

POST Information & Resource Guide Index

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Welcome to the Montana Public Safety Officers Standards and Training (POST) Council Information and Resource Guide

The Council was formed in 2007 under § 2-15-2029, MCA as an independent *quasi*-judicial board. As allowed by statute, the Council adopted Administrative Rules in order to implement the provisions of Title 44, chapter 4, part 4, MCA. Per § 44-4-403, MCA the Council is required to set employment and training standards for all Public Safety Officers as defined in § 44-4-401, MCA and in addition the Council shall provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.

- ❖ **Our Mission:** To ensure competency and promote quality performance by public safety officers by establishing, maintaining and promoting excellence in standards and training.

- ❖ **Our Vision:** The public is safe, secure and has confidence in and respect for Montana Public Safety Officers.

History of the POST Council: The Montana Peace Officer Standards and Training Advisory Council was initially created during the 1971 Legislative Session in a roundabout way. The Council was conceived in response to a growing body of Federal caselaw and numerous research studies regarding the necessity of training standards in law enforcement. There were actually two bills brought before the Legislature creating POST. One bill would place POST under the Montana Board of Crime Control, the other would place POST under the Attorney General. The bill placing POST under the control and authority of the Attorney General passed both houses of the Legislature, then was vetoed by the Governor as unconstitutional. The Governor issued an executive order creating POST and placing it under the control and authority of the Montana Board of Crime Control. The Council was able to hire an Executive Director and depended upon the Board of Crime Control's nine staff to assist the Director and the Council.

The first meeting of the Montana POST Advisory Council was held on September 21, 1972. In 2007, POST underwent a major makeover. First, POST's name was changed from the "Montana Peace Officer Standards and Training Advisory Council," to the "Montana Public Safety Officer Standards and Training Council." The Council had already been providing standards and training for public safety officers, the 2007 name change just made that apparent. Second, POST was made an independent agency, separate from the Montana Board of Crime Control and only administratively attached to the Montana Department of Justice. Third, POST was made a *quasi*-judicial board as defined in Montana statute. POST was also given the ability and authority to promulgate its own rules. The Council expanded from eleven members to thirteen. Finally, POST was given two positions: an Executive Director, and an Administrative Assistant.

In 2008, POST promulgated its first set of Administrative Rules of Montana (ARMs). In 2010, POST was able to hire a third employee: an investigator. In December of 2014, POST completed an overhaul of its ARMs and has made amendments in 2017, 2018, 2019, 2021, 2022, and 2023. POST is working on additional changes to its ARMs and hopes to update all of its rules in 2023.

During the 2019 Legislative Session, the Legislature passed HB 684, which placed POST staff under the Department of Justice as the Public Safety Officer Standards and Training Bureau. This legislation was effective through June 30, 2021, but was extended during the 2021 session until June 30, 2023. During the 2023 Montana Legislative Session, HB 697 was passed, placing the staff back under the Council, providing for quarterly reporting regarding POST's investigations, and requiring an interim study of the POST Council and its staff.

Montana Public Safety Officer Standards and Training
(POST) Council Members

Jesse Slaughter, Chair	Sheriff	<u>jslaughter@casadecountymt.gov</u>
Mark Kraft	Chief of Police	<u>mkraft@richland.org</u>
C. Kristine White	County Attorney	<u>ckwhite@rosebudcoattv.net</u>
Jess Edwards	Tribal Law Enforcement	<u>chiefjessedwards@gmail.com</u>
Matthew Sayler	Local Law Enforcement	<u>msayler@bsb.mt.gov</u>
Wyatt Glade	Board of Crime Control	<u>w.glade@co.custer.mt.us</u>
Conner Smith	State Law Enforcement	<u>csmith2@mt.gov</u>
Mike McCarthy	Public Representative	<u>odiemic.mcc@gmail.com</u>
Jim Anderson	Dept. of Corrections	<u>jim.anderson@mt.gov</u>
Bill Smith	Detention Center Rep.	<u>wsmith@flathead.mt.gov</u>
Kimberly Burdick	Public Representative	<u>kburdick53@outlook.com</u>
Jim Thomas	Public Representative	<u>canyoncreekjim@gmail.com</u>
Leo Dutton	Board of Crime Control	<u>ldutton@lccountymt.gov</u>

Duties:

The Council is responsible for establishing basic and advanced qualification and training standards for employment of Montana’s public safety officers, as defined in MCA 44-4-401.

In addition, the Council:

- Conducts and approves training;
- Provides for the certification and re-certification of public safety officers; and
- Is responsible for the suspension or revocation of certification of public safety officers.

POST Staff Information

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E-Mail: tina.cranmer2@mt.gov



*Montana POST Council Staff (left to right):
Tina Cranmer, Katrina Bolger, Brooke Standish, and Timothy Allred*

POST Council Committees

ARM Committee

Leo Dutton – Chair
Jess Edwards
Bill Smith
Jesse Slaughter
Mark Kraft

Business Plan/Policy Committee

Jess Edwards – Chair
Kimberly Burdick
Jesse Slaughter
EJ Clark - *Ex officio*

Case Status Committee

Jim Thomas – Chair
Conner Smith
Matthew Saylor

Coroner Committee

Leo Dutton – Chair
Bill Smith
Kristine White
Wyatt Glade

Curriculum Review Committee

Conner Smith – Chair
Bill Smith
Kimberly Burdick
Mike McCarthy
Jim Anderson
Joel Wendland - *Ex officio*

Executive Committee

Jesse Slaughter – Chair

Montana Public Safety Officer Standards and Training Council



2023 Business Plan

POST General Overview

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an independent agency, separate from the Montana Board of Crime Control and only administratively attached to the Montana Department of Justice (DOJ). Third, POST was made a *quasi*-judicial board as defined in Montana statute. POST was also given the ability and authority to promulgate its own rules. The Council expanded from eleven members to thirteen. Finally, POST was given two positions: an Executive Director, and an Administrative Assistant.

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During the 2019 Legislative Session, the Legislature passed HB 684, which placed POST staff under the DOJ as the Public Safety Officer Standards and Training Bureau. This legislation was effective through June 30, 2021, but was extended during the 2021 session until June 30, 2023.

During the 2023 Legislative session, the passage of HB 697 allowed HB 684's temporary placement of POST as a bureau of DOJ to expire, and thereby placed POST staff back under the direct control of the Council, provided for quarterly reporting regarding POST's investigations, and required an interim study of the POST Council and its staff. In addition, funds were appropriated to POST in 44-10-204.

Council

Council Meetings: The Council meets three to four times annually to discuss employment and training standards for all Public Safety Officers, provide for the certification or recertification of public safety officers, and for the suspension or revocation of certification of public safety officers as defined in 44-4-401, MCA. They further discuss the operation and goals of the Council and POST staff. The Council may also call Special Meetings to discuss issues that require more immediate attention. Meetings are open to the public.

Council Committees: Committees of the Council generally meet on an “as needed” basis. The Case Status Committee meets every six weeks, and occasionally holds special meetings, when necessary, in order to review the growing number of allegations and investigations.

- **ARM:** The ARM Committee’s purpose is to review and analyze POST ARMs and recommend appropriate rule language to carry out the decisions of the POST Council.
- **Business Plan/Policy:** The Business Plan/Policy Committee’s purpose is to review and, when necessary, propose changes to the long-range business plan of the Council and the daily operations, policies, and procedures under which the POST staff perform day-to-day business.
- **Case Status Committee:** The Case Status Committee’s purpose is to determine whether allegations of misconduct by a public safety officer warrant investigation by POST staff, to determine whether a certificate sanction or other action 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.
- **Coroner:** The Coroner Committee’s purpose is to track and monitor issues of interest to the Montana Coroner’s Association, and coroners in general.
- **Curriculum Review:** The purpose of the Curriculum Review Committee is to review and discuss proposed training curricula requiring POST approval or additional information.
- **Executive Committee:** The purpose of the Executive Committee is to make decisions necessary to implement the policies of the POST Council, and to provide additional oversight of POST staff.

Legislature and Legislative Interim Committees: The Council, Director, and the Executive Committee take an active role by working with the Montana Legislature or Legislative interim committees. They:

- Provide Requested Information
- Testify on POST Practices
- Provide information regarding positions adopted by the Council or the Executive Committee

Budget: The Council approves personnel expenses. The Director approves the day-to-day operating expenses. The Director provides a budget update at Council meetings.

Public Safety Agencies/Stakeholders: The Council and Director work with agencies and groups that have an interest in POST including, but not limited to, attending stakeholder meetings, providing POST updates and training, receiving feedback and concerns, and discussing possible legislation.

Staff

POST Staff Meetings: The staff at POST meet weekly to discuss their mission of providing support for the Council by working together as a team and supporting one another. They:

- Discuss Daily Operations
- Make Goals and Give Updates
- Plan for Council and Committee Meetings
- Review Schedules for Staff and Calendar Items
- Discuss General Concerns and Updates
- Discuss Investigations and the Status Thereof

POST Staff Daily Duties: POST staff complete tasks daily and work to support public safety officers and the community. Among other tasks, they:

- Process Training Applications
- Analyze and Process Certificate Applications
- Process Complaint Allegations/Investigations
- Respond to Extension Requests
- Respond to Public Information Requests
- Review Letter Responses
- Scan Training Files and Upload to Website
- Process Equivalency Applications

Contracts Updated: POST has contracts with several attorneys in order for POST to fulfill its statutory obligations.

- General Counsel to the Council
- Contested Case Counsel

- Hearing Examiners

POST Staff Provide Briefings at Basics: POST presents an overview of POST and its basic functions to every basic academy and basic equivalency course.

- Law Enforcement Officer (3 times a year)
- Probation and Parole (1 time a year)
- Public Safety Communicator (4 times a year)
- Misdemeanor Probation and Pre-trial Officers (1 time a year)
- Corrections/Detention officer (6 times a year)
- Coroner (2 times a year)
- Peace Officer Equivalency (2 times a year)
- Corrections/Detention Equivalency (as needed up to 6 times a year)

Audits: POST Staff will conduct random audits of POST-approved training and required continuing training.

- During the last full week of every month, POST staff will audit a POST-approved training.
- During the last full week of every month, POST staff will audit an officer's required continuing training.
- Should records be lacking, the officer or the agency will be given an opportunity to remedy the matter.
- If POST staff does not receive a response, or the response received does not remedy the issue, the training credit hours related to the training may be removed from the officer or officers' training transcript.
- If an officer has not received the required continuing training, the agency and officer will be given 6 months to obtain and document the required training.
- If an officer has obtained the requisite continuing training, the employing authority will submit a letter to POST staff, stating that the officer has been brought into compliance.

Executive Director Attends Basic Graduations:

- Law Enforcement Officer (3 times a year)
- Probation and Parole (1 time a year)
- Public Safety Communicator (4 times a year)
- Misdemeanor Probation and Pre-trial Officers (1 time a year)
- Corrections/Detention officer (6 times a year)

Website

POST Information and Resource Guide: POST Staff will keep the “POST Information and Resource Guide” updated on the POST website to provide information, laws, and legal opinions that direct the Council or affect stakeholders. The following information is available for transparency for all public safety agencies and the community:

- General Information
- Statistics and Graphs
- Current Integrity Report
- Statutes
- ARMs
- AG-Opinions
- Attorney Memos
- Policies
- Legislative Reports

Statistics/Graphs/Reports: POST staff collect statistics and develop graphs to track progress and growth, measure performance, analyze problems, and prioritize requests. The following statistics and graphs will be on POST’s website along with an annual report:

- Equivalency Requests
- Courses Available to Officers
- Courses that Officers Completed
- Training Hours Officers Completed
- Training profile/Information Requests
- Complaints
- Cases Closed
- Investigations
- Investigations Closed
- Sanctions
- Revocations/Denial of Certificates

Public Record Requests: POST staff will establish a public information request process, provide statistics about public information requests, and retain and publish public information requests on POST's website. This information will include:

- Requester
- Date of Request
- 5-day Acknowledgement
- 90-day Deadline
- Completion Date
- Hours/Cost

Preliminary Investigations: POST staff track allegations that are received and the time to complete the preliminary investigation.

- Employing Agency of the Subject Officer
- Investigator Assigned
- Date Allegation Received
- Date Letter 1 Response Received
- Date Preliminary Investigation Started
- Anticipated Completion Date
- Actual Completion Date

Integrity Reports: The Montana POST Integrity Reports provide a summary of cases which resulted in a certificate sanction, and on which the POST Council has ruled. The integrity reports are on POST's website.

- Current Integrity Report
- Historical Integrity Reports

Goals

FTE: POST Currently has three FTE, one Modified FTE, and a DCI Compliance Specialist who has been assisting POST with investigations on a part-time basis. POST has an immediate need for two FTE.

- Administrative Assistant Modified Position: This modified position is currently staffed. This staff reviews applications for individuals seeking POST credit, prepares certificate applications, completes minutes for Case

Status Committee Meetings, is the file clerk for contested cases, and handles public records requests for officers' transcripts.

- Compliance/Administrative Investigator: The duties of the one POST Paralegal/Investigator have grown substantially over the years. POST has an obligation to conduct its own unbiased investigation of allegations of misconduct. The increased allegations and investigations justify the need for an additional FTE POST Compliance/Administrative Investigator.

Software: POST upgraded its officer training and certification database in 2017. As the needs of the stakeholders have increased, and as POST has continued to fulfill its obligations to the people of Montana, POST has identified the need for more robust software to meet the growing demand on POST.

- Case Management System: The case management system would be a central location for all POST case information including reports, recordings, letters, and statements. It would track information of the individuals/agencies involved. It would track deadlines for the POST letter processes, contested case proceedings, petitions for judicial review, and appeals to the Montana Supreme Court. It would also run reports from the information concerning what cases are open, closed, active, or holding.
- Portal: Officers could submit training to POST through a portal. POST would receive notification of the training submitted. Notices and Certificate Applications would also be submitted to POST through the portal.
- Training: Officers' training hours for certificates would be compiled automatically, and POST would then be notified when an officer completes the required training and years of service.
- Forms: All POST forms could be included and built in the software system.
- Storage: Officers would be able to store all their training documents in the storage that the software provides.

Paperless: For the last several years POST staff have archived an electronic and hard copy of training, investigations, notices, and other documents regarding public safety officers. POST staff have begun the process of ensuring that files are digitized and removing the hard copies of documents. In addition, in 2022, POST staff began issuing all certificates electronically. This has saved time and money.

- There are over 17 filing cabinets of current officers' documents. POST staff verify that the information has been archived electronically and then shred the documents.

- New documents sent in are digitized and shredded.
- POST's inactive or closed investigation files are being saved electronically, and hard copies are being destroyed. Additionally, POST staff will no longer create any hard files on investigations until an investigator is assigned to the case. For those cases that are dismissed without an investigation, or in which the officer does not respond, all files are maintained electronically.
- Council meeting records, including meeting recordings, minutes and materials, have all been digitized and are available to all staff in POST's electronic shared drive. This includes the meeting minutes for every POST Council meeting held since its first meeting in September of 1972.

Audio/Video Conferencing: POST recently updated its conference room with audio/video capability. This will save time, money, increase productivity, and allow POST to be more efficient. The goal is for the Council and staff to have audio/video conferencing options and make scheduling meetings more convenient. Video conferences is available for:

- Council Meetings
- Committee Meetings
- Investigations
- Interviews
- Training
- General Meetings

Glossary of POST Terms

Case Status Committee: a three-member committee of the POST Council, appointed by the chair of the council. The council chair designates 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.

Contested Case: a civil administrative proceeding initiated by a request for a hearing from an officer after an officer has received a notice of agency action imposing sanction, suspension, or revocation by the director when the case could not be settled at the preliminary stage of review or investigation.

Employing Authority or Appointing Authority: an entity that is statutorily empowered with administration, supervision, appointment or termination authority, training, or oversight over a public safety agency or officer. This may include but is not limited to: the chief of police, mayor, county attorney, city council, warden, sheriff, etc.

Equivalency: the process through which an officer who has successfully completed a basic course that is taught or approved by a federal, state, local, or United States military law enforcement agency, that satisfies the basic training requirement for that agency, may obtain a Montana POST basic certificate without completing the MLEA basic academy.

Inservice Training: training which is not POST-approved training, and which is provided by an employing agency to public safety officers to review and develop skills and knowledge for a specific officer's needs.

MAPA: the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

POST-Approved Training: training reviewed and approved by POST pursuant to POST's rules for which POST gives training credit, including but not limited to basic, regional, and professional courses.

Statistics and Graphs Index

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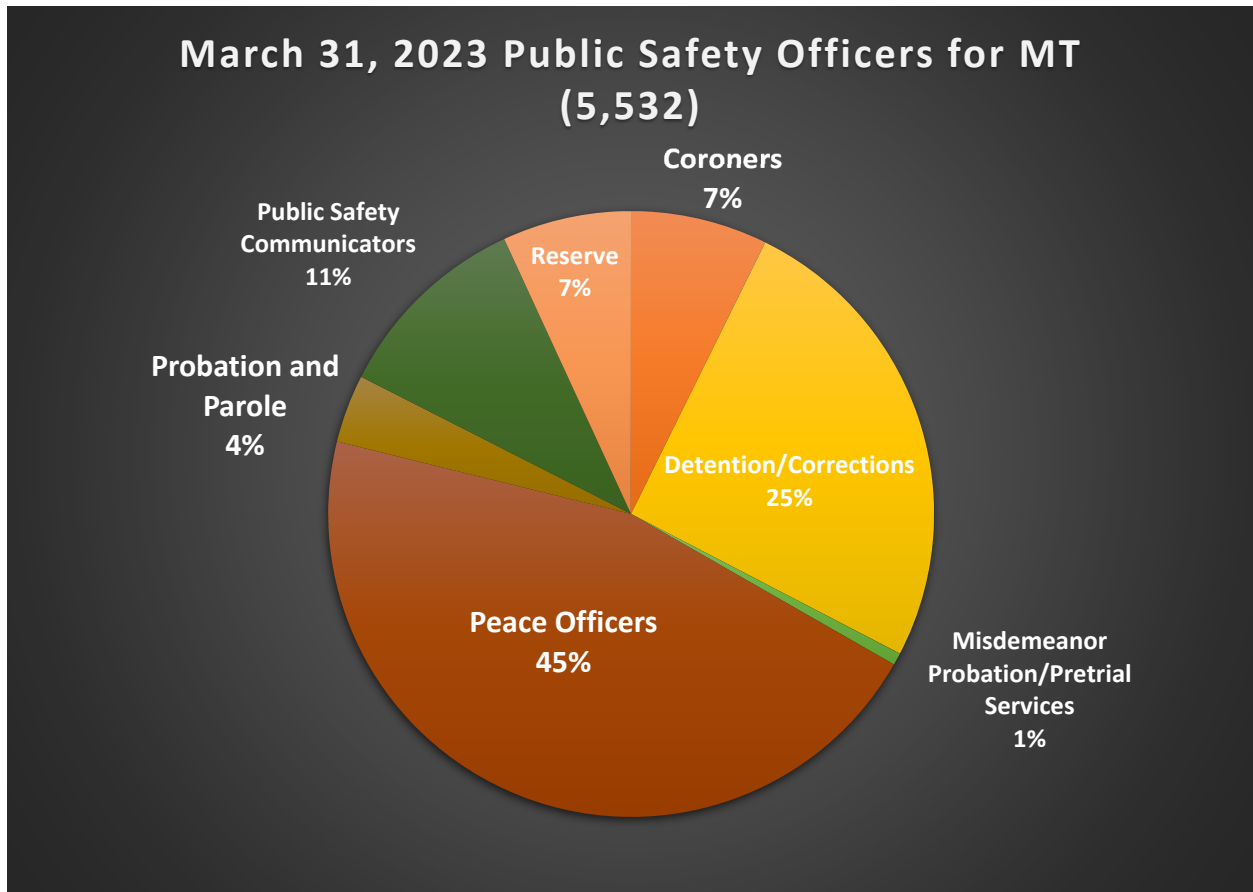
Introduction

POST creates and maintains records of every public safety officer's employment, training, certification, education, and complaints. During its regularly scheduled, quarterly Council meetings, POST staff provide the Council with a "snapshot" of the number of extension requests, equivalency requests, training courses approved, and certificates issued. The Council also receives a report from the Case Status Committee on allegations received, investigations open, and case closures. POST staff also provide a more in-depth annual report of data to the Council each year, and the same report is available on POST's website. This helps the Council oversee the day-to-day operations and its staff's activities, along with providing necessary transparency for public safety officers and members of the public.

Public Safety Officers

Public safety officers are defined in § 44-4-401, MCA, and they include peace officers, coroners, detention officers, corrections officers, public safety communications officers, probation and parole officers, misdemeanor probation officers, pretrial service officers, and reserve officers. POST maintains records of all active public safety officers in the State of Montana.

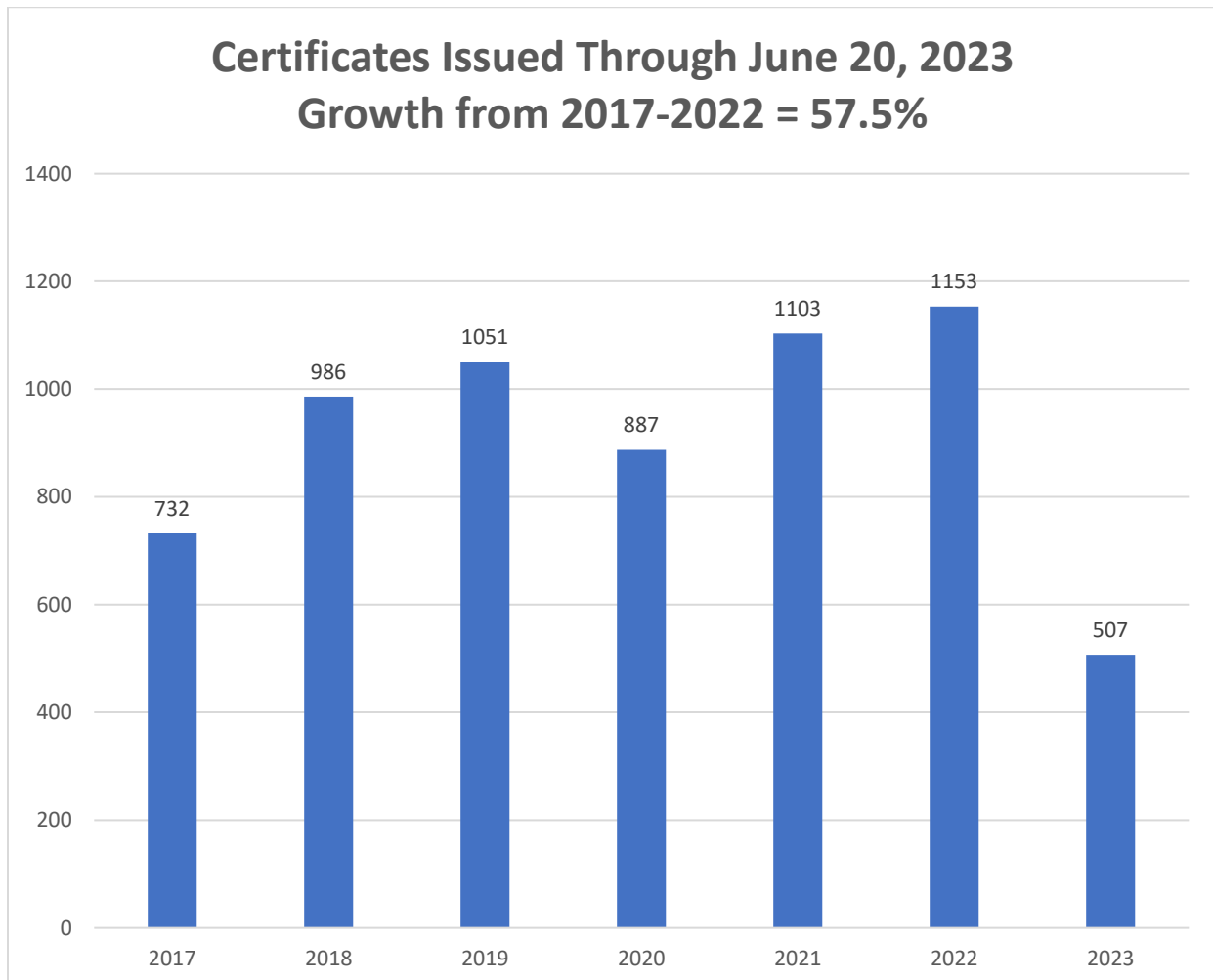
Public Safety Officers in the State of Montana 2022	
Coroners	404
Detention/Corrections Officers	1401
Misdemeanor Probation/Pretrial Services	36
Peace Officers	2521
Probation and Parole	201
Public Safety Communicators	588
Reserve Officers	381
Total	5,532



Certification

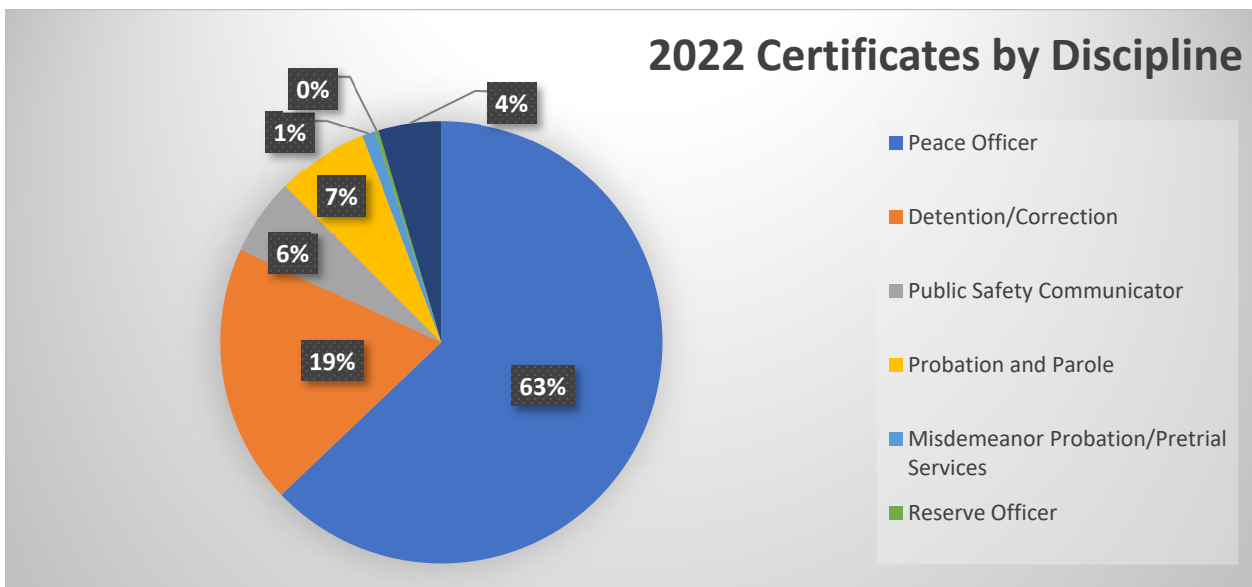
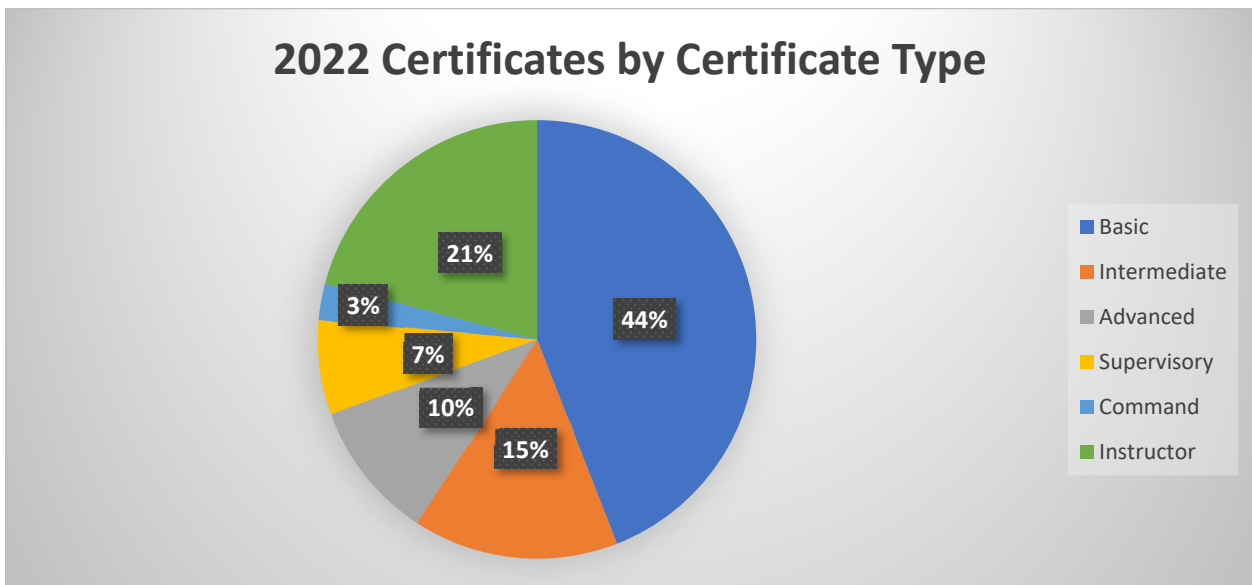
All public safety officers must be certified or eligible for certification. POST issues Basic, Intermediate, Advanced, Supervisory, Command, and Instructor certificates to public safety officers in the State of Montana. Each certificate type has specific training and experience requirements. Certificates are issued for the purpose of promoting ethical behavior, professionalism, education, skill, and experience necessary to perform the duties of a public safety officer. All POST certificates remain the property of the POST Council.

POST has seen consistent growth in the number of certificates it issues each year.



In 2022, the POST Council issued a total of **1,153** certificates.

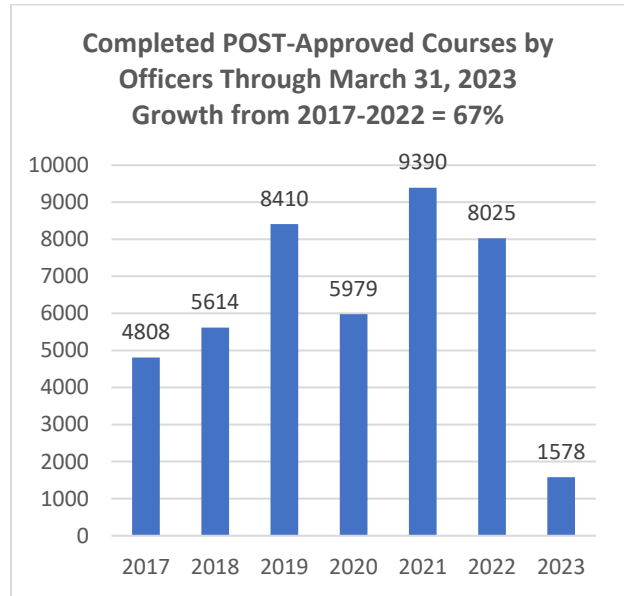
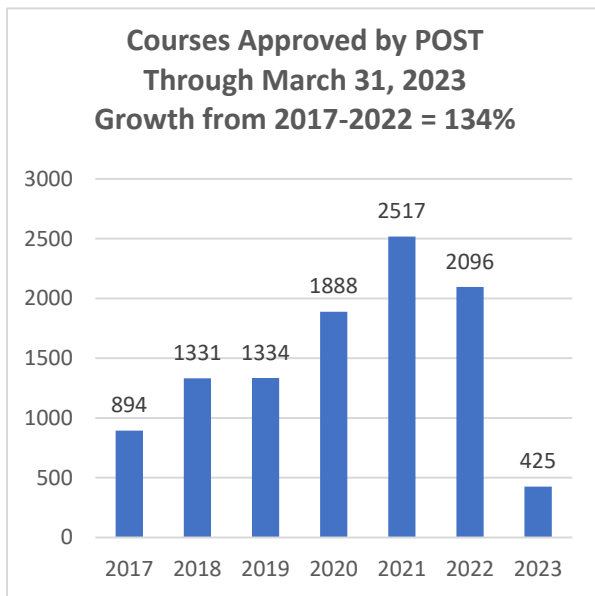
2022 Certificates by Type	
Basic	508
Intermediate	175
Advanced	118
Supervisory	80
Command	31
Instructor	241
Total	1,153



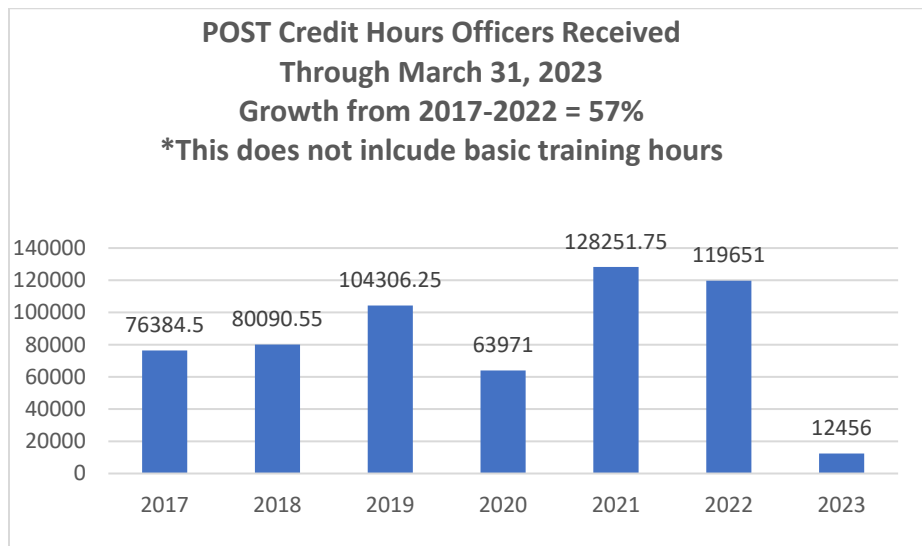
Training

POST provides POST Training Credit Hours for non-basic courses that meet the minimum standards established by the POST Council. POST continues to see growth in the number of training courses it approves each year.

In 2022, POST approved **2,096 courses** for POST Training Credit Hours. POST recorded **8,025 completed** POST-approved courses.



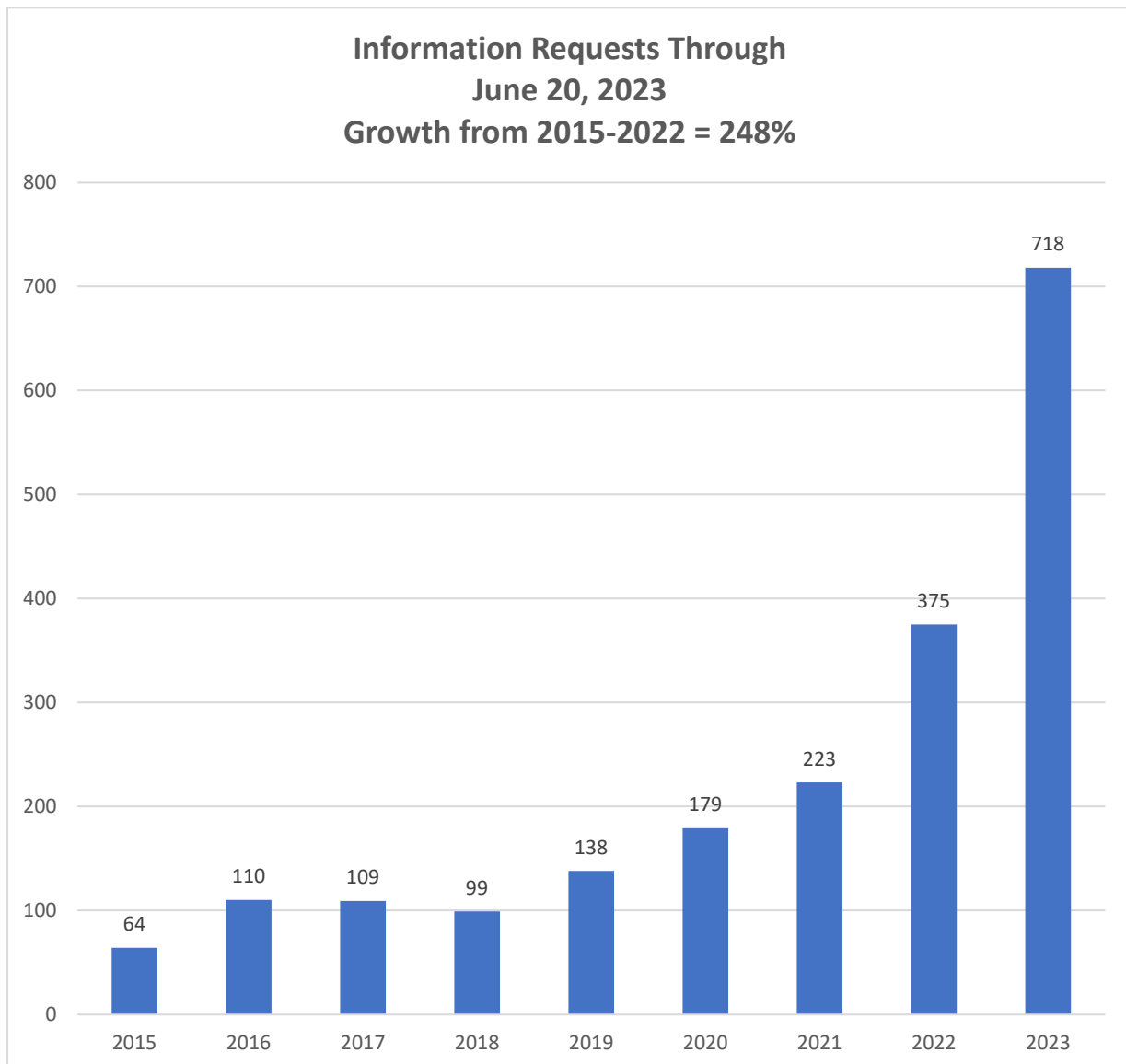
In 2022, Montana's public safety officers earned a **total of 119,651 POST Training Credit Hours**.



Requests for Information

POST processes requests for information in various forms. POST receives public information requests, requests from officers for their information, requests from public safety agencies pursuant to background investigations, and requests from attorneys or investigators regarding pending litigation or other matters. POST has experienced sustained growth in the number of requests it processes each year.

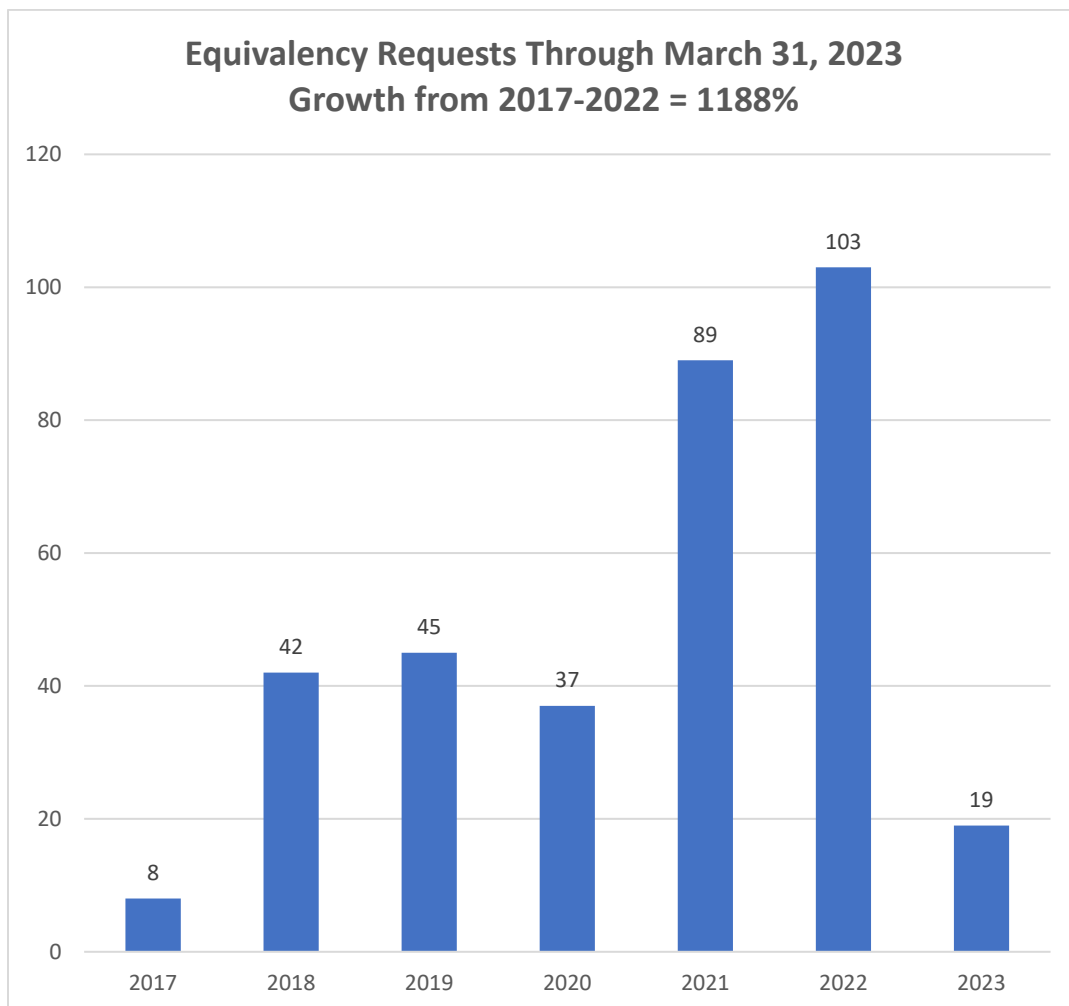
In 2022, POST responded to **375** separate requests for information. As of June 20, 2023, POST has responded to **718** requests.



Equivalency Requests

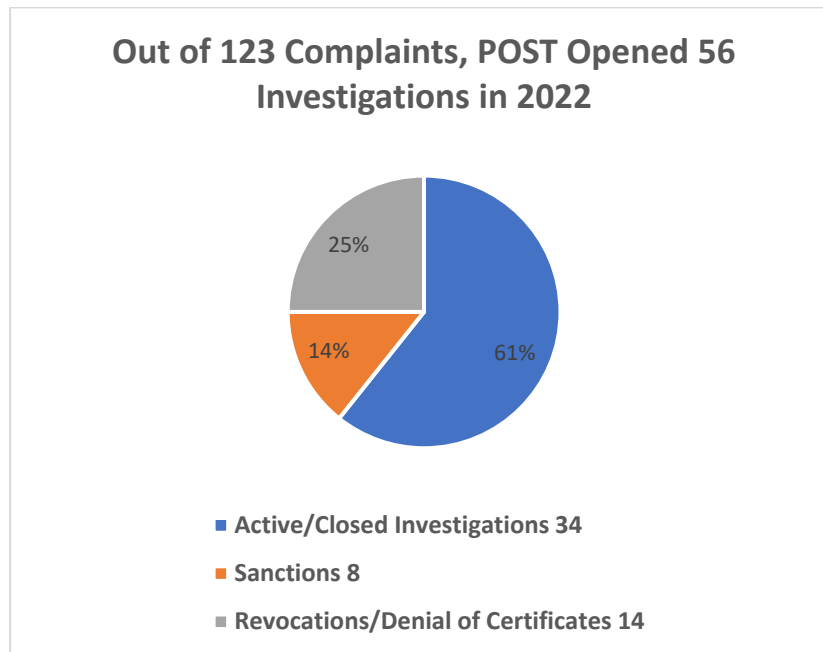
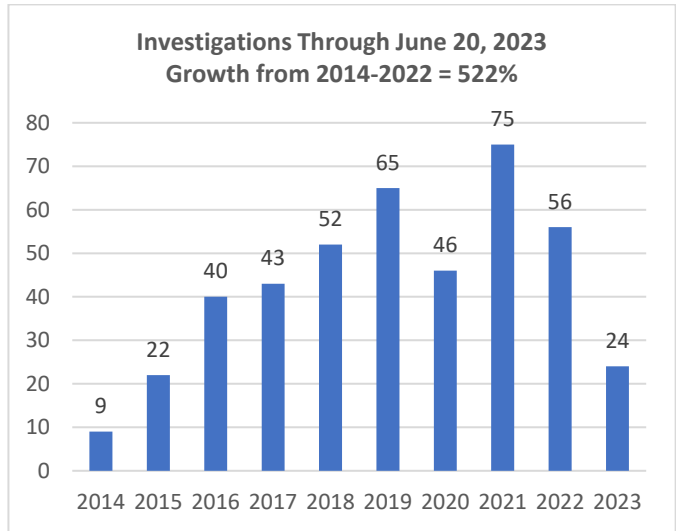
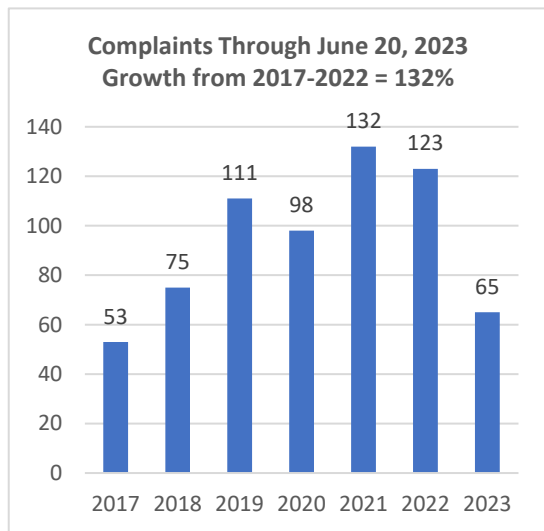
When peace officers or a detention/corrections officers come to work in Montana, and they have already attended a basic academy, their employing authority may request equivalency from POST. Upon receipt of a Basic Equivalency Request, POST staff conducts an investigation of the officer's training, employment, and ethical background. Upon approval of an equivalency request, a peace officer may attend a one-week legal equivalency course in lieu of the full academy. A detention/corrections officer receives study materials and must pass the final examination that Montana officers take. If an officer successfully completes equivalency, he or she will become eligible for POST certification upon completion of the legally-required probationary period.

POST has seen a great deal of growth in the number of equivalency requests that it processes each year.



Complaints and Investigations

The POST Council has been entrusted with the authority to sanction officer certification in § 44-4-403, MCA. If an officer's certification is revoked by POST, the officer may no longer work as a public safety officer in the State of Montana. Any individual may submit a complaint to POST. Every complaint must first be reviewed by the appointing authority before POST will conduct an investigation of any allegation. POST has seen an increase in complaints and investigations.



Montana Public Safety Officer Standards and Training



Integrity Report
October 19, 2021 – July 7, 2023

Case # 1. A corrections officer engaged in sexual harassment of a fellow officer. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 2. A corrections officer engaged in a pattern of aggressive and profane behavior toward other officers. The officer voluntarily surrendered his POST certification.

Case # 3. Law enforcement responded to several incidents involving a peace officer who was intoxicated off duty. Ultimately, the officer was charged with Driving Under the Influence of alcohol twice within a short period of time. The officer's Intoxilizer results were several times the legal limit on both occasions. The officer's POST certification was revoked.

Case # 4. A peace officer failed to document a number of complaints regarding a citizen. The officer later accepted an expensive gift from the same citizen. The officer entered into a stipulated agreement with POST for his certification to be placed on probation for a period of three years.

Case # 5. A peace officer used unjustified force against a female when he pulled her out of the back of his patrol vehicle by her handcuffs and proceeded to drag her by her handcuffs across the snowy parking lot at the detention facility. The officer's certification was revoked when he did not respond to POST's allegations.

Case # 6. A corrections officer engaged in an inappropriate, romantic relationship with an inmate. The officer's certification was revoked when she did not respond to POST's allegations.

Case # 7. After her resignation, it was discovered that a dispatcher had emailed confidential and sensitive information to herself shortly before she left employment with the agency. The officer's certification was revoked when she failed to respond to POST's allegations.

Case # 8. After he pulled a woman over and issued her a warning, a peace officer used department information systems to locate the woman on social media. The officer exchanged sexually graphic messages and photographs with the woman and went to her home where he had physical contact with her. The officer voluntarily surrendered his POST certification.

Case # 9. A peace officer used department information systems to access information regarding two individuals for his ex-wife, and then relayed the information to her. He then responded to a call for service involving his wife pulling and firing a gun to threaten and intimidate the same individuals. The officer then prepared a false report about the call for service and repeatedly lied to his administration regarding the issue. The officer's POST certification was revoked when he failed to respond to POST's allegations.

Case # 10. A reserve officer used his reserve officer status to obtain surveillance video footage for personal reasons. The officer voluntarily surrendered his POST certification.

Case # 11. A detention officer engaged in a pattern of escalating situations with inmates, resulting in the officer having to use force. The officer made numerous inappropriate comments on social media while identifying as an officer. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 12. A detention officer allowed inmates to have inappropriate contact with other inmates, allowed inmates to pass contraband in his presence, and fell asleep on duty. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 13. A peace officer used excessive force on an inmate when the officer pushed the inmate, who was not resisting, up against a cell wall. The officer then threw the inmate down onto a mat on the floor, rendering the inmate unconscious. The officer failed to contact medical staff to check the status of the inmate. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 14. A corrections officer was off duty and became intoxicated at a local bar. While at the bar, the officer got into confrontations with other patrons before being kicked out by the bartender. While outside of the bar in his vehicle, the officer got into another confrontation with a patron who had gone outside. The officer pulled his firearm on the individual, who called law enforcement. During the investigation, law enforcement also discovered that the officer drove his vehicle. The officer was arrested for DUI and Assault with a Weapon. The assault

charge was dropped, and the officer pled guilty to the DUI. The officer was dishonest with responding officers and POST regarding his use of a weapon, claiming he was only “pointing” at the individual outside of his vehicle. He made these claims despite video evidence and witness statements to the contrary. The officer’s POST certification was revoked.

Case # 15. A corrections officer “dry-tased” an inmate without cause to do so. The officer was convicted of Official Misconduct and felony Mistreating Prisoners. The officer’s certification was revoked when he failed to respond to POST’s allegations.

Case # 16. A public safety communications/detention officer failed to contact law enforcement regarding a possible sexual assault and was later observed sleeping on duty. The officer’s certification was revoked.

Case # 17. A Chief of Police and former POST Council member was found to have lied to various officials in multiple criminal investigations. The officer was also found to have had numerous inappropriate communications with a civilian, while also providing that civilian with access to the department and confidential information. As part of the inappropriate communications, POST’s investigation revealed that the officer conspired with the civilian to cause a subordinate officer to violate POST’s ARMs, then reported the violations to POST. Numerous statements in the report to POST were found to be demonstrably false. The officer voluntarily surrendered his POST Certification.

Case # 18. A peace officer became highly intoxicated and was cited for carrying a concealed weapon while intoxicated and for trespass to property. The officer’s certification was suspended for two months, followed by a 22-month, stayed suspension on probation conditions.

Case # 19. A detention officer was found to be in possession of alcohol while attending the Correction/Detention Officer Basic at the Montana Law Enforcement Academy. Such possession is a violation of the Academy’s policies and code of conduct. Additionally, the officer consumed alcohol and drove his department-issued vehicle while attending the academy. The officer’s certification was placed on a two-year, stayed suspension on probation conditions.

Case # 20. A corrections officer violated prison policy when he allowed a general population inmate to enter a restricted housing unit without prior authorization. The officer and POST entered into a Settlement Agreement, wherein the officer's certification was placed on a one-year, stayed suspension on probation conditions.

Case # 21. A peace officer was off duty and consumed alcoholic beverages. The officer then drove his personal vehicle, and was stopped and investigated for DUI. The officer and POST entered into a Settlement Agreement, wherein the officer's certification was placed on a one-year, stayed suspension on probation conditions.

Case # 22. A peace officer engaged in sexual intercourse with a coworker during a ride-along. The officer was on duty and engaged in the sexual activities on elementary school property. Finally, the officer had gone, on his lunch break, to the same coworker's home for sexual activity and did not correctly report his location to dispatch. The officer and POST entered into a Settlement Agreement, wherein the officer's certification was suspended for a period of one month, followed by a five-year period of probation.

Case # 23. A peace officer engaged in on-duty sexual activity with a student attending the university where the officer worked. The officer and POST entered into a Settlement Agreement, wherein the officer's certification was suspended for a period of one month, followed by a five-year, stayed suspension on probation conditions.

Case # 24. A peace officer engaged in inappropriate use of force when he grabbed an intoxicated individual and pulled him downward. The individual was on an elevated platform and fell several feet to the ground. The officer's certification was placed on a one-year, stayed suspension on probation conditions.

Case # 25. A peace officer allowed multiple individuals under the age of 21 to drink in the officer's home. The peace officer also allowed the individuals to drive his ATV on another occasion. The individuals crashed the ATV, and the officer reported to his insurance company that he had been the person driving. Later, the officer threatened several individuals with a firearm. The officer's certification was revoked.

Case # 26. A Chief of Police consumed nine alcoholic beverages during his lunch hour. The officer proceeded to engage in an inappropriate conversation with other patrons at the bar. During the investigation, it was discovered that the officer had been drinking during his lunch hour on a regular basis for the past several months. During the formal MAPA contested case process, the officer and POST entered into a Settlement Agreement, wherein the officer's certification was suspended for a period of three years on conditions. The officer also agreed that he would never return to work as a public safety officer in the State of Montana.

Case # 27. A Chief of Police engaged in a sexual relationship with a subordinate officer, both on and off duty. The officer was later convicted of Distribution of Child Pornography and sentenced to Federal prison. The officer's certification was revoked when he did not respond to POST's allegations.

Case # 28. A public safety communications/detention officer was found to have been sleeping on duty. The officer had also falsified her security check logs and signed off on other duties she had not completed. The officer's certification was revoked when she failed to respond to POST's allegations.

Case # 29. A public safety communications officer was off duty when he became highly intoxicated and disorderly, resulting in law enforcement being contacted. The officer was cited with disorderly conduct and damaged an officer's patrol vehicle while he was being transported. The officer and POST entered into a Settlement Agreement wherein the officer's certification was placed on a two-year, stayed suspension on probation conditions.

Case # 30. A peace officer was terminated from his employment for making false statements, neglect of duty, and misuse of Criminal Justice Information Network information. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 31. A peace officer was off duty and consumed alcoholic beverages before driving. The officer was stopped and investigated for DUI. During the investigation, the officer refused to provide a breath sample. During the formal MAPA contested case process, the officer and POST entered into a Settlement Agreement wherein the officer's certification was placed on a three-year, stayed suspension on probation conditions.

Case # 32. A corrections officer was off duty and drinking alcoholic beverages. The officer then drove his vehicle through an intersection, colliding with another vehicle. The officer's blood test revealed that his BAC was .265. The officer and POST reached a Settlement Agreement wherein the officer's certification was placed on a two-year, stayed suspension on probation conditions.

Case # 33. A peace officer, on more than one occasion, sent unsolicited, sexually graphic photographs to multiple recipients. While his employing authority was investigating the issue, the officer refused to cooperate with the investigation. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 34. A corrections officer was charged with Partner/Family Member Assault and Disorderly Conduct. The officer did not report his arrest/incarceration to his employer. The officer's POST certification was revoked when the officer did not respond to POST's allegations.

Case # 35. A detention officer located and picked up a Ziplock bag containing methamphetamine. The officer then went to the bathroom with the bag, came out without the bag, then entered the bathroom again later. When the officer exited the bathroom, he took the bag up to the waiting room and attempted to make it appear that he located and picked up the bag at that time. The officer then lied and stated that he located the bag in the waiting room. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 36. A peace officer became intoxicated and threatened to shoot himself while holding his duty weapon. The officer and POST entered a Settlement Agreement, wherein the officer agreed to his certification being suspended until such time as the officer may be found fit for duty. Should the officer return upon a finding of fitness, the officer's certification will be subject to a five-year, stayed suspension on probation conditions.

Case # 37. A peace officer broke into a residence and assaulted a sleeping male. The officer's certification was revoked when the officer failed to respond to POST's allegations.

Case # 38. A peace officer used inappropriate, punitive force on an individual who was being investigated for DUI. The officer grabbed the handcuffed individual by the throat and forcefully pushed him backward onto the hood of a patrol vehicle. The officer's certification was revoked.

Case # 39. A corrections officer, twice within the span of 10 months, was investigated for DUI. The officer and POST entered into a Settlement Agreement wherein her certification was placed on a one-year, stayed suspension on probation conditions.

Case # 40. A Bureau Chief was on vacation, and he purchased and consumed a THC edible product when such products were still illegal in Montana. The officer disclosed his actions upon his return, when he was randomly selected for a urinalysis. The officer and POST entered into a Settlement Agreement wherein the officer's certification was suspended for five days, followed by a stayed, twenty-five-day suspension on probation conditions for one year.

Case # 41. A detention officer was on duty and became angry while working on a computer. The officer picked up a computer mouse and struck the monitor with the hand holding the mouse. Upon making contact with the computer monitor, the officer released the computer mouse. The computer monitor was damaged by the officer's actions. The officer then wrote a report, falsely claiming that the damage was accidental. On another occasion, the officer made threats toward a subordinate. Many of the officer's coworkers reported that his behavior had become aggressive and angry. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 42. A corrections officer was accused of being rude and aggressive during a pat search of one of the minor children of an inmate. The officer stated that the child had struck the officer on the hands repeatedly. Video footage did not depict the child striking the officer. The officer's certification was revoked when she failed to respond to POST's allegations.

Case # 43. A Sheriff was drinking in a local bar when one of the Sheriff's employees was in a car accident across the street from the bar. The Sheriff exited the bar, and he spoke with one of the responding officers. During the conversation, the Sheriff became loud and profane, ultimately removing the investigating

officer's body-worn camera. The officer and POST entered into a Settlement Agreement wherein the officer agreed to have his certification placed on a one-year, stayed suspension on probation conditions.

Case # 44. A peace officer engaged in inappropriate, off-duty, sexual behavior which resulted in administrative and criminal investigations. The officer was not ultimately charged with any crime, but he elected to resign his position prior to the employing authority completing its investigation. The officer's POST certification was revoked when he failed to respond to POST's allegations.

Case # 45. A peace officer made inappropriate comments to members of the public on social media, with the purpose of making those members of the public angry. The officer also posted derogatory content on his own Facebook page. The officer and POST entered into a Settlement Agreement, wherein his POST certification was placed on a two-year, stayed suspension on probation conditions.

Case # 46. A peace officer engaged in a sexual relationship with her Chief, both on and off duty. The officer's POST certification was revoked when she failed to respond to POST's allegations.

Case # 47. A public safety communications officer was charged with Misuse of Criminal Justice Information Network information. The officer had used the CJIN terminal to obtain information which she provided to a caller. The officer's certification was revoked when she failed to respond to POST's allegations.

Case # 48. A corrections officer failed to double-lock handcuffs on an inmate, allowing the handcuffs to be tightened to the point that they left marks on the inmate's wrists. On another occasion, the officer transported a different inmate across the prison grounds in a vehicle that was used for transporting mail. The officer and POST entered into a Settlement Agreement, wherein the officer's POST certificate was placed on a two-year, stayed suspension on probation conditions.

Case # 49. A corrections officer was off duty and drank alcoholic beverages. The officer then drove his vehicle approximately 70 miles-per-hour in a 45 mile-per-hour zone before making a wide turn and accelerating to 55 miles-per-hour in a 35 mile-per-hour zone. The officer was stopped and, ultimately, convicted of DUI.

The officer and POST entered into a Settlement Agreement, wherein the officer's POST certification was placed on a two-year, stayed suspension on probation conditions.

Case # 50. A public safety communications/detention officer consumed alcohol on campus at the Montana Law Enforcement Academy, while she was attending Corrections/Detention Officer Basic. The officer and POST entered into a Settlement Agreement, wherein her certification was placed on a one-year stayed suspension on probation conditions.

Case # 51. A peace officer began a sexual relationship with a woman he was simultaneously investigating. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 52. A reserve officer viewed and shared a video of a young woman engaged in illegal sexual acts. The officer voluntarily surrendered his certification.

Case # 53. A detention officer was terminated for violation of victim notification policy, integrity issues regarding his security checks, and for posting videos of the detention facility. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 54. A detention officer was cited and arrested for DUI. The officer had also been noted to have inappropriate boundaries with inmates and was referring to other officers in an inappropriate manner. The officer's POST certification was revoked when she failed to respond to POST's allegations.

Case # 55. A peace officer used excessive force when he punched an arrestee who was handcuffed and secure in the backseat of a patrol car. The officer and POST entered into a Settlement Agreement, wherein the officer's POST certification was suspended for a period of two weeks, followed by a two-year, stayed suspension on probation condition.

Case # 56. A peace officer, while investigating a call regarding drug use, inappropriately demanded a subject enter another subject's dwelling to obtain the drugs and bring them to the officer. During a separate incident, the officer failed to deescalate a situation involving a traffic stop. The officer and POST entered into a

Settlement Agreement, wherein the officer's certification was placed on a two-year, stayed suspension on probation conditions.

Case # 57. A peace officer became intoxicated and assaulted several individuals. The officer and POST entered into a Settlement Agreement, wherein the officer's certification was suspended for a two-year period, followed by two years of probation.

Case # 58. A peace officer was off duty and drinking alcohol. The officer then drove his unmarked, department-issued patrol vehicle. While he was driving, the officer was hit from behind by an intoxicated driver. The officer and POST entered into a Settlement Agreement, wherein the officer's certification was placed on a one-year, stayed suspension on probation conditions.

Case # 59. A corrections officer was off duty and consuming alcoholic beverages when he and his significant other became engaged in a verbal altercation which progressed to a physical altercation. The officer was arrested for Partner/Family Member Assault and ultimately entered into a deferred prosecution agreement on the charge. The officer and POST entered into a Settlement Agreement, wherein the officer's certification was placed on a two-year, stayed suspension on probation conditions.

Case # 60. A corrections officer engaged in an inappropriate, romantic relationship with an inmate. The officer admitted that, while the inmate was incarcerated, he and the inmate engaged in a kiss and inappropriate touching. The officer further confirmed that he and the inmate continued their relationship after she left the facility. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 61. A peace officer was off duty and drinking alcoholic beverages. The officer then drove his vehicle through an intersection, nearly colliding with another vehicle, until the officer's vehicle came to a stop in the ditch on the side of the road. The other driver contacted dispatch and had difficulty getting responses from the officer, due to the officer's level of intoxication. The officer was convicted of DUI. The officer and POST entered into a Settlement Agreement, wherein the officer's certification was suspended for fourteen days, followed by a 30-month, stayed suspension on probation conditions.

Case # 62. A peace officer was off duty and consuming alcoholic beverages. When the officer's significant other's son attempted to leave the residence, the officer physically prevented him from leaving by grabbing his arm. The officer's POST certification was revoked when he failed to respond to POST's allegations.

Case # 63. A peace officer/coroner was off duty and became highly intoxicated. The officer then engaged in a group phone call, during which he made statements regarding having a "hit list" or "kill list." The officer's estranged wife was so concerned by the officer's increased use of alcohol and strange behaviors, she filed a petition for an order of protection against the officer. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 64. A misdemeanor probation/pretrial services officer was alleged to have been stealing suboxone from her clients. The officer voluntarily surrendered her POST certification.

Case # 65. A peace officer responded to a single-vehicle accident. While investigating, he requested a male subject provide a breath sample, mistakenly believing the male subject was under 21. The officer falsified his report, indicating that he obtained the breath sample because he believed the male subject was on probation. The officer made false, disparaging comments about the County Attorney while the officer was on the scene of the crash. He then withheld the crash scene video from the prosecuting attorney. When questioned, the officer lied, and claimed he withheld the video because it didn't have evidentiary value. The officer's certification was revoked.

Case # 66. A peace officer was arrested for several crimes by various law enforcement agencies, including public intoxication, domestic violence with strangulation, and contributing to minors. The officer's certification was revoked when he failed to respond to POST's allegations.

Case # 67. A corrections officer was attending Correction/Detention Officer Basic at the Montana Law Enforcement Academy. The officer consumed alcoholic beverages to the point of intoxication one night, then the officer urinated in a public area on campus. The officer and POST entered into a Settlement Agreement, wherein the officer's certification was placed on a one-year, stayed suspension on probation conditions.

Case # 68. A peace officer who was an instructor at the Montana Law Enforcement Academy made inappropriate, sexual jokes to his students. The officer and POST entered into a Settlement Agreement, wherein the officer's POST certification was placed on a two-year, stayed suspension on probation conditions.

Case # 69. A deputy sheriff who was the acting warden of the detention facility engaged in a sexual relationship with a subordinate contract employee. The officer and the contract employee engaged in sexual contact in the office on one occasion. On three occasions, they had sexual contact away from the office. In two out of the three occasions, the officer came in to work during the early morning hours, then went to the contract employee's home without checking off shift. The officer's certification was revoked.

Case # 70. A detention officer who was working in a juvenile detention facility used an unauthorized restraint technique on an inmate. The officer voluntarily surrendered his POST certification.

Case # 71. A public safety communications officer consumed alcoholic beverages to the point of intoxication. She then drove her personal vehicle with two passengers before crashing her vehicle. The officer then instructed the passengers to flee the scene, and instructed one of the passengers to claim the other passenger was driving. The officer's certification was revoked.

Case # 72. A detention officer, who had been on light duty, was instructed to return to regular duty. The officer became argumentative and began mocking a supervisor in front of subordinates. The officer's POST certification was revoked when he failed to respond to POST's allegations.

Case # 73. A public safety communications officer received a call regarding a missing person. The officer proceeded to yell at the caller. Later, the officer was responsible for opening doors for inmate workers in the detention facility. When inmate workers requested the officer open doors, she became upset and began yelling at the inmate workers. Finally, the officer failed to document a call regarding an erratic driver who nearly hit a child. The officer's certification was revoked.

Case # 74. A police officer was suspected of issuing discriminatory traffic tickets and leaking confidential information regarding law enforcement operations to the press. The officer and POST entered into a Settlement Agreement, wherein the officer's POST certification was placed on a two-year, stayed suspension on probation conditions.

Case # 75. A deputy sheriff mishandled a call involving a physical altercation and the use of a weapon. Due to the officer's negligence, he lost the weapon he collected. The officer and POST entered into a Settlement Agreement, wherein the officer's POST certification was placed on a two-year, stayed suspension on probation conditions.

Case # 76. A police officer was arrested for, and later convicted of, Driving Under the Influence of alcohol. The officer and POST entered into a Settlement Agreement, wherein the officer's POST certification was placed on a two-year, stayed suspension on probation conditions.

Case # 77. A deputy sheriff became highly intoxicated and engaged in an inappropriate, sexual text message conversation with a female under the age of eighteen years old. The officer and POST entered into a Settlement Agreement, wherein the officer's POST certification was suspended for seven days, and then placed on a three-year, stayed suspension on probation conditions.

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Contested Cases

2-4-601. Notice. (1) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice.

(2) The notice must include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the statutes and rules involved;

(d) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

(e) a statement that a formal proceeding may be waived pursuant to 2-4-603.

2-4-602. Discovery. Each agency shall provide in its rules of practice for discovery prior to a contested case hearing.

2-4-603. Informal disposition and hearings -- waiver of administrative proceedings -- recording and use of settlement proceeds. (1)(a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. A stipulation, agreed settlement, consent order, or default that disposes of a contested case must be in writing.

(b) Unless otherwise provided by law, if a stipulation, agreed settlement, consent order, or default results in a monetary settlement involving an agency or the state, settlement proceeds must be deposited in the account or fund in which the penalty, fine, or other payment would be deposited if the contested case had proceeded to final decision. If there is no account or fund designated for the fine, penalty, or payment in the type of action, then the settlement must be deposited in the general fund.

(c) If a stipulation, agreed settlement, consent order, or default results in a nonmonetary settlement involving an agency or the state, settlement proceeds, whether received by the state or a third party, must be recorded in a nonstate, nonfederal state special revenue account established pursuant to 17-2-102(1)(b)(i) for the purpose of recording nonmonetary settlements.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then use informal proceedings under 2-4-604. Parties to contested case proceedings held

under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition must contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision.

2-4-604. Informal proceedings. (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under 2-4-201:

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

(i) written or oral evidence in opposition to the agency's action or refusal to act;

(ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or

(iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings on the objections;

(d) all matters placed on the record after ex parte communication pursuant to 2-4-613;

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at that party's cost a transcription of the recording, or both. Objections become a part of the record.

(3) Agencies shall give effect to the rules of privilege recognized by law.

(4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not the evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it

is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter.

2-4-611. Hearing examiners -- legal services unit -- conduct of hearings -- disqualification of hearing examiners and agency members. (1) An agency may appoint hearing examiners for the conduct of hearings in contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular matter.

(2) An agency may elect to request a hearing examiner from an agency legal assistance program, if any, within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal assistance program or the other agency.

(3) Agency members or hearing examiners presiding over hearings may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(4) On the filing by a party, hearing examiner, or agency member in good faith of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.

2-4-612. Hearing -- rules of evidence, cross-examination, judicial notice. (1) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(2) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(3) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(4) All testimony shall be given under oath or affirmation.

(5) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

(6) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data. They shall be afforded an opportunity to contest the material so noticed.

(7) The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

2-4-613. Ex parte consultations. Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, may not communicate with any party or a party's representative in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

2-4-614. Record -- transcription. (1) The record in a contested case must include:

- (a) all pleadings, motions, and intermediate rulings;
- (b) all evidence received or considered, including a stenographic record of oral proceedings when demanded by a party;
- (c) a statement of matters officially noticed;
- (d) questions and offers of proof, objections, and rulings on those objections;
- (e) proposed findings and exceptions;
- (f) any decision, opinion, or report by the hearings examiner or agency member presiding at the hearing, which must be in writing;
- (g) all staff memoranda or data submitted to the hearings examiner or members of the agency as evidence in connection with their consideration of the case.

(2) The stenographic record of oral proceedings or any part of the stenographic record must be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription must be paid by the requesting party.

2-4-621. When absent members render decision -- proposal for decision and opportunity to submit findings and conclusions -- modification by agency. (1) When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.

(2) The proposal for decision must contain a statement of the reasons for the decision and of each issue of fact or law necessary to the proposed decision and must be prepared by the person who conducted the hearing unless that person becomes unavailable to the agency.

(3) The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

(4) A hearings officer who is a member of an agency adjudicative body may participate in the formulation of the agency's final order, provided that the hearings officer has completed all duties as the hearings officer.

2-4-622. When hearings officer unavailable for decision. (1) If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties.

(2) The parties may waive compliance with 2-4-621 and this section by written stipulation.

2-4-623. Final orders -- notification -- availability. (1)(a) A final decision or order adverse to a party in a contested case must be in writing. A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Except as provided in 75-2-213 and 75-20-223, a final decision must be issued within 90 days after a contested case is considered to be submitted for a final decision unless, for good cause shown, the period is extended for an additional time not to exceed 30 days.

(b) If an agency intends to issue a final written decision in a contested case that grants or denies relief and the relief that is granted or denied differs materially from a final agency decision that was orally announced on the record, the agency may not issue the final written decision without first providing notice to the parties and an opportunity to be heard before the agency.

(2) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law must be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision must include a ruling upon each proposed finding.

(5) Parties must be notified by mail of any decision or order. Upon request, a copy of the decision or order must be delivered or mailed in a timely manner to each party and to each party's attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. An agency decision or order is not valid or effective against any person or party, and it may not be invoked by the agency for any purpose until it has been made available for public inspection as required in this section. This provision is not applicable in favor of any person or party who has actual knowledge of the decision or order or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.

2-4-631. Licenses. (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the

new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) Whenever notice is required, no revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Judicial Review of Contested Cases

2-4-701. Immediate review of agency action. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

2-4-702. (Temporary) Initiating judicial review of contested cases.

(1)(a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2)(a) Except as provided in 75-2-211, 75-2-213, and subsections (2)(c) and (2)(e) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute, subsection (2)(d), or subsection (2)(e), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the

petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e)(i) A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for judicial review of the decision. If a petition for judicial review is filed in the water court, the water court rather than the district court has jurisdiction and the provisions of this part apply to the water court in the same manner as they apply to the district court. The time for filing a petition is the same as provided in subsection (2)(a).

(ii) If more than one party is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has jurisdiction.

(iii) If a petition for judicial review is filed in the district court, the petition for review must be filed in the district court in the county where the appropriation right is located.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record. (*Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.*)

2-4-702. (Effective October 1, 2025) Initiating judicial review of contested cases. (1)(a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2)(a) Except as provided in 75-2-211, 75-2-213, and subsection (2)(c) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record.

2-4-703. Receipt of additional evidence. If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

2-4-704. Standards of review. (1) The review must be conducted by the court without a jury and must be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof of the irregularities may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

- (a) the administrative findings, inferences, conclusions, or decisions are:
 - (i) in violation of constitutional or statutory provisions;
 - (ii) in excess of the statutory authority of the agency;
 - (iii) made upon unlawful procedure;
 - (iv) affected by other error of law;
 - (v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
 - (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (b) findings of fact, upon issues essential to the decision, were not made although requested.

(3) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82 on the grounds of unconstitutionality, as provided in subsection (2)(a)(i), the petitioner shall first establish the unconstitutionality of the underlying statute.

2-4-711. Appeals -- staying agency decision. An aggrieved party may obtain review of a final judgment of a district court under this part by appeal to the supreme court within 60 days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process:

(1) if appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for 20 days from the date of filing of the notice;

(2) if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

Quasi-Judicial Boards

2-15-124. Quasi-judicial boards. If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member must be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members must be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members must be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of the governor's term and the remaining members in the middle of the governor's term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate then meeting in regular session or next meeting in regular session following the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the

senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy must be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which the member is appointed.

(5) The governor shall designate the presiding officer. The presiding officer may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless otherwise provided by law, each member is entitled to be paid \$100 for each day in which the member is actually and necessarily engaged in the performance of board duties and is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their board duties outside their regular working hours or during time charged against their leave, but those members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. Ex officio board members may not receive compensation but must receive travel expenses.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law.

POST Creation and Allocation

2-15-2029. Montana public safety officer standards and training council -- administrative attachment -- rulemaking. (1)(a) There is a Montana public safety officer standards and training council. The council is a quasi-judicial board, as provided for in 2-15-124, and is allocated to the department of justice, established in 2-15-2001, for administrative purposes only as provided in 2-15-121, except as provided in subsection (1)(b) of this section.

(b) The council may hire its own personnel and independently administer the conduct of its business, and 2-15-121(2)(a), (2)(d), and (3)(a) do not apply.

(2) The council may adopt rules to implement the provisions of Title 44, chapter 4, part 4. Rules must be adopted pursuant to the Montana Administrative Procedure Act.

Travel Reimbursement

2-18-501. Meals, lodging, and transportation of persons in state service. All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging and taxes on the allowable cost of lodging, except as provided in subsection (3), plus \$7.50 for the morning meal, \$8.50 for the midday meal, and \$14.50 for the evening meal except as provided in subsection (10). All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:

(a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.

(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.

(3) Except as provided in subsection (10), the department of administration shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of the following:

(a) meals, not including alcoholic beverages, when the actual cost exceeds the maximum established in subsection (4)(a); and

(b) lodging when the actual cost exceeds the maximum established in subsection (2)(a) or (4)(a).

(4) Except as provided in subsection (3), for travel to a foreign country, the following provisions apply:

(a) All elected state officials, all appointed members of boards, commissions, and councils, all department directors, and all other state employees must be reimbursed as follows:

(i) \$7 for the morning meal, \$11 for the midday meal, and \$18 for the evening meal; and

(ii) \$155 per night for lodging.

(b) All claims for meal and lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

(5) When other than commercial, nonreceiptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of \$12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.

(6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.

(7) The provisions of this section may not be construed as affecting the validity of 5-2-301.

(8) The department of administration shall establish policies necessary to effectively administer this section for state government.

(9) All commercial air travel must be by the least expensive class service available.

(10) When the actual cost of meals exceeds the maximum standard allowed pursuant to subsection (1), the department of administration may authorize the actual cost of meals for firefighters.

(11) For the purposes of implementing subsection (10), the following definitions apply:

(a) "Firefighter" means a firefighter who is employed by the department of natural resources and conservation and who is directly involved in the suppression of a wildfire in Montana.

(b) "Wildfire" means an unplanned, unwanted fire burning uncontrolled and consuming vegetative fuels.

2-18-502. Computation of meal allowance. (1) Except as provided in subsections (2) and (4), an employee is eligible for the meal allowance provided in 2-18-501, only if the employee is in a travel status for more than 3 continuous hours during the following hours:

(a) for the morning meal allowance, between the hours of 12:01 a.m. and 10 a.m.;

(b) for the midday meal allowance, between the hours of 10:01 a.m. and 3 p.m.; and

(c) for the evening meal allowance, between the hours of 3:01 p.m. and 12 midnight.

(2) An eligible employee may receive:

(a) only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift; or

(b) a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.

(3) "Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.

(4) An appointed member of a state board, commission, or council or a member of a legislative subcommittee or select or interim committee is entitled to a midday meal allowance on a day the individual is attending a meeting of the board, commission, council, or committee, regardless of proximity of the meeting place to the individual's residence or headquarters. This subsection does not apply to a member of a legislative committee during a legislative session.

(5) The department of administration shall prescribe policies necessary to effectively administer this section for state government.

2-18-503. Mileage -- allowance. (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.

(2)(a) When a state officer or employee is authorized to travel by motor vehicle and chooses to use a privately owned motor vehicle even though a government-owned or government-leased motor vehicle is available, the officer or employee may be reimbursed only at the rate of 48.15% of the mileage rate allowed by the United States internal revenue service for the current year.

(b) When a privately owned motor vehicle is used because a government-owned or government-leased motor vehicle is not available or because the use is in the best interest of the governmental entity and a notice of unavailability of a government-owned or government-leased motor vehicle or a specific exemption is attached to the travel claim, then a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(3) Members of the legislature, jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own airplanes in the performance of official duties are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for motor vehicle travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part.

Coroners

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

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

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

7-4-2902. Vacancy in office of county coroner or disqualification of coroner.

(1) The coroner, or the board of county commissioners if the coroner is unable or refuses to act, shall request the coroner or a qualified deputy coroner of another county to be acting county coroner if the coroner:

(a) is absent or unable to attend to duties or if the office of coroner is vacant and there are no qualified deputies available;

(b) is related to the deceased;

(c) is a potential party in an action concerning the death or the coroner's inquiry into the death may pose a conflict of interest;

(d) has not successfully completed the basic coroner course required in 7-4-2905 and there are no qualified deputies available; or

(e) is disqualified under the provisions of 46-4-201.

(2) The salary of and expenses incurred by an acting coroner on behalf of a requesting county are an allowable charge against the requesting county.

7-4-2903. Stenographer for coroner in certain counties. In each county having a population of 45,000 or more by the latest federal census enumeration, the coroner may, with the consent of the county commissioners, appoint a stenographer. The stenographer shall hold such position during the pleasure of the coroner making the appointment and shall receive as salary a sum to be fixed by the board of county commissioners, to be paid monthly out of the contingent fund of the county upon the order of the board.

7-4-2904. Qualifications for office of county coroner. (1) In addition to the qualifications set forth in 7-4-2201, to be eligible for the office of coroner, at the time of election or appointment to office a person must be a high school graduate or holder of an equivalency of completion of secondary education as provided by the superintendent of public instruction under 20-7-131 or of an equivalency issued by another state.

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

- (a) take and file with the county clerk the constitutional oath of office; and
- (b) certify to the county clerk that:

(i) the individual has successfully completed the basic coroner course of study as provided for in 7-4-2905 or that the individual has completed the equivalent educational requirements as approved by the public safety officer standards and training council established in 2-15-2029; or

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

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

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

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

7-4-2911. Duties of county coroner. The county coroner shall:

- (1) hold inquests as provided in Title 46, chapter 4, parts 1 and 2;
- (2) inquire into the cause, manner, and circumstances of all human deaths, as required in 46-4-122, and establish the identity of the deceased person;
- (3) provide decent disposal of an unclaimed dead human body and unclaimed parts of bodies believed to be human;
- (4) maintain records of inquiries as required by good practice and by law;
- (5) as soon as practicable upon identifying a dead human body, provide for notifying the next of kin of the deceased of the fact of death in any death into which the coroner is making an inquiry;
- (6) if a law enforcement agency does not have jurisdiction of the case, preserve evidence involving any human death, pursuant to the coroner's authority, including placing under the coroner's control, to the extent necessary, any personal and real property that may be related to or involved in the death;
- (7) witness and certify deaths that are the result of a judicial order;
- (8) inquire into any human death when no physician or surgeon licensed in the state will sign a death certificate;
- (9) notify the county attorney and the law enforcement agency having jurisdiction of all deaths requiring inquiry pursuant to 46-4-122; and
- (10) in the cases specified in 25-3-205, discharge the duties of sheriff. If acting as sheriff, the coroner is allowed the same salary as sheriff or the same fees as constable for similar services.

7-4-2913. Payment of costs of inquest. Whenever an inquest is held because of the death of an individual confined in the state prison, the county clerk of the county where the inquest is held shall make out a statement of all the costs incurred by the county in the inquest, properly certified by the coroner of the county. This statement must be sent to the department of corrections for approval, and after approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the inquest was held.

7-4-2914. Statement required before allowing accounts of coroner. Before allowing the accounts of the coroner, the board of county commissioners shall require the coroner to file with the clerk of the board a statement, in writing and verified by affidavit, showing:

- (1) the amount of money or other property belonging to the estate of the deceased person that has come into the coroner's possession since the last statement; and
- (2) the disposition made of the property.

7-4-2915. Custody and disposition of bodies held pending investigation.

(1) In the course of an inquiry authorized under the provisions of 46-4-122, the coroner may take custody of a dead human body and cause it to be removed from the site of death to a facility designated by the coroner.

(2) A dead human body in the custody of a county coroner must be held until the coroner, after consultation with appropriate law enforcement officials and the county attorney, establishes that it is not necessary to hold the body to determine the reasonable and true cause of death or that the body is no longer necessary to assist any local investigations.

(3) If the identity of a dead human body is unknown or if those entitled to custody of a body do not claim it, the coroner shall take custody of the body even if the circumstances of the death do not otherwise require an inquiry by the coroner.

(4) A dead human body in the custody of the coroner may be released by the coroner to the custody of a person who is entitled to custody or to a funeral home.

(5) The coroner shall release to a funeral home a dead human body that is not designated to be released to a specific funeral home by the deceased prior to death, by the deceased's next of kin, or by a friend of the deceased who will take financial responsibility for the disposition of the body. The coroner shall rotate the release of bodies to funeral homes in a manner that is fair and equitable. The coroner may not release a body to a funeral home if the funeral home has requested in writing by December 1 of the preceding year that it does not wish to participate in the release of bodies under this section.

7-4-2917. Disposition of property of deceased -- suicide note. (1) Any property of a decedent or any suicide note composed or purportedly composed by a decedent in the custody of the county coroner shall be held until such time as the county attorney establishes that it is not necessary to hold such property or note to determine the true cause of death, to assist any investigating agency, or to be used as evidence in any related criminal court action.

(2) For the purposes of this section, “investigating agency” means any county attorney, the state medical examiner, and any law enforcement agency of this state and any political subdivision of this state having jurisdiction of the death.

(3) When such property or note is no longer needed for evidentiary purposes, it shall be given upon written request to the personal representative of the decedent appointed under Title 72 or, if no personal representative is appointed, to the decedent’s family or whoever in the discretion of the county attorney should receive the property or the note.

7-4-2923. Computation of mileage for reimbursement. When a coroner serves more than one process in the same cause, not requiring more than one journey from the office, the coroner may receive mileage only for the more distant service, and mileage is not allowed for less than 1 mile actually traveled.

7-4-2924. Indigent funeral assistance. (1)(a) There is a special revenue account within the state special revenue fund established in 17-2-102 to aid counties in providing adequate burial, entombment, or cremation of an indigent person.

(b) There must be deposited in the account money received from donations to provide adequate burial, entombment, or cremation of an indigent person as defined in 53-3-116(5).

(c) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department of administration and may only be used for those purposes provided in this section.

(2)(a) A county may request to receive funding from the special revenue account created in this section to provide assistance for the burial, entombment, or cremation of an indigent person regardless of whether the county currently provides an indigent assistance program as provided in 53-3-116.

(b) A county may not use the funding provided in this section to cover amounts prohibited in 53-3-116(6).

(3) The department of administration may adopt rules to implement this section.

Public Safety Communications Officers

7-31-201. Definitions. As used in this part, the following definitions apply:

(1) “Council” means the Montana public safety officer standards and training council provided for in 2-15-2029.

(2) “Public safety communications officer” means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

7-31-202. Qualifications for public safety communications officers. To be appointed a public safety communications officer, a person:

- (1) must be a citizen of the United States;
- (2) must be at least 18 years of age;
- (3) must be fingerprinted and a search must be made of local, state, and national fingerprint files to disclose any criminal record;
- (4) may not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;
- (5) must be of good moral character, as determined by a thorough background investigation;
- (6) must be a high school graduate or have been issued a high school equivalency diploma by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government; and
- (7) must meet any additional qualifications established by the council.

7-31-203. Certification of public safety communications officers -- suspension or revocation -- penalty -- notification requirements. (1) A local government shall require that a person, unless exempt under subsection (3), appointed to receive requests for emergency services, as defined in 10-4-101, and to dispatch the appropriate emergency service units be certified by the council as a public safety communications officer.

(2)(a) The council shall determine the certification standards for public safety communications officers as provided in 7-31-202.

(b) The certification standards must contain a requirement that an applicant for certification attend and successfully complete a basic course for public safety communications officers conducted by the Montana law enforcement academy within 1 year of date of hire.

(3)(a) A person certified by the council prior to July 1, 2001, and employed as a public safety communications officer as of July 1, 2001, is not subject to the requirement of subsection (2)(b).

(b) A person under permanent appointment as a public safety communications officer as of July 1, 2001, is not subject to the requirements of subsection (2).

(4) A public safety communications officer who has successfully met the certification standards set by the council, or who is exempt from certain certification standards pursuant to subsection (3), who has met the qualification requirements in 7-31-202, and who has completed a 6-month probationary term and 1 year of employment must, upon application to the council, be issued a basic public safety communications officer certificate.

(5) Failure by any person appointed as a public safety communications officer after July 1, 2001, unless exempt under the provisions of subsection (3), to meet the minimum requirements in 7-31-202 or to satisfy the certification requirements provided for in subsection (2) of this section is cause to terminate that person's employment as a public safety communications officer.

(6) It is unlawful for a person whose certification as a public safety communications officer has been suspended or revoked by the council to act as a public safety communications officer. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine in an amount not to exceed \$500, or both.

(7) Within 10 days of the appointment, termination, resignation, or death of any public safety communications officer, written notice must be given to the council by the employing authority.

Reserve and Auxiliary Officers

7-32-201. Definitions. As used in this part, the following definitions apply:

(1) "Auxiliary officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities.

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

(3) "General law enforcement duties" means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

(4) "Law enforcement agency" means a law enforcement service provided directly by a local government.

(5) "Law enforcement officer" means a sworn, full-time, employed member of a law enforcement agency who is a peace officer, as defined in 46-1-202, and has arrest authority, as described in 46-6-210.

(6) "Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency or a part-time, paid member of a law enforcement agency serving as a court officer as provided in 3-6-303. The volunteer member or the part-time paid member is a peace officer, as defined in 46-1-202, and has arrest authority, as described in 46-6-210, only when authorized to perform these functions as a representative of the law enforcement agency.

(7) "Special services officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform functions, other than

general law enforcement duties, that require specialized skills, training, and qualifications, who may be required to train with a firearm, and who may carry a firearm while on assigned duty as provided in 7-32-239.

7-32-202. Prohibition on participation in certain pension and retirement systems. (1) A reserve officer may not participate in any pension or retirement system established for full-time law enforcement officers.

(2) An auxiliary officer may not participate in any pension or retirement system established for full-time law enforcement officers.

7-32-203. Provision of workers' compensation coverage. (1) Each law enforcement agency that utilizes reserve officers or special services officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency. The law enforcement agencies shall pay to the insurer an appropriate premium, as established by the insurer, to cover the insurance risk of providing coverage to the officers.

(2) Each law enforcement agency that utilizes auxiliary officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency.

7-32-211. Reserve officers authorized. A local government may authorize reserve officers. A person who meets minimum standards for appointment as a peace officer may be appointed as a reserve officer.

7-32-212. Prohibition on reduction of full-time officers. A local government may not reduce the authorized number of full-time law enforcement officers through the appointment or utilization of reserve officers.

7-32-213. Qualifications for appointment as reserve officer. To be appointed a reserve officer, a person:

(1) must have resided in the state continuously for at least 1 year prior to the appointment and in the county where the appointment is made for a period of at least 6 months prior to the date of the appointment;

(2) must be a citizen of the United States;

(3) must be at least 18 years of age;

(4) must be fingerprinted, and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(5) may not have been convicted of a crime for which the person could have been imprisoned in a federal penitentiary or state prison;

- (6) must be of good moral character as determined by a thorough background investigation;
- (7) must be a graduate of an accredited high school or the equivalent;
- (8) must be examined by a licensed physician within 30 days immediately preceding the date of appointment and pronounced in good physical condition; and
- (9) must possess a valid Montana driver's license.

7-32-214. Basic training program required. (1) A reserve officer may not be authorized to function as a representative of a law enforcement agency performing general law enforcement duties after 2 years from the original appointment unless the reserve officer has satisfactorily completed a minimum 88-hour basic training program that must include but need not be limited to the following course content:

- (a) introduction and orientation--1 hour;
- (b) police ethics and professionalism--1 hour;
- (c) criminal law--4 hours;
- (d) laws of arrest--4 hours;
- (e) criminal evidence--4 hours;
- (f) administration of criminal law--2 hours;
- (g) communications, reports, and records--2 hours;
- (h) crime investigations--3 hours;
- (i) interviews and interrogations--2 hours;
- (j) patrol procedures--6 hours;
- (k) crisis intervention--4 hours;
- (l) police human and community relations--3 hours;
- (m) juvenile procedures--2 hours;
- (n) defensive tactics--4 hours;
- (o) crowd control tactics--4 hours;
- (p) firearms training--30 hours;
- (q) first aid--10 hours; and
- (r) examination--2 hours.

(2) The law enforcement agency is responsible for training its reserve officers in accordance with minimum training standards established by the council.

7-32-215. Reserve manual required. The authorizing law enforcement agency establishing a law enforcement reserve force shall adopt and publish a manual setting forth the minimum qualifications, minimum training standards, and standard operating procedures for reserve officers.

7-32-216. Limitations on activities of reserve officers. (1) A reserve officer may serve as a peace officer only on the orders and at the direction of the chief law enforcement administrator of the local government.

(2) Except for a reserve officer serving as a court officer as provided in 3-6-303, reserve officer may act only in a supplementary capacity to the law enforcement agency.

(3) Reserve officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer whose span of control would be considered within reasonable limits.

7-32-217. Restrictions on carrying weapons. No reserve officer may carry a weapon:

(1) while on assigned duty until the reserve officer has qualified on the firing range with a weapon in compliance with the firearms qualifying course conducted by the Montana law enforcement academy; and

(2) until authorized by the chief law enforcement administrator to carry a weapon.

7-32-218. Status of reserve officer upon activation. A reserve officer is vested with the same powers, rights, privileges, obligations, and duties as any other peace officer of this state upon being activated by the chief law enforcement administrator of the local government and while on assigned duty only.

7-32-219. Reserve force coordinator. The chief law enforcement administrator of a law enforcement agency with reserve officers shall appoint a full-time law enforcement officer of the agency as a reserve force coordinator. The reserve force coordinator shall coordinate the activities of the reserve force with those of the law enforcement agency.

7-32-220. Appointment of reserve officer to full-time position. A reserve officer may be appointed as a full-time law enforcement officer through the procedures provided in Montana law for such appointments.

7-32-221. Termination of reserve officers. Reserve officers serve at the pleasure of the chief law enforcement administrator and may be terminated at any time by the chief law enforcement administrator by written notification without any cause.

7-32-222. Reserve officer change in residency. A reserve officer may change permanent residency to another county and remain a member of the reserve officer unit to which the reserve officer was appointed provided that:

- (1) the statutory basic training requirements have been met;
- (2) the probationary period established by the law enforcement agency is completed; and
- (3) approval for continuing membership is granted by the chief law enforcement administrator controlling the reserve unit.

7-32-231. Auxiliary officers authorized. A local government may authorize auxiliary officers only on the orders and at the direction of the chief law enforcement administrator of the local government.

7-32-232. Role of auxiliary officers. (1) Auxiliary officers:

- (a) are subordinate to full-time law enforcement officers; and
 - (b) may not serve unless supervised by a full-time law enforcement officer.
- (2) An auxiliary officer may carry a weapon while on an official search and rescue mission with prior approval from the sheriff.

7-32-233. Limitation on arrest authority of auxiliary officer. An auxiliary officer has only the arrest authority granted a private person in 46-6-502.

7-32-234. Exceptions. Provisions of 7-32-211, 7-32-213, and 7-32-214 do not apply to auxiliary officers, to special services officers, to sworn volunteer peace officers who are not assigned to general law enforcement duties, or to members of a posse organized to quell public disturbance or domestic violence in accordance with 7-32-212(6).

7-32-235. Search and rescue units authorized -- under control of county sheriff -- optional funding. (1) A county may establish or recognize one or more search and rescue units within the county.

(2)(a) Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff, or the sheriff's designee, having jurisdiction and whose span of control would be considered within reasonable limits.

(b) A county sheriff or the sheriff's designee may authorize the participation of members of the civil air patrol, including cadets under 18 years of age, in search and rescue operations.

(3) Subject to 15-10-420, a county may, after approval by a majority of the people voting on the question at an election held throughout the county, levy an

annual tax on the taxable value of all taxable property within the county to support one or more search and rescue units established or recognized under subsection (1). The election must be held as provided in 15-10-425.

(4) A search and rescue unit established or recognized by a county may possess human remains as defined in 37-19-101 for the purpose of training canines used for search and rescue work.

(a) The county sheriff or the sheriff's designee shall keep an inventory of all human remains that are kept for the purpose of training search and rescue canines. The inventory must be updated when the search and rescue unit receives human remains or disposes of human remains that are no longer useful to the search and rescue unit.

(b) Each search and rescue unit that possesses human remains for the purpose of training search and rescue canines shall establish policies and standard operating procedures for access to, the inventory of, and the possession and disposal of human remains kept for the purpose of training search and rescue canines.

7-32-239. Special services officers -- authorization -- role. (1) Special services officers:

- (a) are subordinate to full-time law enforcement officers;
- (b) must be supervised by a law enforcement officer;
- (c) shall complete specialized training and must possess specialized skills required by the chief law enforcement administrator; and
- (d) may be authorized by the chief law enforcement administrator to carry a weapon while on assigned duty only upon successful completion of training in the laws and procedures governing use of force and upon demonstration of proficiency with that weapon.

(2) A local government may authorize special services officers only on the orders and at the direction of the chief law enforcement administrator of the local government.

7-32-240. Certification of Montana peace officer who leaves full-time or part-time employment to enter active reserve status in Montana -- definition. (1)

Except as provided in subsection (2), an officer who has been issued a peace officer basic certification by the Montana public safety officer standards and training council or who is eligible for the certification and who becomes an active reserve officer in Montana may retain the officer's peace officer certification and return to full-time or part-time employment as a peace officer under the following circumstances:

(a) If the reserve officer has not had a break in service of more than 3 years at any time since the peace officer's last date of employment as a full-time or part-time peace officer in Montana, the peace officer retains the peace officer certification and may return to full-time or part-time employment as a peace officer from reserve status without attending an equivalency course or returning to the basic academy.

(b) If the reserve officer has had a break in service of more than 3 years at any time since the officer's last date of employment as a full-time or part-time peace officer in Montana, the officer must successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's most recent appointment as a full-time or part-time peace officer in Montana in order to maintain the officer's peace officer certification. If the officer fails the basic equivalency course, the officer must attend the peace officer basic course at the Montana law enforcement academy at the next available opportunity. The officer's agency may request an extension of time for the officer to meet the basic requirement pursuant to 7-32-303(9).

(c) If the reserve officer has had a break in service of more than 5 years at any time since the officer's last date of employment as a full-time or a part-time peace officer in Montana, the officer must successfully complete the peace officer basic course at the Montana law enforcement academy, as approved by the council, within 1 year of the officer's most recent appointment as a full-time or part-time peace officer in Montana in order to retain the officer's peace officer certification. The officer's agency may request an extension of time for the officer to meet the basic requirement pursuant to 7-32-303(9).

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

(b) Officers listed in subsection (2)(a) are subject to the provisions of 7-32-303(6) through (8).

(3) For the purposes of part 3 and this part, the phrase "break in service" means a continuous period in which the officer is not performing the duties of a peace officer in Montana, either as a full-time or part-time peace officer or as an active reserve officer.

Law Enforcement Officers

7-32-301. Residency requirements. A sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or police officers in this state to preserve the public peace and prevent or quell public

disturbance may not appoint as a special deputy, marshal, or police officer any person who has not resided continuously in this state for a period of at least 1 year and in the county where the appointment is made for a period of at least 6 months prior to the date of appointment.

7-32-302. Waiver of residency requirements. The person or body authorized by law to appoint special deputies, marshals, or police officers may in its discretion waive residency requirements.

7-32-303. Peace officer employment, education, and certification standards -- suspension or revocation -- penalty. (1) For purposes of this section, unless the context clearly indicates otherwise, “peace officer” means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person authorized by law to appoint peace officers in this state may not appoint a person as a peace officer who does not meet the qualifications provided in this subsection (2) plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029. A peace officer must:

- (a) be a citizen of the United States;
- (b) be at least 18 years of age;
- (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;
- (d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;
- (e) be of good moral character, as determined by a thorough background investigation;
- (f) be a high school graduate or have been issued a high school equivalency diploma by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;
- (g) be free of any mental condition that might adversely affect performance of the duties of a peace officer, as determined after:
 - (i) a mental health evaluation performed by a licensed physician or a mental health professional who is licensed by the state under Title 37, who is acting within the scope of the person’s licensure when performing a mental health evaluation, who is not the applicant’s personal physician or licensed mental health professional, and who is selected by the employing authority; or
 - (ii) satisfactory completion of a standardized mental health evaluation instrument determined by the employing authority to be sufficient to examine for

any mental conditions within the meaning of this subsection (2)(g), if the instrument is scored by a licensed physician or a mental health professional acting within the scope of the person's licensure by a state;

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

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

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

(k) be certified or be eligible for certification as a peace officer by the council or become eligible for certification upon completion of the requirements contained in subsections (6) through (10).

(3) At the time of appointment, a peace officer shall take the formal oath of office prescribed in Article III, section 3, of the Montana constitution. No other oath may be required.

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

(5) It is the duty of an appointing authority in Montana to ensure that each peace officer appointed under its authority has the basic training, including any training required in subsections (6) through (8), in addition to meeting all other requirements of peace officer certification promulgated by the Montana public safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic training required by subsections (6) through (8) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

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

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

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

(7)(a) If a peace officer previously satisfied the requirement in subsection (6), is certified or is eligible for certification as a peace officer in Montana or may

become eligible for certification upon completion of the probationary period in subsection (10), and has had a break in service as a peace officer of less than 3 years, the peace officer is not required to satisfy the requirement in subsection (6) or to attend an equivalency course prior to returning to work in Montana as a peace officer.

(b) If a peace officer previously satisfied the requirement in subsection (6), is certified or is eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of the probationary period in subsection (10), and has been continuously employed as a peace officer outside of Montana for no more than 3 years, the peace officer is not required to satisfy the requirement in subsection (6) or to attend an equivalency course prior to returning to work in Montana as a peace officer.

(c) If a peace officer previously completed the peace officer basic course successfully, is certified or is eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of the probationary period in subsection (10), and has been continuously employed as a peace officer outside of Montana for more than 3 years or who has had a break in service as a peace officer for more than 3 years but less than 5 years, the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the peace officer's most recent appointment as a peace officer in Montana. If the peace officer fails the basic equivalency course, the officer shall satisfy the requirement in subsection (6) at the next available opportunity.

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

(8)(a) Except as provided in subsection (8)(c), if a peace officer has successfully completed a peace officer basic course that is taught or approved by a federal, state, local, or United States military law enforcement agency, that satisfies the peace officer basic training requirement for that agency, and that the council has reviewed and approved as commensurate with the current peace officer basic course offered at the Montana law enforcement academy, the peace officer shall successfully complete the peace officer basic equivalency course, as approved by

the council, within 1 year of the officer's initial appointment in Montana. If the officer fails the basic equivalency course, the officer must satisfy the requirement in subsection (6) at the next available opportunity.

(b) Except as provided in subsection (8)(c), if a peace officer has successfully completed a peace officer basic course that is taught or approved by a federal, state, local, or United States military law enforcement agency and that satisfies the peace officer basic training requirement for that agency and if that peace officer's combined training and experience have been reviewed and approved by the council as commensurate with the current peace officer basic course offered at the Montana law enforcement academy, the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's initial appointment in Montana. If the officer fails the basic equivalency course, the officer must satisfy the requirement in subsection (6) at the next available opportunity.

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

(9) The Montana public safety officer standards and training council may extend the 1-year time requirements of subsections (6) through (8) upon the written application of the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic equivalency course, and an unreasonable shortage of personnel within the department. The council may not grant an extension to exceed 180 days.

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

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

7-32-304. Exception for organizing posse. The provisions of this part shall not apply in cases of the officers listed in 7-32-301 summoning a posse forthwith to quell public disturbance or domestic violence.

7-32-305. Purchase of firearm by retiring law enforcement officer. A sheriff or other peace officer, as defined in 7-32-303, who is terminating from service and is eligible for a retirement benefit from a retirement plan under Title 19, chapters 6 through 9, 19, or 21, may request to purchase firearms that have been issued to the sheriff or peace officer and that are legal for a private citizen to possess. If the request is accepted, the parties shall agree on the purchase price, not to exceed fair market value.

Detention Centers

7-32-2241. Definitions. As used in this part, the following definitions apply:

(1) “Detention center” means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.

(2) “Detention center administrator” means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center.

(3) “Detention center staff” means custodial personnel whose duties include ongoing supervision of the inmates in a detention center.

(4) “Inmate” means a person who is confined in a detention center.

(5) “Local government” means a city, town, county, or consolidated city-county government.

(6) “Multijurisdictional detention center” means a detention center established and maintained by two or more local governments for the confinement of persons arrested or sentenced to confinement or a local government detention center contracting to confine persons arrested or sentenced in other local governments.

(7) “Private detention center” means a detention center owned by private industry and leased to or operated under a contract with a local government.

POST Statutes

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

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

(2) "Public safety officer" means:

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

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

(c) a peace officer, as defined in 46-1-202;

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

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

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

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

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

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

44-4-402. Membership -- composition. (1) The council consists of no more than 13 voting members appointed by the governor in accordance with 2-15-124 and as provided in this section.

(2) Membership must include:

(a) one state government law enforcement representative;

(b) one chief of police, who may be appointed based on recommendations from the Montana association of chiefs of police;

(c) one sheriff, who may be appointed based on recommendations from the Montana sheriffs and peace officers association;

(d) one representative from the department of corrections established in 2-15-2301;

- (e) one local law enforcement officer in a nonadministrative position, who may be appointed based on recommendations from the Montana police protective association;
- (f) one detention center administrator or detention officer;
- (g) one Montana-certified tribal law enforcement representative;
- (h) one county attorney, who may be appointed based on recommendations from the Montana county attorneys association;
- (i) two members of the board of crime control established in 2-15-2006;
- (j) one misdemeanor probation officer, as defined in 46-23-1001, who is certified by the Montana public safety officer standards and training council and who may be appointed based on recommendations from an association representing misdemeanor probation officers; and
- (j) two Montana citizens at large who are informed and experienced in the subject of law enforcement.

44-4-403. Council duties -- determinations -- appeals. (1) The council shall:

- (a) establish basic and advanced qualification and training standards for employment;
 - (b) conduct and approve training; and
 - (c) provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.
- (2) The council may waive or modify a qualification or training standard for good cause.
- (3) A person who has been denied certification or recertification or whose certification or recertification has been suspended or revoked is entitled to a contested case hearing before the council pursuant to Title 2, chapter 4, part 6. A decision of the council is a final agency decision subject to judicial review.
- (4) The council is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining and retaining confidential criminal justice information, as defined in 44-5-103, regarding public safety officers in order to provide for the certification or recertification of a public safety officer and for the suspension or revocation of certification of a public safety officer. The council may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979 provided for in Title 44, chapter 5.

44-4-404. Appointing authority responsible for applying standards. (1) It is the responsibility of a public safety officer's appointing authority to apply the employment standards and training criteria established by the council pursuant to this part, including but not limited to requiring the successful completion of

minimum training standards within 1 year of the public safety officer's hire date and terminating the employment of a public safety officer for failure to meet the minimum standards established by the council pursuant to this part.

(2)(a) A public safety officer's appointing authority may apply to the council on behalf of the public safety officer for an extension to complete the minimum training standards. The extension may not exceed 180 days. The application must explain the circumstances that make the extension necessary.

(b) When granting an extension, the council may consider the following factors:

(i) illness of the public safety officer or a member of the public safety officer's immediate family;

(ii) lack of reasonable access to the basic equivalency course;

(iii) an unreasonable shortage of personnel in the public safety officer's department; and

(iv) any other factors the council considers relevant.

(3)(a) If a public safety officer who has not yet completed the minimum training standards is ordered to state or federal military duty within 1 year of the officer's hire date, the officer's employing agency shall notify the council within 10 days of the officer's departure for military duty. The public safety officer's 1-year period to complete minimum training standards must be stayed.

(b) Within 10 days of the public safety officer's return to the employing agency from military duty, the officer's employing agency shall notify the council. The public safety officer's 1-year period to complete minimum training standards must then resume.

Investigations report. Starting October 1, 2023, and each quarter after, the council shall provide a written report on pending investigations to the law and justice interim committee in accordance with 5-11-210. The report must protect the privacy rights of the individuals involved and must provide for each investigation:

(1) when it was opened;

(2) the process that remains to be completed; and

(3) the likely timing for resolution of the investigation.

Interim study of POST council. (1) The law and justice interim committee established in 5-5-226 shall study the public safety officer standards and training council established in 2-15-2029 during the 2023-2024 interim. The study shall:

(a) examine the legislative history of the council's structure, staffing, and duties;

(b) review the current structure, staffing, and duties of the council;

(c) compare the council’s current structure and administrative attachment to similar entities in other states; and

(d) provide recommendations to the 69th legislature for how the council should be structured and staffed.

(2) The law and justice interim committee shall consult with council members, council staff, the department of justice, local law enforcement agencies, and other stakeholders the committee considers necessary.

(3) All aspects of the study must be concluded by September 15, 2024. Final results of the study must be reported to the 69th legislature. *(Terminates December 31, 2024.)*

Railroad Special Peace Officers

44-4-902. Application for appointment. A class I railroad corporation, as defined by the interstate commerce commission in part 1201 of 49 CFR, desiring the appointment of an officer or employee as a special peace officer shall apply to the attorney general. The application must state the name, age, and place of residence of the person applying for appointment. The applicant must have at least 3 years of experience as a class I railroad peace officer or have completed a training course at an approved law enforcement academy, or meet the qualifications described in 7-32-303 and adopted pursuant to Title 44, chapter 4, part 4. The application must be signed by the applicant and a managing officer of the railroad corporation. The managing officer signing the application shall at the same time submit an affidavit to the effect that the officer is acquainted with the person seeking appointment, that the officer believes the applicant to be of good moral character, and that the applicant is of good moral character and has experience such that the applicant can be safely entrusted with the powers and duties of a special peace officer.

Definitions – “Peace Officer”

46-1-202. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) “Advanced practice registered nurse” means an individual certified as an advanced practice registered nurse provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(2) “Arrest” means the formal act of calling the defendant into open court to enter a plea answering a charge.

(3) “Arrest” means taking a person into custody in the manner authorized by law.

(4) “Arrest warrant” means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(5) “Bail” means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(6) “Charge” means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(7) “Conviction” means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(8) “Court” means a place where justice is judicially administered and includes the judge of the court.

(9) “Included offense” means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(10) “Judge” means a person who is vested by law with the power to perform judicial functions.

(11) “Judgment” means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(12) “Make available for examination and reproduction” means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

(13) “New trial” means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(14) “Notice to appear” means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

(15) “Offense” means a violation of any penal statute of this state or any ordinance of its political subdivisions.

(16) “Parole” means the release to the community of a prisoner by a decision of the board of pardons and parole prior to the expiration of the prisoner’s term subject to conditions imposed by the board of pardons and parole and the supervision of the department of corrections.

(17) “Peace officer” means any person who by virtue of the person’s office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person’s authority.

(18) “Persistent felony offender” means an offender who has previously been convicted of two separate felonies and who is presently being sentenced for a third felony committed on a different occasion than either of the first two felonies. At least one of the three felonies must be a sexual offense or a violent offense as those terms are defined in 46-23-502. An offender is considered to have previously been convicted of two separate felonies if:

(a) the two previous felonies were for offenses that were committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the most recent of the two felony convictions; or

(ii) the offender’s release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at a postconviction hearing.

(19) “Place of trial” means the geographical location and political subdivision in which the court that will hear the cause is situated.

(20) “Preliminary examination” means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(21) “Probation” means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections upon direction of the court.

(22) “Prosecutor” means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

(23) “Same transaction” means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

(24) “Search warrant” means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

(25) “Sentence” means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty.

(26) “Statement” means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person’s communications or a transcript of the communications; and

(c) a writing containing a summary of a person’s oral communications or admissions.

(27) “Summons” means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

(28) “Superseded notes” means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

(29) “Temporary road block” means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

(30) “Witness” means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(31) “Work product” means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators.

Misdemeanor Probation, Probation and Parole & Pretrial Services

46-9-505. Issuance of arrest warrant -- redetermining bail -- definition.

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

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

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

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

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

46-23-1002. Powers of the department. The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

(2) authorize probation and parole officers to carry firearms, including concealed firearms, when necessary. The department shall adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms.

(3) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court.

(4) adopt rules to administer the rental voucher program the department may implement pursuant to 46-23-1041.

46-23-1003. Qualifications of probation and parole officers. (1)(a) Probation and parole officers must have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in subsection (1)(b) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees are exempt from this requirement but are encouraged to further their education at the earliest opportunity.

(b) Work experience that may be substituted for the educational requirements in subsection (1)(a) includes experience in the areas of criminology, education, medicine, psychiatry, psychology, law, law enforcement, social work, sociology, psychiatric nursing, or guidance and counseling.

(2) Each probation and parole officer shall, through a source approved by the officer's employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers, at least 1 hour of which must include training on serious mental illness and recovery from serious mental illness. In addition, each probation and parole officer must receive training in accordance with standards adopted by the Montana public safety officer standards and training council established in 2-15-2029. The training must be at the Montana law enforcement academy unless the council finds that training at some other place is more appropriate.

46-23-1005. Misdemeanor probation offices -- misdemeanor probation officers -- costs. (1) A local government may establish a misdemeanor probation office associated with a justice's court, municipal court, or city court. The misdemeanor probation office shall monitor offenders for misdemeanor sentence compliance and restitution payments. An offender is considered a fugitive under the conditions provided in 46-23-1014.

(2) A local government may appoint or contract with a private Montana entity for the provision of misdemeanor probation officers and other employees necessary to administer this section. Misdemeanor probation officers:

(a) must have the minimum training required in 46-23-1003; and

(b) shall follow the supervision guidelines required in 46-23-1011.

(3) A publicly employed misdemeanor probation officer may order the arrest of an offender as provided in 46-23-1012.

(4) An offender who is convicted of the offense of partner or family member assault under 45-5-206 or of a violation of an order of protection under

45-5-626 and who is ordered to be supervised by misdemeanor probation must be ordered to pay for the cost of the misdemeanor probation. The actual cost of probation supervision over the offender's sentence must be paid by the offender unless the offender can show that the offender is unable to pay those costs. The costs of misdemeanor probation are in addition to any other fines, restitution, or counseling ordered.

MCS Officers

61-12-201. Appointment of employees and out-of-state personnel as peace officers -- definition. (1) The director of transportation may appoint employees of the department as peace officers to carry out this part. The employees appointed may include only those employees of the department who are employed in the administration of the motor carrier services functions of the department and employees of other states. Out-of-state personnel may be appointed only for the purpose of enforcing gross vehicle weight laws at joint weigh station facilities. Each employee appointed must be issued a certificate of appointment and execute an oath of office, which must be entered into the records of the department.

(2) The department may enter into joint weigh station agreements with other states. If the department enters into a joint weigh station agreement with another state, the department may not reduce staff levels in the motor carrier services division of the department as a result of the agreement but may reassign staff. However, this subsection does not apply to a reduction in force for the department as a whole.

(3) As used in this part, "department" means the department of transportation.

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Organization

23.13.101 Organization and General Provisions, Public Inspection of Orders and Decisions (1) The organization and function of the Public Safety Officers Standards and Training Council (“POST” or “POST Council”) are described in ARM 23.1.101(1)(d), (2)(k), and (4).

(2) POST will maintain an index of all final orders and decisions in contested cases and declaratory rulings. All final decisions and orders must be available for public inspection on request, except confidential information which is protected from disclosure by federal or state law. Copies of final decisions and orders must be given to the public on request after payment of the cost of duplication.

23.13.102 Definitions As used in this chapter, the following definitions apply:

(1) “Allegation” means:

(a) a statement or accusation of misconduct made against a public safety officer to POST staff or the council by anyone;

(b) a statement or accusation of misconduct against a public safety officer made by the POST executive director acting upon any credible knowledge, information, or belief;

(c) the document or statement, prior to the notice of agency action, that initiates the informal denial, revocation, suspension, or sanction proceeding against an officer.

(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.

(3) “Certification” or “certificate” means any certification granted by the council after completion of the specific requirements as set forth in these rules.

(4) “Contested case” means:

(a) a civil administrative proceeding that progresses pursuant to notice and hearing as outlined in MAPA and these rules; or

(b) a proceeding initiated by a request for a hearing from the officer after the officer has received a notice of agency action imposing sanction, suspension,

or revocation by the director when the case could not be settled at the preliminary stage of review, investigation, or informal proceeding.

(5) “Conviction” means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, without regard to the sentence imposed or whether the charge is later dismissed.

(6) “Council” or “POST Council” or “POST” means the full 13-member public safety officer standards and training council as created by 2-15-2029, MCA.

(7) “Director” or “executive director” means the bureau chief of the public safety officer standards and training bureau.

(8) “Employing authority,” “employing agency,” or “governmental unit” means any entity that is statutorily empowered with administration, supervision, hiring or firing authority, training, or oversight over a public safety agency or officer. This may include but is not limited to: the chief of police, mayor, county attorney, city council, warden, sheriff, etc.

(9) “Field training” means instruction, training, or skill practice rendered to an officer by another officer or officers on a tutorial basis during a tour of duty while performing the normal activities of that officer’s employment.

(10) “Hearing examiner” means the chair or the council’s designated representative, who regulates the course of a contested case proceeding or other hearing held by the council, pursuant to 2-4-611, MCA and these rules. Powers of a presiding officer are the same as those of a hearing examiner.

(11) “In-service training” means training provided within a law enforcement and/or public safety agency to review and develop skills and knowledge for the specific agency’s needs.

(12) “Informal proceeding” means a proceeding that occurs before a MAPA contested case proceeding and includes but is not limited to: correspondence between POST and the officer accused of misconduct and his employing authority; investigation by POST; stipulation or settlement negotiations or agreement; or a sanction, suspension, or revocation imposed through a notice of agency action.

(13) “MAPA” means the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(14) “Misconduct” means any action or conduct that could potentially result in sanction, suspension, or revocation of POST certification pursuant to ARM 23.13.702 or a violation of the code of ethics contained in ARM 23.13.203.

(15) “Misdemeanor probation/pretrial services officer” means a public safety officer who regularly performs the following functions as part of their work assignment:

(a) gathers information about pretrial defendants or misdemeanants through interviews and records checks;

(b) reports information regarding pretrial defendants or misdemeanants to a judge so the judge can determine the propriety of pretrial supervision, detention, or sentence revocation;

(c) monitors pretrial defendants’ or misdemeanants’ compliance with court-ordered pretrial release or misdemeanor probation conditions;

(d) provides information and resources to pretrial defendants or misdemeanants to help prevent violations of court-ordered conditions; and

(e) reports violations of court-ordered conditions to the court.

(16) “MLEA” or “Academy” means the Montana Law Enforcement Academy.

(17) “Notice of agency action” means the document that:

(a) gives an officer the notice required under 2-4-601, MCA;

(b) informs the officer of the suspension, revocation, or sanction imposed by the POST director and the supporting reasons;

(c) initiates the 30-day time period in which an officer may request a hearing and thus initiate a contested case proceeding under MAPA.

(18) “Party” means one side, or its representative, in an informal or contested case proceeding, usually the respondent and/or POST.

(19) “POST-approved training” means training reviewed and approved pursuant to ARM 23.13.301 for which POST gives training credit, including but not limited to basic, regional, and professional courses.

(20) “POST certified instructor” means a public safety officer, as defined in these rules, who has met the requirements for and received an Instructor Certificate pursuant to these rules, and may apply for and receive approval for POST training credit pursuant to these rules, for trainings the officer conducts.

(21) “Presiding officer” means the chair of the council who holds all the same powers as a hearing examiner for the purpose of contested cases.

(22) “Public safety officer” means an officer, as defined in 44-4-401, MCA. Nothing in these rules may be construed to apply the requirements of 7-32-303 or 44-4-403, MCA to an elected official.

(23) “Respondent” means the public safety officer against whom an allegation of misconduct has been made, or the officer’s legal representative.

(24) “Revocation” means the permanent cancellation by the director or council of a public safety officer’s POST certificate, certification, and certifiability such that the performance of public safety officer duties is no longer permitted.

(25) “Roll call training” means instruction or training of short duration, less than two hours, within any law enforcement and/or any public safety agency, conducted when officers change shifts.

(26) “Sanction” means a consequence or punishment for a violation of ARM 23.13.702, 23.13.203, or the laws or rules of Montana.

(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.

(28) “Substance abuse” means the use of illegal drugs, other illegal substances, or legally acquired drugs in a manner that substantially limits the officer’s ability to perform the essential duties of a public safety officer, or poses a direct threat to the health or safety of the public or a fellow officer.

(29) “Suspension” means the annulment, for a time period set by the director or council, of a public safety officer’s POST certificate, certification, and certifiability, such that the performance of public safety or peace officer duties is not permitted during that period of time.

(30) “Voluntary surrender” means a public safety officer agrees to the revocation of the officer’s certificate.

23.13.103 Record of All POST Council Meetings (1) As required by Title 2, chapter 6, MCA, POST will maintain records of all meetings and make those records available for public inspection. The record consists of an audio recording and minutes of the proceedings. The audio recording is the official record of POST meetings.

23.13.104 Notice to the Public of POST Council Actions of Significant Interest to the Public (1) In accordance with 2-3-102 through 2-3-114, MCA, prior to making a final decision that is of significant interest to the public, POST will afford reasonable opportunity for public participation. Reasonable opportunity for public participation may be afforded by:

(a) any of the agency actions allowed pursuant to 2-3-104, MCA; or
(b) a notice of the proposed agency action published in the register in accordance with template 102a (www.armtemplates.com). POST may grant or deny an opportunity for hearing, except a hearing is required if the proposed action is the adoption of rules in an area of significant interest to the public.

(2) For purposes of (1)(b) only, significant interest to the public is defined at 2-4-102, MCA, as matters an agency knows to be of widespread citizen interest.

(3) Public comment on any public matter within the jurisdiction of POST must be allowed at any public meeting under 2-3-103(1)(b), 2-3-202, and 2-3-203, MCA, defining “public matter” and “meeting” and stating the requirements applicable to opening and closing meetings to the public. The opportunity for public comment must be reflected on the meeting agenda and incorporated into the official minutes of the meeting. For purposes of this rule and 2-3-103(1)(b), MCA, contested case is defined at 2-4-102(4), MCA.

Certification

23.13.201 Minimum Standards for the Appointment and Continued Employment of Public Safety Officers (1) All public safety officers must be certified by POST and meet the applicable employment, education, and certification standards as prescribed by the Montana Code Annotated.

(2) In addition to standards set forth in the Montana Code Annotated, including but not limited to 44-4-404, MCA, all public safety officers must:

(a) be a citizen of the United States or may be a registered alien if unsworn;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which they could have been imprisoned in a federal or state penitentiary or a crime involving unlawful sexual conduct;

(e) be of good moral character as determined by a thorough background check;

(f) be a high school graduate or have been issued an equivalency certificate by the Superintendent of Public Instruction, or by an appropriate issuing agency of another state or of the federal government;

(g) successfully complete an oral interview and pass a thorough background check conducted by the appointing authority or its designated representative;

(h) be in good standing with POST and any other licensing or certification boards or committees equivalent to POST in any other state such that no license or certification similar to a POST certification has been revoked or is currently suspended in any other state;

(i) possess a valid driver's license if driving a vehicle will be part of the officer's duties;

(j) abide by the code of ethics contained in ARM 23.13.203; and

(k) complete, within every two calendar years, 20 hours of documented agency in-service, roll call, field training, or POST-approved continuing education training credits, which include but are not limited to a professional ethics curriculum covering the following topics and any additional topics required by the council:

(i) a review of the Code of Ethics ARM 23.13.203 and Grounds for Denial, Sanction, Suspension, and Revocation ARM 23.13.702;

(ii) review of the annual POST integrity report;

(iii) discussion involving core values of each employing agency which may include integrity, honesty, empathy, sympathy, bravery, justice, hard work, kindness, compassion, and critical thinking skills;

(iv) review of agency policy and procedure regarding ethical and moral codes of conduct;

(v) discussion of the similarities and differences between agency and POST consequences for actions that violate policy or rule.

(3) Every public safety communications officer, as a part of the training required in (2)(k), must complete, every two calendar years, a telephone cardiopulmonary resuscitation (TCPR) course. The required TCPR training shall follow evidence-based, nationally recognized guidelines for high-quality TCPR that incorporate recognition protocols for out-of-hospital cardiac arrest (OHCA) and continuous education. The training must cover a minimum of the following topics:

- (a) anatomy and physiology of the circulatory and cardiovascular systems;
- (b) relationship between circulatory, respiratory, and nervous systems;
- (c) signs and symptoms of acute coronary syndrome (ACS);
- (d) signs of life recognition;
- (e) early recognition of the need for CPR;
- (f) agonal respirations;
- (g) hypoxic seizures and sudden cardiac arrest;
- (h) pathophysiology of sudden cardiac death/cardiac arrest;
- (i) the role of TCPR in cardiac arrest survival;
- (j) the importance of minimizing disruptions when TCPR is in progress;
- (k) physiology behind the performance of the instructions;
- (l) automated external defibrillators and the role they play in resuscitation;
- (m) explanation, with practical training exercises, for different TCPR instructions, including: adult, child, infant, neonate, pregnant patients, obese patients, and stoma patients;
- (n) critical incident stress management; and
- (o) unusual circumstances posing challenges to the delivery of TCPR instructions, such as: patients with do-not-resuscitate orders or physician orders for life-sustaining treatment, patients on ventilators, post-operation patients, patients obviously dead on arrival, electrocution, drowning, strangulation, two-rescuers ventilations, and cardiac arrest from trauma.

(4) The POST Council is not responsible for maintaining records of continuing education hours acquired to satisfy the requirements of (2)(j) and (2)(k). The employing agency must maintain records of the administration of the oath and the continuing education hours acquired to satisfy (2)(j) and (2)(k). Agency records maintained under this rule are subject to audit by the executive director during normal business hours upon reasonable notice to the agency.

23.13.203 Code of Ethics (1) All public safety officers who have been hired or employed by any agency or entity in Montana, or who have been certified by POST, or who have attended an MLEA basic class must abide by the code of ethics contained herein.

(2) All public safety officers hired or sworn before this rule's effective date are also bound by the code of ethics contained in this rule. Continued employment as a public safety officer in Montana constitutes an agreement to be bound by this code of ethics. Failure to comply with or violation of any part of the code of ethics may be grounds for denial, suspension, sanction, or revocation of any POST certificate.

(3) The public safety officers' code of ethics is:

(a) "My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged;

(b) "I will perform all duties impartially, without favor or ill will and without regard to status, sex, race, religion, creed, political belief or aspiration. I will treat all citizens equally and with courtesy, consideration, and dignity. I will never allow personal feelings, animosities, or friendships to influence my official conduct;

(c) "I will enforce or apply all laws and regulations appropriately, courteously, and responsibly;

(d) "I will never employ unnecessary force or violence, and will use only such force in the discharge of my duties as is objectively reasonable in all circumstances. I will refrain from applying unnecessary infliction of pain or suffering and will never engage in cruel, degrading, or inhuman treatment of any person;

(e) "Whatever I see, hear, or learn, which is of a confidential nature, I will keep in confidence unless the performance of duty or legal provision requires otherwise;

(f) "I will not engage in nor will I condone any acts of corruption, bribery, or criminal activity; and will disclose to the appropriate authorities all such acts. I will refuse to accept any gifts, favors, gratuities, or promises that could be interpreted as favor or cause me to refrain from performing my official duties;

(g) "I will strive to work in unison with all legally authorized agencies and their representatives in the pursuit of justice;

(h) "I will be responsible for my professional development and will take reasonable steps to improve my level of knowledge and competence;

(i) "I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession."

23.13.204 Purpose of Certificates (1) Certificates are awarded by the council for the purpose of raising the level of professionalism and skill of public safety officers and to foster cooperation among the council, agencies, groups, organizations, jurisdictions, and individuals.

(2) Basic, intermediate, advanced, supervisory, command, and other certificates are established for the purpose of promoting ethical behavior, professionalism, education, and experience necessary to perform the duties of a public safety officer.

(3) Certificates remain the property of the council. The council has the power to recall, sanction, suspend, or revoke any or all certificates upon good cause based on a preponderance of the evidence as determined by the council.

23.13.205 General Requirements for Certification (1) To be eligible for the award of a certificate, each officer must be a full-time or part-time public safety officer as defined by 44-4-401, MCA, at the time the application for certification is received by the council.

(2) Public safety officers must complete the required basic training as set by the council.

(3) All public safety officers must abide by the code of ethics as prescribed in ARM 23.13.203. Acceptance of POST certification is an agreement to abide by and adopt the code of ethics and refrain from the behaviors outlined in ARM 23.13.702.

(4) Prior to issuance of any certificate, the public safety officer must have completed the designated combinations of education, training, and experience as established by the council.

(5) To maintain certification the officer must:

(a) abide by all laws and rules of Montana, including those set forth herein;

(b) maintain ethical conduct by upholding and abiding by the code of ethics set forth in ARM 23.13.203 and refrain from engaging in any behavior that constitutes a ground for denial sanction, suspension, or revocation under ARM 23.13.702;

(c) maintain the continuing education and training requirements set forth by the council and ARM 23.13.201(2)(k).

(6) Training hour guidelines are as follows:

(a) no training hours for the basic courses or legal equivalency courses may be applied to any other certificate; and

(b) acceptability of training hours claimed for training received from noncriminal justice sponsored agencies will be determined by the council, and requires an application for credit.

(7) No more than 15% of the required training hours will be allowed from in-service training. An officer who wishes to use in-service training hours when applying for intermediate, advanced, supervisory, command and other certificates must submit documentation of in-service training hours with the officer's certificate application. The POST Council is not responsible for maintaining records of the course content supporting regional, online, or in-service training hours acquired to satisfy the requirements of this rule. The employing agency or the individual officer must maintain records of the course

content supporting regional, online, or in-service training hours acquired to satisfy this rule.

(8) Applicable discipline-specific experience in any public safety agency will be considered by the council when determining the minimum standards for certification of each discipline.

23.13.206 Requirements for the Basic Certificate (1) POST will issue basic certificates in the following disciplines:

- (a) peace officer;
- (b) detention/corrections officer;
- (c) probation and parole officer;
- (d) misdemeanor probation/pretrial services officer;
- (e) public safety communications officer;
- (f) coroner; and
- (g) reserve officer.

(2) In addition to ARM 23.13.204 and 23.13.205, the following are required for the award of the basic certificate:

(a) Public safety officers hired after August 1, 2008, must have completed:

(i) the probationary period prescribed by law or by the current employing agency, but in any case have a minimum of one year discipline-specific employment experience with the current employing agency; and

(ii) the basic course or the equivalency as defined by the council.

(b) Public safety officers hired before August 1, 2008, must have:

(i) completed the probationary period prescribed by the employing agency, and served a minimum of one year with the present employing agency;

(ii) completed the basic course at the MLEA, or an equivalency as defined by the council; and

(iii) satisfied the requirements for the basic certificate by their experience, and satisfactorily performed their duties as attested to by the head of the agency for which they are employed.

(c) Public safety officers with out-of-state training or who have been formerly employed by a designated federal agency, state, tribal entity, county, municipality, city, or town who do not have basic certification and are employed by a Montana law enforcement and/or public safety agency:

(i) must have completed the probationary period prescribed by law, but in any case have a minimum of one year experience with the present employing agency;

(ii) whose training or service time is determined by the council as equivalent to the basic course must successfully complete an equivalency

program, approved by the council and administered by the MLEA. The council will require those who fail an equivalency program to successfully complete the basic course at the academy; and

(iii) whose training or service time is determined by the council as not equivalent to the basic course must, within one year of initial appointment, successfully complete the basic course.

(d) All of the training and equivalency requirements for the basic certificate must be accomplished within one year of the initial appointment.

(e) The council may grant a one-time extension to the one year time requirement for public safety officers upon the written application of the officer's appointing authority. The application must explain the circumstances that make the extension necessary. The council may not grant an extension to exceed 180 days. Factors that the council may consider in granting or denying the extension include but are not limited to:

(i) illness of the public safety officer or a member of the public safety officer's immediate family;

(ii) absence of reasonable access to the basic course, or the legal training course; and/or

(iii) an unreasonable shortage of personnel within the department.

(f) A public safety officer who has been issued a basic certificate by the council and whose last date of employment as a public safety officer in the discipline for which the officer received a basic certificate was less than 36 months prior to the date of the person's present appointment as a public safety officer in the discipline for which the officer received a basic certificate is not required to fulfill the basic educational requirements as set forth in these rules.

(g) If the last date of employment as a public safety officer in the discipline for which the officer received a basic certificate is more than 36 months but less than 60 months prior to the date of present employment as a public safety officer in the discipline for which the officer received a basic certificate, the public safety officer may satisfy the basic requirement by successfully passing a basic equivalency course administered by the academy. If the public safety officer fails the basic equivalency course, the basic course shall be completed within the time frames set forth in the rules. If no basic equivalency course exists for the public safety officer's specific discipline, then the applicable basic course must be completed within one year of the public safety officer's most recent appointment.

(3) An officer meeting the qualifications outlined above will be issued a basic POST certificate. The discipline of the basic POST certificate will correspond to the basic training course the officer attended. POST will consider the completion of the above requirements to constitute the officer's application

for a POST basic certificate. However, if an officer wishes to fill out an application form, then POST will also consider that application. POST will not reissue a basic certificate merely to change the discipline listed.

23.13.207 Requirements for the Public Safety Officer Intermediate Certificate

(1) POST will issue intermediate certificates in the following disciplines:

- (a) peace officer;
- (b) detention/corrections officer;
- (c) probation and parole officer;
- (d) misdemeanor probation/pretrial services officer; and
- (e) public safety communications officer.

(2) In addition to ARM 23.13.204 and 23.13.205, a peace officer or probation and parole officer who is an applicant for an award of the intermediate certificate:

(a) must have served at least one year with the present employing agency and be satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;

(b) must possess the discipline-specific basic certificate; and

(c) must have four years of discipline-specific experience and 200 combined job-related training hours as provided in these rules.

(3) In addition to ARM 23.13.204 and 23.13.205, a detention/corrections officer or a misdemeanor probation/pretrial services officer who is an applicant for an award of the intermediate certificate:

(a) must have served at least one year with the present employing agency and be satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;

(b) must possess the discipline-specific basic certificate; and

(c) must have four years of discipline-specific experience and 144 combined job-related training hours as provided in these rules.

(4) In addition to ARM 23.13.204 and 23.13.205, a public safety communication officer who is an applicant for an award of the intermediate certificate:

(a) must have served at least one year with the present employing agency and be satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;

(b) must possess the discipline-specific basic certificate; and

(c) must have four years of discipline-specific experience and 84 combined job-related training hours as provided in these rules.

(5) Officers who believe they are eligible for an intermediate certificate must submit a completed application, with a verification from the agency administrator that the officer's training meets the requirements of these rules and a recommendation that the applicant should be awarded the certificate, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will review the application and approve or deny the certification, unless the director determines as a matter of discretion that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director, the certificate becomes valid unless the council takes further action.

(6) A misdemeanor probation/pretrial services officer who possessed a probation and parole basic certificate before March 27, 2020 meets the requirement of (3)(b).

23.13.208 Requirements for Public Safety Officer Advanced Certificate

(1) POST will issue advanced certificates in the following disciplines:

(a) peace officer;

(b) detention/corrections officer;

(c) probation and parole officer;

(d) misdemeanor probation/pretrial services officer; and

(e) public safety communications officer.

(2) In addition to ARM 23.13.204 and 23.13.205, a peace officer or probation and parole officer who is an applicant for an award of the advanced certificate:

(a) must possess the discipline-specific intermediate certificate; and

(b) must have eight years of discipline-specific experience and 400 combined job-related training hours as provided in these rules.

(3) In addition to ARM 23.13.204 and 23.13.205, a detention/corrections officer or a misdemeanor probation/pretrial services officer who is an applicant for an award of the advanced certificate:

(a) must possess the discipline-specific intermediate certificate; and

(b) must have eight years of discipline-specific experience and 304 combined job-related training hours as provided in these rules.

(4) In addition to ARM 23.13.204 and 23.13.205, a public safety communications officer who is an applicant for an award of the advanced certificate:

(a) must possess the discipline-specific intermediate certificate; and

(b) must have eight years of discipline-specific experience and 184 combined job-related training hours as provided in these rules.

(5) Officers who believe they are eligible for an advanced certificate must submit a completed application, with a verification from the agency administrator that the officer's training meets the requirements of these rules and a recommendation that the applicant should be awarded the certificate, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

(6) A misdemeanor probation/pretrial services officer who possessed a probation and parole intermediate certificate before March 27, 2020 meets the requirement of (3)(a).

23.13.209 Requirements for Public Safety Officer Supervisory Certificate

(1) POST will issue supervisory certificates in the following disciplines:

(a) peace officer;

(b) detention/corrections officer;

(c) probation and parole officer;

(d) misdemeanor probation/pretrial services officer; and

(e) public safety communications officer.

(2) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the supervisory certificate:

(a) must possess the discipline-specific intermediate certificate;

(b) must have successfully completed a 32-hour POST-approved management course; and

(c) must have served satisfactorily as a first-level supervisor currently and for one year prior to the date of application, as attested to by the head of the employing agency.

(3) A first-level supervisor is a position above the operational level for which commensurate pay is authorized, is occupied by an officer who, in the upward chain of command, principally is responsible for the direct supervision of employees of an agency or is subject to assignment of such responsibilities.

(4) Officers who believe they are eligible for a supervisory certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

(5) A misdemeanor probation/pretrial services officer who possessed a probation and parole intermediate certificate before March 27, 2020 meets the requirement of (2)(a).

23.13.210 Requirements for Public Safety Officer Command Certificate

(1) POST will issue command certificates in the following disciplines:

- (a) peace officer;
- (b) detention/corrections officer;
- (c) probation and parole officer;
- (d) misdemeanor probation/pretrial services officer; and
- (e) public safety communications officer.

(2) In addition to ARM 23.13.204 and 23.13.205, the applicant for an award of the command certificate:

- (a) must possess the discipline-specific supervisory certificate;
- (b) must have completed a professional development course or courses cumulating a minimum of 160 hours or more of POST-approved, supervisory, management or leadership topic matter; and
- (c) must have served satisfactorily as a first-level supervisor currently and for one year prior to the date of application, as attested to by the head of the employing agency.

(3) Officers who believe they are eligible for a command certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

(4) A misdemeanor probation/pretrial services officer who possessed a probation and parole supervisory certificate before March 27, 2020 meets the requirement of (2)(a).

23.13.212 Instructor Certification Requirements (1) Instructor certificates are not discipline-specific and POST may issue an instructor certificate to any public safety officer who meets the qualifications in these rules.

(2) A public safety officer providing POST approved training as defined in these rules must be certified by the council as an instructor.

(3) To qualify as an instructor, the officer shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) two years of public safety experience;
(b) an active POST basic certificate in the officer's current discipline;
(c) an endorsement from the applicant's agency head; and
(d) successful completion of a POST-approved instructor development course. Effective October 28, 2017, all instructor development courses must be a minimum of 40 hours in length and must include a minimum of the following:

(i) 12 hours of curriculum design;
(ii) 8 hours of adult learning theories;
(iii) 8 hours of foundation skills for trainers;
(iv) 8 hours of training preparation and delivery; and
(v) 4 hours of context of training.

(4) Instructor certificates in any discipline issued prior to October 28, 2017 and any instructor certificate issued after October 28, 2017, may be renewed every four years.

(5) The council or the director may deny applications for instructor certification for failure to satisfy the required qualifications. The council or the director may recall, suspend, or revoke instructor certificates at any time for good cause to ensure the quality of the training programs.

(6) Officers who believe they are eligible for any instructor certificate must submit a completed application, with agency administrator approval, to the director. Applications are available from POST staff or on the POST web site.

(a) The director will then review the application and approve or deny the certification, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.

(b) Upon approval by the director the certificate becomes valid unless the council takes further action.

(7) A misdemeanor probation/pretrial services officer who possessed a probation and parole basic certificate before March 27, 2020 meets the requirement of (3)(b).

23.13.214 Employment and Training of Reserve Officers (1) An agency that appoints a reserve officer pursuant to 7-32-213, MCA, must submit a completed employment status form to the director within ten days of appointing the reserve officer.

(2) The employing agency is responsible for training the reserve officer. The reserve officer must complete training as prescribed in this rule within two years of the reserve officer's initial appointment.

(3) Training must, at a minimum, consist of the courses and hours listed in 7-32-214(1), MCA.

(4) Upon notice of the reserve officer's qualification, made by the reserve officer's agency head to the director on a form approved by the council, POST will issue a reserve officer basic certificate to the reserve officer.

23.13.215 Firearms Proficiency Standards (1) Each agency that employs a public safety officer who is authorized to carry firearms during the work assignment must:

(a) require the officer to complete successfully the firearms proficiency requirements provided in this rule at least once a year, for any manufacture and model of firearm customarily carried by that officer;

(b) designate a firearms instructor as defined in these rules to conduct or oversee and document annual firearms proficiency. The instructor need not be a POST-certified instructor but must have attended a minimum 40-hour POST-approved firearms instructor course or its equivalent, which includes the following topics:

- (i) firearms safety;
- (ii) role of the instructor;
- (iii) civil and criminal liability exposure;
- (iv) instructional techniques for firearms instructors;
- (v) operation of the firing line;
- (vi) range preparation;
- (vii) handgun;
- (viii) disabled officer techniques; and
- (ix) low light shooting techniques.

(c) keep on file in a format readily accessible to the council a copy of all firearms proficiency records, which must include:

- (i) date of qualification;
- (ii) identification of the officer;
- (iii) firearm manufacture and model;
- (iv) results of qualifying; and
- (v) course of fire used.

(2) The minimum standards for annual firearms proficiency are:

(a) Primary duty handgun – a minimum of 30 rounds, fired at ranges from point-blank to 15 yards with a minimum of 15 rounds at or beyond seven yards;

(b) Shotgun – minimum of five rounds fired at a distance ranging from point-blank to 25 yards;

(c) Precision rifle – a minimum of ten rounds fired at a minimum range of 100 yards;

(d) Patrol rifle – a minimum of 20 rounds fired at a distance ranging from point-blank to 50 yards;

(e) Fully automatic weapon – a minimum of 30 rounds fired at a distance ranging from point-blank to ten yards, with a minimum of 25 rounds fired in full automatic (short bursts of two or three rounds), and a minimum of five rounds fired semi-automatic; and

(f) Secondary or backup handgun – a minimum of 12 rounds fired at a distance ranging from point blank to at or beyond seven yards, which includes a minimum of six rounds fired at or beyond seven yards.

(3) The minimum passing score for annual firearms proficiency is 80% for each firearm on an IPSC Official Target or dimensional equivalent.

(4) The MLEA sets the passing score for the Montana Law Enforcement Basic Firearms Qualification.

(5) Before carrying a firearm or making an arrest, a misdemeanor probation/pretrial services officer must successfully complete the firearms proficiency requirements provided in this rule.

23.13.216 Public Safety Officer Employment, Education, and Certification Standards

(1) Except as provided in (2), the basic and basic equivalency training standards set forth in 7-32-303, MCA, are applicable to all public safety officers, where an appropriate basic course or basic equivalency course exists in the public safety officer's field. The council may approve a location other than the Montana Law Enforcement Academy for the basic or basic equivalency courses in the following disciplines: detention/corrections officer; probation and parole officer; misdemeanor probation/pretrial services officer; public safety communications officer; and coroner.

(2) The standards set forth in (1) do not apply to reserve officers.

(3) A public safety officer's employing authority must provide written notice to POST within 10 days of the appointment, termination, resignation, or death of the public safety officer.

23.13.217 Requirements for SWAT Primary Course Credit (1) To receive POST approval for a SWAT primary course, a course must meet the following requirements:

(a) the course must be a minimum of 40 hours in length and be approved pursuant to ARM 23.13.301 and 23.13.304 and must contain a minimum of the following:

(i) team communication, team make-up;

- (ii) confrontation management to include preplanning, immediate action, planning, execution, post execution;
 - (iii) weapons, munitions, and equipment to include live fire, close quarter defense, crisis negotiations, intelligence gathering/ground reconnaissance, preplanning tactics, walk through, breaching techniques;
 - (iv) team movement and interior tactics to include approach, position, entry, search, static, dynamic, halls, stairs;
 - (v) open air/mobile assault, downed officer citizen rescue, chemical agents/diversionary device/less lethal, practical exercises, and legal issues.
- (2) The director or the director's designee will review applications and approve or deny POST credit pursuant to these rules, unless the director determines, as a matter of discretion, that the council's review is necessary due to extenuating circumstances.
- (3) Upon approval by the director or the director's designee, the course will be reflected on the attending officers' POST training transcripts unless the council takes further action.

Training Courses

- 23.13.301 Qualifications for Approval of Public Safety Officer Training Courses** (1) The director or the director's designee may approve any request for POST training credit. Any person aggrieved by a determination made by the director under this rule may seek review of the decision by the POST Council.
- (2) To obtain the status of POST-approved training, training courses must:
- (a) meet the requirements for trainee attendance and performance, and the instructor requirements contained in these rules;
 - (b) be based upon generally recognized best practices;
 - (c) comport with Montana laws and court decisions;
 - (d) be at least two hours or more in length;
 - (e) be advertised and open to all public safety agencies; and
 - (f) contain course content that has been reviewed and approved by the agency hosting the training, or the employing authority of the officer receiving credit for the training, either before or after the training occurs, through the procedures set forth in (3).
- (3) A POST-certified instructor seeking course credit for public safety officers must have an active POST certificate that is not revoked, suspended or on probation and must submit an application for accreditation to the director and retain documentation of:

(a) an education or training record that indicates the officer has received education or training in the specific field, subject matter, or academic discipline to be taught;

(b) material showing course content, including an agenda, syllabus and/or lesson plan and student handouts; and

(c) a copy of the course advertisement.

(4) To receive POST training credit, an agency hosting a training by any other person or entity for a public safety officer or officers must submit an application for accreditation to the director and retain documentation of:

(a) an instructor certification or training record and an instructor biography;

(b) material showing course content, including an agenda, syllabus and/or lesson plan and student handouts; and

(c) a copy of the course advertisement.

(5) It is the responsibility of the employing authority or any person or entity wishing to receive POST-approved training credit to retain the required documentation set forth in these rules and monitor the standards for training, trainee attendance, and performance as set by the council. Records maintained under this rule are subject to audit by the executive director or the director's designee during normal business hours upon reasonable notice to the agency.

23.13.302 Requirements for Trainee Attendance and Performance in POST Approved Courses

(1) Trainees enrolled in any POST approved course shall be admitted only in accordance with rules of eligibility and admission as either contained herein or contained in the course announcement.

(2) No trainee may receive credits for a training course if absences exceed 10% of the total hours for the course.

(3) Any trainee who fails to comply with these rules pertaining to attendance, performance, and behavior shall be denied credits.

(4) A POST-certified instructor will not receive training credit for any training in which the POST-certified instructor provides instruction.

(5) Failure to comply with the rules contained herein or other guidelines may result in either denial of course approval or a revocation of course approval.

23.13.304 The Basic Courses

(1) The amount of training for which credit will be granted in any basic public safety officer's course will be prescribed by the council.

(2) Students in any basic public safety officers' course are required to complete instruction in the prescribed subject areas as directed by the council.

(3) The council will review and approve the curriculum for all basic public safety officers' courses. The review may consist of examining and approving the course syllabus and/or a thorough review of individual course performance objectives and lesson plans which have been established for each designated training block within the prescribed subject areas.

(4) The council may approve changes from the course content established at the last review upon written application from the MLEA administrator, training agency, or training provider providing evidence that such change is compatible with the public interest.

Coroner Education and Continued Education

23.13.601 Coroner Education and Continued Education and Extension of Time Limit for Continued Certification (1) Coroner education shall be conducted as prescribed in 7-4-2905, MCA.

(2) New coroners shall complete the 40 hour basic coroner course at the academy or other equivalent course approved by POST:

(a) the basic coroner course must be completed in accordance with 7-4-2905, MCA.

(3) Coroners must complete 16 hours of continuing coroner education at least once every two years.

(a) The council may extend the two year time limit requirement for the continuation of coroner's certification, set forth in 7-4-2905, MCA, upon the written application of the coroner or the appointing authority of the deputy. The application must explain the circumstances which necessitate the extension;

(b) Factors considered in granting or denying an extension include, but are not limited to:

(i) illness of the coroner/deputy coroner or an immediate family member;

(ii) absence of reasonable access to the continuing coroner education; or

(iii) an unreasonable shortage of personnel;

(c) The council may not grant an extension to exceed 180 days; and

(d) The council will not grant extensions after the expiration of the two year time limit.

Revocation/Suspension of Certification

23.13.702 Grounds for Denial, Sanction, Suspension, or Revocation of

POST Certification (1) Any legitimate allegation made against any public safety officer that may result in the denial, sanction, revocation, or suspension of that officer's certification must be considered by either:

- (a) the case status committee and the executive director; or
- (b) the council.

(2) The public safety officer's employing authority must report to the executive director any substantiated grounds for denial, sanction, suspension, or revocation of POST certification as enumerated in (3). If review of an officer's conduct is pending before any court, council, tribunal, or agency, the employing authority may wait for a final adjudication before reporting the officer's conduct to the executive director. If the officer's conduct results in termination of the officer's employment, the notice requirements of 7-32-303, MCA, and ARM 23.13.216 apply.

(3) The grounds for denial, sanction, suspension, or revocation of the certification of public safety officers are as follows:

(a) willful falsification of any information in conjunction with official duties, or any single occurrence or pattern of lying, perpetuating falsehoods, or dishonesty which may tend to undermine public confidence in the officer, the officer's employing authority, or the profession;

(b) a physical or mental condition that substantially limits the officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated or overcome by reasonable accommodation;

(c) engaging in substance abuse as defined in these rules;

(d) unauthorized use of or being under the influence of an intoxicating substance, including alcoholic beverages or marijuana, while on duty, or the use of and intoxicating substance, including alcoholic beverages or marijuana, in a manner which tends to discredit the officer, the officer's employing authority, or the profession;

(e) conviction of a criminal offense enumerated in Tit. 45, Ch. 5-10 or Tit. 61, ch. 8, pt. 4, MCA, or an offense which would be a criminal offense enumerated in Tit. 45, Ch. 5-10 or Tit. 61, ch. 8, pt. 4, MCA if committed in this state;

(f) neglect of duty or willful violation of orders or policies, procedures, rules, or criminal law when such action or inaction, committed in the officer's capacity as an officer or otherwise, reflects adversely on the officer's honesty, integrity, or fitness as an officer or is prejudicial to the administration of justice;

- (g) willful violation of the code of ethics set forth in ARM 23.13.203;
 - (h) 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;
 - (i) failure to meet the minimum standards for appointment or continued employment as a public safety or peace officer set forth in these rules or Montana law;
 - (j) failure to meet the minimum training requirements or continuing education and training requirements for a public safety or peace officer required by Montana law and these rules;
 - (k) operating outside or ordering, permitting, or causing another officer to operate outside of the scope of authority for a public safety or peace officer as defined by 44-4-401, 44-4-404, or 7-32-303, MCA, or any other provision of Montana law regulating the conduct of public safety officers;
 - (l) the use of excessive or unjustified force in conjunction with official duties;
 - (m) engaging in sexual misconduct as defined in these rules; or
 - (n) the denial, sanction, suspension, or revocation of any license or certification equivalent to a POST certification imposed by a board or committee equivalent to POST in any other state.
- (4) It is a defense to an allegation of substance abuse, as defined in these rules, if the officer shows by a preponderance of the evidence that the officer's substance abuse has been eliminated or overcome by reasonable treatment.

23.13.703 Procedure for Making and Receiving Allegations of Officer Misconduct and for Informal Resolution of Those Allegations by the Director

(1) The POST Council will create, maintain, and adopt in public meetings a policy and procedure for processing and responding to allegations. The policy and procedure will be posted on POST's web site and made publicly available. It will comply with these rules and offer the director further guidance regarding the specific steps that the director and POST staff will take when responding to allegations.

(2) Any allegation made against a public safety officer that states potential grounds for denial, sanction, suspension, or revocation of POST certification must be made initially to the employing authority of the officer in question by the individual making the allegation, unless the employing authority is making the allegation. All allegations must be made in writing unless the director initiates the allegation. Anonymous allegations will not be considered

unless the director determines that public safety may be threatened if POST takes no action on an anonymous allegation.

(3) Except as provided in this section, POST will not proceed with an allegation unless the individual making the allegation or POST staff has notified the employing authority of the allegation. This requirement does not apply if the allegation has been made against the highest ranking officer in the agency, who would otherwise constitute the employing authority, and there is some reason to believe that the investigation or public safety would be put in danger by such a notification.

(4) Within 30 days of being notified of the allegation, or in making its own allegation of misconduct, the employing authority must give POST a notice of the employing authority's investigation, action, ruling, finding, or response to the allegation, in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question, and which may contain a recommendation from the employing authority regarding whether POST should impose a sanction. If the employing authority recommends POST impose a sanction, the employing authority must state what sanction the employing authority deems reasonable. POST shall consider but is not bound by the recommendation of the employing authority. If available, a copy of the initial allegation made to the employing authority and the employing authority's written response must be forwarded to the director. The employing authority may make a written request to the director for additional time to respond. Such a request must provide good cause as to the reason more time is required. The director may grant or deny requests for additional time at the director's discretion.

(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 (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.

(a) Any allegation submitted to the council must be submitted to the director or POST staff and may not be submitted to the full council or any individual member of the council.

(b) The allegation must provide at least the following information:

(i) the name, address, and telephone number of the individual making the allegation, which the director may keep confidential if the individual or public safety would be harmed by disclosure;

- (ii) the name and place of employment of the officer;
- (iii) a complete description of the incident;
- (iv) the remedy sought;

(c) A person making an allegation must use the allegation form available from POST staff or submit an allegation in substantially similar format.

(d) An employing authority or the Montana Law Enforcement Academy may submit a written allegation on the agency's letterhead with supporting documents that the agency deems appropriate.

(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.

(a) All such correspondence must be copied to the employing authority, unless the exception noted in (3) applies.

(b) The policy provided in (1), will outline the number and nature of these letters.

(c) The purpose of this correspondence is to allow the officer to respond to the allegation, allow the director and contested case counsel to gather more information, and allow the parties to reach an informal resolution.

(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:

(a) engage in informal negotiations and settlement discussions and enter into a stipulation or memorandum of understanding with the officer or the officer's counsel, or otherwise informally resolve the complaint. An informal resolution reached before the MAPA contested case hearing stage under this subsection is not subject to approval by the council;

(b) accept the voluntary surrender of a certificate;

(c) make one of the following findings:

(i) No finding: The investigation cannot proceed for reasons that include but are not limited to: the complainant failed to disclose promised information to

further the investigation; or the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the officer(s) or employee(s) involved.

(ii) Not sustained: The investigation failed to discover sufficient evidence to prove or disprove the allegations.

(iii) Sustained: The investigation disclosed a preponderance of evidence to prove the allegation(s).

(iv) Unfounded: The investigation disclosed that the complainant made a false allegation, the subject of the complaint was not involved in the incident, or the incident did not occur.

(v) Exonerated: The investigation disclosed that the incident occurred, but the subject of the complaint acted lawfully and in a manner consistent with the agency's policy and procedures.

(d) issue the appropriate denial, sanction, suspension, or revocation of a certificate;

(e) if a denial, sanction, suspension, or revocation is imposed, the director must provide a notice of agency action in writing to the officer, satisfying the notice required by 2-4-601, MCA;

(f) the officer may request contested case proceedings pursuant to 44-4-403, MCA and MAPA, as outlined in ARM 23.13.704.

(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 as soon as practicable.

(11) In all cases in which a written allegation is submitted which does not culminate in a MAPA contested case hearing, the director must file a written report in the officer's POST file setting forth the circumstances and resolution of the case. All written correspondence with the officer and the officer's employing authority must also be maintained in the officer's POST file.

23.13.704 Requests for a Formal Contested Case Hearing Under MAPA

(1) 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.

23.13.705 Formal MAPA Contested Case Proceedings (1) A contested case involves a determination by POST that affects the rights or responsibilities of the petitioner or respondent.

(2) Contested case proceedings may be commenced only after the requirements of ARM 23.13.704 have been met and an officer or other aggrieved person has requested a hearing.

(3) Contested case proceedings before the council are subject to MAPA, in addition to, where applicable, the Montana Rules of Civil Procedure, the Montana Uniform District Court Rules, the Montana Rules of Evidence, the Montana Rules of Professional Conduct, the Montana Code of Judicial Conduct, and these rules.

(4) In cases under ARM 23.13.704(2), the respondent's failure to respond, appear, or otherwise defend a notice of agency action of which the respondent has had notice, may result in the hearing examiner finding the officer in default and entering an order against the officer containing findings of fact, conclusions of law, and an opinion in accordance with MAPA, Montana Rules of Civil Procedure, and any other rule of law applicable.

(5) A party may be self-represented, or may, at the party's own expense, be represented by an attorney licensed to practice law in the state of Montana.

(6) In cases under ARM 23.13.704(2), contested case counsel for POST will represent the director during the proceedings.

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.

23.13.707 Adoption of Attorney General’s Model Rules (1) The POST Council adopts and incorporates by reference the Attorney General Model Rules ARM 1.3.216, 1.3.226, 1.3.227, 1.3.228, 1.3.229, 1.3.230, and 1.3.232 in effect. The model rules incorporated by reference can be found on the Secretary of State’s web site at <http://sos.mt.gov/>. In applying the model rules, references to “the agency” should be interpreted to refer to “the POST Council.”

23.13.709 Contested Cases, Discovery (1) In all contested cases, discovery is available to the parties in accordance with Rules 26 through 37 of the Montana Rules of Civil Procedure. All references to “court” will be considered references to the hearing examiner or POST Council; all references to subpoena power will be considered references to ARM 1.3.230; all references to “trial” will be considered references to “hearing”; all references to “plaintiff” will be considered references to “a party”; all references to “clerk of court” will be considered references to the hearing examiner.

(2) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the hearing examiner, the adversely affected party may seek enforcement in district court under 2-4-701, MCA.

(3) If either party seeking discovery believes it has been prejudiced by a protective order issued by the hearing examiner under Rule 26(c), M.R.Civ.P., or, if either party refuses to make discovery, the aggrieved party may petition the district court for review of the hearing examiner’s action under 2-4-701, MCA.

(4) Severe failures of discovery may also be sanctioned pursuant to M.R.Civ.P. 37 and the case law interpreting it. Sanctions under this subsection may be enforced by or appealed to district court pursuant to 2-4-701, MCA.

23.13.711 Contested Cases, Record (1) The hearing examiner in the contested case proceeding is responsible for maintaining the official record of the contested case until its conclusion. The record must include:

- (a) all pleadings, motions, and rulings;

- (b) all evidence, either written or oral, received, or considered by the presiding officer;
- (c) a statement of matters officially noticed;
- (d) questions and offers of proof, objections, and rulings on objections;
- (e) proposed findings and exceptions; and
- (f) any decision, opinion, or report, and any proposed findings of fact, conclusions of law, and proposed order, entered by the hearing examiner, which must be in writing.

(2) The hearing examiner must number the docket and maintain it like the docket of a court of record.

(3) At the request of any party, all or part of the hearing proceedings must be transcribed. The cost of transcription is the responsibility of the requesting party.

23.13.713 Contested Cases – Hearing Examiners (1) The POST Council chair or the director may appoint a hearing examiner to conduct a hearing in a contested case, as allowed by 2-4-611, MCA.

(2) A hearing examiner appointed under 2-4-611, MCA and this rule may:

- (a) administer oaths or affirmations;
- (b) issue subpoenas;
- (c) provide for the taking of testimony and depositions;
- (d) set the time and place for hearing;
- (e) set motion and briefing schedules that comport with the Montana Rules of Civil Procedure and the Montana Uniform District Court Rules for filing, service, deadlines, and time calculation;

(f) by mutual consent of the parties, hold conferences to consider narrowing or simplifying the issues;

(g) rule on summary judgment motions, motions in limine, and other motions and, if motions are dispositive, make recommendations to the POST Council as if a hearing on the merits had occurred;

(h) allow, disallow, or limit expert testimony;

(i) recommend to the council dismissal of the case based on M.R.Civ.P. 41, default, or other reason;

(j) provide for and conduct the MAPA contested case process as a matter of discretion, within the bounds of the applicable law.

(3) If a hearing examiner is appointed in a contested case proceeding, notice must be provided to the public safety officer or other party with the notice of agency action or immediately after the officer requests a hearing pursuant to 44-4-403, MCA.

(4) Pursuant to 2-4-611(4), MCA, the POST Council may disqualify a hearing examiner if a party shows by affidavit the existence of personal bias, lack of independence, disqualification by law, or other ground for disqualification.

(5) If a hearing examiner recuses himself or herself for good cause, the director or POST Council may appoint a replacement.

(6) For guidance on the POST Council's past actions on cases and penalties imposed, a hearing examiner may inspect POST's integrity report, available on POST's web site or from POST staff, and may examine any POST file not containing privileged, ex parte, or other protected or constitutionally private material.

23.13.714 Contested Case Hearing (1) The contested case hearing will be conducted before the POST Council or a hearing examiner, at the council's discretion.

(2) The hearing will be held in Helena, Montana unless the director determines that another venue is more appropriate.

(3) The hearing examiner must ensure that the petitioner or respondent and counsel for POST are afforded the opportunity to respond and present evidence and argument on all issues involved.

(4) All testimony must be given under oath or affirmation.

(5) Exhibits must be marked and must identify the party offering the exhibits. The exhibits will be preserved by the hearing examiner and then by POST as part of the record of the proceedings.

(6) The hearing examiner may hear closing arguments, request written argument, order a schedule for parties to submit a prehearing memorandum, a final prehearing order, proposed findings of fact and conclusions of law, or any other writings that might assist the hearing examiner.

(7) The hearing examiner may grant recesses or continue the hearing.

(8) At the contested case hearing under ARM 23.13.704(2):

(a) POST has the burden of proving by a preponderance of the evidence that there was good cause for the denial, sanction, suspension, or revocation of certification imposed by the director, as stated in the notice of agency action;

(b) the director will be represented by contested case counsel during the contested case process; and

(c) absent a determination by the hearing examiner that the interests of justice require otherwise, the order of hearing is as follows:

(i) opening statements by both parties;

(ii) presentation of evidence by POST;

(iii) cross examination by the respondent;

- (iv) presentation of evidence by the respondent;
- (v) cross examination by POST; and
- (vi) rebuttal testimony.

23.13.715 Contested Cases, Evidence (1) All evidence introduced in a contested case hearing will be received and evaluated in conformance with common law and statutory rules of evidence, including the Montana Rules of Evidence.

23.13.716 Contested Cases, Ex Parte Communications (1) Pursuant to 2-4-613, MCA, ex parte communication by a party or a party's agent with the hearing examiner, the council, any individual member of the council, or any person authorized to participate in the decision of the contested case, is expressly prohibited unless otherwise authorized by law.

(2) An unauthorized ex parte communication may be treated as a default and may constitute a waiver of the party's rights to proceed.

(3) If an ex parte contact occurs, the person receiving the communication must state on the record the nature and content of the communication and a summary of its contents. The presiding officer or hearing examiner may, in the exercise of discretion, make any order that is appropriate.

23.13.719 Decision and Order, Stays (1) After completing a contested case proceeding, the hearing examiner shall, within 30 days of the hearing, issue findings of fact and conclusions of law that would, if adopted by the council, meet the requirements of 2-4-623, MCA.

(2) Within 15 days after the hearing examiner has issued findings, conclusions, and a proposed decision, an adversely affected party may submit exceptions to the hearing examiner's decision. The council shall receive briefs and hear oral arguments at its next meeting and deliberate pursuant to 2-4-621, MCA. The party filing the exceptions must incorporate a supporting brief in the document stating the exceptions. The opposing party may file a brief in response to the exceptions within ten days. No reply brief will be received.

(3) For the period between the submission of the hearing examiner's decision and the hearing before the council, general counsel for the council or another person designated by the council chair will act as a special master for purposes of resolving any issue arising before the council hearing.

(4) After deliberating, the council will decide to adopt, reject, or modify the hearing examiner's findings and recommendation. The council will issue a decision and order pursuant to 2-4-623, MCA, and mail a copy of this decision to respondent or the respondent's legal representative.

(5) If a party has filed exceptions to the decision of the hearing examiner, the contested case is not considered to be submitted for decision under 2-4-623(1), MCA, until oral arguments are concluded before the council.

(6) If a certificate was denied, revoked or suspended by the director before the hearing, the certificate will remain denied, revoked or suspended pending the outcome of the contested case proceeding and the respondent must surrender the certificate(s) to the council and forfeit the position, authority, and powers afforded the officer in this state while the contested case proceeds. However, the hearing examiner, before the contested case hearing, or the special master designated in (3), after the hearing, may, upon a properly supported motion that affords POST adequate opportunity to respond, stay the denial, suspension or revocation for good cause shown.

(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.

23.13.720 Contested Cases, Settlement or Stipulation and Process for

Review by the POST Council (1) If, in the course of the MAPA contested case proceeding, the parties reach a stipulated agreement or settlement, the parties must:

(a) put the agreement into writing, signed by the petitioner or respondent, as applicable, and the director;

(b) present the agreement to the POST Council for acceptance or rejection:

(i) if the council accepts the agreement by motion, then the agreement becomes the POST Council's final agency action;

(ii) if the council rejects the agreement, then the parties must provide the hearing examiner an excerpt of the official record of the POST meeting in which the council rejected the agreement. The contested case proceeds as though there had been no agreement.

(2) By signing a stipulation or settlement agreement, all parties:

(a) indicate their understanding that all agreements reached during the contested case process are subject to the POST Council's approval and are not binding until the council has approved the agreement by seconded motion;

(b) waive their rights or privileges to raise any argument, objection, complaint, or attempt to disqualify or remove any POST Council member or hearing examiner based on that individual's having heard, discussed, or ruled on the agreement. By submitting an agreement to the hearing examiner and the

council, all parties agree not to attempt to disqualify that hearing examiner or any member of the POST Council who considers the agreement or prevent them from ultimately hearing the case on the merits if the agreement is rejected.

23.13.721 Appeals (1) A final POST Council decision rendered after a contested case proceeding is the final agency decision subject to judicial review pursuant to 2-4-702, MCA.

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1988 Mont. AG LEXIS 18

Office of the Attorney General of the State of Montana

February 19, 1988

42 Op. Atty Gen. Mont. No. 68

Reporter: 1988 Mont. AG LEXIS 18; 42 Op. Atty Gen. Mont. No. 68

OPINION No. 68

February 19, 1988

Core Terms

volunteer, nominal fee, nominal, public agency, reimburse, federal regulation, tied, compensation for services, law enforcement agency, hours of service, sheriff's deputy, reserveofficer, public funds, total amount, time spent, full-time

Syllabus

[*1]

COUNTIES - Use of public funds to compensate reserve deputy sheriffs for time spent and expenses incurred;

PEACE OFFICERS - Use of public funds to compensate reserve deputy sheriffs for time spent and expenses incurred;

POLICE - Use of public funds to compensate reserve deputy sheriffs for time spent and expenses incurred;

POLICE DEPARTMENTS - Use of public funds to compensate reserve deputy sheriffs for time spent and expenses incurred;

PUBLIC FUNDS - Use of public funds to compensate reserve deputy sheriffs for time spent and expenses incurred;

SHERIFFS - Use of public funds to compensate reserve deputy sheriffs for time spent and expenses incurred;

CODE OF FEDERAL REGULATIONS - [29 C.F.R. §§ 553.100](#) to [553.106](#);

[MONTANA CODE ANNOTATED - Sections 7-32-201\(5\), 7-32-212, 46-1-201\(8\), 46-6-401.](#)

HELD: County public funds may be used to reimburse a reserve deputy sheriff's expenses, provide reasonable benefits, and pay nominal compensation, but the total

amount of these provisions may not be given as a form of compensation tied to productivity.

Request By: James Yellowtail
Big Horn County Attorney
Drawer L
Hardin MT 59034

Opinion By: MIKE GREELY, Attorney General

Opinion

You have requested [*2] my opinion on the following question:

May county public funds be used to compensate time spent and expenses incurred by reserve deputy sheriffs, in view of their status as volunteers under [section 7-32-201\(5\), MCA](#)?

A response to your question hinges on the definition of the term "volunteer" in [section 7-32-201\(5\), MCA](#), which states:

"Reserveofficer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer as defined in 46-1-201(8) and has arrest authority as described in 46-6-401 only when authorized to perform these functions as a representative of the law enforcement agency.

While Montana has no statutory or case law defining "volunteer," a rather extensive definition is set out in the federal regulations accompanying the Fair Labor Standards Act, [29 C.F.R. §§ 553.100](#) to .106 (1987). The definition and explanations contained in these regulations are directly applicable to Montana's state and local governments under the 1985 United States Supreme Court decision, *Garcia v. San Antonio Metropolitan Transit Authority*, 105 U.S. 1005 (1985).

The federal regulations define a volunteer as:

(a) An individual who performs hours of service [*3] for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered

. . . .

(c) Individuals shall be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.

[29 C.F.R. § 553.101\(a\)](#), (c).

The federal regulations further explain that individuals, such as reserve police officers, who volunteer services to public agencies are considered volunteers and

not employees of the public agencies "if their hours of service are provided with no promise[,] expectation, or receipt of compensation for the services rendered, except for reimbursement for expenses, reasonable benefits, and nominal fees, or a combination thereof . . ." [29 C.F.R. § 553.104\(a\)](#).

It is noteworthy that these regulations provide that volunteers may be paid expenses, reasonable benefits, a "nominal fee," or a combination of these, without losing their status as volunteers:

Individuals do not lose their status as volunteers because they are reimbursed for tuition, transportation and meal costs involved in their attending classes intended to teach [*4] them to perform efficiently the services they provide or will provide as volunteers.

[29 C.F.R. § 553.106\(c\)](#). The regulations further explain that volunteer status is not lost if reasonable benefits are provided. The examples given of reasonable benefits include coverage of volunteers by group insurance plans, such as the workers' compensation provisions. [29 C.F.R. § 553.106\(d\)](#).

The regulations clearly distinguish payment of a nominal fee from payment of compensation for services, and the effect of these on a volunteer's status:

Individuals do not lose their volunteer status if they receive a nominal fee from a public agency. A nominal fee is not a substitute for compensation and must not be tied to productivity. However, this does not preclude the payment of a nominal amount on a "per call" or similar basis to volunteer firefighters. The following factors will be among those examined in determining whether a given amount is nominal: The distance traveled and the time and effort expended by the volunteer; whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods; and whether the volunteer provides services as needed [*5] or throughout the year. An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

[29 C.F.R. § 553.106\(e\)](#).

As noted earlier, a combination of expenses, benefits and fees does not, by itself, preclude volunteer status. However, volunteer status can be jeopardized if the total amount of payments made (expenses, benefits, fees) is excessive in the context of the economic realities of the particular situation. [29 C.F.R. § 553.106\(f\)](#).

It is apparent from these regulations that a reserve deputy sheriff may receive some nominal compensation for time spent and may be reimbursed for expenses without losing volunteer status, but these payments must not be a substitute for

salaried compensation, nor may they be tied to productivity. These regulations, taken in conjunction with Montana's statute prohibiting a reduction in the number of full-time officers, [§ 7-32-212, MCA](#), also suggest that the above-listed forms of "encouragement" to volunteers cannot be abused to the extent that volunteer reserveofficers are used in place of authorized full-time law enforcement officers.

[*6]

THEREFORE, IT IS MY OPINION:

County public funds may be used to reimburse a reserve deputy sheriff's expenses, provide reasonable benefits, and pay nominal compensation, but the total amount of these provisions may not be given as a form of compensation tied to productivity.

1988 Mont. AG LEXIS 48

Office of the Attorney General of the State of Montana

42 Op. Atty Gen. Mont. No. 97

Reporter

1988 Mont. AG LEXIS 48; 42 Op. Atty Gen. Mont. No. 97

OPINION No. 97

July 14, 1988

Core Terms

search and rescue, auxiliary, workers' compensation, train, law enforcement agency, supervision, coverage, reserve officer, new statute, volunteer, law enforcement service, actual service, county sheriff, qualification, part-time, sheriff's, unsworn

Syllabus

[*1]

COUNTY OFFICERS AND EMPLOYEES - Members of recognized search and rescue units as auxiliary officers of county sheriff; SHERIFFS - Members of recognized search and rescue units as auxiliary officers of county sheriff; WORKERS' COMPENSATION - Coverage of members of recognized search and rescue units; MONTANA CODE ANNOTATED - Sections 7-32-201 to 7-32-235, 7-32-2121(11); OPINIONS OF THE ATTORNEY GENERAL - 36 Op. Att'y Gen. No. 6 (1975).

HELD: Members of a recognized search and rescue unit are auxiliary officers and must be provided full workers' compensation coverage when engaged in a search, training, or testing operation called and supervised by the sheriff.

Request By: John W. Robinson

Ravalli County Attorney

Ravalli County Courthouse

Hamilton MT 59840

Opinion By: MIKE GREELY, Attorney General

Opinion

You have requested my opinion on the following questions:

1. Are members of recognized search and rescue units "auxiliary officers" and thereby covered under workers' compensation laws?

2. If members of recognized search and rescue units are not auxiliary officers, can they be covered by workers' compensation for liability purposes when such units are called out by the sheriff for a search or for mandated [*2] training or testing?

In 1985 the Legislature amended section 7-32-235, MCA, by adding subsections (1) and (3), MCA, which authorize a county to "establish or recognize one or more search and rescue units within the county" and to support the units financially by means of a property tax. Your questions concern the county's responsibility for providing workers' compensation coverage for members of a search and rescue unit which the county has recognized under section 7-32-235(1), MCA. If the members of such a unit are "auxiliary officers," then section 7-32-203(2), MCA, requires the law enforcement agency that utilizes them to provide full workers' compensation coverage while the auxiliary officers are providing actual service for the law enforcement agency.

Prior to 1977 there was little statutory guidance on questions concerning voluntary law enforcement groups such as search and rescue associations. See, e.g., 36 Op. Att'y Gen. No. 6 at 300 (1975). Following a statewide survey by the Montana Board of Crime Control which revealed wide variations in the performance, training, authority, and supervision of such groups, the 1977 Legislature enacted Senate Bill 152 (1977 [*3] Mont. Laws, ch. 85), now codified at sections 7-32-201 to 234, MCA, which addressed the regulation of all volunteer members of law enforcement agencies. Senate Bill 152 distinguished between "auxiliary officers" and "reserve officers," established qualification and training standards for reserve officers, and defined the role and authority of auxiliary officers.

In 1981 the Legislature added section 7-32-235, MCA, to the statutory provisions on reserve and auxiliary officers. The new statute provided that search and rescue units are under the operational control and supervision of the county sheriff having jurisdiction. When the 1985 amendments discussed above were enacted, this provision became subsection (2) of section 7-32-235, MCA.

The 1981 legislation which expressly gave the county sheriff supervisory control over search and rescue operations (1981 Mont. Laws, ch. 42) contained an instruction stating that the new statute was intended to be codified as an integral part of title 7, chapter 32, part 2, MCA, and that the provisions of Title 7, chapter 32, part 2, MCA, apply to the new statute. To conform the statutory list of duties of the sheriff, the legislation also [*4] amended section 7-32-2121, MCA, by adding subsection (11), which requires the sheriff to "take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service."

Section 7-32-201(1), MCA, defines "auxiliary officer" as "an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities." (Emphasis added.) Subsection (3) defines "law enforcement agency" as "a law enforcement service provided directly by a local government."

In view of the legislative history and express language of the involved statutes, I conclude that members of a county-recognized search and rescue unit are "auxiliary officers" and thereby subject to the applicable provisions of Title 7, chapter 32, part 2, MCA. Cf. *State v. Lemmon*, 41 St. Rptr. 2359, 692 P.2d 455 (1984) (member of sheriff's posse is an auxiliary officer). Search and rescue unit members are unsworn part-time volunteers who provide a law enforcement service when called out on a search by the sheriff. [*5] While such auxiliary officers are exempt from the qualification and training requirements which apply to reserve officers (see § 7-32-234, MCA, I further conclude that the full workers' compensation coverage required by section 7-32-203(2), MCA, should also extend to any training or testing exercised which are conducted on the orders and at the direction of the sheriff. See § 7-32-231, MCA. While engaged in training or testing operations under the sheriff's supervision, the auxiliary officers are providing "actual service for law enforcement agency" and should be insured by the agency under its workers' compensation coverage. See § 7-32-203(2), MCA.

These conclusions make it unnecessary to address your second question.

THEREFORE, IT IS MY OPINION:

Members of a recognized search and rescue unit are auxiliary officers and must be provided full workers' compensation coverage when engaged in a search, training, or testing operation called and supervised by the sheriff.

Load Date: 2014-10-29

2000 Mont. AG LEXIS 18

Office of the Attorney General of the State of Montana
48 Op. Atty Gen. Mont. No. 22

Reporter

2000 Mont. AG LEXIS 18; 48 Op. Atty Gen. Mont. No. 22

OPINION No. 22

December 18, 2000

Core Terms

peace officer, appointment, crime control, train

Syllabus

[*1]

PEACE OFFICERS - Peace officer employment, education and certification standards;
STATUTORY CONSTRUCTION - Construction of statute's provisions in manner which gives meaning and effect to each;

STATUTORY CONSTRUCTION - Construing plain meaning of words of statute;

MONTANA CODE ANNOTATED - Sections 1-2-101, 7-32-303, -303(5)(a), (5)(b), (5)(c), -303(6).

HELD: Mont. Code Ann. § 7-32-303(6) authorizes only one extension, not to exceed 180 days, to the requirement that every peace officer must attend and successfully complete, within one year of his or her initial appointment, an appropriate peace officer basic training course certified by the Board of Crime Control.

Request By: Mr. Jim Oppedahl
Executive Director
Montana Board of Crime Control
P.O. Box 201408
Helena, MT 59620-1408

Opinion By: JOSEPH P. MAZUREK, Attorney General

Opinion

You have requested my opinion on the following question, which I have rephrased as follows:

May the Board of Crime Control grant more than one 180-day extension under Mont. Code Ann. § 7-32-303(6) for a peace officer to complete basic training?

In my opinion, the Board may not.

Mont. Code Ann. § 7-32-303 governs peace officer employment, education and certification standards. [*2] Relevant to your question is subsection (5)(a), which provides:

(5)(a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the board of crime control. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection (a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

Thus, the general requirement is that a peace officer must attend and successfully complete an appropriate peace officer basic training course within one year of his or her initial appointment.

Subsections (5)(b) and (5)(c) provide exceptions to that general rule; however, they only apply to peace officers who, at some time prior in their careers as peace officers, have received a basic certificate from the Board of Crime Control (Board) or the equivalent certification from another state. Subsection (5)(c) [*3] reiterates the one-year rule in requiring former officers to pass a basic equivalency test and to complete a legal training course conducted by the Montana Law Enforcement Academy.

You asked for my construction of subsection (6), which grants the Board authority to extend the one-year time requirement of subsections (5)(a) and (5)(c). Specifically, you asked whether more than one 180-day extension to the one-year time requirement may be granted. Subsection (6) states:

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

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

In light of the rules of statutory construction, [*4] I conclude that the Board's interpretation that subsection (6) authorizes the Board to grant only one 180-day extension is correct. Statutes must be construed or interpreted in accordance with the intent of the legislature. *State v. Christensen*, 265 Mont. 374, 376, 877 P.2d 468, 469 (1994). In construing a statute, I must look first to the plain meaning of the words of the statute; if the language is clear and unambiguous, no further interpretation is necessary. Id.

The statutory language of Mont. Code Ann. § 7-32-303(6) is clear and unambiguous. In relevant part it states, "The board may not grant an extension to exceed 180 days." My opinion is that this language expresses a clear intent by the legislature to give the Board authority to grant one extension, but placed upon the Board the constraint that an extension could not exceed 180 days.

Mont. Code Ann. § 1-2-101 expresses a preference that, where possible, a statute be interpreted in a manner which gives meaning to each particular provision of the statute. Additionally, the Montana Supreme Court has stated that any statutory interpretation that renders any sections of the [*5] statute superfluous and does not give effect to all of the words used must be avoided. *State v. Berger*, 259 Mont. 364, 367, 856 P.2d 552, 554 (1993).

The legislative intent in § 7-32-303(6) is expressed unambiguously through the straight-forward process attendant to extension requests. The statute requires the Board to act upon "the written application of the peace officer" which, in turn, "must explain the circumstances that make the extension necessary." It then identifies certain circumstances that may be considered by the Board "in granting or denying the extension." The statute concludes by prohibiting the Board from granting an extension exceeding 180 days. Subsection (6) thus contemplates a one-time process initiated by the submission of an extension request and a determination that, if favorable, cannot extend the normal deadline more than 180 days. The provision, given literal effect, is not susceptible to a construction under which a peace officer may tender multiple applications whose intended or practical effect is to secure extensions exceeding the 180-day limit. Any other conclusion, moreover, would produce inconsistency [*6] with § 7-32-303(5)(a), since interpreting subsection (6) to allow multiple extensions over 180 days to an officer who has not received his or her basic certification would undermine subsection (5)(a)'s requirement that peace officers complete the educational requirements imposed upon them within one year of their appointment except where an extension is granted under the following subsection. Put otherwise, it makes little sense to impose a

one-year deadline, with the possibility of an extension for a specified maximum length, if through the simple use of multiple extensions that length may be exceeded.

In sum, it is clear that § 7-32-303(6) recognizes that there are certain legitimate reasons an officer may need an extension beyond the one-year requirement set forth in § 7-32-303(5)(a). Nonetheless, the overriding intent of the statute is to require that all peace officers receive the proper education within one year of their appointment, except where compelling circumstances exist to justify an extension not to exceed 180 days. The public and officer safety reasons underlying this requirement are obvious.

THEREFORE, IT IS MY OPINION:

Mont. Code Ann. § 7-32-303(6) authorizes [*7] only one extension, not to exceed 180 days, to the requirement that every peace officer must attend and successfully complete, within one year of his or her initial appointment, an appropriate peace officer basic training course certified by the Board of Crime Control.

Load Date: 2014-10-29

49 Op. Att'y Gen. No. 12

FIRES - Cooperative law enforcement agreement with federal agency for fire response;
PUBLIC OFFICERS - Eligibility of public officer for compensation from federal government agency;
SALARIES - Services provided outside "official duties" of sheriff;
SHERIFFS - Compensation paid to county employee under terms of cooperative law enforcement agreement with federal agency;
MONTANA CODE ANNOTATED - Title 2, section 2; sections 2-2-102(8), -104, -104(3)(a), -121(1), 7-4-2511(2), 7-32-2121, 44-11-305;
MONTANA CONSTITUTION - Article VI, sections 1(1), 5;
OPINIONS OF THE ATTORNEY GENERAL - 45 Op. Att'y Gen. No. 10 (1993), 43 Op. Att'y Gen. No. 43 (1989), 43 Op. Att'y Gen. No. 32 (1989).

HELD:

A sheriff may receive compensation from a federal agency under the terms of a cooperative law enforcement agreement where the services rendered by the sheriff fall outside of his or her "official duties" without violating any of Montana's statutory or constitutional provisions.

October 31, 2001

Mr. George H. Corn
Ravalli County Attorney
Courthouse Box 5008
205 Bedford Street
Hamilton, MT 59840

Dear Mr. Corn:

You have presented the following question for my opinion:

May a sheriff accept compensation from a federal agency under a cooperative law enforcement agreement without violating any statutory or constitutional provisions?

I.

For the purposes of this opinion, I assume the following facts stated in your letter of inquiry. The Ravalli County Commissioners entered into a "Cooperative Law Enforcement Agreement No. 01-03-004" (Agreement) with the Forest Service on May 26, 2000. This Agreement was signed by Perry Johnson, the Ravalli County sheriff, and authorized and approved by the Commissioners of Ravalli County as allowed by Mont. Code Ann. § 44-11-305.

In general, this Agreement authorized the Forest Service to contract with county law enforcement personnel for services provided to the Forest Service, such as patrolling Forest Service campgrounds in exchange for payment. The rate of pay for personnel was equal to their county wage, including hourly wage, workers' compensation, transportation, and administrative costs.

The Agreement also included a "Financial Plan for Fire Emergencies" (Financial Plan). The Financial Plan allowed the Forest Service, during fire emergencies, to engage local law enforcement personnel for work outside their normal duties and hours. The work was to be done on an as-needed basis as determined by the Forest Service. Specifically, the Financial Plan provided that "[w]hen the Forest Service requests regular or reserve deputies to work in positions beyond the normal responsibilities of the Sheriff's Department due to a fire emergency," the Forest Service would pay for such work at the rates provided for in the Financial Plan. The Financial Plan specified the Forest Service employees who were capable of requesting such services. In particular, "[o]nly the Forest Service Fire Dispatcher and the Forest Law Enforcement Officer may request services under the fire agreement."

Reimbursable services under the Financial Plan included: "fire camp security, maintain[ing] roadblocks for fire equipment or fire camp security, equipment security, [and] traffic control requested by Forest Service." Regular deputies were paid at their overtime rate and reserve deputies were paid \$13.60 per hour for the first eight hours worked and \$20.40 for overtime thereafter. Nonreimbursable services included "mass evacuation, normal Sheriff's Department activities, [and] normal traffic control." Additionally, the Financial Plan provided that the Forest Service would pay the county "32.5 cents per mile for officers responding to their assignments, \$44.00 per day flat rate for patrol cars left at the scene and a 22 percent administrative fee to offset administrative costs."

During the fire season of 2000, the Forest Service exercised the Financial Plan, and pursuant to its provisions, local law enforcement personnel, including the Ravalli County sheriff, reported for work at places designated by the Forest Service. In general, the mechanics of payment worked in the following manner: law enforcement personnel reported for work at the designated site; after working, the personnel would turn a time card in to the sheriff's office; the hours worked would then be turned over to county finance personnel, who tabulated the hours and sent a request for payment to the Forest Service; finally, the county paid the personnel and the Forest Service reimbursed the county.

The Financial Plan called for both sworn deputies and reservists to be hired. County figures show that a total of 24 sheriff's department personnel, including the sheriff, worked 7649.96 hours and were paid \$178,830. The sheriff's department was open for business during its normal business hours and personnel continued their work schedule for the county.

II.

You have requested my opinion regarding whether a sheriff can accept compensation from a federal agency under the terms of a cooperative law enforcement agreement without violating any provisions of the Montana Code Annotated or the Montana Constitution.

Mont. Code Ann. § 7-4-2511(2) generally governs compensation of county officials. It states:

No salaried county officer may receive for his own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by him. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county.

In Platz v. Hamilton, 201 Mont. 184, 653 P.2d 144 (1982), the Montana Supreme Court addressed whether a clerk of district court was required to remit to the county treasurer the fees collected by the clerk in the issuance and execution of passports. Citing Mont. Code Ann. § 7-4-2511(2), the Court found to be dispositive the fact that there was no statute imposing an official duty upon the clerk to execute passport applications or to pay over execution fees collected to the county treasurer. Id. The Court held that because the execution of passport applications was not an official duty imposed upon a clerk of district court by state statute, and because the legislature had not enacted a statute with regard to the disposition of execution fees, the clerks had no duty to remit the fees to the general fund. Id. at 190, 653 P.2d at 147.

Thus, in order to respond to your question, I must determine whether assisting the Forest Service in its efforts to respond to fire emergencies during the fire season of 2000 was an official duty of the sheriff of Ravalli County.

The duties of a sheriff are set forth in Mont. Code Ann. § 7-32-2121. Among other duties, the sheriff must preserve the peace, arrest persons committing public offenses, prevent and suppress breaches of the peace, serve process, run a detention center, supervise search and rescue units when they are called, and serve as humane officer. Section 7-32-2121 imposes no official duty on a county sheriff to aid a federal agency in the performance of the sheriff's official duties. Furthermore, a federal agency cannot unilaterally mandate such aid from a county agency absent enabling state legislation. See generally Printz v. United

States, 521 U.S. 898 (1997) (holding that the federal government may not compel the states to implement, by legislation or executive action, federal regulatory programs).

The services rendered by Sheriff Johnson to the Forest Service are analogous to the services performed in Platz in that they are not part of a sheriff's statutorily defined duties. This was recognized by the Financial Plan, which provided payment solely for services beyond the ordinary responsibilities of the sheriff's department. Thus, under the applicable law, it is my opinion that the duties performed by Sheriff Johnson at the behest of the Forest Service were not official services rendered by him for which compensation is prohibited.

Having addressed the substantive law concerning whether the compensation was received for services outside of his official duties, the question as to whether Sheriff Johnson can accept such payment without violating the statutorily imposed standards of conduct found in title 2, chapter 2 must be addressed. Sheriff Johnson is classified as a public officer and subject to the standards of conduct because he is an elected officer of local government. See Mont. Code Ann. § 2-2-102(8). Mont. Code Ann. § 2-2-104(3)(a) provides, "[A] public officer, legislator, or public employee may not receive salaries for two separate public employment positions that overlap for the hours being compensated."

The general reason for salary limitations for public officers is to preserve separation of powers and to prevent public officials from advancing their own interests at the expense of public welfare. 45 Op. Att'y Gen. No. 10 (Mont. 1993) held that a Public Service Commissioner who reactivated his prior employment in order to be eligible to receive a severance payment did not violate the code of ethics for state public officials because the payment received did not appear to constitute a gift within the meaning of the word as used by the standards of conduct. See Mont. Code Ann. § 2-2-104.

Similarly, in this case Sheriff Johnson was paid for rendering a service, which he was not statutorily required to perform, in exchange for pay. The federal agency had control over whether Johnson would be asked to render services. Accordingly, receipt of compensation from the Forest Service does not violate the public policy behind salary restrictions nor does it violate the rules of conduct for public officers embodied in Montana law.

It is also my opinion that the work performed by the sheriff according to the terms of the Financial Plan would not violate the prohibition found at section 2-2-121(1), which prohibits a public officer from using "public time, facilities, equipment, supplies, personnel or funds for the officer's or employee's private business purposes." While Sheriff Johnson did receive a private financial benefit for performing under the Financial Plan, it does not appear that public time, facilities, equipment, supplies, personnel, or funds were used for which the county was not reimbursed by the Forest Service. The county was compensated for any associated vehicle costs and paid a 22 percent administrative fee to cover other resources used to carry out the terms of the Financial Plan. Under the circumstances involved in this particular situation, it is my opinion that section 2-2-121(1) would not be violated.

Lastly, you raise the issue of whether a constitutional impediment exists that would prohibit Sheriff Johnson from accepting compensation from the Forest Service. Article VI, section 5 of the Montana Constitution provides that officers of the executive branch shall receive salaries as provided by law. Section 5(2) further provides, in relevant part: "During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency." Section 1(1) sets forth the officers within the executive branch. It provides: "The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor."

Although the sheriff of Ravalli County is an elected public official, he is not a member of the executive branch as defined by article VI, section 1(1), and he therefore would not be subject to the compensation limitations outlined in article VI, section 5.

Additionally, even if the constitutional restrictions on salary applied to a county sheriff, in this case they would not prevent Sheriff Johnson from accepting compensation from a federal agency under these circumstances. 43 Op. Att'y Gen. No. 32 (Mont. 1989) held that an elected officer of the executive branch may not receive additional compensation for simultaneous service in the Montana National Guard.

However, this holding was later clarified to prohibit only compensation received from the state. 43 Op. Att'y Gen. No. 43 (Mont. 1989). Then-Attorney General Racicot concluded that a public officer who is engaged in rendering services to a federal agency and who is paid by that federal agency may accept such compensation without violating Montana's constitutional provisions governing salary restrictions. Id.

Accordingly, Sheriff Johnson did not violate any statutory or constitutional provisions in accepting compensation from a federal agency under these circumstances. He received compensation for duties performed, which were not official services, while continuing to perform all manner of public service required by his elected position.

Based on the above analysis, it is my opinion that a sheriff may receive compensation from a federal agency under the terms of a cooperative law enforcement agreement where the services rendered by the sheriff fall outside of his or her "official duties" without violating any Montana statutory or constitutional provision.

THEREFORE, IT IS MY OPINION:

A sheriff may receive compensation from a federal agency under the terms of a cooperative law enforcement agreement where the services rendered by the sheriff fall outside of his or her "official duties" without violating any of Montana's statutory or constitutional provisions.

Very truly yours,

MIKE McGRATH
Attorney General

mm/as/dm

2012 Mont. AG LEXIS 6

Office of the Attorney General of the State of Montana

54 Op. Atty Gen. Mont. No. 8

Reporter

2012 Mont. AG LEXIS 6; 54 Op. Atty Gen. Mont. No. 8

Opinion No. 8

August 10, 2012

Core Terms

peace officer, appoint, basic training, break in, train, deadline, initial appointment, one year, successful completion, time period, scenario, forfeit

Syllabus

[*1]

PEACE OFFICERS - Effect of a break in service on the peace officer training requirements;

MONTANA CODE ANNOTATED - Sections 1-2-101, 7-32-303(1)(a), (2), (5)(a), (b), (c), (6), (7), 44-4-404;

OPINIONS OF THE ATTORNEY GENERAL - 48 Op. Atty. Gen. No. 22 (2000).

HELD: A peace officer who has a break in service during the one year time period provided in 7-32-303(5)(a) has the remainder of the one-year period, plus any additional time as granted by the public officer standards and training council, in which to attend and successfully complete a basic training course. If the break in service extends beyond one year from his or her initial appointment and the officer has not completed a basic training course within one year of the initial appointment as required by 7-32-303(5)(a), the officer forfeits his or her position as peace officer and cannot serve in that capacity until he or she attends and successfully completes a basic training course.

Request By: Ms. Winnie Ore, Chairperson

Montana Public Safety Officer Standards & Training Council

2260 Sierra Road East

Helena, MT [*2] 59602

Opinion By: STEVE BULLOCK, Attorney General

Opinion

[P1] You have requested my opinion on the following question, which I have rephrased as follows:

How long does a peace officer have to complete a basic training course if the officer has a break in service during the one-year time period provided in Mont. Code Ann. § 7-32-303(5)(a)?

[P2] The general requirement is that a peace officer must attend and successfully complete an appropriate peace officer basic training course within one year of his or her initial appointment:

Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the Montana public safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection (5)(a) forfeits the position, authority, and arrest powers accorded a [*3] peace officer in this state.

Mont. Code Ann. § 7-32-303(5)(a). This requirement applies to all state, county, and city law enforcement officers described in Mont. Code Ann. § 7-32-303(1)(a).

[P3] The one-year deadline may be extended by the public safety officer standards and training council (POST council) for a period of up to 180 days as provided in subsection (6):

The Montana public safety officer standards and training council may extend the 1-time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illnesses of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic equivalency course, and an unreasonable shortage of personnel within the department. The council may not grant an extension to exceed 180 days.

Mont. Code Ann. § 7-32-303(6) [*4] . As determined in a prior opinion of this office, the 180-day deadline may be extended only once. 48 Op. Atty. Gen. No. 22 (2000).

[P4] The Montana Department of Justice offers a 12-week law enforcement officer basic course which has been approved by the POST council and is available three times a year

through the Montana Law Enforcement Academy. Topics covered include education and training in the fundamentals of policing, including law, human behavior, police function, patrol operations, investigation, traffic enforcement, and police proficiencies. See <https://doj.mt.gov.mlea/basic-programs-3/>. Successful completion of the training requirement and other qualifications, including a one-year probationary period, allows the officer to apply to the POST council for a basic certificate certifying that the officer has met all the basic qualifying peace officer standards of this state. Mont. Code Ann. § 7-32-303(7).

[P5] Your question involves a peace officer who is appointed by a law enforcement agency but has a break in service prior to completing the basic course described in Mont. Code Ann. § 7-32-303(5)(a) [*5]. I will analyze your question in two parts: (1) the first scenario assumes that the officer leaves and returns to service within the one-year time period provided in Mont. Code Ann. § 7-32-303(5)(a); and (2) the second scenario assumes that the officer leaves but does not return to service within the one-year time period provided in Mont. Code Ann. § 7-32-303(5)(a).

[P6] I will assume for purposes of this opinion that the peace officer has never been issued a basic certificate (so that the provisions of Mont. Code Ann. § 7-32-303(5)(b) do not apply); that the officer has not previously completed a basic peace officer's course taught by a federal, state, or United States military law enforcement agency (so that the provisions of Mont. Code Ann. § 7-32-303(5)(c) do not apply); and that the officer is appointed after September 30, 1983 (so that the provisions of Mont. Code Ann. § 7-32-303(5)(a) are applicable).

I.

[P7] In the first scenario, a peace officer appointed by [*6] an agency has a break in service during the one-year time period described in Mont. Code Ann. § 7-32-303(5)(a). The following dates are representative:

January 1, 2012:	The officer is appointed by the agency.
May 1, 2012:	The officer leaves employment.
October 1, 2012:	The officer returns to employment.

Because the break in service occurs before the one-year period expires in January 2013, the officer does not forfeit his/her position, authority, or arrest powers by virtue of the fact that he or she did not complete basic training within one year of his/her initial appointment. Mont. Code Ann. § 7-32-303(5)(a). The officer may thus return to service under the terms of his or her initial appointment (assuming he or she still meets the qualifications of Mont. Code Ann. § 7-32-303(2)), and has the remainder of the one-year period (or until January 1, 2013) in which to complete basic training, plus any additional time extended by the POST council pursuant to Mont. Code Ann. § 7-32-303(6).

[P8] You question whether **[*7]** the one-year deadline could be extended by the length of the break in service or, stated another way, whether the one-year deadline should be tolled during the officer's absence. Using the above example, the officer would have until May 1, 2013, or an additional five months, to complete basic training.

[P9] I find no statutory support for the proposition that the one-year deadline can be extended based solely on the employment circumstances of an individual officer. The rules of statutory construction require me to "ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1-2-101; (AG Opinion cite). The deadlines in Mont. Code Ann. § 7-32-303 are clear and unambiguous. 48 Op. Atty. Gen. No. 22 (2000). There is no mention of "tolling" or any extensions beyond 180 days as provided in Mont. Code Ann. § 7-32-303(6). There is no indication that the Legislature intended an individual officer or appointing agency to avoid the deadlines in Mont. Code Ann. § 7-32-303(5)(a) **[*8]** simply by terminating and reinstating his or her appointment at will.

[P10] By the same reasoning, an individual or appointing agency may not avoid the statutory deadlines by maintaining a break in service for less than one year, returning to a different agency, maintaining another break in service for less than one year, and potentially repeating this process without ever completing basic training. For example:

January 1, 2010:	The officer is appointed to the agency (Agency A).
June 15, 2010:	The officer leaves employment at Agency A.
January 1, 2011:	The officer is appointed to another agency (Agency B).
June 15, 2011:	The officer leaves employment at Agency B.
January 1, 2012:	The officer is appointed to another agency (Agency C).
June 15, 2012:	The officer leaves employment at Agency C.

The clear intent of § 7-32-303(5)(a) is to mandate basic training within one year of the "initial" appointment. This objective is defeated if an officer or appointing agency can effectively toll the deadlines through multiple appointments.

[P11] I realize that the one-year deadline may present a hardship, particularly for an officer whose return date is so late he or she may **[*9]** not have sufficient time remaining to successfully complete basic training. In that circumstance, however, the POST council may extend the one-year period for up to six months, presumably allowing sufficient time for completion of the course. Mont. Code Ann. § 7-32-303(6). I note that the circumstances listed in the statute are not exclusive, so that the POST council has substantial discretion when considering an extension request by the officer and the appointing agency.

II.

[P12] In the second scenario, a peace officer has a break in service that extends beyond the one-year time period described in Mont. Code Ann. § 7-32-303(5)(a). The following dates are representative:

January 1, 2012:	The officer is appointed by the agency.
May 1, 2012:	The officer leaves employment.
January 1, 2013:	The one-year period expires and the officer has not returned to service.

This scenario is distinct from the first because the officer, having failed to complete the education requirements within one year of initial appointment, forfeits his or her position, authority and arrest powers pursuant to the **[*10]** last sentence of Mont. Code Ann. § 7-32-303(5)(a). As a result, the officer may not resume employment under the terms of his or her initial appointment. Rather, the appointing agency is statutorily required to terminate the officer's employment "for failure to meet the minimum standards established by the council." Montana Code Annotated 44-4-404.

[P13] To avoid this result, some agencies propose to start the one-year time period anew by rehiring or reappointing the person as a peace officer. This proposition runs afoul of legislative intent and the plain language of 7-32-303(5)(a), which requires completion of basic training within one year of the "initial" appointment, after which time the officer forfeits his or her position. By virtue of this requirement, the legislature has provided a single, one-year grace period during which time the officer may serve as a peace officer without the necessary training. Once the grace period expires, the officer is no longer privileged to serve in a law enforcement capacity. There is nothing that would allow an appointing agency to extend multiple grace periods, **[*11]** or allow the officer to continually serve as a peace officer without training.

[P14] As the administrator of the Montana Law Enforcement Academy (MLEA), I have publicly declared the need for qualified and highly trained law enforcement personnel. (<https://doj.mt.gov/mlea/basic-programs-3/>). Section 7-32-303(5)(a) promotes that goal, while at the same time granting some flexibility to appointing agencies and the officers in the hiring and training process. While I recognize there are legitimate reasons why a peace officer may require a break in service extending beyond the one-year deadline due to circumstances beyond his or her control, e.g., military service or health issues, I cannot condone an interpretation of the statute that compromises public or officer safety. I conclude that agencies are not entitled to "rehire" or "reappoint" peace officers if they have not successfully completed basic training within the time periods provided by law.

[P15] Despite my conclusion, there is nothing preventing the agency from employing the individual in some other capacity until he or she completes basic training. I understand that MLEA will accept individuals for training even **[*12]** if they are not in

a current appointed position as a peace officer. After training is successfully completed and the individual is certified by the POST council, he or she may resume the duties of a peace officer. In this respect, the one-year grace period is honored, the public safety objectives are fulfilled, and the individual's ability to work as a peace officer is inconvenienced but not totally compromised as a result of the break in service.

THEREFORE IT IS MY OPINION:

A peace officer who has a break in service during the one year time period provided in 7-32-303(5)(a) has the remainder of the one-year period, plus any additional time as granted by the public officer standards and training council, in which to attend and successfully complete a basic training course. If the break in service extends beyond one year from his or her initial appointment and the officer has not completed a basic training course within one year of the initial appointment as required by 7-32-303(5)(a), the officer forfeits his or her position as peace officer and cannot serve in that capacity until he or she attends and successfully completes a basic training course.

Load Date: 2014-10-29

ATTORNEY GENERAL
STATE OF MONTANA

Tim Fox
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

March 14, 2016

Sheriff Tony Harbaugh, Chair
Montana POST Council
2260 Sierra Road East
Helena, Montana 59602

Re: Attorney General Opinion Request: Waiver of Statutory Training Requirements

Dear Sheriff Harbaugh:

The Montana Public Safety Officer Standards & Training Council (POST) has requested an opinion regarding the following question:

Does the authority granted POST in Mont. Code Ann. § 44-4-403(2) to “waive or modify a qualification or training standard for good cause” give POST the power to waive a qualification or training standard imposed by statute?

The request was presented with a legal analysis. This letter is not a formal Attorney General Opinion, but rather is a “letter of advice.” It is within the discretion of this office to issue such a letter if the questions posed can be answered by reference to an unambiguous statute or regulation. In this instance the question is answered by reference to statutes and regulations which specifically involve significant public safety interests.

As POST’s legal counsel have advised, POST cannot modify or waive training requirements that are explicitly provided by statute. An agency, or in this case a board, is itself a creature of statute and has only the authority provided by statute. Absent explicit authority, then, a board does not unilaterally have the power to waive or otherwise alter a statutory requirement. *See* 47 Op. Att’y Gen. No. 22 (board must adopt rules regarding undue conflict, instead of determining on a case-by-case basis, where statute mandated adoption of standards for review).

Montana Code Annotated § 44-4-403 sets out the duties of POST. The Council shall “establish basic and advanced qualification and training standards for employment.” 44-4-403(1)(a). Correspondingly, the Council “may waive or modify a qualification or

training standard for good cause.” 44-4-403(2). For purposes of statutory interpretation, a term used in a statutory provision should be assumed to have the same meaning throughout the provision unless explicitly stated otherwise. 49 Op. Att’y Gen. No. 15 (“identical words used in different parts of the same act are intended to have the same meaning”) (citing *Gustafson v. Alloyd*, 513 U.S. 561, 570 (1995)).

Here, then, POST’s ability to waive “a qualification or training standard” refers to the “qualification and training standards” established by POST as referenced in -403(1)(a). To read this provision as providing authority to waive training standards set by statute, not by POST, would require inserting what the Legislature has omitted, in violation of Mont. Code Ann. § 1-4-101.

This result is supported by Mont. Code Ann. § 1-3-204, which provides: “Any person may waive the advantage of a law intended solely for that person’s benefit. A law established for a public reason cannot be contravened by a private agreement.” This statute has been interpreted to mean that laws which are intended to *protect* the public in general cannot be waived privately by either implication or agreement. *Hoehne v. Sherrod, Inc.*, 205 Mont. 365, 369 (1983). See also *Shea v. North-Butte Mining Co.*, 55 Mont. 522, 179 P. 499 (1919), and *Lewis v. B&B Pawnbrokers, Inc.*, 1998 MT 302, 292 Mont. 82, 968 P.2d 1145.

Here, all statutorily prescribed training standards are established to promote public safety, and therefore “for a public reason.” Certifications are awarded by POST for the purpose of raising the level of professionalism and skill of public safety officers and to foster cooperation among the POST Council, agencies, organizations, and the public. Mont. Admin. R. 23.13.204(1). The certificates awarded are established for the purpose of promoting ethical behavior, professionalism, education and experience necessary to perform the duties of a public safety officer. *Id.* at (2). As such, POST’s own administrative rules require adherence to statutory training mandates. Mont. Admin. R. 23.13.201(1), under the heading “Minimum Standards”, states: “All public safety officers must be certified by POST and meet the applicable employment, education, and certification standards as prescribed by the Montana Code Annotated.”

POST, therefore, may waive or modify qualification and training standards it has independently set under the authority provided by the Legislature, but may not waive or modify standards prescribed by statute. For example your letter discusses misdemeanor probation officers and misdemeanor pretrial services officers, both of which are required to “have the minimum training required in 46-23-1003.” Mont. Code Ann. §§ 46-9-505(5); 46-23-1005(2)(a). Section 46-23-1003(2) sets the qualification for probation and parole officers and requires “16 hours a year of training in subjects relating to the powers

Sheriff Tony Harbaugh, Chair

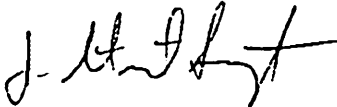
March 14, 2016

Page 3

and duties of probation officers, at least 1 hour of which must include training on serious mental illness and recovery from serious mental illness." POST cannot waive this requirement for misdemeanor officers. Section 46-23-1003(2) also requires "training in accordance with standards adopted by" POST. While the requirement to meet standards adopted by POST may not be waived, POST is provided discretion as to the specific standards to be adopted. POST could therefore adopt a curriculum for misdemeanor officers that, while meeting the hours of training requirements of § 46-23-1003(2), differs from the curriculum for felony probation and parole officers. This would have to be adopted by rule change though, not by individual waiver, to conform to the "adopted by" requirement.

Therefore, POST's analysis is correct. A statutory requirement cannot be waived by POST under Mont. Code Ann. § 44-4-403(2).

Very truly yours,

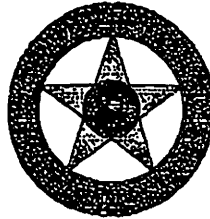


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Assistant Attorney General

c: Tim Fox
Alan Joscelyn
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ATTORNEY GENERAL
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VOLUME NO. 56

OPINION NO. 2

PUBLIC SAFETY OFFICERS - The definition of "agent" in Mont. Code Ann. § 44-2-111 does not restrict the persons that the Attorney General may appoint as agents to employees "within the department of justice";

STATUTORY CONSTRUCTION - Where statutory language is ambiguous, I must look outside of the plain language to determine the intent of the Legislature;

MONTANA CODE ANNOTATED - Title 44, chapter 1, part 1; sections 1-2-101, 1-2-102, 7-32-303, 44-2-111, 44-2-113, 44-2-115, 44-2-115(1), 44-2-115(2), 44-2-115(3), 44-2-115(5).

HELD: The definition of "agent" in Mont. Code Ann. § 44-2-111 does not restrict the persons that the Attorney General may appoint as agents to employees "within the department of justice."

July 1, 2016

Sheriff Tony Harbaugh, Chair
Montana POST Council
2260 Sierra Road East
Helena, MT 59602

Dear Sheriff Harbaugh:

[P1] The Montana Public Safety Officer Standards and Training Council (POST) has requested an Attorney General Opinion as to a question that I have rephrased as:

Does the definition of "agent" in Mont. Code Ann. § 44-2-111 restrict the persons that the Attorney General may appoint as agents to employees "within the department of justice"?¹

¹ Because I conclude that 44-2-111 does not restrict "agents" to employees within the Department of Justice (DOJ), I do not reach your second question regarding the authority of the Department to enter into a Memorandum of Authority (MOU) with the Department of Corrections (DOC) regarding DOC investigators.

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MONTANA DEPARTMENT OF JUSTICE

Legal Services Division ★ Division of Criminal Investigation ★ Highway Patrol Division ★ Forensic Science Division
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Sheriff Tony Harbaugh
July 1, 2016
Page 2

[P2] Part 1 of Volume 44, Chapter 2, Montana Code Annotated, provides the Attorney General with the authority to appoint "agents." An agent appointed by the Attorney General "is a peace officer" and is provided the powers and duties (and limitations on those powers) in Mont. Code Ann. § 44-2-115.

[P3] At issue here is Mont. Code Ann. § 44-2-111 which defines "agent." This statute reads: "[a]s used in this part, 'agent' means a person appointed by the attorney general to conduct criminal investigations and perform related duties within the department of justice." Your letter questions whether the phrase "within the department of justice" qualifies "agent" and thereby limits an "agent" to DOJ employees only.

[P4] While 44-2-111 could be read to limit agents to DOJ employees, it is not the only way to read the sentence, grammatically speaking. "Within the department of justice" could be read to modify "related duties" but not "conduct criminal investigations." Under this reading an "agent" may be appointed from departments other than DOJ, but, if the agent is to "perform related duties" outside of conducting criminal investigations, these related duties must be within DOJ. An example of such a "related duty" is teaching at the Law Enforcement Academy. The instructors at the Academy are not actively conducting criminal investigations, but they are performing related duties within DOJ.

[P5] Because the statute is subject to more than one reasonable interpretation as to whether it limits an "agent" to employees of DOJ, it is ambiguous. I must therefore look outside the plain language of the definition to determine the meaning intended by the Legislature. See *State v. Johnston*, 2008 MT 318, ¶ 26, 346 Mont. 93, 193 P.3d 925 ("We resolve ambiguous terms, however, by looking to the structure, purpose and/or legislative history of a statute to determine the intent of the Legislature."). I also must consider statutory schemes "in their entirety and the legislative intent may not be gained from the wording of any particular section or sentence, but only from a consideration of the whole." *Friends of the Wild Swan v. Department of Natural Res. & Conservation*, 2005 MT 351, ¶ 16, 330 Mont. 186, 127 P.3d 394.

[P6] First, I note that 44-2-111 speaks to the "definition" of agent, not the "qualifications" of an agent. The Legislature listed the specific qualifications of agents in Mont. Code Ann. § 44-2-113: "a person qualified by experience, training, and high professional competence in criminal investigation. Each agent shall meet all the requirements of 7-32-303 (listing POST certification standards)." The Legislature could have expressly included "employed by the department of justice" or similar language as a qualification, but did not do so. This weighs against reading such a limitation into the definition. See Mont. Code Ann. § 1-2-101 (an interpretation of a statute should not "insert what has been omitted or . . . omit what has been inserted."). Additionally, as

Sheriff Tony Harbaugh
July 1, 2016
Page 3

44-2-113 is the more particular provision regarding qualifications, it should control. Mont. Code Ann. § 1-2-102.

[P7] Importantly, for ten years or more, beginning under former Attorney General McGrath, DOJ has maintained an MOU with DOC designating DOC employees as investigators so that these employees may conduct criminal investigations within DOC prison and treatment facilities. As such, three Attorneys General, myself included, have implicitly acknowledged that agents may be appointed by the Attorney General in departments other than DOJ. The DOC agents subject to the MOU are essential to conducting investigations within DOC facilities, because local law enforcement often does not have the time or resources to investigate all alleged crimes within these facilities. This long-standing, consistent interpretation is entitled to “respectful consideration.” *Friends of the Wild Swan*, ¶ 11 (granting DNRC, “as a state agency . . . respectful consideration of its long and continued course of consistent interpretation of a statute”) (citation and internal quotations omitted).

[P8] Additionally, I understand from DOC that a prior Legislature was informed of the MOU between DOJ and DOC, and then opted not to pass legislation designating DOC investigators as “peace officers,” preferring instead the additional oversight provided by the MOU. Thus the Legislature, despite having knowledge of the use of this statute to appoint non-DOJ agents, has not taken steps to change the law but instead relied on the MOU. The Legislature’s inaction in light of knowledge of the MOU weighs in favor of an interpretation that does not limit agents to DOJ employees. *See Swanson v. Hartford Ins.*, 2002 MT 81, ¶ 22, 309 Mont. 269, 46 P.2d 584 (“We presume that if the legislature disagreed with our interpretation . . . it would have amended the statute accordingly.”) (internal citation and quotation marks omitted).

[P9] On the other hand the lists of powers and duties under Mont. Code Ann. § 44-2-115 seem tailored toward DOJ criminal investigators. For example, the agent “shall provide investigative assistance” to federal, state and local agencies “at their request in accordance with rules adopted by” DOJ. 44-2-115(1). The only “concurrent jurisdiction” expressly granted is the investigation of “offenses involving dangerous drugs [and] organized criminal activity,” -115(2), and the section also speaks to investigating gambling and workers’ compensation fraud. -115(3), (5).

[P10] The majority of agents appointed by the Attorney General will, of course, work within DOJ. It thus makes sense that the powers and duties section refers primarily to the type of work performed by DOJ agents. The listed duties do not apply to all agents within DOJ, however. Not all agents, for example, “investigate gambling activities” or workers’ compensation fraud. -115(3), (5). Thus the listed duties cannot be read as

Sheriff Tony Harbaugh
July 1, 2016
Page 4

mandatory for all agents. Though primarily directed at DOJ agents, this list of powers and duties could be intended to place limits on the authority of non-DOJ agents as well. A non-DOJ agent, for example, would be able to provide "investigative assistance" to local law enforcement agencies, but only at the request of a local agency and "in accordance with rules adopted by" DOJ.

[P11] Looking at the statute and Part 1 as a whole, and considering the history of agency interpretation and inaction by the Legislature, my opinion is that the phrase "within the department of justice" in Mont. Code Ann. § 44-2-111 is not intended to limit the definition of "agent" to DOJ employees only. A person "qualified by experience, training, and high professional competence in criminal investigation," Mont. Code Ann. § 44-2-113, may be appointed as an "agent" by the Attorney General, even if he works for a state agency other than DOJ.²

THEREFORE, IT IS MY OPINION:

The definition of "agent" in Mont. Code Ann. § 44-2-111 does not restrict the persons that the Attorney General may appoint as agents to employees "within the department of justice."

Sincerely,



TIMOTHY C. FOX
Attorney General

tcf/jss/jym

² It is unnecessary in this opinion to address whether "agent" is limited to state employees. However, I note that Mont. Code Ann. § 44-2-114 requires all agents to "be covered by the public employees' retirement system."

ATTORNEY GENERAL
STATE OF MONTANA

Tim Fox
Attorney General



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June 19, 2019

Tony Harbaugh
Montana POST Council
2260 Sierra Road East
Helena, MT 59602

RECEIVED

JUN 21 2019

MT POST Council

Re: Request for Opinion: Training Standards for Misdemeanor and Pretrial Services Officers

Dear Sheriff Harbaugh:


By letter dated June 4, 2019, you requested an Attorney General Opinion for the question:

Can the POST Council provide different training standards for misdemeanor probation offers [officers] and pretrial services officers than that required for felony probation officers?

A legal research memorandum was enclosed with that request. On June 13 we received an email from your office explaining the urgency of resolving this question. Fortunately, in this instance we can accommodate that urgency through prior correspondence between POST and this office.

The question quoted above is substantially similar to a previous POST question which resulted in a letter of advice dated March 14, 2016. The analysis that your office provided on June 4, 2019 is consistent with our 2016 analysis. We therefore refer you and the other interested agencies to the 2016 letter of advice (copy enclosed). Specifically, please review the highlighted paragraph at pp. 2-3 thereof.

Very truly yours,


PATRICK M. RISKEN
Assistant Attorney General

encl.

cc: Jon Bennion

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MONTANA DEPARTMENT OF JUSTICE

Legal Services Division * Division of Criminal Investigation * Highway Patrol Division * Forensic Science Division
Gambling Control Division * Motor Vehicle Division * Information Technology Services Division * Central Services Division

ATTORNEY GENERAL
STATE OF MONTANA

Tim Fox
Attorney General



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March 14, 2016

Sheriff Tony Harbaugh, Chair
Montana POST Council
2260 Sierra Road East
Helena, Montana 59602

Re: Attorney General Opinion Request: Waiver of Statutory Training Requirements

Dear Sheriff Harbaugh:

The Montana Public Safety Officer Standards & Training Council (POST) has requested an opinion regarding the following question:

Does the authority granted POST in Mont. Code Ann. § 44-4-403(2) to “waive or modify a qualification or training standard for good cause” give POST the power to waive a qualification or training standard imposed by statute?

The request was presented with a legal analysis. This letter is not a formal Attorney General Opinion, but rather is a “letter of advice.” It is within the discretion of this office to issue such a letter if the questions posed can be answered by reference to an unambiguous statute or regulation. In this instance the question is answered by reference to statutes and regulations which specifically involve significant public safety interests.

As POST’s legal counsel have advised, POST cannot modify or waive training requirements that are explicitly provided by statute. An agency, or in this case a board, is itself a creature of statute and has only the authority provided by statute. Absent explicit authority, then, a board does not unilaterally have the power to waive or otherwise alter a statutory requirement. *See* 47 Op. Att’y Gen. No. 22 (board must adopt rules regarding undue conflict, instead of determining on a case-by-case basis, where statute mandated adoption of standards for review).

Montana Code Annotated § 44-4-403 sets out the duties of POST. The Council shall “establish basic and advanced qualification and training standards for employment.” 44-4-403(1)(a). Correspondingly, the Council “may waive or modify a qualification or

Sheriff Tony Harbaugh, Chair

March 14, 2016

Page 2

training standard for good cause.” 44-4-403(2). For purposes of statutory interpretation, a term used in a statutory provision should be assumed to have the same meaning throughout the provision unless explicitly stated otherwise. 49 Op. Att’y Gen. No. 15 (“identical words used in different parts of the same act are intended to have the same meaning”) (citing *Gustafson v. Alloyd*, 513 U.S. 561, 570 (1995)).

Here, then, POST’s ability to waive “a qualification or training standard” refers to the “qualification and training standards” established by POST as referenced in -403(1)(a). To read this provision as providing authority to waive training standards set by statute, not by POST, would require inserting what the Legislature has omitted, in violation of Mont. Code. Ann. § 1-4-101.

This result is supported by Mont. Code Ann. § 1-3-204, which provides: “Any person may waive the advantage of a law intended solely for that person’s benefit. A law established for a public reason cannot be contravened by a private agreement.” This statute has been interpreted to mean that laws which are intended to *protect* the public in general cannot be waived privately by either implication or agreement. *Hoehne v. Sherrod, Inc.*, 205 Mont. 365, 369 (1983). See also *Shea v. North-Butte Mining Co.*, 55 Mont. 522, 179 P. 499 (1919), and *Lewis v. B&B Pawnbrokers, Inc.*, 1998 MT 302, 292 Mont. 82, 968 P.2d 1145.

Here, all statutorily prescribed training standards are established to promote public safety, and therefore “for a public reason.” Certifications are awarded by POST for the purpose of raising the level of professionalism and skill of public safety officers and to foster cooperation among the POST Council, agencies, organizations, and the public. Mont. Admin. R. 23.13.204(1). The certificates awarded are established for the purpose of promoting ethical behavior, professionalism, education and experience necessary to perform the duties of a public safety officer. *Id.* at (2). As such, POST’s own administrative rules require adherence to statutory training mandates. Mont. Admin. R. 23.13.201(1), under the heading “Minimum Standards”, states: “All public safety officers must be certified by POST and meet the applicable employment, education, and certification standards as prescribed by the Montana Code Annotated.”

POST, therefore, may waive or modify qualification and training standards it has independently set under the authority provided by the Legislature, but may not waive or modify standards prescribed by statute. For example your letter discusses misdemeanor probation officers and misdemeanor pretrial services officers, both of which are required to “have the minimum training required in 46-23-1003.” Mont. Code Ann. §§ 46-9-505(5); 46-23-1005(2)(a). Section 46-23-1003(2) sets the qualification for probation and parole officers and requires “16 hours a year of training in subjects relating to the powers

Sheriff Tony Harbaugh, Chair

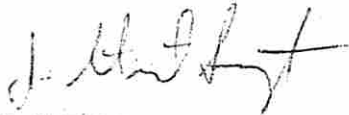
March 14, 2016

Page 3

and duties of probation officers, at least 1 hour of which must include training on serious mental illness and recovery from serious mental illness." POST cannot waive this requirement for misdemeanor officers. Section 46-23-1003(2) also requires "training in accordance with standards adopted by" POST. While the requirement to meet standards adopted by POST may not be waived, POST is provided discretion as to the specific standards to be adopted. POST could therefore adopt a curriculum for misdemeanor officers that, while meeting the hours of training requirements of § 46-23-1003(2), differs from the curriculum for felony probation and parole officers. This would have to be adopted by rule change though, not by individual waiver, to conform to the "adopted by" requirement.

Therefore, POST's analysis is correct. A statutory requirement cannot be waived by POST under Mont. Code Ann. § 44-4-403(2).

Very truly yours,



J. STUART SEGREST

Assistant Attorney General

c: Tim Fox
Alan Joscelyn
Jon Bennion
Pat Risken

ATTORNEY GENERAL
STATE OF MONTANA

RECEIVED

DEC 12 2019

MT POST Council

Tim Fox
Attorney General

Jon Bennion
Chief Deputy Attorney General



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Helena, MT 59620-1401

December 11, 2019

Tony Harbaugh
POST Council
2260 Sierra Road East
Helena, MT 59602

Re: Request for Opinion

Dear Mr. Harbaugh:

You have requested an Attorney General Opinion regarding certification by the Montana Public Safety Officers Standards and Training Council (POST) of tribal detention and corrections officers, namely:

Are tribal detention and corrections officers “public safety officers” requiring certification by POST?

Because the analysis involves references to unambiguous statutes, an Attorney General Opinion is not warranted under Mont. Code Ann. § 2 15-501(7). We have determined that your question can be answered with a letter of advice, which is not a formal Attorney General Opinion and should not be presented as such.

Under Mont. Code Ann. § 44-4-403(1)(c), POST must “provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.” A “public safety officer” is defined at Mont. Code Ann. § 44-4-401(2).

A tribal detention or corrections officer meets none of the statutory definitions and is not a “person required by law to meet the qualification or training standards established by the council.”

Because a tribal detention or corrections officer is not a “public safety officer,” POST is not required to provide certification under Mont. Code Ann. § 44-4-403(c).

Again, this letter is a letter of advice and not a formal Opinion of the Attorney General.

Sincerely,

Hannah Tokerud
Assistant Attorney General

Reviewed by

Perry Johnson 12-12-19
1 page

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MT POST Council

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December 11, 2019

Tony Harbaugh
POST Council
2260 Sierra Road East
Helena, MT 59602

Re: Request for Opinion

Dear Mr. Harbaugh:

You have requested an Attorney General Opinion regarding the Montana Public Safety Officers Standards and Training Council's (POST) advanced coroner course, namely:

- Does the POST Council have authority to set forth ARMs specifying the definition of the time allowed for coroners to conduct their 16-hour advanced coroner course?
- If POST does not have such authority, does the current statutory requirement that a coroner complete an advanced course every two years mean every two calendar years or every two years from when the previous course is completed?

Because the analysis involves references to unambiguous statutes, an Attorney General Opinion is not warranted under Mont. Code Ann. § 2-15-501(7). We have determined that your question can be answered with a letter of advice, which is not a formal Attorney General Opinion and should not be presented as such. Your two questions are addressed in turn.

1. Rulemaking authority.

Mont. Code Ann. § 7-4-2905(2)(b) states:

The council shall annually conduct a 16-hour advanced coroner course. Unless there are exigent circumstances, failure of any coroner or deputy coroner to satisfactorily complete the advanced coroner course, or an

Reviewed by

Perry Johnson 12-12-19
2 pages

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Tony Harbaugh
December 11, 2019
Page 2

equivalent course approved by the council, at least once every 2 years results in forfeiture of office. The council may adopt rules providing a procedure to extend the 2-year period because of exigent circumstances.

Administrative rules may not conflict with statute and may not unnecessarily repeat statutory language. Mont. Code Ann. § 2-4-305(2) & (6). Mont. Code Ann. § 7-4-2905(2)(b) adequately sets forth the time requirements to complete the advanced coroner course (*i.e.*, two years). If POST were to adopt an administrative rule requiring training every two years, it would be duplicative. Alternatively, if POST were to adopt an administrative rule requiring training between periods of anything other than two years, it would conflict with the statute. There is no need or reason for an additional rule.

POST is, however, authorized to establish rules creating a procedure to extend the two-year period requirement under exigent circumstances. *See* Mont. Code Ann. § 7-4-2905(2)(b). While this does not authorize POST to establish the general rule of how often training must occur, it does allow it to define the exception to the rule for individuals experiencing these exigent circumstances.

2. Definition of two years.

Unless the context requires otherwise, a year in Montana statute is defined as “a calendar year.” Mont. Code Ann. § 1-1-301; *see also Bosch v. Town Pump, Inc.*, 2004 MT 330, ¶ 9, 324 Mont. 138, 14 102 P.3d 32, 34 (“a one-year period is calculated as starting on a given day and ending on the date one day prior to the start day in the next calendar year. For example, a one-year limitations period beginning with a start date of November 16, 1994, ends on November 15, 1995.”). The start of the period excludes the day of the triggering event. *Cf. Kessel v. Liberty Northwest Ins. Corp.*, 2007 MT 305, ¶ 14, 340 Mont. 92, 172 P.3d 599 (“a limitations period is calculated by excluding the day of the event which gives rise to the claim.”). In this instance, if a coroner completed a two advanced day coroner course on October 9–10, 2019, they would have to complete their next advanced corner course by October 10, 2021.

Again, this letter is a letter of advice and not a formal Opinion of the Attorney General.

Sincerely,


JEREMIAH LANGSTON
Assistant Attorney General

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STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU

Steve Bullock
Attorney General



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TO: WINNIE ORE, CHAIRPERSON
MONTANA PUBLIC SAFETY OFFICER STANDARDS AND
TRAINING COUNCIL – formerly and often referred to as POST:
PEACE OFFICERS STANDARDS AND TRAINING COUNCIL

FROM: NORMAN C. PETERSON
AGENCY LEGAL SERVICES BUREAU
MONTANA DEPARTMENT OF JUSTICE

DATE: APRIL 10, 2012

RE: EX PARTE CONTACTS WITH POST COUNCIL MEMBERS

You have requested that I review with the POST Council the subject of ex parte contacts with council members, and more importantly to inform council members what type of contacts are specifically impermissible.

In researching the issue, I found there were a considerable number of memorandums and legal opinions that have been written on the subject, and written specifically for boards much like, if not identical to the POST Council.

In particular I have attached one very detailed memorandum written for the California State Water Resources Control Board by its Chief Counsel. Along with my memorandum, I would recommend all board members read the California memorandum and keep it in their information packet. The last page of the latter memorandum has a nicely organized flow chart that a board member can use in deciding whether a contact is ex parte, and thus prohibited. I have also attached three administrative rules regarding ex parte contact; these are not POST Council rules, and are attached only for informational purposes. The body of this memorandum discusses the rules and statutes applicable to the POST Council.

A General Discussion of Ex Parte

“Ex parte” is a Latin term that means “by or for one party.” It has its origins in providing a fair and unbiased system of justice in which each party to a lawsuit has an equal opportunity to present and hear evidence, rebuttal and cross examination. Judges, by

common law, cannot communicate with one party to a lawsuit on the subject of the lawsuit without the knowledge or presence of the opposing party. Ex parte communications are considered inherently improper as they defeat the purpose of “due process” for all parties.

The same prohibition applies to administrative hearings and the decision makers in those hearings. For our purposes, it refers to communication between a Council member [decision maker] and a person interested in an application before the POST Council, without other interested persons, other Council members, or the public being present. The phrase “person interested” can be generally thought of as a person who has a stake in the subject, such as an employee or person that has a matter before the POST Council. It can also mean a person that has an identified personal interest as being opposed to the application.

“Ex parte” contacts are prohibited because if such contact occurs, several different problems could arise when that contact is eventually disclosed. Since other interested persons were not part of the discussion, disclosure makes those persons feel that the Council member involved has a personal stake in the outcome, or is now biased against their position, or can no longer be neutral in considering the application. There will be pressure for the Council member to disqualify him or herself from the matter being decided. If the Council member refuses to disqualify him or herself, the other interested persons will feel that the person making the ex parte contact has had an unfair advantage in the process.

If the decision is adverse to that other interested person, the ex parte contact creates a potential legal issue because it appears that “due process” has not been provided. Alternatively, these other parties could start making ex parte contacts of their own, causing the Council to lose control of its own procedure.

In some States, if any board decision has been reached as a result of the ex parte contact, the decision may be subject to attack as a violation of the Right to Know statutes, with the possibility of sanctions imposed. Montana has such statutes and while I know of no cases discussing this particular aspect of the law, it could certainly happen here.

Ex parte contacts could cause conflict within the Council and among its members. In addition, if one or more members are disqualified, there may be a problem with a quorum, possibly making it difficult to process the application in a timely and efficient manner.

In some states, Courts have concluded that proof of an ex parte communication by a quasi-judicial officer creates a rebuttable presumption of prejudice unless proven otherwise by competent evidence by the officer. The person affected adversely by the decision is entitled to a new and complete hearing, unless the party defending against a new hearing can show that the communication was not, in fact, prejudicial. For these reasons, among others, ex parte contacts about a case are not allowed.

Montana Statutory Law Applicable to POST

While there is no definition of ex parte contact in the Title 44 statutes, Mont. Code Ann. § 2-4-613 of the Montana Administrative Procedure Act defines ex parte consultation: **“Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, may not communicate with any party or a party’s representative in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.”**

As you will read below, that statute applies to POST.

POST is created in Mont. Code Ann. § 2-15-2029, and is designated as a quasi-judicial board for purposes of Mont. Code Ann. § 2-15-124. That latter section describes the requirements of a quasi-judicial board, and for the purposes of this memorandum the main point is that a quasi-judicial board may make decisions in contested cases.

Mont. Code Ann. § 44-4-40, et seq. provides the powers and duties of POST. The contested case hearing procedures in the Montana Administrative Procedure Act, Title 2, Chapter 4, part 6, are made applicable to POST. The decision making power of POST will be exercised in a controlled contested case setting. Singular to POST, a decision of POST may be appealed to the Board of Crime Control as the final agency decision prior to any appeal to a Montana District Court.

The first sentence of Mont. Code Ann. § 2-4-613 of the Montana Administrative Procedure Act: “**Unless required for disposition of ex parte matters authorized by law**” generally references subjects such as domestic violence cases where there is an immediate and present danger, or mental commitment proceedings, or instances of imminent hazards created by hazardous substances; all of which may require or allow the proceeding to continue without a party being present.

To my knowledge, as regards POST, there are no “**ex parte mattes authorized by law**”, so the qualifier in the first sentence has no application to POST. Therefore, Council members are subject to the prohibitions of Mont. Code Ann. § 2-4-613, and once a notice of hearing or staff action has been issued, no Council member may communicate with any named party [or employee of the party], or that party’s representative or attorney regarding any issue of fact or law in that contested matter, unless there has been some notice and opportunity for all parties to participate. That prohibition would include the presentation of any written material, or e-mails, or information of any sort about the facts or merits of a case. It also prohibits the presenting of gifts or favors by an interested party. And communication is a two-way street; no Council member may initiate such a conversation or seek information once a notice of hearing has been issued.

Although not as common, the above ex parte prohibitions may apply to a hearing where the Council is adopting or considering the adoption of an administrative rule, and there has been a publication in the Montana Administrative Register of the Council’s consideration of the rule. However, The Administrative Procedure Act allows rule making bodies to have informal and other conferences for purposes of getting information and opinions regarding any proposed rules. That being true, it appears that it is within the discretion of the agency to allow or not allow ex parte contact in such situations. I would recommend that the Council discuss the matter and decide how it wishes to proceed in regard to rule making and ex parte contacts.

Finally, the prohibition on “ex parte” communications does not extend to Council staff; any interested party can communicate with the staff on a procedural matter, or even on the merits of a matter that has been set for hearing, as long as the contact is documented.

As noted earlier, I have also attached to this memorandum other agency definitions of “ex parte” contact. They are not all that different from the Montana Code reference, and they do not apply to POST. They are included only for informational purposes.

Examples of Ex Parte Communications

Deliberate contacts are somewhat self explanatory. No Council member may reach out, in any manner, to an identified interested party and discuss – outside of the Council hearing – the facts or merits of an application that has been noticed for a hearing. Similarly, a Council member cannot discuss, when contacted in any manner by an identified interested party, the facts or merits of a matter that has been noticed for a hearing.

There are other less definitive examples, but each is prohibited as above.

1. An applicant may send a letter or an email to every Council member dealing with a pending application, but there is no notice that the letter or email was shared with the opposing party or the public. This is particularly difficult as this type of contact is quite common, particularly with citizen boards. The absence of information may cause the problem.

Therefore a Council member should always view such information as suspect, and may wish to proceed in this manner. Before viewing it, make sure of the source and who has had access to it. If the Council's staff has given it to the member, it is probably appropriate. If it came directly from an interested party, or the source is simply unknown, it would be best to leave it unread and to bring it to the full Council's attention at the hearing or if at all possible prior to the hearing.

Perhaps the best approach is for the Council, in its internal operating rules, to state that no information regarding a pending matter should be viewed or read unless it comes from staff, or unless it was requested by the Council itself, with all interested parties having the same opportunity.

2. An elected official or appointed official in your town or county, or a neighboring one, may send or forward some information, or talk on the telephone about a pending application, and the communication is not shared with other parties or other Council members. This is a prohibited ex parte contact, and members must avoid such conversations or contacts. This is a particularly difficult example, as in many rural or urban areas, it is simply the way business gets done. However, Council members must always be conscious of the fact that they are wearing their "Council member hats" when speaking of a Council matter that has been noticed for hearing. No matter how tempting,

it is still prohibited ex parte conduct.

3. A technical expert assisting a party to a matter gives a report to a Council member, or all members, but does not file it as a hearing exhibit, or give notice that it is being used. This is again, prohibited. Council members must be cautious about the source of materials they view, and again, once a matter has been noticed for hearing, no material that has not come from staff should be viewed or considered prior to its presentation at the hearing.

The problem with much of the above is that the Council member did not initiate the contact nor did the member attempt to make an ex parte contact; but because of someone else's behavior, the member may have received information not made available to other board members, the public or other interested parties.

What Can You Talk About and Whom Can You Talk To?

Not to be flippant, but the simple answer is that as long as you are not discussing a pending application or pending administrative rule adoption [if the latter is included at the Council's choice] you can talk to anybody about anything. Almost anything else is fair game; as after all, you are the ones that know how the Council operates and you can address the questions of the public concerning the Council. This includes procedural questions, status requests, requests for information, or scheduling questions. The important thing to remember about ex parte contacts is a Council member must maintain his or her neutrality by avoiding discussions **about actual cases pending and possibly rule adoptions that have been noticed.**

In addition, you may talk with a party – **even on a pending matter** – on an issue of procedure, as you are not technically discussing the facts or merits of the pending matter. But this is a fairly delicate subject area that can get you in trouble, and avoidance is usually the best policy. For instance, a party asks you a procedural question about which party goes first and if they need an attorney to represent them, or if they need to present a certain type of evidence. You very carefully answer the question without discussing the merits, but at the Council hearing that person blurts out: “But I thought you told me I did not need to present this sort of information?” Ok, now you are in the soup as the rest of the Council and the other party are looking at you and stating: You talked about this case with this person? No matter how innocent the conversation, you are presented in a rather poor light.

My best advice – when you are asked about something by a party to a pending matter – is to always refer them to staff, unless it is an absolutely basic procedural question. If not, you may find yourself being disqualified, or delaying the proceedings, or worse yet, having the entire matter blow up into litigation because of what seemed like an innocent conversation.

How Can the Council or its Members Prevent Ex Parte Contacts?

Initially, there is little a Council member can do to stop such attempted contacts by the public, applicants, or consultants; as after all these matters have important consequences and it is natural for them to ask questions and seek information or advice on how best to advocate for their position. But things can be done.

Rule No. 1 is always to immediately stop the contact when the attempt is first made, and document the fact that the contact was made. A Council member should also relay that matter to the Chairperson or the Chairperson's designee for such purposes. If the contact is by email, it would be appropriate to forward that email to the Chairperson, who then would need to decide whether to share the information with the other board members and to send it to other identified interested parties. At the very least, it should be included in the file as an attempted contact.

If an ex parte contact is made and the Council member inadvertently and suddenly finds him or herself in the middle of a discussion that s/he realizes should not have taken place, the same approach should be taken, but with the addition of further information to the Chairperson about the contact and information received or discussed. At that point, the board member should consider recusing him or herself from a decision on the pending matter, or at least discuss it with the Chairperson or me.

The Chairperson, when receiving such information, should make it part of the file and probably note the contact at the hearing; or prior to the hearing notify any other interested party if that is possible.

If desirable, and requested, the Council can adopt an internal ex parte policy that all members can understand and follow, and which, if possible, can set out in black and white the options of the Council and its members. References can be made to very specific instances; thereby allowing a member a quick and certain means of avoiding certain conversations or situations without the possibility of causing offense.

As noted earlier, any contact can be relayed to staff; they are, after all, the persons who are most familiar with the application and the procedure to be followed, and their job is to keep things on track. They are also not charged with the responsibility of making the final “judicial” decision, and are thus free to discuss matters in greater detail than are board members.

One particular situation that is apparently recurring is when a single Council member, outside a Council meeting, meets with either applicants or the public or interested parties on a subject of interest, and Council member knows there is a hearing pending before the Council that deals with the same subject, and possibly involves some of the people at the meeting. These meetings simply increase the risk of ex parte contact and should be avoided. If they cannot be avoided, and I can see where avoidance would cause public relation problems, the individual Council member must remain on guard as concerns ex parte contacts. Most of the time it is sufficient if the member is simply aware of the facts that define an ex parte contact, as this makes it easier to avoid them.

There is also the situation where the offender is persistent in attempting to make contact when first rebuffed. In that instance, the Chairperson may need to become involved, but in all cases the matter must be brought to public scrutiny and have each and every contact disclosed to any identified interested party and to make it a part of the public record.

As one memorandum noted, the cure is to make the contact public and to provide a reasonable time for everyone else to react and have their say on the matter. Due process for all is the key concept. Everyone should have notice of all aspects of the proceeding, and an opportunity to be heard and to confront the evidence that the Council will be using in coming to a decision.

Conclusion

There is likely no greater temptation for the citizen Council member than to enter into ex parte contacts and rationalizing it with the thought that “I am doing it for personal education and doing the public good.”

While we like to think we know ourselves, we do not always recognize what influences our decisions. The public good is done when decisions are made in a controlled environment with all parties and the public having the same opportunity to present information and argue their cases before the unbiased and neutral decision maker. When you wear the hat of the public decision maker, you give up some personal freedom

as regards public contact. You additionally owe a duty of fairness to your fellow board members, the public, and those who appear before you. The prohibition against ex parte contact is literally hundreds of years old and is founded on both law and common sense. Ex parte contact should be scrupulously avoided, and if it occurs, it must be immediately and honestly reported.

MEMORANDUM

To: POST Council
From: Chris D. Tweeten, Legal Counsel
Re: Misdemeanor Probation Officer Training
Date: October 14, 2012

At the last meeting the question arose as to whether the Council has authority to approve training standards for misdemeanor probation officers. For the reasons stated below, in my opinion the Council does have such authority, but only with respect to misdemeanor probation officers employed by a local government.

The Council's general jurisdiction derives from statutes found in Title 44, Chapter 4, Part 4 of the Code. Mont. Code Ann. § 44-4-403 provides in pertinent part:

- (1) The council shall:
 - (a) establish basic and advanced qualification and training standards for employment;
 - (b) conduct and approve training; and
 - (c) provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers.

The statute is not clearly arranged, in that subsections (1)(a) and 1(b) do not state *whose* employment and training the Council may govern. However, I think the best reading of the statute, indeed the only one that makes sense, is that all three sub-parts of subsection (1) refer to the "public safety officers" specifically referred to in sub-part (c).

"Public safety officer" is defined in Mont. Code Ann. § 44-4-401(2) to include eight particularly described employment positions related to law enforcement, e.g. correction officers, detention officers, and, notably, probation officers employed by the Department of Corrections, followed by a catch-all sub-

part (2)(i): “any other person required by law to meet the qualification or training standards established by the council.”

The Legislature in 1995 allowed a local government to create an office to supervise misdemeanor probationers. The statute allows a local government to hire misdemeanor parole and probation officers and requires that the officers “must have the minimum training required in 46-23-1003.” That statute deals with the training of probation and parole officers employed by the Department of Corrections.

Probation and parole officers employed by the Department of Corrections are “public safety officers” under Mont. Code Ann. §44-4-401(2)(g). Since the DOC officers are required to meet the standards established by the Council under Mont. Code Ann. §44-4-403, and misdemeanor probation officers employed by a local government are required to meet the same educational requirements as are the DOC officers, it is my opinion that the misdemeanor probation officers employed by a local government are required to meet training standards established by the Council. They are therefore “public safety officers” under the catch-all provision found in Mont. Code Ann. § 44-4-401(2)(i): “any other person required by law to meet the qualification or training standards established by the council.”

It is further my opinion that the Council may, under limited circumstances, approve training by an entity other than MLEA of misdemeanor probation officers employed by a local government. In describing the training required for probation and parole officers employed by DOC, Mont. Code Ann. § 46-23-1003 provides in pertinent part that “[t]he training must be at the Montana law enforcement academy **unless the council finds that training at some other place is more appropriate.**” (Emphasis added.) This statute allows the Council to approve training at a non-MLEA facility, but only on a finding that the non-MLEA facility is a more “appropriate” provider than MLEA. While “appropriate” is not defined, in my opinion the Council would have to make an evidence-based determination that the training provided by the non-MLEA

facility is superior in preparing applicants to serve as local government misdemeanor probation officer to the training provided by MLEA, if any.

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU

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TO: STUART SEGREST, AAG

FROM: SARAH M. HART, ALSB
SHART2@MT.GOV, (406) 444-5797

RE: RESERVE AND PART TIME OFFICERS

CC: ALLEN HORSFALL, POST DIRECTOR

DATE: July 17, 2013

STATUTORY AUTHORITY OF RESERVE AND PART TIME OFFICERS

I. RESERVE OFFICERS

- 1. Reserve officers may not be paid (a salary).**
 - “Reserve officer” means a sworn, part-time, *volunteer* member of a law enforcement agency... § 7-32-201(6), MCA (emphasis added).
 - “By definition, reserve officers are volunteers, not employees.” Informal letter of advice, November 27, 2007 (2007 Mont. AG Lexis 8).
 - The best explanation of the nuances of “compensation” is found in AG Opinion No. 68 (1988), which explained that “county public funds may be used to reimburse a reserve deputy sheriff’s expenses, provide reasonable benefits,” such as workers compensation, “and pay nominal compensation, but the total amount of these provisions may not be given as a form of compensation tied to productivity.” The opinion was careful to note that “*these payments must not be a substitute for salaried compensation.*” *Id.*
 - Reserve officers must be covered under workers compensation. § 7-32-203, MCA.
 - Reserve officers also cannot receive pension or participate in retirement systems like full time officers. § 7-32-202, MCA.
- 2. Cannot use reserve officers to replace regular officers.**

- § 7-32-212, MCA: “A local government may not reduce the authorized number of full-time law enforcement officers through the appointment or utilization of reserve officers.”
- 3. Reserve officers must meet certain qualifications and have 88 hour basic training within 2 years of appointment.**
- Qualifications are listed in § 7-32-213, MCA.
 - Reserves “may not be authorized to function as a representative of a law enforcement agency performing general law enforcement duties after 2 years from the original appointment unless the reserve officer has satisfactorily completed a minimum 88-hour basic training program.” § 7-32-214, MCA.
 - Although appointed as reserve officers and not as peace officers, § 7-32-211, MCA states that “A person who meets minimum standards for appointment as a peace officer may be appointed as a reserve officer.”
 - The minimum standards for appointment as a peace officer are listed in § 7-32-303(2), MCA.
 - There are some residency requirements for reserves. § 7-32-222, MCA; *See also* Informal letter of advice, November 27, 2007 (2007 Mont. AG Lexis 8).
 - Reserve officers may not attend the MLEA peace officer basic course. § 44-10-301, MCA.
- 4. Police departments must have a reserve coordinator and reserve manual.**
- Must have a manual “setting forth the minimum qualifications, minimum training standards, and standard operating procedures for reserve officers” § 7-32-215, MCA.
 - Must have a “full-time law enforcement officer of the agency as a reserve force coordinator.” § 7-32-219, MCA.
- 5. Reserve officers must be supervised.**
- § 7-32-216, MCA: “(1) A reserve officer may serve as a peace officer only on the orders and at the direction of the chief law enforcement administrator of the local government. (2) A reserve officer may act only in a supplementary capacity to the law

enforcement agency. (3) Reserve officers: (a) are subordinate to full-time law enforcement officers; and (b) may not serve unless supervised by a full-time law enforcement officer whose span of control would be considered within reasonable limits.”

6. Reserve officers must qualify with firearms and be authorized to carry them.

- A reserve officer cannot carry a firearm “until the reserve officer has qualified on the firing range with a weapon in compliance with the firearms qualifying course conducted by the Montana law enforcement academy” and must be authorized to carry one. § 7-32-217, MCA.

7. Reserve officers becoming peace officers.

- Reserve officers can only be appointed to full time peace officer positions if proper hiring procedures are followed, as required by law. § 7-32-220, MCA.
- Peace officers who leave full or part time employment and become reserves for longer than 36 months must go through (at least) an equivalency proceeding with POST before they become peace officers again (whether full or part time). § 7-32-240, MCA.

II. PART-TIME OFFICERS

8. Part-time officers are peace officers (if they receive a salary).

- As outlined above, if an officer receives a salary or any compensation tied to productivity, he or she is NOT a reserve officer. § 7-32-201(6), MCA; AG Opinion No. 68 (1988).
- Thus, any officer receiving a salary (whether part-time or full-time) is a peace officer and must meet the qualifications of § 7-32-303, MCA. That includes (among many other things) having attended the MLEA academy within one year of appointment and being eligible for POST certification.

smh/clr

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU

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TO: PERRY JOHNSON, POST EXECUTIVE DIRECTOR
POST COUNCIL MEMBERS

FROM: SARAH M. CLERGET
SCLERGET@MT.GOV, (406) 444-5797

RE: MISDEMEANOR PROBATION AND PRETRIAL SERVICE OFFICERS

CC: JIM SCHEIR, ALSB

DATE: Friday, November 21, 2014

A. INTRODUCTION

The POST Council requested this memo at the end of the Council meeting on September 3rd, 2014. It follows a discussion during that meeting about the statutory status of misdemeanor probation officers and pretrial service officers. The Council also had questions about the statutory requirements for training for these officers.

The questions revolved around the differences between officers who were publically employed—i.e. employed by a local government—and those who were employed by a private company (either directly or under a government contract). Thus, this memo addresses four categories of officers: (1) publicly employed misdemeanor probation officers, (2) privately employed misdemeanor probation officers, (3) publically employed pretrial service officers, and (4) privately employed pretrial service officers.

B. QUESTIONS PRESENTED AND SHORT ANSWERS

Regarding **misdemeanor probation** officers:

- 1) Are they public safety officers?

Public: yes

Private: unclear

- 2) What are their training requirements?

Public: required to meet all the same requirements as regular probation

and parole officers (160-hour basic and 16hrs/year continuing).

Private: unclear

- 3) What role does POST have in their training?

Public: POST must set training standards and approve their training.

POST does not have to provide the training

Private: unclear

- 4) What role does POST have in certifying, decertifying/sanctioning, or tracking these officers?

Public: POST must certify, decertify/sanction, and track

Private: It is up to the Council.

Regarding **pretrial service** officers:

- 5) Are pretrial service officers public safety officers?

Yes, both public and private.

- 6) What are their training requirements?

Both public and private must have the same training as probation and parole officers (160-hour basic and 16hrs/year continuing).

- 7) What role does POST have in their training?

POST must set training standards and approve their training. POST does not have to provide the training.

- 8) What role does POST have in certifying, decertifying/sanctioning, or tracking these officers?

POST must certify, decertify/sanction, and track

C. LEGAL ANALYSIS

(i) Regarding misdemeanor probation officers:

The statutory scheme regarding misdemeanor probation officers is a little convoluted. Therefore, it is easiest to first examine and understand the basic statutory scheme as it relates to misdemeanor probation officers who are employed by a local government. Once that is understood, it is easier to see how officers who are employed by private entities relate to the statutory scheme. For this reason, we will first examine the statutes as they relate to officers employed by a local government.

The definition of “public safety officer” is found in MCA § 44-4-401(2). The relevant portion of that statute states as follows:

44-4-401. Definitions....(2)"Public safety officer" means:

...

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

...

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

MCA § 44-4-401(2) (2014) (emphasis added). Note that subsection (g) specifically includes probation and parole officers *who are employed by DOC*. More importantly, however, subsection (i) states that *any person* required by law to meet training standards established by POST is a public safety officer. In other words, if POST is required to establish training standards for you, then you are public safety officer by definition.

Misdemeanor probation officers who are employed by a local government are required to meet training standards established by POST. *See* MCA §§ 46-23-1003 and 1005(1)-(2). Therefore, misdemeanor probation officers who are employed by a local government are public safety officers under the definition found in MCA §44-4-401(2)(i).

Here is the specific language from the statutes and an explanation of how they relate to each other:

First, the qualifications for a misdemeanor probation officers are found in MCA § 46-23-1005. The relevant portions of that statute are as follows:

46-23-1005. Misdemeanor probation offices -- officers -- costs. (1) *A local government may establish a misdemeanor probation office associated with a justice's court, municipal court, or city court. The misdemeanor probation office shall monitor offenders for misdemeanor sentence compliance and restitution payments. An offender is considered a fugitive under the conditions provided in 46-23-1014.*

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

- (a) *must have the minimum training required in 46-23-1003;*
- (b) *shall follow the supervision guidelines required in 46-23-1011; and*
- (c) *may order the arrest of an offender as provided in 46-23-1012.*

...

MCA § 46-23-1005(1)-(2) (2014)(emphasis added). Subsection (2)(a), above, requires minimum training for misdemeanor probation officers to be the same as what is found in MCA § 46-23-1003. MCA § 46-23-1003 in turn holds the qualifications for regular probation and parole officers. That statute states as follows:

46-23-1003. Qualifications of probation and parole officers. (1) Probation and parole officers must have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2)(c) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees are exempt from this requirement but are encouraged to further their education at the earliest opportunity.

(2) Each probation and parole officer shall, through a source approved by the officer's employer, obtain *16 hours a year of training* in subjects relating to the powers and duties of probation officers, at least 1 hour of which must include training on serious mental illness and recovery from serious mental illness. *In addition, each probation and parole officer must receive training in accordance with standards adopted by the Montana public safety officer standards and training council established in 2-15-2029. The training must be at the Montana law enforcement academy unless the council finds that training at some other place is more appropriate.*

MCA § 46-23-1003 (2014).

Subsection (2) of MCA § 46-23-1003 thus requires that all probation and parole officers receive training as required by POST. POST in turn adopted ARM 23.13.206, which requires that all probation and parole officers attend a 160-hour basic course. The training requirement for regular probation and parole officers therefore includes a 160-hour basic course plus 16 hours per year of continuing education.

Traditionally, this training has been held at MLEA. However, MCA § 46-23-1003(2) indicates that the training may be held at another place if the Council believes that place is more appropriate. Nothing in the statute indicates that the Council must *provide* the training—only that it must approve the training and the standards for probation and parole officers.

Putting all of this together, subsection (2)(c) of MCA § 46-23-1005 requires

misdemeanor probation officers to meet the minimum training for regular probation and parole officers, which is found in MCA § 46-23-1003(2). Subsection (2) of MCA § 46-23-1003 then requires that all probation and parole officers meet training standards approved by POST. POST requires all probation and parole officers to attend a 160-hour basic course and 16 hours of continuing education per year, through ARM 23.13.206. Therefore (via the transitive property) MCA § 46-23-1005 requires misdemeanor probation officers to meet training standards set by POST—the same standards as regular probation and parole officers. Under the definition of “public safety officer” found in MCA § 44-4-401(2)(i), a public safety officer is “any other person required by law to meet the qualification or training standards established by the council.” Therefore, misdemeanor probation officers are public safety officers under MCA § 44-4-401(2)(i) and they are required to meet the same training standards as regular probation and parole officers, i.e. a 160-hour basic and 6 hours continuing education. This training must be approved by POST, but does not have to be provided by POST, and can occur at MLEA or any other place the Council deems appropriate.

Additionally, because misdemeanor probation officers are public safety officers whose training is both required and approved by the Council, POST should be certifying, decertifying or sanctioning, and tracking the training for these officers. This is because according to MCA § 44-4-404, POST must “provide for the certification or recertification of *public safety officers* and for the suspension or revocation of certification of public safety officers.” MCA § 44-4-404(1)(c). If misdemeanor probation and parole officers are public safety officers, as shown above, then POST is responsible for providing for their certification and applying the contested case process as it would for any other public safety officer.

However, this analysis does not apply to *all* misdemeanor probation officers. Note that the language in subsection (2) of MCA § 46-23-1005 indicates that misdemeanor probation officers are *only* those officers who are appointed *and employed* by a local government. The statute states that “A local government may appoint misdemeanor probation officers *and other employees*” and thus implies that the probation officers appointed by the local government are also employees of that local government. The use of the “AND” in that sentence is very important. If the statute said “*or other employees*” the analysis might be different. However, the statute uses “*and other employees*” presumably to indicate that misdemeanor probation officers are only those individuals who are already employees of the local government and are then appointed to be misdemeanor probation officers (in addition to their previous status as local government employees) or who become government employees through their hire as misdemeanor

probation officers. Thus, the statute seems to say that anyone not employed by a local government is not a misdemeanor probation officer. Under MCA § 46-23-1005, therefore, it does not appear to be possible to have a “misdemeanor probation officer” who is employed by anyone other than a local government— i.e. a private company. Officers employed by private companies might be calling themselves misdemeanor probation officers, but they do not fit under the statute’s language and therefore might just as easily be called something entirely different (e.g. private probation officers).

Because privately employed individuals don’t fit under MCA § 46-23-1005, they do not appear to be bound by the minimum training requirement in MCA § 46-23-1005(2)(a)— which refers in turn to the training requirements in MCA § 46-23-1003(2). And if they are not bound by the training requirements in MCA § 46-23-1003(2), which requires POST standards and approval, then they also do not fit under the definition of “public safety officers” in MCA § 44-4-401(2)(i). They therefore cannot be considered “public safety officers” under the same analysis as misdemeanor probation officers employed by a local government. They also would not have the same training requirements. These officers appear to be completely left out of the current statutory scheme regulating misdemeanor probation officers. Therefore, it is entirely up to the Council how they want to deal with these officers.

(ii) Regarding Pretrial Service Officers:

The statutory scheme for pretrial service officers is much less complicated than that of misdemeanor probation. There is only one statute that defines a “pretrial service agency,” which would in turn employ pretrial service officers: MCA § 46-9-505. The relevant portion of that statute states:

46-9-505. Issuance of arrest warrant -- redetermining bail -- definition. ... (5)
As used in this section, "pretrial services agency" means a government agency or a private entity under contract with a local government whose employees have the minimum training required in 46-23-1003 and that is designated by a district court, justice's court, municipal court, or city court to provide services pending a trial.

MCA § 46-9-505(5) (2014).

This statute therefore makes it clear that a pretrial service agency *includes* private entities or those under contract with a local government. Therefore, pretrial officers who are employed by a pretrial services agency—*whether public or private*—are required to meet

the same POST requirements and receive the same post-approved training. Those requirements are the same as regular probation and parole officers, as stated in MCA § 46-23-1003 and ARM 23.13.206, namely a 160-hour basic course and 16 hours of continuing education.

Additionally, because *all* pretrial service officers— *whether public or private*—are required to meet the POST standards and receive POT-approved training in MCA § 46-23-1003, they also *all* fit the definition of “public safety officer” found in MCA § 44-4-401(2)(i). They are certainly other persons who are “required by law to meet the qualification or training standards established by the council.” MCA § 44-4-401(2)(i). All pretrial service officers are therefore public safety officers.

Since all pretrial service officers, whether public or private, are public safety officers, POST is required by MCA § 44-4-404 to provide for their certification, etc. This means that POST should be certifying, decertifying, sanctioning, and tracking *all* pretrial service officers regardless of whether they are employed by a public or private entity.

Again, MCA § 46-23-1003 does not require that POST *provide* the 160-hour basic and continuing education training for these officers, just that POST set standards and approve the training. However, privately employed pretrial service officers may present a problem for POST. MLEA only accepts officers who are employed by a local government. *See* MCA §44-10-301; ARM 23.12.1201. Therefore, pretrial service officers who are employed by a private entity are public safety officers who cannot be trained at the academy. Therefore, this may be an instance in which POST wishes to find “that training at some other place is more appropriate,” as contemplated by the last sentence of MCA § 46-23-1003. Again, however, there is nothing in the statute that indicates POST must provide the training, only that POST must approve it. Therefore, if private industry were to create a training equivalent to the 160-hour basic received at MLEA by officers who are publically employed, and if POST were to approve that training, the statutory requirements would be met.

D. CONCLUSION

The statutory scheme is clearer with respect to pretrial service officers than with misdemeanor probation officers. It appears that misdemeanor probation officers who are employed by anyone other than a local government are excepted from the statutory scheme entirely, given that MCA § 46-23-1005 refers only to local government employees. Therefore, how the Council handles these officers appears to be open for

debate. It seems that under the current statutory scheme, however, that privately-employed misdemeanor probation officers are not public safety officers, have no training requirement, and are not overseen by POST at all. Publically-employed misdemeanor probation officers and all pretrial service officers—whether public or private—are public safety officers, however. And they are all required to meet the same training requirements as regular probation and parole officers: a 160-hour basic course and 16 annual hours of continuing education.

STATE OF MONTANA
DEPARTMENT OF JUSTICE
AGENCY LEGAL SERVICES BUREAU

Tim Fox
Attorney General



1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

TO: Perry Johnson, POST Executive Director
POST Council Members

FROM: Sarah M. Clerget
Sclerget@mt.gov, (406) 444-5797

RE: Misdemeanor Probation and Pretrial Service Officers Training
Requirements

DATE: Friday, May 08, 2015

A. INTRODUCTION

This memo addresses the training requirements for misdemeanor probation officers and pretrial service officers. POST Director Perry Johnson requested this memo based on discussions during and after the September and December 2014 POST meetings. It follows my November 21, 2014, memo on the statutory status of misdemeanor probation officers and pretrial service officers.

The POST Council determined (during those meetings and based on that memo) that privately employed misdemeanor probation officers are not currently contemplated under the statutory scheme, are *not* public safety officers, and are therefore not under the purview of POST. This memo therefore does not address privately employed misdemeanor probation officers. This memo only addresses the three categories of officers that fall under POST's jurisdiction: (1) publicly employed misdemeanor probation officers, (2) publicly employed pretrial service officers, and (3) privately employed pretrial service officers. (For further discussion of this, see the November 21, 2014, memo.)

B. QUESTIONS PRESENTED AND SHORT ANSWERS

1) What training must misdemeanor probation and pretrial service officers have in order to comply with the current law?

Publicly employed misdemeanor probation officers and all pretrial service officers (whether publicly or privately employed) are public safety officers who must be certified by POST with a basic certificate. These officers must have the same training—or training that is *at least* equivalent to—the training that felony probation and parole officers receive, including a 280 hour basic and 16 hours per-year of continuing education with at least one hour relating to mental illness.

2) Who must provide that training and where may it be held?

The training must be POST-approved but POST is not required to provide the training. Training for publicly employed misdemeanor probation officers and publicly employed pretrial service officers could happen at the Montana Law Enforcement Academy (MLEA). However, because private pretrial service officers cannot be trained at MLEA, it is recommended that the Council approve training these officers at an alternative location.

3) Can POST waive or modify these training requirements?

No. The requirement that publicly employed misdemeanor probation officers and all pretrial service officers must receive the same training as felony probation and parole officers is statutory. The only way to change the training requirements would be to change the current statutory scheme.

C. LEGAL ANALYSIS

(i) Background.¹

Publicly employed misdemeanor probation officers are public safety officers. Misdemeanor probation officers are statutorily required to meet the training standards set by POST. Mont. Code Ann. § 46-23-1005 (citing Mont. Code Ann. § 46-23-1003). The

¹ This section is a truncation of the November 21, 2014, memo. For further discussion of the information in this section, please see that memo.

definition of “public safety officer” includes “any other person required by law to meet the qualification or training standards established by the council.” Mont. Code Ann. § 44-4-401(2)(i). Therefore, publicly employed misdemeanor probation officers are public safety officers under Mont. Code Ann. § 44-4-401(2)(i) because they must meet the qualification or training standards set by POST. Additionally, because publicly employed misdemeanor probation officers are public safety officers, POST must “provide for the certification or recertification . . . and for the suspension or revocation of certification” of these officers. Mont. Code Ann. § 44-4-403(1)(c).²

Both publicly and privately employed pretrial service officers are public safety officers. It is clear from Mont. Code Ann. § 46-9-505(5) that a pretrial service agency includes private entities or those under contract with a local government. That statute also requires all pretrial service officers to meet training standards set by POST. *Id.* (citing Mont. Code Ann. § 46-23-1003). Because all pretrial service officers—whether public or private—are required to meet POST standards and receive POST-approved training, they also fall within the definition of “public safety officer” found in Mont. Code Ann. § 44-4-401(2)(i). As public safety officers, all pretrial service officers must be certified, decertified or sanctioned, and tracked by POST, whether they are publicly or privately employed. Mont. Code Ann. § 44-4-403(1)(c).

(ii) Training requirements for felony probation and parole officers under Mont. Code Ann. § 46-23-1003.

The training requirements for felony probation and parole officers is found in Mont. Code Ann. § 46-23-1003, which states:

(1) Probation and parole officers must have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2)(c) may be substituted for educational requirements at the rate of 1 year of experience

² Note that the language of Mont. Code Ann. § 46-23-1005(2) implies that the probation officers appointed by the local government are also employees of that local government (“A local government may appoint misdemeanor probation officers *and other employees* . . .”). Thus, misdemeanor probation officers are those officers who are appointed *and employed* by a local government; whereas, the statute seems to say that anyone not employed by a local government is not a misdemeanor probation officer. For further discussion of this point, see the November 21, 2014, memo.

for 9 months formal education if approved by the department. All present employees are exempt from this requirement but are encouraged to further their education at the earliest opportunity.

(2) Each probation and parole officer shall, through a source approved by the officer's employer, obtain *16 hours a year of training* in subjects relating to the powers and duties of probation officers, at least 1 hour of which must include training on serious mental illness and recovery from serious mental illness. *In addition, each probation and parole officer must receive training in accordance with standards adopted by the Montana public safety officer standards and training council established in 2-15-2029.* The training must be at the Montana law enforcement academy *unless the council finds that training at some other place is more appropriate.*

Mont. Code Ann. § 46-23-1003 (emphasis supplied). POST has in turn adopted administrative rules setting standards for the training of public safety officers, including felony probation and parole officers. *See e.g.* ARM 23.13.201, 23.13.205, and 23.13.206.

To obtain a POST basic certificate, which all public safety officers must have, felony probation and parole officers must attend a basic course. *See* ARM 23.13.201(1), 23.13.205(2), and 23.13.206(1)(a)(ii). The current basic course curriculum approved by the Council is 280 training hours and is hosted by the Department of Corrections at the MLEA.

Additionally, felony probation and parole officers are required by statute to have 16 hours per year of continuing education in subjects relating to probation officers, including at least one hour of training on serious mental illness and recovery therefrom. Mont. Code Ann. § 46-23-1003(2).³

³ The 16 hours per year requirement of Mont. Code Ann. § 46-23-1003(2) exceeds the 20 hours every two years requirement that POST imposes on public safety officers in ARM 23.13.201(2)(j). However, the language of Mont. Code Ann. § 46-23-1003(2) is clear that the yearly statutory requirement (16 hours) is “[i]n addition” to the POST administrative standard (20 hours every 2 years). The Council may want to consider modifying, waiving, or refining the requirement in ARM 23.13.201(2)(j) (as POST cannot waive or modify the statutory requirement) so that any officer whose training is based on Mont. Code Ann. § 46-23-1003 is not required to have 52 hours of training every two years.

Thus, under Mont. Code Ann. § 46-23-1003(2) and the incorporated POST standards, felony probation and parole officers are currently required to attend a 280 hour basic class and receive 16 hours per year of continuing education in probation-related subjects, with at least one hour of mental illness and recovery training, in order to receive and maintain their POST certification.

(iii) Training requirements for publicly employed misdemeanor probation officers and all pretrial service officers.

Like felony probation and parole officers, publicly employed misdemeanor probation officers and all pretrial service officers must meet the training requirements found in Mont. Code Ann. § 46-23-1003 and the incorporated POST standards. For publicly employed misdemeanor probation officers this requirement is found in Mont. Code Ann. § 46-23-1005(2)(a), which states: “Misdemeanor probation officers: (a) must have the *minimum training required in 46-23-1003 . . .*” For all pretrial officers this requirement is found in Mont. Code Ann. § 46-9-505(5), which defines a “pretrial services agency” as “a government agency or a private entity under contract with a local government whose employees have the *minimum training required in 46-23-1003 . . .*”

Thus, both of the statutes regulating publically employed misdemeanor probation officers and all pretrial service officers— Mont. Code Ann. §§ 46-23-1005 and 46-9-505(5), respectively—require that these officers have the “minimum training required in 46-23-1003.” The statutory construction indicates that first the Council must set training required for felony probation and parole officers, and then apply that felony probation training standard to publically employed misdemeanor probation officers and all pretrial service officers. The statutory scheme does not contemplate a different or modified standard for publically employed misdemeanor probation officers and all pretrial service officers based on their differing duties. Since felony probation and parole officers are currently required, by Mont. Code Ann. § 46-23-1003 and the incorporated POST standards, to attend a 280 hour basic course and, thereafter, 16 hours per year of continuing education training (with one hour devoted to mental illness), this also constitutes the minimum training required for publicly employed misdemeanor probation officers and all pretrial service officers.

(iv) The role of POST with respect to these training requirements.

POST cannot modify or waive these training requirements for publicly employed misdemeanor probation officers and all pretrial service officers because they are statutory.⁴ The only way to change these requirements is to amend the statutes—Mont. Code Ann. §§ 46-9-505(5) and 46-23-1005—that incorporate the training requirements for felony probation and parole officers under Mont Code Ann. § 46-23-1003.

Nothing in Mont. Code Ann. § 46-23-1003, or the other relevant statutes, require POST to *provide* the basic and continuing education training for these officers. POST need only review and approve (or deny) the training for POST credit towards obtaining and maintaining POST certification. Once officers meet the necessary training requirements, POST must issue them a basic certificate, track training hours, and then sanction or revoke that certificate as necessary just as it does for all other public safety officers. Mont. Code Ann. § 44-4-403(1)(c).

However, privately employed pretrial service officers may present a difficulty as MLEA only accepts officers who are employed by a local government. *See* Mont. Code Ann. § 44-10-301; ARM 23.12.1201. Therefore, pretrial service officers who are employed by a private entity are public safety officers who cannot be trained at the academy. This may be an instance in which POST wishes to find “that training at some other place is more appropriate,” as contemplated by Mont. Code Ann. § 46-23-1003(2). Again, however, there is nothing in the statute that indicates POST must provide the training outside MLEA, only that POST must review it and approve (or deny) it for POST credit. If private industry were to create a training equivalent to the 240 hour basic course and 16 yearly hours of continuing education that are currently provided at MLEA for felony probation and parole officers, and if POST were to approve that training for POST credit, the statutory requirements would be met.

As public safety officers, publicly employed misdemeanor probation officers and all pretrial service officers must be certified by POST in order to operate within the scope of the law. *See* Mont. Code Ann. § 44-4-404; ARM 23.13.201(1). In order to be POST certified, the officers must meet these basic and continuing training requirements. *See* ARM 23.13.201, 23.13.205, 23.13.206, and 23.13.702. Getting these officers trained

⁴For discussion on why the Council cannot waive statutory training requirements for an entire group of officers, see Chris Tweeten’s memo of March 3, 2015.

must therefore be accomplished as soon as possible, as they may be operating outside the scope of their authority without such training.

Additionally, operating for any period of time without the required certification and training, or in violation of the statutes discussed herein, may make an officer unfit or ineligible for a POST certificate (even after they ultimately got the required training). This is because ARM 23.13.702(2)(m) forbids “operating outside or ordering, permitting, or causing another officer to operate outside of the scope of authority for a public safety or peace officer” and ARM 23.13.205(3) and (5)(b) makes compliance with ARM 23.13.702 a prerequisite and requirement for POST certification. Therefore, if officers have you have been operating outside the scope of their authority in violation of the law, then simply curing their training deficits may not be enough to get them POST certified. It is also important to note that under these ARMs *any other* public safety or peace officers who *permits or causes* a publicly employed misdemeanor probation officer or a pretrial service officer to operate outside the scope of his or her authority (i.e. without the proper training and certification) may also be in violation of ARM 23.13.702(2)(m). It is therefore necessary to get publicly employed misdemeanor probation officers and all pretrial service officers trained and certified as soon as possible.

D. CONCLUSION

Under the current statutory scheme, publicly employed misdemeanor probation officers and all pretrial service officers must receive the same or equivalent training as felony probation and parole officers receive pursuant to Mont. Code Ann. § 46-23-1003 and the incorporated POST standards. The only way to change this requirement is to change the statutes which set the training standards for these officers. It is also not possible to just let these officers operate outside the scope of their authority until the next legislative session, as this may make them ultimately ineligible for POST certification. Therefore, training for these officers that is at least equivalent to the training for felony probation and parole officers—i.e., at least a 280 hour basic course and 16 hours of yearly continuing education with at least one hour in mental illness—must be offered as soon as possible, and probably somewhere other than at MLEA.

c: Jim Scheier

MEMORANDUM

TO: Perry Johnson, POST Executive Director
FROM: Chris Tweeten, POST Legal Counsel
RE: Reserve Officer Qualifications and Training
DATE: August 25, 2015

You have asked me to advise regarding the training of reserve officers with respect to these questions:

1. Does POST have authority to adopt training standards for reserve officers that include requirements not provided by Mont. Code Ann. § 7-32-214?
2. If POST adopts standards that differ from those required by Mont. Code Ann. § 7-32-214, could POST be exposed to liability that is greater than would exist if POST adopted no different or additional standards?

I conclude that POST does have such authority, and that its exercise does not necessarily create liability exposure that is greater than would exist if POST did not adopt different or additional standards.

Training requirements for reserve officers are found in Mont. Code Ann. § 7-32-214, which provides:

7-32-214. Basic training program required. (1) A reserve officer may not be authorized to function as a representative of a law enforcement agency performing general law enforcement duties after 2 years from the original appointment unless the reserve officer has satisfactorily completed a minimum 88-hour basic training program that must include but need not be limited to the following course content:

- (a) introduction and orientation--1 hour;
- (b) police ethics and professionalism--1 hour;
- (c) criminal law--4 hours;
- (d) laws of arrest--4 hours;
- (e) criminal evidence--4 hours;

- (f) administration of criminal law--2 hours;
- (g) communications, reports, and records--2 hours;
- (h) crime investigations--3 hours;
- (i) interviews and interrogations--2 hours;
- (j) patrol procedures--6 hours;
- (k) crisis intervention--4 hours;
- (l) police human and community relations--3 hours;
- (m) juvenile procedures--2 hours;
- (n) defensive tactics--4 hours;
- (o) crowd control tactics--4 hours;
- (p) firearms training--30 hours;
- (q) first aid--10 hours; and
- (r) examination--2 hours.

(2) The law enforcement agency is responsible for training its reserve officers in accordance with minimum training standards established by the council.

Two parts of the statute recognize quite clearly that POST has discretion to adopt additional standards. First, subsection (1) provides that the training program “must include but need not be limited to” the training items listed in subsections (a)-(r) of subsection (1). The quoted language provides that the listed training requirements are not exclusive, and that additional requirements may be imposed. Second, subsection (2) of the statute states that the employing agency is responsible for training the reserve officer “in accordance with minimum training standards established by the council.” The legislature thus has recognized the Council’s authority to set standards.

Please note, however, that the authority to establish additional standards does not give POST the authority to delete categories of training that have been required by the Legislature. Administrative rules must be consistent with statute. The “includes but is not limited to” language in Mont. Code Ann. § 7-32-214(1) authorizes POST to add to, but not detract from, the requirements of the statute. Thus, POST has the authority to create additional categories of training not provided by statute, but it may not delete from the training standards matters that the legislature has required. The existing POST rule regarding training for reserve officers requires

only that the applicant meet the standards provided in Mont. Code Ann. § 7-32-214. ARM 23.13.214.

Exercise of its discretion to adopt additional training standards for reserve officers should not expand the Council's liability exposure. The Council has clear authority to adopt the standards, and generally rulemaking is beyond the review of the Courts as long as the rules are within the scope of the agency's power, adopted under proper procedures, and not contrary to statute. As discussed above, the Council has authority to make rules in this area. Adherence to procedural requirements is a matter for case by case analysis, but our recent experience in rulemakings should prepare us to comply with the requirements for rulemaking found in MAPA. Mont. Code Ann. Tit.2, ch. 4, pt. 3.

When exercising its discretion to make rules adopting standards for reserve officers, the Council should compare any proposed standards to the statutes, and make sure that the proposed standards do not contradict any of the mandatory standards found in Mont. Code Ann. § 7-32-214(1). If the rules do not contradict anything that is in statute, they should be held valid by a court, and should provide no basis for a finding of liability against the Council.

Please feel free to contact me if you have further questions.

MEMORANDUM

TO: Perry Johnson
FROM: Chris Tweeten
RE: Home School Diploma issue
DATE: March 5, 2018

Questions have arisen regarding treatment of home school diplomas as a credential for POST certification. While the questions have been posed by the Montana Highway Patrol with respect to the statutes governing the qualifications of their recruits, I will confine my analysis to the specific qualifications for POST certification.

As an administrative agency, POST has only those powers delegated by the Legislature. *Montana Society of Anesthesiologists v. Montana Board of Nursing*, 2007 MT 290, ¶ 43, 339 Mont. 472, 489, 171 P. 3d 704, 713. In Mont. Code Ann. 44-4-403(3), the Legislature empowered POST to “establish basic and advanced qualification and training standards” and to “provide for the certification and recertification of public safety officers.” It is clearly within POST’s delegated authority to establish an education standard for POST certification. Mont. Code Ann. § 2-15-2029 (2) (POST has authority to make rules to implement Mont. Code Ann. § 44-4-403.)

When a matter is within the authority of an agency, but the means and substance of the agency’s regulations is not determined by the Legislature, it is left to the agency’s discretion to devise regulations to carry out its legislative mission. *Guillot v. Montana State H’way Comm’*, 23 P.2d 1072, 1076 (1936). In this case, my research has found no statute that would require POST to treat a home school diploma as the equivalent of a diploma issued by an accredited high school for certification. It is therefore left to POST’s discretion to determine the educational requirements

for certification. In that process, POST must apply the plain meaning of the words used by the Legislature, without adding or subtracting from what was enacted. *State v. Bullman*, 2007 MT 288, ¶ 11, 339 Mont. 461, 464, 171 P.3d 681, 683; Mont. Code Ann. § 1-2-101 (in interpreting a statute, role of judge is “not to insert what has been omitted or to omit what has been inserted.”)

POST adopted for certification purposes many of the requirements of Mont. Code Ann. § 7-32-303 (2), which controls the appointment of public safety officers. POST’s rule, ARM 23.13.201(2), brings forward many of the provisions of the statute, including this one:

In addition to standards set forth in the Montana Code Annotated, including but not limited to 44-4-404, MCA, all public safety officers must:

...
(e) be a high school graduate or have been issued an equivalency certificate by the Superintendent of Public Instruction, or by an appropriate issuing agency of another state or of the federal government;

The Council then carried forward this requirement into the certification process:

Prior to issuance of any certificate, the public safety officer must have completed the designated combinations of education, training, and experience as computed by the credit hour system established by the council.

ARM 23.13.205(4).

POST’s discretion is broad, but it does not allow the agency to disregard the requirements of its own regulations. *Whitehall Wind, LLC v. Montana Public Service Comm’n*, 2010 MT 2, ¶ 24, 355 Mont. 15, 20, 223 P.3d 907, 910. Having adopted these rules, POST would be guilty of an abuse of discretion if, in a particular case, it decided to accept a home school diploma in place of the academic or equivalency credentials required by its rules. While Mont. Code Ann. § 7-32-303 technically binds hiring authorities, the statute has historically played a central role in POST’s administrative rules governing the requirements for certification and employment. If POST wished to change its regulations to allow acceptance of a diploma from a home school to

satisfy ARM 23.13.201(2), it would be best to await a legislative amendment to Mont. Code Ann. § 7-32-303 that recognized the acceptability of home school diplomas.

TO: Perry Johnson, Executive Director POST
FROM: Kristina Neal
DATE: February 19, 2019
RE: College credit

Dear Mr. Johnson:

You have requested a memo on the following question:

Can officers receive an extension in which to submit and receive college credit as part of their training credit?

Previously officers could receive credit for their college hours toward their POST training requirements. However, ARM 23.13.205 was amended and this provision removed from the law. The basis for this change in the law was that it was timely for POST staff but, more so, the change eliminated subjectivity and discretion in determining the applicability of the college courses. The amended version of ARM 23.13.205 became effective December 22, 2018. The amended version did not provide for an exception or for an extension beyond the effective date in which officers could submit their college hours.

Notice of the changes

Although the ARM does not provide for an extension beyond the effective date of December 22, 2018, the decision to modify and adopt this change was

only made after several public meetings. On August 15, 2018, an advertised public meeting was held in which the public was able to offer testimony regarding the changes. Members of the public and law enforcement community were present and did offer testimony at this hearing. Public comment could be submitted both orally and through a written statement.

The decision to adopt this proposed amendment to the ARM was then made on October 2, 2018, at an advertised public POST Council meeting where the issue of proposed ARM changes was placed on the agenda. The POST Council provided the maximum amount of notice allowed pursuant to MAPA – six months from the proposed amendment until its adoption. Thus, although the new law does not provide for an extension of time, beyond the effective date, sufficient notice was provided that such an extension was not required.

Procedural Due Process

Although not permissible pursuant to the ARMs, an officer could potentially have a due process argument for an extension if the officer or officers could establish that, based on circumstances, the officer did not receive sufficient notice. The Montana Constitution provides that no person shall be deprived of life, liberty or property without due process of law. Mont. Const. Art. 2, §17.

“Due process is flexible and calls for such procedural protections as the particular situation demands.” *Goble v. Montana State Fund*, 2014 MT 99, ¶146, 374 Mont. 453, 325 P. 3d 1211 (The Montana Supreme Court held that no procedural due process violation occurred when the State failed to notify defendants that they would be unable to receive their disability benefits due to their incarcerations) quoting *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S. Ct. 893, 902, 47 L. Ed. 2d 18 (1976).

Challenges based on a person’s due process rights rest on the lack of notice, and thus may be overcome in a specific case where reasonable persons are advised what must be done to avoid a certain result. *State v. Pyette*, 2007 MT 119, ¶15, 337 Mont. 265, 159 P. 3d 232 (Defendant’s due process rights not violated by statute that allowed the Motor Vehicle Division to suspend her driver’s license based on her failure to pay a court ordered fine when the court had sent the defendant two notices and included in its second notice that the defendant had ten days to act or her driver’s license would be suspended.) For example, in *Clark Fork Coalition v. Montana Dept. of Environmental Quality*, 2007 MT 176, ¶17, 164 P. 3d 902, 338 Mont. 205 the Montana Supreme Court held the appellants did not violate a mining company’s procedural due process rights when it did not serve notice of entry of judgment on the mining company, after the

mining company had unsuccessfully attempted to intervene. The Court held that as the court proceedings were conducted in public with an available record. *Clark Fork Coalition*, ¶15. In reaching its ruling, the Court explained, “There is no absolute standard for what constitutes due process. The process due in any given case varies with the circumstances.” *Clark Fork Coalition*, ¶17 quoting *McDermott v. McDonald*, 2001 MT 89, ¶10, 305 Mont. 168, 24 P. 3d 200. In finding against the mining company, the Court expounded, “We cannot by rule relieve the citizen’s duty to superintend his own affairs.” *Clark Fork Coalition*, ¶17.

Additionally, in Montana, only the legislature may validly provide for judicial review of agency decisions. “The legislature may provide for direct review by the district court of decisions of administrative agencies.’ A right of judicial review cannot be created by agency fiat.” *Nye v. Dep’t of Livestock*, 196 Mont. 222, 226, 639 P.2d 498, 500-01 (1982) quoting Mont. Const. art. VII, § 4, cl. 2.

Thus, the only discretion that the POST Council would have regarding a request for an extension in which an officer requests training credit for college hours is if the officer can support a due process violation with specific facts which support that the officer received insufficient notice regarding the ARM amendment and its effective date. Further, since the legislature has not provided

for such an extension, or judicial review of a decision regarding an extension, any decision by the POST Council would be final.

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.

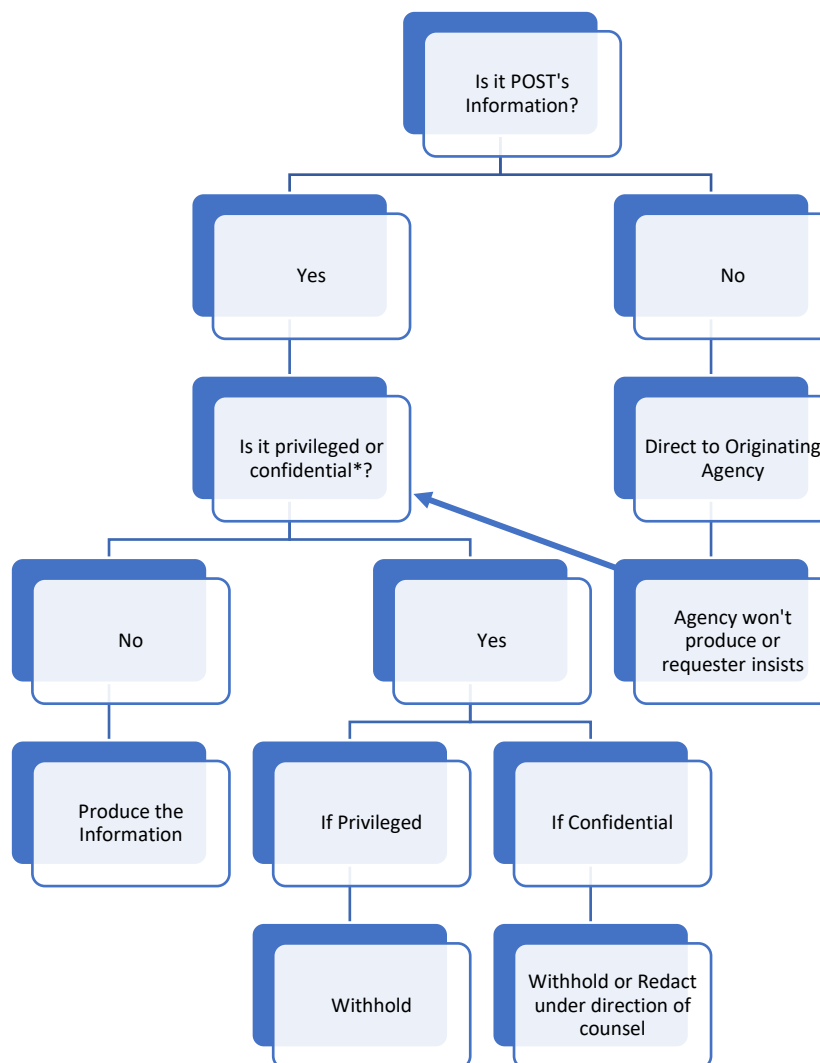
1. Internally generated information may be privileged. As to POST's internally generated information that is not made public, i.e., internal drafts as opposed to Letters 1 and 2, these may be privileged, depending. If the paralegal/investigator is operating as a paralegal, and the document was drafted 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.

Public Records Requests ~ Generally



Scenario 1 ~ Allegation sent to agency, and agency hasn't responded yet.

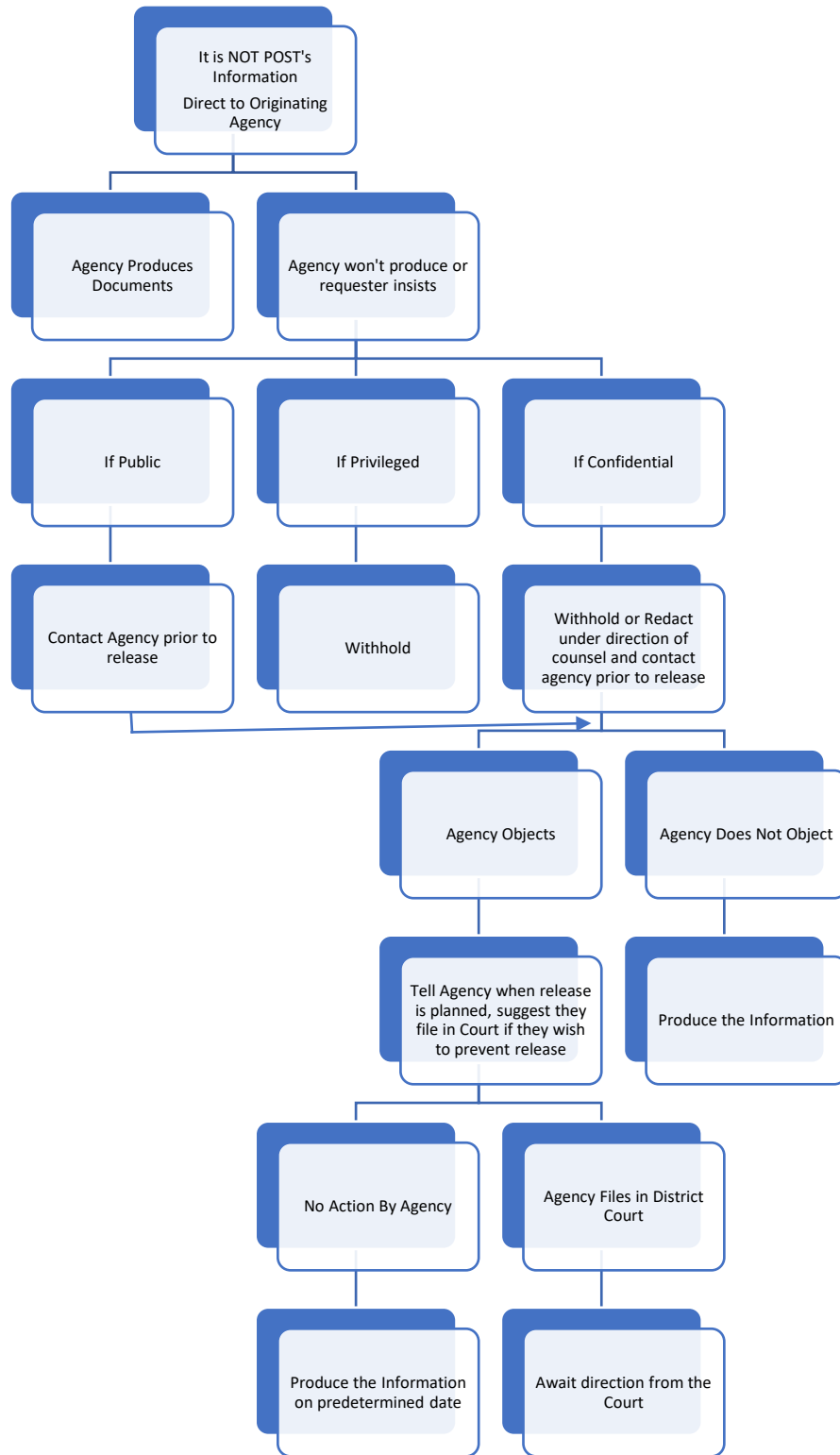
It is appropriate to tell the requestor you have received an allegation about the officer and have sent it to the employing authority for a response under ARM 23.13.703. If they ask for a copy of the allegation, respond that you will provide it after the agency has provided its response.

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

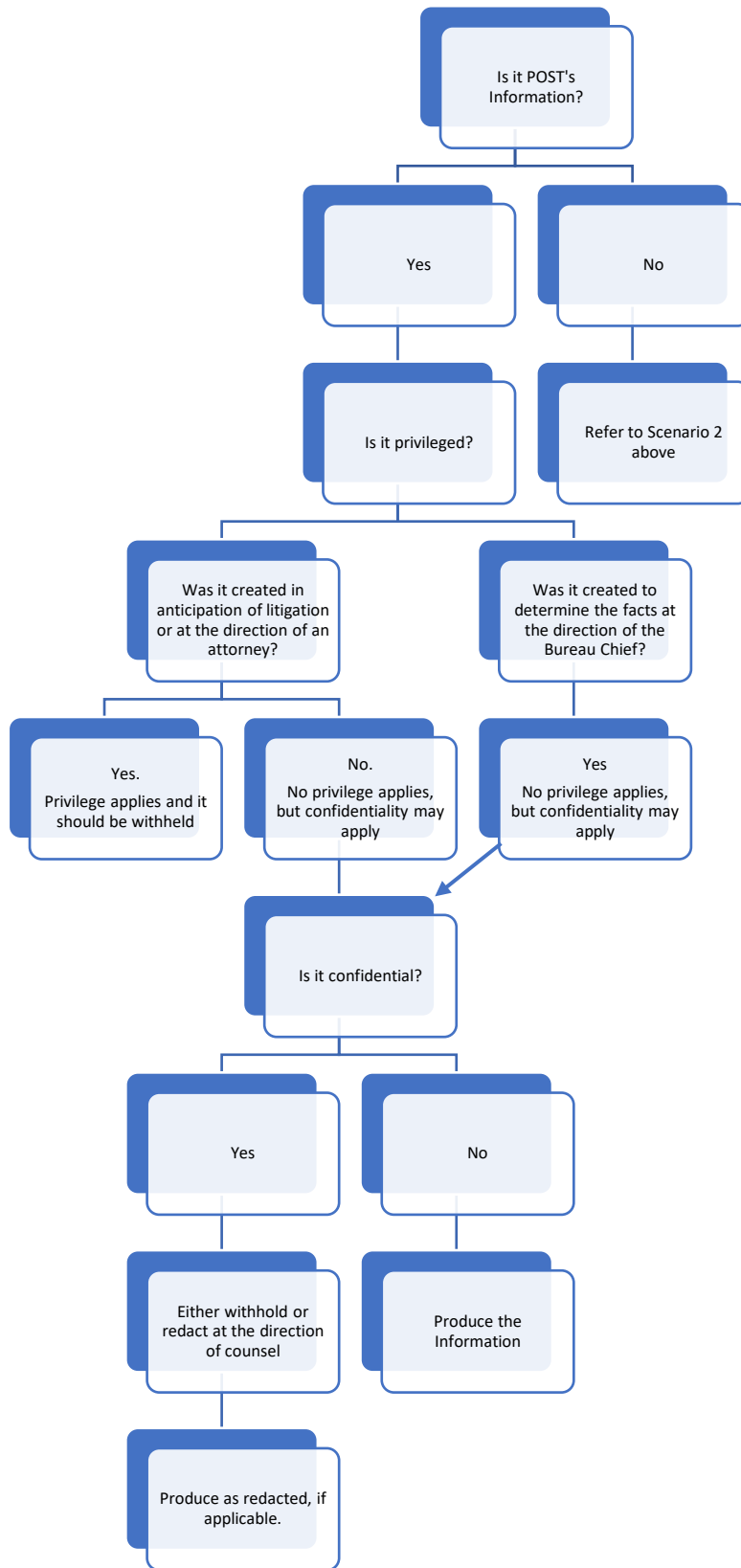
*Confidential Could be: CCJI, Dates of Birth, Social Security Numbers, Medical/Mental Health Information

Scenario 2 ~ Agency has responded, but Case Status Committee hasn't reviewed.

Regarding Agency Response:



Scenario 3 ~ Request for POST's investigation information prior to completion of investigation.



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 be 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.

LEGAL MEMORANDUM

To: Timothy Allred

From: J. Stuart Segrest

Date: October 14, 2022

Cc: Katrina Bolger

Re: MLEA's approval of law enforcement basic courses at colleges

Timothy,

You have asked that I provide a legal memo analyzing whether current statutory law allows for equivalency of a peace officer basic course taught by colleges off the Montana Law Enforcement Academy's (MLEA) campus if the course was approved by MLEA and the POST Council. In other words, if MLEA and the POST Council approve a college program as "commensurate with the current peace officer basic course offered at the Montana law enforcement academy," do graduates, once appointed as an officer, qualify for the basic equivalency course exception under § 7-32-303(8)(a), MCA? The answer is yes, a graduate of a course approved by MLEA and the Council would qualify for equivalency under § 7-32-303(8)(a).

Applicable Law and Analysis

Section 7-32-303(6) MCA states that "[e]xcept as provided in subsections (7) and (8)" a peace officer is required to "successfully complete the peace officer basic course *at* the Montana law enforcement academy, as approved by the council, within 1 year of" initial appointment or reappointment after a break in service of more than five years. For these officers, then, the only exception to the requirement to complete the full basic course at MLEA is to meet the requirement of 7-32-303(7) or (8).

Section 7-32-303(8)(a) provides that "if a peace officer has successfully completed a peace officer basic course that is ... approved by a ... state ... law enforcement agency" that has also been "reviewed and approved [by the Council] as

commensurate with the current peace officer basic course offered at the Montana law enforcement academy," then the officer need only complete "the peace officer basic equivalency course." Stated differently, an appointed peace officer qualifies to attend the MLEA basic equivalency course if the officer attended a non-MLEA basic course that was approved by both: (1) a state law enforcement agency and (2) the Council.

Here, MLEA is in discussions with colleges in Montana to approve a curriculum for a peace officer basic course that is "commensurate with the current peace officer basic course offered at" MLEA. The program will then be reviewed and approved by the POST Council. The question is whether, when a graduate of this program is appointed by an agency, the exception at 7-32-303(8)(a) will apply and only require a basic equivalency course at MLEA, or whether a statutory change is required.

As explained above, the 8(a) exception applies if the basic course taught at the college is approved by (1) a state law enforcement agency and (2) the Council. Under this scenario, the Council will have approved of the program as commensurate with the MLEA course. Therefore, the only question is whether MLEA qualifies as a "state law enforcement agency." It does. While "state law enforcement agency" is not defined in this section, MLEA is governed by the Montana Department of Justice (DOJ), and DOJ determines the curriculum at MLEA, among other things. *See* § 44-10-201 to -202. As DOJ governs and establishes the curriculum at MLEA, and DOJ is without question a state law enforcement agency, this requirement is met. To interpret the statute otherwise would lead to the absurd result of MLEA not being qualified to approve a basic course as commensurate with its own course – certainly not what the Legislature intended – and thus should be avoided. *See U.S. West v. Dep't of Revenue*, 2008 MT 125, ¶ 19, 343 Mont. 1, 183 P.3d 16 ("a literal application of a statute which would lead to absurd results should be avoided whenever any reasonable explanation can be given consistent with the legislative purpose of the statute.") (citation omitted).

Conclusion

The graduate of a college course approved by MLEA and the Council would qualify for the exception under § 7-32-303(8)(a) and thus only have to take the basic equivalency course after appointment.

LEGAL MEMORANDUM

To: Timothy Allred

From: J. Stuart Segrest

Date: October 25, 2022

Cc: Katrina Bolger

Re: Whether § 7-32-303(8)(a), MCA, allows an officer to attend a non-MLEA basic course after hire and then qualify for equivalency.

Timothy,

You have asked that I provide a legal memo analyzing whether the basic equivalency exception at § 7-32-303(8)(a), MCA (the "8(a) exception"), applies where an agency sends a recently hired, uncertified officer to an approved non-Montana Law Enforcement Academy (MLEA) basic course, as an alternative to MLEA basic, during the year after hire. The answer is no. While the statute is not entirely clear on this point, the best reading of the statute, and the one most in line with the intent and purpose of the statute, is that the 8(a) exception applies only to non-MLEA courses completed prior to an officer's hiring, and thus prior to the start of the one-year period to attend either the full MLEA basic course or the basic equivalency course.

Background

MLEA has been in discussions with Montana colleges regarding a law enforcement basic course curriculum that would be taught at the college and approved by MLEA and the POST Council as "commensurate with" the MLEA basic course. In a prior memo, I explained that a graduate of such an approved course would qualify for equivalency under the 8(a) exception.

In a recent meeting, the Curriculum Committee asked whether an officer would qualify for the 8(a) exception if the uncertified officer attended an approved non-MLEA college course *after* being hired, as an alternative to the basic course at MLEA as contemplated by § 7-32-303(6), MCA. The answer to this question requires an analysis of the language and intent of section 8(a).

Applicable Law and Analysis

Section 7-32-303(6), MCA, requires a peace officer to “successfully complete the peace officer basic course at the Montana law enforcement academy ... within 1 year of” initial appointment or reappointment. The only exception is as provided in subsections (7) and (8).

Section 7-32-303(8)(a), MCA, allows an officer to take the “the peace officer basic equivalency course” as an alternative to the full MLEA basic course if the officer “has successfully completed a peace officer basic course that is” approved by MLEA and POST (see prior memo for analysis). Emphasis added. The question here is whether this exception, and particularly the phrase “has successfully completed,” requires completion *prior to* the officer’s appointment, or whether an officer that successfully completes an approved non-MLEA course *after* appointment qualifies.

The Montana Supreme Court considers four factors when weighing competing statutory interpretations:

- (1) Is the interpretation consistent with the statute as a whole?
- (2) Does the interpretation reflect the intent of the legislature considering the plain language of the statute?
- (3) Is the interpretation reasonable so as to avoid absurd results?
- and (4) Has an agency charged with the administration of the statute placed a construction on the statute?

U.S. West v. Dep’t of Revenue, 2008 MT 125, ¶ 16, 343 Mont. 1, 183 P.3d 16.

Taking the statute’s plain language (factor (2)), first, the requirement that an officer “has successfully completed a peace officer basic course” may be read two ways. One acceptable way to read the statute is that the 8(a) exception only applies if the officer successfully completed the approved basic course prior to hire. That is, a natural reading of “has successfully completed” is in reference to an event that already happened. However, one could also read “has successfully completed a peace officer basic course” to be met, technically, once the officer passes an approved basic course, even if this occurred post-hire, as long as this occurs within the year of hire and in time to apply for and attend the basic equivalency course. In other words, if the officer takes and passes an approved course within a few months of hire, it is then grammatically correct to say that he “has successfully completed [an approved] peace officer basic course” at that time, even though this was not true when the officer was hired.

Though the 8(a) exception may technically be read to apply to an officer that completes a non-MLEA course after hire, the better reading based on the remaining three factors is that the exception only applies to officers who completed the course prior to hire. As to legislative intent under factor (2), and agency construction under factor (4), POST's intent when it proposed subsection 8(a) and POST's consistent interpretation of the exception is that it only applies to situations where an officer has previously completed an approved non-MLEA basic course prior to appointment. Indeed, the most common scenario in which the 8(a) exception applies is for officers that previously worked for law enforcement in a different state or for a federal or tribal agency in Montana. In these situations, the officer necessarily "has successfully completed a peace officer basic course" prior to appointment.

This interpretation is also more consistent with the statute as a whole (factor (1)). Subsection 6 requires the officer to attend MLEA basic "within 1 year" of appointment. This requirement may be substituted for taking "the basic equivalency course ... within 1 year" of appointment under 8(a). Read together, an officer has one year to either take the full basic course or an equivalency course, not one year to do both. Reading 8(a) to allow an officer to take both a full basic course and an equivalency course after appointment is thus not contemplated by the whole statute when read together.

Finally, interpreting 8(a) to allow an officer to complete a non-MLEA basic course after hire may lead to an absurd result. Specifically, an agency could choose to send an officer to a full non-MLEA course as an alternative to MLEA basic; perhaps for monetary or other reasons. This would contradict, however, or at least undercut, subsection 6's requirement that the officer "complete the basic course *at the Montana law enforcement academy*" Emphasis added.

Conclusion

The best reading of § 7-32-303(8)(a), MCA, considering the intent, purpose, and prior construction of the statute, is that the exception applies only to non-MLEA courses completed prior to an officer's appointment, and thus prior to the start of the one-year period to attend either the full MLEA basic course or the basic equivalency course.

LEGAL MEMORANDUM

To: Timothy Allred, POST Executive Director

From: J. Stuart Segrest, Counsel to POST

Date: April 6, 2023 [revised]

Cc: Katrina Bolger

Re: School Marshal Program

Timothy,

You have asked that I provide a legal memo analyzing the law, passed in 2021 as HB 572, allowing appointment of a school marshal by a school district board of trustees. *See* §§ 20-7-1335 to -1338, MCA. In particular, you ask whether (1) a school marshal qualifies as a public safety officer; (2) whether POST has any duties or oversight as to school marshals; and, (3) what POST discipline a school marshal would fall under. In sum, to be eligible to serve as a school marshal, an officer must be deputized or otherwise appointed by a person authorized by law to appoint peace officers, such as a sheriff. Once deputized, the person is subject to POST oversight and certification requirements.

Background

It is unclear whether POST was consulted when HB 572 was considered and passed by the Legislature. The legislative hearings do not include testimony from POST, and the committee members did not pose a question to POST. The sponsor did explain in committee that a school marshal must already be an active or retired peace officer, must be POST certified, and must maintain POST certification. According to the sponsor, the goal was to have a school marshal act like a traditional school resource officer while being paid by the school district, with district funding, as opposed to being paid by the law enforcement agency.

POST took no action on this law, or as to an appointed “school marshal,” until Katrina Bolger received a question from a sheriff about a school marshal appointment and the relationship between a school marshal and POST. This memo attempts to answer that general question and the specific questions above.

Applicable Law and Analysis

The school marshal law allows a school district's board of trustees to "appoint an independent contractor or a school district employee to be certified as a school marshal." § 20-7-1335 (1), MCA. "To be eligible to serve as a school marshal" the candidate must: "be an active or retired peace officer as defined in 46-1-202" or "an active or retired [peace]¹ officer from another state" and continue, after appointment, to "meet the qualifications required for peace officers pursuant to 7-32-303." § 20-7-1335, MCA. Thus, to serve as a school marshal, the officer must *already* be an active or retired peace officer; the school marshal appointment may not be the person's first peace officer appointment. Indeed, as explained below, a school marshal appointment alone does not confer peace officer status because a school district does not qualify as a peace officer appointing authority under Montana law.

I. Requirements prior to appointment as a school marshal.

Starting with an active in-state officer, to be eligible to serve as a school marshal, the officer must meet 7-32-303 qualifications, including POST certification. *See* § 7-32-303(2)(k), MCA. Most active officers will already be POST certified, and so will meet this requirement. If the officer has had their POST certification revoked or suspended, they would not qualify to be appointed as a school marshal. As to a peace officer within one year of their initial appointment, who has not completed the peace officer basic course, the officer must "become eligible for certification," 7-32-303(2)(k), and thus will be required to complete basic within the year.² To do so, the recently appointed officer will have to be deputized or appointed as discussed below.

As to a retired in-state officer, to be eligible to serve as a school marshal, the officer must meet 7-32-303 requirements, and thus be certified or "eligible for certification" as a peace officer. § 7-32-303(2)(k), MCA. If the officer has had a "break in service" of less than 3 years, the officer is eligible to serve as a peace officer without further training. If the officer has had a break in service of more than 3 years, the officer will be required to successfully complete a basic

¹ This subsection uses the term "public safety officer," but because 20-7-1335(3)(c) requires the person be "an active or retired peace officer" the only "public safety officer" that would qualify from another state is a peace officer.

² Unless extended by POST upon application of the peace officer appointing authority.

equivalency or full basic course, depending on the length of the break. § 7-32-303(7), MCA. To do so, the retired officer will have to be deputized or appointed as discussed below.

As to an out-of-state officer, to be eligible to serve as a school marshal, the officer must meet the certification requirements under 7-32-303(8), including POST approval of their out-of-state certification and completion of the basic equivalency or full basic course, depending on whether the officer's break in service is more than five years. To do so, the out-of-state officer will have to be deputized or appointed as discussed below.

II. All school marshals must be deputized by or continue working for an authorized law enforcement agency.

As noted above, under 20-7-1335(3)(b), a person must "meet the qualifications required for peace officers pursuant to 7-32-303" to be eligible to serve as a school marshal. To qualify as a peace officer, a person must be appointed by an authorized agency listed in § 7-32-303(2): "A sheriff of a county, the mayor of a city, a board, a commission, or any other person authorized by law to appoint peace officers" (collectively "authorized agency"). Neither the school marshal law (20-7-1335 to 1338), nor any other Montana law authorizes a school district's board of trustees to appoint peace officers.

Because a school district cannot appoint a peace officer, appointment by a school district alone is insufficient to meet 7-32-303 requirements. Instead, the school marshal must be deputized or otherwise appointed as a peace officer by an authorized law enforcement agency. *See* § 7-4-2401, MCA (deputy officers); § 7-32-4108 (appointment to police force), MCA. Appointment as a reserve or auxiliary officer, however, is insufficient, because neither reserve nor auxiliary officers qualify as a peace officer under 7-32-303.³

The potential authorized agencies available to appoint a school marshal as a peace officer will vary depending on the location of the school. This law, however, is intended primarily to address the need for school officers in rural areas (according to legislative discussions) and thus the potential appointing authority will often be the county sheriff.

³ While a reserve officer is defined as a "peace officer" under 46-1-202, *see* § 7-32-201(6), reserve officers are not subject to certification and training under 7-32-303 but instead to the streamlined training requirements under 7-32-214.

As such, all officers, once appointed and serving as a school marshal, must be deputized or appointed by an authorized agency as a peace officer. This includes an active in-state peace officer. If the active officer quits his or her peace officer position with an authorized agency to work as a school marshal, the person will no longer meet 7-32-303's requirements unless deputized by their prior agency or another authorized law enforcement agency. Alternatively, because 20-7-1335(2)(b) provides for part-time employment as a school marshal, an active officer may continue to be employed part time by the law enforcement agency as a peace officer and work part time for the school district as a school marshal. As to retired or out-of-state officers, they must also be appointed/deputized as a peace officer by an authorized agency prior to and during their time serving as a school marshal to meet 7-32-303 peace officer qualification.

III. Interaction with POST.

As explained above, any person serving as a school marshal must meet peace officer qualifications and thus be certified by POST. Because the authorized agency will be the appointing law enforcement agency, not the school district, POST would track the officer through the appointing law enforcement agency. Like any other peace officer, a school marshal would be required to maintain certification and would lose eligibility as a school marshal if POST suspends or revokes their certificate. §§ 7-32-303(11); 20-7-1335(3)(b), MCA.

When a school district appoints a school marshal, it must ensure the person appointed "satisfies the qualifications required under 20-7-1335," including peace officer qualification. § 20-7-1337, MCA. The district must also "submit the school marshal's name, date of birth, and address of the school marshal's place of employment" to: (1) POST; (2) "all applicable law enforcement agencies" with jurisdiction in the school district; (3) the police chief if the district is in a municipality; and to (4) the county sheriff. § 20-7-1338, MCA. Taken together with the 7-32-303 requirements, POST should be informed when a person is appointed as a school marshal by both the law enforcement authority appointing the person as a peace officer (§ 7-32-303(4), MCA) and by the school district.

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Conclusion

As discussed above, a school marshal is not, standing alone, a public safety officer under Montana law. A person must be appointed as a peace officer by an authorized law enforcement agency to serve as a school marshal. A lawfully appointed school marshal will therefore be subject to POST oversight and certification as a peace officer, but POST should regulate the peace officer through the appointing law enforcement agency, not the school district.

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*Draft Approved by the Business Plan/Policy Committee on June 13, 2023

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

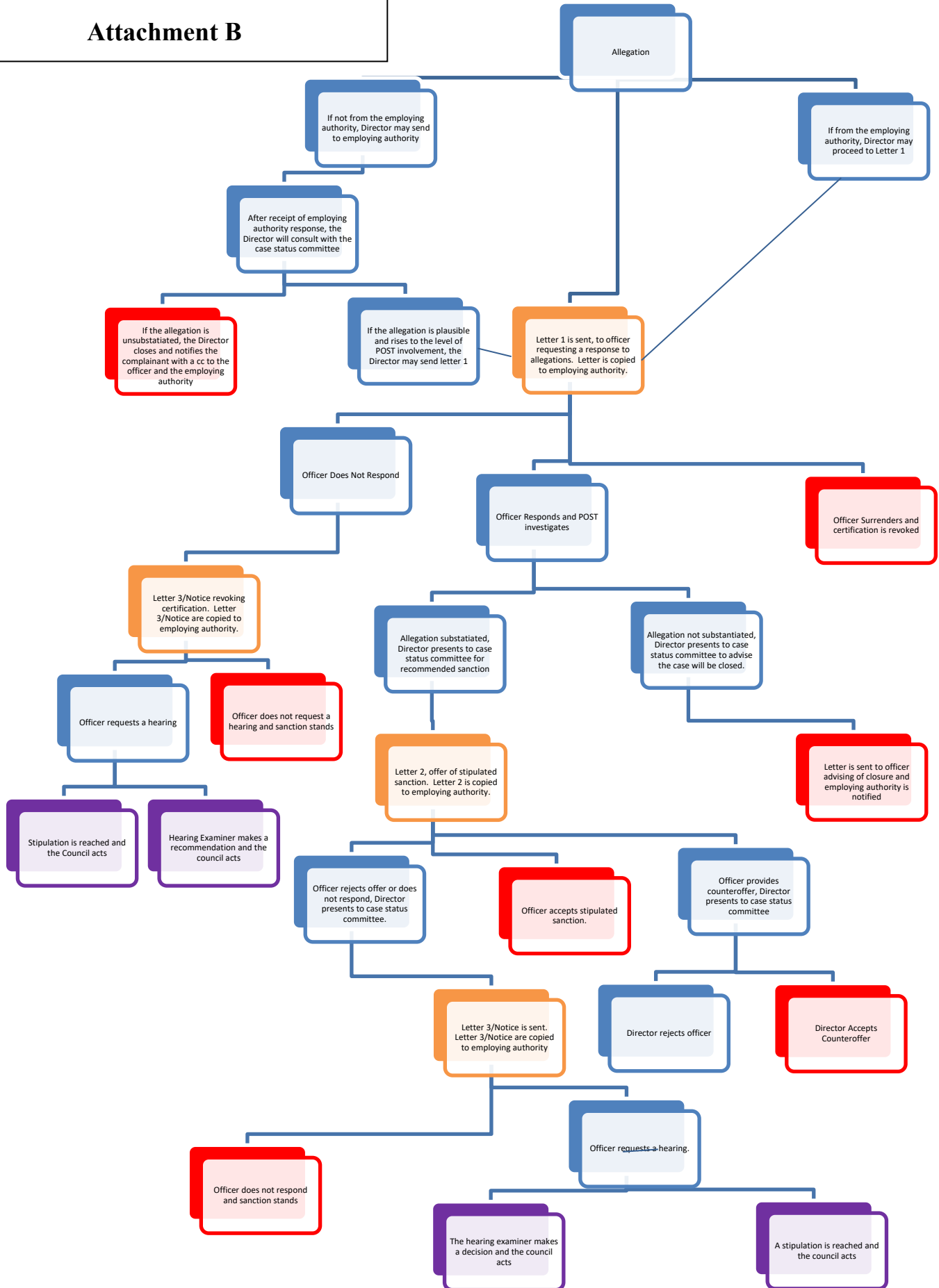
- d. Failure to complete an employing authority's probationary period for any issue which does not include a violation of the public safety officer code of ethics. This may include, but is not limited to: failure of firearms qualifications, failure of the Montana Physical Abilities Test, or an officer's 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



Policy and Procedure for Determination of Qualifications for POST Certification

Policy: POST will issue certificates to public safety officers upon notice to POST of an officers' qualification for certificates.

Section 1 Procedure for Determining Qualifications for the POST Basic Certificate

1. POST will issue basic certificates pursuant to ARM 23.13.206. Issuance will be based upon an officer's completion of the appropriate basic requirements. When POST is notified of an officer's fulfillment of the requirements, POST will issue the certificates within a timeframe which POST determines is reasonable.
2. POST will determine whether the time in service requirement has been met based upon the Notice of Appointment which the employing authority sends to POST.
 - a. POST will create a system to identify officers' time in service which allows POST to issue basic certificates in a timely manner.
3. POST will determine whether the basic requirements have been met based upon:
 - a. Confirmation from the Montana Law Enforcement Academy (MLEA), that the officer successfully completed the appropriate basic course;
 - b. In the case of a Probation and Parole Officer, confirmation from the Department of Corrections that the officer successfully completed the Probation and Parole basic course;
 - c. In the case of reserve officers, the officer's and agency administrator's submission of the Notice of Qualifications for Reserve Certificate and Application for Award of Reserve Certificate form which has been approved by the council; or
 - d. Confirmation from MLEA that the officer successfully completed the appropriate equivalency course.
 - i. Equivalency is available to peace officers and Detention/Corrections officers and POST must approve an officer for equivalency prior to an officer's attendance, if the officer wishes to meet the basic training qualification by attending equivalency in lieu of a full basic course.
 - ii. POST will approve or deny requests for equivalency based upon the procedures outlined in Sections 1.1 or 1.2.

Section 1.1 Procedure for Determining Qualifications for Peace Officer Equivalency

1. POST will consider only requests for equivalency for peace officers which are submitted to POST by an employing authority.
2. An employing authority may make an equivalency request to POST for a peace officer on a Basic Equivalency form or on the agency's letterhead. The request for equivalency must provide a minimum of the following information:
 - a. The date and location of the officer's basic course;
 - b. The agency from whom the officer has received certification and the date on which the officer was certified; and
 - c. A notarized release of information which has been signed by the officer. The release of information which the officer signed for the employment background may be sufficient. POST staff has an equivalency release of information available to employing authorities which may be provided upon request.
3. Upon receipt of a request for equivalency for a peace officer, POST staff will determine whether the officer has been appointed. No officer will be approved for equivalency if:
 - a. The employing authority has not submitted a Notice of Appointment to POST; or
 - b. The employing authority has not informed POST of an offer of employment which is conditioned in whole or in part upon POST's approval for the officer to attend equivalency.
4. After confirmation of an officer's appointment status, POST staff will contact the appropriate entity/ies to investigate the training and certification status of the officer which may include, but is not limited to:
 - a. The officer's prior employers
 - b. The officer's prior certifying agency/ies
 - c. The officer's current employer
5. POST staff will check the National Decertification Index to determine whether the officer's certification has been sanctioned.
6. POST staff may request any additional documentation concerning training, discipline, or certification sanction which POST deems reasonable to determine the officer's qualification.

7. If an equivalency request is made to POST prior to October 1, 2019, and the officer's prior basic academy hours are not at least equivalent to the current MLEA peace officer basic, equivalency will not be granted.
8. If a request for equivalency is made after October 1, 2019, and the officer's basic academy course hours are not at least equivalent to the current MLEA peace officer basic course, POST may examine the officer's experience and ongoing training to determine training equivalency.
 - a. POST will first examine all of the officer's training and determine if the officer's ongoing training would meet or exceed the number of hours taught at the current MLEA peace officer basic. If an officer's ongoing training is used to determine equivalency, the officer may not receive credit hours toward other certificates from the hours used.
 - i. Example: An officer attended a 200-hour basic course and has 300 hours of ongoing training which would, in combination with the basic, be equivalent to the 480-hour MLEA peace officer basic course. Only 20 hours of the officer's ongoing training may be applied to other certificates:

$$\begin{array}{r}
 200 \text{ hours} - \text{basic} \\
 + 300 \text{ hours} - \text{ongoing training} \\
 \hline
 500 \text{ hours} - \text{total training} \\
 \\
 500 \text{ hours} - \text{total training} \\
 - 480 \text{ hours} - \text{MLEA basic} \\
 \hline
 20 \text{ hours} - \text{training that may be used toward further} \\
 \text{certificates}
 \end{array}$$
 - ii. POST will not use the officer's prior ongoing training courses for basic equivalency which may qualify an officer for other certificates (i.e., instructor development or management courses) without the consent of the officer and the employing authority.
 - b. If an officer does not have sufficient ongoing training or there is not sufficient documentation of ongoing training to determine that the officer's training is equivalent, POST will then examine the officer's years of experience to determine whether the experience would be equivalent to receiving an MLEA basic. POST will use the following formula to determine basic training based upon years of service: 1 year of service = 40 hours of training.

- i. Example: An officer attended a 200-hour basic course and has 7 years of experience. The years of service are equivalent to 280 hours of training.

$$\begin{array}{r} 7 \text{ years} \\ \times 40 \text{ hours} \\ \hline 280 \text{ hours} - \text{years of service} \end{array}$$

$$\begin{array}{r} 200 \text{ hours} - \text{basic} \\ + 280 \text{ hours} - \text{years of service} \\ \hline 480 \text{ hours} - \text{total training} \end{array}$$

- ii. If an officer's years of service are such that the above formula would exceed the required basic hours, the officer may not use the additional years of service as equivalent to ongoing training for the purpose of receiving additional certificates.
 - iii. If an officer's years of service are used to meet the training requirement for equivalency, the officer may still use those years of service toward other certificates.
9. Upon approval of the equivalency request, POST will send the approval letter to the employing authority and copy the officer. The appropriate MLEA application will be attached to that letter with instructions on how the officer may gain acceptance to the equivalency course. If the request is denied, POST will send a letter to the employing authority with a copy to the officer which will include instructions concerning how the officer may challenge the denial.

Section 1.2 Procedure for Determining Qualifications for Detention/Correction Officer Equivalency

- 1. POST will consider only requests for equivalency for detention/correction officers which are submitted to POST by an employing authority.
- 2. An employing authority may make an equivalency request to POST for a detention/correction on a Basic Equivalency form or on the agency's letterhead. The request for equivalency must provide a minimum of the following information:
 - a. The date and location of the officer's basic course;
 - b. The agency from whom the officer has received certification and the date on which the officer was certified; and

- c. A notarized release of information which has been signed by the officer. The release of information which the officer signed for the employment background may be sufficient. POST staff has an equivalency release of information available to employing authorities which may be provided upon request.
3. Upon receipt of a request for equivalency for a detention/correction, POST staff will determine whether the officer has been appointed. No officer will be approved for equivalency if:
 - a. The employing authority has not submitted a Notice of Appointment to POST; or
 - b. The employing authority has not informed POST of an offer of employment which is conditioned in whole or in part upon POST's approval for the officer to attend equivalency.
4. After confirmation of an officer's appointment status, POST staff will contact the appropriate entity/ies to investigate the training and certification status of the officer which may include, but is not limited to:
 - a. The officer's prior employers
 - b. The officer's prior certifying agency/ies
 - c. The officer's current employer
5. POST staff will check the National Decertification Index to determine whether the officer's certification has been sanctioned.
6. POST staff may request any additional documentation concerning training, discipline, or certification sanction which POST deems reasonable to determine the officer's qualification.
7. If the officer's basic academy course hours are not at least equivalent to the current MLEA detention/correction basic course, POST may examine the officer's experience and ongoing training to determine training equivalency.
 - a. POST will first examine all of the officer's training and determine if the officer's ongoing training would meet or exceed the number of hours taught at the current MLEA detention/correction basic. If an officer's ongoing training is used to determine equivalency, the officer may not receive credit hours toward other certificates from the hours used.
 - i. Example: An officer attended a 100-hour basic course and has 100 hours of ongoing training which would, in combination with the basic, be equivalent to the 160-hour MLEA detention/correction

officer basic course. Only 40 hours of the officer's ongoing training may be applied to other certificates:

$$\begin{array}{r} 100 \text{ hours} - \text{basic} \\ + 100 \text{ hours} - \text{ongoing training} \\ \hline 200 \text{ hours} - \text{total training} \end{array}$$
$$\begin{array}{r} 200 \text{ hours} - \text{total training} \\ - 160 \text{ hours} - \text{MLEA basic} \\ \hline 40 \text{ hours} - \text{training that may be used toward further} \\ \text{certificates} \end{array}$$

- ii. POST will not use the officer's prior ongoing training courses for basic equivalency which may qualify an officer for other certificates (i.e., instructor development or management courses) without the consent of the officer and the employing authority.
- b. If an officer does not have sufficient ongoing training or there is not sufficient documentation of ongoing training to determine that the officer's training is equivalent, POST will then examine the officer's years of experience to determine whether the experience would be equivalent to receiving an MLEA basic. POST will use the following formula to determine basic training based upon years of service: 1 year of service = 40 hours of training.
 - i. Example an officer attended a 100-hour basic course and has 2 years of experience. The years of service are equivalent to 80 hours of training.

$$\begin{array}{r} 2 \text{ years} \\ \times 40 \text{ hours} \\ \hline 80 \text{ hours} - \text{years of service} \end{array}$$
$$\begin{array}{r} 100 \text{ hours} - \text{basic} \\ + 80 \text{ hours} - \text{years of service} \\ \hline 180 \text{ hours} - \text{total training} \end{array}$$

- ii. If an officer's years of service are such that the above formula would exceed the required basic hours, the officer may not use the additional years of service as equivalent to ongoing training for the purpose of receiving additional certificates.

- iii. If an officer's years of service are used to meet the training requirement for equivalency, the officer may still use those years of service toward other certificates.
8. Upon approval of the equivalency request, POST will send the approval letter to the employing authority and copy the officer. The letter will provide instructions on how the officer may gain acceptance to the equivalency course. If the request is denied, POST will send a letter to the employing authority with a copy to the officer which will include instructions concerning how the officer may challenge the denial.

Section 2 Procedure for Determining Qualifications for Intermediate and Advanced Certificates

1. POST will issue intermediate and advanced certificates pursuant to ARMs 23.13.207 and 23.13.208. Issuance will be based upon an officer's completion of the appropriate training, certification, and time in service requirements. Upon approval of an application for intermediate and advanced certificates, POST will issue the certificates within a timeframe which POST determines is reasonable.
2. POST will determine whether the time in service requirement has been met based upon the Notices of Appointment which the employing authorities send to POST, except as provided in 2.b.
 - a. All time in service must be discipline-specific. For example, an officer who was employed as a Probation and Parole officer for 2 years may not use those 2 years of service toward a detention/correction intermediate or advanced certificate.
 - b. Officers with experience as a public safety officer, as defined in 44-4-401, MCA, in another jurisdiction may receive credit for that time in service upon providing documentation of that time in service to POST with the officer's certificate application. Such documentation may include:
 - i. A POST transcript from another state
 - ii. An inservice training record from the officer's non-Montana employing authority/ies
 - iii. Other documentation may be approved as sufficient on a case-by-case basis.
 - c. In the case of intermediate certificates, the officer must have been working a minimum of one year with the officer's current employing authority. POST will review its appointment records to determine if this requirement has been met.

3. POST will review its certification records to determine if the officer has the required certificate/s to qualify for additional certification/s. For example, an officer must have the discipline-specific basic certificate in order to qualify for an intermediate certificate.
4. POST will review its training records and the officer's inservice records, if provided, to determine if the officer has the required hours for certification.
 - a. Training credit hours are not discipline-specific. For example, if a peace officer was previously employed as a detention/correction officer and received 100 POST training credit hours during the officer's detention/correction employment, the peace officer may use those 100 hours toward a peace officer intermediate certificate.
 - i. No training credit will be granted for any college courses which were not submitted for approval prior to December 22, 2018.
 - ii. No training credit will be granted for any military training which was not submitted for approval prior to December 22, 2018, except for military training received when the officer was working as a public safety officer as defined in 44-4-401, MCA.
 - iii. No training credit will be granted for any basic training.
 - iv. No training credit will be granted for any training received when the officer was not employed as a public safety officer, as defined in 44-4-401, MCA, except as provided in 4.b.
 - b. If an officer applied for POST credit hours for college courses or military training prior to December 22, 2018, and the credit was granted by POST, up to 25% of the required hours may be applied from that credit. For example, if a peace officer applies for an intermediate certificate which requires 200 hours of POST Training Credit, POST may apply up to 50 college or military credit hours toward the 200-hour requirement.
 - c. If an officer attaches an inservice training record to the application, up to 15% of the required hours may be applied from that record. For example, if a detention/correction officer applies for an intermediate certificate which requires 144 hours of POST Training Credit, POST may apply up to 21.6 inservice training hours toward the 144-hour requirement.
 - i. Acceptable documentation of inservice training may include an excel spreadsheet which includes at least the dates of the training, the length of the training, and the type of training the officer received, an agency transcript, or any other list which provides the information required for POST to identify the training received. The acceptability of inservice documentation will be determined on a case-by-case basis.

- d. Officers with experience as a public safety officer, as defined in 44-4-401, MCA, in another jurisdiction may receive credit hours toward certificates upon providing documentation of training which would meet POST's requirements in ARMs 23.13.301 and 23.13.302. POST will not record such training hours on the officer's Montana POST transcript, but will maintain the documentation submitted by the officer. Such documentation may include:
 - i. A POST transcript from another state
 - ii. A training record from the officer's non-Montana employing authority/ies
 - 1. When submitting a training record from an employing authority, the officer must indicate which training would meet POST requirements in ARMs 23.13.301 and 23.13.302
 - iii. Other documentation may be approved as sufficient on a case-by-case basis.

Section 3 Procedure for Determining Qualifications for Instructor Certificates

1. POST will issue instructor certificates pursuant to ARM 23.13.212. Issuance will be based upon an officer's completion of the appropriate training, certification, and time in service requirements. Upon approval of an application for instructor certification, POST will issue the certificate within a timeframe which POST determines is reasonable.
2. POST will determine whether the time in service requirement has been met based upon the Notices of Appointment which the employing authorities send to POST, except as provided in 2.b.
 - a. Time in service is not discipline-specific. For example, a detention/correction officer who was employed as a Probation and Parole officer for 6 months may use those 6 months of service toward an instructor certificate.
 - b. Officers with experience as a public safety officer, as defined in 44-4-401, MCA, in another jurisdiction may receive credit for that time in service upon providing documentation of that time in service to POST with the officer's certificate application. Such documentation may include:
 - i. A POST transcript from another state
 - ii. An inservice training record from the officer's non-Montana employing authority/ies
 - iii. Other documentation may be approved as sufficient on a case-by-case basis.

3. POST will review its certification records to determine if the officer has the required basic certificate and that the status of that certificate meets the requirements of ARM 23.13.212.
4. POST will review its training records, to determine if the officer has the required Instructor Development course or its equivalent.
 - a. If an officer attended an instructor development course or its equivalent prior to October 28, 2017, and that course was approved by POST the officer may use that course to qualify for instructor certification.
 - b. If an officer attends a course which the officer believes is equivalent to instructor development, or an instructor development course which has been approved as such by POST after October 28, 2017, the officer and the employing authority must certify that the course met the requirements of ARM 23.13.212(2)(d), such certification is subject to audit pursuant to POST's training audit policy. Courses which may be recognized as equivalent to instructor development include, but may not be limited to:
 - i. DARE
 - ii. SFST Instructor
 - iii. A Bachelor's degree in Education
 - c. Officers with experience as a public safety officer, as defined in 44-4-401, MCA, in another jurisdiction may receive credit for an instructor development course which meets the requirements of 23.13.212. POST will not record such training hours on the officer's Montana POST transcript, but will maintain the documentation submitted by the officer. Such documentation may include:
 - i. A POST transcript from another state
 - ii. A lesson plan from the course which the officer wishes to use to meet the training requirement
 - iii. A training record from the officer's non-Montana employing authority/ies
 1. When submitting a training record from an employing authority, the officer must indicate the instructor development course that meets POST requirements in ARMs 23.13.212, 23.13.301 and 23.13.302
 - iv. Other documentation may be approved as sufficient on a case-by-case basis.

Section 4 Procedure for Determining Qualifications for Supervisory Certificates

1. POST will issue supervisory certificates pursuant to ARM 23.13.209. Issuance will be based upon an officer's completion of the appropriate training,

certification, and time in service requirements. Upon approval of an application for supervisory certification, POST will issue the certificate within a timeframe which POST determines is reasonable.

2. POST will determine whether the time in service requirement has been met based upon the application certification by the employing authority.
3. POST will review its certification records to determine if the officer has the required intermediate certificate.
4. POST will review its training records to determine if the officer has the required management course.
 - a. Officers with experience as a public safety officer, as defined in 44-4-401, MCA, in another jurisdiction may receive credit for management course which meets the requirements of 23.13.209. POST will not record such training hours on the officer's Montana POST transcript, but will maintain the documentation submitted by the officer. Such documentation may include:
 - i. A POST transcript from another state
 - ii. A training record from the officer's non-Montana employing authority/ies
 1. When submitting a training record from an employing authority, the officer must indicate the management course that meets POST requirements in ARMs 23.13.209, 23.13.301 and 23.13.302
 - iii. Other documentation may be approved as sufficient on a case-by-case basis.

Section 5 Procedure for Determining Qualifications for Command Certificates

1. POST will issue command certificates pursuant to ARM 23.13.210. Issuance will be based upon an officer's completion of the appropriate training, certification, and time in service requirements. Upon approval of an application for command certification, POST will issue the certificate within a timeframe which POST determines is reasonable.
2. POST will determine whether the time in service requirement has been met based upon the application certification by the employing authority.
3. POST will review its certification records to determine if the officer has the required supervisory certificate.

4. POST will review its training records to determine if the officer has the required training.
 - a. Officers with experience as a public safety officer, as defined in 44-4-401, MCA, in another jurisdiction may receive credit for training which meets the requirements of 23.13.210. POST will not record such training hours on the officer's Montana POST transcript, but will maintain the documentation submitted by the officer. Such documentation may include:
 - i. A POST transcript from another state
 - ii. A training record from the officer's non-Montana employing authority/ies
 1. When submitting a training record from an employing authority, the officer must indicate the training/s that meets POST requirements in ARMs 23.13.210, 23.13.301 and 23.13.302
 - iii. Other documentation may be approved as sufficient on a case-by-case basis.

Section 6 General Provisions for Determining Certification Qualifications

1. As provided in POST ARM 23.13.205 no training hours will be granted for any basic training. This includes but is not limited to out of state, federal, tribal and military basic training.
2. Unless otherwise noted in Montana law, POST policies, or POST ARMs, no training credit will be granted for any training which an officer obtains if the officer is not employed as a public safety officer, as defined in 44-4-401, MCA, at the time the training is received.
3. Upon issuance of any certificate, POST will mail the original certificate to the employing authority of the applicant. It is the responsibility of the employing authority to disseminate the certificate to the appropriate officer upon the employing authority's receipt of the certificate.

Policy and Procedure for Auditing Training Hours

Policy: POST will conduct random audits of officer and/or agency training records in order to ensure compliance with POST ARMs 23.13.201, 23.13.301 and 23.13.302. Should records be lacking, POST will provide officers and agencies an opportunity to remedy the matter.

Procedure for auditing POST-accredited training:

1. During the last full week of every month, POST staff will use a computer program to automatically generate a 6- digit number. The first 6-digit number generated which is the POST ID number of an active public safety officer will determine the officer or training to be audited.
2. The training transcript of the officer will be reviewed, and the most recent POST-accredited training on the transcript will be audited.
3. POST staff will locate the application which corresponds to the training and contact the agency, entity or individual who is required to retain the record pursuant to ARM 23.13.301.
4. The contact will be made in the form of a written letter, which will provide the agency, entity, or individual with 30 days from the date of the letter to provide a copy of the training records which have been retained pursuant to ARM 23.13.301.
5. If POST staff does not receive a response, the training credit hours related to the training may be removed from the officer or officers' training transcript upon written notice to the officer or officers.
6. If POST receives a response which is lacking required information, POST will make written contact with the agency, entity, or individual in the form of a letter. The agency, entity, or individual officer will be given 30 days from the date of the letter to obtain the required documentation and submit a copy to POST.
7. If POST staff does not receive a response, or the response received does not remedy the issue, the training credit hours related to the training may be removed from the officer or officers' training transcript upon written notice to the officer or officers.

Procedure for auditing training required pursuant to ARM 23.13.201

1. During the last full week of every month, POST staff will use a computer program to automatically generate a 6- digit number. The first 6-digit number generated which is the POST ID number of an active public safety officer will determine the officer to be audited.
2. POST staff will contact the officer's employing authority in the form of a written letter, which will provide the employing authority and the officer with 30 days from the date of the letter to submit to POST a copy of the officer's training records which demonstrate the officer received 20 hours of training in the last 2 years, to include an ethics training.
3. If POST receives a response which is lacking required information, POST will make written contact with the agency and officer in the form of a letter. The agency and officer will be given 30 days from the date of the letter to obtain the required documentation and submit a copy to POST.
4. If the officer has not received the required training, or if no response is received, POST will contact the officer and agency in the form of a written letter. The agency and officer will be given 6 months from the date of the letter to obtain and document the required training and submit it to POST. No training obtained during the 6- month period may be used toward the next 2-year training requirement.
5. At the agency's request, POST may provide training material or options for bringing the officer into compliance with ARM 23.13.201.
6. Once the officer has obtained the requisite training, the employing authority will submit a letter to POST, stating that the officer has been brought into compliance. The employing authority will attach a transcript or other written record establishing that the officer's training is in compliance.

Policy and Procedure for Obtaining POST Training Credit Hours

Policy: POST will approve training credit hours on an hour-for-hour basis. When a training has been approved, and when POST receives documentation that a public safety officer has completed the training, POST will enter training hours on the public safety officers' transcripts.

Procedure for Montana Public Safety Agencies

1. Any agency that would like to request POST credit hours may do so by using POST's "Application for POST Credit Hours for a Training." The application may be obtained from POST staff or on POST's website.
2. The agency applying for POST credit hours must provide the following information on the application:
 - a. the course name
 - b. the course location
 - c. the number of course hours
 - d. the course date/s
3. The agency must provide the email address and phone number of the individual responsible to retain documentation of:
 - a. any/all non-public safety officer instructors' biography/ies
 - b. the course agenda
 - c. a lesson plan
 - d. student materials and handouts
 - e. the PowerPoint, if available
4. The agency must certify:
 - a. that the course is over 2 hours in length
 - b. that the course was open and advertised
5. After the course is complete, the agency or entity that requested credit must submit a POST single or multi-day roster to POST.
6. Upon receipt of an application and roster from an agency, POST staff will review the application. If all required information has been provided, and the application is certified, the credit hours will be entered on the officer or officers' transcript.

No credit hours may be requested for non-working lunches. POST credit may only be granted for hours of actual instruction which are supported by the course material retained by the agency.

At any time, on a random basis, POST staff may audit the training records of any agency upon reasonable notice.

Procedure for Non-Criminal Justice Entities

1. Any entity that would like to request POST credit hours may do so by using POST's "Application for POST Credit Hours for a Training." The application may be obtained from POST staff or on POST's website.
2. The entity applying for POST credit hours must provide the following information on the application:
 - a. the course name
 - b. the course location
 - c. the number of course hours
 - d. the course date/s
3. The entity must provide an email address and phone number of the individual responsible to retain documentation of:
 - a. any/all non-public safety officer instructors' biography/ies
 - b. the course agenda
 - c. a lesson plan
 - d. student materials and handouts
 - e. the PowerPoint, if available
4. The entity must certify:
 - a. that the course is over 2 hours in length
 - b. that the course was open and advertised
5. After the course is complete, the entity that requested credit must submit a POST single or multi-day roster to POST.
6. Upon receipt of an application and roster from an entity, POST staff will review the application. If all required information has been provided, and the application is certified, the credit hours will be entered on the officer or officers' transcript.

No credit hours may be requested for non-working lunches. POST credit may only be granted for hours of actual instruction which are supported by the course material retained by the agency.

At any time, on a random basis, POST staff may audit the training records of any entity upon reasonable notice.

Procedure for Individual Public Safety Officers

1. Any individual officer who would like to request POST credit hours which has not been preapproved using the procedures above may do so by using POST's "Application for Individuals Seeking POST Credit Hours for Out-of- State and Other Courses," or for online courses, POST's "Application for Individuals Seeking POST Credit for Online Courses." The applications may be obtained from POST staff or on POST's website.
2. Every officer applying for POST credit hours must provide the following information on the application:
 - a. the officer's full name
 - b. the officer's date of birth
 - c. the name of the agency for which the officer works
 - d. the officer's phone number and email address
 - e. the course name
 - f. the course location
 - g. the number of course hours
 - h. the course date/s
3. The officer or the officer's employing authority must retain documentation of:
 - a. any/all non-public safety officer instructors' biography/ies
 - b. the officer's certificate of completion
 - c. the course agenda
 - d. the lesson plan
 - e. student materials and handouts
 - f. the PowerPoint, if available
4. The officer and the officer's employing authority must certify
 - a. that the course was over 2 hours in length
 - b. that it was open and advertised
 - c. that the officer attended at least 90% of the training
5. Upon receipt of an application from an individual officer, POST staff will review the application. If all required information has been provided, and the application is certified, the credit hours will be entered on the officer's POST transcript.

No credit hours may be requested for non-working lunches. POST credit may only be granted for hours of actual instruction which are supported by the course material retained by the agency.

At any time, on a random basis, POST staff may audit the training records of any officer upon reasonable notice.

Policy and Process for Submission, Response, and Reporting of Public Information Requests

Policy: POST will provide timely responses to all public information requests submitted pursuant to POST's processes. POST will report data on public information requests to the Legislative Finance Committee and to the public pursuant to Montana law. This Policy and Process and the Public Information Request Form will be posted on POST's website, and POST's Administrative Assistant will be listed on the website as the designated contact for public information requests by October 1, 2023. Effective October 1, 2023, the following processes will be followed regarding submission, response, and reporting of requests for public information.

Section 1: Process for Submitting Public Information Requests

1. All public information requests must be submitted by completing and sending POST's Public Information Request Form to POST's Administrative Assistant via mail or email. The following information requests do not need to be submitted pursuant to this process:
 - a. A public safety officer requesting his or her own POST transcript;
 - b. A public safety agency requesting information pursuant to a background release;
 - c. A public safety agency requesting an employee officer's information;
 - d. Any governmental agency requesting information for the purpose of determining an individual's eligibility for professional licensure or certification;
 - e. Discovery requests or other requests made pursuant to pending court action;
 - f. Subpoenas duces tecum; or
 - g. Requests for information from a criminal justice agency when the information is requested for the purpose of conducting a legally authorized investigation.
2. If POST's Administrative Assistant is unavailable, the requester may submit POST's Public Information Request Form to POST's Executive Assistant via mail or email.

Section 2: Process for Responding to Public Information Requests

1. Upon receipt of a POST Public Information Request Form, the Administrative Assistant will record the following information:
 - a. The identity of the requester;
 - b. What information is requested;

- c. The date of the request; and
 - d. Indicate the request is “in progress.”
2. Within five business days, the Administrative Assistant will consult with the Director or POST staff to determine which staff member should respond to the request. The Administrative Assistant will then contact the requester to acknowledge receipt of the request, and to inform the requester who will be responding to the request. If this acknowledgement is made by the Administrative Assistant via email, the staff member responsible for responding to the request will be copied.
3. Within five business days of the Administrative Assistant’s acknowledgement, the responding staff member will provide one of the following to the requester:
 - a. If the request is for a single, specific, clearly identifiable, and readily available public record, the responding staff member will provide the record; or
 - b. If the request is not for a single, specific, clearly identifiable, and readily available public record, the responding staff member will provide an estimate of the time it will take to provide the information, and any fees that may be charged for fulfilling the request.
 - i. Fees may be charged for any request that exceeds 50 pages of copying, more than one hour of staff time, or more than 30 minutes (.5 hours) of attorney time. See Attachment A.
 - ii. Upon notifying the requester of fees, POST’s time to respond to the request will be suspended until payment is received.
4. Upon the requester’s payment of fees, or upon notification of the estimate of time to fulfill the request when no fees are charged, the responding staff member will provide the requested information within 90 days.
5. If the Executive Director determines that additional time is necessary to respond to any public information request, the Executive Director or the Director’s designee will inform the requester in writing, explaining the reasons for the additional time required. The responding staff member will be notified of the written explanation and will produce the information within 6 months of acknowledgment or payment.
6. If the responding staff member requests additional information or clarification of an information request, the response time will be suspended until the requester has provided the requested information or clarification. If the request for additional information or clarification is denied by the individual requesting the public information, that denial must be made in writing. If, after 30 days of the responding staff members request, the individual requesting public information fails to respond to a request for clarification or additional information, POST may

close the request upon written notice to the person requesting the public information.

7. The POST Administrative Assistant will record a public information request as closed when the public information is produced, when the request is denied, or when the requester is notified of closure pursuant to paragraph 6, above.
8. POST will maintain electronic copies of every public information request and all related correspondence and responses under the applicable record retention policy.

Section 3 Reporting

1. POST will publish, on its website, information regarding the number of public information requests made pursuant to this process and the length of time it took for POST to respond to requests for public information. The information will be updated quarterly and will include:
 - a. Each request for public information received by POST;
 - b. A description of the responses from POST to each request for public information;
 - c. The total number of requests for public information received by POST;
 - d. The identity of each requester;
 - e. The information requested;
 - f. The date of each request;
 - g. The date on which each request was closed;
 - h. The number of hours it took for POST to respond to the request;
 - i. The costs imposed on the requester, if any; and
 - j. Statistics, which could include graphs or charts, regarding the number of public information requests POST has received and the length of time it took for POST to close the request.
2. Beginning July 1, 2024, POST will provide quarterly reports to the Legislative Finance Committee, which will include the above information.

Attachment A

POST Public Records Request Fee Schedule	
Photocopying	
Photocopying Charges, including staff time spent copying or scanning	\$0.35 per page in excess of 50 pages
Staff time to prepare material for production	Actual Cost
If the request is for extraordinarily voluminous material, POST may have copies made by Print and Mail Services	Actual Cost
Electronic Media Copies	
Electronic Media Copies – Staff time for copying electronic files	Actual Cost
Electronic media	Actual Cost
Mainframe and mid-tier processing charges, including processing time, transmission time, and report writing charges	Actual Cost
Email export	\$127.78 per hour
Other State ITSD Services	Actual Cost per rate schedule at http://sitsdservicecatalog.mt.gov/services
Legal Review	
Legal Review and/or Redactions	Actual Cost per hour after .5 hours of Attorney time and/or after 1 hour of staff time
Research and/or analysis whether involving paper or electronic records	Actual Cost per hour after .5 hours of Attorney time and/or after 1 hour of staff time

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Active POST Investigations/Contested Cases

POST Quarterly Report to the Law and Justice Interim Committee

Case Number	Date Opened	Stage	Process Remaining	Anticipated Completion Date	Additional Notes
23-20	6/12/2023	Awaiting Officer Response to allegations	Investigation	November, 2023, if settled	
23-04	2/3/2023	MAPA Process, Scheduling Conf. 7/6/23	Settle or take action	Unknown	
22-22	7/19/2022	Settlement Negotiations	Settle or take action	July, 2023, if settled	
22-26	7/19/2022	Investigation Complete	Offer Settlement, Settle or take action	July, 2023, if settled	Investigation was placed on hold pending criminal charges, but is moving forward now
22-48	11/16/2022	Investigation Complete	Offer Settlement, Settle or take action	July, 2023, if settled	
22-56	6/12/2023	Awaiting Officer Response to allegations	Investigation	November, 2023, if settled	Investigation was placed on hold pending criminal charges, but is moving forward now
23-21	6/13/2023	Awaiting Officer Response to allegations	Investigation	November, 2023, if settled	
23-15	5/8/2023	Officer has not responded to allegations	Take action; MAPA process or close	August, 2023 if no hearing requested	
23-06	3/20/2023	Settlement Negotiations	Settle or take action	July, 2023, if settled	
23-19	6/12/2023	Awaiting Officer Response to allegations	Investigation	November, 2023, if settled	
22-44	11/14/2022	Settlement Negotiations	Settle or take action	July, 2023, if settled	
23-07	3/20/2023	Settlement Negotiations	Settle or take action	July, 2023, if settled	
23-08	3/20/2023	Settlement Negotiations	Settle or take action	July, 2023, if settled	
23-22	6/12/2023	Awaiting Officer Response to allegations	Investigation	November, 2023, if settled	
22-09	1/26/2022	Begin Investigation	Investigation	October, 2023, if settled	Case was on hold for over a year pending employment arbitration and fitness evaluation
22-31	10/14/2022	Settlement Negotiations	Settle or take action	July, 2023, if settled	
23-05	3/20/2023	Action taken, awaiting officer hearing request	MAPA process or close	July of 2023 if no hearing requested	
22-32	10/14/2022	Settlement Negotiations	Settle or take action	July, 2023, if settled	Investigation was placed on hold pending criminal charges, but is moving forward now
23-23	6/12/2023	Awaiting Officer Response to allegations	Investigation	November, 2023, if settled	
23-24	6/12/2023	Awaiting Officer Response to allegations	Investigation	November, 2023, if settled	
22-37	10/17/2022	No Response to Settlement Offer	Take action; MAPA process or close	August, 2023 if no hearing requested	
23-17	5/8/2023	Officer has not responded to allegations	Take action; MAPA process or close	August, 2023 if no hearing requested	
23-18	5/25/2023	Awaiting Officer Response to allegations	Investigation	October, 2023, if settled	
22-53	11/17/2022	Evaluation Complete	Settle or take action	July of 2023 if closed	
23-10	5/4/2023	Officer has not responded to allegations	Take action; MAPA process or close	August, 2023 if no hearing requested	
21-66	12/16/2021	MAPA Process, Scheduling Conf. 6/5/23	Contested Case Process	January, 2024	
22-55	1/5/2023	Settlement Negotiations	Settle or take action	July, 2023, if settled	
23-12	3/20/2023	Settlement Negotiations	Settle or take action	July, 2023, if settled	
23-13	3/20/2023	Settlement Negotiations	Settle or take action	July, 2023, if settled	

POST Investigations on Hold

POST Quarterly Report to the Law and Justice Interim Committee

Case Number	Date Opened	Stage	Process Remaining	Anticipated Completion Date	Additional Notes
21-49	8/30/2021	Case is on hold	Investigation	Unknown	Case is on hold for employment grievance process
22-47	Not Yet Opened	Case is on hold	Investigation	Unknown	On hold for criminal
21-38	5/13/2021	Case is on hold	Investigation	Unknown	Case is on hold for civil litigation
21-59	10/18/2021	Case is on hold	Investigation	Unknown	Case is on hold for employment grievance process
21-60	10/18/2021	Case is on hold	Investigation	Unknown	Case is on hold for employment grievance process
22-07	1/26/2022	Case is on hold	Investigation	Unknown	Case is on hold for civil litigation
23-09	3/20/2023	Case is on hold	Investigation	Unknown	Case is on hold for civil litigation
22-13	3/8/2022	Case is on hold	Investigation	Unknown	On hold for criminal
23-11	3/20/2023	Case is on hold	Investigation	Unknown	Case is on hold for employment grievance process

POST Cases, Officer Serving Sanction

POST Quarterly Report to the Law and Justice Interim Committee

Case Number	Date Opened	Stage	Process Remaining	Anticipated Completion Date	Additional Notes
18-31	8/14/2018	Reached Settlement	Monitor compliance with settlement agreement	January, 2024, if no violations	
21-33	5/3/2021	Action taken	Monitor compliance with sanctions	October, 2023 if no violations	
22-21	7/21/2022	Reached Settlement	Monitor compliance with settlement agreement	January, 2024, if no violations	
21-63	12/15/2021	Reached Settlement	Monitor compliance with settlement agreement	September, 2023 if no violations	
18-32	8/14/2018	Reached Settlement	Monitor compliance with settlement agreement	November, 2024 if no violations	
20-14	5/11/2020	Reached Settlement	Monitor compliance with settlement agreement	October, 2025 if no violations	
21-64	12/16/2021	Action taken	Monitor compliance with sanctions	October, 2023 if no violations	
22-04	1/25/2022	Reached Settlement	Monitor compliance with settlement agreement	May, 2026 if no violations	
21-20	3/8/2021	Reached Settlement	Monitor compliance with settlement agreement	September, 2023 if no violations	
22-15	5/31/2022	Reached Settlement	Monitor compliance with settlement agreement	May, 2025 if no violations	
19-49	10/7/2019	Reached Settlement	Monitor compliance with settlement agreement	July, 2023 if no violations	
22-12	3/8/2022	Reached Settlement	Monitor compliance with settlement agreement	November, 2023 if no violations	
22-36	10/17/2022	Reached Settlement	Monitor compliance with settlement agreement	March, 2024 if no violations	
19-01	1/14/2019	Reached Settlement	Monitor compliance with settlement agreement	Upon retirement if no violations	
21-53	8/31/2021	Reached Settlement	Monitor compliance with settlement agreement	February, 2025 if no violations	
22-51	11/16/2022	Action taken	Monitor compliance with sanctions	October, 2025 if no violations	
20-33	9/23/2020	Reached Settlement	Monitor compliance with settlement agreement	November, 2024 if no violations	
22-52	11/17/2022	Reached Settlement	Monitor compliance with settlement agreement	October, 2024 if no violations	
19-13	3/12/2019	Reached Settlement	Monitor compliance with settlement agreement	November, 2023 if no violations	
21-43	6/1/2021	Reached Settlement	Monitor compliance with settlement agreement	July, 2024 if no violations	
23-14	3/20/2023	Reached Settlement	Monitor compliance with settlement agreement	July 1, 2026 if no violations	
19-57	11/25/2019	Reached Settlement	Monitor compliance with settlement agreement	January, 2024, if no violations	



Montana Public Safety Officer Standards & Training Council

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Beginning July 1, 2024, POST will provide quarterly reports to the Legislative Finance Committee, regarding public information requests. This information will also be published on POST's website.