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

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

III. 9:10 a.m. ~ Approval of minutes for December 8, 2021, Council Meeting

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

V. 9:25 a.m. ~ Committee Reports

   A. Committee Assignments
   B. Curriculum ~ Conner Smith
   C. ARM ~ Leo Dutton
   D. Case Status ~ Jim Thomas
   E. Coroner ~ Leo Dutton
   F. Marijuana ~
   G. Business Plan/Policy ~ Kimberly Burdick

VI. 10:00 a.m. ~ Break

VII. 10:15 a.m. ~ Old Business

   A. Drishinski Discussion *
   B. Marijuana Presentation – Doug Samuelson

VIII. 11:30 a.m. ~ Lunch Break

IX. 12:00 p.m. ~ New Business
A. Michelle Dietrich
   1. Introduction
   2. Due Process Discussion

B. LEOB Syllabus

C. Misdemeanor Probation/Pretrial Service Syllabus – Rick SyWassink

D. Garrett Peterson Bomb Technician Recertification Application

E. General Council Memos
   1. Public Record Memo
   2. Conrad Memo

F. Director’s Report
   1. Budget
   2. Certificates Awarded
   3. Training Approved
   4. Equivalency Granted
   5. Extensions Granted
   6. Contact List ~ Council Members & Staff
   7. Office Updates
   8. Next meeting – May 11, 2022

X. 1:00 p.m. ~ Meeting Adjourned

* Executive Sessions are closed to the public in order to protect the privacy rights of individuals or to discuss active litigation strategy. Times are approximate, except for public comment; actual times may vary depending on presentation/discussion time.
Short, but sweet, sentiment from Ryan Oster

Eric S. Gilbertson, 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

From: Ryan Oster <ryanoster@yahoo.com>  
Sent: Wednesday, February 16, 2022 6:32 AM  
To: Gilbertson, Eric <Eric.Gilbertson@mt.gov>  
Subject: Re: [EXTERNAL] POST Replacement

Thank you for the info. I am happy that things are moving forward.

God bless you guys as you continue to hold the line.

Ryan

On Tuesday, February 15, 2022, 07:18:36 AM MST, Gilbertson, Eric <eric.gilbertson@mt.gov> wrote:

Ryan,

Good Morning!

I just received word this morning that Sidney Police Chief Mark Kraft was appointed to fill your former spot on the council. I want to thank you once again for your years on the council and the direction you provided law enforcement in Montana both at the local level and by serving on the POST council. I would suspect with the appointment you may not be at the meeting next week but if you do intend on coming please let us know.

Have a great day!
February 8, 2022

Jim Anderson  
PO Box 201301  
Helena, MT 59620

Dear Jim,

It is my pleasure to appoint you to the Montana Public Safety Officer Standards and Training Council in accordance with MCA § 44-4-402. Your term will commence February 7, 2022 and run through January 1, 2023. You fulfill the qualifications of a Representative of the Department of Corrections. A copy of the statute describing the Board’s duties is enclosed (MCA § 44-4-402).

Montana’s boards, councils and commissions play a significant role in effective governing, and I know that your service will help make Montana a better place now and for future generations.

Attached is an oath of office that will need to be signed in the presence of a notary public and returned by mail to Boards and Appointments, Governor’s Office, P.O. Box 200801, Helena, MT 59620-0801. Please also complete and return the attached questionnaire.

Mary Ann Keune provides staff support to the Board and will be reaching out to you with information about the Board’s next meeting.

Congratulations on your appointment and thank you for your service.

Sincerely,

GREG GIANFORTE  
Governor

cc: Mary Ann Keune, Department of Justice
February 8, 2022

Mark Kraft
300 12th Ave. NW, Suite 5
Sidney, MT 59270

Dear Mark,

It is my pleasure to appoint you to the Montana Public Safety Officer Standards and Training Council in accordance with MCA § 44-4-402. Your term will commence February 7, 2022 and run through January 1, 2023. You fulfill the qualifications of a Chief of Police. A copy of the statute describing the Board’s duties is enclosed (MCA § 44-4-402).

Montana’s boards, councils and commissions play a significant role in effective governing, and I know that your service will help make Montana a better place now and for future generations.

Attached is an oath of office that will need to be signed in the presence of a notary public and returned by mail to Boards and Appointments, Governor’s Office, P.O. Box 200801, Helena, MT 59620-0801. Please also complete and return the attached questionnaire.

Mary Ann Keune provides staff support to the Board and will be reaching out to you with information about the Board’s next meeting.

Congratulations on your appointment and thank you for your service.

Sincerely,

[Signature]

GREG GIANFORTE
Governor

cc: Mary Ann Keune, Department of Justice
February 8, 2022

Mike McCarthy
PO Box 6903
Helena, MT 59602

Dear Mike,

It is my pleasure to appoint you to the Montana Public Safety Officer Standards and Training Council in accordance with MCA § 44-4-402. Your term will commence February 7, 2022 and run through January 1, 2023. You fulfill the qualifications of a Montana Citizen At-Large who is informed and experienced in the subject of law enforcement. A copy of the statute describing the Board’s duties is enclosed (MCA § 44-4-402).

Montana’s boards, councils and commissions play a significant role in effective governing, and I know that your service will help make Montana a better place now and for future generations.

Attached is an oath of office that will need to be signed in the presence of a notary public and returned by mail to Boards and Appointments, Governor’s Office, P.O. Box 200801, Helena, MT 59620-0801. Please also complete and return the attached questionnaire.

Mary Ann Keune provides staff support to the Board and will be reaching out to you with information about the Board’s next meeting.

Congratulations on your appointment and thank you for your service.

Sincerely,

GREG GIANFORTE
Governor

cc: Mary Ann Keune, Department of Justice
MONTANA POST COUNCIL MEETING

December 8, 2021

Face to Face Meeting 9:00 a.m. to 12:24 p.m.
Montana Law Enforcement Academy
2260 Sierra Road East
Helena, MT 59602

Council members present: Jesse Slaughter - Council Chair, Jim Thomas, Conner Smith, Kristine White, Matt Sayler, and Bill Smith.

Council Members present by phone:
Wyatt Glade
Ryan Oster

Council Members Not Present: Leo Dutton, Jess Edwards, Tia Robbin

Staff Members Present: Eric Gilbertson, Executive Director; Mary Ann Keune, Administrative Officer; Katrina Bolger, Paralegal/Investigator; Tina Cranmer, Administrative Assistant
POST Legal Counsel:
Michael Fanning, Esq.

SPECIAL MASTER:
Stuart Segrest, Esq.

Guests in the Room:
Glen Stinar, MLEA
Shelby DeMars, MPPA

Guests on the Phone:
Mark Muir
Cherilyn Devries, Montana Human Rights Network
James Anderson, DOC
Mike Baum, DCI
WHEREUPON, the following proceedings were had:

* * * * *

CHAIR SLAUGHTER: If everybody can grab their seats, we'll call this meeting to order. It's 9:00 a.m. on December 8th, 2020. We're in Helena, Montana. This meeting is now on the record, and I'm going start by turning it over to our new Director, Director Eric Gilbertson, to do roll call, please.

MR. GILBERTSON: Thank you, Chair.

Jesse Slaughter.

CHAIR SLAUGHTER: Here.

MR. GILBERTSON: Bill Smith.

MR. BILL SMITH: Here.

MR. GILBERTSON: Kimberly Burdick.

MS. BURDICK: Here.

MR. GILBERTSON: Leo Dutton.

(No response)

MR. GILBERTSON: Leo is absent. He has another engagement in Oregon. Jess Edwards.

(No response)

MR. GILBERTSON: Jess advised he wouldn't be able to make it unless his vote was necessary later on. Wyatt Glade.
(No response)

MR. GILBERTSON: Wyatt, are you on the phone?

(No response)

UNKNOWN SPEAKER: DCI.

MR. GILBERTSON: Ryan Oster.

MR. OSTER: Here.

MR. GILBERTSON: Matt Sayler.

MR. SAYLER: Here.

MR. GILBERTSON: Conner Smith.

MR. CONNER SMITH: Here.

MR. GILBERTSON: Jim Thomas.

MR. THOMAS: Here.

MR. GILBERTSON: Kristine White.

(No response)

MR. GILBERTSON: Kristine White.

(No response)

MR. GILBERTSON: And Tia Robbin will not be able to be here. She'll be absent as well.

CHAIR SLAUGHTER: Thank you, Director. So at this time we're going to welcome any guests. We'll start with guests -- I don't see any guests in the room, so I'll go to the phone. Can you please announce yourself on the phone, please.

MS. DeVRIES: This is Cherilyn DeVries
from the Montana Human Rights Network. I'm here
to give public comment, but I know that's later in
the agenda.

CHAIR SLAUGHTER: I believe it was
Rhonda with Human Rights --

MS. DeVRIES: I'm sorry. It's really
hard to hear. My name is -- I'm not sure if you
were referring to me -- Cherilyn, C-H-E-R-I-L-Y-N,
last name is D-E-V-R-I-E-S.

MR. GILBERTSON: Okay. Anyone else on
the phone?

MR. MUIR: Like Cherilyn -- this is Mark
Muir, M-A-R-K M-U-I-R, and like Cherilyn I'm
having some difficulty hearing. I don't know if
there's a way to increase the volume on your end.

However, I am just intending to offer a
slight bit of public comment with respect to the
ARM considerations.

MS. BOLGER: Mr. Chair, this is Katrina.
Everybody who is in the room, you have a goose
neck microphone in front of you. When you speak,
make sure that your light is green, and make sure
you speak directly into the mike so people can
hear you.

(Ms. Kristine White present)
CHAIR SLAUGHTER: Do we have any other guests on the phone?

MR. ANDERSON: Jim Anderson from the Department of Corrections.

MR. GILBERTSON: Thanks, Jim. Anyone else on the phone?

MR. BAUM: Mike Baum, DCI.

CHAIR SLAUGHTER: Mike, can you spell your last name for the record.

MR. BAUM: It's B-A-U-M.

CHAIR SLAUGHTER: Thank you, Mike.

MR. GILBERTSON: Any other guests on the phone?

(No response)

MR. GILBERTSON: Okay. And we had a couple guests walk in while we were talking to the guests on the phone. Could you guys maybe just introduce yourselves real quickly.


MR. GILBERTSON: Thank you, Shelby.

CHAIR SLAUGHTER: And then Kristine White joined us.

Okay. Director Gilbertson, I'm going to
turn it over to you. I think at this point in
time it's appropriate that you introduce yourself
to the Council as our new Director, and to the
public at large, and then I'll have you address
new staff issues. Okay.

MR. GILBERTSON: Absolutely, and thank
you. My name is Eric Gilbertson, and I've been
appointed and decided to become the new POST
Director for the Council.

Just by way of history I guess, I have a
bachelor of science from Montana State University.
I went to law school in Oregon for a couple years
before I decided I didn't want to be a lawyer, and
chose a career in law enforcement instead.

So I worked for the Lewis & Clark County
Sheriff's Office for just under 16 years, and then
this position became available. And ethics
training and public safety in Montana is one of my
passions, so I felt it was a good fit for me
personally and professionally.

That's the back story on me as the new
Director, and I'm just excited to be here and
working with this group of individuals and
stakeholders across the state.

Not only am I new, but upon coming on
board I had a discussion with the outgoing Director Perry Johnson about General Counsel for the Council, and in that process, we identified a new General Counsel who I believe will be a good fit for the Council, and is Stuart Segrest. And I'm going to let Stuart do his own bio.

MR. SEGREST: Thanks, Eric. Yes. So my name is Stuart, and I spent 14 years in the Attorney General's Office, the Montana Attorney General's Office. I started off doing criminal appeals, and then for the most part I either represented different agencies within DOJ such as Highway Patrol or DCI, and sometimes gave counsel to POST, although that was a little more rare.

I also defended the State in court in constitutional challenges. So kind of a broad array of stuff, really fun, really enjoyed it. And the end of the last summer, I decide to try my hand at private practice, so I'm downtown with a firm Christensen and Prezeau now.

And Eric reached out to our firm, and I jumped at the chance to get back to representing a State agency, or a State board in this case, and I'm really excited for the opportunity. Happy to discuss anything more at any other time, but I
think that's kind of the basic background.

MR. GILBERTSON: And then also in the corner of the room is Tina Cranmer, who has been with POST for some time. This is her first Council meeting, but she's been instrumental in the work that we do. And she doesn't like to speak a whole lot, but we love having her, so I just want to acknowledge that she's here as well.

CHAIR SLAUGHTER: Thank you, Eric. And as always, thank you to Mary Ann and Katrina for all you do, and we appreciate you as well.

So if you will, please, we'll please rise for the Pledge of Allegiance.

(Pledge of Allegiance)

(Invocation)

CHAIR SLAUGHTER: Okay. So now we're going to move to the approval of the minutes from August 11th, 2021. I believe that's Pages 3 through 41 in your packet.

MR. OSTER: Mr. Chairman, this is Ryan Oster. I make a motion that we approve those minutes.

MR. THOMAS: This is Jim Thomas. I second.

CHAIR SLAUGHTER: Ryan Oster made a
motion, Jim Thomas second. Do we have any discussion?

(No response)

CHAIR SLAUGHTER: Hearing no discussion, the motion carries. Minutes are approved.

So if there is no objection, and we're right on time, we would go now to public comment and guest issues. Anybody on the phone have public comment or guest issues, if you can hear me okay.

MR. GLADE: Good morning, Mr. Gilbertson. This is Wyatt Glade. I'm not necessarily a member of the public. I just wanted you to know that I have dialed in, and --

(inaudible) --

MR. GILBERTSON: Thank you, Wyatt. I appreciate it. Glad you could make it.

MS. DeVRIES: This is Cherilyn DeVries from the Montana Human Rights Network. I'm calling to offer public comment on the attempt to allow Richard Mack to offer training on county supremacy to law enforcement officers back in June. I notice that it was pretty slanted toward freedom of speech issue.

And certainly officers are allowed to
I have freedom of speech and thought in beliefs. However, when taxpayers funds are paying for officer training, I believe some review should be in order when the trainings are approved. Richard Mack's form of the pro militia ideology called county supremacy, which denies the legitimacy of the federal government, and that County Sheriffs are the highest law enforcement authorities in the nation, and along with extremist Ammon Bundy, who has had armed stand-offs with law enforcement officers also promotes county supremacy.

Richard Matt has also appeared with anti-semitic speakers over the years, which does not show his good values that I think we want our officers to have.

I would ask in the future that trainings be reviewed to make sure that they align with law enforcement officer training standards. Thank you very much.

CHAIR SLAUGHTER: Thank you for that.

Any further comment?

MR. MUIR: Mr. Chairman, this is Mark Muir. Can you hear me okay?

CHAIR SLAUGHTER: I'm sorry. I didn't hear the name. Please say your name again.
MR. GILBERTSON: I think it was Mark Muir. Mark, did you have comment?

(No response)

MR. GILBERTSON: He might try to call in again, so I think you can move to hear other callers.

CHAIR SLAUGHTER: I think Mark is trying to call in again, so we'll be patient. Is there anybody else that has any public comment?

MR. MUIR: Mark Muir rejoining the call.

CHAIR SLAUGHTER: Thanks, Mark. Would you spell your last name for the Court Reporter, please.

MR. MUIR: Mr. Chair, I'm sorry. I can't hear you.

CHAIR SLAUGHTER: Can you please spell your last name for the record, and then give any public comment you would like.

MR. MUIR: Thank you, Mr. Chairman. It's Muir, M-U-I-R, Mark. And I just want to take one minute to offer a compliment to Mary Ann for some assistance that she gave me doing research recently. She certainly is under no obligation to provide me in the quick prompt fashion that she did, and I really appreciate the fact that she
attempted to work with the public.

Secondly, I just wanted to offer that I have noted that in the committee reports today you're going to review the topic of adding a subsection to the ARMs regarding sexual misconduct. I encourage you to follow through with that.

The only suggestion that I have is that prior to adopting any final language, you might want to review the 2011 literature from the International Association of Chiefs of Police that provides a slightly broader definition of sexual misconduct, which I think upon review might be helpful in crafting the terms to define sexual misconduct.

With that said, I wish you the best in accomplishing these changes to the ARMs, and it's certainly a matter that is presently being intensively scrutinized in Montana Courts.

And as you probably know, there is a certified question before the Montana Supreme Court by the Ninth Circuit asking them to weigh in on whether or not on-duty sexual assault is considered within the course and scope of employment, so certainly an important topic for
you to be addressing, and I appreciate your time this morning.

    CHAIR SLAUGHTER: Thank you very much, Mark. For anyone on the phone, can you hear better now? We made some technological adjustments in here.

    MR. MUIR: Mr. Chairman, I can hear you much better, at least four or five times better.

    CHAIR SLAUGHTER: Okay. Great. People on the phone, please, please speak up. We will not intentionally talk over the top of you, we will not intentionally ignore you, but with technology sometimes we don't hear it quite right.

    I just ask that even if you spelled your name before, please spell it again when you come on, just so that the Court Reporter gets everything accurately for the record. Thank you so much for that.

    Any more public comment or guest issues? More public comment or guest issues.

    (No response)

    MR. GILBERTSON: Chair Slaughter, the question was if we wanted to jump to committee reports. We do have a matter that we would like to get going at 9:30, and we can't start before
that time. We do need a little bit of set-up time prior to that, and I think just for that sake, I'd recommend going on break until 9:30 at this point.

CHAIR SLAUGHTER: Thank you, Director.
So that's what we're going to do. We're going to take an exactly ten minute break, and we need to be back ready to go promptly at 9:30. So thank you all.

(Recess taken at 9:20 a.m.)

(Richard Smith transcript bound separately)

(Reconvened at 9:49 a.m.)

CHAIR SLAUGHTER: For those on the phone, just give us a couple minutes. We're rearranging the room, and we're going to go to committee reports.

Now that that's over, and Mr. Gilbertson is back in his seat, I'm going to turn it over to him for committee reports.

MR. GILBERTSON: Thank you, Chair Slaughter.

Turning to Page 51, the first item is just to review current committee assignments, maybe in light of some discussion we'll have further on in the course of the meeting.

One of the things that was brought to my
attention is that since the last meeting, Conner Smith has been appointed to the Case Status Committee, and that is a pretty heavy lift for any one individual Council member to carry. But he is also present on the Marijuana Committee, as well as the Curriculum Review Committee as Chairman.

And I would just ask if he thinks that he would like to continue being on all three committees, or potentially not.

MR. CONNER SMITH: I would be fine letting one of those go. The Case Status is definitely one of my priorities; and probably the Curriculum. Marijuana I'm less knowledgeable on. We can still bring in our experts, as we discussed, at our next meeting, and I don't mind that, but I don't see a need to be on that committee.

MS. KEUNE: This is Mary Ann. Which one do you want to be off of?

MR. CONNER SMITH: The marijuana.

MS. KEUNE: This is Mary Ann again. So are you saying that you will stay on the Curriculum, or are you off that as well?

MR. CONNER SMITH: Yes, I can stay on the Curriculum. It's not a heavy lift on that
MS. KEUNE: Okay. Thank you.

MR. GILBERTSON: And then I think for the time being, even in light of what we'll talk about later in regards to resignations, I think we can keep those committees as they are until new people may be appointed to the Council, and maybe they would be a good fit for some of those slots that may open up. Does anyone have discussion on that?

(No response)

MS. BOLGER: This is Katrina. I just wanted to point out that there are only going to be two voting members on the Business Plan Policy Committee then.

MR. GILBERTSON: And I guess that's a question maybe I'll ask Ryan if he's still on the phone.

Ryan, it's my understanding your intention was to continue in your Council duties until a replacement is found; is that accurate?

MR. OSTER: So this is Ryan. My resignation from the Police Department is effective on the 30th of December.

I'm willing to continue as long as I
can. I do have another employment opportunity, and I'm not exactly sure what that is going to look like after the first of the year. So sorry, I can't really -- I'm not giving you a real precise answer, but I'm hopeful that the Governor is going to move forward with an appointment soon.

MR. GILBERTSON: I think we all are, and I appreciate your willingness to continue, Ryan. Chair, would you recommend maybe putting someone else on that plan just for continuity?

CHAIR SLAUGHTER: Yes, I would.

MR. GILBERTSON: Do you have any suggestions, or does anyone want to volunteer for that position?

MR. SAYLER: This is Matt. I'd be willing to sit on it until it fills with someone else.

CHAIR SLAUGHTER: Sorry, Matt, but you're on a lot, and you're also on Case Status, so I'm worried about your load as it is now. So just put me on there for now. I attend them anyway, so --

MR. GILBERTSON: Business Plan.

CHAIR SLAUGHTER: Business Plan. Thank you, Matt. I just know you have a heavy load.
MR. SAYLER: Doesn't bother me.

MR. SEGREST: You just look like the good guy.

MR. GILBERTSON: Any further discussion on committee assignments? Am I overlooking anything?

(No response)

MR. GILBERTSON: I think we'll move to committee reports. Conner Smith is the Chair of the Curriculum Review Committee. Do you have anything to report there?

MR. CONNER SMITH: Nothing to report.

MR. GILBERTSON: Moving on to the ARM Committee report. I reached out to Sheriff Dutton last week, and received a response. He has nothing to report in regards to ARMs. Does anyone else on that committee -- Jesse, did you have anything you want to add?

CHAIR SLAUGHTER: I have no report, Director.

MR. BILL SMITH: No, sir.

MR. GILBERTSON: I think we do have a report from the Case Status Committee. Jim Thomas.

MR. THOMAS: Yes. Thank you. It's in
black and white, Pages 52 through 56, what we've been doing. We've been busy. We had a meeting yesterday, over 500 pages of documents that we went through. And so I can't really go into much detail on the cases themselves.

I didn't know, Eric, if we wanted to talk about what we're planning to do with the Case Status Committee as far as recognizing it formally, or do we want to talk about that later?

MR. GILBERTSON: I think we have a point later on under New Business, is my understanding. And Shelby is out of the room right now, so I think that we'll probably do that during the Director's report.

MR. THOMAS: Okay. So any questions I can answer, I'll be happy to, if anyone has any.

(No response)

MR. GILBERTSON: Okay. Moving on to the Coroner report, again, I did reach out to Sheriff Dutton last week, and I received a response from him. I also spoke to Sheriff Steve Holton to make sure that I got added to that group's email list.

So my report from Sheriff Dutton just says, "Hi, Eric. The Coroners Association Conference is May 3rd, 4th, 5th, 2022. The hotel
in Billings is yet to be determined. The association meeting is in January to determine the training topics."

And in speaking with Sheriff Holton, those dates are kind of contingent on whether that will be in person, or held virtually. So I don't have a date for that.

Coroner Basic is set for December 13th through 17th out here at the Academy, and register with the Academy website.

The second paragraph is: "Of concern, there are only 15 civilian coroners left in the state. The County Commissioners have combined offices in many counties. When an incident occurs of an in-custody death, the agency is required to use an independent elected coroner. This has become problematic for the remaining Coroners," and then he provides some background information that I think the committee has probably seen in the past, and I think that was more of an FYI.

Along those lines, I will note that I had a discussion with Pat Barber from Sanders County last week, and it was previously a Sheriff Coroner position, and Sanders County has chosen to separate those offices once again. So there will
be one more civilian coroner in the state, probably bumping that number to 16.

CHAIR SLAUGHTER: Director, this is Jesse Slaughter. I'm actually pushing my Commissioners to do the same thing. I know among Sheriffs, we've discussed different MCA changes that would kind of allow for another Sheriff to basically investigate another Sheriff's in-custody death.

And I have a hard time with it. It was designed to kind of create separation, and help with giving the public a good ethical investigation that they know was handled appropriately.

So I'm actually in the process with my -- and the County Attorney on board, too -- and trying to separate those out as well, because I think that it -- I definitely think that's something in the next two years that's going to become a big topic.

MR. GILBERTSON: Anyone else have discussion regarding coroner?

(No response)

MR. GILBERTSON: Moving on to the Marijuana Committee, it is my understanding there
was no meeting of that committee, but there was a plan at the August meeting to attempt to have someone come present issues to the Council at this December meeting.

And the two people capable of doing that with the Highway Patrol are otherwise engaged. I think one of them is currently out of state, and one is participating and probably instructing in a DRE course that's going on right now. So we don't have any discussion for that agenda item today unless someone else has something to add.

(No response)

CHAIR SLAUGHTER: Director, are we going to just table that and then put it on the next meeting's agenda?

MR. GILBERTSON: That would be my recommendation. And Conner, if you think that might be possible to have someone.

MR. CONNER SMITH: Yes, I've talked to both individuals. As long as I can give them a heads up on the next date, then they can plan around it, and they'll be here.

MR. GILBERTSON: Sounds good, and I think we'll have a discussion further as to possible dates for the next Council meeting, so
maybe after that we could reach out to them.

It's been an hour since we took a break, roughly 40 minutes. Do we need a break here? Do you want to continue through Business Plan Policy? We have more extensive of a report in that committee report.

CHAIR SLAUGHTER: Let's take a short break, like five minutes. We'll be back at 10:06.

(Recess taken)

CHAIR SLAUGHTER: It looks like everybody is back, so we'll get started again, and I'll turn it back over to the Director to talk about Business Plan and Policy.

MR. GILBERTSON: Thank you, Chair. Kimberly Burdick is the Chair of the Business Plan and Policy, and I know she wanted to defer some of the discussion to me, but I would give her the first opportunity to talk if she would like.

MS. BURDICK: Thank you, Director Gilbertson. We did meet on November 17th via the phone, and you see the items in front of you for discussion covered in Pages 57 to 61. I am going to defer the bulk, if not all, of the discussion to Director Gilbertson; and I am aware that Stuart also knows an awful lot about what went on as
well. He's aware of this. So I'm going to take this opportunity to defer.

MR. GILBERTSON: Sounds good. So being a relatively new Director, I guess I'd just make a comment before moving to this that in April's meeting, Perry Johnson made a comment about new members on the Council, and the interplay between POST staff and the Council being a dance.

And as I'm new to my position and other people are here, I think that's an analogy that we can talk about again. And I'm not much of a dancer, so if I make some missteps along the way, I apologize, and I appreciate everyone bearing with me.

So I think there has been some discussion on the part of the Council and the Business Plan about how to improve ARMs to reflect the reality that some of the people employed in public safety are military members, and complications that if they're deployed, what that presents to the office, and how to best to address that.

So looking at Montana Code 44-4-404, there was a suggestion that we amend that statute to incorporate a tolling of the time period while
someone is deployed in active duty status and also serving in the military.

While looking at that issue, I think we discovered an ancillary issue, that some of the disciplines allow for an extension to be granted by the Director outside of the one year requirement to attend and receive basic training. In others it's not explicitly stated.

And so the second proposed amendment to that statute would be to allow POST staff to grant an extension for all public safety disciplines consistent with those that say there's a six month extension. And then I guess I'll defer to Stuart as far as a legal expert on what he would suggest with this.

MR. SEGREST: So I think it's a good idea in a general sense to address it.

I did look at, and I know there was some discussion at the Business Plan meeting, about whether USERRA -- which is the federal law that requires employers to sort of keep the position open, and keep it in the same place for those who are called to military duty -- and whether that would apply or whether that should be a guide.

As a specific matter, that federal
statute applies to employers, private and governmental. So POST being a regulator, I don't know that it specifically speaks to POST.

However, everyone that POST regulates is an employee of one of these employing agencies, and I think it's a good idea for POST not to get in the way of allowing that public agency to follow USERRA, its requirements under USERRA, and hold that position open for that person during their time of military service.

And in that sense, I think it does make sense to pause that time period for the officer to get POST training or POST certified training during the time of military service.

The one recommendation I would have in looking at this -- and this has been, I just have to say, federal law -- This is a relatively simply law as far as federal laws go. Federal laws are complicated, way more complicated than state laws.

So I can't tell you in any sense that this is -- I'm giving you the full scope. From what I've seen so far, and I've talked to one other attorney in my office who has had a lot of experience with this statute, it seems like the one recommendation I would have --
MR. GILBERTSON: I ask you to pause real quick, Stuart. I think we had a recent caller calling via phone, and it appears your microphone may not be muted. So I would ask if you'd consider muting your phone. We're getting some feedback at the Council meeting.

MR. MUIR: Absolutely, Mr. Chairman. My apologies. It's Mark Muir rejoining the call. I didn't want to interrupt.

MR. GILBERTSON: Thank you, Mark. I appreciate it.

MR. SEGREST: It sounds like we're good. So I guess my point was that you might want to consider putting in a time limit under -- this would be the proposed change 2(b), and this is at Page 57 of your materials.

So the USERRA itself has a five year general limit that it applies for military service. There are some exceptions, but for the most part, it's a five year limit.

So I think I would suggest at least considering having something like a five year limit, or perhaps referencing USERRA and having the limit be the limit provided within that federal statute.
And I can keep going. I don't know if at this point I should pause and see if you have questions, but that's my sort of general overview of it.

CHAIR SLAUGHTER: Any questions here in person or on the phone regarding that?

(No response)

CHAIR SLAUGHTER: Go ahead, Stuart.

MR. SEGREST: Eric or Katrina, another issue we had discussed is whether time in service should count in other regards for those officers. Did you want me to discuss that now, or should we hold that off for later?

MS. BOLGER: Go for it.

MR. SEGREST: So USERRA provides what is called an escalator provision, and that's basically you should treat the employee as if they had been, at least for longevity purposes, employed and working in the particular job during the time they were in military service.

So for example, if there's a pay raise every year, and they had been gone for a year, they should get that pay raise as opposed to being at the salary they were at when they left.

So the way that's come up in the
discussions about the military leave issue here is: Do we want to provide some type of credit for time in service, as far as how that affects these officers and their certifications over the time that they're serving in the military?

I don't know that that is exactly equivalent to longevity. I don't think -- and again, this is based on very preliminary research -- I don't think you would have to, or that the employer would have to.

I think what you might want to do, and I think perhaps the committee discussed this, is craft it so that if they're serving in a military police role or some other role that is equivalent to law enforcement, or whatever the particular public safety job is that they hold, that that would apply as time in service, but not otherwise.

That of course is then going to be I think a call the Director is going to have to analyze and determine if it's similar enough. So that's my general take on it. I don't know if you would have to. It's a good idea potentially to consider, but I think you would want to limit it, because we're talking about experience, and experience is different than just
longevity. And if they're not getting law
enforcement experience, it might not be something
that you want to give them credit for, so that
would be my one caution and advice on that piece
of it.

And that's what I have at this point.
It would be, as you can see, a change to the
statute, because it's not currently authorized by
the statute, and POST isn't authorized to make a
change to this degree that the statute doesn't
provide for.

So that would be the next step, is if
you approve a change like this, to work with DOJ
and figure out a way to propose legislation.

CHAIR SLAUGHTER: Thank you, Stuart.
Eric, anything?

MR. GILBERTSON: No, I think Stuart
outlined it very well. So I think the discussion
would be for the Council to decide if this is a
direction that they would like to move forward.

POST staff has talked about this issue
with DOJ, and they were comfortable with us doing
at least the initial work on it. But I think the
next step would be to work with DOJ, or
potentially have Chair Slaughter bring it to the
attention of the Law and Justice Oversight Committee when he makes his report as an option.

CHAIR SLAUGHTER: Thank you, Director Gilbertson. I agree. I know this is a significant issue in my organization. We have many, many military members, both on the detention, civilian, and in sworn ranks.

And I believe that this is very, very complicated, and if we can work on a road map to make it less complicated, and also to honor those men and women who make the ultimate sacrifice to serve our county and serve as law enforcement, so that we are fairly, and giving them the honor that they deserve, and take some of the confusion out of it. Because I know in my organization, this is a constant struggle.

So if there's anything I believe we should do from our point of view, I support doing whatever we can, up to and including a legislative change, if we so determine necessary.

MR. THOMAS: This is Jim Thomas. So do we need a motion directing staff to work, continue to work with DOJ on this, or where do we go from here?

MR. GILBERTSON: I would like Katrina
Bolger to answer that question.

MS. BOLGER: I would like Stuart Segrest to answer that question.

MR. SEGREST: I think that would be workable, Mr. Thomas. I think a motion -- I think it depends on what the Council wants to do. If you want to approve it at this point, then yes, that's what you would do is instruct the Director to go forward, and work with DOJ.

If you want, you could adopt this specific language, you could suggest changes and have them come back. Katrina, what do you think time-wise? When do we need sort of finalized language in order to get this thing going?

MS. BOLGER: I think that that would be a question for LJIC's legal staff. I do know that during their committee meetings in the interim, they set numbers for bills that are sort of place holders.

So the agencies that they oversee come in and say, "We have a couple of bills we want to take forward," they give them two numbers, if they say they need two; and then it becomes a bill from there. And that I think is probably the more efficient way to get it done.
MR. SEGREST: Do we know when the next meeting of that committee is?

MS. BOLGER: I do not, but we can find out.

MR. SEGREST: So I would say you could do one of two things. One is to just approve in a general sense, make a motion to direct the Director to work on this, with the idea that you're going to provide or advocate for a statutory change; and the other is to vote on specific language.

Maybe at this point we just take the first option, unless you want to have more discussion about specific language.

MR. THOMAS: Chairman.

CHAIR SLAUGHTER: Mr. Thomas.

MR. THOMAS: As a Veteran and former law enforcement officer, I would like to make a motion that we direct staff and the Director to work on these changes.

CHAIR SLAUGHTER: Thank you, Mr. Thomas. We have a motion to direct the staff to work on changes. Do I have a second?

MR. CONNER SMITH: This is Conner. I second.
CHAIR SLAUGHTER: Any further discussion on the matter?

(No response)

CHAIR SLAUGHTER: So I have one further discussion on this. I think that the MCA issue could be very significant in this, and to set our Director up for success, I really think that that's kind of what we should push for, and then push for our administrative stuff after that fact; or if they can coincide, then coincide them.

But I think it just sets Council staff up for success if we go that direction, and I'd be willing to help with any of that because I think it's really important. Any further discussion?

(No response)

CHAIR SLAUGHTER: Okay. So having a motion by Mr. Thomas, seconded by Mr. Smith, all in favor, signify by saying aye.

(Response)

CHAIR SLAUGHTER: Opposed, same sign.

(No response)

CHAIR SLAUGHTER: Motion carries. Thank you very much. I'll turn it back over to you, Eric.

MR. GILBERTSON: Thank you. Looking at
the agenda for today, I realize that I blended Point 1 and Point 2 together. So I guess if we need to have additional discussion on the extension for Basic Academies, we should do that now. Any recommendation from Stuart?

MR. SEGREST: Yes, I can give a brief explanation, and it is also going to be -- We're recommending a Legislative change, so I think it makes sense to talk about in the same context as the change for military deployment.

So this is the same page, same statute. We're recommending, or at least my recommendation is: As the Council might be aware, there is an Administrative Rule that POST has that allows you to grant a six month extension, up to a six month extension, for certain reasons for any public safety officer.

Statutes, however, only specifically mention a six month extension for some of those, but not all of those public safety officers. So for example, for peace officers, it does speak to a six month extension for detention officers. That specific language is not in there. It doesn't say you can't do it, it just doesn't speak to extensions at all.
So we would I think -- The idea here is to change or add to statute to support that ARM and the Council's practice of considering and granting extensions for all public safety officers, including those like detention officers that don't have specific language currently in the MCA statutes.

So that would be (2)(a) here, and it would add language that speaks to all public safety officers, and allows the Council to grant an extension to exceed 180 days.

As I understand it, the committee had also looked at making individual changes to each of those particular officers, such as detention officers, that don't currently have that language, and adding them to each individual one.

I think it's probably simpler -- and simple is good when you go to the Legislature and ask for changes -- to add one that just says "all public safety officers," which would then mimic what POST's current ARM says, and that's what is provided as an example for you on Page 57 in this change to 44-4-404 at (2)(a). And I don't have anything more on that, but I'm happy to answer questions if there are any.
CHAIR SLAUGHTER: Any questions from members of the Council or people on the phone?

(No response)

CHAIR SLAUGHTER: Okay. Back to you, Director.

MR. GILBERTSON: I think similar to what we did with the last issue, I'd just ask if the Council would consider a motion directing POST staff to work on that, as they are with the military issue.

CHAIR SLAUGHTER: Can I get a motion to direct POST staff on extensions for the Basic Academy similar to the military deployment legislation.

MS. BURDICK: This is Kimberly Burdick. So moved.

MR. BILL SMITH: Bill Smith. Second.

CHAIR SLAUGHTER: I have a motion and a second. Any further discussion?

(No response)

CHAIR SLAUGHTER: Anybody on the phone?

(No response)

CHAIR SLAUGHTER: The motion before us right now is to direct POST staff with extensions for the Basic Academies, up to and including all
public safety officers, not just sworn officers.

So that is the motion on the floor, and I have a second. Hearing no discussion, move to a vote. All in favor, signify by saying aye.

(Response)

CHAIR SLAUGHTER: Opposed, same sign.

(No response)

CHAIR SLAUGHTER: Okay. Motion carries.

Thank you. Thank you, Director.

MS. BOLGER: I just have a quick question. This is Katrina. Does the Council envision doing this as a single bill or as two bills?

CHAIR SLAUGHTER: That is really good question. I think -- and Stuart can correct me if I'm wrong -- but in my experience on this, it's probably going to be two, because you're dealing with two separate issues, and you're going to have to delineate them out.

MR. SEGREST: That's a good point. If it's considered two separate subjects, then you would want two different bills.

I think you could probably start with two, and then if the particular Representative or Senator that carries it wants to combine them --
and Legislative Services will have a say on whether there are two different ones, too -- but I think because they're not the exact same issue, you probably want to start off with two different ones.

MS. BOLGER: Thank you. I just wanted to make sure.

CHAIR SLAUGHTER: That is a really good question. Thanks, Katrina. Director Gilbertson, I'll turn it back over to you for ARM rules.

MR. GILBERTSON: And I know we have a couple interested parties on the ARMs. I think Mark Muir is still on the phone.

And one of our proposed changes is to ARM 23.13.102, which is the definition subsection of the ARMs, to include a definition that provides guidance, but isn't necessarily all inclusive as to what sexual misconduct is.

The language drafted here was kind of culminated by Katrina Bolger, but it's by no means a final recommendation. And I did appreciate Ms. DeMars' comment about seeking out what IACP had adopted in the past, and I think we can look at that language for further guidance as well.

I guess if this is something the Council
would like to consider, my recommendation would be to move it potentially to the ARM subcommittee to do further work on and come up with a definition.

MS. BOLGER: Does Stuart want to jump in and voice any opinions?

MR. SEGREST: I don't have a specific opinion about the definition itself. I think it's good to define it. And I think Mark Muir's point that you should consider that past document seems logical to me. I don't see a reason not to unless there's a rush.

My only comment would be you have two -- this is at Page 58 -- you have two options to do this. One is to add -- Well, I'll just give you the option I prefer first -- and that would be to separately define sexual misconduct in the definition section, and then you change 23.13.702(3) to say, "Engaging in sexual misconduct as defined in these rules," as opposed to adding the full definition to 702.

I think it's already a long rule, and it would probably clutter it up and make it hard to use. I prefer defining it in the separate section, and just referencing it as we suggest here on Page 58. Other than that, I don't have
any comment.

MR. SAYLER: This is Matt. Just in looking at it, the definition that's here seems extremely broad. I think it could be much more narrowed. It seems to encompass a lot of things that we don't really need to, and sort of revising it in some areas.

For example, it says -- a lot of it is encompassed already in statute with the changes in privacy communications from the last legislative session, I think, that you're not allowed to send unsolicited and pornographic pictures to anyone anyway. So that would fall under not obeying laws, so I don't know why we need to define things multiple times for the same action.

I think a lot of this is already covered in our other ARMs, too. There's no need to keep doing it over and over again. I just think it's too broad. It needs to be more narrow, more specific.

CHAIR SLAUGHTER: So this is Jesse Slaughter. So with what Matt just said, if we make a motion today to move this forward, we're just making a motion for it to go back to the ARM Committee for them to further work on the
language. So there would be a point of discussion on that in the ARM Committee, correct? Because we're not making this an ARM today.

MS. BOLGER: No. This is what I like to refer to as a supposal. This is not proposed language, this is supposed idea conceptually.

CHAIR SLAUGHTER: Is that a word?

MS. BOLGER: I made it one.

CHAIR SLAUGHTER: I like it. So Matt, to address your question, does that make you feel more comfortable?

MR. SAYLER: Yes. I just think it seems extremely broad, what it says. Maybe a little bit too much overreach for us, I think, in some areas.

CHAIR SLAUGHTER: Okay. Thank you. So having said all that, unless somebody disagrees with me, I think we would need a motion at this time to have the ARM Committee evaluate and/or create a sexual misconduct definition under ARM 23.13.102 and ARM 23.13.702 subsection (3), which are new subsections. I believe we'll need a motion for that to move to committee.

MS. WHITE: So moved.

CHAIR SLAUGHTER: Kristine White made a motion.
MR. BILL SMITH: Bill Smith. Second.

CHAIR SLAUGHTER: Any further discussion in the room or on the phone?

(No response)

CHAIR SLAUGHTER: Shelby.

MR. MUIR: Mr. Chair, Mark Muir here again. I just want to again wholly commend you for taking the topic on. I think in light of the fact that there isn't a lot of uniformity among agencies across the state, this is a step forward in the right direction to amend policy and to help with regard to the ethics training that is required every couple of years.

This will become part of the mandatory review, subject to the ethics requirements. I think it's a step forward in the right direction. So I encourage you to move forward with this.

Thank you for your time.

CHAIR SLAUGHTER: Thank you, Mark. I appreciate it. At this point in time we'll take comment from Shelby DeMars who is in the room.

MS. DEMARS: Thank you guys for letting me get up here really quick.

One of the things that -- Our association, the Montana Police Protective
Association, has had a couple discussions with Eric.

One of the things that our members have brought to our attention, and is something they would like this group to consider, would be looking at putting a more accurate reflection in ARMs of what the Case Status Committee is and does, and how they go about it.

So it's my understanding that as it stands, that committee already, when they conduct a review, when the Executive Director comes in with a recommendation, in many instances they vote on that currently, and that's kind of what the process is thus far.

Our group would like to see that put in writing, just for clarification purposes more than anything. And so I guess it would be our request for this group to consider making a motion to refer that issue to the ARM Committee for further investigation, if that is something you're interested in, basically just looking to clarify and put in writing the process that is already in place. So that's it for my firm.

CHAIR SLAUGHTER: Thank you, Shelby.

Anything further?
CHAIR SLAUGHTER: So if I remember correctly -- kind of got off track here -- we have a motion, we have a second, we've had discussion on this issue. Now we need to move to a vote.

However, my question of clarification I guess is for you, Stuart. With what Shelby just said, is that discussion -- do we need to change what we framed in here, and discuss what she stated? Because it was a little different from where we were.

MR. SEGREST: It is on a different issue. I don't think you need to. You have a motion on the floor regarding the sexual misconduct definition. I suggest you vote on that, and then move to discuss the Case Status ARM change.

CHAIR SLAUGHTER: Perfect. Thank you. That's what I wanted to make sure I got. So for clarification -- and no offense, Ms. DeMars. We're just trying to make sure we've got it all seamless.

MS. DEMARS: You bet.

CHAIR SLAUGHTER: The only thing we're discussing right now, and the motion on the floor
and the discussion, is to move the sexual misconduct new subsections that were delineated on the record already to the ARM subcommittee. So we're going to go to a vote on that. All in favor, signify by saying aye.

(Response)

CHAIR SLAUGHTER: Opposed, same sign.

(No response)

CHAIR SLAUGHTER: Motion carries.

Now with regards to the MPPA -- right? That's who you said? Okay. I just want to get it on the record right -- MPPA's request regarding reducing Case Status Committee recommendations to the Director in writing or -- I want to make sure I say it right. Go ahead. Make sure I get it right.

MS. DeMARS: We would be asking for a motion for the ARM Committee to look into further defining in ARM the Case Status Committee, and their process for voting on recommendations from the Executive Director.

CHAIR SLAUGHTER: Okay. So I guess my question to the Council, based on the MPPA's question, is: Is that something that we would want to do today, or is that something we want to
take under advisement, sort out, and deal with at
another meeting?

   MR. CONNER SMITH: This is Conner. I
think it's something we can deal with today
personally. We talked about it yesterday at the
Case Status Committee meeting, and I think we were
in agreement to move forward.

   CHAIR SLAUGHTER: Okay.

   MR. THOMAS: Chairman Slaughter.

   CHAIR SLAUGHTER: Yes, sir. Mr. Thomas.

   MR. THOMAS: Just backing up what Conner
said. Yes, I think we're in agreement we need to
go there.

   I guess my only question would be I
don't know when the Case Status Committee was
implemented, and I'm just wondering why, if anyone
remembers, why it wasn't put in, you know, defined
in ARM back then. Was there a reason for that or
was it just not --

   MS. BOLGER: This is Katrina, and I was
there, so I guess I'll speak to it.

   There was concern about the Council not
being aware of any of the allegations that were
being discussed by the Director and the
Investigator.
So the Case Status Committee was created I believe in 2013, potentially the end of 2012, and the idea was that the full Council can't hear any given case because they act as the jury, but they could keep a small number of people who can be informed and then recuse themselves during any oral argument without endangering the quorum.

Why it was put in policy is because the Administrative Rule 23.13.703 actually refers to that policy, and requires that it exist, but it was never specified that the Case Status Committee would be as involved as it was.

As the ARM's currently stand, the -- quote unquote -- power, so to speak, lies with the Director, and that essentially has not been the practice. The committee provides a majority vote before the Director moves in general.

So it's current practice, and I don't know what it hurts to put it in writing, but that's a question for Stuart.

MR. SEGREST: I agree with Katrina.

MR. GILBERTSON: I'll just add a point to this, because we did sit down with MPPA and get their perspective on things.

And I think if that provides clarity to
some of the stakeholders and people who are affected by POST, then why wouldn't we? It seems like a logical change, and POST's goal is always to be transparent in its processes. So I don't see any reason not to consider it.

MR. THOMAS: Do we need a motion?

CHAIR SLAUGHTER: Mr. Thomas, I was actually going to look to one of you members of Case Status Committee to make a motion.

MR. THOMAS: This is Jim Thomas. I make a motion to direct staff to develop language for an ARM that formally recognizes the authority and function of the Case Status Committee.

MR. CONNER SMITH: This is Conner. I second that.

CHAIR SLAUGHTER: We have a motion on the floor by Mr. Thomas, second by Mr. Smith. Do we have any further discussion either in the room or on the phone?

MR. THOMAS: Just one thing. Did that sound --

MS. DeMARS: Yes.

CHAIR SLAUGHTER: Again, any further discussion?

MS. BOLGER: This is Katrina. I just
want to be clear. Does that mean we can take it to the ARM Committee, or we're just developing language?

CHAIR SLAUGHTER: To my understanding -- correct me if I'm wrong -- that means we can take it to the ARM Committee.

MR. THOMAS: Correct.

CHAIR SLAUGHTER: So based on what I just said, now any further discussion again?

(No response)

CHAIR SLAUGHTER: Okay. Hearing no further discussion, all those in favor, signify by saying aye.

(Response)

CHAIR SLAUGHTER: Opposed, same sign.

(No response)

CHAIR SLAUGHTER: Motion carries. Thank you all very much.

Next is appeals, correct, Director?

MR. GILBERTSON: I believe so. I think all interested parties in this area had the opportunity to speak, unless I missed anyone who had something else in this section that wanted to raise the issue before we just continue down the line.
MR. GILBERTSON: So the proposed potential change to ARM 23.13.721 can be found on Page 59, and this arose out of the Legislature passing House Bill 28 in the last session, which removed the ability for someone aggrieved of a decision to appeal to the Board of Crime Control. So essentially this is how to make our ARMs comport with that legislative change, and I'll let Stuart speak as to his recommendation and options.

MR. SEGREST: Thank you. My recommendation would be to go with Option 1, and that is to leave in -- to take out the portion of the rule that speaks to Board of Crime Control, and just leave it so that a final POST Council decision is the final agency decision.

There is an option, which would be Option 2, to completely repeal it, and just let the statute speak to that. I suggest that you leave the language that's in the rule explaining that POST's decision is the final agency decision, so that for purposes of transparency, so that people reading the rules don't have to understand or know about the statute in order to figure out
CHAIR SLAUGHTER: Thank you, Stuart. I appreciate that, and unless anybody disagrees, it's pretty clearly laid out here on Page 59, so I guess I would ask for a motion.

MR. SAYLER: This is Matt. I make a motion that we adopt Option 1.

CHAIR SLAUGHTER: Second.

MR. CONNER SMITH: This is Conner. I second.

CHAIR SLAUGHTER: We have a motion now and a second on the floor. Any further discussion regarding the appeals section of ARM 23.13.721? There's two options presented. Option 1 is which we have a motion and second for, that we move forward with that change to the ARM.

And for a point of clarification, Katrina, this would be a change to the ARM, correct?

MS. BOLGER: Are we moving forward with the change, or moving forward to the committee?

MR. SAYLER: I thought the change.

CHAIR SLAUGHTER: My understanding is the change, too, Katrina.

MS. BOLGER: Good deal.
CHAIR SLAUGHTER: Any further discussion? Anybody on the phone or in person?

(No response)

CHAIR SLAUGHTER: Hearing none, all in favor, signify by saying aye.

(Response)

CHAIR SLAUGHTER: Opposed, same sign.

(No response)

CHAIR SLAUGHTER: Motion carries.

Okay. Moving down the list, Item C, non-sanction requests for hearings. And I think this arose from a discussion with Mike Fanning and Katrina Bolger, and this is one where they are substantially more knowledgeable than I am as to how this works.

I know that the rule as it currently exists allows someone who is aggrieved by a decision of the Director not resulting in a sanction, or a denial, some action taken on the certificate, is allowed to request a Council hearing.

And I guess I have POST staff's perspective on what that could potentially mean, if you guys would like, but I would like maybe Stuart or Katrina to further illuminate the issue.
MR. SEGREST: So I guess I can sort of walk us through the options, and the idea here is to at least define, better define how you're going to handle requests or challenges to Director decisions that don't have to do with a certificate or discipline.

This is at Pages 60 and 61. So at the very top of 60 you see the current rule. And one option is to define -- and this is Option 1 -- just lay out a process for contesting something that is a decision of the Director that's not a certificate or discipline issue. So that's the new language at two and three there.

And it would follow what's provided already for a case hearing under what was two in the current rule, and so provides for --

CHAIR SLAUGHTER: People on the phone, can you please put your mike on mute. Thank you. Go ahead.

MR. SEGREST: So I think the main side rails it puts on is that it provides it has to be the aggrieved party or the aggrieved party's attorney, and Katrina and I talked about potentially you could add the agency, the
employing agency, but to make sure that it's not any member of the public, that they have to have a direct stake in that particular decision.

So that is Option 1. It's basically what you currently have, putting a few more side boards on who can make that request for a contested case hearing.

Option 2 is to completely take out the ability of anyone who is not aggrieved by a certificate or discipline issue from suggesting a contested case hearing.

So another way of stating that is that the only parties who can request a contested case hearing would be those for whom the Director denied, sanctioned, suspended, or revoked their certification. That's all that's left in that one.

All other Director, complaints about Director action they could, I suppose, ask to bring that issue to POST, to the Council, and I think they have in the past, but there's not a specific ability for them to request a contested case hearing. So that is Option 2.

Option 3 is a different way of looking at Option 1 that speaks, it kind of combines a
certificate issue and non-certificate issue, and just says, "Any public safety officer aggrieved by a decision may request a contested case hearing," put those side boards on.

And again, if you go with that one, Katrina and I were thinking you might want to add in the employing agency as someone who could contest that.

So Mike Fanning, who had to leave, but he and I have talked about this some, and he suggests that -- My initial thought was that I would recommend you go with Option 2, and just limit it to those who have a certification issue that they're contesting, because of the strain on staff resources and staff time that comes along with a contested case hearing.

Mike brought up a good point that you also want to think about providing some manner for those aggrieved by other decisions, such as an equivalency decision, to have some means to request the Council reconsider that.

So I think -- and this is not on here -- but sort of a middle ground Option 4 would be to allow a contested case for a certification decision of the Director, and then allow them to
-- and I don't know exactly how you want to phrase this -- but something like "request consideration of the Council to review other Director decisions."

And you could further curtail that by listing those that are maybe important enough or sufficient enough to warrant Council review, such as an equivalency determination. And I'm sure Eric and Katrina could come up with some of those points.

So that's a middle ground as to allow some level of review by the Council, and have that in rule for those aggrieved by these non-certification decisions, but not have it be to the level of a contested case hearing, which again takes extra resources and extra time.

So those are I guess four, if you will, options that we've discussed. And I know Katrina and Eric have a much better handle on the types of resource strain that these contested case hearings present. And I don't know if, Katrina or Eric, you want to address that at this time.

MR. GILBERTSON: I think just real quickly. Some people are probably wondering what's an example of a decision the Director makes
that isn't part of a sanction.

And so later on in this meeting, I'll talk about I personally approved 1730 officers to attend 2404 trainings since the last Council meeting. And I could potentially not allow someone to attend the training, or not recognize those training hours if they don't meet the requirements of that training.

Those are the types of decisions that I think are the day-to-day workings of POST, where if someone attended a two hour online training and then didn't indicate that they were retaining the required materials, and I denied that training, they could potentially request a contested case hearing. And I don't know that that is a good use of resources and finances and time for POST with what we currently have.

MS. BOLGER: This is Katrina. If I can just elaborate a little bit.

Part of this came up between Mike and I talking about somebody who was aggrieved by a decision of the Director, and the question was: Does he go to the Council to request reconsideration, or does he request a hearing?

Well, currently anybody can request a
hearing, and frankly having anybody appear before
the Council to complain about a Director's
decision does not comport with the ARMs.

The statute only gives a contested case
hearing to people who have been sanctioned or
denied basic certification, which is why Option 2
can exist, so to speak.

But for those who are not aware, the
contested case hearings are a full-on civil trial.
There's discovery, there's motions, there's a
hearing, there's witnesses, subpoenas. It takes a
lot of work, it takes a lot of time. Tens of
thousands of dollars is not unheard of for a
hearing. It takes a lot of hours. We don't have
a staff attorney to work those cases. We buy our
attorneys hour for hour.

So those are just a couple of things to
consider. We all want to provide due process as
much as we can, but we also have the resources we
have.

CHAIR SLAUGHTER: Katrina, Director
Gilbertson. As a point of order, are we going to
make a motion for this to go to the ARM Committee,
or is this to approve an ARM with these four
options?
MS. BOLGER: This is Katrina. I think we were looking for direction from the Council as to what their preference would be, who should be allowed to have a hearing, and then perhaps take one of the several options discussed to the ARM Committee to refine, and clarify, and make it right.

CHAIR SLAUGHTER: So I guess we would now need a motion to decide which one of these we want to go with, and then we'll have discussion on it.

MR. SAYLER: This is Matt. I guess I would make a motion that we explore Option 4. It seems like the best option that was presented, and I think it offers the best checks and balances consistent.

MR. THOMAS: This is Jim. I second.

CHAIR SLAUGHTER: So Matt made a motion, Jim seconded. Thank you. So now let's open up the floor for discussion. Real quick before we go down the road of discussion, I'm going to ask Stuart to quickly rehash Option 4 again, just so we're clear.

MR. SEGREST: Sure. So Option 4 would retain the language in Option 2, which you have to
do. It speaks to a contested case hearing for those that the Director denies, sanctions, suspends, or revokes their certificate; and it would also provide that an individual aggrieved by a decision of the Director could request reconsideration by the POST Council, but that reconsideration would not include a contested case hearing.

And one option that I provided that I don't know if you want to do or not, would be to further limit the options to request reconsideration without a contested case hearing to certain substantive decisions that the Director makes.

MR. SAYLER: This is Matt. Just so I can clarify. So would this be -- So for example, we could say you could appeal to the Council if it wasn't a condition of like a revocation, suspended, if this had to do with outside certificate issues. For issues not for a certificate, you could come to the Council. If it was for a certificate, though, you'd have to go automatically to a hearing.

MR. SEGREST: Yes. That is correct.

And the only other option -- I don't mean to
confuse it, but it is something I know Katrina and Eric had talked about -- is for those other options that's outside of a certificate issue, you can either just leave it open and say, "You may bring any -- anytime you're aggrieved by a Director's decision, you can bring it to the Council for reconsideration;" or you have a list of determinations by the Director that you can go to the Council to seek reconsideration. So putting more side boards on that option.

MS. BOLGER: This is Katrina. Just a piece of history for people.

The Council has the ability to waive its requirements, and that type of thing, which is why the Council consideration has historically been provided for things like training. When somebody needs a waiver of the open and advertised requirement or something like that, the Council is required to act upon that.

I'm not suggesting that we shouldn't provide a list, but I think that just knowing why that has gone before the Council historically helps.

MR. SEGREST: If I could make a suggestion. Perhaps at this point you leave off
the list, and you just provide the two options, and allow the ARM Committee to write that up, and then you can consider the language, and if you think you need more side boards, you could so direct them at that time.

CHAIR SLAUGHTER: Any further discussion?

(No response)

CHAIR SLAUGHTER: Anyone on the phone?

(No response)

CHAIR SLAUGHTER: So we have a motion by Matt to take Option 4 to the ARMs for further tweaking -- I guess is the right word -- further editing. If I can think of a more appropriate word.

MR. SEGREST: Perhaps even drafting.

CHAIR SLAUGHTER: Drafting. Thank you. I was trying to find the word -- to take Option 4 to the ARM Committee for further drafting. And not hearing any more discussion on that, we'll move to a vote. All in favor, signify by saying aye.

(Response)

CHAIR SLAUGHTER: Opposed, same sign.

(No response)
CHAIR SLAUGHTER: Motion carries.

So with that, we are going to move to old business. Do we need a break?

(No response)

CHAIR SLAUGHTER: Old business, I'll go back over to Director Gilbertson.

MR. GILBERTSON: And I may draw upon Kimberly for this, but I believe it was discussed at the last meeting that there was going to be a review of the existing Public Safety Communicator Basic course content.

Since that time, myself and I believe Kimberly attended both. There have been a couple discussions hosted by Glen Stinar's staff, Kelly Sherman, as to what some of those changes to the curriculum might be.

Some of the stakeholders in public safety weren't utilizing some of the training, I guess the Emergency Medical Dispatch, and they have their own system, so they're asking their staff when they come back to disregard that training.

And I think the discussion was should we streamline the curriculum to bring in other trainings that are more relevant across the state.
And so much of those discussions is centered around potentially making that 24 hours of EMD optional for those agencies that would like that training, but not a mandatory part of the training.

And then there was also a discussion about bringing in a leadership training, which was a request of some of the PSC stakeholders, as well as wildland firefighter dispatching, which is I think one of the other big blocks, and there probably are others I'm not remembering.

So I will just say we've had those two discussions, and I know Kelly has scheduled another one coming up, I think for next week. So it's continuing to be discussed. So I just want to provide that update. And then if Kimberly had anything she wanted to add to that.

MS. BURDICK: This is Kimberly Burdick. So I think the biggest part of the discussion does form around taking EMD out of the curriculum, but I think that it's a good step to take, because I think we had discussed dispatching, or dispatchers and agencies probably being saturated, reaching that point over the past few years that EMD has been offered. And we're probably going to get as
many agencies as we are right now signing on to do
EMD.

So the other thing is in POST we did
adopt the rule for telecommunicator CPR, which is
giving directions over the phone. So that is
already a requirement that is going to serve
agencies well I believe. I mean EMD is -- it's
huge. You can get medical fire, and law
enforcement.

So the TCPR, which in my opinion is what
911 is all about, is giving those directions, and
helping when they get a 911 call. CPR is one of
the big ones, and that's what an awful lot of
citizens think of is CPR and getting that help
when they have that emergency.

So I think this is a good direction to
take, and I know Glen is probably going to expand
upon that, too, when he talks.

MR. STINAR: Sure.

MS. BURDICK: All right. Thanks.

MR. GILBERTSON: I don't know that we
need further discussion, but I guess I'll just ask
the Council. Is there anything more that they
would like POST staff to be doing on the issue?
Not being a part of the first part of the
MR. STINAR: Do you want me to comment now then?

MR. GILBERTSON: That would be great, Glen. I would appreciate it.


As previously mentioned, we've had two discussions. We plan to have one more next Monday. I think that will sort of have taken it as far as we're going to.

There are two primary purposes really. One is to engage stakeholders who seem to have the biggest voice in how things were going, and the other thing is just to see if what we were doing was still relevant.

So you're absolutely right. EMD will become an elective, much like CJIN is right now. So the week prior to the PSC Basic class we'll have EMD on the schedule, as well as CJIN certification -- those that want to take it can, those that don't need it, don't -- and we'll backfill those hours with those things that have been suggested through the groups.
Monday is our last I think meeting, all things considered, then we'll put together the lesson plans, curriculum identified, instructors, and when we get all that done, we'll come back and say here's where we think we need to go.

MR. GILBERTSON: And I guess just a point of clarification. There is a class scheduled for February that will be taught under the existing curriculum.

MR. STINAR: Right. And we have added -- One of the requests was that we add a class, so we'll have four next year, instead of three. But the curriculum will stay the same until we can kind of get all of the other pieces ironed out.

The good news is most we have in-house already. I think the wildland firefighting piece is an interesting conversation, and I think the folks in Billings are interested in providing that. So we went from having someone who was sort of a resister, to someone who is now an active participant in training. So I think that's one of those great outcomes of just getting together and talking.

CHAIR SLAUGHTER: Thank you.

MR. GILBERTSON: I think we can probably
move on to the next issue, which is "B" on Pages 62 and 63, the Attorney General opinion letter. And Chair Slaughter, do you want to speak to this or I can.

CHAIR SLAUGHTER: I can speak to it. So this had to do -- This came out of the April meeting -- does that sound correct -- here in Helena, in which we discussed some specific issues with POST conviction adjudication with relation to records being expunged.

And one of the issues that we were discussing was we have conflicts with ARMs in State law, and we wanted to do an Attorney General's -- ask for an AG's opinion on it, which is the letter that I signed on Pages 62 and 63.

And essentially what we were trying to ask the Attorney General was: If a person's record has been expunged, but they committed an offense that -- if they committed and were convicted of an offense that would prohibit them from being a law enforcement officer, public safety officer, what have you, does that expungement basically trump the conviction?

So we wrote this with the intention that we wanted an answer. And then however there is a
case out there now that exists that is going to
deal with this directly.

So what I believe we want to do is we
want to retract this letter, so we don't have two
separate matters that are ruled on differently, or
could be ruled on differently. So we want to
retract this request for an AG's opinion, and let
the Court determine, due to what is actually a
case that fits this perfectly that's out there in
existence.

So I think what we're asking of the
Council is a motion to withdraw our Attorney
General opinion letter.

MR. SAYLER: This is Matt. So moved.

MS. BURDICK: Second.

CHAIR SLAUGHTER: Kimberly seconded.

Any further discussion in the room or on the phone
regarding that matter?

MR. THOMAS: Just one question. So this
case right now is in the -- has it gone to court?
Is it in the courts or is it --

MS. BOLGER: This is Katrina. It's in
the contested case hearing process.

MR. THOMAS: So if it doesn't go to
court, then we would need an AG's opinion on this,
right, if they don't take it on to District Court, the Montana Supreme Court?

I guess I'm asking. Do we want to table the request, or do we want to completely do away with the request, or can we table it?

CHAIR SLAUGHTER: Mr. Thomas, I think you're correct. I think we just need to notify the AG to not make an opinion on it, and let this case basically take its course. And then obviously if it didn't happen, for some weird reason, we would probably then -- correct me if I'm wrong, Katrina and Stuart -- reissue a new letter.

MR. THOMAS: Okay.

MR. SEGREST: I think I can address that, having worked in the AG's office for a long time, and dealt with AG opinions as part of my job.

It's actually a policy of the office to not issue AG opinions if a matter is currently being litigated. And this matter, even though it's not in court yet, is being litigated. So I suggest that you withdraw it as opposed to just keep it tabled, so that they know that they can put it off of their to-do list.
And then often out of a contested case hearing, you do go to District Court. If somehow that doesn't happen, or there's not a specific decision, I think you just already have the framework. You just reask for the opinion at that time.

MR. THOMAS: Okay.

CHAIR SLAUGHTER: Great question. Any further discussion on the Attorney General opinion letter, in person or on the phone?

(No response)

CHAIR SLAUGHTER: Hearing none, all in favor of us withdrawing our Attorney General opinion letter, signify by saying aye.

(Response)

CHAIR SLAUGHTER: Opposed, same sign.

(No response)

CHAIR SLAUGHTER: Hearing none, motion carries. Stuart, would that be something you could reach out to the AG's office and do for us?

MR. SEGREST: Absolutely. And just so you know, the way I'm going to do that is draft a letter for you to sign that I will then provide to them.

CHAIR SLAUGHTER: Sounds good. All
right. Turn it back over to the Director because we're going to discuss the calendar for 2022.

MR. GILBERTSON: My suggestion would be to get through this item and then take a break for lunch, and just a break in general.

So the last item is to consider POST Council meetings for 2022. And again, this is new to me, and I know we did three meetings last year. I think we have a volume of work, and from a staff perspective, four meetings might be a better fit given the volume of what we do.

I guess I would ask the Council to consider the issue, and establish their preference whether we should have three meetings a year, four meetings a year. Both calendars can be found on Pages 64 and 65, and we did have some circled dates for proposed dates, but those could be adjusted.

So I think first, the decision as to whether we want three or four, and then if those dates work or we need to adjust them.

CHAIR SLAUGHTER: So my two cents is four meetings wouldn't be a bad idea with everything that we have going on. We have a lot going on. I do understand this is a heavy lift
for everybody, and I really do appreciate it, but there's a lot going on right now, and looking into the future it's going to get to become more.

But with that said, I would put it out to the Council for a motion for the three or the four meetings, whatever is the Council's preference.

MR. THOMAS: Chairman Slaughter, Jim Thomas. I'd like to make a motion that we go to four meetings, adopt that calendar for 2022.

MR. BILL SMITH: Bill Smith. Second.

CHAIR SLAUGHTER: We have a motion and a second on the floor. Do I have any further discussion, whether in the room or on the phone?

(No response)

CHAIR SLAUGHTER: Hearing none, go to vote. All those in favor, signify by saying aye.

(Response)

CHAIR SLAUGHTER: Opposed, same sign.

(No response)

CHAIR SLAUGHTER: Hearing none, none opposed, the motion carries. So for 2022 we will go to four meetings. Let's take a break.

(Lunch recess taken)

(Wyatt Glade not present)
CHAIR SLAUGHTER: Lunch break is now over. Thank you all for coming back to your seats. I really appreciate it. I'm going to turn it over to Director Gilbertson for new business.

MR. GILBERTSON: Don't get too comfortable over there, Jesse. The first order under New Business is a resignation letter received from Tia Robbin.

And I never had the opportunity to meet Tia in person, but I do want to thank her for her service to the Council. In my discussions with outgoing Director Perry Johnson, he mentioned what a valuable resource she was to the Council, and while she wasn't always the most vocal of members, when she did speak, it was with great authority and great wisdom.

So again, I'd just like to recognize that she did serve the Council for about six years. It looks like she received a well-deserved promotion, and she has other commitments that won't allow her to serve on the Council anymore. So Jesse, I know you had a chance to serve with her, so if there's anything you'd like to say, feel free.

CHAIR SLAUGHTER: Absolutely. I served
with Tia for a long time, especially when I was a member of the MPPA, on the POST Council, and she's been a long time member, did a very, very good job, and she will be missed. That's for sure. So thank her for her service.

And then moving forward, Chief Oster.

Are you still on the phone, Chief?

MR. OSTER: I am.

CHAIR SLAUGHTER: So Chief, I've had the pleasure of serving with you for a long time, so have several other members of the Council here, and you've done a fantastic job. And we know that you're retiring to do probably bigger and better things. But we do have your letter of resignation here, and I guess I would open it to you because you're present.

MR. OSTER: Open it up to me to do what?

CHAIR SLAUGHTER: Is there anything you'd like to say, Chief?

MR. OSTER: No. I appreciate the years I got to serve, and it's been a real pleasure. I wish Eric and the new crew there good luck in the future. POST's mission is a noble one, and I know that those that I've served on the Council with and those who are on the Council now take that
very seriously.

And as law enforcement administrators, we appreciate that, and we want to make sure going forward that POST is a vibrant organization, that provides that sense of accountability for the citizens of Montana that somebody is watching the standards. And I know you guys will do a great job with that. And so thank you for your friendship, and thanks for opportunities to serve alongside you. As Leo would say "Back on you."

CHAIR SLAUGHTER: Thank you so much, Chief. I think it should also be noted that the Chief was not only a very good Council member, but he also testified in front of the Legislature many times on different things, and was a big leader in our state, and probably always will be. So God bless you, and good luck to you, and thank you for being on today.

MR. OSTER: Thank you.

CHAIR SLAUGHTER: You're welcome, Chief. If there's no further discussion on new business, we'll go towards Administrator Glen Stinar.

MR. STINAR: Good morning again. Glen Stinar, S-T-I-N-A-R, Administrator of the Montana Law Enforcement Academy. My purpose here is to
talk a little bit about the Law Enforcement Officer Basic course.

First briefly, we have one graduating next Tuesday. I know Eric will be there. So six of those students had missed training due to illness, so they have already been scheduled to come back for the next class. So this is sort of I think something we're going to see for awhile.

So what that means to the Council, and particularly to the staff here, is that I've already written letters saying they're not going to get their diplomas until they come back. They have the dates. And you will have a copy of that letter when you get the POST roster from us.

So then when they do come back, for those, whatever they missed, then I'll submit a letter saying they've now met the requirements. Feel free to do what you do.

So I think that's how it's going to be here for awhile, but that's how we've decided to resolve it. So they'll still walk across the stage, they just won't get their diploma, and they'll have to come back and finish to get their diploma. That's I think the best way to do that.

The second thing that I'd like to talk
about is expanding the way that students receive their diploma and eventual certification through POST.

The Academy was established in 1959, February, and I think we've probably done business the way we've always done it because that's the way we've always done it. So what that means is that you get hired by an agency, your name goes on a list, you go to the Academy, you come back, and then after that year of service, you get a Basic Certificate.

And what we find -- and we've had discussions both internally and with some of the agencies around Montana. You know, if you call me today and said, "When can I get a reserved seat for a Law Enforcement Officer Basic class?," I would tell you January of 2023. That doesn't mean it's not going to happen sooner, it just means that those seats are already reserved to then.

You know, we have 176 agencies, 4,000 and some odd sworn altogether, and we'll see 25 or so agencies at a time we can accommodate at any one Basic class.

So the math has never really worked well, and it sort of creates angst at the agency
level, so we're trying to figure out some ways how
we can create more predictability, much like we
did in the Corrections Detention Officer course.

   So a couple things sort of on the
horizon. One, we've asked for some more FTE's
through the legislative process so we can go to
four Basic classes instead of three. I think that
will help. We want smaller classes. We want all
those things, those Christmas wish lists. I think
we're positioned to sort of make some traction
with that.

   The other, about 30 states have some
connection with community based colleges and
universities to obtain a certificate, an
associates degree or some other certificate
program in lieu of a Law Enforcement Officer Basic
course.

   So what we are proposing, with your
approval, is to sort of enter into a study period
where we look at the feasibility of bringing a
model like that to Montana. There's three
community colleges here -- Glendive, Miles City,
and Flathead -- and they're funded a little
differently through the Legislature.

   The Legislature sends funds to these
colleges to promote work force training for folks to stay in those communities. And like I say, there is some interest in the Attorney General's Office to sort of help us do some things we need to do to get this to reality.

The problem is we don't know what we don't know. So the reason for me being here today is to really ask for some input and some support, because ultimately you would have to approve that curriculum. There's some things we would have to change legislatively, so kind of half a dozen little things we've just got to work our way through to kind of get this one to the finish line.

But my proposal is that we work with the Curriculum Development Committee. I think I'm on that still, too -- and the good thing is we're not reinventing the wheel. We're just sort of looking for programs that we think might fit Montana's needs to allow agencies to have a broader pool of applicants that would allow them to not necessarily attend a Law Enforcement Officer Basic course, at least not the whole thing.

If we determine at the end that an associates degree and a couple weeks here in the
summer, kind of a skills test out, if you think
that that's the best way to do this, then we can
sort of accommodate that. If you think, "Hey, an
associates degree gets you the diploma, and it's
up to the agency to figure out what to do with you
from a skills/training perspective."

So I guess however we land, ultimately
the Council are the ones -- you -- will be
responsible for approving the training that
ultimately gets folks sort of a diploma in lieu of
a Basic course.

So those are a couple things we're
working on. Like I say we've got some --

CHAIR SLAUGHTER: Turn your mike on.

MR. STINAR: Sorry. So we have, like I
said, had mentioned, talked with community college
folks and MSU Bozeman. They're interested in sort
of helping us with this project.

Obviously colleges and universities are
businesses also, and everybody wants to stay
relevant. I think this could be sort of a
win-win. The agencies have a broader pool. I
mean a 20 year old kid may not want to be a cop,
they just want to go to college for a couple
years, then at the other end they come out, and
they are more employable than having to kind of
wait in line.

So I think this is sort of I think the
direction I'd like to maybe take the Academy, and
hopefully maybe that will help agencies, as well
as just people in Montana, you know, promote work
force training, promote alternative ways to get
employed as a peace officer, to get employed as a
peace officer, and then that will help us here,
too, I think as well. So that's sort of --

UNKNOWN SPEAKER: You're out of time.

CHAIR SLAUGHTER: We're going to get a
new one.

MR. STINAR: It's the same problem we
have. It's always batteries and keys that stops
every operation from getting to the finish line,
isn't it?

But subject to your questions, that's
sort of the broad overview. As I had mentioned,
we have some folks who are tee'd up to kind of
talk about it a little more. So we don't have a
timeline. We just want to explore, or refine,
come back, and breathe, and hopefully --

I don't want to drag this on forever,
but I think it would not take us longer than a few
months to kind of see what's out there, see what fits, and then see where we can go from here. So that's my ask I guess for today.

CHAIR SLAUGHTER: As a point of clarification, Administrator Stinar, I want to make sure I understand you correct.

You mentioned creating a study group. You're not talking about waiting until the next session, doing a legislative group, you're talking about an internal study group?

MR. STINAR: That's correct. Really it will be driven by me, but I want to have some connectivity to the Curriculum Committee here, because it would sort of save time I think at the other end.

We have sort of this window of opportunity exists, because the legislative process will kick up again in a little over a year, and if we're going to ask for funding, if we're going to ask to FTE, all those things that have to kind of -- or we will be asking for Administrative Rule and MCA changes, because right now, the people have to attend a Law Enforcement Officer Basic course located at the Academy in Helena.
So they're not huge things to fix, they're just little things that we've got to make sure we're tracking so that when we come out the other end we're not, "Oops, we forgot something."

So does that answer your question, sir?

CHAIR SLAUGHTER: Yes. I just wanted to clarify that, because I don't think it needs that type of process. The Legislature may deem otherwise when we approach them.

So is your ask to use probably your staff and the Curriculum Review to kind of establish how this would flow, and then determine what I think universities and colleges that would be willing to jump on board with something like this?

MR. STINAR: Right, and we would do sort of the leg work here. I guess what -- I don't want it to be a surprise when I get a hold of Eric and say, "Let's set up a meeting with the Curriculum Development Committee," and kind of brief our progress.

So if there's more interest in being a part of it, then I'll allow other members of the Curriculum Committee to determine how much they want to get involved, but I sort of see this
playing out as an Academy driven study group that
sort of comes up with recommendations to the
Curriculum Committee, who then says, "We've looked
at this and we think it's going to work, and let's
go to the Council for some more discussion."

MR. CONNER SMITH: So Glen and I have
been in talks about this as well, and I'm on the
Curriculum Committee, so I'd like to help out with
whatever you need. I guess it's a good way to
move forward with this, and it makes sense, so --

MR. STINAR: I appreciate that.

MS. BURDICK: And I'm not on the
Curriculum Committee, but I would like to be on
the Curriculum Committee.

MR. GILBERTSON: I'll put on the record
I did talk to Glen about this. But I think one
advantage -- and correct me if I'm wrong, Glen --
but you haven't been able to host any preservice
officers at the Academy for a few years; is that
correct?

MR. STINAR: That's correct.

MR. GILBERTSON: So in a sense, if an
individual decides that they want to pursue a
career in law enforcement, this is an opportunity
for them to come out the other end with what would
potentially be an equivalent Basic certificate. It is a way to accommodate those officers without being appointed by an agency prior to attendance, right?

MR. STINAR: That's correct.

MR. GILBERTSON: And then another advantage that crossed my mind is we do have, I think Glen said 176 public safety agencies across the state, and many of those agencies, it is a drain to send an officer to attend the Basic class here for 12 weeks, and they have to figure out how to fill those shifts that are still occurring while that officer is in attendance here.

So having that, again, that candidate who doesn't have to come to the Academy after their first day of appointment is an advantage to those smaller stakeholders as well. So just a couple things I thought about and thought I'd mention.

MR. STINAR: We've talked with other states who do this sort of thing, Colorado being one of them. And from a POST Council perspective, the biggest challenge they have is ensuring that the training is really equivalent, it is what they said it was going to be.
Sometimes there was deviation from what is briefed that was going to happen and quality of training and what actually happens at the other end. So that QA, quality assurance, you know, that is one of the things we would have to sort of build into this is how do we know that the folks in Glendive are actually doing what they're saying they're doing, how do we sort of spot check those things.

So I think from your perspective, that would be the biggest concern is how do we ensure that, this continuity of training. I sort of envision that being an FTE that we roll into this process maybe as part of our and your organization, or just part of our organization, or yours, or whatever it is. We're not that far down the road yet. It's just how do we -- we have a body to go out and do these checks, so that's a big part of it.

MR. GILBERTSON: I think I heard you say that POST would get another FTE out of this?

MR. STINAR: No. I don't have that kind of authority, Executive Director. But anyway, the to-do list, you know. I think it's a good idea. I think it's time that we sort of look at maybe
doing things a little bit differently, and it
sounds like you're on board, so --

CHAIR SLAUGHTER: I guess I would ask.
Do we need a motion to codify POST's partnership
with MLEA in this journey with the Curriculum
Committee, and Kimberly Burdick who wants to help,
or anyone on the Council who want to help for that
matter, to give Administrator Stinar an answer so
we know we can move forward.

MR. SEGREST: I think you could have a
motion. I don't think you need one. At this
point I think it's more informational from
Administrator Stinar's point of view, and I think
the Curriculum Committee could probably address
it, and if further action is needed at that point,
there might be action from the full Council.

CHAIR SLAUGHTER: Sounds good to me. So
it sounds like we're good to go, we're on board
with that, and we will have the Curriculum
Committee I guess at your disposal, as you're a
member of them. Kimberly Burdick also would like
to help, and I would be willing to help as well,
Administrator Stinar, with any meetings or
anything that you want to see happen. I think
it's a great idea.
MR. STINAR: Thank you.

MR. GILBERTSON: Continuing, moving on to Item D. The Public Safety Communicator syllabus can be found on Page 69. This is what is scheduled to be taught at that February class, and we need a motion from the Council to approve I believe the curriculum.

CHAIR SLAUGHTER: Sounds correct. Do we have a motion to approve that?

MR. THOMAS: This is Jim. I'll make a motion to approve that curriculum.

MR. SAYLER: This is Matt. I'll second.

CHAIR SLAUGHTER: Any further discussion on the PSC syllabus curriculum?

(No response)

CHAIR SLAUGHTER: Anyone on the phone?

(No response)

CHAIR SLAUGHTER: Hearing none, all in favor of approving the PSC syllabus, signify by saying aye.

(Response)

CHAIR SLAUGHTER: All opposed, same sign.

(No response)

CHAIR SLAUGHTER: Motion carries.
MR. GILBERTSON: Moving on to Item E, the Probation and Parole syllabus. Similar to the last item, this is the proposed syllabus for the upcoming Probation and Parole class.

I know Mary Ann and I spoke to Tim Allred briefly regarding this, and I think there have been a couple minor changes to the syllabus, but it's essentially the same; is that correct, Mary Ann?

MS. KEUNE: Yes.

MR. GILBERTSON: So we need a motion to approve.

MR. CONNER SMITH: This is Conner. I motion to approve.

MR. THOMAS: This is Jim. I second.

CHAIR SLAUGHTER: We have a motion and a second. Any further discussion regarding the Probation and Parole Basic Academy syllabus?

(No response)

CHAIR SLAUGHTER: Hearing no further discussion, all those in favor signify by saying aye.

(Response)

CHAIR SLAUGHTER: Opposed, same sign.

(No response)
CHAIR SLAUGHTER: Motion carries.

Moving on to the Director's report. Director.

MR. GILBERTSON: Thank you very much.

Hopefully my microphone will carry through on this.

The first item is the budget, and in short summary, we have some money, we've spent some money, and we're likely to spend more for the remainder of the fiscal year. So essentially the numbers are what they are.

I will say that I believe POST to be good stewards of the money that it's allotted. Sometimes -- and I think we had a budget meeting here a week or so ago where potentially we might exceed our budget by small amounts. We have a large number of contested cases and other expenses in the coming year.

And I guess the only thing I'll say regarding the budget specifically is I think we need to take opportunities to save money where we can. POST has been in the position where they want to get the Council out across the state, have those meetings so other stakeholders can attend.

That is an expense that we have to balance with the other needs of POST, and I think
in light of that, my recommendation is that for
calendar year 2022 to hold the POST Council
meetings here in Helena to save some of those
resources, given the number of contested cases and
other fees we're likely to encounter.

Moving on to certificates awarded,
you'll see a list of the certificates that have
been awarded since the last meeting. There's been
323 of them. You can find those on Pages 77
through 101.

I spoke about it earlier, but the
trainings approved, I approved training for --
myself and Perry -- approved training for 1730
officers to attend 2404 courses, which totaled
32,605 and a half hours, which brings the sum
collective law enforcement knowledge across the
state up roughly three and a half years, if
someone were attending a course every single
minute of every single day in that short period of
time.

So on Item 4, we granted equivalency to
24 officers, eleven extensions.

And that will move us to the contact
list for the Council members and staff, and this
has been somewhat updated, but it's constantly
evolving, and so I guess I'll speak to that.

I know with Ryan retiring -- and I'm
hoping he's still on the phone -- I know there was
conversation with Doug Overman, who is the Chiefs
of Police rep, and they were going to solicit
interest in filling Ryan's slot, and I'm just
going to give Ryan the opportunity to provide any
update if he knows of anything.

MR. OSTER: This is Ryan. So actually
the new President is Wade Nash out of Polson PD.
He's the Chief there.

I know that the Executive Board for the
Chiefs association has I guess picked a rep that
they would like to see appointed to POST. I'm not
sure who that is, because I'm not on the "E" board
anymore, but they I believe are sending a letter
to the Governor with the MACOP support behind that
person, and so hopefully that will kind of
facilitate getting a new appointment. So that's
all I know about it.

MR. GILBERTSON: Thank you, Chief. I
appreciate the update.

Similar to that, I reached out to
Director Gootkin with DOC last week, and heard
back from him this week. It's his intention to
recommend Jim Anderson from DOC to fill that vacant DOC slot. I forwarded both of them the recommendation form and the appointment application, and so hopefully they'll be moving forward on that.

Which leaves us with the third vacant slot, and anyone listening in today or anyone present in the room, if you know of any good citizens who would like to serve on the Council, please advise them of the opening and ask they submit an application. We want to include those voices on the Council, and we would like to fill as many slots and let them be heard.

Moving on to Item 7, I think we covered adequately previously. That's the MPPA discussion, unless Shelby has anything more to address. Okay.

Then just generally office updates. We took on a new staff member -- myself -- and we'll see how it goes. I don't know how he's doing, but he's trying. Just a shout out to the staff that I have. They've been overwhelmingly supportive of me, and they are a blessing to the State of Montana, so thanks to them.

On another note, I guess we -- and
Katrina said it best this morning -- we are the busiest probably that she can ever recall us being in her time serving since around 2012.

MS. BOLGER: I think it was beginning in 2012. I'm nearing about a decade here.

MR. GILBERTSON: So I think your staff is doing as much as possible with the resources they have. And we've got a lot of upcoming issues to address, and we'll continue to move forward the best we can, and that's my Director's report.

CHAIR SLAUGHTER: Thank you, Eric. And we also agree about how awesome the staff is, including yourself. So you guys are doing a great job. Eric, I think you're a really good fit, and I think things are going to go quite smoothly with you.

So next we have to adjourn the meeting, but before we do that, do we have anything for the good of the order that we need to discuss?

MR. SAYLER: This is Matt. Are we just going to go off this February 23rd for our next meeting, or are we going to set that prior to leaving? Just so we know.

CHAIR SLAUGHTER: Let's do that.

MR. GILBERTSON: I think the intention
was to adopt that. Do you have a conflict there?

MR. SAYLER: No, I just wanted to double check.

MR. GILBERTSON: I think the proposed four meeting dates on that calendar -- and I don't remember the pages -- but the next one will be that one in February, and then we'll evaluate. I know some commitments come up later on in the year, and if we need to adjust the ones after that, we can.

CHAIR SLAUGHTER: Director, if the Council members could just get a calendar invite in the next week or two just for those meetings to remind everybody to put them on the calendar.

MR. GILBERTSON: They sure can.

CHAIR SLAUGHTER: Thank you. Anything else?

(No response)

CHAIR SLAUGHTER: Anybody on the phone have anything?

(No response)

CHAIR SLAUGHTER: Okay. Hearing none, do I have a motion to adjourn.

MS. BURDICK: Motion to adjourn.

MR. SAYLER: Second.
CHAIR SLAUGHTER: Kimberly made the motion, we're going to say Matt seconded. Any discussion?

(No response)

CHAIR SLAUGHTER: All those in favor, signify by saying aye.

(Response)

CHAIR SLAUGHTER: Meeting adjourned.

(The proceedings were concluded at 12:23 p.m.)

* * * * *
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POST Council Committees 2021

**BUSINESS PLAN/POLICY**
Kimberly Burdick – Chairman
Jess Edwards
Jesse Edwards
EJ Clark

**MARIJUANA**
Leo Dutton
Jesse Slaughter
Eric Gilbertson
Matt Sayler

**CURRICULUM REVIEW**
Conner Smith – Chairman
Jim Thomas
Bill Smith
Kimberly Burdick
Glen Stinar

**CASE STATUS**
Jim Thomas – Chairman
Conner Smith
Matt Sayler

**CORONER**
Leo Dutton – Chairman
Bill Smith
Kristine White
Wyatt Glade

**ARM**
Leo Dutton – Chairman
Jess Edwards
Bill Smith
Jesse Slaughter
23.13.102 Definitions  As used in this chapter, the following definitions apply:

…

(2) “Case status committee” is a three-member committee of the POST Council, appointed by the Chair of the council. The council chair shall designate a chair of the case status committee. The case status committee’s purpose is to determine whether allegations of misconduct by a public safety officer should be investigated by POST staff, to determine whether a certificate sanction is appropriate, to determine the appropriate sanction to a certificate upon a finding of misconduct, and to review other proposed actions at the request of the director. The director will act based upon a majority vote of the case status committee.

…

(27) “sexual misconduct” is defined as:

(a) any sexual activity, contact, or communication which occurs while the officer is on duty;

(b) any sexual contact without consent as defined in 45-5-501(1)(b), MCA, without regard to whether such violation results in criminal charges or a conviction, including gratuitous physical contact with suspects or other civilians, such as unnecessary searches, frisks, or pat-downs;

(c) any sexual activity, contact, or communication, on or off duty, which the officer facilitates with public safety agency property, resources, or information systems;

(d) procuring, observing, or disseminating pornographic or sexually offensive material either on duty or using department property or resources, when such procurement, observation, or dissemination is not related to the officer’s official duties;

(e) engaging in sexual harassment as defined in applicable laws; or
(f) any other sexual conduct which, whether committed in the officer’s
capacity as an officer or otherwise, is prejudicial to the administration of justice or
reflects adversely on the employing authority’s integrity or the officer’s honesty,
integrity, or fitness as an officer.
23.13.702 Grounds for Sanction, Suspension, or Revocation of POST Certification

1. The case status committee and 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 grounds for denial, sanction, suspension, or revocation of the certification of public safety officers are as follows:

   (l) the use of excessive or unjustified force in conjunction with official duties; or

   (m) 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; or

   (n) engaging in sexual misconduct as defined in these rules.
23.13.703 Procedure for Making and Receiving Allegations of Officer Misconduct and for Informal Resolution of Those Allegations by the Director

... 

(5) After the employing authority has been notified and given the opportunity to act, the director or POST staff may accept an allegation to be presented to the case status committee. If an allegation is received from an employing agency, the executive director may, if appropriate under the circumstances, send a “Letter 1” (as described in the POST Council’s policy and procedure adopted under subsection (1)) to the officer prior to consultation with the case status committee, provided the director notify the committee of the Letter 1 as soon as practicable.

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

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

(8) After an allegation is made by or filed with the director, and upon a majority vote of the case status committee, the director, contested case counsel for POST, or other POST staff or designees will investigate the complaint.

(9) Following the review and investigation of an allegation, communication with the respondent, communication with the employing authority, and consultation with counsel for POST, and based upon a majority vote of the case status committee, the director may take any appropriate action, including but not limited to the following:
(10) If a review of the conduct of an officer is pending before any court, council, tribunal, or agency, the director may, as a matter of discretion, stay any proceedings for denial, sanction, suspension, or revocation pending before the council, no matter what stage or process they have reached, until the other investigation or proceeding is concluded. If the case has already been assigned to a hearing examiner, the hearing examiner must grant a stay based on an application by the director or counsel for POST. The director will notify the case status committee of the stay at the next available opportunity.
23.13.704 Requests for a Formal Contested Case Hearing Under MAPA

(1) Any person aggrieved by a decision of the director or a decision of the
council, other than a decision by the director to deny, sanction, suspend, or revoke a
certificate, that is not a final decision following a contested case hearing, as
provided in 2-4-623, MCA, may request a contested case hearing before the council
by following the procedures set forth in Title 2, chapter 4, part 6, MCA.

(2) If the director denies, sanctions, suspends, or revokes an officer’s
POST certification pursuant to ARM 23.13.703(9) and the officer receives a notice
of agency action, then the officer has the right to request a formal contested case
proceeding under MAPA, to include a hearing, pursuant to 44-4-403(3), MCA.

(a) The proceedings and hearing can only be initiated by a request from the
officer whose certificate was denied, sanctioned, suspended, or revoked, or the
officer’s attorney, and not by any other person or entity.

(b) To request a hearing, the officer must follow the instructions contained
in the “notice of agency action” and notify the appropriate individual or the director
that the officer requests a hearing within 30 days of the date of the notice of agency
action.

(c) Failure to notify and request a hearing within 30 days of the date of the
notice of agency action will constitute a waiver of the right to a hearing.

(2) Any public safety officer or employing authority aggrieved by a decision
of the director, other than a decision by the director to deny, sanction, suspend, or
revoke a certificate, that is not a final decision following a contested case hearing,
as provided in 2-4-623, MCA, may request the denial be placed on the agenda for
consideration by the council at the council’s next regularly scheduled meeting.
23.13.706 Contested Cases, Emergency Suspension of a License  

(1) Pursuant to 2-4-631(3), MCA, if the director or the council determines that public health, safety, or welfare requires emergency action, the director or council may immediately suspend a certification. The order must include findings justifying emergency action, and regular proceedings must be promptly initiated. If the director takes emergency action to suspend a certification, the director will inform the case status committee as soon as practicable and will take further action based upon a majority vote of the committee.
23.13.719  Decision and Order, Stays

(7) Case status committee members may not participate in deliberations or any decision of the full council regarding the denial, revocation, or suspension of an officer’s POST certification, unless the committee member did not participate in the committee’s decisions on the matter and did not participate in committee meetings at which the matter was discussed.

OR

(7) Case status committee members may not participate in deliberations or any decision of the full council regarding the denial, revocation, or suspension of an officer’s POST certification, unless:

(a) the committee member has not reviewed any material which is outside of the administrative record before the council; and

(b) the committee member is not otherwise prevented from making an unbiased decision due to the committee member’s participation in committee meetings at which the matter was discussed.

OR

(7) Case status committee members may participate in deliberations and any decision of the full council regarding the denial, revocation, or suspension of an officer’s POST certification, unless the committee member determines that the committee member cannot make an unbiased decision due to the committee member’s participation in committee meetings at which the matter was discussed.
23.13.721 Appeals  (1) A party, other than the council, adversely affected by a
final POST Council decision rendered after a contested case proceeding, may
appeal to the Montana Board of Crime Control pursuant to ARM 23.14.1004 and
44-4-403(3), MCA. The decision of the Montana Board of Crime Control is the
final agency decision subject to judicial review pursuant to 2-4-702, MCA.

   (2) The council may appeal to the Board of Crime Control under the
conditions provided in Title 2, chapter 4, part 6, MCA.
February 15, 2022

To: POST Council

From: Jim Thomas, Case Status Committee Chair

Subject: Closure of Cases

The Case Status Committee of the POST Council met one time, on January 19, 2022, since the December 8, 2021 Council meeting. 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:

2017: No Cases from 2017 were closed

There is one open case from 2017. That case is in district court.

2018: No cases from 2018 were closed

There are 3 open cases from 2018. In two cases, the officer is serving a sanction, and one case is an active investigation.

2019: One case from 2019 was closed

19-02 was closed. An officer failed to document emails which contained criminal allegations. The officer also accepted a gift of an elk hunt which was in excess of $50. POST and the officer reached a Stipulated agreement for the officer’s POST certification to be placed on probation for 3 years. The officer has successfully completed his probationary period.

There are 6 open cases from 2019. Five officers are serving a sanction, and one case is an active investigation.

2020: No cases from 2020 were closed

There are 12 open cases from 2020. In eight cases, the officers are serving a sanction, and four cases are active investigations.
2021: Five cases from 2021 were closed

21-44 was closed. A corrections officer was alleged to have used excessive force on two occasions. The case was closed with a finding of “Not Sustained” regarding both instances. There was insufficient evidence to prove or disprove a violation of POST ARMs.

21-54 was closed. A peace officer made derogatory statements about his supervisor and was alleged to have neglected his duty with regard to the number of cases he opened, appeared to work hung over, and to have posted inappropriate images on social media. While POST sustained some of the allegations, the Committee did not feel that POST action was warranted and deferred to the employing authority’s discipline.

21-57 was closed. A corrections officer engaged in an inappropriate, romantic relationship with an inmate. The officer’s certification was revoked when she failed to respond to POST’s allegations.

21-61 was closed. A reserve officer inappropriately used his officer status to obtain video footage for personal reasons. The officer voluntarily surrendered his POST Certification.

21-72 was closed. A peace officer from North Dakota requested equivalency. During POST’s review, it was discovered that he had been suspended in North Dakota, and was currently under suspension when he was appointed in Montana. Additionally, there were questions regarding his Driver’s License status for the first two months of his employment in Montana. His request for equivalency was denied, and he requested a hearing. After a short period, the officer withdrew his hearing request, indicating he accepted a job in another state.

There are 31 open cases from 2021. Of those, 23 cases are active investigations, two are in the contested case process, two cases are on hold pending other matters, and five officers are serving a sanction.

2022: No cases from 2022 were closed

There are 10 open cases from 2021. All 10 cases are active investigations.

Since the last Council meeting, POST has closed a total of 13 cases.

POST currently has 39 active investigations.
POST currently has 2 cases which are in the MAPA process.
POST currently has 1 case on judicial review.
POST currently has 9 new allegations to present to case status.
POST currently has 20 cases awaiting information from agencies.
POST currently has 2 investigations on hold pending other matters.

POST has a total of 73 cases which it is currently working on.

POST currently also has 20 cases in which officers are serving sanctions.
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<th>Course Classifications</th>
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<td>Orientation and Graduation</td>
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<td>Evaluations</td>
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<td>Class and Squad Photos</td>
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<td>POST Council</td>
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### Patrol Operations

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<td>Classroom</td>
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<td>Skill building exercises</td>
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<td>Walkthroughs</td>
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<td>Police Vehicle Operations Track</td>
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<td>Youth Gangs</td>
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<td>Mental Health First Aid</td>
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<td>CJIN</td>
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<td>Report Writing</td>
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<td>Child Protective Services</td>
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<td>Outlaw Motorcycle Gangs</td>
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<td>Patrol Skills Practice (formerly patrol negotiations)</td>
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### Investigations

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<td>Child Interviews</td>
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<td>Domestic Violence Victimology</td>
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<td>Domestic Violence Investigation with Scenario</td>
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<tr>
<td>Computer Crimes</td>
<td>2</td>
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<tr>
<td>Dangerous Drugs</td>
<td>8</td>
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<tr>
<td>Criminal Intelligence Systems MATIC</td>
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<tr>
<td>Human Trafficking online</td>
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<tr>
<td>Human Trafficking classroom</td>
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<tr>
<td>Investigative Interviewing</td>
<td>11</td>
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<tr>
<td>Photo Lineup Class and Final Scenario</td>
<td>2</td>
</tr>
<tr>
<td>VIN numbers</td>
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<tr>
<td>Missing Persons Investigations - Juveniles, Indigenous Persons</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>84</strong></td>
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### Health and Wellness

<table>
<thead>
<tr>
<th>Topic</th>
<th>Hours</th>
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<tr>
<td>Diet and Exercise</td>
<td>2</td>
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<tr>
<td>CPR/AED</td>
<td>4</td>
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<tr>
<td>First Aid/Stop the Bleed</td>
<td>1</td>
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<tr>
<td>Critical Incident Stress</td>
<td>3</td>
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<tr>
<td>Emotional Survival for Families</td>
<td>2</td>
</tr>
<tr>
<td>Physical Fitness Exercise Including MPAT</td>
<td>6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>18</strong></td>
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<tr>
<td>Traffic Enforcement</td>
<td></td>
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<tr>
<td>----------------------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Crash Investigation</td>
<td>4</td>
</tr>
<tr>
<td>TIMS traffic incident management system</td>
<td>4</td>
</tr>
<tr>
<td>Vehicle Stops classroom</td>
<td>4</td>
</tr>
<tr>
<td>Vehicle Stops practice</td>
<td>4</td>
</tr>
<tr>
<td>DUI Enforcement - SFST</td>
<td>40</td>
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<tr>
<td>DUI Scenario</td>
<td>4</td>
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<tr>
<td>Traffic Radar 4 hours classroom</td>
<td>4</td>
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<table>
<thead>
<tr>
<th>Survival Skills</th>
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<tr>
<td>Firearms Classes and Range Simulator</td>
<td>16</td>
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<tr>
<td>Firearms Live Fire Range</td>
<td>40</td>
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<tr>
<td>Firearms Disabled Officer and Off Duty Considerations</td>
<td>2</td>
</tr>
<tr>
<td>Pat Downs and Searches</td>
<td>2</td>
</tr>
<tr>
<td>Defensive Tactics - Human Factors and Control Principals</td>
<td>4</td>
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<tr>
<td>Defensive Tactics Hands on Training</td>
<td>36</td>
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<tr>
<td>Handcuffing (separate from DT)</td>
<td>4</td>
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<tr>
<td>Chemical Agents and OC spray (During DT week)</td>
<td>4</td>
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<tr>
<td>MILO Simulations - Use of Force Final Scenarios</td>
<td>4</td>
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<tr>
<td>Defensive Tactics - Confrontation Simulation</td>
<td>4</td>
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<tr>
<td>Calls for Service Scenarios</td>
<td>8</td>
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<tr>
<td>Final Assessment Rotations</td>
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<td></td>
<td><strong>124</strong></td>
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</table>

**TOTAL HOURS**  

504  504
PRETRIAL
And
MISDEMEANOR PROBATION OFFICER
BASIC COURSE
CURRICULUM

February 15, 2022
In early 2022, the Pretrial Services and Misdemeanor Probation (PTS/MP) Officer Basic Course was moved from Dawson Community College to the Montana Law Enforcement Academy, in Helena, Montana.

With this move, it was determined that the curriculum for the course should be reviewed, and any changes made as well as maintaining the curriculum as it was, be submitted to the POST Board for approval in the course.

On February 14, 2022, a group consisting of certified instructors and agency management from the PTS/MP assembled and reviewed the current curriculum that had been developed over the previous two (2) years. Some minor changes were made, however the subject matter stayed basically the same. 140 hours is required for a complete academy program and the curriculum listed here exceeds that with TOTAL OF 150 HOURS.

The biggest changes were in the areas of Motivational Interviewing increased to eight (8) hours from two (2) hours, and in the areas of firearms training, increased from sixteen (16) to twenty (20) hours and defensive tactics increased from twenty (20) to twenty-four (24) hours.

PTS/MP is a unique field in the Criminal Justice System and having practitioners review, develop and teach the curriculum pays dividends to new officers as this career field continues to grow.

If after reviewing the attached curriculum, there are questions, please contact Rick SyWassink, at 406-647-6345 or by email at rick.sywassink@gmail.com.
# Pretrial Services and Misdemeanor Probation Officer Basic Course, 2022

## COURSE HOURS

### 1. Orientation and Professional Standards
- **1.1 Orientation** 2
- **1.2 POST Council Overview** 2
- **1.3 PTS and Misdemeanor Probation Overview** 2
- **1.4 Ethics and Professional Boundaries** 4

### 2. Legal Studies
- **2.1 Montana Court Systems** 2
- **2.2 Pretrial Status** 2
- **2.3 Misdemeanor Probation** 2
- **2.4 Working with Public Defenders** 2
- **2.5 Working with County Attorney Office** 2
- **2.5A Report Writing** 4 (New)
- **2.6 Court Room Testimony** 6
- **2.7 Specialty Courts** 4
- **2.8 PREA (Online)** 2

### 3. Substance Misuse
- **3.1 Substance Use and Addictions** 4
- **3.2 Urinalysis and Drug Testing** 2

### 4. Supervising Special Charges
- **4. Supervising Special Charges** 2

### 5. Mental Health and Communication
- **5.1 Official Mental Health 1st Aid Curriculum** 8
- **5.2 Mental Health Overview and Supervision** 8
- **5.3 Motivational Interviewing** 8

### 6. Communication and Situational Awareness
- **6. Communication and Situational Awareness** 12

### 7. Case Management
- **7.1 Case Management** 6
- **7.2 Release Assessment** 2
- **7.3 Supervision Assessment** 2
- **7.4 Child Protective Services** 2
- **7.5 Diversity Training** 4
- **7.6 Interstate Compact** 2
- **7.7 Victim Services (Include Human Trafficking)** 2
8. Officer Safety and Expectations
   8.1 Firearms 20
   8.2 Use of Force 4
   8.3 Law Enforcement Expectations 2
   8.4 Defensive Tactics 24

9. Self-Preservation and Career Planning 2

10. Final Exam 2

TOTAL 154 hours of which four (4) hours will be included in firearms and defensive tactics for a total of 150 hours.
<table>
<thead>
<tr>
<th>Course</th>
<th>Content to include</th>
<th>Hours</th>
<th>IP/O</th>
<th>NOTES (Numbers correspond to 2019 curriculum.)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1 Orientation &amp; Professional Standards</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 Orientation</td>
<td>Academy overview, expectations, facility information, and agency ethic/code of conduct documents.</td>
<td>2</td>
<td>IP</td>
<td>3 - Orientation</td>
</tr>
<tr>
<td>1.2 POST Council Overview</td>
<td>Introduction to Peace Officer Standards and Training (POST). Overview of certification processes and Administrative Rules of Montana (ARMs).</td>
<td>2</td>
<td>IP</td>
<td>3 - Post Council Overview</td>
</tr>
<tr>
<td>1.3 PTS &amp; Misd PB Overview</td>
<td>Introduction to Pretrial Services, National Association of Pretrial Service Agencies (NAPSA), and Misdemeanor Probation. Include major case impacts (i.e. Salerno).</td>
<td>2</td>
<td>IP</td>
<td>New</td>
</tr>
<tr>
<td>1.4 Ethics and Professional Boundaries</td>
<td>Professional Boundaries, Ethics</td>
<td>4</td>
<td>IP</td>
<td>5 - Professional Boundaries</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>16 &amp; 35 - Ethics</td>
</tr>
<tr>
<td><strong>2 Legal Studies</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Montana Court Systems</td>
<td>Overview of processes and differences between Municipal, Justice, and District. Constitutional Law and Montana Code Annotated.</td>
<td>2</td>
<td>IP</td>
<td>8 - Montana Court Systems</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>10 &amp; 36 - Constitutional Law</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>39 - Montana Code Annotated</td>
</tr>
<tr>
<td>2.2 Pretrial Status</td>
<td>Applicable statutes, including civil rights. Bail and bond. Defendants.</td>
<td>2</td>
<td>IP</td>
<td>9 - Civil Rights</td>
</tr>
<tr>
<td>2.3 Misdemeanor Probation</td>
<td>Applicable statutes, including civil rights. Sentencing. Offenders.</td>
<td>2</td>
<td>IP</td>
<td>9 - Civil Rights</td>
</tr>
<tr>
<td>2.4 Working with Office of Public Defenders</td>
<td>Working with Office of Public Defenders (OPD).</td>
<td>2</td>
<td>IP</td>
<td>New</td>
</tr>
<tr>
<td>2.5 Working with County Attorney’s Office</td>
<td>Working with County Attorney’s Office (CA).</td>
<td>2</td>
<td>IP</td>
<td>New</td>
</tr>
<tr>
<td>2.6 Court Room Testimony</td>
<td>Court Room Testimony.</td>
<td>4</td>
<td>IP</td>
<td>11 - Court Room Testimony</td>
</tr>
<tr>
<td>2.7 Specialty Courts</td>
<td>Overview of Veteran’s, Mental Health, Family, Drug, and DUI specialty courts.</td>
<td>4</td>
<td>IP</td>
<td>New</td>
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<tr>
<td>2.8 PREA</td>
<td>Prison Rape Elimination Act (PREA) as it applies to PTS and Misd. PB.</td>
<td>2</td>
<td>O</td>
<td>38 - PREA</td>
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<tr>
<td><strong>3 Substance Misuse</strong></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1 Dangerous Drug Identification</td>
<td>Dangerous Drug Identification - trends and symptoms.</td>
<td>2</td>
<td>IP</td>
<td>12 - Dangerous Drugs (Identification)</td>
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<tr>
<td>3.2 Urinalysis and Drug Testing</td>
<td>Urinalysis and Drug Testing - result interpretation.</td>
<td>2</td>
<td>IP</td>
<td>14 - Urinalysis and Drug Testing</td>
</tr>
<tr>
<td>3.3 Substance Use Addictions &amp; Treatment</td>
<td>Substance Use Addictions &amp; Treatment - including resources and philosophies.</td>
<td>4</td>
<td>IP</td>
<td>20 - Substance Use Addictions and Treatment</td>
</tr>
<tr>
<td><strong>4 Supervising Special Charges</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Special considerations for supervising sexual/violent charges. How the Sexual and Violent Offender Registry (SVOR) works. Domestive Violent (DV), Parter Family Member Assault (PFMA), Driving Under the influence (DUI) supervision escalation.</td>
<td>4</td>
<td>IP</td>
<td>13 - Supervising Sex Offenders</td>
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<tr>
<td>5</td>
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<td></td>
<td></td>
<td>21 - Sexual Violent Offenders Registry</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>41 - Domestic Violence</td>
</tr>
<tr>
<td><strong>5 Mental Health</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.1 Mental Health Overview and Supervision</td>
<td>Overview of common Mental Heath and Co-occurring disorders. Special considerations for supervision. Focus on resources and options.</td>
<td>8</td>
<td>IP</td>
<td>17 - Supervising Mental Health</td>
</tr>
<tr>
<td>5.2 Mental Health 1st Aid</td>
<td>Official Mental Health 1st Aid curriculum</td>
<td>8</td>
<td>IP</td>
<td>23 - Mental Health 1st Aid</td>
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<tr>
<td><strong>6 Communication and Situational Awareness</strong></td>
<td></td>
<td>12</td>
<td>IP</td>
<td>18+24+25+40</td>
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~140~
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<tr>
<th>6.1 Communication and Situational Awareness</th>
<th>De-escalation, non-violent crisis intervention, risk management, and situational awareness.</th>
<th>10</th>
<th>IP</th>
<th>18 - Verbal Defense and Influence 24 - Situational Awareness 40 - Risk Management</th>
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<tbody>
<tr>
<td>6.2 Motivational Interviewing</td>
<td>Official Motivational Interviewing curriculum</td>
<td>2</td>
<td>IP</td>
<td>25 - Motivational Interviewing</td>
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<tr>
<td>7 Case Management</td>
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<td>4+6+7+15+19+22+42+43</td>
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<tr>
<td>7.1 Case Management and Report Writing</td>
<td>Including scenario based learning. ROIs and HIPPA.</td>
<td>6</td>
<td>IP</td>
<td>15 - Case Planning/Management 22 - Reports of Violation/Report Writing</td>
</tr>
<tr>
<td>7.2 Release Assessment</td>
<td>Best practices, PSA, DMF, Criminal Histories</td>
<td>2</td>
<td>IP</td>
<td>New</td>
</tr>
<tr>
<td>7.3 Supervision Assessment</td>
<td>Best practices and data supporting use of assessment tools (ie. Risk &amp; Needs).</td>
<td>2</td>
<td>IP</td>
<td>4 - Risk and Needs Assessment</td>
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<tr>
<td>7.4 Child Protective Services</td>
<td>Role and resources. Signs of abuse. Mandatory Reporting. Drug Endangered Children. (Include ROI requirements.)</td>
<td>4</td>
<td>IP</td>
<td>6 - Child Protection Services 43 - Drug Endangered Children</td>
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<tr>
<td>7.5 Diversity Training</td>
<td>Diversity/historically disadvantaged groups (to include Native American cultural awareness)</td>
<td>4</td>
<td>IP</td>
<td>7 - American Indian Cultural Awareness</td>
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<td>7.6 Interstate Compact</td>
<td>Compact overview. Rules specific to misdemeanor probation. Human Trafficking.</td>
<td>2</td>
<td>IP</td>
<td>19 - Interstate Compact 42 - Human Trafficking</td>
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<td>8 Officer Safety and Expectations</td>
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<td>8.1 Firearms</td>
<td>Firearms. De-escalation with firearms.</td>
<td>16</td>
<td>IP</td>
<td>28 - Firearms</td>
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<td>8.2 Use of Force</td>
<td>Use of Force.</td>
<td>4</td>
<td>IP</td>
<td>26 - Use of Force</td>
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<td>8.3 Law enforcement expectations</td>
<td>Law enforcement expectations.</td>
<td>4</td>
<td>IP</td>
<td>New</td>
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<td>8.4 Defensive Tactics</td>
<td>Defensive Tactics.</td>
<td>20</td>
<td>IP</td>
<td>27 - Defensive Tactics</td>
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<tr>
<td>9 Self-preservation and Career Planning</td>
<td>Corrections Fatigue to Fulfillment, including workplace violence.</td>
<td>4</td>
<td>IP</td>
<td>29 - CF2F</td>
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<tr>
<td>19 FINAL EXAM</td>
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<td>TOTAL HOURS</td>
<td>140</td>
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APPLICATION FOR INDIVIDUALS SEEKING POST
CREDIT HOURS FOR ONLINE, OUT OF STATE, AND OTHER COURSES

ARM 23.13.301 & 23.13.302

Instructions: This form is to be completed and submitted by an officer who attended training (including online training) which was not already approved for POST credit hours. This form must be submitted after the training takes place. This form must be submitted within one year of completion of the training. This form is the only document the individual needs to submit to POST.

Applicant Information:

Full Name: Garrett Peterson
Agency Name: Billings Police Department
Date of Birth: 
Work Phone: 
Personal Phone: 
E-mail Address: 

Requirements:
Please note the requirements for POST credit are:

1) If the course is taught by a Montana public safety officer, the officer must be a certified instructor. If the course is not taught by a Montana public safety officer, you must retain the instructor biography.

- Is the instructor/s a Montana public safety officer? □ Yes □ No
- If the instructor/s is a Montana public safety officer, does the instructor/s have a POST instructor certificate? □ Yes □ No □ N/A
- If the instructor/s is not a Montana public safety officer, do you have a copy of the instructor’s biography/ies? □ Yes □ No □ N/A
- If you do not have a copy of the instructor’s biography, and you wish to request a waiver of the requirement that you retain the instructor’s biography, please outline the efforts you made to obtain the biography below:

FBI does not release course or instructor information. Security Waiver signed.

- Do you have a copy of the documentation of the above efforts? □ Yes □ No

2) You must complete this application and retain all required materials. Do NOT submit the materials to POST with this application.

Do you have the following materials:
- a copy of the course certificate of completion? □ Yes □ No
- course outline, lesson plan, or agenda? □ Yes □ No
- study guide or course syllabus? □ Yes □ No
- student materials & handouts? □ Yes □ No

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Application for Individuals Seeking POST Credit Hours
for Online, Out of State, and Other Courses
Page 2

3) the course must be a minimum of two hours in length
   Is the course at least 2 hours in length?  ✔ Yes  □ No

4) the course must be open and advertised to all public safety agencies
   Is the course open and advertised to all public safety agencies?  ✔ Yes  □ No
   Do you have a copy of the course advertisement? (Not necessary for online courses)
   □ Yes  ✔ No

5) you must attend a minimum of 90% of the training
   Did you attend a minimum of 90% of the training?  ✔ Yes  □ No

If you do not meet these requirements, you will not receive POST credit hours. The documents which you are required to retain may be audited by POST on a random basis.

Course Information:
Course Name:  U.S. Public Safety Bomb Technician-Recertification
Date Taken:  5/3/21-5/7/21  Number of Course Hours:  40 hours
Course Provider:  U.S. Dept of Justice-FBI  Course Location:  Redstone Arsenal, AL
Provider Website:  https://www.justice.gov/oip/training

Certification of Applicant:
My signature certifies that all required documentation has been obtained and will be retained and that all of the requirements of ARMs 23.13.301 and 23.13.302 have been met. I certify that I should be granted POST Training Credit Hours for this course.

Signature of Applicant  1/19/22

Certification of Agency:
My signature certifies that all required documentation has been obtained and will be retained and that all of the requirements of ARMs 23.13.301 and 23.13.302 have been met. I certify that this officer should be granted POST Training Credit Hours for this course.

Samantha Puckett  1/19/22
Printed Name of Agency Head  Signature of Agency Head  Date

E-mail:  Phone:  

*For Special Courses (Instructor Development, Firearms Instructor & SWAT Primary, proceed to page 3.

For POST Staff Use:

Reviewed by  Date
LEGAL MEMORANDUM

To: Katrina Bolger and Eric Gilbertson

From: J. Stuart Segrest

Date: January 7, 2022

Re: Public Information Request Scenarios

Katrina and Eric,

You have asked that I provide some guidance as to certain types of public record requests made to POST. With the understanding that public record requests are often fact specific and require a case-by-case analysis, I provide the following suggested responses to the scenarios you propose (labeled “Analysis”). I also include a general road map for analyzing public record requests. As we discussed, please reach out to me or other counsel with any additional questions you have based on the circumstances of a particular request.

Background

As you are aware, the Montana Constitution provides persons a Right to Know and corresponding right to “examine documents.” Art. II, § 9. The right to know must be balanced against the “demand of individual privacy.” Id. The privacy interest must “clearly exceed[] the merits of public disclosure” to prevent dissemination.

The Supreme Court, however, has held that public safety officers serve in a position of “great public trust,” and thus their expectation of privacy is reduced and will generally not outweigh the right to know, especially regarding allegations of professional misconduct. See, e.g., Billings Gazette v. Billings, 2011 MT 293, ¶ 26, 362 Mont. 522, 267 P.3d 11 (“society is not willing to recognize as reasonable the privacy interest of individuals who hold positions of public trust when the information sought bears on that individual's ability to perform public duties”); Great Falls Tribune v. Sheriff, 238 Mont. 103, 107, 775 P.2d 1267, 1269 (1989) (the public’s right to know outweighed the privacy interests of three disciplined police officers because police officers hold positions of “great public
trust”); *Bozeman Daily Chronicle v. Bozeman Police Dept.*, 260 Mont. 218, 227, 859 P.2d 435, 440-41 (1993) (allegations of sexual intercourse without consent by an off-duty police officer were proper matters for public scrutiny because “such alleged misconduct went directly to the police officer’s breach of his position of public trust . . .”).

**Road Map**

Though the specific analysis and outcome may differ depending on the circumstances, each public record request should go through the same basic analytical framework. Is the information:

1. Privileged (if yes then non-disclosable)
2. Confidential by law (if yes then non-disclosable)
3. Disclosable after balancing the right to know vs. the right to privacy

Privilege is a legal term of art. The most relevant for POST’s work would be the attorney-client and work-product privileges (discussed below). There may be other privileges that apply in unique circumstances. Confidential by law generally means by statute, either state or federal. This includes confidential criminal justice information (CCJI) and may include federally protected information such as medical and student records. Finally, whether non-privileged, non-confidential information is disclosable is determined by balancing the right to know versus the privacy rights of the officer or other individuals whose information is disclosed in the record. Protected private information or other confidential information (such as CCJI) should be redacted or withheld prior to dissemination.
Analysis of Scenarios

Scenario 1 – After allegation but before the agency’s response.

An allegation has been made directly to POST against an officer. Under ARM 23.13.703, POST has forwarded the allegation to the employing agency to provide a written response within 30 days. Prior to the agency providing the response, POST receives a public record request asking whether an allegation has been made and for a copy of the allegation.

Analysis 1

Where a request is made concerning an allegation that has been sent to the employing agency to investigate and respond, the allegation is likely public information subject to disclosure (and potentially redaction). It is, however, appropriate to tell the requestor you have received an allegation about the officer and have sent it to the employing authority for a response under ARM 23.13.703. If they ask for a copy of the allegation, I suggest you respond that you will provide it after the agency has provided its response. Section 2-6-1006(2) only requires that public information be provided “in a timely manner,” and 30 days (or so) is a reasonable response time.

Scenario 2 – After agency response but before POST opens an investigation.

POST receives a public record request for the employing agency’s response to an allegation prior to opening its own investigation or providing the allegation to the Cases Status Committee for review and direction.

Analysis 2

1. Direct to originating agency. Where a person requests the agency response before the case status committee has considered the information, I think it is appropriate to direct the requestor to the employing/originating agency. In doing so I would explain that because the originating agency created and compiled the information, it can better assess whether there is privileged or confidential criminal justice information (CCJI) that needs to be redacted, and can better weigh the public interest in disclosure against the privacy interests of the officer and other individuals.
2. Inform agency and officer of request. If the requestor refuses and insists on POST providing the response, POST should contact the agency and officer to inform them of the request and then analyze the response to see whether any portions are 1. privileged, 2. confidential by law (CCJI or other), or 3. protected private information, including: (a) protected personal information as explained by Judge Seeley in the Missoula Independent Orders (birthdates, social security numbers, telephone numbers, etc.), and (b) other private information that outweighs the public interest in disclosure (e.g., information identifying minors or officer information that is not relevant to the allegations). Another option before reviewing and redacting, or during the process, is to contact the agency and ask if this is information within the response they feel should be redacted.

3. Redact and release. If the agency or officer objects to release of the entire response, or requests more redactions that POST thinks is legally defensible, POST should respond that it has an obligation to provide the response as information held by a public agency (assuming the agency doesn’t label the entire file as CCJI). An officer’s expectation of privacy, especially concerning allegations of misconduct, generally will not outweigh the right to know as explained by the Supreme Court. If the agency or officer disagrees with disclosure, then POST should suggest they file a declaratory judgment action to prevent dissemination by a certain date (e.g. “POST plans to release the records on ___ date absent a court order prohibiting disclosure.”).

4. File declaratory judgment action if necessary. If POST knows or suspects that the requestor will object to POST’s redactions, or if POST is unsure whether some redactions should be made, POST can file a declaratory judgment action as it did in the Missoula Independent case, naming all interested parties as defendants: generally the requestor, the accused officer(s), and the agency.

Scenario 3 – Investigative file between “Letter 1” and “Letter 2.”

POST has provided the agency response to the Case Status Committee, and the Committee has directed POST to send a “Letter 1” to the officer and to investigate. During the investigation, but prior to providing an investigation synopsis and sanction recommendation to the Committee, POST receives a record request for its investigative file.
Analysis 3

The analysis where POST’s investigation is underway is primarily the same as in Scenario 2 above. That is, the information is public unless it is privileged, confidential, or if privacy outweighs the right to know. However, make sure you first read the record request narrowly, and only provide POST’s investigation information if expressly requested.

As in Scenario 2, first direct the requestor to the employing agency, explaining that they are the originating agency of (most of) the information and can better assess whether there is privileged, confidential, or private information that needs to be redacted.

If the requestor refuses, then proceed as explained above as to information received from the agency: let the agency and officer know of the record request and ask whether they object. If we disagree and think more should be released, then we explain that and suggest they seek a declaratory judgment if needed to prevent us from releasing the information. If POST is unsure, then you can affirmatively file a declaratory judgment action.

1. Internally generated information may be privileged. As to POST’s internally generated information that is not made public, i.e., internal drafts as opposed to Letters 1 and 2, these may be privileged, depending. If the paralegal/investigator is operating as a paralegal, and the document was drafted in anticipation of litigation (i.e., an administrative hearing or district court litigation), the drafts are protected from disclosure as “attorney work product” (the attorney-work-product privilege applies to paralegal work). See Nelson v. City of Billings, 2018 MT 36, ¶¶ 30, 37 (“documents protected by the attorney-client and attorney-work-product privileges [are] not subject to release” under the right to know). And if the drafts or correspondence are provided to an attorney to obtain legal advice (or from the attorney giving legal advice), then they are also protected from disclosure.

2. Externally generated information is likely not privileged or confidential. As to information compiled from external sources during POST’s investigation, it is not privileged or confidential if compiled or created by the paralegal/investigator while operating as an investigator. Specifically, as an investigator (as opposed to a paralegal working with an attorney), the information is not privileged work product. And interview recordings and other information gathered by POST from external sources is not confidential as CCJI
because POST is not designated as a criminal justice agency for purposes of creating investigatory information (only for “obtaining and retaining” CCJI). The investigation information would thus be redactable only where privacy outweighs the right to know (an unlikely scenario at this stage).

If particular questions you ask, or discussions you have, show your analysis of the matter (as opposed to the witness’s factual answers), you may be able to argue those are work product and should be redacted, especially if created with or for an attorney. This will need to be a case-by-case determination.
Scenario 1 ~ Allegation sent to agency, and agency hasn’t responded yet.

It is appropriate to tell the requestor you have received an allegation about the officer and have sent it to the employing authority for a response under ARM 23.13.703. If they ask for a copy of the allegation, respond that you will provide it after the agency has provided its response.

*Privileged Could be: Attorney-Client Communications, Attorney Work Product

*Confidential Could be: CCJI, Dates of Birth, Social Security Numbers, Medical/Mental Health Information
Scenario 2 ~ Agency has responded, but Case Status Committee hasn’t reviewed.

Regarding Agency Response:

- **If it is NOT POST's Information Direct to Originating Agency**
  - Agency Produces Documents
  - Agency won't produce or requester insists
    - **If Public**
      - Contact Agency prior to release and balance against privacy as necessary
    - **If Privileged**
      - Withhold
    - **If Confidential**
      - Withhold or Redact under direction of counsel and contact agency prior to release

- **Agency Objects**
  - Tell Agency when release is planned, suggest they file in Court if they wish to prevent release

- **Agency Does Not Object**
  - Produce the Information

- **No Action By Agency**
  - Produce the Information on predetermined date

- **Agency Files in District Court**
  - Await direction from the Court
Scenario 3 ~ Request for POST’s investigation information prior to completion of investigation.

- Is it POST’s Information?
  - Yes
  - Is it privileged?
    - Yes. Privilege applies and it should be withheld
    - No. No privilege applies, but confidentiality may apply
  - No
    - Refer to Scenario 2 above

- Was it created in anticipation of litigation or at the direction of an attorney?
  - Yes
    - Is it confidential?
      - Yes
        - Either withhold or redact at the direction of counsel
      - No
        - Produce the Information, redacting any protected private information after balancing test
  - No
    - Was it created to investigate the facts at the direction of the Bureau Chief?
      - Yes
        - No privilege applies, but confidentiality may apply
      - No
        - Is it confidential?
          - Yes
            - Produce as redacted, if applicable.
          - No
LEGAL MEMORANDUM

To: Eric Gilbertson and Katrina Bolger

From: J. Stuart Segrest

Date: February 3, 2022

Re: Response to Conrad City Attorney’s legal memo

Katrina and Eric,

You have asked that I provide a response to a “legal opinion” written by Conrad City Attorney Daniel Jones (“legal memo”) regarding the City’s obligation to comply with POST’s request that it investigate allegations of misconduct against a city police officer. The City Attorney concludes that only POST has authority to investigate allegations of officer misconduct, that POST cannot change this obligation by rule, and that POST cannot require a city to investigate in its stead.

I disagree with the City Attorney’s analysis. While he is correct that POST has the authority to investigate allegations of officer misconduct, POST also has authority to adopt rules effectuating investigations, and a city has a corresponding duty to enforce POST’s standards, including conducting investigations to determine whether misconduct allegations are substantiated.

Applicable Law

As the legal memo acknowledges, POST has statutory authority to set standards and qualifications for public safety officers, including a city’s police officers (i.e. “peace officers”), and to investigate and suspend or revoke certification if these standards are violated. § 44-4-403(1)(a), (c), MCA. An officer whose certification has been revoked or suspended “is entitled to a contested case hearing[.]” § 44-4-403(3), MCA.

The duty to enforce standards and investigate misconduct, however, is not solely POST’s. It is also the responsibility of the appointing authority (i.e. the employing agency) “to apply the employment standards and training criteria established by the [POST] council,” including “terminating the employment of a public safety officer for failure to meet the minimum standards established by
the council[,]” § 44-4-404, MCA. Likewise, the appointing authority has a duty “to ensure that each peace officer appointed under its authority” meets all “requirements of peace officer certification promulgated by” POST. § 7-32-303(5), MCA. As to cities specifically, each city is required to have a police department, and its police officers “must meet the minimum qualifying standards for employment promulgated by” POST. §§ 7-32-4101; 7-32-4112, MCA.

To implement its oversight of public safety officer standards, POST has adopted administrative rules as allowed by § 2-15-2029(2), MCA. Relevant here, POST has adopted standards for appointment, certification, and continued employment of officers, and grounds for denying, sanctioning, suspending, and revoking an officer’s certification. ARM 23.13.201, 23.13.702(3). The procedure for investigating and resolving allegations of misconduct is laid out at ARM 23.13.703, with additional detail provided in POST’s “Officer Misconduct Allegation Policy and Procedure.”

Considering their duty to apply and enforce POST’s standards, POST requires employing agencies to “report to the executive director any substantiated grounds for denial, sanction, suspension, or revocation of POST certification as enumerated in [23.13.702(3)].” ARM 23.13.702(2). To further facilitate coordination with the employing agency, and to ensure it is aware of and has a chance to investigate the allegations, POST requires most allegations to made first to the employing agency. ARM 23.13.703(2)-(3). POST also requires the employing agency “give POST a notice of the employing authority’s investigation, action, ruling, finding, or response to the allegation, in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question, and which may contain a recommendation from the employing authority regarding whether POST should impose a sanction.” ARM 23.13.703(4).

Analysis

As explained above, POST is authorized, and required, by law to set public safety officer employment standards and training criteria, and to investigate and discipline officers as necessary. § 44-4-403, MCA. POST has set these standards. But POST does not hire or directly supervise officers: individual agencies, whether local or state, are the “employing agency.” Montana law therefore requires these employing agencies (including the City of Conrad) to ensure its officers meet POST’s standards, and to terminate those who do not. §§ 44-4-404, 7-32-303(5), 7-32-4112, MCA. As such, POST requires agencies to report, and
investigate, allegations of misconduct made against one of its employed officers. ARM 23.13.702(2), 23.13.703(4).

These investigation and reporting requirements are not only authorized under Montana law, they are necessary to effectuate the statutory scheme. It is not possible for POST, on its own, to investigate at the local level every allegation of misconduct. The Legislature thus requires the employing agency to ensure its officers meet POST’s standards. To do so, the agency must investigate allegations of misconduct: i.e. allegations that an officer has violated one or more standards. Even if POST had not adopted ARM 23.13.703(4), Montana law impliedly requires agencies to investigate allegations of misconduct to determine whether the officer continues “to meet the minimum standards established by the council[.]” § 44-4-404, MCA. And it’s of no merit that this statute doesn’t use the phrase “investigate.” It’s implied, just like it’s implied, but not expressly stated, in § 44-4-403, MCA (the statute providing POST investigatory authority), as acknowledged in the legal memo. Neither POST nor the employing agency can ensure compliance with POST’s standards without investigating allegations of misconduct. ¹ Contrary to the legal memo’s conclusion, then, the City of Conrad is obligated to conduct investigations into misconduct implicating a violation of POST’s standards.

The city’s duty to investigate is not inconsistent with or prohibited by Montana law regarding self-government powers. As the memo notes, the self-government power is broad, including any power or service not prohibited by statute. § 7-1-101 to 102, MCA. And Montana law explicitly allows and requires a city, as the employing agency of a police officer, to investigate allegations of misconduct.² Indeed, the City’s refusal to investigate officer misconduct at the direction of POST would itself be “inconsistent with state law or regulation.” § 7-1-113(1), MCA (emphasis added). This is so not only because statutes and POST rules require the employing agency’s participation, but also because refusing to

¹ Otherwise, the City would not be able to effectively investigate or manage misconduct of its own officers, a result at odds with the Montana Supreme Court’s consistent holding that the public has a right to know about officer misconduct. See, e.g., Billings Gazette v. Billings, 2011 MT 293, ¶ 26, 362 Mont. 522, 267 P.3d 11 (“society is not willing to recognize as reasonable the privacy interest of [officers] who hold positions of public trust when the information sought bears on that [officer’s] ability to perform public duties”).

² This situation is thus different than City of Helena v. Svee, where the subject matter “had been made the exclusive domain” of the state agency. 2014 MT 311, ¶ 16, 377 Mont. 158, 339 P.3d 32 (emphasis added).
investigate would establish “standards or requirements which are lower or less stringent than those imposed by state law or regulation.” § 7-1-113(2), MCA (emphasis added). In short, the City’s investigation, at POST’s direction, would not be “inconsistent with state law and administrative regulation,” it’s required by state law and regulation.

The legal memo is also incorrect in suggesting the duty to investigate misconduct may not be delegated to the employing agency. First, POST may promulgate rules to effectuate its duties, which includes investigating misconduct. §§ 2-4-201, 2-15-2029, MCA. Investigating misconduct requires obtaining information from the employing agency who is in the best position to obtain that information and initially assess whether misconduct occurred. Second, as explained, the employing agency has an independent obligation to ensure its officers are in compliance with POST’ standards: i.e. have not committed misconduct. Finally, POST does not abdicate its duty to investigate by having the employing agency conduct an initial investigation. On the contrary, POST considers the agency investigation when deciding whether to dismiss the allegation as unsupported or conduct its own investigation, which may lead to sanctions and a contested case hearing. See ARM 23.13.703 and POST’s Officer Misconduct Allegation Policy and Procedure. The agencies investigation is not the end of POST’s investigation, it’s the beginning, and the ultimate decision as to whether the officer committed misconduct rests with the POST council.

**Conclusion**

POST is authorized by law to investigate allegations of misconduct and to pass regulations to facilitate this process. In addition, the law requires an employing agency, such as the City of Conrad, to ensure its officers meet POST standards. As such, POST’s rule requiring the agency to investigate allegations of misconduct is lawful and enforceable. Hopefully the City of Conrad reconsiders its position and fulfils its duty under the laws and regulations of the State (not to mention its duty to the citizens of Conrad) to investigate allegations of officer misconduct.
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Employees this Report 38
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<tr>
<td>1-11-2022</td>
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<td>12-16-2021</td>
<td>Letter approving CDOB extension sent</td>
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Employees this Report: 7
Montana Public Safety Officer Standards and Training (POST) Council & Staff - 2022

Mark Kraft
Sidney Police Department
300 12th Ave. NW, Suite 5
Sidney, Montana 59270
(406) 433-2210
mark.kraft@richland.org
Term ends: January 1, 2023 (1st term)
Qualification: Chief of Police

Jess Edwards
Box 348
Browning, MT 59417
(406) 450-6090
chiefjessedwards@gmail.com
Term ends: January 1, 2023 (1st term)
Qualification: Certified Tribal Law Enforcement Representative

Matt Sayler
Butte Silver Bow Law Enforcement
15 East Center Street
Butte, MT 59701
(406) 490-5724 (cell)
(406) 497-1171 (work)
msayler@bsb.mt.gov
Term ends: January 1, 2023 (1st term)
Qualification: Local Law Enforcement Officer (non administrative)

Wyatt Glade
1010 Main Street
Miles City, MT  59301
(406) 874-3310 (work)
(406) 421-5695 (home)
w.glade@co.custer.mt.us
Term ends: January 1, 2023 (1st term)
Qualification: Board of Crime Control Representative
Conner Smith
18 Trooper Dr.
PO Box 117 Boulder, MT  59632
(406) 461-4115
csmith2@mt.gov
Term ends: **January 1, 2025 (1st term)**
Qualification: State Government Law Enforcement Representative

Jesse Slaughter
3800 Ulm North Frontage Road
Great Falls, MT  59404
(406) 454-7688
jslaughter@cascadecountymt.gov
Term ends: **January 1, 2025 (1st term)**
Qualification: Sheriff

Bill Smith
920 Main Street, Ste. 100
Kalispell, MT 59901
(406) 758-5919
wsmith@flathead.mt.gov
Term ends: **January 1, 2025 (1st term)**
Qualification: Detention Center Representative

Kimberly Burdick
Chouteau County Sheriff’s Office
Box 459
Fort Benton, MT  59442
(406) 622-5425
kburdick53@outlook.com
Term ends: **January 1, 2025 (3rd term)**
Qualification: Public Representative

Jim Thomas
P. O. Box 503
Canyon Creek, MT  59633
H: (406) 368-2349
barlazyjl@linctel.net
Term ends: **January 1, 2025 (3rd term)**
Qualification: Public Representative
Leo Dutton  
221 Breckenridge  
Helena, MT  59601  
(406) 447-8235  
ldutton@lccountymt.gov  
Term ends: January 1, 2025 (2nd term)  
Qualification: Montana Board of Crime Control  

Kristine Byron-White  
PO Box 146  
Forsyth, MT 59327  
(406) 351-3359 (cell)  
(406) 346-2236 (work)  
ckwhite@rosebudcoatty.net  
Term ends: January 1, 2023 (1st term)  
Qualification: County Attorneys  

Jim Anderson  
PO Box 201301  
Forsyth, MT 59327  
(406) 580-2543 (cell)  
jim.anderson@mt.gov  
Term ends: January 1, 2023 (1st term)  
Qualification: Department of Corrections  

Mike McCarthy  
PO Box 6903  
Helena, MT  59602  
C: (406)  
odiemic.mcc@gmail.com  
Term ends: January 1, 2023 (1st term)  
Qualification: Public Representative  

Eric Gilbertson  
2260 Sierra Road East  
Helena, MT  59602  
(406) 438-7253 (cell)  
(406) 444-9976 (work)  
eric.gilbertson@mt.gov
Mary Ann Keune  
2260 Sierra Road East  
Helena, MT 59602  
(509) 993-8601 (cell)  
(406) 444-9975 (work)  
mkeune@mt.gov

Katrina Bolger  
2260 Sierra Road East  
Helena, MT 59602  
(406) 444-9974 (work)  
kbolger@mt.gov

Tina Cranmer  
2260 Sierra Road East  
Helena, MT 59602  
(406) 444-9964 (work)  
tina.cranmer2@mt.gov