

MONTANA Public Safety Officer Standards and Training Council
Meeting Agenda – December 7, 2016
Face to Face Meeting 9:00 a.m. – 12:00 p.m.
Department of Transportation
2701 Prospect Ave, Auditorium West
Helena, Montana 59602

Dial-in Participant Information

Dial-in number: (866) 576-7975

Access code: 612394

- I. 9:00 a.m.** – Call meeting to order, roll call, identify and welcome guests.
- II. 9:05 a.m.** – Approval of minutes for September 7, 2016 POST Meeting (p.1)
- III. 9:15 a.m.** – Public Comment/Guest Issues
- IV. 9:30 a.m.** – Old Business
 - a. Lawsuit – Chris Tweeten
 - b. POST Council Meeting Venue
 - c. Notary on the Reserve Application (p. 32)

10:00 a.m. Break

- V. 10:15 a.m.** – New Business
 - a. Gina Dahl Resignation (p. 34)
 - b. Instructor Qualification Discussion
 - c. PSC Basic Syllabus (p. 35)
 - d. Scripp’s Records Request (p. 37)
 - e. Director’s Report
 - i. DUI/SFST Update (p. 60)
 - ii. Budget Report (p. 62)
 - 1. Carry Forward Money
 - iii. Legislative Update
 - 1. Legislative Draft
 - A. Reserve Officer Statute (p. 63)
 - 2. Misdemeanor Probation/Pretrial Services Officers
 - iv. March Basic Coroner Training (p. 94)
 - v. Certificates Awarded (p. 96)
 - vi. Equivalency Granted
 - 1. Pilar Kuntz, Deputy – Roosevelt County Sheriff’s Office
 - 2. Steven Liss, Investigator – Gambling Investigation Bureau
 - 3. Trisha Wolford, Police Officer – Bozeman Police Department
 - 4. Ryan Epley, Detention Officer – Missoula County Sheriff’s Office
 - 5. Ryan Beston, Police Officer – Ft. Peck Department of Law and Justice
 - 6. Dylan Sutton, Police Officer – Billings Police Department
 - 7. Charles Renfro, Investigator – Investigator - DOC

8. Patrick Saling, Corrections Officer - DOC
- vii. Extensions Granted
 1. David Richard, Corrections Officer - DOC
 2. Kassie Klein, Detention Officer – Richland County Sheriff’s Office
 3. Sam Wavra, Police Officer – Conrad Police Department
 4. Victoria Lehnen, Public Safety Communicator – Granite Country Sheriff’s Office
 5. Cortney Fowler, Public Safety Communicator – Stillwater Country Sheriff’s Office
 6. Casey Mulkey, Deputy – Valley County Sheriff’s Office
 7. Jason Thompson, Detention Officer – Yellowstone County Sheriff’s Office
 8. Brenton Dorsey, Detention Officer - Yellowstone County Sheriff’s Office
 9. Jason Eckart, Detention Officer - Yellowstone County Sheriff’s Office
 10. George Stull, Detention Officer - Yellowstone County Sheriff’s Office
 11. Andrew Miller, Detention Officer - Yellowstone County Sheriff’s Office
 12. Codie Plotner, Detention Officer - Yellowstone County Sheriff’s Office
 13. Justin Prindle, Detention Officer - Yellowstone County Sheriff’s Office
 14. Richard McCann, Detention Officer - Yellowstone County Sheriff’s Office
 15. Kelly Comstock, Detention Officer - Yellowstone County Sheriff’s Office
 16. Elizaveta Harmon, Police Officer – Fairview Police Department
- viii. Cases Open/Closed (p. 107)
- ix. Office Updates
 1. Sugar CRM
 2. Temp

- VI. 11:00 a.m. – Committee Reports**
- a. ARM – Bill Dial
 - b. Coroner – Jim Cashell
 - c. Case Status – John Strandell
 - d. Curriculum – Jim Thomas
 - e. Business Plan/Policy – Kimberly Burdick

VIII. 12:00 p.m. – Adjourn

* 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.

MEETING MINUTES
MONTANA POST COUNCIL
September 7, 2016
MLEA
HELENA, MT

PRESENT

Tony Harbaugh ~ Chairman ~ by phone
Kimberly Burdick ~ by phone
Jim Cashell
Bill Dial ~ by phone
Kevin Olson
Ryan Oster
Tia Robbin ~ by phone
Jesse Slaughter
John Strandell
Jim Thomas

NOT PRESENT

Gina Dahl
Lewis Matthews

STAFF PRESENT

Perry Johnson ~ Executive Director
Mary Ann Keune ~ Administrative Assistant
Katrina Bolger ~ Paralegal/Investigator

LEGAL COUNSEL PRESENT

Sarah Clerget
Chris Tweeten

GUESTS

Dan Moore ~ Motor Carrier Services
Andrea Lower ~ Gallatin County Court Services
Steve Ette ~ Gallatin County Court Services
Gen Stasiak ~ Gallatin County Court Services
Truman Tolson ~ Missoula Police Department

I. WELCOME

Meeting called to order by Tony Harbaugh, Chairman, at 8:00 a.m. at the MLEA, rooms 213 & 214.

Tony Harbaugh stated that he had been in contact with John Strandell this morning and asked him to chair the meeting on Tony Harbaugh's behalf as it's hard to chair a meeting while on the phone.

Perry Johnson called roll. Perry Johnson noted that Kimberly Burdick was going to try and join the meeting by phone around 9:15 a.m. Bill Dial stated he had to leave the meeting for a bit but would join back on around 9:15 a.m. Tia Robin commented that she would need to leave the meeting from 10:00 a.m. until 10:30 a.m. Perry Johnson

told the group that there would be some business between 9:15 a.m. and 10:00 a.m. to take care of.

Perry Johnson noted that Laurel Bulson retired so the Council didn't have a Detention Officer Representative. He calls the Governor's Office every day or two to find out if a representative has been appointed yet. The Governor hasn't had time to appoint anyone yet but his office is looking hard at one of the applicants.

II. Approval Of Minutes for September 7, 2016

Kevin Olson made an amendment to page 7, second paragraph, last sentence. The word should be interpreting, not interrupting.

Kevin Olson made a motion and Jim Cashell seconded to approve the minutes of the March 9, 2016 meeting as amended. Motion carried, all members voting in favor.

III. PUBLIC COMMENT/GUEST ISSUES

John Strandell asked Dan Moore if he had any issues he wanted to bring up. He didn't have anything to speak about, he just wanted to listen in.

Andrea Lower said that she was just listening today and had nothing to discuss.

IV. OLD BUSINESS

Lawsuit

Chris Tweeten updated the Council about the Lake County lawsuit against POST and Fish Wildlife and Parks. He said the attorneys have agreed and the judge has approved an extension of the discovery deadline. As far as he knows it is still in the discovery phase.

Attorney General's Opinion

Chris Tweeten reported about the issue dealing with the MOU between DOJ and DOC regarding the ability of DOC to retain investigators. The DOC investigators work solely on correction's matters mainly on those that arise within the walls of the institutions. He reported that a question had arisen upon reading the statutes as to whether the Attorney General has the authority to appoint persons who aren't within DCI, employed by DOJ, as investigative agents under the governing statute.

Chris Tweeten said his opinion was it wasn't legal based on the presence in the statute of some language suggesting that it's reach was limited to matters within DOJ. He reminded the Council that POST had a meeting with the folks at DOC and proposed to submit a request for an opinion from the Attorney General. There was discussion about what the scope and reach of that would be. A consensus was reached with DOC and the Attorney General's Office with how to phrase that request to make it more palatable to the Attorney General. POST sent in the request and received an opinion. Chris Tweeten shared that the opinion disagreed with his interpretation of the statute and it stated that under the terms of the statute it is permissible for the Attorney General to appoint the investigative agents for DOC. The statute is found in the DCI section code. Chris

Tweeten shared that the opinion cleared the way for the completion of the MOU between Justice and Corrections in terms of these investigators. The memorandum is finished and in place.

Chris Tweeten commented that Perry Johnson had sent him an email asking for some additional discussion about some questions that arose in light of the opinion. The overriding question is whether these agents who are appointed by the Attorney General to serve within DOC are public safety officers and have to undergo all the training required of public safety officers under the jurisdiction of POST. There were also a couple of other questions posed by Perry Johnson to Chris Tweeten. If these agents have a break in service do they have to take an equivalency class or go back to basic depending on the length of time of the break of service. Chris Tweeten commented that as he reads the opinion, the opinion puts these investigators on the same footings as the investigators for DCI. The authority for appointment is exactly the same and the opinion discusses an aspect of the governing statutes for DCI agents. It says that the jurisdiction of the DOC agents don't have to be equivalent to the agents appointed in DCI.

Chris Tweeten continued with, the DOC agents are appointed under the very same statute as DCI agents and the opinion turns on the question of whether they are peace officers and public safety officers. Chris Tweeten's interpretation is that these DOC agents serve on the same basis as any other public safety officer. They have to have basic and they have to keep up with their training. If there is a break in service they are subject to 7-32-303(5) just like any other public safety officer.

John Strandell told the Council that the MOU was signed last week so it is in place. He is working with DOC getting the training records and documents he needs to make sure the MOU is in place. The Attorney General will administer the oath of office with the agents. John Strandell said he is pleased with it because the investigators within DOC do a great job investigating crimes within facilities. It will empower them and give them authority to continue their efforts. He mentioned that Paul Szczepaniak and he are talking about partnering on a number of different areas especially when DOC and DCI can investigate a matter together.

Ryan Oster asked if the DOC agents that are in place all have a basic. John Strandell said all the officers who have been hired are certified and have to meet the same standard as a DCI agent.

Perry Johnson liked the question by Ryan Oster and wondered what happened to those DOC agents in lieu of the opinion and the years that they served before the opinion was created. Chris Tweeten said he hopes POST never has to find out. He thinks the Attorney General's opinion is they have always been eligible for appointment under the statute in the DCI part of the code. The problem as to whether these officers could be appointed at all has been solved prospectively and retrospectively with the opinion. The Attorney General's opinion is that the statute always said the Attorney General could appoint outside DOJ. Chris Tweeten said he didn't know the history of whether some agents have served without having a basic. If they had defects in their certification or training during that time it could be a problem if an inmate raised a problem with respect to how he was treated by one of these investigators and filed a civil rights claim. A court

would get a chance to look at the issue and if the court disagrees with the Attorney General that would be the courts right.

John Strandell commented that he is going to do a very thorough review of the officers who will be appointed. Perry Johnson asked if the notice of appointment should come from DOC and John Strandell agreed that DOC should send in the notices.

Chris Tweeten stated that there are two ways to handle it. The notice of appointment could come from the Attorney General since he is appointing the officers or from DOC who is employing the agents.

Jim Cashell asked if these agents would need to have the correctional officer's certifications since they would be working with inmates inside the institutions. John Strandell and Chris Tweeten both agreed that they would not need correctional officer's certifications since they don't fit within the definition of a correctional officer. John Strandell shared that he asked the same question back when the original MOU was signed and the legal team said they wouldn't need it. Kevin Olson said the question in his mind is how much time do they spend "hands-on" supervising and correcting offenders. That would be the ultimate question under the statute for correction/detention officers. Chris Tweeten pointed out that these agents don't supervise offenders at all.

POST Council Meeting Venue

Chris Tweeten shared that at the last meeting there was a discussion about the Council taking it's meeting on the road. He didn't find any statutory language, administrative rule or Attorney General's opinion that would get in the way of moving the meeting around the state. He explained that the Council, as an independent board, can meet wherever it wants as long as it complies with the public notice provisions in the statute. Perry Johnson commented that at the last meeting there was interest in going into other communities and filling the spectator chairs. John Strandell mentioned that he liked the idea of scheduling the next meeting on the road and see how it goes. He also mentioned that the lack of involvement from the public is an indicator that people are happy with how things are going and there aren't any burning issues.

Jesse Slaughter thinks it's a really good idea to travel but cautions he doesn't want to over burden the staff with taking it on the road. He also thinks it's a good idea to reach out to others in the community and to inform them of the meeting. As Council members Jesse Slaughter believes it's their obligation to come to the meetings and participate. He wants the Council to strategize on how to promote the meeting. If it's not going to be promoted and they show up to an empty room then there is no reason to move it.

John Strandell thinks traveling one meeting a year would be sufficient and agrees with Jesse Slaughter on promoting the meeting. Perry Johnson thinks it's an opportunity to take advantage of having more people attend. He said in the last couple of years he has been good about sending out meeting emails to many people but hasn't done it for the last couple of meetings. Perry Johnson said there are a lot of things going on at POST and it's hard to keep all the balls in the air. He has dropped the ball in not informing the stakeholders about the meeting.

Perry Johnson told the Council that he would like to see one meeting a year in Helena, one in the east and one in the west. John Strandell likes the idea but doesn't want it to be too much for staff so it would be Perry Johnson's call. Ryan Oster said that there isn't much participation from MACOP from the eastern part of the state so thinks it is important to travel to them. Kevin Olson commented that since there will be traveling involved maybe POST could hold a 4 hour ethics class the afternoon before the meeting. Make it a meaningful trip and accomplish several things. Jim Thomas stated that when he and Jerry Williams traveled to Broadus to do some training they filled up the room twice. He really thinks it would be a good idea. John Strandell agreed and asked Tony Harbaugh to help orchestrate a meeting in that part of the state. Tony Harbaugh said he would be happy to help and also thinks there would be a big turn out from the stakeholders in the eastern towns. Perry Johnson will bring back a recommendation for travel for 2017 at the December 7, 2016 Council meeting.

Johns Strandell told the Council that a break was scheduled for 9:00 a.m. but he suggested they just keep going with the meeting. Perry Johnson shared that the oral arguments for McLean, and the stipulations for Thompson and Houston is scheduled for 9:15. He didn't think there would be a quorum of Council members available to deal with the cases. Some of the members agreed to call in to hear the cases. Perry Johnson counted up the members and Katrina Bolger pointed out that Jim Thomas, who is a member of the Case Status Committee, hadn't heard any information on the Houston case so he can be part of the quorum for that case. Perry Johnson pointed out that it will depend on how many members call in to participate in that part of the meeting.

Perry Johnson said that the Case Status Committee members can't be a part of the quorum and Kevin Olson has had some interaction with the McLean and Thompson cases. Kevin Olson said he couldn't vote in the Houston case. John Strandell asked if it would be best to wait until 9:15 and come back to that portion of the agenda.

Sarah Clerget stepped out in the hall to call Dan Cederberg to see if he would be willing to waive Kevin Olson as part of the quorum or waive the conflict with the Case Status Committee members. While Sarah Clerget was making the call it was decided to move into the Director's report.

V. NEW BUSINESS:

Directors Report

Approval of Revised LEOB Syllabus

Perry Johnson directed the Council to page 53 of the meeting materials. He shared that Glen Stinar had a meeting at the Attorney General's Office or he would have been present to present the syllabus. Perry Johnson commented that he knows there have been changes made but they weren't highlighted in the meeting materials. The total number of hours for the basic hasn't changed but some of the instruction has in regards to the MLEA syllabus. He believes some interpersonal communications and verbal de-escalation techniques has been added. They have taken some hours and moved them around. The new syllabus will be used next week with the incoming LEO Basic.

Ryan Oster made a motion and Jess Slaughter 2nd to approve the new LEOB syllabus. Motion carried, all members voting in favor. Tony Harbaugh abstained from the vote. Perry Johnson asked Tony Harbaugh if he understood the vote was about the LEOB syllabus. Tony Harbaugh said he understood but thought he had to hold his vote in case there is a tie.

Out of State Jobs Posted on POST Website

Perry Johnson reported that he received a call a couple of weeks ago from Training Officer Calderwood from the Coeur d'Alene Police Department. The officer asked if POST would consider putting job announcements on their website for his agency. Perry Johnson told the officer that he didn't think that it would be appropriate but he would put it on the agenda and ask the Council to give him direction on the subject. Tony Harbaugh agreed with Perry Johnson and said that if an officer is interested in going to work in another state they can look on the websites for that state. Kevin Olson agreed and mentioned that the Council has been addressing the workload on the staff and this would add more work unnecessarily and it would be hard to stop other states who would like their jobs posted. John Strandell agreed as well. Jesse Slaughter asked if there were posting for jobs in Montana. Perry Johnson said there are some posted on occasion.

Sarah Clerget reentered the room and said that Dan Cederberg would be calling back as he was in a meeting.

Stevensville DUI Processing Certification

Perry Johnson directed the members to page 55 in the meeting materials. He told the Council that when he first saw the letter he thought it was an internal matter for the agency and that the blessing from POST wouldn't make any difference. He shared that the certification is issued by the lab so if the agency can get the training locally and cover the requirements for that certification it doesn't matter to POST. It appears to Perry Johnson that there is already a solution for the problem and POST doesn't have any stake in the issue. POST doesn't issue a certificate for processing a DUI, which comes from the Lab. Jim Thomas asked if POST certifies the training. Perry Johnson replied that POST certifies the training when it's in the Basic Academy and in the EQ class but we don't issue a certificate for the training. The certification card comes from the Lab.

Ryan Oster asked if the 3 people being referenced are people from the Stevensville PD. John Strandell thought it was statewide. Ryan Oster and Perry Johnson both commented that they think it is referring to 3 people in the Stevensville PD. Ryan Oster said he doesn't understand what the issue is and what it has to do with POST.

Kevin Olson stated that as he remembers, the agency's senior operator is usually the one who tracks the expiration of the cards. Even though the agency didn't get a letter from the state Crime Lab, whomever is responsible for the intoxilyzer machine either failed or fell on deaf ears that somebody was going to be expired. He explained that the materials refer to the 40 hour class. There is an Intoxilyzer class and the SFST class. When Kevin Olson was the Academy Director he had people asking every year to come sit through that portion of the LEOB because they let their card lapse. They only wanted to take the 16 hours of the Intoxilyzer. He reported that the course is blended between the Intoxilyzer and SFST training. He told the people who were wanting to sit

through the class that they would have to attend the whole 40 hours since it was blended. The Academy now does a 40 hour class the week after the EQ class for those out of state officers who need the certification as well as those officers who have expired cards. Kevin Olson said he doesn't think POST should make an exception because of a hardship of a local agency. The 40 hour class is available to take or the Crime Lab will give the class. Ryan Oster commented that even if POST made an exception we can't order anyone to put on a class. John Strandell thought it would set a very bad precedence as well. Jesse Slaughter told the Council that literally all it is to recert is to swipe your card and enter the last 4 digits of your social security number. If a person is missing the recert they will just have to come back and take the 40 hour class.

Sarah Clerget said as she reads in the last sentence they have the 40 hour class, it's just in 2 pieces. It looks like there are troopers who are going to teach the SFST segment and the Lab is going to teach the 16 hour portion. They are asking for the blessing from POST for it to come in 2 separate pieces.

Jesse Slaughter doesn't think Perry Johnson is able to answer that until he sees the completed product with the certifications. He stated that it doesn't matter to POST how they do the training as long as they follow the law in the submission and the teaching. Perry Johnson said he thinks the issue really is that they want the card and POST doesn't give the card. The training is going to have to meet the requirements of the DOJ, Forensic Science Division, before they will be issued the card again. The agency is going to have to meet that standard. Ryan Oster commented that if they want POST credit for the training they need to submit the required documents and Perry Johnson will have a look at it and give it credit if it meets the standards. Perry Johnson shared that it can be used as in-service if they don't care about POST credit as well. Perry Johnson said the bottom line is they want a card issued and POST doesn't do that. The 3 officers have to meet the requirement of the Lab for that training.

Tony Harbaugh suggested reaching out to the lab and clarifying with them that based on what is being said that POST would have to give permission for the training. He thinks it would be valuable to check with the Lab and see what information was given and correct it if need be. Jim Cashell commented that it looks to him like a situation was created and now they are looking for a simple and easy way out. He thinks they are going to have to find a 40 hour class and go to it and it's up to the Lab to certify them on the Lab's machine. He warns that we can't start breaking these things down and making exceptions or we are going to be creating a problem. John Strandell agreed with Jim Cashell. Perry Johnson said he will reach out to Ben Vetter at the Crime Lab and check with him about the issue.

John Strandell asked if the 40 hour class held twice a year is the only class available. Mary Ann Keune commented that it seems like POST has received other Intoxilyzer – SFST classes and given credit for them. Perry Johnson said he would report back with what he finds out at the next Council meeting.

Ryan Oster commented that he still thinks it's the Lab's issue, not POST's and Perry Johnson agreed. Ryan Oster said if the Lab wants to submit a 16 hour get caught up class they can do that as long as they provide all the required material. John Strandell

agrees but thinks that if Perry Johnson talks to the Lab he will get the Lab's position and then we will have that information.

The members took a break from 9:00 a.m. to 9:15 a.m.

McLean Oral Argument

Perry Johnson stated that Sarah Clerget was on the phone at that moment with one of the attorneys that represents 2 of the parties. He reported that as soon as she comes back in the room it will be clear as to how the meeting needs to proceed. He was sure that there was a quorum available to take care of the subsection c. on the agenda, the Houston stipulation. John Strandell called roll again to verify who was on the phone. Members on the phone were Tony Harbaugh, Kimberly Burdick, Bill Dial, and Tia Robin. Perry Johnson commented that Tony Harbaugh can't vote on these cases but the other 3 on the phone can.

Truman Tolson joined the meeting by phone.

John Strandell confirmed that Dan Moore and Andrea Lower were still on the phone as well.

Steve Ette from Gallatin County Court Services joined the call as well.

Perry Johnson turned the hearing over to the Hearing Examiner, Chris Tweeten.

Chris Tweeten stated, pursuant to notices considered by mail this is the time that has been set for consideration by the Council on 3 contested case matters that are listed in the meeting agenda.

The first matter is full argument with respect to the case of Maria McLean which is contested case number 1665-2016. Chris Tweeten explained that his understanding is that the proposed decision has been prepared by hearing examiner, David Scrimm by which he adopts by reference the order that was issued on August 18, 2016 granting summary judgment to POST. With respect to the question of the denial of the certificate application of Maria McLean.

Sarah Clerget stated that POST didn't have a quorum present and the opposing counsel would not waive the quorum. Chris Tweeten commented that he would get there and wants it on the record. Chris Tweeten asked if Mr. Cederberg or Ms. McLean were on the phone and also noted that no one was present in the room either. He asked for the record if anyone on the phone was prepared to enter an appearance for Ms. McLean in this matter. He understood a question had arisen with respect to the presence or absence of a quorum. In POST's Administrative Rules those members of the committee that screen these matters are recused from participation in consideration of the matter once it comes before the Council on consideration of a proposed decision by a hearing examiner. He continued that here are 6 members of the Council present and there are 4 more on the phone with a total of 10 members. He asked any of the members who participated in screening committee consideration on the McLean case to identify themselves. John Strandell, Jim Thomas and Tony Harbaugh each identified

themselves. Chris Tweeten noted that 7 members remain which is a quorum. Sarah Clerget stated that Kevin Olson was conflicted out as he was a listed witness.

Kevin Olson commented that he would like to demand that Mr. Cederberg show cause why he would be conflicted out. He has no reason or background why he was subpoenaed. Kevin Olson remarked that he has no knowledge of the case. Sarah Clerget said that she and Kevin Olson talked about it. Kevin Olson said that they talked about that Dan Cederberg was going to bring some claim of because Kevin Olson was running the Academy he had some testimony. He also stated that Sarah Clerget and Kevin Olson had a discussion that he was going to be subpoenaed and it had to do with him being the administrator of the MLEA. He doesn't know if that is a basis for conflicting him out of the case.

Chris Tweeten stated that pursuant to MAPA in section 2-4-611, a member of the Council is not disqualified unless a party to the matter has filed an affidavit of disqualification showing interest or bias or lack of impartiality on behalf of that member. To Chris Tweeten's knowledge, that hasn't happened. Sarah Clerget confirmed that no document had been submitted. Chris Tweeten asked if she had reached some sort of agreement or understanding with Mr. Cederberg regarding Mr. Olson's participation. Sarah Clerget said she had just spoken to Mr. Cederberg and conveyed that her understanding was that Kevin Olson was conflicted out. She said that obviously the decision is up to Chris Tweeten as the Hearing Examiner and the Council. Chris Tweeten asked if Sarah Clerget had any understanding as to why Mr. Cederberg wasn't appearing at the meeting. Sarah Clerget did not. She reported that for the record, Mr. Cederberg received the mailed copy of the notice of hearing and she also emailed him last week. The statement in Mr. Scrimm's order states that it has to be approved by the Council. She corrected that it is a recommendation. She did relay that Mr. Cederberg had been out of town until yesterday but she spoke to him on the phone and he was back in the office and he is aware that the hearing is happening.

Chris Tweeten shared that he is puzzled since this hearing is scheduled for oral argument this morning and neither Ms. McLean nor her counsel are appearing for purposes of oral argument. He wondered if Mr. Cederberg isn't appearing because it's his understanding that the Council can't proceed due to lack of a quorum. Sarah Clerget mentioned that she represented that to Mr. Cederberg 5 minutes ago. Chris Tweeten asked John Strandell if the Council could hold this matter to the end of the calendar of contested case matters and have Sarah Clerget contact Mr. Cederberg about joining the hearing. Sarah Clerget suggested Katrina Bolger make the call so they could move forward in the hearings. John Strandell and Chris Tweeten agreed that Katrina Bolger would make the call.

Chris Tweeten commented that on one hand he doesn't want to proceed with oral argument if under the circumstances it wouldn't be fair to do that to Ms. McLean but on the other hand the statute is very clear about what needs to be done in order to disqualify a member of the agency. He hasn't seen anything that indicates that the statutory requirements have been complied with. If he is correct in his understanding that there is a quorum if Mr. Olson is available to participate then he will hear oral argument.

Bill Dial said he couldn't hear what Sarah Clerget had said and asked Chris Tweeten to summarize what was said because he can't understand why Mr. Cederberg wasn't at the hearing. Chris Tweeten said the problem is he doesn't know either and he doesn't think Sarah Clerget knows. He explained that Mr. Cederberg has been out of town but there were emails last week indicating that the matter would be taken up today followed by formal written notice. Mr. Cederberg should know that this matter is under consideration today. If it is his intention to submit it without argument that's one thing, but if he didn't understand what the intention of the Council was today and he his confusion was compounded by the conversation that he had with Sarah Clerget a few minutes ago that might raise a fairness question.

Perry Johnson commented that according to the 2-4-611, Mr. Cederberg didn't meet that standard anyway. Chris Tweeten agreed. Perry Johnson shared that in regards to the Council giving any consideration in regards to anything that has been said outside the scope of today, there was a responsibility for Mr. Cederberg to meet that statute to disqualify any member of the Council, not just Kevin Olson for cause but any member of the Case Status Committee even. Sarah Clerget pointed out that the Case Status Committee is excepted by POST's ARM. She said she needs to double check that. Chris Tweeten said as he understands it Kevin Olson isn't being disqualified for participation in the Case Status Committee. Sarah Clerget said that she was just talking about the 3 members of the Case Status Committee. Chris Tweeten commented that according to his records that if those 3 are excluded there is still a quorum with 7 members.

Bill Dial remarked that if POST's attorney said that Mr. Cederberg was given adequate notice and he responded to that notice then the Council needs to go forward. He doesn't mind putting it off until the end of the hearings but he wants to go forward.

Chris Tweeten wants to hear from Mr. Cederberg if it's possible to make sure the record is complete if it goes on to District Court or the Board of Crime Control.

John Strandell reported that Katrina Bolger returned to the room. Katrina Bolger said that Mr. Cederberg will be calling in. Chris Tweeten said they would proceed with the other two cases first.

Thompson Stipulation

Sarah Clerget explained that when POST originally received the case it was understood that Ms. Thompson was operating as a Misdemeanor Probation Officer and during the discovery process in the contested case proceeding POST discovered that she was working as a Pretrial Service Officer part of the time. As a Pretrial Service Officer employed by a private company, in this case Missoula Corrections Services, she was eligible for a POST certificate. A basic POST certificate was issued based on her pretrial service operation and limited to that operation. She was not certified as a misdemeanor probation officer. Because POST issued that certification she then voluntarily made the motion to voluntarily dismiss and the Hearing Examiner granted it pending the Council's approval. All that is being asked of the Council is to approve the dismissal of this case based on the fact that POST issued the certificate. Chris Tweeten asked if there was anyone appearing on behalf of the officer. Sarah Clerget said no.

Dan Cederberg joined the meeting by phone.

Chris Tweeten told Dan Cederberg that Chris Tweeten has been delegated the responsibility of moving these matters procedurally along for consideration by the POST Council today as indicated on the agenda as a presiding officer. Chris Tweeten said that the Council will complete the 2 stipulated matters then circle back to Maria McLean.

Chris Tweeten opened the floor for discussion on the Thompson stipulation. Jim Cashell made a motion and Kevin Olson seconded to approve the stipulation for Melissa Thompson. Motion carried, all members, except for those recused, voted in favor. Chris Tweeten said the stipulation is approved and said there should be a formal letter sent out signed by either Tony Harbaugh or John Strandell and that would complete the Council's work and the time would begin to run for seeking any review before the Board of Crime Control or District Court.

Houston Stipulation

Sarah Clerget told the Council that this was a voluntary surrender by the officer but because it was in the contested case stage already that means the Council has to approve the stipulation and dismissal per the ARMs. She explained that POST had some historic events with the officer back when he was a peace officer in Havre. Those events caused him to leave law enforcement of his own volition. He then became a publicly employed pretrial service officer. When he applied for the basic certificate as a pretrial service officer POST discovered the prior incidents from when you was a law enforcement officer and proceeded with revocation and proceedings against all his law enforcement certificates and the denial of his application for pretrial. In the intervening time while that contested case proceeding went on he got a different job with the courts with a different job description for which he no longer needs a POST certificate. He then voluntarily surrendered all of his peace officer certificates and withdrew his application for a pretrial certificate.

Sarah Clerget said the stipulation which is in the meeting materials on page 48 weighs out the most important parts that he is giving up. He is giving up the law enforcement certificate in paragraph 1 and he's withdrawing his application. In 4, a, b and c which are on page 49 he is working in a capacity that he doesn't require a POST certificate and he is not a public safety officer. From the date of his signing this stipulation on, he understands that he has no POST certificates. This was a good resolution to this matter which was headed for hearing. She asked the Council to approve the stipulation per the ARMs.

Chris Tweeten asked if there was anyone present to appear for Mr. Houston. Seeing none he asked for questions or comments or discussion from the Council. Kevin Olson abstained from this vote for the record since Mr. Houston worked for Kevin Olson as a police officer during Kevin Olson's tenure as Chief of Police for the City of Havre. Kevin Olson asked if there is still a quorum. Jim Thomas said he can vote on this stipulation. Perry Johnson asked if Chris Tweeten wanted a roll call vote on the stipulation and Chris Tweeten said he would.

Jim Cashell made a motion and Ryan Oster seconded to approve the stipulation. Jim Thomas, Jesse Slaughter, Jim Cashell, Ryan Oster, Kimberly Burdick, Bill Dial, and Tia Robin voted in favor. Motion carried.

McLean Oral Argument

Chris Tweeten said the meeting would continue with the Maria McLean oral argument. He shared that a question had arisen with respect of a quorum for purposes of consideration in this matter. POST's ARM provide that the members of the Case Status Committee, which is the committee that screens these matters when they originally come in, be excluded. Sarah Clerget shared that it is arguable. Chris Tweeten reported that the practice has been for those members to recuse themselves when voting on those matters that they have screened. There are 10 Council members present and 3 of them have participated in the screening of this matter. Those members are John Strandell, Jim Thomas and Sheriff Harbaugh. He explained that it would reduce the number of voting members to 7 which is still a quorum.

Chris Tweeten told Dan Cederberg that it is his understanding that in conversations with Sarah Clerget earlier in the day that the question of Kevin Olson's eligibility to participate in this matter has come up. He continued that Sarah Clerget may have made representations that Kevin Olson would not be a voting member of the Council for purposes of this matter. He asked Dan Cederberg if that was right. Dan Cederberg agreed.

Chris Tweeten shared that he looked at the statute 2-4-611(4) that specifically addresses the questions of disqualifying members of an agency for cause based on personal bias, lack of independence, disqualification by law or other disqualifications of an agency member. That statute presumptively allows all members of the agency to vote on a matter unless an affidavit of disqualification has been timely filed. The requirement is that it be filed in advance of the time and date of the hearing. Chris Tweeten said that no such affidavit is in the record as far as he knows. He asked Dan Cederberg if that was consistent with his knowledge. Dan Cederberg agreed.

Chris Tweeten continued that Mr. Olson, as Chris Tweeten understands is not willing to recuse himself from this matter because he doesn't consider his participation or whatever participation that he has had previously to be sufficient to create either personal bias or lack of independence or any disqualification by law. Chris Tweeten asked Mr. Olson if that was correct. Mr. Olson agreed and asked Dan Cederberg for the record to show cause why he shouldn't participate in this proceeding.

Chris Tweeten asked Dan Cederberg to explain what cause he has, if any, to remove Mr. Olson from the voting duties that he has as a member of this Council on this matter.

Dan Cederberg stated that he has participated in the discussion that have been ongoing in regard to the legislation that is being considered to deal with the situation. He continued that Kevin Olson has been in conversations with representatives for Missoula Correctional Services and some of the other prerelease centers with regard to the legislation that would address the issues that will be talked about today. Dan Cederberg stated that during those discussions Kevin Olson had heard information about the positions that the other entities have, what their tactics and arguments are going to be so in essence he has had inside information in regards to what is going on here. He said that under those circumstances his take would be that Kevin Olson is in a situation where he should recuse himself.

Chris Tweeten replied that Mr. Cederberg didn't raise that issue prior to today and said there is no affidavit in front of him. Dan Cederberg agreed. Chris Tweeten said that as he reads the statute, in the absence of that kind of affidavit of actual bias Mr. Olson is under no duty to recuse himself regardless of prior discussions. Chris Tweeten continued that he knows that other members of the staff have engaged in those discussions and he suspects that other members of the Council have been aware of those discussions as well. If an awareness of the prior course of dealings between the private entities providing misdemeanor probation and pretrial services and the Council through its staff, if that knowledge is sufficient to disqualify then he suspects that all members of the Council would be disqualified. The Council has heard reports with respect to those discussions on more than 1 occasion. Under the rule of necessity public policy doesn't favor the idea that a matter can be stymied by that kind of information with the respect to a matter that the Council is going to vote on.

Kevin Olson asked Dan Cederberg if his argument was because Maria McLean is employed by Missoula Correctional Services and in Kevin Olson position with DOC Missoula Correctional Services is a contractor for DOC and he should recuse himself for that reason. Dan Cederberg stated that he would like to go back to the beginning of this matter. He said this was all initiated back when Kevin Olson was the MLEA Director and there was correspondence between Missoula Correctional Services and him with regard to allowing people like Ms. McLean to go to the MLEA to have their training. At that point Kevin Olson had gotten an opinion from the Attorney General's Office that they weren't entitled to come to the MLEA. He pointed out that Kevin Olson has actually been involved in this matter since the beginning with regard to the officers situated in the way Ms. McLean is situated. Dan Cederberg stated that that started the whole process and that is when they came to POST, he thinks back in 2013 and pointed out the fact that they were having the problem. Dan Cederberg assumes that Kevin Olson dealt with the Attorney General's Office, possibly working for them at that point and conferred with them and their attorney with regards to the process. He said that Kevin Olson goes all the way back to the beginning of the process and talking to the Attorney General's staff and that follows all the way through to the situation where Kevin Olson was a potential witness in the case. Dan Cederberg listed Kevin Olson as a witness, in fact had a subpoena issued to him. He commented that Kevin Olson has been heavily involved in this matter from the beginning and he thinks that under those standards there is an appearance of impropriety in regards to continued involvement in voting on the outcome of the issue. Dan Cederberg believes it is a situation where Kevin Olson should recuse himself.

Kevin Olson offered a point of clarification. The facts of this case without going into a long argument are, did she have a break of service and did she accrue her 16 hours of continuing education. Her basic academy was in 1998 and Kevin Olson stated he wasn't the administrator of the MLEA in 1998. If the disputed facts are was there a break in service or did she get her 16 hours, Kevin Olson asked how he was conflicted out of those 2 facts.

Dan Cederberg responded that Kevin Olson has been involved in this issue in general from the beginning, not specifically with regard to Ms. McLean. Dan Cederberg said the ruling specifically affects her as she would have to go back to the basic training before she can get a certificate. The decisions that were made when Mr. Olson was running the MLEA make it impossible for her to do that. So her avenue for keeping her

job and working in the area she has been working in for 20+ years has had Kevin Olson intricately involved in the whole process and it has significantly made an impact on her. Dan Cederberg thinks that under those circumstances Kevin Olson should recuse himself.

Kevin Olson proposed to Chris Tweeten that he declares she does work for Missoula Correctional Services. They are a contractor with DOC that falls within his division. Other than that Kevin Olson sees no conflict and asked Chris Tweeten to make the decision as to whether or not Kevin Olson is conflicted out.

Chris Tweeten asked Dan Cederberg if he had anything further. Dan Cederberg did not. Chris Tweeten asked Sarah Clerget if she had anything on behalf of the contested case counsel. Sarah Clerget reiterated what Kevin Olson has said that with the facts of this case specifically she does not believe there has not been any ex parte contact and Kevin Olson by his own admission doesn't know anything about the specific facts of this case that are contested.

Chris Tweeten said his ruling through the authority that has been delegated to him is two-fold. First, in the absence of a timely filed affidavit of disqualification, he believes the Supreme Court has said that the statutory grounds for disqualification of a member of an agency from participating in the matter need not be considered. In other words, the burden is on the complaining party to file a timely affidavit of disqualification. In the absence of such an affidavit the issue is not properly raised. Chris Tweeten reported with the first ground that he would rely is that there is no timely filed affidavit of disqualification. Therefore the matter is not timely or properly raised before the Council.

Chris Tweeten said secondly, if this were a matter of fundamental fairness it would be a different case. In this matter having reviewed Mr. Scrimm's summary judgment order and his proposed decision based on that order. This has been mentioned both by Mr. Olson and the contested case counsel. The facts of this case are quite specific and they are factually specific to Ms. McLean's matter.. Chris Tweeten continued that the denial of Ms. McLean's application for a certificate is based on, as he reads in Mr. Scrimm's order, on her failing to fulfill the requirements for training with respect to officers who had breaks in service and also to fulfill the obligations of officers for continuing education. Those are factually specific to Ms. McLean's case. They don't involve the subject matter of the prior discussions on the bigger picture issues of this matter and therefore he did not think it would be fundamentally unfair for Mr. Olson to participate in this matter. He does not think that due process compels him to recuse himself. That being the case, Chris Tweeten said the question is left to the conscience of Mr. Olson and he has indicated that his judgment is that he need not recuse himself and Chris Tweeten doesn't see any grounds for POST to overrule Mr. Olson's determination in that regard. Certainly, Chris Tweeten is operating as the delegated representative of the Council for purposes of conducting this hearing. If any member of the Council wishes to make a motion duly seconded to overrule his determination with respect to this matter he thinks the Council should entertain it and take a vote. But, failing that, he thinks that the rule would be that the Council has accepted his judgment and that the matter should proceed. Chris Tweeten called for a motion from any member of the Council who wishes to make one that would dispute any of the conclusions he just expressed with respect to Mr. Olson's obligation to recuse himself

in this matter. He asked if anyone on the Council have a motion. Hearing none, pursuant to the responsibility he has been given as the delegated presiding officer over these hearings his ruling is that Mr. Olson is not disqualified according to the statute. He is not disqualified according to the due process clause and therefore the Council is obligated to respect his judgment as to whether or not he needs to personally recuse himself or not. As Kevin Olson stated on the record, his intention is not to do so. Chris Tweeten told the Council that with Mr. Olson's vote included there is a quorum for the consideration of this matter as long as everyone is still on the phone.

Chris Tweeten asked John Strandell to confirm who is on the phone. John Strandell asked for verification and Perry Johnson called roll. Tia Robin, Bill Dial, and Kimberly Burdick were all on the phone. Ryan Oster, Jim Cashell, Jesse Slaughter and Kevin Olson were in the room. That makes 7 members.

Chris Tweeten said that it appears a quorum is present for purposes of this matter so the meeting should proceed to the hearing that has been noticed.

Chris Tweeten told Dan Cederberg that the Council is here at his request for consideration of this matter by taking exception to the Hearing Examiners proposed decision and if he would like to present argument at this point.

Dan Cederberg said he would. He shared that there were 2 issues here and wanted to give a background. He continued that Maria McLean has been a pretrial and misdemeanor probation officer with Missoula Correctional Services (MCS) for 18 years. She worked there and went to the MLEA in 1998 and received her certificate. At that time it wasn't a separate certificate being issued by POST. That has been a more recent development. She went to the training at MLEA and went to work in 1998 for MCS. She worked there for a number of years and then in 2005 took time off for raising her family. She returned to work 5 years later in 2010 and resumed her work at MCS. She primarily worked in the misdemeanor probation office but has also done work as a pretrial service officer. She continued in that work and continues to do that until today. During that time zone, 2005 and 2010, question number 1 is was there a break in service that required her to return to the academy when she came back to work in 2010. The second issue deals with her training that Ms. McLean has had during her stint as a pretrial and misdemeanor probation officer.

Dan Cedberg continued with Ms. McLean has been working since February of 1998. Between February of 1998 and September of last year, 2015 which was the year she applied for a certificate from POST. She applied in December, 2015. In the years between 1998 and 2015 she obtained an average of 22.75 hours of training per year. The statutory requirement is for 16 hours per year. They admit that she didn't do 16 hours each year but she did do 16 hours a year. Since she returned to work in 2010 she has received 199.5 hours of training which calculates out to an average of 33.25 hours per year. So, in the 5 years since she has been back she has done double the number of hours. Dan Cederberg said once again, that's the average over the 5 year period. There are a lot of years during that time when she did not receive 16 hours. She hasn't had 16 hours every year but her average over the 5 years is 33.25 hours. That is more than double the statutory requirement.

Dan Cederberg told the Council that under those circumstances they are making 2 arguments. The first relates to whether or not she needed to attend the MLEA training when she returned to work. They looked at a precedent from a meeting for September 16, 2015 with the POST Council. On page 23 in those minutes there was a discussion being held about when the time frame starts when there is a break in service. Sarah Clerget said that the action taken by the POST Council indicated that if a person goes from a public safety officer to a public safety officer position the Council is attributing the date of initial employment under the statute to be the most recent hire in the agency for the current position and the appropriate basic being applied for. Under the precedence the argument is that POST should look at the 2010 hire date as the date from which the break in service should be measured. If you look at the 2010 hire date there has been no break in service. During those years between 2010 and 2015 she has worked continuously so there has been no break in service.

Dan Cederberg shared that what they are asking POST to do is with regards to the break in service issue is to look at the precedence from their minutes and consider her hire date to be 2010. When the 2010 hire date is considered there is no break in service. Then Ms. McLean does qualify for the issuance of the certificate under that scenario.

Dan Cederberg continued with the second issue, the hours a year of training. Their argument there is that the hours a year does not specifically state that the hours have to be obtained in each year and that there is no ruling or determination by POST that everyone has to have their training in each year. Here we have an officer who has doubled the amount of required training so to deny her a certificate based on that training is really to put form over substance. He explained that she is getting the training. She has been very conscientious. She just hasn't made sure that each year she has 16 hours. To their knowledge there has been nothing out there saying that this isn't an allowable situation. The statute says hours a year, it doesn't say hours per years. So, they think the fair argument and the fair way to handle the training hours is to look at the overall context and to make a determination that this is an officer that is meeting the spirit of the law although arguably she isn't meeting the letter of the law. Therefore, she is entitled to have it recognized that she is getting training and therefore the training issue should be resolved in her favor and she should be issued her certificate. That is their argument on the 2 issues. This is a lady who worked in corrections in Florida before she moved here. She has some 30 years in corrections with a break in service to raise her kids and it is really putting form over substance which is not required. There are legitimate legal arguments upon which POST can determine that she does qualify. They think the fundamentally fair thing to do is to recognize that from attending the MLEA and from the training issue she has met the requirements and should be issued a certificate.

Chris Tweeten asked Sarah Clerget to give her argument.

Sarah Clerget shared with the Council that starting on page 39 of the meeting materials is the order from Hearing Examiner Scrimm. He goes through and makes factual findings and she reminded the Council that their decision today is whether or not to adopt these findings and conclusions from the Hearing Examiner. She said that Dan Cederberg made the same arguments in front of Mr. Scrimm that he just made and she will shortly make in response in front of Hearing Examiner Chris Tweeten.

There is nothing new here and Mr. Scrimm made his determinations based on all of those arguments.

Sarah Clerget told the Council that she is going to take them through the undisputed facts that the Hearing Examiner found because she thinks they are responsive to both of Dan Cederberg's points. She directed the Council to page 39. Sarah Clerget shared that Dan Cederberg said that Ms. McLean went to the basic academy in 1998 and fact #5, the Hearing Examiner found that Ms. McLean has not obtained 16 hours of training every year since attending Probation and Parole Basic in 1998. She has received less than the required 16 hours of training for 11 out of the last 18 years since she attended the basic course. The years she missed those trainings are laid out in facts #6 through #12. That shows that not only did she not receive 16 hours of training a year before her break in service which was in 2010 for about 5 years, but since she has come back to work in 2010 in 2012, 2014 and 2015 she hasn't received the 16 hours a year of training. She presented lots of arguments about the average argument in front of the Hearing Examiner. Sarah Clerget pointed the members to page 44 in the meeting materials, page 6 of his decision, the last paragraph where he is discussing the failure to meet the education requirements. He says, "finally McLean's averaging theory could result in a peace officer taking 240 hours of training in one year and taking none for the next 15 and while averaging 16 hours per year, the peace officer would not have improved her skill or abilities at all during that time period." Sarah Clerget said that is the result of this averaging argument which is certainly not a policy that POST should consider as viable in this context or any other context.

Sarah Clerget continued that additionally, she wants to respond to the statement about the discussion in the minutes on September 16, 2015. Many of the Council members were there and will remember the discussion. The discussion was in the context of the equivalency requests about a man named David Weidner. He was a public safety communicator who had been to the public safety communicator basic and wanted to become a corrections officer. She corrected that this was an extension request, not an equivalency request. He had to go to basic for corrections officer basic and for the purpose of giving him an extension to attend corrections officer basic, the question was which hire date should be used. That was the context in which the Council was discussing that hire date of going from a public safety officer position to a public safety officer position. In that case it was a public safety officer communicator position to a corrections officer position. The point of that discussion was when Mr. Weidner was hired as a corrections officer he had to go to that discipline specific basic and when should his hire date be for the purposes of giving him the 18 month extension to get to basic. She thinks that the statement about a public safety officers hire date when moving from a public safety officer to a public safety officer position is not applicable here because the Council was talking about not only the same discipline but the same position for Ms. McLean. There is no similarity between that example where the Council determined the hire date for changing disciplines.

Sarah Clerget said that in addition there are specific minutes, she doesn't have the date, but in the June 17, 2015 meeting the Council discussed the application of the 16 hours of training per year that is statutory for probation and parole officers verses the 20 hours every 2 years that is in the ARMs of continuing education. The Council ruled for that interpretation that they were interpreting the ARMs as being the 20 hours every 2 years of being satisfied if a probation and parole officer receives 16 hours per year of

training. She pointed out to the Hearing Examiner in her arguments as she submits today in that discussion, POST was very specific that it was 16 hours per year that POST was contemplating for the probation and parole officers in order to satisfy that 20 hours every 2 years. It was actually exceeding that requirement of 20 hours every 2 years. POST has in fact in minutes other than the 1 cited by Mr. Cederberg been rather specific about 16 hours per year. Also, as she argued in front of the Hearing Examiner that the legislative history of that statute is pretty clear that it was intended to be per year, 16 hours per year and not an average of 16 hour per year. She would submit also that the argument of averages should not be persuasive at all as it wasn't to the Hearing Examiner.

Sarah Clerget continued that with respect to the returning to basic she is sympathetic to Ms. McLean's position as she is sure the POST Council is, but unfortunately a break in service of 5 years with a pattern of not having the 16 hours per year even since she has returned to work is additionally concerning. The problem is that when she went to basic as you can tell from fact finding, in fact 2 on page 39, her basic academy lasted from November 9, 2008 through November 20, 2008. It was a very different basic academy than it is now. That is part of the reason there is a requirement for folks to go back after they have had such a long break in service because there has been a lot of changes and new material that is required. This case is a good example of that, particularly in the context of not having the continuing education. For both of those reasons, she asks that the Council adopt the findings and conclusions of the Hearing Examiner as they are and find that Ms. McLean needs to return to basic before she will be eligible for her probation and parole basic certificate.

Chris Tweeten asked if any members of the Council had questions for either of the attorneys with respect to their arguments.

Bill Dial asked Dan Cederberg to explain his rationale that Ms. McLean's date of employment should be 2010. Dan Cederberg explained that the rationale comes from minutes from the POST meeting that was held in December 16, 2015. On page 23 of the minutes there was an indication that the Council was discussing a break in service. The Council determined in that meeting that a person who was going from a public safety officer to a public safety officer position the date of initial employment under 7-32-303(5)(a) which is the statute of public safety officers, to be the most recent date of hire in the agency for the current position and the appropriate basic being applied for. He said under that precedent that was set about a year ago he argues that her date of hire then is the most recent date of hire in the agency for the current position. Her most recent date of hire was in 2010 for MCS and she has worked without interruption since 2010 through today, 2016. He thinks those minutes allow for POST Council to continue with that precedent in this case and consider her hire date 2010 then she would have had no break in service.

Sarah Clerget responded with that was the discussion about David Weidner that she was referring to in her arguments. To clarify, David Weidner had no break in service. It was a transfer from one position to another with no allegation of break in service. Also, she reiterated that whatever the hire date is doesn't change the break in service. The break in service still occurred and whether or not she was hired in 2010 or 1998 it doesn't change the fact that she has had it and therefore has to go back to basic regardless of when her hire date is.

Dan Cederberg responded that their point is there is a precedent here and you can look at that language and you can interpret it the way he is interpreting it. You can also interpret it the way Ms. Clerget is interpreting it. If you look at what the real intent here is there has been no issue with Ms. McLean being a long standing officer. There are no issues about her conduct or her ability to do the job day to day. All these things are technical argument that there is precedent that can be interpreted either way. Dan Cederberg is saying that the Council should look at its language from the minutes from 2015 and interpret that way and rely on that to allow this officer who is doing a good job out there and protecting public safety to continue to work. The POST Council certainly can go in and set up criteria to prevent the scenario where the Hearing Examiner moved about the 240 hours in one year and not go back for however many years that divided by 16 is. That's not what they are saying. They are saying she had intermittent training and she has had more than what the requirement is. In this particular scenario the Council can look at where she is at and determine this scenario isn't clear and it can be interpreted the way Ms. McLean is arguing it. It can certainly also be interpreted the way Ms. Clerget is arguing it. He doesn't dispute that, but the choice here today is to look at it and when you look at this particular case and you know there is no issue in regard to her being a long time officer who is doing a good job, you can for this case make the determination that the break in service is going to be interpreted the way Mr. Cederberg is arguing it. Also, that the hours are going to be averaged and then you can go back and clarify these matters so that maybe no averaging at all will be the decision. But today, the Council doesn't have that ruling before them so they have the ability to go ahead and allow for the training. Dan Cederberg thinks that is the correct thing to do in this particular instance. It is the right thing to do as that furthers the overall goal of the Council to keep folks out there working that are appropriate. If the Council bounces her on this they are bouncing her on a technicality or a couple of technicalities, not that she isn't qualified to do the job. Dan Cederberg said it is the right thing to do and urged POST to move forward in that fashion.

Sarah Clerget rested on what she has unless there were other questions. Chris Tweeten asked for other questions from the Council. None were heard.

Chris Tweeten thanked counsel for their enlightening arguments regarding their positions respectively with respect to the case.

Bill Dial commented when listening to Mr. Cederberg it reminded him of what they used to say when he was a high school coach. You either coach with your heart or your head. In this situation he would like to coach with his heart but there are 2 things being talked about. First, does she have ongoing training and does she have a separation of over 5 years. She did have ongoing training which did not meet statutory requirements or ARMs. She also had a break of more than 5 years of service. In Bill Dial's heart he doesn't want to take a job away from her but in his head it is clear. She had a separation and when Mr. Cederberg was explaining he was thinking about if it was Perry Johnson. Bill Dial continued that Perry Johnson was a distinguished law enforcement officer, a great Sheriff and a great Undersheriff. Let's say 6 years down the road he wants to go back and be a police officer. His separation of service is more than 5 years and the ARMs and statutes are what they are and the Council would be

setting dangerous precedent if they approve this. He will vote not to approve the request.

Chris Tweeten said the appropriate motion at this point is to either affirm or overrule the proposed decision of the Hearing Examiner. The Council can if it wishes, to make changes in the Hearing Examiner's legal rationale. If the Council wishes to make changes in the undisputed facts as they are set forth there would be automatic summary judgment however the Council can only do that by each member of the Council who is voting on this matter fully considering the entire record that is before the Council. Bill Dial asked what the appropriate motion would be. Chris Tweeten said the appropriate motion would be basically one of 3 things. First of all to affirm the proposed decision that is made by the Hearing Examiner which is to adopt the Hearing Examiner's order granting summary judgment in this case which appears on page 39 in the meeting material which was granted on August 18, 2016. That is the first option.

Chris Tweeten continued with the second option which is reverse the Hearing Examiner's proposed order and enter judgment in favor of Ms. McLean. He would suggest that since this is a summary judgment case and the facts are deemed to be undisputed and neither party has argued or provided affidavits to show that any of those facts are under dispute, those facts have to be taken as true for purposes of this proceeding. He doesn't think the facts that are stated in the undisputed facts section of Mr. Scrimm's order granting summary judgment can be changed but you can disagree with his legal reasoning. If the Council accepts Mr. Cederberg's arguments with respect to how the requirements of the statutes are to be interpreted and apply it to the undisputed facts of this case then the Council's option would be to overrule the Hearing Examiner's proposal and to enter their own legal conclusions with respect to Ms. McLean's case.

Bill Dial made a motion and Jim Cashell seconded to accept the recommendation of the Hearing Officer on Ms. McLean. Chris Tweeten stated that the motion was made by Bill Dial, seconded by Jim Cashell that the Council members voting on this matter vote to affirm the proposal of the Hearing Examiner granting summary judgment.

Chris Tweeten asked if there was any further discussion on behalf of the Council. Hearing none Chris Tweeten asked for a roll call vote.

Perry Johnson called the roll. Bill Dial, Jim Cashell, Ryan Oster, Jesse Slaughter, Kimberly Burdick, Kevin Olson and Tia Robin all voted in favor. Chris Tweeten stated that members of the Council have voted unanimously to affirm the Hearing Officer's proposed decision. On the record he suggested notifying Ms. McLean and her counsel that they have the opportunity to appeal this matter further through the Montana Board of Crime Control and beyond that to the appropriate District Court for the district for the state of Montana in the event they continue to disagree with the conclusions reached by the agencies.

Chris Tweeten asked Mr. Cederberg if he had anything further. Dan Cederberg thanked the Council for their time this morning in considering their arguments. He thinks that Mr. Dial summarized accurately the position that they have and they will decide if they want to move it on to another forum.

Chris Tweeten asked Ms. Clerget if she had anything further and she said no.

John Strandell gave the Council a 10 minute break at 10:25.

John Strandell reconvened and asked who was still on the phone. Tony Harbaugh, Bill Dial, Steve Efte, Andrea Lower and Gen Stasiak were on the phone.

Budget Report

Perry Johnson asked the group to turn to page 56 to look at the current budget report. He shared that POST proposed a legislative package that would have included 1.5 positions. A half time attorney position dedicated to POST Council business and a full time administrative assistant to process the daily work that goes on. The proposal first goes to the Governor for endorsement or approval. Kevin Olson and John Strandell said the proposal gets packaged with DOJ's requests. Perry Johnson said POST submits their budget to the Governor at the same time the Attorney General does.

Perry Johnson said the proposal for POST's manpower wasn't approved by the Governor. He understands that no one's proposal was approved for DOJ. They were asking for 7 new positions, some of which were endorsed by the last legislature in regards to the Eastern Montana Crime Lab. The 7 weren't approved by the Governor and neither were POST's. He talked to the accounting staff at DOJ and they said the ball is in POST's court now and it does need to be forwarded with the elected official's budget request to the legislature for their future consideration. Perry Johnson still thinks there is opportunity to ask for the additional manpower. He has presented to MPPA, MSPOA and MACOP letting them know what POST's budget needs are and was pretty well received. Ryan Oster was at the Chief's conference and Tony Harbaugh at MSPOA and Perry Johnson thinks there is a good relationship with POST's stakeholders and they recognize what POST is trying to do will take some more resources. He is hoping to get some stakeholders to step up and endorse what the Council is doing and get traction in the legislature this next session.

Perry Johnson said the fiscal year closed out with about \$16,000.00 left in the budget from last year and asked to revert 30% back into this budget.

Business Plan /Policy Committee Meeting Update

Perry Johnson shared that the committee met last Friday. It was a small gathering of 2 members, Kimberly Burdick and Ryan Oster. The staff wanted to talk to the committee about the red lined version of the legislative package but mostly the P & P segment. Perry Johnson asked the Council to turn to page 57 in the meeting materials. It was the same draft that was pushed out to the Council in the June meeting.

P & P Legislation

Perry Johnson shared the other reason he wanted to sit down with the committee was that he had traveled to Billings a couple of weeks ago and presented to the DCI agents who were having their annual meeting in Billings. Following that meeting he spent 1½ hours with Rich Friedel. Rich Friedel is a business man as well as an attorney from Billings who provides misdemeanor and pretrial services in the Billings area. He has called in to the POST meetings in the past. Perry Johnson always thought it was Rich Friedel's position that POST would accommodate a training regimen for them, to create

or hold out something different to them than what is in the statute. He was very wrong about that.

Perry Johnson told the Council that Rich Friedel feels that misdemeanor probation and pretrial services is more of a business that tends to monitor offenders and not arrest offenders. He believes the correct application of those processes is if they are monitoring misdemeanor offenders and if they see a violation that it is incumbent on them to make a report to the court. If the court feels that appropriate action is necessary it is the court's decision as to what the appropriate action is. He asked Rich Friedel if it is necessary to arrest people in his business. He said they do not arrest and doesn't think it is appropriate to arrest to person who is on a misdemeanor probation for a misdemeanor offense. It is not a good use of the incarceration resource that is available.

Perry Johnson said that he wanted to talk to the Business Plan Committee because they were the ones that helped the staff figure out the draft on the first bill that the Council received. He shared that he spoke with the committee about whether it would be appropriate for the Council to look at a different bill that would remove the arrest authority of misdemeanor probation and pretrial services and defines that they are an agency that monitors and reports back to the court. He said the way it was left was that they were pretty comfortable with the draft that was brought to the Council in June where there are definitions of a pretrial service officer and misdemeanor probation officers, that defines POST's relationship with the private vendors by making sure that they understand who POST has oversight over and who POST doesn't.

Perry Johnson shared that he also had contact with Compliance Monitoring Systems (CMS) in Missoula who provides a pretrial/misdemeanor service as well. They do monitoring, they don't arrest and report back to the court if there are violations and the court makes the decisions as to issue warrants or any other kind of outreach.

Perry Johnson said Rich Friedel is a very interesting person who believes his program has a tremendous amount of value and is very invested in it. He feels like it gives people the opportunity to be monitored and be successful because someone is looking over the person's shoulder. Perry Johnson said Jodine Tarbert in Missoula with CMS feels the same way as Rich Friedel.

Ryan Oster said that someone was going to dig up the legislative intent. Katrina Bolger commented that she ran the legislative history on the amendment that added the ability to arrest to the pretrial services statute. It was explicitly added in 2001. The argument was from Missoula County. There were no opponents and in the Senate there were no proponents to the bill. In the House hearing MCS, Sue Wilkins, testified in favor of the bill. Katrina Bolger continued that essentially they added the arrest powers because they felt like there was a need because it took so long to get a bench warrant to arrest people. Public safety demanded that they be able to arrest just as a probation officer would be able to arrest. She said there were some questions from the Senate Judiciary Committee regarding weren't these people considered innocent until proven guilty and they put those concerns to rest since the bill did pass.

Katrina Bolger said the exhibits that were brought forward to both Judiciary Committees were a letter signed by all of the Missoula judges of the Fourth Judicial

District stating that there was a need for the ability to arrest because the bench warrant causes delays and gums up the system so as a matter of public safety the misdemeanor needed to be arrested right then. She shared that another letter was from Fred Van Valkenburg who was formerly the County Attorney in Missoula County. He and several of his deputies signed a letter of support stating basically the same thing. The 2 Justices of the Peace submitted a letter as well with the same type of language. That is the legislative history for pretrial services.

Katrina Bolger said she doesn't have the legislative history of misdemeanor probation with her. It was nearly 200 pages. It was brought in with a bill in 1995 that changed domestic abuse to partner family member assault. It was part of that legislation where many laws, definitions and penalties were changed. The idea was that they wanted people who were convicted of misdemeanors, especially partner family member assault to be monitored while they were on probation to be sure they were following their conditions. Katrina Bolger said one thing that was noted over and over again that seemed to be important is that the misdemeanor probation program is optional in each county. They determine if there is a need and they are allowed to set it up. Whether or not a county has those officers is entirely up to them. It was mostly a domestic violence bill and hasn't been amended in 21 years. The arrest authority and training requirements were present from the beginning. It was written that way in 1995 and hasn't been changed in 21 years.

Ryan Oster told the Council that he finds it ironic that a police officer can respond to a disturbance and in sorting it out can find 3 drunks that are under court conditions and the police officer can't arrest them. The officer has to file with the prosecutor and the prosecutor has to file a notice with the court but, the pretrial services officers are authorized to make arrests on the same thing. He shared that part of the discussion that took place in the Business Plan Committee was how much of the elephant does POST eat in 1 bite. Is this a battle we want to have this session or is the plate full?

Perry Johnson said that Ryan Oster's point is well taken. He pointed out to the Council what is left in the agenda. It goes from page 57 to page 80 of drafts that was brought to the Council during the June meeting. Those are what the committee thought were appropriate business for the Council to carry into the legislature this time. There are new statutes being created and rewriting 7-32-303. It is very aggressive and very ambitious. That's why it's back in front of the Council.

Ryan Oster remarked that one of the benefits is that they would be removed from POST's umbrella. If the arrest authority is taken away then they wouldn't be under POST. Perry Johnson agreed and said he spoke with Beth McLaughlin who is the court administrator. The court administrator in the Supreme Court has a commission that provides training for all courts of lower jurisdiction. Those lower courts have to attend the training. Perry Johnson said that Katrina Bolger raised a very good point that these pretrial programs aren't mandated by the state to anyone. This is a program that is an option to the counties if they want to and if they fall under the parameters. The legislature conjoined them to Adult Probation & Parole and that's why the government employed pretrial/misdemeanor officers are trying to get into DOC's basic academy. He said that Andrea Lower and Bill Todd just graduated from that program last Friday from the basic 400 hours. He thinks because they are attached to the court of lower jurisdiction, that's where they get their authority. A county or a municipality adopts

this program and they employ these people. They are working for that court that is actually empowered to create the program. They are part of the court.

Andrea Lower wanted to clarify that Gallatin County established a county office and they don't work for the courts and they also supervise felonies.

Kevin Olson asked by what authority do they supervise felonies. She said the court does order them to supervise those people in pretrial status. The courts send people on felony probation who are pending revocation of new charges to pretrial service to monitor them in addition to their felony probation. In misdemeanor probation they have people who are on misdemeanor probation who get sentenced on felonies and they are monitored until they get sentenced. They are monitored on misdemeanor charges until they are sentenced by the county. Only from then do they have a court order to have them supervised by felony probation completely. She said there are no limits to the crimes that they supervise unless they are violent or sex offenders.

Steve Ete commented that he understands that it would be easier to get rid of this problem by taking arrest authority away from those that are not public safety officers but he doesn't think it is the route to go. Gallatin County Services have been operating for 15 years as pretrial officers and 10 years as misdemeanor probation officers. Their courts are aware of what they do and they give them the authority to do that in the form of orders. All the misdemeanor probation officers include statements that the courts sign to give the powers of arrest. He hopes the community and those that should comment such as local judges and local commissioners and prosecutors do comment prior to making such a drastic decision to take this away from programs that the local government have established.

Perry Johnson shared that when he looks at the statute it says that a pretrial service agency means a government agency that is designated by a district court, justice court, municipal court or city court to provide services. Then it says that a local government may establish a misdemeanor office associated with the justice court, municipal court, or city court. He likes Kevin Olson's question because he wonders how they aren't associated with those courts. How do they not supervise the agency when the statute says that they must.

Steve Ete responded that because the court has to provide them the authority and they do. Their program was established through the Criminal Justice Coordinating Council. They developed the office of Court Services and have a local branch to supervise them in that area. The court decides which people should be supervised by pretrial officers. They are under the authority of those courts. He said one thing that was brought up on Friday with the Business Plan Committee was the issue of debtors court. Their agency doesn't violate anyone on pretrial status for failure to pay. They work with the people, work with the courts and yet they file all of the violation reports for Justice Court and District Court to their prosecutors for private providers. More often than not private providers write on their violation reports that the person failed to pay. Their agency has never removed a bracelet for failure to pay but there have been numerous people who have had their bracelets removed because they have failed to pay private providers. He understands that it would be easy for private providers to establish programs if they just didn't have the ability to arrest people and he would hope that

CMS and Mr. Friedel's company have not arrested anyone because they do not have the authority to arrest anyone.

Sarah Clerget asked that if in Steve Ette's opinion the private folks don't have any authority to arrest anyone or any misdemeanor or any pretrial. Steve Ette responded that it is interesting that Mr. Friedel hasn't arrested anyone for their pretrial program and Steve Ette believes that the arrest authority is based on somebody who has been identified as a public safety officer and been to the academy. Steve Ette had to leave to attend court.

Katrina Bolger commented that the arrest amendment that was made to the pretrial services statute was brought by a private entity to the legislature. Sarah Clerget added that MCS is the one who testified. Perry Johnson said that they were the only ones who testified as a proponent and there were no opponents. He asked Andrea Lower if they arrest. Andrea Lower said they have in the past. They have detained. They have a field warrant sort of warrant that is signed by them and law enforcement and have brought the warrant to the jail within 12 hours. Since these discussions that have taken place and getting everyone through the academy they have not done that.

Perry Johnson asked if she thinks it is an important part of what they need to do. Andrea Lower said they aren't out doing bar checks or out arresting on the pretrial services side. If they come in the office intoxicated then in the past they have chosen to detain those people and they are seen by the judge the very next morning. In that regard, she would say yes. She would say no to go into their homes. There is the possibility of introducing new crimes. Perry Johnson said if someone came in today intoxicated and their agency decided to detain the person and they walked out what happens then. They haven't done anything. They let them leave. If they have blown hot then they get called into 911 due to public safety. Perry Johnson said that helps him understand the process a little better.

Perry Johnson said he liked the legislation package that has been put before the Council and based on what Gen Stasiak, Andrea Lower and Steve Ette pointed out they still see some benefit to the arrest side for publicly employed officers and he thinks it still defines POST's relationship with the publically employed officers. There is still a relationship there and POST still has oversight over them. He thinks it limits the scope of POST's responsibility to those private vendors as well. Perry Johnson thinks it is interesting that when an officer sees a violation of a condition from a court the officer is required to file the affidavit with the County Attorney and then to get a warrant. It is the statutory requirement. However, a misdemeanor probation officer or pretrial service officer can see the same violation and can make an arrest. He thinks it is an interesting dynamic.

Gen Stasiak invited the Council to visit their agency to see how they do it on the county side. She has run the program for 6 years and it has grown with the courts asking them to do more and more things that she feels saves the tax payers' money. They are preventing overcrowding in the jails or tying up the courts by submitting violation after violation reports. The courts trust their discretion and appreciate their abilities to sparingly use the power of arrest. Their agency doesn't go into homes and find their clients drinking but it is common for the police to call them to accompany the officer to a bar where they find someone who has driven to the bar and is fairly intoxicated

with the intention of driving home. The number 1 priority is to keep the community safe and they don't use those powers of arrest lightly. They are responsible to the courts to make sure they make the decisions wisely.

Tony Harbaugh asked Sarah Clerget about page 57, subsection (4). He asked if the language should read 16 hours per year. Chris Tweeten suggested each year. Sarah Clerget agreed with each year.

90 Day Nonresponsive Officer

Perry Johnson told the Council that this was talked about historically with this Council. The Hearing Examiner, David Scrimm, pointed out that everyone else that is responsive to the process gets 30 days but if a person is nonresponsive to the process at the very end they are suspended for 90 days and then they are revoked. He didn't find that in POST's ARMs. David Scrimm asked if there was a reason for doing that. Perry Johnson responded to David Scrimm that it was talked about during a Council meeting and they wanted to be more than fair. Perry Johnson said that it has created this situation for the 3 Case Status Committee members and the staff where the process is delayed for contested cases. He shared there are about 5 dozen cases rights now and about 8 of them have the staff waiting on the people that have never been heard from. The first time they were given the allegation they received 30 days to respond. When they were given the notice of nonresponse they were given 30 to respond and then they get another 90 days after POST sends a notice of agency action.

Perry Johnson is bringing it back to the Council because the staff and committee has been working this as a process that was approved by the Council. He would like the Council to reconsider that 90 days and take it back to what the ARM's say that at the end of that process they have 30 days to respond or they are permanently revoked.

Kevin Olson asked if the ARM says 30 days but as a matter of principal it became 90 days. Perry Johnson didn't think it was ever an operational issue. He said that he thinks they were just trying to be fair. Katrina Bolger shared that it was a motion voted on by the Council that for nonresponsive officers they would be sent letter 1, they get 30 days. At a no response letter, they get 30 more days or else and then a notice of agency action giving them the 90 days to respond. Bill Dial asked if it was an office policy. Katrina Bolger stated that it was a motion passed by the Council.

John Strandell remembers that it was an issue of fairness. The Council wanted to be fair to the individuals and give them plenty of opportunity to respond. He agrees that based on the experience they have gained as a committee and staff that 30 days is adequate. He thinks it would be a good policy to change it.

Ryan Oster commented that they would actually have 90 days total. Tony Harbaugh said that it came about when there was an individual who's attorney wasn't available but it did turn into a discussion that came back to the Council where the committee had run into this situation a couple of times. It didn't appear that the respondents had enough time. Tony Harbaugh thinks in extreme cases it would be good to have the ability to go beyond the 30 days but he thinks the 30 days is appropriate for the majority of the cases.

Kevin Olson commented that procedurally these are all things going on. He asked Sarah Clerget if on day 52 someone contacted her as an attorney for the officer and couldn't get things taken care of in a timely manner, could they be granted an extension. Sarah Clerget responded that it depended on which stage the process was in. If it was in the letter 1 30 day response period or the 30 day no response period, an extension could be granted. Once the notice goes out she doesn't have jurisdiction any more. The jurisdiction goes to the hearing examiner. There have been people in the past who have contacted the hearing examiner for an extension to employ a lawyer and the hearing examiner granted the extension. Kevin Olson commented that it looks like there is a remedy in place if the officer so chooses to exercise it.

Bill Dial made a motion that the Council suspend the practice of the 90 day nonresponsive officer and put it back to the existing ARMs but the Council could vote to extend someone's request if they have difficulty meeting those times.

Sarah Clerget suggested amending Bill Dial's motion. She doesn't think it's a good idea to bring it back to the whole Council for time's sake. It would be better to say Perry Johnson has the ability to grant the extension based on his discretion.

Bill Dial restated the motion that there will be a 30 day nonresponsive notification for all cases. In a case where that there is an extension the Executive Director has the power to grant that extension.

Sarah Clerget clarified that they will be sent a letter and offer them 30 days to respond and if they don't respond within that 30 days Perry Johnson has the opportunity to grant the extension if they ask for one. At the end of that 30 days, after the first letter, if they haven't responded they are issued a notice. They have 30 days from that notice under the discretion of the hearing examiner to grant an extension.

Bill Dial thought that sounded like they were at 60 days with that explanation.

Perry Johnson and John Strandell said that the length of time between letters and the circumstances that occur is a little bit different for each case.

Sarah Clerget said the 90 days from when the notice of agency action is sent is the issue right now. Currently when the notice is sent to a nonresponsive officer, they have 90 days to respond. If they have been a responsive officer they only get 30 days to respond. The 30 days that is being asked to limit is after a nonresponsive officer gets the notice of agency action.

Katrina Bolger explained that a person gets a letter 1, they have 30 days to respond. If a person doesn't respond, they get a no response letter and have 30 days to respond to that. Then they get a notice of agency action. At that point, they are suspended for 90 days during which time they can request a hearing. If an officer is responsive, when they get the notice of agency action they only have 30 days to request a hearing. A nonresponsive officer has 5 months to respond so the staff and committee would like it to be a total of 3 months, then revocation.

Kevin Olson asked if the ARM said they get 30 days and Perry Johnson responded that they do. Ryan Oster asked Bill Dial if it would be cleaner to have the motion be to put the practices in line with the POST ARMs.

Bill Dial withdrew his earlier motion. Ryan Oster made a motion that the Council put their operational practices in line with their ARM's and that a nonresponsive officer has 30 days as does a responsive officer. Bill Dial seconded. Motion carried, all members voting in favor.

2. 44-4-403 Discussion

Katrina Bolger explained that during the last Council meeting there was discussion about 44-4-404(3), on page 61 of the meeting materials. She said Kevin Olson had mentioned adding in that if an officer is revoked or denied for misconduct that the mental or physical deficiency piece should be added in there. The Business Plan Committee talked about it and due to the confusion it would cause it would be best to leave it as is. POST's ARMs state that the grounds for sanction, misconduct is also defined as being a mental or physical disability that prevents an officer from doing their job.

Perry Johnson shared that it was the consensus of that discussion with the Business Plan Committee that it is captured in the ARMs and if it is put into this part it complicates things in the event that somehow a remedy is found for whatever the physical or mental incapacitation is.

Ryan Oster added that the discussion centered on not wanting an administrator to call POST with a problem officer and ask POST to get them evaluated. They didn't want it to become POST's problem somehow. He said they decided it would be best to just leave it alone.

Jim Cashell asked if it meant the wording in paragraph 3 wasn't going to be there anymore. Perry Johnson replied that the wording that is there is consistent with what was there before. It will be left as is. He asked the lawyers in the room about the wording in (3); It is unlawful for a person who has had his or her basic certification as a public safety officer in any discipline revoked and denied for misconduct by the council. Jim Cashell shared that it sounds like the misconduct is by the council, etc. It was agreed to change it to; It is unlawful for a person who has had his or her basic certification as a public safety officer in any discipline revoked ~~and~~ or denied by the council for misconduct ~~by the council~~, etc.

John Strandell summed up that it is recommended no change other than the one Jim Cashell brought up.

Legislative Update

Law & Justice Interim Committee Meeting

Perry Johnson said that after the last Council meeting he presented a synopsis of the legislation packet the Council approved to the Law & Justice Interim Committee and was well received. They would have probably forwarded POST's bill to the floor with a recommendation but he wouldn't ask them to do that until he came back to the Council one more time. At Bill Dial's suggestion Perry Johnson did reach out to Frank

Garner and provide him with a copy of the red lined version. Frank Garner said he would review them and is willing to do whatever he can to move the package along. Perry Johnson hasn't talked to him since he provided the copy.

Kevin Olson mentioned that Perry Johnson may want to look at the Legislative Home page under the Laws section and he will see that there are already 2 place holders for bills for POST.

Final Red Line Statutes

Perry Johnson directed the members to page 65-80 in the meeting materials. He said unless there is additional discussion about them they will be presented to the legislature. He thinks they will be broken up in separate bills but isn't sure.

Certificates Awarded

Perry Johnson directed the members to page 81-96 of the meeting materials. He shared that there were around 300 certificates issued. No further action needed to be taken.

Equivalency Granted

Perry Johnson shared that there is a list of 8 people but thinks 3 more were added since the list was created.

Extension Granted

Perry Johnson shared that there is a list of 13 people granted a 180 day extension.

Case Files-Cases Opened/Closed – Written Report

Perry Johnson directed the members to page 97 in the meeting materials. No one had any questions concerning the report.

Jim Thomas asked the Council to go back to page 81 of the certificate list. He asked what Alternatives, Inc. is. Perry Johnson told him it is a Yellowstone County program that does pretrial service. Jim Thomas asked if the basic certificate type would be Probation & Parole. Perry Johnson said it is.

Office Updates

Perry Johnson thanked Mary Ann Keune for the job she does typing the minutes. Bill Dial suggested that POST look at hiring a transcription provider to help with the work load.

Sugar CRM

Perry Johnson said that the database that was purchased 2 years ago is not live yet.

VI. COMMITTEE REPORTS:

ARM Committee: ~ Bill Dial ~ nothing new

Chris Tweeten shared that he spoke in the last meeting that one thing that is supposed to be done by statute every 2 years is send a letter the Legislative Services with respect to the ARMs. He feels like it would be a good idea for POST to provide a report with respect to the status of POST's ARMs.

Coroner Committee: ~ Jim Cashell ~ No report

Case Status Committee ~ John Strandell said that they met for almost 3 hours yesterday and viewed over 40 cases. They are a very busy committee.

Curriculum Committee: ~ Jim Thomas ~ nothing new

Business Plan/Policy Committee: ~ Kimberly Burdick wasn't on the phone to respond. Ryan Oster did not have anything to add.

VII. Director's Evaluation

Perry Johnson waived his right to privacy for review and discussion of his yearly evaluation. The evaluation was sent out to the Council members and 22 stakeholders by the request Tony Harbaugh. There was a good response and the responses are included in the meeting materials. He feels like doing this evaluation is valuable.

Jim Thomas said he would rather Perry Johnson not change from anything he is currently doing. Tony Harbaugh shared that it is apparent from the comments that were returned that Perry Johnson enjoys what he is doing and he is doing it well. Bill Dial commented that the POST Council has come a long way from 4 or 5 years ago and it is due to Perry Johnson's personality and leadership.

Perry Johnson said that he thinks there is room for changes and new ideas in the future but it is all dependent on the staffing the legislature allows. The staff will give the service which they are funded for.

Chris Tweeten stated that is rare for a lawyer to be asked to evaluate a client. He wouldn't feel right sharing any problem he had with the whole Council. If he did have a problem he would share it privately with Perry Johnson. For the most part he doesn't have anything to complain about.

Sarah Clerget said she has about 10 to 15 clients that she deals with on a not as regular basis. One of the things she would like the Council to know is that at ALSB, POST and Perry Johnson are used over and over as an example of how a council, ARMs, a Director and the relationship between general counsel and contested case counsel should function. POST is used as a model that is used regularly as an example which is very helpful to the rest of the agencies in the state.

Kevin Olson echoed the compliments stated. He thanked Perry Johnson for giving the invocation for the P & P Basic a week ago. It was a wonderful celebration and depicts what kind of a person Perry Johnson is.

VIII. Adjourn

Kevin Olson made a motion and Jesse Slaughter seconded to adjourn. Motion carried, all members voting in favor.

Submitted by
Mary Ann Keune
MAK
11/21/16

DRAFT



Montana Public Safety Officer Standards & Training Council

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dojmt.gov/post

NOTICE OF QUALIFICATIONS FOR RESERVE CERTIFICATE AND APPLICATION FOR AWARD OF RESERVE CERTIFICATE

§§ 7-32-214, 44-4-403, MCA

Instructions: The reserve officer must complete this form and forward it to his or her agency head for the agency head's endorsement. The agency should then forward the completed form and attachments to the POST Council at the address above. The Council will notify the agency head of action taken. Please note the requirements for the Reserve Certificate are:

1) you must successfully complete the training outlined in § 7-32-214, MCA.

Did you complete the training outlined in § 7-32-214, MCA? [] Yes [] No

Training completion date: _____

2) you must be a reserve with your current agency for one full year.

Have you been a reserve with your current agency for one year or more? [] Yes [] No

3) you must meet the definition of a reserve officer in § 7-32-201(6), MCA, meaning you must be a sworn, part-time, volunteer member of a law enforcement agency.

Have you been sworn? [] Yes [] No

Are you part-time? [] Yes [] No

Are you a volunteer? (Note volunteers cannot be paid a wage) [] Yes [] No

4) you must meet the residency requirement of § 7-32-213, MCA, meaning you must have lived in Montana for at least one year, and you must have lived in the county in which you are a reserve officer for at least six months.

Have you been a resident of Montana for at least one year? [] Yes [] No

Have you been a resident of the county in which you are a reserve for at least six months? [] Yes [] No

5) you must meet the requirements of ARM 23.13.205, including subscribing to the code of ethics contained in ARM 23.13.203.

Have you taken an oath regarding the code of ethics pursuant to ARM 23.13.203? [] Yes [] No

If you do not meet these requirements, you will not be issued a Reserve Certificate.

Full Name: _____

Agency Name: _____

POST ID Number: _____

Date of Birth: _____

Phone: _____

E-mail Address: _____

Applicant Certification: I attest that the information contained on this application is true and correct to the best of my knowledge.

Signature of Applicant

Date

Agency Recommendation: *I recommend that the certificate be awarded. I certify that the applicant has complied with the minimum training set forth in [§ 7-32-214, MCA](#), has been a sworn, part time volunteer with this agency for at least one year, has sworn an oath regarding the code of ethics, is of good moral character and is worthy of this award. My opinion is based on personal knowledge of the inquiry, and the personnel records of this jurisdiction substantiate the recommendation.*

Printed Name of Agency Head

Signature of Agency Head

Date

E-mail: _____

Phone: _____

State of Montana

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____,

(SEAL)

Signature of Notary Public

POST Council Use Only			
Approved for _____	Approved by _____		
Date Mailed _____	Date: _____	Cert. # _____	

HILL COUNTY ATTORNEY

Gina Dahl

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Havre, MT 59501-3923
Telephone 406-265-5481, Ext. 211 • Fax: 406-265-3638
Email: dahlg@co.hill.mt.us

Robert McCamey, Jr.
Deputy
mccameyr@co.hill.mt.us

RECEIVED
NOV 09 2016
MT POST Council

November 1, 2016

Honorable Steve Bullock
Governor of Montana
P.O. Box 200801
Helena, MT 59620-0801

Re: POST appointment

Dear Governor Bullock:

Please accept this letter as resignation from my position on the Public Safety Officers Standards and Training Council. I have accepted a position in Billings and will no longer serve as Hill County Attorney. Therefore I will be ineligible to serve as the County Attorneys' representative on the Council. My term began January 1, 2015, and ends January 1, 2019. My last day as County Attorney will be November 25, 2016, and this resignation will be effective at that time.

I have enjoyed serving on the Council and believe the work is important. Thank you for providing me the opportunity to serve Montana and the law enforcement community with this appointment.

Sincerely,



Gina Dahl
Hill County Attorney

cc: Perry Johnson, Executive Director, POST Council

MLEA Public Safety Communicators Basic Course 2017 Draft

	2/9/2017	2/10/2017	2/11/2017	2/12/2017	2/13/2017	2/14/2017	2/15/2017	2/16/2017	2/17/2017	2/18/2017
	Thursday	Friday	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
8:00	CJIN Inquiry	CJIN			Dispatchers Role			Call Taking	Operations	
8:30	Certification	Entry							TTD/TTY Devices	
9:00	Class	Class			1 hour					
9:30	(DCI)	(DCI)			Ethics	Q&A Scenarios				
10:00	Optional	Optional				Showing Active Listening CJIN Systems (MLEA)	Mental Health First Aid	2 hours	2 hours	
10:30					2 hours			L/E Call Operations	Limited English Proficiency	
11:00					POST				Sexual Harrassment	
11:30					1 hour	4 hours	4 hours	2 hours	1 hour each	
12:00					Lunch	Lunch	Lunch	Lunch	Lunch	
12:30					Risk Management	SVOR		Fire/Haz-Mat Call Operations	Interpersonal Communications	
13:00										
13:30					2 hours	2 hours		2 hours		
14:00				Registration Check In and Campus Orientation	Healthy Lifestyle	Cultural Awareness	Mental Health First Aid	EMS Call Operations		
14:30										
15:00										
15:30										
16:00										
16:30										
17:00	8 hours	8 hours			2 hours	2 hours	4 hours	2 hours	4 hours	
						COURSE	INSTRUCTOR	COURSE	INSTRUCTOR	
						Check In/Orientation	Natale Adorni-MLEA	Ethics	Scott Sterland-MLEA	
						Call Taking	Brian Boehm-MSU-UPD	Suicide Intervention	Glen Stinar-MLEA	
						SVOR	Jamie Lavinder-DCI	Mental Health First Aid	Rebecca Guyer Strait-MLEA	
						Limited English Proficiency	Robin Turner-MCADSV	Radio Operations	Zach Slattery-HPD	
						TTD/TTY Devices	Johnson/Whittaker	EMS Call Operations	Brian Boehm-MSU-UPD	
						Domestic Violence	Natale Adorni-MLEA	Fire/Haz-mat Operations	Brian Boehm-MSU-UPD	
						Call Documentation	Peter Bovingdon-MLEA	LE Call Operations	Brian Boehm-MSU-UPD	
						Law and Criminal Procedure Terminology Definitions	Peter Bovingdon-MLEA	CJIN Systems	Ian Caldwell-DCI	
						Interpersonal Comm.	Glen Stinar-MLEA	Crisis Int./Stress Mgmt	Carol Staben Burroughs-Bozeman	
						Risk Management	Scott Sterland-MLEA	POST	Perry Johnson-MLEA	
						Cultural Awareness	Dave Fradette-MLEA	EMD	Mary Granger	
						Sexual Harrassment	Natale Adorni-MLEA	CJIN Inquiry Certification	Ian Caldwell-DCI	
						Healthy Lifestyles	Kim Pullman-Helena	CJIN Entry Class	Ian Caldwell-DCI	
						Dispatchers Role	Bridget DeFord-HPD			

2/19/2017 Sunday	2/20/2017 Monday	2/21/2017 Tuesday	2/22/2017 Wednesday	2/23/2017 Thursday	2/24/2017 Friday	2/25/2017 Saturday
	Radio Operations	Suicide Intervention	EMD	EMD	EMD	
	2 hours	2 hours				
	Domestic Violence	PSC Exam				
	2 hours	2 hours	4 hours	4 hours	4 hours	
	Lunch	Lunch	Lunch	Lunch	Lunch	
	Law and Criminal Procedure Terminology Definitions	EMD	EMD	EMD	Crisis Intervention/ Stress Management	
	Call Documentation				2 hours Testing Graduation Certificates/Coins	
	4 hours	4 hours	4 hours	4 hours	2 hours	

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that dissemination, distribution or forwarding of this communication is prohibited. If you received this communication in error, please notify the sender immediately and delete this message from any device/media where is stored.

From: Jones, Ross [<mailto:ross.jones@scripps.com>]
Sent: Friday, October 14, 2016 3:01 PM
Subject: FOIA Request from Scripps News in Washington
Importance: High

To Whom It May Concern:

This is a request under the Freedom of Information Act. I request the following information **in electronic form, such as a Microsoft Excel spreadsheet:**

-All actively licensed police officers, including name, date of licensure and department

-All decertified officers, including name, date of licensure, department, reason for decertification and date of decertification

-All officers otherwise disciplined by your agency, but not decertified, including name, date of licensure, department, reason for discipline, the type of discipline and the date of discipline

Because I am making this request in the public interest as a news agency, I request that fees be waived. If you elect to charge for this information, I agree to pay only reasonable duplication fees for the processing of this request and ask that you delineate all expenses associated with providing this information.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. If part of the information requested is available before all of the material is ready, please do not hold up the release of the available documents while preparing the remaining information.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request. I can be reached at (202) 408-2709.

Sincerely,

Ross Jones | Scripps Washington Bureau
(202) 408-2709 | ross.jones@scripps.com

Sheriff John Doe
Independence County Courthouse
Greenfield, MT 59999

June 31, 2016

Dear Sheriff Doe:

The POST Council has received a request under the Right to Know provisions of Montana law. The request asks POST to create a spreadsheet containing the name, date and level of certification, and employing agency for all peace officers currently certified by POST, and for all officers who have been decertified by POST, along with the grounds for de-certification. POST has determined that officers who have been decertified for misconduct have no reasonable expectation of privacy in this identifying information, and accordingly will comply with this request as it pertains to officers who have been de-certified or otherwise disciplined by POST for misconduct, going back to 2007, when POST was separated from the Montana Board of Crime Control.

As to officers who are currently certified, however, the law is not clear as to whether a privacy interest exists that is sufficient to clearly exceed the merits of public disclosure. Therefore, POST intends to file a declaratory judgment action in the Montana First Judicial District Court, Lewis and Clark County, as further

explained below, seeking a determination under Montana law of which currently certified officers, if any, have a sufficiently reasonable expectation of privacy to defeat the information request.

I write to notify you of the request, and ask that you forward this letter to all of your POST-certified peace officer employees. POST intends to file the lawsuit described in the preceding paragraph, and it intends to assert in that action that all POST-certified officers have a privacy right in their own safety and that of the officer's family, and that this interest clearly outweighs the merits of public disclosure by POST of the officer's personally identifying information. However, the right to privacy is a personal right, and individual officers may have additional facts and circumstances they may want to advance to show they have a privacy interest sufficient to substantially outweigh the merits of public exposure. If this is the case, the officer should take steps to intervene in the action through other counsel; POST will not assert such individual privacy interests on such an officer's behalf. Your agency, in consultation with other county officials, should determine whether it will provide legal representation for an officer who wishes to assert the right of privacy, or whether it will leave it to the individual officer to retain a lawyer.

POST will send you a copy of the Complaint for declaratory judgment when we file it. Any officer who wishes to assert a privacy interest separate from the one

POST intends to assert to prevent disclosure of the officer's personal information must intervene in the action to have his or her rights adjudicated in POST's lawsuit. If you or your county officials have any questions, please feel free to contact me.

Sincerely,

PERRY JOHNSON
POST Executive Director

Sheriff John Doe
Independence County Courthouse
Greenfield, MT 59999

June 31, 2016

Dear Sheriff Doe:

The POST Council has received a request under the Right to Know provisions of Montana law. The request asks POST to create a spreadsheet containing the name, date and level of certification, and employing agency for all peace officers currently certified by POST, and for all officers who have been decertified by POST, along with the grounds for de-certification. POST has determined that officers who have been decertified for misconduct have no reasonable expectation of privacy in this identifying information, and accordingly will comply with this request as it pertains to officers who have been de-certified or otherwise disciplined by POST for misconduct, going back to 2007, when POST was separated from the Montana Board of Crime Control.

As to officers who are currently certified, however, the law is not clear as to whether a privacy interest exists that is sufficient to clearly exceed the merits of public disclosure. Therefore, POST intends to file a declaratory judgment action in the Montana First Judicial District Court, Lewis and Clark County, seeking a

determination under Montana law of which currently certified officers, if any, have a sufficiently reasonable expectation of privacy to defeat the information request.

I write to notify you of the request, and ask that you forward this letter to all of your POST-certified peace officer employees. POST intends to file the lawsuit described in the preceding paragraph, but it does not intend to represent the interests of individual officers. The right to privacy is a personal right, and POST does not feel it is appropriate that it should assume that an officer wants to assert a right of privacy, and, if so, to assume what the individual grounds might be for asserting that right.

Each officer should decide for him- or herself whether their privacy right should be asserted. Your agency, in consultation with other county officials, should determine whether it will provide legal representation for an officer who wishes to assert the right of privacy, or whether it will leave it to the individual officer to retain a lawyer. POST will send you a copy of the Complaint for declaratory judgment when we file it. Any officer who wishes to assert a privacy interest to prevent disclosure of the officer's personal information must intervene in the action to have his or her rights adjudicated in POST's lawsuit. If you or your county officials have any questions, please feel free to contact me.

Sincerely,

PERRY JOHNSON
POST Executive Director

Sheriff John Doe
Independence County Courthouse
Greenfield, MT 59999

June 31, 2016

Dear Sheriff Doe:

The POST Council has received a request under the Right to Know provisions of Montana law. The request asks POST to create a spreadsheet containing the name, date of certification, and employing agency for all peace officers currently certified by POST, and for all officers who have been decertified by POST, along with the grounds for and date of de-certification, sanction, or suspension. POST has determined that officers who have been decertified, sanctioned, or suspended for misconduct have no reasonable expectation of privacy in this identifying information, and accordingly will comply with this request as it pertains to officers who have been de-certified or had their certification sanctioned or suspended by POST for misconduct, going back to 2007, when POST was separated from the Montana Board of Crime Control.

As to officers who are currently certified, however, the law is not clear as to whether a privacy interest exists that is sufficient to clearly exceed the merits of public disclosure. POST has performed the requisite constitutional balancing test and believes that, absent any individual assertions of privacy, the information that has been requested should be released. POST therefore intends to release the following information on each peace officer currently certified by POST, and ONLY the following information:

- Officer's name (first and last)
- Date the officer received basic certification
- The officer's current employing agency

If, however, any officer asserts a privacy interest in the information listed above, that officer must notify post **within ten days of the date of this letter.** **If POST receives a timely assertion of a privacy interest, then POST will not release that officer's information, and will instead file a declaratory judgment action in the Montana First Judicial District Court, Lewis and Clark County, seeking a determination under Montana law of which information should be released regarding those officers who have specifically asserted their privacy interests.** Please note, however, that while POST intends to file this lawsuit regarding the

release of information for the individuals who have asserted a privacy interest, it **does not intend to represent the interests of individual officers during the lawsuit.** POST will send those officers who have timely asserted a privacy interest a copy of the Complaint for declaratory judgment when we file it.

Any officer who wishes to assert a privacy interest to prevent disclosure of the officer's personal information must intervene in the action to have his or her rights adjudicated in POST's lawsuit. The right to privacy is a personal right, and POST does not feel it is appropriate that it should assume that an officer wants to assert a right of privacy, and, if so, to assume what the individual grounds might be for asserting that right. Each officer should decide for him- or herself whether their privacy right should be asserted. Your agency, in consultation with other administrative officials, should determine whether it will provide legal representation for an officer who wishes to assert the right of privacy, or whether it will leave it to the individual officer to retain a lawyer or represent him or herself.

If an officer asserts a privacy interest but does not appear or participate in the lawsuit to represent his or her own privacy interests, then those interests will not be presented to the court and may be waived, as POST will not assert them. If an officer asserts a privacy interest to POST and appears in the declaratory judgment action, POST will then redact or withhold the information of those officers who have asserted a privacy interest and appeared in the declaratory judgment action until such time as the Court gives POST instruction on whether to release the information or not. POST will release the above-listed information for those officers who do not assert a privacy interest on or around [insert date].

If you or your administrative officials have any questions, please feel free to contact me.

Sincerely,

PERRY JOHNSON

POST Executive Director

To: POST Council and Perry Johnson, Executive Director
From: Chris D. Tweeten, POST Legal Counsel
Re: Jones Right to Know Request
Date: November 8, 2016

On December 7, the Council will consider policy questions related to a Right to Know request submitted to the Council by Ross Jones, a reporter affiliated with Scripps News Service. The requester seeks information about law enforcement officers who have been de-certified or otherwise disciplined by POST for wrongdoing, and for officers who are in good standing. The information sought includes the names, dates of certification, dates of de-certification (if applicable), and the employing agencies for each currently certified officer and each officer who has been de-certified for bad conduct.

The request presents several issues, which I discuss below.

1. Does Jones, as a non-resident of Montana, have standing to make the request?

Yes. The Supreme Court has clarified in the recent *Krakauer* decision that the Montana Right to Know applies to requests by persons and entities whether the requester is a Montana resident or not.

2. Do the officers whom POST has disciplined for misconduct have the right to ask POST to withhold their records based on an assertion of a right to privacy?

No. The Court has repeatedly held that law enforcement officers have no reasonable expectation of privacy with respect to disciplinary records. *See, e.g., Great Falls Tribune v. Cascade County Sheriff*, 238 Mont. 103, 107, 775 P.2d 1267, 1269 (1989). I think based on these decisions POST has no grounds to resist the request for information regarding officers who were either de-certified or otherwise disciplined for serious misconduct.

3. Does a public employee have an expectation of privacy with respect to their names and employing agencies?

It is unclear. The Attorney General has opined that a public employee's expectation of privacy does not clearly outweigh the public's right to know the names of publicly employed persons. 54 Op. Att'y Gen. No. 3 (September 16, 2011). However, that decision does not show the kind of individualized balancing of the right to privacy against the public's interest in disclosure that the Supreme Court requires. *See, e.g., Billings Gazette v. City of Billings*, 2013 MT 334, ¶ 14, 372 Mont. 409, 413, 313 P.3d 129, 133. It seems a bit doubtful a court would agree with the Attorney General's opinion now.

There is certainly room to argue that the personal safety interests of law enforcement officers are part of their rights of privacy, and that officer safety clearly outweighs the public's right to know the names and employing agencies of all law enforcement officers who have been certified by POST.¹ This is especially true now that the statutes recognize an exception to the obligation to disclose information that may jeopardize the safety of a member of the public. MCA 2-6-1003(2) (2015) ("A public officer may withhold from public scrutiny information relating to individual or public safety....") However, this statute is effective only to the extent it is determined by a court to be consistent with the constitutional Right to Know provision. Early Right to Know decisions from the Montana Supreme Court tended to take a very narrow view of the exceptions to the scope of Article II, § 9. Later decisions, however, have been less restrictive. The Court has, for example, held a criminal defendant's fair trial rights can overcome the public's right to know. Whether the Court is willing to give effect to the new statute likely depends on the extent to which the Court is willing to say that personal safety is an element of a police officer's privacy right.

The Court has not addressed these questions to date, and its willingness to reach the conclusion POST would be advancing probably depends substantially on the facts of the case that raises the issue. It is the consensus of your attorneys, Sarah Clerget and me, that the proof of a personal safety interest for Montana law enforcement officers as a class would be difficult, and success could not be predicted with any degree of confidence. However, the individual circumstances of specific officers might lead a court to find a personal safety interest with respect to the specific officers in question.

4. Is POST obligated to gather the information in its records and reproduce the information in a spreadsheet to be created by POST staff.

¹ The obvious example of the officer with a personal safety interest would be an officer working undercover. There is also evidence from other states of officers who have been, in effect, assassinated near their homes.

The 2015 rewrite of the public records laws has clarified that an agency is under no obligation to create a new summary document distilling information found in public records held by the agency. MCA 2-6-1006 (4) (2015) (“A public agency is not required to alter or customize public information to provide it in a form specified to meet the needs of the requesting person.”)

So, mashing all of this together, I have the following thoughts:

1. I think his request that we create a spreadsheet should be evaluated by considering whether it would be less time and trouble to set up a spreadsheet containing the information he wants or to assemble the files we are going to produce and either have them copied at his expense or make them available for him to come out and examine them. POST is under no legal obligation to make the requested spreadsheet. In either case, POST is within its statutory rights to charge the actual cost of producing the records, and to collect an estimate of the fees in advance if it wants, although the constitutionality of the statutory provision allowing an agency to recover fees could be called into question.

According to Katrina, the request regarding all of the officers' information can be achieved without redaction in approximately one hour.² The IT Division for DOJ can extract the data from POST's database. POST's current database is an Access database, so any extraction would be an excel spreadsheet or similar format. POST anticipates this to be a substantial number of records (at least one thousand, if not several thousand). POST staff and/or DOJ IT staff will then be required to manually go through the retrieved data to remove and set aside the records of any officers who have asserted a privacy interest in their individual data.

POST staff has a running list of decertified officers which was prepared for another records request. If POST decides that it will produce the records of officers who have been sanctioned since its inception in 2007, most of that information is available. POST staff will find it necessary to manually retrieve certification and employment information on each officer who has been sanctioned by looking each one up in the database and entering the data into the existing excel spreadsheet.

² Katrina is providing more information about this in a separate document in the packet.

2. I think there are no grounds to withhold documents relating to officers who have been de-certified or disciplined for serious misconduct.

3. I think in light of the new statutes and recent case law, POST could make an argument that it is lawful to withhold the names and of certified officers it has not disciplined or de-certified. The statute now creates an explicit exception for information that would, if produced, jeopardize officer safety. As we've previously discussed, the problem, should that exception be litigated, would be to prove to the court that the information actually would create a significant threat to officer safety if it was released. If POST is interested in invoking that exception, we should think before we reject the request about how we would make that proof. Again, your attorneys believe the factual arguments about a privacy interest in the context of all officers as a class are difficult to prove.

The AG Opinion discussed above can be criticized because it creates a categorical rule that public employee names and addresses must be disclosed without allowing for individual consideration of the balance between the merits of public disclosure and the rights of the employees. The opinion treats all public employees as if they were situated the same for purposes of that balancing, while I think POST would take the position that there are some unique considerations that apply to public safety officers.

A separate question is whether POST should make these arguments, or whether we should inform the certified officers that the demand has been made and rely on the officers to raise the issue. Recall that in the first go around of the Lake County litigation, POST filed a declaratory judgment action (sometimes referred to for short as a "Dec Action") asking the Court to evaluate the documents at issue and decide which should be produced and which could be withheld. POST took the position in that case that it would abide by whatever the Court decided, and that POST did not adopt or advance the arguments of either the officers or the requester, the Missoula Independent. The officers (who were contemplating a lawsuit against the State for damages) appeared and contested the obligation to produce the information, and the Court ultimately held that essentially all the requested information should be produced. It is noteworthy that by adopting this middle ground approach and seeking the assistance of the Court as to its obligations, POST avoided the obligation to pay the requester's attorney fees, which are allowable by statute in the discretion of the Court.

Sarah has suggested several considerations that argue against the idea that the POST Council should make these privacy arguments on behalf of the officers. An attempt by POST to prevent the disclosure of the identities of law enforcement officers could open the agency to criticism that the agency is being less than transparent. Sarah also notes that in many cases the identity of law enforcement officers has already been released by the employing agency, local (*see* <http://townsendpd.org/about/departments-roster/>) or state (*see* <https://employeepay.mt.gov/transEmpPay/faces/index.xhtml>). The Supreme Court has made it clear that an agency cannot deny production of records whose contents are already available to the public.

Finally, there is the matter of POST's litigation costs. Filing the declaratory judgment action would not be free. Attorney costs for either me or Sarah, or both, could be substantial, depending on how hotly contested the litigation was. Just to take an example, in the declaratory judgment in the Lake County matter, Sarah's fees related to the declaratory judgment action exceeded \$20,000. This case would probably be less than that, since we've learned a lot about such action from the first case. But it does demonstrate that these cases have an effect on POST's budget.

The statutes also allow the requester to recover attorney fees against the agency holding the records at the Court's discretion. In the Lake County declaratory judgment action POST filed regarding the records request, the requester's attorney sought more than \$6700 in fees from POST. The Court in its discretion denied that request, but the case illustrates another potential expense POST could incur if it adopts the litigation option.

4. If POST were to decide to honor the request, several considerations come into play. First, whatever approach the Council adopts, significant efforts will be required from staff to comply with the request. See discussion in 1. above and Katrina's document. Second, POST would have to decide whether any redactions should be made. Third, POST would have to advise the requester of the estimated time required for the production and an estimate of the cost to the requester.

Second, if the Council decides to contest the production of any of the information, the best approach would be to file a declaratory judgment action against Jones seeking guidance from the Court as to what information

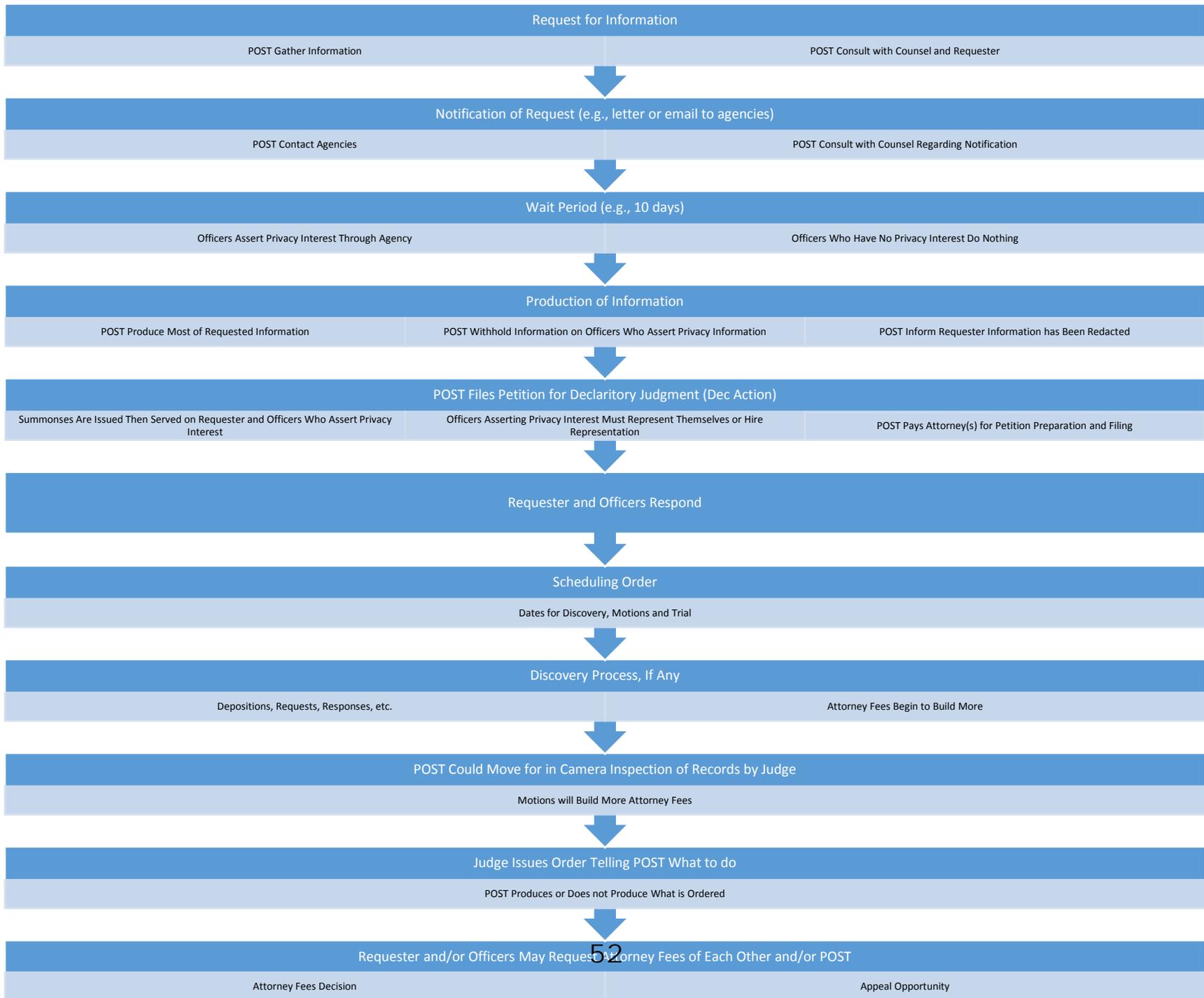
must be produced and what, if any, may be withheld. The Council will then have to decide whether POST will represent the interests of the officers. If not, POST should somehow notify the affected officers and agencies that if they wish to contest production of the requested information, they should plan to intervene in POST's action to assert those interests.

Third is the question of attorney fees. POST would of course have to pay its own attorney or attorneys to litigate the case. But there is also the question of the requester's fees, which the court may allow in its discretion. The declaratory judgment action POST filed in the earlier Montana Independent case did not result in an award of fees, but the matter is discretionary and there is a possibility of a fee award against POST when the lawsuit is over.

Conclusion

POST has not adopted a policy governing disclosure of information at this time. At its next meeting, the response to Jones' request will be on the agenda for discussion, and many of the issues discussed above will be decision points for the Council. (1) Does the Council want to comply with the request? (2) Would it be preferable to defer that issue and instead take the route POST took in the Lake County case, i.e., file a lawsuit and ask the Judge what it should do. (3) Should the Council argue that there is a privacy interest in personal safety that would be jeopardized by production of information regarding the identity of law enforcement officers as a class? If so, what guidance can the Council give to its attorneys regarding evidence that could be introduced in Court to prove that this privacy interest exists and clearly outweighs the merits of public disclosure? (4) If POST adopts the approach suggested in (3), would POST prefer to require the individual officers to argue their own privacy issues instead of representing the interests of the officers?

I look forward to the discussion at the Council's meeting.



Memo

To: Montana POST Council
From: J.D. Douglas CIS Supervisor
Date: 11/21/2016
Re: Safety of Criminal Investigators/release of information

This is to document my concerns regarding the release of information regarding identities of covert Criminal Investigators employed by the State of Montana. This is first and foremost a safety issue. The release of the investigators' names, any personal information, or longevity information will jeopardize their safety in the field. The investigators work by creating a false identity in the company of persons suspected of illegal activity. Often the illegal activity involves criminal acts out of range of help and often involves activities with weapons. Thus, the work, by its very nature, involves circumstances under which the investigators would suffer if it became known that they were not as they portray themselves or that they are law enforcement officers. The identification by name or looks of an investigator and then exposure in the company of persons committing or known to have committed criminal acts would create fear, anxiety, and motive by the suspects to destroy evidence and knowledge obtained by the investigators, including the investigator's ability to communicate his/her knowledge. In short, this exposure creates a threat of death or serious bodily injury to our investigators. Additionally, it puts the families of these officers at similar, and a totally unacceptable level of risk for harm.

The employers of these investigators (including the State of Montana as a singular agency) are required to avoid and reduce as possible any risks associated with their work. The suggested release of information triggered by a request for **release of the name, agency and certification of every peace officer in Montana** creates a risk to these employees in addition to the inherent risks associated with the undercover work. As described above, any exposure of an investigator's identity or occupation endangers the investigator and/or the work done by the investigator. In the current age of digital systems, the risk is increased and could result in similar physical jeopardy to an investigator. And, given the existence of digitally-accessed databases (e.g., Cadastral, Lexis) the speed with which such information can be shared cannot be ignored.

In passing the **Occupational Safety and Health Act**, Congress declared its intent "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." Section 5 of the Act contains the "general duty clause" which requires employers to maintain conditions or adopt practices reasonably necessary and appropriate to protect workers on the job. The practice of keeping confidential all personal information regarding these investigators is reasonable, necessary and appropriate to protect them on the job. As an employer, the role of the State of Montana and FWP is to provide a safe work environment for our employees. I refer to the FWP Administrative and Personnel policy manual, Section Q (rev. 2/1/2006), which emphasizes the purpose of the policy is to reduce the incidence of occupational injury of employees and states, "Employees have the right to perform their duties in a safe environment and may refuse to work, without fear of retaliation, when faced with an imminent danger of death or serious bodily injury." Considering these investigators routinely work throughout the state, and occasionally in other states, any release of any information from which their true identity can be learned poses a severe safety concern for them and their families as well as compromises the detection and prosecution of major wildlife violators in Montana. Furthermore, I believe this is applicable to any officer in the state who operates in a covert capacity.

The risks associated with the undercover investigators' work is known and accepted as part of an effective, time-tested law enforcement tool. As stated above, the first consideration must be the investigators' physical safety. In addition, exposure of the investigators' personal information would effectively negate the program and the entire state of Montana would suffer, given the resources used to create and sustain this effective program.

It is a given that an Investigator's job is dangerous, and that they take risks regularly in the course of their work. These risks, however, are not taken lightly and are guided by policy and law so as to minimize their exposure in the prosecution of major, often felonious, wildlife violators. In turn, the State of Montana has a legal and ethical obligation to mitigate these risks by doing everything reasonable and possible by, in this instance, maintaining the confidentiality of their identities.

In 2012, the names and pay grades of all state employees were released, ostensibly under a similar request. This release was done without consideration of numerous ramifications that would result with the identification of individuals in many agencies whose work is involved in covert criminal investigation and other areas that demand confidentiality. At that time, this issue was brought to the attention of the Department of Administration and we were assured that steps would be taken in the future were similar requests made. Given the fact that the individuals involved comprise such a small portion of the total state employee ranks, it seems reasonable that, should POST grant the inquiry, to exclude these positions with a letter of explanation of why. We hope the Council takes the appropriate steps to ensure that our covert officers receive the protection they deserve and need in this situation. Thank you for your consideration.

In our prosecutions, we file the necessary motions ensure their on-going protection while still meeting the defendant's right to due process and discovery materials. (attached).

1 BARBARA C. HARRIS
Assistant Attorney General
2 P.O. Box 201401
Helena, MT 59620-1401
3 Telephone: (406) 444-2026

4 COUNSEL FOR STATE

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8 **IN THE JUSTICE COURT OF MISSOULA COUNTY, STATE OF MONTANA**
BEFORE THE HONORABLE JOHN E. ODLIN, JUSTICE OF THE PEACE
9

10 STATE OF MONTANA,

11 Plaintiff,

12 v.

13 Defendant.

Cause No. CR-2013-10581-C1

**STATE'S MOTION TO DISALLOW
DISSEMINATION OF PERSONAL
INFORMATION REGARDING
UNDERCOVER WITNESSES AND
BRIEF IN SUPPORT**

14
15 The State hereby requests an order requiring compliance with Mont. Code Ann.
16 Title 44, Chapter 5, with specific language prohibiting dissemination of personal
17 information regarding the State's undercover witnesses.

18 Montana Code Annotated § 44-5-303 provides in part:

19 (1) Except as provided in subsections (2) through (4), dissemination
20 of confidential criminal justice information is restricted to criminal justice
21 agencies, to those authorized by law to receive it, and to those authorized to
22 receive it by a district court upon a written finding that the demands of
23 individual privacy do not clearly exceed the merits of public disclosure.
24 Permissible dissemination of confidential criminal justice information
25 under this subsection includes receiving investigative information from and
26 sharing investigative information with a chief of a governmental fire
27 agency organized under Title 7, chapter 33, or fire marshal concerning the
criminal investigation of a fire.

(2) If the prosecutor determines that dissemination of confidential
criminal justice information would not jeopardize a pending investigation
or other criminal proceeding, the information may be disseminated to a
victim of the offense by the prosecutor or by the investigating law
enforcement agency after consultation with the prosecutor.

1 (3) Unless otherwise ordered by a court, a person or criminal justice
2 agency that accepts confidential criminal justice information assumes equal
3 responsibility for the security of the information with the originating
4 agency. Whenever confidential criminal justice information is
5 disseminated, it must be designated as confidential.

6 Thus, according to Montana law, the dissemination of confidential criminal justice
7 information is restricted.¹ In a case such as this, a defendant is entitled to such
8 information during the course of discovery in the case. Mont. Code Ann. § 46-15-322.
9 However, dissemination by defense counsel or a defendant generally is not allowed.
10 And, in this case, the State requests the proposed order, based on the risks to other
11 investigations, cases, and witnesses. The order would also ensure communication of the
12 prohibition to the Defendant, his counsel, and the media.

13 Some of the reasons for controlling dissemination of confidential criminal justice
14 information in this case are the same as in other criminal cases. They relate to the need to
15 avoid dissemination of information that involves an ongoing case. Investigation continues
16 in such a case throughout trial. Any dissemination of information prior to trial can taint the
17 process in various ways, including disturbing the basis for a witness's basis of knowledge,
18 a witness's motivation, and a witness's fear of retaliation. Dissemination of such
19 information can also taint potential jurors and create bias for either party. Thus, the
20 statutory standard for dissemination states the balancing test related to the demands of
21 individual privacy versus the merits of public disclosure. Mont. Code Ann. § 44-5-303(1).
22 In this case, there is no merit to public disclosure prior to trial, given the risks described
23 above. And the standard for release by a prosecutor to a victim includes the considerations
24 of pending investigations or other criminal proceedings. Mont. Code Ann. § 44-5-303(2).

25 ¹“Confidential criminal justice information” means:
26 (a) criminal investigative information;
27 (b) criminal intelligence information;
(c) fingerprints and photographs;
(d) criminal justice information or records made confidential by law; and
(e) any other criminal justice information not clearly defined as
public criminal justice information.

1
2 Additional reasons for controlling dissemination are more unique to this case.
3 While the Defendant is entitled to know the details of witnesses in the case, it is
4 incontrovertible that there is no reason for the dissemination beyond a defendant of the
5 names or other personal information of the undercover witnesses in this case at this time.
6 It is also irrefutable that such dissemination would affect other cases, as the witnesses are
7 involved in other cases. Therefore, the dissemination would, at the very least, make
8 useless the time and expense already expended in the legitimate law enforcement
9 endeavors involving these witnesses.²

10 In addition, the safety of the wardens who engage in undercover work is at stake.
11 While the work is inherently dangerous (e.g., hunting involving remote locations and
12 firearms), the danger should be controlled when possible. The situation is analogous to
13 that recognized in Mont. Code Ann. § 46-15-324(3), which provides that “Disclosure of
14 the existence of an informant or the identity of an informant who will not be called to
15 testify is not required if: (a) disclosure would result in substantial risk to the informant or
16 to the informant’s operational effectiveness; and (b) the failure to disclose will not
17 infringe the constitutional rights of the accused.” The concerns regarding risk to the
18 witness and to his/her operational effectiveness demand that there be no dissemination
19 beyond that required by the rules of discovery.

20 Any order regarding dissemination should also be directed to any member of the
21 general public, including those inclined to use any form of media to disseminate the
22 information. Recent dissemination by news reporters, contrary to cordial requests to the
23 contrary, have resulted in the detriment to undercover cases similar to this.

24 ///

25 ///

26
27 ²When properly conducted, undercover work is a legitimate governmental
endeavor. See *State v. Fitzpatrick*, 2012 MT 300, 367 Mont. 385, 291 P.3d 1106.

1 ///

2 A request to have defense counsel call the undersigned regarding this case, left
3 with defense counsel's support staff on March 14, 2013, has not been returned.

4 Dated this _____ day of March, 2013.

5
6 _____
7 BARBARA C. HARRIS
8 Assistant Attorney General

9 **CERTIFICATE OF SERVICE**

10 I hereby certify that I caused to be mailed, by U.S. pre-paid mail, a true and
11 accurate copy of the foregoing State's Motion to Disallow Dissemination of Personal
12 Information Regarding Undercover Witnesses and Brief in Support to the following:

13 Mr. Victor Bunitsky
14 Attorney at Law
15 P.O. Box 77
16 Virginia City, MT 59755-0077

17 DATED: _____
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Johnson, Perry

From: James Marble <james@townofstevensville.com>
Sent: Tuesday, October 18, 2016 2:46 PM
To: Johnson, Perry; Vetter, Benjamin
Cc: Larson, Scott
Subject: RE: Intoxilyzer training

Thanks.

Chief Marble

From: Johnson, Perry [mailto:PJohnson@mt.gov]
Sent: Monday, October 17, 2016 1:47 PM
To: Vetter, Benjamin
Cc: Larson, Scott; James Marble (james@townofstevensville.com)
Subject: RE: Intoxilyzer training

Ben,

Thank you for your response.

Chief Marble,

It appears that you will need to make arrangements to have your officers attend a regular SFST training.

Best wishes,

*Perry Johnson, Executive Director
Montana Public Safety Officer Standards and Training Council
2260 Sierra Road East
Helena, Montana 59602
(406) 444-9976 Desk
(406) 444-9978 Fax
(406) 475-5524 Cell*



From: Vetter, Benjamin
Sent: Monday, October 17, 2016 8:50 AM
To: Johnson, Perry <PJohnson@mt.gov>
Cc: Larson, Scott <SLarson@mt.gov>
Subject: RE: Intoxilyzer training

Perry,

After discussing the issue with my supervisor and the lab administrator, we decided a class held only for Stevi PD (4-5 people) could not be fiscally justified. Please let me know if you have any questions and I hope things are going well. Thank you!

Ben Vetter
Montana Forensic Science Division
Breath Alcohol Section
2679 Palmer Street
Missoula, MT 59808
(406) 329-1126

From: Johnson, Perry
Sent: Wednesday, October 12, 2016 1:53 PM
To: Vetter, Benjamin <bvetter@mt.gov>
Cc: James Marble (james@townofstevensville.com) <james@townofstevensville.com>
Subject: Intoxilyzer training

Ben,

Good afternoon!

I called a minute ago and know that you are out of the office until Monday, but I thought this may give you a reminder to visit with me about the intoxilyzer issue with the Stevensville PD.

Please contact me at your convenience so we can resolve this.

Thanks and have a great afternoon!

***Perry Johnson, Executive Director
Montana Public Safety Officer Standards and Training Council
2260 Sierra Road East
Helena, Montana 59602
(406) 444-9976 Desk
(406) 444-9978 Fax
(406) 475-5524 Cell***



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41100 Department of Justice Standard Budget Summary By Org, Account

Data Selected for Month/FY: 01 (Jul)/2017 through 05 (Nov)/2017

Business	(All)
Program	(All)
FY_BudF	(All)
Month	(All)
Source o	(All)
OBPP Pr	(All)
Fund	(All)
Fund Typ	(All)
Account	(All)
Acct Lvl	(All)
Account	(All)
Project	(All)
Org	(All)
Ledger	(All)

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Acct Lvl 1	Subclass	Standard Budget	Actuals Amt	A Accrual Amt	Balance
61000	Personal Services	213,355.00	91,821.12	0.00	121,533.88
	200H1 POST COUNCIL	213,355.00	91,821.12	0.00	121,533.88
62000	Operating Expenses	244,923.00	34,441.91	(1,152.00)	211,633.09
	200H1 POST COUNCIL	144,923.00	21,726.80	(1,152.00)	124,348.20
	200H2 POST LEGAL (BIEN)	100,000.00	12,715.11	0.00	87,284.89
Grand Total		458,278.00	126,263.03	(1,152.00)	333,166.97

~~OUT OF STATE OFFICERS/MT RESERVE STATUTES~~

2016 POST Legislative Package

PROPOSED LANGUAGE (As-Amended and redlined):

7-32-240. ~~Certification.~~ Certification of Montana peace officer who leaves full-time or part-time employment to an active reserve status in Montana.

~~(1) (1) An peace officer who is certified~~ has been issued a peace officer basic certificate by the Public Safety Officer Standards and Training Council (council), or who is eligible for such certification, and who becomes an active reserve officer in Montana, may retain his or her peace officer certification and return to full or part time employment as a peace officer under the following circumstances:

- ~~(a) if a reserve officer will become eligible for certification after they meet the qualification, training, employment and educational standards and all qualification, training, and employment standards set by the council and have completed a 1 year probationary term of employment pursuant to 7-32-303(5)^[1] and who leaves full-time or part-time employment as a peace officer within this state^[2] and enters an officer has not had a break in service of more than three years at any time since his or her last date of employment as a full or part time peace officer in Montana, then the reserve officer will retain his or her peace officer certification and may return to full or part time employment as a peace officer from reserve status without attending an equivalency course or returning to the basic academy;~~
- ~~(b) if a reserve officer has had a break in service of more than three years at any time since his or her last date of employment as a full or part time peace officer in Montana, then the officer must successfully complete the peace officer basic equivalency course, as approved by the council, within one year of the officer's most recent appointment as a full or part time peace officer in Montana in order to maintain his or her peace officer certification. If the officer fails the basic equivalency course, then the officer must attend the peace officer basic course at the Montana Law Enforcement Academy at the next available opportunity;~~
- ~~(c) if a reserve officer has had a break in service of more than five years at any time since his or her last date of employment as a full or part time peace officer in Montana, then the officer must successfully complete the peace officer basic course at the Montana law enforcement academy, as approved by the council, within one year of the officer's most recent appointment as a full or part time peace officer in Montana in order to maintain his or her peace officer certification. -active reserve status within 36 to 60 months retains basic certification status for as long as the peace officer remains an active reserve officer.~~

~~(2) For the purposes of this part a "break in service" means a continuous period in which the officer is not performing the duties of a peace officer, either as a full or part time peace officer or as an active reserve officer in Montana.~~

[±] Will depend on the edits to §7-32-303(5)

(3) The provisions of subsection (1) do not apply to a peace officer who was last employed as full-time or part-time peace officer outside of Montana, or a peace officer who was last employed by a federal or United States military law enforcement agency, or to any reserve officers outside Montana. Such officers wishing to be full or part time peace officers in Montana are subject to the provisions of 7-32-303(5). If 36 or more months have passed since the peace officer's last full-time or part-time employment and the peace officer returns to full-time or part-time employment as a peace officer within this state, the peace officer shall comply with 7-32-303(6)^{f21}(c)(5)(b).

(2) A peace officer who has remained on active reserve status and who would have been eligible for certification pursuant to 7-32-303(5)(b)^{f31} at the time the officer was appointed as a reserve officer in this state and who is appointed as a full-time or part-time peace officer within this state shall comply with the training requirements of 7-32-303(6)(b), (6)(c), or (6)(e)^{f41} depending on the number of months since the date of last employment as a full-time or part-time peace officer.

~~--[OR]--~~

(2) The provisions of subsection (1) do not apply to a peace officer who was last employed as full-time or part-time peace officer by another state, a federal entity, or a United States military law enforcement agency.

² Formerly §7-32-303(5): will depend on edits to §7-32-303(5) and (6)

³ See n. 1, *supra*.

⁴ Formerly §7-32-303(5): §7-32-303(6) . . . (b) A peace officer who has been **certified by the council pursuant to subsection (5) or who is eligible for a basic certificate as determined by the council** and whose last date of employment as a peace officer **within this state** was less than 36 months prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (6)(a). If the peace officer's last date of employment as a peace officer **was not within this state and** was less than 36 months prior to the date of the person's present appointment as a peace officer, the peace officer may satisfy the basic educational requirements as set forth subsection (6)(c).

(c) See n. 2, *supra*.

. . .

(c) [ENTIRELY NEW/SUGGESTED LANGUAGE ->] A peace officer who has been certified by the council pursuant to subsection (5) or who is eligible for a basic certificate as determined by the council and whose last date of employment as a peace officer or member of the military law enforcement was more than 60 months prior to the date of present employment as a peace officer must satisfy the basic educational requirements as set forth subsection (6)(a).

INSTRUCTION LETTER FOR PROCESSING LC0186 AFTER INITIAL REVIEW

Deadline for notifying drafter with your instructions: Tuesday, December 06, 2016

TO: Rachel Weiss
FROM: Public Safety Officer Standards and Training Council by Law and Justice Interim Committee

I have received LC0186 for initial review, along with its cover letter dated November 22, 2016.

Here are my instructions for processing LC0186:

- PROCEED.** This draft is satisfactory as is. Please submit this draft for legal review by the Legislative Services Division now.
- PROCEED AFTER MAKING THE ENCLOSED CHANGES.** Enclosed are changes that will make the draft satisfactory. Please submit this draft for legal review by the Legislative Services Division after making these changes.
- MAKE THE ENCLOSED CHANGES--THEN RETURN TO ME.** Please return the draft (with changes made) to me for review.
- PUT ON HOLD. I NEED MORE TIME TO REVIEW THIS DRAFT.** I have no changes to make at this time, but I need more time to determine what, if any, additional changes need to be made.
- CANCEL THIS DRAFT REQUEST.**

Signature Perry Johnson

Unofficial Draft Copy

As of: November 22, 2016 (4:43pm)

LC0186

**** Bill No. ****

Introduced By *****

By Request of the Public Safety Officer Standards and Training
Council

A Bill for an Act entitled: "An Act generally revising public safety officer standards and training council laws; clarifying education requirements for county coroners and deputy coroners; revising peace officer employment, education, and certification standards; revising council duties; revising laws related to the suspension or revocation of a public safety officer's certification; revising duties of appointing authorities; providing a penalty for a violation of certain public safety officer certification requirements; providing requirements for pretrial services officers; clarifying training requirements for probation and parole officers employed by the department of corrections; and amending sections 7-4-2901, 7-4-2904, 7-4-2905, 7-32-240, 7-32-303, 44-4-401, 44-4-403, 44-4-404, 46-9-108, 46-9-505, 46-23-1001, 46-23-1003, and 46-23-1005, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2901, MCA, is amended to read:

"7-4-2901. Appointment of deputy coroners. (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist the coroner or act in the coroner's absence.

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As of: November 22, 2016 (4:43pm)

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(2) At the time of appointment, a deputy coroner or acting coroner must meet the qualifications required of a coroner as provided in 7-4-2904(1) and (2)(a). Within a reasonable time after appointment, a deputy shall successfully complete the basic coroner course, as provided for in 7-4-2905(2)(a). ~~The~~ After the successful completion of the basic coroner course, the deputy ~~shall~~ must also meet the requirements for advanced education as provided in 7-4-2905(2)(b).

(3) A deputy coroner may be the coroner or qualified deputy coroner from another county."

{Internal References to 7-4-2901: None.}

Section 2. Section 7-4-2904, MCA, is amended to read:

"7-4-2904. Qualifications for office of county coroner. (1)

In addition to the qualifications set forth in 7-4-2201, to be eligible for the office of coroner, at the time of election or appointment to office a person must be a high school graduate or holder of an equivalency of completion of secondary education as provided by the superintendent of public instruction under 20-7-131 or of an equivalency issued by another state or jurisdiction.

(2) Each coroner, before entering the duties of office, shall:

(a) take and file with the county clerk the constitutional oath of office; and

(b) certify to the county clerk that:

(i) the individual has ~~satisfactorily~~ successfully

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As of: November 22, 2016 (4:43pm)

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completed the basic coroner course of study provided in 7-4-2905 or that the individual has completed the equivalent educational requirements as approved by the ~~attorney general~~ Montana public safety officer standards and training council established in 2-15-2029; or

(ii) the individual intends to take the basic coroner course at the next offering of the course if the coroner has been appointed or was elected by other than a local government general election and, from the date of appointment or election and assumption of the duties as coroner, a basic coroner course was not offered. A coroner forfeits office for failure to take and satisfactorily complete the next offering of the basic coroner course."

{Internal References to 7-4-2904:
7-4-2901x 11/9}

Section 3. Section 7-4-2905, MCA, is amended to read:

"7-4-2905. Coroner education and continuing education. (1) Coroner education must be conducted by the Montana public safety officer standards and training council established in 2-15-2029. The council may adopt rules establishing standards and procedures for basic and advanced education. The cost of conducting the education must be borne by the ~~department of justice~~ council from money appropriated for the education. The county shall pay the salary, mileage, and per diem of each coroner-elect, coroner, and deputy coroner attending from that county.

(2) (a) The council shall conduct a 40-hour basic coroner

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course of study after each general election. The course, or an equivalent course approved by the council, must be completed before the first Monday in January following the election. The council may conduct other basic coroner courses at times it considers appropriate.

(b) The council shall annually conduct a 16-hour advanced coroner course. Unless there are exigent circumstances, failure of any coroner or deputy coroner to satisfactorily complete the advanced coroner course, or an equivalent course approved by the council, at least once every 2 years results in forfeiture of office. The council may adopt rules providing a procedure to extend the 2-year period because of exigent circumstances."

{ Internal References to 7-4-2905:

7-4-2901x2 7-4-2902x 7-4-2904x 11/9 }

Section 4. Section 7-32-240, MCA, is amended to read:

"7-32-240. Certification of Montana peace officer who leaves full-time or part-time employment to an active reserve status in Montana. ~~A peace (1) Except as provided in subsection (3), an officer who leaves full-time or part-time employment and enters an active reserve status within 36 to 60 months retains basic certification status after entering reserve status for as long as the peace officer remains an active reserve officer. has been issued a peace officer basic certification by the public safety officer standards and training council or who is eligible for the certification, and who becomes an active reserve officer in Montana, may retain the officer's peace officer certification~~

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and return to full-time or part-time employment as a peace officer under the following circumstances:

(a) If ~~36 or more months have passed~~ the reserve officer has not had a break in service of more than 3 years at any time since the peace officer's last date of employment as a full-time or part-time employment and the peace officer returns to full-time or part-time employment, the peace officer shall, upon return to retains the peace officer certification and may return to full-time or part-time employment as a peace officer from reserve status without attending an equivalency course or returning to the basic academy, comply with 7-32-303(5)(c).

(b) If the reserve officer has had a break in service of more than 3 years at any time since the officer's last date of employment as a full-time or part-time peace officer in Montana, the officer must successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's most recent appointment as a full-time or a part-time peace officer in Montana in order to maintain the officer's peace officer certification. If the officer fails the basic equivalency course, the officer must attend the peace officer basic course at the Montana law enforcement academy at the next available opportunity.

(c) If the reserve officer has had a break in service of more than 5 years at any time since the officer's last date of employment as a full-time or a part-time peace officer in Montana, the officer must successfully complete the peace officer basic course at the Montana law enforcement academy, as approved

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by the council, within 1 year of the officer's most recent appointment as a full-time or part-time peace officer in Montana in order to retain the officer's peace officer certification.

(2) For the purposes of this part, "break in service" means a continuous period in which the officer is not performing the duties of a peace officer in Montana, either as a part-time or a full-time officer or as an active reserve officer.

(3) (a) The provisions of subsection (1) do not apply to a peace officer who was last employed as a full-time or part-time peace officer outside of Montana, a peace officer who was last employed by a federal or United states military law enforcement agency, or to a reserve officer outside of Montana.

(b) Officers listed in subsection (3)(a) are subject to the provisions of 7-32-303(5)."

{Internal References to 7-32-240: None.}

Section 5. Section 7-32-303, MCA, is amended to read:

"7-32-303. Peace officer employment, education, and certification standards -- suspension or revocation -- penalty.

(1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person authorized by law to appoint peace officers in this state may not appoint any person as a

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peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029. A peace officer must:

- (a) be a citizen of the United States;
- (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 the person could have been imprisoned in a federal or state penitentiary;
- (e) be of good moral character, as determined by a thorough background investigation;
- (f) be a high school graduate or have been issued a high school equivalency diploma by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;
- (g) ~~(i)~~ be free from any mental condition that might adversely affect performance by the applicant of the duties of a peace officer, as determined after:

~~(i) be examined by a licensed physician or, for the purposes of a mental health evaluation, performed by a person licensed physician or a mental health professional who is licensed by the state under Title 37 and acting within the scope of the person's licensure when performing a mental health evaluation, who is not the applicant's personal physician or licensed mental health professional, and who is appointed or approved by the employing authority to determine if the applicant is free from any mental~~

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~~or physical condition that might adversely affect performance by the applicant of the duties of a peace officer; or~~

(ii) satisfactory completion of a standardized mental health evaluation instrument determined by the employing authority to be sufficient to examine for any mental conditions within the meaning of subsection (2)(g), if the instrument is scored by a licensed physician or a mental health professional acting within the scope of the person's licensure by the state.

(h) be free from any physical condition that might adversely affect performance of the applicant of the duties of a peace officer, as determined after a satisfactory completion of a physical examination performed by a health care provider who is licensed by the state under Title 37 and acting within the scope of the person's licensure when performing the physical examination, who is not the applicant's personal health care provider, and who is appointed or approved by the employing authority.

~~(ii) (A) satisfactorily complete the physical examination required by subsection (2)(g)(i); and
—— (B) complete a standardized mental health evaluation instrument determined by the employing authority to be sufficient to examine for any mental health conditions that might adversely affect the performance by the applicant of the duties of a peace officer if the instrument is scored by a mental health professional acting within the scope of licensure by any state and the mental health professional finds that the applicant is free of any such mental health condition;~~

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~~(h)~~(i) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

~~(i)~~(j) possess or be eligible for a valid Montana driver's license;

(k) be certified or be eligible for certification as a peace officer by the council.

(3) At the time of appointment, a peace officer shall take a formal oath of office and an ethics oath, as promulgated by the council.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice of the event must be given to the Montana public safety officer standards and training council by the employing authority.

(5) ~~(a) Except as provided in subsections (5) (b) and (5) (c), it~~ It is the duty of an appointing authority in Montana to ~~cause~~ ensure that each peace officer appointed under its authority ~~to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by~~ has the appropriate basic training, including any training required in subsections (6) through (8), in addition to meeting all other requirements of peace officer certification promulgated by the Montana public safety officer standards and training council. Any peace officer appointed after September 30,

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1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic ~~course as required by this subsection (5)(a)~~ training required by subsections (6) through (8) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(6) Except as provided in subsections (7) and (8), a peace officer shall successfully complete the peace officer basic course at the Montana law enforcement academy, as approved by the council, within 1 year of:

(a) the peace officer's initial appointment as a peace officer; or

(b) the peace officer's most recent appointment as a peace officer if a peace officer has had a break in service as a peace officer of more than 5 years.

(7)(a) If a peace officer previously satisfied the requirement in subsection (6), is certified or eligible for certification as a peace officer in Montana, and has had a break in service as a peace officer of less than 3 years, the peace officer is not required to satisfy the requirement in subsection (6) or to attend an equivalency course prior to returning to work in Montana as a peace officer;

(b) If a peace officer previously satisfied the requirement in subsection (6), is certified or eligible for certification as a peace officer in Montana, and has been continually employed as a peace officer outside of Montana for no more than 3 years, the peace officer is not required to satisfy the requirement in subsection (6) or to attend an equivalency course prior to

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returning to work in Montana as a peace officer;

(c) If a peace officer previously completed the peace officer basic course successfully, is certified or eligible for certification as a peace officer in Montana, and has been continually employed as a peace officer outside of Montana for more than 3 years or who has had a break in service as a peace officer for more than 3 years but less than 5 years, the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the peace officer's most recent appointment as a peace officer in Montana. If the peace officer fails the basic equivalency course, the officer shall satisfy the requirement in subsection (6) at the next available opportunity.

(d) If a person satisfied the requirement in subsection (6) prior to the person's appointment or employment and is hired or appointed as a peace officer more than 3 years but less than 5 years after the date that the person satisfied the requirement in subsection (6), the person shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the person's most recent appointment or employment as a peace officer. If the person is not appointed or employed as a peace officer within 5 years after the date of the person's successful completion of the requirement in subsection (6), the person shall satisfy the requirement in subsection (6) within 1 year of the person's most recent appointment as a peace officer in Montana.

(8)(a) Except as provided in subsection (8)(b), if a peace

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officer has successfully completed a peace officer basic course that is taught or approved by a federal, state, local, or United States military law enforcement agency, that satisfies the peace officer basic training requirement for that agency, and that the council has reviewed and approved as commensurate with the current peace officer basic course offered at the Montana law enforcement academy, the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's initial appointment in Montana. If the officer fails the basic equivalency course, the officer must satisfy the requirement in subsection (6) at the next available opportunity.

(b) The peace officer shall complete the requirement of subsection (6) within 1 year of the officer's initial appointment as a peace officer in Montana if the officer has had a break in service as a peace officer for more than 5 years.

~~(b) A peace officer who has been issued a basic certificate by the Montana public safety officer standards and training council and whose last date of employment as a peace officer was less than 36 months prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace officer may satisfy the basic educational requirements as set forth in subsection (5)(c).~~

~~(c) A peace officer referred to in subsection (5)(b) or a~~

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~~peace officer who has completed a basic peace officer's course that is taught by a federal, state, or United States military law enforcement agency and that is reviewed and approved by the Montana public safety officer standards and training council as equivalent with current training in Montana and whose last date of employment as a peace officer or member of the military law enforcement was less than 60 months prior to the date of present appointment as a peace officer may, within 1 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy the basic educational requirements by successfully completing a basic equivalency course administered by the Montana law enforcement academy. The prior employment of a member of the military law enforcement must be reviewed and approved by the Montana public safety officer standards and training council. If the peace officer fails the basic equivalency course, the peace officer shall complete the next available appropriate basic course.~~

~~(6)(9)~~ The Montana public safety officer standards and training council may extend the 1-year time requirements of subsections ~~(5)(a) and (5)(c)~~ (6) through (8) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic equivalency course, and an unreasonable shortage of

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personnel within the department. The council may not grant an extension to exceed 180 days.

~~(7)(10)~~ A peace officer who has successfully met the qualification, training, employment, and educational standards and ~~qualifications and the educational requirements~~ of this section, successfully met the qualification, training, and employment standards set by the council, and who has completed a 1-year probationary term of employment must be issued a peace officer basic certificate by the council certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

~~(8)(11)~~ It is unlawful for a person whose basic certification as a peace officer, ~~detention officer, or detention center administrator~~ has been revoked or ~~suspended~~ denied by the Montana public safety officer standards and training council for misconduct to act as a peace officer, ~~detention officer, or detention center administrator.~~ It is unlawful for a person whose peace officer basic certification has been suspended by the council to act or be appointed or employed as a peace officer in Montana during the period in which the certification is suspended. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed \$500, or both."

{ Internal References to 7-32-303:

7-32-240a 7-32-305x 7-32-2112x * 20-25-321x
44-2-113 x 44-4-902x 61-8-105x 11/9 }

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Section 6. Section 44-4-401, MCA, is amended to read:

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

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

(2) "Public safety officer" means:

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

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

(c) a peace officer, as defined in 7-32-303 or 46-1-202;

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

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

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

(g) a probation or parole officer who is employed by the department of corrections pursuant to 46-23-1002;

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

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

(j) a coroner with the duties described in 7-4-2911 or a deputy coroner appointed pursuant to 7-4-2901;

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

(l) a publicly employed pretrial services officer employed by a pretrial services agency, as those terms are defined in [section 9]; and

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

{Internal References to 44-4-401: None.}

Section 7. Section 44-4-403, MCA, is amended to read:

"44-4-403. Council duties -- determinations -- appeals. (1)

The council shall:

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

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

(c) approve or deny requests for training credit based on procedures and standards set by administrative rule;

~~(c)~~(d) ~~provide for the certification or recertification of~~

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determine an individual's eligibility or ineligibility for certification as a public safety officers officer in Montana;

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

(f) sanction, suspend, revoke, or deny for the suspension or revocation of the certification of public safety officers who violate or fail to meet standards.

(2) The council may waive or modify a qualification or training standard set in administrative rule for good cause. Standards set pursuant to subsection (1)(a) must be in addition to and not inconsistent with standards set by statute.

(3) (a) A person who has been denied certification or recertification or whose certification or recertification has been sanctioned, suspended, or revoked, or denied based on misconduct, or who has been declared ineligible for certification by the council is entitled to a contested case hearing before the council pursuant to Title 2, chapter 4, part 6, and administrative rules established by the council that are not inconsistent with Title 2, chapter 4, part 6, except that a decision by the council may be appealed to the board of crime control, as provided for in 44-4-301. A decision of the board of crime control is a final agency decision subject to judicial review.

(b) The revocation or suspension of a public safety officer's basic certificate in any discipline automatically

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revokes or suspends for the same period of time all other public safety certificates held by the officer. A person may not be appointed or employed as a public safety officer if the person has ever had a public safety officer basic certificate revoked or if the person currently has a public safety officer basic certificate suspended.

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

(5) The council may delegate decisions related to the grant or denial of equivalent credit or the duties listed in 7-32-303(9) and subsections (1)(b), (c), and (d) of this section to its staff or executive director as long as the council reviews any decision that adversely affects the rights of an individual pursuant to Title 2, chapter 4, part 6."

{Internal References to 44-4-403:
41-5-1808x 44-4-301x 11/9}

Section 8. Section 44-4-404, MCA, is amended to read:

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"44-4-404. **Appointing authority responsible for applying standards.** (1) A public safety officer in Montana must meet the applicable qualification, training, and employment standards for the discipline in which they are currently employed and must be certified in that discipline by the council or eligible for the certification after the completion of a 1-year probationary period.

(2) It is the responsibility of a public safety officer's appointing authority to ~~apply~~ ensure that every public safety officer the authority employs meets the qualification, training, and employment standards ~~and training criteria~~ established by the council pursuant to this part, including but not limited to requiring the ~~successful completion of minimum training standards~~ that the public safety officer be certified by the council in the discipline in which the officer is currently employed, or be eligible for the certification within 1 year of the public safety officer's hire date, and terminating or suspending the employment of a public safety officer ~~for failure to meet the minimum standards established by the council pursuant to this part whose certification has been sanctioned, suspended, revoked, or denied, or who has been declared ineligible for certification, until the officer has a valid certification from the council in the appropriate discipline.~~

(3) It is unlawful for a person whose basic certification as a public safety officer in any discipline has been revoked or denied by the council for misconduct or who has been declared ineligible for certification by the council based on misconduct

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to act, be appointed, or be employed as a public safety officer in any discipline in Montana. It is unlawful for a person whose basic certification has been suspended by the council to act, be appointed, or be employed as a public safety officer in any discipline in Montana during the period for which the certification is suspended. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed \$500, or both.

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

{Internal References to 44-4-404: None.}

NEW SECTION. Section 9. Definitions. As used in this chapter the following definitions apply:

(1) "Pretrial services agency" means a government agency whose employees are pretrial services officers and that is designated by a district court, justice's court, municipal court, or city court to provide services pending a trial.

(2) "Pretrial services officer" means an employee of a pretrial services agency who provides services on behalf of the agency and who is subject to the requirements of [section 10].

NEW SECTION. Section 10. Requirements for pretrial services officers. (1) A pretrial services officer may not be an

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employee of a private entity that contracts with a local government to provide pretrial services.

(2) A pretrial services officer must be a public safety officer, as defined in 44-4-401.

(3) A pretrial services officer must have the minimum training required by the Montana public safety officer standards and training council established in 2-15-2029 and be certified or be eligible for certification by that council.

Section 11. Section 46-9-108, MCA, is amended to read:

"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on

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the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with:

(i) an alleged victim of the crime, including in a case of partner or family member assault the restrictions contained in a no contact order issued under 45-5-209; and

(ii) any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, pretrial services officer, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol or use or possess any dangerous drug or other controlled substance without a legal prescription;

(j) if applicable, the defendant shall comply with either a mental health or chemical dependency treatment program, or both;

(k) the defendant shall furnish bail in accordance with 46-9-401; or

(l) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination

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of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-206, 45-5-220, or 45-5-626 is admitted to bail, the detention center shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

{Internal References to 46-9-108:
46-9-501 46-9-505}

Section 12. Section 46-9-505, MCA, is amended to read:

"46-9-505. Issuance of arrest warrant -- redetermining bail -- definition. (1) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of the failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person.

(2) On verified application by the prosecutor setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.

(3) If the defendant has been released under the

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supervision of a pretrial services agency or pretrial services officer, referred to in ~~46-9-108(1)(f)~~, an officer of that agency the pretrial services officer may arrest the defendant without a warrant or may deputize any other officer with power of arrest to arrest the defendant by giving the officer oral authorization and within 12 hours delivering to the place of detention a verified written statement setting forth that the defendant has, in the judgment of the officer, violated the conditions of the defendant's release. An oral authorization delivered with the defendant by the arresting officer to the official in charge of a county detention center or other place of detention is a sufficient warrant for detention of the defendant if the pretrial officer delivers a verified written statement within 12 hours of the defendant's arrest.

(4) Upon the arrest, the defendant must be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311.

~~(5) As used in this section, "pretrial services agency" means a government agency or a private entity under contract with a local government whose employees have the minimum training required in 46-23-1003 and that is designated by a district court, justice's court, municipal court, or city court to provide services pending a trial."~~

{Internal References to 46-9-505: None.}

Section 13. Section 46-23-1001, MCA, is amended to read:

"46-23-1001. Definitions. As used in this part, unless the

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context requires otherwise, the following definitions apply:

(1) "Board" means the board of pardons and parole provided for in 2-15-2302.

(2) "Department" means the department of corrections provided for in 2-15-2301.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of the prisoner's term, subject to conditions imposed by the board and subject to supervision of the department.

(4) "Probation" means the release by the court without imprisonment, except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court.

(5) "Probation and parole officer" means an officer employed by the department pursuant to 46-23-1002."

{Internal References to 46-23-1001:
61-8-731x 11/9 *}

Section 14. Section 46-23-1003, MCA, is amended to read:

"46-23-1003. Qualifications of probation and parole officers. (1) Probation and parole officers are public safety officers pursuant to 44-4-401.

(2) Probation Each probation and parole officers officer must have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in

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2-15-2302(2)(c) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees are exempt from this requirement but are encouraged to further their education at the earliest opportunity.

~~(2)(3)~~ Each probation and parole officer shall, ~~through a source approved by the officer's employer,~~ obtain 16 hours a of training each year ~~of training~~ in subjects relating to the powers and duties of probation officers, at least 1 hour of which must include training on serious mental illness and recovery from serious mental illness.

(4) In addition to the training required in subsection (3), each probation and parole officer must receive training in accordance with standards adopted by the Montana public safety officer standards and training council established in 2-15-2029 and be certified or eligible for certification by the council as a probation and parole officer. The training must be provided by the department and approved by the council. The training must be at the Montana law enforcement academy unless the council finds that training at some other place is more appropriate."

{Internal References to 46-23-1003:

46-9-505a 46-23-1005 a 61-8-731 x* 11/9}

Section 15. Section 46-23-1005, MCA, is amended to read:

"46-23-1005. Misdemeanor probation offices -- officers -- costs. (1) A local government may establish a misdemeanor probation office associated with a justice's court, municipal

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court, or city court. The misdemeanor probation office shall monitor offenders for misdemeanor sentence compliance and restitution payments. An offender is considered a fugitive under the conditions provided in 46-23-1014.

(2) A local government may appoint misdemeanor probation officers and other employees necessary to administer this section. Misdemeanor probation officers:

(a) must be public employees;

(b) may not be employees of a private entity contracting with a local government;

(c) are public safety officers pursuant to 44-4-401;

~~(a)~~(d) must have the minimum training required in 46-23-1003 by the Montana public safety officer standards and training council established in 2-15-2029 and be certified or eligible for certification by the council;

~~(b)~~(e) shall follow the supervision guidelines required in 46-23-1011; and

~~(c)~~(f) may order the arrest of an offender as provided in 46-23-1012.

(3) An offender who is convicted of the offense of partner or family member assault under 45-5-206 or of a violation of an order of protection under 45-5-626 and who is ordered to be supervised by misdemeanor probation must be ordered to pay for the cost of the misdemeanor probation. The actual cost of probation supervision over the offender's sentence must be paid by the offender unless the offender can show that the offender is unable to pay those costs. The costs of misdemeanor probation are

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in addition to any other fines, restitution, or counseling ordered."

{*Internal References to 46-23-1005:*
45-5-206x 61-8-731 x* 11/9}

NEW SECTION. Section 16. {standard} Codification

instruction. [Sections 9 and 10] are intended to be codified as an integral part of Title 46, chapter 9, part 1, and the provisions of Title 46, chapter 9, part 1, apply to [sections 9 and 10].

- END -

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Agency: Legislative Services Division
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E-Mail: rweiss@mt.gov}

Montana Code Annotated 2015

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7-4-2905. Coroner education and continuing education. (1) Coroner education must be conducted by the Montana public safety officer standards and training council established in [2-15-2029](#). The council may adopt rules establishing standards and procedures for basic and advanced education. The cost of conducting the education must be borne by the department of justice from money appropriated for the education. The county shall pay the salary, mileage, and per diem of each coroner-elect, coroner, and deputy coroner attending from that county.

(2) (a) The council shall conduct a 40-hour basic coroner course of study after each general election. The course, or an equivalent course approved by the council, must be completed before the first Monday in January following the election. The council may conduct other basic coroner courses at times it considers appropriate.

(b) The council shall annually conduct a 16-hour advanced coroner course. Unless there are exigent circumstances, failure of any coroner or deputy coroner to satisfactorily complete the advanced coroner course, or an equivalent course approved by the council, at least once every 2 years results in forfeiture of office. The council may adopt rules providing a procedure to extend the 2-year period because of exigent circumstances.

History: En. Sec. 4, Ch. 367, L. 1987; amd. Sec. 1, Ch. 118, L. 1993; amd. Sec. 1, Ch. 24, L. 1995; amd. Sec. 6, Ch. 506, L. 2007.

Provided by Montana Legislative Services



Death Investigation Training – Great Falls, MT

December 13 – 14 - 15, 2016 - 16 Hours POST Credit

- WHAT:** This training will fulfill the 16 hour/every two years Montana POST Council training requirement for continuing Coroner/Deputy Coroner certification.
- WHO:** Open to all Coroners/Deputy Coroners and law enforcement investigators.
- WHERE:** Cascade County Sheriff's Office, 3800 Ulm North Frontage Road, Great Falls, MT.
- WHEN:** Tuesday, Wednesday, Thursday, December 13 – 14 - 15, 2016
- December 13:** 1:00 p.m. – 5:00 p.m. Death scene /case study review: domestic violence homicide – officer involved shooting death – Hilger - Yurian investigation
Presenters: Det. Frank Fritz – Det. Shane Bancroft, Yellowstone Co. Sheriff's Office
- December 14:** 8 a.m. – 12:00 p.m. Serial killer presentation re: former Montana resident – Scott Kimball
12:00 – 1:00 p.m. Lunch on your own
1:00 -5:00 p.m. Continued training re: Scott Kimball, serial killer
Presenter: Jonathan Grusing, FBI Special Agent, Denver Field Office
- December 15:** 8 a.m. – 10:00 a.m. Homicide investigation – Cramer child death case study (Anaconda)
Presenters: Lee Johnson, John Sullivan, Bruce McDermott, Agents, Montana DOJ Major Case Section - DCI
10:00 a.m. – 12:00 p.m. Suicide – equivocal death investigation presentation
Presenter: Det. LT. David Cardillo, Billings Police Department

COST: No Cost – student pays own lodging, meals, transportation. Enrollment is limited to 60 students.

To register for training, contact: Kim Parvinen at kparvinen2@mt.gov or call (406) 444-9959.

Local Hotels Link: [http://www.tripadvisor.com/Hotels-g45198-Great Falls Montana-Hotels.html](http://www.tripadvisor.com/Hotels-g45198-Great_Falls_Montana-Hotels.html)



PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

Pending Certification Report

Name	Instructor Type	Issue Date
ROB	Reserv Officer Basic	
19 Adams, Greg A	PARK COUNTY SHERIFF'S OFFICE	10/17/2016
20 Elliott-Pearson, Brian L	PARK COUNTY SHERIFF'S OFFICE	10/17/2016
21 Caltrider, Matthew D	DILLON POLICE DEPARTMENT	10/12/2016
22 Cowperthwait, Nikki D	DILLON POLICE DEPARTMENT	10/12/2016
23 Negron, Javier D	BEAVERHEAD COUNTY SHERIFF'S OFFICE	10/12/2016
24 Stewart, Dale E	DILLON POLICE DEPARTMENT	10/12/2016
42 Lower, Andrea R	Gallatin County Office of Court Services	10/17/2016

Total **ROB** Certificates 7

BAS	Basic		
5517	Ahmann, Jacob G	BOZEMAN POLICE DEPARTMENT	10/17/2016
5518	Allard, Micah B	MINERAL COUNTY SHERIFF'S OFFICE	10/17/2016
5519	Allen, Sean C	DAWSON COUNTY SHERIFF'S OFFICE	10/17/2016
5520	Anderson, Bryan L	YELLOWSTONE COUNTY SHERIFF'S OFFICE	10/17/2016
5521	Barbao, Harlee I	BOZEMAN POLICE DEPARTMENT	10/17/2016
5522	Beck, James J	MONTANA HIGHWAY PATROL	10/17/2016
5523	Berger, Alexis	MISSOULA POLICE DEPARTMENT	10/17/2016
5524	Bilbrey, Meagan K	MISSOULA POLICE DEPARTMENT	10/17/2016
5525	Brennan, Melissa A	DEPT OF HIGHWAYS/MOTOR CARRIER SERV	10/17/2016
5526	Brown, Ryan R	MADISON COUNTY SHERIFF'S OFFICE	10/17/2016
5527	Burgess, Aaron M	GREAT FALLS POLICE DEPARTMENT	10/17/2016
5528	Burnett, Christopher W	MSU POLICE DEPARTMENT/BOZEMAN	10/17/2016
5529	Damon, Mychal T	FORT PECK DEPT OF LAW & JUSTICE	10/17/2016
5530	Dillon, Travis A	MONTANA HIGHWAY PATROL	10/17/2016
5531	Echols, William J	CHOUTEAU COUNTY SHERIFF'S OFFICE	10/17/2016
5532	Ellingson, Bryan T	BUTTE/SILVER BOW LAW ENFORCEMENT	10/17/2016
5534	Frank, Shanna L	DOJ/DIVISION OF CRIMINAL INVESTIGATION	10/17/2016
5535	Gillen, Harrison B	DAWSON COUNTY SHERIFF'S OFFICE	10/17/2016
5536	Griffith, John E	MISSOULA POLICE DEPARTMENT	10/17/2016
5537	Hanley, Jacob M	BUTTE/SILVER BOW LAW ENFORCEMENT	10/17/2016
5538	Henderson, Terry O	BIG HORN COUNTY SHERIFF'S OFFICE	10/17/2016
5539	Hildebrand, Chance D	LIVINGSTON POLICE DEPARTMENT	10/17/2016
5540	Hronek, Taylor V	GREAT FALLS POLICE DEPARTMENT	10/17/2016
5541	Jenkins, Spencer D	BOZEMAN POLICE DEPARTMENT	10/17/2016
5542	Jensen, Lonny	MC CONE COUNTY SHERIFF'S OFFICE	10/17/2016
5543	Kelm, Brandon A	MONTANA HIGHWAY PATROL	10/17/2016
5544	Kramer, Clinton R	TOOLE COUNTY SHERIFF'S OFFICE	10/17/2016
5545	Larson, Robert G	FORT BENTON POLICE DEPARTMENT	10/17/2016
5546	Lovingier, Matthew W	WEST YELLOWSTONE POLICE DEPARTMENT	10/17/2016
5547	Mansur, Bradley	BILLINGS POLICE DEPARTMENT	10/17/2016
5548	Metcalfe, John M	MONTANA HIGHWAY PATROL	10/17/2016
5549	Nordell, Dylan J	MONTANA HIGHWAY PATROL	10/17/2016
5550	Orr, Jordan E	MISSOULA COUNTY SHERIFF'S OFFICE	10/17/2016
5551	Perry, Blaine R	POWDER RIVER COUNTY SHERIFF'S OFFICE	10/17/2016
5552	Peterson, Ryan B	FERGUS COUNTY SHERIFF'S OFFICE	10/17/2016



PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

Pending Certification Report

Name	Instructor Type	Issue Date
5553 Simonds, Joshua G	CUT BANK POLICE DEPARTMENT	10/17/2016
5554 Swartz, Tyler S	MONTANA HIGHWAY PATROL	10/17/2016
5555 Stergionis, Adam M	GREAT FALLS POLICE DEPARTMENT	10/17/2016
5556 Tate, Joseph D	GARFIELD COUNTY SHERIFF'S OFFICE	10/17/2016
5557 Theriault, Cody W	BOULDER POLICE DEPARTMENT	10/17/2016
5558 Trewick, Katherine A	MONTANA HIGHWAY PATROL	10/17/2016
5559 Van Gundy, John W	FLATHEAD COUNTY SHERIFF'S OFFICE	10/17/2016
5560 White, Justin K	MISSOULA COUNTY SHERIFF'S OFFICE	10/17/2016
5561 Wolf, Jared T	GREAT FALLS POLICE DEPARTMENT	10/17/2016
5562 Beston, Ryan B	FORT PECK DEPT OF LAW & JUSTICE	10/17/2016
5563 Robinson, Tyler	MISSOULA COUNTY SHERIFF'S OFFICE	10/17/2016

Total **BAS** Certificates 46

INT Intermediate

4803 Adair, Christopher M	BLAINE COUNTY SHERIFF'S OFFICE	10/17/2016
4804 Alvarez, Jeremy D	BEAVERHEAD COUNTY SHERIFF'S OFFICE	10/17/2016
4805 Emerson, Derek N	MISSOULA POLICE DEPARTMENT	10/17/2016
4806 Griesse, Nathan A	MISSOULA POLICE DEPARTMENT	10/17/2016
4807 Lammers, Clay J	GARFIELD COUNTY SHERIFF'S OFFICE	10/17/2016
4808 Michaelsen, Ryan K	WOLF POINT POLICE DEPARTMENT	10/17/2016
4809 Reum, Corey E	ROOSEVELT COUNTY SHERIFF'S OFFICE	10/17/2016
4810 Stacey, Jr, James L	MILES CITY POLICE DEPARTMENT	10/17/2016
4811 Shields, Cody J	FLATHEAD COUNTY SHERIFF'S OFFICE	10/17/2016

Total **INT** Certificates 9

ADV Advanced

3120 Amundson, Daniel S	MONTANA HIGHWAY PATROL	10/17/2016
3121 Baldwin, Richard A	MSU POLICE DEPARTMENT/BOZEMAN	10/17/2016
3122 Braun, Justin T	MONTANA HIGHWAY PATROL	10/17/2016
3123 Buls, Joshua M	FLATHEAD COUNTY SHERIFF'S OFFICE	10/17/2016
3124 Carrington, Kelly S	CARBON COUNTY SHERIFF'S OFFICE	10/17/2016
3125 Edwards, Matthew L	BILLINGS POLICE DEPARTMENT	10/17/2016
3126 Finnicum, Scott B	HELENA POLICE DEPARTMENT	10/17/2016
3127 Gilmore, Richard J	BILLINGS POLICE DEPARTMENT	10/17/2016
3128 Goodemoot, Samuel	MONTANA HIGHWAY PATROL	10/17/2016
3129 Hochhalter, Loren D	RAVALLI COUNTY SHERIFF'S OFFICE	10/17/2016
3130 Lloyd, Jeffrey R	MISSOULA POLICE DEPARTMENT	10/17/2016
3131 Obergfell, Nyle J	MONTANA HIGHWAY PATROL	08/17/2016
3132 Schoening, Joshua B	BILLINGS POLICE DEPARTMENT	10/17/2016
3133 Schwartz, Bethany P	BILLINGS POLICE DEPARTMENT	10/17/2016
3134 Tate, John P	BILLINGS POLICE DEPARTMENT	10/17/2016
3135 Weston, Sean A	BILLINGS POLICE DEPARTMENT	10/17/2016
3136 Woods, Peter G	MISSOULA POLICE DEPARTMENT	10/17/2016
3137 Van Hoose, Garrett D	MISSOULA COUNTY SHERIFF'S OFFICE	10/17/2016
3138 Lesnik, Shawn L	MUSSELSHELL COUNTY SHERIFF'S OFFICE	10/17/2016
3139 Schneider, James E	MONTANA HIGHWAY PATROL	10/17/2016



PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

Pending Certification Report

Name	Instructor Type	Issue Date	
Total ADV Certificates 20			
SUP Supervisory			
2824	Braun, Justin T	MONTANA HIGHWAY PATROL	10/17/2016
2825	Childers, Bret A	FLATHEAD COUNTY SHERIFF'S OFFICE	10/17/2016
2826	Denton, Justin C	MISSOULA POLICE DEPARTMENT	10/17/2016
2827	Gremaux, Bradley M	DOJ/DIVISION OF CRIMINAL INVESTIGATION	10/17/2016
2828	Krivitz, Brian M	BILLINGS POLICE DEPARTMENT	10/17/2016
2829	Pearson, Ryan R	HAVRE POLICE DEPARTMENT	10/17/2016
2830	Proctor, Tim F	MONTANA HIGHWAY PATROL	10/17/2016
2831	Sargent, Zachary J	MISSOULA COUNTY SHERIFF'S OFFICE	08/23/2016
2832	Secor, Scott A	GALLATIN COUNTY SHERIFF'S OFFICE	10/17/2016
2833	Stineford, Jonathan P	MISSOULA COUNTY SHERIFF'S OFFICE	08/23/2016
2834	Wickum, Lacie L	MONTANA HIGHWAY PATROL	10/17/2016
2835	Lesnik, Shawn L	MUSSELSHELL COUNTY SHERIFF'S OFFICE	10/17/2016
Total SUP Certificates 12			
COM Command			
2619	Gremaux, Bradley M	DOJ/DIVISION OF CRIMINAL INVESTIGATION	10/17/2016
2620	LaBard II, Richard C	GREAT FALLS POLICE DEPARTMENT	10/17/2016
2621	McGraw, Brian W	GREAT FALLS POLICE DEPARTMENT	10/17/2016
2622	Wells, James D	GREAT FALLS POLICE DEPARTMENT	10/17/2016
2623	Bennett, Scott F	MONTANA HIGHWAY PATROL	10/17/2016
2624	Lesnik, Shawn L	MUSSELSHELL COUNTY SHERIFF'S OFFICE	10/17/2016
Total COM Certificates 6			
ADM Administrative			
2602	Roos, Patrick D	CUSTER COUNTY SHERIFF'S OFFICE	10/17/2016
2603	Lesnik, Shawn L	MUSSELSHELL COUNTY SHERIFF'S OFFICE	10/17/2016
Total ADM Certificates 2			
DTB Detention/Corrections Basic			
2213	Abril, Dakota	BIG HORN COUNTY SHERIFF'S OFFICE	10/17/2016
2214	Bales, Diana C	MONTANA STATE PRISON	10/17/2016
2215	Becker, Dakota B	MISSOULA ADULT DETENTION FACILITY	10/17/2016
2216	Butorovich, Nicholas J	BUTTE/SILVER BOW LAW ENFORCEMENT	10/17/2016
2217	Casper, Micky D	MINERAL COUNTY SHERIFF'S OFFICE	10/17/2016
2219	Contreras, Andrew R	MONTANA STATE PRISON	10/17/2016
2220	Cross, Cody A	MONTANA STATE PRISON	10/17/2016
2221	Devries, Misty M	PINE HILLS YOUTH CORRECTIONAL FACILITY	10/17/2016
2222	Dowels, Alvis T	PINE HILLS YOUTH CORRECTIONAL FACILITY	10/17/2016
2223	Edwards, Jeffrey J	MISSOULA ADULT DETENTION FACILITY	10/17/2016
2224	Graveley, Nicholas L	MONTANA STATE PRISON	10/17/2016
2225	Hamilton, Kenneth R	TROY POLICE DEPARTMENT	10/17/2016



PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

Pending Certification Report

Name	Instructor Type	Issue Date
2226 Hermes, Schuyler K	MISSOULA ADULT DETENTION FACILITY	10/17/2016
2227 Hill, Walter J	MONTANA STATE PRISON	10/17/2016
2228 Hullmann, Matthew	MONTANA STATE WOMEN'S PRISON	10/17/2016
2229 Keller, Cody T	CASCADE COUNTY JUVENILE DETN FACILITY	10/17/2016
2230 Kent, Travis A	PARK COUNTY SHERIFF'S OFFICE	10/17/2016
2231 LaRocque, Brandon G	MISSOULA ADULT DETENTION FACILITY	10/17/2016
2232 McCarthy, Sean M	LEWIS AND CLARK COUNTY SHERIFF'S OFFI	10/17/2016
2233 Munoz, Brandin M	CASCADE COUNTY SHERIFF'S OFFICE	10/17/2016
2234 Nurre, Kevin E	CASCADE COUNTY SHERIFF'S OFFICE	10/17/2016
2235 Patten, Robert J	TROY JUVENILE DETENTION FACILITY	10/17/2016
2236 Peterson, Gary L	MONTANA STATE PRISON	10/17/2016
2237 Prindle, Casey A	PINE HILLS YOUTH CORRECTIONAL FACILITY	10/17/2016
2238 Ramirez, Tom	YELLOWSTONE COUNTY DETENTION	10/17/2016
2239 Reynoso, Jacob J	MISSOULA JUVENILE DETENTION FACILITY	10/17/2016
2240 Rio, Anthony R	MISSOULA COUNTY SHERIFF'S OFFICE	10/17/2016
2241 Robinson, Brandon J	BUTTE/SILVER BOW LAW ENFORCEMENT	10/17/2016
2242 Strutzel, Jami V	MISSOULA JUVENILE DETENTION FACILITY	10/17/2016
2243 Small, Amanda M	RIVERSIDE YOUTH CORRECTIONAL FACILITY	10/17/2016
2244 Taylor, OJ (Odie Jo)	VALLEY COUNTY SHERIFF'S OFFICE	10/17/2016
2245 Traughber, Teresa K	CASCADE COUNTY SHERIFF'S OFFICE	10/17/2016
2246 Weber, Bradley A	MISSOULA ADULT DETENTION FACILITY	10/17/2016
2247 Wells, Jonathan B	HILL COUNTY SHERIFF'S OFFICE	10/17/2016
2248 Wicorek, Austin	RICHLAND COUNTY SHERIFF'S OFFICE	10/17/2016
2249 Wilburn, Jodi M	PINE HILLS YOUTH CORRECTIONAL FACILITY	10/17/2016
2250 Jones, Travis	MONTANA STATE PRISON	10/17/2016
2251 Reinhart, Joseph J	ROOSEVELT COUNTY SHERIFF'S OFFICE	10/17/2016
2252 Willett, Ryan J	YELLOWSTONE COUNTY DETENTION	10/17/2016
2253 Golay, Travis D	UNASSIGNED	10/11/2016

Total DTB Certificates 40

DTI Detention/Corrections Intermediate

2677	Mallery, Ransom S	FLATHEAD COUNTY SHERIFF'S OFFICE	10/17/2016
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Total DTI Certificates 1

DTA Detention/Corrections Advanced

250	Mueller, Craig R	MISSOULA ADULT DETENTION FACILITY	10/17/2016
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Total DTA Certificates 1

DTS Detention/Corrections Supervisory

170	Burt, Wanda L	MISSOULA ADULT DETENTION FACILITY	10/17/2016
171	Mallery, Ransom S	FLATHEAD COUNTY SHERIFF'S OFFICE	10/17/2016

Total DTS Certificates 2

DTM Detention/Corrections Administrative



PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

Pending Certification Report

Name	Instructor Type	Issue Date
23 Neiter, Timothy O	YELLOWSTONE COUNTY DETENTION	08/23/2016

Total DTM Certificates 1

DIS Public Safety Communicators Basic

714	Brissette, Tracy L	GLACIER COUNTY SHERIFF'S OFFICE	10/17/2016
715	Calf Boss Ribs, Melanie A	BLACKFEET LAW ENFORCEMENT	10/17/2016
716	Charlton, Aaron H	HELENA POLICE DEPARTMENT	10/17/2016
717	Christensen (Jones), Kendra L	GLENDIVE POLICE DEPARTMENT	10/17/2016
718	Morrow, Joshua M	HELENA POLICE DEPARTMENT	10/17/2016
719	Rodriguez, Amber A	RAVALLI COUNTY SHERIFF'S OFFICE	10/17/2016
720	Schuetzle, Dennetta R	POWDER RIVER COUNTY SHERIFF'S OFFICE	10/17/2016
721	Wick, Samantha M	RICHLAND COUNTY SHERIFF'S OFFICE	10/17/2016
722	Cummings (Scullin), Megan R	TROY POLICE DEPARTMENT	10/17/2016
723	Schmidt, Katherine D	MC CONE COUNTY SHERIFF'S OFFICE	10/17/2016
724	Bailey, Hannah R	HILL COUNTY SHERIFF'S OFFICE	10/17/2016
725	Broyhill, Tiffany D	SANDERS COUNTY SHERIFF'S OFFICE	10/17/2016
726	Dvorak, Pamela A	GLACIER COUNTY SHERIFF'S OFFICE	10/17/2016
727	Flanagan, Lyndsy J	STILLWATER COUNTY SHERIFF'S OFFICE	10/17/2016
728	Pritt, Cindy L	LIVINGSTON PARK COUNTY 911	10/17/2016
729	Shrum, Brent A	LINCOLN COUNTY SHERIFF'S OFFICE	10/17/2016

Total DIS Certificates 16

DIN Public Safety Communicators Intermediate

79	Olson, Saphira	SHERIDAN COUNTY 911 COMMUNICATION C	10/17/2016
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Total DIN Certificates 1

COR Coroner Basic

1451	Archer, Charles R	SHERIDAN COUNTY CORONER	10/17/2016
1452	Nielsen, Charlotte K	SHERIDAN COUNTY CORONER	10/17/2016
1453	Snodgrass, Craig D	SWEET GRASS COUNTY SHERIFF'S OFFICE	10/17/2016
1454	Williams, Shawn W	MISSOULA COUNTY SHERIFF'S OFFICE	10/17/2016
1455	Reinhart, Joseph J	ROOSEVELT COUNTY SHERIFF'S OFFICE	10/17/2016
1456	Ronneberg, Alan S	SWEET GRASS COUNTY SHERIFF'S OFFICE	10/17/2016
1457	Tronrud, Dan J	SWEET GRASS COUNTY SHERIFF'S OFFICE	10/17/2016

Total COR Certificates 7

APP Adult Probation and Parole Basic

1020	Finn, Ryan J	Gallatin County Office of Court Services	10/17/2016
1021	Gold, Jennifer L	DEPARTMENT OF CORRECTIONS	10/17/2016
1022	Harteneck, Devon A	DEPARTMENT OF CORRECTIONS	10/17/2016
1023	Lower, Andrea R	Gallatin County Office of Court Services	10/17/2016
1024	Linn, Ronald G	DEPARTMENT OF CORRECTIONS	10/17/2016
1025	Todd, Bill R	Gallatin County Office of Court Services	10/17/2016
1026	Wacker, Ashley	DEPARTMENT OF CORRECTIONS	10/17/2016



PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

Pending Certification Report

Name **Instructor Type** **Issue Date**

Total APP Certificates 7

INS Instructors

4945	Brown, Aaron C	FLATHEAD COUNTY SHERIFF'S OFFICE	FIREARMS: PISTOL	09/14/2016
4946	Brown, Aaron C	FLATHEAD COUNTY SHERIFF'S OFFICE	FIREARMS: SHOTGUN	09/14/2016
4947	LaBard II, Richard C	GREAT FALLS POLICE DEPARTMENT	STRESS - THE CORROSIVE ELE	09/06/2016
4948	Fleming, Matthew S	GREAT FALLS POLICE DEPARTMENT	PRIMARY SWAT	
4949	Petty, Noal G	HELENA POLICE DEPARTMENT	VERBAL JUDO	09/12/2016
4950	Faycosh, Jeffrey E	DOJ/DIVISION OF CRIMINAL INVESTIGATION	FIREARM USAGE IN THE REAL	09/20/2016
4951	Guy, Mark O	LAUREL POLICE DEPARTMENT	GLOCK PISTOL	10/12/2016
4952	Lloyd, Jeffrey R	MISSOULA POLICE DEPARTMENT	CRISIS INTERVENTION TRAININ	10/12/2016
4953	Peigneux, Eugene W	DEPT OF HIGHWAYS/MOTOR CARRIER SERV	FIREARMS: PISTOL	10/12/2016
4954	Petersen, Katherine R	MISSOULA POLICE DEPARTMENT	TASER	10/12/2016
4955	Mallery, Ransom S	FLATHEAD COUNTY SHERIFF'S OFFICE	DEFENSIVE TACTICS	10/12/2016
4956	Munfrada, Frederic M	HILL COUNTY SHERIFF'S OFFICE	FIREARMS: PISTOL-SHOTGUN-	10/12/2016
4957	Ross, Jamieson T	HILL COUNTY SHERIFF'S OFFICE	RACIAL PROFILING IN LAW ENF	10/12/2016
4958	Woods, Peter G	MISSOULA POLICE DEPARTMENT	AR 15 PATROL RIFLE BASIC CO	10/12/2016

Total INS Certificates 14



PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

Pending Certification Report

Name	Instructor Type	Issue Date
BAS Basic 5564 Miner, Mandy J	DEPT OF HIGHWAYS/MOTOR CARRIER SERV	10/17/2016
Total BAS Certificates 1		



PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

Pending Certification Report

Name	Instructor Type	Issue Date
DTI Detention/Corrections Intermediate		
2678 Jeffreys, Robert N MISSOULA ADULT DETENTION FACILITY		10/31/2016
<hr/> Total DTI Certificates 1 <hr/>		



PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

Pending Certification Report

Name	Instructor Type	Issue Date
DTB Detention/Corrections Basic		
2254 Tatro, Amy L	YELLOWSTONE COUNTY DETENTION	11/02/2016

Total DTB Certificates 1

DTI Detention/Corrections Intermediate		
2678 Jeffreys, Robert N	MISSOULA ADULT DETENTION FACILITY	10/31/2016

Total DTI Certificates 1



PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

Pending Certification Report

Name	Instructor Type	Issue Date
DTI Detention/Corrections Intermediate		
2679 Andersen, Dustin W	FLATHEAD COUNTY SHERIFF'S OFFICE	11/15/2016

Total DTI Certificates 1



PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

Pending Certification Report

Name	Instructor Type	Issue Date
DTB Detention/Corrections Basic		
2212 Heppner, Jessica C GREAT FALLS YOUTH/TRANSITION CENTER		09/26/2016

Total DTB Certificates 1



Montana Public Safety Officer Standards & Training Council

2260 Sierra Road East
Helena, MT 59602

Phone: (406) 444-9975
Fax: (406) 444-9978

dojmt.gov/post

TO: MONTANA POST COUNCIL

FROM: PERRY JOHNSON, Executive Director
pjohnson@mt.gov, (406) 444-9976

KATRINA BOLGER, Paralegal/Investigator
kbolger@mt.gov; (406) 444-9974

RE: **CASE SYNOPSES**

DATE: Tuesday, November 29, 2016

The purpose of this memorandum is to provide a synopsis to the Montana POST Council of the cases being handled by Council staff and the Case Status Committee.

The following table outlines all of the active cases currently being handled by POST:

	Case No.	Synopsis of Allegations
1	12-18	Officer requested a subordinate officer watch porn with him, changed another officer's timesheet
2	13-01	Officer had inappropriate, sexual relationships with inmates, provided contraband to inmates
3	15-22	Officer stole items and lied about it
4	15-19	Officer was convicted of a felony in another state
5	15-23	Officer lied about having a high school diploma, a stipulated agreement was reached for ethics training and probation on conditions
6	15-24	Officer viewed pornography on his agency-issued computer
7	15-05	Officer attempted to take another officer's taser while he was heavily intoxicated
8	15-09	Officer lied about a suspect trying to run him over, then lied about why he lied, indicating he had PTSD
9	15-10	Officer brought his wife's prescription medication into the jail to bribe inmates to provide sexual favors to him
10	15-14	Officer used inappropriate force with inmates

11	15-26	Officer lied while under investigation
12	15-27	Officer obstructed justice and lied
13	15-21	Officer lied while under investigation
14	15-20	Officer has used inappropriate levels of force with various members of the public and threatened another officer
15	16-04	Married officer engaged in a sex act with another married officer in public, the two officers are not married to each other, then lied. Officer reached a stipulation with POST agreeing to a 30-day suspension and 5 years of probation on conditions.
16	16-05	Married officer engaged in a sex act with another married officer in public, the two officers are not married to each other, then lied. Officer reached a stipulation with POST agreeing to a 30-day suspension and 5 years of probation on conditions.
17	16-06	Officer made threats to a neighboring county sheriff. Officer reached a stipulation with POST, agreeing to probation on conditions.
18	16-07	Officer is being investigated for bringing a cell phone to an inmate with whom he was having a relationship
19	16-09	Officer was decertified in another state, has been convicted of a sexual crime in another state, lied about his criminal history
20	16-13	Officer had an auto accident, lied about it and tried to hide it, admitted he has a drug dependence issue
21	16-15	Officer has lied, failed to log evidence
22	16-16	Officer lied about attending a training which the agency paid for
23	16-18	Officer was cited for DUI, then was cited for driving while suspended
24	16-19	Officer was terminated in another state for having an affair with a fellow officer and being dishonest about it.
25	16-20	Officer engaged in sexual conduct with an inmate and brought the inmate a cell phone
26	16-21	Officer engaged in inappropriate correspondence with an inmate after leaving employment with the prison
27	16-22	Officer was terminated for making inappropriate sexual comments and advances to inmates and other staff.
28	16-24	Officer was convicted of a federal felony.
29	16-25	Officer received phone calls from an inmate and lied about it.
30	16-27	Officer has been charged with committing crimes on duty.
31	16-28	Officer was terminated for dereliction of duty.
32	16-29	Officer lied about damage to the officer's patrol vehicle.
33	16-31	Officer received a DUI, potential other misconduct.
34	16-32	Officer lied about his whereabouts during a shift.
35	16-33	Officer was insubordinate and lied about his conduct.
36	16-34	Officer was charged with assaulting a citizen.
37	16-35	Officer has been charged with PFMA and had exhibited a pattern of violent behavior.

38	16-36	Officer made racially derogatory statements and gestures to an inmate.
39	16-37	Officer lied to dispatch, indicating that he could not locate a subject, when he did locate the subject, and drove away without making contact.
40	16-38	Officer lied when providing a reference for another officer.
41	16-39	Officer has been charged with multiple violent felonies.
42	16-40	Officer lied during an investigation of the officer's inappropriate relationship with an inmate of a different facility.
43	16-41	Officer pled guilty to assault.
1	15-17	Officer received a DUI and suffers from mental health issues, the officer's certificates were revoked due to non-response
2	15-13	Officer sexually harassed various coworkers and engaged in sexual activities on duty and in dispatch. The case was dismissed due to lack of evidence.
3	15-15	Officer assaulted his pregnant live-in girlfriend. Officer's Certificates were revoked due to non-response.
4	15-08	Officer was convicted of a felony. Officer stipulated to surrender of his certificates and the full council approved.
5	15-31	Officer's certificate was recalled after being issued in violation of the law
6	15-34	Officer's certificate application was denied, officer did not qualify
7	15-18	Officer had a sexual relationship with an offender and warned her when Probation and Parole was performing bar checks. Officer voluntarily surrendered his certificates.
8	15-28	Officer was involved in a DUI and false reporting. Officer's certificates were revoked for non-response.
9	15-12	Officer was charged with felonies for threatening a citizen with a gun. Officer surrendered his certificates pursuant to a plea agreement.
10	15-33	Officer's certificate application was denied, officer did not qualify
11	15-16	Officer failed to arrest a fellow officer who assaulted him. POST dismissed the case for lack of evidence that the officer committed any wrongdoing.
12	16-03	Officer passed contraband between inmates and threatened an inmate. Officer's certificate was revoked for non-response.
13	16-02	Officer convicted of shoplifting, committed a theft at the department and lied about it. Officer's certificate was revoked for non-response.
14	16-01	Officer falsified his time cards and requested a subordinate officer cover for him. Officer's certificates were revoked for non-response
15	16-10	Officer received a DUI, refused SFSTs. Officer's certificates were revoked upon the officer's request.
16	16-11	Officer engaged in a sex act with another officer in public. Case was dismissed for lack of evidence.
17	16-12	Officer had an inappropriate relationship with an inmate, lied to investigators regarding their relationship. Officer surrendered her certificate.

18	16-14	Officer lied to obtain a warrant. Case dismissed due to lack of evidence.
19	16-17	Officer has been convicted of a felony, lied about his history, was decertified in another state, and committed a theft in an arrestee's home. After an emergency suspension, the officer surrendered his certificate.
20	16-23	Officer lied under oath. Case was dismissed for lack of evidence.
21	16-26	Officer had an inappropriate relationship with an inmate. Case closed due to officer having no certificates.
22	16-30	Dispatcher posted confidential information on Facebook. Case closed due to officer having no certificates.
23	16-08	Officer engaged in a sex act with another officer in public. Case was dismissed for lack of evidence.