

**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)**
    - 5. 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.

1 MONTANA POST COUNCIL MEETING 1  
2 December 7, 2022  
3 Face to Face Meeting 9:00 a.m. to 11:53 a.m.  
4 Montana Law Enforcement Academy  
5 2240 Sierra Road East  
6 Helena, MT 59602  
7  
8 Council members present: Jesse Slaughter -  
9 Council Chair. Lee Dutton, Jim Thomas, Kristino  
10 White, Bill Smith, Jim Anderson, Jess Edwards,  
11 Wyatt Glade  
12  
13 Council Members present by phone:  
14 Mark Kraft  
15 Matthew Saylor  
16 Mike McCarthy  
17 Kimberly Burdick  
18  
19 Council Members not present:  
20 Conner Smith  
21  
22 Staff Members Present: Timothy Allred, Executive  
23 Director; Katrina Belgor, Paralegal/Investigator;  
24 Tina Cranmer, Administrative Assistant; Brooke  
25 Standish, Administrative Assistant.

1 POST Legal Counsel: 2  
2 Stuart Sogrest, Esq.  
3  
4 Guests in the Room:  
5 Ken Brown  
6 Justin Braun  
7 Dan Smith  
8 Kim Much  
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1 WHEREUPON, the following proceedings were 3  
2 had:  
3 . . . . .  
4 CHAIR SLAUGHTER: So it's 9:05 by my  
5 watch, so we're going to call this meeting to  
6 order. Timothy, if you would, please, will you  
7 start by taking roll.  
8 MR. ALLRED: We'll start with the  
9 Council. Jesse Slaughter.  
10 CHAIR SLAUGHTER: Here.  
11 MR. KRAFT: Here.  
12 MR. KRAFT: Here.  
13 MR. ALLRED: Kristino White.  
14 MS. WHITE: Here.  
15 MR. ALLRED: Jess Edwards.  
16 MR. EDWARDS: Here.  
17 MR. ALLRED: Matthew Saylor.  
18 MR. SAYLER: Here.  
19 MR. ALLRED: Wyatt Glade.  
20 MR. GLADE: Here.  
21 MR. ALLRED: Conner Smith.  
22 (No response)  
23 MR. ALLRED: Conner told me he might not  
24 be able to make it today. Mike McCarthy.  
25 MR. MCCARTHY: Here.

1 MR. ALLRED: Jim Anderson. 4  
2 MR. ANDERSON: Here.  
3 MR. ALLRED: Bill Smith.  
4 MR. BILL SMITH: Here.  
5 MR. ALLRED: Kimberly Burdick.  
6 MS. BURDICK: Here.  
7 MR. ALLRED: Jim Thomas.  
8 MR. THOMAS: Here.  
9 MR. ALLRED: Lee Dutton.  
10 MR. DUTTON: Here.  
11 MR. ALLRED: Those with POST staff.  
12 Council. Executive Director Timothy Allred.  
13 CHAIR SLAUGHTER: Stuart, go ahead.  
14 MR. SOGREST: Stuart Sogrest, Counsel to  
15 POST.  
16 MS. HOLZER: Katrina Belgor, Paralegal  
17 Investigator for POST.  
18 MS. CRANMER: Tina Cranmer,  
19 Administrative Assistant for POST.  
20 MS. STANDISH: Brooke Standish,  
21 Executive Assistant for POST.  
22 MR. ALLRED: Those in the room, please  
23 introduce yourself. Please spell your last name  
24 and come up to the mike.  
25 MR. DAN SMITH: Dan Smith, S-M-I-T-H,

5

1 I'm with the Montana Police Protective  
2 Association.

3 MR. BROWN: Justin Braun, R-R-A-U-N,  
4 Interim Administrator, Montana Law Enforcement  
5 Academy.

6 MR. BROWN: Ken Brown, U-R-E-E-W, Lewis  
7 & Clark County Pretrial Services.

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

10 (No response)

11 MR. ALLRED: Anyone else introduce  
12 themselves if they have not had a chance to do so.

13 (No response)

14 CHAIR SLAUGHTER: Okay. Thank you,  
15 Timothy. I appreciate that. So we're going to  
16 start real quick with the Pledge of Allegiance,  
17 and then please stay standing for the invocation.

18 (Pledge of Allegiance)

19 (Invocation)

20 CHAIR SLAUGHTER: Please be seated.  
21 Thank you, Sheriff. So next on the agenda is the  
22 approval of the September 7th Council minutes.  
23 Has everybody looked those over?

24 MR. BILL SMITH: Bill Smith. Motion to  
25 approve.

7

1 workload analysis on the work that the basic  
2 officers do, and making recommendations, and  
3 changing the course curriculum, removing some  
4 things, moving some things to independent  
5 learning, moving some courses to integrate them in  
6 a contextual way of training in alignment with  
7 the current training, and some areas will be  
8 removed altogether, as we don't feel that they are  
9 in alignment with what a basic patrol officer  
10 needs leaving the Academy.

11 Furthermore, we are looking at adding  
12 FTE's to expand the capacity for our ability at  
13 the Academy to run Basic students through the  
14 LEOB. We're aware that there is a bottleneck with  
15 our capacity to do that, so we're evaluating that,  
16 and the Legislature will determine whether we're  
17 successful with that. So that's all I have.

18 CHAIR SLAUGHTER: Thank you so much.  
19 Thank you for being here. I appreciate it. Any  
20 other guest issues or public comment at this time?

21 (No response)

22 CHAIR SLAUGHTER: I'll just double  
23 check. On the phone, is there members of the  
24 public or guests that have a comment?

25 MS. BURDICK: Mr. Chair.

6

1 CHAIR SLAUGHTER: Do I have a second?

2 MR. THOMAS: Jim Thomas. Second.

3 CHAIR SLAUGHTER: Any discussion on the  
4 minutes, any issues or anything?

5 (No response)

6 CHAIR SLAUGHTER: Seeing none, all in  
7 favor of approving the minutes, signify by saying  
8 aye.

9 (Response)

10 CHAIR SLAUGHTER: Opposed, same sign.

11 (No response)

12 CHAIR SLAUGHTER: Okay. Motion carries.  
13 Thank you. So at this time, we will open up the  
14 floor to public comment or any guest issues. Is  
15 there any public comment? Go ahead.

16 MR. BRAUN: Justin Braun, Interim  
17 Administrator, Montana Law Enforcement Academy.

18 I'd just like to have the Council aware.  
19 Montana Law Enforcement Academy will be proposing  
20 changes to the LEOB Basic. We're currently  
21 evaluating the program.

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

8

1 CHAIR SLAUGHTER: Yes. I can barely  
2 hear you, but yes.

3 MS. BURDICK: Sorry. This is Kimberly.  
4 I'm going to get off this phone and I'm going to  
5 radial on a different phone here.

6 CHAIR SLAUGHTER: Okay. Thank you,  
7 Kimberly. Final call for any public comment or  
8 guest issues.

9 (No response)

10 CHAIR SLAUGHTER: Hearing none, we're  
11 going to move on to old business. Legislative  
12 updates. And I believe Director Allred has copies  
13 in front of everybody. I'll turn it over to you  
14 to kind of get started.

15 MR. ALLRED: Yes. These are two bills  
16 to revise 46-4-404. This has come about the  
17 Council before for discussion. Chair Slaughter  
18 worked with Representative Steve Galloway to be  
19 the sponsor. It's bill draft LC193 and LC194.

20 These pertain to the 100 day extension  
21 that is already in our Administrative Rules, but  
22 it's kind of more clean-up language, make sure  
23 it's in the law, that it's for all public safety  
24 officers.

25 And 194 pertains to the one year time



period 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 ten 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 SLAUGHTER: Thank you, Timothy. I appreciate that. Just so the Council is aware, Monday was the final day of unlimited bill drafts, so Monday was the deadline. So Director Allred got me these, and I gave them to Steve Galloway who is a Representative up in Great Falls, just to get them on there so we've got them.

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

I think they only get four bill drafts after this. It's pretty limited. So that's something to think about. If something else comes up during the session, we have to choose very

wisely 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, comments, concerns about that?

MR. KRAFT: Director Allred, this is Chief Kraft. Is there a way that you'd be able to email those bill drafts to the members that are not present?

MR. ALLRED: Yes. 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 emailed out to everybody on the phone, or just email them out to the whole Council so you'll have a hard copy, electronic copy, too.

MR. SEGREST: If I can jump in on that. If we can make sure to get -- so this is LC194, the second one we got. If you could also give them the bill pre-introduction letter for LC193, the first one also.

And these 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.

CHAIR SLAUGHTER: Any further questions regarding the bill drafts?

(No response)

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 get ahead of myself.

MS. BOLGER: I think that we were 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 over 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 previously -- we had gotten several public record requests for information on law enforcement officers. And what the Council had decided to do is for privacy reasons to only disclose to the press those records of officers that had some type of discipline, suspension or whatnot.

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

And he came back and he said, "Well, I understand the concerns about privacy, and what if we redact the names and use a number identifier so that it's not personally identifying the officers?" So we took that request, and we thought about it, and I've written a memo 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 advice, 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 email itself or the chain of events.

(No response)

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

MS. BOLGER: I don't think so. Stuart

13

1 covered it.

2 CHAIR SLAUGHTER: Okay. Thank you. So

3 at this point in time, we will go into executive

4 session, so if the guests please clear the room,

5 and we will -- give us a minute on the phone.

6 We'll take care of the recording and everything.

7 We'll be in recess for three minutes.

8 (Off the record for executive session)

9 CHAIR SLAUGHTER: So we are now out of

10 executive session, and we are back on the record.

11 During executive session, we discussed

12 with Counsel, POST discussed with Counsel Stuart

13 Segrest the public record request that was brought

14 forward by Don Grunwald, and the POST Council

15 decided that we will release information in its

16 handout. Does the public have this handout?

17 MS. BOLGER: No.

18 CHAIR SLAUGHTER: But there's a sample

19 table, which is my information, and the guests and

20 public are allowed to see that.

21 But it's a sample table that does not

22 have the law enforcement officer's name attached

23 to it, but does have the requested information

24 attached to it, which was agency name, rank,

25 officer type, date of appointment, date of

14

1 separation, and then if there is a type of

2 separation.

3 So that's all of the information it

4 lists. So if anyone wants to see this, it's my

5 information you're free to see it. We did

6 acknowledge -- and I think this is important that

7 we put this on the record. We acknowledge that

8 public officials -- Sheriffs, Chiefs of Police --

9 it's likely going to be really easy to figure out

10 who those people are, but we kind of live in a

11 fish bowl anyway. That's just the way it is. So

12 I just kind of want to get that on the record

13 before we move on.

14 So we're ahead of schedule, and I'm just

15 going to keep moving into new business. The PSC

16 Basic syllabus. Director Allred, do you want to

17 start us off on that.

18 MR. ALLRED: The dispatcher Basic

19 syllabus was presented by Justin Braun and Kim

20 Much, and they're included on Page 33 and 34 of

21 the updates. And at this time, Justin and Kim, if

22 you want to come forward and just kind of -- or

23 one of you to state kind of what your changes are

24 and why made those changes.

25 MS. MUCH: I'm Kim Much. I'm the PSC

15

1 Program Manager here at MESA.

2 A couple changes that we're requesting.

3 When I took over in July, there were some pretty

4 massive changes, so this is a bit of fine tuning,

5 now that we're kind of working out the kinks of

6 some of the new stuff.

7 We are looking to drop as -- we

8 introduced mental health first aid, which is an

9 overall mental health look at -- it's an eight

10 hour course. It's a kind of canned course that

11 looks at several mental health situations. One of

12 them is suicide prevention. And then in call

13 taking, we deal with suicide, how to take a call

14 from a suicidal individual.

15 So we don't see the need anymore for the

16 two hours separated out suicide prevention course,

17 so we would want to drop that completely, as it's

18 found throughout.

19 Wildland fire was now to PSC92 and 93,

20 and after a couple of run throughs, we've

21 discovered that eight hours was a bit of a

22 stretch. We could definitely fill up the time --

23 I'm sure wildland fire is fun to teach on -- but

24 we didn't need eight hours for it. We're going to

25 drop it to six. This was in discussion with DHRD,

16

1 who is the primary instructors for that.

2 And two hours, we want to add something

3 that dispatchers deal with on a very regular basis

4 that's not touched on yet is Search and Rescue.

5 This is something dispatchers, just like wildland

6 fire and the other situations, they tend to be the

7 primary intake of that.

8 And discussing with Search and Rescue,

9 they would like to see an increase in knowledge in

10 dispatchers, so that they can ask the right

11 questions and instruct the individuals with proper

12 information. So we wanted to add two hours of

13 Search and Rescue.

14 And those were the basic changes. Any

15 questions?

16 CHAIR SLAUGHTER: Does the Council have

17 any questions?

18 (No response)

19 CHAIR SLAUGHTER: On the phone?

20 (No response)

21 CHAIR SLAUGHTER: Kimberly?

22 MS. BURDICK: This is Kimberly. I was

23 just going to say that I really like the looks of

24 this. I'm really actually very thrilled to see --

25 (inaudible) --

17  
 1 CHAIR SLAUGHTER: Kimberly, I'm so  
 2 sorry, but you're really far away. Can you really  
 3 speak up so that we can get you on the record?  
 4 MS. BURDICK: I guess all I wanted to  
 5 comment on was I think this looks really great,  
 6 and I'm really thrilled to see the bullying and  
 7 negativity in the com center part in there,  
 8 because that definitely is a thing in a com  
 9 center. So I think this looks wonderful.  
 10 CHAIR SLAUGHTER: Thank you, Kimberly.  
 11 Any further comments or anything?  
 12 (No response)  
 13 CHAIR SLAUGHTER: Thank you so much. Is  
 14 there anybody else that has any comments on this?  
 15 (No response)  
 16 CHAIR SLAUGHTER: Director, do we need  
 17 to take any action on this?  
 18 MR. ALLRED: Chair, you need to approve  
 19 it.  
 20 CHAIR SLAUGHTER: So at this time we  
 21 will take a motion to approve the PSC Basic  
 22 syllabus as written.  
 23 MR. DUTTON: This is Leo. I move to  
 24 make a motion we approve the PSC Basic course  
 25 suggestions and changes as noted in our syllabus.

18  
 1 MS. BURDICK: Second. Kimberly.  
 2 CHAIR SLAUGHTER: So I have a motion by  
 3 Sheriff Dutton and I have a second by Kimberly.  
 4 Any further discussion on this matter?  
 5 (No response)  
 6 CHAIR SLAUGHTER: Seeing none, all in  
 7 favor of approving the PSC Basic syllabus, signify  
 8 by saying aye.  
 9 (Response)  
 10 CHAIR SLAUGHTER: Opposed, same sign.  
 11 (No response)  
 12 CHAIR SLAUGHTER: Motion carries. Thank  
 13 you so much. I really appreciate you being here.  
 14 Thanks a lot.  
 15 Next is Misdemeanor and Pretrial Basic  
 16 syllabus, and at this point we'll hear from Ken.  
 17 MR. BRENN: Thank you. I believe you  
 18 have an outline of the proposed curriculum, and  
 19 for your approval, we've submitted a basic outline  
 20 of the courses we plan to have at our Pretrial and  
 21 Misdemeanor Probation Officer Basic scheduled for  
 22 June of this year.  
 23 There have been some changes from last  
 24 year. We kind of fine tuned things. This is the  
 25 second year that we actually put together our own

19  
 1 academy. In the past, previous to last year, we  
 2 had two academies at Dawson Community College, and  
 3 then there was one year prior to that -- I think  
 4 Tim may have been involved in that -- when the  
 5 Department of Corrections put on the Basic for us.  
 6 From last year, some of the changes are  
 7 pretty minor. We messed with some of the courses  
 8 by an hour or something. Just for example,  
 9 orientation, we had two hours scheduled, and the  
 10 Academy did that, and said, "What are we going to  
 11 do with two hours?" So we reduced that to one  
 12 hour. Just some changes like that.  
 13 Some of the big changes: We have  
 14 increased defensive tactics from 24 hours to 32  
 15 hours. Last year we felt that -- even though Mike  
 16 McCarthy was the instructor for it, he did a very  
 17 good job, but we just didn't feel like he had  
 18 enough time, not enough time for repetitions and  
 19 things like that.  
 20 We had a class called Communication and  
 21 Situational Awareness that we had scheduled last  
 22 year for 12 hours. We've reduced that to four  
 23 hours. A lot of it was repetition from other  
 24 classes.  
 25 We've increased our motivational

20  
 1 interviewing by four hours. We've added a class  
 2 on SCRAM and GPS monitoring. Those are mostly the  
 3 changes we've made.  
 4 We renamed our firearms training from  
 5 Firearms Training to Firearms Familiarization.  
 6 The issue we face is, for example, last year we  
 7 had eight students from five separate entities,  
 8 and only one entity even carry firearms, and that  
 9 was Ravalli County. He's a sworn Deputy. None of  
 10 the others carry firearms.  
 11 We're kind of a unique situation where  
 12 some of us are under counties, some of us are with  
 13 private entities hired by counties. It's kind of  
 14 a unique situation we're in, so we're adding  
 15 things, subtracting things.  
 16 For example, Lewis & Clark County, we  
 17 don't do any monitoring as far as alcohol  
 18 monitoring or GPS. That's done through the 24/7  
 19 program at the Sheriff's Office. But in Billings,  
 20 there's at least two agencies that are contracted  
 21 as Pretrial Misdemeanor Probation that do in-house  
 22 monitoring and UA testing.  
 23 So we're kind of in a unique situation  
 24 where we're trying to fit something in for  
 25 everybody. Any questions? I'm sorry. I don't

21

1 want to go on forever, Sheriff.

2 CHAIR SLAUGHTER: Sheriff Dutton.

3 MR. DUTTON: Just one, and you don't

4 have to take a long time.

5 I find it very interesting to see

6 motivational interviewing. I'm kind of interested

7 in that. What is motivational interviewing? Is

8 that with a suspect, or is that with coworkers?

9 MR. BREEN: No. It's with our

10 defendants. It's kind of a passive way of

11 interviewing, where rather than a confrontational

12 type interview, we're -- I'm former law

13 enforcement, so it's a whole new way of

14 interviewing to me. But where you got them to

15 suggest things when they don't know that they're

16 even suggesting them, and get them pointed in a

17 right direction, if that makes sense to you.

18 MR. DUTTON: Yes, it does. Thanks.

19 CHAIR SLAUGHTER: Thank you, Ken. So we

20 need to have a motion to approve Misdemeanor

21 Pretrial Basic syllabus. Can I get a motion.

22 MS. WHITE: I so move. Kristine.

23 CHAIR SLAUGHTER: Kristine made a

24 motion. Do I have a second?

25 MR. DUTTON: This is Lee. I second.

23

1 DOJ is doing with FTE's, is outside of the

2 Council's purview, outside of the Council's

3 suggestions or buy-in, and also creating some

4 conflict.

5 And there's an issue because there's

6 supposed to be separations of powers. I think it

7 kind of started with the -- What kicked it off was

8 probably the FOIA, public information request, so

9 it started with that.

10 And we want to be good partners, the

11 Council, with the Department of Justice. We want

12 to work with them. And then when they're willing

13 to help or offer suggestions -- just like any of

14 our stakeholders, just like our Board of Crime

15 Control, just our civilians, just like DOC,

16 Sheriffs, anybody -- we want to listen to those

17 suggestions because they're all our stakeholders.

18 However, this coupling of those two

19 together has created issues, so much so that I

20 reached out to the Governor's Office, and I talked

21 to Lieutenant Governor Kristen Juras, and I made

22 her aware. I said, "We are having some pretty

23 significant and frustrating conflicts. They

24 haven't come to a head yet, but they likely will

25 in the near future if we don't remedy some of

22

1 CHAIR SLAUGHTER: Do we have any

2 discussion about this?

3 (No response)

4 CHAIR SLAUGHTER: On the phone, any

5 discussion?

6 (No response)

7 CHAIR SLAUGHTER: Hearing none, all

8 those in favor of approving the Misdemeanor

9 Pretrial Basic syllabus, signify by saying aye.

10 (Response)

11 CHAIR SLAUGHTER: Opposed, same sign.

12 (No response)

13 CHAIR SLAUGHTER: Okay. Syllabus

14 approved. Motion carries.

15 Moving on, we have to have a discussion

16 about a Memorandum of Understanding. So if the

17 Council doesn't mind, I'm going to go ahead and

18 explain what this is and why this is.

19 So we have -- Director Allred, myself,

20 and Katrina -- have been talking, and we have

21 started to run into some conflicts with DOJ.

22 Basically what is happening is we are a

23 quasi-judiciary branch, they are an executive

24 branch, and some of the things that they are

25 directing staff to do, or some of the things that

24

1 these."

2 And the Lieutenant Governor, who is

3 extremely thorough and detailed, went back through

4 all of the session meetings from 2021 that

5 regarded POST. And I don't remember this, and she

6 didn't say I was in the meeting -- or in the

7 hearing -- hearing not meeting -- but it was

8 brought up that POST and Department of Justice

9 would create an MOU to make sure these conflicts

10 didn't happen.

11 So that was brought up. I don't

12 remember who brought it up, or what hearing it

13 was. But she said, "I just listened to it, and we

14 need to do that."

15 So at that point in time I got with

16 Director Allred and Katrina, and I said, "We need

17 to start working on some type of MOU, or at least

18 the skeleton of one. Now that we're going into

19 session, we need to be working on it."

20 What I want to discuss is how much

21 effort we should put into that MOU going into this

22 session -- and I mean we need to do it. Don't get

23 me wrong -- but where do we want to be on it?

24 We need to have a open discussion about

25 it, we also need to have a discussion about things

25  
1 that we want to make sure are included in the HOU,  
2 but this is all dependent upon the Legislature not  
3 sunseting the relationship between POST and DOJ.

4 If it sunsets, it's a moot point, we  
5 don't need it; but if it doesn't sunset, like it  
6 didn't last session, then we're going to need to  
7 make sure we have a really robust and thorough  
8 HOU, so that the Council -- in this complicated  
9 relationship where we are appointed by the  
10 Governor, but our staff is hired by the Attorney  
11 General -- so it is a complicated relationship  
12 that we have; and then to also make sure that we  
13 are still quasi-judiciary, and that we maintain  
14 our separation of powers, I guess.

15 MR. SEGREST: Independence.

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

19 MR. GLAZE: Sheriff Slaughter, before I  
20 go any further, can you tell me in your mind what  
21 the conflicts are?

22 CHAIR SLAUGHTER: Thank you for asking.  
23 So there's been a few. One was a DOJ employee who  
24 was temporarily assigned to the Council as an  
25 investigator without Council approval; just "Here

26  
1 you go." And I mean this when I say this and on  
2 the record. I don't believe this was done  
3 maliciously. This was done, "Hey, you need a  
4 body. You're behind. Here you go."

5 So some of the issues I had was this  
6 individual was sworn, and those are civil  
7 investigations, and so how does that balance work,  
8 especially when they could be interviewing someone  
9 who could accidentally incriminate themselves?  
10 Because that happens all the time. And now you  
11 possibly have an issue there, legally, especially  
12 in particular on the criminal side.

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

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

27  
1 Council, who is responsible not only to maintain  
2 our independence, but also to our stakeholders,  
3 because we're all representing people. And trust  
4 me, the flood gates opened on me in a heartbeat,  
5 and I spent days answering questions, and to which  
6 a lot of stuff I didn't know.

7 So I met with AG Knudson and David  
8 Ortley, and kind of got what I told you. But none  
9 of that information was provided. This person was  
10 just brought in. So that's issue No. 1.

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

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

24 I took it as the help from the Attorney  
25 General's Office was, "Hey, our legal services

28  
1 will cover you if you make a stand on this." I  
2 kind of assumed that was the end of this road,  
3 because the biggest concern on this -- as Stuart  
4 made us very aware, if you recall. If you had a  
5 public records request, and we got sued, and we  
6 lost, they could charge us all their attorney  
7 fees, and we have no way in our budget of covering  
8 it.

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

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

19 MR. GLAZE: Thank you. It does. I'm  
20 just wondering if in approaching this HOU, if an  
21 examination of the statutes over the last, I would  
22 say five, maybe ten years, and how they've changed  
23 would be a good idea.

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

29

1 Crime Control over the last, I would say five  
 2 years at least, that when changes happen at that  
 3 level, often the details are overlooked.  
 4 POST used to be administratively  
 5 attached to the Board of Crime Control -- if I'm  
 6 saying that correctly -- and so all of the  
 7 quasi-judicial functions of POST that had made it  
 8 to that level were then brought to the attention  
 9 of the Board of Crime Control, who made the final  
 10 say on how these things played out.  
 11 And that was eliminated this last  
 12 session, and so now POST and Board of Crime  
 13 Control are no longer in that dynamic. There's no  
 14 longer that relationship. And I'm just wondering  
 15 if statutorily there was some coverage or  
 16 something that addressed the quasi-judicial nature  
 17 of POST as it relates to DOJ.  
 18 To tell you the truth, I can't even  
 19 track when POST was or was not attached to DOJ.  
 20 Has it always been, or has that changed recently?  
 21 CHAIR SLAUGHTER: So it's been  
 22 administratively attached, meaning the paychecks  
 23 of staff have come through DOJ, but they weren't  
 24 under the chain of command. So he's now a -- what  
 25 do they call them -- Bureau Chief -- (indicating)

31

1 your reference, Wyatt. In 2019, the Legislature  
 2 adopted 2-15-228 which created the bureau. We  
 3 prior to that were under the Council. And they  
 4 amended 2-15-229, and that is the temporary  
 5 statute, as is 228.  
 6 If the sunsets on those on July 1st, we  
 7 revert back to being under the Council, and an  
 8 autonomous State agency.  
 9 MR. GLADE: Under which Council?  
 10 MS. BOLGER: Under the POST Council. So  
 11 the Board of Crime Control, where that came from  
 12 is POST was an advisory council to the Board of  
 13 Crime Control. They were never quasi-judicial  
 14 under the board.  
 15 The Governor's Office, back in 2007,  
 16 realized that POST was operating as though it was  
 17 a quasi-judicial board, and took a look at it, and  
 18 said, "Oh, POST needs to change. It is changing.  
 19 It has changed. The profession has changed."  
 20 And so in 2007, that's when POST was  
 21 created as a quasi-judicial body of its own  
 22 accord, but they kept that appeal to the Board of  
 23 Crime Control, and that was what has been changed  
 24 during the last session. They removed that  
 25 intermediary appeal.

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1 -- he's now a Bureau Chief of DOJ. That wasn't  
 2 how it was before.  
 3 When you go back to the 2017 session,  
 4 POST was independent. It was in 2019 that they  
 5 administratively -- I'm sorry -- went beyond  
 6 administratively attached, and made the POST staff  
 7 DOJ, full-fledged DOJ employees acting at DOJ's  
 8 direction.  
 9 MR. GLADE: So with the Board of Crime  
 10 Control, I believe the board was previously  
 11 administratively attached to DOJ, and then moved  
 12 to the DOC, and now I think we're back to the DOJ  
 13 in some way, shape, or form.  
 14 My point is that just with this amount  
 15 of shuffling around, things tend to get lost in  
 16 the mix, and maybe it might be worth our time to  
 17 look at statutes, how they've changed over time,  
 18 and if there's something that's been lost that  
 19 needs to be resurrected that would protect POST,  
 20 or provide POST with some clarity on the  
 21 differentiation between the executive branch  
 22 delineation and the quasi-judicial function of  
 23 POST, I think it would be worth looking at.  
 24 CHAIR SLAUGHTER: Good point.  
 25 MS. BOLGER: This is Katrina. Just for

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1 It just didn't make sense anymore,  
 2 because POST has grown, and become its own sort of  
 3 thing, and the Board of Crime Control has grown  
 4 and become its own thing, but we were both  
 5 attached administratively to the Department of  
 6 Justice just for purposes of paying our bills, and  
 7 hiring, and firing, doing all those sorts of  
 8 things. So hopefully that helps a little.  
 9 MR. GLADE: Thank you.  
 10 CHAIR SLAUGHTER: Sheriff.  
 11 MR. DUTTON: Mr. Chair, Sheriff. One  
 12 other third thing was we as a Council could make a  
 13 decision, we could hear the evidence, and we can  
 14 decide and vote; and then the Department of  
 15 Justice or the AG's Office can direct their Bureau  
 16 Chief to do something different.  
 17 And that was the case when we had a  
 18 former -- wasn't Executive Director. Went to  
 19 Bureau Chief Eric Gilbertson. The Council had  
 20 voted. However you want to say that, we heard the  
 21 evidence, and we make a decision, but they direct  
 22 the Bureau Chief to go, "No, I don't think we want  
 23 to do that."  
 24 So those are concerns. That would be my  
 25 third. Of the two you listed, that's the third

33  
 1 concern of how our decisions are overruled because  
 2 the staff work for the Department of Justice, and  
 3 they don't work for us. So if we vote, and give  
 4 Mr. Allred a directive, that could be overturned.  
 5 CHAIR SLAUGHTER: Sheriff, just for  
 6 clarity. Was that in relation to the public  
 7 relations request?  
 8 MR. DUTTON: Yes, that is what it was.  
 9 CHAIR SLAUGHTER: So just to clear that  
 10 up, that was my decision to bring that back before  
 11 the Council, to bring Ortley in to have a  
 12 discussion, and then to have the Council revote on  
 13 that. What you're saying can happen, but I do  
 14 want to make sure that -- I was the one that said,  
 15 "Okay. We want to hear what Ortley has to say."  
 16 I thought Stuart did a really good job  
 17 of explaining the risk to us, and here's the thing  
 18 that we're -- here's why being attached to DOJ has  
 19 always been appealing to the Legislature. I dove  
 20 into this deep, I've been having talks with Bill  
 21 Mercer and everything.  
 22 When they put us on an island, it's hard  
 23 to budget for us. They really struggle with the  
 24 budgeting for us. If they lump us into a major  
 25 highly funded DOJ operation, if we go over budget,

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 1 then the DOJ absorbs that coverage. I think if  
 2 we're going to be quasi-judiciary, though, than's  
 3 just something we're going to have to live with.  
 4 We do have extreme budgets constraints.  
 5 So when I brought back in Ortley to  
 6 discuss with us the potential issues that Stuart  
 7 had brought up, my biggest concern -- and I think  
 8 why the Council voted to go with their advice --  
 9 was who is going to pay those attorney fees if we  
 10 lose? And when the AG's Office is like, "Yes. If  
 11 you do this, we'll cover you," that was what made  
 12 that decision appealing.  
 13 And in that situation, I felt the need  
 14 to take care of our stakeholders, the need to  
 15 protect the public rights of all of our  
 16 stakeholders in this room was outweighed, you  
 17 know, just the release, and worry about the  
 18 attorney fees, when we know we had that issue  
 19 covered.  
 20 I think there is some confusion about  
 21 that, and that's probably on me, but I think  
 22 that's the confusion. And here's why it's so  
 23 complex. Would we get -- If we separated, would  
 24 we get DOJ assistance? And maybe we wouldn't.  
 25 Maybe we'd really be on an island.

35  
 1 MR. DUTTON: I think we have -- Mr.  
 2 Chair, this is Leo. I think we have in the past,  
 3 but we may pay for it or pay -- I don't know if we  
 4 have to budget for unexpected legal counsel, but I  
 5 think that was one of the appealing parts when we  
 6 went through the Legislature is, "Well, we'll just  
 7 provide you with attorneys." But I think we pay  
 8 for them out of our budget anyway.  
 9 CHAIR SLAUGHTER: Sheriff, you're  
 10 correct. We do. And it is just a complex thing.  
 11 I think that the biggest lift that DOJ gives us is  
 12 Director Allred, I know, is going to need more  
 13 FTE's with our contested case issues that we're  
 14 having. So when he asks for -- it's one thing  
 15 with he asking for it, it's another thing coming  
 16 from Bryan Lockerby and the DOJ.  
 17 So those are all factors that we have to  
 18 factor into our decisions on this, but that's why  
 19 I wanted to have a discussion about it, and that's  
 20 why it's important that we talk about all those  
 21 issues. Anybody else?  
 22 MR. DUTTON: This is Leo. I recommend  
 23 that we proceed forward with the MOU. If it  
 24 becomes a non-issue, glad we have it; but if it  
 25 doesn't, then bad on us for not recognizing that

36  
 1 was a potential. So my recommendation, out of one  
 2 of many, is that we ought to put some work into it  
 3 to have a fall back plan.  
 4 CHAIR SLAUGHTER: Thank you, Sheriff.  
 5 Anybody else?  
 6 MR. SEGREST: I have some thoughts. I  
 7 agree that I think it's a good idea to go ahead  
 8 and put one in place. It's too bad that was sort  
 9 of lost to history at a time, because that would  
 10 have been a great thing to have had in place  
 11 already. I think it would corrected obviously  
 12 some of these issues that have come up.  
 13 One thing I would say is I think we do  
 14 go ahead and put something into place, and in that  
 15 regard I think we should have a discussion about  
 16 some of the topics, sort of the general subject  
 17 matter areas you think should be addressed. And I  
 18 can do a first draft for the Council, and get  
 19 working with DOJ on that.  
 20 Another thing is: If the Legislature  
 21 decides to keep you under DOJ, so that it doesn't  
 22 sunset, and we need the MOU longer term, I think  
 23 we can look at it again, and maybe do a little  
 24 more of a deep dive.  
 25 So I would think initially we could get

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1 an MOU in place that directs some of the high  
2 level stuff we know is coming up, and if it's  
3 going to continue into the future, we look at it  
4 again and maybe have a more long term discussion  
5 about it.  
6 And another thing that I thought of as  
7 far as a potential conflict is when -- As you  
8 know, this board or this Council drafts and passes  
9 administrative rules, but DOJ has its own  
10 administrative rules process that its staff, which  
11 is also POST staff, has to go through, so that's  
12 another level of control that DOJ has that it  
13 would not have if it was just administratively  
14 attached. So that's probably something we should  
15 also address in that MOU.  
16 CHAIR SLAUGHTER: Okay. So I have two  
17 things, and I think we're going to need a motion  
18 to move forward on this, if I'm correct, Stuart,  
19 but I think we need a motion to direct you to  
20 start an MOU process, correct?  
21 MR. SHERST: I think that would be  
22 best, and then I think we can probably -- I think  
23 the motion would probably be to engage DOJ on an  
24 MOU draft, with the understanding that the Council  
25 will probably -- I don't know if you ever vote by

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1 email -- but I would think once we come to a  
2 draft, the Council will want to look at it, and  
3 approve it, and not have to wait until the next  
4 meeting. So that's the two things I would say.  
5 CHAIR SLAUGHTER: I agree. Is there any  
6 discussion or issue with that?  
7 MS. BOLGER: Is that a violation of  
8 public meeting laws? Would we need to have a  
9 special meeting on the phone?  
10 MR. SHERST: Yes, maybe a special  
11 meeting.  
12 CHAIR SLAUGHTER: Let's do that. If  
13 everyone is okay with that, at some point we'll  
14 send out an email announcing a special meeting via  
15 Teams or Zoom or whatever. I think that's a smart  
16 move.  
17 So the other issue I want to address,  
18 which I think we're also going to need a motion  
19 on, too, is: As the Council, I think we should  
20 direct POST staff that before they release  
21 anything to DOJ Communication, they run it through  
22 POST staff, because we need to be aware of it not  
23 after the fact, but ahead of the fact.  
24 So let's start with that one, because in  
25 my opinion, it's the easier of the two issues. So

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1 I feel it's appropriate that we have a directive,  
2 or a motion to have a directive to direct POST  
3 staff that prior to any release to DOJ  
4 Communications, there is a notification to POST  
5 Council about that information. Can I get a  
6 motion.  
7 MR. KRAFT: This is Chief Kraft. I do  
8 move.  
9 CHAIR SLAUGHTER: Thank you, Chief.  
10 Second.  
11 MR. THOMAS: Jim Thomas. I second.  
12 CHAIR SLAUGHTER: Any further discussion  
13 just in relation to a notification before we  
14 release information to the DOJ communications  
15 regarding a media request?  
16 MR. GLADE: Mr. Chair, I have some  
17 questions.  
18 CHAIR SLAUGHTER: Please.  
19 MR. GLADE: So you're directing this to  
20 the staff of the Council, who are also employed by  
21 DOJ; is that correct? I'm just wondering if this  
22 is going to get them in a jam in duty to their  
23 employer; not speaking necessarily about the  
24 content of the motion, more the consequences of  
25 it. We need to think through that. I don't know

40  
1 the parameters of their employment, or who their  
2 supervisors are, but I guess something I would  
3 foresee maybe becoming an issue.  
4 CHAIR SLAUGHTER: I agree, Wyatt. I  
5 just think that it's appropriate that -- I guess  
6 my question is: What's our role here, if stuff is  
7 going directly to DOJ, media release, without the  
8 Council being -- if we're the last to know?  
9 And I look at it like this. We're  
10 accountable to the Governor, and if I'm sitting  
11 there, if he's calling me and saying, "What's  
12 going on, and what just got released?" and I'm  
13 like, "I don't know anything about it," I think  
14 that puts him --  
15 I mean I look at it like our job is to  
16 protect him and his interests, too, and we're just  
17 asking for a notification, so that if the Council  
18 has an issue ahead of the curve, we can reach out  
19 to DOJ and say, "Whoa, the Council has a problem  
20 with this, and we need to discuss this further,"  
21 so something doesn't slip out.  
22 MR. ALLRED: Sheriff Slaughter, this is  
23 Director Allred. Just a question for  
24 clarification. Are we speaking at the time of the  
25 MOU, having this on the MOU, or right now?



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 1 Because the reason why I ask this  
 2 question is because if this is moved forward, as  
 3 Stuart suggested, and we do a special conference  
 4 by phone, or telecommunication, video conference,  
 5 whatever it may be, this could be an MOU which  
 6 would then have to be reviewed by DOJ and --  
 7 MS. BOLGER: This is Katrina. I know  
 8 that the DOJ Communications people actually get  
 9 requests for information on POST stuff, and we  
 10 don't always know if they're responsible --  
 11 MR. ALLRED: I'm just curious. Are you  
 12 asking for the motion now or to be in the MOU?  
 13 CHAIR SLAUGHTER: What I would ask is  
 14 now, immediately, just so that we don't have a  
 15 release of information without the Council's  
 16 knowledge.  
 17 And Director Allred, I have no doubt  
 18 that you would notify us if there was something  
 19 big coming out, but if there's a directive to do  
 20 that, I just want to make sure that it's -- I  
 21 think it would happen naturally anyway, but I just  
 22 want to make sure that it's noted that the Council  
 23 will be notified before the release would go out.  
 24 Just in this case --  
 25 MR. MCCARTHY: Sheriff, this is Mike

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 1 McCarthy.  
 2 CHAIR SLAUGHTER: Go ahead.  
 3 MR. MCCARTHY: Being recently employed  
 4 by DOJ, I guess I have a caution. If you could  
 5 put some boundaries or some framework as to what  
 6 information you're talking about, that would help  
 7 the POST staff, because there is a lot of  
 8 communication back and forth between DOJ and  
 9 staff.  
 10 So I guess I'm looking for some  
 11 framework, too. To keep them out of trouble, what  
 12 type of information are you talking about that the  
 13 board needs to be notified of before it's sent  
 14 out? Does that make sense?  
 15 CHAIR SLAUGHTER: Yes. Absolutely.  
 16 Mike. Great question. I would say it's  
 17 information that would be released publicly to the  
 18 media.  
 19 MR. DUTTON: Mr. Chair, as long as we're  
 20 in the discussion phase of the seconded motion,  
 21 the request from DOJ was they wanted to know about  
 22 anything that was going to be released to the  
 23 public, so they could either approve or  
 24 disapprove, or that they just wanted to know?  
 25 What was their request?

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 1 CHAIR SLAUGHTER: Director Allred, can  
 2 you kind of be specific about that, so I don't  
 3 talk for you.  
 4 MR. ALLRED: Instead of giving a third  
 5 person, I'm asking Katrina to. She's the one --  
 6 MR. SEGREST: Let's just get to the  
 7 source of the --  
 8 MR. ALLRED: She's the one that received  
 9 the --  
 10 MS. BOLGER: So yes. It kind of grew  
 11 over time. There was a metamorphosis of this.  
 12 Initially it was just, "Do what you do with the  
 13 press," and then it was, "If there is something  
 14 that is of particular public interest, you need to  
 15 let us know before you release the information."  
 16 I don't know what the purpose is other  
 17 than they require that they know. They want to  
 18 know who is asking, who we've responded to, and  
 19 what we're giving them, which is they just want to  
 20 know.  
 21 When the AP request occurred, though, it  
 22 was different, where they were actually jumping in  
 23 and saying, "We want to have a say in what you  
 24 release." And so that was -- it's been very  
 25 confusing for staff.

44  
 1 Typically the majority of our requests  
 2 are regarding current investigations. It's fairly  
 3 rare that we get the request for everybody's  
 4 stuff. We've had a lot on the Richard Mack thing,  
 5 and I know that DOJ Communications folks have  
 6 fielded some of those requests outside of our  
 7 involvement as well.  
 8 And it may just be kind of a learning  
 9 thing for them where they just wanted to learn  
 10 more about what we're doing. I don't know. We  
 11 were just told if we're responding to a press  
 12 request, that the Communications people need to be  
 13 informed.  
 14 CHAIR SLAUGHTER: Thank you, Katrina.  
 15 This is Jonae Slaughter again. To make this  
 16 clear, I want to be crystal clear on the record on  
 17 this. We're not saying that they don't get that  
 18 information, and we're not saying that they can't  
 19 help.  
 20 What we're saying is just exactly what  
 21 Katrina said. We don't want to them to respond to  
 22 something publicly and we never know about it,  
 23 because again, we're responsible to a different  
 24 elected official, and that we want to be able to  
 25 say, "We know about it, we're aware of it, and

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 1 yes, we understood that response. In fact we  
 2 helped with that response."  
 3 And I just think that's absolutely  
 4 critical. So I don't in any way want anybody to  
 5 think that we don't want POST staff to follow that  
 6 directive. They were given a directive to notify  
 7 communications. I don't have a problem with that  
 8 as the Chair.  
 9 What I have problem with is just I want  
 10 to make sure before that happens, we're notified.  
 11 "Hey, there was a Richard Mack request and DOJ's  
 12 inquiring about it, and they're looking at  
 13 responding." I think it would be appropriate for  
 14 the Council to reach out and say, "And what's your  
 15 response going to be?" And I bet you 99 times out  
 16 of a 100 we're going to say, "Sounds great."  
 17 At least that way when the person who  
 18 we're accountable to, who is not only the  
 19 Governor, the people, but also all of our  
 20 stakeholders, we say, "Yes, we knew about that.  
 21 We know exactly what was going to be said. We  
 22 were on the front end of it, and I think we're  
 23 okay."  
 24 So that's what I'm looking for. And to  
 25 answer Director Allred's question, I do think we

46  
 1 need to make a motion on this, and I think we do  
 2 need to move forward, because we're about to be in  
 3 session, when we're being under -- I mean everyone  
 4 goes under scrutiny during this time, and we want  
 5 to be able to be accountable. I guess --  
 6 MR. ALLRED: One more clarification,  
 7 Chair. In the motion that's been soundered, was  
 8 there discussion of who you want the information  
 9 sent to, or are you referring to the whole  
 10 Council?  
 11 CHAIR SLAUGHTER: That's a great point.  
 12 MS. BULGER: This is Katrina. Yes, that  
 13 was one of the things that I was concerned about.  
 14 When it's regarding an active investigation, the  
 15 only Council members that should be privy to that  
 16 are the Case Status Committee. So I guess I would  
 17 just suggest that if it was regarding a case, we  
 18 could run it by the chair of that committee.  
 19 CHAIR SLAUGHTER: I completely agree. I  
 20 think if it's a training issue, like the Richard  
 21 Mack issue, I think it's my responsibility to  
 22 receive that information, send out a mass email to  
 23 the Council, and make you guys aware that, "Hey,  
 24 this is what's going on. Does anybody have any  
 25 questions?" and then move from there.

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 1 I feel like that's my burden to deal  
 2 with all that. Does anybody like to see it  
 3 different, like to see that -- I mean just go that  
 4 way?  
 5 (No response)  
 6 CHAIR SLAUGHTER: So I guess --  
 7 MR. DUTTON: Can you, Mr. Chair, can you  
 8 repeat. We have a motion and a second, and we're  
 9 fixing to vote after discussion, but I can't  
 10 remember the motion now.  
 11 CHAIR SLAUGHTER: So maybe we need to  
 12 amend the motion. So I think Chief Kraft made the  
 13 motion. I think, Stuart, please correct me if I'm  
 14 wrong here.  
 15 I think the motion needs to say that  
 16 there is a Council notification with regards to  
 17 any media release that DOJ is requesting; that  
 18 Council notification will be done through the  
 19 Chair, unless it's involving an active case, which  
 20 at that point it will be the chair of the Case  
 21 Status Committee; and then it will be the Chair's  
 22 responsibility to disseminate that information to  
 23 Council members; and then obviously if it's a Case  
 24 Status Committee, it will only remain among the  
 25 Case Status Committee.

48  
 1 And it's simply just a notification  
 2 that, "Hey, this information has been requested,  
 3 and can possibly be released. Do we have any  
 4 issue with it?" That's it. Does it need to be  
 5 amended, Stuart?  
 6 MR. SEBEST: I think it's more of a  
 7 clarification, so understanding that's the motion.  
 8 The person that made the motion can amend if they  
 9 want to, but I think as long as everybody's on the  
 10 same page that that's the motion before you and  
 11 that that's what you're voting on.  
 12 CHAIR SLAUGHTER: Does everybody  
 13 understand the clarification? We're in  
 14 discussion, so if anyone doesn't, please speak up.  
 15 (No response)  
 16 CHAIR SLAUGHTER: Okay. So having heard  
 17 the motion, I'll go to a vote. All those in  
 18 favor, signify by saying aye.  
 19 (Response)  
 20 CHAIR SLAUGHTER: Opposed, same sign.  
 21 (No response)  
 22 CHAIR SLAUGHTER: Okay. Motion carries.  
 23 So Item No. 2 or "C" on our outline would be the  
 24 MOU, and I think this one is going to be simpler,  
 25 but I guess I would entertain a motion to direct

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1 POST staff to draft an MOU that will be initiated  
 2 and assisted by Stuart to avoid these situations  
 3 to begin with. So I guess right now just to  
 4 disband POST staff to do a POST/DOJ MOU.

5 MR. BUTTON: This is how I wrote it down  
 6 when you were talking before, so I make a motion  
 7 for POST staff to engage with Department of  
 8 Justice in developing an MOU draft for the  
 9 Council.

10 CHAIR SLAUGHTER: Do I have seconds?  
 11 MR. EDWARDS: This is Jess. I'll  
 12 second.

13 CHAIR SLAUGHTER: Jess Edwards seconds.  
 14 Any discussion on that particular issue, the MOU?

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

21 And so these are subjects of the MOU:  
 22 The administrative rules process; public record  
 23 process and response process; staff appointment  
 24 and control. Those are the things I heard, the  
 25 main topics.

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1 CHAIR SLAUGHTER: That sounds good.  
 2 Does anybody have any questions for Stuart?  
 3 Discussion.

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

6 CHAIR SLAUGHTER: Hearing none, all  
 7 those in favor of the motion, signify by saying  
 8 aye.

9 (Response)

10 CHAIR SLAUGHTER: Opposed, some sign.  
 11 (No response)

12 CHAIR SLAUGHTER: Thank you. Motion  
 13 carries. At this time I think it's a perfect time  
 14 for a break, so let's take 15 minutes.

15 (Recess taken)

16 CHAIR SLAUGHTER: This is Jesse  
 17 Slaughter, and we're going to go back on the  
 18 record. We heard a phone ding at the break, so  
 19 can we please, everyone on the phone, recheck in  
 20 just so we know who's there.

21 MR. MCCARTHY: Mike McCarthy.

22 CHAIR SLAUGHTER: I heard Mike McCarthy.  
 23 Who else?

24 MR. KRAFT: Chief Kraft.

25 MS. BORDICK: I'm here.

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1 CHAIR SLAUGHTER: Thanks, Kimberly. I  
 2 appreciate it. So we just wanted to make sure we  
 3 didn't lose anybody from the Council, so we knew  
 4 who all we had in here. Is Matt Daylor on the  
 5 phone?

6 (No response)

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

13 MR. MCCARTHY: Thank you, Mr. Chair.  
 14 First, can you guys hear me?

15 CHAIR SLAUGHTER: Yes.

16 MR. MCCARTHY: The Curriculum Committee  
 17 met October 19th. Committee Chair Conner Smith  
 18 was unable to attend, and I acted in his place.

19 The focus of the committee's discussions  
 20 revolved around MLEA's proposal to allow colleges  
 21 and universities to instruct Basic Law Enforcement  
 22 Equivalency course. We had a great discussion  
 23 regarding this, and there's a lot to it.

24 MLEA Administrator Justin Braun and  
 25 Professional Programs Manager Kelly Sherman were

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

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

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

16 So this is the October 14th memo, and  
 17 it's basically whether statute as currently  
 18 written allows the approval of a college teaching  
 19 an approved Basic course, whether that would equal  
 20 equivalency, specifically under statute  
 21 7-32-303(8) (a).

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

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

4 So then the question was: Does MLEA  
 5 equate to a state law enforcement agency? And I  
 6 analyzed it in that bigger paragraph a couple down  
 7 on that same Page 2, and basically it does. The  
 8 main reason it does is MLEA is under the  
 9 Department of Justice, and Department of Justice  
 10 has ultimate authority and control over it, and  
 11 obviously Department of Justice is a law  
 12 enforcement agency.

13 We also went into -- I explained a  
 14 little bit about how Courts interpret statutes,  
 15 and one of the things Courts do is they don't  
 16 interpret a statute in a way that would lead to  
 17 absurd results, basically that would be something  
 18 that nobody would have intended.

19 And here it just wouldn't make sense to  
 20 say that MLEA can't certify another college to  
 21 teach -- that another college's course is  
 22 equivalent to its own course. I can't imagine the  
 23 Legislature meant that.

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

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

7 So that's kind of the threshold issue of  
 8 part of the things we're working towards, does the  
 9 current statute provide for it, and the answer is  
 10 yes.

11 MR. MCCARTHY: So discussion, after  
 12 Stuart had given his documentation, it shows that  
 13 MLEA can do this. I believe Katrina helped with  
 14 this guideline, and MLEA staff helped with the  
 15 guideline and gives --

16 It is not ready yet. MLEA believes it  
 17 still has some work to do on the guidelines that  
 18 would be sent to a college or a university that  
 19 wants to participate in this. MLEA staff is still  
 20 working on dealing with the colleges, and seeing  
 21 what they have to do. Administrator BRAUN, do you  
 22 want to add anything?

23 CHAIR SLAGHTER: He's approaching the  
 24 mike.

25 MR. BRAUN: To lay the foundation, we're

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1 in contact with South Dakota, who has a similar  
 2 program, to get the framework for an MOU that  
 3 would be between DOJ/MLEA and MSU, or whatever  
 4 other educational body that we enter into this  
 5 agreement.

6 Kelly Sherman, who is kind of heading  
 7 this effort, has been out on sick leave for the  
 8 last couple weeks. The efforts have kind of  
 9 stalled out as a result of that.

10 But the next step after we organize the  
 11 MOU is to meet with MSU/Gallatin College officials  
 12 to hammer out some more of the details and move  
 13 this project forward. Questions?

14 (No response)

15 CHAIR SLAGHTER: Thank you. Mike  
 16 McCarthy.

17 MR. MCCARTHY: That's the end of my  
 18 report unless you have questions.

19 MR. ALLRED: Stuart, if you can give  
 20 updates, too, on the second question that came out  
 21 specifically on the second memo in regards to if  
 22 an officer that has been previously been hired, if  
 23 they could go to the equivalency commensurate at a  
 24 college or university.

25 MR. SECREST: So the question came up if

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

10 So this is the October 24th memo. And I  
 11 analyzed the question. And if you look at Page 2,  
 12 this is the second paragraph on that page, and I  
 13 say, "The question here is whether this exception  
 14 --" and I'm analyzing 303(8)(a) again, because  
 15 that's the equivalency exception -- "whether the  
 16 exception, and particularly the phrase 'has  
 17 successfully completed' requires completion prior  
 18 to the officer's appointment, or whether or an  
 19 officer that successfully completes an approved  
 20 MLEA course after appointment qualifies."

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

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1 of the Legislature, you look at -- again, I've  
2 already talked about this in the last memo --  
3 avoiding absurd results, and whether the agency in  
4 charge of the statute has constructed the statute  
5 in a certain way.

6 So I go through all of those, and I  
7 looked at -- I kind of took agency interpretation,  
8 the legislative intent as one, and looked it up  
9 first. And the way this was presented by POST to  
10 the Legislature, and the way it's been interpreted  
11 by POST, is that the idea was that an officer  
12 would have already attended an equivalent Basic  
13 course prior to being hired, and then POST  
14 certifies that it is indeed equivalent, and then  
15 they qualify for a day.

16 And if you apply that here, that would  
17 mean that the employee would have needed to have  
18 completed the Basic course at the college prior to  
19 being hired. It's not an alternative to the Basic  
20 course at MLEA after they've been hired.

21 So there's intent, how POST has  
22 interpreted it. And then looking at the whole  
23 statute, I think that makes sense, because the  
24 (5) (a) is the general requirement, and that's the  
25 one that says, and is specific, that the officer

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

5 So when you look at that, if we allowed  
6 an agency to choose to send their officer not to  
7 MLEA, it would not really be following that intent  
8 and that structure of the statute.

9 So I guess in essence, as I looked at  
10 it, it does seem like the best interpretation of  
11 this statute is that it's limited to those who  
12 have successfully completed a Basic approved  
13 course prior to hire, not as an alternative to  
14 attending MLEA after hire. Even though it's  
15 short, there's kind of a lot of analysis there, so  
16 if anybody has questions, I'm happy to talk about  
17 it.

18 CHAIR SLAUGHTER: Any questions for  
19 Stuart?

20 (No response)

21 CHAIR SLAUGHTER: So Stuart, maybe in  
22 the future, something we may want to look at, if  
23 this -- because I think this college idea is a  
24 great idea, especially with the heavy workload  
25 that MLEA tries to push through. It's like a

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1 funnel, and you're trying to cram everything  
2 through it.

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

7 It will give time for those colleges to  
8 work through issues, work through bugs, get things  
9 kind of up and rolling; but then in the future  
10 that's something we may want to look at, because  
11 for example if you live in eastern Montana, it  
12 might be a lot easier to go to Billings or  
13 Glendive and go through than it would be going all  
14 the way to Helena, and it could save a lot of  
15 money.

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

18 MR. SECREST: Based on my  
19 interpretation, I would think you would have to  
20 amend the statute. But yes. Certainly.

21 CHAIR SLAUGHTER: I knew that. But it's  
22 not -- Amending the statute probably after you had  
23 a practical example would probably not be that  
24 difficult.

25 MR. SECREST: Yes. I think that's

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1 right, and I think it would be helpful if you go  
2 to the Legislature and make that recommendation to  
3 be able to say, "We've had this program up and  
4 running for two years, and however long. It's  
5 been successful, and here's how it works, and we  
6 think it should also be an option for officers  
7 after hire."

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

15 (No response)

16 CHAIR SLAUGHTER: Moving on. Case  
17 Status. Jim Thomas, you're up.

18 MR. THOMAS: Thank you, Chairman  
19 Slaughter. Pages 43 and 44 is the report on the  
20 Case Status Committee. You'll see the cases we've  
21 closed, etc. I can't really answer any questions  
22 about any individual cases, but if there are any  
23 general questions, feel free to ask. We are very  
24 busy. At our last meeting, Katrina, what did we  
25 have, over 600 pages of documents to go through?

1 MR. SEGREST: I think we've been <sup>61</sup>  
2 hovering around 500 and 600 in general.  
3 MR. THOMAS: I tell you what, you talk  
4 about thanking the staff, the work that they put  
5 into these investigations is just unreal. It's  
6 amazing. I mean I wish I could actually share  
7 some of these things with you guys. Some of it  
8 makes you cry, some of it makes you scream and  
9 cuss. I mean you see I've already pulled all my  
10 hair out. But we're very busy.  
11 CHAIR SLAUGHTER: Thanks, Jim.  
12 MR. DUTTON: Mr. Chair, I can't  
13 remember. I know Mr. Thomas is on the  
14 adjudication panel. Who is the other two?  
15 MR. THOMAS: Conner Smith and Matt  
16 Baylor.  
17 MR. DUTTON: Okay. Thank you.  
18 CHAIR SLAUGHTER: It's safe to say that  
19 there's a huge increase in those contested cases  
20 than there was previously, and one of the things  
21 -- I don't necessarily think that's attributed to  
22 we're getting more bad actors.  
23 I think law enforcement officials, our  
24 Chiefs, our Sheriffs, our people, we've done a  
25 good job as POST at explaining what they're

1 supposed to be doing, and when they should be <sup>62</sup>  
2 making the necessary reporting to the Council. So  
3 I just think that's another positive thing is  
4 people are being more transparent and more  
5 forthright with all the information than years and  
6 years ago.  
7 MR. THOMAS: If I may, Sheriff  
8 Slaughter. I still believe that one of the  
9 reasons we in Montana don't have the problems in  
10 law enforcement that we see in so many other  
11 states is that we hold people accountable.  
12 And I knew that Perry Johnson, before he  
13 left, he had shared with the Council an article  
14 out of the Salt Lake Deseret, I think, or  
15 whatever, about the things that, for lack of a  
16 better term, that law enforcement was getting away  
17 with in the state of Utah because they weren't  
18 being held accountable by their POST Council.  
19 And one of the things I enjoy and like  
20 about serving on this Council is we hold people  
21 accountable, and if you want to protect and serve,  
22 if you want to be a hero, then you earn it.  
23 That's the way I look at it. Sorry for the rant.  
24 CHAIR SLAUGHTER: Thank you so much.  
25 MR. ALLRED: Chairman Slaughter, I have

1 one update on the 2017 case. That case has <sup>63</sup>  
2 officially been closed, so we can discuss it here.  
3 Just as a reference to the Council, that was the  
4 Chad White case, Cause DV-19-135.  
5 On December 2nd, 2022, the Honorable  
6 Ronald Spaulding, District Court Judge, entered  
7 judgment in this matter in favor of the Respondent  
8 and Intervenor, the Montana Board of Crime Control  
9 and the Montana POST Council. If you would like a  
10 copy, and if you'd like to see any more  
11 information, you can email myself or Katrina on  
12 that.  
13 MR. BOLGER: So we won.  
14 CHAIR SLAUGHTER: Great job. Thanks to  
15 Case Status and POST staff. Thank you, Director  
16 Allred, for sharing that with us.  
17 MR. SEGREST: I would suggest -- I'm  
18 sorry to interrupt. I think you might as well  
19 send it to the, if you haven't already, send it to  
20 the Council, send the opinion. It's interesting,  
21 and I think it's a good layout of kind of that  
22 process.  
23 MR. BOLGER: This is Katrina. It  
24 reiterates a lot of discussions that have come up  
25 in Council meetings previously, and so I do think

1 it's an interesting opinion, but I'm a nerd. <sup>64</sup>  
2 MR. DUTTON: This is Leo. A point of  
3 clarification. I want to make sure I understand  
4 it. This was a case that the Board of Crime  
5 Control overruled this Council, and then we  
6 appealed that, and the District Court Judge agreed  
7 with us, correct?  
8 MR. ALLRED: So this case came before  
9 contested case Counsel and a Hearing Examiner  
10 prior to 2019, when it started, and at that time  
11 the appeal process went through the Board of Crime  
12 Control, and then to the District Judge, and then  
13 if they wanted to appeal, they can go to the  
14 Supreme Court.  
15 And so that's why at that time -- before  
16 2019 it went to the Board of Crime Control first,  
17 and then they went to the District Judge. But at  
18 this time it would.  
19 MR. BOLGER: But the Board of Crime  
20 Control ruled consistently with POST in this case.  
21 MR. DUTTON: They did. Okay.  
22 MR. BOLGER: Yes.  
23 MR. ALLRED: It just went through that  
24 process.  
25 MR. DUTTON: Okay. Thank you.

55  
 1 CHAIR SLAUGHTER: Sheriff Dutton, it is  
 2 your turn under Coroner report to talk loudly.  
 3 MR. DUTTON: Mr. Chairman, members of  
 4 the Council, the Coroners report. You will have a  
 5 Coroner Basic coming up here in Helena, I believe  
 6 the second week in December. Also there is  
 7 usually an advanced course up in Great Falls, and  
 8 thanks to the Cascade County Sheriff's Office that  
 9 usually hosts this.  
 10 This letter is -- I checked with Andy  
 11 LaBrun that now works down in Red Lodge, Carbon  
 12 County, and he was the lead.  
 13 So there's Willy Kemp is trying to  
 14 design some Coroner training that would be online.  
 15 So this letter is to everyone.  
 16 "I've heard back from several people  
 17 regarding the times for online training before the  
 18 end of the year. The problem in December is  
 19 Christmas/New Years, and I have one weekend I have  
 20 to do things, and might be able to get to work  
 21 around it.  
 22 "Here are the choices I see. We can do  
 23 an eight hour on December 10th, and an eight hour  
 24 on December 11th. I could do four hours on the  
 25 10th and 11th." And I don't know if these guys

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 1 want to hear all the details of Coroner training,  
 2 so I'll just skip down. "Offering several courses  
 3 for Coroners and Deputy Coroners to get their  
 4 hours before they expire at the end of the year."  
 5 What is of note is he's trying to help  
 6 with doing some online training, just getting  
 7 people up to what we normally have as an advanced,  
 8 and I believe that POST is responsible for that  
 9 class, at least it used to be. So I'm not sure on  
 10 this one, on that, if POST is having an advanced  
 11 one in addition to this. Do you know, Sheriff?  
 12 MR. ALLRED: This is Director Allred. I  
 13 can discuss that. So there is a Coroner Basic  
 14 that you discussed with Andy LaBrun. I met with  
 15 him, and also he said he is in conversations with  
 16 Sheriff Dutton.  
 17 That's going to happen next week here at  
 18 the Academy on December, it starts December 12th  
 19 and ends on the 15th. There's 31 students who are  
 20 coming to that, and then we're doing Advanced  
 21 coroners training, too, as well, and that's going  
 22 to be here. It starts today at 1:00, and it will  
 23 end Friday at noon.  
 24 We've worked with several other  
 25 individuals who are going to be instructing the

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 1 Advanced Coroner, and there's eleven individuals  
 2 that are currently signed up for that advanced  
 3 training.  
 4 Andy is also -- we've been working with  
 5 Kelly Sherman, along with MLEA. We're getting a  
 6 date right now for spring Basic Academy, because  
 7 the waiting list is very extensive.  
 8 I've had quite a few conversations with  
 9 Andy as well, talking about what the future will  
 10 hold for the Coroners Basic in regards to POST.  
 11 And one of the conversations we had is when he's  
 12 done, which is going to be in a couple years he  
 13 said, who is going to carry that on. So we've  
 14 been trying to identify who would be able to,  
 15 could carry that on.  
 16 In discussions with Katrina as well,  
 17 just with the revised ARMs, it used to state in  
 18 there that POST would conduct the Coroners Basic,  
 19 and now it was changed to the word "approve" the  
 20 Coroners Basic.  
 21 So anyway, that's a little bit of  
 22 update, so Advanced Coroners will be actually in  
 23 this room starting at one today.  
 24 MR. DUTTON: There you have it. That's  
 25 Leo.

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 1 CHAIR SLAUGHTER: Thank you, Sheriff. I  
 2 really appreciate that.  
 3 Moving on, Business Plan Policy. Joss  
 4 Edwards.  
 5 MR. EDWARDS: I have nothing to report.  
 6 CHAIR SLAUGHTER: Thank you, Joss.  
 7 Marijuana Committee. That's me. I thought we did  
 8 a good job. We came up with our ARM for this.  
 9 I think that we could probably -- it's  
 10 my opinion we could probably get rid of this  
 11 committee. We need a motion to do so. And then  
 12 if something comes up in the future, we would  
 13 stand it up again, but we kind of out laid what  
 14 our plan was and how we would deal with that, and  
 15 it's just going to be something that's going to  
 16 sit on the agenda that we're going to say "no  
 17 report" on.  
 18 So if you guys agree, I would entertain  
 19 a motion to get rid of that committee for now  
 20 because we don't need a committee just to have  
 21 one, in my opinion.  
 22 MR. DUTTON: Mr. Chairman, I make a  
 23 motion that we disband the Marijuana Evaluation  
 24 Committee unless further noted that we need it.  
 25 CHAIR SLAUGHTER: So I have a motion.

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1 Do I have a second?

2 MS. WHITE: I'll second. Kristino

3 White.

4 CHAIR SLAUGHTER: Thank you. Any

5 further discussion about this?

6 (No response)

7 CHAIR SLAUGHTER: Hearing none, all

8 those in favor, signify by saying aye.

9 (Response)

10 CHAIR SLAUGHTER: opposed, same sign.

11 (No response)

12 CHAIR SLAUGHTER: Motion carries. So

13 Director, if we would, please, we can cut that one

14 off future agendas. ARM. Sheriff Dutton.

15 MR. DUTTON: Mr. Chairman, members of

16 the Council. As you alluded to earlier, one of

17 the things that we have discussed is the

18 Administrative Rules of Montana about the

19 marijuana, and how it relates. We've had some

20 good discussion. Does anybody need a review on

21 that?

22 (No response)

23 MR. DUTTON: Seeing none, moving right

24 along. Timothy Allred would be happy to review

25 all of that, but if you don't need it, we can move

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1 along. But it was well discussed, and I think we

2 came up with a good plan. That's the only one I'm

3 aware of, Mr. Chairman, from my memory.

4 CHAIR SLAUGHTER: Sounds great.

5 Anything further, Sheriff?

6 MR. DUTTON: No. That's it. Back to

7 you.

8 CHAIR SLAUGHTER: Thank you. So moving

9 on, Law and Justice. Director Allred, I'll turn

10 it over to you for that.

11 MR. ALLRED: Yes. This is a letter that

12 we received that was on September 30th, 2022, that

13 was sent to Chair Jesse Slaughter of the Public

14 Safety Officer Standards and Training Council.

15 Chair Slaughter and I discussed this the

16 other day. He was going to look into that and

17 what give a report to the Council.

18 CHAIR SLAUGHTER: Yes, and I have not

19 had a chance to do that, so I will do it via email

20 likely.

21 MR. ALLRED: The question is if you do

22 after email, when you read through this, the Law

23 and Justice Committee is asking for support from

24 POST for a bill that they're proposing. It's to

25 receive more data and information, and improve

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1 criminal justice systems for collecting and

2 sharing and integration of data statewide.

3 And so if you have a chance to review

4 that email, we can decide whether POST wants to

5 support this. They gave a sample letter that we

6 could submit to show our support.

7 CHAIR SLAUGHTER: Further discussion on

8 that. So Sheriff Dutton and I dove into this a

9 little bit among Sheriffs, because this is coming

10 to Sheriffs, too.

11 Tomorrow I'm either going to be in

12 Havre, I'll be on the call for the Sheriffs

13 Association, and I'm going to bring this up. And

14 one of my questions about this is: Data is only

15 as good as the information you put in. What are

16 the parameters on the data?

17 And then what's the workload? What's

18 the workload for data collection, and all this

19 other stuff, too? So all those things I'm trying

20 to figure out before I'd ask the Council if we

21 want to consider this.

22 I think there's potentially issues with

23 this. And if anyone has any discussion or

24 comments about it, feel free.

25 MR. DUTTON: Mr. Chair, I do. Being

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1 somewhat familiar from this, this comes from --

2 I'm going to forget the guy's name. He's a good

3 guy. But I'll come back to it -- legislator.

4 There are two legislators that have worked on

5 getting a centralized information center that the

6 Legislature can use in their decisions to make

7 laws, are they effective, are they not effective.

8 And really where all of the information

9 comes from is the people in the streets will do a

10 report, if so required -- which we already do.

11 Then it goes to a central collection point, which

12 is Board of Crime Control. Board of Crime Control

13 will be funded, have extra staff, and then make it

14 available.

15 Where it gets somewhat questionable or

16 problematic is the initial bill that's being

17 presented creates a whole new Criminal Justice

18 Coordinating Council of 23 members, in addition to

19 the Board of Crime Control that exists today.

20 And we're trying to work with the

21 sponsor now to say, "I don't know that this is

22 exactly necessary. It's somewhat redundant. And

23 in the light of the Governor's reduced red tape

24 initiative, this might fall right square into

25 that," but I think the sponsor looked at it to get



buy-in, and it was --

The Criminal Justice Coordinating Council has a large representative of legislators on it. That happened back in 2007 for the Board of Crime 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 Governor readjusted who was on there. It's not a political -- somebody who is a Representative or a Senator is not on there. They're represented by jurisdiction.

So the Board of Crime Control is eager to work with the Legislature. They're ready. At first there 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 here's the data."

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

CHAIR SLAGHTER: Thank you, Sheriff. 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.

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

More of my issue was with -- and you kind of helped me answer this actually. 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 gorilla, 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 crazy for FTE'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 the things that the staff is saddled with, and the amount of FTE's they get, so it could be a really good thing. Wyatt.

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 "we," I'm talking about law enforcement and prosecution in general -- have a bill that affects us in the Legislature, then we send representatives or go personally up there to testify to legislators about the effect that this bill will have on the criminal justice system, and we'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 criminal justice system are in a situation where

they have to pick who to believe. If there are some statistics, some good statistics generally available to them, I think we're going to have better results at the Legislature when it comes to criminal justice.

On the other hand, this sounds a lot like another unfunded mandate for local Sheriffs, city Police Departments, and County Attorneys. I'm concerned 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 then 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. There was not one for POST Council as a representative.

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

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1 Case Status, that would probably be our big  
 2 statistic that we would be pushing through there.  
 3 But is it appropriate for POST to do  
 4 that, when we represent -- Wyatt, like you said --  
 5 we represent County Attorneys, Department of  
 6 Corrections, Sheriffs, Chiefs of Police, Police  
 7 Officers. You know, we represent all these  
 8 groups, and then we're like, "Oh, yeah, we should  
 9 do this," and we write the letter of support, when  
 10 maybe this isn't heavy for us, we're looking at  
 11 it's a full-time FTE for everybody else.  
 12 And I wonder maybe if it's not  
 13 appropriate for us to weigh in on it, because it's  
 14 kind of weird, though, right? We represent the  
 15 POST, the POST Council, the POST staff, but we  
 16 also represent all these other entities. Any  
 17 thoughts?  
 18 MR. ANDERSON: Mr. Chair, I guess I  
 19 think the intent of this is really good, and the  
 20 centralized data would be beneficial to everybody --  
 21 POST, all of our agencies. I've been involved in  
 22 some of the conversations.  
 23 But the logistics are the question right  
 24 now, and I think the intent was to find ways to  
 25 tap into our already collected data systems

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1 thinking. If I'm totally wrong about what I've  
 2 heard, then please correct me or the correct it in  
 3 a motion.  
 4 MR. ANDERSON: I guess I have a  
 5 question, Mr. Chair. Could we make a statement in  
 6 a letter saying that we support the intent of  
 7 this, or is that committing too much?  
 8 CHAIR SLAUGHTER: I think we can do  
 9 whatever we want. I mean that. They sent us a  
 10 sample letter, and if you're smart and trying to  
 11 get support, you do all the work for somebody, and  
 12 you say, "Here. I did the work for you. Now sign  
 13 it," because that's the easy way to do it, right?  
 14 But that's a really good point, Jim. We  
 15 could say, we could write a letter, we could have  
 16 staff draft a similar letter to this, but just  
 17 say, "The POST Council has some questions and is  
 18 uncertain about the future of this. However, we  
 19 support the intent of what you're doing." I think  
 20 if someone gives a motion to that, I absolutely  
 21 think we can do that.  
 22 MR. ANDERSON: I will go ahead and so  
 23 move to have the staff draft a letter and say to  
 24 the effect, "We support the intent behind the  
 25 letter. We have questions about the logistics and

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1 without adding more work, but they don't have that  
 2 ironed out yet.  
 3 So I think the intent, I think we can  
 4 get behind. It's the unfunded mandates, the  
 5 logistics, the FTE's, that that stuff's required.  
 6 I know POST Council is working really hard at  
 7 trying to solve some of those answers, and so I  
 8 guess as far as us supporting it, depending on  
 9 what they are asking, the concept is great. The  
 10 details are what's missing at this point.  
 11 So I don't know if we could support it  
 12 yet, or if we could say something along those  
 13 efforts, that the intent is something we support,  
 14 given that the logistics are figured out and it  
 15 doesn't cost money.  
 16 CHAIR SLAUGHTER: Thanks, Jim. I think  
 17 it's just a letter of support. You know, they're  
 18 going to want to stand up and say, "POST Council  
 19 supports this." I think that's really what it's  
 20 going to come down to.  
 21 I guess I feel comfortable, after the  
 22 conversation we've had, us going to a motion to  
 23 decide if we want to do it or not amongst the  
 24 Council. I'm kind of hearing that we kind of want  
 25 to stay out of it for right now, is what I'm

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1 money," however we could phrase that, but  
 2 supporting the intent.  
 3 MR. SEGREST: Funding.  
 4 CHAIR SLAUGHTER: Thank you, Jim.  
 5 There's a motion on the floor. Do I have a  
 6 second?  
 7 MR. THOMAS: This is Jim. I second.  
 8 CHAIR SLAUGHTER: Thank you, Jim. So  
 9 now we have a motion on the floor and we have a  
 10 second. Do we have any further discussion about  
 11 this?  
 12 MR. DUTTON: Further discussion, just to  
 13 let you know, this has been Representative Barry  
 14 Usher's baby, and it's going to happen to track --  
 15 I mean the train is on the track. I would hope  
 16 that we could help shepherd it to be a useful  
 17 tool, and that's why Board of Crime Control has  
 18 been on board. We're trying to work with  
 19 Representative Usher, and I forget the name of the  
 20 other Democrat that's co-sponsoring it.  
 21 I dared to brought up funding in a  
 22 public meeting -- Brian Lynch is the Democrat  
 23 co-sponsor -- and they weren't happy with that  
 24 word. I'm just giving you that. They said, "You  
 25 figure out how it works, and we'll figure out the

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1 funding." So I was somewhat rebuked in a public  
2 meeting, so just offer that caution in your  
3 motion, that if you ask about the funding, that  
4 seems to be offensive to some of those who work  
5 there. But we can say, as you said, Mr. Chair, we  
6 can say what we want because it is a concern.  
7 Thank you.

8 CHAIR SLAUGHTER: Sheriff, thank you.  
9 That's actually really good feedback, and I think  
10 one of the things we really need to consider as a  
11 Council is there is a super majority, so there's  
12 going to be some things we're going to have to  
13 live with whether we like it or not, because they  
14 can override a Governor's signature even so.

15 With that said, I think, Sheriff, that's  
16 very wise, that we get involved, and now that you  
17 say that, I like Jim's motion even more, because  
18 it says, "Hey, we're willing to play," but let's  
19 make sure POST staff when we -- if the motion  
20 carries and we decide to do this -- that we  
21 delineate our concerns. It doesn't need to be  
22 this long of a letter, it just needs to be like  
23 our concerns are fiduciary, who is funding this,  
24 is this going to require an FTE, how is that going  
25 to be funded, is this going to require --

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

5 MR. ANDERSON: Yes, Mr. Chair, I agree  
6 with you that if we write a letter of support,  
7 then we can be involved in the conversations  
8 moving forward, and I think that's really  
9 important, because I do think there's a lot of  
10 benefits that could come from this.

11 CHAIR SLAUGHTER: I agree. Thank you.  
12 Anybody on the phone? I don't want to forget  
13 about you guys.

14 (No response)

15 CHAIR SLAUGHTER: Any further  
16 discussion?

17 MR. SEGREST: Mr. Chair, I would suggest  
18 that if -- since you are together and making  
19 decisions now, that at least you create a broad  
20 skeleton of that list, so that staff doesn't have  
21 to kind of recreate the wheel later and go back to  
22 you.

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

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1 snowflake, is that a software purchase  
2 that the individual entities have to purchase?

3 MR. DUTTON: No, Mr. Chair. It is  
4 Senate Bill 11, and they have asked for a fiscal  
5 analysis, so that will be -- see if the fiscal  
6 note has been suggested, how much it's going to  
7 cost. So they don't know the answer to that  
8 question we're going to ask, but the fiscal note  
9 has been requested in Senate Bill 11.

10 CHAIR SLAUGHTER: I'm glad that's on the  
11 record. But what about when you combine software,  
12 like the migration --

13 MR. DUTTON: Integration.

14 CHAIR SLAUGHTER: -- integration of  
15 software, so that might be a thing that we might  
16 need to know about.

17 MR. DUTTON: That's a very valid point,  
18 Mr. Chair. Those are all questions we have still,  
19 and they don't know yet.

20 CHAIR SLAUGHTER: I think as you --  
21 Director Allrod, if this does, if this Council  
22 does pass this motion to write this, I think we  
23 want to delineate as many of those concerns as we  
24 can in the letter, so that we're very transparent,  
25 like "We support this. Those are our concerns,"

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1 your local technology systems, data systems; how  
2 it's going to be funded; and that's the list I've  
3 made so far. So is there anything to add to that?

4 CHAIR SLAUGHTER: I can't think of  
5 anything. Can anyone think of --

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

9 CHAIR SLAUGHTER: Thank you, Sheriff.  
10 That's a great point. I believe we could take the  
11 liberty, too, if we think of something later, to  
12 make sure to reach out to Director Allrod, have  
13 them added to the list, because I don't think  
14 Kristine's concern -- it's okay if it is just her  
15 concern. She's a member of the Council, so I  
16 don't think that's a big deal. Any further  
17 discussion?

18 (No response)

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

21 (Response)

22 CHAIR SLAUGHTER: It was just Kimberly  
23 on the phone. Did we lose anybody? Chief Kraft?

24 MR. KRAFT: Aye.

25 CHAIR SLAUGHTER: Is Matt back on?

(No response)

CHAIR SLAUGHTER: Okay. Opposed, same sign.

(No response)

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

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

MR. ALLRED: I can do it like in seven minutes.

CHAIR SLAUGHTER: Your Director's report?

MR. ALLRED: Yes.

CHAIR SLAUGHTER: So what do you want to do? Do you want to take a break and eat? No? Push on? Okay. 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 honor, an absolute honor to work with the POST Council in the different committees, with each individual individually, and with the POST staff.

I cannot be more grateful and elaborate on more words enough. Just so thank you.

We've done several -- we've had committee meetings, whether it would be curriculum or Contested Case Council, and now the Council, the full Council meeting. So I just want to thank you, and just tell you it has been an honor. I'm fully on board with POST and the ideology that it stands to live by, its ethics, 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 twelve, it's \$39,764. I went through the budget, and had a few budget meetings 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

legal fees that come from having Hearing Examiner budgets, contested case hearing budgets, and General Counsel budgets as well. But right now we're right on track. We're doing very well.

I went 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 Council have been involved with over the last several years. And as you can see, it just continues to climb in several different areas.

Right now you may 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 POST is at.

But POST right now with 5,885 public safety officers, 48 percent of those are law enforcement peace officers; and 28 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.

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

This year so far POST has awarded 943 certificates; training approved, 1,961 trainings; 7,646 officers, and 117,153 hours. When you look at these 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 getting 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 review 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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1 training.

2 One area that I want to go into is

3 equivalencies granted. You can see there are a

4 lot of times out of state, some are in-state.

5 We're at 93, which is more than last year, but

6 that's like, if you look at the stats, that's an

7 over 1300 percent increase from the last several

8 years. We're continuously getting those, and

9 continuously reviewing those.

10 Information requests are continuing to

11 grow. I want to show you one thing -- and I know

12 there's lots of stats to go through -- but if you

13 go to Page 61. I found this was very interesting.

14 So far this year POST has got 109

15 complaints in 2022. 55 of those were closed when

16 POST initially reviewed them. POST is required by

17 law to review each complaint that they receive.

18 54 of those were opened to investigation.

19 If you look down at the next section

20 where it says out of the 54 that were opened to

21 investigation, 33 are still active or those

22 investigations have been closed. Eight of those

23 have received sanctions, and 13 of those

24 certificates are revoked or have been denied.

25 And keep in mind that a lot of those

90

1 revocations where their certificate is revoked, a

2 lot of those were failure to respond and take part

3 in the letter process.

4 And so anyway, that kind of gives an

5 idea of what POST has been doing. POST is working

6 and considering each one of those contested case

7 hearings individually, and deciding. As you can

8 see, more than half have been closed when they

9 first initially reviewed the case. I think those

10 are good things to understand.

11 We're going to continue to do a lot of

12 things. We've been working on a lot of things.

13 We've been working on -- we've done several

14 presentations at the CJIN TAG conference in Great

15 Falls for LEOB, EOCB, POC. The last EOCB that

16 POST gave a briefing at, the staff, it was

17 actually in the dark. They had a power outage, so

18 we were sitting at 8:00 in a room completely dark,

19 and that was pretty fun.

20 We are really working at finding areas

21 and ways that we can go more and more paperless,

22 and doing things that make sense. There's a lot

23 of areas that we've been doing duplication, and

24 making things move faster and be more effective,

25 and I think we're doing a great job as staff in

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1 discussing these different areas.

2 One area that's been a concern is just

3 the case management software. We do not have one.

4 With all these cases, Katrina and others have kept

5 a spreadsheet, or she has a moving white board in

6 her office that she is able to move around. We've

7 been working to try and find a good case

8 management software that will fit POST needs.

9 Video conferencing. We've been working

10 diligently to get video conferencing into our

11 conference room. That's one thing I want to

12 discuss in the future and for future thought.

13 It's not as big as this room. It is wide. It's a

14 good square shaped size.

15 But if we had -- we have the option, if

16 we wanted to, to hold a POST Council meeting

17 there. If, say, like seven appeared in person,

18 and six or whatever were on the video conferencing

19 -- not that we're saying that -- but those are

20 options moving forward.

21 There's also the option that was brought

22 up that previously POST would do one hearing in

23 person, or one Council meeting in person, and one

24 by phone. There's options to do that now that you

25 could have Teams, and we're looking into getting

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1 video conferencing in there, which we'd have two

2 72 inch TV's.

3 So there's that, and it's going to help

4 with investigations having that in there, and it's

5 going to help with time, and it's also going to

6 help with hearings. When we have contested case

7 hearings -- This last one we were pulling up old

8 projectors, and having monitors, and wiring going

9 all over this.

10 So right now we're in the process of

11 getting that done. We've got bids going forward,

12 and we're moving forward in that.

13 Just so you know, our Boost Skills

14 contract has been signed for a data base. That

15 was officially done.

16 I did speak at the advisory, the AS

17 advisory committee last month and gave an update

18 of POST and introduced myself.

19 I'm going to be going to MSPCA this

20 Friday, December 9th. I'm on their agenda to give

21 an introduction of myself and give an update of

22 POST.

23 And then just so you know, also we've

24 been working a lot on helping our resource guide

25 be more available, and one of the things we just

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

3 This resource guide has -- there's been  
4 a link that you can open up, and it's kind of like  
5 a big PDF, the whole thing, but now it's going to  
6 be broken down per section, just like the tabs are  
7 in the resource guide here, and so when there's an  
8 update, we can notify people immediately, and  
9 they're able to see those tabs right on the  
10 internet page on a link.

11 So there are some things that we've been  
12 working on. Super excited, great staff, great  
13 Council, and a lot of opportunities to support how  
14 well POST has been doing, and then continue to  
15 grow, and find ways to improve.

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

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

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1 we do sunset. It gives us an opportunity to start  
2 planning for the year.

3 And having four isn't a bad idea,  
4 especially now -- as Director Allred has said --  
5 we could probably do one of these via, with the  
6 conference room do one of those. We could do one  
7 not in person. We could do one virtual one, so  
8 that our budget doesn't go crazy with travel. Any  
9 thoughts?

10 (No response)

11 CHAIR SLAUGHTER: Anybody want to make a  
12 motion?

13 MS. WHITE: This is Kristine. I would  
14 move that we adopt the first calendar for meetings  
15 on Page 64 with four meetings for the year.

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

18 CHAIR SLAUGHTER: Any discussion?

19 (No response)

20 CHAIR SLAUGHTER: I would just say we  
21 can play the whole, if we need a virtual one, by  
22 ear, and if it feels like it's getting cumbersome  
23 and we're having a hard time, we do a virtual one  
24 to make it happen. Does that sound okay? We  
25 don't try to plan it now?

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1 And then the second thing, or the last  
2 thing that the Chair -- I'll turn it over to you,  
3 but I'll explain it.

4 On Pages 64 and 65, these are proposed  
5 calendar dates for Council meetings. Previously  
6 POST has done three meetings in a year. They've  
7 also adopted four, like they did in 2022. So this  
8 would be a -- I'll turn this over to the Chair to  
9 discuss their proposed Council meetings in 2023.

10 CHAIR SLAUGHTER: Thank you, Director  
11 Allred. So on here you'll see the proposed dates.  
12 There's four and three. I don't know. My opinion  
13 is when is -- what's the transmittal date for the  
14 session? Do you guys know?

15 MR. DUTTON: I do not remember.

16 CHAIR SLAUGHTER: I want to say it's  
17 like late February, early March, something like  
18 that.

19 MR. DUTTON: I can contact Annette. She  
20 might know.

21 CHAIR SLAUGHTER: It doesn't really  
22 matter. I kind of like the first Page 64, and  
23 part of it is because there is a meeting when the  
24 session is happening, which I think might be a  
25 good thing, in case we find out we don't want,

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1 (No response)

2 CHAIR SLAUGHTER: Any further discussion  
3 on that?

4 MS. WHITE: Would they all be in Helena?

5 CHAIR SLAUGHTER: Yes.

6 MR. DUTTON: Not driving to Miles City.

7 CHAIR SLAUGHTER: Director Allred and I  
8 were talking about budget, and when we start  
9 talking about all these contested case hearings  
10 and all these legal fees, fiscally it's the most  
11 responsible way that we could do it.

12 I think that the Glendive trip was  
13 \$10,000 when we did the Glendive trip. So it's a  
14 big hit. I'd rather spend that all on legal fees.

15 MS. WHITE: I would agree.

16 CHAIR SLAUGHTER: So any further  
17 discussion on the motion?

18 (No response)

19 CHAIR SLAUGHTER: Bearing none, all  
20 those in favor of the calendar on Page 64 signify  
21 by saying aye.

22 (Response)

23 CHAIR SLAUGHTER: Opposed, same sign.

24 (No response)

25 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.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

**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 failure 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 -

I hereby certify that the within bill,  
HB 78, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.



**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,

vs.

**MONTANA BOARD OF CRIME  
CONTROL,**

Respondent,

and

**PUBLIC SAFETY OFFICER  
STANDARDS AND TRAINING  
COUNCIL,**

Intervenor.

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

**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

ORDER AFFIRMING AGENCY DECISION  
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Public Safety Officers Standards and Training Council.<sup>1</sup> 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.<sup>2</sup>

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.

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<sup>1</sup> 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.

<sup>2</sup> 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)<sup>3</sup>, (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.

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<sup>3</sup> 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:

ORDER AFFIRMING AGENCY DECISION  
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- (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.<sup>4</sup>

<sup>4</sup> 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 dentistry 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 apprise 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/san-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
3. 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)

FILED

12/29/2022

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

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,

v.

MONTANA BOARD OF CRIME CONTROL,

Respondent and Appellee,

and

POLICE OFFICER STANDARDS & TRAINING  
COUNCIL,

Intervenor.

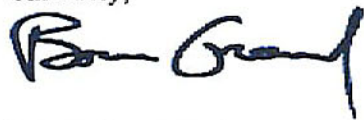
Notice of Appeal was filed on December 29, 2022 and assigned the above Supreme Court case number.

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,

A handwritten signature in blue ink, appearing to read "Bowen Greenwood". The signature is stylized with a large, looped "B" and a trailing flourish.

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.
2. POST issued Respondent a peace officer basic certificate on August 16, 2012.
3. POST issued Respondent a peace officer intermediate certificate on December 3, 2014.
4. 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  
PAGE 1

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.
9. 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.
10. The subject was not resisting.
11. Respondent stepped chest to 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."
16. BPD determined that Respondent's use of force in this situation was excessive.
17. Respondent resigned from BPD on November 11, 2019.
18. POST issued its *Notice of POST Action and Opportunity for Hearing* on April 22, 2022. 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).

**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.

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.

29. 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**

1. POST properly exercises jurisdiction in this matter. Section 44-4-403, MCA.
2. 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;

...

(i) 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;

...



(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.

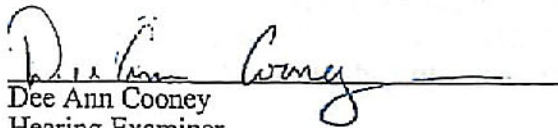
9. Respondent's conduct, as outlined above, required POST to take emergency action regarding Respondent's POST certifications based upon the public health, safety, or welfare. These factual findings include, but are not limited to, Respondent's use of excessive force and Respondent's failure to respond 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.

By:   
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 8<sup>th</sup> 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 Procedure**

**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.

### **WEEK'S #5 - #7**

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.

### **WEEK #9**

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](mailto:jbooth@laurel.mt.gov)

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



<b>60000 Expenditures</b>	<b>311,288.82</b>	<b>311,288.82</b>
61101 Regular	106,225.09	106,225.09
61103 Sick Leave	3,051.99	3,051.99
61104 Vacation	7,820.21	7,820.21
61105 Holiday	6,964.53	6,964.53
61133 Termination Pay - Sick Leave	607.65	607.65
61134 Termination Pay - Vacation	3,084.52	3,084.52
61136 FSLA Comp Time Payout	8.31	8.31
61139 VEBA Sick Leave Payout	585.45	585.45
61158 Compensatory Time Taken	1,164.33	1,164.33
61173 VEBA Annual Leave Payout	6,603.36	6,603.36
61401 FICA	9,683.43	9,683.43
61402 Retirement - Other	12,008.91	12,008.91
61403 Group Insurance	29,417.79	29,417.79
61404 Workers Compensation Insur	1,054.94	1,054.94
61410 State Unemployment Tax	322.38	322.38
62102 Consult & Prof Services	2,868.00	2,868.00
62104 Insurance & Bonds-Fixed Costs	1,749.73	1,749.73
62108 Legal Fees & Court Costs	71,620.15	71,620.15
62134 Honorariums	1,600.00	1,600.00
62162 Witness Fees	341.90	341.90
62165 Temporary Services	3,660.10	3,660.10
62190 Printing/Pub & Graphics	326.54	326.54
621B5 ITSD EMail Services	72.70	72.70
62203 Clothing & Personal	378.00	378.00
62210 Minor Tools, Instrum., & Equip	5.28	5.28
62216 Gasoline	214.75	214.75
62223 Training	24.64	24.64
62225 Books & Reference Materials	51.50	51.50
62232 Safety Supplies/Minor Equip	109.68	109.68
62236 Ofc Supplies/E-Market	1,003.32	1,003.32
62238 Minor Equipment-Office Equip	681.82	681.82
62241 Office Sup/Minor Equip-NonStat	577.62	577.62
62249 Non-Capitalized Software	25,420.00	25,420.00
62304 Postage & Mailing	6.09	6.09
62309 Advertising - Non Recruiting	54.50	54.50
62319 Cellular Phones	439.72	439.72
62322 Teleconferences	511.92	511.92
623B0 ITSD Voice Services	70.29	70.29
623B4 ITSD Long Distance Services	0.08	0.08
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
62519 Photo Copy Equipment	1,580.46	1,580.46
62801 Dues	570.45	570.45
62802 Subscriptions	469.02	469.02
62807B Notary Application Fee SOS	25.00	25.00
62809 Education/Training Costs	53.00	53.00
62817 Meetings/Conference Costs	417.45	417.45
62891A DOA Access\ID Card Fee	20.00	20.00