

MONTANA Public Safety Officer Standards and Training Council
Committee Meeting Agenda ~ May 24, 2023
ARM Committee Meeting 9:00 a.m. ~ 11:00 a.m.
Montana Law Enforcement Academy, Administration Building
Helena, Montana

Teams Videoconference Participant Information

Meeting ID: 253390524086

Dial-in Participant Information

Dial-in number: 406-318-5487

Conference ID: 584530670#

- I. 9:00 a.m. ~** Call meeting to order, roll call, identify and welcome guests.
- II. 9:05 a.m. ~** Public Comment
- III. 9:10 a.m. ~** ARM Discussion
 - a. ARM 23.13.101 ~ **pg. 2**
 - b. ARM 23.13.102 ~ **pgs. 2-8**
 - c. ARM 23.13.103 ~ **pg. 8**
 - d. ARM 23.13.104 ~ **pgs. 8-10**
 - e. New Rule Defining Committees ~ Subchapter 1 ~ **pgs. 10-13**
- IV. 11:00 a.m. ~** Adjourn

* Executive Sessions are closed to the public in order to protect the privacy rights of individuals.

Times are approximate; actual times may vary depending on presentation/discussion time.

1 **23.13.101 Organization and General Provisions, Public Inspection of Orders**

2 **and Decisions** (1) The organization and function of the Public Safety Officers
3 Standards and Training Council (“POST” or “POST Council”) are described in
4 ARM 23.1.101(1)(d), (2)(~~k~~), (j) and (4).

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

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12 **23.13.102 Definitions** As used in this chapter, the following definitions apply:

13 (1) “Allegation” means:

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

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

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

22 ~~(2) “Case status committee” is a three member committee of the POST~~
23 ~~Council, appointed by the chair of the council. The council chair shall designate a~~
24 ~~chair of the case status committee. The case status committee’s purpose is to~~
25 ~~determine whether allegations of misconduct by a public safety officer should be~~
26 ~~investigated by POST staff, to determine whether a certificate sanction is~~
27 ~~appropriate, to determine the appropriate sanction to a certificate upon a finding of~~

1 misconduct, and to review other proposed actions at the request of the director. The
2 director will act based upon a majority vote of the case status committee.

3 (3) (2) "Certification" or "certificate" means any certification granted by the
4 council after completion of the specific requirements as set forth in these rules.

5 (4) (3) "Contested case" means:

6 (a) a civil administrative proceeding that progresses pursuant to notice and
7 hearing as outlined in MAPA and these rules; or, and which is initiated by a request
8 for a hearing from an officer after the officer has received a notice of agency action
9 imposing denial, sanction, suspension, or revocation by the director when the case
10 could not be settled at the preliminary stage of review, investigation, or informal
11 proceeding.

12 (b) a proceeding initiated by a request for a hearing from the officer after the
13 officer has received a notice of agency action imposing sanction, suspension, or
14 revocation by the director when the case could not be settled at the preliminary
15 stage of review, investigation, or informal proceeding.

16 (5) (4)(a) "Conviction" means a judgment or sentence entered upon a guilty
17 or nolo contendere plea or upon a verdict or finding of guilty rendered legal finding
18 of criminal culpability by one of the following:

19 (i) entry of a guilty or nolo contendere plea;
20 (ii) a verdict or finding of guilty rendered by a legally constituted jury; or
21 (iii) a verdict or finding of guilty by a court of competent jurisdiction
22 authorized to try the case without a jury.

23 (b) This definition applies to any finding of criminal culpability, without
24 regard to the sentence imposed or whether the charge is later dismissed.

25 (6) (5) "Council" or "POST Council" or "POST" means the full 13 member
26 public safety officer standards and training council as created by 2-15-2029, MCA.

27 (7) (6) "Denial," "deny," or "denied" means POST's permanent refusal to

1 issue a basic certificate in any discipline, due to any violation of ARM 23.13.203 or
2 23.13.702.

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

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

10 (9) “Equivalency” means the process through which an officer who has
11 successfully completed a basic course that is taught or approved by a federal, state,
12 local, or United States military law enforcement agency, that satisfies the basic
13 training requirement for that agency, may obtain a Montana POST basic certificate
14 without completing the MLEA basic academy.

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

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

22 (11) “In-service training” means training which is not POST-approved
23 training, and which is provided by an employing agency within a law enforcement
24 and/or to public safety agency officers to review and develop skills and knowledge
25 for the a specific agency’s officer’s needs.

26 (12) ~~“Informal proceeding” means a proceeding that occurs before a MAPA~~
27 ~~contested case proceeding and includes but is not limited to: correspondence~~

1 ~~between POST and the officer accused of misconduct and his employing authority;~~
2 ~~investigation by POST; stipulation or settlement negotiations or agreement; or a~~
3 ~~sanction, suspension, or revocation imposed through a notice of agency action.~~

4 (12) “Lateral POST training credit” means training which has been provided
5 to a public safety officer who was formerly employed by a federal, state, tribal,
6 county, municipality, city, or town, which is not a Montana public safety agency,
7 and who is currently employed by a Montana public safety agency, when that
8 training meets the requirements of POST approved training. Lateral POST training
9 credit will not be entered on an officer’s POST Transcript, but it may be used
10 toward POST certificates as outlined in these rules.

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

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

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

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

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

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

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

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

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

3 Academy.

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

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

6 (b) informs the officer of the denial, suspension, revocation, or sanction

7 imposed by the POST director and the supporting reasons;

8 (c) initiates the 30-day time period in which an officer may request a hearing

9 and thus initiate a contested case proceeding under MAPA.

10 (18) “Party” means one side, or its representative, in an informal a

11 preliminary investigation, or contested case proceeding, usually the respondent or

12 POST.

13 (19) “POST-approved training” means training reviewed and approved by

14 POST pursuant to ARM 23.13.301 these rules for which POST gives training credit,

15 including but not limited to basic, regional, and professional courses.

16 (20) “POST-certified instructor” means a public safety officer, as defined in

17 these rules, who has met the requirements for and received an Instructor Certificate

18 pursuant to these rules, and who may apply for and receive approval for POST

19 training POST-approved training credit pursuant to these rules, for trainings the

20 officer conducts.

21 (21) “Presiding officer” means the chair of the council who holds all the

22 same powers as a hearing examiner for the purpose of contested cases.

23 (22) “Public safety officer” means an officer, as defined in 44-4-401, MCA.

24 Nothing in these rules may be construed to apply the requirements of 7-32-303 or

25 44-4-403, MCA to an elected official Sheriff or Coroner.

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1 ~~(23)~~ “Reject” or “Rejection” means POST’s refusal of any request or
2 application by a public safety officer or a public safety agency, which is not a denial
3 as defined in these rules.

4 ~~(23)~~ (24) “Respondent” means the public safety officer against whom an
5 allegation of misconduct has been made, or the officer’s legal representative.

6 ~~(24)~~ (25) “Revocation” means the permanent cancellation by the director or
7 council of a public safety officer’s POST certificate, certification, and certifiability
8 such that the performance of public safety officer duties is no longer permitted.

9 ~~(25)~~ (26) “Roll call training” means instruction or training of short duration,
10 less than two hours, within any law enforcement and/or any public safety agency,
11 conducted when officers change shifts.

12 ~~(26)~~ (27) “Sanction” means a consequence or punishment for a violation of
13 ARM 23.13.702, 23.13.203, or the laws or rules of Montana.

14 ~~(27)~~ (28) “Sexual misconduct” is defined as:

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

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

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

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

1 (e) engaging in sexual harassment as defined in applicable laws; or
2 (f) any other sexual conduct which, whether committed in the officer's
3 capacity as an officer or otherwise, is prejudicial to the administration of justice or
4 reflects adversely on the employing authority's integrity or the officer's honesty,
5 integrity, or fitness as an officer.

6 ~~(28)~~ (29) "Substance abuse" means the use of illegal drugs, other illegal
7 substances, or legally acquired drugs in a manner that substantially limits the
8 officer's ability to perform the essential duties of a public safety officer, or poses a
9 direct threat to the health or safety of the public or a fellow officer.

10 ~~(29)~~ (30) "Suspension" means the annulment, for a time period set by the
11 director or council, of a public safety officer's POST certificate, certification, and
12 certifiability, such that the performance of public safety or peace officer duties is
13 not permitted during that period of time.

14 ~~(30)~~ (31) "Voluntary surrender" means a public safety officer agrees to the
15 revocation of the officer's certificate.

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17 **23.13.103 Record of All POST Council Meetings** (1) As required by Title 2,
18 chapter 6, MCA, POST will maintain records of all meetings and make those
19 records available for public inspection. The record consists of an audio recording,
20 transcript, or and minutes of the proceedings. ~~The audio recording is the official~~
21 ~~record of POST meetings.~~

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23 **23.13.104 Notice to the Public of POST Council Actions of Significant Interest**
24 **to the Public** (1) In accordance with 2-3-102 through 2-3-114, MCA, prior to
25 making a final decision that is of significant interest to the public, POST will afford
26 reasonable opportunity for public participation. Reasonable opportunity for public
27 participation may be afforded by:

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

6 (2) For purposes of (1)(b) only, significant interest to the public is defined at
7 2-4-102, MCA, as matters an agency knows to be of widespread citizen interest.

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

15 (4) (a) The POST Council or its committees may hold closed or executive
16 sessions if the Chair of the POST Council or the Chair of the committee determines
17 that:

18 (i) The matters to be discussed involve issues of individual privacy that
19 clearly exceed the merits of public disclosure; or

20 (ii) The matters to be discussed are in active litigation or are issues likely to
21 be litigated, and discussion of the matters in an open meeting could have a
22 detrimental effect on POST’s litigation position.

23 (b) A Chair’s determination regarding whether to hold a closed or executive
24 session may be overruled by a majority vote of the POST Council or committee.

25 (c) If the POST Council or a committee takes formal action during closed or
26 executive session, the Council or committee will announce its formal action on the

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1 public record, except when the action involves a legally recognized privilege or if
2 the action would violate an individual's privacy interests.

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4 **NEW RULE Committees of the POST Council** (1) The following are
5 committees of the POST Council:

6 (a) The Administrative Rules of Montana Committee, or ARM Committee,
7 consists of five voting members of the POST Council. The ARM Committee's
8 purpose is to review and analyze POST ARMs and recommend appropriate rule
9 draft and amendment language to carry out the decisions of the POST Council. The
10 ARM Committee's rule proposals must be approved by a majority vote of the
11 Council prior to submission to the Secretary of State's office. The ARM
12 Committee may, by a majority vote of the committee, direct that POST staff, with
13 the assistance of legal counsel, prepare draft rule language for the Council's
14 consideration.

15 (b) The Business Plan/Policy Committee consists of at least three, but no
16 more than five, voting members of the POST Council. The Business Plan/Policy
17 Committee's purpose is to review and, when necessary, propose changes to the
18 long-range business plan of the Council, and the daily operations, policies, and
19 procedures under which the POST staff perform day-to-day business. Any
20 substantive business plan, policy, or procedural changes must be approved by a
21 majority vote of the Council. The Business Plan/Policy Committee may, upon a
22 majority vote of the committee, direct POST staff to prepare draft business plan or
23 policy language for the Council's consideration.

24 (c) The Case Status Committee consists of three voting members of the
25 POST Council. The Case Status Committee's purpose is to determine whether
26 allegations of misconduct by a public safety officer warrant investigation by POST
27 staff, to determine whether a certificate sanction or other action is appropriate, to

1 determine the appropriate sanction to a certificate upon a finding of misconduct,
2 and to review other proposed actions at the request of the director. The director and
3 POST staff will act based upon a majority vote of the Case Status Committee. Case
4 Status Committee members may not participate in deliberations or any decision of
5 the full Council regarding the sanction of an officer's POST certification, except as
6 provided in these rules.

7 (d) The Coroner Committee consists of three voting members of the POST
8 Council. The Coroner Committee's purpose is to track and monitor issues of
9 interest to the Montana Coroner's Association, and coroners in general. Any draft
10 legislative proposals or other proposed action must be approved by a majority vote
11 of the POST Council. Draft ARM proposals must be approved by a majority vote
12 of the POST Council and may be referred to the ARM Committee for approval or
13 drafting as well. The Coroner Committee may, by a majority vote of the
14 committee, direct POST staff, with the assistance of legal counsel, to create draft
15 legislation or ARM language relevant only to coroner issues for the Council's
16 consideration.

17 (e) The Curriculum Review Committee consists of five voting members of
18 the POST Council. The MLEA Administrator or his designee will act as an ex-
19 officio member of the Curriculum Review Committee. The purpose of the
20 Curriculum Review Committee is to review and discuss proposed training
21 curriculum requiring POST approval or information. Any curriculum or basic
22 course developed or reviewed by the Curriculum Review Committee must be
23 approved by a majority vote of the POST Council.

24 (f) The Executive Committee consists of five members of the POST
25 Council, including the Chair of the POST Council. The Chair of the POST Council
26 will serve as the Chair of the Executive Committee. The purpose of Executive
27 Committee is to make decisions necessary to implement the policies of the POST

1 Council, and to provide additional oversight of POST staff. The decisions of the
2 Executive Committee may include informing the Montana Legislature or a
3 Legislative committee of positions adopted by the Council, providing advice and
4 direction, short of ultimate decisions, regarding legal matters in which the Council
5 is a named party, and directing action by POST staff in order to accomplish the
6 Council's goals. The Executive Committee may direct POST staff to provide
7 information to the Legislature or its interim committees. The Executive Committee
8 may also direct POST staff to appear and testify before the Legislature or its interim
9 committees in furtherance of positions taken by the Council, or on behalf of the
10 Executive Committee. When POST staff is representing a position of the Executive
11 Committee only, it will disclose that the Council has not taken a position on the
12 issue. The Executive Committee may call a special meeting of the Council, and
13 may make recommendations to the Council at a special or regular meeting.

14 (2) The POST Council may create additional committees upon a motion and
15 resolution passed by a majority vote of the POST Council, including a description
16 of the committee's purpose and authority. The Chair of the POST Council will
17 appoint members, and designate Chairs of the committees of the POST Council in
18 open meetings. The POST Council Chair's appointments are subject to approval by
19 a majority vote of the POST Council. During its final meeting of each calendar
20 year, the POST Council will review the membership of each of its committees and
21 determine whether new or alternative appointments should be made.

22 (3) If a committee member resigns from a committee of the POST Council
23 or otherwise vacates his seat on a committee, the POST Council Chair may make an
24 interim appointment to fill the vacancy. Interim committee members may take
25 action and vote on issues which are before the committee until the POST Council
26 has the opportunity to approve the appointment of the committee member at its next
27 regularly scheduled meeting.

1 (4) The Chair may appoint non-voting ex-officio members of POST Council
2 committees. Ex-officio members should be recognized subject matter experts in the
3 field related to the committee's purpose. Ex-officio members may not be POST
4 Council members. Ex-officio members are subject to approval by a majority vote
5 of the POST Council.

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