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DEPARTMENT OF LAW**

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**Peace Officer Standards
and Training**

**POST BOARD MEETING
RECORD OF PROCEEDINGS**
Friday, March 11, 2016

The Peace Officer Standards and Training Board held its 394th Board meeting at the Ralph L. Carr Colorado Judicial Center, 1300 Broadway, Denver, Colorado, with the following in attendance:

BOARD MEMBERS PRESENT

SHERIFF RON BRUCE, Hinsdale County Sheriff's Office
CHIEF JOHN CAMPER, Grand Junction Police Department
SERGEANT RAFAEL CHANZA, Colorado Springs Police Department
SERGEANT LONNIE CHAVEZ, Grand Junction Police Department
ATTORNEY GENERAL CYNTHIA COFFMAN
CHIEF JOHN COLLINS, Englewood Police Department
SHERIFF CHAD DAY, Yuma County Sheriff's Office
COMMISSIONER DAVE DONALDSON, Logan County
EXECUTIVE DIRECTOR STAN HILKEY, Colorado Department of Public Safety
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
DIRECTOR JANE QUIMBY, Colorado Mesa University DPS
SPECIAL AGENT IN CHARGE THOMAS RAVENELLE, Federal Bureau of Investigation
BRADLEY TAYLOR, Goetz Insurors
SHERIFF FRED WEGENER, Park County Sheriff's Office

BOARD MEMBERS ABSENT

CHIEF DAN BRENNAN, Wheat Ridge Police Department
DEPUTY AMANDA CRUZ-GIORDANO, Arapahoe County Sheriff's Office
CHIEF JOHN DYER, Rifle Police Department
SHERIFF ANTHONY SPURLOCK, Douglas 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, Special Project Manager
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

CHIEF DEPUTY ATTORNEY GENERAL DAVID BLAKE, Attorney General's Office
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
TRAINING MANAGER JOHN HOOD, Colorado Parks and Wildlife
ROGER HUDSON, Public Information Officer
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
COMMANDER KARL SMALLEY, Adams County Sheriff's Office
DEPUTY ATTORNEY GENERAL SCOTT TURNER, Attorney General's Office

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 Deputy Derek Geer of Mesa County Sheriff's Office, Deputy Travis Russell of Las Animas County Sheriff's Office, and Deputy Nathaniel Carrigan of Park County Sheriff's Office, who were killed in the line of duty.

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**

Motion to approve by Chief Phibbs. Approved unanimously.

Action Items:

7. **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. F15-06, **Timothy Joseph Kelley**, Certification B01376, PID 125320. On April 2, 2015, Respondent pled guilty to and was convicted of 1 count of Sexual Exploitation child/video 20+ items § 18-6-403 (3)(b.5)(5)(b)(II), C.R.S., a class 4 felony. *The Respondent was employed as a peace officer on the date of the offense (Date of Offense: January 6, 2014 – Separated: May 31, 2014).* The Respondent has failed to comply with POST Show Cause Order F15-06 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of **Timothy Joseph Kelley’s** Colorado Peace Officer Certification B01376, PID 125320.

Motion to approve by Exec. Dir. Hilkey. Approved unanimously.

2. No. F15-13, **Kisha Pricilla Aristide**, Certification B0038-2865, PID 0038-2865. On August 24, 2015 Respondent pled guilty to and was convicted of 1 count of Computer Crime – Commit Theft 1,000-20,000 § 18-5.5-102(1)(d), C.R.S., a class 4 felony. *The Respondent was not employed as a peace officer on the date of the offense (Date of Offense: March 8, 2014 – Never employed).* The Respondent has failed to comply with POST Show Cause Order F15-13 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of **Kisha Pricilla Aristide’s** Colorado Peace Officer Certification B0038-2865, PID 0038-2865.

Motion to approve by Sheriff McKee. Approved unanimously.

3. No. F15-14, **James Allen Klein**, Certification B8034, PID 121919. On August 3, 2015, Respondent pled guilty to one count of Forgery – Check/Commercial Instrument, §18-5-102 (1)(c) C.R.S, a class 5 felony. *The Respondent was not employed as a peace officer on the date of the offense (Date of Offense: December 28, 2013 –Separated: November 17, 2010).* The Respondent has failed to comply with POST Show Cause Order F15-14 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of **James Allen Klein’s** Colorado Peace Officer Certification B8034, PID 121919.

Motion to approve by Chief Camper. Approved unanimously.

4. No.F15-15, **Jack Miller Gardner**, Certification B5082, PID 123097. On September 18, 2015, Respondent pled guilty to one count of Accessory to Crime-F3, F4,F5, Internet Luring, §18-8-105 (1)(5) C.R.S. a class 5 felony, one count of Official Misconduct 1, §18-8-404 C.R.S., a class 2 misdemeanor, and one count of Obstructing a Peace officer, §18-8-104 (1)(a) C.R.S., a class 2 misdemeanor. *The Respondent was employed as a peace officer on the date of the offense (Date of Offense: May 29, 2014 – Separated: October 8, 2014).* The Respondent has failed to comply with POST Show Cause Order F15-15 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of **Jack Miller Gardner’s** Colorado Peace Officer Certification B5082 (PID 123097).

Motion to approve by Sheriff Day. 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, 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. M15-16, **Timothy Joseph Hay**, Certification B13127, PID 128993. On June 30, 2015, Respondent was convicted of one count of Assault 3 – Know/reckless Cause Injury, §18-3-204 (1)(a) C.R.S., a class 1 misdemeanor. *The Respondent was employed as a peace officer on the date of the offense (Date of Offense: September 18, 2014, - Separated October 4, 2014).* The Respondent has failed to comply with POST Show Cause Order M15-16 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of **Timothy Joseph Hay’s** Colorado Peace Officer Certification B13127, PID 128993.

Motion to approve by Sheriff Bruce. Approved unanimously.

2. No. M15-17, **Aaron Alexander Johnsen**, Certification B16876, PID 136859. On September 24, 2015, Respondent was convicted of one count of Harassment – Following Person in Public Place § 18-9-111 (1)(c) C.R.S., a class 3 misdemeanor. *The Respondent was employed a peace officer on the date of the offense (Date of Offense: September 14, 2015, - Separated September 22, 2015).* Respondent has failed to comply with POST Show Cause Order M15-17 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of **Aaron Alexander Johnsen's** Colorado Peace Officer Certification B16876, PID 136859.

Motion to approve by Chief Camper. Approved unanimously.

3. No. M15-18, **Steven Leon Davis**, Certification B10229, PID 115818. On April 1, 2015, Respondent was convicted of one count of False Reporting – False Information § 18-8-111 (1)(c) C.R.S., a class 3 misdemeanor. *The Respondent was employed a peace officer on the date of the offense (Date of Offense: May 07, 2014, - Separated May 19, 2014).* Respondent has failed to comply with POST Show Cause Order M15-18 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of **Steven Leon Davis' Colorado Peace Officer Certification, B10229, PID 115818.**

Motion to approve by Sheriff McKee. Approved unanimously.

4. No. M15-19, **Evan Kelly Mead**, Certification B11070, PID 119021. On November 18, 2015, the 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 a peace officer on the date of the offense (Date of Offense: September 30, 2015 - Separated December 23, 2006).* Respondent has failed to comply with POST Show Cause Order M15-19 by failing to appear at the scheduled Show Cause Hearing. Director Amend recommends revocation of **Evan Kelly Mead's Colorado Peace Officer Certification B11070, PID 119021.**

Motion to approve by Sheriff Bruce. Approved unanimously.

Presentations:

The following Subject Matter Expert Committees met prior to the regular POST Board meeting on March 11, 2016.

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

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

A. Curriculum Sgt. Graham Dunne, Chair

Last year a revised controlled substance class was approved. Today instructor requirements for the class were discussed, and, per POST's request, the committee approved a 16-hour (2-day) Train-the-Trainer course to be created by POST which will be required for all instructors of the course. The possibility of a test-out process for some people with extensive experience was discussed. Instructor requirements for Standard Field Sobriety Testing (SFST) were discussed and added to the upcoming Basic curriculum revision. Requirements will follow the existing state manual. Changes to the Instructor Methodology course, which is taken by those who wish to become full skills instructors, were discussed. Presentation times were expanded and verbiage was edited. New member Joe Frabbiele of Colorado Springs PD was approved.

B. Arrest Control Cmdr. Erik Bourgerie, Chair

The committee has had two meetings since the last Board meeting. At the January meeting the site safety plan for Aurora PD was approved, and qualifications for the Arrest Control Instructor program were discussed. The "21 foot rule" regarding defense against edged weapons was discussed. Today Robert Rabson of Loveland PD was approved both as a new committee member and as an assistant instructor. The committee completed an inspection at Larimer County SO. Larimer County issues an emergency contact card with student's named emergency contacts listed, which students keep with them at all times. The committee considers that a good idea for any academy. Ten new full skills instructors were approved. A new class, Proper Holds and Restraints, was submitted for approval, but was denied due to significant curriculum issues. Discussion followed regarding the types of classes the committee is expected to review and the qualifications that should be established for these classes in the future. Members will be creating objective criteria to offer guidance to not only committee members, but to those submitting courses for approval. The Basic Arrest Control Training program was reviewed and modified due to an issue in the case law section. A test out is scheduled for April.

C. Firearms Dep. Ed Kafel, Chair

Steve Oulliber of Aurora PD has resigned as a member. The committee approved new member Jason Petrucelli of Aurora PD. We have performed one group test out and one individual test out, and have approved six full skills instructors. Committee members will be performing a program inspection on March 26th at Alamosa. Today the committee discussed modifications to the curriculum, reallocating more hours to decisional shooting rather than equipment selection and weapon maintenance. The committee will submit their proposed revised curriculum at the April Academy Directors' meeting, and then present it for approval at the next POST Board meeting. The committee discussed the loss of officers in Colorado and determined that there is no mechanism in Colorado to provide "lessons learned" from these incidents. While the integrity of investigations must be protected, can a relatively generic mechanism be put in place to provide information to improve officer safety in

the state? The Board suggests contacting other states to determine whether we can mimic an already existing program. It was also suggested that a less formal contact with the affected agencies by SME members may be more helpful and avoid a detrimental impact on the investigation. It was mentioned that a DA decision letter may be a good resource as they usually go into some detail on shootings and are generally open-source.

D. Law Enforcement Driving Cmdr. Karl Smalley, Chair

Three new members were approved: Lt. Dave Clements of Pueblo County Sheriff's Office, Dep. Shannon Lofland of Arapahoe County Sheriff's Office, and Capt. Dean Paxton of Colorado State Patrol. Mike Cummings was presented as a non-law enforcement member, but was tabled for further information. A new site safety plan was approved for El Paso County Sheriff's Office use of the Pikes Peak International Raceway. Colorado Springs PD submitted a safety plan for that facility as well, which was approved. Arapahoe County submitted a driving instructor training program, which was approved. Aurora PD submitted a site safety plan for their new facility, which was approved. The committee approved one full skills instructor for Aurora PD. A 4-hour driving refresher course was submitted by CMTF and was approved. The committee is still revising the academy driving program as well as completing revisions to the driving instructor program. There is an inspection coming up in May.

9. **Legislative Update** Jenn Anderson

There have been six bills introduced that are most pertinent to POST.

HB 1254 – This bill requires POST to provide training curriculum on abuse and exploitation of persons 18 years and older who have intellectual and developmental disabilities (IDD). The training is to be implemented prior to June 30, 2016. No appropriation is attached to this bill. This has passed and been signed by the governor, and was effective 3/9/16. POST has begun work on that curriculum.

HB 1262 – The bill would require peace officers going from one Colorado law enforcement agency to another to provide a waiver allowing their hiring agency to have access to their personnel files from the previous agency. The bill grants immunity from liability to the agency providing the personnel files. There are several amendments that have been added to this bill. One requires that the POST Board deny certification to anyone who has entered into a deferred judgement or deferred prosecution for any felony or the misdemeanors listed that affect certification, if it is not in the public interest.

Board members believe that all persons defined as peace officer by statute should be included in this bill, instead of selecting only certain agencies.

There was discussion regarding deferred judgements and deferred prosecution, with POST Counsel Stacy Worthington outlining legality. The bill would require POST to review individuals in these situations to determine whether an individual should be certified, even if the deferred judgement or prosecution has been completed and the case has been dismissed. Some discretion is allowed with the "public interest" inclusion. At present individuals appeal to the Director, and can appeal that decision to the

Board. The Board believes the appeal procedure should remain the same. In this version of the bill, any individual with a juvenile adjudication could not be denied certification.

In regard to the personnel files, if an agency requests files from the previous agency, the previous agency must comply and provide them to the hiring agency. The hiring agency may need to travel to the previous agency to view them, rather than providing them via email or other means.

Deputy AG David Blake discussed juvenile adjudications, that they cannot be considered convictions. Ms. Worthington outlined that hiring parties can consider other factors in their hiring decisions, as long as they are not discriminatory. Advice from legal counsel should be utilized in hiring decisions.

There appears to be considerable work yet to do on the bill as there are many questions. House judiciary committee passed this bill and it will likely go forward. AG Coffman suggests a meeting with Senator Cook and sponsors to relay the issues, and to request clarification of some details.

HB 1263 – Updates the existing statute prohibiting profiling by peace officers by updating the definition of profiling and describing additional prohibited activities related to profiling.

HB 1264 – This bill prohibits a peace officer from intentionally using a chokehold against another person. The bill makes an exception if the officer believes he or she or another person is in imminent danger of death or bodily injury. Passed House Judiciary Committee.

SB 063 – This bill authorizes counties or municipalities to provide emergency services to counties/municipalities in bordering states, and assigns liability under the “Colorado Governmental Immunity Act.” Passed House and Senate, awaiting Governor’s signature.

SB 111 – The bill would create Reserve Peace Officer Category II status and confer that status to Colorado Mounted Rangers. The bill had significant opposition and a study was suggested. The matter will be studied over the interim.

10. **Triad**

Chief Pete Carey, CSPD
Sheriff Bill Elder, EPSO
Chief Dep. Todd Evans, EPSO
Chief Chris Heberer, Fountain PD
Dep. Chief Ron Reeves, Fountain PD

In November 2015 POST was asked to provide funding to build a police and fire training facility on Pikes Peak International Raceway property. The current range is used by 1500 officers from El Paso SO, CSPD, Fountain, and others, and will cease to exist in November, 2016. The organization was requesting \$750,000. Ms. Calomino and Director Amend discussed the issue extensively with Central Mountain Training Foundation (CMTF), the region in which the facility would be located. The issue has not previously been brought to the Board due to continuing concerns regarding other

funding, property/land issues, lack of staff for grant administration, and other issues. Approximately five weeks ago, Sheriff Elder of El Paso County Sheriff's Office discussed options with Director Amend and requested a presentation to the Board by Triad.

Chief Deputy Todd Evans presented history of the Triad, which was formed in 1993. The current range (which includes four ranges) has been operating since 1996. Funds for the range are administered by El Paso County, though operational decisions are made through monthly board meetings. Fifteen agencies use the range. The urgent need for a new facility in the area is due to the fact that the area is no longer in a remote location, but has I-25, Fort Carson, and retail stores nearby, making it potentially unsafe. In addition, drainage is causing deterioration of the existing facility and will make sections unusable in the near future. Existing ranges cannot accommodate 1500 officers.

Triad is requesting \$225,000 to begin development of a new facility. The Board discussed what grant funds might be used, what the funds could be used for, whether small agencies should have access to these funds, and suggested the establishment of a process for these types of large grant requests in the future. Providing these funds will open the door for future requests of this nature. Per Ms. Calomino, POST has set aside \$225,000 from the FY 2016 remaining funds, but cannot commit FY 2017 funds yet. Land ownership must change by May 30, 2016. If that does not take place, POST would still have time to spend that money by June 30, 2016. Ms. Calomino stated that the Board could make a motion to approve \$225,000 next year should the funds exist. There was discussion regarding reviewing next year's request in the grant application process as per the usual process.

Chief Phibbs made the motion to provide an emergency award of \$225,000 this year to Triad, contingent upon conditions, requirements, and procedures for future awards set by Director Amend.

Motion passed with Robert Lees abstaining and Sheriff Day opposed.

11. **Rule 28 – Update Report** Dir. Cory Amend

Director Amend thanked POST staff for their hard work in reaching out to each agency to attempt to achieve compliance for as many agencies as possible. Out of 254 agencies that were required to meet Rule 28 training requirements, 227 (89%) were in compliance. There were 13,202 officers required to meet training goals, with 13,081 (99%) in compliance with the rule. Only 121 officers did not meet the training requirements. Those agencies that were not in compliance will be unable to utilize POST funding this year. Some agencies had issues with the reserve officer requirement being the same as paid officers. There were some waivers issued, primarily for military or medical leave. POST has clarified Rule 28, and is streamlining procedures to make the process go more smoothly next year.

12. **POST Audit Update** Dir. Cory Amend

Director Amend has requested an audit of the POST organization to be performed by representatives of the International Association of Directors of Law Enforcement Standards and Training (IADLEST). They have reviewed POST rules and statutes,

and will be sending remote surveys to academy directors, agency heads, and POST staff, then will do on-site interviews with staff the third week of April. They hope to have a final report ready by the next Board meeting on June 3, 2016.

Informational Items:

13. **Non-Resident Certification**

Stacy Worthington
Board Counsel

POST has historically denied certification for non-citizen applicants who did not have legal permanent resident status. Statute does not require permanent legal residency, but only that the applicant is in the US legally and is permitted to work. Many other states surveyed spell out in rule and/or statute that officers must be citizens. It was determined that POST should change Form 1 to remove the word “permanent” and that POST confirm that applicants have a visa and a work permit/employment authorization card and are in the state legally. We may specify this in rule at some point, but not at present.

14. **Alternative POST Funding**

Dir. Cory Amend

POST staff is requesting direction on the use of POST grant funds for non-traditional requests, such as construction, Simunitions houses, training vehicles, etc. Historically, POST has received \$1.2 million, which has been used primarily to fund law enforcement training in traditional classroom settings. Due to the increased amount POST receives from vehicle registrations, POST received \$4 million for training last year. Several agencies have requested funds for non-traditional training needs. The Board suggests the Grant subcommittee, with Director Amend and staff, could identify criteria and processes for this type of request. Ms. Calomino suggests a separate meeting for this purpose. Director Amend states that this committee may meet more often than the annual Grant review meeting, and will discuss that with the members and staff.

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

No comments

16. **Adjournment**

Attorney General Cynthia Coffman

AG Coffman adjourned the meeting at 12:47 pm.