

**MONTANA Public Safety Officer Standards and Training Council  
Meeting Agenda ~ February 19, 2020  
Face to Face Meeting 8:00 a.m. ~ 12:00 p.m.  
Department of Transportation  
2701 Prospect Ave.  
Helena, MT 59620**

**Dial-in Participant Information**

Dial-in number: (866) 576-7975

Access code: 612394

- I. 8:00 a.m. ~ Call meeting to order, roll call, identify and welcome guests.**
- II. 8:05 a.m. ~ Pledge of Allegiance and Invocation**
- III. 8:10 a.m. ~ Approval of minutes for October 2, 2019 Council meeting**
- IV. 8:15 a.m. ~ Public Comment/Guest Issues**
- V. 8:25 a.m. ~ Bob Edwards Stipulation**
- VI. 8:45 a.m. ~ Old Business**
  - A. Letter of Advice for 16 Hours Coroner Training**
  - B. Letter of Advice for Tribal Detention Officers**
  - C. 2019 ARM Discussion ~ Kristina Neal**
  - D. Pretrial Services/Misdemeanor Probation Basic Academy**
  - E. Ross Drisinski District Court Petition**
  - F. Thad White Motion to Intervene and Objection**
  - G. Kyle Adams Update**
  - H. Interim Law & Justice Committee Memorandum**
- VII. 9:30 a.m. ~ Break**
- VIII. 9:45 a.m. ~ New Business**
  - A. Committee Reports**
    - 1. Curriculum ~ Kevin Olson**

2. ARM ~ Leo Dutton
  - a. 2020 ARMs
3. Case Status ~ John Strandell
4. Business/Policy ~ Kimberly Burdick
  - a. Board of Crime Control statutes
  - b. POST statutes
5. Coroner ~ Leo Dutton

**B. LEOB Syllabus**

**C. Basic Coroner Syllabus**

**D. CDOB Syllabus**

**E. Proposal for Pretrial Services/Misdemeanor Probation Basic Academy**

**F. Director's Report**

1. Jason Jarrett Resignation
2. Budget
3. Certificates Awarded ~ 565
4. Training Approved ~ Employees-1,578, Courses-2,394, Hours-23,447
5. Equivalency Granted
6. Extensions Granted
7. Misconduct Articles
  - a. Revocation
  - b. Honesty
8. Office Updates
  - a. Attorneys
  - b. Modified Position
  - c. POST Agency Move
  - d. DOJ End of Year Report

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

\* Executive Sessions are closed to the public in order to protect the privacy rights of individuals. Times are approximate, except for public comment; actual times may vary depending on presentation/discussion time.

1 MONTANA Public Safety Officer Standards<sup>1</sup>  
2 and Training Council  
3 October 2, 2019  
4 Face to Face Meeting 8:00 a.m. 12:00 p.m.  
5 MLEA Room 213 & 214  
6 2260 E Sierra Road  
7 Helena, MT 59602  
8  
9 Members Present  
10 Tony Harbaugh Chairman  
11 Jim Thomas  
12 Leo Dutton  
13 Kevin Olson  
14 John Strandell  
15 Matt Saylor by phone  
16 Kristine White  
17 Jess Edwards  
18 Wyatt Glade  
19 Tia Robbin  
20 Jason Jarrett  
21  
22 Members Not Present  
23 Ryan Oster  
24 Kimberly Burdick  
25

1 POST Staff Present  
2 Perry Johnson Executive Director  
3 Mary Ann Keune Administrative Officer  
4 Katrina Bolger Paralegal/Investigator  
5  
6 Legal Counsel  
7 Kristina Neal  
8  
9 Guests  
10 Andrea Lower  
11 Steve Ette  
12 William Harrington  
13 Brian Gootkin  
14 Jayson Zander  
15 Linda Switzer by phone  
16 Gavin Roselles by phone  
17 Casey Elliott by phone  
18 Jon Metropoulos by phone  
19  
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1  
2 CHAIRMAN HARBAUGH: It's 8:00. We've  
3 got a couple more Board members that I believe are  
4 coming, but we're going to go ahead and call the  
5 meeting to order and get started. Maybe we would  
6 start with roll call of the Council first. John  
7 or Jim, if you want to start.  
8 MR. JOHNSON: Do you want me to call the  
9 roll?  
10 CHAIRMAN HARBAUGH: Sure.  
11 MR. JOHNSON: How is that going to work  
12 for you?  
13 CHAIRMAN HARBAUGH: That would be  
14 better.  
15 MR. JOHNSON: Kimberly Burdick is  
16 dealing with a death in the family, so she was  
17 unable to attend. My understanding is that  
18 Kristine White had confirmed for this meeting. So  
19 Kristine White.  
20 (No response)  
21 MR. STRANDELL: Oh, there's Tia.  
22 MR. JOHNSON: Tony Harbaugh.  
23 CHAIRMAN HARBAUGH: Here.  
24 MR. JOHNSON: Jess Edwards.  
25 MR. EDWARDS: Here.

1 MR. JOHNSON: Kevin Olson.  
2 MR. OLSON: Here.  
3 MR. JOHNSON: Ryan Oster is in Billings  
4 at MACOP. Tia Robbin.  
5 MS. ROBBIN: Here.  
6 MR. JOHNSON: John Strandell.  
7 MR. STRANDELL: Here.  
8 MR. JOHNSON: Jim Thomas.  
9 MR. THOMAS: Here.  
10 MR. JOHNSON: Leo Dutton.  
11 MR. DUTTON: Here.  
12 MR. JOHNSON: Matt Saylor.  
13 MR. SAYLER: Here.  
14 MR. JOHNSON: Good morning, Matt.  
15 MR. SAYLER: Good morning.  
16 MR. JOHNSON: Wyatt Glade.  
17 MR. GLADE: Here.  
18 MR. JOHNSON: Jason Jarrett.  
19 MR. JARRETT: Yes, sir.  
20 MR. JOHNSON: Ten accounted for.  
21 CHAIRMAN HARBAUGH: Could we ask the  
22 gallery next to introduce themselves, please.  
23 MS. LOWER: Andrea Lower, Court Services  
24 Pretrial Supervisor, Gallatin County.  
25 MR. ETTTE: Steve Ette, I'm the Director

1 of Court Services, Gallatin County.

2 MR. ZANDER: Jayson Zander --  
3 (inaudible) --

4 MR. HARRINGTON: Bill Harrington, East  
5 Helena Police.

6 CHAIRMAN HARBAUGH: Thank you. The  
7 other members on the line this morning that have  
8 joined us on the telephone, if you would identify,  
9 please.

10 MS. SWITZER: Linda Switzer, Department  
11 of Transportation. I'm filling in for Brad Martin  
12 today.

13 MR. JOHNSON: Linda, I didn't get your  
14 last name. Could you spell it for me, please.

15 MS. SWITZER: S-W-I-T-Z-E-R. I'm the  
16 District 4 Captain for MCS.

17 MR. JOHNSON: Thank you.

18 CHAIRMAN HARBAUGH: Anyone else on the  
19 call this morning?

20 MR. ROSELLES: Gavin Roselles.

21 MR. JOHNSON: Good morning, Sheriff.

22 MR. ROSELLES: Good morning.

23 MS. ELLIOTT: Casey Elliott from the  
24 Dillon Tribune.

25 MR. JOHNSON: Good morning, Casey.

1 MS. ELLIOTT: Good morning.

2 MR. JOHNSON: This is Perry. Just so  
3 we'll go over those ground rules like we do every  
4 time. These are the microphones. Katrina already  
5 put a sign near each one of them. Don't put  
6 anything on top of them or near them, or I'll be  
7 in trouble.

8 MS. BOLGER: Those phones are awfully  
9 close to that microphone. I'm just saying.

10 MR. JOHNSON: And then because we  
11 transcribe our notes, if you could identify  
12 yourself before you speak every time, it will  
13 really help our transcription and the speed in  
14 which we get that transcribed. So I think that's  
15 all the housekeeping. Mr. Chairman.

16 CHAIRMAN HARBAUGH: Thank you. I'd like  
17 to start this morning with pledge of allegiance.  
18 If I could ask everyone to join me in that.

19 (Pledge of allegiance)

20 CHAIRMAN HARBAUGH: While you're still  
21 standing, if I could impose on Sheriff Dutton to  
22 give us a short blessing.

23 (Blessing)

24 CHAIRMAN HARBAUGH: Thank you, Sheriff.

25 MR. JOHNSON: So this is Perry. What I

1 failed to do is to identify the other people that<sup>7</sup>  
2 are in the room that aren't in the gallery, so --

3 MS. BOLGER: Katrina Bolger, POST  
4 paralegal investigator.

5 MS. NEAL: Kristina Neal, contract Legal  
6 Counsel.

7 MR. JOHNSON: Perry Johnson, POST  
8 Director, or Bureau Chief.

9 MS. KEUNE: Mary Ann Keune, POST.

10 CHAIRMAN HARBAUGH: Thank you. Do we  
11 want to talk about approval of previous minutes  
12 or our new members, new Council members?

13 MR. JOHNSON: Well, I think that if  
14 you're ready to approve the minutes, you probably  
15 could.

16 CHAIRMAN HARBAUGH: Did everyone receive  
17 a copy of the minutes? I would entertain a motion  
18 or discussion, if there are --

19 MR. STRANDELL: This is John Strandell.  
20 I would make a motion that we approve the May 29th  
21 minutes.

22 MR. DUTTON: Leo Dutton. I second.

23 CHAIRMAN HARBAUGH: I have a motion and  
24 a second. Any discussion, additions, amendments?

25 MR. JOHNSON: This is Perry. I would

1 like to discuss just a little bit, because we had<sup>8</sup>  
2 some things in the minutes last time that I think  
3 are worth taking a look at, and at least  
4 discussing a little bit.

5 On Page 4 in the lower left corner,  
6 that's Page 7, I highlighted some stuff, and this  
7 is a statement Glen Stinar made to us last time  
8 where he says, "So trends in the last twelve  
9 months, we've seen a decrease in student  
10 discipline issues here at the Academy, so I'm  
11 spending a lot less time having conversations with  
12 students and their agencies, and I think that's a  
13 good thing."

14 I think it's a good thing, too, and I'll  
15 remind you that in years past, when we were  
16 dealing with numerous issues during Basic Academy  
17 classes, this Council looked at this staff and  
18 said, "What are you telling these guys during your  
19 POST presentation?"

20 And I think that we've kind of sharpened  
21 the pencil and really tried to drive home to them  
22 the fact that that Code of Ethics is a big deal,  
23 that those grounds for sanction are a big deal,  
24 and I think by the representation that's in the  
25 room and on the telephone, and the conversations

1 we've had with stakeholders over the past year, I  
2 think that we're started to build an understanding  
3 and a relationship where people have really taken  
4 to heart what we're doing in regards to grounds  
5 for sanction, what that Case Status Committee is  
6 doing in regards to review of those same things.

7           So I thought that was at least worth  
8 looking at.

9           At the bottom of that same page it says,  
10 Glen says this, "Mike attends the coroners  
11 inquests across the state, and at use of force  
12 training, those applications are always within  
13 best practices."

14           Our case status committee is here today,  
15 and you know, I could look at each one of them,  
16 and I think we would affirm this: We deal very  
17 little with use of force issues. I think the  
18 training that they're getting at the Academy  
19 regarding use of force, defensive tactics,  
20 firearms applications, I think it's well received  
21 and it's well applied.

22           So that's kind of an endorsement I think  
23 of what we're doing and where we've been. And I  
24 just felt like it was important that we  
25 acknowledge that.

1           On the next page, Page 5 in your Bates  
2 stamp book, at the bottom of Page 11, I wanted to  
3 point out to you guys that back in May when we had  
4 this meeting, we intended to be moved from the  
5 Maple Building into the Admin. Building, because  
6 everything was going to be done. Well, as you can  
7 see, it's not done. They're trying to get some  
8 traction I think in regards to that construction  
9 program, and it's going to be awhile before we  
10 move. And I just wanted to make sure that you  
11 guys understand we're still in the same spot, and  
12 it looks like we probably will be for awhile.

13           So that's all I had, Mr. Chairman.

14           MR. STRANDELL: Mr. Chairman, if I may,  
15 just to follow up -- this is John Strandell --  
16 just to follow up on the use of force discussion  
17 that Perry brought up, too.

18           You know, DCI investigates a lot of the  
19 officer involved shootings around the state, and  
20 the coroner inquests that are held, and the  
21 coroners juries come back and find that the  
22 officer's use of force was justified. So I think  
23 that attributes, too, to the training that they  
24 receive, and so that's just a good thing to note  
25 also.

11  
1 MR. JOHNSON: This is Perry again. In  
2 my memory, I don't remember a coroners inquest  
3 that has come with an adverse ruling on an officer  
4 involved shooting.  
5 MR. STRANDELL: This is John again.  
6 There hasn't been. In the history of our state,  
7 there's never been a jury come back that has found  
8 that the officer wasn't justified in the use of  
9 force.  
10 So that's an interesting thing, too,  
11 because the media now is picking up on that a  
12 little bit, and they always ask the question why  
13 hasn't that, and we tell them because the  
14 officer's use of force was by policy and  
15 appropriate, so -- but the discussion goes on.  
16 CHAIRMAN HARBAUGH: Any other comments  
17 before we move to a vote?  
18 (No response)  
19 CHAIRMAN HARBAUGH: All those in favor  
20 of approving the minutes, please signify by saying  
21 aye.  
22 (Response)  
23 CHAIRMAN HARBAUGH: Opposed, same sign.  
24 (No response)  
25 CHAIRMAN HARBAUGH: Motion carries.

12  
1 Sheriff Gootkin has joined us in the  
2 gallery. Good morning.  
3 We are at public comment and guest  
4 issues. Do we have public comment at this time  
5 that anyone would like to initiate?  
6 (No response)  
7 UNKNOWN SPEAKER: Oh, come on, Brian.  
8 Say something.  
9 CHAIRMAN HARBAUGH: He couldn't be here.  
10 MR. JOHNSON: He's over there,  
11 Detective.  
12 MR. GOOTKIN: I'm here.  
13 CHAIRMAN HARBAUGH: J.J. said today  
14 would be the first time he'd seen you in a long  
15 time.  
16 UNKNOWN SPEAKER: Public comment. Brian  
17 actually brought lunch yesterday and bought lunch,  
18 and that's worthy of note. It is.  
19 UNKNOWN SPEAKER: It is part of the  
20 official record now.  
21 UNKNOWN SPEAKER: It is.  
22 CHAIRMAN HARBAUGH: So maybe we'll take  
23 a minute and welcome our newest Council member,  
24 and that is Jason Jarrett from Gallatin County.  
25 Jason, if you'd like to share anything with us,

1 tell us about yourself. We put Wyatt through it  
2 on the phone last time.

3 MR. JARRETT: You mean like a good  
4 baking recipe?

5 CHAIRMAN HARBAUGH: You've got the  
6 floor.

7 MR. JARRETT: Eastern Montana kid; 34  
8 years in the business; all levels of public safety  
9 from fire and EMS to law enforcement, assigned the  
10 last six years to the mental health asylum that is  
11 known as the Gallatin County Detention Center.  
12 Glad to be here.

13 CHAIRMAN HARBAUGH: Thank you. Welcome.  
14 Welcome, Kristine. Glad to see you.

15 MS. WHITE: Thank you.

16 CHAIRMAN HARBAUGH: So I think we'll  
17 move to old business. Do you want to speak to  
18 legislative updates?

19 MR. JOHNSON: Yes. I'll direct your  
20 attention to Pages 55 and 56. This is a bill  
21 draft that POST supported that came out of the Law  
22 and Justice Interim Committee prior to the last  
23 legislative session, and this is a bill draft that  
24 actually I think was very successful in committee,  
25 but it didn't make it -- I shouldn't say that. It

1 was unsuccessful in committee. I think it was  
2 well supported, but the bottom line was it died in  
3 the committee.

4 The committee chair was Keith Regier  
5 from up in the Flathead, and the conversation that  
6 we had with him when they tabled that bill was  
7 that they felt that by eliminating the appeal to  
8 the Board of Crime Control, they would over-tax  
9 the judiciary, the Courts. So that was kind of  
10 the consensus of that committee, and that did not  
11 get out of committee.

12 The reason that I put it back on the  
13 agenda today is I think that it is good business,  
14 and we're going to talk about that later as we  
15 work our way through the rest of the meeting  
16 material, when we get to legislative issues.

17 And because this is old business, I  
18 think maybe it's appropriate at least for this  
19 Council to consider whether we want to endorse  
20 this again, and some of this is going to be  
21 contingent on an appeal we've already made to the  
22 Lewis & Clark County District Court in regards to  
23 the Adams appeal from Yellowstone County.

24 Adams was revoked. The Council  
25 confirmed or affirmed that revocation. It was

1 appealed to the Board of Crime Control, and they  
2 reversed the revocation and reinstated his  
3 certification. It's my understanding that he's  
4 not working as a detention officer. However,  
5 we've raised many issues just in regards to that.

6 So I think just going to go into a  
7 little bit of the history, the reason that there  
8 was an appeal to the Board of Crime Control at all  
9 was because prior to 2007, the POST Council was a  
10 subcommittee of the Board of Crime Control, and  
11 the Board of Crime Control was administratively  
12 attached to Department of Justice, so they were --  
13 the decisions made by the Council, they went to  
14 that agency for review.

15 So the Director would make a revocation,  
16 and make a decision in regards to a certificate;  
17 it would go to the Council; they would make a  
18 decision, either affirm or not; and then that  
19 decision would go to the full Board of Crime  
20 Control.

21 Well, back in 2015, the Board of Crime  
22 Control became part of the Department of  
23 Corrections; and back in 2007, the POST Council  
24 became an autonomous administratively attached  
25 agency to the Department of Justice.

1 So until the first of July, we conducted  
2 our own business. We were the agency, and the  
3 Board of Crime Control was an outside agency that  
4 was still, until 2015 still attached to the  
5 Department of Justice. In 2015 they became  
6 attached to the Department of Corrections.

7 So the bottom line is this autonomous  
8 agency was the only agency in Montana that had an  
9 outside agency with another branch of government  
10 reviewing any of your decisions.

11 So with the help of our Counsel, our  
12 legal advice, we have appealed that decision to  
13 Lewis & Clark County District Court, and I think  
14 it's in Judge Reynolds' Court, and the basis for  
15 that is found further on in our material, if I'm  
16 right. And we can talk about that.

17 But part of that is even that separation  
18 of powers argument. And the other part is just  
19 the action they took in regards to adding  
20 something to the record that you guys didn't put  
21 in the record, nor did the Hearing Officer during  
22 the hearing. So I think it was a textbook case  
23 for us to hold up and say, "Hey, can we get some  
24 definition on that?"

25 So the reason I went into that whole

1 explanation is because depending on what kind of  
 2 outcome we get from the District Court, or if it's  
 3 appealed to the Supreme Court, this may be a moot  
 4 conversation. It may be that a District Court  
 5 will say, "You can't do that," and if it's  
 6 appealed to the Supreme Court, the Supreme Court  
 7 may say, "We agree. This is something, this is a  
 8 process that is no longer relevant or no longer  
 9 can be applied to this situation." So that's kind  
 10 of where we're at with this.

11 CHAIRMAN HARBAUGH: Comments?

12 Questions?

13 MR. JOHNSON: This is Perry. That was  
 14 probably such an eloquent explanation that there  
 15 would be no questions.

16 MR. GLADE: This is Wyatt. I'm  
 17 representing the Board of Crime Control at this  
 18 meeting, and I could go on and on, Perry, but I  
 19 would just say I agree with you. It was just very  
 20 confusing, and it almost seems to me like a hold  
 21 over that wasn't addressed when the Board of Crime  
 22 Control was moved.

23 Board of Crime Control used to sit as an  
 24 appellate agency to decisions of POST, and it made  
 25 sense at the time; and then Board of Crime Control

1 got moved to DOC, and POST was administratively  
 2 attached to DOJ, and it just doesn't make any  
 3 sense to have Board of Crime Control reviewing the  
 4 POST decisions.

5 MR. JOHNSON: This is Perry. Last month  
 6 I had an opportunity to meet with the Board of  
 7 Crime Control Chairman just by accident in the  
 8 halls of the Capitol, Peter Ohman, and his  
 9 conversation with me kind of led me to that same  
 10 position of his. He said, "I don't really know  
 11 where we're doing that."

12 It is confusing, and it appeared to him  
 13 like it didn't serve any purpose. But really I  
 14 think that not only is it a hold over from 2015, I  
 15 think it is a hold over from 2007 when POST was  
 16 created, and they became the agency, and they were  
 17 autonomous from the Board of Crime Control. For  
 18 those eight years then, had we gone in front of  
 19 the Board of Crime Control, I think it would have  
 20 still been an outside agency looking at an  
 21 independent agency, so those two administratively  
 22 attached agencies.

23 But I really appreciate the insight into  
 24 that. I'm not an attorney, and I thank the Good  
 25 Lord every night that I'm not.

1 MS. NEAL: This is Kristina, and I would  
 2 speak just for the practical purposes of it even  
 3 on behalf of the officers as well as POST. It  
 4 adds a significant delay to the officers. I mean  
 5 I talked with Kyle Adams' attorney after the  
 6 hearing, and even regardless of how it would have  
 7 gone with the Board of Crime Control, if it would  
 8 have gone the other way, his intent was to appeal  
 9 it to the District Court. And I feel fairly  
 10 confident in Thad White's case that his attorney  
 11 will be appealing it to the District Court as  
 12 well.

13 So for that reasoning that it's just  
 14 going to stop cases from going into the District  
 15 Court doesn't hold water, and it creates a  
 16 significant delay for these cases getting into the  
 17 District Court, both for POST and for these  
 18 officers that are wanting some type of a --

19 Because the same issues are going to be  
 20 raised back up to the District Court, and it's  
 21 really creating a lot of delay for these officers.

22 MR. JARRETT: Jason Jarrett. The need  
 23 for an independent second review after POST,  
 24 what's that mean now, and who should that be?  
 25 Because that's the -- Instead of killing, it

1 probably should say where should it go. What  
 2 would that look like?

3 MS. NEAL: This is Kristina. And I  
 4 think the due process protections are provided  
 5 with your appeal up to the District Court, and I  
 6 think that's appropriate. You're still going to  
 7 have those appeals going up to the District Court,  
 8 and so going from an appeal from POST to the Board  
 9 of Crime Control to the District Court is really  
 10 creating confusion and a lot of delay.

11 MR. GLADE: This is Wyatt. And it  
 12 seemed like -- and I see we're going to talk about  
 13 the Drishinski appeal. I believe that's the one I  
 14 sat on recently with Board of Crime Control.

15 It just seems to me that the outcome of  
 16 the Board of Crime Control's decision determined  
 17 who had to appeal, because either side was going  
 18 to, or file suit, I guess is the better word.

19 MR. METROPOLIS: Jon Metropolis.

20 MR. JOHNSON: Good morning, Jon.

21 MR. OLSON: This is Kevin. And the fact  
 22 remains, with Department of Labor, who does most  
 23 of the regulatory functions of other occupations,  
 24 they get the hearing before the regulatory body,  
 25 and then they go right to court. We are the only

1 regulatory body that has an intermediate step  
 2 before going to court, and I agree with Kristina.  
 3 It just becomes --

4 The back story on that, in 2007 when  
 5 this -- and Brian, and Leo, and law enforcement  
 6 will remember. That's when shortly after Governor  
 7 Schweitzer in his executive order stated that this  
 8 is a subcommittee of the Board of Crime Control,  
 9 and had no powers whatsoever to perform any  
 10 business function. All that had to go as a  
 11 seconded motion to the Board of Crime Control.

12 And that's when there was many meetings  
 13 with law enforcement, and then Attorney General  
 14 Mike McGrath, about the desire to take and make  
 15 POST a stand alone agency. And if you remember  
 16 correctly back then when we went to the  
 17 Legislature, it got very contentious with the  
 18 Board of Crime Control, and they pushed back very  
 19 hard.

20 And the twelfth hour concession was they  
 21 wanted to hang on to be an appellate body for  
 22 POST, and at that time Attorney General McGrath  
 23 said, "We're too late in the game. We're not  
 24 going to fight over this any longer. We're going  
 25 to get POST to be stand alone, but there's going

1 to be some things that have to be worked out  
 2 later."

3 MR. JOHNSON: This is Perry again. And  
 4 then just I think so that the Council understands,  
 5 I don't think we've gone to the Board of Crime  
 6 Control with an appeal in the last six years more  
 7 than five or six times. If we go once a year, I'd  
 8 be surprised if it's six. I think it's four or  
 9 five times that we've gone.

10 So just in regards then to this, I think  
 11 that we're in a position where we have the ability  
 12 to wait, and see what kind of decisions we get out  
 13 of the Court. Even if it's an eleventh hour issue  
 14 by the end of next year, I think, if it hasn't  
 15 been resolved by then, I still think that we have  
 16 an opportunity to find a bill sponsor for this if  
 17 it's necessary at that point.

18 UNKNOWN SPEAKER: I agree.

19 MR. STRANDELL: I agree, too.

20 MR. JOHNSON: This is Perry then. If we  
 21 continue then on Pages 57 through 61. This is  
 22 House Bill 97. This is also a bill I think that  
 23 -- Katrina, you've got to help me out here. We're  
 24 covering a lot of ground today. This died in  
 25 committee as well?

1 MS. BOLGER: Yes. I can't remember if  
2 it was in the House or in the Senate, but it was  
3 killed in committee. I think it was in the House.  
4 Maybe they indicated their concern about the  
5 definitions including Sheriff and a Coroner, and  
6 the language of that.

7 MR. JOHNSON: This is Perry again. This  
8 was in front of the Judiciary House Committee.  
9 This really covers a lot of ground, but it really  
10 defines our work product and our work processes,  
11 and that's what the effort was with this  
12 legislation.

13 In regards to the definition, we thought  
14 that they were pretty vanilla. Actually  
15 everything in here is pretty non-controversial.  
16 And I think one of the chairs of that committee or  
17 a vice chair and I had a conversation while we  
18 were walking down in the hall one day, and I said,  
19 "You know, what's the problem with this?" because  
20 it wasn't coming out of committee, and I said,  
21 "How come we can't get that out of committee?"  
22 And he looked at me and he said, "You've got two  
23 out of four. I think that's pretty good."

24 So once in awhile I think they split the  
25 baby, or they make a concession, or whatever it

1 is. I would believe, and I would really recommend  
2 that this is another bill draft that we keep our  
3 eyes on for in the future, because I think we  
4 could come back, and I think it would be well  
5 received by the Sheriffs, because nothing in here  
6 provides for them to be certified. They still  
7 have a status, but at least they're defined as a  
8 stakeholder with the POST Council, and I think  
9 that's important, because they are stakeholders.  
10 The same with the Coroners. I think that's the  
11 same kind of dynamic right there as well.

12 So actually I really thought that we had  
13 a really good chance of getting all of our bill  
14 drafts across the line, but things happen.

15 CHAIRMAN HARBAUGH: I think we found  
16 that splitting them out, like we did this year, at  
17 least we got some of them through. Two years ago,  
18 when we had it kind of in a package, it was an all  
19 or nothing situation, and that didn't work for us.

20 MR. DUTTON: That was Tony.

21 CHAIRMAN HARBAUGH: Any other comments  
22 or questions on House Bill 97?

23 (No response)

24 CHAIRMAN HARBAUGH: Go ahead.

25 MR. JOHNSON: That takes us to Pages 62

1 through 68. That's House Bill 98. That was a big  
 2 rewrite. That took hours of time with legal staff  
 3 to get that language the way that you find it here  
 4 now, and really we hope had clarified. This bill  
 5 draft did pass, and I've got to think about it.  
 6 October 1st it became effective?

7 MS. BOLGER: Yesterday.

8 MR. JOHNSON: Yesterday. So this is one  
 9 that Tony just mentioned back in 2017. We  
 10 consolidated all of these bills. They all came  
 11 out of Law and Justice as a single bill. This is  
 12 one that we took back again as an independent  
 13 bill, and we did -- I think that this bill passed  
 14 with maybe one vote against it, maybe not even  
 15 that. I think when it finally came out of the  
 16 Legislature, it was really well received.

17 So that's an update for all the  
 18 stakeholders.

19 If there is no discussion on that, then  
 20 House Bill 99 is the same. This was the kind of a  
 21 housekeeping bill with the Coroners, and it kind  
 22 of defined a little closer what the  
 23 responsibilities are.

24 On Page 70, I'd point out on Lines 19  
 25 through 23, we have had a request into the AG for

1 a decision or an opinion in regards to, "What does  
 2 the two years, or the 16 hours every two years  
 3 mean? Is that two calendar years, or is that from  
 4 the end of that training until the next  
 5 anniversaries of those dates"?

6 And I pointed out to Tony this morning  
 7 that the AG has that, and they've given themselves  
 8 an extension in order to respond to it. So we  
 9 don't have an answer yet. But that bill passed.  
 10 It was well received as well.

11 This meeting is going to be over before  
 12 we get started.

13 CHAIRMAN HARBAUGH: Any questions or  
 14 comments on any of the legislative stuff?

15 (No response)

16 CHAIRMAN HARBAUGH: We'll move to the  
 17 Law and Justice Interim Committee memorandum.

18 MR. JOHNSON: This is Perry again. I  
 19 point your attention then to Pages 71 and 72.  
 20 Actually 73 has the agenda for the Law and Justice  
 21 Interim Committee, and you'll see on the agenda  
 22 that there is no mention of Law and Justice  
 23 Committee review of the POST Council.

24 On Page 76, you'll see a message that  
 25 was forwarded to me from Administrator, DOJ

1 Administrator Brian Lockerby, where Liz Bangerter  
2 queue'd up Brian to be able to address any issues  
3 with the POST Council to that Law and Justice  
4 Interim Committee.

5 I did attend that meeting. Brian did,  
6 or Liz did on Brian's behalf, provide this  
7 memorandum to that committee. And I think this is  
8 a good opportunity for us to talk about how we fit  
9 in now with the Department of Justice, and how the  
10 Council wants to address this issue of the sunset  
11 that was placed in the statute that placed the  
12 Council staff under the direction of the  
13 Department of Justice.

14 So that legislation maintains the  
15 quasi-judicial independence of the Council, but  
16 the staff now is part of DOJ. And I'd be lying to  
17 you if I told you that I really know how we fit  
18 in.

19 And I had a great conversation with one  
20 of the attorneys with DOJ, Jeff Hindoien, a couple  
21 of weeks ago, and I asked him that. I said, "I'm  
22 trying to figure out how I fit in with you, so can  
23 you tell me?" and he says, "No, I can't." He  
24 said, "I don't really have it figured out either."  
25 And he said, "I think that's a process that you

1 and Brian are working your way through," and I  
2 think we've been working at it. And I think it is  
3 going to be some work. That's all there is to it.

4 This three person staff that sits in the  
5 room with you, and then your contested case, or  
6 your Legal Counsel, we were really invested in and  
7 really proud to represent you guys. That's just  
8 that we really had a lot of ownership and a lot of  
9 skin in the game, and I think that was reflected  
10 even in the testimony that was presented during  
11 the Legislature.

12 I stood in front of DOJ, and I said, "I  
13 think that it's just inappropriate that this isn't  
14 still an administratively attached autonomous  
15 body. With that in mind, I'm doing everything  
16 that I can to make this work." I get it. That's  
17 the way it's going to be for the next couple of  
18 years, or maybe even longer. And I want to be  
19 successful, and I want you guys to feel like  
20 you're successful, too.

21 But I think this is the time and place  
22 that we get to come back to that, and take a look  
23 at it, and you guys need to point me in the right  
24 direction. What do you want me to do? Where do  
25 you see this program going at the end of those two

1 years?

2           CHAIRMAN HARBAUGH: This is Tony. I  
3 think my first comments have to be in regards to  
4 the fact that I see the Council as critical in  
5 working to maintain the autonomy of not only the  
6 POST Council, but Perry, and all of the staff's  
7 positions here, and what they do. You know, I  
8 think it's imperative that we recognize, and work  
9 to protect that autonomy, and not --

10           I'm not saying that to be at odds with  
11 the DOJ. I think the transition has gone well.  
12 There's always going to be some bumps in the road  
13 that we're going to have to address as we go.

14           But I really feel like we as a Council  
15 need to understand that it's difficult for Perry  
16 to serve two masters as well. You know, he  
17 answered directly to the Council previously, and  
18 now he's a Bureau Chief. And I think we have to  
19 find a way to make that mesh, if we can.

20           And I think as far as the Council and  
21 the Council members go, we owe that to Perry to be  
22 able to say, you know, "Put it back on us if it  
23 becomes an issue," put it back on the Council if  
24 it becomes an issue. Sheriff.

25           MR. DUTTON: This is Leo. One of the

1 things that we could do is, maybe at a later time,  
2 but have a discussion about what is the genesis of  
3 this that came from the Legislature, the  
4 transition. What did they want us to accomplish?  
5 What did they hope to accomplish? What did it  
6 really accomplish? What are the complexities  
7 that, out of the solution for a problem that maybe  
8 not existed, but maybe did.

9           I think this came from the disciplines.  
10 I think that there was complaints to the  
11 Legislature about the Board, and about maybe you,  
12 Perry. I'm guessing that we had people. So I  
13 think we need to look at that. I think we need to  
14 examine that and say, "Are we better," or what we  
15 have now. Is there more control or less control?

16           And as we move our way through the new  
17 path, what were their expectations, so when we go  
18 back to them in two years, we can definitively  
19 answer those questions that were put forth to  
20 them, that did they make it better, or did they  
21 make it worse.

22           But first we need to know the genesis,  
23 and we need to know what their expectations were.  
24 Was it transparency? Was it we were too over  
25 bearing? Were we too lenient? Some of those we

1 may know, but I think we have to have those  
2 discussions. And we do represent several  
3 disciplines of Police, Sheriff, Probation  
4 Officers, all of those that we certify.

5 So their voices were heard at the  
6 Legislature, and it would be good to know what the  
7 Legislature's thought -- which I understand is  
8 difficult -- but still we're going to have to do  
9 it, because when we go back, we need to have  
10 answers to those questions, at least provide some  
11 guidance of what we did.

12 And these things here, here was the  
13 solution you've presented, here were the  
14 difficulties, here's where we find ourselves now,  
15 Legislature. That's my hope is that we can go  
16 back and say, "Here's the problems that were  
17 created. Here's the things that we tried to work  
18 around. Here's where we find ourselves."

19 But that's my suggestion about the two  
20 year plan, or year and a half now, and the interim  
21 committees need to hear about what happened.

22 CHAIRMAN HARBAUGH: This is Tony. I  
23 guess my question, maybe to you, Perry. When you  
24 attended the interim subcommittee meeting, did  
25 they have specific questions about where things

1 were at, or was it an issue to them that they  
2 wanted answers to yet?

3 MR. JOHNSON: This is Perry. There was  
4 no discussion at all. I think the only reason  
5 that it even came up was because Liz offered that  
6 memorandum to the committee. And I think the  
7 memorandum is accurate -- you know, I do.

8 Just in regards to that conversation,  
9 though, in regards to what was the genesis, I  
10 would agree with you, Leo, that there is probably  
11 some concern about the actions of this Council,  
12 and of your Director. I believe that. And I  
13 think that those concerns are valid in this:

14 I think that if they brought those  
15 concerns forward, they could be addressed, instead  
16 of whispering about them to somebody. And I say  
17 that because I'm looking at John Strandell, and  
18 Jim Thomas, and Tony Harbaugh, who serve this  
19 Council as your Case Status Review Committee. And  
20 I haven't made a decision without their input,  
21 ever, in regards to a sanction of a certificate.

22 And I guess I'm proud of work that we've  
23 done, and I'm proud of the decisions that we've  
24 made collectively as a committee, and then as an  
25 affirmation in front of the whole Council. I just

1 am.

2 That notebook back there contains  
3 hundreds of pages of Case Status Committee  
4 material that we're going to review today, this  
5 committee, after this. We plow a huge field with  
6 a tiny staff. And I guess I'll just be honest  
7 with you. I'm not going to apologize for the  
8 decisions we've made, and I'm not going to  
9 apologize for the way I am, you know.

10 We have a big job here. You know, this  
11 group right here draws the line between, "Is this  
12 the conduct that we want our officers in Montana  
13 to endorse or not?" And those are the hairs that  
14 we split every month at that Case Status Committee  
15 meeting.

16 Could I be a little softer? I'm just  
17 one of the nicest guys I've ever met. But the  
18 thing is, you know, I think you have to do  
19 business, and you have to make decisions, and you  
20 have to move some of this stuff along, and we do  
21 that.

22 And Brian will tell you. "Perry, your  
23 world is a lot more black and white than a lot of  
24 people," and you know, I take a lot of comfort in  
25 that because it is. And I'm not looking to pick a

1 fight with anybody, but I'll tell you what, when  
2 these guys and when this Council endorses a  
3 position, I hold the line, and I don't apologize  
4 for the position.

5 And I think it's fair for them to be  
6 upset with me, because I think that's why I'm  
7 here. I'm there to accept that and to intercept  
8 any of that stuff that might be out there.

9 It doesn't come to the Council very  
10 often, though. In fact, this Council held a  
11 special meeting in April to listen to those folks,  
12 and we did, and we made some changes in the way  
13 that we look at, and analyze, and move  
14 allegations. So I think we're pretty transparent.

15 MR. DUTTON: This is Leo. And my  
16 attempt to bring this up, or in my doing so was to  
17 say what was the reason, not to point fingers,  
18 blame at anyone.

19 But clearly our, the people who we  
20 represent had the ear of Legislators, and that's  
21 my opinion how this got changed. So having those  
22 answers, having data will help us. The rumors  
23 that we were able to bring in, and have to stand  
24 up and say, "Here are the issues," and you said it  
25 correctly, Perry, that the whispering that went

1 on, when given the opportunity to come forward,  
2 some did.

3 And yes, we did make some changes, but I  
4 think we were viewed as not a Democratic, but an  
5 autocratic type of board that you had the golden  
6 hammer, and that's a fallacy. It is not true.  
7 You don't even have a gold brick that you may have  
8 thought you had.

9 But I think some of the things that we  
10 need to visit about or do some education about is  
11 it's a process, and when we get accused of  
12 citizens, I face -- I'm elected, so as Sheriffs  
13 are, I face my citizenry, and they ask who  
14 maintains me, who maintains if I'm doing a bad  
15 job.

16 Well, there is an easy remedy. That's  
17 called an election. And we get our evaluation  
18 every four years. But in the meantime, who  
19 oversees the populace that they feel that they  
20 have a contact for.

21 My time limit is up probably, but  
22 anyway, I think the important part is that, as you  
23 said, we maintain the integrity of the office,  
24 even though that's going to make people angry.

25 And if you talk to people in jail -- and

1 I know this is a stretch to compare bad behavior  
2 to people in jail, but maybe not -- is how did  
3 they get there? It was an inch at a time. They  
4 didn't --

5 In fourth grade I've yet to have  
6 somebody say in their class, "What do you want to  
7 be when you grow up?" "I want to be a burglar. I  
8 want to be the best bank robber," or "I want to  
9 rape women." They don't. But they start an inch  
10 at a time.

11 So where do you stop? Where do you say,  
12 "This is not acceptable," and we publish those,  
13 and I think that's what you'd call holding the  
14 line, and I think that's what we need to talk to  
15 the Legislature about. We're not -- we don't hold  
16 the supreme position, but we hold one. We have  
17 to. Okay. My time limit went up.

18 MR. JOHNSON: This is Perry. I'll just  
19 remind you that back when we were still in  
20 Legislature, Mike Milburn and Brian Lockerby did  
21 come and they did talk to us. And even if you  
22 were up on the hill talking to people during the  
23 Legislature, the autocratic conversation never  
24 came up. It was always about money. "This is  
25 only about money. Nothing else."

1 And it may be you believe that, and if  
2 you do, that's good. Here's the other thing that  
3 I think I'd be remiss if I didn't point it out.  
4 Now here I sit today working for DOJ, and they're  
5 not in the room. And so I think what they've done  
6 by doing that is they've allowed us to have this  
7 conversation. They've allowed me to do that.

8 And you know, I really feel good about  
9 that. I really feel like they're not trying to  
10 drive us around. I think that part of the process  
11 is these conversations. And they're allowing us  
12 to have them, or allowing me to have them, instead  
13 of saying, "We don't want you to talk about that.  
14 We don't want your Council to even consider that."  
15 I think that's pretty good government.

16 CHAIRMAN HARBAUGH: Any comments,  
17 discussion?

18 (No response)

19 CHAIRMAN HARBAUGH: Anything else there?

20 (No response)

21 MR. JOHNSON: Do we have any -- This is  
22 Perry. Do we have some additional material we  
23 were going to talk about today, or is that a  
24 different point?

25 MS. BOLGER: This is Katrina. I printed

1 off the new statutes, 2-15-2028 and 2-15-2029.  
2 2029 was in existence. That's what created the  
3 Council and its staff previously. 2028 is a brand  
4 new statute that creates the bureau that is us  
5 three people.

6 MR. JOHNSON: Okay. This is Perry, and  
7 that material is right inside of your front  
8 covers, right?

9 MS. BOLGER: Yes.

10 MR. JOHNSON: Okay.

11 MS. BOLGER: So that's how the new law  
12 reads as of yesterday.

13 MR. JOHNSON: Right. Okay. So this is  
14 Perry. I guess before I move away from these  
15 legislative updates, I wondered if we could just  
16 have a conversation about that conversation that  
17 we had in regards to the Department of Corrections  
18 and Board of Crime Control.

19 So we've talked about that before, and I  
20 know that they're even I think being examined by  
21 an interim committee, through the interim. In  
22 fact, I think that's on that agenda that's from  
23 the meeting material.

24 They had some time during the Law and  
25 Justice Interim Committee to talk about what

1 happened in 2015, and whether they can put that  
2 toothpaste back in the tube, or whatever they're  
3 doing there. I don't know. I haven't interjected  
4 myself into that.

5 But the bottom line right now is the  
6 Board of Crime Control is represented by Kevin.  
7 I'm sorry. The Board of Crime Control is  
8 represented by Wyatt and Leo; and DOC is  
9 represented by Kevin. And since the Board of  
10 Crime Control is a part of the Department of  
11 Corrections, I just want to have that conversation  
12 to know if those three people that represent now  
13 or that work for the Department of Corrections, if  
14 the weight of the Council is appropriate. We've  
15 got three public members and three DOC members  
16 now. So --

17 MR. OLSON: So Perry, this is Kevin.  
18 Leo and Wyatt do not represent Department of  
19 Corrections. The Board of Crime Control, much  
20 like this Council, is still an autonomous unit.  
21 The staff that work with the Board of Crime  
22 Control, like your staff, is employees of  
23 Corrections. The Board of Crime -- Corrections  
24 has no power or influence over what Wyatt or Leo  
25 does in their business functions as board members

1 of the Board of Crime Control.

2 MR. JOHNSON: This is Perry again then.  
3 So then I need to ask the question. The Board of  
4 Crime Control is no longer part of the Department  
5 of Justice. They're part of the Department of  
6 Corrections. They're an autonomous board attached  
7 to the Department of Corrections. So what  
8 stakeholders do they represent now?

9 MR. DUTTON: This is Leo. The Board has  
10 went through a legislative review to say that they  
11 are still a quasi-judicial board that is supposed  
12 to be independent. We have no staff, but we are  
13 there. If we want something done, sometimes we  
14 have to ask Legislature to do it, and there, the  
15 staff, they don't work for us. So when Kevin says  
16 we represent -- I represent MSPOA on that board.

17 Then when we come here, we were sent by,  
18 are representatives of the Board of Crime Control  
19 here. So I always viewed it as being a  
20 representative of MSPOA here, but technically it's  
21 the Board of Crime Control, and it's supposed to  
22 be administratively attached to Department of  
23 Corrections, not underneath.

24 So we don't take orders from -- as a  
25 Board member, I don't take any orders from the

1 Department of Corrections, and Wyatt doesn't<sup>41</sup>  
2 either. Gives a team.

3 MR. JOHNSON: This is Perry. And my  
4 question I think is this, though: So we know --  
5 because everybody has got one of these in front of  
6 them -- we know who everybody represents. Ryan  
7 Oster is representing the Chiefs; Tony Harbaugh  
8 represents the Sheriffs; Jess is tribal law  
9 enforcement; Matt Saylor, local law enforcement;  
10 Wyatt Board of Crime Control; John, State; Tia  
11 public representative; Kevin, Department of  
12 Corrections.

13 So I think what my question is: Are  
14 there some stakeholders that aren't represented  
15 here? I guess I'll just go right to the heart of  
16 it. We don't have -- The only reason that we have  
17 conversations at all about 911 is because Kimberly  
18 represents the public, and she's a 911 manager.  
19 If that was a different person, they wouldn't be  
20 represented here.

21 So that conversation then is: Does this  
22 look right? Does this effectively represent our  
23 stakeholders? And I think it is kind of cool  
24 because we've got a couple of stakeholders in here  
25 that are interested in what we're going to do

1 later, and so that would be another discipline<sup>42</sup>  
2 that may not be represented here, Misdemeanor  
3 Probation Pretrial Services.

4 So I think -- I guess I'm not asking for  
5 an answer, but I'm asking at least for an analysis  
6 of this, and for you guys to at least consider  
7 whether or not this is the configuration that  
8 should be represented by this Council.

9 MR. OLSON: This is Kevin. To roll back  
10 the clock clear back to when Governor Schweitzer  
11 took over, this Council used to have membership of  
12 nineteen people, and he trimmed it back to eleven,  
13 because it was created by executive order.

14 When we tried to remove it, well, when  
15 Justice removed it from the Board of Crime  
16 Control, the request was to go back to eighteen or  
17 nineteen members, and the Legislature said no.

18 Just like the largest law enforcement  
19 agency in the State of Montana, the Montana  
20 Highway Patrol, does not have a seat at this  
21 table. John Strandell represents Motor Carrier  
22 Service, Fish, Wildlife and Parks, and Highway  
23 Patrol. I would agree that it probably isn't the  
24 ideal snapshot of representation, but at the end  
25 of the day, that's what it was.

1 And your opening remark, the same thing  
2 could have been said prior to when this was  
3 administratively attached to Justice, where Leo,  
4 and Wyatt, and John all been representing Justice.

5 So I know we have argued in the past for  
6 representation for Kimberly. And you're right. I  
7 know that Andrea and Steve would love to have a  
8 seat at the table. I think in order to do that,  
9 you're going to have to do it legislatively. And  
10 I think with everything we have going on right  
11 now, that would not be the time for the ask.

12 MR. JOHNSON: This is Perry again. I  
13 agree. I think what you saw there, that is,  
14 that's the statute that creates each of those  
15 positions -- (inaudible) -- and so I agree that it  
16 would take a legislative change.

17 But I think that if we don't look at our  
18 business as a contemporary thing every time that  
19 we meet, if there is an issue to discuss, I think  
20 we have to. I think we have to analyze that,  
21 because I think that people are going to at some  
22 point -- Kimberly has said, "How come we're not  
23 represented?"

24 I think it would be fair for those guys  
25 to say, "How come I'm not represented?" So I talk

1 way too much at these meetings, but --

2 MR. GLADE: This is Wyatt. I think I  
3 understand why you're saying those things, Perry.  
4 I just want to tell you from my perspective, I  
5 realize I represent the Board of Crime Control  
6 here, and the Board of Crime Control is now closer  
7 to the DOC than it's ever been before.

8 But I'm the Custer County Attorney. I  
9 represent the County Attorneys. I think actually  
10 I just took Nick Runyon's spot on the Board of  
11 Crime Control. I don't think they even  
12 necessarily wanted me because I was a County  
13 Attorney. They wanted an eastern Montana County  
14 Attorney for that perspective, and I'm doing my  
15 best.

16 I'm the President of the Montana County  
17 Attorneys Association, and I also serve on the  
18 Board of Crime Control. None of those capacities  
19 in which I serve influence my opinions. I'm just  
20 me, and I'll be here as long as you all put up  
21 with me. So thank you.

22 MR. JOHNSON: This is Perry. We're glad  
23 to have you.

24 MR. OLSON: This is Kevin, and just kind  
25 of the ebb and flow of how this goes on. I mean

1 if we roll back the clock a year ago, you had two  
 2 Chiefs of Police sitting on this Council, right,  
 3 two Sheriffs, you had two County Attorneys. But  
 4 you only have John representing probably 400 state  
 5 law enforcement officers.

6 So it's kind of the ebb and flow.  
 7 Ideally I think you're right, you know, but I also  
 8 add this. Kimberly Burdick is on here as a  
 9 civilian member, and that's a good thing, but  
 10 she's also represented by other people on this  
 11 Council. I don't know of one -- except for  
 12 Billings. I don't know of another communications  
 13 center in Montana that doesn't report to a Sheriff  
 14 or a Chief of Police.

15 So in that regard, even if Kimberly  
 16 wasn't on this Council, they still have advocates  
 17 that are sitting on this Council for them in the  
 18 form of Sheriffs and Chiefs of Police.

19 MR. STRANDELL: This is John. I think  
 20 I'd be more worried about maybe the over abundance  
 21 of Custer County influence on this.

22 MS. BOLGER: This is Katrina, and I  
 23 guess I would just point out -- and it's not -- I  
 24 don't know if there is anything that the Council  
 25 is interested in. But this statute says that the

1 Council consists of no more than thirteen voting  
 2 members. If you guys want to add non-voting  
 3 people, you can, and then they at least get a seat  
 4 at the table and a part of the discussion.

5 MR. JOHNSON: This is Perry. At least  
 6 the way it feels to me, this has always been kind  
 7 of an open forum. I guess remembering in the past  
 8 -- You know, Truman didn't call in today, but boy,  
 9 he had a chair at the table, and he didn't mind  
 10 using it either, so --

11 But there is a lot of guys like that  
 12 will call in, and they'll participate. I know it  
 13 is all not Robert's Rules, but it seems like it  
 14 suits us. It seems like we get to have those  
 15 eye-to-eye contacts with people in the room, and  
 16 we get to have those conversations.

17 And just in regards to representation, I  
 18 think everybody has been well represented. I  
 19 think we're doing a good job, because I don't  
 20 think you have to be a dispatcher to understand  
 21 that they have problems. You don't have to be a  
 22 Game Warden to understand some of the issues that  
 23 they deal with. And I think we consider all of  
 24 those things. So I don't know. It's just --

25 CHAIRMAN HARBAUGH: I know I certainly

1 feel that each of us comes as a representative of  
 2 our own professions and the people that we  
 3 represent, but we also bring more than that to the  
 4 table. We bring our own experiences, and what we  
 5 know about other issues, and other professions.

6 And I think it is important, like Perry  
 7 says, that we have these discussions from time to  
 8 time so that our work is done in the light of day,  
 9 and people understand that we welcome -- There is  
 10 a reason those chairs are set up out there in the  
 11 gallery is we welcome the people that want to come  
 12 and be here in person. We welcome those folks  
 13 that can't be in person that want to be on the  
 14 phone.

15 And I think it's important that everyone  
 16 -- you know, I look at the citizen seats on this  
 17 Council, and recognize the life experiences that  
 18 everyone brings with them are critical to the  
 19 decisions that we have to make day in and day out.  
 20 And I thank you all for you being --

21 MR. SAYLER: This is Matt. I just  
 22 wanted to add, too, Perry, that I think -- I don't  
 23 know if you remember, but my wife has been a  
 24 dispatcher for almost a decade, so I'm probably  
 25 more beholden to her than anybody else. So I mean

1 I get a lot of insight there as well.

2 MR. JOHNSON: This is Perry. Matt, I'm  
 3 not going to tell the MPPA you said that.

4 MR. SAYLER: She's a big part of that,  
 5 too. I mean she does our Facebook page for them,  
 6 she comes to all the conferences. She does  
 7 everything for them, too. She's very active with  
 8 them as well, so she's -- and you know, she's one  
 9 of those ones, too, that if I have a question, she  
 10 can email everybody she went to the Academy with,  
 11 or -- (inaudible) -- training or whatever, and get  
 12 some input that way. So I mean we do -- I attempt  
 13 to reach out when it's something that doesn't  
 14 necessarily.

15 MR. JOHNSON: Thank you, Matt.

16 CHAIRMAN HARBAUGH: Any other discussion  
 17 there?

18 (No response)

19 CHAIRMAN HARBAUGH: Move to the ARM  
 20 discussion on instructor bio issues.

21 MR. JOHNSON: Yes. This is Perry. On  
 22 Pages 77 through 81, during our last Council  
 23 meeting we discussed bios and the difficulties  
 24 sometimes to obtain them. If you go to the FBI.  
 25 That's a good one. If you go to DEA. Those guys

1 will give you their names, and that's about all  
2 you're going to get.

3 So the discussion last time was: How do  
4 we capture that, or the efforts of officers to get  
5 those, and they're not able to? So we gave you a  
6 couple of different options. 78 and 79 is a whole  
7 new form.

8 Our preferred option is Pages 80 and 81,  
9 where on Page 80 about two-thirds of the way down  
10 the page, it says if you don't have a copy of the  
11 instructor's bio, and you wish to request a waiver  
12 of the requirement that you retain the instructor  
13 bio, please outline the efforts you made to obtain  
14 the bio below.

15 So that could be that case where I go to  
16 clandestine lab training, spent a week in Quantico  
17 at the DEA Academy, and they're not going to give  
18 me their bio, so I'm going to say, "Hey, I went to  
19 that training. I attempted to get them. The  
20 names of those instructors are this, and that's  
21 all you're going to get."

22 I think that's appropriate. That's a  
23 bona fide law enforcement agency. It's a federal  
24 agency. It could be FEMA training, it could be  
25 the same; it could be the FBI Academy, the

1 national academy. It could be any number of  
2 things.

3 But I think we have to recognize that  
4 some of those people are so in positions where  
5 compromising their identities beyond their name  
6 could endanger them. So I think this is a good  
7 resolution of that issue.

8 MR. DUTTON: Can I get an amen.

9 MR. JOHNSON: This is Perry. Before you  
10 guys have allowed us to create forms to use for  
11 our stakeholders, and we do a lot of fill in the  
12 blank forms. And so this would just, I think just  
13 by consensus, I think you can enable us to do  
14 this, or maybe you need a motion. I don't know.

15 MR. STRANDELL: Just a quick question,  
16 if I could, Mr. Chairman. This is John. Would  
17 this include that ICAP training that I spoke to  
18 you about, Perry? Do you think this would be a  
19 compromise or a solution there?

20 MR. JOHNSON: This is Perry. I think  
21 that it would.

22 MR. STRANDELL: Okay.

23 MR. JOHNSON: ICAP then, the acronym  
24 stands for Internet Crimes Against Children. And  
25 some of those folks, many of those we can get bios

1 on. I know that. There is probably a few of them  
2 that --

3 MR. STRANDELL: This is John again.  
4 There's sands training and other specialized  
5 training there, the same thing. The instructor  
6 won't give a course syllabus or bio, that kind of  
7 stuff, so --

8 MR. DUTTON: This is Leo. I'm the one  
9 that brought this up because of the National  
10 Academy retrainer we have. We bring in some FBI  
11 people, and they -- and I'll be specific. Monte  
12 Shade. He does a great job, but when you ask him  
13 for a bio, "Well, that's on file somewhere. Can't  
14 really give that to you."

15 So all the people that attended the  
16 class are waiting to get that. I'm waiting. And  
17 this will help. So thank you for doing that.  
18 That's why I said, "Can I get an amen." This will  
19 help get that paperwork moving.

20 CHAIRMAN HARBAUGH: What's the pleasure  
21 of the Council? Does someone want to make a  
22 motion, or is consensus agreeable to everyone?

23 MR. OLSON: This is Kevin. I think it's  
24 an internal business function, and that it's well  
25 within the purview of Perry and his staff.

1 MR. DUTTON: This is Leo. I agree. I  
2 think it's -- (inaudible) -- Bureau Chief's  
3 prerogative.

4 CHAIRMAN HARBAUGH: I think it's  
5 important that coming to the Council, and making  
6 us aware of how it looks is sufficient. --  
7 (inaudible) --

8 MR. STRANDELL: Mr. Chairman, this is  
9 John again. Just one more question. Is it  
10 retroactive then? Is that an opportunity for  
11 people to go back and pick up classes? I see that  
12 this has to be completed within one year. Would  
13 people that attended training be able to --

14 MR. JOHNSON: This is Perry. That's a  
15 decision that we made, another business decision  
16 that we made probably a year or year and a half  
17 ago as a Council, that we put a sunset on any  
18 training. We're going to get to one of those  
19 today.

20 So I think that that would be on a  
21 case-by-case basis. I think that we've put the  
22 sunset on there because we were getting people for  
23 the first four or five years that we were here,  
24 until we made that decision to put a sunset on it,  
25 we were dealing with people that had training that

1 was ten years old, and they'd provide it to us and  
2 say, "Hey, we want this on our transcript."

3 And it got to the point where we just  
4 did a tremendous amount of that, hundreds and  
5 hundreds and thousands of hours of training. We  
6 can't keep all them balls in the air anymore. So  
7 if it's a case-by-case basis, and provide it to  
8 us, this would be my deal with you. I'd bring it  
9 back to you just like I'm going to later in this  
10 meeting and say, "What do you want to do? Do you  
11 want to go back five years on something?"

12 Because the one we're going to talk  
13 about today, we're going to go back about a year  
14 and a month. But because I got direction from the  
15 Council, that's why I brought it to you. I think  
16 that you guys are going to get a chance to look at  
17 it, and have that conversation, but I think there  
18 is an opportunity there at least to have the  
19 conversation.

20 CHAIRMAN HARBAUGH: Anything else on  
21 that?

22 (No response)

23 CHAIRMAN HARBAUGH: Officer involved  
24 shooting.

25 MR. JOHNSON: This is Perry. This is on

1 your own to kind of put the dot on the "I" and the  
2 cross on the "T." We had that conversation back  
3 in May about officer involved shooter training  
4 that Lewis & Clark County has sponsored for the  
5 last four or five years.

6 And the conversation we had at that time  
7 involved budget. We wanted to be able to encumber  
8 enough money, \$2,500, to support that training  
9 effort by Lewis & Clark County as it related to  
10 officers that were involved in shootings, and  
11 Administrators to get some training on how to  
12 support them after that.

13 We ended up having the available funds,  
14 so that was provided to them for that training.  
15 And I don't know, Leo, if you want to speak to  
16 that any further or --

17 MR. DUTTON: -- (inaudible) --

18 MR. JOHNSON: If you would stand up,  
19 please.

20 MR. DUTTON: Thank you. I was going to.  
21 I appreciate that. This is Leo Dutton. I'm  
22 standing up for those of you on the phone.

23 The officer involved shooting class is  
24 done by Nancy Ball Penrod out of California. And  
25 I get the wrong name of the city that she's from,

1 but it's not important.

2           What is important is that she is talking  
3 to your Deputies, your Officers who have been  
4 involved in a shooting. More importantly, she's  
5 talking to you. She's talking to the  
6 Administrators about those who lead the ones who  
7 have been involved in that.

8           We've had -- It's grown. Last time it  
9 was bigger. It's the biggest it's ever been. And  
10 people are hungry for it. We've ignored our own  
11 discipline for a long time. We have expected them  
12 to go out, and man up, and do the job. There's  
13 intrusive thoughts, there's actual trauma that  
14 comes along with some of the stuff that we've  
15 seen. That would explain some of Perry.

16           But the issues that we deal with may be  
17 sometimes irreparable. You're going to either act  
18 it out or you're going to talk it out.

19           What you sponsored was the ability to  
20 bring in commanders who identify more with  
21 themselves than they did with the Officers, and  
22 that may sound like a selfish issue, but you can't  
23 take care of others unless you take care of  
24 yourself.

25           The airplane industry, the aircraft

1 industry recognizes that by telling you to put  
2 your own mask on first before helping others. It  
3 is if you're not well -- you may think you are --  
4 but if you're not well, there is no way you can  
5 lead your troops in being well.

6           That first day of talking to the  
7 Administrators was great. Some people recognize  
8 it, and you alibi, or you deflect, or you make  
9 excuses by saying, "I've got to get so-and-so  
10 here." But she does a good job of not exactly  
11 pointing out it's you that we're talking about.  
12 "You are going to help your other people go  
13 through this."

14           And by the end of the day what it has  
15 helped grow is peer-to-peer counseling groups,  
16 training in other different areas that people say,  
17 "I want to go home and set this up. I'm going to  
18 go home, and we're going to have a conversation.  
19 We're going to have a peer counseling group  
20 separate from the critical incident stress  
21 management group." That's a case-by-case incident  
22 driven type of thing.

23           What we're starting to recognize in our  
24 own profession is that we need to be healthy, and  
25 maybe some of the things that we deal with in this

1 group right now have been a result of an issue  
 2 that someone didn't grow up knowing how to handle.  
 3 Some of us grew up just bucking it up and getting  
 4 it done.

5 Not everybody has that luxury, or not  
 6 everybody has that opportunity to somehow have  
 7 that resilience, but if we can care for our  
 8 profession, if we can say, "You know, some of the  
 9 officers deaths, the highest rate is from suicide,  
 10 instead of being officer involved shooting.

11 So thank you. I'm serious. Thank you  
 12 for recognizing that, that suicide is a problem  
 13 within our ranks, and that you did something about  
 14 it. You allowed them to spend that money, and I  
 15 know -- I was there. I went to the class as well.  
 16 And I saw and talked to the Administrators.

17 I didn't go to the one where the people  
 18 who have been involved in shooting, because it  
 19 distracts from the authenticity and the ability  
 20 for them to share their stories. I've not been,  
 21 thankfully I've not been there, but you were  
 22 there. And we had Perry came in and talk a little  
 23 bit, told a bad joke as usual, but you know, he  
 24 was there, and represented --

25 You know, Perry, that wasn't a slam.

1 It's a good thing.

2 But he did represent POST to say, "We  
 3 care about you guys. We love you guys. And this  
 4 is why we're here. This is why we help sponsor  
 5 this."

6 That's my pitch, and I appreciate it.  
 7 Thank you.

8 CHAIRMAN HARBAUGH: Do you want to go  
 9 into these Board of Crime Control appeals, or do  
 10 you want to take a break now? Pleasure of the  
 11 Council.

12 UNKNOWN SPEAKER: Break.

13 CHAIRMAN HARBAUGH: Let's take about a  
 14 ten minute break, and then we'll go into the  
 15 discussion on the appeals.

16 MR. JOHNSON: Good with that.

17 CHAIRMAN HARBAUGH: Going off.

18 MR. JOHNSON: Be back at 9:25?

19 CHAIRMAN HARBAUGH: Yes, please.

20 (Recess taken)

21 CHAIRMAN HARBAUGH: I think we'll go  
 22 ahead and get reconvened. We've got a few more  
 23 Council members that are coming back into the  
 24 room. But for the sake of continuing to move  
 25 along.

1 MR. JOHNSON: Okay.

2 CHAIRMAN HARBAUGH: We are currently at  
3 discussion on the appeals to the Board of Crime  
4 Control on decisions from our Council.

5 MR. JOHNSON: Well, this is Perry. I  
6 would like to talk next about the Kyle Adams  
7 decision from the Montana Board of Crime Control.  
8 You'll find that material from Pages 82 all the  
9 way through 126. The appeal actually is Pages 91  
10 through 126. And so I would offer that for your  
11 consideration or discussions, Mr. Chair.

12 CHAIRMAN HARBAUGH: Would you, or any of  
13 the Council, or anyone else like to summarize  
14 maybe some of the details of the case itself and  
15 how it came about.

16 MR. JOHNSON: Certainly. This is Perry  
17 again. This is an officer that worked for  
18 Yellowstone County. Did I get that right?

19 The allegation was that while he was  
20 playing video games in a controlled environment in  
21 that detention center over there, a fight broke  
22 out in front of him. He failed to respond to the  
23 fight. Further issues, actually a review of his  
24 work product showed that he falsified or tampered  
25 with the record to the Sheriff in regards to doing

1 cell checks, population counts, and other duties  
2 and responsibilities.

3 By falsifying or tampering with that  
4 record, he actually violated their policies. But  
5 you know, if you followed the letter of law, I  
6 guess you could say that he tampered with an  
7 official record as well.

8 We processed that. We went all the way  
9 through hearing. We've revoked his certificate  
10 through the Case Status Committee. We went  
11 through hearing. Our decision was affirmed by the  
12 Hearing Examiner. It was affirmed by the full  
13 Council upon their review.

14 And then it went to the Board of Crime  
15 Control, and their final agency decision that  
16 begins on Page 82, and I think just probably the  
17 synopsis of their decision is found on Page 90  
18 under sub (8) where it says, "Adams made mistakes,  
19 but revocation is unduly harsh and unwarranted in  
20 light of the evidence in the record."

21 The evidence clearly showed, at least to  
22 all who reviewed it, including the Council, the  
23 Case Status Committee, me and my staff, and  
24 Contested Case Counsel, that these weren't  
25 mistakes, that these were actual and deliberate

1 character issues with this officer. He made<sup>61</sup>  
2 conscious decisions to alter the record, or to  
3 create a record that didn't exist, that by video  
4 we could tell was not accurate, and not honest.  
5 But regardless, the Board of Crime  
6 Control saw fit to reverse our decision.  
7 So based on that --  
8 MR. GLADE: This Wyatt. Can I jump in  
9 just for a moment? I think that when this went to  
10 the Board of Crime Control -- just to clarify. It  
11 didn't go to the full board, it went to an  
12 administrative review committee.  
13 And the way the Board functions -- and I  
14 wish Leo was in here -- is somewhat confusing  
15 because the administrative review committee makes  
16 the initial decision, and then brings their  
17 recommendation to the full board, and there is  
18 some confusion as to the level of decision making  
19 that can occur by the full board, if they approve  
20 or deny the administrative review committee's  
21 decision, that sort of thing.  
22 So I just wanted to jump in there and  
23 say this was the administrative review committee  
24 that made the decisions that you're talking about  
25 when you're saying the Board of Crime Control. It

1 did end up going to the full board in June, I<sup>62</sup>  
2 believe.  
3 MR. JOHNSON: This is Perry again, and I  
4 appreciate that. So that opens up that  
5 conversation then, because I think if there is  
6 confusion with the Board of Crime Control about  
7 what they can do with that committee's decision,  
8 I'm confused about it, too. So could you kind of  
9 correct the record for us then so that we  
10 understand what that process looks like?  
11 MR. GLADE: Tell me about what you're  
12 confused about. Thanks, Leo.  
13 MR. DUTTON: You're welcome. I could  
14 just stay out there, but -- (inaudible) --  
15 MR. GLADE: We're talking about -- this  
16 is Wyatt. We're talking about the Adams decision  
17 from the Board of Crime Control. And specifically  
18 I interrupted Perry, and now I've walked into  
19 something.  
20 I mentioned that when the Board of Crime  
21 Control initially gets these decisions, they don't  
22 go to the full board, they go to the  
23 administrative review committee. If the  
24 committee, the members are named on Page 90 were  
25 -- (inaudible) --

1 So the administrative review committee  
2 reviews the appellate record, I believe. I don't  
3 exactly know what record they get. They review  
4 it, and they make a recommendation to the full  
5 board.

6 When the full board gets the, meets, we  
7 review a pretty abbreviated record, and our  
8 decision making is essentially do we approve the  
9 action of the administrative review committee, or  
10 do we send it back to the administrative review  
11 committee. There may be a couple of other options  
12 in there. But that's where it got kind of  
13 confusing when we dealt with the Drishinski  
14 decision more recently.

15 I don't recall the Adams decision in  
16 June, but I don't know. Leo, do you have any  
17 anything to add on --

18 MR. DUTTON: Is Adams the gentleman from  
19 Yellowstone County?

20 MR. GLADE: Yes.

21 MR. DUTTON: I remember that one. The  
22 committee that had reviewed it, we had just had  
23 the take-over where we had a different Chairman,  
24 and I was at that meeting. I missed the one we're  
25 talking about Ross. I wasn't able to make that in

1 time. But I was there for the gentleman from  
2 Yellowstone.

3 I was not allowed to talk, nor was I  
4 allowed to vote at that. And Peter Ohman said by  
5 statute I wasn't able to testify to anything, nor  
6 was I allowed to vote.

7 MR. GLADE: That's very interesting --  
8 this is Wyatt -- because in the Drishinski  
9 decision, that same rule was brought up, and it's  
10 noted in one of the statutes that we've gone over  
11 -- is that at the Board of Crime Control, a person  
12 assigned to POST cannot participate in the vote.

13 But I asked for clarification on that,  
14 because I am very recently assigned to POST. I  
15 took Bill Dial's spot. Bill had been on POST when  
16 the Drishinski appeal and decision had worked its  
17 way through POST; and basically in between POST  
18 and the Board of Crime Control, and I got assigned  
19 to POST.

20 So I said, you know, "I wasn't on POST  
21 when the decisions were made. What is my role at  
22 this full board meeting considering the  
23 administrative review committee's actions?" And  
24 as I recall, Natalia Bowser checked the by-laws in  
25 the board book and told me that I could

1 participate in the discussion, but I could not  
2 vote. So I did participate in the discussion.

3 MR. DUTTON: This is Leo. I'll get  
4 clarification, because there were things said at  
5 the -- what's his name again --

6 UNKNOWN SPEAKER: Adams.

7 MR. ADAMS: -- Adams that were contrary  
8 to what we had heard. But again, that meeting was  
9 held in Helena at the Department of Corrections  
10 building, and I couldn't say anything. I went to,  
11 but it was ruled that I could not. And it was  
12 frustrating because we'd sat through it, it had  
13 been through our appeal, but they were very strong  
14 to point out that I wasn't to speak.

15 MR. STRANDELL: Mr. Chairman, may I  
16 recommend that Kristina maybe look at that  
17 statute? And I just think it might be something  
18 for us to look at.

19 MS. NEAL: Mr. Chairman, this is  
20 Kristina, and I would be happy to, because -- and  
21 obtain clarification on whether -- and it may be  
22 in coordination with the Board of Crime Control.  
23 I could look at it, and offer advice to Leo and to  
24 Wyatt. But it really would have to come through a  
25 decision of the Board of Crime Control, but I'm

1 happy to look at it, and offer advice on my end  
2 from POST.

3 MR. DUTTON: This is Leo. That would be  
4 helpful. I'm not looking to be an obstructionist  
5 by any means, but there was information that I  
6 felt was being withheld, and I felt compelled to  
7 say something, but wasn't allowed, and I was  
8 baffled. I was completely baffled.

9 MS. BOLGER: This is Katrina. There was  
10 a little bit of confusion in the Adams case  
11 specifically as far as the procedure, I think,  
12 because there was -- they set their hearing. The  
13 committee hadn't even received the transcript from  
14 the Department of Labor that was our Hearing  
15 Examiner, so they hadn't even reviewed the hearing  
16 transcript when we got to the hearing.

17 They started taking testimony from Perry  
18 Johnson, which is not at all allowed, but they  
19 were left without a transcript. So they were  
20 doing the best they could. And then they said  
21 that they were going to set it for another  
22 hearing. We made sure that we they got the  
23 transcript, and then there was never another  
24 hearing. And so then they just issued their  
25 decision.

1 And so I'm not really sure what all  
2 happened there, but we didn't get the opportunity  
3 to clarify who testified to what, and what the  
4 findings of fact were based upon, with the  
5 assistance of the transcript.

6 MS. ROBBIN: May I ask a question? This  
7 is Tia. Is this standard of review typically  
8 denovo at the Board of Crime Control? Is it a  
9 full denovo review?

10 MR. JOHNSON: This is Perry. They have  
11 the ability to review the entire record. So what  
12 Katrina was saying, when they didn't have that  
13 record, it really morphed into a little hearing  
14 where they examined me, and they asked me to  
15 provide information to them.

16 And I'll be honest with you. Based on  
17 that whole dynamic, I've never gone back to  
18 another one, because I don't want to be part -- I  
19 want them to look at the record based on what the  
20 Hearing Examiner's findings were, which were based  
21 on the expert witnesses that were called, and the  
22 testimony that was provided, and the credibility  
23 that was weighted by the Hearing Examiner. It was  
24 really -- it was really inappropriate. It was a  
25 difficult position to be in.

1 MS. ROBBIN: This is Tia again. I'm  
2 just curious what the law says of what is their  
3 standard of review, and then what's the standard  
4 of review going to the District Court then?

5 MS. NEAL: This is Kristina. Tia, I  
6 think that's really the question that we brought  
7 up on appeal, because I don't know of a situation  
8 in which an appeal has come out of the Board of  
9 Crime Control to the District Court where that  
10 standard of review had been looked at. There is  
11 no case law on it.

12 And so what I've argued in our petition  
13 and with our briefing in front of the District  
14 Court is that it should be, you should be giving  
15 deference to the Hearings Examiner who was there  
16 to observe the credibility of the witnesses,  
17 similar to any other type of a proceeding where it  
18 would be that deference standard, instead of  
19 really a denovo type standard, and that's what the  
20 briefing, that's gone to the District Court on  
21 appeal, a lot of that focusing on.

22 So there isn't a standard set because it  
23 hasn't had a case go up where POST has appealed  
24 before on a Board of Crime Control decision. And  
25 so --

1 MS. ROBBIN: Thank you.

2 CHAIRMAN HARBAUGH: Wyatt, you or Leo  
3 still have any questions?

4 MR. GLADE: Perry, I was trying to jump  
5 in there and ask you: When you were testifying,  
6 who were you testifying to?

7 MR. JOHNSON: To that three member  
8 committee.

9 MR. GLADE: To the administrative review  
10 committee, not the full board?

11 MR. JOHNSON: Right.

12 MR. GLADE: Thank you.

13 MR. DUTTON: And that was the full  
14 board. There was testimony given from the board  
15 of those three that were there that were  
16 contradictory to the examiner that was, the  
17 information that was provided in our packet. Bill  
18 Dial pointed that out, and then they said he  
19 couldn't talk either.

20 So you weren't appointed yet when Adams  
21 was there, but it was in the book, and Bill  
22 pointed that out, if you go to Page 26, you look  
23 at that, and it answers the question, "You can't  
24 talk."

25 So my opinion -- and I'm sure that I'll

1 face the wrath of lashes -- but I heard an  
2 emotional testimony, not based on what they read,  
3 but they had talked to the young man, he cried,  
4 and I heard an emotional testimony from the board.

5 MS. BOLGER: This is Katrina. Adams and  
6 his attorney, neither one of them showed up to the  
7 hearing, so they must have done their own  
8 investigation.

9 MR. DUTTON: Were you there? I thought  
10 they said they had talked to him. And I'm  
11 speaking specifically of the County Commissioner  
12 from Broadwater.

13 UNKNOWN SPEAKER: -- (inaudible) --  
14 Humbert?

15 MR. DUTTON: Yes.

16 MR. GLADE: Leo, this is Wyatt. I don't  
17 recall this. In June in the Board of Crime  
18 Control, I was primarily occupied with the vocay  
19 (phonetic) issue, so I was focused on that at  
20 those meetings. I don't recall whether I was here  
21 in person or whether I called into this meeting.

22 MR. DUTTON: I think you called in.

23 MR. GLADE: I'm drawing a blank, to tell  
24 you the truth.

25 MS. NEAL: This is Kristina. And I

1 would echo what Katrina said. I mean the attorney  
2 for Mr. Adams and Mr. Adams, neither one appeared  
3 at the hearing with the review committee. Neither  
4 one appeared. And Adams testimony before the  
5 Hearings Officer, that would be accurate. I mean  
6 he was crying. But I don't know if that's even  
7 reflected in the transcripts. I think that the  
8 transcripts are fairly -- (inaudible) --

9 MR. DUTTON: This is Leo. Sorry. That  
10 was stated to me.

11 MR. OLSON: So this is Kevin. The issue  
12 that that raises a concern for me is: Did one of  
13 those members of that committee have ex parte  
14 communication with one party and not the other?  
15 And I think that as we proceed with court, I think  
16 that Kristina, that's something you might have to  
17 flesh out by putting someone on the stand, because  
18 if that ex parte communication happened, it's  
19 grossly improper.

20 MS. BOLGER: This is Katrina. We  
21 actually have very stern administrative rules  
22 about that ex parte contact, and it is actually  
23 one of the remedies is dismissal of the case in  
24 favor of the person who did not make the contact.

25 MS. NEAL: This is Kristina. And now

1 that the cases have been to District Court, one of  
2 the options available to the District Court is to  
3 be able to bring in other testimony. So I can  
4 expand that, if I could -- if we can follow up on  
5 that investigation.

6 MS. BOLGER: The one drawback -- This is  
7 Katrina -- then would be then we didn't get a  
8 decision on the merits of the appeal to the Board  
9 of Crime Control and the propriety of that.

10 MR. JOHNSON: This is Perry. I agree  
11 with Kevin. I think that at least if their  
12 official record is similar to our official record,  
13 would be the recording, and I think that that's a  
14 public record. I think that we should that at  
15 least examine that record, so that we've got it in  
16 our possession.

17 MS. BOLGER: This is Katrina. I'm happy  
18 to pull it and listen to it to find out.

19 MR. GLADE: This is Wyatt. Any record  
20 of any meeting of that committee, it is a public  
21 meeting, I believe, that is required to be posted,  
22 and published, and open to the public. I highly  
23 doubt they would have held a second meeting, and  
24 conducted witness interviews without notifying the  
25 parties. That would seem really unusual to me.

1 MR. JOHNSON: This is Perry again. That  
2 dynamic where they talked about having a second  
3 hearing, that was presented to us by that  
4 committee, and that was a procedure that never  
5 occurred. We never had the opportunity to go back  
6 and get the bite of that apple.

7 MS. NEAL: This is Kristina. I want to  
8 follow up, and somewhat part is besides mentioning  
9 the other hearing, what they wanted was follow up  
10 briefing, and they did set a briefing schedule,  
11 and both myself, and Mr. Adams, and then I filed a  
12 reply brief, did file followup briefing with the  
13 review committee, and then shortly after then was  
14 their decision.

15 And so I don't know if that's what they  
16 took as to being their second hearing was to be  
17 considered the briefing, because we did do another  
18 whole set of briefing in front of the review  
19 committee as well.

20 MR. JOHNSON: This is Perry then. Just  
21 in regards to Adams, you've got that decision, and  
22 then you've got our appeal in this material right  
23 in front of you today, so you know what the status  
24 is in regards to where we went once we got the  
25 decision, and how we got there. So we've already

1 briefed, and so we're in that process.

2 And I think if there's any additional  
3 questions then, Kristina would be available to you  
4 now to ask those questions.

5 CHAIRMAN HARBAUGH: Sure. Ask the  
6 question then.

7 MR. GOOTKIN: Brian Gootkin, Gallatin  
8 County Sheriff. I'm not here on behalf of the  
9 Montana Sheriffs and Peace Officers, even though  
10 we've had this discussion. I'm not going to talk  
11 about the individual cases.

12 But I will tell you that I have, as the  
13 Sheriff and as an Administrator, I have a serious  
14 problem with the Board of Crime Control being able  
15 to overturn what this Council decided on. Those  
16 are our people that they're responsible for. We  
17 trust that this Council makes that decision.

18 And I guess I am the obstructionist,  
19 Leo, and I'm going to ask you, number one: There  
20 is a study right now going on in the Board of  
21 Crime Control, and obviously there is confusion,  
22 and I think that this needs to be brought to that  
23 interim committee, this issue, along with the  
24 other issues that have already rendered, and I  
25 have addressed with that committee about the Board

1 of Crime Control.

2 This is a serious problem. And then I  
3 would ask the legal folks, folks smarter than me,  
4 to find out what can we do to fix this. Does it  
5 need to be a legislative change? And now is the  
6 time to figure that out because we need to start  
7 working on it now.

8 CHAIRMAN HARBAUGH: It may not be a  
9 legislative change if -- and correct me if I'm  
10 wrong in stating this way -- but if this appeal  
11 goes through the process in favor of POST Council,  
12 and the Judge says --

13 UNKNOWN SPEAKER: The District Court  
14 Judge.

15 CHAIRMAN HARBAUGH: Yes -- the District  
16 Court Judge addresses that, it may then become  
17 moot. Is that correct?

18 MS. NEAL: This is Kristina.

19 MR. GOOTKIN: -- (inaudible) -- that  
20 case, my concern is that -- I'm sorry. Go ahead.

21 MS. NEAL: This is Kristina. And I mean  
22 it potentially would become moot, depending on  
23 what the District Court Judge, Judge Reynolds,  
24 says in the Adams case. And if it went up on  
25 appeal to the Montana Supreme Court, you're right.

1 Then it would be something that would control for  
2 future cases.

3 But you're right. For this, it would --  
4 If Judge Reynolds ruled in our favor, it would be  
5 pertaining to just that case, and it would be  
6 persuasive for any other cases that came up, but  
7 it wouldn't necessarily be binding on other  
8 District Court Judges.

9 MR. GOOTKIN: So number one, in my  
10 opinion, my personal opinion, inappropriate, and I  
11 agree with you that it's an unnecessary step. The  
12 due process is you and the District Court Judge.  
13 First us, first the Administrator, and the Sheriff  
14 and the Chief, then you, then the District Court  
15 Judge.

16 MS. BOLGER: This is Katrina. One of  
17 the things that Kristina was talking about, the  
18 delay, and for the benefit of people that aren't  
19 necessarily familiar. The officers, when we're  
20 talking about their delay, we're delaying them  
21 being able to bring up any constitutional issues  
22 because those cannot be decided at an  
23 administrative level.

24 And so Adams in particular, his attorney  
25 has brought up several constitutional issues, and

1 he's been forced to argue them twice to two  
2 different tribunals that can't do anything about  
3 it.

4 MR. GOOTKIN: So one last question, and  
5 then I'm going to roll it up and leave. A  
6 question for you guys is: Are you allowed as a  
7 Council to go to that interim committee, and do  
8 that, or do you have to have permission from the  
9 Department of Justice?

10 MR. JOHNSON: This is Perry. I would  
11 like to speak to that, because I think that that's  
12 kind of the heart of what we do here. You guys  
13 are autonomous, you're a quasi-judicial board, and  
14 I think you get to take a position on these  
15 things.

16 And I think that not only is it  
17 appropriate -- this is my opinion -- I think it's  
18 imperative that you guys stake your ground, you  
19 know, that you vote and put it on the record that  
20 these are the concerns that we've got, and this is  
21 the -- for lack of a better word -- these are the  
22 issues that we've already identified, that they're  
23 not abstract. This is real. And this is why  
24 we're here.

25 And I don't know if it would be

1 appropriate to ask Kristina to write a memo to  
2 that committee on behalf of the Council or the  
3 chair. I think that would be up to you guys.

4 CHAIRMAN HARBAUGH: I would certainly be  
5 willing if the consensus is we all --

6 MR. STRANDELL: This is John. Just to  
7 answer Sheriff Gootkin's question. We can  
8 independently take action without DOJ approval or  
9 guidance. You know, there is no question on that,  
10 so -- in my view.

11 CHAIRMAN HARBAUGH: I think in addition  
12 to answering that, whether or not we could direct  
13 Perry to be there might be something we need some  
14 clarification on.

15 MR. STRANDELL: Mr. Chairman, just a  
16 couple followup questions. I guess based on what  
17 we've learned today, Kristina, then with some of  
18 the procedural issues and the confusion there, is  
19 that something that should be added to our action  
20 in District Court then, having a record of that  
21 placed before the Judge? Because this is very  
22 disturbing to me, what I just heard.

23 MS. NEAL: This is Kristina. Yes. I  
24 think, I mean I think the first step would be  
25 Katrina taking the transcripts, and we'll review

1 it, and then we can file an amended petition,  
 2 because we've already filed a petition that would  
 3 have stopped any type of statutes of limitations  
 4 or timelines, then we could file an amended  
 5 petition.

6 And the District Court has several  
 7 remedies. I mean the District Court can make a  
 8 decision just based off of briefing, but the  
 9 District Court is also entitled to hold a hearing,  
 10 and actually even on these type of a petition can  
 11 actually come in and take testimony as well. So I  
 12 think it definitely can be information that can be  
 13 included or added to we've already done so far in  
 14 District Court.

15 MR. STRANDELL: This is John again. As  
 16 we've discussed in Case Status Committee, this  
 17 ruling by this Judge is going to be critical as we  
 18 move forward with this. If we get a favorable  
 19 ruling, I think that's going to set the stage then  
 20 on any other action, and it would help us then as  
 21 we move forward with whatever plan we decide to  
 22 move forward with Interim Justice or whatever the  
 23 circumstance may be.

24 MS. NEAL: This is Kristina. I think it  
 25 also would help the Board of Crime Control,

1 because that's kind of been my opinion, just kind  
 2 of my analysis of sitting back, and watching, and  
 3 being at those review committees, is that there is  
 4 some confusion kind of what their role is, what  
 5 deference they give, kind of just trying to figure  
 6 -- I think it may be helpful for the Board of  
 7 Crime Control as well.

8 MR. STRANDELL: This is John again, and  
 9 I'll shut up. I guess just for the record, it  
 10 just angers me to believe that Board members  
 11 couldn't ask questions during the process that  
 12 came before the committee. It's like our process.  
 13 You know, Case Status Committee makes a decision,  
 14 Perry follows up with that, and then it comes  
 15 before this full Council.

16 And I just can't imagine that anyone on  
 17 this Council wouldn't be upset if you went to ask  
 18 a question, and you were directed that you can't  
 19 ask questions. You know, it doesn't make sense to  
 20 me. So that's why I'm interested in that statute  
 21 on what they're basing evidence on. That's not  
 22 the way it's supposed to work.

23 MR. GLADE: This is Wyatt. Kristina,  
 24 who is representing the Board of Crime Control?

25 MS. NEAL: So this is Kristina. So the

1 Board of Crime Control I had served with this  
 2 petition, and then I believe it was Lorraine  
 3 Schneider with the Department of Corrections is  
 4 the one that responded, and she actually requested  
 5 that the Department of Corrections and the Board  
 6 of Crime Control be dismissed from the case, so  
 7 they weren't a party, that just Mr. Adams was a  
 8 party, and asked that she no longer be served with  
 9 any of the paperwork. So at this point, it's just  
 10 Mr. Adams.

11 MR. GLADE: It sure looks like they're a  
 12 party.

13 MS. NEAL: I would agree, and I have  
 14 been serving --

15 MR. GLADE: This is the first that I  
 16 knew that we are getting sued. I don't like that.  
 17 So I do intend to go back to the board to discuss  
 18 that. I'm sorry. I don't have anything else.

19 CHAIRMAN HARBAUGH: Do you have a  
 20 question, Leo?

21 MR. DUTTON: Yes. Just a clarification.  
 22 I just recently was appointed to the radio  
 23 committee that the Governor appointed for the  
 24 statewide radio. In that they send out a welcome  
 25 and clarifications of rules about what board

1 members versus -- there's advisory boards, and  
 2 then there's autonomous boards.

3 It is very clear in there about when you  
 4 can go give legislative input, and if you're an  
 5 advisory board, it's a no; but if you're an  
 6 independent quasi-judicial board, such as us, it's  
 7 a yes. So it is spelled out in there. I just  
 8 read it. And a lot of it was in the code book,  
 9 and I actually read it, and I thought it was  
 10 clear.

11 MR. GLADE: So this is Wyatt. We did  
 12 have an interesting interaction on that point in  
 13 the Board of Crime Control during the last  
 14 session. Laura Obert wanted to go to the  
 15 Legislature, and testify on the study bill that  
 16 has since passed, and she was told that she could  
 17 only do so with the Governor's approval as a board  
 18 member.

19 However, if she wanted -- any member of  
 20 the board could, in their individual capacity,  
 21 testify in the Legislature. And I assume the same  
 22 rule would apply here. I don't know.

23 UNKNOWN SPEAKER: Yes, that was --

24 MR. OLSON: This is Kevin. So I think  
 25 that the proper process here is that Perry should

1 have communication with Brian Lockerby that he's  
2 been directed to participate in this review, and  
3 just to inform Brian, and then in the alternative,  
4 if you get the marching orders to stand down, then  
5 it would by default go to Tony Harbaugh, the  
6 Chairman.

7 MR. STRANDELL: This is John. I don't  
8 think that's ever going to happen, Kevin. I don't  
9 think DOJ is going to direct the Council action.  
10 Just for the record.

11 MR. OLSON: I wasn't alluding that they  
12 would. It's just that I just think out of common  
13 courtesy, that he should inform Brian that he's  
14 been directed to do. And I agree with you, John.  
15 I mean I don't think that would ever be the case,  
16 but -- and I didn't mean to insinuate that either.  
17 So --

18 UNKNOWN SPEAKER: You're a hell of a lot  
19 more eloquent than I am.

20 MR. JOHNSON: This is Perry. I thought  
21 Kevin was just sticking up for me, so I wouldn't  
22 get in trouble. Apparently not.

23 Well, I think we can move on to Page  
24 127. That's the Ross -- I think it's Drishinski  
25 -- because you left the "H" out of that one --

1 issue.

2 So actually this came on September 3rd.  
3 Apparently it was authored on September 3rd. I  
4 think September 19th, the Board of Crime Control  
5 reviewed the findings from the committee on  
6 Drishinski, and then they affirmed that. So they  
7 have, again, recommend the Board of Crime Control  
8 to reverse the Council's decision to revoke  
9 Drishinski's POST certification. So that's  
10 effectively revoked that -- I'm sorry -- turned  
11 over that revocation.

12 MS. BOLGER: This is Katrina. We just  
13 saw any decisions from the full board --

14 MR. JOHNSON: Yesterday.

15 MS. BOLGER: Yesterday.

16 CHAIRMAN HARBAUGH: Do you want to move  
17 -- Do you have any summarization for anyone who  
18 was not here? -- (inaudible) --

19 MR. JOHNSON: This is Perry again. For  
20 the purposes of the Council, so that we're all on  
21 the same page, while they reversed that decision,  
22 if this person actually applied for another  
23 position as a peace officer in Montana, it would  
24 require him to be certified.

25 One of the rules for appointment is that

1 every officer that applies for appointment in  
 2 Montana must be in good standing with any other  
 3 POST board or similar agency in another state, and  
 4 this officer is not. He's been revoked for, I  
 5 think, about 12 years out of the state of Utah for  
 6 conduct involving a sexual act in a patrol car  
 7 while he was on duty. So he would have a hurdle  
 8 to even try to re-engage this profession again.

9 And I think this is an opportunity for  
 10 you guys to consider whether you want to appeal  
 11 this decision, again, like we did Adams. And I'm  
 12 just going on the record and say: Based on what I  
 13 just told you, I don't know why we would use our  
 14 resources to do that.

15 MR. GLADE: This is Wyatt. I did  
 16 participate in -- well, I was at this meeting. I  
 17 don't know if "participate" is the right word,  
 18 because like I mentioned before, I was told I  
 19 could participate in the discussion, but not vote,  
 20 so that's what I did.

21 And just for benefit of everybody, I  
 22 think there was maybe a collective feeling around  
 23 the room -- this is just my perception -- that,  
 24 "Why are we doing this as a board?"

25 And if the goal here is to stop the

1 Board of Crime Control from being the appellate  
 2 review of the POST's decisions, I'd find some  
 3 cooperation. I don't know. I know everybody is  
 4 pretty uncomfortable with lay people reviewing the  
 5 decisions of law enforcement officers reviewing  
 6 law enforcement officers.

7 My perspective, law enforcement officers  
 8 are in the best position to make that review. In  
 9 point of fact with this case, we had a summary of  
 10 Drishinski's history, and it gave us just enough  
 11 to pique our curiosity. So I asked a bunch of  
 12 questions on Drishinski myself, and his lawyer was  
 13 there. And as you mentioned, some of it is pretty  
 14 uncomfortable stuff to talk about in a public  
 15 meeting.

16 He said he had disclosed that to  
 17 whomever he worked for prior to being hired, and  
 18 then there was kind of a political blow up or  
 19 something with someone he ran against.

20 But the point I was going to make is one  
 21 of the board members during that conversation  
 22 said, "I'm uncomfortable hearing this. I don't  
 23 want to talk about this at a public meeting." And  
 24 I don't know how we could make a decision on  
 25 something if we can't talk about it.

1           So I guess that's what I wanted to  
2 convey more than anything, is that I think there  
3 is some disconnect in the movement of the two  
4 agencies. We now have DOC reviewing DOJ, and so  
5 to speak, and at any rate it's kind of a mess.

6           CHAIRMAN HARBAUGH: Kevin.

7           MR. OLSON: This is Kevin, for Kristina.  
8 Correct me if I'm wrong, though, but we were  
9 specifically told we could not ask questions of  
10 the aggrieved party. We can listen to arguments  
11 from the attorney, and ask the attorney questions,  
12 but we cannot accept testimony. We have to rely  
13 upon the record. Isn't that correct?

14           MS. NEAL: This is Kristina. Yes, you  
15 would have to rely upon the record. You could ask  
16 questions, but you couldn't bring in any new  
17 testimony. You still would have to rely upon that  
18 cold record.

19           I know that because at some of the POST  
20 Council meetings, the individuals have presented  
21 their side, and have spoken to you, and that you  
22 were able to ask questions, but you couldn't  
23 necessarily consider those questions other than  
24 looking at the cold record. Maybe due --

25           So I don't even know the purpose of why

1           you would be asking questions to them, other than  
2 -- because really you have to rely upon that cold  
3 record as the POST Council. You have to rely on  
4 the findings of fact, and conclusions of law, and  
5 anything that would have been submitted as an  
6 exhibit, and filings before you.

7           MR. OLSON: This is Kevin once again.  
8 And I would defer to Wyatt. But it kind of almost  
9 sounds like the Board of Crime Control really is  
10 where we were at ten years ago, the way that we  
11 actually conducted business. We kind of winged  
12 it, you know, not following adequate procedure,  
13 and due process, and things like that.

14           I'd hate to say it, but there probably  
15 was ex parte communications, things like that.  
16 And thanks to Perry and his shop, and Chris  
17 Tweeten, putting the side boards on it. It sounds  
18 like that just hasn't happened at the Board of  
19 Crime Control, that they really don't know or  
20 haven't been adequately educated to how these  
21 things and proceedings should be conducted.

22           MS. BOLGER: This is Katrina --

23           MR. GLADE: This is Wyatt. I do want to  
24 address that. I don't think there was any ex  
25 parte communication, and he was represented by

1 Counsel. So prior to asking any questions, I did  
2 say, "With the approval of your Counsel, would you  
3 be willing to answer some questions?"

4 So I guess I don't see any issue there.  
5 There simply wasn't enough facts to make a  
6 decision on what we were provided, in my opinion.  
7 We needed some more information.

8 MS. BOLGER: This is Katrina. I guess  
9 my question for Wyatt would be: What did they  
10 provide you to base your decision on? What  
11 documents were you provided, do you remember?

12 MR. GLADE: Yes. I do. They gave us a  
13 book, a folder like this, and it was a summary of  
14 the facts. I don't recall what it was. The  
15 reason I laugh, I'll tell you in a moment.

16 At any rate, it had a brief summary of  
17 the facts where he talked about an issue in  
18 Arizona, but then later on he mentioned something  
19 about Utah, but there was no facts about what  
20 happened in Utah. And so the issue in Arizona  
21 was, according to him, he had disclosed it  
22 verbally, but failed to disclose it as a criminal  
23 conviction on his form. He said, "I didn't think  
24 it was a criminal conviction," all this stuff.

25 But the Utah issue, which is the one

1 that Perry just alluded to, there were no facts in  
2 the written materials that were provided to us.  
3 So that was primarily what I asked him about, is  
4 what happened in Utah. So he told me that, and he  
5 also mentioned, I believe, that he had been  
6 revoked in Utah.

7 What I chuckled about is at the end of  
8 the meeting, I tried to take my book with me, and  
9 they didn't let me. Leo got out the door with  
10 his, but they didn't let me take mine. They said,  
11 "You can take selected materials out of there, but  
12 we want to keep these." And this was after we had  
13 a discussion about transparency. So I don't know  
14 exactly what was in there, the titles of the  
15 documents, because I don't have them.

16 MR. STRANDELL: Just a quick question.  
17 Who wouldn't let you take the book?

18 MR. GLADE: One of the staff for the  
19 Board of Crime Control.

20 MR. DUTTON: I got mine.

21 MR. OLSON: This is Kevin. Kristina,  
22 with doing just the bare minimal -- we have a  
23 timeline that we'd have to file in Court. What  
24 would we have to file in Court to reserve our  
25 ability to move to an appeal?

1 MS. NEAL: This is Kristina. You'd have  
2 to file something similar to the petition that I  
3 filed for Mr. Adams. It could probably be scaled  
4 back. I mean the petition in the Adams case was  
5 fairly detailed. I think it could be scaled back  
6 some on some of the issues that you may want.

7 If I were to look at doing that,  
8 probably the first thing I would do would be to  
9 ask Katrina to get the transcript of what actually  
10 took place on September 18th, and do a quick  
11 analysis of that as to whether that was going to  
12 give us enough to be able to move forward, based  
13 on what took place at the review committee  
14 hearing, I guess in July probably, and see the  
15 discrepancies between maybe what -- the hearing  
16 happened in July, between the review committee,  
17 the findings of fact, the POST final decision, and  
18 then what your Board of Crime Control final  
19 decision is, and see how those all were meshed  
20 together, I guess.

21 So it wouldn't be hard. I mean it would  
22 be a petition I could put together fairly quickly.

23 MS. ROBBIN: This is Tia. Just looking  
24 up -- I've never read ARM 20.24.1077. That's  
25 referenced right there. And it's very

1 interesting, because it talks about errors of laws  
2 or procedural defects do not warrant reversal  
3 unless substantial rights are affected.

4 Do you think a decision would have to  
5 say which substantial rights are affected for  
6 reversal?

7 And then it goes on to say the  
8 committee, which is the hearing committee of the  
9 Board of Crime Control, "shall not consider any  
10 new evidence at the hearing unless good cause is  
11 shown for failing to produce it before the Hearing  
12 Examiner. If good cause is shown, and the new  
13 evidence is allowed, the committee shall remand to  
14 Hearing Examiner for consideration and ruling."

15 "At its discretion, the committee may  
16 request briefs from the party, and keep a record  
17 of the proceedings."

18 So it just seems that somehow we're  
19 having evidence come in, and we're having  
20 decisions be made, but not those standards met of  
21 what procedures were -- what defects were there.  
22 And shouldn't it have been remanded instead of  
23 this decision?

24 MR. JOHNSON: This is Perry. I think  
25 that's kind of exactly what, Kevin, you alluded to

1 before. I think the process is that we have at  
 2 least recognized and implemented in the last six  
 3 or seven years can reflect that change towards  
 4 that MAPA process, and all of those necessary  
 5 procedures to ensure that due process.

6 Just in regards then to the conversation  
 7 about Drishinski, is there a feeling that you want  
 8 to examine that a little more closely or --

9 MR. STRANDELL: Mr. Chairman, I would  
 10 like to see us do that, based on the previous  
 11 case. I think the two of them, with the  
 12 procedural stuff that we're hearing today, and the  
 13 concerns that we have, I think it would be best to  
 14 also take Drishinski on, too, because I take it  
 15 the Courts would say, "Well, you filed an appeal  
 16 with Adams, but you didn't on Drishinski. Why  
 17 not?" Because it's the same procedure thing  
 18 there.

19 So I'd like to see us move forward on  
 20 that, even though I understand the resources it  
 21 will take, but I just think we're at an important  
 22 stage here in this, that if we don't deal with  
 23 both, I think it could be a problem for us.

24 CHAIRMAN HARBAUGH: Consensus?

25 MR. JARRETT: This is Jason. I think

1 our primary issue is to keep bad people from doing  
 2 bad things to our customers, regardless of the  
 3 legal review. In the first one, if it can get  
 4 solved because of the ex parte communication, and  
 5 clean, and done there, that still leaves a lot of  
 6 questions out, but it takes care of the issue, our  
 7 primary concern, which is to make sure that we  
 8 don't have people unqualified, uncertified, not  
 9 doing the right thing out there, doing that to our  
 10 citizens.

11 MR. OLSON: This is Kevin. And in the  
 12 first case, I'm not saying there was ex parte  
 13 communication. I'm saying that there seems to be  
 14 some confusion, based upon what Leo was told at  
 15 the Board of Crime Control versus what the record  
 16 may reflect. And it would be nice to flesh those  
 17 details out because it sounds like there is  
 18 something just not aligning there.

19 For the record, I voted in favor of Ross  
 20 Drishinski, of not decertifying him, based upon  
 21 the record as a whole. If you remember right, and  
 22 before you came here, we actually had to get a CD  
 23 of the entire hearing, and had to review it,  
 24 because we had went against the Hearing Officer's  
 25 recommendation.

1           You would think that any review beyond  
2 us would have to kind of mirror that same thing,  
3 and couldn't be just reduced to a summary. The  
4 thing with Drishinski, as I, like John, I think  
5 there is some various similarities to the two  
6 cases, just if nothing else that we get some  
7 guidance, not just to us, but to the Board of  
8 Crime Control procedurally, of what this process  
9 should look like.

10           We've kind of perfected our process, but  
11 now we're at the next level, and it would be nice  
12 if the Court could chime in and say, "This is what  
13 this should look like."

14           CHAIRMAN HARBAUGH: I think consensus is  
15 that we at least include Drishinski in the  
16 process, and prepare the necessary paperwork to at  
17 least initiate the appeal would be appropriate at  
18 this time.

19           MR. OLSON: This is Kevin. And if  
20 nothing else, kind of a -- I use the term place  
21 holder. Maybe Reynolds is fairly expedient in  
22 handing down. That will tell us a lot, and  
23 whatever in that ruling by Reynolds may determine,  
24 he may determine, says it's worth dropping  
25 Drishinski.

1           MR. JOHNSON: This is Perry. Then could  
2 I ask. If as we work our way through that  
3 process, based on, you know, the way the Court  
4 will work in those processes, those decisions that  
5 will occur between now and our next meeting in  
6 February, could I ask that this be something that  
7 that Case Status Committee, that meets monthly,  
8 would be empowered to examine, and to make joint  
9 decisions with our Legal Counsel during that  
10 process? Would you guys be comfortable with that?

11           MR. DUTTON: This is Leo. I am.

12           CHAIRMAN HARBAUGH: All right. We'll do  
13 it that way.

14           MR. STRANDELL: Mr. Chairman, could I  
15 ask one in follow up to Kristina? Is like the  
16 Case Status Committee meeting minutes, and when we  
17 handled these cases, and the Council minutes, are  
18 all those part of the record then that goes to the  
19 Board of Crime Control for review?

20           MS. BOLGER: This is Katrina. I can  
21 probably answer that little bit more. We always  
22 disclose the memos and things that we provide to  
23 the Case Status Committee in discovery to opposing  
24 Counsel.

25           In the Drishinski matter specifically,

1 there was testimony about those Case Status  
2 Committee meetings. It's a public record. It's  
3 not necessarily made part of the record without  
4 somebody testifying to it, or somebody putting  
5 those in as an exhibit.

6 So I don't recall that there was  
7 anything in the Adams case about the Case Status  
8 Committee meetings aside from just explaining what  
9 that process is. And I am the one who testified  
10 about the Case Status Committee meetings regarding  
11 Drishinski. So that's kind of how that works.

12 MR. STRANDELL: This is John again. The  
13 reason I asked for that is if the committee  
14 members remember, we had questions in both those  
15 cases, and there was similar to what Wyatt just  
16 described.

17 So again, just for a factual record,  
18 maybe that's something we should consider. If  
19 there is testimony presented before the committee  
20 from a person that's appearing, maybe that should  
21 be part of the record, too, just to see how they  
22 answer to questions then based on that record, and  
23 through this appeal process. I think that's  
24 important, too, to just make that available, I  
25 guess, or even for future.

1 Let's say if we don't prevail here, the  
2 Board of Crime Control still has an appeal  
3 process. I think it's important for the Board of  
4 Crime Control committee to have the same record  
5 that we had, and the same questions, and how they  
6 were answered, and so forth.

7 MS. NEAL: This is Kristina. So in the  
8 Adams case, so if for example Adams would have  
9 actually come to the Case Status Committee and  
10 presented testimony, at that point I think it  
11 probably -- because I probably would have included  
12 it in either my cross-examination or as an exhibit  
13 into summary judgment.

14 But for example, his written response to  
15 Perry that you would have considered as part of  
16 the Case Status Committee was presented as  
17 exhibits at the hearing, and so that would have  
18 been still part of the record, and Perry's  
19 correspondence with him was admitted as exhibits  
20 into the record, and then he had two responses.  
21 Those responses were admitted as exhibits into the  
22 record. So some of that is in there.

23 MR. STRANDELL: Okay. Thanks.

24 CHAIRMAN HARBAUGH: Everyone good with  
25 that one?

1 (No response)

2 CHAIRMAN HARBAUGH: I have one more --  
3 (inaudible) --

4 MR. JOHNSON: Well, I think we're at  
5 Thad White, Page 128. This was a Crime Control  
6 decision where they affirmed the revocation of  
7 Thad White's POST certification.

8 And it is my impression -- Kristina,  
9 maybe I should ask you. Do you have any  
10 impression of what we might expect from follow up  
11 from this?

12 MS. NEAL: This is Kristina. I fully  
13 anticipate -- and I could be wrong -- that Mr.  
14 White's attorney will appeal up to the District  
15 Court, and so he has thirty days, just the same as  
16 I would have in Drishinski, to file a petition  
17 with District Court, and I fully anticipate that  
18 they will proceed.

19 He's raised several due process  
20 arguments and constitutional arguments that were  
21 not addressed by the Hearing Examiner or by the  
22 Board of Crime Control that he wants to raise, and  
23 so he would now raise those, I would anticipate,  
24 in District Court.

25 CHAIRMAN HARBAUGH: Questions or

1 discussion on it?

2 (No response)

3 CHAIRMAN HARBAUGH: Okay.

4 MR. JOHNSON: This is Perry. Well,  
5 we're up to the 9:30 break, and --

6 MR. STRANDELL: And you were worried  
7 that we were going to go too fast.

8 MR. JOHNSON: I was maybe worried.

9 CHAIRMAN HARBAUGH: Do you want to move  
10 into new business at this time?

11 MR. JOHNSON: I do.

12 CHAIRMAN HARBAUGH: Okay. Committee  
13 reports is first.

14 MR. JOHNSON: Before I turn this over to  
15 Kevin, I would point out that there has been a  
16 couple of real active committees, three for sure:  
17 Curriculum, ARM, and Case Status. And then I know  
18 that we haven't held meetings with the Business  
19 Plan or the Coroner Committee, but I would like to  
20 have a conversation with the Coroner Committee, as  
21 long as we're here, after we get through these  
22 other things.

23 In regards to Curriculum and ARM, they  
24 really are almost like a zipper. They interact so  
25 tightly together that I think at some point we may

1 kind of morph those committees' discussions  
 2 together. And I guess what I'm doing is asking  
 3 forgiveness if that happens, because I think that  
 4 there are some interlocking issues there. So with  
 5 that, back to you, Mr. Chairman.

6 CHAIRMAN HARBAUGH: Kevin, do you want  
 7 to --

8 MR. OLSON: Thank you. This is Kevin.  
 9 So as we follow up on our last meeting's  
 10 discussion, where we talked conceptually about  
 11 creating a specific discipline of Misdemeanor and  
 12 Pretrial Service Officers. And ultimately the  
 13 goal was to create just a specific basic course  
 14 for Misdemeanor and Pretrial Services Officers.

15 First and foremost, I want to thank you  
 16 Steve Ette and Andrea Lower. They have put in a  
 17 tremendous amount of time and energy in the  
 18 furtherance of this. And for those that aren't  
 19 familiar with it, I know they've been pursuing  
 20 this goal for many years, and now it's coming to  
 21 fruition.

22 So after that last meeting, we first had  
 23 a meeting with Glen Stinar, the Administrator of  
 24 the Law Enforcement Academy. Andrea came up, and  
 25 Dave Garcia, the training manager for DOC. And we

1 just talked conceptually of what a basic course  
 2 could look like, and then we agreed to go back and  
 3 kind of put some pieces to the puzzle together,  
 4 and then come back as a formal Curriculum  
 5 Committee.

6 We did that. Jim Thomas, and I, and  
 7 Glen Stinar serve on that committee. And Andrea  
 8 came up. And we had a lot of telephone  
 9 representation from several agencies. We left  
 10 there, and Andrea in the meantime -- correct me if  
 11 I get this out of sequence, Andrea -- but she had  
 12 met with her respective peers, from not only  
 13 private entities, but public entities that provide  
 14 those types of services for feedback; and came  
 15 back to --

16 Steve had come back and represented.  
 17 Andrea was in sunny Arizona. And we used that  
 18 kind of as the launching pad to refine what a  
 19 curriculum could look like. And then we came  
 20 together as the Curriculum Committee. And on Page  
 21 132 --

22 In the meantime, I also want to thank  
 23 [Sheriff Holton from Ravalli County Sheriff's  
 24 Office. They came to the meeting, and they were  
 25 willing to step forward, and provide some much

1 needed expertise and training, specifically as it  
2 applies to defensive tactics and firearms. And  
3 that's a huge ask, and greatly appreciated.

4 So what you have here is kind of a  
5 library of topic matter, similar to the very  
6 courses that are offered in the Adult Probation  
7 and Parole Officer Basic course.

8 The instructors are tentative. I just  
9 plugged in instructors that teach in the Adult  
10 Probation and Parole Officer course, and none of  
11 these instructors, or very few of them, have been  
12 contacted to ensure that they would step forward  
13 and teach again.

14 The goal was that we would have these  
15 folks come up and teach this one, and in the  
16 meantime, Andrea would start assembling their own  
17 training cadre who we could hand these courses off  
18 to.

19 So as you can see, the total course  
20 hours is about 140 hours. 20 hours of that is  
21 online courses that are already offered by the Law  
22 Enforcement Academy that Glen Stinar has agreed to  
23 make available access to, to all the parties; and  
24 then 120 hours of it would be on campus  
25 face-to-face training here at the Law Enforcement

1 Academy.

2 We reviewed it, and the committee now  
3 brings it to the Council as a seconded motion for  
4 approval.

5 The one caveat I want to add is this by  
6 no means is a perfected cast in stone curriculum.  
7 We have agreed to work with Steve, and Andrea, and  
8 their folks to do a very thorough post-course  
9 review of what worked, what didn't work, what  
10 should be added, what should be removed, and so on  
11 and so forth. So for the first couple years, this  
12 is going to be a very dynamic process, but I think  
13 it gets us to where we need to be to move forward  
14 offering this course in November.

15 CHAIRMAN HARBAUGH: So by offering it in  
16 November, it's here at MLEA?

17 MR. OLSON: Correct.

18 CHAIRMAN HARBAUGH: Will that keep  
19 people's time frames from expiring? I know there  
20 were concerns earlier that there were folks whose  
21 extensions weren't going to get them enough time.

22 UNKNOWN SPEAKER: If I can add. I know  
23 that Sue over at Missoula Correctional has  
24 concerns regarding people who have attended in the  
25 past, as well as people year plus six months

1 extension granted. They're going to be bumping up  
2 against several, multiple staff that are going to  
3 need to attend either this November or next  
4 November, and in terms of lacking staff at the  
5 agency.

6 I know with ours, I know we're going to  
7 be bumping up against -- (inaudible) --

8 CHAIRMAN HARBAUGH: Discussion.

9 MR. JOHNSON: This is Perry. Hey, I'm  
10 very sorry to whoever is on the phone. During our  
11 break, somebody spoke up and said they had joined  
12 the meeting. So is there anybody on the phone  
13 that we haven't identified?

14 MR. METROPOLIS: Perry, that might have  
15 been me. This is Jon Metropolis. I got off and  
16 then rejoined.

17 MR. JOHNSON: Oh, okay. Who is on the  
18 phone still? Could you identify yourselves for  
19 us, please?

20 MS. SWITZER: Linda Switzer with MCS.

21 MS. ELLIOTT: Casey Elliott from the  
22 Dillon Tribune.

23 MR. ROSELLES: Gavin Roselles, Powell  
24 County.

25 MR. SAYLER: Matt Sayler.

1 MR. JOHNSON: I think that's about the  
2 cast we had before. Okay. Thank you. Well,  
3 here's -- Kevin and I -- did Kevin leave?

4 UNKNOWN SPEAKER: He's on the phone  
5 outside.

6 MR. JOHNSON: Okay. Kevin and I, and  
7 Kevin's committee, Jim Thomas, and Glen Stinar,  
8 we've had some very --

9 UNKNOWN SPEAKER: Robust.

10 MR. JOHNSON: -- robust conversation,  
11 and I just -- I guess I'm going to break the egg,  
12 because I'm really concerned that we've got a  
13 basic syllabus here that is 140 hours.

14 And I'm concerned about that ability --  
15 and this is nothing new to that committee. I  
16 promise -- that these are folks that have not only  
17 the ability, but the responsibility to arrest  
18 people, and because they've got the ability and  
19 responsibility to arrest people, they've got the  
20 ability to use force. When we wrote that out, we  
21 built that in, some defensive tactics and some  
22 firearms.

23 But I really want this Council to  
24 consider that this is a training syllabus that is  
25 less than the training syllabus that we believe is

1 required for a person that works in a controlled  
2 environment in a detention center, and those guys  
3 don't have the ability to arrest.

4 And I want to have that conversation  
5 with you, just to make sure that I'm on the right  
6 page, or that we're going in the right direction  
7 if we endorse this curriculum. So that's a --

8 But Kevin and I have gone around with  
9 that. Jim was part of that conversation, too.

10 And I just don't know if we got there. I want to  
11 make sure that we meet the responsibilities of the  
12 Council to our communities that what we've got is  
13 a sufficient amount of training for those  
14 officers.

15 CHAIRMAN HARBAUGH: Kevin, the previous  
16 training that DOC provided, how does that compare  
17 hours-wise? And I recognize that there was  
18 probably a lot more there than what these folks  
19 needed, but --

20 MR. OLSON: So Mr. Chairman, this is  
21 Kevin. For Probation and Parole, I'll roll back  
22 the clock. For eons this Council was comfortable  
23 with giving them four weeks of training. We gave  
24 it our blessing, and they carried guns and badges.  
25 And it was only in 2015, when I had been at

1 Corrections for a year, that we had revamped that  
2 syllabus and took it to ten weeks.

3 We've now cut it back to eight weeks,  
4 but we didn't eliminate any of the -- a lot of the  
5 -- two weeks of training, we have the ability to  
6 do it in-house on the job, thereby reducing our  
7 footprint here on the campus.

8 And even out of that eight weeks -- and  
9 Andrea can speak to it because she got to come to  
10 our ten week course -- there was so much of it  
11 that does not pertain to misdemeanor or pretrial  
12 services. The risk and needs assessments, we use  
13 it different; the case planning; they don't do  
14 PSI's; all that kind of stuff, and so that's kind  
15 of where we whittled it out.

16 Is it where it needs to be? No,  
17 probably not. Our Law Enforcement Basic is  
18 grossly inadequate. We rank in the bottom three  
19 in the nation for amount of time in a basic. Our  
20 CDOB curriculum probably is grossly deficient in  
21 time.

22 But the argument I make is this is just  
23 a foundation. This is a basic foundation. And I  
24 would hope that any agency that sends officers to  
25 any courses that MLEA, or even this course, would

1 recognize that there needs to be additional  
2 training on the job in order to acquire the  
3 necessary competencies to perform the essential  
4 functions of the job. So this is kind of a  
5 starting point. Will we expand? Possibly. But  
6 for right now, I think this is a good place to  
7 start.

8 MR. DUTTON: Kevin, I appreciate all of  
9 the work that you have done, and Andrea, and all  
10 those kinds of things, and understand this is a  
11 first blush look at it, and I'm hoping that you  
12 can provide me explanation of the questions, and  
13 that kind of morphs into what Perry was talking  
14 about as the ARMs committee and our committee,  
15 that this is a zipper point.

16 When I looked at this, what stood out to  
17 me was the hours. It went from -- I didn't know  
18 that it was 120 hours, and it went to the longer  
19 time, the two weeks, now we're at 316, and then we  
20 carve out 140.

21 One of the concerns that I have is this  
22 is public and private people that are going to be  
23 arresting people. And I'm glad to hear your  
24 explanation, but the mechanics of arrest have been  
25 removed, and I haven't had time to -- and maybe I

1 missed it. But like I said, it was first blush.

2 Mechanics of arrest, when I became a  
3 Reserve Deputy, they stuck us in a room and said,  
4 "Okay. You have no training. You go arrest him."  
5 Of course it cleared out the chairs and all of  
6 that, because they knew there was going to be a  
7 fight, and because they didn't know. So yes,  
8 there was. And so I had the power of the badge,  
9 so --

10 The point was I didn't need to fight. I  
11 hadn't been trained. So they went back and said,  
12 "Okay, with proper training, here's how you could  
13 effect that arrest without ending up first in the  
14 face for a fight." These are things that you want  
15 to do, and if you're going to go at it with the  
16 idea that you're going to win at all cost, my  
17 concern is you take people who have the ability to  
18 make an arrest without those things.

19 So I'm happy to hear you say it's not  
20 done, but I just have some cause for concern when  
21 I see that these people can arrest, private people  
22 can arrest, without the mechanics of it. And it's  
23 just we're going to end up dealing with it, so I  
24 wanted to pose that as a question, and what's the  
25 thoughts for you guys as you went through it,

1 because I know you're the subject matter experts.

2 So if you could walk me through that,  
3 how you went through there.

4 MR. OLSON: So this is Kevin. What  
5 you'll find is in that 20 hours of defensive  
6 tactics is the handcuffing and mechanics of  
7 arrest.

8 MR. DUTTON: In the defensive tactics.  
9 Okay.

10 MR. OLSON: And that's reflective in  
11 CDOB curriculum here, as well as the Law  
12 Enforcement Officer Basic course. It's that HR --  
13 I still refer to it as PPCT, but it's HR  
14 something.

15 UNKNOWN SPEAKER: -- (inaudible) --  
16 stuff.

17 CHAIRMAN HARBAUGH: Jason.

18 MR. JARRETT: Jason here. This is just  
19 a new member question. And Kevin, you said it  
20 well. This is a basic kind of thing, and you  
21 would hope that most places understand it's a  
22 basic thing.

23 What is the state of the 55 other  
24 counties that I don't know as well in terms of  
25 their understanding of what reasonable and

1 adequate is, in terms of training and preparation  
2 for violating or removing people's civil rights?

3 Does most of the state come and say,  
4 "This is what I need," and I go away and go back,  
5 or are most counties and agencies spending the  
6 time with their folks to get them to standard and  
7 adequate?

8 MR. OLSON: This is Kevin. You know,  
9 it's a great question, and I'm going to reflect  
10 back on my time at the Law Enforcement Academy.

11 I think if you look at the 130 some  
12 combined Sheriffs Office and Police Departments,  
13 they're all over the board. There is some of  
14 those agencies that this would be the only  
15 training their officers will ever receive, and  
16 there is other of those agencies that have a very  
17 robust and continued education and training  
18 component for the rest of their professional  
19 careers.

20 I know when we talked to Steve and  
21 Andrea, and they polled their folks -- and feel  
22 free to chime in here, Steve -- I think when you  
23 look at Misdemeanor Probation Services and  
24 Pretrial Services Officers, from jurisdiction to  
25 jurisdiction it changes drastically.

1 In Bozeman, for example, they have no  
2 intention of carrying firearms. They have no  
3 intention of effecting arrests. They said when  
4 they perform their function, they reach out to law  
5 enforcement, and they're accompanied by law  
6 enforcement. They work for Court Services agency.

7 In Ravalli County, their Misdemeanor  
8 Probation Officers work for the Sheriff, and they  
9 effect their own arrests.

10 And you can see everything in between  
11 there. This is an evolving discipline, folks, and  
12 we've been slow to evolve with it. It's going to  
13 continue to expand across the state. I think  
14 public agencies -- Steve, what, less than six in  
15 Montana?

16 MR. ETTE: Well, if you don't mind, I  
17 can add a couple of things. Steve Ette, Director  
18 of Court Services.

19 So one thing you have to remember is  
20 that private entities by statute do not have the  
21 authority to make arrests.

22 MR. JOHNSON: Wait a minute. This is  
23 Perry. Pretrial Service Agencies that are private  
24 have the ability to arrest.

25 MR. ETTE: Yes.

1 MR. JOHNSON: Private or not.

2 MR. STRANDELL: Misdemeanor Probation.

3 MR. ETTE: Right, but we're just talking  
4 misdemeanor probation. That's what I was alluding  
5 to is misdemeanor probation. Pretrial does.

6 MR. JOHNSON: This is curriculum for  
7 both, though.

8 MR. ETTE: Yes. Correct. So there are  
9 people out there that don't have the ability to  
10 make arrests. The people that do have the ability  
11 to make arrests will be attending the Academy, and  
12 the requirements for the Pretrial Misdemeanor and  
13 Probation Officers, the training that they're  
14 going to receive is the same training that they  
15 would receive if they were at the Probation and  
16 Parole Academy.

17 The big difference is that they're not  
18 receiving how to enter information into their  
19 information management system. They're not  
20 receiving how they do a risk assessment through  
21 the -- (inaudible) -- assessment.

22 The curriculum that Kevin came up with  
23 -- and correct me if I'm wrong -- is the same  
24 curriculum that their officers are doing, minus  
25 those disciplines that are specific to the

1 Department of Corrections.

2 MR. OLSON: This is Kevin. To add to  
3 that. The topic matter you see here is the  
4 courses we've already developed with the same  
5 amount of hours that I present in the Adult  
6 Probation and Parole Basic course, with the  
7 exception of defensive tactics and firearms.

8 Now, when we talk about firearms, we do  
9 40 hours. And Jim, chime in here. If you take,  
10 even in the Law Enforcement Officer Basic course,  
11 if you take 20 people out on the firearms range  
12 for 40 hours, they get 20 hours of trigger time.  
13 Okay. So when you see only 20 hours there, that's  
14 assuming that we're going to have people who are  
15 on the range with trigger time longer actually,  
16 depending on what range they use.

17 Perry, for what it's worth, the laws of  
18 arrest in Montana apply to everybody. They don't  
19 apply to Peace Officers, they don't apply to  
20 Probation and Parole Officers. As a citizen, I  
21 can make an arrest.

22 MR. JOHNSON: This is Perry. My  
23 response to that is: We don't certify those  
24 citizens. We don't set a standard of training for  
25 them, or a standard of care for those people that

1 they're in contact with. And we're talking about  
2 my family and yours. We don't set a standard for  
3 anybody besides the stakeholders that we've got.

4 And in regards to that training  
5 curriculum right there, I just can't get my head  
6 around the fact that our detention officers get  
7 more than that, and they'll never -- unless Leo  
8 trains them to carry a gun, or that Sheriff,  
9 they're going to get 20 more hours than these guys  
10 are going to get, and these guys are going to be  
11 in our homes.

12 In regards to that idea that we're going  
13 to send them back, and they're going to get more  
14 training, last time we had a meeting we talked  
15 about there are five pilot programs out there,  
16 five pilot programs that don't have anybody to go  
17 back to get trained. They probably have one  
18 Misdemeanor Probation Officer, and there is nobody  
19 there to pick them up, and put their arm around  
20 them and say, "Hey, can I help you? Let me make  
21 sure that you understand how to do this. Let me  
22 go with you."

23 When they come back to Leo, or Tony, or  
24 wherever, they've got an FTO program. And I don't  
25 know. Maybe I'm just over reacting to this, but

1 boy, I just feel like -- I just feel like we've  
 2 taken a stab at this, and we haven't set the bar  
 3 very high. And man, I just hate to compromise,  
 4 especially when I hear that the training that our  
 5 Peace Officers and our Detention Officers are  
 6 getting now isn't enough. If that's true, then  
 7 I'm struggling with how this can be enough.

8 MR. DUTTON: This is Leo. We recognize  
 9 the immediacy of what we have to do, and I think  
 10 we have to come up with a decision today because  
 11 we're running up against a clock. And I'm  
 12 speaking for my county, that we need something --  
 13 we need to flesh this out today about how this  
 14 works, so either philosophically or mechanically,  
 15 how we come about it.

16 We recognize this will come into the  
 17 ARMs Committee. We recognize that it has to be  
 18 done. And it wasn't an all out, "Oh, we can't do  
 19 that," because we recognize the severity and the  
 20 urgency of inaction.

21 We were looking forward today to asking  
 22 new questions about what was -- the stuff we  
 23 couldn't answer yesterday of the what if's and the  
 24 shoulds and the coulds, those things that when it  
 25 comes to mind -- and maybe I'll give a shorter

1 report because I'm doing it now -- about 316 hours  
 2 going through a probation and parole, and then you  
 3 carve that out of what it takes to be -- there is  
 4 that many hours that don't relate to a pretrial,  
 5 or pretrial officer. Correct?

6 Are we over-training or under-training?  
 7 It seems like there is a huge difference, there  
 8 are a lot of maybe -- you've got a complex. We  
 9 couldn't answer those questions, so that's why  
 10 we're happy for you.

11 MR. OLSON: So this is Kevin. I'm just  
 12 going to cut to the chase. I'm done with this.  
 13 This has -- I have no dog in this fight. I've  
 14 been trying to be an advocate for Steve and Andrea  
 15 and everybody else in this. With all due respect,  
 16 I don't care if the Council votes this up or votes  
 17 it down, but they do.

18 And if you can look out at them and say,  
 19 "We're going to vote it down --" And Perry, I  
 20 love you like a brother. I wish your critique of  
 21 Law Enforcement Basic and the CDOB was as vicious  
 22 as your critique has been of this for the last six  
 23 months. Because that's the way I feel. Every  
 24 time I try to come up with a solution, I get  
 25 slapped down.

1 I bring this is as a second motion from  
 2 the Curriculum Committee. It is not going to  
 3 affect me. Leo is going to have to pay hell when  
 4 he goes home with his misdemeanor officers and  
 5 pretrial officers. Andrea and Steve are going to  
 6 be without training. And I'm not sure what  
 7 Sheriff Holton is going to do over in Ravalli  
 8 County.

9 If you want to approve it, approve it.  
 10 If you think it's grossly deficient, then vote  
 11 your conscience and vote against it. But at the  
 12 end of the day, DOC is not responsible as a  
 13 training entity. We're just not. Misdemeanor  
 14 Probation Officers supervise offenders for how  
 15 long, Steve?

16 MR. ETE: Some up to two years.

17 MR. OLSON: We supervise offenders for  
 18 four years in some cases. There's distinct  
 19 differences between what we do, and we just have  
 20 to accept that. It's just the cold hard reality.

21 But at the end of the day, we've been  
 22 kicking this can down the road for eight years,  
 23 and this was the solution that I tried to build  
 24 with the folks with the boots on the ground, and  
 25 that's what it is.

1 We're willing to step forward and  
 2 provide some instructors, MLEA is willing to step  
 3 forward and provide some instructors to make this  
 4 happen, but it is what it is.

5 CHAIRMAN HARBAUGH: Jim.

6 MR. THOMAS: This is Jim Thomas. It  
 7 seemed like the debate is whether or not this is  
 8 adequate or inadequate, based on the number of  
 9 hours compared to what someone who works in a jail  
 10 gets.

11 I mean if that's the case, then -- if I  
 12 may -- if you think this is inadequate, I mean  
 13 looking at the number of hours our basic law  
 14 enforcement officers get compared to the rest of  
 15 the country, maybe we should have a vote on  
 16 whether or not we should certify our basic law  
 17 enforcement syllabus, because it's not even close  
 18 to what other states have.

19 Should we vote on whether it's adequate  
 20 or not, and tell Glen he can't do any more basic  
 21 law enforcement? We all know that's ridiculous.  
 22 I think we've done a good job of providing  
 23 something basic, and the idea that -- I mean it's  
 24 like lots of cops carry tasers. I don't think  
 25 they teach taser here. Are they doing it now?

1 But there was a time when there wasn't.

2 I mean I need to address the basic  
3 things, and then build from it. I think this is  
4 something we can build from. From my view, from  
5 being on the committee, the curriculum committee,  
6 no, it's not perfect, you know. None of our  
7 programs are perfect, you know. And I guess it's  
8 a matter of opinion on whether or not they're  
9 adequate or not, and I guess it's what your  
10 background is in terms of what your opinion is on  
11 that.

12 But I would argue that this is a good  
13 step forward. I think we should move with this.

14 MR. DUTTON: And just to address, with  
15 all due respect, we're not condemning you for the  
16 work you did. And I think I said that when we  
17 started. But if you're going to step back and  
18 say, "Take it or leave it," that's not what we --  
19 we had questions. We liked what we saw. But what  
20 are concerns?

21 I have to go back and report to the  
22 people that I represent, so I can't in clear  
23 conscience say, "Well, that came up," and "Well,  
24 did you ask this question?" "No, because that  
25 offended Kevin or Jim." No, that's not how this

1 works, and you know it.

2 So I've got to ask the questions. It's  
3 not that I'm trying to be offensive or to you. I  
4 recognize the severity of time. I need to make  
5 sure that we have carefully, along with you,  
6 constructed something that works now, and we can  
7 build upon. We recognize that. We really do.

8 Like, "Oh, what were they thinking?"  
9 That's not it. Just didn't have anybody else to  
10 ask questions. And I don't know who to ask  
11 questions if we can't ask you questions. I really  
12 don't.

13 UNKNOWN SPEAKER: Mr. Chairman, this is  
14 maybe a step back from the intermediate discussion  
15 that we're on here. I mean I agree this maybe is  
16 a good place to start. I also agree that I'd like  
17 to see a lot more, but again, we've got to start  
18 somewhere.

19 But I want to say from my perspective,  
20 both as a defense attorney before becoming a  
21 prosecutor and a prosecutor, that when I have a  
22 case that could be a misdemeanor or a felony, it's  
23 a felony, because there about until a year or two  
24 ago, at least in Custer County, was no misdemeanor  
25 probation.

1 I don't feel like there's going to be  
2 any accountability or any follow through or any  
3 supervision if I don't get that person into the  
4 DOC for a probation.

5 Things have changed a lot since I  
6 started. I tell you now the amount of supervision  
7 that's coming out of some of these, the three year  
8 deferred or the two years deferred sentences that  
9 we're seeing, I'd almost rather see those be  
10 misdemeanors with some solid misdemeanor probation  
11 and a criminal record coming out of it.

12 For those of you that don't know, a  
13 deferred imposition of sentence does not stick on  
14 the criminal record if they successfully complete  
15 it.

16 And even from a bigger picture  
17 standpoint, if we can implement some competent  
18 misdemeanor probation services across the state, I  
19 think you're going to see your felony numbers and  
20 therefore your DOC numbers go down. So I do think  
21 we need to put as much support towards this as we  
22 can.

23 MR. OLSON: Mr. Chair, this is Kevin.  
24 And Leo, what I was alluding to wasn't --  
25 unfortunately the vote is take it or leave it.

1 That's the cold hard reality.

2 What I was alluding to was I'm not  
3 expending any more of my time trying to build a  
4 course for people that don't work for me. I  
5 turned to the experts. We turned to the experts  
6 and said, "Is this what you want?" and they said  
7 "Yes, us and our group, that's what we want."

8 So as a curriculum committee, we bring  
9 this as a seconded motion. It was unanimous. Jim  
10 Thomas, myself, and Glen Stinar voted unanimously  
11 that this is what the curriculum should look like.

12 If you vote that down, all I'm saying is  
13 I will not be actively participating in building a  
14 course. That will have to fall back to the topic  
15 matter experts.

16 CHAIRMAN HARBAUGH: Point of  
17 clarification. With a seconded motion, we treat  
18 that differently than a regular motion in front of  
19 the Council, in that it does not need a second on  
20 a seconded motion. If someone were to call for  
21 the question, we could move it then forward,  
22 following any discussion.

23 MR. JOHNSON: Could I just --

24 CHAIRMAN HARBAUGH: Sure.

25 MR. JOHNSON: This is Perry. And I'm

1 glad the way that Kevin started. I love you like  
2 a brother, too, and I argued with my brothers my  
3 whole life.

4 And I think that I do have a dog in the  
5 fight, and I think you guys all do, too, because  
6 we really do want to do the right thing. And if  
7 that came across as vicious, I'll tell you I'm  
8 sorry, but I don't know how else to be. I don't  
9 know how else to move this stuff forward without  
10 having those conversations, because I like to.

11 I like to hear, you know, where we're  
12 going and how we got there. I think we have a  
13 responsibility, not to just your stakeholders, but  
14 to your neighbors, and your communities. I think  
15 we do. And I think it's got to be in the record.  
16 I think we've got to make sure that we know how we  
17 got where we got. And I think that we have  
18 acknowledged that.

19 So in regards to calling for the  
20 question, I think that it's your guys'.

21 MR. OLSON: Mr. Chairman, this is Kevin.  
22 I actually would prefer the standard procedure, a  
23 motion and a second, because it seems that there  
24 is some people uncomfortable, and that's okay, you  
25 know. And so I don't have any -- we don't have to

1 move right to the question. I mean if there is a  
2 motion and a second, that would be fine.

3 MR. DUTTON: I think we need to. I'm  
4 looking at my -- I recognize that there is  
5 concern. That will get into my committee. But if  
6 we vote yes, which is fine, then there is a lot  
7 left to talk about in mind. But we have to  
8 decide. We have to make some positive movement.

9 MR. OLSON: And before we vote, Mr.  
10 Chairman, if we could, I'd once again ask Steve  
11 and Andrea to give any -- and to County Attorney  
12 Glade. I appreciate his comment and vision from  
13 misdemeanor services, because I think when we talk  
14 about jail overcrowding, and some of that stuff,  
15 that's where the solutions lie.

16 And I think he's right on point. I  
17 think you see a lot of these people that if there  
18 was some structured supervision for the next six  
19 months or a year, you would see a lot less of a  
20 court docket in the District Courts. So you know.  
21 And I hope that that expands.

22 You know, I went to a six week law  
23 enforcement academy. It was in Bozeman, in your  
24 stomping ground. Lived in trailer houses.

25 MR. JOHNSON: And somebody gave me keys.

1 MR. OLSON: And we've evolved to 12  
2 weeks, and we're still not there. And Glen  
3 recognizes that, and he's trying to build upon  
4 doing some online courses and stuff like that.

5 This is just a starting point. I hope  
6 it grows. I hope we're able to continue to grow  
7 our CDOB programs, and public safety communicators  
8 program. But this addresses the most intermediate  
9 needs, and I would -- feel free to chime in,  
10 folks.

11 MS. LOWER: What I would have to say is  
12 that in 2001, the legislation that passed put  
13 misdemeanor probation in the laps of this Council.  
14 In 2002, my pretrial service program was formed.  
15 At that time I worked with the prior POST Council  
16 members to make sure that we were trained and  
17 certified. We were, for the members that are new,  
18 we were issued certificates. Those certificates  
19 were pulled because they were not handled  
20 appropriate.

21 From the get go, I have handled this  
22 with the utmost integrity, and we're 18 years into  
23 it now, so I think it's time that something does  
24 need to take place. We're trying to do it right.  
25 We're trying to make sure that everybody is

1 trained appropriately, so with all of the other  
2 pilot agencies that are out there, and other  
3 counties bringing programs on, I do think that  
4 it's time to start somewhere. If that means the  
5 program grows, we tweak the training, bring in  
6 other trainers, that's fine; but it always comes  
7 back to POST Council for approval as the agenda.

8 So that's really what I have to say at  
9 this point. So thank you.

10 MR. ETTE: Steve Ette. Just a couple of  
11 things. Like Andrea alluded to, there was the  
12 training that was adopted, people went to Gallatin  
13 County approved, Gallatin County funded that,  
14 Gallatin County sent people to national  
15 associations to get certified through the Pretrial  
16 101 program through the National Association of  
17 Pretrial Services. Gallatin County sent  
18 Misdemeanor Probation Officers to the Probation  
19 and Parole Academy. Gallatin County has sent  
20 pretrial officers to the Probation and Parole  
21 Academy.

22 We came up with a suggested curriculum.  
23 If you want more hours, when we were sitting at  
24 that meeting -- I know Perry disagreed with the  
25 number of hours. Provide some recommendation to

1 the number of hours. What is it that you want us  
2 to see?

3 I'm prepared to send people up there for  
4 ten weeks, for two weeks, for five weeks.  
5 Whatever it is that you want, we're willing to do  
6 it. For 18 years we haven't had that. We just  
7 need to get it established. If it's this, and --  
8 (inaudible) -- let's do that. If it's this, and  
9 you want to come back with recommendations for  
10 something else those people want to do in between  
11 the interim, let's do that. But we need to move  
12 on, and we need to quit spinning our wheels on the  
13 same subject over and over. So I would just  
14 appreciate that happening. Thank you.

15 CHAIRMAN HARBAUGH: Without any further  
16 discussion, we have a seconded motion.

17 MR. DUTTON: Call for the question.

18 CHAIRMAN HARBAUGH: We have a seconded  
19 motion. The question has been called for. We  
20 will move to an immediate vote on the curriculum.  
21 All those in favor, please signify by saying aye.

22 (Response)

23 CHAIRMAN HARBAUGH: Opposed, same sign.

24 UNKNOWN SPEAKER: Aye.

25 CHAIRMAN HARBAUGH: So it appears that

1 the motion has carried with one nay vote.

2 MR. JOHNSON: Wait a minute. Matt did  
3 you -- sometimes on the phone you don't get an  
4 opportunity to say "aye" to approve it. Did you  
5 say "aye" to approve it?

6 MR. SAYLER: Yeah, I vote in favor.

7 CHAIRMAN HARBAUGH: Okay. I apologize.  
8 The motion carries. Thank you. So ARM Committee.  
9 Sheriff Dutton, do you have anything to add?

10 UNKNOWN SPEAKER: Hey, Jim. We've got  
11 questions.

12 MR. DUTTON: This is Leo. For those  
13 that are on the phone, I'm standing again, just so  
14 you can take pics if you need to.

15 We met yesterday and talked about this.  
16 I don't know that we need to rehash this. The can  
17 is pretty dented. I think we came out with a  
18 product. I do like the idea of building upon it,  
19 and that's what we talked about yesterday. We  
20 need to make a decision, and Perry's words is  
21 "skin the cat." I'll use something more  
22 politically correct, that we have come through the  
23 process, and made the sausage, and I think it will  
24 help. We can get these people to training.

25 But I hope that you will tell them we're

1 going to increase this, we're going to expect more  
 2 training in some of the areas. We've addressed  
 3 the areas that we were concerned about, the things  
 4 that, the liberty issues, all of those kinds of  
 5 things; but again, we have to have a starting  
 6 point.

7 Thank you again for the work that you  
 8 did. I appreciate it. If I came off crass or  
 9 disrespectful, I didn't mean to. I just needed to  
 10 ask those questions. I'm good at offending  
 11 people. I'm an equal opportunity offender, I  
 12 might had.

13 We had some other issues that --  
 14 speaking of brothers of offenders, do you want to  
 15 talk about anything, Perry?

16 MR. JOHNSON: I do. This is Perry, and

17 --

18 MR. DUTTON: He's not standing.

19 MR. JOHNSON: In regards to Leo's ARM  
 20 Committee, Tia was a party to that, so is Matt  
 21 Sayler and Jess Edwards.

22 In regards to the ARM edits, we have  
 23 some that are static that have already been  
 24 discussed, and they're found on Pages 133 to 136.  
 25 And these are the results of those conversations

1 that we had with our stakeholders during those  
 2 opportunities that we created with those special  
 3 meetings, where we talked about how do we define  
 4 those responsibilities, when do we have to report,  
 5 and how does that look.

6 So this is the final product. Katrina  
 7 and Kristina have been real involved with this.  
 8 This has also been vetted by the AG's office.

9 MS. BOLGER: Ish.

10 MR. JOHNSON: Ish. They've had an  
 11 opportunity to look at it, and give us some  
 12 feedback, because they're the ones that are going  
 13 to actually give us a final product for an  
 14 Administrative Rule change.

15 So that part of it is pretty static.  
 16 It's a product that we've already talked about,  
 17 and it's out there in front of you, because it  
 18 will be part of the process as we move these other  
 19 edits that we're going to talk about through the  
 20 process. It will be one part and parcel, the  
 21 whole package we'll go through for the  
 22 conversation with the stakeholders, where they  
 23 have an opportunity to give us feedback, where we  
 24 provide an opportunity for a hearing, or for all  
 25 of those things. So that part is static.

1 The other part that we've got in front  
2 of you would include the Misdemeanor Probation  
3 Pretrial Services discussion. So from Page 137 to  
4 142, what you're looking at -- I'm sorry -- 143,  
5 what you're looking at there is if we create a new  
6 discipline, and it sounds to me like -- I'm not  
7 trying to put the cart before the horse -- but it  
8 sounds like since we have approved the curriculum  
9 that is different than that of probation, that  
10 this is probably the conversation that we need to  
11 have.

12 I'll expand that conversation just a  
13 little bit by referring you to Page 144 through  
14 149. There was a conversation where we would have  
15 maintained a single discipline of  
16 probation/pretrial, and that would have  
17 encompassed or would have kept intact Misdemeanor  
18 Probation as Probation Officers.

19 And just for the purpose of this  
20 committee meeting then, or this Council meeting,  
21 give me a little feedback. Do you feel like  
22 you're at the position where you want to talk  
23 about that other? I think that we have to.

24 I'll circumvent this just a little bit.  
25 I would say, based on the conversation we just

1 had, that the information that is available to you  
2 on 137 provides you with a road map to create that  
3 new discipline that will be married to that  
4 curriculum that you just discussed, and you just  
5 approved.

6 So it creates that new description,  
7 Misdemeanor Probation/Pretrial Services Officer.  
8 That's the new discipline. So that certificate,  
9 after you've served a year as a Misdemeanor or  
10 Pretrial Service Officer, that's what it's going  
11 to say. It's going to say both of those things  
12 because there is only going to be one Academy for  
13 those folks.

14 Moving forward then, on Page 138, 139,  
15 and you see that we've just captured them, because  
16 this will all be edits. We'll have to have that  
17 discipline for intermediate, advanced,  
18 supervisory, command, and instructor. So those  
19 folks will all have those.

20 I'll take you all the way through to  
21 Page 142. About two-thirds of the way down,  
22 you'll see sub (4). That's new language, and  
23 that's based on the conversation that we had with  
24 Steve and Andrea at prior meetings where they  
25 said, "Hey --" Actually we just had it again --

1 where they said, "Hey, let's make sure that we  
2 capture this."

3 So it says there, "Misdemeanor  
4 Probation/Pretrial Service Officer who was issued  
5 a Probation and Parole Basic certificate prior  
6 to," the effective date of whenever the rule will  
7 be, "will have met the requirements contained in  
8 3(b) of this rule."

9 And what that says for us, at least as a  
10 staff and as a Council, is there is no further  
11 training requirement for them. If they are  
12 already certified as Probation Officers, they  
13 won't be certified again as a Misdemeanor  
14 Probation Officer, because it says they have met  
15 the requirements of this rule.

16 And then finally on Page 143, there is a  
17 couple of options there for you. Under sub(5),  
18 sub(5), and it's a conversation that, again, it  
19 comes back to that firearms issue in regards to  
20 those agencies that employ these folks that have  
21 to ability to arrest, and elect the opportunity to  
22 arm them.

23 So I can read it for you if you want,  
24 but I know that you've got it right in front of  
25 you, so I don't know if that's necessary either,

1 or maybe I need to read it into the record. I  
2 don't know.

3 CHAIRMAN HARBAUGH: -- (inaudible) --

4 MR. JOHNSON: Sub(5), the first option  
5 is "Any Misdemeanor Probation/Pretrial Service  
6 Officer must meet the standards of this rule, and  
7 receive a minimum of a 40 hour POST approved  
8 firearms course prior to carrying a firearm during  
9 the officer's work assignment;" or sub(5), "Any  
10 Misdemeanor Probation/Pretrial Services Officer  
11 must meet the standards of this rule, and attend  
12 the 120 hour POST approved advanced Misdemeanor  
13 Probation Pretrial Services Course prior to  
14 carrying a firearm or making any arrests during  
15 the officer's work assignment."

16 I see already here that that would be a  
17 one 40 hour, because that's the curriculum we just  
18 approved. So those are a couple basic.

19 MS. BOLGER: Not advanced. This is  
20 Katrina. This is a prior version of that  
21 language. I don't know how that -- (inaudible) --  
22 but it should be they should receive a minimum of  
23 the POST, the appropriate POST approved basic.

24 MR. JOHNSON: So that would be, in that  
25 case -- this is Perry again. In that case, that

1 would be POST approved basic Misdemeanor  
2 Probation/Pretrial Services course.

3 MR. OLSON: So this is Kevin. My only  
4 comment is: Why are you plugging in the hours?  
5 If this changes next year, you're going to go back  
6 to --

7 MS. BOLGER: We won't. The new language  
8 would actually -- it would say, "The appropriate  
9 POST approved basic," it wouldn't say --

10 MR. OLSON: Okay. I just don't want you  
11 to have to go through rulemaking process again  
12 every time you modify the course.

13 MR. STRANDELL: -- (inaudible) --

14 MS. WHITE: In our county, Rosebud  
15 County -- this is Kristine White. We have  
16 misdemeanor probation pretrial supervisor who is  
17 employed by the county. They're not a private  
18 entity. And I'm wondering is there any others  
19 that are very similar to this, and whether this  
20 would apply to her. She's been doing it for 20  
21 years, and she did start under a grant process,  
22 and did come to the Department of Corrections for  
23 some training, but it's from 20 years ago.

24 So I'm wondering how these rules would  
25 affect her personally. Would she be encompassed

1 in them, or --

2 MR. JOHNSON: This is Perry. This is  
3 kind of a cruel conversation, because we don't  
4 know who that is. We have no record of a  
5 Misdemeanor Probation Officer in Rosebud County.  
6 We've never received a notice of appointment. We  
7 don't know who that is. So --

8 MS. WHITE: She sent in paperwork about  
9 two years ago to the Department of Corrections,  
10 the training department.

11 MR. JOHNSON: You think we do have a  
12 Misdemeanor Probation Officer in Rosebud County?

13 MS. KEUNE: I think so. Isn't that who  
14 Allen was speaking about?

15 MS. WHITE: Yes.

16 MS. KEUNE: I think we determined she is  
17 in our data base. Well, she's been in and out.  
18 I'm not exactly sure where it landed, and if she  
19 did attend the Basic Academy or not.

20 MR. JOHNSON: So let me ask some follow  
21 up questions. Who does she actually work for?  
22 Who supervises her?

23 MS. WHITE: That's the biggest one that  
24 we're having right now. We wanted the  
25 Commissioners to monitor her because the Court

1 really doesn't and I really don't. I don't want  
2 to. So the Commissioners do. But she's her own  
3 department head, so she has her own department.

4 MR. JOHNSON: Well, this is Perry again  
5 then. I think that the most fair way to even  
6 analyze that whole dynamic would be to take a look  
7 at her training record, just like what Andrea, and  
8 Steve, and that staff did over there. We have to  
9 take a look at that.

10 Because actually when they talk about  
11 what the Council did 20 years ago, really I get  
12 it. You know, I have heartburn about that. But  
13 you guys have figured it out. I've got heartburn  
14 about a lot of stuff, right?

15 So the bottom line is they've made some  
16 decision that really, well, we've really got to  
17 looking at it, and some approvals contingent on  
18 some training that wasn't sufficient to meet the  
19 standards and the statutes. So I don't know  
20 what --

21 MS. WHITE: Yeah, I know she's  
22 maintained her yearly classes, and updates, and  
23 training.

24 MR. JOHNSON: So that would be an  
25 analysis. If we've got that record of that

1 employee, we would be able to analyze that  
2 transcript through the data that's available to  
3 us, if it was provided to us. If it wasn't, we'd  
4 have to go back and take a look at her training  
5 and what she can provide.

6 MS. WHITE: I can have her resubmit.

7 MR. JOHNSON: Well, I don't know if it's  
8 necessary. You know, there is 5,400 Public Safety  
9 Officers, so to just talk about one it would be  
10 difficult. But I think there is several out there  
11 in that same position, even with the private  
12 vendors, I think. We don't have any idea who the  
13 identity of many of them are. We just don't. But  
14 that's something that we could follow up, and have  
15 that conversation with you specifically in regards  
16 to that person right there.

17 MS. WHITE: Okay. Perfect.

18 -- (inaudible conversation) --

19 MR. JOHNSON: So Mr. ARM Chairman, I  
20 think the only other thing I would follow up  
21 besides this conversation -- I'm not asking for a  
22 decision -- would be to look at the material on  
23 Pages 150 and 151.

24 I spoke earlier about Kimberly in  
25 regards to Public Safety Communicators. And

1 during the Legislature, there was a conversation  
2 that we had with the American Heart Association,  
3 where they wanted to -- (inaudible) -- training  
4 related to -- go ahead, Kevin.

5 MR. OLSON: Not to interrupt, but can I  
6 back up the bus for a second, because I'm looking  
7 in my book here, and I see on 137, this is  
8 creating a distinct discipline for Misdemeanor  
9 Probation and Pretrial Services Officer; but on  
10 154, I see you're combining them. Which one is  
11 it?

12 MR. JOHNSON: Stop that conversation  
13 about anything after 143.

14 MR. OLSON: Okay. Thank you, Perry.  
15 Sorry to interrupt you.

16 MS. BOLGER: I need clarification here.  
17 Is the Council going to pick which Subsection 5,  
18 and are we going to try to -- (inaudible) --

19 MR. JOHNSON: I think -- This is Perry  
20 again. I think that we are. But I think that we  
21 need to make sure that they know the whole package  
22 that they're going to move.

23 MS. BOLGER: Okay.

24 MR. OLSON: This is Kevin. Leo, what  
25 was the desire of the ARM Committee as far as --

1 MR. DUTTON: This is Leo. We talked  
2 about different ones. We weren't able to settle  
3 on one until we had that conversation with you  
4 today. So we don't bring a real recommendation,  
5 but I think we've come up with some language that  
6 will work. Katrina wrote it down. I think we're  
7 able to make a decision today about which it  
8 should be.

9 MS. BOLGER: This is Katrina again.  
10 I've noticed that the definition that I drafted is  
11 not included in here. Should I print that off for  
12 everybody to have a copy?

13 MR. JOHNSON: This is Perry again, and  
14 the definition would be found in --

15 MS. BOLGER: That would be part of  
16 23.13.102.

17 MR. JOHNSON: That's the definitions  
18 that are found in the Administrative Rules for  
19 POST, and that's where we define --

20 MS. BOLGER: We would need to provide a  
21 definition of what it meant to what  
22 Probation/Pretrial Service Officer is.

23 MR. JOHNSON: So we do need that. We  
24 will need that.

25 MS. BOLGER: -- (inaudible) --

1 MR. JOHNSON: Okay. So actually based  
2 on that curriculum that we just reviewed, it looks  
3 like that second part of sub(5) would fit already.  
4 We wouldn't need to have further conversation  
5 about that, the way it looks to me. There is a  
6 firearms training involved in that basic.

7 MR. DUTTON: This is Leo. Minus the  
8 hours.

9 MR. JOHNSON: Right.

10 -- (inaudible) --

11 MR. JOHNSON: Break that out.

12 CHAIRMAN HARBAUGH: Approved.

13 MS. BOLGER: Perry, would you like for  
14 me to clean this up, and also print those off for  
15 everybody?

16 MR. JOHNSON: I think that would be  
17 super.

18 UNKNOWN SPEAKER: Can you give them a  
19 cool name instead of Misdemeanor  
20 Probation/Pretrial?

21 UNKNOWN SPEAKER: What kind of cool name  
22 do you want?

23 UNKNOWN SPEAKER: That's what's written  
24 in the law.

25 -- (inaudible conversation) --

1 CHAIRMAN HARBAUGH: It is a bureau.

2 MR. JOHNSON: While Katrina is doing  
3 that, I will talk to you about these minimum  
4 standards, 150 and 151.

5 The American Heart Association wants  
6 minimum training standards in regards to telephone  
7 CPR, TCPR, and we've got some additional language  
8 that Kimberly is talking to AVCO about. I talked  
9 to MSPOA a couple of weeks ago about the  
10 possibility that we were going to edit this  
11 requirement in the Administrative Rules.

12 The bottom line is is it looks like we  
13 wouldn't put a specific number of hours, but we  
14 would put the curriculum that is necessary. It's  
15 very similar to what we put in there in regards to  
16 the 20 hours of documented agency -- (inaudible)  
17 -- they have to go over some things, and the same  
18 with this.

19 MR. THOMAS: This is Jim. Isn't that  
20 already included in the EMT training for basic  
21 class?

22 MR. JOHNSON: This is Perry again, and  
23 I'll respond to this before I open it up to Mary  
24 Ann.

25 It is, and what they're trying to

1 capture is all those people that have not attended  
2 that EMT training before. This would capture  
3 them, and bring everybody up to at least that same  
4 standard of performance.

5 MS. KEUNE: Perry, we do have in the  
6 additional --

7 MR. JOHNSON: Okay. In front of this.

8 MS. KEUNE: -- and spell that out.

9 MR. JOHNSON: Oh, yeah, I see it. So  
10 that additional material is in the front of your  
11 book. It's double sided, and there's -- I've got  
12 to make sure that you understand that this is just  
13 a draft. That's all. But it was something that  
14 we wanted to talk to you about, because if we  
15 don't do something with it, I can see the American  
16 Heart Association coming back to the Legislature  
17 and trying to capture that with a statutory  
18 requirement for Public Safety Communicators.

19 So this is Perry again. And I guess  
20 looking at what we're doing here today, that's the  
21 informational, wouldn't you say, Leo? I don't  
22 think that we want to move on that, because we  
23 don't have it finalized as a draft.

24 The rest of this stuff, when Katrina  
25 comes back in the room with those clean copies, I

1 think that's something that your committee wanted  
2 to move forward.

3 CHAIRMAN HARBAUGH: Do you -- while  
4 we're waiting for Katrina -- do you want to move  
5 forward to Case Status?

6 MR. STRANDELL: Yes, Mr. Chairman. I  
7 can report that the Case Status Committee  
8 continues to meet monthly, and reviews a large  
9 volume of cases every month. I'd encourage  
10 anybody to watch to see how our committee  
11 operates, and the process that we use, to stick  
12 around after this meeting today and listen to the  
13 discussion. So --

14 MR. JOHNSON: This is Perry. There are  
15 --

16 -- -- (inaudible) --

17 MR. STRANDELL. Oh, I'm sorry. Okay. I  
18 keep forgetting about that. Okay. Disregard my  
19 previous -- do you want me to start over again?

20 But anyway, we stay busy, and we're  
21 still up to around 80, 83 cases, I believe, on the  
22 docket that we're reviewing. We've got about 30  
23 that we're reviewing here at the end of the  
24 meeting that you cannot attend.

25 UNKNOWN SPEAKER: But you have almost

1 400 pages then.

2 UNKNOWN SPEAKER: Yes.

3 CHAIRMAN HARBAUGH: Anything else, John?

4 MR. STRANDELL: No.

5 CHAIRMAN HARBAUGH: Business Plan and  
6 Policy is -- (inaudible) --

7 MR. JOHNSON: And this is Perry. There  
8 was no -- they did not meet since the last POST  
9 Council meeting.

10 CHAIRMAN HARBAUGH: Leo, you're chair of  
11 the Coroner Committee. Any report there?

12 MR. DUTTON: No report. Who's on it? I  
13 can't be a committee of one.

14 MR. JOHNSON: It's Leo, and Wyatt, and  
15 Kristine. There is one more.

16 And I did want to have just a little  
17 conversation about that committee. I would ask,  
18 Leo, if you would consider calling a committee  
19 meeting in the interim between now and February,  
20 and I do that because I'd like to have that  
21 conversation about inquests processed and  
22 potential training for Coroners across the state.  
23 And I think with Wyatt and Kristine on that  
24 committee, I think we could put together at least  
25 a pretty good outline of what might be necessary

1 for those Coroners that are tasked with that  
2 responsibility. Because I think that's kind of --  
3 (inaudible) -- at least I've heard that.

4 MR. STRANDELL: Mr. Chairman.

5 CHAIRMAN HARBAUGH: Yes.

6 MR. STRANDELL: How many are left that  
7 can actually do that?

8 CHAIRMAN HARBAUGH: That's one of the  
9 issues that's come about now, is we're I think  
10 required currently to have a civilian Coroner  
11 conduct those, and I know there's been some  
12 discussion that we had in regards to whether or  
13 not Deputy Coroners that are -- (inaudible) -- and  
14 there was a lot of things to be looked at there  
15 that we need to kind of flesh out, and --

16 UNKNOWN SPEAKER: I know Al Jenkins and  
17 the Yellowstone guy are just back, to back, to  
18 back inquests all over the state, because they're  
19 about the last ones left.

20 MR. JOHNSON: Well, this is Perry. I  
21 think there are 17 Coroners that are civilians.  
22 There's 39 --

23 MR. DUTTON: There are 42.

24 UNKNOWN SPEAKER: Are combined, aren't  
25 they?

1 MR. JOHNSON: I thought it was only 39.  
2 I could check my records -- (inaudible) --.

3 So there's some out there. But I think  
4 that is a good question.

5 -- (inaudible conversation) --

6 MR. DUTTON: That is a hotly contested  
7 question at our Coroners conference about the  
8 evolution of combining offices of Sheriff Coroner,  
9 and who's going to conduct a Coroner's Inquest.  
10 The latest opinion has been, like Gallatin County  
11 I believe, and me, I employ civilian Coroners, and  
12 even though they work for the Sheriff's Office,  
13 they're not -- (inaudible) -- and they're eligible  
14 to -- as long as it's not for me, and as long as  
15 Gallatin County doesn't do their own.

16 But there's been some questioning of  
17 that, but I think the real people who have to be  
18 comfortable with that are the County Attorneys,  
19 because they're supposed to lead it. So we really  
20 need the input of that going forward, because I  
21 can see more Commissioners thinking that it saves  
22 money, and for whatever reason they think that.

23 Anyway, I think that's the question. So  
24 if we could assist me in helping doing a Doodle  
25 Poll or whatever to get that date, I think that

1 would be great.

2 MR. JOHNSON: Okay. So that would be  
3 your committee -- this is Perry again -- that  
4 would be your committee, and we'd have on your  
5 committee, we've got the County Attorneys'  
6 representative on POST Council and the President  
7 of the Montana County Attorneys Association, so  
8 that's a pretty nice partnership.

9 MR. DUTTON: I mean we'll talk to them a  
10 lot.

11 MR. JOHNSON: Okay. Good. That's the  
12 only thing that I wanted to bring to this group,  
13 because I think that's a good project for the  
14 Council.

15 MR. DUTTON: That's my report, Mr.  
16 President.

17 CHAIRMAN HARBAUGH: Thank you. So  
18 moving to the one year training requirement waiver  
19 -- (inaudible) --

20 MR. JOHNSON: Okay. This is something  
21 that I alluded to earlier. This is found on Page  
22 152 and 153. His request to us came in regards to  
23 some Desert Snow thing that he attended. His  
24 application came in 30 days or so after the one  
25 year sunset. And to be real honest with you, this

1 is pretty good training. You know, when they go  
2 away to Desert Snow, it's pretty intensive.

3 And this is what we talked about before  
4 on a case-by-case basis. You're probably going to  
5 see me bring those to you, and ask you to consider  
6 either waiving or denying that request for that  
7 training on the POST transcript.

8 So that would be an action item that I  
9 would ask you to consider today, whether or not  
10 you would consider his appeal, and that's where  
11 it's at.

12 CHAIRMAN HARBAUGH: Is it your  
13 recommendation, or do you want to make a  
14 recommendation to the Council?

15 MR. JOHNSON: I would recommend that we  
16 consider his appeal favorably, and I think I base  
17 that on the fact that this is a fellow that was an  
18 Undersheriff, and I recognize that, as a past  
19 Sheriff, I really appreciated those guys that were  
20 packing my parachute every day, and they were  
21 busy. And so I get it. And we're all busy, but  
22 the bottom line is he said, "This is my fault.  
23 It's not yours. But I would still ask you to  
24 consider it," and I appreciate that kind of  
25 response instead of saying, "Hey, I deserve this."

1 I would recommend that we grant that  
2 consideration.

3 CHAIRMAN HARBAUGH: I would entertain a  
4 motion.

5 MR. GLADE: So moved.

6 MR. STRANDELL: John seconded.

7 CHAIRMAN HARBAUGH: I have a motion and  
8 a second, Wyatt and John. Any further discussion?

9 (No response)

10 CHAIRMAN HARBAUGH: Move to an immediate  
11 vote. All those in favor, signify by saying aye.

12 (Response)

13 CHAIRMAN HARBAUGH: Opposed, same sign.

14 (No response)

15 CHAIRMAN HARBAUGH: Motion carries.

16 MR. JOHNSON: That takes us to Page 154  
17 to 164, and this is a request from Undersheriff  
18 DuBois, however you say that, the Undersheriff for  
19 Flathead County.

20 And on Page 154, he kind of states what  
21 the issue is. They have a real specific canine  
22 program that encompasses only three canine  
23 officers in the state of Montana. He's asking for  
24 your consideration in regards to waiving that  
25 "open and advertised," because of the three people

1 that this would have actually had some impact on,  
2 they all were involved in the training at some  
3 level.

4 So the decision is yours to make in  
5 regards to whether that was adequate or not in  
6 order for me to advertise, and it would be  
7 necessary for him to have this application.

8 CHAIRMAN HARBAUGH: Specific  
9 recommendation from the Bureau Chief?

10 MR. JOHNSON: I would recommend that you  
11 grant it. And I'll remind you that historically  
12 there was, I think it was called Farro (phonetic).  
13 It was some kind of a standing device where there  
14 were only two agencies in Montana that had it.  
15 They asked for the same consideration and you  
16 granted it because it was such a specific piece of  
17 equipment. Nobody else would have enjoyed the  
18 benefit of any training to it because they didn't  
19 have it.

20 MS. ROBBIN: This is Tia. So moved.

21 UNKNOWN SPEAKER: Second.

22 CHAIRMAN HARBAUGH: I have a motion and  
23 a second. Any further discussion?

24 (No response)

25 CHAIRMAN HARBAUGH: Move to an immediate

1 vote. All those in favor, please signify by  
2 saying aye.

3 (Response)

4 CHAIRMAN HARBAUGH: Opposed, same sign.

5 UNKNOWN SPEAKER: Well played.

6 CHAIRMAN HARBAUGH: Thank you. Motion  
7 carries.

8 MR. JOHNSON: This is Perry. And I  
9 think we would go right back to that draft  
10 Administrative Rules, keeping in mind now, this is  
11 the clean copy that you're looking at, and now  
12 there's a definitions page here in regards to  
13 Misdemeanor Probation/Pretrial Service Officers.

14 I think -- I've got to look here -- do I  
15 have any additional information. I thought I had  
16 an email from Andrea Lower that I was going to --  
17 (inaudible) -- with this. But I don't see it.

18 UNKNOWN SPEAKER: -- (inaudible) --

19 MS. BOLGER: -- (inaudible) -- I don't  
20 think we had it printed.

21 MR. JOHNSON: Oh, okay. Andrea had  
22 suggested that we define -- help me here, Andrea.  
23 She suggested that we break these definitions out,  
24 and so without getting real specific, I'm going to  
25 turn this back to Katrina to speak to that just a

1 little bit.

2 MS. BOLGER: The reason that the  
3 definition is for the combined Misdemeanor  
4 Probation/Pretrial Service Officer is because  
5 we're defining the discipline itself. We're not  
6 adding to definitions that are already in the  
7 statute of each of the two disciplines. We're  
8 saying these are the people that are Public Safety  
9 Officers that are this discipline that gets this  
10 certificate. Does that make better sense?

11 MS. LOWER: It does. What has come up  
12 in some of our meetings with some of the other  
13 agencies, within the private entities, is --  
14 (inaudible) -- as being Misdemeanor Pretrial  
15 Officers, but we supervise more than misdemeanors,  
16 we supervise -- (inaudible) --

17 And then on the Misdemeanor Probation  
18 end, you've got, like we were talking, the cases  
19 where they've been either amended down, and  
20 there's been negotiations where the felonies are  
21 being amended down to those misdemeanors, and they  
22 are actually felony offenders, but now they're on  
23 a misdemeanor conviction. So those are just  
24 clarifications on my part.

25 MR. JOHNSON: This is Perry. Well, I

1 just want to make sure, though, that this  
2 definition still captures what you had hoped to  
3 capture.

4 MS. LOWER: Yeah, I'm fine --  
5 (inaudible) --

6 MR. METROPOLIS: Mr. Chair, this is Jon  
7 Metropolis. What is the definition you're  
8 referring to?

9 MS. BOLGER: Jon, do you want me to read  
10 it? This is Katrina.

11 MR. METROPOLIS: Okay.

12 MS. BOLGER: It would be part of  
13 23.13.103. It says, "As used in this chapter, the  
14 following definitions apply: 'Misdemeanor  
15 Probation/Pretrial Service Officers' are Public  
16 Safety Officers who regularly perform the  
17 following functions as part of their work  
18 assignment."

19 Subsection (a): "Gather information  
20 about pretrial defendants or misdemeanants through  
21 interviews and records checks."

22 Subsection (b): "Report information  
23 regarding pretrial defendants or misdemeanants to  
24 a Judge so a Judge can determine the propriety of  
25 pretrial supervision, detainment, or defendant's

1 revocation."

2 Subsection (c): "Monitor pretrial  
3 defendants or misdemeanants compliance with  
4 Court-ordered pretrial release or misdemeanor  
5 probation conditions."

6 Subsection (d): "Provide information  
7 and resources to pretrial defendants or  
8 misdemeanants to assist in prevention of  
9 violations of Court-ordered conditions, and --"

10 Subsection (e): "Report violations of  
11 Court-ordered conditions to the Court."

12 MR. METROPOLIS: Thank you. Is this  
13 posted on the agenda or in this document anywhere?  
14 I have not noticed it.

15 MS. BOLGER: I don't believe so, because  
16 I think it got drafted in the eleventh hour.

17 MR. METROPOLIS: Okay. I tried taking  
18 notes, Katrina, and I thank you for reading that.  
19 I'm not very good. If you could just email it to  
20 me when you get a chance, I'd appreciate it.

21 MS. BOLGER: I will do that.

22 MR. METROPOLIS: Thank you. Thank you,  
23 Mr. Chairman. I apologize for interrupting.

24 CHAIRMAN HARBAUGH: Thank you. Sheriff  
25 Dutton.

1 MR. DUTTON: One of the questions I  
2 anticipate coming is it says "Public Safety."  
3 Does this incorporate the public and private, or  
4 now giving --

5 MS. BOLGER: This is Katrina. The  
6 Montana POST Council is in charge of setting  
7 standards and certifying Public Safety Officers.  
8 Those private entities are now defined as Public  
9 Safety Officers in statute.

10 MR. DUTTON: Thank you. Mr. Chairman,  
11 that's the question I anticipated, so thank you  
12 for the clarification.

13 -- (inaudible) --

14 MR. DUTTON: I think we're done -- If  
15 you notice --

16 CHAIRMAN HARBAUGH: On the ARM?

17 MR. DUTTON: Yeah, on the ARMs, the last  
18 page, does that meet with what our conversation  
19 was?

20 CHAIRMAN HARBAUGH: Subsection 5 or 5?

21 MR. DUTTON: Yeah, 5 or 5. The one --

22 CHAIRMAN HARBAUGH: Do you want to take  
23 a look at that and make sure that --

24 MR. DUTTON: Yes, we need to decide on  
25 which ones that you feel appropriate --

1 MS. BOLGER: If either.

2 MR. DUTTON: Yeah. I guess the question  
3 is: One, do you want it in there? Question two  
4 would be: Which one?

5 MR. OLSON: This is Kevin. The only  
6 comment I would make, are we setting a double  
7 standard? Because we don't have anywhere in the  
8 rule that requires a law enforcement agency for  
9 giving -- (inaudible) -- for basic.

10 MR. DUTTON: Can you speak just a little  
11 lower? I can barely hear you.

12 MR. OLSON: So I'm asking are we setting  
13 a double standard? Because we have nothing in  
14 Administrative Rule that prohibits a law  
15 enforcement agency from issuing a firearm to a  
16 Peace Officer prior to attending the basic.

17 MR. DUTTON: As long as -- This is Leo.  
18 I think when I hire someone --

19 MR. OLSON: I know you do, but I'm  
20 talking about any agency in Montana. There is  
21 nothing within our Administrative Rules that says,  
22 "Listen, if you hire a Deputy or a Police Officer,  
23 they can't carry a firearm until they attend the  
24 basic training."

25 MS. BOLGER: This is Katrina. These

1 people don't have to arrest.

2 MR. OLSON: Right.

3 MS. BOLGER: They can choose to do so,  
4 and that's a little bit different than a Peace  
5 Officer. Also we have private entities hiring  
6 these people.

7 MR. OLSON: I'm not arguing the merits  
8 of what it says. I'm just saying, going back to  
9 looking globally at this.

10 CHAIRMAN HARBAUGH: I guess my thought  
11 is in regards -- kind of parallel what Katrina is  
12 saying, that I don't look at it as a double  
13 standard because they're not all Peace Officers.  
14 They are now by statutory definition Public Safety  
15 Officers, which we oversee. But some of them are  
16 civilians, and I guess in my mind, there's -- if  
17 you give a -- (inaudible) -- to me, in making that  
18 requirement in regards to the firearms. Anyone  
19 else feel differently?

20 MR. DUTTON: That's how the committee  
21 felt. That's why it's in there.

22 CHAIRMAN HARBAUGH: If we could prefer  
23 -- Sorry. Go ahead, Jim.

24 MR. THOMAS: I think we were thinking --

25 CHAIRMAN HARBAUGH: -- prefer a motion

1 to either delete --

2 MR. THOMAS: -- the second of the two be  
3 offered up.

4 MR. JOHNSON: This is Perry. So  
5 actually they wouldn't be able to make an arrest  
6 prior to going to Basic, or carry firearms.

7 MR. GLADE: This is Wyatt. They could  
8 still make arrests as citizens. They wouldn't  
9 have the statutory authorization or all of the  
10 rights and abilities they would have as a Public  
11 Safety Officer.

12 MR. OLSON: So this is Kevin. A  
13 question for you, Wyatt. If the statute says that  
14 Misdemeanor Probation/Pretrial Service Officers,  
15 even private, have the power to make arrests, with  
16 no mention of basic or training, can we narrowly  
17 confine that further by rule?

18 MR. GLADE: I don't understand your  
19 question.

20 MR. OLSON: So what's the statute,  
21 Katrina? Do you know on that? On the pretrial.

22 MS. BOLGER: It's in our book here. Tab  
23 2. The one for Pretrial Services, 46.9.505.

24 UNKNOWN SPEAKER: Page 43.

25 MS. BOLGER: Page 43, Subsection 5.

1 Wait. Subsection 3, "If the defendant has been  
2 released under the supervision of a pretrial  
3 service agency, an officer of that agency may  
4 arrest the defendant without a warrant, or may  
5 deputize any other officer."

6 When drafting this, the thought behind  
7 it I think was that the statute allows them the  
8 authority to arrest. We're not saying they can't  
9 arrest. We're setting a standard for their  
10 ability to arrest, which the Council could do. I  
11 think that was the idea behind it.

12 MR. GLADE: I still don't understand the  
13 question.

14 MR. OLSON: So the statute is clear.

15 MR. GLADE: Right.

16 MR. OLSON: These people may make  
17 arrests. There's no mention within this that they  
18 have be trained or been at least to the Academy.

19 CHAIRMAN HARBAUGH: In comparison to a  
20 sworn officer who might be hired and put on the  
21 street to carry out his duties before attending  
22 Basic, this would require essentially that they  
23 attend that training, including firearms training.

24 UNKNOWN SPEAKER: This is an  
25 Administrative Rule that we are entertaining at

1 the moment.

2 CHAIRMAN HARBAUGH: Yes.

3 UNKNOWN SPEAKER: And this is a State  
4 statute. And so I might need some help from our  
5 Administrative Rule expert over there on which one  
6 would be more specific and which one would have  
7 controlling authority there.

8 And I think you've got to step back and  
9 realize, like you mentioned, citizens can arrest.  
10 The real tough question is how much force can they  
11 use, and what investigative procedures can they  
12 use to do so. And I'm talking about a lot of  
13 times you get officers outside of their  
14 jurisdiction, and they don't know they're outside  
15 of their jurisdiction, they're trying to make an  
16 arrest.

17 I remember a DUI where an officer ran  
18 somebody through field sobriety tests, and he was  
19 outside of his jurisdiction, and that became a big  
20 issue about whether you could or could not do  
21 that.

22 MR. GLADE: So I don't know that I know  
23 the answer to your question, Kevin.

24 MR. OLSON: This is Kevin. I like the  
25 concept. I do. You know, if we have authority to

1 more narrowly tailor a statute.

2 MS. BOLGER: If you look at -- it's in  
3 one of your handouts -- the new version of  
4 2.15.2029, Subsection 2. "A council may adopt  
5 rules to implement the provisions of this  
6 statute." And POST's statute 44.4.403 says that,  
7 "The Council shall establish basic and advanced  
8 qualification and training standards for  
9 employment."

10 MR. OLSON: Again, just being devil's  
11 advocate, for employment, not once they're hired,  
12 then our standards become moot, but how they're  
13 hired.

14 MR. METROPOLIS: Mr. Chairman, this is  
15 Jon Metropolis. I again apologize for  
16 interrupting.

17 CHAIRMAN HARBAUGH: Go ahead, Jon.

18 MR. METROPOLIS: May I have a minute?  
19 Okay. I have two comments to make. I'm an  
20 attorney for MCS. One concerns form, and one  
21 concerns substance.

22 The first one on substance, I think Mr.  
23 Olson is raising an important and substantive  
24 point, for ARMs need to have a statutory basis,  
25 and they need to stay within the bounds of that

1 statutory basis.

2           So when the statute authorizes arresting  
3 authority, all I will say right now is I think an  
4 agency should think very carefully about whether  
5 they can limit that, especially significantly as  
6 this one does.

7           My second comment concerns form. As I  
8 read this second alternative for Subsection 5, I  
9 think the language might do something that it's  
10 not intended to do, because it seems to say that  
11 even if there's a Pretrial Services Officer making  
12 an arrest but not carrying a firearm, that person  
13 would have had to take the 120 hour POST approved  
14 advanced course.

15           I don't think that's the intention of  
16 that section, because it seems to be aimed at  
17 firearm proficiency, I think. But I think that's  
18 the way it is drafted. Thank you, Mr. Chairman.

19           CHAIRMAN HARBAUGH: Thank you, Jon.  
20 Response.

21           MS. LOWER: So what I wanted to add is  
22 that in Gallatin County, we cannot allow the  
23 staff, if they haven't been to the Academy, to  
24 sign off on -- (inaudible) -- pick up and take to  
25 jail.

1           Playing devil's advocate again,  
2 something that you might want to think about is  
3 you've got somebody in Eureka, Libby, one-man  
4 agency; they offer an extension, it's granted, so  
5 there's 17 of their 18 that can't do their job  
6 before they're actually at the Academy. So  
7 they're working, you know, a length over a year at  
8 their current position with no powers to detain or  
9 arrest individuals that they're working with.

10           CHAIRMAN HARBAUGH: -- (inaudible) --

11           MR. DUTTON: This is Leo. Are we  
12 painting ourselves in the corner we don't want to  
13 be? Is that what you're saying?

14           MR. OLSON: No, I was just bringing it  
15 up because -- and Kristina, please chime in --  
16 (inaudible) -- I was just concerned that  
17 statutorily, we would give them the power of  
18 arrest in a broad sense, and through the  
19 Administrative Rulemaking, we're going to further  
20 define that that power of arrest can only exist  
21 based upon the requirements we put into rule.

22           MR. GLADE: This is Wyatt. I think  
23 that's exactly what Administrative Rules are  
24 supposed to do, is take the broad statutory  
25 authority, and make it more specific.

1 MR. OLSON: That's all I was looking  
2 for, Wyatt.

3 MR. DUTTON: This is Leo. Are we, as  
4 the attorney, Mr. Metropolis, said on the phone,  
5 do we have an equity issue here, where the statute  
6 says they can, we're saying you can, but? Are we  
7 going to be in conflict with statute? I'm looking  
8 at our legal representative.

9 MS. NEAL: This is Kristina. And I  
10 would agree with Wyatt. I think it says that you  
11 may, and you put restrictions -- you have so many  
12 things with that statute, or change the statute.  
13 You just clarify and put restrictions on the  
14 statute, but I don't think it would be  
15 appropriate.

16 MR. GLADE: This is Wyatt. I want to  
17 take a step back and look at the situation for  
18 Misdemeanor Probation Officer's going to need to  
19 make an arrest. I'm glad we've got some in the  
20 room.

21 In my jurisdiction, we have Pretrial  
22 Services/Misdemeanor Probation Officer that's  
23 partly grant funded, partly County funded; and we  
24 handle this by saying you also file an ROE, and  
25 we'll get a warrant, and a law enforcement officer

1 will do the arrest. I know in bigger  
2 jurisdictions maybe that wouldn't work, but I  
3 guess I'm looking at this.

4 I don't think this is going to cause a  
5 big disruption in the Misdemeanor Probation  
6 Officers being able to do their job if they can't  
7 make arrests until they've been trained. They can  
8 have a period of time where they're not able to  
9 make arrests, and they're going to have to either  
10 get a law enforcement officer to help them, or  
11 find some way to cover that need; but I don't  
12 think this is going to disrupt their job, their  
13 ability to do their job, is my thoughts.

14 MS. NEAL: This is Kristina, and I would  
15 think you'd be opening yourself up to more  
16 liability if you didn't have some type of  
17 clarification on when they were able to make  
18 arrests. Having Misdemeanor Probation Officers  
19 making arrests without any type of training is  
20 opening up some type of liability as well.

21 CHAIRMAN HARBAUGH: In reading No. 5,  
22 does that really comport with how you're doing it  
23 now, where it says they have to meet the Basic  
24 course prior to carrying a firearm or making  
25 arrests, and you're saying until they can, you

1 don't allow them effect an arrest or --  
2 (inaudible) -- in your organization?

3 MS. LOWER: Well, we don't carry a  
4 firearm, first of all, in Gallatin County, so  
5 that's not an issue for our agency. I know some  
6 smaller agencies get to carry a firearm, so --

7 We do not allow the staff to sign an  
8 authorization to -- just like a field warrant for  
9 probation. We don't allow them to sign off on any  
10 of that paperwork until they've been through the  
11 Academy.

12 CHAIRMAN HARBAUGH: Thank you.

13 MR. OLSON: This is Kevin. And I concur  
14 with what Wyatt said. Even in the statute for  
15 Adult Probation and Parole, we can give verbal  
16 authorization to make an arrest, but that's not  
17 actually making the arrest. So he hits it right  
18 on the head, is in those jurisdictions where they  
19 haven't been to the training, they could sign a  
20 field warrant, or detainer, or go to the Court and  
21 get a warrant, and then have a Law Enforcement  
22 Officer make the arrest on their behalf.

23 CHAIRMAN HARBAUGH: Anyone want to make  
24 a motion?

25 MR. JOHNSON: Jim, did you already make

1 the motion?

2 MR. THOMAS: I did not.

3 CHAIRMAN HARBAUGH: He was almost --  
4 (inaudible) --

5 MR. THOMAS: I was about to, and then  
6 Tony just walked right over the top of me.

7 CHAIRMAN HARBAUGH: I did. I'm guilty.

8 MR. THOMAS: My motion was to use the  
9 second of the two options, of No. 5. Do I need to  
10 read it or --

11 CHAIRMAN HARBAUGH: No, but I think we  
12 need at least a second, and then we can discuss  
13 it.

14 MR. DUTTON: I'll second so we can  
15 discuss.

16 CHAIRMAN HARBAUGH: We have a motion and  
17 a second. Further discussion.

18 (No response)

19 CHAIRMAN HARBAUGH: Any further  
20 discussion?

21 MR. GLADE: This is Wyatt. The  
22 gentleman on the phone raised a point regarding  
23 the language in the second option. And I believe  
24 his point -- and I'll defer to him -- but he said  
25 essentially the first paragraph simply limits the

1 ability to carry a firearm by having --  
2 (inaudible) --

3 The second one says you have to have  
4 gone through the Basic before carrying a firearm  
5 while making an arrest. That's the distinction  
6 we're dealing with, and I believe that was the  
7 point that the gentleman on the phone had. I'm  
8 not advocating, I'm just bringing up something  
9 that was discussed previously.

10 CHAIRMAN HARBAUGH: And the difference  
11 in discussion between making an arrest and  
12 authorizing an arrest has been clarified, I think,  
13 for everyone. In other words, it's not preventing  
14 their authority to order the arrest prior to  
15 attending.

16 Any further discussion?

17 (No response)

18 CHAIRMAN HARBAUGH: We'll move to an  
19 immediate vote. All those in favor of deleting  
20 the first sub(5) and instituting the second sub(5)  
21 language, new language, please signify by saying  
22 aye.

23 (Response)

24 CHAIRMAN HARBAUGH: Was that you, Matt?

25 MR. SAYLER: Yes. I said yes. I said

1 aye.

2 CHAIRMAN HARBAUGH: Opposed, same sign.

3 (No response)

4 CHAIRMAN HARBAUGH: Hearing none, the  
5 motion carries.

6 MR. JOHNSON: This is Perry. I was out  
7 of the room for a minute, so did you take care of  
8 the rest of the ARM -- Okay. So I think now we're  
9 back to the rest of the Administrative Rule things  
10 that we've discussed before, and then we're in the  
11 position where we can move them forward into the  
12 process for editing and changing the  
13 Administrative Rules.

14 UNKNOWN SPEAKER: -- (inaudible) --

15 MR. JOHNSON: Yes, 133 to 143. So this  
16 is Perry. That captures that conversation we had  
17 with the stakeholders about the requirements for  
18 reporting, the procedures, and it captures the  
19 creation of the new discipline. And Katrina, help  
20 me out with this. It captures the addition of the  
21 definition into 102, that one pager that she read  
22 into the record. So that's what it would  
23 encompass, that amount of material.

24 UNKNOWN SPEAKER: So moved.

25 CHAIRMAN HARBAUGH: I have a motion to

1 approve.

2 UNKNOWN SPEAKER: Second.

3 CHAIRMAN HARBAUGH: Any further  
4 discussion?

5 (No response)

6 CHAIRMAN HARBAUGH: Hearing none, we'll  
7 move to a vote. All those in favor, please  
8 signify by saying aye.

9 (Response)

10 CHAIRMAN HARBAUGH: Opposed, same sign.

11 (No response)

12 CHAIRMAN HARBAUGH: Motion carries.

13 MR. JOHNSON: Are we on Page 154? Oh,  
14 we took care of that.

15 UNKNOWN SPEAKER: Yes.

16 MR. JOHNSON: Okay. Do we want to keep  
17 going?

18 CHAIRMAN HARBAUGH: What's the Council's  
19 pleasure? Do you want to break or push through?  
20 We've got -- (inaudible) --

21 MR. JOHNSON: I don't know if we do.

22 CHAIRMAN HARBAUGH: Let's keep moving,  
23 and we'll try and get through it. If you do need  
24 to take a break, feel free to do so, but we'll  
25 continue with new business.

1 MR. JOHNSON: Well, this is Perry then.  
2 We're on sub(b). This is the Invisible Institute  
3 request, and you can see their written request on  
4 Page 165 and 166. You'll see their updated email  
5 request on 167 and 168, and then you'll also see  
6 Kristina Neal's memo to the Council -- actually I  
7 guess to me as Bureau Chief. I requested this on  
8 behalf of the Council, so we have it in front of  
9 us, as well as Chris Tweeten's memo on Pages 173,  
10 from back in 2016.

11 I include Chris Tweeten's memo because  
12 we went through this process already several years  
13 ago regarding a similar type request from Scripps  
14 News Service.

15 Then on Pages 179 and 180, you'll see  
16 POST's letter, insertion form. This went out to  
17 all our stakeholders, public safety administrators  
18 and officers in Montana through the  
19 administrators.

20 And then finally I think there's some  
21 additional information in our packet that relates  
22 to Complaint for Declaratory Judgment that was  
23 filed on our behalf yesterday by Kristina Neal.  
24 So just to recap, this is an agency or a business  
25 that had asked for public service agency officer

1 records that are in the custody of POST Council.

2 The information or the advice we've been  
3 given consistently by our Legal Counsel is that  
4 much of that information is public information,  
5 and that if an officer wants to assert their own  
6 privacy issue, they have the opportunity afforded  
7 to them, which we have done. We gave them a  
8 sufficient amount of time to do that.

9 We provided a response to the Invisible  
10 Institute yesterday afternoon, and we've also  
11 taken steps to provide for a response in District  
12 Court on behalf of the Council to position  
13 ourselves in regards to anything necessary there.

14 This is the same process that we used  
15 for the Scripps News request, and it's just a  
16 different day and a different request in this  
17 case.

18 MS. BOLGER: They also wanted more  
19 officers than -- (inaudible) --

20 MR. JOHNSON: This is Perry. That's  
21 correct.

22 CHAIRMAN HARBAUGH: In their definition  
23 of --

24 MR. SULLIVAN: Patrick Sullivan.

25 MR. JOHNSON: Hi, Patrick. This is

1 Perry. We're still in our Council meeting.

2 You're welcome to audit this, but it's going to be  
3 some period of time before we get to that case  
4 status issue with you.

5 MR. SULLIVAN: Okay. When you say --

6 MR. JOHNSON: I would suggest that you  
7 call back at about 1:00 p.m.

8 MR. SULLIVAN: Okay. Thank you.

9 MR. JOHNSON: You're welcome.

10 CHAIRMAN HARBAUGH: I guess the question  
11 was: Is it an expansion? When you say more  
12 officers.

13 MS. BOLGER: This is Katrina. The  
14 Scripps News Service request was only for  
15 certified peace officers. This request was for  
16 peace officers, reserve officers, probation and  
17 parole officers, and correction detention  
18 officers.

19 CHAIRMAN HARBAUGH: Anything else on  
20 that?

21 MR. JOHNSON: There's no action  
22 necessary. This is an information piece so that  
23 if your stakeholders reach out to you, then you  
24 understand what they were asking for. It is  
25 interesting to me that we had some elected

1 Sheriffs that believed that they had a right to  
 2 certain privacy interests in this form. And I'm  
 3 not throwing stones at anybody, but I'll tell you  
 4 what, when you signed up to campaign for Sheriff,  
 5 your privacy kind of flew out the door. So that's  
 6 life.

7 I would direct -- if you're ready to  
 8 move forward, I would direct your attention to  
 9 that comprehensive budget area that you find on  
 10 Page 181, and I'll remind you that this isn't what  
 11 you're used to seeing. You're used to seeing far  
 12 more expanded than this, but in regards to this  
 13 transition with DOJ, our administrative officer  
 14 and their staff over there are still working the  
 15 nuts and bolts out of creating a good report for  
 16 you.

17 But the bottom line there is we are well  
 18 within the parameters of our budget. I think we  
 19 are 25 percent of the way through the year. I  
 20 think our personnel line reflects about 21 percent  
 21 of our budget. Our operating line expenditures  
 22 only reflect less than 5 percent of our budget.

23 Which isn't unusual for us at this time  
 24 of year. You know, our data base will come out of  
 25 that, all of our legal expenses; these meetings

1 will come out of that as well. This is the first  
 2 one that comes out of this budget year. Because  
 3 the cases usually cost us a significant amount, we  
 4 can anticipate this year some District Court  
 5 expenses, some expert witness expenses, some  
 6 witness travel and per diem expenses; and then  
 7 just the regular daily expenses that we would have  
 8 expenditure to.

9 I think during this budget hearing --  
 10 I'm sorry -- this budget discussion, I think this  
 11 is an opportunity for us to talk about meeting  
 12 locations. I'm glad that John Strandell is  
 13 walking back in the room, because during our last  
 14 Council meeting, John suggested that we go back on  
 15 the road with a Council meeting, and historically  
 16 we've done that. A couple of years ago this  
 17 October, we were in Miles City. That same year, I  
 18 think in the end of May we were in Kalispell; and  
 19 then in January or February, we were somewhere  
 20 else as well.

21 MS. BOLGER: Great Falls.

22 MR. JOHNSON: Great Falls. That's  
 23 right. That was called a meeting, I suppose.

24 So I think that we have sufficient funds  
 25 to discuss going on the road again. At the last

1 meeting it was suggested that we return to  
 2 Kalispell, and hit Tia up for a venue again. We  
 3 were treated very well. We did have a good venue  
 4 up there for that October 7th meeting next year,  
 5 so that would be a year from now.

6 I kind of took a look at where we've  
 7 been, and I like the idea of going back to  
 8 Kalispell. I would also at least offer to you a  
 9 discussion about maybe conducting one of our  
 10 meetings in Lewistown as well. I think we've  
 11 really reached out trying to get some of those  
 12 agencies with the ability to maybe come to some of  
 13 our meetings, and we could see that we've got  
 14 Helena, Helena, and Bozeman here in Helena. But I  
 15 think if we went to Lewistown, some of those  
 16 smaller agencies would have an opportunity to  
 17 come, and sit, and participate with our  
 18 conversations, too.

19 So I would suggest that if we were to do  
 20 that, we do the next meeting here the end of  
 21 February, and then that June 3rd meeting --

22 -- (inaudible) --

23 MR. JOHNSON: That's just a suggestion.  
 24 We don't have to. We can stay in Helena for that  
 25 June 3rd one.

1 UNKNOWN SPEAKER: What dates are they  
 2 exactly? Are they listed in here?

3 MR. JOHNSON: I can tell --

4 -- (inaudible) --

5 UNKNOWN SPEAKER: They're on the sheet  
 6 that's sitting next to the --

7 MR. JOHNSON: Right. Here you go.  
 8 Right here.

9 CHAIRMAN HARBAUGH: So February 26th,  
 10 June 3rd -- (inaudible) --

11 And you're suggesting --

12 MR. JOHNSON: This is Perry. I would  
 13 suggest February 26th in Helena. I would suggest,  
 14 just for conversation, Lewistown on June 3rd, and  
 15 Kalispell on October 7th.

16 This is Perry again. We had kind of  
 17 landed on October for Kalispell during our last  
 18 meeting, but we said we would talk about it --  
 19 (inaudible) --

20 CHAIRMAN HARBAUGH: Anyone have a  
 21 comment?

22 MR. STRANDELL: This is John. I agree.  
 23 I think that's a great plan. I would endorse  
 24 that.

25 UNKNOWN SPEAKER: Cancun.

1 MR. DUTTON: The October 7th may  
 2 conflict with the Board of Crime Control's Crime  
 3 Prevention Conference, just if we're looking for  
 4 either switching it around. I don't know where  
 5 it's going to be next year, but I think that's a  
 6 conflict.

7 MR. JOHNSON: This is Perry. I would  
 8 suggest then that -- we set this way back in May,  
 9 these dates, and they were just points on the  
 10 calendar we thought might work. So I think that  
 11 they're dynamic. If we need to change something  
 12 in regards to a conflict with a different  
 13 conference, or training, or something, I think  
 14 that we've got that ability, as long as we notice  
 15 Tia oftentimes, but to make whatever arrangements  
 16 are necessary up there.

17 CHAIRMAN HARBAUGH: -- (inaudible) --

18 MR. JOHNSON: Yeah. So are we okay  
 19 then? We've got consensus on that? Okay.

20 I would say then we're at certificates  
 21 awarded, and you'll find it on Pages 182 to 205,  
 22 all of those. Trainings include there were 303  
 23 certificates awarded in the last, since the last  
 24 meeting. Trainings approved are on Page 206.

25 And that doesn't look like much of a

1 report, but it is. If you'll look at "Employees  
 2 this report," we captured training for 1,699  
 3 Public Safety Officers who, through their efforts,  
 4 attended or obtained training through 2,482  
 5 courses. And we approved 32,237 quarter hours of  
 6 training since we last met. So I think we're  
 7 really on this fiscal year, or even this calendar  
 8 year, to approve over 100,000 hours of training  
 9 for our Public Safety Officers, and that's a  
 10 pretty nice -- (inaudible) --

11 CHAIRMAN HARBAUGH: Cudos to your staff.

12 MR. JOHNSON: Well, I made a note to  
 13 myself. When we looked at this as a staff, Mary  
 14 Ann pointed out to me, she says, "You don't get  
 15 those phone calls, but I do all the time." The  
 16 people are thrilled with the processes that we've  
 17 created in regards to the applications and the  
 18 audit. And so that does go -- that staff needs to  
 19 be recognized, because Katrina's doing the audits,  
 20 and Mary Ann is capturing all those missed  
 21 appointments, determinations, and all those  
 22 applications for training, and getting processed.

23 And boy, you know, sometimes I think  
 24 that turnover is within a week, and if there's a  
 25 bottleneck at all, it's because of your Executive

1 Director. I just can't get ahead of them once in  
2 awhile. But I think we're pretty current right  
3 now.

4 MS. KEUNE: It's a small step.

5 MR. JOHNSON: Yeah, one step at a time.  
6 Moving on, your equivalency granted is on Pages  
7 207 and 208. There were actually 29, on 208,  
8 employees this report.

9 For the new Council members, when you're  
10 looking at 28 or 29 people in an equivalency  
11 class, definitely appreciate that. That  
12 eliminates a Basic Academy class every year,  
13 because we do it twice a year, the Academy does it  
14 twice a year, and that captures 55 or 60 people  
15 every year, and we're actually bringing a  
16 tremendous amount of experience in from other  
17 states or other jurisdictions.

18 One thing that I would point out that  
19 we've discovered during our conversation about  
20 this Invisible Institute report or those  
21 sanctioned officers, that there's a  
22 disproportionate amount of officers that have been  
23 sanctioned that obtain certification even through  
24 EQ or pre-service, and that was surprising to us,  
25 to the point that Katrina just kind of captured it

1 as she was going through the numbers, how many she  
2 was seeing, and she started to actually count them  
3 up.

4 And I guess I would say to you that her  
5 rough numbers would indicate that it may be 20 to  
6 30 percent of them, that we know of, not 20 to 30  
7 percent of our new officers in Montana are  
8 pre-service or EQ officers. So I think that's  
9 something that in the future we probably want to  
10 keep an eye on. I think it's kind of cool to be  
11 able to look at that.

12 MR. STRANDELL: Quick question, Mr.  
13 Chairman. On the EQ side, Perry, did you see any  
14 correlation where, you know, background  
15 investigations, where there hasn't been adequate  
16 background investigations done on officers that  
17 come into the state, or other means?

18 MR. JOHNSON: This is Perry. I know for  
19 -- I can tell you one right off the bat, I mean a  
20 felon that was working in Montana. So I know that  
21 there couldn't have been a background. But just  
22 anecdotally, I'm always kind of surprised and  
23 disappointed at the people that we see move, that  
24 I see or hear from Chiefs that say, "Man, I picked  
25 up somebody, and I don't know how we even got

1 him." And so either they're getting bad  
2 information during their backgrounds, or on the  
3 other hand, I've had Sheriffs say to me, "They  
4 didn't even call me," or Chiefs could say, "They  
5 didn't reach out to me. And the only reason I  
6 knew that they were even inquiring about my staff  
7 member was because they were on the ground  
8 interviewing them, and they never asked me a  
9 question about them."

10 So I think there's still a gap there in  
11 regards to what one agency will do versus another  
12 one, but I think that we can probably even examine  
13 the agencies who are experiencing sanctioned  
14 officers, or allegations, versus those that are  
15 not, because I think that recruiting and retention  
16 issue is reflective of that dynamic as well.

17 But I think it always will be. I think  
18 that when you think about the discretionary time  
19 is when that officer has to fill that third  
20 position versus 100 man office to fill three  
21 positions, they've got the resources to do it, and  
22 that guy over there, he's looking for somebody  
23 that will -- (inaudible) -- you know. It's tough.

24 Cases open and closed on Pages 210 to  
25 212. I think that Katrina, on 212, kind of gave

1 us a summary of where we're at. We're at 80.  
2 We've had 70 we're currently working on. We've  
3 got ten that we -- (inaudible) --

4 The one thing that we have noticed in  
5 regards to the allegations that have -- I think  
6 the Case Status Committee can speak to this as  
7 well -- is that it appears that we're getting  
8 allegations that are a little more significant,  
9 that seem to have a little more meat on the bone  
10 by the time we get them, and the investigation is  
11 often incident complete. And they give us a lot  
12 more to work with.

13 We encounter some agencies that just  
14 have a hard time releasing any information to us  
15 as well. That's a challenge, and we've been  
16 pretty successful working our way through that,  
17 but it's going to be something that we're going to  
18 have to pay attention to. Again, I think that's  
19 one of those training issues. Maybe through the  
20 County Attorneys Association, conversations with  
21 them, we might be able to position ourselves a  
22 little better with that partnership.

23 So in regards to office updates, Pages  
24 213 and 214. This is just a report that Katrina  
25 again compiled for you, for the Council. We've

1 been doing our audits since we've had the ability  
2 to do that. We found 100 percent compliance  
3 already, and it's kind of neat, I think. Some of  
4 them that we've reached out to have been DOC, I  
5 think the prison, and of course, they need 16  
6 hours of training -- I'm sorry -- 20 hours of  
7 training every two years. They need that ethics  
8 component.

9 And often that audit report that we get  
10 back from them shows that they did get that ethics  
11 training on the day they responded to us.

12 UNKNOWN SPEAKER: So it's really working  
13 out for you.

14 MR. JOHNSON: So let's see. I've also  
15 provided for you guys just the way that we began  
16 our interaction with DOJ -- John would be familiar  
17 with this -- every bureau has policies and  
18 operations plans. You see all of ours. We've  
19 attached all of those links for our Administrative  
20 Rules. We've provided them with information who  
21 serves on the Council.

22 And for your purposes, on Page 216, that  
23 detention center representative is now filled with  
24 Jason Jarrett from the Gallatin County Sheriff's  
25 Office. So that's our entire staff there.

1 I don't want to go through and read all  
2 of this to you, because this is our business plan,  
3 and it was prior to POST ever moving over to DOJ,  
4 these were our policies.

5 I would say that on Page 235, you'll see  
6 some goals, or that's where the goals begin. And  
7 those didn't change either. We have long desired  
8 to scan all of our active officer files, just for  
9 efficiency purposes, and for archiving purposes as  
10 well. So we start with our active files, and we  
11 go to the archived ones.

12 And then in regards to that retention  
13 policy, that's contingent on the ability to scan  
14 and have access to all of those files in  
15 electronic format.

16 Our long term goal really hasn't changed  
17 either, because we talked about it today, you know  
18 that ethics intervention, those case status  
19 allegations, those things that we look at. We  
20 want to create an opportunity to interact with our  
21 stakeholders, and be able to quantify whether our  
22 efforts at training have any outcome on  
23 allegations or the ethical behavior of our  
24 officers. And I think that we're examining  
25 several different opportunities for that.

1 In regards to the second goal, that  
 2 education and outreach to agencies, we took that  
 3 on the road last year. We created this orange  
 4 book that's on the table for everybody. Our  
 5 intent is to maintain that effort, and to continue  
 6 to go on the road every year, and make contacts at  
 7 a dozen, or 15, or 18 agencies across Montana, and  
 8 invite those neighboring agencies to come in and  
 9 look at the changes in the ARMs, the legislative  
 10 changes, and keep them apprised of what we're  
 11 doing.

12 In regards to our vulnerability, if  
 13 you'll go to Page 244, you'll see that we have  
 14 articulated that we continue to believe, as a POST  
 15 Council, that the POST Council should have its own  
 16 staff, and that that's a vulnerability that we  
 17 have identified to the Department of Justice. And  
 18 that builds on that conversation that we had  
 19 earlier today.

20 In regards to legislative needs, I think  
 21 on Page 251, you'll see under sub (3), we identify  
 22 that there is still a legislative issue there in  
 23 regards to what we believe, as the POST Council,  
 24 that they should be autonomous, and we identify  
 25 that there.

1 I guess I'm bringing that stuff up  
 2 because that still is part of that conversation  
 3 that we had in regards to where we're at with DOJ.  
 4 This is in the DOJ plan now. This is in the POST  
 5 Council, this is in the POST bureau goals and  
 6 objectives. And they haven't edited that. That  
 7 is still there. That's you guys. So that's where  
 8 we're at. Any questions about any of that?

9 There is on Page 256 -- Katrina, I'll  
 10 ask you to just speak to this very briefly because  
 11 I think it is very brief. Is this the syllabus  
 12 for EQ for CDOB?

13 MS. BOLGER: No. This is one for EQ for  
 14 peace officers on 256.

15 MR. JOHNSON: Oh, I'm sorry. 256 is the  
 16 EQ. This curriculum has been tweaked, so I bring  
 17 it to you for your approval. They've added eight  
 18 hours to that EQ for law enforcement officers. It  
 19 was historically five days and 32 hours. Now it's  
 20 a full 40 hour week.

21 They expanded the opportunity for POST  
 22 to visit with these officers coming into Montana  
 23 from other jurisdictions. And then they've  
 24 adjusted some of the hours on the other ones as  
 25 well.

1 MR. DUTTON: Make a motion to approve.

2 CHAIRMAN HARBAUGH: We have a motion to  
3 approve the new curriculum --

4 MR. EDWARDS: I'll second.

5 CHAIRMAN HARBAUGH: -- EQ. Jess  
6 seconds. Any further discussion?

7 (No response)

8 CHAIRMAN HARBAUGH: Call for a vote.  
9 All those in favor, please signify by saying aye.

10 (Response)

11 CHAIRMAN HARBAUGH: Opposed, same sign.

12 (No response)

13 CHAIRMAN HARBAUGH: Motion carries.  
14 Thank you.

15 MR. JOHNSON: Now on Page 257 is  
16 Correction Detention Officer Basic Equivalency.

17 MS. BOLGER: This is Katrina. So the  
18 Council hasn't approved CDOB equivalency process  
19 since 2015, I think. So one of the things that we  
20 realized is that we don't actually get an  
21 opportunity to present to these equivalency  
22 people, and it's a gap. Every other Basic except  
23 them and Coroners we talk to.

24 So we requested from MLEA to provide us  
25 with their current process. Essentially what

1 happens is that if they're approved for  
2 equivalency by POST, the MLEA sends them the  
3 mental health first aid book, MLEA mental illness  
4 intervention field manual, and the CDOB binder.

5 On the last day of the course, when  
6 everybody else is taking the basic exam, those  
7 equivalency folks come to Helena, and they sit for  
8 the exam with them.

9 Historically that's been the end of it.  
10 We have requested that we be allowed to, after  
11 they complete their exam, they will then come to  
12 POST and get an abbreviated sort of presentation.  
13 They'll get the same material that we provide to  
14 every other Basic.

15 CHAIRMAN HARBAUGH: Do we need a --

16 MR. JOHNSON: This is Perry. So we need  
17 to approve that change and that process then.

18 MR. STRANDELL: This is John. I'll so  
19 move.

20 CHAIRMAN HARBAUGH: I have a motion.

21 MR. THOMAS: This is Jim. I'll second.

22 CHAIRMAN HARBAUGH: And a second to  
23 approve the change to the CDOB EQ. Any further  
24 discussion?

25 (No response)

1 CHAIRMAN HARBAUGH: Move to an immediate  
2 vote. All those in favor, please signify by  
3 saying aye.

4 (Response)

5 CHAIRMAN HARBAUGH: Opposed, same sign.

6 (No response)

7 CHAIRMAN HARBAUGH: Motion carries.

8 MR. JOHNSON: So this is Perry. We're  
9 out of page numbers. Very briefly, I just want to  
10 make sure that I give you a little bit of a  
11 rundown on what I've been allowed to do since the  
12 last POST Council meeting.

13 In June I attended the MSPOA conference.  
14 Actually I attended the entire Sheriffs Institute.  
15 POST was allowed to interact extensively with that  
16 group of new Sheriffs and existing Sheriffs as  
17 well during that whole conversation. I really  
18 appreciate the opportunity to be able to attend  
19 that, and to have those good conversations with  
20 those officers.

21 I also attended the IADLEST conference  
22 in Milwaukee in June. While I was there, I was  
23 elected as Western Region representative for  
24 IADLEST. I represent eleven western states, I  
25 think about 40 percent of the United States.

1 Building on that, October 8th, 9th, and  
2 10th next week, we'll have a regional fall  
3 conference down in Meridian, Idaho at their POST  
4 Academy.

5 I attended the FBI National Academy  
6 conference last week in Whitefish. Leo was there.  
7 He was the President of that. He had a very good  
8 attendance at that.

9 Next week I'll be at the Department of  
10 Justice supervisor boot camp.

11 MR. STRANDELL: So will I.

12 MR. JOHNSON: John and I are going to  
13 learn how to be supervisors, after 40 years, I  
14 guess.

15 MS. KEUNE: Long time.

16 MR. STRANDELL: You're talking about  
17 Perry, right?

18 MR. JOHNSON: She was not.

19 MS. BOLGER: Questions for you.

20 MR. JOHNSON: Also in the last few  
21 months, this group, these three employees or staff  
22 members, we present to every Law Enforcement  
23 Officer Basic, every Correction Detention Officer  
24 Basic, Public Safety Communicators Basic, P&P  
25 Basic.

1 And for the last three years, I've been  
 2 honored to be able to give the invocation for the  
 3 P&P graduation. And Kevin has really made that  
 4 quite a ceremony. He does it right in the rotunda  
 5 of the Capitol, and it's a stark difference from  
 6 what it used to be. So thank you very much.

7 UNKNOWN SPEAKER: Do we know they know  
 8 that you're doing that?

9 MR. OLSON: Well, years ago they used to  
 10 have a cake and coffee in the classroom, and hand  
 11 out of the certificates.

12 MR. JOHNSON: So I also attended the  
 13 week of September 19th the MSPOA Executive Board  
 14 meeting. Tony and Leo were also part of that.

15 What we have coming up in the next few  
 16 months, death investigation and advanced Coroner  
 17 training. We've hosted that for the last four  
 18 years up in Great Falls. That's scheduled for 16  
 19 hours, December 3rd, 4th, and 5th. That's a  
 20 Tuesday afternoon, Wednesday, and Thursday  
 21 morning.

22 The Coroner Basic Academy, that 40 hour  
 23 class, will be at MLEA the week of December 9th,  
 24 and Bob Rosepal and his crew have carried that  
 25 flag for us for a very many years now, six or

1 seven.

2 ARM and Curriculum Committees meetings,  
 3 they've been doing yeoman's work, and I really  
 4 wanted to say thank you to both of those groups  
 5 for their efforts.

6 Mary Ann is going to just hate me to  
 7 death for this, but I wanted to make sure that  
 8 everybody recognizes her daughter is active duty  
 9 Army. She just returned from ten month deployment  
 10 over in the mid east. And how many?

11 MS. KEUNE: 13.

12 MR. JOHNSON: 13 months. Doggone it. I  
 13 missed some fingers. And I just we really  
 14 appreciate her service. That's a nice thing for  
 15 --

16 UNKNOWN SPEAKER: 12 and a half.

17 MR. JOHNSON: There you have it. And  
 18 you know, I also point out that, you know, I think  
 19 during our last Council meeting back in May, Mary  
 20 Ann was celebrating her 42nd wedding anniversary  
 21 as well, so those are things that really I think  
 22 need to be recognized. This is a nice family that  
 23 we've got here. Even when we argue, it's a nice  
 24 argument.

25 Finally, just I'll share a story because

1 I love stories, and Mary Ann shared it with me  
 2 yesterday, and again, she probably thought that  
 3 would be the end of it. She stepped into my  
 4 office and said, "You know, I've got a 14 year old  
 5 grandson that last year traded a firearm that he  
 6 had and some money for a snowmobile with this old  
 7 guy in Lincoln," because her grandchildren live up  
 8 in Lincoln.

9 And she said, "Awhile back, the old guy  
 10 --" Mary Ann's daughter works at one of the dining  
 11 facilities in Lincoln. The old guy comes in there  
 12 frequently. And he said to Mary Ann's daughter,  
 13 "Is he left or right handed, that grandson?" And  
 14 she said, "Well, why?" And he said, "Well,  
 15 because you know, that kid, that's the first gun  
 16 he owned, and he ought to have that back," and he  
 17 said, "I'm going to give it back to him, and I'm  
 18 going to make him a holster, because he should  
 19 have that."

20 And you know, we deal with so much crap.  
 21 Isn't it neat when you hear a good story? That's  
 22 a good story right there.

23 CHAIRMAN HARBAUGH: Certainly is.

24 MR. JOHNSON: So thanks for letting me  
 25 share that.

1 MS. KEUNE: -- (inaudible) --

2 MR. JOHNSON: You could have left. That  
 3 concludes my report to the Council.

4 CHAIRMAN HARBAUGH: Thank you. Go  
 5 ahead.

6 UNKNOWN SPEAKER: One thing. When we  
 7 were talking about Council meeting schedules, on  
 8 February 26th, Tony and I will not be here. We'll  
 9 be at Western States. So if we had the  
 10 opportunity to discuss a date of the 18th or 19th  
 11 of February, I'll be -- I don't know about Tony,  
 12 but that's -- we won't be gone that week.

13 UNKNOWN SPEAKER: I can't speak for him,  
 14 but I won't.

15 MR. JOHNSON: So if we did it -- the  
 16 26th must be on Wednesday. So if we did it on the  
 17 19th? Can we just change that right now, take a  
 18 look at it?

19 UNKNOWN SPEAKER: Jim, this --  
 20 (inaudible) --

21 UNKNOWN SPEAKER: Sure.

22 CHAIRMAN HARBAUGH: I think it works  
 23 better for me, but I'm not where I can look at my  
 24 schedule.

25 MR. JOHNSON: Well, I'll shoot that out

1 to you guys.

2 CHAIRMAN HARBAUGH: Better than the  
3 following week.

4 MR. JOHNSON: And see if that works, and  
5 if it looks like it will, then we'll change that  
6 now. I'll make sure that you're all noticed.

7 MR. DUTTON: Thank you.

8 MR. JOHNSON: You bet.

9 UNKNOWN SPEAKER: I'll try to make it  
10 work.

11 MR. STRANDELL: Shall we try to change  
12 that October 7th meeting, too, then, while  
13 everybody has got their calendars out? Because  
14 that was --

15 MR. JOHNSON: I don't know if we really  
16 do have a conflict.

17 MR. STRANDELL: Board of Crime Control.

18 MR. DUTTON: It's that first week, but I  
19 can --

20 MR. JOHNSON: That must --

21 MR. STRANDELL: I'm pretty sure it is.

22 MR. JOHNSON: That must be the middle of  
23 the first week then, so what are you thinking?  
24 The end of September? That would be September  
25 30th.

1 MR. DUTTON: I guess next week is the  
2 Board of Crime Control.

3 -- (inaudible conversation) --

4 MR. DUTTON: It might not be that first  
5 week.

6 UNKNOWN SPEAKER: Are you going to Miles  
7 City?

8 MR. JOHNSON: We'll look at that. We've  
9 got a year to look at that.

10 CHAIRMAN HARBAUGH: Anything else for  
11 the good of the cause?

12 (No response)

13 UNKNOWN SPEAKER: Move to adjourn.

14 CHAIRMAN HARBAUGH: I have a motion to  
15 adjourn.

16 MR. DUTTON: Second.

17 CHAIRMAN HARBAUGH: No need to vote. I  
18 declare adjournment.

19 UNKNOWN SPEAKER: Declaratory.

20 MR. JOHNSON: Okay. Any business on the  
21 phone?

22 (No response)

23 MR. JOHNSON: Thanks for calling in.

24 (The proceedings were concluded)

25 \* \* \* \* \*



**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](http://dojmt.gov/post)

### **Stipulation and Resolution**

Perry Johnson, Bureau Chief of the Montana Public Safety Officer Standards & Training Bureau (POST) and Robert Edwards have agreed to the following terms to resolve POST complaint case number 17-37.

1. POST has a statutory obligation to “provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers” in Montana. Mont. Code Ann. § 44-4-403(1)(c). Mr. Edwards admits the jurisdiction of POST over the subject matter of this proceeding. Mr. Edwards and POST desire to avoid unnecessary expenditure of time and other valuable resources involving the issues in this action.

2. Therefore, Mr. Edwards specifically and affirmatively waives a contested case hearing and all rights to appeal this matter under the Montana Administrative Procedure Act. POST will rescind its April 3, 2018 revocation of Mr. Edwards’s certifications, and elects to resolve this matter on the terms and conditions set forth as follows:

a. Mr. Edwards hereby agrees that he will not pursue any Montana law enforcement position requiring certification by the Montana POST Council prior to January 1, 2024. Mr. Edwards affirms that he has left law enforcement, that he currently holds no position that requires a POST certification, and that he will not return to or take position in law

enforcement in Montana that does require POST certification prior to January 1, 2024.

b. After January 1, 2024, if Mr. Edwards is appointed to a position which requires POST certification, his POST certification will be placed on probation for one year. During his period of probation, Mr. Edwards will not violate any Montana criminal laws, POST ARMs, or policies of his employing authority. Should Mr. Edwards receive any conviction, negative review, or infraction during his probationary period, he must immediately report the same to POST.

c. If Mr. Edwards violates this agreement in any way, then the Bureau Chief may request that Mr. Edwards surrender his POST certificates. Mr. Edwards agrees that, upon such a request from the Bureau Chief of POST, Mr. Edwards will voluntarily surrender his POST certificates. If Mr. Edwards voluntarily surrenders his POST certificate, as described above, then Mr. Edwards will no longer be a public safety officer in Montana after the date of surrender. Mr. Edwards may request a contested case hearing regarding the alleged violation upon his surrender.

d. POST reserves the right to sanction Mr. Edwards's certification if it becomes aware of additional violations of its standards which have been adopted pursuant to §§ 2-15-2029 and 44-4-403, MCA. At the time of this Stipulation and Resolution, Mr. Edwards is not under investigation for any other violations of POST's ARMs.

3. Mr. Edwards understands that this Stipulation and Resolution is subject to the approval of the Case Status Committee and of the full POST Council. Mr. Edwards further understands that review by the full POST Council is subject to the provisions of ARM 23.13.720.

4. Mr. Edwards acknowledges that he has read and understands each term of this Stipulation and that he has had sufficient time to consult with counsel should he choose to do so. Mr. Edwards acknowledges that he enters this stipulation voluntarily, and without reservation. Mr. Edwards acknowledges that no promise, other than those contained herein, and no threat has been made by the Council or by any member, officer, agent, or representative of the Council to induce Mr. Edwards to enter into this stipulation.

5. Mr. Edwards understands that this agreement and all records of this proceeding will be kept by POST in the ordinary course of its business and subject to its normal practices, procedures and policies.

Dated this 14 day of January, 2020

  
\_\_\_\_\_  
**Robert Edwards**

  
\_\_\_\_\_  
**Counsel for Mr. Edwards**

Dated this 14 day of January, 2020

  
\_\_\_\_\_  
**Perry Johnson, Bureau Chief**

  
\_\_\_\_\_  
**Counsel for POST**

**ATTORNEY GENERAL**  
**STATE OF MONTANA**

**RECEIVED**

**DEC 12 2019**

**MT POST Council**

**Tim Fox**  
**Attorney General**

**Jon Bennion**  
**Chief Deputy Attorney General**



**Department of Justice**  
**Joseph P. Mazurek Building**  
**215 North Sanders**  
**P.O. Box 201401**  
**Helena, MT 59620-1401**

December 11, 2019

Tony Harbaugh  
POST Council  
2260 Sierra Road East  
Helena, MT 59602

Re: Request for Opinion

Dear Mr. Harbaugh:

You have requested an Attorney General Opinion regarding the Montana Public Safety Officers Standards and Training Council's (POST) advanced coroner course, namely:

- Does the POST Council have authority to set forth ARMs specifying the definition of the time allowed for coroners to conduct their 16-hour advanced coroner course?
- If POST does not have such authority, does the current statutory requirement that a coroner complete an advanced course every two years mean every two calendar years or every two years from when the previous course is completed?

Because the analysis involves references to unambiguous statutes, an Attorney General Opinion is not warranted under Mont. Code Ann. § 2-15-501(7). We have determined that your question can be answered with a letter of advice, which is not a formal Attorney General Opinion and should not be presented as such. Your two questions are addressed in turn.

**1. Rulemaking authority.**

Mont. Code Ann. § 7-4-2905(2)(b) states:

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

**Reviewed by**

*Perry Johnson* 12-12-19  
2 pages

**TELEPHONE: (406) 444-2026**

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**MONTANA DEPARTMENT OF JUSTICE**

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Tony Harbaugh  
December 11, 2019  
Page 2

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.

Administrative rules may not conflict with statute and may not unnecessarily repeat statutory language. Mont. Code Ann. § 2-4-305(2) & (6). Mont. Code Ann. § 7-4-2905(2)(b) adequately sets forth the time requirements to complete the advanced coroner course (*i.e.*, two years). If POST were to adopt an administrative rule requiring training every two years, it would be duplicative. Alternatively, if POST were to adopt an administrative rule requiring training between periods of anything other than two years, it would conflict with the statute. There is no need or reason for an additional rule.

POST is, however, authorized to establish rules creating a procedure to extend the two-year period requirement under exigent circumstances. *See* Mont. Code Ann. § § 7-4-2905(2)(b). While this does not authorize POST to establish the general rule of how often training must occur, it does allow it to define the exception to the rule for individuals experiencing these exigent circumstances.

## 2. Definition of two years.

Unless the context requires otherwise, a year in Montana statute is defined as “a calendar year.” Mont. Code Ann. § 1-1-301; *see also Bosch v. Town Pump, Inc.*, 2004 MT 330, ¶ 9, 324 Mont. 138, 14 102 P.3d 32, 34 (“a one-year period is calculated as starting on a given day and ending on the date one day prior to the start day in the next calendar year. For example, a one-year limitations period beginning with a start date of November 16, 1994, ends on November 15, 1995.”). The start of the period excludes the day of the triggering event. *Cf. Kessel v. Liberty Northwest Ins. Corp.*, 2007 MT 305, ¶ 14, 340 Mont. 92, 172 P.3d 599 (“a limitations period is calculated by excluding the day of the event which gives rise to the claim.”). In this instance, if a coroner completed a two advanced day coroner course on October 9–10, 2019, they would have to complete their next advanced corner course by October 10, 2021.

Again, this letter is a letter of advice and not a formal Opinion of the Attorney General.

Sincerely,

  
JEREMIAH LANGSTON  
Assistant Attorney General

## Johnson, Perry

---

**From:** Johnson, Perry  
**Sent:** Thursday, January 23, 2020 10:09 AM  
**To:** Drane Jr, Allen  
**Subject:** RE: Dennetta Schuetzle coroner training/certification

Allen,

Good morning!

I can sure understand the difficulty with recruiting, training, and retaining staff, it is the same issue all over Montana!

I wish I had better news for you in regards to an extension. The problem with that is the Administrative Rule is specific. It states, in part:

*(3) Coroners must complete 16 hours of continuing coroner education at least once every two years.  
(d) The council will not grant extensions after the expiration of the two year time limit.*

The statute states, in part:

Montana Code Annotate 7-4-2905 states, in subsection (2)(b):

*(b) The council shall approve a 16-hour continuing coroner education course. Unless there are exigent circumstances, failure of any coroner or deputy coroner to satisfactorily complete the 16-hour continuing coroner education 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.*

In these situations POST has suggested getting the coroner into the Basic Coroner training as soon as possible to correct the training deficiency. I would suggest in this case that you reach out to Lt. Bob Rosipal of the Cascade County Sheriff's Office and get Dennetta registered for the basic class that Lt. Rosipal is hosting in April. I have copied this message to him so that he is aware of the issue we are dealing with.

Please let me know if you have questions or if we can be of any assistance to you.

Thanks and have a great day!

**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:** Drane Jr, Allen <adrane@prco.mt.gov>  
**Sent:** Thursday, January 23, 2020 9:12 AM  
**To:** Johnson, Perry <PJohnson@mt.gov>  
**Subject:** Re: Dennetta Schuetzle coroner training/certification

Good morning Perry,

Dennetta has not had the chance to attend 16 hours of training she has completed one online course through the University of North Dakota that is 5 hours and that we just sent in to post. We have had a difficult time keeping enough staff that it hasn't been good for sending people to trainings when the trainings are on the western side of the state. Is it possible to get an extension and I will have her do more online classes?

Sheriff Allen E. Drane Jr  
Powder River County Sheriff's Office  
114 N Park Ave  
P.O. Box 200  
Broadus, MT 59317  
406-436-2333

---

**From:** Johnson, Perry  
**Sent:** Tuesday, January 21, 2020 7:45 AM  
**To:** Drane Jr, Allen  
**Cc:** Keune, Mary Ann  
**Subject:** Dennetta Schuetzle coroner training/certification

Sheriff Drane,

Good morning! I hope this finds you and yours doing well!

Attached please find a copy of the POST transcript for Dennetta Schuetzle. While reviewing files we found that Ms. Schuetzle had attended a basic coroner training academy on December of 2017. Our records do not reflect any additional continuing training since that time.

Montana Code Annotate 7-4-2905 states, in subsection (2)(b):

*(b) The council shall approve a 16-hour continuing coroner education course. Unless there are exigent circumstances, failure of any coroner or deputy coroner to satisfactorily complete the 16-hour continuing coroner education 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.*

POST Administrative Rules state:

*(3) Coroners must complete 16 hours of continuing coroner education at least once every two years.  
(d) The council will not grant extensions after the expiration of the two year time limit.*

Could you please let me know if Ms. Schuetzle has obtained the required 16-hour training?

Please let me know if you have questions or if we can be of any assistance to you.

Thanks and have a great day!

***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***





Montana Secretary of State  
Corey Stapleton

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**Rule: 23.13.601**

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Rule Title: CORONER EDUCATION AND CONTINUED EDUCATION AND EXTENSION OF TIME LIMIT FOR CONTINUED CERTIFICATION

Department: [JUSTICE](#)  
Chapter: [PUBLIC SAFETY OFFICER STANDARDS AND TRAINING \(POST\)](#)  
Subchapter: [Coroner Education and Continued Education](#)



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Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

[Printer Friendly Version](#)

**23.13.601 CORONER EDUCATION AND CONTINUED EDUCATION AND EXTENSION OF TIME LIMIT FOR CONTINUED CERTIFICATION**

- (1) Coroner education shall be conducted as prescribed in [7-4-2905](#), MCA.
- (2) New coroners shall complete the 40 hour basic coroner course at the academy or other equivalent course approved by POST:
- (a) the basic coroner course must be completed in accordance with [7-4-2905](#), MCA.
- (3) Coroners must complete 16 hours of continuing coroner education at least once every two years.
- (a) The council may extend the two year time limit requirement for the continuation of coroner's certification, set forth in [7-4-2905](#), MCA, upon the written application of the coroner or the appointing authority of the deputy. The application must explain the circumstances which necessitate the extension;
- (b) Factors considered in granting or denying an extension include, but are not limited to:
- (i) illness of the coroner/deputy coroner or an immediate family member;
- (ii) absence of reasonable access to the continuing coroner education; or
- (iii) an unreasonable shortage of personnel;
- (c) The council may not grant an extension to exceed 180 days; and
- (d) The council will not grant extensions after the expiration of the two year time limit.

History: [2-15-2029](#), [7-4-2905](#), MCA; [IMP](#), [2-15-2029](#), [44-4-403](#), MCA; [NEW](#), 2008 MAR p. 1587, Eff. 8/1/08; [AMD](#), 2018 MAR p. 2518, Eff. 12/22/18.

MAR Notices	Effective From	Effective To	History Notes
<a href="#">23-13-254</a>	12/22/2018	Current	History: <a href="#">2-15-2029</a> , <a href="#">7-4-2905</a> , MCA; <a href="#">IMP</a> , <a href="#">2-15-2029</a> , <a href="#">44-4-403</a> , MCA; <a href="#">NEW</a> , 2008 MAR p. 1587, Eff. 8/1/08; <a href="#">AMD</a> , 2018 MAR p. 2518, Eff. 12/22/18.
<a href="#">23-13-196</a>	<a href="#">8/1/2008</a>	12/22/2018	History: <a href="#">2-15-2029</a> , MCA; <a href="#">IMP</a> , <a href="#">2-15-2029</a> , MCA; <a href="#">NEW</a> , 2008 MAR p. 1587, Eff. 8/1/08.

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For questions regarding the content, interpretation, or application of a specific rule, please contact the agency that issued the rule. A directory of state agencies is available online at <http://www.mt.gov/govt/agencylisting.asp>.

For questions about the organization of the ARM or this web site, contact [sosarm@mt.gov](mailto:sosarm@mt.gov).

ATTORNEY GENERAL  
STATE OF MONTANA

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DEC 12 2019

MT POST Council

Tim Fox  
Attorney General

Jon Bennion  
Chief Deputy Attorney General



Department of Justice  
Joseph P. Mazurek Building  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401

December 11, 2019

Tony Harbaugh  
POST Council  
2260 Sierra Road East  
Helena, MT 59602

Re: Request for Opinion

Dear Mr. Harbaugh:

You have requested an Attorney General Opinion regarding certification by the Montana Public Safety Officers Standards and Training Council (POST) of tribal detention and corrections officers, namely:

Are tribal detention and corrections officers “public safety officers” requiring certification by POST?

Because the analysis involves references to unambiguous statutes, an Attorney General Opinion is not warranted under Mont. Code Ann. § 2 15-501(7). We have determined that your question can be answered with a letter of advice, which is not a formal Attorney General Opinion and should not be presented as such.

Under Mont. Code Ann. § 44-4-403(1)(c), POST must “provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.” A “public safety officer” is defined at Mont. Code Ann. § 44-4-401(2).

A tribal detention or corrections officer meets none of the statutory definitions and is not a “person required by law to meet the qualification or training standards established by the council.”

Because a tribal detention or corrections officer is not a “public safety officer,” POST is not required to provide certification under Mont. Code Ann. § 44-4-403(c).

Again, this letter is a letter of advice and not a formal Opinion of the Attorney General.

Sincerely,

Hannah Tokerud  
Assistant Attorney General

Reviewed by

Perry Johnson 12-12-19  
1 page

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MONTANA DEPARTMENT OF JUSTICE

Legal Services Division \* Division of Criminal Investigation \* Highway Patrol Division \* Forensic Science Division \* Gambling Control Division \* Motor Vehicle Division \* Information Technology Services Division \* Central Services Division

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

In the matter of the amendment of )  
ARM 23.13.102, 23.13.206, )  
23.13.207, 23.13.208, 23.13.209, )  
23.13.210, 23.13.212, 23.13.215, )  
23.13.702, and 23.13.703 pertaining )  
to the certification of public safety )  
officers )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

TO: All Concerned Persons

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

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

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

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

(1) through (5) remain the same.

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

(7) through (13) remain the same.

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

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

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

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

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

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

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

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

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

(d) misdemeanor probation/pretrial services officer;

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

(2) remains the same.

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

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

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

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

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

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

(d) misdemeanor probation/pretrial services officer;

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

(2) remains the same.

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

(a) through (5) remain the same.

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

AUTH: 2-15-2029, MCA

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

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

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

(c) probation and parole officer; and

(d) misdemeanor probation/pretrial services officer; and

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

(2) remains the same.

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

(a) through (5) remain the same.

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

AUTH: 2-15-2029, MCA

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

REASON: See the Reasons under ARM 23.13.207.

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

(c) probation and parole officer; and

(d) misdemeanor probation/pretrial services officer; and

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

(2) through (4) remain the same.

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

AUTH: 2-15-2029, MCA

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

REASON: See the Reasons under ARM 23.13.207.

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

(c) probation and parole officer; and

(d) misdemeanor probation/pretrial services officer; and

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

(2) through (3) remain the same.

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

AUTH: 2-15-2029, MCA

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

REASON: See the Reasons under ARM 23.13.207.

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

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

AUTH: 2-15-2029, MCA

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

REASON: See the Reasons under ARM 23.13.207.

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

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

AUTH: 2-15-2029, MCA

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

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

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

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

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

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

(f) remains the same.

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

(h) remains the same.

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

(j) and (k) remain the same.

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

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

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

AUTH: 2-15-2029, MCA

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

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

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

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

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

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

(c) through (11) remain the same.

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

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

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

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

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

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

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

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

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

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

/s/ Hannah Tokerud  
Hannah Tokerud  
Rule Reviewer

Sheriff Tony Harbaugh  
Chairman  
Public Safety Officers Standards  
and Training Council

By: /s/ Perry Johnson  
Perry Johnson  
Executive Director

Certified to the Secretary of State October 29, 2019.

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

(2) The public safety officer's employing authority must report to the executive director ~~any potential ground~~ sustained violation of the grounds for denial, sanction, suspension, or revocation of POST certification as enumerated in (3). If review of the conduct of an officer is pending before any court, council, tribunal, or agency, the employing authority may await final adjudication of the pending review prior to reporting the officer's conduct to the executive director. If the officer's conduct resulted in termination of the officer's employment, the notice requirements of 7-32-303, MCA, and ARM 23.13.216 still apply.

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

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

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

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

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

(e) conviction or commission of a misdemeanor or felony criminal offense enumerated in Tit. 45, ch. 5-10 or Tit. 61, ch. 8, pt. 4, MCA, or an offense which would be a misdemeanor or felony criminal offense enumerated in Tit. 45, ch. 5-10 or Tit. 61, ch. 8, pt. 4, MCA, if committed in this state;

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

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

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

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

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

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

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

~~or to the public's confidence in the profession;~~

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

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

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

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

DRAFT

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

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

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

- (i) firearms safety;
- (ii) role of the instructor;
- (iii) civil and criminal liability exposure;
- (iv) instructional techniques for firearms instructors;
- (v) operation of the firing line;
- (vi) range preparation;
- (vii) handgun;
- (viii) disabled officer techniques; and
- (ix) low light shooting techniques.

(c) keep on file in a format readily accessible to the council a copy of all firearms proficiency records, which must include:

- (i) date of qualification;
- (ii) identification of the officer;
- (iii) firearm manufacture and model;
- (iv) results of qualifying; and
- (v) course of fire used.

(2) The minimum standards for annual firearms proficiency are:

(a) Handgun – a minimum of 30 rounds, fired at ranges from point-blank to 15 yards with a minimum of 15 rounds at or beyond seven yards;

(b) Shotgun – minimum of five rounds fired at a distance ranging from point-blank to 25 yards;

(c) Precision rifle – a minimum of ten rounds fired at a minimum range of 100 yards;

(d) Patrol rifle – a minimum of 20 rounds fired at a distance ranging from point-blank to 50 yards;

(e) Fully automatic weapon – a minimum of 30 rounds fired at a distance ranging from point-blank to ten yards, with a minimum of 25 rounds fired in full automatic (short bursts of two or three rounds), and a minimum of five rounds fired semi-automatic.

(3) The minimum passing score for annual firearms proficiency is 80% for each firearm on an IPSC Official Target or dimensional equivalent.

(4) The MLEA sets the passing score for the Montana Law Enforcement Basic Firearms Qualification.

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

	A	B	C	D
1	<b>Misdemeanor / Pre-Trial Officer Basic Course</b>			
2	<b>BASIC COURSE- 140 Hours</b>	<b>HOURS</b>		<b>INSTRUCTOR</b>
3	POST Council Overview	2		POST Staff
4	Risk and Needs Assessments	4		Jennie Hansen, DOC
5	Professional Boundaries	3		Dave Garcia, DOC
6	Child Protection Services	2		Mark Laramore, CPS
7	American Indian Cultural Awareness	2		Harlan Trombley, DOC
8	Montana Court Systems	2		Judge Ortley, MLEA
9	Civil Rights	4		Judge Ortley, MLEA
10	Constitutional Law	2		Judge Ortley, MLEA
11	Court Room Testimony	4		Judge Ortley, MLEA
12	Dangerous Drugs (Identification)	2		Brad Gremaux, DCI
13	Supervising Sex Offenders	2		Dawn Handa*
14	Urinalysis and Drug Testing	3		Chris Evans, DOC
15	Case Planning / Management	6		Tara Kattell, DOC
16	Ethics	2		Scott Sterland, MLEA
17	Supervising Mental Health	2		Terry Boyd, DOC
18	Verbal Defense and Influence	8		Dave Garcia, DOC
19	Interstate Compact	2		Cathy Gordon, DOC
20	Substance Use Addictions and Treatment	4		Isaac Coy, DPHHS
21	Sexual Violent Offenders Registry	2		Jamie Lavinder, DCI
22	Reports of Violations / Report Writing	4		Kim Lahiff, DOC
23	Mental Health First Aid	8		Rebecca Guyer-Strait, MLEA
24	Situational Awareness	2		Wayne Bye, DOC
25	Motivational Interviewing	2		Dave Garcia, DOC
26	Legal Issues Pertaining to Use of Force	4		Judge Ortley, MLEA
27	Defensive Tactics	20		Ravalli County Sheriff's Office
28	Firearms	16		Ravalli County Sheriff's Office
29	Fatigue to Fulfillment	4		Dave Garcia, DOC
30	FINAL EXAM	2		
31	TOTAL	120		
32				
33	<b>PRE-ACADEMY ON-LINE INSTRUCTION</b>	<b>HOURS</b>		
34	Orientation	2		
35	Ethics	2		
36	Constitutional Law	2		
37	Sexual Harassment	2		
38	PREA	2		
39	Montana Code Annotated	2		
40	Risk Management	2		
41	Domestic Violence	2		
42	Human Trafficking	2		
43	Drug Endangered Children	2		
44	TOTAL	20		
45				
46	<b>TOTAL COURSE HOURS</b>	<b>140</b>		

## Keune, Mary Ann

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**From:** Johnson, Perry  
**Sent:** Wednesday, October 2, 2019 3:06 PM  
**To:** Keune, Mary Ann; Bolger, Katrina  
**Subject:** FW: MLEA Training for Misdemeanor Probation Officers and Pretrial Supervision Officers

February 2020 agenda item

**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:** Jon Metropoulos <[jon@metropouloslaw.com](mailto:jon@metropouloslaw.com)>  
**Sent:** Wednesday, October 2, 2019 10:16 AM  
**To:** Sue Wilkins <[SWilkins@m-c-s-inc.org](mailto:SWilkins@m-c-s-inc.org)>  
**Cc:** Olson, Kevin <[KOlson@mt.gov](mailto:KOlson@mt.gov)>; Johnson, Perry <[PJohnson@mt.gov](mailto:PJohnson@mt.gov)>; Dan Cederberg <[dcederberg@cederberg-law.com](mailto:dcederberg@cederberg-law.com)>; Andrea R. Lower ([andrea.lower@gallatin.mt.gov](mailto:andrea.lower@gallatin.mt.gov)) ([andrea.lower@gallatin.mt.gov](mailto:andrea.lower@gallatin.mt.gov)) <[andrea.lower@gallatin.mt.gov](mailto:andrea.lower@gallatin.mt.gov)>; 'Ette, Steve' ([Steve.Ette@gallatin.mt.gov](mailto:Steve.Ette@gallatin.mt.gov)) <[Steve.Ette@gallatin.mt.gov](mailto:Steve.Ette@gallatin.mt.gov)>  
**Subject:** Re: MLEA Training for Misdemeanor Probation Officers and Pretrial Supervision Officers

I intended to correct this to specify agenda item VIII A 2 b, which Sheriff Dutton is handling.

On Oct 2, 2019, at 9:27 AM, Jon Metropoulos <[jon@metropouloslaw.com](mailto:jon@metropouloslaw.com)> wrote:

On Oct 2, 2019, at 9:26 AM, Jon Metropoulos <[jon@metropouloslaw.com](mailto:jon@metropouloslaw.com)> wrote:

Perry and Kevin: When the POST meeting taking place today gets to agenda item VIII A 1, concerning SB 220, I would like the opportunity for public comment to emphasize these two points: 1. MCS, and we expect other community corrections entities, would find it difficult, perhaps impossible, to comply with a training program where all pertinent employees were required to attend at once. We need to have full and adequate staffing at MCS to perform our service. We would appreciate structuring the training opportunities in a way recognizing this, essentially allowing multiple opportunities. 2. MCS is a legacy provider, having rendered this service to the Missoula area for decades. As such, it already has employees hired and on staff and providing these services supervising offenders; thus, it would be impossible to comply with a

mandate for this training within one year of hire. Modifications to recognize this would be practical and appreciated.

Please enter these comments into the record.

I am monitoring the meeting and would appreciate, if necessary, the opportunity to state these comments in the context of the agenda; i.e. during the discussion of the implementation of SB 220. AND and Misdemeanor Probation/Pretrial Services Syllabus.

Thank you.

Respectfully,

Jon Metropoulos

On Oct 2, 2019, at 8:40 AM, Jon Metropoulos  
<[jon@metropouloslaw.com](mailto:jon@metropouloslaw.com)> wrote:

Perry and Kevin: As you know, I am attending the Post Council meeting this morning by telephone. My purpose is to emphasize the points Sue Wilkins has made in this email to you and to monitor the discussion surrounding this and the other issues on the agenda. I cannot attend in person, so would ask that you incorporate this email with a copy of Sue's email into the record as a public comment delivered to you on behalf of Missoula Correctional Services.

Thank you.

Respectfully,

Jon Metropoulos

Sent from my iPhone

On Oct 1, 2019, at 10:55 PM, Sue Wilkins <[SWilkins@m-c-s-inc.org](mailto:SWilkins@m-c-s-inc.org)> wrote:

Dear Kevin and Perry,

I would like to thank you for working with Andrea, Steve, and the POST training Committee to review training courses for the Misdemeanor and Pretrial Supervision Officers. It is something we have been wanting to see for some time.

As you are aware, Missoula Correctional Services (MCS) has been providing Misdemeanor Supervision Services since 1996 and Pretrial Supervision Services since 1998 for Missoula County. We began providing these services for the City of Missoula in 2012. Our officers were allowed attend MLEA with the State Parole and Probation Officers for the Basic Course until 2012. At that time, we were informed that we could no longer attend that training as our officers were not public employees. Since then we have hired POST certified trainers and local professionals to provide the training previous certified by POST. We strongly believe that

training for our officers, offender safety, and the safety of the community. We also believe that having consistent training is important for all officers to receive throughout the State of Montana. It is why we have been trying to get legislation that allowed for this since 2012.

Because MCS has been operating our programs for years, it is important to recognize that MCS (and others) can not send all of its employees to the proposed training session in November at the same time. We must continue to provide services to the Courts and we must continue to supervise the offenders/defendants who are in our programs. In other words, some officers must stay behind to do so. I would respectfully ask that there be some form of accommodations made to providing two training sessions this year to enable us to be send all of our employees to the training that is approved by POST. We definitely want to have all our officers receive the training that is approved. We simply need to send some of our officers to one training session and the rest to the second session so we can maintain operations.

Please also realize that there are employees that were hired more than one year ago because we have been in existence for an extended period of time and therefore, the rule that the training must occur within one year of hire should not apply to those employees as the new training is being implemented. Again, MCS supports the training and wants all of its officers to go through the courses approved. MCS, however, must continue to be able to operate and therefore, for this initial training year there needs to be some concessions made.

Thank you for considering the issues noted above. And a big thanks for working on this with all of us. – Sue Wilkins



SIGN UP FREE



# Pre-Trial Services & Misdemeanor Probation Basic #1

QUESTION SUMMARIES

DATA TRENDS

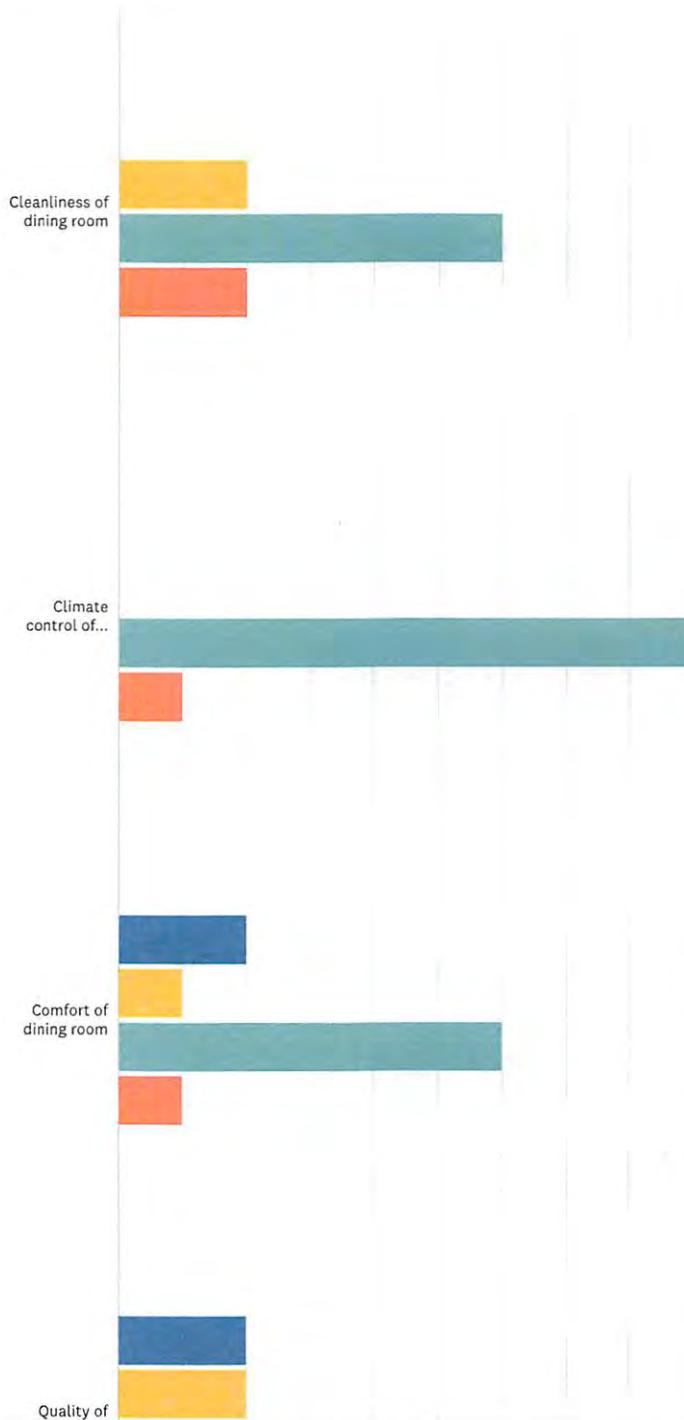
INDIVIDUAL RESPONSES

Q1



## Food Service

Answered: 10 Skipped: 0

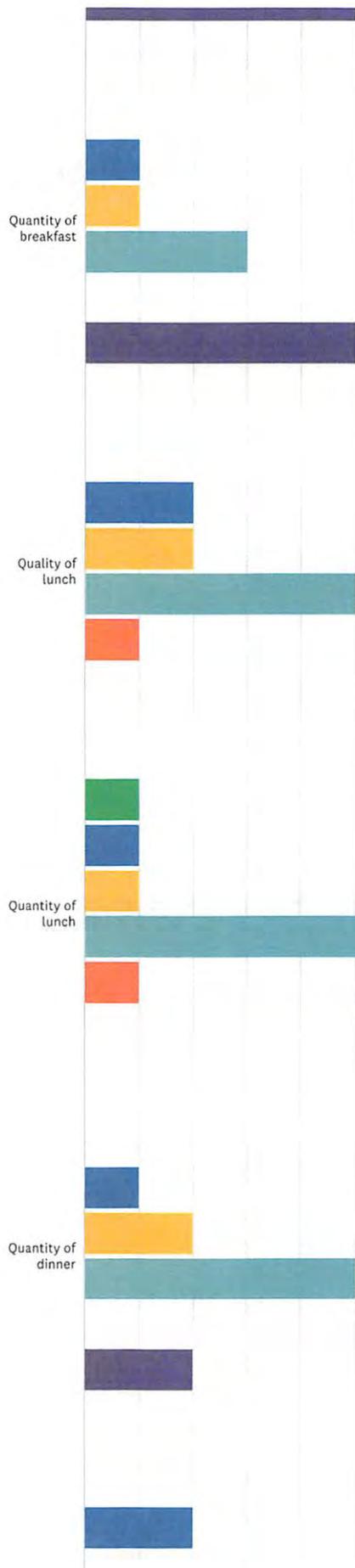


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Share Tweet Share

10 responses  
128

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COPY

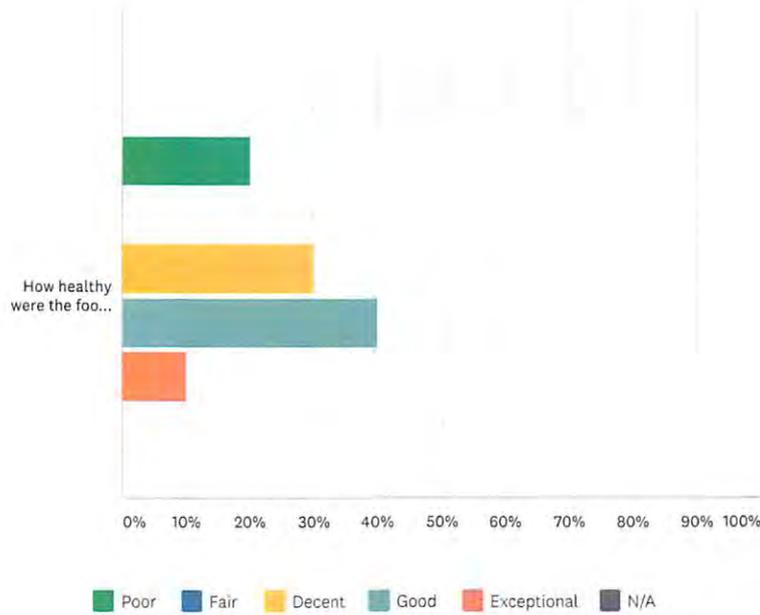
Share

Tweet

Share

10 responses  
129

SIGN UP FREE



	POOR	FAIR	DECENT	GOOD	EXCEPTIONAL	N/A	TOTAL	WEIGHTED AVERAGE
Cleanliness of dining room	0.00% 0	0.00% 0	20.00% 2	60.00% 6	20.00% 2	0.00% 0	10	4.00
Climate control of dining room	0.00% 0	0.00% 0	0.00% 0	90.00% 9	10.00% 1	0.00% 0	10	4.10
Comfort of dining room	0.00% 0	20.00% 2	10.00% 1	60.00% 6	10.00% 1	0.00% 0	10	3.60
Quality of breakfast	0.00% 0	20.00% 2	20.00% 2	10.00% 1	0.00% 0	50.00% 5	10	2.80
Quantity of breakfast	0.00% 0	10.00% 1	10.00% 1	30.00% 3	0.00% 0	50.00% 5	10	3.40
Quality of lunch	0.00% 0	20.00% 2	20.00% 2	50.00% 5	10.00% 1	0.00% 0	10	3.50
Quantity of lunch	10.00% 1	10.00% 1	10.00% 1	60.00% 6	10.00% 1	0.00% 0	10	3.50
Quantity of dinner	0.00% 0	10.00% 1	20.00% 2	50.00% 5	0.00% 0	20.00% 2	10	3.50
Quality of dinner	0.00% 0	20.00% 2	0.00% 0	70.00% 7	10.00% 1	0.00% 0	10	3.70
Quality of beverages								
How healthy were the food choices, overall?	20.00% 2	0.00% 0	30.00% 3	40.00% 4	10.00% 1	0.00% 0	10	3.20

Q2

### Defensive Tactics

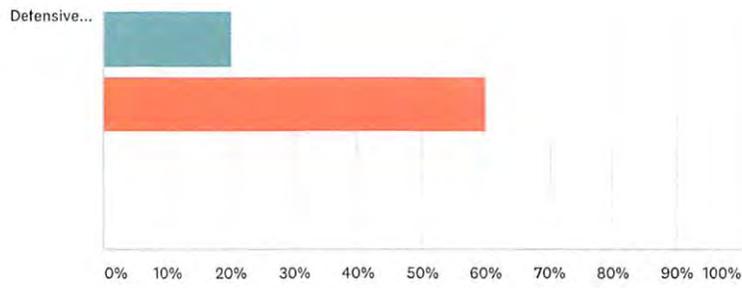
Answered: 10 Skipped: 0

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 ■ Fair 
 ■ Decent 
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 ■ Exceptional 
 ■ N/A

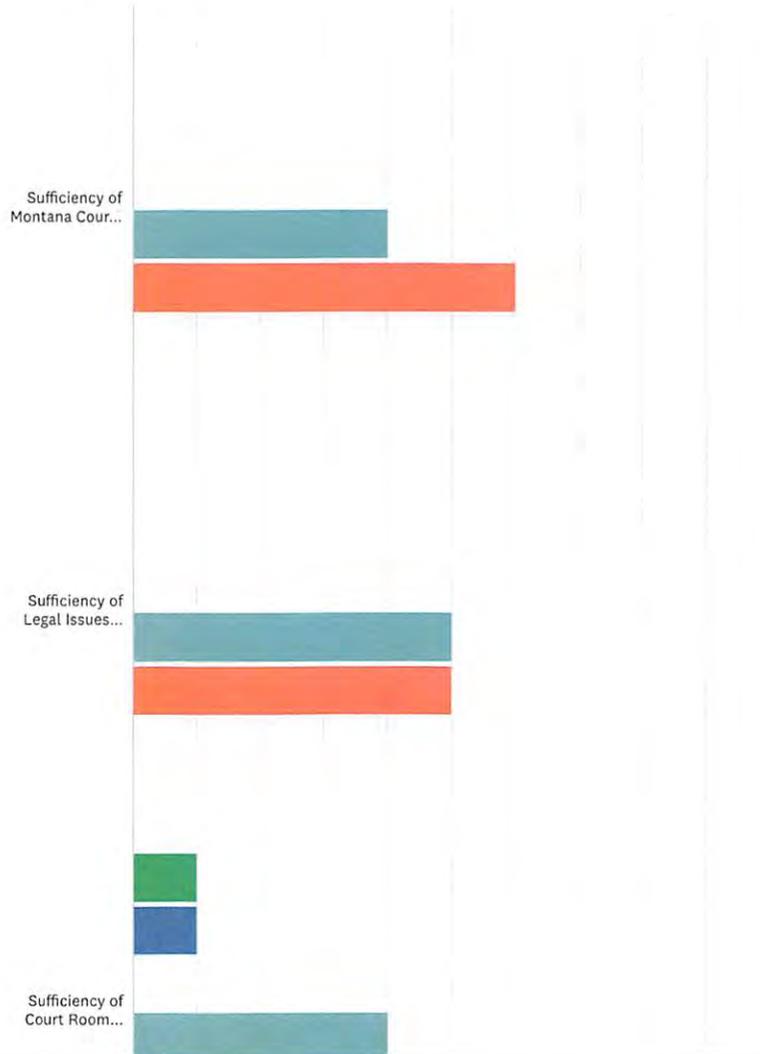
	POOR	FAIR	DECENT	GOOD	EXCEPTIONAL	N/A	TOTAL	WEIGHTED AVERAGE
Sufficiency of Defensive Tactics Training	0.00% 0	0.00% 0	20.00% 2	20.00% 2	60.00% 6	0.00% 0	10	4.40

### Q3



## Legal

Answered: 10 Skipped: 0



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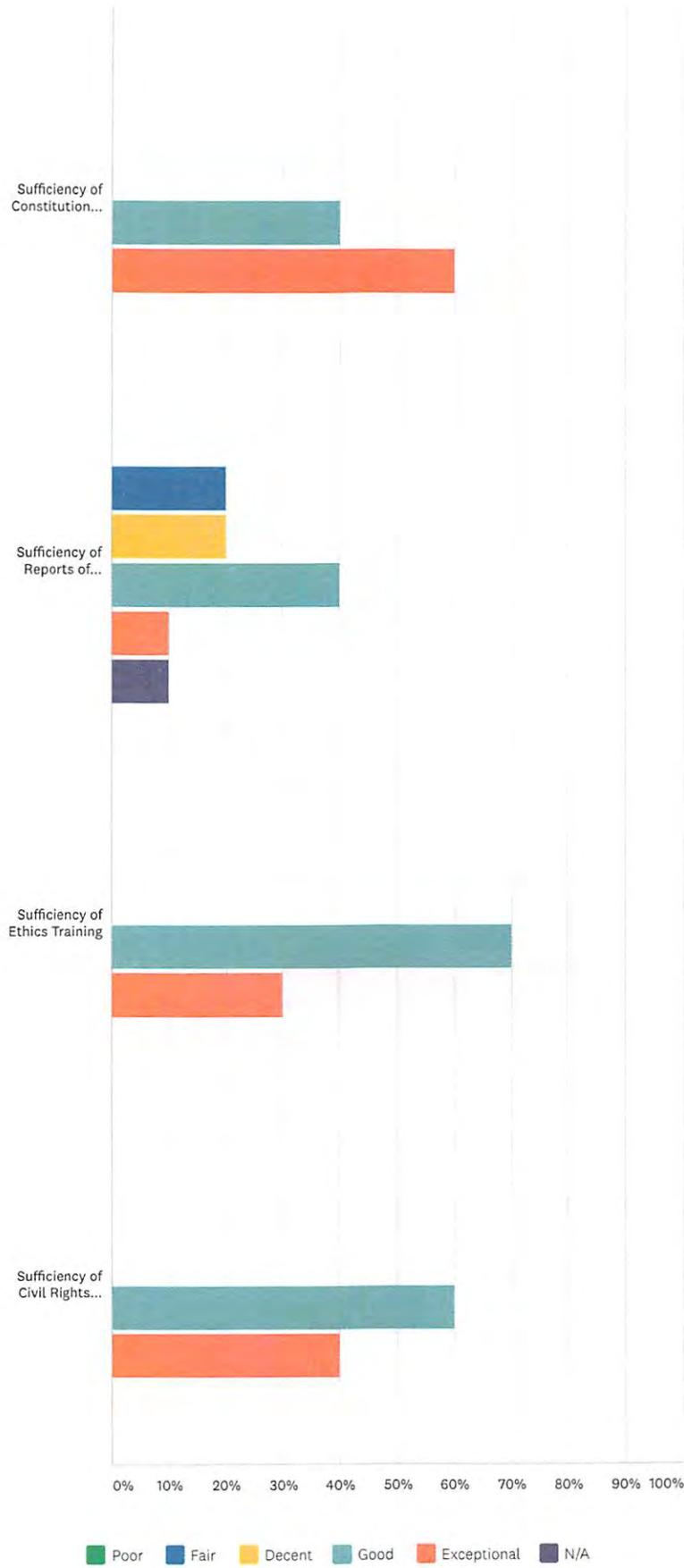
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POOR FAIR DECENT GOOD EXCEPTIONAL N/A TOTAL WEIGHTED AVERAGE

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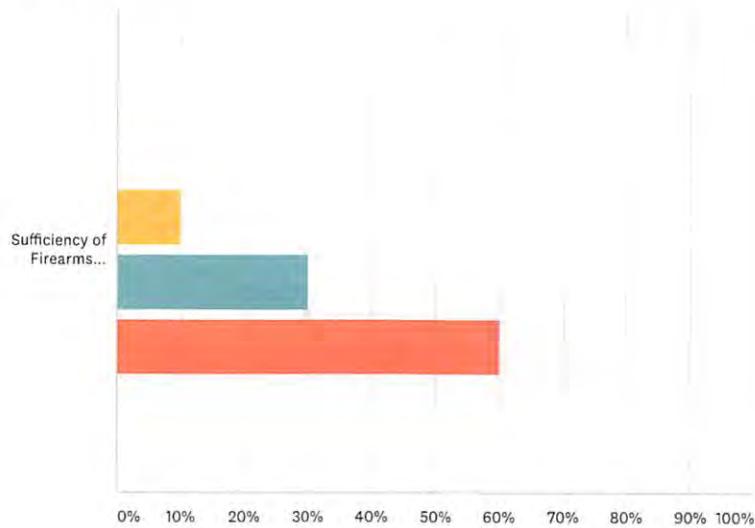
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Training Category	100%	75%	50%	25%	0%	Count	Average
Sufficiency of Court Room Mechanics and Testimony Training	10.00%	10.00%	0.00%	40.00%	40.00%	0	3.90
Sufficiency of Constitutional Law Training	0.00%	0.00%	0.00%	40.00%	60.00%	0	4.60
Sufficiency of Reports of Violation and Report Writing Training	0.00%	20.00%	20.00%	40.00%	10.00%	1	3.44
Sufficiency of Ethics Training	0.00%	0.00%	0.00%	70.00%	30.00%	0	4.30
Sufficiency of Civil Rights Training	0.00%	0.00%	0.00%	60.00%	40.00%	0	4.40

Q4

Firearms

Answered: 10 Skipped: 0



	POOR	FAIR	DECENT	GOOD	EXCEPTIONAL	N/A	TOTAL	WEIGHTED AVERAGE
Sufficiency of Firearms Training	0.00%	0.00%	10.00%	30.00%	60.00%	0.00%	10	4.50

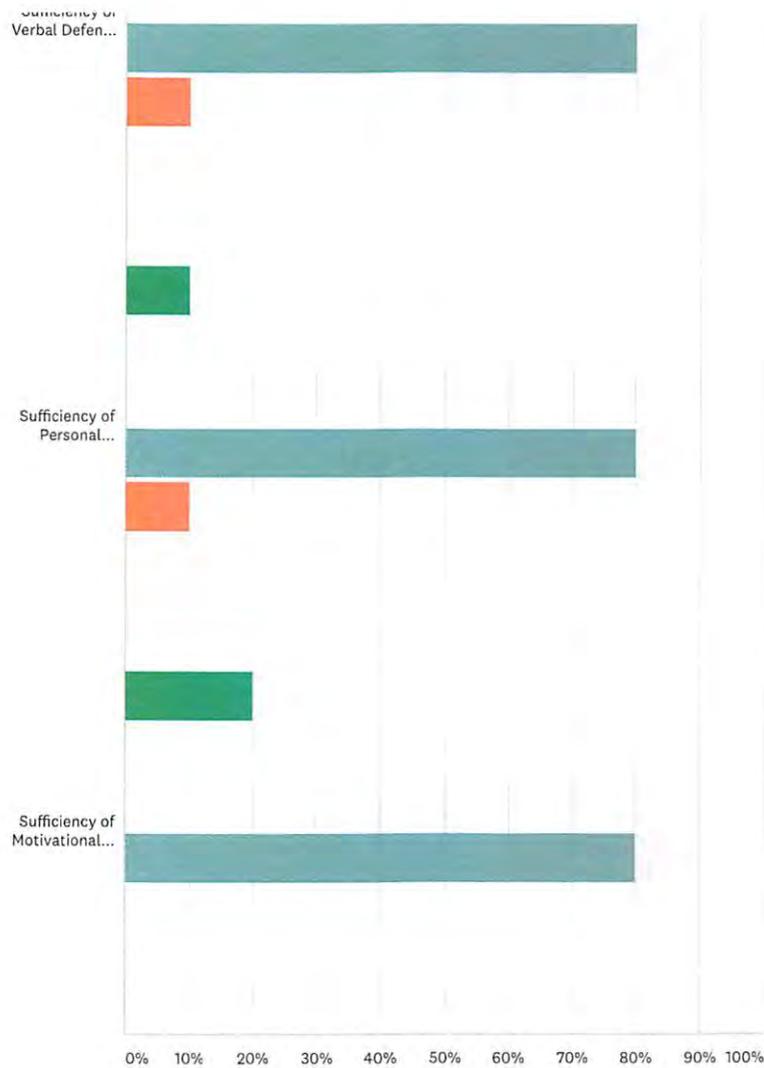
Q5

Verbal Defense and Influence

Answered: 10 Skipped: 0

COPY

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■ Poor 
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 ■ Good 
 ■ Exceptional 
 ■ N/A

	POOR	FAIR	DECENT	GOOD	EXCEPTIONAL	N/A	TOTAL	WEIGHTED AVERAGE
Sufficiency of Verbal Defense and Influence Training	10.00% 1	0.00% 0	0.00% 0	80.00% 8	10.00% 1	0.00% 0	10	3.80
Sufficiency of Personal Protection/Situational Awareness Training	10.00% 1	0.00% 0	0.00% 0	80.00% 8	10.00% 1	0.00% 0	10	3.80
Sufficiency of Motivational Interviewing Training	20.00% 2	0.00% 0	0.00% 0	80.00% 8	0.00% 0	0.00% 0	10	3.40

Q6

### Mental Health First Aid

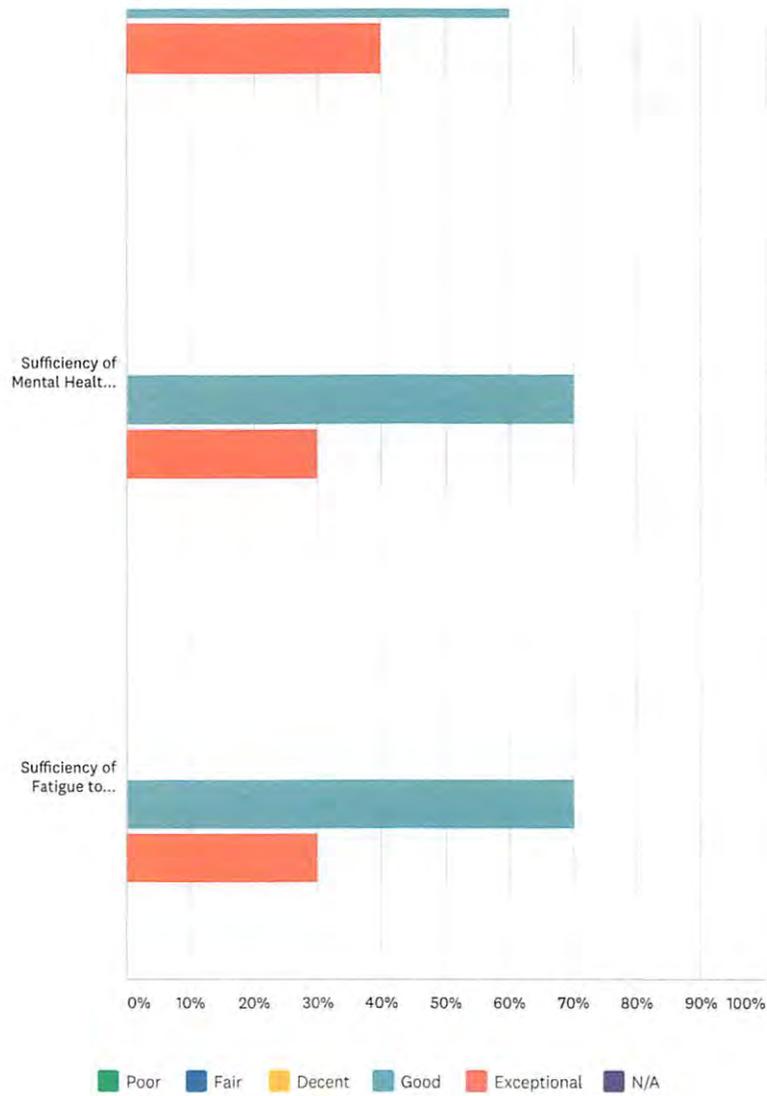
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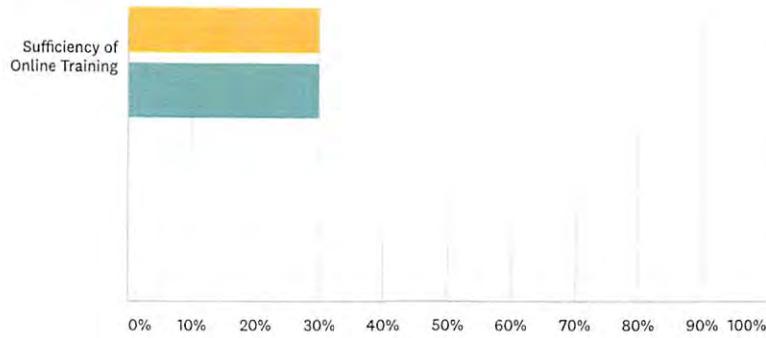
	POOR	FAIR	DECENT	GOOD	EXCEPTIONAL	N/A	TOTAL	WEIGHTED AVERAGE
Sufficiency of Mental Health First Aid Training	0.00% 0	0.00% 0	0.00% 0	60.00% 6	40.00% 4	0.00% 0	10	4.40
Sufficiency of Mental Health Caseloads Training	0.00% 0	0.00% 0	0.00% 0	70.00% 7	30.00% 3	0.00% 0	10	4.30
Sufficiency of Fatigue to Fulfillment Training	0.00% 0	0.00% 0	0.00% 0	70.00% 7	30.00% 3	0.00% 0	10	4.30

Q7

### Online Training

Answered: 10 Skipped: 0

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■ Poor 
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 ■ N/A

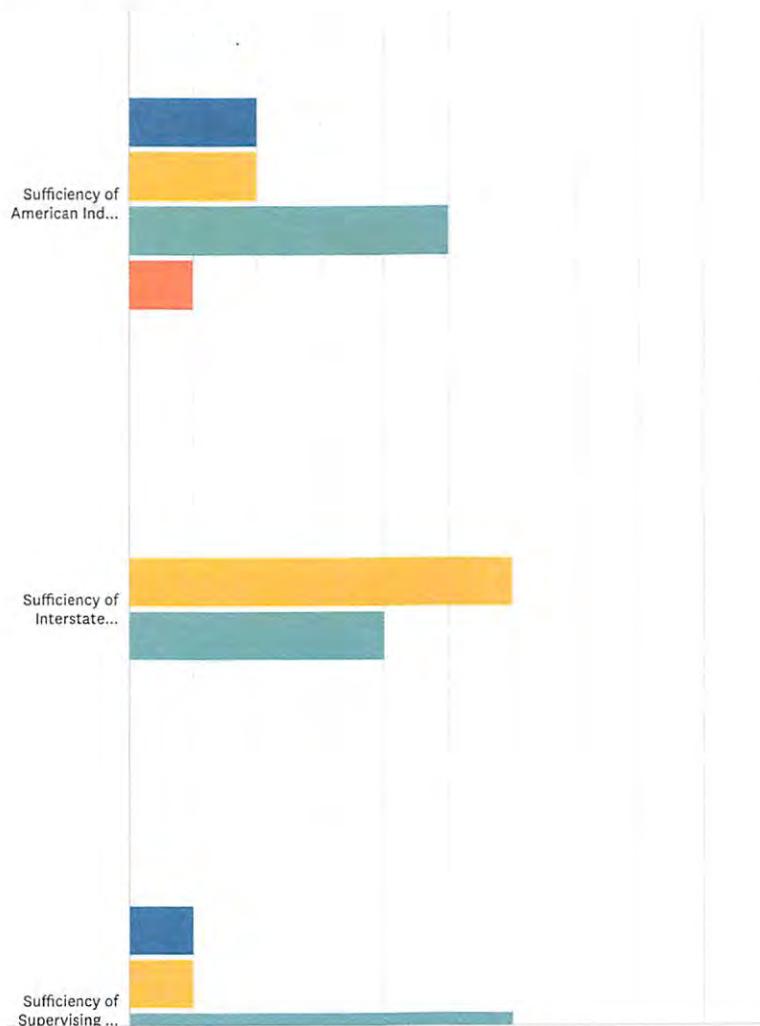
	POOR	FAIR	DECENT	GOOD	EXCEPTIONAL	N/A	TOTAL	WEIGHTED AVERAGE
Sufficiency of Online Training	10.00% 1	30.00% 3	30.00% 3	30.00% 3	0.00% 0	0.00% 0	10	2.80

Q8



Miscellaneous

Answered: 10 Skipped: 0



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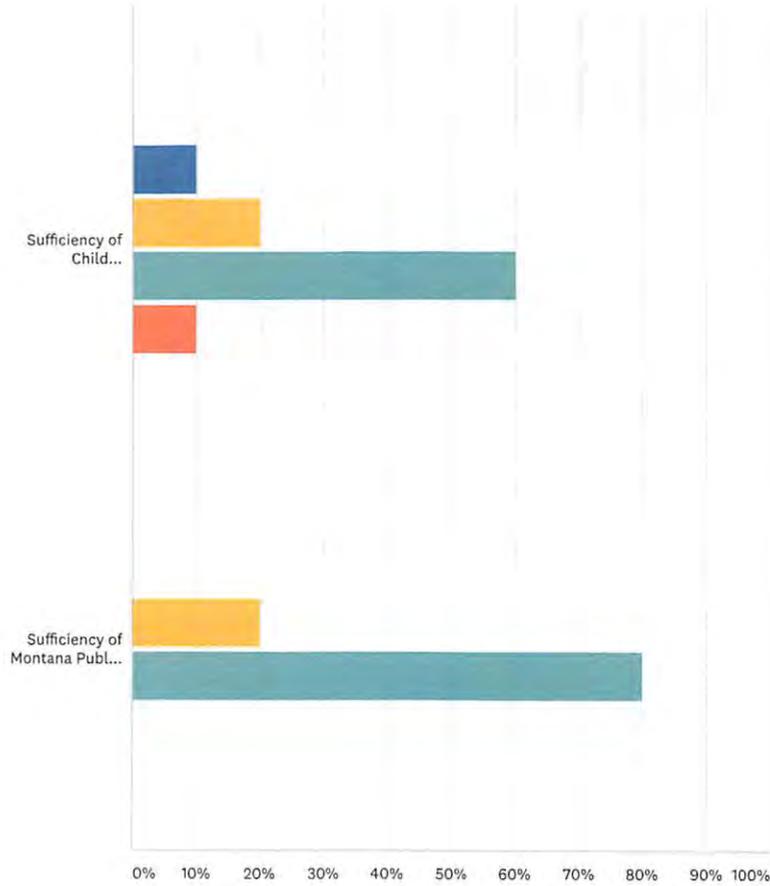
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 ■ N/A

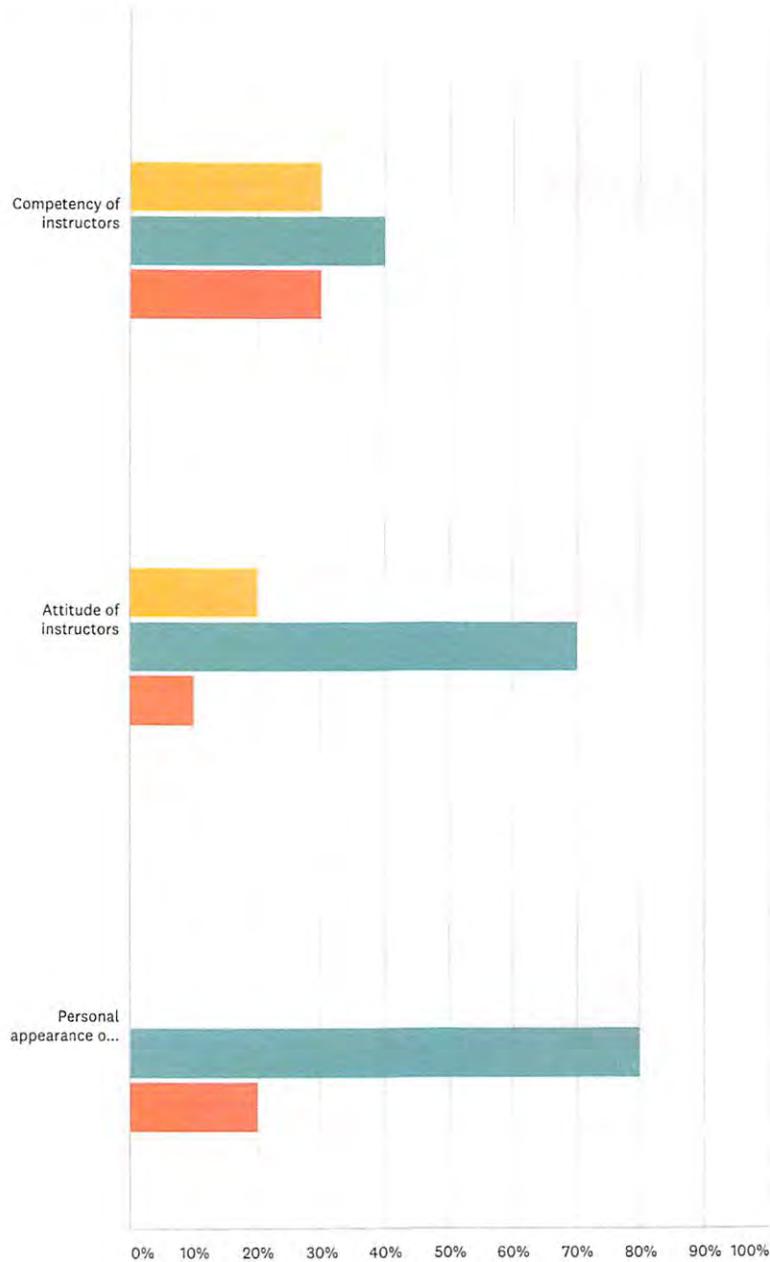
	POOR	FAIR	DECENT	GOOD	EXCEPTIONAL	N/A	TOTAL	WEIGHTED AVERAGE
Sufficiency of American Indian Cultural Awareness Training	0.00% 0	20.00% 2	20.00% 2	50.00% 5	10.00% 1	0.00% 0	10	3.50
Sufficiency of Interstate Compact Training	0.00% 0	0.00% 0	60.00% 6	40.00% 4	0.00% 0	0.00% 0	10	3.40
Sufficiency of Supervising Sex Offenders in the Community Training	0.00% 0	10.00% 1	10.00% 1	60.00% 6	20.00% 2	0.00% 0	10	3.90
Sufficiency of Child Protective Services Training	0.00% 0	10.00% 1	20.00% 2	60.00% 6	10.00% 1	0.00% 0	10	3.70
Sufficiency of Montana Public Safety Officer Standards and Training Presentation	0.00% 0	0.00% 0	20.00% 2	80.00% 8	0.00% 0	0.00% 0	10	3.80



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Answered: 10 Skipped: 0



■ Poor 
 ■ Fair 
 ■ Decent 
 ■ Good 
 ■ Exceptional 
 ■ N/A

	POOR	FAIR	DECENT	GOOD	EXCEPTIONAL	N/A	TOTAL	WEIGHTED AVERAGE
Competency of instructors	0.00% 0	0.00% 0	30.00% 3	40.00% 4	30.00% 3	0.00% 0	10	4.00
Attitude of instructors	0.00% 0	0.00% 0	20.00% 2	70.00% 7	10.00% 1	0.00% 0	10	3.90
Personal appearance of instructors	0.00% 0	0.00% 0	0.00% 0	80.00% 8	20.00% 2	0.00% 0	10	4.20

Q10



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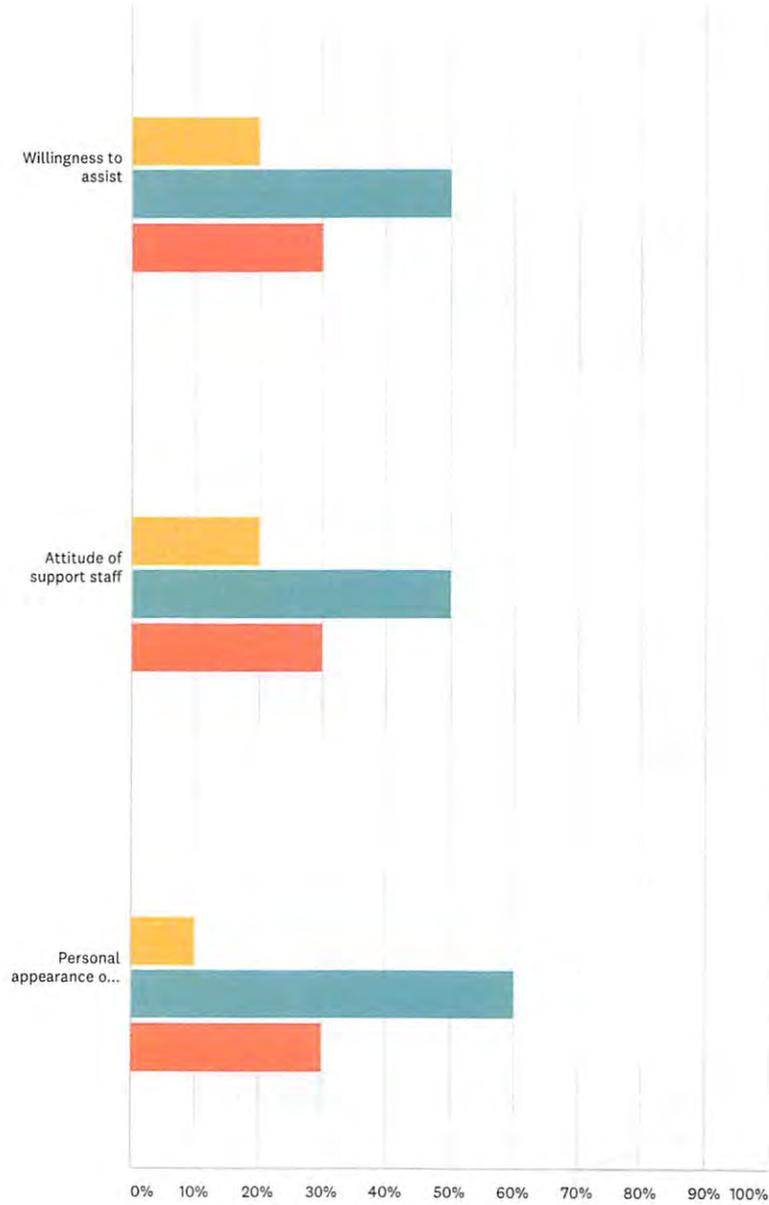
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 ■ Decent 
 ■ Good 
 ■ Exceptional 
 ■ N/A

	POOR	FAIR	DECENT	GOOD	EXCEPTIONAL	N/A	TOTAL	WEIGHTED AVERAGE
Willingness to assist	0.00% 0	0.00% 0	20.00% 2	50.00% 5	30.00% 3	0.00% 0	10	4.10
Attitude of support staff	0.00% 0	0.00% 0	20.00% 2	50.00% 5	30.00% 3	0.00% 0	10	4.10
Personal appearance of support staff	0.00% 0	0.00% 0	10.00% 1	60.00% 6	30.00% 3	0.00% 0	10	4.20

Q11

Comments:

Answered: 8 Skipped: 2

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11/26/2019 11:25 AM

add coursing dealing with equipment monitoring (ex. GPS, SCRAM, Remote Breath, drug patch) a lot of pre trail individuals are required to do some form of monitoring while awaiting sentencing and some need to continue some form after.

11/25/2019 4:30 PM

The only thing I would recommend is ensuring that instructors are aware of what our program entails. Many instructors had no idea what we even do on a daily basis. This is important for them to know prior to putting together a presentation on training for our line of work.

11/25/2019 3:56 PM

I felt the director did not have a good attitude towards us.

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PREA training was a bit overkill as our agency does PREA training regularly (other agencies I spoke with said the same thing). I would have liked to have seen more focus on our day-to-day operations (More M.I., more on violations and circumstances on to file or not, etc.). I realize this was a put together course on short notice and if at all I can help provide feedback or answer questions I would be more than happy to do so.

12/2/2019 11:45 AM

Have more training/classes geared toward the actual job pre trial and misdemeanor probation officers do. Can do without all to D.O.C policy, it did not pertain to us as a class. Being the first class the growing pains and issues were expected, but it still seemed too disorganized at times. Wasn't a good sign when instructors asked what our jobs entailed and they responded by saying "I don't know why I am here then".

11/27/2019 1:29 PM

The Courtroom testimony person did not show up for the class. It would be beneficial for that to be taught because a good amount of time is spent testifying. There should be instruction on home visits/home searches. This would be beneficial for officers that are just beginning their careers and for those who may need a refresher. It would be great if the class could bring in some of their Report of Violations/Other Reports and have them critiqued by others and instructors. This will help improve report writing from real life examples. Motivational Interviewing should be longer and work on MI techniques. The presentation was more informative than training to use the skills. More time and focus should be given to Verbal De-escalation tactics since the majority of Pretrial & Misdemeanor Probation Officers are not able to carry or use non-lethal weapons. The substance use and mental health section could be shorten up a bit. The online training had flaws but Scott was open to comments & suggestions and is working out the kinks to improve and streamline it for the next class. Since this academy is brand new and some of the instructors did not know they were teaching sections until a couple of weeks before it started there were a lot of instructors that did not know what Pretrial & Misdemeanor Probation Officers do and therefore unable (either time wise or lack of knowledge) to adjust what they normally teach at Probation & Parole Academy to be applicable to our jobs. There was frustration that some of the instructors had no idea what we did or the audience they were teaching to. Adding a first aid class would be beneficial. The majority of the MLEA staff were fantastic but there was a feeling like this academy was a bit of a bother for some. There was an underlying tone that we did not belong there. Sort of like we were the redheaded step-children of the law enforcement community. Again, this was not everyone and there were some efforts made to make us feel included. Judge Ortley was excellent. He found out what our jobs entailed and adjusted his presentation accordingly. I thought that this academy was in the works since we were told that we could not attend the Probation & Parole Academy in June. After talking to some of the instructors, it sounded like they had very little time to prepare to teach this academy. It seemed like there was a huge disconnect between the creators of this academy and those teaching the classes. While some of the components of pretrial and misdemeanor probation are similar, there are other components that are not, such as the power to arrest and searches of person and property. It would be beneficial to have both misdemeanor probation and pretrial input (based on their on the job experience) when adjusting the curriculum for the next class (which I guess this survey is doing). This ensures that the curriculum is balanced and addresses the training needs of both pretrial and misdemeanor probation. All in all, I met some great people and was able to make great contacts with other agencies. I hope to continue to develop good working relationships that will improve and further our pretrial and misdemeanor probation programs statewide. Big shout out and much appreciation to the Ravalli County Sheriffs Office!! Thanks for your knowledge, professionalism, great attitudes and the perfect amount of humor speckled throughout.

11/27/2019 12:58 PM

I felt 3 weeks of training wasn't sufficient enough time to receive the training needed. I absolutely feel we need instructors who do the job of Pretrial or Misdemeanor Probation teaching the classes. Probation and Parole officers have a completely different approach when working with their offenders. Pretrial officers are working with offenders not yet sentenced therefor are presumed innocent and we do not work with an innocent defendant like a person on a suspended sentence. With the exception of the MLEA Staff, often times the instructors were not prepared well enough for the class and had to "wing it" or we were the "gopher" I understand this class was the first class and there certainly is much improvement needed to make it more compatible for our specific job needs. However, I will say as a former Academy attender of 2 previous Academy's I feel like there is ALWAYS something to be learned and whether or not the material applied specifically to my job position I was able to take the lesson and learn something new each time.

11/26/2019 1:38 PM

My number one critique would be to ensure that the instructors of all the courses, especially MLEA staff, actually understand what Pretrial Services and Misdemeanor Probation Officers do. Almost all of the instructors believed they were teaching a Probation and Parole Class and were consequently providing information not applicable to the positions we hold. Pretrial Officers and Misdemeanor Probation Officers do not need to know DOC policy and procedure; that is not who we work for. The online training may have been more helpful with many of the glitches ironed out and if the class actually had the ability to complete the online modules prior to the start of in class instruction. Additionally, the online modules should not be the same exact information and slides presented in class as this was purely a waste of time. It would be helpful to know exactly what the laws are pertaining to Pretrial Services as in, what are officers actually allowed to mandate of the defendants they are supervising and what are they not allowed to do in order to maintain the presumption of innocence for each defendant. It would have been helpful to have a demonstration of a home visit as many of us are completing those unarmed and in very vulnerable capacities. What should we be looking for when the judge tells us to approve a residence? What are we able to look at and what are we not allowed to do when completing a home visit? There should also be a CPR course included in this training so all Officers come out CPR certified. Finally, the class is called Pretrial Services and Misdemeanor Probation Basic. There is no such thing as Misdemeanor Parole.

11/26/2019 11:25 AM

add coursing dealing with equipment monitoring (ex. GPS, SCRAM, Remote Breath, drug patch) a lot of pre trail individuals are required to do some form of monitoring while awaiting sentencing and some need to continue some form after.

11/25/2019 4:30 PM

The only thing I would recommend is ensuring that instructors are aware of what our program entails. Many instructors had no idea what we even do on a daily basis. This is important for them to know prior to putting together a presentation on training for our line of work.

11/25/2019 3:56 PM

I felt the director did not have a good attitude towards us.

11/25/2019 3:04 PM

Kristina Neal  
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[Kristinaneal46@gmail.com](mailto:Kristinaneal46@gmail.com)

ATTORNEY FOR PETITIONER

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY, MONTANA**

---

PUBLIC SAFETY OFFICERS	)	
STANDARD AND TRAINING	)	
COUNCIL (POST)	)	
	)	Cause No. _____
Petitioner,	)	PETITION FOR JUDICIAL REVIEW
	)	
vs.	)	
ROSS DRISHINSKI	)	
	)	
Respondents.	)	

---

The Petitioner, POST, petitions this Court for judicial review of the final decision of the Montana Board of Crime Control (BOCC) to restore Ross Drishinski’s POST certification. POST files this petition pursuant to the Montana Administrative Procedure Act (“MAPA”), Mont. Code Ann. §2-4-702(1) and (2)(a), (2)(b) and (2)(d) because this action challenges a final decision made pursuant to Mont. Code Ann. §44-7-101. POST seeks a determination by this Court that the BOCC’s decision was unlawful, was arbitrary and capricious, and was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. *See*, Mont. Code Ann. §2-4-704.

///

**I. FACTS UPON WHICH JURISDICTION AND VENUE ARE BASED (MONT. CODE ANN. § 2-4-702(2)(b))**

1. Petitioner, POST, is quasi-judicial board of the State of Montana, created under Mont. Code Ann. § 2-15-124.

2. Respondent Ross Drishinski is an individual peace officer, who had been employed by the Pondera County Sherriff's Office.

3. The Montana Board of Crime Control (BOCC) is quasi-judicial board of the State of Montana, created under Mont. Code Ann. § 2-15-124. *See also*, Mont. Code Ann. § 44-7-101.

4. On or about October 1, 2019, the BOCC issued a final decision to restore POST certification to Ross Drishinski.

5. POST has exhausted all known available administrative remedies and is aggrieved by the final decision of the BOCC.

6. Under Mont. Code Ann. § 2-4-702(1)(a) and Mont. Code Ann. § 2-4-702(2), this Court has jurisdiction to review agency actions.

7. This Petition was filed within thirty days of service of the BOCC's final decision to restore Ross Drishinski's POST certification. Mont. Code Ann. § 2-4-702(2)(a).

8. Venue is proper in Lewis and Clark County, Montana because Lewis and Clark County is where POST maintains its principal office. Mont. Code Ann. § 2-4-702(2)(a).

**II. PROCEDURAL FACTS**

9. On May 17, 2017, POST filed a Notice of POST Action revoking Drishinski's POST certification. POST alleged that Drishinski previously had a certification revoked in Utah in 2006 for "sexual misconduct"; had been convicted of public sexual indecency in Arizona in 2007, had lied on his job application to the

Pondera County Sheriff's Office regarding his Arizona conviction, and had lied to POST during its investigation.

**A. The Hearing Examiner's findings**

10. A hearing in this matter was held before Hearing Examiner David Scrimm on December 12, 2017. (The Hearing Examiner's Findings of Fact and Conclusions of Law are attached as Exhibit A.)

11. Drishinski called Michael Galloway, a former Ponder County Sherriff's deputy as a witness. Mr. Galloway testified telephonically. He called no other witnesses.

12. POST called as witnesses former Pondera County Sherriff, Tom Kuka, Mesa, Arizona Police Department Officer Ryan Douglass, POST's paralegal/investigator Katrina Bolger and POST's Bureau Chief, Perry Johnson.

The Hearing Examiner found that:

13. On January 12, 2006, Drishinski's Utah POST certification was revoked for "sexual misconduct."

14. On March 27, 2007, Officer Douglass issued Drishinski a citation for Public Sexual Indecency – Intercourse, a misdemeanor.

15. Drishinski pled guilty to this offense on August 8, 2007.

16. On September 6, 2007, Drishinski filled out an application for employment with the Pondera County Sheriff's Office.

17. On the section of the job application that requests the applicant to list criminal convictions, Drishinski wrote "N/A."

18. Kuka was the Pondera County Sheriff at the time that Drishinski was interviewed and hired. Galloway was one of the deputies that sat on the hiring and interviewing committee.

19. Galloway testified that Drishinski verbally informed the interview committee of his Arizona conviction.

20. When Drishinski applied for the position with Pondera County, he contacted POST and spoke to the Council's legal representative regarding the Utah POST certificate revocation. Kuka also contacted POST's executive director, Wayne Ternes. At the time, POST's position was that Drishinski could hold a Montana POST certificate, despite the Utah revocation.

21. The Pondera County Sheriff's Office formally hired Drishinski in January 2008.

22. In 2014, POST discovered that Drishinski had not applied for POST certification. The issue of Drishinski's Montana POST eligibility was again raised in regard to the Utah revocation. POST decided not to open an investigation.

23. On April 9, 2015, POST issued Drishinski a Basic Peace Officer Certificate.

24. In December 2014, POST adopted a new administrative rule allowing it to deny POST certification to an applicant who had been disciplined by another state.

25. In April 2016, POST received a complaint regarding Drishinski which encompassed the Pondera County job application, the Arizona conviction, and the Utah certificate revocation.

26. When POST investigated Drishinski regarding the Arizona conviction, Drishinski informed POST that Officer Douglass had lied on the stand during Drishinski's girlfriend's trial and falsified his report.

27. Drishinski also stated that he did not know that he had been convicted of a crime in Arizona and claimed that it was only a civil citation.

**B. The Hearing Examiner's Conclusions**

28. The Hearing Examiner concluded that Drishinski had met his burden of proving that his certification should not have been revoked.

29. The Hearing Examiner found that Drishinski did not lie on his job application.

30. The Hearing Examiner found that Drishinski did not obstruct POST's investigation nor did he lie to investigators.

31. The Hearing Examiner concluded that the POST Council waived its right to not certify or to sanction Drishinski based upon the Utah revocation.

32. The Hearing Examiner further concluded that no basis existed for revoking Drishinski's POST certificates.

**C. The POST Council Findings**

33. On October 3, 2018, the POST Council reviewed the Hearing Examiner's Findings of Fact and Conclusions of Law and heard argument from both POST's attorney and Drishinski's attorney.

34. The POST Council voted to postpone a vote on the matter and instead review the entire record, including the transcripts of the hearing.

35. On February 29, 2019, the POST Council again heard argument from POST's attorney and Drishinski's attorney. Drishinski personally appeared and spoke to the POST Council.

36. The POST Council concluded that Drishinski's conduct had violated the Code of Ethics, that he had lied on his job application, that he had been convicted of a misdemeanor sexual offense, and his conduct was improper and harmful to his own reputation as a peace officer.

37. The POST Council determined that revocation of Drishinski's certification was proper. (The POST Council Final Decision is attached as Exhibit B.)

**D. Board of Crime Control Appeal**

38. Drishinski appealed to the Board of Crime Control.

39. A hearing was held before the BOCC's Appeal Review Committee. POST's attorney, Drishinski's attorney and Drishinski appeared at the hearing.

40. The Appeal Review Committee of the BOCC recommended that the BOCC reverse the POST Council's decision and recommended that Drishinski's certification be restored to him in good standing.

41. The BOCC adopted the Appeal Review Committee's recommendation. (Exhibit C.)

### **III. GROUNDS FOR RELIEF**

#### **A. The BOCC Ruling Improperly Usurps its Judgment for that of the POST Council.**

42. Petitioner incorporates by reference, paragraphs 1-41.

43. The weighing and balancing of expert opinion pro and con is properly vested in the administrative agency in its field of expertise. *State ex rel. Department of Public Service Regulations v. Montana Irrigators*, 209 Mont. 375, 381, 680 P.2d 963, 966 (1984).

44. Further, when evaluating the evidence, the agency's experience, technical competence, and specialized knowledge should be utilized. *Mayer v. Board of Psychologists*, 2014 MT 85, ¶ 27, 374 Mont. 364, 321 P.3d 819.

45. The POST Council is comprised of public safety officers from a variety of disciplines as well as three members from the public at large. (*See*, Mont. Code Ann. § 44-4-402). Thus, it is against public policy and judicial economy for another unrelated agency, such as the BOCC, to review and alter the decisions of the POST Council.

### **IV. RELIEF REQUESTED**

POST requests that the Court:

A. Order a stay of the BOCC decision and reimpose the revocation of the Drishinski's POST certification. *See*, Mont. Code Ann. § 2-4-702(3).

B. Order that the BOCC transmit the full record to this Court. *See*, Mont. Code Ann. § 2-4-702(4).

C. Order any additional briefing, with a briefing schedule, as the Court deems appropriate.

D. Find, as a matter of fact and as a matter of law, that the BOCC's decision to reverse the findings of fact and conclusions of law rendered by the POST Council, was clearly erroneous, arbitrary, capricious, and unlawful

E. Grant any such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 1st day of November, 2019.

By: \_\_\_\_\_  
Kristina Neal  
POST Legal Counsel

CERTIFICATE OF SERVICE

I certify that on the 1st day of November 2019, a true copy of the foregoing petition was served by U.S. Mail, postage prepaid, on the following:

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406 Attorneys  
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\_\_\_\_\_  
Kristina Neal

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Kristinaneal46@gmail.com

MONTANA TWELFTH JUDICIAL DISTRICT COURT, HILL COUNTY

THAD WHITE,	)	
	)	
Petitioner,	)	Cause No. DV-19-135
	)	Hon. Kaydee Snipes Ruiz
	)	
	)	MOTION TO INTERVENE
vs.	)	
	)	
MONTANA BOARD OF CRIME	)	
CONTROL,	)	
	)	
Respondent.	)	
	)	

COME NOW the PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL (POST) and moves, pursuant to Mont. R. Civ. P., Rule 24(a)(2), to intervene as a Respondent in the above-captioned matter. At issue on judicial review before this Court is the BOARD of CRIME CONTROL’s (BOCC) review of the POST Council’s decision following a MAPA contested case hearing relating to Mr. White’s POST certification. The BOCC was the administrative tribunal that heard the appeal of Mr. White from a decision of the POST Council to revoke Mr. White’s certifications, following a MAPA contested case hearing. Pursuant to Mont. Code Ann. §§44-7-101(2) and 44-4-403(3), MCA, the appellate decision of the BOCC is the Final Agency Decision for purposes of exhausting administrative remedies and ripeness for the filing of a Petition for Judicial Review.

The Montana POST Council is a quasi-judicial board administratively attached to the Department of Justice. Mont. Code Ann. § 2-15-2029. The POST Council has the duty to

provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers. Mont. Code Ann. §44-4-403(1)(c). The POST certificates then “remain the property of the council.” ARM 23.13.204(3).

Pursuant to this duty, on October 19, 2009, POST issued a Peace Officer Basic certificate to Mr. White. On October 20, 2014, Mr. White began working at the Department of Corrections (DOC) as a Probation and Parole (P&P) officer. On November 5, 2015, POST issued a Probation and Parole Basic certificate to Mr. White. Mr. White maintained his position with DOC until he resigned on October 6, 2016.

On May 1, 2017, POST received a Notice of Termination from DOC, which indicated Mr. White “resigned under investigation.” Upon receipt of this Notice, POST conducted an investigation into the circumstances of the White’s resignation. POST concluded that Mr. White committed acts which constituted grounds for sanction of his POST certificates. Based on the violations of POST ARMs 23.13.702(2)(a), (g), (h) and (i), as well as violations of POST ARM 23.13.203(3)(a) and (i), the executive director of POST revoked Mr. White’s POST certificates.

Pursuant to ARM 23.13.704(2) and Mont. Code Ann. § 44-4-403, Mr. White requested a contested hearing to dispute the revocation of his POST certificates. The contested hearing was held on December 12, 2018. The Hearing Examiner carefully reviewed an extensive record, including summary judgment briefing and a hearing with numerous witnesses and, as a matter of law, found multiple violations which supported sanctioning Mr. White. The Hearing Examiner determined, based on his Findings of Fact, that the appropriate sanction for Mr. White’s violations was revocation of his POST certification.

On February 29, 2019, the POST Council held a hearing and reviewed the Hearing Examiner’s Findings of Fact and Conclusions of Law. A unanimous POST Council voted that revocation of Mr. White’s certificates was appropriate. Pursuant to Mont. Code Ann. § 44-7-101, Mr. White appealed the decision of the POST Council to the BOCC. The BOCC voted to uphold the POST Council’s revocation of Mr. White’s certificates. The BOCC transmitted the record to this Court on November 29, 2019.

The POST Council is comprised of public safety officers from a variety of law enforcement disciplines as well as three members from the public at large. (*See*, Mont. Code Ann. § 44-4-402). The POST Council is attached to the Department of Justice, under the Attorney General's Office. The Board of Crime Control is attached to the Department of Corrections.

Intervention by POST in this matter is appropriate and necessary. Montana Rule of Civil Procedure 24(a)(2) provides that the court **must** permit intervention when a party:

claims an interest relating to the property or transaction which is the subject of the action, and is so situated that disposing of the action may as a practical matter impact or impede the movant's ability to protect its interest, unless the existing parties adequately represent that interest.

(Emphasis added). The only involvement in this matter by the BOCC was its appellate review of the final POST Council decision. POST is the entity that issued Mr. White his certification and had the duty to revoke the certification when Mr. White violated POST's standards. Moreover, Mr. White's POST certification remains the property of the POST Council.

Counsel for the BOCC has been contacted and has no objection to POST's Motion to Intervene. Counsel for Mr. White does object.

DATED this \_\_\_ day of December 2019.

---

Kristina Neal  
Counsel for POST

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing to be sent, via first class mail, to:

Jason T. Holden  
Katie R. Ranta  
Faure Holden Attorneys at Law, P.C.  
P.O. Box 2466  
Great Falls, MT 59403-2466

Board of Crime Control  
c/o Agency Legal Services  
John Melcher, Bureau Chief  
Attn: Rob Stutz  
1712 Ninth Avenue  
P.O. Box 201440  
Helena, MT 59620-1440

DATED: \_\_\_\_\_

MONTANA TWELFTH JUDICIAL DISTRICT COURT, HILL COUNTY

THAD WHITE,	)	
	)	
Petitioner,	)	Cause No. DV-19-135
	)	Hon. Kaydee Snipes Ruiz
	)	
vs.	)	ORDER GRANTING MOTION TO
	)	INTERVENE
	)	
MONTANA BOARD OF CRIME	)	
CONTROL,	)	
	)	
Respondent.	)	

Upon motion by the Public Safety Officer Standards and Training Council (POST) and no objection by the Board of Crime Control, pursuant to Mont. R. Civ. P, Rule 24(a)(2), and for good cause appearing

IT IS HEREBY ORDERED THAT POST may intervene in the above-captioned matter. POST's response to Mr. White's Notice of Appeal is due **January 17, 2020**.

DATED December \_\_\_\_, 2019.

\_\_\_\_\_  
The Honorable Kaydee Snipes Ruiz

cc: Kristina Neal, Counsel for POST, 4385 Wylie Drive, Helena, MT 59602  
Jason T. Holden, P.O. Box 2466, Great Falls, MT 59403-2466  
Board of Crime Control, c/o Agency Legal Services, John Melcher, Bureau ChiefAttn:  
Rob Stutz, 1712 Ninth Avenue, P.O. Box 201440, Helena, MT 59620-1440

Jason T. Holden (jholden@faureholden.com)  
Katie R. Ranta (kranta@faureholden.com)  
Faure Holden Attorneys at Law, P.C.  
1314 Central Avenue  
P.O. Box 2466  
Great Falls, MT 59403  
Phone: 406-452-6500  
Fax: 406-452-6503  
Attorneys for Petitioner Thad White

MONTANA TWELFTH JUDICIAL DISTRICT COURT – HILL COUNTY

<p>THAD WHITE,  Petitioner,  v.  MONTANA BOARD OF CRIME CONTROL,  Respondent.</p>	<p>Cause No. DV-19-135 Hon. Kaydee Snipes Ruiz  <b>RESPONSE IN OPPOSITION TO POST'S MOTION TO INTERVENE</b></p>
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Petitioner Thad White, by and through his counsel of record, Faure Holden Attorneys at Law, P.C., respectfully submits this Response in Opposition to the Police Officer Standards & Training Council's (POST) Motion to Intervene.

**I. INTRODUCTION**

POST's Motion to Intervene should be denied. POST cannot meet the criteria for intervention as a matter of right under Mont. R. Civ. P. 24(a).

**II. RELEVANT FACTS**

There is one uncontested fact that resolves this motion – the final agency decision was made by the Board of Crime Control (BOCC) not POST. This is not only a fact – it is the law. Mont. Code Ann. § 44-4-403(3) ("A decision of the board of crime control is a final agency decision subject to judicial review.").

### **III. ARGUMENT AND ANALYSIS**

#### **A. The Board of Crime Control is the proper Respondent.**

POST concedes that the BOCC is the proper party to this action. This concession alone should result in the denial of POST's Motion. The Montana Administrative Procedure Act (MAPA) specifies that only a final agency decision may be reviewed. Mont. Code Ann. § 2-4-702(1)(a). As POST admits, the BOCC is the administrative agency that made the final decision in this matter – not POST. By law, POST has no authority to render a final agency decision for purposes of judicial review under MAPA. Mont. Code Ann. § 2-15-2029, § 44-4-403(3). Conversely, it is undisputed, both factually and legally, that the BOCC made the final agency decision. In fact, POST recently appealed a decision of the BOCC wherein POST itself named the BOCC as a party. See Exhibit A. BOCC is the proper party under Montana law.

#### **B. POST's Motion Fails to Even Allege the Proper Elements for Intervention as a Matter of Right.**

The sole argument POST makes to intervene fails as a matter of law. POST argues that, under Mont. R. Civ. P. 24(a)(2), the Court "must" permit it to intervene because it "claims an interest relating to the property or transaction which is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless the existing parties adequately represent that interest." Mont. R. Civ. P. 24(a)(2). POST makes no argument for permissive intervention; it seeks only intervention as a matter of right. POST's argument fails.

POST's Motion fails the very test for intervention upon which it relies. Citing *Abbey/Land LLC v. Interstate Mechanical, Inc.*, 2015 MT 77, 378 Mont. 372, 345 P.3d

1032, POST articulates the requirements for intervention as a matter of right as follows:

1. POST's motion is timely;
2. POST has an interest in the subject matter of the action;
3. POST's interest may be impaired by the disposition of the action; and
4. POST's interest is not adequately represented by an existing party.

*Abbey/Land*, ¶ 14. POST "must satisfy each of the four criteria to be entitled to intervene as a matter of right." *Estate of Schwenke v. Becktold*, 252 Mont. 127, 131, 827 P.2d 808, 811 (1992).

POST's Motion is not supported by the facts or the law. POST has not even attempted to meet (nor can it meet) the criteria for intervention as a matter of right. POST *has not even alleged* that its interest may be impaired by the disposition of the action. POST *has not even alleged* that the BOCC is not, or will not, adequately represent POST's interest. At most, POST alleges it has *an interest* in the outcome. That is simply not enough to require POST's intervention and participation in this judicial proceeding. *Aniballi v. Aniballi*, 255 Mont. 384, 842 P.2d 342, (1992) ("If intervention must be allowed whenever an applicant makes a claim on property, there would be no reason to require leave of court to intervene."); *Loftis v. Loftis*, 2010 MT 49, ¶ 13, 355 Mont. 316, 227 P.3d 1030 ("a mere claim of interest is insufficient to support intervention as a matter of right."). POST does not allege these critical elements because it knows that the BOCC will adequately defend its (BOCC's) final agency decision, and thereby POST. On its face, and as a matter of law, POST's Motion fails.

**C. POST Cannot Meet the Test for Intervention as a Matter of Right.**

*Abbey/Land* illustrates that POST does not, and cannot, meet the requirements for intervention as a matter of right. *Abbey/Land* dealt with a collusive confession of

judgment (between the plaintiff and defendant, which were owned by the same person) that would have left the intervenor insurance company holding the bag for a \$12 million judgment. In other words, the defendant was not defending the case, it was confessing a \$12 million judgment for which it (the defendant) would bear no responsibility. No other defendant was available in the action to contest the judgment as all other defendants previously settled. *Abbey/Land*, ¶¶ 7, 15. Finally, the insurer was entitled as a matter of law to contest the confessed judgment in the same action, not in a separate, subsequent lawsuit. *Abbey/Land*, ¶ 15.

POST does not, and cannot, meet all the requirements for intervention as matter of right. Here, BOCC and Mr. White are not colluding at POST's expense, nor are they colluding at all. The BOCC agreed with POST's decision to revoke Mr. White's Certificates. The BOCC's and POST's interests are identical; they are on the same side. BOCC is a party and will defend and represent POST's interests which are, again, identical to BOCC's interests. And again, POST *has not even alleged* that the BOCC cannot adequately protect its interests. Finally, POST has cited no authority that would entitle it, as a matter of law, to be made a party to this action. In *Abbey/Land*, the insurer was legally entitled and obligated to challenge the confessed judgment *in that same action*. POST is not legally entitled to defend its decision, *because the decision at issue is not POST's decision*. It is undisputedly the BOCC's decision that was appealed, and in fact, it can only be the BOCC's decision that is appealed.

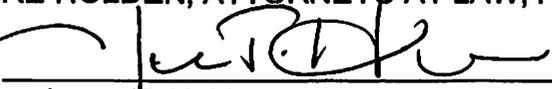
POST has not, and cannot, meet the criteria for intervention by right. Its unsupported Motion should be denied.

**IV. CONCLUSION**

POST's Motion to Intervene should be denied because, on its face, it is deficient as a matter of law. It does not even allege the four required criteria are met. POST's Motion to Intervene should also be denied because it did not, and cannot, meet the four required criteria.

DATED this 30<sup>th</sup> day of December, 2019.

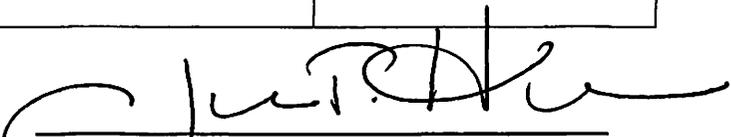
FAURE HOLDEN, ATTORNEYS AT LAW, P.C.

BY:   
Jason T. Holden

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing was duly served upon the following by the means designated below on the 30<sup>th</sup> day December, 2019.

Montana Board of Crime Control c/o Agency Legal Services Bureau Attn: Rob Stutz P.O. Box 201440 Helena, MT 59620-1440	<input checked="" type="checkbox"/> U. S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Kristina Neal 4385 Wylie Drive Helena, MT 59602 <i>Attorney for POST Council</i>	<input checked="" type="checkbox"/> U. S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Hon. Kaydee Snipes Ruiz Courtesy Copy to Chambers jacey.mcdonald@mt.gov	<input type="checkbox"/> U. S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail

  
Jason T. Holden

Kristina Neal  
Attorney for POST  
4385 Wylie Drive  
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COPY

FILED

JUL 22 2019

ANGIE SPARKS, Clerk of District Court  
By C POTUZA Deputy Clerk

ATTORNEY FOR PETITIONER

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY, MONTANA**

\_\_\_\_\_  
PUBLIC SAFETY OFFICERS )  
STANDARD AND TRAINING COUNCIL )  
(POST) )  
)  
)  
                  Petitioner, )  
)  
)  
                  vs. )  
)  
KYLE ADAMS and )  
MONTANA BOARD OF CRIME )  
CONTROL )  
)  
)  
                  Respondents. )  
\_\_\_\_\_

Cause No. DDV 2019-995  
PETITION FOR JUDICIAL REVIEW

**JAMES P. REYNOLDS  
Presiding Judge**

The Petitioner, POST, petitions this Court for judicial review of the final decision of the Montana Board of Crime Control (BOCC) to restore Kyle Adams's POST certification. POST files this petition pursuant to the Montana Administrative Procedure Act (MAPA), Mont. Code Ann. § 2-4-702(1), (2)(a), (2)(b) and (2)(d) because this action challenges a final decision made pursuant to Mont. Code Ann. § 44-7-101. POST seeks a determination by this Court that the BOCC's decision was unlawful, was arbitrary and capricious, and was clearly erroneous in view

of the reliable, probative and substantial evidence on the whole record. *See*, Mont. Code Ann. § 2-4-704.

**I. FACTS UPON WHICH JURISDICTION AND VENUE ARE BASED MONT. CODE ANN. §2-4-702(2)(b)**

1. Petitioner, POST, is an Administrative Agency of the State of Montana, created under Mont. Code Ann. § 2-15-124. *See also*, Mont. Code Ann. § 2-15-2029.
2. Respondent Kyle Adams is an individual detention officer, who had been employed by the Yellowstone County Detention Facility.
3. Respondent Montana Board of Crime Control is an Administrative Agency of the State of Montana, created under Mont. Code Ann. § 2-15-124. *See also*, Mont. Code Ann. § 44-7-101.
4. On or about June 21, 2019, the BOCC issued a final decision to restore POST certification to Kyle Adams.
5. POST has exhausted all known available administrative remedies and is aggrieved by the final decision of the BOCC.
6. Under Mont. Code Ann. § 2-4-702(1)(a) and Mont. Code Ann. §2-4-702(2), this Court has jurisdiction to review agency actions.
7. This Petition was filed within thirty days of service of the BOCC's final decision to restore Kyle Adams's POST certification. Mont. Code Ann. § 2-4-702(2)(a).
8. Venue is proper in Lewis and Clark County, Montana because Lewis and Clark County is where POST maintains its principal office. Mont. Code Ann. § 2-4-702(2)(a).

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**II. STATEMENT OF THE FACTS WHICH DEMONSTRATE THAT THE BOCC'S ERRONEOUS RULING WAS ARBITRARY AND CAPRICIOUS.**

9. On November 29, 2017, POST filed a Notice of POST action revoking Adams's POST certification. POST alleged that Adams, on August 1, 2016, had had logged security checks that he did not perform. Also, on August 1, 2016, Adams was playing solitaire and failed to properly supervise his unit when a fight broke out directly in front of him. The Notice further alleged that on February 9, 2017, Adams falsified a shakedown log when he indicated that he had performed two cell shakedowns, which he had not completed.

**A. The Hearings Examiner's findings**

10. A hearing in this matter was held before Hearing Examiner Caroline S. Holien on June 27, 2018. (Exhibit A.)

11. Adams testified on his own behalf. He called no other witnesses.

12. POST called as witnesses POST's Bureau Chief, Perry Johnson, Sergeant Jacob Willoughby, Lieutenant Steve Metzger, Sergeant Hans DeMello, and Lieutenant Roger Bodine.

13. The Hearing Examiner found that Adams became a detention officer on October 16, 2015. He was not POST certified at the time of his hire and could not become certified until he was employed for one year. In October, 2016, he attended the law enforcement academy and obtained his POST certification on December 16, 2016.

14. The Hearing Examiner found that on August 1, 2016, Adams was working in the unit designated as North Four.

15. Upon his arrival, Adams was to complete a head count. Adams's count did not match the facilities' records, and, after three attempts, another office had to assist Adams with the count. Adams's repeated incorrect counts prompted Sgt. Willoughby to review the security footage from that date.

16. One of Adams's duties was to conduct security checks, which requires the officer to walk the unit and physically check the security of each inmate.
17. The hearings examiner found that Adams logged at least one security check that he did not actually perform.
18. Another duty included performing shakedowns of a bunk or cell. All searches must be recorded in the shakedown logs. A shakedown is required even if a bunk is empty. A shakedown of an empty bunk should take between five to ten minutes. Entering that a shakedown had occurred on an empty bunk when one has not actually been performed is falsifying a log entry.
19. The hearings examiner found that Adams logged having completed four shakedowns even though he did not complete two of the shakedowns he logged because the bunks were empty.
20. Also, on April 1, 2016, two inmates engaged in a verbal argument that escalated to pushing and shoving between the two men. The altercation was directly in front of where Adams was seated. Adams was playing Solitaire when the argument escalated. Once the argument escalated, Adams minimizes his Solitaire game, calls for help and waits by the door for help.
21. Adams should have been telling the inmates to bunk down and attempted to verbally take control of the situation.
22. Sgt. DeMello and other officers arrive to help and instruct the inmates to "bunk down." As the other officers take control of the situation, Adams returns to his desk to close out the Solitaire game. Adams could not describe the fighting inmates to DeMello.

23. Lt. Bodine was assigned to conduct an internal investigation into Adams's conduct on August 1, 2016.

24. As part of his investigation, Bodine watched the security video of Adams's August 1, 2016 shift, reviewed Sgt. Willoughby's report and personally interviewed Adams.

25. When Bodine interviewed Adams, he admitted he logged two security checks that he did not conduct. He also admitted that he was not watching his unit when the altercation occurred. Based on his investigation, Bodine concluded that Adams had failed to properly supervise the inmates and that he had knowingly falsified his logs by indicating he had performed security checks and shakedowns that he had not actually performed.

26. The Hearings Examiner found that on February 9, 2017, Adams had logged that he had conducted a shakedown of an inmate's cell. When Sgt. Willoughby did a follow-up shakedown, twenty minutes later, he discovered three extra blankets, two extra sheets, one extra bed cover, three extra towels, six extra pairs of underwear, two extra shirts, three extra pairs of pants, two pairs of IL socks, coffee bags filled with juice, and a shampoo bottle filled with juice.

27. Adams admitted to Willoughby that he had only done a "quick shakedown" where he only "went and saw and looked around."

28. On April 14, 2017, YCDF reported to POST the allegations regarding the August 1, 2016 incidents.

29. In response to POST's inquiry, Adams admitted to failing to monitor his unit when the fight broke out and admitted that he logged a security check that he did not do. He also admitted that "I admitted guilt to everything I did to Lt. Bodine during a recorded interview."

30. In his response, Adams did not address the February, 2017, incident.

31. On May 30, 2017, YCDF sent POST another letter with the February incident.

32. POST Bureau Chief Johnson subsequently interviewed Adams. During the interview, Adams admitted to Johnson that he had falsified his log books on August 1, 2016, and failed to properly supervise his inmates. Adams also admitted that he had logged doing shakedown on February 9, 2017, that was only a “quick shakedown.”

**B. The Hearings Examiner’s Conclusions**

33. The Hearings Examiner concluded that the Code of Ethics applied to Adams even though he had not received his certification on August 1, 2016.

34. The Hearings Examiner found that Adams admitted that he engaged in conduct that involved logging security checks and shakedowns not actually conducted during his shift on August 1, 2016. Adams also admitted that he failed to properly supervise inmates because he was playing Solitaire.

35. The Hearings Examiner also found that Adams admitted that he only conducted a “quick shakedown” of the cell in question in February, 2017. The Hearings Examiner found that given the amount of contraband discovered and removed during the subsequent shakedown of that cell that Adams had falsified the log when he indicated that he completed a “shakedown.”

36. The Hearings Examiner did not find credible Adams’s testimony that he thought he had discretion based on his training.

37. The Hearings Examiner found the testimony of Lt. Steve Metzger, YCDF’s training officer, more persuasive.

38. The Hearings Officer found concerning Adams’s attempt to minimize the importance of the log falsification.

39. The Hearings Officer found that Adams’s conduct and his attempt to minimize the impact of his actions supported revocation of his POST certification.

40. The Hearings Officer specifically found, "Adams has demonstrated a lack of integrity that cannot be corrected by further training."

41. The Hearings Examiner concluded that Adams had engaged in conduct during his employment as a detention officer that violated the oath that he took as a public safety officer and that revocation of his certification was appropriate.

**C. The POST Council Findings**

42. On October 3, 2018, the POST Council reviewed the Hearing Examiner's Findings of Fact and Conclusions of Law and heard argument from both POST's attorney and Adams's attorney.

43. The POST Council unanimously voted to accept the Hearings Examiner's Findings of Fact and Conclusions and Law and voted that Adams's certification remain revoked.

**D. Board of Crime Control Appeal**

44. Adams appealed to the Board of Crime Control.

45. A hearing was held before the BOCC's Appeal Review Committee. Adams failed to appear both in person and through counsel. POST's attorney and executive director both appeared at the hearing.

45. The Appeal Review Committee of the BOCC recommended that the BOCC reverse the POST Council's decision and recommended that Adams's certification be restored to him in good standing.

46. The BOCC adopted the Appeal Review Committee's recommendation. (Exhibit B).

47. Specific to Adams's dereliction of duty, on August 1, 2016, when he was playing Solitaire and failed to properly supervise his unit when a fight broke out directly in front of him,

the BOCC rejected the Hearings Examiner's finding and, instead, accepted Adams's testimony that he did call for back up when the fight broke out and that no dereliction of duty occurred.

48. Specific to Adam's falsification of the log book for security check's that Adams did not complete, on August 1, 2016, the BOCC recognized that Adams admitted that he did not conduct at least one security check that he logged. Nonetheless, the BOCC found that the Hearings Examiner erroneously relied on speculation and that this violation was not established by credible evidence.

49. Specific to Adams's falsification of the log book for shakedowns that he did not complete, the BOCC found that Adams performed these shakedowns. Thus, the BOCC implicitly rejected the Hearing Examiner's findings that Adams explicitly admitted to Perry Johnson that he logged shakedowns that he did not perform and the Hearing Examiner's finding that Lt. Bodine was credible in testimony that he concluded from his investigation that Adams knowingly falsified his logs.

50. The BOCC disregarded the Hearing Examiner's specific finding that "Adams demonstrated a lack of integrity that cannot be corrected by further training."

51. Specific to the violation from February 9, 2017, the BOCC disregarded the Hearing's Examiner's findings that Adams admitted that he only did a "quick shakedown" and the testimony of the other YCDF officers and supervisors as to what constitutes a shakedown.

### **III. GROUNDS FOR RELIEF**

#### **A. The BOCC Improperly Substituted Its Judgment for that of the Hearing Examiner and for that of the POST Council.**

52. Petitioner incorporates by reference, paragraphs 1-51.

53. Since a hearing examiner is in the unique position of hearing and observing all testimony entered in the case, his or her determinations as to witness credibility are entitled to

great deference. *Knowles v. State ex. rel. Lindeen*, 2009 MT 415, ¶ 21, 353 Mont. 507, 222 P.3d 595.

54. Therefore, when reviewing a hearings examiner's findings of fact, the question is not whether there is evidence to support *different* findings, but whether substantial evidence supports the findings made. *Knowles*, ¶ 21 (emphasis in original).

55. The Hearings Examiner was able to determine the credibility of Adams as well as the credibility of the YCDF officers and Bureau Chief Johnson.

56. The BOCC's ruling disregards Adams's admissions to Lt. Bodine and Bureau Chief Johnson that Adams admitted to them that he logged two security checks that he did not conduct and admitted that he was not watching his unit when the altercation occurred on August 1, 2016.

57. The BOCC's ruling disregards Lt. Bodine's testimony that he investigated and concluded that Adams failed to properly supervise the inmates and knowingly falsified his logs.

58. The BOCC's ruling disregards that Adams admitted to Johnson that he logged a shakedown on February 7, 2017 when he had only completed a "quick shakedown."

59. The BOCC's ruling ignores the Hearings Examiner's specific finding regarding Adams's credibility when the Hearings Examiner concluded that Adams minimized the impact of his actions and demonstrated a lack of integrity that cannot be corrected by further training.

**B. The BOCC Improperly Altered the Conclusions of Law Reached by the Hearings Examiner and the POST Council.**

60. Petitioner incorporates by reference, paragraphs 1-59.

61. When determining whether an agency correctly interpreted its own rules, procedures or policies, the agency's interpretation should be afforded greater weight, unless it is plainly inconsistent with the spirit of the rule. *Knowles*, ¶22.

62. The BOCC found Adams's violations on August 1, 2016, less significant and more of a training issue because they occurred before Adams received his POST certification.

63. However, the Hearing's Examiner considered this issue and concluded that, "It stands to reason that an individual seeking certification from POST would understand that its rules would apply to them not only after receiving certification but during that one-year period in which they were required to gain 'discipline-specific employment experience with the current employing agency.' Adams's argument that POST rules did not apply to him prior to certification also ignores the basic fact that he was seeking certification as a public safety officer, which carries a greater responsibility than merely complying with the policies and procedures of the employing agency." Thus, the Hearings Examiner concluded that on August 1, 2016, the POST standards and the Code of Ethics applied to Adams.

64. Adams raised this same issue at the October 3, 2018 POST Council meeting. The POST Council considered and rejected Adams's argument. Similar to the Hearing's Examiner, the POST Council concluded that the Code of Ethics and Standards applied to Adams on August 1, 2016, and that his violations on August 1, 2016, were relevant and appropriate grounds for sanction under A.R.M. 23.13.702.

**C. The BOCC Ruling Improperly Usurps Its Judgment for that of the POST Council.**

65. Petitioner incorporates by reference, paragraphs 1-64.

66. The weighing and balancing of expert opinion pro and con is properly vested in the administrative agency in its field of expertise. *State ex rel. Department of Public Service Regulations v. Montana Irrigators*, 209 Mont. 375, 381, 680 P.2d 963, 966 (1984).

67. Further, when evaluating the evidence, the agency's experience, technical competence, and specialized knowledge should be utilized. *Mayer v. Board of Psychologists*, 2014 MT 85, ¶ 27, 374 Mont. 364, 321 P.3d 819.

68. The POST Council is comprised of public safety officers from a variety of disciplines as well as three members from the public at large. (See, Mont. Code Ann. §44-4-402). Thus, it is against public policy and judicial economy for another unrelated agency, such as the BOCC, to review and alter the decisions of the POST Council.

#### **IV. RELIEF REQUESTED**

POST requests that the Court:

A. Order a stay of the BOCC decision and reimpose the revocation of the Adams's POST certification. See, Mont. Code Ann. § 2-4-702(3).

B. Order that the BOCC transmit the full record to this Court. See, Mont. Code Ann. § 2-4-702(4).

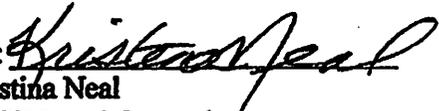
C. Order any additional briefing, with a briefing schedule, as the Court deems appropriate.

D. Find, as a matter of fact and as a matter of law, that the BOCC's decision to reverse the findings of fact and conclusions of law rendered by the Hearing's Examiner and reviewed and adopted by the POST Council, was clearly erroneous, arbitrary, capricious, and unlawful

///

E. Grant such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of July, 2019.

By:   
Kristina Neal  
POST Legal Counsel

CERTIFICATE OF SERVICE

I certify that on the 22nd day of July 2019, a true copy of the foregoing petition was served by U.S. Mail, postage prepaid, on the following:

Eric Holm  
HOLM LAW FIRM, PLLC  
115 N. Broadway, Ste. 304  
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Billings, MT 59103

Tim Fox  
Montana Attorney General  
215 N. Sanders St.  
Helena, MT 59601

I certify that on the 22nd day of July 2019, a true copy of the foregoing petition was served by hand-delivery, on the following:

Natalia Bowser  
Bureau Chief, Crime Control Bureau  
Montana Department of Corrections  
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Katrina Bolger  
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*Attorney for Kyle Adams*

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

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PUBLIC SAFETY OFFICERS STANDARD AND TRAINING COUNCIL,	)	
	)	Cause No.: DDV-2019-995
	)	
Petitioner,	)	
	)	
vs.	)	<b>KYLE ADAMS'S</b>
	)	<b>RESPONSE BRIEF</b>
KYLE ADAMS,	)	
	)	
Respondent.	)	

---

**INTRODUCTION**

The Public Safety Officers Standard and Training Council (“POST”) permanently revoked detention officer Kyle Adams’s POST certification because he allegedly made four mistakes in one day, four months before he had undergone POST training and obtained his POST certification, and one alleged mistake some months later. The Montana Board of Crime Control (“MBCC”) properly reversed this decision because the incidents did not constitute a violation of POST’s standards or code of ethics. POST’s revocation decision deserved reversal not only because the allegations were more akin to training issues than to grounds for permanent revocation, but from a strictly legal standpoint, Adams was not even bound by POST’s rules at

the time of the vast majority of the allegations against him.

Further, POST's statutory burden of proof requiring Adams to disprove the allegations against him – rather than requiring POST to prove them – violated his constitutional right to due process. It is telling that this rule was changed just months after Adams first raised the issue in this case. As a result, even if this Court is inclined to reverse the MBCC's decision, revocation would be unconstitutional.

For these reasons, Adams respectfully requests that MBCC's decision be affirmed.

### **STATEMENT OF FACTS**

On October 16, 2015, Yellowstone County hired Adams to work as a Detention Officer at the Yellowstone County Detention Facility (“YCDF”) in Billings. Proposed Findings of Fact; Conclusions of Law; and Recommended Order (“PFOFCOLRO”), p. 2, ¶ 3 (Jul. 26, 2018) (attached hereto as Exhibit A). As is common, Adams was not POST-certified at the time of his hire. *Id.*, p. 2, ¶ 4. He did not start his POST training through the Montana Law Enforcement Academy (“MLEA”) until a year after his hiring, in October 2016. *Id.*, p. 2, ¶ 5. He did not receive his POST certification until December 16, 2016. *Id.*

Months earlier, on August 1, 2016, Adams was written up at work for four instances where Adams's conduct allegedly fell short. *Id.*, pp. 2-6. One incident on that date pertained to a verbal altercation between inmates that quickly escalated to pushing and shoving. *Id.*, pp. 5-6, ¶¶ 29-35. The entire episode lasted 10 seconds or less. *Id.*, p. 5, ¶ 29. Adams was playing solitaire on the computer in the same large room where the altercation began. *Id.* He minimized the solitaire screen and called for backup, which he had been told to do following a previous altercation in which he entered an inmate fracas without backup. *Id.*, pp. 5-6, ¶¶ 30-31. He did not intervene in the fight or tell the other inmates to bunk down. *Id.*, pp. 5-6, ¶¶ 29-31.

Also on August 1, 2016, Adams performed an inmate head count and got the wrong number. *Id.*, p. 3, ¶ 12. He repeated the head count and got the same wrong number. *Id.* Then an officer from another shift provided information that one inmate had been checked out, and the discrepancy was resolved on the third count. *Id.*, p. 3, ¶ 12. Adams was not aware the inmate had been checked out. *Id.* POST agreed that Adams did not intentionally miscount, nor did he intentionally report an incorrect number. *Id.*, p. 3, ¶ 13.

Adams also performed numerous security checks (walk-throughs) during his shift on August 1. *Id.*, p. 4, ¶ 20. He had been called away from the unit at one point during his shift, preventing him from performing his security checks at the regular 30-minute intervals or at the exact times logged in the computer. *Id.* The result was that Adams's computer log showed one more security check than he actually performed. *Id.*, p. 4, ¶ 18. The Hearing Officer wrote that Adams missed "at least one" security check; however, no evidence was introduced showing he missed more than one. *Id.*

Adams was also accused of not performing shakedown searches that day. *Id.*, p. 5, ¶ 27. Two of his four shakedowns that day were on empty bunks not assigned to any inmate. *Id.* One did not even have a bunk; rather, it was an empty floor. Transcr., 29:1-6 (Jun. 27, 2018) (relevant portions attached as exhibit B). Adams testified he had initially been trained that a shakedown was unnecessary on an empty bunk, so he bypassed those two. *Id.*, 28:11-22. That is not the policy. PFOFCOLRO, p. 5, ¶ 28. Adams's other two shakedowns that day were on cells, and he did perform those shakedowns. *Id.*, p. 5, ¶ 27.

These four alleged incidents took place prior to Adams undergoing POST training or receiving his POST certification. The MBCC stated that POST presented little evidence relating to the nature or extent of Adams's training on the job before attending the MLEA course to earn

his POST certification. Final Agency Decision (“FAD”), Ex. A, p. 4, ¶ 4(D) (attached hereto as Exhibit C).

The only alleged misconduct violation that occurred after Adams completed his POST training and received his certification took place on February 9, 2017. PFOFCOLRO, pp. 6-7, ¶¶ 40-47. Adams allegedly left behind a large number of excess property items in a cell following a shakedown. *Id.* The items included extra blankets, bed covers, and clothes, as well as fruit juice in a shampoo bottle and coffee bags. *Id.*, p. 7, ¶ 47. Adams testified he let this inmate keep the additional items in his cell during the shakedown to make up for the jail previously losing one of his books by accident. *Id.*, pp. 6-7, ¶¶ 40, 44. Officers perform shakedowns on a rotating schedule so that different officers search different cells on their shifts. *Id.*, p. 4, ¶ 21. The MBCC noted that the volume and type of excess items in this cell raised the question of how long the items had been accumulating in the cell under other officers’ watches. FAD, Ex. A, p. 4, ¶ 6.

At the time of the MBCC’s final agency decision, Adams’s POST certification had been revoked for over 18 months. In essence, he served an 18-month suspension until MBCC reinstated his certification. In doing so, the MBCC concluded that, since most of the violations occurred before Adams had begun his POST training and were more benign or ambiguous than asserted by POST, the decision to revoke was incongruous with the facts. *Id.*, pp. 2-3.

#### **STANDARD OF REVIEW**

The MBCC considers all appeals brought from decisions of POST, pursuant to §§ 44-4-403, 44-7-101, MCA. A decision of the MBCC is a final agency decision subject to judicial review. § 44-4-403, MCA; ARM 23.13.721.

Because the MBCC rejected the Hearing Officer and POST’s proposal for decision, there are two standards of review to consider. The first is found at § 2-4-621(3), MCA, which states

that an agency “may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision,” but that it “may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirement of law.” § 2-4-621(3), MCA.

The other standard to consider is found at § 2-4-704, MCA, stating:

(1) The review [by a district court of a final agency decision] must be conducted by the court without a jury and must be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof of the irregularities may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

(a) the administrative findings, inferences, conclusions, or decisions are:

(i) in violation of constitutional or statutory provisions;

(ii) in excess of the statutory authority of the agency;

(iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(b) findings of fact, upon issues essential to the decision, were not made although requested.

§ 2-4-704, MCA. In its Petition for Judicial Review, POST claims that MBCC's decision should be reversed because it "was unlawful, arbitrary and capricious, and was clearly erroneous in view of the reliable, probative and substantial evidence of the whole record." Petition for Judicial Review, p. 2 (Jul. 22, 2019).

## ARGUMENT

### **I. MBCC Properly Reversed POST's Revocation Decision.**

POST misstates the standard in its brief. POST contends, "The [MBCC] Improperly Substituted Its Judgment for that of the Hearing Examiner's and for that of the POST Council." The actual standard, as applied to this case, is that the *District Court* may not substitute *its* judgment for that of the MBCC as to the weight of the evidence of fact. Furthermore, in determining whether the MBCC properly interpreted the rules, policies, or procedures, the District Court should afford "great weight" to the agency's (MBCC's<sup>1</sup>, not POST's) interpretation. *Knowles v. St. ex rel. Lindeen*, 2009 MT 415, ¶ 22, 353 Mont. 507, 222 P.3d 595. The Court should also defer to the MBCC's interpretation unless it is "plainly inconsistent with the spirit of the rule." *Id.* The Court must affirm MBCC's interpretation of the rule "so long as it lies within the range of reasonable interpretation permitted by the wording." *Id.* These are key distinctions that temper the District Court's discretion in overturning the final agency decision in this case.

The MBCC's decision to reinstate Adams's POST certification was proper. From the outset, POST has argued that Adams violated the following rules:

ARM 23.13.702

(a) willful falsification of any information in conjunction with official duties, or any single occurrence or pattern of lying, perpetuating

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<sup>1</sup> According to ARM 23.13.721, MBCC's decision is the "final agency decision subject to judicial review," not POST's decision vis-à-vis the Hearing Officer.

falsehoods, or dishonesty which may tend to undermine public confidence in the officer, the officer's employing authority, or the profession;

...

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

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

...

ARM 23.13.203(4)

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

...

(i) I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession.

POST reached the conclusion of law that Adams violated these statutes based on the facts presented at the hearing. PFOFCOLRO, pp. 13-14. Section 2-4-621(3), MCA, grants MBCC the authority to reject these conclusions of law, which it did. It was not clearly erroneous or otherwise arbitrary, capricious, or an abuse of discretion for MBCC to believe that the facts in this case do not amount to professional misconduct as a matter of law, especially when the rules generally require that the violations be "willful."

The facts presented at the hearing paint a picture of an individual being accused of four incidents of arguably sloppy or incomplete work on one day, over four months before he became trained and received his POST certification, and then one incident another two months later of not doing a good enough job and using too much discretion on one cell shakedown. It was not unlawful or reversible error for the agency to believe these are training issues and not certification-revocation issues, especially considering four of the five incidents took place before Adams was even POST-trained and -certified.

## **II. The MBCC's Review of POST's Decisions Does Not Violate Constitutional Separation of Powers.**

Our state government has three branches: executive, legislative, and judicial. Mont. Const., Art. III, Sec. 1 (1972). Separation of powers means that one branch cannot exercise power belonging to another branch, except for express constitutional authority. *Id.* The *Morales* case, upon which POST solely relies to support its position, reached its conclusion because the city commission (part of the legislative branch) tried to fire a police judge (part of the judicial branch). *St. ex rel. Morales v. City Commission of Helena*, 174 Mont. 237, 242, 570 Mont. 887, 889 (1977) (superseded by statute on other grounds). That violated separation of powers. *Id.*

In our case, the governor's office is part of the executive branch of government. § 2-15-103, MCA. The attorney general's office is also part of the executive branch. *St. ex rel. Fletcher v. Dist. Ct.*, 260 Mont. 410, 418, 859 P.2d 992, 996 (1993). Having the MBCC (purportedly under the Governor's Office) oversee decisions by POST (purportedly under the Attorney General's office) is not unconstitutional.

## **III. Adams's POST Certification Cannot Be Revoked Based Upon Allegations of Misconduct Arising Before He Obtained His POST Certification.**

As stated in Section I, *supra*, MBCC appropriately reasoned that the alleged incidents – most of which took place before Adams began his POST training and received his certification – did not violate POST's rules. Not only that, but POST should not be allowed to revoke a POST certification based upon incidents arising before the individual ever obtained his or her certification. In other words, revocation cannot be imposed in this case, because Adams was not bound by POST's standards and code of ethics until *after* he obtained his POST certification. Any allegations of professional misconduct before obtaining his POST certificate cannot be used against him to justify revocation of his POST certificate.

POST alleged that Adams committed misconduct in the following circumstances:

1. An August 1, 2016, headcount;
2. August 1, 2016, security checks;
3. August 1, 2016, shakedowns;
4. An August 1, 2016, inmate altercation; and
5. A February 9, 2017, shakedown.

*See* PFOFCOLRO, pp. 2-7, ¶¶ 6-46. There is no suggestion by POST that any of these instances were concealed or otherwise not discovered until a later date. In fact, they were reportedly investigated on the date of each occurrence or in the following days. Four of these incidents, however, occurred several months before Adams attended the MLEA and obtained his POST certification and, as a result, should not be grounds for revocation of his certification.

Adams was not legally bound by POST's standards or code of ethics until he obtained his POST certification on December 16, 2016. Montana law states, "Acceptance of POST certification is an agreement to abide by and adopt the code of ethics [as prescribed in ARM 23.13.203] and refrain from the behaviors outlined in ARM 23.13.702." ARM 23.13.205(3). Since Adams did not hold his POST certification until December 2016, these regulations could not have been applied to him in August 2016 when the first four incidents happened. The statute explicitly states that acceptance of the certification itself constitutes the agreement to be bound by the standards and code. That is, a person has not agreed to be legally bound by the standards or code unless and until he or she accepts POST's certification.

The Hearing Officer reasoned that, because Adams was required to undergo a one-year probationary period as a public safety officer before obtaining his POST certification, he would have understood that POST's rules would apply to him during that probationary period.

PFOFCOLRO, p. 11. This, however, is not what the law says. Instead, ARM 23.13.205(3) states that the POST standards and code of ethics are not applicable or binding on a person until the POST certification is accepted. One cannot insert into a law something that has been omitted. § 1-2-101, MCA; *City of Missoula v. Mt. Water Co.*, 2016 MT 183, ¶ 54, 384 Mont. 193, 378 P.3d 1113. There is no evidence that Adams ever agreed to be bound to POST's rules until he accepted his POST certification on December 16, 2016.

Montana's probationary detention officers are still bound to standards of conduct before receiving their POST certification – just not POST's standards. They are bound by their employers' personnel policies, and, more importantly, ARM 23.13.201 allows POST itself the opportunity to evaluate an applicant's past history, performance, and qualifications before granting them a certification in the first place.

This rule lays out the requirements for a public safety officer to obtain POST certification, including, for example, that he or she “not have been convicted of a crime for which they could have been imprisoned in a federal or state penitentiary or a crime involving unlawful sexual conduct;” “be of good moral character as determined by a thorough background check;” “successfully complete an oral interview and pass a thorough background check conducted by the appointing authority or its designated representative;” and “be in good standing with any other licensing or certification boards or committees equivalent to POST in any other state such that no license or certification similar to a POST certification has been revoked or is currently suspended in any other state.” ARM 23.13.201(d), (e), (g), and (h). A “thorough background check” would include inquiry into an applicant's job performance and disciplinary record. POST will discover any misconduct occurring during the probationary period, or at any other time before the certification decision, during the application process. If an applicant's pre-

certification conduct deems him or her unworthy of certification, then POST will deny the certification. As a result, even though the law says that a probationary detention officer is not bound by POST's standards and codes, he or she can still be denied certification based on prior misconduct.

In our case, however, POST conducted this thorough background check of Adams, which would have included these August incidents, and *still* granted him his POST certification. And although he was certified in December 2016, four out of the five allegations used to revoke his certification occurred over several months before Adams accepted his POST certification and agreed to be bound by the applicable rules. Consequently, those allegations cannot be used against him in these revocation proceedings.

#### **IV. POST's Burden of Proof Violates Adams's Due Process Rights.**

If this Court reverses MBCC's decision, revocation would be unconstitutional. POST's codified burden of proof – which at the time of the contested case hearing required the certification holder to prove his or her innocence rather than POST to prove guilt – violates Adams's constitutional right to due process. That rule was changed just months after Adams first raised this argument. The law now does require POST to prove its case.

At the time of hearing, the standard of proof was as follows:

(8) At the contested case hearing under ARM 23.13.704(2):

(a) the respondent has the burden of proving by a preponderance of the evidence that there was no basis for the denial, sanction, suspension, or revocation of certification imposed by the director, as stated in the notice of agency action

ARM 23.13.714(8)(a). As you can see, the statute placed the burden upon Adams to prove there was no basis for the revocation. Under the Montana Constitution, this burden-shifting standard violates Adams's due process rights.

Article II, Section 17 of the Montana Constitution provides that, “No person shall be deprived of life, liberty, or property without due process of law.” Revocation of Adams’s POST certification by a quasi-judicial board of the State of Montana deprives him of a property interest, thus invoking due process protection. § 2-15-2029(a), MCA.

The right to due process in Montana, whether in an administrative or judicial tribunal, requires notice and an opportunity to be heard in a meaningful manner. *Klundt v. State ex rel. Bd. of Personnel Appeals*, 219, Mont. 347, 351, 712 P.3d 776, 779 (1986); *South v. Bd. of Horse Racing*, 1998 MT 91, ¶ 11, 288 Mont. 249, 956 P.2d 752. Furthermore, “due process mandates that an administrative hearing will constitute a fair trial, conducted in accordance with fundamental principles of fair play and applicable procedural standards established by law.” *Connell v. Dept. of Soc. and Rehab. Svcs.*, 280 Mont. 491, 496, 930 P.2d at 91 (1997). These rights to a fair hearing and a meaningful opportunity to be heard are prominently impacted by the procedural rules created and enforced by the tribunal.

While POST has some discretion in setting its procedural rules and proof burden, there is a clear limit to that discretion. The Montana Supreme Court has stated, “It is within the State’s power to regulate the burden of persuasion, ‘unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.’” *City of Missoula v. Mt. Water Co.*, 2016 MT 183, ¶ 110, 384 Mont. 193, 378 P.3d 1113 (dissent), quoting *Speiser v. Randall*, 357 U.S. 513, 523 (1958). Montana clearly ranks the right to due process as “fundamental,” as it is a delineated constitutional right. As a result, POST cannot set a burden of proof that violates a citizen’s due process rights.

In the context of criminal matters, it is well settled that due process requires the State to prove its allegations, not the defendant, and any jury instructions that tend to shift that burden to

the defendant violate due process. *State v. McCaslin*, 2004 MT 212, ¶ 24, 322 Mont. 350, 96 P.3d 722 (overruled on other grounds), citing *In re Winship*, 397 U.S. 358, 364 (1970), *State v. Clark*, 1998 MT 221, ¶ 29, 290 Mont. 479, 964 P.2d 766, *Sandstrom v. Mont.*, 442 U.S. 510, 524 (1979). Revoking a POST certification for misconduct is analogous to punishing an individual for a criminal violation, and the burden should be on the revoking or punishing party. A criminal defendant is not required to prove there are no grounds to establish a criminal violation, nor should a POST respondent be required to prove there are no grounds to establish professional misconduct. The same holds true in the other areas of the law where due process rights are implicated. See, e.g., *In re J.S.*, 2017 MT 214, ¶ 24, 388 Mont. 397, 401 P.3d 197 (ruling that, to meet due process demands in a civil commitment proceeding, the burden is on the state to prove the legal case, stating “[A commitment proceeding] constitutes an effort by the State to deprive an individual of a significant liberty interest. The burden of proving that a commitment is necessary therefore remains with the State and a respondent has the right to require the State to meet its burden of proof”); *Great Falls Tribune v. Mont. PSC*, 2003 MT 359, ¶ 56, 319 Mont. 38, 82 P.3d 876 (ruling that a government agency’s procedural rules, which shifted the burden of proof of confidentiality from the State to the public, violated the Montana Constitution).

In our case, POST’s administrative rule that placed the burden of proof on Adams constitutes an unconstitutional burden shift. At the contested case hearing, POST must bear the burden to prove, by some measurable standard, that a violation occurred sufficient to justify revocation. After all, POST is the state entity with the authority to revoke an individual’s POST certification, and it is POST that should be required to prove every element of its case, just as in any criminal proceeding or other administrative proceeding involving due process rights. Shifting the burden to the respondent to prove a negative – that no grounds exist for the

revocation – defies logic and violated fundamental principles of due process.

**CONCLUSION**

The District Court should affirm the MBCC’s decision. MBCC did not erroneously or arbitrarily determine that POST’s findings do not rise to the level of policy or ethics violations warranting revocation. If anything, they amount to training issues – not willful violations or outright neglect of duty. MBCC acted well within its authority in reaching that conclusion, and its oversight of another executive branch entity’s decision was not unconstitutional.

Furthermore, POST should not be allowed to base a revocation decision upon alleged misconduct that took place before Adams obtained his POST certification and statutorily agreed to be bound by POST’s rules. He was bound by other rules of conduct that are not at issue in this case. POST also cannot justify revocation here where its hearing procedure tracked an unconstitutional burden of proof that required Adams to prove his own innocence.

Adams respectfully requests this Court to affirm the final agency decision.

DATED this 20<sup>th</sup> day of September, 2019.

HOLM LAW FIRM, PLLC

By:   
Eric E. Holm

**CERTIFICATE OF SERVICE**

This is to certify that on this 20<sup>th</sup> day of September, 2018, I served a true and correct copy of the foregoing by email and first class mail, addressed to the following:

Kristina Neal  
4385 Wylie Dr.  
Helena, MT 59502  
Kristinaneal46@gmail.com  
*Attorney for POST*

HOLM LAW FIRM, PLLC

By:   
Eric E. Holm

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

IN THE MATTER OF CASE NO. 17-18 REGARDING:

THE REVOCATION OF THE ) Case No. 1003-2018  
CERTIFICATE OF KYLE ADAMS, )  
)  
)

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PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;  
AND RECOMMENDED ORDER

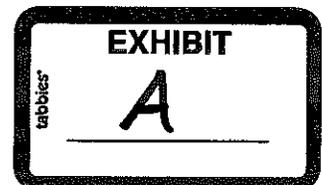
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I. INTRODUCTION

This matter concerns the Montana POST Council's November 29, 2017 Notice of POST Action revoking the POST certification of Kyle Adams. POST's Notice asserted violations of Admin. R. Mont. 23.13.702(a), (g), and (h) and Admin. R. Mont. 23.13.201(4)(a)(i). Specifically, POST asserts that Adams engaged in prohibited conduct under Admin. R. Mont. 23.13.702.

On June 27, 2018, this matter came before Hearing Examiner Caroline A. Holien for hearing. Adams was present and represented by Eric Holm, Attorney at Law. POST was present through its representative, Perry Johnson, Executive Director, and was represented by Kristina Neal, Attorney at Law. Adams, Johnson, Sergeant Jacob Willoughby, Lieutenant Steve Metzger, Sergeant Hans DeMello, and Lieutenant Roger Bodine all testified under oath. POST's Exhibits 3, 4, 6, and 8 through 15 were all admitted into evidence.

Counsel graciously agreed to present written argument regarding the admissibility of letters of support offered by Adams as his proposed Exhibit A. POST argues the letters are irrelevant and hearsay. Adams readily concedes the letters are hearsay but counters the letters are relevant as to the bias that infected POST's investigation and to Adams' character and ability to serve as a detention officer. Adams argues he is not attempting to invoke an exception to the bar against hearsay under Rule 802, M.R.Evid., but merely to show Johnson's approach to the investigation was flawed.



Johnson conceded that he did not contact the authors of the three letters. Johnson testified that he interviewed only those who he believed had first-hand knowledge of the events in question. While the letters are potentially relevant to issues surrounding Adams' character, the letters constitute inadmissible hearsay. Therefore, Adams' Exhibit A is hereby excluded.

## II. ISSUE

Whether Kyle Adams' POST certification should be revoked under the provisions of Mont. Code Ann. § 44-4-403 and other provisions cited in the Notice of POST Action and Opportunity for Hearing.

## III. FINDINGS OF FACT

1. Kyle Adams began working at the Yellowstone County Detention Facility (YCDF) as a Control Operator in December 2013.
2. Adams served in the U.S. Army for seven years from 2001 to 2008. Adams obtained a bachelors degree in Law Enforcement Administration from Ashford University in 2014.
3. Adams became a Detention Officer at YCDF on October 16, 2015.
4. Adams was not POST certified at the time of his hire. Adams could not become POST certified until he was employed for one year.
5. In October 2016, Adams attended the Montana Law Enforcement Academy and obtained his POST certification on or about December 16, 2016.
6. On August 1, 2016, Adams was working in the unit designated as North Four. The North Four unit is an open bay with single beds in roughly one half of the unit and an open seating area in the other half. There are also shower and toilet stalls in the unit. Inmates are free to roam the unit. There is one officer station that overlooks a large portion of the unit.
7. Upon his arrival at North Four, Adams was to complete a head count of the inmates in the unit and report that count to the sergeant on duty, Sergeant Jacob Willoughby.
8. YCDF Policy 4-05-00.00 sets forth the facility's head count procedure. The policy provides:

A physical head count of all inmates will be conducted at the beginning of each shift and at lock-down and at other established times. Each officer will be required to record the head count on the post log and to report the head count to the control officer.

Ex. 2.

9. Officers are required to enter the head count in the post log for the unit or post; the control officer's log; and the booking officer's log, which is the official head count record. Ex. 2.

10. The head count policy provides:

In order to reconcile the differences between the actual count and the number of inmates in custody, the booking officer will determine the whereabouts of all inmates by checking the inmate check-out log and any other information indicating authorized absence of inmates and crosscheck the information with the cell assignment board.

Ex. 2.

11. The policy further provides that, if there are inmates unaccounted for, the head count procedure is to be repeated and the cell check logs and inmate checkout sheets are to be checked completely. If an incorrect head count occurs again, the officer is to compare the actual inmates accounted for against the cell assignment board and inmate roster to determine who is missing. If the head count continues to be incorrect, the facility command is to be notified immediately and a systematic inspection of all other areas of the facility is done until the missing inmate is located. Ex. 2.

12. Adams' count resulted in a number that did not match the facility's records. Adams re-counted twice and came up with the same number. Adams only provided an accurate count after Sgt. Willoughby sent the prior shift's North Four officer back to the unit to assist Adams with the count.

13. Adams performed each of the head counts on August 1, 2016 by walking through each walkway and counting the individuals present. Adams was not aware that one inmate had been checked out. Adams did not intentionally miscount; nor did he intentionally report an incorrect number.

14. Adams' repeated incorrect counts prompted Sgt. Willoughby to review the security video footage of North Four from that same date on August 2, and August 3, 2016.

15. There is approximately a 10-minute discrepancy between YCDF's computer log and security video log. Sgt. Willoughby's review of the security video took into account the time lag.

16. While incorrect head counts are not unusual at YCDF, it is unusual for an officer to have to repeat the head count three times.

17. One of Adams' duties included performing security checks, which requires the officer to walk around the unit and physically check the security of each inmate. Generally, security checks are to be performed every 30 minutes in North Four.  
Ex. 3.

18. Adams documented at least one security check that he did not actually perform.

19. Security checks are not always performed at precisely 30-minute intervals due to interruptions in the detention officers' work day.

20. On August 1, 2016, Adams performed numerous security checks during his shift. Adams was called out of his unit at one point during his shift, which prevented him from performing his security checks at the regular 30-minute intervals or at the exact times logged in the computer.

21. One of Adams' duties also included performing shakedowns, which is a search of a bunk or cell. Officers are assigned, based on a rotation, which bunks they are required to shakedown for that shift.

22. YCDF Policy 4-03-00.00 sets forth its Security Inspections (Shakedown) policy and procedure. The policy provides:

It is necessary to conduct frequent searches of the inmates' cells and other areas where inmates work, play, congregate, or are temporarily held to discover and eliminate these problems.

Shakedowns should be frequent, but irregularly scheduled to prevent inmates from guessing when a shakedown is coming. The area and property search should be systematic and thoroughly checked.

Ex. 4.

23. Officers are required to conduct a shakedown even if the bunk is empty. Shakedowns are used to locate contraband that may have been hidden by the

inmates. A proper shakedown of an empty cell should take between five to ten minutes. An occupied cell should take much longer.

24. A log entry in the inmate's progress reports is required if contraband is found in the cell. All cell searches must be recorded in the post and shakedown logs. If any item is removed from the cell during a shakedown, a receipt listing those items must be given to the inmate. Ex. 4.

25. The search procedure is outlined in the policy, which requires the officer to stand in the cell and visually observe the layout and contents of the cell and determine if anything is out of the ordinary. The officer is required to search all clothing and to confiscate any clothing in excess of the allowed issue. All blankets, mattress covers, and mattresses must be examined and removed from the bedframe. The sink and toilet must be examined inside and out, as well as the faucets, drains, ventilator grills, shelves, doortracks, and windows. All personal items must be checked, including books, letters, toiletries, etc. The officer is also required to determine if there is any damage in the cell suggesting sabotage or damage by the inmate. Ex. 4.

26. The officer is required to "[l]eave the cell as nearly as possible to the condition [the officer] found it." Ex. 4.

27. Adams logged having completed four shakedowns during his shift on August 1, 2016. Adams did not complete two of the shakedowns he logged because the bunks were empty.

28. An officer should not log a shakedown on a empty bunk if a shakedown has not been completed due to the possibility that inmates would hide weapons, excess issue, or other contraband in the empty bunk. Entering a shakedown had occurred on an empty bunk when one has not actually been performed is falsifying a log entry.

29. In his review of the security video from Adams' August 1, 2016 shift, Sgt. Willoughby discovered two inmates had engaged in a verbal argument that escalated to pushing and shoving between the two men at approximately 1950 hours. The altercation occurred directly in front of the officer station where Adams was seated. Adams is seen on the security video playing Spider Solitaire on the computer while the inmates' argument starts and quickly escalates. The altercation lasted 10 seconds or less. Ex. 6.

30. Adams is observed minimizing his Solitaire game before calling for assistance and going to the door to wait for help to arrive. Ex. 6.

31. Adams had been taught to wait for backup to arrive from a previous inmate altercation in which he immediately intervened in the fight himself without backup. Officers are required to wait for backup before intervening unless it appears reasonably certain they can handle the situation without putting themselves or any of the inmates in danger.

32. Several detention officers reported to the unit and are seen standing near the officer station in the security video. Sgt. Hans DeMello was the sergeant who responded to Adams' call for help. Sgt. DeMello instructed the inmates to "bunk down" and the inmates complied. Other detention officers who had reported to the area had not done anything to contain the situation before Sgt. DeMello's arrival.

33. As the detention officers began to take control of the unit, Adams returned to his desk and closed out his Solitaire game. Adams did assist the officers in identifying the inmates involved in the altercation using the inmates' booking cards.

34. When questioned by Sgt. DeMello on who had been involved in the fight, Adams responded, "I don't know," and, "I didn't see who it was." Adams could not describe the fighting inmates to Sgt. DeMello.

35. Adams should have been telling the inmates to bunk down when the altercation was observed. Adams should have made an effort to verbally take control of the situation before backup arrived.

36. On August 2, 2016, Lieutenant Roger Bodine was assigned to conduct an internal investigation into Adams' conduct during his shift on August 1, 2016.

37. Lt. Bodine reviewed Sgt. Willoughby's report and reviewed the security video of Adams' August 1, 2016 shift.

38. As part of his investigation, Lt. Bodine also interviewed Adams. Adams admitted he logged two security checks that he did not conduct. Adams also admitted not watching the unit when the altercation occurred on August 1, 2016.

39. Based upon his investigation, Lt. Bodine concluded that Adams had failed to properly supervise the inmates and had knowingly falsified his logs by indicating he had performed security checks and shakedowns that he had not actually performed. Lt. Bodine also found a dereliction in duty by Adams' failure to respond appropriately to the inmate altercation.

40. Some time prior to February 9, 2017, YCDF staff conducted a unit shakedown in Unit Three. A particular inmate's books were taken during that

shakedown. The inmate later complained that his books should not have been taken and efforts were made to locate the books and return them to the inmate. One of the books was located and returned to the inmate, and the inmate found another one in his cell.

41. Adams was familiar with the inmates in Cell No. 19 of Unit Three. Adams had not experienced any behavioral problems with the inmates.

42. Sgt. Willoughby requested that Adams call the Sergeants Office so he could request that another detention officer conduct a shakedown of the inmate's cell to ensure the books had been returned.

43. Adams called the Sergeants Office and spoke to Sgt. DeMello. Adams reported that he had just completed a shakedown of the inmate's cell. Adams noted in his log that he had done a shakedown of the inmate's cell. Sgt. Willoughby subsequently checked Adams' log and determined that Adams had logged a shakedown of the inmate's cell approximately 20 minutes earlier.

44. Adams informed the inmate during the shakedown that his missing books could not be located. Adams allowed the inmate to keep extra laundry in his cell.

45. Detention officers do not have the discretion to leave items in a cell except for perhaps empty cracker boxes in which inmates typically store their personal papers.

46. Due to concerns about a potential conflict between Adams and the inmate due to Adams conducting a second shakedown within such a short time period, Sgt. Willoughby conducted a shakedown of the inmate's cell. Sgt. Willoughby discovered the inmate had three extra blankets, two extra sheets, one extra bed cover, three extra towels, six extra pairs of underwear, two extra shirts, three extra pairs of pants, two pairs of IL socks, coffee bags filled with juice, and a shampoo bottle filled with juice. The discovery of these items led Sgt. Willoughby to conclude that Adams had not done a proper shakedown of the inmate's cell.

47. Sgt. Willoughby subsequently met with Adams to discuss the items he had discovered in the inmate's cell. Adams admitted that he had done a "quick shakedown" where he "went and saw and looked around." Sgt. Willoughby reviewed the security video for the time Adams had noted conducting the shakedown and determined Adams had spent two minutes inside the cell.

48. On April 14, 2017, Captain Sam Bofto sent a letter to Perry Johnson, Executive Director of Montana POST, informing him that Adams had been

suspended without pay for 40 hours “for an ethics violation as well as policy violations” at YCDF. Ex. 10.

49. On May 4, 2017, Johnson sent Adams a letter advising him that POST had received notice of allegations of misconduct against him from YCDF. Johnson’s letter advised Adams that the allegations included:

That you failed to respond appropriately to a physical altercation between inmate, instead playing a computer game;

That you falsified cell check logs, shakedown logs, and head counts, indicating that you conducted the checks when, in fact, you did not.

Johnson’s letter further advised Adams that the allegations, if proven true, could result in sanction, suspension, or revocation of his POST certification. Ex. 11.

50. On May 24, 2017, POST received Adams’ written response to Johnson’s letter. Adams wrote:

I wrongfully represented myself at [YCDF]. A fight happened in my unit at the time I was playing a game on the computer. I did tell them to stop, but I could have ended sooner if I was watching the unit. I also logged a security check that I did not do, and conducted a “shakedown” on an empty bunk.

During the investigation and questioned about my actions I did not may accuses [sic] or deny any allegations. I admitted guilt to everything I did to LT. Bodine during a recorded interview.

I understood and accepted I make [sic] a huge mistake from the beginning, and I should never have compromised myself . . .

Ex. 12.

51. Adams did not disclose the February 2017 incident for which he was being investigated.

52. On May 30, 2017, POST received a second letter from Captain Bofto reporting that Adams had been disciplined for an ethics violation that included a last chance agreement and an 80 hours suspension without pay. Ex. 13.

53. On July 12, 2017, Johnson sent a second letter to Adams advising him that POST had received notice of additional allegations of misconduct. The letter listed the previous allegations, as well as the most recent ones that included:

That you falsified shakedown logs when you stated that you performed two cell shakedowns which you did not do.

The letter went on to describe the possible sanctions that may result from the additional allegations, if proven to be true. Ex. 14.

54. On August 2, 2017, POST received a written response from Adams. Adams explained what had occurred during his shift in February 2017 that had led to the additional discipline. Adams wrote:

I told Lt. Bodine that I should have contacted Sgt. Willoughby for approval before I made my decision. If I would have contacted my supervisor for permission before hand, it would have prevented me of receiving my write up and suspension. I did not think leaving additional laundry would be considered falsifying my log. I did not log taking items out that I did not remove.

Ex. 15.

55. Johnson personally interviewed Adams. Adams admitted to Johnson that he had falsified his log books on August 1, 2016, as well as failing to properly supervising the inmates during his shift on that day. Adams also admitted that he had logged doing a shakedown on February 9, 2017, but that it was actually only a "quick shakedown."

56. On November 29, 2017, POST notified Adams of the revocation of his POST certification.

#### IV. DISCUSSION

The Montana POST Council is a quasi-judicial board administratively attached to the Department of Justice. Mont. Code Ann. § 2-15-2029. The POST Council has a legislative mandate to "provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers" in Montana. Mont. Code Ann. § 44-4-403(1)(c). POST has also enacted administrative rules to effectuate this legislative mandate, including specific rules regarding contested cases. Admin. R. Mont. 23.13.101 *et seq.*

POST revoked Adams' certification on the grounds that he had engaged in conduct prohibited under Admin. R. Mont. 23.13.702, which include:

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

...

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

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

...

Admin. R. Mont. 23.13.203 contains an oath all public safety officers take that includes:

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

...

(i) I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession.

A. Events Occurring Prior to Adams' POST Certification are Relevant and Appropriate Grounds for Sanction.

Adams argued that he was not bound by POST's certification standards or code of ethics until he actually achieved certification, which, in this case, was not until on or about December 16, 2016. Adams notes that Admin. R. Mont. 23.13.205(3) provides, "Acceptance of POST certification is an agreement to abide by and adopt the code of ethics [as prescribed in ARM 23.13.203] and refrain from the behaviors outlined in ARM 23.13.702."

Adams ignores the requirements set forth in Admin. R. Mont. 23.12.206(2)(a)(i), (ii), which provides:

Public safety officers hired after August 1, 2008 are required to complete the following:

- (i) the probationary period prescribed by law or by the current employing agency, but in any case have a minimum of one year discipline-specific employment experience with the current employing agency; and
- (ii) the basic course or the equivalency as defined by the council.

Adams would not have been eligible for POST certification without first having completed one year of employment with YCDF. It stands to reason that an individual seeking certification from POST would understand that its rules would apply to them not only after receiving certification but during that one-year period in which they were required to gain “discipline-specific employment experience with the current employing agency.” Adams’ argument that POST rules did not apply to him prior to certification also ignores the basic fact that he was seeking certification as a public safety officer, which carries a greater responsibility than merely complying with the policies and procedures of the employing agency. It means that the individual is prepared to accept and to meet the responsibilities attached to serving as a public safety officer in the State of Montana. As a public safety officer, there were rules governing Adams’ behavior, therefore, making him subject to the Code of Ethics. The events occurring prior to Adams’ certification in December 2016 are relevant and are appropriate grounds for sanction under Admin. R. Mont. 23.13.702.

B. Testimony Describing Events Observed in the Security Video of Adams’ August 1, 2016 Shift is Relevant.

Adams argues that evidence regarding what was observed in the security video of his August 1, 2016 shift should be disregarded or not given significant weight as POST failed to produce the original recording as required under Rule 1002, M.R.Evid.

Adams’ argument is well taken. There is no indication that the security video had been destroyed or otherwise not obtainable. *See* Rule 1004, M.R.Evid. Sgt. Willoughby testified to certain conclusions he came to as a result of his viewing the entirety of the security video from Adams’ August 1, 2016 shift. However, the security video supporting Sgt. Willoughby’s conclusions was not offered at hearing. Therefore, testimony that involved conclusions based upon Sgt. Willoughby’s review of the security video for August 1, 2016 and not merely that portion that is included in Ex. 6 has not been considered by the Hearing Examiner.<sup>1</sup>

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<sup>1</sup> It should be noted that Adams has admitted to much, if not all of the conduct, pointed to in the testimony of Sgt. Willoughby, Lt. Bodine, and Johnson.

C. Adams Received Proper Notice of the Allegations and Evidence that led to POST's Revocation of his Certification.

Adams argues that the Notice of POST Action failed to give him proper notice of any evidence or allegations of misconduct on August 1, 2016. The notice refers to events occurring on August 2, 2016. It was fairly apparent at hearing that Adams not only understood the events occurred on August 1, 2016 at the time of hearing but throughout the investigations conducted by YCDF and POST. The Hearing Examiner is not persuaded that Adams did not receive proper notice of the allegations against him or that he did not have adequate opportunity to respond to those allegations.

D. Adams has Failed to Prove by a Preponderance of the Evidence That There is no Basis for Revocation of his POST Certification.

There was sufficient evidence presented at the hearing to justify revocation as the appropriate sanction based solely on the already-proven violations. Adams admitted that he engaged in conduct that involved logging security checks and shakedowns not actually conducted during his shift on August 1, 2016. Adams also admitted that he failed to properly supervise inmates, which resulted in an albeit brief physical altercation between two inmates, while playing Spider Solitaire at the office station during that same shift. Finally, Adams also admitted logging a shakedown in February 2017, which he characterized as a "quick shakedown." However, that shakedown clearly never occurred given the amount of contraband discovered and removed during a subsequent shakedown of that same cell.

Adams argues that some of his conduct was as a result of discretion he thought he had as a detention officer. Adams also points to issues in the training he received from his Field Training Officers. Adams' testimony was not particularly persuasive when compared to the testimony of Lt. Steve Metzger. Lt. Metzger has served at YCDF for 32 years - 16 of those years as a training officer. Lt. Metzger denied YCDF has ever had a policy that allowed detention officers to skip conducting a shakedown of an empty bunk. Lt. Metzger testified that detention officers do not have the discretion to leave items in a cell and that no detention officer would have received training to the contrary. Lt. Metzger also denied that a "quick shakedown" is an accepted approach at YCDF and that a shakedown of a cell should take approximately 15 minutes.

Not only does Lt. Metzger have the training and experience that supports his serving as an expert witness on YCDF policies and procedures, his testimony is more inherently consistent and reasonable considering the immense responsibility of detention officers in ensuring the health and safety of inmates committed to their care. It makes little sense that an empty bunk would not warrant a shakedown given

that the inmates are free to roam the area with little supervision. Further, allowing detention officers the discretion to allow certain inmates to keep excess issue or other items inevitably invites the scenario of one inmate receiving what appears to be preferential treatment, which certainly could lead to bad result. Finally, and perhaps most concerning, is Adams' attempt to minimize the importance of true and accurate logging of events occurring during his shift. Other officers are entitled to rely upon the information contained in those logs. Not only is that reliance necessary for the orderly administration of the facility but to avoid any potential liability issues if something was to occur to an inmate or another officer.

Adams' conduct during the shifts in question, as well as his attempt to minimize the impact of his actions, shows that revocation of his POST certification is the appropriate sanction in this case. Adams has demonstrated a lack of integrity that cannot be corrected by further training.

In order for the Hearing Examiner to find the decision of POST's Executive Director to revoke Adams' certification was not appropriate, a preponderance of the evidence must show that there was no basis for that revocation. Admin. R. Mont. 23.13.714(8)(a). Based on the evidence presented by the parties, there is no basis in either the Montana Code or Administrative Rules to overturn the revocation. Adams has failed to meet his burden<sup>2</sup> to show "by a preponderance of the evidence that there was no basis for the . . . revocation of certification imposed by the director, as stated in the notice of agency action." Admin. R. Mont. 23.13.714(8)(a). Because Adams has failed to meet his burden, the Executive Director's decision to revoke Adams' certification should be affirmed.

## V. CONCLUSIONS OF LAW

1. POST has jurisdiction to determine this matter. Mont. Code Ann. § 44-4-403.

2. Kyle Adams engaged in conduct during his employment as a detention officer at YCDF that violated Admin. R. Mont. 23.13.702(a), (g), and (h). Adams is therefore subject to sanction of his POST certification. Admin. R. Mont. 23.13.702(2).

3. Adams engaged in conduct during his employment as a detention officer at YCDF that violated the oath he took as a public safety officer. See Admin. R.

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<sup>2</sup> The Hearing Examiner questions whether, because of due process concerns, Adams should bear this burden. However, she is bound by the administrative rules governing this proceeding.

Mont. 23.13.203(a), (i). Adams is therefore subject to sanction of his POST certification. Admin. R. Mont. 23.13.702(2).

4. As a result of Adams' conduct, he is subject to revocation of his POST certification. Admin. R. Mont. 23.13.702(2)(f).

5. Adams' conduct was improper and was harmful to his own reputation as a detention officer. Admin. R. Mont. 23.13.702(2)(l).

6. Adams failed to meet his burden that "by a preponderance of the evidence that there was no basis for the . . . revocation of certification imposed by the director, as stated in the notice of agency action." Admin. R. Mont. 23.13.714(8)(a).

7. The appropriate sanction for Adams' violations of Admin. R. Mont. 23.13.702 and 23.13.203 is revocation of his POST certification.

#### VI. RECOMMENDED ORDER

Based on the foregoing findings of fact and conclusions of law, it is the recommendation of this Hearing Examiner to the POST Council that the POST certification of Kyle Adams remain revoked.

DATED this 26<sup>th</sup> day of July, 2018.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: Caroline A. Holien  
CAROLINE A. HOLIEN  
Hearing Examiner

NOTICE: Pursuant to Admin. R. Mont. 23.13.719(2), within 15 days after the Hearing Examiner has issued findings, conclusions, and a proposed decision, an adversely affected party may submit exceptions to the Hearing Examiner's decision. The Council shall receive briefs and hear oral arguments at its next meeting and deliberate pursuant to Mont. Code Ann. § 2-4-621. The party filing the exceptions must incorporate a supporting brief in the document stating the exceptions. The opposing party may file a brief in response to the exceptions within ten days. No reply brief will be received.

\*\*\*\*\*

CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by depositing them in the U.S. Mail, postage prepaid, and addressed as follows:

Eric Holm  
Attorney at Law  
P.O. Box 3094  
Billings, MT 59103

Kristina Neal  
Attorney at Law  
4385 Wylie Drive  
Helena, MT 59602

DATED this 26<sup>th</sup> day of July, 2018.

Sandy Duncan

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

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IN THE MATTER OF CASE NO. 17-18 REGARDING:

THE REVOCATION OF THE                    ) Case No. 1003-2018  
CERTIFICATE OF KYLE ADAMS            )

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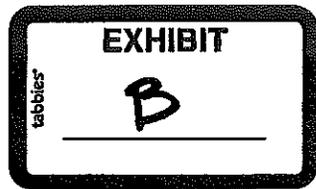
TRANSCRIPT OF PROCEEDINGS

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Heard at the POST Council Conference Room  
2260 Sierra Road East  
Helena, Montana  
June 27, 2018  
9:00 a.m.

BEFORE HEARING OFFICER CAROLINE HOLIEN

PREPARED BY: LAURIE CRUTCHER, RPR  
COURT REPORTER, NOTARY PUBLIC  
P.O. BOX 1192  
HELENA, MT 59624  
(406) 442-8262



1 information in the computer logs regarding your  
2 security checks on that day?

3 A. Negative.

4 Q. What is a shake-down?

5 A. A shake-down is a slang -- I guess you  
6 could probably call it -- is like cell search. It  
7 is just I'd say slang for cell search. You'd  
8 enter a cell, look for items, remove items. You  
9 can use discretion and leave items behind as well,  
10 or take even more items based on discretion.

11 Q. What were you trained to do if you came  
12 across an empty bunk?

13 A. Empty bunk, many times, that's a bonus  
14 because it was a shake-down that you can log as  
15 taken care of because there was no one there.  
16 Then you'd move on with your day to another,  
17 whoever else is on your list, because the list is  
18 generated randomly, depending on the housing unit,  
19 depending on how many cells for that day. Some --  
20 Minimum security was four a shift maximum, and  
21 general population was two a shift, two individual  
22 cells a shift.

23 Q. Was it part of your duties on August  
24 1st, 2016 to perform shake-downs?

25 A. Yes, it was.

1 Q. Do you recall if you did your required  
2 shake-downs on that day?

3 A. There was four shake-downs on the list  
4 for August. I conducted two. The other two were  
5 empty. And one of them didn't even have a bunk in  
6 that area. It was an empty floor.

7 Q. When you conducted your shake-downs,  
8 these four shake-downs on August 1st, 2016, did  
9 you purposely do them incorrectly?

10 A. Negative.

11 Q. Were you trying to hide any items that  
12 an individual may have put in those bunks?

13 A. Negative.

14 Q. Did you intentionally state in the logs  
15 that you did a shake-down on those bunks when in  
16 fact you didn't, and you were required to shake  
17 those bunks down?

18 A. Negative.

19 Q. Have you since learned a different  
20 procedure for that?

21 A. Absolutely.

22 Q. Tell us about that.

23 A. After the incident took place, I made  
24 sure that if I had an empty bunk, to prevent any  
25 further issues, I randomly selected another cell,

BEFORE THE MONTANA BOARD OF CRIME CONTROL

In Re Appeal of KYLE ADAMS  
from Decision of the Public Safety  
Officer Standards and Training (POST)  
Council

FINAL AGENCY DECISION

Procedural History

On November 29, 2017, the POST Council notified KYLE ADAMS that his POST certification was revoked subject to a contested case hearing. A contested case hearing was conducted June 27, 2018, before a hearing examiner (HE) with the Montana Department of Labor and Industry's Office of Administrative Hearings. On July 26, 2018, the HE issued proposed findings of fact, conclusions of law, and recommended order (PFOF, COL and RO). Based thereon, the HE recommended to the POST Council that KYLE ADAMS' POST certification *remain revoked*. The POST Council's Final Decision dated October 3, 2018, accepted in total the PFOF, COL and RO as its final decision. ADAMS timely appealed and POST Council remitted the record on appeal to the Board of Crime Control's Appeal Review Committee (ARC).

Upon notice, the ARC initiated its review then continued the matter pending receipt of additional briefs before resuming deliberations. ARC issued to the



Board and served on the parties, a written recommendation as to the disposition of the appeal. ARC unanimously recommended that the Board reverse the POST Council's decision that ADAMS' certification remain revoked and recommended that the certification be restored to him good standing.

#### ORDER

At its meeting on June 14, 2019, the Montana Board of Crime Control considered ADAMS' appeal. Upon motion made, seconded and carried, ARC's written Recommendation to the Board, a copy of which is attached as Exhibit A and incorporated herein by reference, was adopted by the Board. It is ORDERED under authority of §44-7-101(2), MCA, that the POST Council's Final Decision dated October 3, 2018, is REVERSED and ADAMS' certification is restored to him in good standing.

The Board based its decision on the record as a whole and, in particular, on the fact that most of the alleged violations occurred before ADAMS' had begun his POST certification training. In addition, the record did not support the POST Council's decision that its November 29, 2017, revocation of ADAMS' certification (subject to a contested case hearing) should remain in effect following the hearing at which the facts were fully developed. ADAMS' conduct, as determined at the hearing and memorialized in findings of fact, was considerably

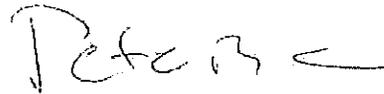
more benign or ambiguous than had been asserted as of November 29, 2017.

POST Council's Final Decision dated October 3, 2018, is incongruous with the facts.

This Final Agency Decision is subject to judicial review.

DONE: June 14, 2019

SIGNED: 6/21/2019

A handwritten signature in black ink, appearing to read "Peter Ohman", written over a horizontal line.

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Peter Ohman, Chair  
Montana Board of Crime Control



Montana Board of Crime Control  
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Peter Ohman  
State Public Defender  
Chairperson

Rick Kim  
Fort Peck Executive Board  
Member  
Vice Chairperson

Laurie Barron  
Superintendent

Tim Brurud  
Youth Justice Council Chair

Katie Campbell  
Probation Parole Officer

Jared Cobell  
Assistant U.S. Attorney

Brenda Desmond  
4<sup>th</sup> Judicial District Court  
Standing Master

William Dial  
Whitefish Police Chief

Leo Dutton  
Lewis & Clark Sheriff

Tim Fox  
Attorney General

Wyatt Glade  
Custer County Attorney

Beth McLaughlin  
Court Administrator

Reginald Michael  
Department of Corrections  
Director

Laura Obert  
Broadwater County  
Commissioner

Olivia Rieger  
7<sup>th</sup> Judicial District  
District Court Judge

Angela Russell  
Attorney

Geri Small  
Professional & Community  
Organizations

Derek VanLuehene  
Public Representative

TO: Montana Board of Crime Control  
FROM: POST Appeal Review Committee  
DATE: June 6, 2019  
RE: Committee Recommendation to Board  
KYLE ADAMS APPEAL from POST Council Revocation of Certification

### Procedural History

On November 29, 2017, the Public Safety Officer Standards and Training Council (POST) issued a notice to Kyle Adams of the revocation of his POST certification subject to a contested case hearing.

The contested case hearing was conducted on June 27, 2018. Hearing Examiner Caroline Holien of the DLI Office of Administrative Hearings presided. Present were Kyle Adams, Adams' attorney Eric Holm, Perry Johnson, Executive Director and representative of the POST Council in this matter, and POST Council's attorney Kristina Neal.

On July 26, 2018, the Hearing Examiner issued Proposed Findings of Fact, Conclusions of Law and Recommended Order (PFOF/COL/RO). The Hearing Examiner recommended that Adams' POST certification remain revoked. The PFOFs/COL/RO were adopted in their entirety by the POST Council.

Adams timely appealed the POST Council's decision to the Appeal Review Committee of the Montana Board of Crime Control pursuant to §§44-4-403(3) and 44-7-101(2), MCA. Adams' legal argument on appeal was included in his notice of appeal. POST timely submitted the record to the Montana Board of Crime Control's Appeal Review Committee (ARC). POST Council submitted its legal brief.

Pursuant to notice, the ARC met on November 30, 2018 to consider the record. The ARC review is informal; it may hear argument. ARM 20.24.1007(1)(2). Findings of Fact must be supported by the evidence in the record; in its discretion the ARC may request briefs. Kristina Neal and Perry Johnson appeared on behalf of POST Council. Having included his legal argument in the Notice of Appeal, Mr. Adams and his counsel Eric Holm did not appear. Ms. Neal summarized the POST Council's position and presented argument. ARC members asked questions of Ms. Neal to clarify several issues. Under authority of ARM 20.24.1006(3), ARC's review was continued in order to: obtain additional briefs, obtain a transcript of the contested case hearing; and allow sufficient

time for review of the transcript upon receipt. The Appeal Review Committee's review/deliberations resumed on March 15, 2019.

The ARC has authority under ARM 20.24.1008, to recommend to the Board that it affirm or reverse the POST Council's decision or that it remand to the hearing examiner for additional findings pursuant to ARM 20.24.1008.

BASED UPON THE RECORD, the Review Committee unanimously voted to RECOMMEND to the remaining members of the Board of Crime Control that it REVERSE the POST Council's revocation of Kyle Adams' POST Certification and restore the certification to him in good standing. Adams' appeal to the Board of Crime Control stayed the enforcement of POST's revocation decision pursuant to ARM 20.24.1004(4). The Board may adopt the ARC's recommendation or send the recommendation back to ARC for further consideration. Once adopted by the board, the ARC's recommendation becomes the final agency decision that is subject to judicial review. ARM 20.24.1009.

The basis for ARC's recommendation is set out below.

1. Despite affording POST Council's decision deferential consideration, the Committee could not conclude that the record, considered as a whole, supported its decision.
2. The ARC's decision, based on the record was that POST prosecuted the case presented to it by the employing agency, Yellowstone County Detention Facility (YCDF), apparently over the course of several months via multiple submissions, but that revocation of Mr. Adams' certification was not supported. The violations alleged by YCDF and by POST as the basis alleged for revoking Adams' certification (subject to the right to a contested case hearing) were based on ARM 23.13.702<sup>1</sup>(a), (g), (h). The Hearing Examiner concluded in the PFOF, COL, RO (first paragraph of the INTRODUCTION), that POST asserts that Adams engaged in prohibited conduct under ARM 23.13.702. The subsections plead require proof of neglect of duty, "willful falsification" or willful violations". However, in relation to the evidence actually presented at the hearing, Adams' conduct was considerably more benign and ambiguous than the pleadings suggested. For that reason, the Hearing Examiner's recommendation that Adams' certification "remain" revoked, is incongruous with the examiner's own PFOF, COL, RO. The proposed findings of fact as determined by the examiner and adopted in their entirety by POST, paint a markedly different and less serious picture of Adams' conduct. Rather the findings were favorable to Adams relating to certain of the conduct that POST had alleged was the basis for revocation. ARC believes that for the board to adopt the hearing examiner's recommendation that the certification remain revoked would not comport with

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<sup>1</sup> Although the citation form was incorrect, it obviously was intended to refer to ARM 23.13.702(2)(a),(g),(h). Additionally, the POST alleged violation of ARM 23.13.201(4)(a)(i). No such rule subsection exists now or did at any time pertinent to this proceeding.

the facts as they are now fully established, would be an injustice to Adams based on the record as a whole.

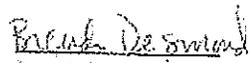
3. Adams was appointed as a Detention Officer at the Yellowstone County Detention Facility (YCDF) on October 16, 2015. The Detention Officer position requires POST certification. ARM 23.13.201.
4. POST's Notice of Action revoking Adams' certification, subject to a contested case hearing, alleged multiple instances where Adams' conduct fell short. All of the conduct with one exception occurred on a single day: August 1, 2016.
  - A. One violation on August 1, 2016 pertained to a verbal altercation between inmates that quickly escalated to pushing and shoving. The entire episode lasted 10 seconds or less. (PFOF # 29). Adams was playing on-line solitaire in the control room when it began. He minimized the screen (one key stroke) before calling for backup. (PFOF #30). Several detention officers responded, and none took any action prior to arrival of Sgt. DeMello. (PFOF #32) who ordered the inmates to "bunk down" and they complied. (PFOF #32). Adams assisted in identifying the inmates involved in the altercation using the inmates' booking cards. (PFOF #33). YCSO/YCDC and POST Council asserted that Adams "failed to properly supervise" the inmates and "failed to respond appropriately to the altercation", asserting he should have made an effort to verbally de-escalate the situation before backup arrived. (PFOF # 36). Adams testified that he did tell the inmates to stop (PFOF #50) and that he called for backup based on having intervened in an altercation without backup on a different prior occasion and been told he was supposed to wait for back up. (PFOF #31). Neglect or dereliction of duty is not borne out by the findings.
  - B. Another infraction involved a "head count" discrepancy on August 1, 2016. Adams repeated his head count with the same result. Then an officer from another shift assisted and the discrepancy was resolved on the third count. Adams was not aware that one inmate had been checked out. The Hearing Examiner in the contested case hearing found that with respect to the head count issue, Adams did not intentionally miscount, nor did he intentionally report an incorrect number. (PFOF #13). POST adopted that finding.
  - C. Another incident on August 1, 2016, pertained to security checks (walk-throughs) and whether they were conducted. The Hearing Examiner found that Adams performed numerous security checks during his shift on August 1, 2016 and that he had been called away from the unit at one point during his shift which prevented him from performing his security checks at the regular 30-minute intervals or at the exact times logged in the computer. (PFOF #20). The Hearing examiner concluded Adams had missed "at least one" security check/walk through. By finding that Adams missed at "least one", the Hearing Examiner erroneously relied on speculation. Any failure to perform a second security check was not established by credible evidence or it would have warranted an affirmative finding of two missed security checks.

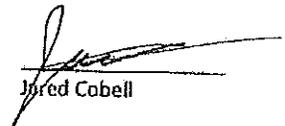
ARC concludes based on the record that Adams admittedly logged one security check/walk through that he did not perform. (PFOFs ## 17, 18, 19, 20).

- D. Another claim of the YCDF/POST pertained to 4 shakedowns assigned to Adams on his shift on August 1, 2016, two of which involved empty bunks/cells. Adams logged the shakedowns as having been performed. Adams admitted that his shakedowns of the empty bunks/cells were cursory, lasting approximately 2 minutes each, when a properly conducted shakedown of an empty cell should last "5 to 10 minutes" per policy. YCDF/POST asserted that logging those 2 shakedowns as having been performed when they were only cursorily performed constituted a falsification of the logs. ARC deems the quality or thoroughness of an empty bunk shakedown to be a training or discipline issue and not a records falsification issue. POST presented little evidence relating to the nature or extent of Adams's training on the job before attending the MLEA course to earn his POST certification. The minimal evidence presented at the contested case hearing which touched upon that issue, was the testimony of an individual who was the training officer at YCDF and at the time of the contested case hearing was under scrutiny/investigation relating to honesty/integrity issues. POST Council acknowledged this to the ARC stating that POST became aware immediately before the contested case hearing that the witness was under investigation, but that POST had no documentation related to it or the documentation would have been provided to ARC with the rest of the record on appeal.
5. Adams had not even begun his *POST training* program on August 1, 2016 when the foregoing events took place. He began his POST training program in October 2016 and was POST certified in December 2016. Therefore, POST's argument that its rule 23.13.702 applies to persons before they are certified, misses the point of what consideration, if any, it gave to the issue of Adams's job training prior to August 1, 2016. ARC deems the issues in this case to be largely training-related and that on balance, after careful consideration, determines they do not implicate Adams' integrity or honesty or warrant revocation of his POST certification.
6. The only violation that occurred after Adams completed his POST certification training at the MLEA, occurred on February 9, 2017. That alleged violation was for failure to remove/confiscate a *large* number of large "excess property items" from a cell during a shakedown. The volume and type of excess items (as listed in the Hearing Examiner's PFOF #46 adopted by POST Council), when considered in conjunction with PFOF #21 pertaining to assignment of shakedowns each shift based on a rotation system, raises concern about how long the items had been accumulating in the cell and how consistently the policy relating to confiscation of excess property items is applied.

7. ARC notes that the Board has express authority under ARM 20.24.1008 to reverse a POST Council decision and it has that authority for a reason, even if it is seldom invoked.
8. Adams made mistakes, but revocation is unduly harsh and unwarranted in light of the evidence in the record.

  
Laura Cbert, Committee Chair

  
Brenda Desmond

  
Jared Cobell

Montana Board of Crime Control Board of Directors  
POST Appeal Review Committee

CERTIFICATE OF SERVICE

I certify that on the 21st day of June 2019, a true copy of the foregoing Final Agency Decision was served by U.S. Mail, postage prepaid, on the following:

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ATTORNEY FOR PETITIONER

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY, MONTANA**

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PUBLIC SAFETY OFFICERS )  
STANDARD AND TRAINING COUNCIL )  
(POST) )  
)  
)  
                    Petitioner, )  
)  
                    vs. )  
KYLE ADAMS )  
)  
)  
                    Respondents. )

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Cause No. DDV 2019-995

REPLY BRIEF IN SUPPORT OF  
POST’S PETITION FOR JUDICIAL  
REVIEW

**I. THIS COURT MUST GIVE DEFERENCE TO THE HEARING EXAMINER’S FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

In the instant matter, the Board of Crime Control (BOCC) has intermediary appellate authority over POST, an agency with which it has no professional relationship. No other agency within the state has appellate oversight of another unrelated agency. Adams has argued that this Court should give “great weight” to the BOCC’s interpretation and cites to *Knowles v. St. ex rel. Lindeen*, 2009 MT 415. (Resp. Br. p. 6.) However, *Knowles*, did not involve a second agency conducting review of another autonomous agency. Rather, contradicting Adams’s argument, the Montana Supreme Court in *Knowles* specifically instructed district courts that great deference should be afforded to the hearings examiner’s findings and conclusions. *Knowles*, ¶ 21. The Court explained, “because a hearing examiner is in the unique position of hearing and observing

all testimony entered in the case, his or her determinations as to witness credibility are entitled to great deference.” *Knowles*, ¶ 21 (citation omitted).

Besides Adams, the hearings examiner listened to and carefully evaluated the testimony of six supervising law enforcement officers. This Court should afford great deference to the hearing examiner’s findings and reject the modified findings of the BOCC, as the BOCC failed to provide the hearing examiner with the proper deference. “Under MAPA, an agency may reject a hearing officer’s findings of fact only if, upon review of the complete record, the agency first determined that the findings were not based upon competent substantial evidence.” *Blaine County v. Stricker*, 2017 MT 80, ¶ 25 (internal quotation marks omitted; citing *Moran v. Shotgun Willies*, 270 Mont. 47, 51, 889 P. 2d 1185, 1187 (1995)). “In reviewing findings of fact, the question is not whether there is evidence to support different findings, but whether competent substantial evidence supports the findings actually made.” *Mayer v. Bd of Psychologists*, 2014 MT 85, ¶ 27 (citing *Knowles*, ¶ 21). “An agency abuses its discretion if it modifies the findings of a hearing officer without first determining that the findings were not supported by substantial evidence.” *Stricker*, ¶ 25. “[A]n agency’s rejection or modification of a hearing officer’s [factual] findings cannot survive judicial review unless the court determines as a matter of law that the Hearing Examiner’s findings are not supported by substantial evidence.” *Stricker*, ¶ 25.

Regarding whether substantial evidence supports the factual findings, *Stricker* explained:

Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. It consists of more [than] a mere scintilla of evidence but may be less than a preponderance. The evidence is viewed in the light most favorable to the prevailing party when determining whether findings are supported by substantial credible evidence.

*Stricker*, ¶ 26 (internal citations and quotations omitted); see also *Mayer*, ¶27. The hearings examiner in this matter carefully weighed all the evidence and testimony and substantial evidence supported her findings.

## **II. ADAMS INTENTIONALLY FALSIFIED RECORDS.**

In his response brief, Adams has characterized his misconduct as mistakes. (Resp. Br. p. 1.) Adams’s misconduct was not the product of sloppy work. Rather, Adams knowingly

falsified jail records. Even Adams in his own words to POST, in his response letter wrote, “I also logged a security check that I did not do.” Moreover, Bodine testified that Adams admitted to him that he logged security checks that he did not complete and logged a shake down that he did not complete. (*See* Hearing Examiner FOF # 39.) Adams also admitted to Johnson that he falsified log books on August 1, 2016 and admitted to Johnson that on February 9, 2017 he had logged a shakedown when it was only a “quick shakedown.” (*See* Hearing Examiner FOF # 55.) As the hearing examiner found, based on substantial evidence, Adams demonstrated a lack of integrity that cannot be corrected by further training.

### **III. POST WAS NOT AWARE OF ADAMS’S MISCONDUCT AT THE TIME POST CERTIFIED ADAMS.**

Johnson testified that it is the responsibility of the employing agency to refer misconduct to POST. (Hearing Transcript (Tr.) p. 184.) POST did not receive the complaint and information about Adams’s violations until April 14, 2017, when Captain Sam Bofto sent a letter to Johnson. (Tr. p. 177.) Therefore, at the time that POST would have certified Adams, POST would not have been aware of the misconduct.

Johnson testified that it is actually “very common” for POST not to receive a referral from the employing agency until after all the disciplinary, legal, or criminal proceedings would have been concluded by the employing agency. (Tr. pp.182-83.) Johnson explained, based on this process, POST has previously revoked certificates based on conduct that would have occurred prior to the individual being issued a certificate. (Tr. p. 185.)

### **IV. THE HEARING EXAMINER CORRECTLY CONCLUDED THAT ADAMS’S CONDUCT ON AUGUST 1, 2016, SHOULD SERVE AS GROUNDS FOR REVOCATION.**

Adams has argued that his certification should not be revoked because some of the conduct relied upon by POST occurred after Adams had been appointed as a public safety officer but before he had received his certification. If this Court were to adopt Adams’s legal conclusion that the code of ethics does not apply to him, it could have precedential value in future cases. This Court should find, as did the hearing examiner and the POST Council, that the

language in A.R.M. 23.13.702(2)(h) incorporates the code of ethics (found in A.R.M. 23.13.203(3)) into the “Grounds for denial, sanction, suspension or revocation of POST certification” such that a violation of the code of ethics by any officer—regardless of when that officer was hired, sworn, or received a POST certification—may be grounds for sanction, suspension, or revocation of POST certification.

Currently, POST A.R.M. 23.13.702(2)(h), which announces the “grounds for denial, sanction, suspension or revocation of POST certification,” states that any “willful violation of the code of ethics set forth in these rules” will be grounds for sanctioning a POST certificate. The only “code of ethics set forth in these rules” is found in A.R.M. 23.13.203(3). This language in A.R.M. 23.13.702(2)(h) therefore incorporates the code of ethics (found in A.R.M. 23.13.203(3)) into the “grounds for sanction, suspension or revocation of POST certification.” This means that when an officer commits misconduct, POST can “charge” that officer under any of the subsections in A.R.M. 23.13.702 which announce the “grounds for denial, sanction...” or POST can “charge” a violation of the code of ethics under A.R.M. 23.13.203(3). Thus, A.R.M. 23.13.702(2)(h) gives teeth to the code of ethics, by making it a code of behavior for all officers and a means of sanctioning unethical conduct.

In addition to the POST A.R.M.s, the MCA provides that the POST Council “provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.” Mont. Code Ann. § 44-4-403(1)(c). The POST A.R.M.s are the vehicle by which the POST Council regulates certification. Those A.R.M.s require (as explained above) that in order to maintain a POST certificate (and avoid denial, sanction, suspension, or revocation of that certification) an officer must not willfully violate of the code of ethics found in A.R.M. 23.13.203(3). Thus, the POST Council has, in accordance with its statutory mandate (found in Mont. Code Ann. § 44-4-403(1)(c) and elsewhere) promulgated an additional standard for public safety officers who are currently employed—that they avoid willfully violating the code of ethics. This should be true no matter when the officer was hired

or sworn or when the officer's POST certificate was issued. All officers in Montana should be required to abide by a code of ethics.

This Court should reverse the BOCC and affirm the hearing examiner's well-reasoned legal interpretation of the POST statutes and A.R.M.s. found in her conclusion of laws numbers 2-3 (Discussion at pp. 10-11). A.R.M. 23.13.702(2)(h) incorporates the code of ethics (found in A.R.M.23.13.203(3)) into the "grounds for denial, sanction, suspension or revocation of POST certification" such that a violation of the code of ethics by any officer—regardless of when that officer was hired, sworn, or received a POST certification—may be grounds for sanction, suspension, or revocation of POST certification. This conclusion of law would set a strong precedent for future cases and send a solid message that all public safety officers in Montana must hold themselves to a high ethical standard and abide by the code of ethics.

**V. IT DID NOT VIOLATE ADAMS'S DUE PROCESS RIGHTS TO REQUIRE THE BURDEN OF PROOF TO BE PLACED UPON ADAMS.**

Adams has alleged that the rule requiring that the respondent has the burden of proving by a preponderance of the evidence that there is not a basis for the revocation of his certification violates his due process rights. In support of this argument, Adams cites to criminal cases and civil commitment cases, both situations which fundamentally impact an individual's liberty interests. In contrast, in other licensing circumstances, the burden of proof is on the licensee. For example, when an individual's driver's license is revoked, and the revocation is challenged, "the petitioner bears the burden of proving that the State's action was improper." *Jess v. State ex rel. Records and Driver Control*, 2008 MT 422, ¶ 8, 347 Mont. 381, 198 P. 3d 306 citing *Widdicombe v. State ex rel. Lafond*, 2004 MT 49, ¶ 7, 320 Mont. 133, 85 P. 3d 1271.

Just as a driver's license is issued to a driver but remains a privilege bestowed by the State, the POST certificates "remain the property of the council." A.R.M. 23.13.204(3). It is not unreasonable to require Adams to bear the burden of proof that no basis existed for the revocation of his certification.

**VI. EVEN IF THE BURDEN OF PROOF HAD BEEN PLACED UPON POST, POST WOULD HAVE MET THE BURDEN.**

As the hearing examiner found, POST presented substantial uncontested evidence that Adams's willfully falsified log books, neglected his duty and violated the code of ethics. Adams explicitly admitted, to several individuals, that he falsified the log books. He wrote in his own words, "I logged a security check that a did not do" and, in writing, admitted that he made the same admissions to Lt. Bodine. Mr. Adams, in his own writing, admitted that he failed to perform his duties due to playing games on his computer.

At the hearing, POST presented the testimony of three officers from the Yellowstone County Detention Facility that testified to Adams's falsifications and dereliction of duty. POST also produced the video tape of Adams as he sat playing on his computer and then took no action once a fight broke out in front of him. POST further called Lt. Steve Metzger as an expert witness about the training and policies and procedures at the Yellowstone County Detention Facility and called Perry Johnson as an expert regarding the standards expected of peace officers across the state. Even if the standard of proof is placed upon POST, POST presented sufficient evidence to uphold the revocation of Adams's certification.

**CONCLUSION**

The hearing examiner carefully reviewed an extensive record, including summary judgment briefing and a hearing with numerous witnesses and, as a matter of law, found multiple violations in which to support sanctioning Adams. The hearing examiner correctly determined, based on her Findings of Fact, that the appropriate sanction for Adams's violations is revocation of his POST certification.

Based on the above-arguments and the arguments presented in his opening brief, POST request that this Court find, as a matter of fact and as a matter of law, that the BOCC's decision to reverse the findings of fact and conclusions of law rendered by the hearing examiner and reviewed and adopted by the POST Council, was clearly erroneous, arbitrary, capricious, and unlawful.

RESPECTFULLY SUBMITTED this 4th day of October, 2019.

By: \_\_\_\_\_  
Kristina Neal  
POST Legal Counsel

CERTIFICATE OF SERVICE

I certify that on the 4th day of October 2019, a true copy of the foregoing petition was served by U.S. Mail, postage prepaid, on the following:

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# Memorandum

DCI

**To:** Law and Justice Interim Committee  
**From:** Bryan Lockerby, Administrator  
**CC:** Perry Johnson, POST Bureau Chief; Tony Harbaugh, POST Council Chairman  
**Date:** *Sept. 9, 2019*  
**Re:** Status Update Regarding POST per MCA 2-15-2029

The 2019 Montana legislature passed HB684 which merged Public Safety Officers Standards and Training (POST) with the Montana Department of Justice, under the Division of Criminal Investigation (DCI). The bill added POST as a Bureau to DCI with a two-year sunset and required regular updates to the Law and Justice Interim Committee.

Following the end of the session, stakeholders from the Montana Sheriff's and Peace Officers Association, Montana Association of Chiefs of Police, Montana Police Protective Association, and the Chairman of the POST Council met with Montana DOJ senior leadership at their request in May of this year. A frank and open discussion about the transition, management, and oversight process took place which provided clarity about POST's continued independent role and responsibilities to all public safety officers.

DOJ staff at CSD, JITSD, and DCI worked closely with POST and other entities to ensure that the July 1, 2019 transition date would be as seamless as possible. This included making changes to internal reporting systems, fiscal accounts, time reporting, and the other nuances that sometimes get missed. A fiscal tech was also reassigned by DCI to support POST operations.

The operational changes went smoothly but the human element was not forgotten. The DOJ Chief of Staff and DCI Administrator met personally with POST staff to assure them that their positions were secure and would be unaffected by the change. A letter was distributed to DCI staff welcoming POST and the talented staff that was joining the team.

An early assessment with POST staff identified a great need for imaging of records. Over 23,000 active and archived files that consist of multiple paper documents were being stored in the building and needed to be uploaded into a digital imaging file. JITSD program managers met with POST to develop a plan to accommodate such a large scanning project that would require high speed internet for processing. With MLEA construction currently underway, fiber optic cable was being installed which would greatly enhance POST imaging. The tremendous increase in speed will greatly reduce the time, effort, and cost to complete the imaging. It is anticipated that imaging may begin as early as Fall of 2019.

POST staff have submitted both operational plans and their written policy to DCI. The (draft) operational plans include short- and long-term goals and objectives, needs assessment, performance measurements, efficiencies, and help identify other specific needs of the Bureau. The POST written policy will be merged into the DCI policy manual with other Bureau policies.

MT DOJ is reviewing what role staff can provide to support POST legal needs. POST's process is doing well but as hearings and appeals increase, so does the demand for legal review and actions. MT DOJ hopes to provide relief in some of these matters as the POST Council requests.

In general, POST operations have been unaffected by the change and continue to function as previously. The staff is to be commended for their responsiveness, particularly Bureau Chief Perry Johnson for his leadership and support.



# Memorandum

DCI

**To:** Law and Justice Interim Committee  
**From:** Bryan Lockerby, Administrator  
**CC:** Perry Johnson, POST Bureau Chief; Tony Harbaugh, POST Council Chairman  
**Date:** 11/13/2019  
**Re:** Status Update Regarding POST per MCA 2-15-2029

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The 2019 Montana legislature passed HB684 which merged Public Safety Officers Standards and Training (POST) with the Montana Department of Justice, under the Division of Criminal Investigation (DCI). The bill added POST as a Bureau to DCI with a two-year sunset and required regular updates to the Law and Justice Interim Committee.

For a number of years, the Montana Department of Justice has been in compliance with MCA [17-7-111](#) (3) (c) which requires “...a statement of goals and objectives for each program of the agency”. Annually, each Division at DOJ prepares and updates an operational plan that includes short- and long-term goals to improve services and create efficiencies in government.

Following the 2019 legislative session, Divisions were again directed to update their goals and objectives for the year by the Montana Attorney General’s Office. Now that POST has become a part of DCI, the Bureau contributed to this process for the first time. Some of those goals include digitally imaging active and archived officer files, adopting a retention policy, developing an ethics and peer intervention training program, and education and outreach to public safety agencies about POST’s rules and responsibilities. The operations plan also includes performance measures to not only implement the objectives but also to measure their success.

The relationship between the staff at POST and the Montana Law Enforcement Academy Bureau staff has always been good but I must personally commend the professional interaction between Perry Johnson and Glen Stinar in the last few years. Their collaboration to implement systems and to collaborate for the good of public safety has been exemplary. They are forward thinkers and are constantly looking for ways to improve and support training, education, certification, and the quality of law enforcement services around our state. There are a number of initiatives and programs underway which will greatly benefit the future of public safety for years to come.



# Memorandum

DCI

**To:** Law and Justice Interim Committee  
**From:** Bryan Lockerby, Administrator  
**CC:** Perry Johnson, POST Bureau Chief; Tony Harbaugh, POST Council Chairman  
**Date:** January 16, 2020  
**Re:** Jan 2020 status update regarding POST per MCA 2-15-2029

*The 2019 Montana legislature passed HB684 which merged Public Safety Officers Standards and Training (POST) with the Montana Department of Justice, under the Division of Criminal Investigation (DCI). The bill added POST as a Bureau to DCI with a two-year sunset and required regular updates to the Law and Justice Interim Committee.*

POST retains active and inactive officer files which likely total over 25,000. The team's goal has been to digitally archive records and this process has been started. With limited staff and on-going workload, it's estimated that this massive project could take over three years to complete. DCI is supporting POST goals by researching state resources such as Print and Mail to accelerate this effort and reduce added work on staff.

Discussions have been held with the POST Bureau Chief, MLEA, and DOJ to assess what legal support that DOJ can provide to support POST. These conversations are on going and are currently undergoing additional research and assessment to determine the best options.

A major renovation has been underway for the last two years at MLEA where POST is based. In February, POST will be moving their workstations to another MLEA building which will provide more space and better office conditions.

The Montana Sheriffs and Peace Officers (MSPOA) held their quarterly meeting in Great Falls early January and requested a status update from the DCI Administrator. An update was provided with no questions from the membership.

As I better understand POST business operations, I continue to be impressed by the small but highly effective team at POST. They process a tremendous amount of work product, from certifications to training audits, all with precision and professionalism.

MCA Contents / TITLE 2 / CHAPTER 15 / Part 20 / 2-15-2029 Montana pu...

# Montana Code Annotated 2019

TITLE 2. GOVERNMENT STRUCTURE AND ADMINISTRATION  
CHAPTER 15. EXECUTIVE BRANCH OFFICERS AND AGENCIES  
Part 20. Department of Justice

## Montana Public Safety Officer Standards And Training Council -- Rulemaking -- Report To Law And Justice Interim Committee

**2-15-2029. (Temporary) Montana public safety officer standards and training council -- rulemaking -- report to law and justice interim committee.** (1) (a) There is a Montana public safety officer standards and training council. The council is a quasi-judicial board, as provided for in **2-15-124**, and is allocated to the department of justice established in **2-15-2001**, except as provided in subsections (1)(b) and (1)(c) of this section.

(b) The council shall coordinate with the department of justice to hire the bureau chief of the public safety officer standards and training bureau.

(c) The council maintains its independent and quasi-judicial authority and duties provided for in **44-4-403**.

(2) The council may adopt rules to implement the provisions of Title 44, chapter 4, part 4. Rules must be adopted pursuant to the Montana Administrative Procedure Act.

(3) The department of justice and the public safety officer standards and training council shall report to the law and justice interim committee. (*Terminates June 30, 2021--sec. 23, Ch. 456, L. 2019.*)

**2-15-2029. (Effective July 1, 2021) Montana public safety officer standards and training council -- administrative attachment -- rulemaking.** (1) (a) There is a Montana public safety officer standards and training council. The council is a quasi-judicial board, as provided for in **2-15-124**, and is allocated to the department of justice, established in **2-15-2001**, for administrative purposes only as provided in **2-15-121**, except as provided in subsection (1)(b) of this section.

(b) The council may hire its own personnel and independently administer the conduct of its business, and **2-15-121(2)(a)**, **(2)(d)**, and **(3)(a)** do not apply.

(2) The council may adopt rules to implement the provisions of Title 44, chapter 4, part 4. Rules must be adopted pursuant to the Montana Administrative Procedure Act.

**History: En. Sec. 1, Ch. 506, L. 2007; amd. Sec. 4, Ch. 456, L. 2019.**

Created by **LAWSI**<sup>II</sup>

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

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

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

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

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

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

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

#### 23.13.215 FIREARMS PROFICIENCY STANDARDS

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

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

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

- (i) firearms safety;
- (ii) role of the instructor;
- (iii) civil and criminal liability exposure;
- (iv) instructional techniques for firearms instructors;
- (v) operation of the firing line;
- (vi) range preparation;
- (vii) handgun;
- (viii) disabled officer techniques; and
- (ix) low light shooting techniques.

(c) keep on file in a format readily accessible to the council a copy of all firearms proficiency records, which must include:

- (i) date of qualification;
- (ii) identification of the officer;
- (iii) firearm manufacture and model;

- (iv) results of qualifying; and
- (v) course of fire used.
- (2) The minimum standards for annual firearms proficiency are:
  - (a) Primary Duty Handgun – a minimum of 30 rounds, fired at ranges from point-blank to 15 yards with a minimum of 15 rounds at or beyond seven yards;
  - (b) Shotgun – minimum of five rounds fired at a distance ranging from point-blank to 25 yards;
  - (c) Precision rifle – a minimum of ten rounds fired at a minimum range of 100 yards;
  - (d) Patrol rifle – a minimum of 20 rounds fired at a distance ranging from point-blank to 50 yards;
  - (e) Fully automatic weapon – a minimum of 30 rounds fired at a distance ranging from point-blank to ten yards, with a minimum of 25 rounds fired in full automatic (short bursts of two or three rounds), and a minimum of five rounds fired semi-automatic;:
  - (f) Secondary or Backup Handgun – a minimum of 12 rounds fired at a distance ranging from point blank to at or beyond seven yards, which includes a minimum of six rounds fired at or beyond seven yards.
- (3) The minimum passing score for annual firearms proficiency is 80% for each firearm on an IPSC Official Target or dimensional equivalent.
- (4) The MLEA sets the passing score for the Montana Law Enforcement Basic Firearms Qualification.
- (5) Before carrying a firearm or making an arrest, a misdemeanor probation/pretrial services officer must successfully complete the firearms proficiency requirements provided in this rule.

#### 23.13.216 PUBLIC SAFETY OFFICER EMPLOYMENT, EDUCATION, AND CERTIFICATION STANDARDS

- (1) Except as provided in (2), the basic and basic equivalency training standards for employment, education, and certification set forth in 7-32-303(5)(a), (b), and (c), MCA, are applicable to all public safety officers, where an appropriate basic course or basic equivalency course exists in the public safety officer's field. The Council may approve a location other than the Montana Law Enforcement Academy for the basic or basic equivalency courses in the following disciplines: detention/corrections officer; probation and parole officer; misdemeanor probation/pretrial services officer; public safety communications officer; and coroner.
- (2) The standards set forth in (1) do not apply to reserve officers.
- (3) The notification requirements set forth in 7-32-303(4), MCA apply to all public safety officers. A public safety officer's employing authority must provide written notice to POST within 10 days of the appointment, termination, resignation, or death of a public safety officer.



**Montana Public Safety Officer Standards and Training Council**

2260 Sierra Road East  
Helena, MT 59602

Phone: (406) 444-9975

Fax: (406) 444-9978

[dojmt.gov/post](http://dojmt.gov/post)

February 12, 2020

To: POST Council

From: John Strandell, Case Status Committee Chair

Subject: Closure of Cases

This is the Committee's written report setting forth the circumstances and resolution of cases. After consultation with legal counsel and meeting of the Case Status Committee of the POST Council, the following cases have been closed:

**2015: No cases from 2015 were closed**

There are 3 open cases from 2015. One officer has requested a hearing which is in the MAPA process, one officer is serving a sanction, and one officer is suing POST in district court.

**2016: No cases from 2016 were closed**

There are 3 open cases from 2016. Two are officers serving a sanction, and one is being appealed to district court.

**2017: No cases from 2017 were closed**

There are 5 open cases from 2017. Two are officers serving a sanction, two are in district court, and one is in the pre-hearing contested case process.

**2018: One case from 2018 was closed**

18-28 was closed. The officer engaged in an inappropriate relationship with a youth who was in the detention facility where the officer worked. The officer voluntarily surrendered his certification.

There are 5 open cases from 2018. One case is on hold pending employment grievance processes; in three cases, the officer is serving a sanction; and one case is an active investigation.

## **2019: Ten cases from 2019 were closed**

19-28 was closed. The officer used CJIN to look up individuals for personal reasons. She voluntarily surrendered her certification.

19-25 was closed. The officer engaged in a “slap fight” with a female inmate and attempted to hit her with a flashlight. The officer voluntarily surrendered his certification.

19-53 was closed. The officer engaged in an inappropriate romantic relationship with an inmate. The officer’s certification was revoked after she did not respond to POST’s allegations.

19-32 was closed. The officer engaged in an intimate relationship with an inmate and provided the inmate with information which created security concerns in the jail. The officer’s certification was revoked after he did not respond to POST’s allegations.

19-48 was closed. The officer was charged with various crimes related to two separate incidents. She entered a plea agreement wherein she pled to several misdemeanors. The officer’s certification was revoked after she did not respond to POST’s allegations.

19-39 was closed. The officer reported for work intoxicated, and was later charged with partner/family member assault after punching her husband while she was intoxicated. The officer’s certification was revoked after she did not respond to POST’s allegations.

19-17 was closed. The officer engaged in an affair, lied about it, then lied under oath about whether he was ever questioned about it. The officer voluntarily surrendered his certification.

19-36 was closed. The officer made repeated unprofessional and offensive comments at work, then lied about the comments. He also was found to be asleep on duty. The officer’s certification was revoked after he did not respond to POST’s allegations.

19-37 was closed. The officer engaged in a pattern of making sexually inappropriate comments to inmates and refused to cooperate in her agency’s investigation of those comments. The officer’s certification was revoked after she did not respond to POST’s allegations.

19-47 was closed. The officer sent racially derogatory and sexually inappropriate text messages to his subordinate staff. The officer’s certification was revoked after he did not respond to POST’s allegations.

There are 30 open cases from 2019. Four officers are serving a sanction, four cases are on hold pending other matters and 22 cases are active investigations.

POST has closed **2** cases based upon plea agreements which officers reached, avoiding the necessity of investigation.

Since the last Council meeting, POST has **closed a total of 54 cases**.

POST currently has 28 active investigations.

POST currently has 2 cases which are in the MAPA process.

POST currently has 3 cases on judicial review.

POST currently has 1 case in district court in the form of a lawsuit.

POST currently has 9 new allegations to present to case status.

POST currently has 20 cases awaiting information from agencies.

POST currently has 5 investigations on hold pending other matters.

POST has **a total of 68** cases which it is currently working on.

POST currently also has **13 cases** in which officers are serving sanctions.

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

(a) establish basic and advanced qualification and training standards for employment;

(b) conduct and approve training; and

(c) provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.

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

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

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

**44-7-101. Functions.** (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical

assistance and supportive services that are approved by the board or assigned by the governor or legislature.

~~(2) The board shall consider all appeals brought from decisions of the Montana public safety officer standards and training council pursuant to 44-4-403. A board member designated as a member of the Montana public safety officer standards and training council, as provided in 44-4-402, may not participate in appeals brought to the board from decisions of the council. The board shall promulgate rules governing the manner and method of the appeals.~~

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

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

(2) “Public safety officer” means:

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

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

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

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

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

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

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

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

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

(k) a misdemeanor probation officer as defined in 46-23-1001;

(l) a pretrial services officer who must meet the training requirements in 46-23-1003 and who is employed by a pretrial services agency as defined in 46-9-505;  
and

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

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

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

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

(d) 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

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

(2) The council may waive or modify a qualification or training standard set in

administrative rule for good cause.

(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 consistent 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 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) and (1)(e). 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) through (1)(c) of this section to **its staff or executive director** **[the staff or bureau chief of the**

Montana public safety officer standards and training bureau provided for in 2-15-2028] as long as the council reviews any decision that adversely affects the rights of an individual pursuant to Title 2, chapter 26, part 6.

**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 the officer is 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 training and employment standards and training criteria established by the council pursuant to this part, including but not limited to:

(a) 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

(b) 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 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 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 give written notice of the event to the council.

## Johnson, Perry

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**From:** Larson, Scott  
**Sent:** Monday, January 27, 2020 2:37 PM  
**To:** Larson, Scott  
**Subject:** New coroner resources

Montana County Coroners,

Just to follow up on the email that Buck Herron sent out last week. I also want to pass along some information that should positively affect all of you. Please pass along to other members of your agencies that are tied to the coroner system.

Montana was recently awarded two federal grants that provide money for projects that support death investigation. The goal is to provide new resources to the system that would directly benefit this important process. The following items were awarded through these grants:

1. Starting on February 1, 2020 all drug-related overdose deaths that get entered in the Montana Death Case Management System (DCMS) can be submitted to the lab for a potential free autopsy (up to 100 autopsies). If the autopsy and subsequent toxicology results find that the cause of death is drug-related then the cost will be covered by federal grant money. The goal is that every suspected drug overdose gets submitted for an autopsy. When entering in cases in DCMS click "Yes" in the Suspected Drug Death tab. It is important to note that only cases entered in the system are eligible because this will be how we can track this subset of cases.
2. Provide statewide coroner trainings on using the Montana Death Case Management System. Buck Herron from DPHHS will coordinate these with members of the Coroner Association.
3. Software maintenance fees towards the Montana Death Case Management System will be paid for 3 years. The plan is that State agencies will share these costs moving forward but it will be vital that enough data gets entered into this system for it to be viable.
4. Linking Forensic Science Divisions Toxicology results directly to the Montana Death Case Management System. This will allow all pertinent information in a case to be in one location.
5. Free reference book on death investigation provided to all 56 counties. Currently the book that has been assessed is titled "*Death Investigation: An Introduction to Forensic Pathology for the Nonscientist*, by Ann Bucholtz". Contact myself if you have ideas of another book that you feel could be more pertinent.
6. Two presentations on death investigation (must be opiate-related) at a 2020 meeting involving coroners (potentially at Advanced, Annual Association Meeting, MSPOA). I know that many meeting schedules are set but we are working with some of you to sort this out. Up to \$1705 per speaker or event is possible.
7. Scholarships for two ABMDI coroner certification application and exam fees. Material and training will be found on-line and the final exam can be proctored at approved sites. The goal is to increase the number of coroners that have undergone this certification to assess how it may fit into the larger system moving forward.

Thank you for your continued dedication. As always feel free to contact me if you have any thoughts or concerns.

Regards,

Scott Larson

Administrator / Forensic Science Division and State Medical Examiner's Office / 2679 Palmer St. Missoula, MT 59808 / 406-329-1179 / [slarson@mt.gov](mailto:slarson@mt.gov)

MLEA

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JAN 06 2020

MT POST Council

Montana Law Enforcement Academy  
 Law Enforcement Officer Basic Course  
 Release - December 2019

	Online content
	New Content
	Content removed

**Course Classifications**

**Administrative**

Orientation ONLINE	2
Orientation and Graduation	6
POST Council	1
Written Examinations	5
14	

**Law and Criminal Procedure**

Intruduction to Constitutional Law ONLINE	2
Introduction to MCA title 45 ONLINE	4
U.S. Bill of Rights, MT Constitution Article II Search, Siezure and Arrest	4
Interviews, Statements, Interrogation and Miranda	4
Montana Criminal Code Title 45 and 46	4
Montana Traffic Code Title 61	3
Court Systems	1
Protective orders, Full Faith And Credit	2
Domestic Violence/ Stalking and the Law	2
Search Warrants and Court Room Testimony includes Scenario's (2)	12
Minors and youth court act	2
Civil Process	2
Risk Management and Liability Reduction ONLINE	4
Legal Issues in the Use of Force	3
Legal Issues in Indian Country	2
Laws of Gambling and Tobacco	2
53	

**Human Behavior and Social Interaction**

History of Law Enforcement ONLINE	2
Below 100	2
Ethics ONLINE	2
Ethics removed 4 hour videos blocks	
Ethics	2
Gender Diversity	2
Sexual Harrassment ONLINE	2
21st Century Policing/ Fair and Impartial Policing	6
Community Policing	2
Emotional Intelligence	2
Suicide Prevention QRP	4
Policing on Camera	2
CIT Montana	4
CIT Montana 4 hours of class removed	
32	

**Patrol Operations**

Patrol Operations	14
Patrol Readiness Training	24
Skill building exercises	8
Walkthroughs	8
Simulated Live Fire Scenarios	8
Police Vehicle Operations ONLINE	4
Police Vehicle Operations Classroom	4
Police Vehicle Operations Track	40
Youth Gangs	2
Mental Illness and Mental Health First Aid/Voices and scenario	12
CJIN	2
Report Writing	4
Child Protective Services	2
Outlaw Motorcycle Gangs	2
Patrol Negotiation	4
	114

**Investigations**

Elder Abuse and Neglect	2
SAKI investigations with scenarios	16
Child Interviews	2
Drug Endangered Children online recently added course	2
Domestic Violence victimology	3
Domestic Violence Investigation with Scenario	8
Crime Scene Photography	4
Evidence Analysis	8
Crime Scene Management includes DCI 4 hours	6
Computer Crimes	2
Dangerous Drugs	6
Criminal Intelligence Systems MATIC	2
Human Trafficking classroom recently added course	2
Human Trafficking online recently added course	2
Investigative Interviewing	8
Photo Lineup Class and Practical	2
Motor Vehicle VIN Numbers	1
Missing Persons Investigations - Juveniles, Indigenious Persons	4
	80

**Health and Wellness**

Physical Fitness training	10
Diet and Exercise	2
CPR/AED	4
Stop the Bleed-bleeding control.org	2
Critical Incident Stress	3
Emotional Survival for Families	2
Physical Fitness (MPAT) mid term	4
	27

<b>Traffic Enforcement</b>		
Crash Investigation		4
Vehicle Stops classroom		4
Vehicle Stops Hands On		4
Vehicle Stops - High Risk		4
SFST		40
Traffic Radar 4 hours classroom		4
		60
<b>Survival Skills</b>		
Firearms Classes and Range Simulator		11
Firearms Live Fire Range		43
Firearms Disabled Officer and Off Duty Considerations		2
Pat Downs and Searches		4
Defensive Tactics - Human factors and control principals		4
Defensive Tactics Hands on Training		36
Threat Pattern Recognition		1
Handcuffing Additional from DT		3
Chemical Agents (OC Spray) during DT week		4
MILO simulations Use of Force		4
Defensive Tactics - Confrontation Simulation		4
Calls for Service Scenarios (formerly Deadly Encounters)		8
Final Assessment stations		6
		130

**TOTAL HOURS**

**510 510**

# Basic Coroner Training

April 6-10, 2020

## Monday, April 6

0800-0815:	Welcome	Rosipal / Meehan / LeBrun
0815-0930:	Laws Pertaining to Coroners	Meehan / LeBrun
0930-1030:	Cause & Manner	Rosipal / Meehan / LeBrun
1000-1200:	From dispatch to disposition	Rosipal / Meehan / LeBrun
1200-1300:	Lunch	
1300-1700:	From dispatch to disposition	Rosipal / Meehan / LeBrun

## Tuesday, April 7

0800-1200:	Forensic Pathology	Dr. Rob Kurtzman
1200-1300:	Lunch	
1300-1500:	Toxicology	Crime Lab
1300-1700:	Forensic Pathology	Dr. Rob Kurtzman

## Wednesday, April 8

0800-1000:	Instructor scenario	LeBrun / Rosipal
1000-1200:	Vital Statistics	Dean Vig
1200-1300:	Lunch	
1300-1400:	Evidence & Forms	Meehan
1400-1700:	Death Scene Photography	Bruckner

## Thursday, April 9

0830-1200:	Scenarios (Groups 1-4)	All instructors
0830-1200:	Death Notification (Groups 5-8)	Chaplain Ammons
1200-1300:	Lunch	
1300-1630:	Scenarios (Groups 5-8)	All instructors
1300-1630:	Death Notification (Groups 1-4)	Chaplain Ammons
1630-1700:	Scenario Debrief	All instructors

## Friday, April 10

0800-0900:	Case Review	Billquist-Jette
0900-1000:	Donations	Jose Armenteros
1130-1200:	Case Review	Billquist-Jette
1200:	Class Evaluations / Certificates Dismissal	All Instructors

***Instructor: Bob Rosipal***

***Date: April 2020***

***Course: Basic Coroner***

***Curriculum Plan***

**Goal Statement:** Basic Coroner Investigation to include the abilities to identify evidence, determine cause and manner of death, and the circumstances surrounding all types of death investigations.

**Instructional Goals:**

- \*Have working knowledge of Coroner Laws within the State of Montana.**
- \*Comfortable understanding of the various duties related to a coroner throughout a death investigation.**
- \*Ability to determine the manner of death through evidence collection, other circumstances surrounding the death, family interviews, medical history, and information from other sources.**
- \*Ability to identify the proximate cause of death, immediate cause of death, and the mechanism of death.**
- \*Understanding of basic vocabulary related to coroner duties.**
- \*Understand and identify the sequential changes of the body after death and how these changes relate to the estimated time of death.**
- \*How to mentally cope with deaths as a coroner through investigations and outside of work.**
- \*Understanding the death certificate procedure and working with Vital Statistics**
- \*Understanding of an inquest and the process for arranging one.**

**Performance Objective:**

**Students will be presented with instructor lead investigations/demonstrations of the complete death investigation.**

- \*Evaluation of scene**
- \*Pronouncing death**
- \* Photograph the scene**

- \* Sketch the scene
- \* Examination of body
- \* Collection and documentation of evidence
- \*Transportation of body
- \*Next of Kin Notification
- \* Interviewing family and other informational sources (medical records and interviews with physicians)
- \* Making the decision for autopsy
- \*Donations (Sight life)
- \* Completing all official reports
- \* Completing Death Certificate (Vital Statistics)
- \* Case studies
- \*Other than natural deaths: break down of other manners of death
- \* State Suicide Review Board
- \*Equivocal Deaths: possibility of more than one manner of death
- \* Fetal Deaths
- \* Media relations
- \* Student handouts: Vocabulary, basic questions, scene investigation check list, coroner laws of Montana, and copies of required coroner forms.
- \* Process of setting up an inquest

**Rationale:** Students will learn the basic death investigation procedure to better assist them in all death investigations and the documentation of each.

**Lesson Content:** Information will be presented in various ways to include lecture, PowerPoint, scenario presentations, group learning activities, and assessment.

**Evaluation Procedures:** Students will be presented with a scenario based deaths in which they will be responsible for the complete investigation. Students will be assessed on their collection of information, evidence, and documentation of the scene, as well as their interaction with witnesses,

next of kin and other professional sources; students will also be evaluated on documentation of the death in various report types.

Student will be evaluated on the following standard

- 40% Lecture
- 30% Scenario
- 20% Report and Documentation
- 10% Other Documentation (Death Certificate, State Coroner Report Form, Motor Vehicle Fatality Form, ART Form, and others)

**Teaching Materials:** Materials will be distributed to students by various instructors to include, Coroner Instructors, Pathologists, Vital Statistics, and others.

- Students will need a writing utensil and note book. Other needed materials will be supplied by instructors to include handouts, forms, and camera.

**Training References:** A CD will be provided to each student and is required reading for this class.

\*Medical Examiners' and Coroners' Handbook on Death Investigation

\*SUIDI Investigation Book

\*Death Investigation: A Guide for the Scene Investigator

**Hours for Training:** The basic coroner course is a 40-hour course. 4-hours is given for report writing of their assigned scenario and the independent study of the following:

- "A Guide for the county coroners of the state of Montana", authored by Dr. Willy Kemp
- "Sudden, Unexplained Infant Death Investigations – curriculum guide"
- "Sudden, Unexplained Infant Death Investigations – Guidelines for the scene investigator"

MLEA

Montana Law Enforcement Academy  
Correction/Detention Officer Basic Course

Course Classifications

<b>Administrative Assessment</b>		
Orientation and Culmination		4
Written Examinations		5
		9
<b>Law and Criminal Procedure/Investigations</b>		
Correctional Law		5
Crime Scene Preservation		2
Dangerous Drugs		2
Prison Rape Elimination Act (PREA)		3
POST Council		1
		13
<b>Human Behavior and Social Interaction</b>		
Avoiding Offender Manipulation		4
Behavior Management		4
Crisis Intervention Training		8
Cross Gender Supervision		2
Cultural Awareness		4
Ethics		4
Gangs		3
Generational Issues		3
Human Development		4
Mental Health First Aid		8
Interpersonal Communications		8
Mental Illness Intervention		4
Risk Management		2
Sexual Harassment		1
		59
<b>Operations</b>		
Cell Extractions		4
Classification		3
Emergency Response		4
Fingerprinting		6
Intake		8
Report Writing		4
Searches		6
		35
<b>Health and Wellness</b>		
Diet and Exercise		1
Fatigue to Fulfillment		4
Fire Safety and Response		2
		7
<b>Survival Skills</b>		
Chemical Agents		2
Hostage Situations		4
Defensive Tactics - HFRG		26
Restraints		3
Transport Escort		2
		37

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FEB 13 2020

MT POST Council

TOTAL HOURS

160 160

248

PROPOSAL  
FOR  
MISDEMEANOR/PRE-TRIAL  
BASIC COURSE

Submitted to the Montana Law Enforcement Academy  
By  
Rick SyWassink  
Dawson Community College  
February 3, 2020

## **EXECUTIVE SUMMARY**

The purpose of this proposal is to address issues concerning the collaboration between the Montana Law Enforcement Academy and Dawson Community College in conducting a Misdemeanor/Pre-Trial Officer Basic Course on the campus of Dawson Community College. This proposal will address, but is not limited to topics such as facilities, cost, points of contact and other administrative matters.

## **BACKGROUND**

The MLEA has conducted a training academy for a new classification of Peace Officer identified as the Misdemeanor Probation and Pre-Trial Services Basic Course. This course is 140 hours of instruction, with 20 of the pre-academy hours being on-line instruction. The remaining hours are classroom hours and address a myriad of topics. Instructors have been Department of Corrections (DOC) personnel, MLEA staff, and ~~Peace Officers~~.

A <sup>proposal</sup> ~~decision~~ has been made to move the Misdemeanor/Pretrial Academy out of the Helena location. Dawson Community College, in Glendive, Montana has been contacted and that educational institution is willing to host this training understanding that the academy is under the auspices of the MLEA/POST. <sup>Public safety</sup>

## **TASK ISSUE 1-LOCATION**

The Misdemeanor/Pre-trial Officer Basic Academy will be located on the campus of Dawson Community College, 300 College Drive, Glendive, Montana 59330.

## **TASK ISSUE 2- POINT OF CONTACT**

The point of contact and on-site manager of this academy will be Rick SyWassink, Criminal Justice Faculty. Mr. SyWassink's contact information is [rsywssink@dawson.edu](mailto:rsywssink@dawson.edu). He can be contacted 24 hours a day by cell phone at 406-647-6345.

## **TASK ISSUE 3- HOUSING**

Dormitories are located on campus. At the time of this proposal, school is still in session and dormitories are occupied. When school dismisses for the summer, the dormitories will be vacated and students have to be out of their rooms by May 15, 2020. Academy students will be located in the newest dormitory in the complex and that should be ready to for occupancy after Memorial Day (June 2).

The dorms can accommodate 25 candidates. Apartments are two (2) bedroom. (Diagrams of the layout of the apartment are forthcoming) Candidates will be issued a meal card for use in the cafeteria five (5) days a week for three meals a day. Cost to the candidates for room and meals is \$125.00 per week.

When all dorm rooms are cleaned and prepped, they can easily accommodate 100 occupants.

Dormitories will be operated under MLEA/POST Academy Rules and Regulations. Violations of these rules and regulations will be reported to MLEA/POST Staff and any disciplinary actions to be taken will be administered by the Academy.

#### **TASK ISSUE 4- FACILITIES**

On campus, there is a full service gymnasium with weight rooms, basketball courts, indoor jogging track, and walking trails on and around campus. There is also a firing range for firearms classes located at the Dawson County Sheriff's Office.

There are numerous fully equipped classrooms that can seat 28 students comfortably, in addition to a lecture hall that can accommodate 75 students. There is also a library and numerous computer working stations as well as secure campus-wide wireless internet access.

#### **TASK ISSUE 5- CLASSES AND INSTRUCTIONAL STAFF; CLASS/STUDENT RECORDS**

In reviewing the topics of the courses, it is understood that the curriculum is dynamic and may be subject to change. DCC would utilize their staff, and adjunct instructors in addition to MLEA/POST Certified Instructors to instruct the classes, manage the classroom, maintain progress reports of the students and have those records forwarded to MLEA for the student's record.

It is noted that Risk and Needs Assessments and Professional Boundaries are taught by DOC staff. These may be the types of courses DOC wishes their staff to instruct as it appears to address department workings. The rest of the topics the DCC staff can instruct and if those instructors need to be MLEA certified, arrangements can be made to do an instructor certification course at the college.

It is understood that MLEA/POST will supply syllabi and at least a student manual for instructors to utilize.

Cost of the class would be the current rate per student to maintain consistency.

#### **TASK ISSUE 6- RIGHT TO INSPECT/AUDIT**

Since the course is an MLEA function, MLEA/POST has the right to audit/inspect courses, financial records, student progress reports, instructor evaluations and any other areas concerning the course at any time, announced or unannounced.

## **TASK ISSUE 7- DCC ADMINSTRATIVE CONTACT/PRACTICES**

Administrative functions, such as Memorandums of Understanding, Bookkeeping/financial practices, and other matters that must be addressed by DCC Administration will have Traci Masau, Vice President of Academic and Student Affairs as the point of contact. Vice President Masau may be contacted at [tmasau@dawson.edu](mailto:tmasau@dawson.edu) or by phone at 406-377-9418.

## **SUMMARY AND RECOMMENDATIONS**

The MLEA and POST for the State of Montana is contemplating moving the Misdemeanor/Pre-Trial Officer Basic Course for the MLEA to Dawson Community College in Glendive, Montana.

DCC has reviewed the requirements for this action, and is able to not only provide the physical facilities to perform the training, but also the staff to conduct the training and its needed support activities. With continued cooperation between MLEA and POST this action is a viable one and will move forward, understanding that there are still planning items to address after the review of the original submission.

## Johnson, Perry

---

**From:** Johnson, Perry  
**Sent:** Tuesday, February 11, 2020 11:24 AM  
**To:** Otterstrom, Stacey  
**Cc:** Jason Jarrett (jason.jarrett@gallatin.mt.gov); Custer SO /Tony Harbaugh  
**Subject:** FW: Resignation

Stacey,

Good morning!

As we discussed a couple of weeks ago, Jason Jarrett, who served as the detention/officer/administrator on the POST Council has retired. He is no longer involved in the management of the Gallatin County Detention Center.

With that in mind, the Council will need a new member in that position.

Do you have a candidate from the last time we filled the position or do you want me to ask stakeholders to provide applications?

Thanks!

***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:** Jarrett, Jason <Jason.Jarrett@gallatin.mt.gov>  
**Sent:** Tuesday, February 11, 2020 11:18 AM  
**To:** Johnson, Perry <PJohnson@mt.gov>  
**Subject:** [EXTERNAL] Resignation

I retired effective December 1, 2019 and returned as a part time employee. It is my intent to resign my position on the post council effective at the convenience of the council.

Jason Jarrett  
Sheriff's Office  
Gallatin County, Mt  
406-582-2105

2/13/20 POST Budget

Org	Acct Lvl 1	Standard Budget	Actuals Amt	A Accrual Amt	Balance
05POST	POST	458,990.00	191,843.43	0.01	267,146.56
	61000 Personal Services	261,052.00	157,205.23	0.00	103,846.77
	62000 Operating Expenses	197,938.00	34,638.20	0.01	163,299.79
<b>Grand Total</b>		<b>458,990.00</b>	<b>191,843.43</b>	<b>0.01</b>	<b>267,146.56</b>

**Montana POST Council**  
**Employment Report**  
Equivalency Granted

Agency	Date	F/P	Action	Status	Assignment	Pos/Rank	Level	Class	Shift
<b>Bridge, Kenneth C. 026721</b>									
Bozeman Police Department	12-09-2019		Assigned	Active				Officer	
<b>Ellington, John P. 026743</b>									
Stevensville Police Department	12-17-2019		Assigned	Active				Officer	
<b>Flagen, Tristen 021506</b>									
Lake Co. SO Detention	12-16-2019		Assigned	Active				D/C Office	
<b>Hall, Matthew J. 026287</b>									
Park Co. SO	5-06-2019		Assigned	Active				Deputy	
<b>Jay, Amanda 026518</b>									
Missoula Police Department	8-28-2019		Assigned	Active				Officer	
<b>Kynett, Jessika L. 016398</b>									
Bozeman Police Department	12-09-2019		Assigned	Active				Officer	
Gallatin County 911 Ctr.	10-11-2018		Resigned	Inactive				PSC Office	
Livingston Police Department	10-12-2016		Resigned	Inactive				Officer	
Livingston Park County 911	4-24-2006		Resigned	Inactive				PSC Office	
Montana Highway Patrol Dispatch	3-11-2005		Unknown	Inactive				PSC Office	
<b>LaPointe, Michael J. 026603</b>									
Yellowstone Co. SO	1-27-2020		Resigned	Inactive				Deputy	
<b>Lewis Sr, Michael J. 026746</b>									
Broadwater Co. SO	12-13-2019		Assigned	Active				Deputy	
<b>Muis, Timothy W. 026516</b>									
Missoula Police Department	8-28-2019		Assigned	Active				Officer	
<b>Norman, Lance D. 002251</b>									
Whitefish Police Department	11-01-2019		Assigned	Active				Officer	
Flathead Co. SO Reserves	11-30-2014		Resigned	Inactive				Reserve	
Flathead Co. SO	10-31-2012		Retired	Inactive				Deputy	
Columbia Falls Police Department	9-03-1992		Resigned	Inactive				Officer	
<b>Poppie, Todd S. 026744</b>									
Ravalli Co. SO	12-16-2019		Assigned	Active				Deputy	
<b>Scherr, Christopher 026683</b>									
Whitefish Police Department	7-08-2019		Assigned	Active				Officer	
<b>Schwartz, Melody S. 014430</b>									
Pine Hills Youth Correctional Facility	12-31-2018		Assigned	Active				D/C Office	
Dawson Co. SO Detention	1-31-2005		Resigned	Inactive				D/C Office	
<b>Skyberg, Nicholas A. 026321</b>									
McCone Co. SO Reserves	5-23-2019		Assigned	Active				Reserve	

**Montana POST Council**  
**Employment Report**  
Equivalency Granted

Agency	Date	F/P	Action	Status	Assignment	Pos/Rank	Level	Class	Shift
<b>Stewart, Katherine M.</b>			<b>026606</b>						
Department of Justice/DCI	10-15-2019		Assigned	Active		Officer			
<b>Wendt, Travis A.</b>			<b>026581</b>						
Flathead Co. SO	9-09-2019		Assigned	Active		Deputy			
<b>White, Ian S.</b>			<b>026379</b>						
Lewis And Clark Co. SO Detention	10-18-2019		Resigned	Inactive		D/C Office			
<b>Yellowtail, Ivan</b>			<b>023714</b>						
Yellowstone Co. SO Detention	12-16-2019		Assigned	Active		D/C Office			
Big Horn Co. SO Detention	6-23-2018		Resigned	Inactive		D/C Office			

**Employees this report: 18**

**Montana POST Council**  
**Employment Report**  
Extensions Granted

Agency	Date	F/P	Action	Status	Assignment	Pos/Rank	Level	Class	Shift
<b>Benavente, John</b> <b>026239</b>									
Roosevelt Co. SO Detention	4-15-2019		Assigned	Active				D/C Office	
<b>Cursino, Victor</b> <b>025936</b>									
Richland Co. SO Detention	11-27-2018		Assigned	Active				D/C Office	
<b>Curtis, Kimberly A.</b> <b>026012</b>									
Lewis And Clark Co. SO Detention	12-13-2018		Assigned	Active				D/C Office	
<b>Deason, James T.</b> <b>026610</b>									
Custer Co. SO Detention	10-16-2019		Assigned	Active				D/C Office	
<b>DeVerniero, John A.</b> <b>026514</b>									
Richland Co. SO	8-27-2019		Assigned	Active				Deputy	
<b>Doll-Bessette, Jolyn M.</b> <b>025939</b>									
Hill Co. SO Dispatch	11-26-2018		Assigned	Active				PSC Office	
<b>Hand, Kole M.</b> <b>026585</b>									
Custer Co. SO Detention	9-16-2019		Assigned	Active				D/C Office	
<b>Juarez Jr, Juan J.</b> <b>025937</b>									
Richland Co. SO Detention	10-30-2019		Resigned	Inactive				D/C Office	
<b>Klein, Mercedes L.</b> <b>026131</b>									
Richland Co. SO Detention	3-04-2019		Assigned	Active				D/C Office	
<b>McLeod, Brian</b> <b>026770</b>									
Montana State Prison	1-19-2019		Assigned	Active				D/C Office	
<b>Sedgwick, Ryan</b> <b>024697</b>									
Laurel Police Department	4-02-2019		Assigned	Active				Officer	
Laurel Police Department Reserves	4-01-2019		Resigned	Inactive				Reserve	
<b>Skorupa, Robert C.</b> <b>005588</b>									
Pondera Co. SO Coroner	1-01-2019		Assigned	Active				Coroner	
Pondera Co. SO	1-01-2019		Assigned	Active				Sheriff	
<b>Slotsve, Erik</b> <b>026176</b>									
Miles City Police Department	3-01-2019		Assigned	Active				Officer	
<b>Sterling, Tyler A.</b> <b>026102</b>									
Roosevelt Co. SO Detention	2-11-2019		Assigned	Active				D/C Office	
<b>Thatcher, Jorey M.</b> <b>026045</b>									
Butte-Silver Bow LE Detention	1-14-2019		Assigned	Active				D/C Office	
<b>Tinglin, Digmie C.</b> <b>026240</b>									
Roosevelt Co. SO Detention	4-15-2019		Assigned	Active				D/C Office	
<b>Truesdale, Shawn H.</b> <b>026480</b>									

FEB 12,2020  
08:51AM

**Montana POST Council**  
**Employment Report**  
Extensions Granted

Page: 2

Agency	Date	F/P	Action	Status	Assignment	Pos/Rank	Level	Class	Shift
Wheatland Co. SO Reserves	7-14-2018		Assigned	Active		Reserve			
Wheatland Co. SO Dispatch	7-14-2018		Assigned	Active		PSC Office			
Wheatland Co. SO Detention	7-14-2018		Assigned	Active		D/C Office			
<b>Watters, Michael R.</b>						<b>024967</b>			
Richland Co. SO Detention	12-26-2019		Assigned	Active		D/C Office			
Richland Co. SO	12-25-2019		Resigned	Inactive		Deputy			

**Employees this report: 18**

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1425622&download=yes](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1425622&download=yes)

# Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct?

Saint Louis University Law Journal, Vol. 45, pp. 541-579, 2001

40 Pages Posted: 2 Jul 2009

[Roger L. Goldman](#)

Saint Louis University - School of Law

[Steven Puro](#)

Saint Louis University, Department of Political Science

Date Written: 2001

## **Abstract**

We take it as a given that any profession or occupation, which involves interaction with the public, will be regulated by a state agency. Accountants, architects, attorneys, barbers, cosmeticians, dentists, etc. are all required to undergo training, meet selection standards and, if they seriously misbehave, they will have their licenses or certificates revoked by the board or commission which regulates that profession. Until fairly recently, there was no license or professional certificate issued by a state agency for law enforcement officers. That meant that an officer, who had successfully completed his police academy training and received a diploma, could be terminated by one department for cause and be hired by any other department in the state willing to hire him.

This article describes the statutes and regulations now in existence in the 44 states that do license and revoke licenses of law enforcement officers for misconduct. There is great variation among the states on what conduct can lead to revocation, e.g., some states require conviction of a crime whereas others permit revocation administratively, after a hearing before an ALJ. There are also differences on what types of officers are subject to having their licenses removed, e.g., in some states, only peace officers, in others, correctional officers are also covered. With the fate of the exclusionary rule uncertain given recent U.S. Supreme Court

decisions, strengthening license revocation to ensure that citizens are not subject to continuing abuse by law enforcement officers is more important than ever before.

**Keywords:** revocation of police officer license, police decertification

**Suggested Citation:** [Suggested Citation](#)

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rn.com/sol3/papers.cfm?abstract\_id=1425622

### C. The Need for Revocation

Many of the states with the power to impose sanctions are doing so with increasing frequency. For example, forty officers had their certificates revoked in 1999 compared to one in 1993, two in 1994, and six in 1995.<sup>21</sup> The reasons included sex with arrestees or inmates, theft, third-degree assault and positive drug tests.<sup>22</sup> In Texas, there were twenty-five suspensions and thirty-three revocations in 1997, compared to 267 suspensions and 146 revocations in 1999.<sup>23</sup> Traditional remedies for police misconduct fail to address the problem caused by the practice of leaving the decision to hire and fire officers up to local sheriffs and chiefs. This often leads to situations where unfit officers are able to continue to work for a department that is unable or unwilling to terminate them. Even when they are terminated, these officers often go to work for other departments within the state. Although virtually every other profession is regulated by a state board with the power to remove or suspend the licenses or certificates of unfit members of the profession (e.g., attorneys, physicians, teachers), there has been a longstanding tradition of local control of police without state involvement.

Although it might seem unusual for a police department to hire an officer with a past record of misconduct, the second department is usually located in a poor community that cannot afford to pay high salaries to its police. These low-income departments are more willing to overlook the previous misconduct because the officer is in possession of the state-mandated certificate that demonstrates he has successfully completed the necessary hours of training to be an officer.<sup>40</sup> Departments need not pay for the costs of a training academy or the salary of the trainee while he is in training.<sup>41</sup> In other cases, the second department may be unaware of the previous misconduct, either because the first department would not disclose the officer's previous misconduct, or because the second department does not conduct a thorough background check. Officers under suspicion of misconduct may willingly leave their current department with an understanding that they will receive a positive job recommendation or at least no negative recommendations. Chiefs and city officials fear defamation suits if they give an honest assessment of the officer's past performance to the new department.<sup>42</sup> The chief's and city's main interest is removing the officers from their departments. As the mayor of a community

commented after the quick departure—by termination or resignation—of four police officers after allegations of improper sexual relationships with two teen-age girls, “The important issue here is that the police officers accused of doing these things are not with the Webster Groves Police Department.”<sup>43</sup> When it was pointed out that other departments might hire them, the mayor responded, “Those communities make their own choices.”<sup>44</sup> Without a state agency with the authority to collect information on past performance and prevent the officer from continuing in law enforcement by a procedure such as revocation, the movement of unfit officers among departments seems to be inevitable. In some cases, departments let problem officers resign with an agreement not to disclose the reasons for the resignation,<sup>45</sup> rather than go through the expense and length of a hearing and possible reversal by a civil service board.<sup>46</sup> The executive director of Missouri’s POST said there was a need for police departments to report resignations to POST, not just suspensions or terminations; departments should “not send their dirty laundry down the road to be cleaned.”<sup>47</sup>

The earliest function of POSTs was to supervise statewide minimum training standards. Over time, POSTs began to set minimum qualifications for entrance into the police academies. Graduates of the state-certified academies became the main, in some states the only, source of new police officers. Upon successful completion of the academy, the officer receives the state certificate. Without a certificate, an individual cannot be employed as a police officer in the state. Following its authority in the areas of police training, qualification and certification, most POSTs were authorized to revoke the certificates of officers for defined misconduct. This is an inevitable development: if an individual is not qualified to enter the academy because he has been convicted of a misdemeanor involving moral turpitude, what possible justification can there be that once an individual who met the qualifications to enter has graduated from the academy and has been certified, and then is convicted of a misdemeanor involving moral turpitude, he may retain his certificate? As discussed below, the type of police misconduct that can lead to loss of certification varies greatly among the states. In their relatively new role, POSTs serve as licensing agencies for police personnel. The POSTs’ ability to revoke the certificates of police officers allows them to deal with the problem of police misconduct.

There is also a variation among the states with regard to how the legislature provides revocation power. For example, in some states, a statute sets forth the grounds for revocation,<sup>62</sup> while in others, the legislature establishes the revocation power in the POST and permits it by rule to establish the specific grounds for revocation.<sup>63</sup> Still, in other states, a combination of the foregoing approaches is used; the state statute sets forth some grounds for revocation, usually a felony conviction, and the POST is permitted to establish other grounds for revocation.<sup>64</sup>

# NDI: Tracking Interstate Movement of Decertified Police Officers

Roger L. Goldman, The Callis Family Professor of Law Emeritus, Saint Louis University School of Law, Missouri



## National Decertification Index

All professions, even those with selective recruiting processes and rigorous hiring standards such as law enforcement, are required to deal with misconduct from a member of their field at some time. In the case of law enforcement officers, it's essential to public safety and to the community's trust in law enforcement that there are proper mechanisms in place to remove such officers from the profession so they are no longer in a position of authority over the community.

Currently, in the United States, 46 states provide for the revocation of a police officer's license or certificate when the officer has engaged in serious misconduct.<sup>1</sup> The process is similar to that used in many other professions that require licenses like law and medicine.<sup>2</sup> A decertified officer is prohibited from continuing to serve in law enforcement in the state that revoked his or

her certification. The state agency in charge of decertification is typically the Peace Officer Standards and Training Commission (POST).

If a decertified officer decides to go to another state to become a police officer, how will the new agency that the officer applies to find out about the decertification, assuming the officer doesn't reveal the fact that he or she was decertified? In July 1999, the International Association of Directors of Law Enforcement Standards and Training (IADLEST) established a database, with funding from the DOJ's Bureau of Justice Administration (BJA), to track decertified officers across the United States.

The National Decertification Index (NDI) is a database of decertified police officers and corrections officers. Currently, POSTS in 43 of the 45 decertification-permitting states submit decertification actions to the NDI.<sup>3</sup> As of mid-September 2018, the NDI contained almost 25,000 actions. The NDI is a pointer system—it contains no information about what the officer did to be decertified; it merely refers the person seeking information about a particular officer to the state POST that decertified him or her. POST agencies are permitted to query the NDI, as are hiring departments as long as the POST has granted access for the agency's pre-hire screening process.

Since the grounds for decertification vary greatly among U.S. states, the fact of decertification does not mean the officer is automatically ineligible to be an officer in the state to which he or she has moved. For example, in some states, conviction of a felony is the only grounds for decertification; whereas, in other states, the commission of specified misconduct, such as filing a false police report, could trigger decertification.

The value of the NDI is illustrated by the case of Sean Sullivan, a police officer in Oregon who had been convicted of two counts of harassment and who was decertified by the Oregon POST. His name was entered into the NDI. Three months after his conviction, he applied to be an officer in both Alaska and Kansas and indicated on his applications he had never been convicted nor decertified. He was hired to be police chief in a small town in Kansas, but when the Kansas POST became aware of the Oregon decertification by checking the NDI, he was decertified in that state, as well.<sup>4</sup>

There have been efforts at the federal level to have a federally administered databank on police officers similar to the National Practitioner Data Bank (NPDB) for licensed health care professionals. The IACP supported the enactment of the Law Enforcement and Correctional Officers Employment Registration Act of 1996.<sup>5</sup> In addition to listing the names of officers who had

been decertified, it would also have established a registry listing all criminal justice agencies for which the officer had worked; however, the bill did not progress out of committee to congressional debate and a vote.<sup>6</sup>

More recently, the President's Task Force on 21st Century Policing recommended that the Office of Community Oriented Policing Services (COPS) partner with IADLEST "to expand its National Decertification Index to serve as the National Register of Decertified Officers with the goal of covering all agencies within the United States and its territories."<sup>7</sup> Although that recommendation has not been implemented, some federal agencies now both query the NDI as well as enter the name of decertified federal law enforcement officers in the database.

Contacting former employers before hiring an employee is important for any occupation or profession but even more so for law enforcement given the immense powers that police officers have over citizens. The NDI offers an additional layer of protection to a chief beyond checking with police departments for whom the applicant has worked. Querying the NDI will let the chief know whether or not the potential employee has been decertified by a state POST. ♦

**Roger L. Goldman**, The Callis Family Professor of Law Emeritus at Saint Louis University School of Law, Missouri is the nation's foremost expert on police licensing and license revocation laws as a way to address serious misconduct by law enforcement officers. His work has been cited in the national media, including the *New York Times*, the *Wall Street Journal*, the Associated Press, the *Atlantic Magazine*, and *CBS Morning News*. His op-eds have appeared in *Newsweek* and the *Guardian*. For more than three decades, he has helped states (including Missouri, Illinois, Indiana and Hawaii) write and adopt laws that provide for removing the state license of an officer who engages in serious misconduct.

## Notes:

<sup>1</sup> The four states that do not have the authority to decertify are California, Massachusetts, New Jersey, and Rhode Island. Hawaii's law was enacted in July 2018, effective in July 2019.

<sup>2</sup> The author discusses decertification in "Police Officer Decertification: Promoting Police Professionalism through State Licensing and the National Decertification Index," *The Police Chief* 81, no. 11 (November 2014): 40–42.

<sup>3</sup> Two different North Carolina agencies submit names: The Sheriffs' Education and Training Standards Commission and the Criminal Justice Education and Training Standards Commission.

<sup>4</sup>Eriks Gabliks, "Oregon Case Shows NDI Works," *IADLEST Newsletter*, October 2011, 5.

<sup>5</sup>H.R. 3263, 104th Cong. (1996); S. 484, 104th Cong. (1995).

<sup>6</sup>Roger L. Goldman, "Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct?" *Saint Louis University Law Journal* 45, No.2 (2001): 541, 575.

<sup>7</sup>President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* (Washington, DC: COPS Office, 2015), 29.

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Please cite as

Roger L. Goldman, "NDI: Tracking Interstate Movement of Decertified Police Officers," *Police Chief Online*, September 12, 2018.

# Police officers who lie could be banned from serving in Colorado

Bipartisan bill would permanently revoke certification for cops who lie on the record

By  
**Alex Burness**

-

April 16, 2019



POST Director Erik J Bourgerie came to the Capitol on April 16, 2019 to testify in support of a bill that would permanently penalize police for lying. (Photo by John Herrick)

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Here's the good news: about 99.5% of the nearly 14,000 cops in Colorado are *not* fired for knowingly lying in police reports, when they're testifying, or during internal affairs investigations, according to Colorado POST, the state regulatory agency for Peace Officer Standards and Training.

Here's the bad news: 0.5% of 14,000 is still a pretty big number. An estimated average of 70 Colorado cops are fired every year for knowingly lying in an official capacity, POST reports.

A bipartisan bill moving through the Capitol would make sure that smidgen of known liars never get to work as police officers in the state again. It's already cleared the state Senate, and on Tuesday it passed out of the State, Veterans and Military Affairs Committee of the House. It could become law in the next couple weeks.

The bill — [SB-166](#), sponsored by Avon Democrat Dylan Roberts in the House and Rhonda Fields (D-Aurora) and Bob Gardner (R-Colorado Springs) in the Senate — would give POST the authority to revoke the certification of any officer found to have lied on the record — that is, in court, in an investigation or on a criminal document. If passed, the law would apply only to Colorado police officers, meaning that an officer decertified here still could seek police work in another state.

"If we're going to make sure the public has trust in our law enforcement, penalties should be severe for those law enforcement officers that knowingly make untruthful statements," said Rep. Roberts, who also works as a deputy district attorney in Eagle County.

POST currently does not have the statutory authority to revoke licenses from officers they know have lied on the record. The agency can only revoke a cop's certification if that cop has been convicted of a felony or one of 44 misdemeanors.

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Rep. Stephen Humphrey, a Republican from Eaton who was one of two “no” votes at Tuesday’s committee hearing, said he’s not convinced POST needs this extra authority.

“It would seem to me that a sheriff or a chief, if (a lying officer) comes to their attention, they fire that individual,” he said, adding, “There’d have to be a big problem in the culture of that agency” for someone to lie and keep their job.

There’s nothing preventing local sheriffs and police chiefs from firing lying officers, but, crucially, there’s also nothing preventing those found to be liars from seeking new jobs with other law enforcement agencies in Colorado. SB-166 would remove the option to simply move on to a new agency because without POST certification, a cop can’t hold any job with arresting authority — and the penalty proposed by SB-166 is permanent.

Colorado’s main law enforcement lobby groups are either formally supportive of the bill or listed as not having a position. No one testified against the bill on Tuesday, which may in part reflect the fact that Democrats control the Capitol now and can — and likely will — pass this bill. So, anyone speaking out against it would not only be publicizing their support for the continued employment of lying police officers, but would be doing so in what would almost certainly be a losing effort.

Two people testified for the bill: Colorado POST Director Erik Bourgerie and Michael Phibbs, chief of the Auraria Campus Police Department. Attorney General Phil Weiser was not in attendance, but sent his support.

“This bill provides the public confidence of knowing unethical police officers are removed,” said Phibbs, whose name, committee Chair Rep. Chris Kennedy joked, was appropriate for the subject. Phibbs was testifying on behalf of the Colorado Association of Chiefs of Police, which is a primary proponent of the bill.

Phibbs told the committee that police departments would not apply an “arbitrary standard” to enforcement of the policy, should it become law. The specific circumstances under which officers would be decertified by POST are spelled out in the bill — and, even then, accused officers would have the option to appeal to the POST board and in court.

SB-166’s approval on Tuesday comes just days after Gov. Jared Polis signed a separate bill, [HB-1119](#), which will require Colorado law enforcement agencies to make public the files on completed internal investigations of police interactions with citizens, including alleged incidents of excessive force. Up until now, the vast majority of those files have been kept from the public.

Together, SB-166 and HB-1119 are expected to dramatically increase police accountability in Colorado.

Roberts, who himself works in law enforcement, said that’s a good thing.

“We need to make sure (officers) who do not act with the public trust in mind are punished accordingly,” he said.

# Division of Criminal Investigation 2020 Strategic Plan Summary



## The purpose of a strategic plan

The world changes, technology evolves, priorities shift, policy makers decide, and nothing is forever. To be flexible and adapt, organizations must always be prepared to adjust and alter their course as needed. As a state agency, we work within our allocated budget with efficiency to serve our customer base and improve services. Strategic plans are vital in developing a roadmap for the future and to identify priorities for the organization.

*"Efforts and courage are not enough without purpose and direction."  
– John F. Kennedy*



1. Service to our citizens
2. Bring justice to those who violate the law
3. Honor in the performance of our duties

Annually, Bureau Chiefs update their goals and priorities into the DCI Operations Plan. These include both short- and long-term goals, which are defined as 0-3 years or 3-5 years in length. The Administrator then determines the top needs of the organization, which is forwarded to senior leadership at the Montana Department of Justice. The main submissions of all eight Divisions are then reviewed and prioritized. A team approach is used to identify global resources that can support the full mission of DOJ and the needs of our Divisions.

## Division Goals for DCI

### Short Term; 0 – 3 years

#### **Permanent funding for the Deputy Ombudsman**

*Demands for service have overwhelmed the Office of the Ombudsman and the Deputy position has been modified or grant funded for several years. To ensure permanency and consistent service to citizen requests, the position cannot rely on uncertain funding streams.*

#### **Digitally archive all POST records**

*There are thousands of active and retired officer records in storage that need to be digitally archived for easier recovery and save space. With fiber optic lines now installed at MLEA, we can launch the initiative.*

#### **Attempt to increase Major Case staff by 3 FTE**

*Demands for service continue to increase and many requests for assistance are being declined. The increase in officer involved shootings and rising levels of violence strain the services we can currently provide to local law enforcement.*

#### **Complete CJIN systems upgrade**

*Major software upgrades are required for an antiquated system nearing end of life. Advancements in technology have surpassed CJIN systems and FBI requirements are forcing the change. We can't be using an 8-track in this digital world.*

#### **Focus on recruitment and retention**

*"Train people well enough so they can leave, treat them well enough so they don't want to." Richard Branson had it right with that statement and DCI is blessed to have some of the best and the brightest. We already hire great people, let's keep them.*



## DCI Long Term; 3 – 5 years

### Balanced employee pay equity competitive with market rates

*The bureaucracy of any government system makes it difficult to be competitive with the private sector and in some cases, even with other sections of state government. We need to find the sweet spot to retain the best people but also be responsible to the policy makers who frame our limitations in response to our real boss, the taxpayer.*

### Enhance MLEA infrastructure beyond current phases for additional improvements.

*Thanks to support from the Attorney General's Office, there have been marked improvements to the law enforcement academy's aging infrastructure but there's still more to be done. If it's going to be a state-of-the-art campus, a long-term capital improvement strategy is required.*

## Investigations Bureau

### SHORT TERM

- 3 Major Case FTE
- 3D Crime Scene Scanner Certification
- Drone Crime Scene training finalized
- MATIC prep for possible Keystone XL
- MFCU in-service training
- MFCU merge all e-files
- MFCU add 1 Auditor & 1 Agent
- Launch SSI Unit
- Regional Officer Involved Shooting team

### LONG TERM

- Financial Crime Unit

## Narcotics Bureau

### SHORT TERM

- Recruitment and retention of agents and support staff
- Additional overtime

### LONG TERM

- Technical Services Agent

## Crime Information Bureau

### SHORT TERM

- Launch Criminal Justice Portal
- Complete NCHIP 2017
- CJIN upgrade

### LONG TERM

- Expand CRISS & CJIN to 24/7 Help Desk
- Reorg assessment of CRISS/CJIN/SVOR
- Vendor Management

## Academy Bureau

### SHORT TERM

- Finish dormitories, Oh's, cafeteria renovation
- Add one week to Basic through online learning

### LONG TERM

- Add LMS to basic courses
- Increase number of basic courses
- Develop Phase V and VI of A&E Master Plan
- Staffing increase assessment and plan

## Special Services Bureau

### SHORT TERM

- Deputy Ombudsman permanent
- Monitor SAKI
- Develop LINC position

### LONG TERM

- Sustainable Child Advocacy Centers

## POST Bureau

### SHORT TERM

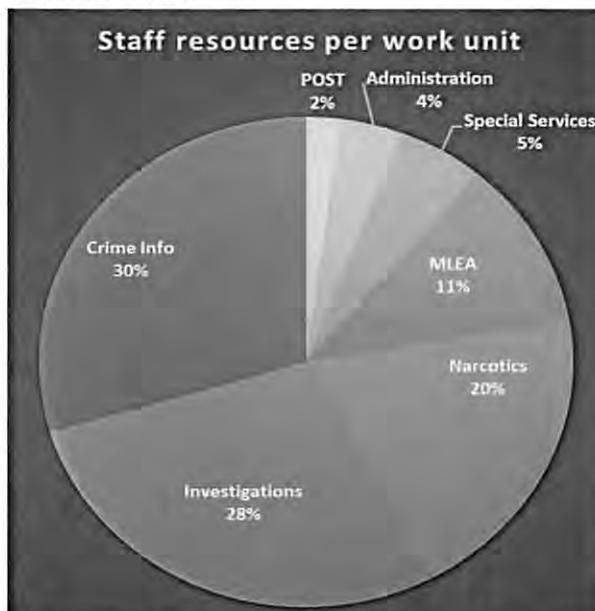
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- Adopt retention policy

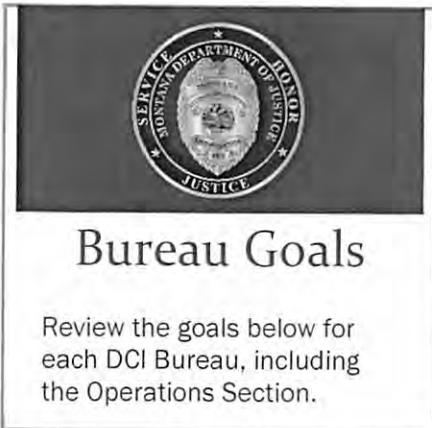
### LONG TERM

- Ethics and peer intervention training
- Outreach on POST services
- Legal support

## Operations Section

- Fiscal techs support three Bureaus each
- Take over CJIN payments and billing
- Route non-mailer checks
- Clean up M: drive
- Cross training





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