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**Peace Officer Standards
and Training**

**POST BOARD MEETING
RECORD OF PROCEEDINGS**
Friday December 1, 2017
10:00 pm – 12:00 pm

The Peace Officer Standards and Training Board held its 401st Board meeting at the Ralph L. Carr Colorado Judicial Center, 1300 Broadway, Denver, Colorado, with the following in attendance:

BOARD MEMBERS PRESENT

CHIEF DAN BRENNAN, Wheat Ridge Police Department
SERGEANT RAFAEL CHANZA, Colorado Springs Police Department
SERGEANT LONNIE CHAVEZ, Grand Junction Police Department
CHIEF CORY CHRISTENSEN, Steamboat Springs Police Department
ATTORNEY GENERAL CYNTHIA COFFMAN, Colorado Department of Law
CHIEF JOHN COLLINS, Englewood Police Department
SHERIFF CHAD DAY, Yuma County Sheriff's Office
CHIEF DEBRA FUNSTON, Palisade Police Department
EXECUTIVE DIRECTOR STAN HILKEY, Colorado Department of Public Safety
PROFESSOR KARA HOOFNAGLE, Johnson & Wales University
ROBERT LEES, Robert A. Lees and Associates
SHERIFF MICHAEL MCINTOSH, Adams County Sheriff's Office
SHERIFF STEVE NOWLIN, Montezuma County Sheriff's Office
CHIEF MICHAEL PHIBBS, Auraria Department of Public Safety
DIRECTOR JANE QUIMBY, Colorado Mesa University DPS
MAYOR RON RAKOWSKY, City of Greenwood Village
SPECIAL AGENT IN CHARGE CALVIN SHIVERS, Federal Bureau of Investigation
SHERIFF ANTHONY SPURLOCK, Douglas County Sheriff's Office
BRADLEY TAYLOR, Goetz Insurors

BOARD MEMBERS ABSENT

SHERIFF RON BRUCE, Hinsdale County Sheriff's Office
DEPUTY AMANDA CRUZ-GIORDANO, Arapahoe County Sheriff's Office
SUSAN "ZEKE" KNOX, United States Attorney's Office
CHIEF JOHN MINOR, Silverthorne Police Department
SHERIFF FRED WEGENER, Park County Sheriff's Office

BOARD COUNSEL

STACY WORTHINGTON

POST STAFF MEMBERS PRESENT

ERIK BOURGERIE, Director
BOB BAKER, In-Service Training Manager
BECKY CALOMINO, Grant Manager
SUSAN CARTER, Training Coordinator
DAN GRIFFIN, Training Coordinator
KIM HERNANDEZ, Grant Specialist
LORI JENCKS, Administrative Assistant
CRISTINE MACK, Investigator
JOE PICCINETTI, Administrative Assistant

MEMBERS OF THE PUBLIC IN ATTENDANCE

SERGEANT QUINN ARCHIBEQUE, Delta County Sheriff's Office
AGENT IVAN BEERS, Lakewood Police Department
REGAN BENSON
DIRECTOR MINER BLACKFORD, Otero Junior College LETA
SERGEANT JEFF BREDEHOEFT, Douglas County Sheriff's Office
SERGEANT GRAHAM DUNNE, Aurora Police Department
CAPTAIN MICHAEL ENSMINGER, Jefferson County Sheriff's Office
APRIL FOX, Arapahoe Community College
STAFF SERGEANT BRIAN HILL, Federal Reserve Police Department
TRAINING MANAGER JOHN HOOD, Colorado Parks and Wildlife
JANET LARSON, County Sheriffs of Colorado
COMMANDER RICK MCNAIR, Adams County Sheriff's Office
COMMANDER KARL SMALLEY, Adams County Sheriff's Office
DEPUTY ATTORNEY GENERAL SCOTT TURNER, Department of Law
RICHARD WEBB
LARRY WOLFE
JANICE WORTHEM, Colorado State Patrol

Introductions:

1. **Welcome** Attorney General Cynthia Coffman
2. **Pledge of Allegiance**
3. **Introduction of New Board Member Steve Nowlin** Attorney General Cynthia Coffman

AG Coffman introduced new POST Board member Sheriff Steve Nowlin, Montezuma County Sheriff's Office.

4. **Recognition of Departing Board Member Rafael Chanza** Attorney General Cynthia Coffman

AG Coffman recognized departing POST Board member Rafael Chanza, Colorado Springs Police Department.

5. **Introduction of POST Director Erik Bourgerie** Attorney General Cynthia Coffman

AG Coffman introduced new POST Director Erik “Bo” Bourgerie.

6. **Recognition of Departing SME Members** Attorney General Cynthia Coffman

AG Coffman recognized departing SME committee members, Commander Erik Bourgerie, Arrest Control Committee Chair, and Commander Rick McNair, Curriculum Committee.

7. **Introduction of Board Members, SME Members, Staff and Guests**

8. **Roll Call** Director Erik Bourgerie

Declaration of a quorum (13)

9. **Subject Matter Expert Committee Reports**

- A. Arrest Control Staff Sergeant Brian Hill
Vice-Chair

The committee reviewed three injury reports. No negligence was found. One full instructor was approved for Aurora PD. Minor revisions to the ACT test out requirements are anticipated to be completed by early January. The resubmitted Colorado Rangers safety plan was approved, as was the site safety plan and lesson plan for Technical College of Rockies-Delta. Agent Ike Beers was nominated as committee chair, and was tentatively elected pending approval by his supervisor.

- B. Curriculum Sgt. Graham Dunn, Chair

Lesson plans and instructors for TCR-Delta, Colorado Rangers and Front Range CC academies were reviewed. Most material has been approved, though there were a few items that were denied as they did not meet POST requirements. FRCC and Rangers require instructor approvals, and Delta will be providing further information to the committee and, if approved, will start in January. A new Instruction Methodology course submitted by a private company was approved. An Instruction Methodology equivalency was approved for an officer, to allow them to become a full skills instructor. Review of Curriculum Bibliography is continuing, with completion in early 2018. Review of the Reserve academy program is complete. An additional 17

hours of instruction time will be requested, and will be brought before the Board for approval at a later date. The committee is hoping to create a list of TCCC instructors that POST can make available to academies, especially rural areas, where finding instructors or places to have their instructors certified can be more difficult. New member Captain Mike Ensminger, Jefferson County Sheriff's Officer, was approved. Meeting dates for 2018 were approved. A proposed change to Rule 21 was approved by the committee.

C. Firearms Sgt. Jeff Bredehoeft

Five inspections and five test outs were completed in the past year, as well as nine individual test outs. Changes are being proposed to the Firearms Training program, adding eight hours to the present program. Sgt Bredehoeft presented a power point outlining changes, which would be effective January 2019. The current curriculum is 64 hours. Most academy programs exceed the minimum, and there was no objection by academy directors to the increase of eight hours to 72 hours total. Areas that were excessive were reduced (equipment selection and maintenance) and other areas were increased, such as Tactical Situations and Decisional Shooting, and the minimum number of rounds will be increased from 1500 to 1700. Live Fire Decisional Shooting exercises will be increased from five to seven, and force-on-force scenarios will be increased from two to four. Changes to the Handgun Instructor Program are also being proposed. The Handgun Instructor Program will mirror the Firearms Training program, and 160 hours of instruction as a full skills instructor will be required to teach the Handgun Instructor program. The proposed Handgun Instructor program will also be effective January 2019. Rule 24 is being revised to clarify various aspects. A mandatory format for de-escalation has not been added to the curriculum yet, but is being discussed by the committee. The Board suggests adding that to the curriculum in addition to transition to lower levels of force, possibly in conjunction with defensive tactics.

D. Law Enforcement Driving Cmdr. Karl Smalley, Chair

The committee had a special meeting in October to review and approve the driving programs for Front Range CC and TCR-Delta. New member Stewart Curry of Colorado Mountain College was approved. Three new instructors were approved (Jose Medina-Pueblo PD, Jake Six-Otero Jr. College, Jon Gaskins-Adams County Sheriff's Academy).

10. **Approval of POST Minutes** Attorney General Cynthia Coffman
from September 8, 2017

Motion to approve by Chief Phibbs. Approved unanimously.

11. **2018 Proposed POST Board Meeting Dates** Director Erik Bourgerie

March 9, 2018
June 1, 2018
September 14, 2018
December 7, 2018

Members inquired whether there were any potential conflicts with other conferences or events. At the time the meeting dates were proposed, there were no existing conflicts. A work session is planned for September 13th.

Motion to approve 2018 dates. Approved unanimously.

12. **SRO Subcommittee Update** Sheriff Chad Day

The SRO subcommittee (Sheriff Day, Mayor Rakowsky, Chief Minor, Jenn Anderson, Bob Baker) met to discuss potential changes to the SRO requirement in statute, due to unintended consequences, especially to small agencies that either have no schools in their jurisdiction, or have no SRO program. The original statute required only one curriculum, which was a 40-hour course. The subcommittee presented three options to present for legislative action. Option one is preferred by the subcommittee.

Option 1 – Make SRO training voluntary for those agencies without SRO programs or schools in their jurisdiction, and allow POST to develop a separate, eight-hour curriculum for those agencies which would still like to take part in training without completing the full 40-hour program.

Option 2 – Similar to Option 1, but make SRO training mandatory for all agencies except those without schools in their district, and allow POST to develop an eight-hour curriculum for those agencies which do have schools but do not have an SRO program.

Option 3 – Make SRO training mandatory for all agencies, but allow POST to develop an eight-hour curriculum for those agencies without schools or SRO programs.

The subcommittee states that it is not a good use of resources or time for the agencies without schools or SRO programs to require an officer from each agency to attend a full, 40-hour SRO course.

The value of the course, even for those agencies without schools or SRO programs was reviewed. The training may be valuable for any agency for other events/situations. NASRO is fairly school-focused, and having it be mandatory seems an undue burden. Small agencies may have to send multiple officers repeatedly if the officer originally trained leaves the agency, in order to meet the mandate.

The existence of overlapping jurisdictions was brought up, as typically a county sheriff's office may cover the small municipalities in their jurisdiction, and would potentially be able to assist with SRO needs.

There was discussion of how often the full course is taught. The planned schedule of the NASRO course for Colorado is not definite at present.

Motion to support Option 1 by Sheriff Day. Brennan and Coffman opposed. Motion carries.

Brennan believes there should be required training for any jurisdiction that has students, that there is an obligation for training in this area, and that Option 3 would be preferred, and that there should be an 8-hour course.

AG Coffman strongly believes there should be some mandated training for all agencies.

13. **Sealed Records**

Director Erik Bourgerie
Stacy Worthington

There was prior discussion by the Board regarding deferred judgements and their effect on POST certification. Subsequently there was a legislative change allowing POST to review deferred judgements/sentencing and to deny certification even if there was a later dismissal upon completion of the conditions of the deferred sentence. Recently there have been cases where the records have been sealed. At present we cannot consider sealed records to deny certification, though we can see the records. There was also a recent case in which the governor pardoned an individual in order to allow him to obtain POST certification. Director Bourgerie is requesting Board input on whether to pursue further legislative action to clarify the issue.

There was extensive discussion regarding the unequal treatment of those applicants who had gone through the process to have their records sealed, whether other licensing Boards had similar standards, and whether law enforcement should be held to a higher standard. Ms. Worthington reviewed that the statute does state that we must deny certification if there is a conviction, though a variance for misdemeanor convictions may be granted if it is determined the certification would not be against the public interest. She further explained that a Governor's pardon essentially eliminates any conviction and any consequences.

Motion to allow POST to seek legislative action to permit consideration of sealed records in denial of certification by Sheriff McIntosh. Roll call vote was requested. Exec. Dir. Hilkey, Mr. Lees, and Chief Phibbs were opposed. Motion carried.

Exec. Dir. Hilkey is opposed as he believes the individual agencies should know of the individual's record, but that the decision whether to hire should be the right of the agency and not a decision made by the POST Board.

Chief Phibbs is opposed as he would prefer the Board request further research to better determine the scope of the problem and the best legislative action.

14. **Peace Officer Certification Revocation Actions** Director Erik Bourgerie

POST Rule 9 - Revocation of Peace Officer Certifications – Felony

Convictions: § 24-31-305, CRS(2)(a) A Colorado peace officer certification issued pursuant to subsection (1) or (1.3) of this section or 24-31-308 shall be suspended or revoked by the POST Board if the certificate holder has been convicted of a felony, or has been convicted on or after July 1, 2001, of any misdemeanor described in subsection (1.5) of § 24-31-305 CRS, or has otherwise failed to meet the certification requirements established by the Board. For purposes of this rule, the term ‘conviction’ includes any deferred judgments or deferred sentences imposed by a court.

1. No. F17-06, Matthew Robert Paysinger, Certification B10975 (PID 100597). On June 7, 2017, Respondent was convicted of one count of Second Degree Burglary §18-4-203(1) CRS, a Class 4 Felony. The Respondent was not employed as a peace officer on the date of the offense (Date of Offense: January 3, 2017, never employed). The Respondent has failed to comply with POST Show Cause Order No. F17-06 by failing to appear at the scheduled Show Cause Hearing on August 10, 2017. Director Bourgerie recommends revocation of Matthew Robert Paysinger’s Colorado Peace Officer Certification B10975 (PID 100597).

Motion to revoke by Sgt. Chavez. Approved unanimously.

2. No. F17-07, James Allen Keller, Certification B4360 (PID 107958). On February 15, 2017, Respondent was convicted of one count of Stalking-emotional distress §18-3-602(1)(c) CRS, a Class 4 Felony, and Harassment-repeat telephone calls §18-9-111(1)(f) CRS, a class 3 Misdemeanor. The Respondent was not employed as a peace officer on the date of the offense (Date of Offense: September 22, 2016, separated April 30, 2013). The Respondent has failed to comply with POST Show Cause Order No.F17-07 by failing to appear at the scheduled Show Cause Hearing on August 10, 2017. Director Bourgerie recommends revocation of James Allen Keller’s Colorado Peace Officer Certification B4360 (PID 107958).

Motion to revoke by Mayor Rakowski. Approved unanimously.

3. No. F17-08, David Brian Henrichsen, Certification B14034 (PID 124134). On January 25, 2017, Respondent was convicted of one count of Computer Crime §18-5.5-102(1)(d),(3)(a)(VI) CRS, a Class 5 Felony. The Respondent was not employed as a peace officer on the date of the offense (Date of Offense: August 2, 2016, separated July 1, 2015). The Respondent has failed to comply with POST Show Cause Order No.F17-08 by failing to appear at the scheduled Show Cause Hearing on August 10, 2017. Director Bourgerie

recommends revocation of David Brian Henrichsen's Colorado Peace Officer Certification B14034 (PID 124134).

Motion to revoke. Approved unanimously.

4. No. F17-09, Joseph Jay Fawcett, Certification B4188 (PID 105327). On August 8, 2017, Respondent was convicted of one count of Human Trafficking Involving Servitude §18-3-503 CRS, a Class 3 Felony and one count of Pandering of a Child-arrange prostitution §18-7-403(1)(b) CRS, a Class 3 Felony. The Respondent was not employed as a peace officer on the date of the offense (Date of Offense: March 14, 2017, never employed). The Respondent has failed to comply with POST Show Cause Order No.F17-09 by failing to appear at the scheduled Show Cause Hearing on October 5, 2017. Director Bourgerie recommends revocation of Joseph Jay Fawcett's Colorado Peace Officer Certification B4188 (PID 105327).

Motion to revoke by Sheriff Spurlock. Approved unanimously.

5. No. F17-10, Eric Matthew Henry, Certification, B15760 (PID 134718). On August 7, 2017, Respondent was convicted of one count of Felony Menacing with real/simulated weapon §18-3-206(1)(a)(b) CRS, a Class 5 Felony. The Respondent was employed as a peace officer on the date of the offense (Date of Offense: February 18, 2017, separated May 3, 2017). The Respondent has failed to comply with POST Show Cause Order No.F17-10 by failing to appear at the scheduled Show Cause Hearing on October 5, 2017. Director Bourgerie recommends revocation of Eric Matthew Henry's Colorado Peace Officer Certification B15760 (PID 134718).

Motion to revoke by Ms. Quimby. Approved unanimously.

6. No. F17-11, Michael Lee Keaney, Certification B8631 (PID 113691). On June 21, 2016, Respondent was convicted of two counts of Internet Sexual Exploitation of a Child §18-3-405.4(1) CRS, a Class 5 Felony. The Respondent was not employed as a peace officer on the date of the offense (Date of Offense: January 1, 2014, separated July 16, 2007). The Respondent has failed to comply with POST Show Cause Order No.F17-11 by failing to appear at the scheduled Show Cause Hearing on October 20, 2017. Director Bourgerie recommends revocation of Michael Lee Keaney's Colorado Peace Officer Certification B8631 (PID 113691).

Motion to revoke by Chief Brennan. Approved unanimously.

POST Rule 9 - Revocation of Peace Officer Certifications – Misdemeanor Convictions: § 24-31-305, C.R.S.(2)(a) A Colorado peace officer certification issued pursuant to subsection (1) or (1.3) of this section or 24-31-308 shall be suspended or revoked by the POST Board if the certificate holder has been convicted of a felony at any time, or has been convicted on or after July 1, 2001, of any misdemeanor described in subsection (1.5) of § 24-31-305 C.R.S., or has otherwise failed to meet the certification requirements established by the Board. For purposes of this rule,

the term 'conviction' includes any deferred judgments or deferred sentences imposed by a court. Revocation of peace officer certificates based upon conviction(s) of misdemeanor crimes are recognized in § 24-31-305(1.5) (b) thru (h), C.R.S.

1. No. M17-04, Kory Robert Nicastle, Certification B17731 (PID 138580). On April 5, 2017, Respondent was convicted of one count of Harassment-strike/shove/kick, §18-9-111(1)(a) CRS, a Class 3 Misdemeanor. The respondent was not employed as a peace officer on the date of the offense (Date of Offense: May 5, 2016, separated December 6, 2013). The Respondent has failed to comply with POST Show Cause Order No. M17-04 by failing to appear at the scheduled Show Cause Hearing on August 10, 2017. Director Bourgerie recommends revocation of Kory Robert Nicastle's Colorado Peace Officer Certification B17731 (PID 138580).

Motion to revoke by Mr. Lees.. Approved unanimously.

2. No. M17-06, Jason Eric Mendoza, Certification B17193 (PID 134853). On January 19, 2017, Respondent was convicted of one count of Obstructing Government Operations §18-8-102 CRS, a Class 3 Misdemeanor. The respondent was employed as a peace officer on the date of the offense (Date of Offense: June 26, 2016). The Respondent has failed to comply with POST Show Cause Order No. M17-06 by failing to appear at the scheduled Show Cause Hearing on August 10, 2017. Director Bourgerie recommends revocation of Jason Eric Mendoza's Colorado Peace Officer Certification B17193 (PID 134853).

Motion to revoke by Chief Phibbs. Approved unanimously.

15. **Emergency Rulemaking-Rule 8** Stacy Worthington

The Emergency Rulemaking hearing was brought to order December 1, 2018 at 11:25 am. Ms. Worthington stated the emergency justification for the change to Rule 8 – Appeal Process for Peace Officer Applicants – Certification Denial as a Result of a Misdemeanor Conviction. Ms. Worthington requested any public comment. No public comment was presented. This change is required to comply with state statute § 24-31-305 after amendment of that statute. The emergency rule, if adopted today, will be in effect for 90 days, and at the March Board meeting, the Board may choose to make the changes permanent.

Ms. Worthington explained that the Board denies certification, but an applicant can then request an exemption for misdemeanor convictions if they choose.

Motion to adopt Rule 8 by Sheriff Day. Approved unanimously.

16. **Bail Recovery Curriculum** Director Erik Bourgerie

The POST Board is required to create and maintain a Bail Recovery Curriculum. DORA pointed out that the present curriculum cited case law from 1873, which until recently was the prevailing case law on bail recovery agents. It is proposed that we

remove the referenced case law, and add additional statutes pertinent to bail recovery agents.

Motion to approve revised curriculum by Mayor Rakowsky. Approved unanimously.

17. Comments from Others on POST Issues

Sheriff Day requested an update on the issue brought up at the last Board meeting regarding reimbursement for training that takes place the end of June, immediately prior to the end of fiscal year on June 30. Ms. Calomino spoke with Budget Analyst Jon Reitan, and requested he attend the Board meeting to explain the situation. He was unable to attend, but Dep. AG Scott Turner had discussed the issue with Mr. Reitan. It is a state requirement that all receipts must be submitted by June 30th. POST cannot change the procedure, and it is included in the grant contracts. We can work with grantees to insure that reimbursement can take place, if the grantee communicates with POST staff. We must account for expenditures in the correct fiscal year. Please contact POST staff should the issue come up.

Director Bourgerie stated that POST has requested a marijuana educator and an additional compliance investigator. POST surveyed other POST agencies regarding their academy inspection cycle, and it was determined that our 5-year cycle is less frequent than 78% of the 23 responding agencies. POST would like to obtain a 3-year cycle for academy inspections, utilizing an additional investigator to achieve that goal.

18. Adjournment

Attorney General Cynthia Coffman

Motion to adjourn by Mayor Rakowsky. Approved unanimously.

Meeting adjourned at 11:41 am