

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 23.13.102, 23.13.201,)
23.13.215, 23.13.216, 23.13.301,)
23.13.304, and 23.13.703 pertaining)
to the certification of public safety)
officers)

TO: All Concerned Persons

1. On January 15, 2021, the Public Safety Officers Standards and Training (POST) Council published MAR Notice No. 23-13-260 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 4 of the 2021 Montana Administrative Register, Issue Number 1. The POST Council held a public hearing on the proposed amendment of the above-stated rules on February 24, 2021.

2. The POST Council has amended ARM 23.13.102, 23.13.201, 23.13.215, 23.13.216, 23.13.301, 23.13.304, and 23.13.703 as proposed.

3. The POST Council has thoroughly considered the comments and testimony received. Copies of the written comments were provided to the council and will be provided to the public on request. A summary of the comments received and the council's responses are as follows:

COMMENTS 1 through 3: Amanda Cahill of the American Heart Association provided written and oral testimony in support of the proposed amendments to ARM 23.13.201. Joel Gaertic with the Montana State Firemen's Association and Kimberly Burdick with Chouteau County 911 provided written testimony in support of the proposed changes to ARM 23.13.201. All commenters support public safety communicators being trained in providing telephonic cardiopulmonary resuscitation (TCPR) instruction in order to provide every person experiencing a medical emergency increased chances of survival.

RESPONSE TO COMMENTS 1 through 3: POST agrees with these statements. With TCPR training, public safety communications officers can assist untrained callers in providing CPR and can remind CPR-trained callers how to provide high-quality CPR. This will improve the services provided for the safety and wellbeing of the citizens of Montana.

COMMENT 4: Mark Kraft, Chief of the Sidney Police Department, provided oral testimony in support of POST's proposed changes to ARM 23.13.215. Chief Kraft testified that the proposed amendment is a common-sense change and will reduce

some of the burden of time and expense associated with agencies providing firearms instruction.

RESPONSE TO COMMENT 4: POST agrees with these comments and has determined that it is unreasonable for officers to be subject to the same firearms proficiency standards for their backup and primary handguns. POST further determined that the new standards will adequately protect the public while ensuring fair standards for officers.

COMMENT 5: Charles Kem, Stillwater County Sheriff/Coroner, provided written testimony in opposition to POST's proposed amendments to ARM 23.13.215. Sheriff Kem does not interpret the current rule to apply to backup firearms. He suggested that POST adopt only the changes to (2)(a), without providing an explicit provision for backup firearms qualifications. Sheriff Kem also suggested that POST change the proposed amendment to (2)(f) to the following language: "Secondary or backup handgun – must qualify once a year on a course of fire approved by the officer's agency head."

RESPONSE TO COMMENT 5: POST does not agree with Sheriff Kem's interpretation of ARM 23.13.215. Pursuant to (1)(b), every officer must complete the proficiency requirements at least once a year for every firearm that the officer customarily carries. POST does not intend for agencies to meet this standard only for primary handguns, but rather, it intends that officers meet POST's qualification standards for every firearm that they carry on duty. Leaving the course of fire up to the agencies would not ensure a minimum standard across the State of Montana. POST determines this change is reasonable and appropriate to provide an additional minimum standard for the backup handguns customarily carried by officers in Montana.

COMMENTS 6 and 7: Laurie Little Dog and Amanda Martin provided oral testimony in opposition to the amendment of ARM 23.13.703. Ms. Little Dog expressed concern regarding the change to (4) and stated that the agency should be required to provide a recommendation to streamline the process. She also expressed concern that the amendment of (9) provides officers more "outs" with regard to complaints. She believed that finding a complaint to be false is a "high bar" to meet, and that the public should have the ability to contest POST's findings. Ms. Martin stated her support for Ms. Little Dog's comments.

RESPONSE TO COMMENTS 6 and 7: POST disagrees with the comments made by Ms. Little Dog and Ms. Martin. Since POST amended (4) to allow an employing authority to make a recommendation regarding the action POST should take on an officer's certification, officers accused of misconduct have argued that POST may not take action on their certification without a recommendation from the employing authority. POST did not intend to require a recommendation by the employing authority, nor did POST intend that the absence of such a recommendation bar POST from taking action.

The amendments to (9) are necessary for POST to enter accurate findings about any given allegation. POST does not intend to give an officer an "out," but instead sees these findings as necessary to accurately reflect the facts of an incident. POST sometimes receives cases with video or other conclusive evidence that directly contradicts the statements of the complainants.

The request for public recourse goes beyond the scope of this rulemaking. Any mechanism for public recourse would require another rule change and cannot be accomplished here.

COMMENTS 8 through 10: Josh Butterfly with Opening Doors, Marcus Bull Child, and Lyyah Lee provided oral testimony in opposition to POST's proposed amendments to ARM 23.13.102, 23.13.201, 23.13.215, 23.13.216, 23.13.301, 23.13.304, and 23.13.703. These opponents testified generally about officers' use of excessive force when dealing with members of the public and specifically about a use of force incident that resulted in a woman's arm being broken.

RESPONSE TO COMMENTS 8 through 10: POST finds these comments to be irrelevant to the current proposed rule changes. There are already minimum training standards for public safety officers that include training in use of force, de-escalation techniques, and related subjects.

/s/ Hannah E. Tokerud
Hannah E. Tokerud
Rule Reviewer

Sheriff Tony Harbaugh
Chairman
Public Safety Officers Standards
and Training Council

By: /s/ Perry Johnson
Perry Johnson
Bureau Chief
Public Safety Officer Standards and
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Certified to the Secretary of State May 18, 2021.