408.00 | 452,331.61 | 19,076.39 | 96 |
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|         | TOTAL FUND 02546 MT Law Enforcement Academy |       |       |         | 471,658.00 | 452,562.82 | 19,095.18 | 96 |</p>
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Montana Public Safety Officer Standards and Training (POST) Council
2021

Ryan Oster
Hamilton Police Department
223 S. 2nd Street
Hamilton, Montana 59840
(406) 363-2100
chief@cityofhamilton.net
Term ends: January 1, 2023 (2nd term)
Qualification: Chief of Police

Jess Edwards
Box 348
Browning, MT 59417
(406) 450-6090
chiefjessedwards@gmail.com
Term ends: January 1, 2023 (1st term)
Qualification: Certified Tribal Law Enforcement Representative

Matt Sayler
Butte Silver Bow Law Enforcement
15 East Center Street
Butte, MT 59701
(406) 490-5724 (cell)
(406) 497-1171 (work)
msayler@bsb.mt.gov
Term ends: January 1, 2023 (1st term)
Qualification: Local Law Enforcement Officer (non administrative)

Wyatt Glade
1010 Main Street
Miles City, MT 59301
(406) 874-3310 (work)
(406) 421-5695 (home)
w.glade@co.custer.mt.us
Term ends: January 1, 2023 (1st term)
Qualification: Board of Crime Control Representative

Conner Smith
2550 Prospect Ave
Helena, MT 59601
(406) 461-4115
csmith2@mt.gov
Term ends: January 1, 2025 (1st term)
Qualification: State Government Law Enforcement Representative
**Jesse Slaughter**  
3800 Ulm North Frontage Road  
Great Falls, MT  59404  
(406) 454-7688  
jslaughter@cascadecountymt.gov  
Term ends: **January 1, 2025 (1st term)**  
Qualification: Sheriff

**Kevin Olson**  
PO Box 201301  
Helena, MT  59620-1301  
(406) 444-9610  
kolson@mt.gov  
Term ends: **January 1, 2023 (2nd term)**  
Qualifications: Department of Corrections Representative

**Bill Smith**  
920 Main Street, Ste. 100  
Kalispell, MT  59901  
(406) 758-5919  
wsmith@flathead.mt.gov  
Term ends: **January 1, 2025 (1st term)**  
Qualification: Detention Center Representative

**Kimberly Burdick**  
Chouteau County Sheriff’s Office  
Box 459  
Fort Benton, MT  59442  
(406) 622-5425  
kburdick53@outlook.com  
Term ends: **January 1, 2025 (3rd term)**  
Qualification: Public Representative

**Jim Thomas**  
P. O. Box 503  
Canyon Creek, MT  59633  
H: (406) 368-2349  
barlazyl@linctel.net  
Term ends: **January 1, 2025 (3rd term)**  
Qualification: Public Representative
Leo Dutton  
221 Breckenridge  
Helena, MT  59601  
(406) 447-8235  
ldutton@lecountymt.gov  
Term ends:  January 1, 2025 (2nd term)  
Qualification:  Montana Board of Crime Control

Tia Robbin  
P.O. Box 842  
Kalispell, MT 59903  
(406)-250-9659  
t.robbin@flathead.coop  
Term ends:  January 1, 2023 (2nd term)  
Qualification:  Public Representative

Kristine Byron-White  
P.O. Box 146  
Forsyth, MT 59327  
(406) 351-3359 (cell)  
(406) 346-2236 (work)  
ckwhite@rosebudcoatty.net  
Term ends:  January 1, 2023 (1st term)  
Qualification:  County Attorneys

Mary Ann Keune  
2260 Sierra Road East  
Helena, MT 59602  
(509) 993-8601 (cell)  
(406) 444-9975 (work)  
mkeune@mt.gov

Katrina Bolger  
2260 Sierra Road East  
Helena, MT 59602  
(406) 444-9974 (work)  
kbolger@mt.gov

Tina Cranmer  
2260 Sierra Road East  
Helena, MT 59602  
(406) 444-9964 (work)  
tina.cranmer2@mt.gov
Galvanized by Derek Chauvin’s conviction for the murder of George Floyd, the nation appears ready at last to move toward meaningful reforms of policing in America. Key among them is setting a national standard for officer training for the 18,000 law enforcement agencies spanning the country.

Those agencies range from tiny Mayberry-sized outfits to the sprawling NYPD — but all need common standards that ensure officers are exposed to the same critical fundamentals.

Currently, most police training in the United States is too short, misfocused, uses ineffective teaching methods, and is out of alignment with both community priorities and research about what works to minimize bias and use of force, according to a recent analysis by the Council on Criminal Justice Task Force on Policing.

We’re members of that task force, and, as a former mayor and the mother of a young man killed by a police officer, we don’t see eye to eye on everything. But we strongly agree on this: Police training needs a serious overhaul.

Key training reforms are embodied in the George Floyd Justice in Policing Act, which was passed by the House in March and awaits action by the Senate. The act would direct the U.S. Department of Justice to create uniform accreditation standards for law enforcement and require officers to complete training on racial profiling, implicit bias, and the duty to intervene when another officer uses excessive force.

Congressional power in this arena is limited by the 10th Amendment, which stipulates that the states make and enforce laws for the protection of the public. The reforms in the George Floyd Act would only apply to federal law enforcement officers, but the federal government has another way to get state and local agencies to comply: money. Agencies that fail to require their peace officers to complete the federal training program could forfeit federal grant funding.
National standards would ensure that all officers, regardless of their agency's size or location, are exposed to key concepts, skills and tactics. This would create not just consistency, but better outcomes for police and community members. That said, local jurisdictions should retain some discretion to configure training in accordance with their own needs and resources.

What's wrong with American police training now? Among other problems laid out in our Task Force findings, the preparation most officers receive is too short compared with other countries. American officers receive an average of only six months of basic training, far less than comparable democracies require (in Germany, for example, it's up to 30 months). The U.S. average masks wide differences among states, ranging from 404 hours in Georgia to more than 1,000 hours in Hawaii.

The content of police training is another problem. It places a heavy emphasis on physical and technical skills, such as the use of firearms, while shortchanging instruction on communication and critical thinking skills, de-escalation tactics, principles of procedural justice, and the handling of scenarios that officers most commonly encounter. One survey of police agencies found that academies spend an average of 80 hours on weapons training — and just eight hours on violence de-escalation.

De-escalation training is an essential component of any national training standard. It shows officers how to defuse situations before force becomes necessary and equips them with tools to evaluate and respond to volatile circumstances in real time. One field experiment found that officers who completed de-escalation training were less likely to use force, be the target of public complaints, and become injured compared with those who received no training.

Beyond improving basic training for recruits, we must also require mandatory, periodic recertification of officers. These refresher courses should go well beyond time at the firing range to tackle such core topics as communication skills and de-escalation tactics.

As with training, there are no national certification standards specifying the minimum requirements an individual must meet to become a sworn officer — and these rules vary widely among states. Some mandate background checks, a minimum education level, and a psychological evaluation, but others have far less rigorous requirements.
To remedy this inconsistency, we need a set of minimum standards for state certification programs. Incentivizing states to adopt such requirements would create consistency in officer hiring and help agencies attract officers more likely to comply with department policies, engage respectfully and equitably with residents and prevent the escalation of volatile incidents.

As it stands, the scattershot approach to police training and certification has been driven more by the latest trends than by what we’ve learned from the evidence.

Let’s do better and enact national standards to ensure that all officers, whether policing a community of 4,000 or 4 million, receive the best preparation possible to provide just and effective public safety service — and fulfill their mandate to respect the constitutional rights of those they serve.

*Collette Flanagan is the founder of Mothers Against Police Brutality. Michael Nutter is the former mayor of Philadelphia. Both serve on the Council on Criminal Justice Task Force on Policing.*
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