

**MEETING MINUTES
MONTANA POST COUNCIL
December 3, 2014
Helena Regional Airport
HELENA, MT**

PRESENT

Tony Harbaugh ~ Chairman
Mike Batista
Laurel Bulson
Kimberly Burdick ~ by phone
Gina Dahl ~ by phone
Bill Dial ~ by phone
Tia Robbins ~ by phone
Jesse Slaughter ~ by phone
Jim Smith ~ by phone
John Strandell

NOT PRESENT

Jim Cashell
Lewis Matthews
Jim Thomas

STAFF PRESENT

Perry Johnson ~ Executive Director
Katrina Bolger ~ Paralegal/Investigator
Mary Ann Keune ~ Administrative Assistant

LEGAL COUNSEL PRESENT

Sarah Clerget
Chris Tweeten ~ by phone

GUESTS

Truman Tulson ~ Missoula Police Department
Ryan Oster ~ Hamilton Police Chief
Dan Moore ~ Motor Carrier Services
Curt Stinson ~ Helena Police Department
Steven Doner ~ MSU Police Department
Pat Kiem ~ Alternative Inc.

WELCOME

Meeting called to order by Tony Harbaugh, Chairman at 9:04.

Roll call was taken by Perry Johnson.

Perry Johnson stepped out of the room to place calls to the absent members to gather a quorum.

Laurel Bulson arrived at 9:18 ~ quorum present.

Chris Tweeten commented that the November 18, 2014 POST Council meeting minutes had double names in some places. John Strandell made a motion and Laurel Bulson seconded to approve the meeting minutes for September 3, 2014 and November 18, 2014 after they are cleaned up. Motion carried ~ all members voting in favor.

PUBLIC COMMENT

Truman Tolson stated he would like to be able to access his agency's training records. He also would like the forms to be fillable. Perry Johnson responded that he is hoping the new software will address those issues.

OLD BUSINESS

Chris Tweeten gave the Council an update on the ARM adoption. The final adoption of the rules has been submitted to the Secretary of State's office along with an order signed by Tony Harbaugh. The notice will be published in the Montana Administrative Register on December 15, 2014. The rules will be affective at that time. Chris Tweeten stated replacement pages will need to be created and submitted for the new ARMs by the end of December, 2014.

Bill Dial joined the meeting at 9:29 by phone

Perry asked Chris to explain the procedure for adopting the module rules in Title 1 by reference. There was some renumbering done as well.

NEW BUSINESS

Stipulations: The Council couldn't review the three cases with officer stipulations due to no quorum available with the three members of the Case Status Subcommittee excluded. The stipulations will be added as an agenda item to the next Council meeting.

Coroners: John Strandell, Perry Johnson and Katrina Bolger met with Dan Whitting and Dick Brown in Great Falls in September. Katrina Bolger reported on the meeting with the coroners. She stated they read the statutes regarding POST certifying coroners and had some good discission. Overall, everyone felt like POST should be certifying, decertifying and tracking their training. The coroners are interested in POST coming to their meetings and being involved.

John Strandell stated that this would increase the workload on POST staff. Capturing the gap that has occurred in the last couple of years will take some effort but once things are caught up it will be easier to maintain.

Tony Harbaugh added that there are twenty counties with civilian coroners and twenty-six counties where the coroners are contained within the Sheriff's Office. He thinks it is critical for this to be brought under one umbrella at POST.

John Strandell also mentioned that there is some glaring contradiction in statute concerning coroners. Perry Johnson would like to have a look at the statute with Sarah and make some decisions.

Perry Johnson reported that Frank Garner, a freshman legislator from Flathead County, will be carrying our legislative package. There was discussion about addressing the

part-time officer issue. Tony Harbaugh, Perry Johnson, and Sarah Clerget made comments. It was decided to put some language together, then discuss when and how to put a meeting together.

Perry Johnson shared that POST will be hosting a sixteen hour Death Investigations class in Great Falls, December 9-10-11, 2015. POST will make this training an annual event since it is a statutory obligation for POST. Perry Johnson also pointed out that the Basic Coroner training is a statutory obligation for POST as well. Bob Rosipal and Bob Edwards have taken on the training and do a nice job with it each year. Tony Harbaugh is glad there are a couple of options for coroner training. Perry Johnson pointed out that the training isn't limited to coroners, anyone can attend.

Pretrial and Misdemeanor Probation Officers: Sarah Clerget spoke about pretrial and misdemeanor probation officers. She summarized the memo she wrote concerning this subject. Sarah Clerget referred to 46-23-1005 and believes that **government employed misdemeanor probation officers** fit into the category by definition. She doesn't think that private misdemeanor probation officers are contained under this statute. She finds no guidance in the MCA to support **private misdemeanor probation officers**. Misdemeanor Probation Officers are required to have 160 hours of basic training and sixteen hours of continuing education each year. She reminded the Council that POST is required to approve the training for misdemeanor probation officers but it isn't required to provide the training.

Sarah Clerget referred to 46-9-505 in her memo. It addresses **pretrial probation officers** employed by **private** agencies and those employed by a **governmental** agency. She reported that they also are required to have 160 hours of basic training and sixteen hours of continuing education each year. POST is required to set the standards for their training but is not required to provide the training. According to the statute Sarah Clerget believes POST is obligated to certify, decertify and track the training for all pretrial probation officers.

Laurel Bulson, asked Sarah how she weeded this all out. Sarah Clerget referred to 46-23-1003 (2) and 44-4-401(2)(i) and explained how she came to this decision. Sarah Clerget explained that Pretrial, Misdemeanor and Probation and Parole officers are all statutorily required to have the same training.

Tony Harbaugh and Perry Johnson made comments about the level of oversight the Council has and the responsibility of POST in regards to the training of these officers.

Perry Johnson asked Mike Batista if POST approved a curriculum from a private vendor, would DOC be able to live with that for their Probation and Parole Officers. Mike Batista stated he would have to take a look at it. Perry Johnson asked that this discussion be added to the next Council meeting's agenda. Mike Batista would like to have some internal discussion with his staff in the meantime. Tony Harbaugh tabled the issue until the next meeting.

John Strandell asked how many counties contract with private companies. Laurel Bulson stated Missoula, Cascade and Yellowstone all contract at this time but it is a growing situation.

Jim Smith joined the meeting by phone.

Pat Kiem, who represents Prerelease Center in Billings Alternative, Inc, stated that his company is trying to figure out what kind of training is required for them and where they get it from. He asked if they would fall under the DOC umbrella. Tony Harbaugh stated that if Pat Kiem is talking about the umbrella of training the answer is yes. The training that is approved for DOC would be the basic that the Council would establish. Perry Johnson commented that the group that Pat Kiem represents wouldn't fall under the DOC umbrella. However, the basic course content that the Council approves in regards to the training of DOC's P & P officers, the statutory requirement for those other officers is to meet that same requirement.

Sarah Clerget clarified the statutes' requirements for private misdemeanor and pretrial officers. She states that under the statute private misdemeanor officers don't exist. Pat Kiem asked about private probation and parole officers that deal with felonies. Sarah needed to think about that for a little bit.

John Strandell had a question about the instructors who would teach from the private sector. Perry Johnson said POST doesn't certify private instructors. Perry explained that law enforcement instructors from Montana have to be certified by POST but private vendors only have to send in a bio and POST credit is given. Truman Tolson made a comment concerning the subject.

Sarah Clerget had an answer for the question concerning private probation and parole officers. She stated, based on 46-12-1003, there isn't an additional specific definition for felony probation and parole officers. She believes private felony probation and parole officers would fall under the peace officer definition. Tony Harbaugh asked Pat Kiem if the county contracts with the district courts to provide this service for felony probation. Pat Kiem reported that they do contract with the county and also with the Department of Corrections. Tony asked if there was any training requirement language in the contract. Pat Kiem wasn't sure of that answer.

Perry Johnson is concerned that the scope of work gets bigger each time the Council meets without enough staff to do the job. Sarah Clerget believes this was the initial intent of the legislature when POST was created, they just didn't give POST enough money to carry out the task.

Tony Harbaugh stated he didn't think there is a clear definition of a private provider. Perry Johnson replied that he agreed with Sarah's analysis that the felony and probation and parole officers do fall under POST's purview. He believes the Council has a responsibility to the private industry to clearly define what POST's role is in this matter.

Tony Harbaugh asked if we could address this by resolution. Sarah Clerget said that POST could handle it that way but it's not a very strong position. She thinks it should be handled with an ARM. Tony Harbaugh wondered if POST should ask the private entities to make a draft of how they would want to change the language to bring themselves in. Perry Johnson replied that the Council has Laurel Bulson and Mike Batista as a reference to be involved in the discussion along with the private industries.

Chris Tweeten stated that the Council has been dealing with the problem for a couple of years and gave a brief history of the situation and his opinion in regards to the statute.

John Strandell recommended that Mike Batista, Laurel Bulson, and Perry Johnson meet and come up with a recommendation. Mike Batista will chair the group.

Chris Tweeten stated that there is a window of opportunity to draft some legislation and line up a sponsor to introduce it. Mike Batista wasn't sure if it was enough time and would like to see how it comes together.

Case Files: Cases: Perry reported that the Case Status Subcommittee has been meeting on a regular basis trying to move these cases through the process. He feels there are a few cases hanging out there that may end up going to contested case. He explained the process that POST is using which follows the ARM when a complaint comes in. He said it seems to be working well.

Office Updates. Katrina Bolger reported that she spoke with Claudia Weiss from BOCC about the potential problems and concerns with a Facebook page. Claudia Weiss said their page had been well received without any problems. There are filters that can be turned on if there is a worry of inappropriate remarks.

Curt Stinson started the page and shared the safeguards they use at the Helena Police Department. He cautioned that POST makes sure there is a person who has the time to maintain the page.

Perry Johnson wants to wait and see if POST will have enough time to handle this project. John Strandell added he thinks it should be done and Bill Dial agreed. Perry Johnson said as long as POST has permission to create a page, it will get worked on as time allows.

Katrina Bolger also addressed the idea of a newsletter. Bill Dial thinks that anything that could be done to keep the rumor mill down is a good idea. He thinks Perry writing a quarterly email and posting it on the website is a good idea.

Perry Johnson let the Council know that Katrina Bolger would be trained in managing POST's website so people will be seeing changes soon.

Perry Johnson directed the Council to the updated forms in their binders. The new forms are reflective of the information that will be used in the new database, Sugar CRM. He told the Council that Amy Palmer handed off the project to a new project manager and the staff will meet with him next week.

John Strandell made a motion and Bill Dial seconded to approve the forms presented along with any changes with non-substantive edits that need to be made to the forms in the future. Motion carried-all members voting in favor.

Budget Report: Perry Johnson reported that POST is almost fifty percent through the fiscal year and haven't spent quite a third of the budget. He is comfortable but reminds everyone that a contested case can come along and eat up a budget.

Legislative Update: Chris Tweeten talked about the procedure for the bill POST is going to bring before the Legislature.

Chris Tweeten reported that the claim against POST has now become a lawsuit. The complaint had not yet been served the last time Chris Tweeten talked to Ann Brodsky. Sarah Clerget added that it was served and Ann Brodsky accepted service on behalf of all defendants. Chris Tweeten share that Josh Van de Wetering, the lawyer for the plaintiffs, has offered a settlement number which is not acceptable to Risk Management. Chris Tweeten suggested Perry Johnson and himself schedule a meeting with Ann Brodsky to hear her thoughts on defending the case. Chris Tweeten stated he would talk to Ann Brodsky and get back to Perry Johnson about meeting with Ann Brodsky hopefully before Christmas.

Approval/Denial of Certificate Requests: There were 102 names on the certificate list. Bill Dial made a motion and Kimberly Burdick seconded to approve the certificates as presented by POST Director Johnson. Motion carried-all members voting in favor.

Approval/Denial of Extension Requests: There were two extension requests. Kimberly Burdick made a motion and Laurel Bulson seconded to approve the extension requests. Motion carried-all members voting in favor.

Basic Equivalency Requests: There were thirteen requests. Eight of the officers had already attended an EQ class at the MLEA. John Strandell made a motion and Bill Dial seconded it to approve the basic equivalency requests. Motion carried-all members voting in favor.

Letter of Resignation from Kevin Olson: Perry Johnson read a letter of resignation from Kevin Olson to the Council. Kevin Olson resigned as the MLEA Administrator to take a job with DOC as the Administrator of the Probation and Parole Division. Mike Batista made the announcement to the Council.

Sarah Clerget's Memo: Sarah Clerget summed up the memo concerning the situation that POST had with Dan Wadsworth in Ronan in regards to Reserve Officers. Bill Dial, Perry Johnson, Tony Harbaugh and Chris Tweeten all made comments about the question of an amicus brief opportunity. Bill Dial made a motion and Kimberly Burdick seconded to table this until Sarah Clerget has time to meet with Risk Management and the Council has time to consider the other information that Chris Tweeten presented to the Council. Motion carried-all members voting in favor.

COMMITTEE REPORTS:

ARM Committee: Tony Harbaugh had nothing new to add.

Coroner: Committee Tony Harbaugh had nothing new to add.

Integrity and Profession Standard Committee: Kimberly Burdick had nothing new to add.

Curriculum Committee: Perry Johnson had nothing new to add.

Business Plan Committee: Perry Johnson stated he would like the staff to put together a plan and bring it back to the Council.

Policy Committee: Perry Johnson stated he would like the staff to put together a plan and bring it back to the Council.

Individual Council Member Reports and Comments:

Kimberly Burdick: no comment

Bill Dial: Bill Dial asked that any contact with Legislative Service be copied to Frank Garner or whomever is carrying a bill for POST.

Mike Batista: no comment

Laurel Bulson: no comment

John Strandell: no comment

Tony Harbaugh: no comment

Perry Johnson commented with the new ARMs coming out, he would like to publish a book and push it out to our stakeholders. Bill Dial suggested it get published on line and make it the responsibility of the agencies. Perry Johnson said he has had a tremendous reception to stopping in at agencies and visiting with the officers and would like to do that outreach with the ARMs.

Perry Johnson asked if the Council has any interest in creating an “end of service” certificate for the Sheriffs and Chiefs who are leaving office. John Strandell commented that including everyone who is retiring would be a nice idea. The Council members thought that sounded like a good idea.

John Strandell asked about the status of the stipulations since there wasn’t a quorum available to handle the stipulations.

Perry Johnson replied that the Executive Director has authority to move forward with the stipulations and he planned to do that

There was a decision not to go into executive session since there wasn’t a quorum present. The next meeting will be held Wednesday, March 11, 2015. The meeting will be a phone conference.

Bill Dial made a motion and Kimberly Burdick seconded to adjourn the meeting. Motion carried-all members voting in favor. Meeting adjourned at 11:48.

Submitted by
Mary Ann MAK
2/24/15

