

Officer Misconduct Allegation Policy and Procedure

Purpose: To establish a procedure for the uniform receipt and investigation of allegations of misconduct by Montana public safety officers, to protect citizens from misconduct by public safety officers, and to protect public safety officers who conduct themselves appropriately.

Classification: All allegations of misconduct are subject to Montana and Federal Right to Know and Right to Privacy laws. Information regarding allegations of misconduct will be released under the direction of legal counsel. No information regarding pending allegations is to be released to Council members, except those members who participate in the Case Status Committee, until such release is allowed by the Montana Administrative Procedures Act (MAPA).

If an officer who is accused of misconduct retains an attorney at any time during this procedure, communications regarding the allegations will be directed to the officer's attorney unless a release signed by both the officer and the officer's attorney is received.

Making an Allegation:

1. An employing agency may make an allegation directly to the executive director or designee. All other allegations must be made to the employing agency first either by the complainant or POST, unless the executive director determines that it would be inappropriate to do so.
2. Allegations which are not made by the employing agency will initially be communicated to the employing agency unless the executive director determines that it would be inappropriate to do so. The executive director or designee will request a written response to the allegation from the employing agency.

If an allegation is received from an employing agency, the executive director may, at his discretion, proceed to sending Letter 1 to the officer prior to consultation with the Case Status Committee. If the officer is not certified and is not working as a public safety officer, the director may send a letter closing the matter and informing the officer that an investigation will be open if the officer becomes employed as a public safety officer again.

3. Upon receipt of the employing agency's allegation or response to the allegation, the allegation will be placed on the agenda to be presented to the Case Status Committee at the next committee meeting. The Case Status Committee members will be provided copies of the allegation and agency response, if any. The Case Status Committee will make a recommendation to the executive director regarding how to proceed with the allegation. They may recommend the executive director request more information, close the file, or move forward to Letter 1, or other recommendations as each case may warrant. If the executive director sends a Letter 1 or a closure letter to an officer prior to consultation with the Case Status Committee, the allegation and Letter 1 or the closure letter will be presented to the Case Status Committee at the next committee meeting.
4. If more information is requested, the executive director or designee will request and obtain available information and provide it to the committee at its next meeting. If a case is closed, the executive director will contact the complainant in writing and in a timely manner and inform the complainant of that decision. If the complainant is not an employing authority, the executive director will copy the employing authority and the officer with the information sent to the complainant.
5. If Letter 1 is to be sent, the allegation will be assigned a case number by POST staff and Letter 1 will be sent by the executive director in a timely manner. Letter 1 will include a description of the allegations against the officer, citation to the specific ARMs that the officer may have violated, a request for a release of personnel information and form, a voluntary surrender form and instructions regarding surrender, and will give the officer thirty-five days from the date of the letter in which to respond. The officer may request an extension of time in writing, which will be granted or denied at the executive director's discretion. All letters to the officer (1 through 3 and Notice of Agency Action) will be copied to the employing agency and/or former employing agency if the officer no longer works there.
6. If the officer does not respond to Letter 1, the executive director will send a letter with a Notice of Agency Action to the officer. The officer's certificate(s) will be revoked. The officer will be provided thirty days from the date of the Notice to request a hearing.
7. If the officer does respond to Letter 1, POST staff will begin investigating the allegations. The officer's response and results of the investigation will

be disseminated to the Case Status Committee for review prior to the next committee meeting. The Case Status Committee will make a recommendation to close the case, make an offer of a stipulated sanction, or further investigate officer. If the case will be closed, a letter advising the officer of that will be sent, and the executive director will call or write a separate letter to the employing agency reflecting the decision. If further investigation is recommended, the director will continue to keep the committee apprised of the investigation during committee meetings until the investigation is complete. Once an investigation is complete, the committee will make a recommendation regarding what an offered stipulated sanction should be. The executive director will then send Letter 2 to the officer containing an offer. The officer will be given thirty-five days to respond by either accepting the offer, rejecting it and making a counteroffer, or rejecting it with no counteroffer.

8. If the officer responds to Letter 2, that response will be provided to the Case Status Committee for review prior to the next committee meeting. If the officer accepts the offer, the committee will be informed. If the officer makes a counteroffer, the committee will make a recommendation about whether to accept the counteroffer or not. If the officer simply rejects the offer, the committee will make a recommendation as to what sanction should be applied with Letter 3. If a counteroffer is accepted, a stipulation will be sent to the officer. If it is not, the committee will make a recommendation as to what sanction should be applied with Letter 3.
9. If a Letter 3 is to be sent, the executive director will hire a hearing examiner and prepare Letter 3 and a Notice of Agency Action with the assistance of staff and legal counsel. Letter 3 and the Notice of Agency Action will inform the officer that he or she has thirty days to request a hearing. The original Notice of Agency Action will be sent to the hearing examiner for filing, along with a copy of Letter 3. A copy of Letter 3 and the Notice of Agency Action will be sent to the employing agency. The original letter and a copy of the Notice of Agency Action will be sent to the officer. The thirty days will run from the date upon which the Notice of Agency Action is signed by the executive director. Any sanction applied in the Notice of Agency Action will begin upon the executive director's signature.

The executive director or designee may present any allegation to the Case Status Committee at any time during the complaint procedure.

Upon receipt of the officer's request for hearing, MAPA and the ARMs will govern further procedure.

Allegation Policy and Procedure Attachment A

Section 1 – Guidelines for Certification Sanctions

1. Sanction of officer certification may take one or more of the following forms:
 - a. Revocation of all certifications as defined in ARM 23.13.102(22).
 - i. POST may revoke only advanced certifications of an officer, leaving a basic certification intact, such that the officer may continue working.
 - b. Denial of certification. Denial of an officer's application for basic certification due to the officer's misconduct is equivalent to a revocation of the basic certification of an officer.
 - c. Suspension as defined in ARM 23.13.102(26).
 - i. POST may suspend only advanced certifications of an officer, leaving a basic certification intact, such that the officer may continue working.
 - ii. Suspension of any or all certificates may be based upon conditions similar to those outlines in 1.d. below.
 - iii. POST may suspend certification on an emergency basis pursuant to ARM 23.13.706. Such emergency suspension will be utilized sparingly and only in the most egregious of cases and only upon concurrence of the chair of the case status committee or the committee chair's designee.
 - d. Probation. Probation will be based upon conditions. The conditions of probation may include, but need not be limited to any of the following:
 - i. A requirement that the officer self-report any violation of Montana law, POST rules, POST policies, or any violation of additional probation conditions;
 - ii. A requirement that the officer's employing authority report any violation by the officer of Montana law, POST rules, POST policies, or any violation of additional probation conditions;
 - iii. Suspension of an officer's ability to apply for additional certifications;
 - iv. Suspension of a POST-certified instructor's ability to provide POST-approved training;
 - v. A requirement that the officer remain at a specific agency;
 - vi. Requirements for training;
 - vii. Requirements for treatment;
 - viii. If the probation is part of a stipulated agreement between POST and the officer, the officer must agree that he will not engage in the contested case process contained in MAPA;
 - ix. A requirement that the officer produce documentation of any training or treatment upon which probation has been conditioned; or
 - x. A requirement that the officer petition to the case status committee or POST for removal from probation.
2. The following factors may be considered in determining an appropriate sanction:
 - a. The gravity and nature of the ethical responsibility violated, including whether the responsibility is owed to the public, to the legal system, or to the profession;
 - b. The officer's mental state, if appropriate;
 - c. The length of time since the conduct occurred;
 - d. The actual or potential injury to the public, the legal system or to the profession;

- e. Any aggravating or mitigating factors;
 - f. The existence of prior offenses;
 - g. Sanctions imposed on other officers based upon similar conduct;
 - h. The employing authority's recommendation;
 - i. The officer's response to the allegations and any ongoing reaction to the allegations including the officer's interactions with POST during the course of its investigation; or
 - j. Any additional information which tends to influence the officer's ability to perform the functions of a public safety officer with the highest standards of honesty, integrity, justice and morality.
3. Except in cases of an officer's wanton disregard for such violations, POST will not proceed with investigation or sanction of allegations which do not include an ethical violation or a failure to meet the minimum standards for appointment or certification. Such allegations need not be reported to POST by the employing authority unless a Notice of Termination is required to be submitted. Such allegations may include:
- a. Issues of insufficient training which may be remedied by the employing authority;
 - b. Policy violations which do not include violations of the public safety officer's code of ethics or the employing authority's ethics policies;
 - c. Violations of standard operating procedures which do not include any ethical violations, and which may be remedied through the criminal justice system. Such violations include, but may not be limited to: search warrant deficiencies, lack of probable cause or particularized suspicion, or other investigative deficiencies; or
 - d. Failure to complete an employing authority's probationary period for any issue which does not include a violation of the public safety officer code of ethics. This may include, but is not limited to: failure of firearms qualifications, failure of the Montana Physical Abilities Test, or an officer's general unsuitability for the chosen field or agency.

Section 2 – Period of Limitation

1. Except as provided in 2. below, POST will not proceed with investigation of any allegation of misconduct when the alleged misconduct occurred more than 5 years prior to POST's receipt of the allegation.
2. Exceptions to 1. could include, but may not be limited to the following:
 - a. Any felony conviction;
 - i. Dismissal of a conviction following a guilty finding shall not constitute a bar to sanction of an officer's certification for the conviction.
 - b. An ongoing pattern of conduct which began more than 5 years prior to POST's receipt of the allegation;
 - c. Failure to meet any of the minimum standards for appointment or certification found in ARMs 23.13.201 or 23.13.205;
 - d. Failure of a peace officer to meet any of the minimum standards for appointment found in 7-32-303, MCA;
 - e. Falsification of information which resulted in the appointment or certification of an officer when the officer would not have otherwise been appointed or certified absent the officer's falsification;

- f. Falsification of information during any legally authorized investigation;
- g. Conduct involving unlawful physical violence or unlawful sexual conduct whether the officer received a criminal conviction or not;
- h. Any sexual conduct which occurs while the officer is on duty or which the officer facilitates with public safety agency property; or
- i. Any other conduct which is so egregious in nature that POST's failure to take action could undermine the public's confidence in the integrity of the profession.

Allegation Policy and Procedure

Attachment B

