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**Peace Officer Standards
and Training**

**POST BOARD MEETING
RECORD OF PROCEEDINGS**
Monday, December 14, 2015

The Peace Officer Standards and Training Board held its 393rd 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
CHIEF JOHN CAMPER, Grand Junction Police Department
SERGEANT RAFAEL CHANZA, Colorado Springs Police Department
ATTORNEY GENERAL CYNTHIA COFFMAN
CHIEF JOHN COLLINS, Englewood Police Department
DEPUTY AMANDA CRUZ-GIORDANO, Arapahoe County Sheriff's Office
SHERIFF CHAD DAY, Yuma County Sheriff's Office
COMMISSIONER DAVE DONALDSON, Logan County
PROFESSOR KARA HOOFNAGLE, Johnson & Wales University
SUSAN "ZEKE" KNOX, United States Attorney's Office
ROBERT LEES, Robert A. Lees and Associates
SHERIFF FRED MCKEE, Delta County Sheriff's Office
SHERIFF JOHN MINOR, Summit County Sheriff's Office
CHIEF MICHAEL PHIBBS, Auraria Department of Public Safety
SPECIAL AGENT IN CHARGE THOMAS RAVENELLE, 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
SERGEANT LONNIE CHAVEZ, Grand Junction Police Department
CHIEF JOHN DYER, Rifle Police Department
EXECUTIVE DIRECTOR STAN HILKEY, Colorado Department of Public Safety
DIRECTOR JANE QUIMBY, Colorado Mesa University DPS
SHERIFF FRED WEGENER, Park County Sheriff's Office
CHIEF ROBERT WHITE, Denver Police Department

BOARD COUNSEL

STACY WORTHINGTON

POST STAFF MEMBERS

CORY AMEND, Director
ROBERT A. BAKER, In-Service Training Manager
CAROLYN BERRY, Marijuana Curriculum Coordinator
BECKY CALOMINO, Grant Manager
LORI JENCKS, Administrative Assistant
ARIEL KISKIRAS, Administrative Assistant
CRISTINE MACK, Investigator
STEFANIE MACKKEY, Grant Coordinator
TOM MULLEN, Compliance Investigator

MEMBERS OF THE PUBLIC IN ATTENDANCE

COMMANDER ERIK BOURGERIE, Summit County Sheriff's Office
DIRECTOR MICHAEL CARTER, Community College of Aurora
SERGEANT GRAHAM DUNNE, Aurora Police Department
APRIL FOX, Arapahoe Community College
FRANCINE GONZALEZ, Department of Revenue, Motor Vehicle Investigations
TRAINING MANAGER JOHN HOOD, Colorado Parks and Wildlife
ROGER HUDSON, Public Information Officer
DARIN ICARDI, Department of Revenue, Motor Vehicle Investigations
CAPTAIN RHONDA JONES, Denver Police Department
DEPUTY TIM JUNGCLAUS, Adams County Sheriff's Office
LIEUTENANT CHRIS JUUL, Aurora Police Department
INVESTIGATOR KEN KING, Colorado Attorney General's Office
DIRECTOR CATHY LABRECQUE, Pikes Peak Community College
COMMANDER RICK McNAIR, Adams County Sheriff's Office Academy
JO MCGUIRE, Better Way Colorado
JEANNIE MILLER
ELIZABETH O'DONNELL
CHRIS OSHER, The Denver Post
COMMANDER KARL SMALLEY, Adams County Sheriff's Office
DEPUTY ATTORNEY GENERAL SCOTT TURNER, Attorney General's Office

The following Subject Matter Expert Committees met prior to the regular POST Board meeting on December 14, 2015.

- Arrest Control Subject Matter Expert Committee
- Curriculum Subject Matter Expert Committee
- Firearms Subject Matter Expert Committee
- Law Enforcement Driving Subject Matter Expert Committee

Introductions:

1. **Welcome** Attorney General Cynthia Coffman
2. **Pledge of Allegiance** Attorney General Cynthia Coffman
3. **Moment of Silence**

AG Coffman requested a moment of silence for Colorado State Trooper Jaimie Jursevics and University of Colorado-Colorado Springs Officer Garrett Swasey who were killed in the line of duty. The AG expressed her respect and gratitude for the difficult and dangerous job police officers perform.

4. **Introduction of Board Members, SME Members, Staff and Guests**
5. **Roll Call** Director Cory Amend

Declaration of a Quorum (13)

6. **Approval of POST Minutes from September 18, 2015**

Approved unanimously

Presentations:

7. **Subject Matter Expert (SME) Committee Reports:**

- A. **Curriculum** Sgt. Graham Dunne, Chair

The Curriculum committee has completed the preliminary revision of the Basic curriculum. Sexual assault has been separated from Major Case Considerations and will be presented as a separate class. Recently included is a condensed version of Combat Tactical Casualty Care into the Reserve academy curriculum. The committee is currently reviewing the Instructor Methodology program

- B. **Arrest Control** Cmdr. Erik Bourgerie, Chair

The review of the Arrest Control Training program has been completed and the changes will go to the academies for their feedback. Kevin Smyth of Aurora PD was added as a new member. Meeting dates for 2016 were approved. A satisfactory inspection was completed at Highlands Ranch Public Safety Training Institute. The Committee is investigating whether a ringworm test HRPSTI is using on their mats is something that could or should be distributed to all academies. A new site safety

plan was approved for Adams County Sheriff's Office FLATROCK facility supplemental arrest control room. The site safety plan for the new Aurora PD facility was denied as it is still under construction. The academy is to begin in February and will be approved if construction-related issues are corrected. Four new full skills instructors were approved: Grant Heyneman, Aurora PD; Rob Pavletic, Aurora PD; Justin Calkins, Larimer County SO; and Andrew Weber, Larimer County SO. The committee is continuing discussion of test out procedures and requirements, and the skills instructor program.

C. **Firearms** Trng. Mgr John Hood, Vice-Chair

The committee approved 2016 monthly meeting dates. An unintentional discharge worksheet was recently developed for use at the academies. Several full skills instructors were approved since the last Board meeting. Lesson plans have been reviewed and approved for a firearms skills development course. Expectations have been added to the Firearms Instructor program. Member Master Trooper Fred Currier has retired and will be replaced by Master Trooper Pete Lawrence.

A vote was requested for Firearms curriculum changes.

Approved unanimously

D. **Law Enforcement Driving** Cmdr. Karl Smalley, Chair

An inspection was completed on Otero Jr. College LETA and program was approved. Safety plan for Colorado Springs PD Academy was approved. New site safety plan for Aurora PD was reviewed, but was tabled as the site is still under construction. Cmdr. Smalley will view the site and should be able to approve prior to their academy start date. Instructor programs were reviewed and are up to date, with the exception of Denver PD. Denver will be submitting their instructor program and should be approved at March meeting. Driving curriculum additions were discussed and Electronic Stability Control high center of gravity vehicle will be added. Total program hours will remain the same. The SME committee chairs met to discuss instructor requirements and expectations.

Action Items:

8. **Peace Officer Certification** Tom Mullen
Revocation Actions Compliance Investigator

A. **POST Rule 9 – Revocation of Peace Officer Certifications – Felony 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 or judge.

1. No. F15-09, **Jefferson Leroy Kiser**, Certification B01736 (PID 122539). On March 25, 2015, respondent pled guilty to and was convicted of 1 count of Assault I-SBI with Deadly Weapon § 18-3-202(1)(a), C.R.S., a class 3 felony. *The respondent was not employed as a peace officer on the date of the offense (Date of Offense: August 1, 2013 –Separated: May 16, 2005).* The respondent has failed to comply with POST Show Cause Order F15-09 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of Jefferson Leroy Kiser’s Colorado Peace Officer Certification B01736 (PID 122539).

Approved unanimously

2. No. F15-10, **David Newall Hayhurst**, Certification 1295 (PID 108057). On March 27, 2015 respondent pled guilty to and was convicted of 1 count of Sexual Exploitation/child-poss Material, § 18-6-403(3)(b.5), C.R.S., a class 6 felony. *The respondent was not employed as a peace officer on the date of the offense (Date of Offense: January 23, 2014 –Separated: January 10, 1993).* The respondent has failed to comply with POST Show Cause Order F15-10 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of David Newall Hayhurst’s Colorado Peace Officer Certification 1295 (PID 108057).

Approved unanimously

3. No. F15-11, **John William Japp**, Certification B6311 (PID 119517). On May 21, 2015, respondent pled guilty to one count of Sexual Assault/Victim incapable of appraising nature of conduct-attempt, §18-3-402 (1)(b), a class 5 felony. *The respondent was employed as a peace officer on the date of the offense (Date of Offense: September 18,*

2014–Separated: September 29, 2014). The respondent has failed to comply with POST Show Cause Order F15-11 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of John William Japp’s Colorado Peace Officer Certification B6311 (PID 119517).

Approved unanimously

B. 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, or has been convicted on or after July 1, 2001, of any misdemeanor described in subsection (1.5) of § 24-31-30 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. M15-11, **Robert M. Raskiewicz**, Certification B7273 (PID 119415). On April 4, 2004 respondent was convicted of one count of Official Misconduct, §18-8-104 C.R.S., a class 1 misdemeanor. *The respondent was employed as a peace officer on the date of the offense (Date of Offense: January 21, 2003, – Separated December 31, 2008)*. The respondent has failed to comply with POST Show Cause Order M15-11 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of Robert M. Raskiewicz’s Colorado Peace Officer Certification No. B7273 (PID 119415).

Delay in revocation was due to our not receiving notice from the courts of the conviction, which was recently discovered in a search of the court database.

Approved unanimously

2. No M15-12, **James L. Underwood II**, Certification B01368 (PID 126671). On June 30, 2015, the respondent was convicted of one count of Harassment-Obscene Language/Gesture Domestic Violence § 18-9-111 (1)(b) C.R.S., a class 3 misdemeanor. *The respondent was not employed as a peace officer on the date of the offense (Date of Offense: April 27, 2015, – Separated September 15, 2007)*. The respondent has failed to comply with POST Show Cause Order M15-12 by failing to

appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of James L. Underwood II's Colorado Peace Officer Certification No. B01368 (PID 126671).

Middle initial was listed incorrectly in agenda as James T. Underwood.

Approved unanimously

3. No. M15-13, **Lyndreth Wall Jr.**, Conditional Certification PID 130243. On April 13, 2010, respondent was convicted of one count of Harassment-strike/shove/kick § 18-9-111 (1)(a) C.R.S., a class 3 misdemeanor. *The Respondent was not employed as a peace officer on the date of the offense (Date of Offense November 22, 2009, – Not employed).* The Respondent has failed to comply with POST Show Cause Order M15-13 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of Lyndreth Wall Jr.'s Colorado Peace Officer Certification PID 130243.

Approved unanimously

4. No M15-14, **Christopher Avila**, Certification B01299 (PID 116972). On August 4, 2015, Respondent was convicted of one count of Harassment-Follow Person in a Public Place § 18-9-111(1)(c) C.R.S., a class 3 misdemeanor. *The Respondent was not employed as a peace officer on the date of the offense (Date of Offense February 6, 2015, – Date of Separation September 24, 2012).* The Respondent has failed to comply with POST Show Cause Order M15-14 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of Christopher Avila's Colorado Peace Officer Certification B01299 (PID 116972).

Approved unanimously

5. No M15-15, **Mico Malinzak-Fernandez**, Certification B16524 (PID 136425). On June 16, 2015, Respondent was convicted of one count of Official Misconduct, § 18-8-404, C.R.S., a class 2 misdemeanor. *The Respondent was employed as a peace officer on the date of the offense (Date of Offense January 6, 2014, - Date of Separation February 17, 2014).* The Respondent has failed to comply with POST Show Cause Order M15-15 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of Mico Malinzak-Fernandez's Colorado Peace Officer Certification B16524 (PID 136425).

Status as not employed and date of separation were listed incorrectly in agenda. Date of separation was listed as September 13, 2012, and Mr. Milinzak-Fernandez was employed as an officer at the time of the offense.

Approved unanimously

9. **Formal Rulemaking Hearing** Attorney General Cynthia Coffman
Board Counsel Stacy Worthington
Director Cory Amend

The formal rulemaking session was initiated at 10:38 am. Introductory information and instructions were presented by AG Coffman. All in attendance were asked to introduce themselves.

Director Amend read the Statement of Basis and Purpose for all Rule changes.

Rule 1 – Definitions

There was extensive discussion and clarification of the definition of “Conviction” as regards deferred sentences and juvenile adjudication. The legal definitions were clarified by Ms. Worthington, as well as POST’s options in revocation and denial of certification. It was suggested that we consider legislative options to address revocation or denial of certification due to deferred sentences and juvenile adjudication.

It was suggested that the change to Rule 1 paragraph (l) be stricken, as well as the reference to deferred sentences and juvenile adjudication in Rule 8 - Appeal Process for Peace Officer Applicants – Certification Denial as a Result of a Misdemeanor Conviction, Rule 9 – Revocation Hearings for Criminal Conduct, and Rule 14 – Fingerprint-Based Criminal History Record Check.

Rules 1 approved unanimously after deletion of reference to deferred sentences and juvenile adjudication. There are no changes to Rules 8, 9 and 14 after removal of these references.

Rule 4 – Subject Matter Expert Committees

Rule 5 – Hearings

Rule 7 – Variances

Rule 10 – Basic Peace Officer Certification

Rule 11 – Provisional Certification

Rule 12 – Reserve Certification

Rule 13 – Renewal of Basic Certification

Rule 15 – Certification Examination - Basic, Provisional, Renewal

Rule 16 – Skills Examinations for Provisional and Renewal Applicants

Rule 17 – Certification Records

Rule 18 – Certifications, Suspensions, and Revocation – Basic, Provisional, Renewal, and Reserves.

Rule 24 – Skills Training Safety and Skills Program Requirements for Basic and Reserve Academies

Rule 25 – Academy Instructor Training Programs

Rule 26 – Academy and Academy Instructor Training Program Inspections

Approved Unanimously

Rule 28 – In-Service Training Program

There was discussion of the requirement for perishable skills training to include all three skills every year, and that it should be up to each agency head to determine whether all perishable skills should be required, or if all 12 hours of perishable skills could be in one or two skills alone. The difficulties of providing certain training and expenses incurred were mentioned as factors. POST is continuing to fund driving and firearms simulators for each training region to help allay these concerns. Skills waivers are available for agencies which do not need training in one or more specific skills.

Motion to accept Rule 28 as amended.

Roll call vote was requested.

Yea – 10

Nay – 5

Approved

Rule 29 – Hiring Standards

There was discussion regarding the requirement for psychological/physical evaluations and whether that should be mandated by POST. It was also requested that clarifying language be added to the citizenship verification sentence. A roll call vote was requested to strike paragraph (f), the requirement for psych/physical evaluation.

Nay – 10 votes

Yea - 7 votes

Motion failed

It was suggested that a psych/physical done within the past three years would be acceptable, and language was added to the rule, as well as the language to

the citizenship verification.

Yea – 16 votes

Nay – 1 vote

Approved

Formal rulemaking session ended at 1:16 pm, with a break from 12:08 pm to 12:18 pm. Two Board members left, but quorum still in effect.

10. **Proposed POST Board Meeting Dates for 2016**

March 11, 2016

June 3, 2016,

September 16, 2016

December 2, 2016

Approved Unanimously

Informational Items:

11. **Continuing Education Awards** Bob Baker
In-Service Training Manager

POST had in-service continuing education funds of 1.5 million for this fiscal cycle. Eighty-one agencies have utilized the funding, double the number for last fiscal cycle. There is presently \$310,000 remaining. Another notification will be issued and agencies will be encouraged to utilize those funds for training-related items.

12. **Comments from others on POST Issues**

Jo McGuire, co-chair of Better Way Colorado, spoke regarding the new Marijuana curriculum being presented to 4th, 7th and 10th grade students, and a petition presented by concerned parent groups across Colorado to AG Coffman. The groups feel the curriculum does not have a science/medical basis, utilize best practices, contains conflicting information, sends the wrong message to the students and does not stress harm to students strongly enough. They request more transparency and review of the curriculum by parents.

Elizabeth O'Donnell, concerned citizen and mother, spoke of her concerns that Denver Public Schools does not have any curriculum addressing the science of marijuana's harm to students. She requested we help by producing an appropriate curriculum.

Sue Anderson, concerned citizen, discussed the large number of dispensaries in Boulder indicates that there is huge “gray” market with marijuana going to students and others, and she feels that something must be done.

AG Coffman expressed appreciation for the interest and the petition, which she will read. She feels strongly that the education is well behind where it needs to be, one reason for creation of the curriculum.

Director Amend stated that the goal of the school outreach program is to get the correct, fact-based information to the student population, as there are at present no programs addressing these concerns. Utilizing School Resource Officers as marijuana experts for their schools is the ideal. POST is mandated by HB15-1287 to provide community outreach. This is one way we are fulfilling that mandate.

Carolyn Berry stated that we have piloted this program in four school districts across the state, with two control districts and two experimental districts that receive the full services of the program. Countering the impression that marijuana can’t harm adolescents is the express goal. She briefly discussed the medical and financial ramifications of marijuana use for adolescents. She explained the curriculum and the surveys further as well as the reasoning behind the chosen age groups. She also stated the primary makeup of the Board, which includes members from Colorado Department of Public Health and Education, Colorado Department of Education, Colorado Department of Transportation, Safe2tell, University of Colorado-Denver, and other educators, attorneys and medical personnel.

Dr. Kara Hoofnagle, POST Board member and head of Criminal Justice at Johnson & Wales University, specializes in marijuana and how legalization affects police officers. Officers are very clear that they want to educate adolescents in the realities of marijuana use and its potential harm.

13. **Adjournment**

Attorney General Cynthia Coffman

Attorney General Coffman adjourned the meeting at 1:50 p.m.