

1 **23.13.102 Definitions** As used in this chapter, the following definitions apply:

2 (1) “Allegation” means:

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

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

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

11 (2) “Certification” or “certificate” means any certification granted by the
12 council after completion of the specific requirements as set forth in these rules.

13 (3) “Contested case” means:

14 (a) a civil administrative proceeding that progresses pursuant to notice and
15 hearing as outlined in MAPA and these rules; or

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

20 (4) “Conviction” means a judgment or sentence entered upon a guilty or
21 nolo contendere plea or upon a verdict or finding of guilty rendered by a legally
22 constituted jury or by a court of competent jurisdiction authorized to try the case
23 without a jury, without regard to the sentence imposed or whether the charge is later
24 dismissed.

25 (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.

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1 (6) “Director” or “executive director” means the bureau chief of the public
2 safety officer standards and training bureau.

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

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

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

15 (10) “In-service training” means training provided within a law enforcement
16 and/or public safety agency to review and develop skills and knowledge for the
17 specific agency’s needs.

18 (11) “Informal proceeding” means a proceeding that occurs before a MAPA
19 contested case proceeding and includes but is not limited to: correspondence
20 between POST and the officer accused of misconduct and his employing authority;
21 investigation by POST; stipulation or settlement negotiations or agreement; or a
22 sanction, suspension, or revocation imposed through a notice of agency action.

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

25 (13) “Misconduct” means any action or conduct that could potentially result
26 in sanction, suspension, or revocation of POST certification pursuant to ARM
27 23.13.702 or a violation of the code of ethics contained in ARM 23.13.203.

1 (14) “Misdemeanor probation/pretrial services officer” means a public
2 safety officer who regularly performs the following functions as part of their work
3 assignment:

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

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

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

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

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

14 (15) “MLEA” or “Academy” means the Montana Law Enforcement
15 Academy.

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

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

18 (b) informs the officer of the suspension, revocation, or sanction imposed by
19 the POST director and the supporting reasons;

20 (c) initiates the 30-day time period in which an officer may request a hearing
21 and thus initiate a contested case proceeding under MAPA.

22 (17) “Party” means one side, or its representative, in an informal or
23 contested case proceeding, usually the respondent and/or POST.

24 (18) “POST-approved training” means training reviewed and approved
25 pursuant to ARM 23.13.301 for which POST gives training credit, including but not
26 limited to basic, regional, and professional courses.

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1 (19) "POST certified instructor" means a public safety officer, as defined in
2 these rules, who has met the requirements for and received an Instructor Certificate
3 pursuant to these rules, and may apply for and receive approval for POST training
4 credit pursuant to these rules, for trainings the officer conducts.

5 (20) "Presiding officer" means the chair of the council who holds all the
6 same powers as a hearing examiner for the purpose of contested cases.

7 (21) "Public safety officer" means an officer, as defined in 44-4-401, MCA.
8 Nothing in these rules may be construed to apply the requirements of 7-32-303 or
9 44-4-403, MCA to an elected official.

10 (22) "Respondent" means the public safety officer against whom an
11 allegation of misconduct has been made, or the officer's legal representative.

12 (23) "Revocation" means the permanent cancellation by the director or
13 council of a public safety officer's POST certificate, certification, and certifiability
14 such that the performance of public safety officer duties is no longer permitted.

15 (24) "Roll call training" means instruction or training of short duration, less
16 than two hours, within any law enforcement and/or any public safety agency,
17 conducted when officers change shifts.

18 (25) "Sanction" means a consequence or punishment for a violation of ARM
19 23.13.702, 23.13.203, or the laws or rules of Montana.

20 (26) "Substance abuse" means the use of illegal drugs, other illegal
21 substances, or legally acquired drugs in a manner that substantially limits the
22 officer's ability to perform the essential duties of a public safety officer, or poses a
23 direct threat to the health or safety of the public or a fellow officer.

24 (27) "Suspension" means the annulment, for a time period set by the director
25 or council, of a public safety officer's POST certificate, certification, and
26 certifiability, such that the performance of public safety or peace officer duties is
27 not permitted during that period of time.

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

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1 **23.13.702 Grounds for Sanction, Suspension, or Revocation of POST**

2 **Certification** (1) The executive director or the council will consider any legitimate
3 allegation made against any public safety officer that may result in the denial,
4 sanction, revocation, or suspension of that officer's certification.

5 (2) The public safety officer's employing authority must report to the
6 executive director any substantiated grounds for denial, sanction, suspension, or
7 revocation of POST certification as enumerated in (3). If review of an officer's
8 conduct is pending before any court, council, tribunal, or agency, the employing
9 authority may wait for a final adjudication before reporting the officer's conduct to
10 the executive director. If the officer's conduct results in termination of the officer's
11 employment, the notice requirements of 7-32-303, MCA, and ARM 23.13.216
12 apply.

13 (3) The grounds for denial, sanction, suspension, or revocation of the
14 certification of public safety officers are as follows:

15 (a) willful falsification of any information in conjunction with official
16 duties, or any single occurrence or pattern of lying, perpetuating falsehoods, or
17 dishonesty which may tend to undermine public confidence in the officer, the
18 officer's employing authority, or the profession;

19 (b) a physical or mental condition that substantially limits the officer's
20 ability to perform the essential duties of a public safety officer, or poses a direct
21 threat to the health and safety of the public or fellow officers, and that cannot be
22 eliminated or overcome by reasonable accommodation;

23 (c) engaging in substance abuse as defined in these rules;

24 (d) unauthorized use of or being under the influence of alcoholic beverages
25 while on duty, or the use of alcoholic beverages in a manner which tends to
26 discredit the officer, the officer's employing authority, or the profession;

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1 (e) conviction of a criminal offense enumerated in Tit. 45, Ch. 5-10 or Tit.
2 61, ch. 8, pt. 4, MCA, or an offense which would be a criminal offense enumerated
3 in Tit. 45, Ch. 5-10 or Tit. 61, ch. 8, pt. 4, MCA if committed in this state;

4 (f) neglect of duty or willful violation of orders or policies, procedures,
5 rules, or criminal law when such action or inaction, committed in the officer's
6 capacity as an officer or otherwise, reflects adversely on the officer's honesty,
7 integrity, or fitness as an officer or is prejudicial to the administration of justice;

8 (g) willful violation of the code of ethics set forth in ARM 23.13.203;

9 (h) conduct which, whether committed in the officer's capacity as an officer
10 or otherwise, is prejudicial to the administration of justice or reflects adversely on
11 the employing authority's integrity or the officer's honesty, integrity, or fitness as
12 an officer;

13 (i) failure to meet the minimum standards for appointment or continued
14 employment as a public safety or peace officer set forth in these rules or Montana
15 law;

16 (j) failure to meet the minimum training requirements or continuing
17 education and training requirements for a public safety or peace officer required by
18 Montana law and these rules;

19 (k) operating outside or ordering, permitting, or causing another officer to
20 operate outside of the scope of authority for a public safety or peace officer as
21 defined by 44-4-401, 44-4-404, or 7-32-303, MCA, or any other provision of
22 Montana law regulating the conduct of public safety officers;

23 (l) the use of excessive or unjustified force in conjunction with official
24 duties; or

25 (m) the denial, sanction, suspension, or revocation of any license or
26 certification equivalent to a POST certification imposed by a board or committee
27 equivalent to POST in any other state.

1 (4) It is a defense to an allegation of substance abuse, as defined in these
2 rules, if the officer shows by a preponderance of the evidence that the officer's
3 substance abuse has been eliminated or overcome by reasonable treatment.

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1 **23.13.703 Procedure for Making and Receiving Allegations of Officer**

2 **Misconduct and for Informal Resolution of Those Allegations by the Director**

3 (1) The POST Council will create, maintain, and adopt in public meetings a
4 policy and procedure for processing and responding to allegations. The policy and
5 procedure will be posted on POST's web site and made publicly available. It will
6 comply with these rules and offer the director further guidance regarding the
7 specific steps that the director and POST staff will take when responding to
8 allegations.

9 (2) Any allegation made against a public safety officer that states potential
10 grounds for denial, sanction, suspension, or revocation of POST certification must
11 be made initially to the employing authority of the officer in question by the
12 individual making the allegation, unless the employing authority is making the
13 allegation. All allegations must be made in writing unless the director initiates the
14 allegation. Anonymous allegations will not be considered unless the director
15 determines that public safety may be threatened if POST takes no action on an
16 anonymous allegation.

17 (3) Except as provided in this section, POST will not proceed with an
18 allegation unless the individual making the allegation or POST staff has notified the
19 employing authority of the allegation. This requirement does not apply if the
20 allegation has been made against the highest ranking officer in the agency, who
21 would otherwise constitute the employing authority, and there is some reason to
22 believe that the investigation or public safety would be put in danger by such a
23 notification.

24 (4) Within 30 days of being notified of the allegation, or in making its own
25 allegation of misconduct, the employing authority must give POST a notice of the
26 employing authority's investigation, action, ruling, finding, or response to the
27 allegation, in writing, which must include a description of any remedial or

1 disciplinary action pending or already taken against the officer regarding the
2 allegation in question, and which may contain a recommendation from the
3 employing authority regarding whether POST should impose a sanction. If the
4 employing authority recommends POST impose a sanction, the employing authority
5 must state what sanction the employing authority deems reasonable. POST shall
6 consider but is not bound by the recommendation of the employing authority. If
7 available, a copy of the initial allegation made to the employing authority and the
8 employing authority's written response must be forwarded to the director. The
9 employing authority may make a written request to the director for additional time
10 to respond. Such a request must provide good cause as to the reason more time is
11 required. The director may grant or deny requests for additional time at the
12 director's discretion.

13 (5) After the employing authority has been notified and given the
14 opportunity to act, the director or POST staff may accept an allegation.

15 (a) Any allegation submitted to the council must be submitted to the director
16 or POST staff and may not be submitted to the full council or any individual
17 member of the council.

18 (b) The allegation must provide at least the following information:

19 (i) the name, address, and telephone number of the individual making the
20 allegation, which the director may keep confidential if the individual or public
21 safety would be harmed by disclosure;

22 (ii) the name and place of employment of the officer;

23 (iii) a complete description of the incident;

24 (iv) the remedy sought;

25 (c) A person making an allegation must use the allegation form available
26 from POST staff or submit an allegation in substantially similar format.

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1 (d) An employing authority or the Montana Law Enforcement Academy
2 may submit a written allegation on the agency's letterhead with supporting
3 documents that the agency deems appropriate.

4 (6) The director may initiate an allegation, based on good cause and reliable
5 information, and must follow the procedure set forth in this rule as if initiated by
6 any other individual, including but not limited to submitting the complaint to the
7 employing authority.

8 (7) After an allegation has been received or has been initiated by the
9 director, the director, in consultation with contested case counsel for POST, will
10 correspond with the respondent in writing.

11 (a) All such correspondence must be copied to the employing authority,
12 unless the exception noted in (3) applies.

13 (b) The policy provided in (1), will outline the number and nature of these
14 letters.

15 (c) The purpose of this correspondence is to allow the officer to respond to
16 the allegation, allow the director and contested case counsel to gather more
17 information, and allow the parties to reach an informal resolution.

18 (8) After an allegation is made by or filed with the director, the director,
19 contested case counsel for POST, or other POST staff or designees will investigate
20 the complaint.

21 (9) Following the review and investigation of an allegation, communication
22 with the respondent, communication with the employing authority, and consultation
23 with counsel for POST, the director may take any appropriate action, including but
24 not limited to the following:

25 (a) engage in informal negotiations and settlement discussions and enter into
26 a stipulation or memorandum of understanding with the officer or the officer's
27 counsel, or otherwise informally resolve the complaint. An informal resolution

1 reached before the MAPA contested case hearing stage under this subsection is not
2 subject to approval by the council;

3 (b) accept the voluntary surrender of a certificate;

4 (c) make one of the following findings:

5 (i) No finding: The investigation cannot proceed for reasons that include
6 but are not limited to: the complainant failed to disclose promised information to
7 further the investigation; or the complainant wishes to withdraw the complaint; or
8 the complainant is no longer available for clarification. This finding may also be
9 used when the information provided is not sufficient to determine the identity of the
10 officer(s) or employee(s) involved.

11 (ii) Not sustained: The investigation failed to discover sufficient evidence to
12 prove or disprove the allegations.

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

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

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

21 (d) issue the appropriate denial, sanction, suspension, or revocation of a
22 certificate;

23 (e) if a denial, sanction, suspension, or revocation is imposed, the director
24 must provide a notice of agency action in writing to the officer, satisfying the notice
25 required by 2-4-601, MCA;

26 (f) the officer may request contested case proceedings pursuant to 44-4-403,
27 MCA and MAPA, as outlined in ARM 23.13.704.

1 (10) If a review of the conduct of an officer is pending before any court,
2 council, tribunal, or agency, the director may, as a matter of discretion, stay any
3 proceedings for denial, sanction, suspension, or revocation pending before the
4 council, no matter what stage or process they have reached, until the other
5 investigation or proceeding is concluded. If the case has already been assigned to a
6 hearing examiner, the hearing examiner must grant a stay based on an application
7 by the director or counsel for POST.

8 (11) In all cases in which a written allegation is submitted which does not
9 culminate in a MAPA contested case hearing, the director must file a written report
10 in the officer's POST file setting forth the circumstances and resolution of the case.
11 All written correspondence with the officer and the officer's employing authority
12 must also be maintained in the officer's POST file.

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1 **23.13.704 Requests for a Formal Contested Case Hearing Under MAPA**

2 (1) Any person aggrieved by a decision of the director or a decision of the
3 council, other than a decision by the director to deny, sanction, suspend, or revoke a
4 certificate, that is not a final decision following a contested case hearing, as
5 provided in 2-4-623, MCA, may request a contested case hearing before the council
6 by following the procedures set forth in Title 2, chapter 4, part 6, MCA.

7 (2) If the director denies, sanctions, suspends, or revokes an officer's POST
8 certification pursuant to ARM 23.13.703(9) and the officer receives a notice of
9 agency action, then the officer has the right to request a formal contested case
10 proceeding under MAPA, to include a hearing, pursuant to 44-4-403(3), MCA.

11 (a) The proceedings and hearing can only be initiated by a request from the
12 officer whose certificate was denied, sanctioned, suspended, or revoked, or the
13 officer's attorney, and not by any other person or entity.

14 (b) To request a hearing, the officer must follow the instructions contained
15 in the "notice of agency action" and notify the appropriate individual or the director
16 that the officer requests a hearing within 30 days of the date of the notice of agency
17 action.

18 (c) Failure to notify and request a hearing within 30 days of the date of the
19 notice of agency action will constitute a waiver of the right to a hearing.

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1 **23.13.706 Contested Cases, Emergency Suspension of a License** (1) Pursuant
2 to 2-4-631(3), MCA, if the director or the council determines that public health,
3 safety, or welfare requires emergency action, the director or council may
4 immediately suspend a certification. The order must include findings justifying
5 emergency action, and regular proceedings must be promptly initiated.

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1 **23.13.719 Decision and Order, Stays** (1) After completing a contested case
2 proceeding, the hearing examiner shall, within 30 days of the hearing, issue findings
3 of fact and conclusions of law that would, if adopted by the council, meet the
4 requirements of 2-4-623, MCA.

5 (2) Within 15 days after the hearing examiner has issued findings,
6 conclusions, and a proposed decision, an adversely affected party may submit
7 exceptions to the hearing examiner's decision. The council shall receive briefs and
8 hear oral arguments at its next meeting and deliberate pursuant to 2-4-621, MCA.
9 The party filing the exceptions must incorporate a supporting brief in the document
10 stating the exceptions. The opposing party may file a brief in response to the
11 exceptions within ten days. No reply brief will be received.

12 (3) For the period between the submission of the hearing examiner's
13 decision and the hearing before the council, general counsel for the council or
14 another person designated by the council chair will act as a special master for
15 purposes of resolving any issue arising before the council hearing.

16 (4) After deliberating, the council will decide to adopt, reject, or modify the
17 hearing examiner's findings and recommendation. The council will issue a decision
18 and order pursuant to 2-4-623, MCA, and mail a copy of this decision to respondent
19 or the respondent's legal representative.

20 (5) If a party has filed exceptions to the decision of the hearing examiner,
21 the contested case is not considered to be submitted for decision under 2-4-623(1),
22 MCA, until oral arguments are concluded before the council.

23 (6) If a certificate was denied, revoked or suspended by the director before
24 the hearing, the certificate will remain denied, revoked or suspended pending the
25 outcome of the contested case proceeding and the respondent must surrender the
26 certificate(s) to the council and forfeit the position, authority, and powers afforded
27 the officer in this state while the contested case proceeds. However, the hearing

1 examiner, before the contested case hearing, or the special master designated in (3),
2 after the hearing, may, upon a properly supported motion that affords POST
3 adequate opportunity to respond, stay the denial, suspension or revocation for good
4 cause shown.

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1 **23.13.721 Appeals** (1) A party, other than the council, adversely affected by a
2 final POST Council decision rendered after a contested case proceeding, may
3 appeal to the Montana Board of Crime Control pursuant to ARM 23.14.1004 and
4 44-4-403(3), MCA. The decision of the Montana Board of Crime Control is the
5 final agency decision subject to judicial review pursuant to 2-4-702, MCA.

6 (2) The council may appeal to the Board of Crime Control under the
7 conditions provided in Title 2, chapter 4, part 6, MCA.

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