

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 23.13.102, 23.13.201,) PROPOSED AMENDMENT
23.13.215, 23.13.216, 23.13.301,)
23.13.304, and 23.13.703 pertaining)
to the certification of public safety)
officers)

TO: All Concerned Persons

1. On February 24, 2021, at 10:00 a.m., the Public Safety Officers Standards and Training (POST) Council will hold a telephonic public hearing via ZOOM meeting platform to consider the proposed amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis by the novel coronavirus, COVID-19, there will be no in-person hearing. Interested parties may access the remote conferencing in the following ways:

- (a) Zoom meeting ID: 924 5297 1072
Passcode: vLC8CS
- (b) Phone number: 866-576-7975
Access code: 612394

The hearing will begin with a brief introduction by staff to explain the use of the telephonic platform. All participants will be muted except when it is their time to speak.

2. The POST Council will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the POST Council no later than 4:00 p.m. on February 19, 2021, to advise us of the nature of the accommodation that you need. Please contact Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

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

(1) through (27) remain the same.

(28) "Voluntary surrender" means a public safety officer agrees to the revocation of the officer's certificate.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: ARM 23.13.703(9)(b) allows the executive director to accept the voluntary surrender of an officer's certification following the review and investigation of an allegation of officer misconduct. During communications regarding certificate sanctions in 2020, POST learned that officers and their representatives were unsure what constituted a voluntary surrender, namely whether a voluntary surrender was a simple relinquishment of a certificate or was an agreement not to challenge a certificate revocation. In light of this confusion, POST determined this amendment is reasonably necessary to specify what it means when an officer decides to voluntarily surrender a certificate. A voluntary surrender necessarily includes a waiver of any challenge to the certificate revocation. This definition comports with POST's practice of recording a voluntary surrender as a revocation in POST's database and in the National Decertification Index and the Integrity Report.

23.13.201 MINIMUM STANDARDS FOR THE APPOINTMENT AND CONTINUED EMPLOYMENT OF PUBLIC SAFETY OFFICERS (1) and (2) remain the same.

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

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

(3) remains the same but is renumbered (4).

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: During the 2019 Legislative Session, POST was contacted by a representative of the American Heart Association regarding potential legislation requiring public safety communications officers to receive ongoing training on telephone cardiopulmonary resuscitation (TCPR). With TCPR training, public safety communications officers can assist untrained callers in providing CPR and can remind CPR trained callers how to provide high-quality CPR. In January 2020, the Business Plan/Policy Committee of the POST Council determined that the desired effect of the legislation could be enacted through rulemaking. POST determined that this amendment is reasonably necessary to improve the services provided for the safety and wellbeing of the citizens of Montana. The training topics set forth in the rule are in line with training requirements in other states.

23.13.215 FIREARMS PROFICIENCY STANDARDS (1) remains the same.

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

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

(b) through (d) remain the same.

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

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

AUTH: 2-15-2029, MCA
IMP: 7-32-303, 44-4-403, MCA

REASON: Many public safety officers carry a secondary or backup handgun in case they are unable to access or use their primary handgun. Often, the backup firearm has a smaller capacity than the primary firearm and is intended for use at a shorter distance. In February 2020, a deputy contacted POST regarding the difficulty officers face meeting the firearms proficiency standards on their backup handguns given these differences. POST has determined that it is unreasonable for officers to be subject to the same firearms proficiency standards for their backup and primary handguns and that it is reasonably necessary to amend the rule to distinguish between primary and secondary handguns. POST further determined that the new standards will adequately protect the public while ensuring fair standards for deputies.

23.13.216 PUBLIC SAFETY OFFICER EMPLOYMENT, EDUCATION AND CERTIFICATION STANDARDS (1) Except as provided in (2), the basic and basic equivalency training standards for employment, education, and certification set forth in 7-32-303(5)(a), (b), and (c), MCA, are applicable to all public safety officers,

where an appropriate basic course or basic equivalency course exists in the public safety officer's field. The council may approve a location other than the Montana Law Enforcement Academy for the basic or basic equivalency courses in the following disciplines: detention/corrections officer; probation and parole officer; misdemeanor probation/pretrial services officer; public safety communications officer; and coroner.

(2) remains the same.

~~(3) The notification requirements set forth in 7-32-303(4), MCA apply to all public safety officers.~~ A public safety officer's employing authority must provide written notice to POST within 10 days of the appointment, termination, resignation, or death of the public safety officer.

AUTH: 2-15-2029, MCA
IMP: 7-32-303, 44-4-403, MCA

REASON: During the 2019 legislative session, the Legislature passed HB 98. This bill made significant changes to the wording and organization of 7-32-303, MCA. Due to the reorganization of the statute, many subsection numbers changed. During a February 2020 Business Plan/Policy Committee meeting, the committee determined that these changes are reasonably necessary to align the rule with the statute. An additional change from HB 98 requires peace officers to receive their basic training at the Montana Law Enforcement Academy. These amendments clarify which public safety disciplines may attend a basic academy at another location.

Given the possibility of future revisions to 7-32-303, MCA, which could involve renumbering the subsections, POST determined that the amendment to (3) is reasonably necessary to eliminate the statutory reference so that POST does not have to update its rules every time the statute's numbering changes.

23.13.301 QUALIFICATIONS FOR APPROVAL OF PUBLIC SAFETY OFFICER TRAINING COURSES (1) and (2) remain the same.

(3) A POST-certified instructor seeking course credit for public safety officers must have an active POST certificate that is not revoked, suspended, or on probation and must submit an application for accreditation to the director and retain documentation of:

(a) through (5) remain the same.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: As part of a periodic review of the administrative rules, staff realized that a public safety officer with a revoked certificate would be eligible to instruct for POST course credit, while a public safety officer with a lesser sanction, such as a suspended certificate or one on probation, could not. This was an oversight. POST determined it is reasonably necessary to amend this rule to provide consistency so that an officer with a revoked certificate is treated like other sanctioned officers.

23.13.304 THE BASIC COURSES (1) through (3) remain the same.

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

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, 44-4-403, MCA

REASON: In March 2020, POST amended its rules to allow for the certification of misdemeanor probation/pretrial services officers. The MLEA conducted the first basic course for the new discipline but indicated that it would not have capacity to conduct the training on a regular basis. Dawson County Community College submitted proposals to provide this vital training to public safety officers in Montana. The council approved this proposal. In addition, the Department of Corrections has historically provided the probation and parole basic academy. Because the MLEA does not provide the training in these disciplines, the council determined that any training agency or provider would be the appropriate entity to apply to make changes to a course. This amendment is therefore reasonably necessary to facilitate standard processes among training providers.

23.13.703 PROCEDURE FOR MAKING AND RECEIVING ALLEGATIONS OF OFFICER MISCONDUCT AND FOR INFORMAL RESOLUTION OF THOSE ALLEGATIONS BY THE DIRECTOR (1) through (3) remain the same.

(4) Within 30 days of being notified of the allegation, or in making its own allegation of misconduct, the employing authority must give POST a notice of the employing authority's investigation, action, ruling, finding, or response to the allegation, in writing, which must include a description of any remedial or disciplinary action pending or already taken against the officer regarding the allegation in question, and which may contain a recommendation from the employing authority regarding whether POST should impose a sanction. If the employing authority recommends POST impose a sanction, the employing authority must state what sanction the employing authority deems reasonable. POST shall consider but is not bound by the recommendation of the employing authority. If available, a copy of the initial allegation made to the employing authority and the employing authority's written response must be forwarded to the director. The employing authority may make a written request to the director for additional time to respond. Such a request must provide good cause as to the reason more time is required. The director may grant or deny requests for additional time at the director's discretion.

(5) through (9)(c)(i) remain the same.

(ii) Not sustained: The investigation failed to discover sufficient evidence to prove or disprove the allegations ~~made or the investigation conclusively proved that the act or acts complained of did not occur.~~

(iii) Sustained: The investigation disclosed a preponderance of evidence to prove the allegation(s) ~~made.~~

(iv) Unfounded: The investigation disclosed that the complainant made a false allegation, the subject of the complaint was not involved in the incident, or the incident did not occur.

(v) Exonerated: The investigation disclosed that the incident occurred, but the subject of the complaint acted lawfully and in a manner consistent with the agency's policy and procedures.

(d) through (11) remain the same.

AUTH: 2-4-201, 2-15-2029, MCA

IMP: 2-4-201, 2-15-2029, 44-4-403, MCA

REASON: In March 2020, POST amended this rule to allow an employing authority to make a recommendation regarding the action POST takes on an officer's certification. POST did not intend to require an employing authority to make a recommendation. Since March 2020, officers accused of misconduct have argued that POST may not act on their certification without a recommendation from the employing authority. In light of this confusion, the council has determined that this rule change is necessary to make clear that any recommendation is optional.

In March 2020, POST also amended ARM 23.13.702 regarding the types of conduct that POST finds unacceptable for public safety officers and that employing authorities must report to POST. Since then, POST has identified additional possible findings the executive director could make following the review and investigation of an allegation. The amendments to (9) are reasonably necessary to reflect those additional findings and to provide clarity to officers, employing authorities, and the citizens of Montana regarding what an investigation discloses and the disposition of any given allegation.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov, and must be received no later than 5:00 p.m., March 12, 2021.

5. Lewis K. Smith, III, Attorney at Law, has been designated to preside over and conduct this hearing.

6. The council maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's website at <http://sosmt.gov/ARM/Register>.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Hannah E. Tokerud
Hannah E. Tokerud
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 January 5, 2021.