

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

In the matter of the adoption of New Rule I; the amendment of ARM 23.13.101, 23.13.102, 23.13.201, 23.13.203, 23.13.205, 23.13.206, 23.13.207, 23.13.208, 23.13.209, 23.13.210, 23.13.211, 23.13.212, 23.13.214, 23.13.215, 23.13.301, 23.13.302, 23.13.702, 23.13.703, 23.13.704, 23.13.705, 23.13.713, 23.13.714, 23.13.719, 23.13.720, and 23.13.721; and the repeal of ARM 23.13.213 pertaining to the certification of public safety officers) NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On August 4, 2017, the Public Safety Officers Standards and Training Council (POST Council) published MAR Notice No. 23-13-246 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1213 of the 2017 Montana Administrative Register, Issue Number 15. The Council held a public hearing on the proposed rules on September 5.

2. The POST Council has adopted New Rule I (23.13.217), amended ARM 23.13.101, 23.13.102, 23.13.201, 23.13.203, 23.13.206, 23.13.207, 23.13.208, 23.13.209, 23.13.210, 23.13.211, 23.13.212, 23.13.214, 23.13.215, 23.13.301, 23.13.302, 23.13.702, 23.13.703, 23.13.704, 23.13.705, 23.13.713, 23.13.714, 23.13.719, 23.13.720, and 23.13.721, and repealed ARM 23.13.213 as proposed.

3. The POST Council has amended ARM 23.13.205, but with the following changes from the original proposal, new matter underlined and deleted matter interlined:

23.13.205 GENERAL REQUIREMENTS FOR CERTIFICATION (1) To be eligible for the award of a certificate, each officer must be a full-time or part-time public safety officer ~~employed by a federal agency, state, tribal entity, county, municipality, city, or town~~ as defined by 44-4-401, MCA, at the time the application for certification is received by the council.

(2) through (10) remain as proposed.

4. The POST Council has thoroughly considered the comments and testimony received. Copies of the written comments were provided to the Council and will be provided to the public on request. Having fully considered the

comments, the POST Council has decided to adopt the rules as originally proposed, with one change. A summary of the comments received and the department's responses are as follows:

COMMENT 1: This comment was submitted by Ralph Dawson, Chief, Fromberg Police Department. Chief Dawson takes issue with the appropriateness of proposed amended ARM 23.13.203, due to the fact that the proposed amendments remove the requirement that the public safety officer's code of ethics be administered as an oath. Chief Dawson believes that an oath is a "point of honor" and that public safety officers should continue to be administered an oath containing the code of ethics.

RESPONSE TO COMMENT 1: The Council proposed this amendment in response to the suggestion by a legislator that the requirement in existing rules that an applicant swear to abide by the Code of Ethics as an oath was in violation of Article III, § 3 of the Montana Constitution. That provision sets forth the terms of the oath of office for all members of the Legislature and executive, ministerial, and judicial officers. It further states: "No other oath, declaration, or test shall be required as a qualification for any office or public trust." To address the legislator's concern, POST proposed to amend the rule to make the Code of Ethics binding on public safety officers without the requirement that the officer swear it as an oath. The proposed amendment eliminates a potential constitutional flaw in the existing rule. The POST Council is sympathetic to the spirit of Chief Dawson's comment, but believes that the elimination of the potential constitutional issue is the better course. The POST Council will adopt the rule as proposed.

COMMENT 2: Missoula Correctional Services (MCS) suggests that ARM 23.13.205(1), as currently enacted, be changed to read:

23.13.205 GENERAL REQUIREMENTS FOR CERTIFICATION (1) To be eligible for the award of a certificate, each officer must be a full-time or part-time public safety officer employed by a federal agency, state, tribal entity, county, municipality, city or town, as defined in 44-4-401, MCA, or a full-time or part-time employee of a pretrial services agency, as referred to in 46-9-108(1)(f), MCA, at the time the application for certification is received by the council.

(Underlined material suggested to be added.) Missoula Correctional Services states that the amendment is needed to allow Missoula County to make use of pretrial services officers employed by MCS, which is a non-governmental agency.

RESPONSE TO COMMENT 2: After discussion at the Council meeting of October 6, 2017, the Council and the MCS agreed that Comment 2 would be satisfied if ARM 23.13.205(1) was amended to read:

23.13.205 GENERAL REQUIREMENTS FOR CERTIFICATION (1) To be eligible for the award of a certificate, each officer must be a full-time or part-time public safety officer ~~employed by a federal agency, state, tribal entity, county,~~

~~municipality, city or town~~, as defined in 44-4-401, MCA, at the time the application for certification is received by the council.

(Stricken material deleted.) The Council, in its motion to approve the rules, accepted this amendment to its rule as proposed. Accordingly, Comment 2 need not be considered further.

COMMENT 3: MCS suggests language be added to the proposed amendment to ARM 23.13.206(1) to indicate that a pretrial services officer employed by a non-governmental agency is among the officers who are eligible for certification by the Council, for the same reasons stated with respect to Comment 2.

RESPONSE TO COMMENT 3: The proposed amendment associated with Comment 2 would add "pretrial services officer" to the list of professional positions which are eligible for certification under ARM 23.13.206(1). After discussion at the Council's meeting of October 6, 2017, MCS, through its attorney Dan Cederberg, withdrew the comment with respect to this proposed amendment. Comment 3 therefore need not be considered further by the Council.

/s/ Matt Cochenour
Matt Cochenour
Rule Reviewer

Sheriff Tony Harbaugh
Chairman
Public Safety Officers Standards
and Training Council

By: /s/ Perry Johnson
Perry Johnson
Executive Director

Certified to the Secretary of State October 16, 2017.