

COMPLAINT INVESTIGATION POLICY

PURPOSE- COMPLAINTS AGAINST PUBLIC SAFETY OFFICERS-

- A. To establish a policy for the receipt and investigation of allegations of misconduct by Montana Public Safety Officers, to protect citizens from misconduct by Public Safety Officers, to protect Public Safety Officers who conduct themselves appropriately and to identify policies, procedures, rules or laws that may need review or change.
- B. To establish a procedure wherein all such complaints made by any complainant will be uniformly and properly received, recorded, investigated and completed or disposed of.

DEFINITIONS – (ARM 23.13.701)-

As used in this policy, the following definitions apply:

- (1) "Certification" means any basic or advanced standards and training certification granted by the council after completion of the specific requirements as set forth in these rules.
- (2) "Complainant" means:
 - (a) any person or entity making a complaint against a public safety officer to the council; or
 - (b) the POST executive director acting upon any credible knowledge, information, or belief.
- (3) "Council" means the public safety officer standards and training council as created by 2-15-2029, MCA.
- (4) "Director" means the executive director of the public safety officer standards and training council, as established by these rules.
- (5) "Formal proceedings" means proceedings for suspension or revocation that the director determines cannot be settled at the preliminary stage of review, investigation, and/or informal proceeding stage, and must proceed pursuant to notice and hearing.

- (6) "Governmental unit" means any governmental entity which is statutorily empowered with administration, supervision, or oversight over a public safety agency or officer.
- (7) "Informal proceedings" means proceedings that do not require notice and hearing, and may include but not be limited to sanctions, stipulations, and/or memorandums of understanding.
- (8) "Presiding officer" means the chair of the council or their designated representative, who shall regulate the course of hearings held by the council.
- (9) "Public safety officer" means an officer, as defined in 44-4-401, MCA.
- (10) "Respondent" means the public safety officer against whom a complaint has been made or their legal representative.
- (11) "Revocation" means the permanent cancellation by the council of a public safety officer's certification.
- (12) "Sanction" means a consequence or punishment for a violation of ARM 23.13.702, or the accepted norms of being a public safety officer.
- (13) "Suspension" means the annulment, for a period of time set by the council, of a public safety officer's certification.
- (14) "Uncertifiable officer" means a public safety officer who:
 - (a) is employed as a public safety officer, but does not possess the basic certificate, as described in ARM 23.13.206;
 - (b) has been the object of a complaint filed pursuant to ARM 23.13.703;
 - (c) has been afforded the process which is due under law; and
 - (d) has been found to be subject to suspension or revocation pursuant to ARM 23.13.702.

CLASSIFICATION-

- A. When a complaint is made against a public safety officer, the initial complaint and all other transactions and procedures involved thereafter will be strictly confidential and shall remain that way until the process is completed. Members of the council will only receive details of a complaint under the following circumstances authorized by Montana statute and ARM:

- (1) In the Executive Director's written report setting forth the circumstances and resolution of the case once closed.
- (2) In the Contested Case Hearing process pursuant to the Montana Administrative Procedures Act.

METHOD OF MAKING COMPLAINTS-

- A. A complaint alleging misconduct by a public safety officer must be made in accordance with the Complaint Procedure. The complainant will be given a copy of the Complaint Procedure form which includes the *Public Safety Officer Complaint Form* (ANNEX A).

INVESTIGATION-

- A. When a properly completed *Public Safety Officer Complaint Form* is received it will be assigned a complaint number and an investigative file will be opened. The Investigator will conduct a thorough investigation of the complaint and make a report of findings to the Executive Director within ninety (90) days of the receipt of the complaint unless mitigating circumstances exist or develop.

FINDINGS

- A. After completing the investigation, one of the following findings will be used to close the investigation.
 1. ***Unfounded:*** When the investigation indicates the alleged wrong doing did not occur.
 2. ***Exonerated:*** When the investigation indicates that the act occurred, but was justified, lawful and proper.
 3. ***Not Sustained:*** When the investigation discloses insufficient evidence to prove or disprove clearly the allegations made.
 4. ***Sustained:*** When the investigation discloses the action alleged, did in fact occur.
 5. ***Sustained with Qualifications:*** When the investigation discloses the action complained of did in fact occur, but not in the manner or to the degree stated.

6. ***Inquiry***: If during the investigation it is determined that a citizen is Merely requesting a clarification of a policy or procedure, that complaint may be considered an inquiry.
7. ***Non finding***: The investigation cannot proceed because the complainant failed to disclose promised information to further the investigation; or the complainant wishes to withdraw the complaint; or the complainant is no longer available for clarification. This finding may also be used when the information provided is insufficient to determine the identity of the officer(s) or employee(s) involved.

EXECUTIVE DIRECTOR-ACTION (23.13.703 ARM)-

- A. Upon receipt of the completed investigation, the Executive Director, within thirty(30) days, unless mitigating circumstances exist or develop, will take any appropriate action, including but not limited to the following:
 1. Close the case for good cause;
 2. Take informal (non-contested cases) action, including but not limited to the following:
 - a. Enter into a stipulation with the Public Safety Officer for appropriate sanction up to and including revocation;
 - b. Accept the voluntary surrender of certification;
 3. File a formal complaint (contested cases):
 - a. When the finding of an investigation is sustained and the subject of the investigation is an administrative level public safety officer, such as a Sheriff, Chief of Police, Undersheriff, or Assistant Chief, the Executive Director will automatically file a formal complaint.

COMMENCEMENT OF FORMAL PROCEEDINGS- (23.13.704 ARM)

- A. The Executive Director shall file a written complaint with the Respondent outlining the particulars of the complaint.
- B. The Presiding Officer shall, after review of the complaint, issue a written order to show cause and a notice of opportunity for hearing.
- C. The Respondent must file and answer, containing a statement of grounds of opposition to each allegation of the complaint which the Respondent opposes, within thirty (30) days or be in default.
- D. A conference call will be held no later than thirty (30) days from the date of service of the notice to establish a hearing date and designate the Presiding Officer, if changed. The date of hearing shall be not more than

thirty (30) days from the date of the conference call unless mitigating circumstances exist or develop.

HEARING-

- A. A hearing will be conducted pursuant to the Montana Administrative Procedure Act.

DECISION AND ORDER

- A. In the event a certificate is suspended, the council shall state in its decision and order the length of time for which the certificate is suspended and the reasons therefore. In suspending a certificate, the council shall be guided by generally accepted professional standards. A respondent who has had certification suspended may apply for recertification once the period of suspension has passed.
- B. In the event a certificate is revoked or suspended, the respondent shall surrender the certificate(s) to the council and forfeit the position authority and powers afforded the officer in this state.
- C. In the event a certificate is revoked or suspended, employment in any public safety discipline during the time of suspension is prohibited, and permanently prohibited under a revocation order.

RECORD OF PROCEEDINGS

- A. The record shall consist of the items enumerated in 2-4-614, MCA, and an audio recording of oral proceedings shall be the official record of the proceedings.

APPEALS

- (1) If requested by the respondent, an appeal may be made to the Montana Board of Crime Control pursuant to ARM 23.14.1004. The decision of the Montana Board of Crime Control is the final agency decision subject to judicial review.