

VOLUME NO. 54

OPINION NO. 8

PEACE OFFICERS - Effect of a break in service on the peace officer training requirements;

MONTANA CODE ANNOTATED - Sections 1-2-101, 7-32-303(1)(a), (2), (5)(a), (b), (c), (6), (7), 44-4-404;

OPINIONS OF THE ATTORNEY GENERAL - 48 Op. Atty. Gen. No. 22 (2000).

HELD: A peace officer who has a break in service during the one year time period provided in 7-32-303(5)(a) has the remainder of the one-year period, plus any additional time as granted by the public officer standards and training council, in which to attend and successfully complete a basic training course. If the break in service extends beyond one year from his or her initial appointment and the officer has not completed a basic training course within one year of the initial appointment as required by 7-32-303(5)(a), the officer forfeits his or her position as peace officer and cannot serve in that capacity until he or she attends and successfully completes a basic training course.

August 10, 2012

Ms. Winnie Ore, Chairperson
Montana Public Safety Officer
Standards & Training Council
2260 Sierra Road East
Helena, MT 59602

Dear Ms. Ore:

[P1] You have requested my opinion on the following question, which I have rephrased as follows:

How long does a peace officer have to complete a basic training course if the officer has a break in service during the one-year time period provided in Mont. Code Ann. § 7-32-303(5)(a)?

[P2] The general requirement is that a peace officer must attend and successfully complete an appropriate peace officer basic training course within one year of his or her initial appointment:

Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the Montana public safety officer standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection (5)(a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

Mont. Code Ann. § 7-32-303(5)(a). This requirement applies to all state, county, and city law enforcement officers described in Mont. Code Ann. § 7-32-303(1)(a).

[P3] The one-year deadline may be extended by the public safety officer standards and training council (POST council) for a period of up to 180 days as provided in subsection (6):

The Montana public safety officer standards and training council may extend the 1-time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances that make the extension necessary. Factors that the council may consider in granting or denying the extension include but are not limited to illnesses of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the basic equivalency course, and an unreasonable shortage of personnel within the department. The council may not grant an extension to exceed 180 days.

Mont. Code Ann. § 7-32-303(6). As determined in a prior opinion of this office, the 180-day deadline may be extended only once. 48 Op. Atty. Gen. No. 22 (2000).

[P4] The Montana Department of Justice offers a 12-week law enforcement officer basic course which has been approved by the POST council and is available three times a year through the Montana Law Enforcement Academy. Topics covered include education and training in the fundamentals of policing, including law, human behavior, police function, patrol operations, investigation, traffic enforcement, and police proficiencies. See <https://doj.mt.gov/mlea/basic-programs-3/>. Successful completion of

the training requirement and other qualifications, including a one-year probationary period, allows the officer to apply to the POST council for a basic certificate certifying that the officer has met all the basic qualifying peace officer standards of this state. Mont. Code Ann. § 7-32-303(7).

[P5] Your question involves a peace officer who is appointed by a law enforcement agency but has a break in service prior to completing the basic course described in Mont. Code Ann. § 7-32-303(5)(a). I will analyze your question in two parts: (1) the first scenario assumes that the officer leaves and returns to service within the one-year time period provided in Mont. Code Ann. § 7-32-303(5)(a); and (2) the second scenario assumes that the officer leaves but does not return to service within the one-year time period provided in Mont. Code Ann. § 7-32-303(5)(a).

[P6] I will assume for purposes of this opinion that the peace officer has never been issued a basic certificate (so that the provisions of Mont. Code Ann. § 7-32-303(5)(b) do not apply); that the officer has not previously completed a basic peace officer's course taught by a federal, state, or United States military law enforcement agency (so that the provisions of Mont. Code Ann. § 7-32-303(5)(c) do not apply); and that the officer is appointed after September 30, 1983 (so that the provisions of Mont. Code Ann. § 7-32-303(5)(a) are applicable).

I.

[P7] In the first scenario, a peace officer appointed by an agency has a break in service during the one-year time period described in Mont. Code Ann. § 7-32-303(5)(a). The following dates are representative:

January 1, 2012: The officer is appointed by the agency.
May 1, 2012: The officer leaves employment.
October 1, 2012: The officer returns to employment.

Because the break in service occurs before the one-year period expires in January 2013, the officer does not forfeit his/her position, authority, or arrest powers by virtue of the fact that he or she did not complete basic training within one year of his/her initial appointment. Mont. Code Ann. § 7-32-303(5)(a). The officer may thus return to service under the terms of his or her initial appointment (assuming he or she still meets the qualifications of Mont. Code Ann. § 7-32-303(2)), and has the remainder of the one-year period (or until January 1, 2013) in which to complete basic training, plus any additional time extended by the POST council pursuant to Mont. Code Ann. § 7-32-303(6).

[P8] You question whether the one-year deadline could be extended by the length of the break in service or, stated another way, whether the one-year deadline should be tolled during the officer's absence. Using the above example, the officer would have until May 1, 2013, or an additional five months, to complete basic training.

[P9] I find no statutory support for the proposition that the one-year deadline can be extended based solely on the employment circumstances of an individual officer. The rules of statutory construction require me to "ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1-2-101; (AG Opinion cite). The deadlines in Mont. Code Ann. § 7-32-303 are clear and unambiguous. 48 Op. Atty. Gen. No. 22 (2000). There is no mention of "tolling" or any extensions beyond 180 days as provided in Mont. Code Ann. § 7-32-303(6). There is no indication that the Legislature intended an individual officer or appointing agency to avoid the deadlines in Mont. Code Ann. § 7-32-303(5)(a) simply by terminating and reinstating his or her appointment at will.

[P10] By the same reasoning, an individual or appointing agency may not avoid the statutory deadlines by maintaining a break in service for less than one year, returning to a different agency, maintaining another break in service for less than one year, and potentially repeating this process without ever completing basic training. For example:

January 1, 2010:	The officer is appointed to the agency (Agency A).
June 15, 2010:	The officer leaves employment at Agency A.
January 1, 2011:	The officer is appointed to another agency (Agency B).
June 15, 2011:	The officer leaves employment at Agency B.
January 1, 2012:	The officer is appointed to another agency (Agency C).
June 15, 2012:	The officer leaves employment at Agency C.

The clear intent of § 7-32-303(5)(a) is to mandate basic training within one year of the "initial" appointment. This objective is defeated if an officer or appointing agency can effectively toll the deadlines through multiple appointments.

[P11] I realize that the one-year deadline may present a hardship, particularly for an officer whose return date is so late he or she may not have sufficient time remaining to successfully complete basic training. In that circumstance, however, the POST council may extend the one-year period for up to six months, presumably allowing sufficient time for completion of the course. Mont. Code Ann. § 7-32-303(6). I note that the circumstances listed in the statute are not exclusive, so that the POST council has substantial discretion when considering an extension request by the officer and the appointing agency.

II.

[P12] In the second scenario, a peace officer has a break in service that extends beyond the one-year time period described in Mont. Code Ann. § 7-32-303(5)(a). The following dates are representative:

January 1, 2012:	The officer is appointed by the agency.
May 1, 2012:	The officer leaves employment.
January 1, 2013:	The one-year period expires and the officer has not returned to service.

This scenario is distinct from the first because the officer, having failed to complete the education requirements within one year of initial appointment, forfeits his or her position, authority and arrest powers pursuant to the last sentence of Mont. Code Ann. § 7-32-303(5)(a). As a result, the officer may not resume employment under the terms of his or her initial appointment. Rather, the appointing agency is statutorily required to terminate the officer's employment "for failure to meet the minimum standards established by the council." Montana Code Annotated 44-4-404.

[P13] To avoid this result, some agencies propose to start the one-year time period anew by rehiring or reappointing the person as a peace officer. This proposition runs afoul of legislative intent and the plain language of 7-32-303(5)(a), which requires completion of basic training within one year of the "initial" appointment, after which time the officer forfeits his or her position. By virtue of this requirement, the legislature has provided a single, one-year grace period during which time the officer may serve as a peace officer without the necessary training. Once the grace period expires, the officer is no longer privileged to serve in a law enforcement capacity. There is nothing that would allow an appointing agency to extend multiple grace periods, or allow the officer to continually serve as a peace officer without training.

[P14] As the administrator of the Montana Law Enforcement Academy (MLEA), I have publicly declared the need for qualified and highly trained law enforcement personnel. (<https://doj.mt.gov/mlea/basic-programs-3/>). Section 7-32-303(5)(a) promotes that goal, while at the same time granting some flexibility to appointing agencies and the officers in the hiring and training process. While I recognize there are legitimate reasons why a peace officer may require a break in service extending beyond the one-year deadline due to circumstances beyond his or her control, e.g., military service or health issues, I cannot condone an interpretation of the statute that compromises public or officer safety. I

conclude that agencies are not entitled to “rehire” or “reappoint” peace officers if they have not successfully completed basic training within the time periods provided by law.

[P15] Despite my conclusion, there is nothing preventing the agency from employing the individual in some other capacity until he or she completes basic training. I understand that MLEA will accept individuals for training even if they are not in a current appointed position as a peace officer. After training is successfully completed and the individual is certified by the POST council, he or she may resume the duties of a peace officer. In this respect, the one-year grace period is honored, the public safety objectives are fulfilled, and the individual’s ability to work as a peace officer is inconvenienced but not totally compromised as a result of the break in service.

THEREFORE IT IS MY OPINION:

A peace officer who has a break in service during the one year time period provided in 7-32-303(5)(a) has the remainder of the one-year period, plus any additional time as granted by the public officer standards and training council, in which to attend and successfully complete a basic training course. If the break in service extends beyond one year from his or her initial appointment and the officer has not completed a basic training course within one year of the initial appointment as required by 7-32-303(5)(a), the officer forfeits his or her position as peace officer and cannot serve in that capacity until he or she attends and successfully completes a basic training course.

Sincerely,

STEVE BULLOCK
Attorney General

sb/jma/jym