

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

- (1) “Allegation” means:
 - (a) a statement or accusation of misconduct made against a public safety officer to POST staff or the council by anyone;
 - (b) a statement or accusation of misconduct against a public safety officer made by the POST executive director acting upon any credible knowledge, information, or belief;
 - (c) the document or statement, prior to the notice of agency action, that initiates the informal denial, revocation, suspension, or sanction proceeding against an officer.
- (2) “Certification” or “certificate” means any certification granted by the council after completion of the specific requirements as set forth in these rules.
- (3) “Contested case” means:
 - (a) a civil administrative proceeding that progresses pursuant to notice and hearing as outlined in MAPA and these rules; or
 - (b) a proceeding initiated by a request for a hearing from the officer after the officer has received a notice of agency action imposing sanction, suspension, or revocation by the director when the case could not be settled at the preliminary stage of review, investigation, or informal proceeding.
- (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 authorized to try the case without a jury, without regard to the sentence imposed or whether the charge is later dismissed.
- (5) “Council” or “POST Council” or “POST” means the full 13-member public safety officer standards and training council as created by 2-15-2029, MCA.
- (6) “Director” or “executive director” means the bureau chief of the public safety officer standards and training bureau.
- (7) “Employing authority,” “employing agency,” or “governmental unit” means any entity that is statutorily empowered with administration, supervision, hiring or firing authority, training, or oversight over a public safety agency or officer. This may include but is not limited to: the chief of police, mayor, county attorney, city council, warden, sheriff, etc.
- (8) “Field training” means instruction, training, or skill practice rendered to an officer by another officer or officers on a tutorial basis during a tour of duty while performing the normal activities of that officer’s employment.
- (9) “Hearing examiner” means the chair or the council’s designated representative, who regulates the course of a contested case proceeding or other hearing held by the council, pursuant to 2-4-611, MCA and these rules. Powers of a presiding officer are the same as those of a hearing examiner.
- (10) “In-service training” means training provided within a law enforcement and/or public safety agency to review and develop skills and knowledge for the specific agency’s needs.
- (11) “Informal proceeding” means a proceeding that occurs before a MAPA contested case proceeding and includes but is not limited to: correspondence between POST and the officer accused of misconduct and his employing authority; investigation by POST; stipulation or settlement negotiations or agreement; or a sanction, suspension, or revocation imposed through a notice of agency action.
- (12) “MAPA” means the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(13) “Misconduct” means any action or conduct that could potentially result in sanction, suspension, or revocation of POST certification pursuant to ARM 23.13.702 or a violation of the code of ethics contained in ARM 23.13.203.

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

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

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

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

(d) provides information and resources to pretrial defendants or misdemeanants to help prevent violations of court-ordered conditions; and

(e) reports violations of court-ordered conditions to the court.

(15) “MLEA” or “Academy” means the Montana Law Enforcement Academy.

(16) “Notice of agency action” means the document that:

(a) gives an officer the notice required under 2-4-601, MCA;

(b) informs the officer of the suspension, revocation, or sanction imposed by the POST director and the supporting reasons;

(c) initiates the 30-day time period in which an officer may request a hearing and thus initiate a contested case proceeding under MAPA.

(17) “Party” means one side, or its representative, in an informal or contested case proceeding, usually the respondent and/or POST.

(18) “POST-approved training” means training reviewed and approved pursuant to ARM 23.13.301 for which POST gives training credit, including but not limited to basic, regional, and professional courses.

(19) “POST certified instructor” means a public safety officer, as defined in these rules, who has met the requirements for and received an Instructor Certificate pursuant to these rules, and may apply for and receive approval for POST training credit pursuant to these rules, for trainings the officer conducts.

(20) “Presiding officer” means the chair of the council who holds all the same powers as a hearing examiner for the purpose of contested cases.

(21) “Public safety officer” means an officer, as defined in 44-4-401, MCA. Nothing in these rules may be construed to apply the requirements of 7-32-303 or 44-4-403, MCA to an elected official.

(22) “Respondent” means the public safety officer against whom an allegation of misconduct has been made, or the officer’s legal representative.

(23) “Revocation” means the permanent cancellation by the director or council of a public safety officer’s POST certificate, certification, and certifiability such that the performance of public safety officer duties is no longer permitted.

(24) “Roll call training” means instruction or training of short duration, less than two hours, within any law enforcement and/or any public safety agency, conducted when officers change shifts.

(25) “Sanction” means a consequence or punishment for a violation of ARM 23.13.702, 23.13.203, or the laws or rules of Montana.

(26) “Substance abuse” means the use of illegal drugs, other illegal substances, or legally acquired drugs in a manner that substantially limits the officer’s ability to perform the essential duties of a public safety officer, or poses a direct threat to the health or safety of the public or a fellow officer.

(27) “Suspension” means the annulment, for a time period set by the director or council, of a public safety officer’s POST certificate, certification, and certifiability, such that the performance of public safety or peace officer duties is not permitted during that period of time.

(28) “Voluntary surrender” means a public safety officer’s agreement to allow revocation of the officer’s certificate.

23.13.201 Minimum Standards for the Appointment and Continued Employment of Public Safety Officers (1) All public safety officers must be certified by POST and meet the applicable employment, education, and certification standards as prescribed by the Montana Code Annotated.

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

- (a) be a citizen of the United States or may be a registered alien if unsworn;
- (b) be at least 18 years of age;
- (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;
- (d) not have been convicted of a crime for which they could have been imprisoned in a federal or state penitentiary or a crime involving unlawful sexual conduct;
- (e) be of good moral character as determined by a thorough background check;
- (f) be a high school graduate or have been issued an equivalency certificate by the Superintendent of Public Instruction, or by an appropriate issuing agency of another state or of the federal government;
- (g) successfully complete an oral interview and pass a thorough background check conducted by the appointing authority or its designated representative;
- (h) be in good standing with POST and any other licensing or certification boards or committees equivalent to POST in any other state such that no license or certification similar to a POST certification has been revoked or is currently suspended in any other state;
- (i) possess a valid driver’s license if driving a vehicle will be part of the officer’s duties;
- (j) abide by the code of ethics contained in ARM 23.13.203; and
- (k) complete, within every two calendar years, 20 hours of documented agency in-service, roll call, field training, or POST-approved continuing education training credits, which include but are not limited to a professional ethics curriculum covering the following topics and any additional topics required by the council:
 - (i) a review of the Code of Ethics ARM 23.13.203 and Grounds for Denial, Sanction, Suspension, and Revocation ARM 23.13.702;
 - (ii) review of the annual POST integrity report;
 - (iii) discussion involving core values of each employing agency which may include integrity, honesty, empathy, sympathy, bravery, justice, hard work, kindness, compassion, and critical thinking skills;
 - (iv) review of agency policy and procedure regarding ethical and moral codes of

conduct;

(v) discussion of the similarities and differences between agency and POST consequences for actions that violate policy or rule.

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

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

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

23.13.215 Firearms Proficiency Standards (1) Each agency that employs a public safety officer who is authorized to carry firearms during the work assignment must:

(a) require the officer to complete successfully the firearms proficiency requirements provided in this rule at least once a year, for any manufacture and model of firearm customarily carried by that officer;

(b) designate a POST-certified instructor as defined in these rules to conduct or oversee and document annual firearms proficiency. The instructor must also have attended a minimum 40-hour firearms instructor course or its equivalent, which includes the following topics:

- (i) firearms safety;
- (ii) role of the instructor;

- (iii) civil and criminal liability exposure;
 - (iv) instructional techniques for firearms instructors;
 - (v) operation of the firing line;
 - (vi) range preparation;
 - (vii) handgun;
 - (viii) disabled officer techniques; and
 - (ix) low light shooting techniques.
- (c) keep on file in a format readily accessible to the council a copy of all firearms proficiency records, which must include:
- (i) date of qualification;
 - (ii) identification of the officer;
 - (iii) firearm manufacture and model;
 - (iv) results of qualifying; and
 - (v) course of fire used.
- (2) The minimum standards for annual firearms proficiency are:
- (a) Primary Duty Handgun – a minimum of 30 rounds, fired at ranges from point-blank to 15 yards with a minimum of 15 rounds at or beyond seven yards;
 - (b) Shotgun – minimum of five rounds fired at a distance ranging from point-blank to 25 yards;
 - (c) Precision rifle – a minimum of ten rounds fired at a minimum range of 100 yards;
 - (d) Patrol rifle – a minimum of 20 rounds fired at a distance ranging from point-blank to 50 yards;
 - (e) Fully automatic weapon – a minimum of 30 rounds fired at a distance ranging from point-blank to ten yards, with a minimum of 25 rounds fired in full automatic (short bursts of two or three rounds), and a minimum of five rounds fired semi-automatic;
 - (f) Secondary or Backup Handgun – a minimum of 12 rounds fired at a distance ranging from point blank to at or beyond seven yards, which includes a minimum of six rounds fired at or beyond seven yards.
- (3) The minimum passing score for annual firearms proficiency is 80% for each firearm on an IPSC Official Target or dimensional equivalent.
- (4) The MLEA sets the passing score for the Montana Law Enforcement Basic Firearms Qualification.
- (5) Before carrying a firearm or making an arrest, a misdemeanor probation/pretrial services officer must successfully complete the firearms proficiency requirements provided in this rule.

23.13.216 Public Safety Officer Employment, Education, and Certification Standards

(1) Except as provided in (2), the basic and basic equivalency training standards for employment, education, and certification set forth in 7-32-303(5)(a), (b), and (c), MCA, are applicable to all public safety officers, where an appropriate basic course or basic equivalency course exists in the public safety officer's field. The Council may approve a location other than the Montana Law Enforcement Academy for the basic or basic equivalency courses in the following disciplines: detention/corrections officer; probation and parole officer; misdemeanor probation/pretrial services officer; public safety communications officer; and coroner.

(2) The standards set forth in (1) do not apply to reserve officers.

~~(3) The notification requirements set forth in 7-32-303(4), MCA apply to all public safety officers. A public safety officer's employing authority must provide written notice to POST within 10 days of the appointment, termination, resignation, or death of a public safety officer.~~

23.13.301 Qualifications for Approval of Public Safety Officer Training Courses

(1) The director or the director's designee may approve any request for POST training credit. Any person aggrieved by a determination made by the director under this rule may seek review of the decision by the POST Council.

(2) To obtain the status of POST-approved training, training courses must:

(a) meet the requirements for trainee attendance and performance, and the instructor requirements contained in these rules;

(b) be based upon generally recognized best practices;

(c) comport with Montana laws and court decisions;

(d) be at least two hours or more in length;

(e) be advertised and open to all public safety agencies; and

(f) contain course content that has been reviewed and approved by the agency hosting the training, or the employing authority of the officer receiving credit for the training, either before or after the training occurs, through the procedures set forth in (3).

(3) A POST-certified instructor seeking course credit for public safety officers must have an active POST certificate that is not revoked, suspended or on probation and must submit an application for accreditation to the director and retain documentation of:

(a) an education or training record that indicates the officer has received education or training in the specific field, subject matter, or academic discipline to be taught;

(b) material showing course content, including an agenda, syllabus and/or lesson plan and student handouts; and

(c) a copy of the course advertisement.

(4) To receive POST training credit, an agency hosting a training by any other person or entity for a public safety officer or officers must submit an application for accreditation to the director and retain documentation of:

(a) an instructor certification or training record and an instructor biography;

(b) material showing course content, including an agenda, syllabus and/or lesson plan and student handouts; and

(c) a copy of the course advertisement.

(5) It is the responsibility of the employing authority or any person or entity wishing to receive POST-approved training credit to retain the required documentation set forth in these rules and monitor the standards for training, trainee attendance, and performance as set by the council. Records maintained under this rule are subject to audit by the executive director or the director's designee during normal business hours upon reasonable notice to the agency.

23.13.304 The Basic Courses (1) The amount of training for which credit will be granted in any basic public safety officer's course will be prescribed by the council.

(2) Students in any basic public safety officers' course are required to complete instruction in the prescribed subject areas as directed by the council.

(3) The council will review and approve the curriculum for all basic public safety

officers' courses. The review may consist of examining and approving the course syllabus and/or a thorough review of individual course performance objectives and lesson plans which have been established for each designated training block within the prescribed subject areas.

(4) The council may approve changes from the course content established at the last review upon written application from the MLEA administrator, training agency, or training provider providing evidence that such change is compatible with the public interest.

23.13.703 Procedure for Making and Receiving Allegations of Officer Misconduct and for Informal Resolution of Those Allegations by the Director

(1) The POST Council will create, maintain, and adopt in public meetings a policy and procedure for processing and responding to allegations. The policy and procedure will be posted on POST's web site and made publicly available. It will comply with these rules and offer the director further guidance regarding the specific steps that the director and POST staff will take when responding to allegations.

(2) Any allegation made against a public safety officer that states potential grounds for denial, sanction, suspension, or revocation of POST certification must be made initially to the employing authority of the officer in question by the individual making the allegation, unless the employing authority is making the allegation. All allegations must be made in writing unless the director initiates the allegation. Anonymous allegations will not be considered unless the director determines that public safety may be threatened if POST takes no action on an anonymous allegation.

(3) Except as provided in this section, POST will not proceed with an allegation unless the individual making the allegation or POST staff has notified the employing authority of the allegation. This requirement does not apply if the allegation has been made against the highest ranking officer in the agency, who would otherwise constitute the employing authority, and there is some reason to believe that the investigation or public safety would be put in danger by such a notification.

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

(5) After the employing authority has been notified and given the opportunity to act, the director or POST staff may accept an allegation.

(a) Any allegation submitted to the council must be submitted to the director or POST staff and may not be submitted to the full council or any individual member of the council.

(b) The allegation must provide at least the following information:

(i) the name, address, and telephone number of the individual making the allegation, which the director may keep confidential if the individual or public safety would be harmed by disclosure;

(ii) the name and place of employment of the officer;

(iii) a complete description of the incident;

(iv) the remedy sought;

(c) A person making an allegation must use the allegation form available from POST staff or submit an allegation in substantially similar format.

(d) An employing authority or the Montana Law Enforcement Academy may submit a written allegation on the agency's letterhead with supporting documents that the agency deems appropriate.

(6) The director may initiate an allegation, based on good cause and reliable information, and must follow the procedure set forth in this rule as if initiated by any other individual, including but not limited to submitting the complaint to the employing authority.

(7) After an allegation has been received or has been initiated by the director, the director, in consultation with contested case counsel for POST, will correspond with the respondent in writing.

(a) All such correspondence must be copied to the employing authority, unless the exception noted in (3) applies.

(b) The policy provided in (1), will outline the number and nature of these letters.

(c) The purpose of this correspondence is to allow the officer to respond to the allegation, allow the director and contested case counsel to gather more information, and allow the parties to reach an informal resolution.

(8) After an allegation is made by or filed with the director, the director, contested case counsel for POST, or other POST staff or designees will investigate the complaint.

(9) Following the review and investigation of an allegation, communication with the respondent, communication with the employing authority, and consultation with counsel for POST, the director may take any appropriate action, including but not limited to the following:

(a) engage in informal negotiations and settlement discussions and enter into a stipulation or memorandum of understanding with the officer or the officer's counsel, or otherwise informally resolve the complaint. An informal resolution reached before the MAPA contested case hearing stage under this subsection is not subject to approval by the council;

(b) accept the voluntary surrender of a certificate;

(c) make one of the following findings:

(i) No finding: The investigation cannot proceed for reasons that include but are not limited to: the complainant failed to disclose promised information to further the investigation; or the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the officer(s) or employee(s) involved.

(ii) Not sustained: The investigation failed to discover sufficient evidence to prove or disprove the allegations made ~~or the investigation conclusively proved that the act or acts complained of did not occur.~~

(iii) Sustained: The investigation disclosed a preponderance of evidence to prove the allegation(s) made.

(iv) Unfounded: The investigation disclosed that the complainant made a false allegation, the subject of the complaint was not involved in the incident, or the incident did not occur.

(v) Exonerated: The investigation disclosed that the incident occurred, but the subject of the complaint acted lawfully.

(vi) Policy failure: The investigation disclosed a preponderance of evidence to prove the allegation(s) made, but the subject of the complaint was acting in a manner consistent with the agency's policy and procedures, which requires a revision to the applicable policy as written.

(d) issue the appropriate denial, sanction, suspension, or revocation of a certificate;

(e) if a denial, sanction, suspension, or revocation is imposed, the director must provide a notice of agency action in writing to the officer, satisfying the notice required by 2-4-601, MCA;

(f) the officer may request contested case proceedings pursuant to 44-4-403, MCA and MAPA, as outlined in ARM 23.13.704.

(10) If a review of the conduct of an officer is pending before any court, council, tribunal, or agency, the director may, as a matter of discretion, stay any proceedings for denial, sanction, suspension, or revocation pending before the council, no matter what stage or process they have reached, until the other investigation or proceeding is concluded. If the case has already been assigned to a hearing examiner, the hearing examiner must grant a stay based on an application by the director or counsel for POST.

(11) In all cases in which a written allegation is submitted which does not culminate in a MAPA contested case hearing, the director must file a written report in the officer's POST file setting forth the circumstances and resolution of the case. All written correspondence with the officer and the officer's employing authority must also be maintained in the officer's POST file.