MONTANA Public Safety Officer Standards and Training Council Meeting Agenda ~ February 22, 2023 Video Conference 9:00 a.m. ~ 12:00 p.m. Helena, MT 59602

Dial-in Participant Information Dial-in number: (866) 576-7975 Access code: 612394

OR

Teams Meeting ID: 294 811 032 009 Password: MFdVfx

- I. 9:00 a.m. ~ Call meeting to order, roll call, identify and welcome guests.
- II. 9:05 a.m. ~ Pledge of Allegiance and Invocation
- III. 9:10 a.m. ~ Approval of minutes for December 7, 2022, Council Meeting
- IV. 9:15 a.m. ~ Public Comment/Guest Issues
- V. 9:25 a.m. ~ Old Business
 - A. Legislative Updates
 - 1. Legislative Appropriation
 - 2. HB77 Clarified that all Public Safety Officers may apply for a 180 extension to complete the minimum training standards. (44-4-404)
 - 3. HB78 A public safety officer's time to complete the minimum training standards must be stayed. (44-4-404)
 - 4. HB256 Expand when auxiliary officers may carry a weapon (7-32-232)
 - SB79 DOC appoint criminal investigators for certain purposes (7-32-303)
 - 6. SB232 Deadline for public agencies to respond to Information requests (2-6-1006)
 - 7. LC4206 Revise laws relating to State Lottery investigators and enforcement (23-7-212)
 - 8. LC2771 Revise laws related to POST officer certification (7-32-303)

B. Thad White V. POST Update

- VI. 9:50 a.m. ~ Break
- VII. 10:00 a.m. ~ Lausch ~ Oral Argument

VIII. 10:45 a.m. ~ New Business

- A. LEOB Basic Syllabus ~ Justin Braun
- B. K-9
- C. Committee Reports
 - 1. Curriculum ~ Conner Smith
 - 2. Case Status ~ Jim Thomas
 - 3. Coroner ~ Leo Dutton
 - 4. Business Plan/Policy ~ Jess Edwards
 - 5. ARM ~ Leo Dutton

D. Director's Report

- 1. Budget
- 2. Calendar 2022 Statistics
 - Total Public Safety Officers ~ 5,885
 - Certificates Awarded ~ 1,082
 - Training Approved ~ 2,096 trainings, 8,025 officers, 119,651 hrs.
 - Equivalency Granted ~ 103
 - Extensions Granted ~ 51
 - Information Requests ~ 375
 - Complaints ~ 123
 - Opened Investigations ~ 56
 - Sanctioned Certificates ~ 8
 - Revoked/Denied Certificates ~ 14
- 3. Office Updates
- 4. POST Council Members Term Expiration
- 5. Next Council Meeting May 3, 2023

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

^{*} Executive Sessions are closed to the public in order to protect the privacy rights of individuals or to discuss active litigation strategy. Times are approximate, except for public comment; actual times may vary depending on presentation/discussion time.

HONTANA POST COUNCIL MEETING Documber 7. 2022 Faco to Face Mosting 9:00 a.m. to 11:53 a.m. Montana Law Enforcement Academy 2260 Siorra Road East Rolona, MT 59602 Council combers progent: Joseo Slaughter -Council Chair. Los Dutton, Jim Thomas, Eristino 10 White, Bill Smith, Jim Anderson, Jess Edwards, 11 Wystt Glade 22 13 Council Members present by phone: 14 Mark Spafe 15 Matthow Saylor 16 Hike HcCarthy 17 Eimberly Burdick 18 29 Council Members not present: 20 Conner Smith 21 22 Staff Hopbors Present: Timothy Allred. Executive 22 Diroctor; Estring Belgor, Paralogal/Investigator; 24 Tine Crasmor, Administrative Assistant: Brooks Standish, Administrative Assistant.

PART LOGAL Counsel: Stuart Sogrest, Req. Suestp in the Room: Kon Broom Justin Graun Dan Smith Kim Much 10 11 12 13 14 15 16 17 18 19 21 22 23 24 25

WHEREUPON, the following proceedings were 2 hadı CHAIR SLAUGHTER: So it's 9:05 by my watch, so we're going to call this meeting to order. Timothy, if you would, please, will you start by taking roll. MR. ALLRED: Wo'll start with the Council. Jesse Slaughter. 10 CHAIR SLAUGHTER: Hore. 11 MR. ALLRED: Hack Kraft. 12 MR. MRAFT: Here. MR. ALLRED: Xristino White. 13 14 MS. WHITE: Bere. 15 MR. ALLRED: Joss Edwards. 16 MR. EDWARDS: Hero. 17 MR. ALLRED: Hatthew Saylor. 18 HR. SAYLER: More. 19 MR. ALLRED: Wyatt Glado. 20 NR. GLADE: Mero. HR. ALLRED: Conner Smith. 21 22 (No response) 23 MR. ALLRED: Conner told me he might not 24 be able to make it today. Hike HcCarthy. 25 HR. McCARTEY: Boro.

HR. ALLEED: Jim Andorson. MR. ANDERSON: Sere. MR. ALLRED: Bill Smith. MR. BILL SHITE: Soro. MR. ALLEED: Kimborly Burdick. MS. RURDICK: Horo. MR. ALLRED: Jim Thomas. MR. THOMAS: Horo. MR. ALLEED: Lee Button. 10 HR. DUTTON: Hore. 11 HR. ALLRED: Those with POST staff. 12 Council. Executive Director Timothy Allred. 13 CHAIR SLAUGHTER: Stuart, go ahoad. 14 MR. SEGMEST: Stuart Segrest, Counsel to 15 POST. 16 MS. BOLGER: Ratrina Bolgor, Paralogal 17 Investigator for POST. HS. CRANHER: Tina Cranner, 10 19 Administrative Assistant for POST. MS. STANDISS: Brooks Standish. 20 21 Executive Assistant for POST. 22 MR. ALLRED: Those in the room, ploase 23 introduce yourself. Please spell your last mane 24 and come up to the mike. 25 MR. DAM SMITH: Dan Smith, S-M-I-T-H,

I'm with the Montana Police Protective Association.

MR. BROWN: Justin Braun, B-R-A-U-M, Interim Administrator, Montana Law Enforcement Academy.

MR. BRESH: Kon Droon, U-R-E-E-W, Lowis 6 Clark County Protrial Services.

MR. ALLRED: Thank you. Is there anyone on the phone other than Council members?

(No response)

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NR. ALLRED: Apyone else introduce thomsolves if they have not had a chance to do se. (No respense)

CHAIR SLAUGHIER: Okay. Thank you, Timothy. I appropriate that. So we're going to start roal quick with the Plodge of Allegiance, and then please stay standing for the invegation.

(Ploage of Allogiance)

(Invocation)

CHAIR SLAUGHTER: Ploage be scated. Thank you, Shoriff. So next on the agenda is the approval of the September 7th Council minutes. Has overybody looked those over?

MR. BILL SHITE: Bill Smith, Motion to approve.

CHAIR SLAUGHTER: Do I have a second! MR. THOMAS: Jim Thomas. Second. CHAIR SLAUGHTER: Any discussion on tho minutes, any issues or anything?

(He response)

CHAIR SLAUGHTER: Sceing none, all in favor of approving the minutes, signify by saying ayo.

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CHAIR SLAUGHTER: Opposed, same sign. (No response)

CHAIR SLAGGRIER: Okay, Notion carries. Thank you. So at this time, we will open up the floor to public commont or any quest issues. Is there any public comment? Go ahead.

MR. BRAUN: Justin Braun, Intorin Administrator, Montana Law Enforcement Accdomy.

I'd just like to have the Council aware. 19 Montana Law Enforcement Agademy will be proposing changes to the LECB Basic. We're currently qualuating the program.

And per a recent PERC (phonotic) report on recruit training, we're going to try to move the Academy curriculum further in alignment with those recommendations. Wo'll be conducting

workload analysis on the work that the basic officers do, and making recommendations, and changing the course curriculum, removing some things, moving some things to independent learning, moving some courses to integrate them in a contextural way of training in alignment with the current training, and some areas will be removed altogether, as we den't feel that they are in alignment with what a basic patrol officer needs leaving the Ausdemy.

Furthermore, we are looking at adding PTE's to expand the capacity for our ability at the Academy to run Basic students through the 1503. We're aware that there is a bettleneck with our capacity to do that, so we're evaluating that, and the Legislature will determine whether we're successful with that. So that's all I have.

CHAIR SLAUGHTER: Thank you so much. Thank you for boing hore. I appropriate it. Any other quest issues or public comment at this time?

(No response)

CHAIR SLAUGHTER: I'll just double check. On the phone, is there combers of the public or quosts that have a comment?

MB. BURDICK: Mr. Chair.

CHAIR SLAUGHTER: You. I can barely hosr you, but yos.

MS. BURDICK: Sorry. This is Mimborly. I'm going to got off this phone and I'm going to redial on a different phone hore.

CHAIR SLAUGHTER: Okay. Thank you, Kimborly. Final call for any public commont or quest issues.

(Ho response)

CHAIR SLAUGHTER: Hearing none, we're going to move on to old business. Logislative undates. And I boliove Director Allred has copies in front of everybody. I'll turn it ever to you to kind of got started.

MR. ALLRED: Tos. Those are two bills to rovice 44-4-404. This has gone about the Council before for discussion. Chair Slaughter worked with Representative Stove Galloway to be the sponsor. It's bill draft LC193 and LC194.

These pertain to the 100 day extension that is already in our Administrative Rules, but it's kind of nore clean-up language, make sure it's in the law, that it's for all public safety offigors.

And 194 portains to the one year time

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poriod for Public Service Officers to attend the Basic Academy. If they have a military order for state or federal, that time would become stayed. They're required to give a notice if they do have military order tun days before, then when they return, and then ten days at least after they return to office. So that time would be paused or stayed that one year.

Before you is just kind of like the language of the law so you can see it.

CHAIR SLAUGHER: Thank you, Timothy. I appropriate that. Just so the Council is award, Konday was the final day of unlimited bill drafts, so Honday was the deadline. So Director Allred get me these, and I gave them to Stove Galloway who is a Representative up in Great Palls, just to get them on there so we've get them.

It doesn't necessarily mean that he'll carry them. Oftentimes they'll pass them off to semabody class, but I wanted to make sure the unlimited bill draft time that we get them.

I think they only get four bill drafts after this. It's protty limited. So that's something to think about. If something class comes up during the assaion, we have to choose work

wicely and be very calculated with what we want to do, but I think these are good amendments, and we've obviously discussed them quite a bit. Any questions, communic, supported about that?

NR. KRAP7: Director Allred, this is Chiof Kraft. Is there a way that you'd be able to omail those bill drafts to the members that are not present?

AR. ALLESD: You. Absolutely. I apologize. We actually just got these. One of them we just got yesterday, and the other one we got the day before, so we brought them as copies, but we will get these enailed out to everybody on the phone, or just enail them out to the whole council so you'll have a hard copy, electronic copy, too.

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MR. SEGREST: If I can jump in on that.

If we can make sure to get -- so this is LG194,

the second one we get. If you could also give

then the bill pre-introduction letter for LG193,

the first one also.

And those are the current language. The Council will notice it's a little bit different than the original language you passed, but I think substantively it's the same, so I think we're on

track.

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CHAIR SLAUGHTER: Any further questions regarding the bill drafts?

(No respense)

CHAIR SLAUGHTER: Moving on, Stuart emailed the updated request records. Does this come before executive session, or are we discussing this before? I just wanted to be careful and not got should of purels.

MS. ROLORR: I think that we work going to talk about the email itself, and then go into session first to advise the Council.

CHAIR SLAUGHTER: That's great. Thank
you. I just wanted to make sure we had that
correct. So I'll turn it ever to either Stuart or
Katrina to discuss the email before we go into
executive session.

MR. SEGREST: So as you'll all remember, the Council proviously -- we had gotten several public record requests for information on law enforcement officers. And what the Council had ducided to do is for privacy reasons to only disclose to the press these records of officers that had some type of discipling, suspension or whatnot.

so we informed this Den Grunwald, who is a professor at Duke University, criminologist, he had submitted one of these record requests, and so we provided him with this information on suspended and otherwise disciplined officers.

And he came back and he said, "Mell, r understand the concerns about privacy, and what if we reduct the names and use a number identifier so that it's not personally identifying the officer?" So we took that request, and we thought about it, and I've written a more that the Council has and that we'll discuss during the session.

The reason that we're going into executive session is because this does involve legal service, and there's the potential of a lawsuit depending on what happens after and what the Council decides to do. So just as an explanation, that's where we are, and then we'll discuss further in executive session, unless there are further questions at this time on the enail itself or the chain of events.

(No response)

CHAIR SLAUGHTER: Ratring, do you have anything to add?

Hs. BoldER: I don't think so. Stuart

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covered it.

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CHAIR SLAUGHTER: Okay. Thank you. So at this point in time, we will go into executive session, so if the guests please diear the room, and we will -- give us a minute on the phone.

We'll take care of the recording and overything.

We'll be in xecose for three minutes.

(off the record for executive session)

CHAIR SLAUGHTER: So we are now out of

Oxocutive session, and we are back on the record-During executive session, we discussed with Counsel, FOST discussed with Counsel Stuart Segrest the public second request that was brought forward by Ben Grunwald, and the FOST Council decided that we will release information in its handout. Does the public have this handout?

HA. BOLGER: No.

CHAIR SLAUGHTER: But there's a sample table, which is my information, and the guests and public are allowed to see that.

But it's a sample table that does not have the law enforcement officer's name attached to it, but does have the requested information attached to it, which was agency name, rank, officer type, data of appointment, date of separation, and then if there is a type of separation.

So that's all of the information it lists. So if anyone wants to see this, it's my information you're free to see it. We did acknowledge -- and I think this is important that we put thin on the record. We acknowledge that public officials -- Shoriffe, Chiefs of Police -- it's likely going to be really easy to figure out who those people are, but we kind of live in a fish howl anyway. That's just the way it is. So I just kind of want to get that on the record before we move on.

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going to keep moving into new business. The PSC Basic syllabus. Director Allred, do you want to chart us off on that.

MR. ALLERD: The dispatcher Besic syllabus was presented by Justin Braun and Kim Much, and they're included on Page 33 and 36 of the updates. And at this time, Justin and Kim, if you want to come forward and just kind of -- or one of you to state kind of what your changes are and why made those obserges.

MS. MVCB: I'm Kim Hush. I'm the PSC

Program Managor hore at HLSA.

A couple changes that we're requesting. When I took over in July, there were some pratty massive changes, so this is a bit of fine tuning, now that we're kind of working out the kinks of some of the new stuff.

We are looking to drop as -- we introduced montal health first aid, which is an overall mental health look at -- it's an eight hour course. It's a kind of canned course that looks at several mental health situations. One of them is suicide provention. And then in call taking, we deal with suicide, how to take a call from a suicidal individual.

So we don't see the need anymore for the two hours separated out suicide prevention course, so we would want to drop that completely, as it's found throughout.

Wildland fire was new to PSC92 and 93.

and after a couple of run throughs, we've
discovered that eight hours was a bit of a
stretch. We could definitely fill up the time -I'm sure wildland fire is fun to teach on -- but
we didn't need eight hours for it. We're going to
drop it to aix. This was in discussion with DHRC,

who is the primary instructors for that.

And two hours, we want to add something that dispatchers does with on a very regular basic that's not touched on yot is fearch and Rescue.
This is something dispatchers, just like wildland fire and the other situations, they tend to be the primary intake of that.

And discussing with Search and Resour, they would like to see an increase in knowledge in dispatchers, so that they can ask the right questions and instruct the individuals with proper information. So we wanted to add two hours of Search and Resource.

And those were the basic changes. Any questions?

CHAIR SLAUGHYER: Does the Council have any questions?

(Ho response)
CHAIR SLAUGHTER: On the phone?
(No response)
CHAIR SLAUGHTER: Kinberly?

MS. BURDICK: This is Rimborly. I was just going to say that I roally like the looks of this. I'm really actually very thrilled to see -- (insudible) --

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CHAIR SLAUGHTER: Rimborly, I'm no sorry, but you're really far away. Can you really speak up so that we can get you on the record?

MS. BURDICK: I guess all I wanted to comment on was I think this looks really great. and I'm roally thrilled to see the bullying and negativity in the com contag part in there, bocause that definitely is a thing in a comcontor. So I think this looks wonderful.

CHAIR SLAUGHTER: Thank you, Rimberly. Any further comments or enything?

(No response)

CHAIR SLAUGHTER! Thank you so much. Is thoro anybody else that has any comments on this? (No response)

CHAIR SLAUGHTER: Director, do we need to take any action on this?

MR. ALLRED: Chair, you need to approve

CHAIR SLAUGHTER: So at this time we will take a motion to approve the PSC Basic syllabus so written.

MR. DUTTON: This is Lec. I move to make a motion we approve the PSC Basic course suggestions and changes as noted in our syllabus.

MS. BURDICK: Second. Kimberly. CHAIR SLAUGHTER: So I have a motion by Shoriff Dutton and I have a second by Kimberly. Any further discussion on this matter?

(No response)

CHAIR SLAUGHTER: Socing none, all in favor of approving the PSG Basic syllabus, signify by saving ave.

(Response)

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CHAIR SLAUGHTER: Opposed, same sign. (No response)

CHAIR SLAVSHIER: Motion carries. Thank you so much. I really appropriate you being here. Thanks a lot.

Nort is Misdemosnor and Protrial Basic syllabus, and at this point wo'll boar from Kon.

MR. BREEN: Thank you. I bolieve you have an outling of the proposed curriculum, and for your approval, wo've submitted a basic outline of the courses we plan to have at our Protrial and Misdemeanor Probation Officer Basic scheduled for June of this year.

There have been some changes from last year. We kind of fine tuned things. This is the second year that we actually put together our own

academy. In the past, pravious to last year, had two academies at Dawson Community College, and then there was one year prior to that -- I think Tim may have been involved in that -- when the Department of Corrections put on the Basic for us.

From last year, some of the changes are protty minor. We messed with some of the courses by an hour or something. Just for example, orientation, we had two hours scheduled, and the Academy did that, and said, "What are we going to do with two hours?" So we reduced that to one hour. Just some changes like that.

Some of the big changes: We have increased defensive testics from 24 hours to 32 hours. Last year we felt that -- even though Mike McCarthy was the instructor for it, he did a very good job, but we just didn't feel like he had enough time, not enough time for repetitions and things like that.

We had a class called Communication and Situational Awaronoss that we had scheduled last your for 12 hours. We've reduced that to four hours. A lot of it was repetition from other glasses.

Wo've increased our motivational

interviewing by four hours. We've added a class on SCRAM and GPS monitoring. Those are mostly the changes we've made.

We renemed our firearms training from Firegrow Training to Pircaros Familiarization. The issue we face is, for example, last year we had eight students from five separate entities. and only one entity even carry firearms, and that was Ravalli County. Ho's a sworn Deputy. Mone of the others carry firearms.

Wo're kind of a unique situation whore some of us are under counties, some of us are with private entities hired by counties. It's kind of a unique situation we're in, so we're adding things, subtracting things.

For example, Lowis & Clark County, wo don't do any monitoring as far as alcohol monitoring or GPS. That's done through the 24/7 program at the Shoriff's Office. But in Billings, thore's at least two agongies that are contracted 21 as Pretrial Misdemeanor Probation that do in-house 22 monitoring and UA testing.

so we're kind of in a unique situation 24 where we're trying to fit something in for everybody. Any questioner I'm serry. I den't

want to go on forever, Sheriff.

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CHAIR SLAUGHTER: Shoriff Dutton. MR. DUTTON: Just one, and you don't have to take a long time.

I find it very interesting to see motivational interviewing. I'm kind of interested in that. What is motivational intoguishing? Is that with a suspect, or is that with coworkers?

MR. BREEN: No. It's with our defendants. It's kind of a passive way of interviewing, where rather than a confrontational type interview, we're -- I'm former law enforcement, so it's a whole new way of interviewing to me. But where you get them to suggest things when they don't know that they're even suggesting them, and get them pointed in a right direction, if that makes sense to you.

MR. DUTTON: Yes, it does, Thanks. CHAIR SLAUGHIER: Thank you, Run. 50 we need to have a motion to approve Misdemeanor Protrial Basic syllabos. Can I get a motion. MS. WHITE: I so movo. Keistine. CHAIR SLAUSBIER: Kristine made o

motion. Do I have a second? MR. DUTTON: This is Loo. I second.

CHAIR SLAUSBIRR: Do we have any discussion about this?

(No response)

CHAIR SLAUGHIER: On the phone, any discussion?

(No respense)

CHAIR SLAGGETER: Hearing none, all those in favor of approving the Hisdomosnor Pretrial Basic syllabus, signify by daying ayo.

(Respense)

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CHAIR SLAUGHTER: Opposed, same sign. (No response)

CHAIR SLAUGHTER: Okay. Syllabus approved. Motion carries.

Maving on, we have to have a discussion shout a Monogandum of Understanding. So if the Council descrit mind. I'm going to go ahead and explain what this is and why this is.

Ho we have -- Director Allred, Byself. and Matrina -- have been talking, and we have started to run into some conflicts with DOJ. Basically what is happening is we are a 23 quasi-judiciary branch, they are an executive branch, and some of the things that they are directing staff to do, or some of the things that

DOJ is doing with FTB's, is outside of the Council's purviow, outside of the Council's suggestions or buy-in, and also creating some conflict.

And thoro's an issue because there's supposed to be separations of powers. I think it kind of started with the -- What kicked it off was probably the FOIR, public information request, so it started with that.

And we want to be good partners, the Council, with the Department of Justice. We want to work with them. And then when they're willing to help or offer suggestions -- just like any of our stakeholders, just like our Board of Crime Control, just our civilians, just like DOC. Shoriffs, anybody -- we want to liston to those suggestions because they're all our stakeholders.

Mowover, this coupling of those two togother has created issues, so much so that I reached out to the Governor's Office, and I talked to Lieutenant Covernor Eristen Juras, and I made her aware. I said, "We are having some protty significant and frustrating conflicts. They haven't come to a head yet, but they likely will in the near future if we don't remedy some of

those."

and the Liquienant Covernor, who is extremely thorough and dotailed, wont back through all of the session meetings from 2021 that regarded POST. And I don't remember this, and sho didn't may I was in the mosting -- or in tho hearing -- hearing not meeting -- but it was brought up that POST and Department of Justice would create an HOU to make sure these conflicts didn't happen.

So that was brought up. I don't remember who brought it up, or what hearing it was. But she said, "I just listened to it, and we need to do that."

So at that point in time I got with Director Allred and Matrine, and I said, "We need to start working on some type of MOU, or at least the skeleten of one. How that we're going into sension, we need to be working on it."

What I want to discuss is how much offert we should put into that MOU going into this session -- and I mean we need to do it. Don't got me wrong -- but where do we want to be on it?

We need to have a open discussion about it, we also need to have a discussion about things

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that we want to make sure are included in the HOV, but this is all dependent upon the Logislature not sunsetting the relationship between POST and DOJ.

If it sunsets, it's a most point, we don't mond it; but if it doesn't sunset, like it didn't last session, then we're going to need to make sure we have a really rebust and therough MBU, so that the Council -- in this complicated relationship where we are appointed by the Governor, but our staff is hired by the Attorney conoral -- so it is a complicated relationship that we have; and then to also make sure that we are still quasi-judiciary, and that we maintain our separation of powers, I guess.

MR. SEGREST: Independence.

CHAIR SLAUGHTER: Independence. Thank
you. So I guess I want to open up seen discussion
and questions and answers about this issue.

MR. GLADE: Sheriff Slaughter, before I go any further, can you tell no in your mind what the conflicts are?

CHAIR SLAUGHTER: Thank you for esking. So there's been a few. One was a DOJ employee who was temperarily assigned to the Council as an investigator without Council approval; just "Hore

you go." And I mean this when I say this and on the record. I don't believe this was done maliciously. This was done, "Hoy, you need a body. You're behind. Here you go."

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So some of the issues I had was this individual was sween, and those are divil investigations, and so how does that balance work, aspecially when they could be interviewing sensone who could accidentally incriminate themselves? Because that happens all the time. And now you possibly have an issue there, legally, especially in particular on the criminal side.

And then it was the parameters of that individual waren't really clear. That was another thing. And my feeling is: I think we all know we need the help, we need the FTE, but there should have been, if anything, even if it was done by enail, some type of Council buy-in or approval or notification, so that the Council was aware of it. And in talking to the Governor's office, once it happens, you can't undo it. They're protested employees.

Now, I've been told this is very much a temperary thing. By the first of the year it's over, it's done. But having transparency with the

Council, who is responsible not only to maintain our independence, but also to our stakeholders, because we're all representing people. And trust me, the fleed gates opened on me in a heartboat, and I spent days answering questions, and to which a lot of stuff I didn't know.

so I met with AG Enudsen and David Ortley, and kind of get what I teld you. But none of that information was provided. This person was just brought in. So that's issue No. 1.

Issue No. 2 is: POST staff made me aware that they are required by the Department of Justice to reach out to -- for POST staff to always let them knew if there's any of these public records requests, and to coordinate with their communications, public relations people.

Again, is that a possible thing that we need to do? Possibly. But probably not without Council approval, because -- and you could explain this to everyone better than I can -- but you have an executive branch directing a quasi-judicial branch what to release to the media, and how we're going to do it.

I took it as the help from the Attorney General's Office was, "Roy, our legal services will cover you if you make a stand on this." I kind of assumed that was the end of this rend, because the biggest concern on this -- as Stuart made us very awars, if you recall. If you had a public records request, and we get sued, and we lost, they could charge us all their attorney fees, and we have no way in our budget of covering it.

So those are the potential issues and conflicts that we're having. So those are the type of things that we want to delineate.

Now, with that discussion, I also think we need to make certain that this sunsets, and that POST become independent once again, so that we don't even have the look, that we don't even have this appearance is not good, and it creates issues. So I hope that captures the --

MR. GLADE: Thank you. It does. I'm just wendering if in approaching this MOU, if an examination of the statutes over the last, I would say five, maybe ten years, and how they've changed would be a good idea.

There's been so much change with regard to 2037, and the relationship with the Board of

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Crime Control over the last, I would say five years at least, that when changes happen at that level, often the details are overlooked.

post used to be administratively attached to the Seard of Crimo Control -- if I'm saying that correctly -- and so all of the quaci-judicial functions of POST that had made it to that level were then brought to the attention of the Beard of Grimo Control, who made the final say on how those things played out.

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And that was eliminated this less session, and so now FGST and Board of Crisco Control are no longer in that dynamic. There's no longer that relationship. And I'm just wondering if statuterily there was some deverage or competing that addressed the quasi-judicial nature of FGST as it relates to DGJ.

To tell you the truth, I can't even truck when POST was or was not attached to DOJ.
Has it always been, or has that changed recently?

CHAIR BLAUGHTER: So it's boon administratively attached, cosming the psychocks of staff have come through DOJ, but they weren't under the chain of domand. So he's now a -- what do they call them -- Bureau Chief -- (indigating)

-- ho's new a Eureau Chief of DOJ. That wasn't how it was before.

When you go bank to the 2017 session, post was independent. It was in 2019 that they administratively -- I'm sorry -- went beyond administratively attached, and made the sour staff post, full-fladged DOS supleyees acting at DOS's direction.

KR. CLADE: So with the Seard of Crime Control, I believe the board was proviously administratively attached to DDJ, and then neved to the DCC, and new I think we're back to the DCJ in some way, shape, or form.

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My point is that just with this amount of shuffling around, things tend to get lost in the mix, and maybe it might be worth our time to look at statutes, how they've changed ownr time, and if there's semething that's been lost that needs to be resurrested that would protect POST, or provide POST with some clarity on the differentiation between the executive branch delineation and the quasi-judicial function of POST, I think it would be worth looking at.

CHAIR SLAUGHTER: Good point.
NG. BOLGER: This is Matrine. Just for

your reference, Wyatt. In 2019, the Legislature adopted 2-15-228 which created the bureau. We prior to that were under the Council. And they amended 2-15-229, and that is the temporary statute, as is 228.

If the sunsets on those on July let, we revert back to being under the Council, and an autonomous State agency.

MR. GLADE: Under which Council?

HU. BOLUER: Under the POST Council. So
the Board of Crime Centrel, where that came from
is POST was an advisory council to the Board of
Crime Centrel. They were never quasi-judicial
under the board.

The Governor's Office, back in 2007, Foslixed that POST was operating as though it was a quani-judicial board, and took a look at it, and said, "Oh, FOST needs to change. It is changing. It has changed. The profession has changed."

And so in 2007, that's when POST was created as a quasi-judicial body of its own accord, but they kept that appeal to the Board of Crimo Control, and that was what has been changed during the last session. They removed that intermediary appeal.

It just didn't make some anymoro, because PGST has grown, and become its own sort of thing, and the Geard of Crims Central has grown and become its own thing, but we were both attached administratively to the Department of Justice just for purposes of paying our bills, and hiring, and firing, doing all those sorts of things. So hopefully that helps a little.

HR. GLADE: Thank you.

CHAIR SLAUGHTER: Shoriff.

HR. DUTTON: Mr. Chair, Shoriff. One other third thing was we as a Council could make a decision, we could hear the evidence, and we can decide and vote; and then the Department of Justice or the AG's Office can direct their Bureau Chief to do something different.

And that was the case when we had a former -- wasn't Executive Director. Went to Bureau Chief Eric Gilbertson. The Council had voted. However you want to say that, we heard the evidence, and we make a decision, but they direct the Bureau Chief to go, "No, I don't think we want to do that."

Bo those are concorns. That would be my third. Of the two you listed, that's the third

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concorn of how our decisions are overruled because the staff work for the Department of Justice, and they don't work for us. So if we vote, and give Mr. Allred a directive, that could be everturned.

CHAIR SLAUGHTER: Sheriff, just for clarity. Was that in relation to the public relations request?

MR. DUTTON: Yes, that is what it was.

CHAIR SLAUGHTER: So just to clear that
up, that was my decision to bring that back before
the Council, to bring Ortley in to have a
discussion, and then to have the Council revote on
that. What you're saying can happen, but I do
want to make sure that -- I was the one that said,
"Olay. We want to hear what Ortley has to say."

I thought Stuart did a really good job of explaining the risk to us, and here's the thing that we'ra -- here's why being attached to DOJ has always been appealing to the Legislature. I dove into this deep, I've been having talks with Bill Moreor and everything.

When they put us on an island, it's hard to budget for us. They really struggle with the budgeting for us. If they lump us into a major highly funded BOJ operation, if we go over budget,

then the SOJ absorbs that everage. I think if we're going to be quisi-judiciary, though, that's just semathing we're going to have to live with. We do have extreme budgets constraints.

So when I brought back in ortley to discuss with us the potential issues that Stuart had brought up, my biggest concorn -- and I think why the Council voted to go with their advice -- was who is going to pay those attorney fees if we lose? And when the AG's Office is like, "Yes. If you do this, we'll cover you," that was what made that decision appealing.

And in that situation, I folk the need to take dare of our stakeholders, the need to protect the public rights of all of our stakeholders in this recent was outweighed, you know, just the release, and worry about the attorney fees, when we know we had that issue covered.

I think there is some confusion about that, and that's probably on me, but I think that's the confusion. And here's why it's so complox. Yould so get -- If we separated, would we get IDJ assistance? And maybe we wouldn't. Naybe we'd really be on an island.

pm. porrow: I think we have -- Hr.

Chair, this is Loo. I think we have in the past, but we may pay for it or pay -- I den't knew if we have to budget for unexpected legal counsel, but I think that was one of the appealing parts when we want through the Legislature is, "Well, we'll just provide you with attorneys." But I think we pay for them out of our budget anyway.

CHAIR SLAUGHTER: Shoriff, you're correct. We do. And it is just a complex thing. I think that the biggest lift that DOS gives us is Director Allred, I know, is going to need more FTE's with our contested case issues that we're having. So when he asks for -- it's one thing with he asking for it, it's another thing coming from Bryan Lockerby and the DOS.

So those are all factors that we have to factor into our decisions on this, but that's why I wanted to have a discussion about it, and that's why it's important that we talk about all those issues. Anybody else?

MR. DUTTON: This is Leo. I recommend that we proceed forward with the MOU. If it becomes a non-issue, glad we have it; but if it doesn't, then bad on us for not recognizing that

was a potential. So my recommendation, out of one
contains, is that we ought to put some work into it
to have a fall back plan,

GUAIR SLAUGHTER: Thank you, Shoriff. Anybody clasf

NR. SEGREST: I have some thoughts. I agree that I think it's a good idea to go shead and put one in place. It's too bad that was sort of lost to history at a time, because that would have been a great thing to have had in place already. I think it would corrected obviously some of these issues that have come up.

one thing I would say is I think we do go shead and put semething into place, and in that regard I think we should have a discussion about some of the topics, sort of the general subject matter areas you think should be addressed. And I can do a first draft for the Council, and got working with DOJ on that.

Another thing is: If the Legislature decides to keep you under DDJ, so that it deasn't sumset, and we need the HOU longer term, I think we can look at it again, and maybe do a little more of a deep dive.

so I would think initially we could got

an HOU in place that directs some of the high level stuff we know is dening up, and if it's going to dentinue into the future, we look at it sgain and maybe have a more long term discussion shout it.

And another thing that I thought of as far as a potential conflict is when -- he you know, this board or this Council drafts and passes administrative rules, but DOJ has it own administrative rules process that its staff, which is also POJT staff, has to go through, so that's another level of control that DOJ has that it would not have if it was just administratively attached. So that's probably screeting we should also address in that HOU.

CHAIR SLAUGHTER: Okey. So I have two things, and I think we're going to need a motion to neve forward on thin, if I'm degreet, Stuart, but I think we need a motion to direct you to start an KOO process, correct?

MR. SEGREST: I think that would be best, and then I think we can probably — I think the metion would probably be to engage DOF on an BOU draft, with the understanding that the Council will probably — I don't know if you over wote by

draft, the council will want to look at it, and approve it, and not have to wait until the nown meeting. So that's the two things I would say.

CHAIR SLAVGHIRR: I agree. Is there any

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CHAIR SLAVOHIER: I agree. Is there any discussion or issue with that?

MS. SOLGER: In that a violation of public meeting laws? Would we need to have a apacial meeting on the phone?

KR. SESREST: You, maybe a special monting.

CHAIR SLAUGUTER: Let's do that. If overyone is chay with that, at some point we'll send out an email announcing a special meeting via Teams or Icom or whatover. I think that's a snart move.

So the other issue I want to address. which I think we're also going to need a motion on, too, is: As the Council, I think we should direct POST staff that before they release anything to DOJ Communication, they run it through POST staff, because we need to be aware of it not after the fact, but sheed of the fact.

so let's start with that one, because in my opinion, it's the easier of the two issues. So

I feel it's appropriate that we have a directive, or a motion to have a directive to direct POST staff that prior to any release to DOJ Communications, there is a notification to POST Council about that information. Can I got a motion.

HR. RRAFT: This is Chief Rraft. I so

CHAIR SLADGBTER: Thank you, Chief. Second.

HR. TECHAS: Jim Thomas. I second.

CHAIR SEAUGHTER: Any further discussion
just in relation to a notification before we
release information to the DOJ communications
regarding a media request?

MR. GLADE: Mr. Chair, I have some questions.

CHAIR SLAUGHTBR: Ploaso.

MR. GLADE: So you're directing this to the staff of the Council, who are also employed by DOJ; is that correct? I'm just wendering if this is going to get them in a jam in duty to their employer; not speaking necessarily about the content of the motion, more the consequences of it. We need to think through that. I don't know

the parameters of their ampleyment, or who their supervisors are, but I guess something I would forcese maybe becoming an issue.

CHAIR SLAUGHTER: I agree, Wyatt. I just think that it's appropriate that -- I guess my question is: What's our role here, if stuff is going directly to BOJ, modia rolesse, without the Council being -- if we're the last to know?

And I look at it like this. We're accountable to the Governor, and if I'm sitting thore, if he's calling no and saying, "What's going on, and what just got released?," and I'm like, "I don't knew anything about it," I think that puts him --

I mean I look at it like our job is to protect him and his interests, too, and we're just asking for a notification, so that if the Council has an issue shead of the curve, we can reach out to odd and say, "Whea, the Council has a problem with this, and we need to discuss this further," we consthing deem't slip out.

MR. ALIRED: Shariff Slaughtor, this is Director Allred. Just a question for clarification. Are we speaking at the time of the MOU. Daving this on the MOU, or right new?

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Docause the russen why I ack this question is because if this is moved forward, as Stuart suggested, and we do a opecial conference by phone, or telecommunication, video conference, whatever it may be, this could be an NOV which would then have to be reviewed by DoJ and --

HAS. BOLORD: This is Matrine. I know that the DOF Communications people actually got requests for information on POST stuff, and we don't always know if they're responsible --

MR. ALLRED: I'm just curious. Are you asking for the mation now or to be in the your

CHAIR SLAUGHTER: What I would ask in now, immediately, just so that we don't have a release of information without the Council's knowledge.

And Director Allred, I have no doubt that you would notify us if there was senathing big coming out, but if there's a directive to do that, I just want to make sure that it's -- I think it would happen esturally anyway, but I just want to make sure that it's noted that the Council will be notified before the release would do out.

> Just in this case --MR. McCARTHY: Sheriff, this is Mike

HoCarthy.

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CHAIR SLAUBHTER: Jo shoed.

MR. HCGARTHY: Being recently employed by DOJ, I guess I have a caution. If you could put some boundaries or some framework as to what information you're talking about, that would help the POST staff, because there is a lot of communication back and forth between DOJ and staff.

So I guess I'm looking for some framework, too. To keep them out of trouble, what type of information are you talking about that the heard needs to be notified of before it's sent out? Does that make sense?

CHAIR SLAUGHTER: Tas. Absolutely, Hike. Great question. I would say it's information that would be released publicly to the media.

MR. DUTTON: Hr. Chair, as long as we're in the discussion phase of the seconded motion, the request from DOJ was they wanted to knew about anything that was going to be released to the public, so they could either approve or disapprove, or that they just wanted to knew? What was their request?

CHAIR SLAUGHTER: Director Allred, can you kind of be specific about that, so I don't talt for you.

MR. ALLERED: Instead of giving a third person, I'm asking Katrina to. She's the one --

MR. SEGRECT: Let's just got to the

MR. ALLRED: Sho's the one that received

MS. BOLGER: So yos. It kind of grow over time. There was a matamorphosis of this. Initially it was just, "Do what you do with the press," and then it was, "If there is senething that is of particular public interest, you need to let us know before you release the information."

I don't know what the purpose is other than they require that they know. They want to know who is asking, who we've responded to, and what we're giving them, which is they just want to know.

When the AP request occurred, though, it was different, where they were schually jumping in and saying, "We want to have a say in what you release." And so that was -- it's been very confusing for shaff.

Typically the majority of our requests are regarding current investigations. It's fairly rare that we got the request for everybody's stuff. He've had a lot on the Richard Hack thing, and I know that DOJ Communications folks have fielded some of those requests outpide of our involvement as well.

And it may just be kind of a learning thing for them where they just wanted to learn more about what we're doing. I den't know. We were just told if we're responding to a press request, that the Communications people need to be informed.

CHAIR SLAUGHTER: Thank you, Katrina.
This is Jose Slaughter again. To make this
clear, I want to be crystal clear on the record on
this. We're not saying that they don't get that
information, and we're not saying that they can't

What we're saying is just exactly what Ratrine said. We don't want to them to respond to something publicly and we never know about it, because again, we're responsible to a different elected official, and that we want to be able to say, "We know about it, we're aware of it, and

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yos, we understood that response. In fact we helped with that response."

And I just think that's absolutely critical. So I don't in any way want anybody to think that we don't want post staff to follow that directive. They were given a directive to notify communications. I don't have a problem with that as the Chair.

What I have problem with is just I want to make sure before that happens, we're notified.
"Hey, there was a Richard Hack request and DOJ's inquiring about it, and they're looking at respending." I think it would be appropriate for the Council to reach out and say, "And what's your response going to be?" And I bet you 99 times out of a 100 we're going to say, "Sounds great."

At least that way when the person who we're assessmeable to, who is not only the Governor, the people, but also all of our stakeholders, we say, "Tes, we knew about that. We knew exactly what was going to be said. We were on the front ond of it, and I think we're okay."

So that's shat I'm locking for. And to abover Director Allred's quantion, I do think we need to make a metion on this, and I think wo do need to move forward, busause we're about to be in session, when we're being under -- I mean everyone goes under coruting during this time, and we want to be able to be accountable. I guess --

NR. ALLRED: One more clarification, Chair. In the motion that's been seconded, was there discussion of who you want the information sent to, or are you referring to the whole Council?

CHAIR SLAUGHTER: That's a great point.

MS. BULGSR: This is Ratring. Tos, that
was one of the things that I was concerned about.

When it's regarding an active investigation, the
ently Council mombers that should be privy to that
are the case Status Committee. So I guess I would
just suggest that if it was regarding a case, we
could run it by the chair of that committee.

CHAIR OLAUGHTER: I completely agree. I think if it's a braining issue, like the Richard Mack issue, I think it's my responsibility to receive that information, send out a mass quail to the Council, and make you guye aware that, "Bey, this is what's going on. Does anybody have any questionsy," and then move from there.

I feel like that's my burden to don!
with all that. Done anybody like to see it
different, like to see that -- I mean just go that
way?

(No response)

CHAIR SLAUGHTER: So I muse --

MR. DUTTON: Can you, Mr. Chair, can you repeat. We have a motion and a second, and we're fixing to vote after discussion, but I can't remember the motion now.

CHAIR SLAUGHTER: So maybe we need to amond the motion. So I think Chief Kraft made the motion. I think, Stuart, please correct me if I'm wrong here.

I think the motion needs to say that thore is a Council notification with regards to any modia release that DOS is requesting; that Council notification will be done through the Chair, unless it's involving an active case, which at that point it will be the chair of the Case Status Committee; and then it will be the Chair's responsibility to disseminate that information to Council members; and then obviously if it's a Case Status Committee, it will only remain among the Case Status Committee.

And it's simply just a notification that, "Hoy, this information has been requested, and can possibly be released. Be we have any issue with it?" That's it. Does it need to be anneaded. Stuart?

MR. SEGREST: I think it's more of a clarification, so understanding that's the motion. The person that made the motion can amond if they want to, but I think as long as everybody's on the same page that that's the motion before you and that that's what you're voting on.

CHAIR BLAUGHTER: Does everybody
understand the clarification? We're in
discussion, so if anyone doesn't, please speak up-

CHAIR SLAUGHTER: Okay. So having heard the motion, I'll go to a voto. All those in favor, signify by saying ayo.

(Sosponse)

CHAIR STATUSTER: Opposed, same eign.

CHAIR SLAUGHTER: Ckey. Motion carries. So Item No. 2 or "C" on our outline would be the HOU, and I think this one is going to be simpler, but I guess X would entertain a motion to direct POST staff to craft an MCD that will be intrinted and assisted by Stuart to avoid these situations to bogin with. So I quess right now tust to direct POST staff to do a POST/DOJ MOD.

MR. DETTON: This is how I wrote it down when you were talking before, so I make a motion for POST staff to oppose with Department of Justice in developing an MOU draft for the Council.

CHAIR SLAUGHTER: Do I have second? MP. EDWARDS: This is Joss. I'll second.

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CHAIR SLAUGHTER: Joss Edwards seconds. Any discussion on that particular issue, the MDU?

MR. SEGREST: I don't think this needs to be part of the motion itself, but here's some topics I've written down, and just while we're here. Obviously feel free to call me or email me with other things you think need to be included lator, but the administrative rules process --

And so those are subjects of the MOU: The administrative rules process; public record process and response process; staff appointment and control. Those are the things I heard, the main topids.

CHAIR SLAUGHTER: That sounds good. Doos anybody have any questions for Stuart? Discussion.

> MR. SEGREST: Or additions to that list? (No response)

CHAIR SLAUSHTER: Hearing none, all those in favor of the motion, signify by saying

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CHAIR SLAUGHTER: Opposed, same sign. (No response)

CHAIR SLAUGHTER: Thank you. Motion carries. At this time I think it's a porfect time for a broak, so let's take 15 minutes.

(Recess taken)

CHAIR SLAUGHTER: This is Jesse Slaughtor, and we're going to go hank on the record. We heard a phone ding at the break, so can we please, everyone on the phone, recheck in tust so we know who!s thoro.

MR. McCARTHY: Hike McCarthy. CHAIR SLAUGSTER: I hourd Mike McCarthy. Who olso?

> HR. ERAPT: Chiof Rraft. HS. BURDICK: I'm hore.

CHAIR SLAUGHTER: Thanks, Rimborly. appreciate it. So we just wanted to make sure we didn't loss snybody from the Council, so we know who all we had in hore. Is Matt Saylor on the phone?

(Mo response)

CHAIR SLAUGHTER: Okay. I am taking it that he stopped off the phone for a second. So we're back on, and at this point in time we are on committee reports. So starting out, Item No. 1 is going to be gurriculum, and Mike McCarthy, you're on the phone, and you're up.

HR. McCARTHY: Thank you, Hr. Chair. Pirst, can you duys hear me?

CHAIR SLAUGHTER: Yos.

MR. McCARTHY: The Corridulum Committee mot October 19th. Committee Chair Conner Smith was unable to attend, and I acted in his place.

The forms of the committee's discussions revolved around HLTA's proposal to allow colleges and universities to instruct Basic Law Enforcement Equivalency course. We had a great discussion rogarding this, and there's a lot to it.

HLEA Administrator Justin Braun and Professional Programs Managor Kolly Shorman word

on hand. They presented the information and answered some questions. I believe Administrator 3 Braun is in the audience, and if there's other questions that may dome up, he may be able to answer those also.

Stuart Segreat had been asked to look into the proposal to see if it was presently logal to be able to do this. His two documents can be found on Page 38 and 40 if you haven't road them. 10 They outling it pretty well, and explain a lot. 11 Stuart, did you want to go over those at all?

MR. SEGREST: Sure. I can. Do you want me to just start with the first mane maybe, and then the second is a little bit more of a specific

so this is the Outchor 14th memo, and it's basically whother statute as currently written allows the approval of a college teaching 19 an approved Basic course, whother that would equal 20 equivalency, specifically under statute 7-32-303(8)(a).

And if you look at Page 2 of that memo. 23 kind of toward the top, the main things that have to be met are: It has to be approved by a state law enforcement agency, and approved by the

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council. So in our scenario, we know the Council is going to review and presumably approve it at some point.

so then the question was: Does MLSA equate to a state law enforcement agency? And I analysed it in that bigger paragraph a couple down on that same Page 3, and basically it does. The main reason it does is MLEA is under the Department of Justice, and Department of Justice has ultimate authority and control over it, and obviously Department of Justice is a law enforcement aponcy.

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We also want into -- I explained a little bit about how courts interpret statutes, and one of the things Courts do is they don't interpret a statute in a way that would lead to abourd results, basically that would be conething that nebody would have intended.

And hore it just wouldn't make sense to say that MLSA can't certify another college to teach -- that enother college's course is equivalent to its own course. I can't imagine the Legislature meant that.

So anyway, in reviewing it, it seems like the answer in yes, that a Basic course

approved by MLEA and the Council, taught outside of MLEA at a college campus, would qualify for equivalency, and an efficer that has passed it and been hired by a law enforcement agency would qualify under (8) (a) for equivalency wouldn't have to take the full Basic course.

so that's kind of the threshold issue of part of the things we're working towards, dees the current statute provide for it, and the answer is yes.

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NR. HotARTHY: So discussion, after Stuart had given his documentation, it shows that HAZA can do this. I believe Katrina helped with this guideline, and MAZA staff helped with the guideline and gives --

It is not roady yet. NLEA believes it still has some work to do on the guidelines that would be sent to a college or a university that wants to participate in this. HLUB staff is still working on dealing with the colleges, and desing what they have to do. Administrator Braun, do you want to add anything?

CHAIR SLAUGHIER: He's approaching the mike.

MR. SRAUM: To lay the foundation, we're

in contact with Bouth Dakota, who has a similar program, to got the framework for an NOU that would be between DOJ/MLER and MSU, or whatever other educational body that we enter into this agreement.

Relly Shorman, who is kind of heading this effort, has been out on sick leave for the last couple weeks. The efforts have kind of stalled out as a result of that.

But the next step after we organize the MCD is to meet with MSD/Gallatin College officials to heamer out some more of the dotails and move this project forward. Questions?

(No response)

CHAIR SLAGSSTER: Thank you. Hiko HoCarthy.

KR. MCCARTHY: That's the end of my report unless you have questions.

MR. ALLRED: Stuart, if you can give update, too, on the second question that came out specifically on the second sene in regards to if an officer that has been previously been hired, if they could go to the equivalency commensurate at a college or university.

MR. SEGREST: So the question came up if

we approve this, and we have Basic courses that have been approved at colleges in Montana that are not at the Law Enforcement Academy, and an agency hires someone who has not previously worked as an officer, and has not previously attended a equivalent Basic course, could they choose to send them to one of those colleges and their Basic course as opposed to sending them to the Law Enforcement Academy as provided in 7-32-303(6).

So this is the Gotobur 24th mome. And I analyzed the question. And if you look at Page 2, this is the second paragraph on that page, and I say, "The question here is whether this exception --" and I'm enalyzing 303(8)(a) again, because that's the equivalency exception -- "whether the exception, and particularly the phrase 'has successfully completed' requires completion prior to the efficier's appointment, or whether or an efficier that successfully completes an approved these course after appointment qualifies."

And so I go through, and this is the next sentence down, there's a few things that the Montena Supreme Court has said we should look at when we're analyzing statutory language. You look as the statute as a whole, you look at the intent

T: So the question came up if

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of the Logislature, you look at -- again, I've already talked about this in the last memo -- avoiding about results, and whether the agency in charge of the statute has constructed the statute in a contain way.

So I go through all of those, and I looked at -- I kind of took agency interpretation, the logislative intent as one, and looked it up first. And the way this was presented by POST to the Legislature, and the way it's been interpreted by POST, is that the idea was that an officer would have already attended an equivalent Hamic course prior to being hired, and then PCST certifies that it is indeed equivalent, and then they qualify for a day.

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And if you apply that here, that would mean that the employee would have needed to have completed the Sauis course at the college prior to being hired. It's not an alternative to the Sauis course at HLEA after they've been hired.

So there's intent, how POST has interpreted it. And then looking at the whole statute, I think that makes somen, because the (6) (a) is the general requirement, and that's the one that says, and is specific, that the officer

1 has to attend Besig at the Hontana Law Enforcement
2 houseny. And then there's an exception to it -3 unless they've already attended an equivalent
4 dourse, and then they qualify for equivalency.

do when you look at that, if we allowed an agency to choose to sold their efficer not to HLEA, it would not really be following that intent and that atrusture of the statute.

He I guess in assence, as I looked at it, it does soom like the bost interpretation of this statute is that it's limited to those who have sugmensfully completed a Basic approved course prior to hire, not as an alternative to attending MLEA after hire. Even though it's short, there's kind of a lot of analysis there, so if anybody has questions, I'm happy to talk about it.

CHAIR SLAUGHTER: Any questions for Stuart?

(No response)

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CHAIR GLAUGHTER: So Stuart, maybe in the future, semething we may want to look at, if this -- because I think this college idea is a great idea, dependally with the heavy verticed that MISA price to much through. It's like a

funnel, and you're trying to dram everything through it.

fo I think this is a fantastic idea. I think it's actually a good thing that initially the statute doesn't support it, and requires that if you're hired, you go through MLEA.

It will give time for those colleges to work through issues, work through bugs, get things kind of up and rolling; but then in the future that's semething we may want to look at, because for example if you live in eastern Hontans, it might be a lot easier to go to Billings or dlondive and go through then it would be going all the way to Bolona, and it could save a lot of mency.

But that's something we could look at in the future. It's doable, don't you think, Stuart?

MR. SECREST: Based on my interprotection, I would think you would have to amond the statute. Sut yes. Cortainly.

CHAIR SLAUGHTR: I knew that. But it's not -- Amounding the statute probably after you had a practical example would probably not be that difficult.

MR. SEGREST: You. I think that's

right, and I think it would be helpful if you go to the Legislature and make that recommendation to be able to say, "No've had this program up and running for two years, and however long. It's been successful, and here's how it works, and we think it should also be an option for officers after hire."

CHAIR SLAUGHTER: So I just want to say I approxists all the work that's being done on this by the Academy, by the Curriculum Committee, and Stuart. I think this is long everdue, and it's really a step in the right direction, so I really approxists it. Thank you guys so much. Do we have any other questions on that?

(No respense)

CHAIR SLAUDHTER: Howing on. Case Status. Jin Thomas, you're up.

MR. THOMAS: Thank you, Chairman

Slaughter. Pages 43 and 44 is the report on the

Case Status Committee. You'll see the cases we've

closed, etc. I can't really answer any questions

about any individual cases, but if there are any

general questions, feel free to ask. We are very

busy. At our last meeting, Katrina, what did we

have, over 600 pages of documents to go through?

MR. SREEKST: I think we've been hovering around 500 and 600 in general.

MR. THOMAS: I tell you what, you talk about thanking the staff, the work that they put into these investigations is just unreal. It's amazing. I mean I wish I could actually share some of those things with you guys. Some of it makes you cry, some of it makes you scream and cups. I mean you see I've already pulled all my hair out. But we're very busy.

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Baylor.

CHAIR SLAUGHTER: Thanks, Jim. HR. DOTTON: Nr. Chair, I can't remember. I know Mr. Thomas is on the adjudication panel. Who is the other two? HR. THOMAS: Conner Smith and Matt

MR. DUTTON: Okay. Thank you. CHAIR SLAUGHTER: It's safe to say that there's a huge increase in those contested cases then there was previously, and one of the things -- I don't necommercial think that's attributed to watro getting mero bad autors.

I think law enforcement officials, ser Chiofs, our Shoriffs, our popule, we've done a good job as POST at explaining what they're

supposed to be doing, and when they should be making the necessary reporting to the Council. So I just think that's another positive thing is cople are being more transparent and more forthright with all the information than yours and VORER AGO.

MR. THOMAS: If I may, shoriff Slaughter. I still believe that one of the reasons we in Montana don't have the problems in law enforcement that we see in so many other states is that we held people accountable.

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And I know that Parry Johnson, bufore he loft, he had shared with the Council an article out of the Salt Lake Doseret, I think, or whatever, about the things that, for lack of a bottom term, that law enforcement was gotting away with in the state of Utah because they weren't 18 being hold accountable by their POST Council.

And one of the things I only and like about serving on this Council is we hold people accountable, and if you want to protect and serve, if you want to be a hore, then you care it. That's the way I look at it. Sorry for the rant. CHAIR SLAUGHTER: Thank you so much.

MR. ALLRED: Chairman Slaughter, I have

one update on the 2017 case. That case has officially boon closed, so we can discuss it here.

On December 2nd, 2022, the Honorable Ronald Spaulding, District Court Judge, entered judgment in this matter in favor of the Respondent and Intervonor, the Hontana Board of Grime Control and the Montana Post Council. If you would like a copy, and if you'd like to see any more information, you can email myself or Estrina on

MS. BOLGER: Mg wo won.

CHAIR SLAUGHTER: Great job. Thanks to Caso Status and POST staff. Thank you, Director Allred, for sharing that with us.

HR. SEGREST: I would suggest -- I'm serry to interrupt. I think you might as well send it to the, if you haven't already, send it to the Council, sand the opinion. It's interesting, and I think it's a good layout of bind of that process.

MS. BOLGER: This is Katring. It roiteratus a lot of discussions that have come up in Council mootings proviously, and so I do think it's an interesting opinion, but I'm a nord MR. BUTTON: This is Loc. A point of clarification. I want to make sure I understand it. This was a case that the Board of Crimo Control overruled this Council, and then we appealed that, and the District Court Judge agreed with us, corroct?

MR. ALLRED: So this case dame before contested case Counsel and a Hearing Examiner prior to 2019, whom it started, and at that time the appeal process went through the Board of Crime Control, and then to the District Judge, and then if they wanted to appeal, they can go to the Supremo Court.

And so that's why at that time -- before 2019 it want to the Board of Grime Control first, and then they went to the District Judge. But at this time it would.

MS. BOLGER: But the Board of Crime Control ruled consistently with POST in this case.

MR. DOTTON: They did. Ckay.

MS. BOLGER: You.

MR. ALLRED: It just went through that DIOCEES.

MR. DUITCH: Okay, Thank you.

Just as a reference to the Council, that was the Thad White case, Cause DV-19-135.

CHAIR SLAUGHTER: Shariff Dutton, it is your turn under Coroner report to talk loudly.

MR. DUTTON: Mr. Chairman, mombors of the Council, the Coroners report. You will have a Coroner Basic coming up here in Helena, I believe the second week in December. Also there is usually an advanced course up in Great Falls, and thanks to the Cascado County Shoriff's Office that usually hosts this.

This letter is -- I checked with Andy LaBrun that now works down in Red Lodge, Carbon County, and he was the lead.

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So there's Willy Komp is trying to design sems Corener training that would be online. So this letter to to everyone.

"I've heard back from several people regarding the times for online training before the and of the year. The problem in December is Christmas/How Years, and I have one wookend I have to do things, and might be able to get to work around it.

"Here are the choices I see. We can do an eight hour on December 10th, and an eight hour an December 11th. I could do four hours on the 10th and 11th." And I don't know if these cave

want to hear all the details of Coronor training, so I'll just skip down. *Offering several courses for Coronors and Doputy Coronors to got their hours before they expire at the end of the year."

What is of note is he's taying as holp with doing some online training, fust cotting people up to what we normally have as an advanced. and I believe that POST is responsible for that class, at losst it used to be. So I'm goz sure on this one, on that, if POST is having an advanced one in addition to this. Do you know, Shoriff?

MR. ALLDED: This is Director Allred. T can discuss that. So there is a Coroners Basic that you discussed with Andy LaBrun. I not with him, and also he said he is in conversations with Shoriff Button.

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That's going to happon most wook hore at the Academy on December, it starts December 12th and ends on the 16th. There's 31 students who are coming to that, and then wo're doing Advanced Coronors training, too, as well, and that's going to be here. It starts today at 1:00, and it will and Friday at room.

We've worked with soveral other individuals who are going to be instructing the

Advanced Coroner, and there's oloven individuals that are corrently signed up for that advanced training.

Andy is also -- we've been working with Kolly Shorman, along with HLEA. Wo're getting a date right now for spring Dasic Academy, because the waiting list is very extensive.

I've had quite a few conversations with Andy as wall, talking about what the future will hold for the Coroners Basic in regards to FOST. And one of the conversations we had is when ho's done, which is going to be in a couple years he said, who is going to carry that on. So we've been trying to identify who would be able to, could carry that on.

In discussions with Matrice as well. just with the revised ARMs, it used to state in there that POST would conduct the Coroners Basic, and now it was changed to the word "approve" the Coronors Sasio.

So anyway, that's a little bit of update, so Advanced Coroners will be actually in this room starting at one today.

MR. DUTTCH: There you have it. That's Tago.

CHAIR SLAUGHTER: Thank you, Shoriff. I really approciate that.

Hoving on, Business Plan Policy. Joss Edwards.

MR. EDWARDS: I have nothing to report. CHAIR SLAUGHTER: Thank you, Jose. Marijuana Committee. That's mo. I thought we did a good tob. We game up with our ARN for this.

I think that we gould probably -- it's my opinion we could probably got rid of this committee. We need a motion to do so. And then if semathing comes up in the future, we could stand it up again, but we kind of out laid what our plan was and how we would don't with that, and it's just going to be something that's going to sit on the agenda that we're going to say "no report" on.

So if you guys agree, I would entertain a motion to get rid of that committee for now because we don't need a committee just to have one, in my opinion.

MR. DOTTON: Mr. Chairman, I make a 21 motion that we dishard the Marijuana Evaluation Committee unloss further noted that we need it. CHAIR SLAUGHTER: So I have a motion.

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Do I have a second?

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 $\label{eq:HS.WEITE: I'll second. Kristing} \textbf{White.}$ White.

CHAIR SLAUGHFER: Thank you. Any further discussion about this?

(He response)

CHAIR BLAUGHTER: Meaning none, all those in favor, signify by maying aye.

(Response)

CHAIR SLAUGHTER: Opposed, same sign.
(No response)

CHAIR SLAUGHIER: Motion carries. So Director, if we would, please, we can dut that one off future agendas. ARM. Sheriff Dutton.

the Council. As you alluded to earlier, one of the Council. As you alluded to earlier, one of the things that we have discussed is the Administrative Rules of Hontana about the marijuana, and how it relates. He've had some good discussion. Does anybody need a review on there

(No response)

MR. DUTTON: Sociang mone, moving right along. Timothy Allred would be happy to review all of that, but if you don't need it, we can move

along. But it was well discussed, and I think wo damo up with a good plan. That's the only one I'm aware of, Mr. Chairsan, from my momory.

CHAIR SLAUGEFAR: Sounds great.
Anything forther, Shoriff?

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MR. EUTTON: No. That's it. Back to

CHAIR SLAUGHTHE: Thank you. So moving on, Law and Justice. Director Allred, 2'll turn it over to you for that.

MR. ALDRED: Tes. This is a latter that we received that was on September 30th, 2022, that was sent to Chair Joses Slaughter of the Public Safety Officer Standards and Training Council.

chair Slaughter and I discussed this tho other day. He was going to look into that and that give a report to the Council.

CHAIR SLAUGHTER: You, and I have not had a change he do thank, so I will do it via enail likely.

MR. ALLED: The question is if you do after email, when you read through this, the Law and Justice Committee is asking for support from POST for a bill that they're proposing. It's to receive more data and information, and improve

criminal justice systems for collecting and charing and integration of data statewide.

And so if you have a change to review that exail, we can decide whether POST wants to support this. They gave a sample latter that we could submit to show our support.

CHAIR SLAUGHTER: Purther discussion on that. So Shoriff Dutton and I dove into this a little bit among Sheriffs, because this is coming to Shoriffs, too.

Tomorrow I'm oither going to be in Savre, I'll be on the call for the Sheriffs Association, and I'm going to bring this up. And one of my questions about this is: Data is only as good as the information you put in. What ere the parameters on the data?

And then what's the workload? What's the workload for data collection, and all this other stuff, too? So all those things I'm trying to figure out before I'd ask the Council if we want to consider this.

I think there's potentially issues with this. And if anyone has any discussion or comments about it, feel free.

MR. DVTTON: Mr. Chair, I do. Boing

somewhat familiar from this, this comes from -I'm going to forget the guy's name. He's a good
guy. But I'll come back to it -- logislator.
There are two legislators that have worked on
getting a dentralized information center that the
Legislature can use in their decisions to make
laws, are they effective, are they not effective.

And really where all of the information comes from is the people in the streets will do a report, if so required -- which we already do. Then it goes to a central collection point, which is Board of Crime Control. Board of Crime Control will be funded, have extra staff, and then make it available.

Where it gets semawhet questionable or problematic is the initial bill that's being presented creates a whole new Criminal Justice Coordinating Council of 22 members, in addition to the Board of Crimo Control that exists today.

And we're trying to work with the sponsor now to say, "I don't know that this is exactly necessary. It's semewhat redundant. And in the light of the Governor's reduced red tape initiative, this might fell right square into that," but I think the sponsor looked at it to get

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buy-in, and it was --

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The Criminal Justice Coordinating Council has a large representative of logislators on it. That happened back in 2007 for the Board of Crimo Control, and it was not productive because they were making decisions based on politics

And just for people's background, it didn't go well, so the Covernor readjusted who was on thore. It's not a political -- semebody who is a Representative or a Senator is not on there. They're represented by jurisdiction.

So the Board of Crime Control is easer to work with the Legislature. They're ready. At first those was some concern, but there's the idea that they're going to use a program called Snowflake to bring -- truth -- the idea that all this information will come into a system called Snowflake, and then it will be distributed to the Board of Crime Control.

The people who want to review that are the new suggested Criminal Justice Coordinating Council, and the idea is: Was justice reinvestment working? And they want to prove it by data. And then there's another set that said. "We wasted a lot of money, and it's not working, and horo's the data."

That's the beneat truth that I can beil it down to. What you'll hoar from the Legislature is they just want the accurate data of -- they make a law, what's the impact, and what they want from the street level. It did bring some challegges, it will bring some challenges. But that's the most I know of it. Hr. Chairman.

CHAIR SLAUGHTER: Thank you, Shoriff. I could see, if it works correctly, I could see it being an advantage to the POST Council to give information, particularly the POST Council.

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The reason I state that is Case Status. To be able to -- I fool like we do this already, It's like a phone call away, and you can got all the information. But I don't really have a huge

More of my issue was with -- and you kind of beloed me answer this accually. I was going to wait until tomorrow, but I think you helped me answer it -- how it's progressing, and is it going to be an 800 pound gorille, or is it going to be effective.

I think our Council particularly, it

could be a huge advantage, especially when I know that Director Allred is fighting like gramy for PTE's, because they're getting overrun with case status; and I know that some of our stakeholders - And Dan's in the room -- want to see POST Council do more.

But if you were to look at all of tho things that the steff is saddled with, and the amount of FTE's they got, so it could be a scally good thing. Wystt.

MR. GLADE: Thank you. I kind of see it both ways on this. I think data is great. I think the better data we could collect, the better position we're going to be in, because every time we have a -- when I say "wo," I'm talking about law enforcement and prospection in general -- have a bill that afforts us in the Logislature, then we send representatives or go personally up there to testify to legislators about the effect that this 20 bill will have on the original justice system, and wa're then met by the people on the other side saying exactly the opposite of what we're saying.

So the Legislators who by and large don't know a lot about the workings of the griningl tustice system are in a situation where they have to pick who to believe. If there some statistics, some good statistics generally available to them. I think we're going to have botter results at the Legislature when it comes to original justice.

On the other hand, this sounds a lot like another unfunded mandate for local Sheriffs, city Police Departments, and County Attornoys. I'm concorned about that. We're dealing with the House Bill 640 still. I'm talking about the data collection, the data entry. It's going to create a lot more work for people who are already fairly taxed. So I can see both sides of this. Thank you.

MR. ALLRED: And thon if I could add some, too, Director. So I did look at who would be on the Council. I saw the representative from the Department of Corrections would be on there. Thoro was not one for PGST Council as a roprosentative.

CHAIR SLAUGHTER: So my question to the Council would also be this: After talking through all this, I'm not sure -- and please, POST stoff, correct me if I'm wrong. I'm not sure it would be a super heavy lift for POST to give data because

Cano Status, that would probably be our big

But is it appropriate for POST to do
that, when we represent -- Wyatt, like you said -we represent County Attornays, Department of
Corrections, Cheriffs, Chiefs of Police, Police
officers. You know, we represent all these
groups, and then we're like, "Oh, yezh, we should
do this," and we write the lotter of support, when
maybe this isn't heavy for us, se're looking at
it's a full-time FTE for everyheavy else.

And I wonder maybe if it's net appropriate for us to weigh in on it, bucques it's kind of woird, though, right? We represent the POST, the POST Council, the POST staff, but we also represent all these other entities. Any thoughts?

NR. ANDERSON: Hr. Chair, I guess X think the intent of this is really good, and the centralized data would beneficial to everybody -POST, all of our agencies. I've been involved in some of the convergations.

but the logistics are the question right now, and I think the intent was to find ways to tap into our already collected data systems

thinking. If I'm totally wrong about what I'vo heard, then please correct me or the correct it in a metion.

MR. AMDERSON: I guess I have a question, Mr. Chair. Could we make a statement in a letter saying that we support the intent of this, or is that committing too much?

CHAIR SLAUGHTER: I think we can do whatever we want. I mean that. They sent us a cample letter, and if you're smart and trying to got support, you do all the work for somebody, and you say, "Here. I did the work for you. How sign it," because that's the casy way to do it, right?

But that's a really good point, Jim. We could say, we could write a letter, we could have staff draft a similar letter to this, but just say, "The POST Council has some questions and is uncertain about the future of this. However, we support the intent of what you're doing." I think if sensone gives a motion to that, I absolutely think we can do that.

MR. AEDERSCH: I will go should and so move to have the staff draft a letter and say to the effect, "We support the intent behind the letter. We have questions about the legistics and without adding more work, but they don't have that ironed out yet.

go I think the intent, I think we can got behind. It's the unfunded mandates, the legistics, the FTE's, that that stuff's required. I knew 2057 Council is working really hard at trying to solve some of those answers, and do X guess as far as us supporting it, depending on what they are asking, the concept is great. The details are what's missing at this point.

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So I don't know if we could support it yet, or if we could say semething along those offects, that the intent is scanthing we support, given that the logistics are figured out and it doesn't cost money.

GEAIR SLAUGHTER: Thanks, Jim. I think it's just a latter of support. You know, they're going to want to stand up and say, "FGST Gouncil supports this." I think that's really what it's going to come down to.

I guess I feel confortable, after the convergation we've had, us going to a motion to decide if we want to do it or not amongst the foundil. I'm kind of hearing that we kind of want to stay out of it for right now, is what I'm

monoy," however we could phrane that, but supporting the intent.

HR. SECREST: Funding.

CHAIR SLADGETER: Thank you, Jin.
There's a notice on the floor. Do I have a

MR. TECHAS: This is Jim. I second.

CHAIR SLAUGHTER: Thank you, Jim. So
now we have a motion on the floor and we have a
second. Do we have any further discussion about
this?

HR. DOTTON: Further discussion, just to lot you know, this has been Representative Barry Usher's baby, and it's going to happen to track -- I mean the train is on the track. I would hope that we could help shephord it to be a useful tool, and that's why Board of Crime Control has been on board. We're trying to work with Representative Usher, and I forget the name of the other Demograt that's co-sponsoring it.

I dered to brought up funding in a public meeting -- Brien Lynch is the Democrat co-sponsor -- and they weren't happy with that word. I'm just giving you that. They said, "You figure out how it works, and we'll figure out the

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funding." So I was somewhat rebuked in a public moeting, so just offer that caution in your motion, that if you ask about the funding, that spons to be offensive to spon of those who work thore. But we can say, as you said, Mr. Chair, we can say what we want because it is a concern. Thank you.

CHAIR SLAUGETER: Showlff, thank you. That's actually really good feedback, and I think one of the things we really need to consider as a Council is thore is a super majority, so there's going to be some things we're going to have to live with whether we like it or not, because they can everride a Governor's signature even so.

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With that said, I think, Shoriff, that's very wise, that we get involved, and now that you say that, I like Jim's motion even more, because it says, "Hoy, we're willing to play," but let's make sure POST staff when we -- if the metion carrios and we decide to do this -- that wo delinoste our concerns. It desen't need to be this long of a lottor, it tust goeds to be like our concerns are fiduciary, who is funding this, is this going to require an \$75, how is that going to be funded, is this going to require --

analysis, so that will be -- see if the fiscal note has been suggested, how much it's coing to cost. So they don't know the answer to that quantion wa're going to ask, but the fiscal note has been requested in Senate Bill 11. 10 CHAIR SLAVORTER: I'm glad that's on the 11 record. But what about when you combine software. 12 like the migration --13 HR. DUTTON: Integration.

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need to know about.

CHAIR SLAUGHTER: -- integration of software, so that might be a thing that we might

32 Spowflako, is that a software purchase

MR. DOTTON: No, Mr. Chair. It is

that the individual entities have to purchase?

Senate Bill 11, and they have asked for a fincal

HR. DUTTON: That's a very valid point, Hr. Chair. Those are all questions we have still, 18 and they don't know yot.

CHAIR SLAUGHTER: I think as you --Director Allred, if this does, if this Council done pass this motion to write this, I think we went to dolingate as many of those concorns as we can in the letter, so that we're very transparent, like "Ye support this. Those are our concorns."

and then that way, it opons the door for us to have a lot more conversation, but yet still -because I do. I support the concept on its face. Any further discussion?

MR. AMDERSON: Yos, Mr. Chair, I agree with you that if we write a letter of support, then we can be involved in the conversations moving forward, and I think that's really important, because I do think there's a lot of honefite that could come from this.

CHAIR SLAUGHTER: I agree. Thank you. Anybody on the phono? I don't want to forget about you duys.

(No response)

CHAIR SLAUGHTER: Any further discussion?

MR. SEGREST: Hr. Chair, I would suggest that if -- since you are together and making decisions now, that at losst you groute a broad skeleton of that list, so that staff dogsn't have to kind of recreate the wheel later and go back to vou.

So I think some of the things I've heard are: You have concerns about hew it's coing to be implemented; how it's going to be integrated with

1 your local technology systems, data systems; how it's going to be funded; and that's the list I've made so far. So is there enything to add to that? CHAIR SLAUGHTER: I can't think of

anything. Can anyone think of --

MR. DUTTON: I'll bring up what Wyatt said. Is there going to be unfunded mandatos to the local?

CHAIR SLAUGHTER: Thank you, Shoriff. That's a great point. I believe we could take the liberty, too, if we think of semething later, to make sure to reach out to Director Allred, have them added to the list, because I don't think Rristine's concern -- it's okay if it is just how concern. She's a member of the Council, so I don't think that's a big doal. Any further discussion?

(No response)

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

(Response)

CHAIR SLAUCHTER: It was just Kimberly on the phone. Did we lose anybody? Chief Braft? HR. KRAFT: Ayo.

CHAIR SLAUGHTER: Is Note back on?

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CHAIR SLAUGHTER: Okay. Opposed, same sign.

(Bo response)

CHAIR SLAUGHTER: Motion carries. Thank you, Director Allred.

go at this point in time we're going to go to the Director's report. Our food is here, though. Be we want to take a quick break and eat, and jump back into this? Hecause I think we can finish this probably relatively quickly.

MR. ALLERD: I can do it like in soven

GRAIR SLAUGHTER: Tour Disector's report?

MR. ALLRED: Tes.

CHAIR SLAUGHTER: So what do you want to do? Do you want to take a break and cat? No? Push on? Okey. So Director Allred, I'll turn it over to you.

MR. ALLRED: I've got my seven minutes.

First I just want to say that it has been an

bonor, an absolute honor to work with the FOST

Council in the different committees, with each

individual individually, and with the POST staff.

1 cannot be mose gratoful and claborate on note
words enough. Just so thank you.

Me'vo done neveral -- we've had

committee meetings, whether it would be curriculum
or Contested Case Counsel, and now the Council,
the full Council meeting. So I just want to thank
you, and just tell you it has been an honer. I'm
fully on board with POST and the ideology that it
stands to live by, its othics, and doing what is
right, and advancing training throughout the
state, good training, proper training, and holding
people accountable, and advocating for those who
are doing, and supporting those who are doing what
is right.

so let's go to the budget. The budget is found on Page 49 through 50. And POST has an annual budget of \$477,167 a year. If you divide that by twolve, it's \$39,764. I went through the budget, and had a few budget moetings on this, and so far, we are doing very well.

However, we have had some heavy lifts with some specific cases with legal fees, and we were going to be playing that out. We've been completely within our operations budget, but some of the things we can't control are some of our

logal fees that come from having Scaring Examinor budgets, contested case hearing budgets, and General Counsel budgets as well. But right new we're right on track. We're doing very well.

I want through, and I've gathered several state, and with my seven minutes is now down to five, I won't be able to go through each one of them, but I hope you looked through them, and see just the increase in growth that staff has and the Gouncil have been involved with ever the last several years. And as you can see, it just continues to climb in several different areas.

Right now you say find this interesting. We have several goals, and one of our goals is to continue to strengthen and support our state and data, and move forward with continuing to having this, so that each year we're building and showing where 905T is at.

But POST right now with 5,805 public cafety officers, 40 percent of those are law enforcement peace officers; and 20 percent are correctional, detention officer basic officers. You can see it's on Page 54, it breaks it down even further that it's Probation and Parole Officers, which is four percentage and those kind

of things

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But I thought that would be nice for the POST Council to see that, kind of see all those public safety officers, where they're at.

This year so far POST has awarded 943 contificates; training approved, 1,951 trainings; 7,046 officers, and 117,153 hours. When you look at those graphs, you can just see how it's continued to grow and grow. And it goes back to what the Chair was saying. It's not a matter of just people all of sudden doing this, it's with POST Council, and the POST staff, and the agencies, working with them, and gutting them to understand the importance of working with POST, and the importance of training, and receiving their certificate, not only their Basic certificate, but other certificates that they have.

I reached out to Connor Smith, and was able to roview an agreement that they have with the Highway Patrol that shows the steps, and the pay increases, incentive that they have for having POST certificates. Many agencies are adopting the certificates as part of their incentives to give raises. They find that important to receive that

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training.

One area that I want to go into in equivalencies grapted. You can see these are a lot of times out of state, some are in-state. We're at 93, which is more than last year, but that's like, if you look at the state, that's an OVOS 1300 percent ingresso from the last sourcel years. Wo're continuously getting those, and continuously reviewing those.

Information requests are continuing to grow. I want to show you one thing -- and I know there's lots of state to go through .. but if you go to Page 61. I found this was very interesting.

So far this year POST ban got 109 complaints in 2022. 55 of those were closed when POST initially reviewed them. POST is required by law to roving each complaint that they receive. 54 of those were opened to investigation.

If you look down at the next section where it says out of the 54 that were spened to investigation. 33 are still active or those investigations have been closed. Bight of those have received sapotions, and 13 of those cortificatos ere royokod or have been denied.

And koup in mind that a lot of those

90 Povocations where their cortificate is revoked. lot of those were failure to respond and take part in the letter process.

And so anyway, that kind of gives an ides of what POST has been doing. POST is working and considering and one of these contested ones hearings individually, and deciding. As you can see, more than half have been closed when they first initially reviewed the case. I think those are good things to understand.

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We're going to continue to do a lot of things. We've been working on a lot of things. We've been working on -- we've done several propontations at the CJIN TAC conference in Great Palls for LEGB, GEOB, PGC. The last GDGB that POST gave a briofing at, the staff, it was actually in the dark. They had a power outage, so we were sitting at 8:00 in a room completely dark, and that was protty fun. .

We are really working at finding areas and wave that we can do more and more paperless. and doing things that make sonso. Those's a lot of areas that we've been doing duplication, and making things move fastor and be more effective, and I think wo're doing a great tob as staff in

discussing those different areas.

One area that's been a concern is just the case management poftware. We do not have one With all those cases, Estrine and others have kept a sproadsboot, or she has a moving white board in has office that she is able to move around. We've been working to try and find a good case management andtware that will fit POST peeds.

Video conferencing. We've been working diligently to get video conferencing into our conference room. That's one thing I want to discuss in the future and for future thought. It's not as big as this room. It is wide. It's a good square shaped sixe.

But if we had -- we have the option, if we wanted to, to hold a POST Council mosting there. If, say, like seven appeared in person, and six or whatever were on the video conferencing -- not that wo're saying that -- but those are options moving forward.

Thoro's also the option that was brought up that proviously POST would do one bearing in person, or one Council meeting in person, and one by phone. There's options to do that now that you could have Toxms, and we're looking into getting

video conformacing in there, which wo'd have two 72 inch 17's.

So thoro's that, and it's going to holp with investigations having that in there, and it's going to help with time, and it's also going to help with hearings. When we have contested case hearings -- This last one we were pulling up old projectors, and having monitors, and wiring going all over this.

so right now we're in the process of getting that done. We've got bids going forward, and wo're moving forward in that.

Just so you know, our Boost Skills contract has been signed for a data base. That was officially done.

I did speak at the advisory, the AG advisory committee last month and gave an update of FORT and introduced myself.

I'm going to be going to HEPCA this Friday, December 9th. I'm on their agenda to give an introduction of myself and give an update of

And then just so you know, also we've henn working a lot on helping our resource guide 25 be more available, and one of the things we just

did on the internet page, and it should be live within the next couple days.

This resource cuide has -- there's been a link that you can open up, and it's kind of like a big PDY, the whole thing, but now it's going to he broken down per section, just like the tabs are in the resource quide here, and so when there's an update, se can notify people ismediately, and thoy're able to see those tabs right on the internet page on a link.

So those are some things that we've been working on. Super excited, great staff, great Council, and a lot of opportunities to support haw well POST has been doing, and then continue to grow, and find ways to improve.

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I want to note under the Director's Report, No. 14, POST Council term expiration. If you look on Page 62 and 63. This is important.

I've heard back from some of you, but if you could please let be or the Chair know if you have, or if you're going to apply again to be put on the Post Council. If you're not, please let us know, as well as -- As you look through this page, you can see about helf the Council, their terms expire on January 1st, 2023.

also adopted four, like they did in 2022. So this would be a -- I'll turn this over to the Chair to discuss their proposed Council meetings in 2023. 10 Allred. So on here you'll see the proposed dates. 11 There's four and three. I den't know. My opinion 12 is when is -- what's the transmittal date for the 13 mosmicu? Do you guys know? 14 15 16

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MR. DUTTON: I do not remember. CRAIR SLAUGHTER: I want to say it's like late February, early March, semething like that.

And then the second thing, or the last

on Pages 64 and 65, these are proposed

CHAIR SLAUGHTER: Thank you, Director

thing that the Chair -- I'll turn it over to you,

calendar dates for Council meetings. Providualy

Post has done three meetings in a year. They've

but I'll emplain it.

NW. BUTTOW: I can contact Annotte. She might know.

CHAIR SLAUGHTER: It doesn't really matter. I kind of like the first Page 64, and part of it is because there is a scating when the nession is happening, which I think might be a good thing, in case we find out we don't sunset,

we do suncet. It gives us an opportunity to start planning for the year.

And having four isn't a bad idos, osposially now -- as Director Allred has said -we could probably do one of those wis, with the conference room do one of those. We could do one not in parson. We could do one virtual one, so that our budget doesn't go crary with travel. Any thoughts?

(No response)

CHAIR SLAUGHTER: Anybody want to make a motion?

MS. WHITE: This is Evicting. I would move that we adopt the first calendar for meetings on Page 64 with four mentings for the year.

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

> - CHAIR SLAUGHTER: Any discussion? (No response)

CHAIR SLAUGHTER: I would just may wo can play the whole, if we need a virtual one, by car, and if it fools like it's cotting cumborsome and wo're having a hard time, we do a virtual one to make it happen. Does that sound okay? We don't try to plan it now?

(Ho response)

CHAIR BLAUGHTER: Any further discussion

Mg. WHITE: Would they all be in Helone? CHAIR SLAUGHTER: Tos. MR. DUTTON: Not driving to Miles City.

CHAIR SLAUGHTER: Director Allred and I wore talking about budget, and when we start talking about all those contested case bearings and all those legal foce, fiscally it's the most responsible way that we could do it. '

I think that the Glandive trip was \$10,000 when we did the Glendive trip. So it's a hig hit. I'd gather spend that all on local fees.

MS. WHITE: I would agree. CHAIR SLAUGHTER: So any furthor

discussion on the metion?

(No response)

CRAIR SLABORTER: Rearing none, all those in favor of the calendar on Page 64 signify by saying ayo.

(Rosponso)

CHAIR SLAUGHTER: Opposed, same sign. (No response)

CHAIR SLAUGHTER: Motion carries. Last

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AN ACT REVISING LAWS RELATED TO PUBLIC SAFETY OFFICER APPOINTING AUTHORITIES;

AMENDING SECTION 44-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-4-404, MCA, is amended to read:

"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."

Section 2. Effective date. [This act] is effective on passage and approval.

- END -



I hereby certify that the within bill,	
HB 77, originated in the House.	
•	
Chief Clerk of the House	
2	
Speaker of the House	
.	
Signed this	day
of	, 2023
President of the Senate	
Signed this	day

HOUSE BILL NO. 77 INTRODUCED BY S. GALLOWAY

BY REQUEST OF THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

AN ACT REVISING LAWS RELATED TO PUBLIC SAFETY OFFICER APPOINTING AUTHORITIES; AMENDING SECTION 44-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.



AN ACT REVISING LAWS RELATED TO PUBLIC SAFETY OFFICER APPOINTING AUTHORITIES;

AMENDING SECTION 44-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
RETROACTIVE APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-4-404, MCA, is amended to read:

"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 fallure to meet the minimum standards established by the council pursuant to this part.

- (2) (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."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to a public safety office within 1 year of the officer's hire date who was ordered to state or federal military duty



on or after July 1, 2022.

- END -



day
, 2023
day

HOUSE BILL NO. 78

INTRODUCED BY S. GALLOWAY

BY REQUEST OF THE PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL

AN ACT REVISING LAWS RELATED TO PUBLIC SAFETY OFFICER APPOINTING AUTHORITIES; AMENDING SECTION 44-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

-FILED-

December 2, 2022 Hill County District Court

STATE OF MONTANA
By: Karen Kinsella
DV-21-2019-0000135-JR
41.00

MONTANA TWELFTH JUDICIAL DISTRICT COURT, HILL COUNTY

THAD WHITE,

Petitioner,

Cause No. DV-19-135 Hon. Randal I. Spaulding

vs.

MONTANA BOARD OF CRIME CONTROL.

Respondent,

and

PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL.

intervenor.

ORDER DENYING DISMISSAL AND AFFIRMING FINAL AGENCY DECISION

I. PRELIMINARY MATTERS

A. Introduction

This matter is before the Court on Petitioner Thad White's (Mr. White's) petition for judicial review under MCA § 2-4-702.

Mr. White petitioned for judicial review on October 29, 2019, seeking relief from an order of the Montana Board of Crime Control (BOCC) which revoked Mr. White's POST certificates. As will be developed below, Mr. White held certificates from the

Public Safety Officers Standards and Training Council.¹ POST certificates are the mandatory credentials public safety officers must hold to serve in one of a number of fields under the broad banner of public safety officers. MCA § 44-4-401, ARM 23.13.201.²

The Court has reviewed the entire administrative record together with the record developed upon judicial review as well as argument of counsel. Based upon that review, the Court enters this order affirming and adopting without change, the Hearing Examiner's proposed findings of fact, conclusions of law, and recommended sanction which was first adopted by POST Council and then entered by BOCC as the final agency action in this case.

B. Procedural Overview

POST issued a Peace Officer Basic certificate to Mr. White in 2009. After Mr. White began work with the Department of Corrections as a Probation and Parole Officer, POST issued Mr. White a Probation and Parole Basic certificate in 2016.

As the agency that issues certificates, and as the agency that sanctions certificates, (MCA § 44-4-403(1)(c), ARMs 23.13.204, 23.13.702 et seq.), POST Council revoked Mr. White's certificates in 2018. POST's action to revoke followed Mr. White's resignation from his work with DOC as a Probation and Parole officer upon allegations he falsified his employee time reporting to claim scores of hours he did not actually work. POST conducted an investigation through its Bureau Chief, Perry Johnson, who concluded Mr. White had falsified time sheets and that falsification warranted revocation.

¹ Originally entitled Peace Officers Standards and Training Council, the moniker POST is widely recognized and embedded in the culture and understanding of the law enforcement community both in Montana and across the country. Later, new professionals joined the Montana system, but were not "peace officers" as that term is understood. For example, dispatchers now hold the title public safety communications officers. To include those new professionals, the broad title was expanded to Public Safety Officers Standards and Training Council, but the old acronym POST survived.

² The term "public safety officer" includes peace officers, detention officers, correctional officers, probation and parole officers, public safety communicators, coroners, reserve officers, misdemeanor probation officers, and pretrial service officers.

(See ARM 23.13.702(2)(a) (2018)³, (providing that "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," is a ground for denial, sanction, suspension, or revocation of POST certification.)

Properly notified of POST's January 8, 2018, administrative action, Mr. White demanded an administrative contested case hearing as provided for in MCA § 44-4-403(3). That hearing was held December 12. 2018, before an independent hearing examiner, Hon. Jeffrey Sherlock (Ret.). Hearing Examiner Sherlock issued a proposed decision dated January 10, 2019, which included detailed findings of fact, reasoned conclusions of law, and a proposed order recommending revocation.

Pursuant to MCA § 2-4-621(3), on March 26, 2019, POST Council accepted and adopted the Hearing Examiner's recommendation and entered its revocation order. Under the system in then in place, "a decision by the [POST] council [could] be appealed to the board of crime control." MCA §§ 44-4-403(3), 44-7-101 (2019), which White did. By order dated September 3, 2019, BOCC affirmed POST'S decision, also concluding revocation was proper.

C. Parties

The BOCC order represented a final agency order from which an individual may seek judicial review. Mr. White filed his petition for judicial review on October 28, 2019. As a resident of Hill County. Mr. White properly filed his petition in the Montana Twelfth Judicial District, Hill County, Hon. Kaydee Snipes Ruiz, presiding. Thereafter, POST was added as an intervenor and White substituted the presiding judge.

³ POST has amended ARM 23.13.702, which took effect on March 28, 2020. POST applied the current procedural ARMs to govern this proceeding, but the substantive ARMs that were in effect at the time of Mr. White's violations to analyze whether his certification should be sanctioned based upon misconduct. Saint Vincent Hosp. & Health Ctr. v. Blue Cross & Blue Shield, 261 Mont. 56, 60-61 (1993) (use substantive law in effect at the time and current procedural law).

On December 16, 2019, POST moved to intervene under Mont. R. Civ. P. 24(a)(2). In support of that motion, POST argued it had an interest in the matter and the outcome of the petition for judicial review could impact POST's interests. Over White's objection, on February 25, 2020, the Court granted POST's motion to intervene

On July 6, 2020, Judge Snipes Ruiz recused herself. On July 20, 2020, this Court accepted Judge Snipes Ruiz's Invitation to Assume Jurisdiction.

On August 17, 2021, BOCC moved to be dismissed from this matter and have POST substituted as the sole respondent. BOCC argued that its legal interest in the case had ceased, based upon the 2021 Legislature's passage of HB 28, and that BOCC will no longer have any statutory authority in this or any future POST disciplinary matter. Mr. White opposed the motion. Having considered the briefs of counsel, this Court finds and concludes that BOCC'S motion to dismiss should be denied for the reasons noted in White's response in opposition. However, to correctly reference POST in the caption of the case, the Court orders that the caption of this cause to be retitled: *Thad White, Petitioner, v. Montana Board of Crime Control, Respondent and Public Safety Officer Standards and Training Council, Intervenor*. This being said, the matter now is ripe for decision.

II. MEMORANDUM

A. The Court's Role is that of an Appellate Court not a Finder of Fact.

In a petition for judicial review the District Court sits in the position of an appellate court, receiving the record as developed below and reviewing the cause for errors of law. MCA § 2-4-702. As with any appellate review, judicial review of an administrative decision is "confined to the record." MCA § 2-4-704(1). The extent of the record is defined in MCA § 2-4-614. The Court has received and exhaustively reviewed the record but agrees with Respondent's (and Intervenor's who have joined in Respondent's proposed order) assertion that while a proposition may be found

somewhere in the record it does not equate to a finding of fact unless the Hearing Examiner identified it as such. MCA §§ 2-4-621, -623.

The Court begins with the observation that Mr. White's petition for judicial review contains many paragraphs of purported "facts" which read like averments of fact in a civil complaint, but which have not been properly established. Under MAPA, the only necessary averments of fact are those concise few necessary to establish jurisdiction and venue. MCA § 2-4-702(2)(b). Similarly, both parties' initial briefs contain lengthy recitations of purported "facts." The Court has read those recitations and gives them the recognition they deserve with the caveat that most are not the Hearing Examiner's findings and cannot substitute, alter, or otherwise add to the Hearing Examiner's expressed findings for purposes of judicial review.

After considering the record in its totality, the Court concludes and holds that the Hearing Examiner's proposed decision, adopted and incorporated without change by POST, and then BOCC, is fully compliant with the standards contained in MCA § 2-4-623. The Examiner made extensive, concise, and explicit, findings supported by substantial evidence in the record and detailed conclusions of law based upon those findings, a number of which included the Hearing Examiner's judgment of the credibility of the several witnesses which should be granted deference by this Court.

B. Standard Of Review

MAPA declares the "standards of review" upon judicial review of an administrative contested case. MCA § 2-4-704. As established above, this Court's task is not to reexamine findings supported by the record which, in many respects, Petitioner asks this Court to do. Instead, this Court's task is to review the case to determine if White's substantial rights have been prejudiced. In this regard, MAPA instructs:

(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.

MCA § 2-4-704.

C. White's Claims of Error

Within the judicial review framework outlined above, White raises seven claims of error:

- 1. POST's administrative rule assigning to White the burden of proof is unconstitutional.
- 2. POST's process amounts to a due process violation because White acquired a property interest in the POST certificate he held.
- 3. POST's process violates MAPA by compelling efforts toward an "informal resolution" and by clashing with § 2-4-631(3).
- 4. POST's structure "lacks 'walls of division" in violation of due process rights.
- 5. The Hearing Examiner erred by admitting Exhibit 2, entitled Administrative Investigation Report, Dawn Handa's report synthesizing her investigative findings regarding White's work hours.
- 6. POST violated its own procedures by failing to conduct an investigation.
- 7. POST erred by failing to offer White reasonable accommodations for White's admitted mental health issues.

Based on these errors, White seeks this Court's order restoring his certificates and dismissing POST's action against White.⁴

White did not brief or argue his asserted right to monetary damages such as back wages, interest, and attorneys' fees. Such relief is not available by judicial review under MAPA and will not be explored here.

For its part, POST argues there was no constitutional violation, procedural error, or other error of law that prejudiced White's substantial rights. Even admitting some technical error, POST argues, that error did not reach a substantial right which prejudiced White. Therefore, POST urges the Court to affirm the administrative action.

This Court examines each of White's claims in turn below.

1. POST's administrative rule assigning to White the burden of proof is unconstitutional.

It is White's burden to prove the burden of proof rule is unconstitutional.

The constitutionality of a statute is presumed, and the party challenging the constitutionality of a statute bears the burden of proving the statute conflicts with the constitution beyond a reasonable doubt. "If any doubt exists, it must be resolved in favor of the statute." Mont. Cannabis Indus. Ass 'n, ¶ 12.

State v. Jensen, 2020 MT 309, ¶ 9, 402 Mont. 231, 477 P.3d 335 (citing and quoting Mont. Cannabis Indus. Ass'n v. State, 2016 MT 44, ¶ 12, 382 Mont. 256, 368 P.3d 1131, internal cite omitted).

To begin, White has not established a fundamental right to a POST certificate. Indeed, he has not established a right of any kind. Though not a constitutionally enumerated right, Montana recognizes "the opportunity to pursue employment" as a fundamental right. Mont. Cannabis Indus. Ass'n v. State, 2012 MT 201, ¶ 18, 366 Mont. 224, 286 P.3d 1161 (citing Wadsworth v. State, 275 Mont. 287, 299, 911 P.2d 1165, 1172 (1996)). But such does not equate to a property right in a particular job or employment. Id. Like every Montanan, White has a right to pursue employment, but he has no constitutionally recognized right to a POST certificate or to work in a public safety field which requires POST certification.

An aspect of this case that bears mention is the fact that POST certification is tightly bound by administrative rules rather than a complete statutory scheme.

Nonetheless, the Montana Supreme Court has ruled the same analysis applies to an administrative rule.

In Wiser v. State, a denturist challenged the constitutionality of the Board of Dentistry's administrative rule prohibiting denturists from practicing independently from dentists. Following the Wadsworth holding, Wiser held there was no fundamental right to specific employment. Absent a fundamental right, the strict scrutiny analysis is inapplicable, and licenses may be restricted to protect public welfare under the State's police power. Id at ¶ 19-20 (citing Wiser v. State, 2006 MT 20, 331 Mont. 28, 129 P.3d 133). Just as Wiser had no right to practice denturity free from regulation, White has no right to serve as a public safety officer free from regulation.

In his brief, White cites two cases in support of his claim the burden of proof amounts to constitutional error. Neither case is apposite because neither case involves a license or certification elevating the holder to a position of great authority and public trust. White's first cited case involved the burden of proof in a criminal case which is an entirely different scheme. State v. Anderson. 2008 MT 116, 342 Mont. 485, 182 P.3d 80 (2008). The State's burden of proof in a criminal case is in no way controlling, or even analogous, to a civil administrative licensing case. White's second cited case is better described as a case involving a legal presumption rather than a burden of proof. That case involved a Georgia statute that raised a presumption a railroad was negligent in any action involving a train collision causing injury. Western & Atlantic Railroad v. Henderson, 279 U.S. 639 (1929). Again, that case offers no guidance in an administrative licensure action.

While White attempts to conjure a property right in a POST certificate, POST's administrative rules make clear that a certificates "... remain the property of the council", not the certificate holder. ARM § 23.13.204. Nothing in the law or POST's regulations create any property interest in a POST certificate.

As a final observation, during oral argument Counsel for Mr. White commented POST failed to apprize him the administrative process to reverse the burden of proof from the certificate holder to POST. All rulemaking projects in Montana are matters of public

record. Proposed amendments to rules and notices adopting rules are published in the Montana Administrative Register. See MAPA, Title 2, chapter 4, part 3. It appears the parties approached the burden of proof issue in discovery and POST responded to Request for Production Number 3 with the following response.

REQUEST FOR PRODUCTION NO. 3: Please produce notices provided by POST pursuant to ARM 23.13.104 from January 1, 2013 to the present.

RESPONSE: Please see attached MAR Notices of Proposed Rulemaking. POST will be publishing another Notice on July 20, 2018. Such notices are available publically [sic] on the Secretary of State's website.

See Thad White's Brief in Support of Motion for Summary Judgment at Exhibit C, p. 8.

Had Mr. White examined the public record or pursued this discovery response, he would have learned of the pending rule change on the burden of proof.

The Court concludes White has failed to prove he had a fundamental right to a certificate and has failed to meet his burden of proving any constitutional violation based on POST's burden of proof.

2. POST's process amounts to a due process violation because White acquired a property interest in the POST certificate he held.

Citing Boreen v. Christensen, 267 Mont. 405, 416, 884 P.2d 761, 767 (1994) and Ulrich v. State ex rel. Board of Funeral Serv., 1998 MT 196, 289 Mont. 407, 961 P.2d 126, White argues "POST's regulatory scheme creates a property interest in a POST Certificate" and that from that property interest, flows a right to due process before POST may revoke a certificate. Neither case supports those propositions.

Boreen did not involve a license of any kind. The issue in Boreen was whether a government employee is an "at will" employee if he could only be discharged for "just cause." The Court held applicable regulations created a property interest in continued employment and the employee may only be terminated for just cause. Boreen is simply

inapplicable to the case at bar where, as noted above, the administrative regulations declare certificates remain the property of the Council.

White also cites *Ulrich v. State ex rel. Board of Funeral Serv.* in support of his due process argument. As a certificate holder has no property interest in a POST certificate, White cannot assert a due process right based on that property interest. Notably, the term "due process" is not even found in the *Ulrich* decision. *Ulrich* presented a case where the licensing authority sought to revoke a license because: a) the licensee committed a crime arguably impacting the licensee's suitability for licensure; and b) the licensee had not been rehabilitated. The Montana Supreme Court approved a divided burden of proof, placing the burden of proving the conviction and its relationship to suitability on the agency and placing the burden of proving rehabilitation on the licensee. The hearing examiner found the agency failed in its initial burden of proof and the licensee sustained his burden of proving rehabilitation. *Ulrich*, ¶¶ 35-36.

While *Ulrich* does not support White's due process argument, it is instructive on one point nonetheless – the Montana Supreme Court approved assigning a portion of the burden of proof upon the licensee.

3. POST's process violates MAPA by compelling efforts toward an "informal resolution" and by clashing with § 2-4-631(3).

White argues POST's procedure allowing an "informal resolution," ARM 23.13.703(7), impermissibly clashes with MAPA's expressed terms prohibiting waiver of "formal proceedings" in licensure actions, MCA § 2-4-603(2). If that were correct, it may be considered a due process violation or a violation of a statutory provision.

MAPA sensibly allows for informal dispositions – stipulations, agreed settlements and consent orders. MCA § 2-4-603(1). But MAPA expressly disallows waiving formal proceedings in licensure cases. MCA § 2-4-603(2). Contrasted to some informal process allowable under § 2-4-604, here White enjoyed every procedural right assured by MAPA for formal administrative contested case proceedings. MCA §§ 2-4-601 through 631.

No error of law occurred because Mr. White was accorded every benefit of formal administrative proceedings assured by MAPA.

4. POST's structure "lacks 'walls of division'" in violation of due process rights.

Premised on the notion that POST's Executive Director "is the complainant, investigator, prosecutor, fact finder, and decision maker." White argues there are no required "walls of division." That premise is both factually incorrect and legally unsound.

POST's action against White did not begin with Executive Director Perry Johnson. Rather, it appears that it began with Department of Correction's Notice of Termination presented to POST as required by ARM § 23.13.216(3). POST Hearing Exhibit 3. Thereafter as required by ARM § 23.13.702(1), POST began an investigation. POST's investigation resulted in Mr. Johnson's decision to revoke White's certificate, but Mr. Johnson was not the prosecutor. POST's "contested case counsel" – the prosecutor – is designated in ARM 23.13.705.

Executive Director Johnson's investigation was overseen by POST's Case Status Committee which reviewed the investigation and voted to approve the revocation and commence the contested case process. Tr. at 239:25-242:16: ARM 23.13.703(9)(d).

Ultimately the fact finder and decision maker was retired Judge Sherlock in his role as an independent hearing examiner. ARM 23.13.714.

This Court agrees with Respondent (and Intervenor) that the facts as demonstrated by the record do not support White's premise that Executive Director Johnson exceeded his authority or that POST's disciplinary process is infirm.

Ample case law supports the constitutionality of an administrative agency functioning in both the investigative and adjudicative roles. Goldstein v. Commission on Practice of the Supreme Court, 2000 MT 8, 297 Mont. 493. 995 P.2d 923. Goldstein held "[T]he case law, both federal and state, generally rejects the idea that the combination

(of) judging (and) investigating functions is a denial of due process." *Id.*, ¶ 24 (quoting *Withrow v. Larkin*, 421 U.S. 35, 43 L. Ed. 2d 712, 95 S. Ct. 1456 (1975)). Notably, in the case sub judice different components of POST initiated the action and then later adjudicated the case. POST's staff work was overseen by the Case Status Committee and after the Hearing Examiner issued his proposed decision, the full POST Council adjudicated the case.

5. The Hearing Examiner erred by admitting Exhibit 2, entitled Administrative Investigation Report, a DOC employee's report synthesizing her investigative findings regarding White's work hours.

White asserts the Hearing Examiner erred by admitting Exhibit 2, a DOC supervisor's report examining whether White falsified his time cards. Exhibit 2 is a 56-page document, the great bulk of which is a collection noncontroversial documents: records routinely found in personnel files, a collection of Montana statutes and DOC internal operating procedures, emails to and from White and DOC staff, and copies of time sheets Mr. White submitted. Also included were raw tables of Mr. White's work arrival and departure times referred to as "scan-in/scan-out" times.

At trial, Counsel for White objected to the admission of Ex. 2 and now raises the same objection to this Court. Judge Sherlock twice overruled White's objection: Tr. at 170:8-9 and 171:5-8. At the second point, Counsel for White clarified her objection was only to a small portion of the 56-page document.

MS. RANTA: The portion of this report that we object to is anything having to do with the scan-in and scan-out system, which is this time card audit.

Tr. at 171:17-20.

Counsel's objection was that the witness. Ms. Handa of DOC, was not an administrator of the prison's automated scan-in/scan-out record system. In an exchange with the Hearing Examiner, Counsel noted the only objectionable portion began on page 32 of Ex. 2, the "Entry Control Accountability Report" which comprised just 3 pages of

the 56-page exhibit. Tr. at 172:3-6; Ex. 2. Noting the objection, Judge Sherlock admitted the exhibit, but ruled, "You can cross-examine her," offering Counsel the means to attack the veracity of those 3 pages and erode the weight of that evidence.

Mr. White argues the Hearing Examiner's ruling was wrong under Mont. R. Evid. 602, personal knowledge; Rule 801(c) and 803(6), hearsay; and Rule 901, authentication. See Tr. at 170:2-7.

This Court's task, like the Montana Supreme Court's, is to review the Hearing Examiner's ruling under an abuse of discretion standard. *Bessette v. Bessette*, 2019 MT 35, ¶ 13, 294 Mont. 262, 434 P.3d 894. *Bessette* held:

An abuse of discretion occurs if a court exercises granted discretion based on a clearly erroneous finding of fact, an erroneous conclusion or application of law, or otherwise "acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice."

Id. (quoting In re D.E., 2018 MT 196, ¶ 21, 392 Mont. 297, 423 P.3d 586). The Court applies the same standard to cases arising in administrative hearings. Steer. Inc. v. Dep't. of Revenue, 245 Mont. 470, 474-75, 803 P.2d 601, 603-04 (1990).

At the outset, it must be noted this matter was not tried to a jury of lay men and women. The matter was tried before an experienced and respected retired district court judge. Judge Sherlock was not subject to the hazards and pitfalls that may be encountered by a jury giving undue weight to an exhibit or by a jury misconstruing the significance of an exhibit. Applying that experience, the Hearing Examiner noted Ex. 2, Handa's report, was cross-checked and corroborated from a number of sources. Handa's report was not solely reliant upon the scan-in/scan-out system to which White objected. The Hearing Examiner recognized the solid, multi-factor grounding of Handa's audit report and entered these findings of fact:

38. In compiling her audit, Handa referred to the time claimed by White, the prison records, interviews with White's coworkers who might know of his whereabouts, White's calendar, records of all meetings and trainings White may have attended, records of emails between White and Tadlock, and reviewing White's supervisors' notes. (Tr p 168). Handa also gave

White credit for one half hour for each day worked, to recognize the time needed to check into and out of the prison. (See pp 52-56 of Ex2).

- 39. Handa's investigation concluded that White was claiming some 216 hours of time that he had not actually worked. (Ex 2 p56).
- 40. On September 12, Handa and Tadlock interviewed White. When asked to explain some of the specific discrepancies shown in the audit. White had no response. (Tr pl 18).

Findings of Fact and Conclusions of Law.

DOC presented its time audit to White and offered him an opportunity about one month later to rebut the time audit's conclusion he had submitted falsified time cards. The Hearing Examiner found, "White presented no information concerning the time audit. Instead, White resigned. (Tr. at 136-137, 200)." Finding of Fact 42.

The Hearing Examiner left no doubt that he did not give undue weight to that portion of Ex. 2 related to scan-in/scan-out record system. The Hearing Examiner embarked on a detailed examination of facts tending to prove timecard violations "not based on the prison time clock." Finding of Fact 43-48. The Hearing Examiner found substantial credible evidence of timecard violations without relying on the three pages of Ex. 2 to which White objected. The Hearing Examiner found:

48. Thus, even if the prison records are suspect, the above findings demonstrate falsification of time cards.

Finding of Fact 48.

This Court agrees with Respondent (and Intervenor) that the Hearing Examiner acted within his discretion in admitting Ex. 2. The Hearing Examiner weighed, evaluated, and cross-checked the scan-in/scan-out record system against other unchallenged evidence. The Hearing Examiner did not "act[ed] arbitrarily, without employment of conscientious judgment, or exceed[ed] the bounds of reason resulting in substantial injustice."

Assuming, arguendo, the Hearing Examiner committed some evidentiary error, that error was harmless.

A similar situation arose in a police officer's challenge to evidence at a police commission hearing which resulted in the officer's firing. Abbey v. City of Billings Police Comm'n, 268 Mont. 354, 886 P.2d 922 (1994). The case turned on how a police vehicle was damaged and whether the officer falsified his role in that damage. The officer argued the commission improperly heard accident reconstruction opinions from nonexpert lay witnesses. Four witnesses testified regarding the likely circumstances of the damage, two of whom were not experts and two of whom qualified as experts. On appeal, the District Court held the laypersons' opinions should not have been permitted, but that evidence was cumulative of properly admitted expert testimony and, therefore, harmless.

The Montana Supreme Court affirmed, finding the testimony was "merely harmless error" because the same testimony came in through qualified experts.

Harmless error is an error committed during the trial proceedings which does not affect the substantial rights of the party. Thus, in order for the District Court to reverse the Commission, Abbey had to show that Deschene's and Fillner's testimony violated his substantial rights. We conclude that he has not shown that.

Id. at 364, 886 P.2d at 928. Similarly, Mr. White's substantial rights were not impacted because other unchallenged evidence demonstrated the same facts. The Hearing Examiner wrote, "Thus, even if the prison records are suspect, the above findings demonstrate falsification of time cards." Finding of Fact 48.

In Abbey, the Montana Supreme Court held cumulative evidence admitted in error does not affect the substantial rights of a party in an administrative proceeding. Under MCA § 2-4-704, this Court is to determine if admission of Ex. 2 prejudiced Mr. White's substantial rights. This Court concludes that admission of Ex. 2 was proper because it involved no abuse of discretion. However, to the extent that admission of the report in its entirety may have been erroneous, such error was harmless in view of the other evidence properly admitted.

6. POST violated its own procedures by failing to conduct an investigation.

Mr. White argues POST failed to conduct an investigation amounting to an error of law that prejudiced his substantial rights. This Court finds no support for the argument in the record, factually or legally.

Mr. White cites the Court to an administrative rule imposing a duty upon the POST director to investigate a filed complaint. ARM 23.13.703(8). Mr. White argues POST improperly accepted DOC's investigation prepared by Mr. White's supervisor, Dawn Handa, which was later admitted as Ex. 2. This failure. Mr. White argues, prevented POST from discovering exculpatory facts which prejudiced Mr. White.

While it is true, the administrative rules require POST to conduct an investigation, it is also true that before POST takes any action, the rules oblige it to allow the employing agency to first investigate the matter. POST must refer allegations to the "employing authority" and await that agency's report of its investigation. ARM 23.13.703(3), (4). By rule, the certificate holder's agency must act first. Under this system, it is evident POST is expected to factor the agency's initial investigation; any other conclusion is absurd.

Here POST relied upon DOC's investigation but conducted its own inquiry as well. The record shows the following activities POST performed to investigate the allegations against Mr. White.

- POST received the Notice of Termination on White from DOC on May 1, 2017. Tr. at 226, 236-37; Ex. 3; Finding of Fact 49.
- POST requested and received DOC's investigation regarding Mr. White's termination. Tr. at 227.
- POST received and reviewed Mr. White's written statement concerning the allegations, which was dated July 8, 2017. Finding of Fact 50.
- POST received White's personnel files from Havre PD, DOC and Hill County Sheriff's Office personnel file. Tr. at 227:24-228:3.
- November 6, 2017, POST staff interviewed Mr. White. Tr. at 228, 238; Findings of Fact 51, 53.

The administrative rules required POST, as it did, to refrain from conducting its own investigation until it received DOC's investigation report. Then POST was required to conduct an investigation of its own, but the form of that investigation is not declared by rule. The Court finds no merit to Mr. White's claim of prejudice stemming from POST's investigation.

7. POST erred by failing to offer White reasonable accommodations for White's admitted mental health issues.

Mr. White argues POST violated Montana law because it did not offer him reasonable accommodations for his mental health challenges before revoking his POST certification. Mr. White cites the Court to ARM § 23.13.702(2)(b) (2018).

Mr. White's argument is misplaced because the record is clear that POST did not revoke Mr. White's certificate because of a mental condition. Rather, in addition to ethics violations, POST's action was based upon Mr. White's:

- (a) willful falsification of any information in conjunction with official duties ... which may tend to undermine public confidence in the officer, the officer's employing authority, or the profession:
- * * *
- (g) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations;
- (h) willful violation of the code of ethics . . . :
- (i) other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession:
- * * *
- (1) acts that are reasonably identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the employing authority's or officer's reputations:

ARM § 23.13.702(2) (emphasis added).

Since POST did not sanction Mr. White because of any mental health condition, it was not obligated to offer an accommodation. Therefore, there was no violation of an administrative rule prejudicing a substantial right.

III. CONCLUSION AND ORDER.

After a thorough review of this matter, the Court finds no error in the decision below prejudicing the substantial rights of Petitioner Thad White.

ACCORDINGLY, IT IS HEREBY ORDERED:

- 1. White's petition for judicial review is denied in its entirety;
- 2. White's prayer for relief is denied in its entirety; and
- The final agency action first imposed by the Montana Board of Crime Control and now defended by the Public Safety Officers Standards and Training Council is affirmed.

DATED this 2nd day of December 2022.

Hon. Randal I. Spaulding, District Judge

cc: Katie Ranta & Jason Holden, Counsel for Petitioner
Patrick M. Risken, Counsel for BOCC
Michael L. Fanning, Counsel for POST
Hon. Randal I. Spaulding, District Court Judge (Presiding)

12/29/2022

Bowen Greenwood

CLERK OF THE SUPREME COURT

STATE OF WONTANA

Case Number: DA 22-0748



IN THE SUPREME COURT OF THE STATE OF MONTANA THE OFFICE OF THE CLERK OF SUPREME COURT HELENA, MONTANA 59620-3003

December 29, 2022

RE: District Court Case No: DV-2019-135

NOTICE OF FILING

Supreme Court No. DA 22-0748

THAD WHITE,

Petitioner and Appellant,

٧.

MONTANA BOARD OF CRIME CONTROL,

Respondent and Appellee,

and

POLICE OFFICER STANDARDS & TRAINING COUNCIL.

Intervenor.

Notice of Appeal was filed on December 29, 2022 and assigned the above Supreme Court case number.

PLEASE NOTE the time for filing the appellant's opening brief has NOT yet begun. Another notice will be sent when this office receives the district court record, the filing of which initiates the briefing schedule pursuant to the Montana Rules of Appellate Procedure.

As a reminder, one can follow this case online through the Clerk of the Supreme Court's Public View Docket at http://supremecourtdocket.mt.gov/.

Sincerely,

Bowen Greenwood

Clerk of the Supreme Court

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

IN THE MATTER OF JARED LAUSCH'S CERTIFICATE REVOCATION

Case No. 21-65

HEARING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Public Safety Officer Standards and Training Council (POST) has moved the Hearing Examiner to issue an order entering default against Jared Lausch (Respondent). For good cause appearing, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

- 1. Billings Police Department (BPD) appointed Respondent as a peace officer on March 29, 2010.
 - POST issued Respondent a peace officer basic certificate on August 16, 2012.
- POST issued Respondent a peace officer intermediate certificate on December 3,
 2014.
 - POST issued Respondent a peace officer advanced certificate on April 2, 2018.
- 5. In April of 2019, while employed by BPD, Respondent was acting as an assisting officer on a driving under the influence investigation and arrest.
 - 6. When Respondent arrived on scene, the officer in charge was conducting field

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

sobriety testing on the subject.

- 7. The subject was cooperative but easily confused and slow to react.
- 8. The officer in charge had the subject stand up from a car bumper on which the subject had been sitting and informed him that he was under arrest.
- The officer in charge and another officer were each holding one of the subject's arms and were in the process of handcuffing the subject.
 - The subject was not resisting.
- 11. Respondent stepped chest to the subject and stated, "Put your hands behind your back."
 - 12. The subject responded, "Fuck off, bitch."
- 13. Respondent grabbed the subject by the neck or chin and slammed him back across the hood of the patrol car.
- 14. The subject was handcuffed when Respondent pushed him backward over the hood of the patrol car.
- 15. While holding the subject across the hood, Respondent stated, "You don't get in my face."
 - BPD determined that Respondent's use of force in this situation was excessive.
 - Respondent resigned from BPD on November 11, 2019.
- POST issued its Notice of POST Action and Opportunity for Hearing on April 22,
 This notice came after POST followed its internal process of seeking Respondent's input on the allegations against him. Respondent did not participate in that process.
 - 19. In its Notice, POST notified Respondent of the following:

The Public Safety Officer Standards and Training Council (POST) has good cause to believe that Jared Lausch (Respondent) is unqualified to hold POST certifications because of actions which violate the Montana Code Annotated (MCA) or POST's administrative rules (ARM).

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER PAGE 2

POST has revoked Respondent's basic, intermediate, and advanced certificates.

POST certification is required to serve as a public safety officer or peace officer in Montana. As of the date of this notice [April 22, 2022], Respondent does not have POST certification and it is therefore unlawful for Respondent to act as a public safety officer or peace officer in Montana.

- 20. Respondent then requested a hearing on May 17, 2022, and this contested case was initiated.
- 21. The Hearing Examiner held a scheduling conference on June 8, 2022. During that conference, the need for Respondent to provide a release for his Billings Police Department personnel records was discussed. POST demonstrated that it needed this information to verify whether revocation was the appropriate penalty in this case. Respondent stated that he would provide a release immediately, but he never did so.
- 22. On June 20, 2022, the Hearing Examiner issued a scheduling order. In that order, the Hearing Examiner set a show cause hearing to address whether to stay the revocation of the Respondent's certification during the contested case process. The hearing on the stay was scheduled for July 7, 2022.
- 23. On June 22, 2022, POST moved to continue the show cause hearing because Respondent had not provided the release for his personnel file. Respondent did not respond. The Hearing Examiner granted that motion.
- 24. POST had a Case Status Committee meeting on July 11, 2022. In discussing this case, the Committee noted that it needed Respondent's personnel file to review whether revocation was the appropriate penalty for this case. Respondent did not attend the Case Status Committee meeting.
- 25. Pursuant to the June 20, 2022 Scheduling Order, POST provided timely initial witness disclosures. Respondent did not submit his initial witness disclosures.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER PAGE 3

- 26. On August 23, 2022, POST moved the Hearing Examiner to schedule a show cause hearing to address whether this matter could be continued based upon Respondent's failure to provide POST with a release for his personnel file. POST had contacted Respondent prior to filing the motion, but Respondent did not respond to POST.
- 27. On August 24, 2022, the Hearing Examiner set a show cause hearing for September 27, 2022.
- 28. On September 9, 2022, POST filed a motion to hold the scheduling order in this matter in abeyance until POST received the Respondent's completed release. The reason was that POST could not move forward in the case in the absence of that release. Respondent did not respond.
- On September 13, 2022, the Hearing Examiner issued an Order holding her June
 20, 2022 Scheduling Order in abeyance.
- 30. On September 27, 2022, the Hearing Examiner and POST appeared for the scheduled show cause hearing. Respondent did not appear.
- 31. Since issuing its notice of agency action, POST has reached out to Respondent on numerous occasions about the release. Respondent replied only one time. On July 19, 2022, Respondent stated that he had been busy but that he would provide the release "as soon as possible." Respondent never provided the release.

CONCLUSIONS OF LAW

- POST properly exercises jurisdiction in this matter. Section 44-4-403, MCA.
- POST is responsible for providing "for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers."
 Section 44-4-403(1)(c), MCA.
 - 3. A "public safety officer" includes a peace officer. Section 44-4-401(2), MCA.

- 4. POST "has the power to recall, sanction, suspend, or revoke any or all certificates upon good cause based on a preponderance of the evidence." ARM 23.13.204(3).
- 5. The failure of a public safety officer to refrain from any of the prohibited conduct stated in ARM 23.13.702(3) constitutes grounds for sanction of the officer's POST certification.
 - 6. ARM 23.13.702(3) sets forth prohibited conduct as including the following:

•••

- (f) neglect of duty or willful violation of orders or policies, procedures, rules, regulations, or criminal law when such action or inaction, committed in the officer's capacity as an officer or otherwise, reflects adversely on the officer's honesty, integrity, or fitness as an officer or is prejudicial to the administration of justice;
- (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:

•••

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

- 7. All public safety officers must abide by the code of ethics in ARM 23.13.203(3), which includes the following:
 - (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;

--

(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;

•••

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER PAGE 5

(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.

8. Respondent's conduct, as outlined above, constitutes prohibited conduct under the

provisions of ARM 23.13.702 and constitutes grounds for revocation of his POST certifications.

9. Respondent's conduct, as outlined above, required POST to take emergency action

regarding Respondent's POST certifications based upon the public health, safety, or welfare.

These factual findings include, but are not limited to, Respondent's use of excessive force and

Respondent's failure to respond to POST's notice.

10. The entry of default against Respondent is appropriate under ARM 23.13.705(5)

based upon Respondent's failure to respond, appear, or otherwise defend POST's notice of agency

action.

ORDER

IT IS HEREBY ORDERED, Respondent's basic, intermediate, and advanced certificates

are revoked pursuant to ARM 23.13.703(9)(d).

DATED November 7, 2022.

Bw.

Dee Ann Cooney

Hearing Examiner

cc:

Michelle Dietrich, mdietrich@mt.gov Jared Lausch, punisher.lausch@gmail.com

Montana Law Enforcement Academy Basic Changes

In keeping with the theme of "base level skill" for students of the Montana Law Enforcement Basic, there is a new approach to the basic course. The following represents the mindset of having the officers successfully complete the course but will also identify deficiencies in officers with an opportunity to utilize remedial instruction to correct those.

For Basic #180 the plan is to have check in on Sunday, January 8th from 9 a.m. to noon. There will be an orientation process from 1 p.m. to 5 p.m.

WEEK #1

Class will begin on Monday January 9, primarily consisting of necessary classroom courses to give students necessary officer tools which will benefit the students throughout the course of Basic which are the following:

POST Introduction

Preparation for Duty – This class will focus on proper equipment needed, setup for basic patrol function, call handling, etc.

Emotional Intelligence

Police Ethics

Fair and Impartial Policing

Radio Precedure

Diet and Exercise

Policing on Camera

Report Writing - The focus of having Report Writing earlier in the course will be outlined in week #2. We will be requiring the students to write more reports.

Investigative Interviewing

Handcuffing/Pat Downs

CIT/Interpersonal Communication

Firearms Introduction - Pistol

WEEK #2

The focus of week #2 is to give students preparation for weeks to come. During this week there are four (1) one-hour blocks labeled PT/Patrol Functions. During these blocks of instructions, the students will be broken into two (2) thirty person groups by squads. Squads A/B/C will be taken for an hour of physical fitness training, mandatory on the clock. Squads D/E/F will be taught basic patrol functions and then the groups will flip flop. The purpose of the basic patrol functions will give officers the understanding of how to fill out proper paperwork they will encounter with their own agencies such as report face sheets and understand appropriate call taking procedures which will require the students to collect basic information on calls for service. Officers will be given scenarios requiring interviewing skills, proper information collection, and report writing skills. The following is the break down for Week #2:

January 16 – P.T. for Squads A/B/C
Proper Documentation on Face Sheets for Squads D/E/F

January 17 – P.T. for Squads D/E/F
Proper Documentation on Face Sheets for Squads A/B/C

January 18 – P.T. for Squads A/B/C
Notices to Appear for Squads D/E/F

January 19 – P.T. for Squads D/E/F Notices to Appear for Squads A/B/C

WEEK #3

Week #3 begins some break out sessions including MILO, Stop the Bleed/Below 100, Traffic Stops, CPR/AED, Radar, and handcuffing. Traffic stops will incorporate issuance of citations.

Students will be receiving MCA code including criminal and traffic.

The week finishes up with TIMS and Crash Investigation, including proper crash form preparation and issuance of citations.

WEEK #4

Week #4 will be DUI/SFST/Intoxilyzer week. No change in this week, except having it before PVOC rotation. There will be incorporation of DUI scenarios in PVOC.

<u>WEEK'S #5 - #7</u>

Firearms week.

PVOC week.

Defensive Tactics

WEEK #8

The students will come back from the breakout weeks and need classroom to prepare them for the final four weeks of basic. Classes will include the requisites in Youth Court, Mental Health First Aid, and others.

There will be incorporated Physical Fitness and Patrol Functions. The patrol functions class will be prepping students for a two day rotation of calls for service response involving the high frequency/high volume calls the majority of law enforcement officers handle to include but not limited to, Noise Disturbance, Theft/Shoplifting, Criminal Trespass, Bar Fight, Suspicious Person/Vehicle/Circumstance, Intoxicated persons, etc.

The focus of the Patrol Functions is to introduce the students to basic proficiencies of command presence, verbal control, physical control, officer safety and proper handling of the common calls. Students will be shown proper handling of these types of calls for service, then placed into these scenarios with all training officers. Upon conclusion of scenarios, officers will be required to write reports simulating an actual patrol day.

February 27 – P.T. for Squads A/B/C
Basic Calls for Service Introduction for Squads D/E/F

February 28 – P.T. for Squads D/E/F
Basic Calls for Service Introduction for Squads A/B/C

March 1 – P.T. For Squads A/B/C
Basic Calls for Service Introduction for Squads D/E/F

March 2 – P.T. For Squads D/E/F
Basic Calls for Service Introduction for Squads A/B/C

March 2 and 3 — Students will be divided into four groups of 15. There will be 14 hours of patrol skills demonstration, which include students demonstrating proper skills in handling patrol calls for service. Students will be evaluated and critiqued on performance and in any instances, remedial training will be provided.

We are also looking at having these two days situated for conducting MPAT in full uniform to meet the MPAT requirement.

<u>WEEK #9</u>

Week #9 begins with the students broken into two halves. One group will conduct Confrontation Simulation while the other group will learn the basic building search techniques preparing to the upcoming week of Patrol Readiness/Active Shooter week in Boulder.

Tuesday through Friday, Patrol Readiness/Active Shooter week in Boulder.

March 6 and 7 - Will focus on static building search tactics in preparation for Alarm Response the following week.

March 8 and 9 - Will focus on Active Shooter Training and Active Shooter Response.

WEEK #10 (May end up using HPD and LCSO later in the week)

Week #10 again requires classroom instruction on Dangerous Drugs, Domestic Violence Response, and Sexual Assault Investigation. Newly incorporated into this week will be roughly a day and half of focus on domestic violence response. Students will be given opportunities over a day and half to practice domestic violence response which will include a verbal only domestic dispute and an arrestable PFMA investigation. Students will be given report assignments.

WEEK #11

Week #11 will be the student's opportunity for major case response and major case investigation. The week will start with evidence analysis, then migrate into major case investigation, crime scene photography, then begin with crime scene search.

During the breakout sessions, officers not conducting their crime scene search will be subject to the following break out sessions on appropriate days:

Crime Scene Management – The focus of this block of instruction is to provide the basic law enforcement officer the skills to understand responding to a call can rapidly change into having to preserve a crime scene and instill the skills of evidence recognition, crime scene security, and crime scene logging.

Drug Endangered Children – Taught by Montana DCI on the Drug Endangered Children Response and Protocol

Disabled Officers - Taught by Michael Dale in regards to proper tourniquet usage and survival shooting skills

Use of Force Scenarios – Breakdown of current events in law enforcement which officers will be shown training videos from Police Activity or Police One, and then focus on class participation in applying statutes such as Graham vs. Connor, Tennessee vs. Garner, and provide real life application in those scenarios.

The week will end with a day of Calls for Service (Plumber Scenario) and Ambush (Traffic Stop) Scenarios.

The week will finish up with the final comprehensive test.

Students will be given a two-hour introduction into Probation and Parole's responsibilities and the role of a law enforcement officer when handling calls regarding subjects on probation and parole.

The final part of the afternoon can be utilized in two different situations.

- (1) Remedial Training for Ambush, Building Search, PFMA response
- (2) Duty to Intervene Scenario

Discussion has been made for possible Remedial Calls for Service/Ambush/PFMA or other scenarios to make an informed decision on if a student will be able to meet the standard of Proficient Base Level of Skill to graduate from the academy.

WEEK #12

Monday will be a preparation day for the students for the final scenarios. This will include preparation and evaluation criteria for CIT, DUI, Sexual Assault, PFMA, and will now incorporate students to write a report on a selected MILO scenario. Finally in the afternoon, students will be provided a class on testifying in court and prepared for their Courtroom (Moot Court) Scenario.

Tuesday through Thursday, students will go about their different scenarios. Students will be evaluated on their performance. If a student is identified as needing remedial training, staff has introduced Friday for Final Skills Remediation to be conducted on Friday of this week.

Students identified as needing remedial training, will be afforded the opportunity to demonstrate Proficient Base Level Skill in those scenarios the day after all students have completed Final Skills Assessment. This day has been labeled Final Skills Assessment Remediation, Administrative Operations, and we will have officers write their reports to simulate writing reports during a shift. Students will begin the day 0800 hours and utilize this time to write reports. It will allow those students needing remedial training, the opportunity to receive remedial training. It will also provide staff an opportunity to prepare for final evaluations and deal with students not meeting the Base Level of Skill.

WEEK #13

Even though it is listed as Week #13, there will be a time for students to clean out their rooms and clean up the dorms.

Academy staff will conduct a topic review and wrap-up for the class.

Final evaluations will be given first thing in the afternoon.

Students will finish the day with graduation practice.

Graduation will be slated for Tuesday.

Classes affected offered as POST Credit Classes:

There were some classes that had to be taken out of the normal schedule to accommodate the changes to hands-on training. These classes are going to be offered after hours during their time at the Academy for not only students of the Basic Course, but to surrounding area officers needing POST credit. Those classes include:

Adult Protective Services taught by DPHHS
Outlaw Motorcycle Gangs taught by Shane Haight, Montana DCI
Youth Gangs taught by Detective Guy Baker, Missoula PD
Medicaid Fraud/Elder Abuse taught by Montana DCI Medicaid Fraud Agents
Gambling Laws taught by Montana DCI Gambling Agents
Alcohol/Tobacco Laws Taught by Montana Department of Revenue Agents

These classes are given in two-hour blocks and will give new Basic LEO students the opportunity to obtain POST credits in attendance.

Good Afternoon,

Thank you for taking the time to speak with me earlier today. It is good to get started towards MLECA's (Montana Law Enforcement Canine Association) goals. I have CC'd the President of MLECA on this email.

We are attempting to create a baseline standard for K-9 in Montana. We are not seeking to create a state certification at this time. We are looking to have something that simply states a K-9 teams must possess certifications for their abilities and that certification must meet a minimum standard. There are numerous nationally recognized K-9 certifications available, and we don't feel pinning handlers down to a certain certification is the direction to go. This being said, there are standards that the majority of recognized LE K-9 certifications meet. This would allow Montana K-9 handlers to choose a certification that suits them while also maintaining a standard.

We are looking to institute something as basic as the following example:

Narcotics Detection:

K-9 team must possess documentation from a third party certifying body, that the K-9 team can reliably detect illicit substances.

Tracking:

K-9 team must be able track or trail a subject a minimum of .25 miles.

Criminal apprehension:

K-9 handler must be able to reliably "out" his/her dog verbally or physically.

K-9 must have a "Recall."

K-9 must be able to perform a "Call off" or "Down in motion" on a decoy.

Any assistance or support would be greatly appreciated. We can be contacted at the following emails:

Jackson Booth, Laurel Police Department (MLECA President): jbooth@laurel.mt.gov

Travis Manning, Musselshell County Sheriff's Office (MLECA Vice-President): tmanning@co.musselshell.mt.us

Thank You,



Travis Manning

Deputy Sheriff/K-9 Handler/Deputy Coroner

Musselshell County Sheriff's Office

https://musselshellcounty.org/public-office/sheriffs-office/[linkprotect.cudasvc.com]

820 Main Street

Roundup, MT 59072

Office: 406-323-1402

Fax: 406-323-2566

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Montana Public Safety Officer Standards and Training Council

2260 Sierra Road East Helena, MT 59602 Phone: (406) 444-9975 Fax: (406) 444-9978

dojmt.gov/post

February 9, 2023

To:

POST Council

From: Jim Thomas, Case Status Committee Chair

Subject: Closure of Cases

The Case Status Committee of the POST Council met twice, on December 21, 2022, and February 1, 2023, since the Council's December 7, 2022 meeting. This is the Committee's written report setting forth the circumstances and resolution of cases. After consultation with legal counsel and meeting of the Case Status Committee of the POST Council, the following cases have been closed:

2017: No Cases from 2017 were closed

There is one open case from 2017. That case is in the Montana Supreme Court.

2018: No cases from 2018 were closed

There are 3 open cases from 2018. In two cases, the officer is serving a sanction, and in one case, a Notice has been issued.

2019: No cases from 2019 were closed

There are 5 open cases from 2019. In all 5 cases, the officers are serving a sanction.

2020: Two cases from 2020 were closed

20-19 was closed. 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.

20-35 was closed. A Police Officer became intoxicated and drove his vehicle, resulting in the officer nearly colliding with another vehicle at an intersection. The officer was so intoxicated, he had trouble communicating with the other involved vehicle's driver. The

officer was convicted of DUI. POST and the officer entered a stipulated agreement for the officer's certification to be placed on a two-week enforced suspension, concurrent to his suspension by the employing authority, followed by thirty months of probation. The officer has successfully completed his probationary period, and the case is closed.

There are 5 open cases from 2020. In four cases, the officers are serving a sanction, and one case is an active investigation.

2021: One case from 2021 was closed

21-25 was closed. A detention officer was alleged to have engaged in harassing and targeting behavior toward a subordinate. POST closed the case with a finding of Not Sustained with regard to any POST violations, and concluded that the agency took appropriate action.

There are 15 open cases from 2021. Of those, one case is in the informal letter process, one is in the contested case process, 4 cases are on hold pending other matters, and 7 officers are serving a sanction.

2022: Nine cases from 2022 were closed

- 22-20 was closed. A corrections officer inappropriately used a taser on an inmate and was convicted of felony mistreatment of a prisoner. The officer's certification was revoked when he failed to respond to POST.
- 22-46 was closed. An undersheriff was alleged to have withheld information from POST regarding an officer's termination. He was also alleged to have engaged in corrupt hiring practices. POST entered findings of Exonerated and Not Sustained and closed the case without further action.
- 22-23 was closed. A Chief of Police was found to have engaged in sexual activity with a subordinate officer, both on and off duty. The officer has also been convicted of offenses involving the distribution of child pornography. The officer's certification was revoked when he failed to respond to POST.
- 22-24 was closed. A Police Officer was arrested after breaking into the home of a former partner and assaulting a man in the home. The officer's certification was revoked when he failed to respond to POST.
- 22-50 was closed. A reserve officer posted a video of a female engaged in bestiality. The officer voluntarily surrendered his POST certification.
- 22-16 was closed. A detention officer violated victim notification policies, failed to complete security checks, and posted videos from inside the detention facility, creating security concerns. The officer's certification was revoked when he did not respond to POST.
- 22-29 was closed. A peace officer was alleged to have used his position to get title work completed for his LLC. POST closed the matter as POST action was unwarranted.

22-40 was closed. A misdemeanor probation/pretrial services officer was investigated for allegedly taking prescription medications from offenders she was supervising. The officer voluntarily surrendered her POST certification.

22-45 was closed. A sheriff was alleged to have engaged in inappropriate hiring practices, and to have appointed "deputy coroners" who never received any coroner training and never went to calls, although they were still paid as deputy coroners. POST closed its investigation and will reexamine the matter should the officer become appointed again.

There are 34 open cases from 2022. Of those, 27 cases are in the informal letter process, one is in the contested case process, one officer is serving a sanction, and 5 of them are on hold pending other matters.

2019: No cases from 2023 were closed

There are four open cases from 2023. All four cases are in the informal letter process.

Since the last Council meeting, POST has closed a total of 25 cases.

POST currently has 35 active investigations.

POST currently has 4 cases which are in the MAPA process.

POST currently has 1 case on appeal to the Montana Supreme Court.

POST currently has 7 new allegations to present to case status.

POST currently has 16 cases awaiting information from agencies.

POST currently has 10 investigations on hold pending other matters.

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

POST currently also has 20 cases in which officers are serving sanctions.

60000 Expenditures	的。 是在1000年的中央,1000年代在1000年代在1000年代在1000年代在1000年代在1000年代在1000年代在1000年代在1000年代在1000年代在1000年代在1000年代在1000年代在1000年代		311,288.82
	31101 Regular	106,225.09	106,225.09
•	31103 Sick Leave	3,051.99	3,051.99
1	31104 Vacation	7,820.21	7,820.21
	61105 Holiday	6,964.53	6,964.53
	31133 Termination Pay - Sick Leave	607.65	607.65
	31134 Termination Pay - Vacation	3,084.52	3,084.52
6	S1136 FSLA Comp Time Payout	8.31	8.31
6	S1139 VEBA Sick Leave Payout	585.45	585.45
	31158 Compensatory Time Taken	1,164.33	1,164.33
	31173 VEBA Annual Leave Payout	6,603.36	6,603.36
	31401 FICA	9,683.43	9,683.43
ļε	31402 Retirement - Other	12,008.91	12,008.91
	31403 Group Insurance	29,417.79	29,417.79
	31404 Workers Compensation Insur	1,054.94	1,054.94
ļe	31410 State Unemployment Tax	322.38	322.38
	32102 Consult & Prof Services	2,868.00	2,868.00
100	32104 Insurance & Bonds-Fixed Costs	1,749.73	1,749.73
	32108 Legal Fees & Court Costs	71,620.15	71,620.15
	32134 Honorariums	1,600.00	1,600.00
ļe	32162 Witness Fees	341.90	341.90
ļe	32165 Temporary Services	3,660.10	3,660.10
	62190 Printing/Pub & Graphics	326.54	326.54
■	321B5 ITSD EMail Services	72.70	72.70
	62203 Clothing & Personal	378.00	378.00
	62210 Minor Tools, Instrum., & Equip	5.28	5.28
1 to 1	62216 Gasoline	214.75	214.75
1	52223 Training	24.64	24.64
	32225 Books & Reference Materials	51.50	51.50
6	32232 Safety Supplies/Minor Equip	109.68	109.68
6	62236 Ofc Supplies/E-Market	1,003.32	1,003.32
le le	62238 Minor Equipment-Office Equip	681.82	681.82
	52241 Office Sup/Minor Equip-NonStat	577.62	577.62
6	52249 Non-Capitalized Software	25,420.00	25,420.00
	52304 Postage & Mailing	6.09	6.09
	32309 Advertising - Non Recruiting	54.50	54.50
[6	32319 Cellular Phones	439.72	439.72
	32322 Teleconferences	511.92	511.92
1	323B0 ITSD Voice Services	70.29	70.29
į e	623B4 ITSD Long Distance Services	0.08	80.0
	62407 In-State Meals	34.00	34.00
	62410 In-State Meals Overnight	76.00	76.00
	62489 Non-Employee In State Mileage	3,621.22	3,621.22
	62490 Non-Employee In State Meals	379.50	379.50
	62497 Non-Employee In-State Lodging	3,111.61	3,111.61
	62506 Postage Meter	539.89	539.89
	32519 Photo Copy Equipment	1,580.46	
1	62801 Dues	570.45	
	62802 Subscriptions	469.02	469.02
	62807B Notary Application Fee SOS	25.00	
	62809 Education/Training Costs	53.00	
	62817 Meetings/Conference Costs	417.45	
į	62891A DOA Access\ID Card Fee	20.00	20.00