



ADMINISTRATIVE RULES OF MONTANA



23.13.102 DEFINITIONS

As used in this chapter, the following definitions apply:

- (1) "Allegation" means:
 - (a) a statement or accusation of misconduct made against a public safety officer to POST staff or the council by anyone;
 - (b) a statement or accusation of misconduct against a public safety officer made by the POST executive director acting upon any credible knowledge, information, or belief;
 - (c) the document or statement, prior to the notice of agency action, that initiates the preliminary investigation of an officer.
- (2) "Certification" or "certificate" means any basic or advanced standards and training certification granted by the council after completion of the specific requirements as set forth in these rules.
- (3) "Contested case" means a civil administrative proceeding that progresses pursuant to notice and hearing as outlined in MAPA and these rules, and which is initiated by a request for a hearing from an officer after the officer has received a notice of agency action imposing denial, sanction, suspension, or revocation by the director when the case could not be settled at the preliminary stage of review, investigation, or informal proceeding.
- (4) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, without regard to the sentence imposed or whether the charge is later dismissed.
- (5) "Council," "POST Council," or "POST" means the Public Safety Officer Standards and Training Council as created by 2-15-2029, MCA.
- (6) "Denial," "deny," or "denied" means POST's permanent refusal to issue a basic certificate in any discipline, due to any violation of ARM 23.13.702 or 23.13.803.
- (7) "Director" or "executive director" means the executive director of the Public Safety Officer Standards and Training Council.
- (8) "Employing authority," "employing agency," "appointing authority," or "governmental unit" means any entity that is statutorily empowered with administration, supervision, hiring or firing authority, training, or oversight over a public safety agency or officer. This may include but is not limited to: the chief of police, mayor, county attorney, city council, warden, sheriff, etc.

- (9) "Equivalency" means the process through which an officer who has successfully completed a basic course that is taught or approved by a federal, state, local, or United States military law enforcement agency, that satisfies the basic training requirement for that agency, may obtain a Montana POST basic certificate without completing the MLEA basic academy.
- (10) "Field training" means instruction, training, or skill practice rendered to an officer by another officer or officers on a tutorial basis during a tour of duty while performing the normal activities of that officer's employment.
- (11) "Hearing examiner" means the chair or the council's designated representative, who regulates the course of a contested case proceeding or other hearing held by the council, pursuant to 2-4-611, MCA and these rules. Powers of a presiding officer are the same as those of a hearing examiner.
- (12) "In-service training" means training which is not POST-approved training and which is provided to public safety officers to review and develop skills and knowledge for a specific officer's needs.
- (13) "Lateral POST training credit" means training which has been provided to a public safety officer who was formerly employed by a federal agency, state, tribe, county, municipality, city, or town, which is not a Montana public safety agency, and who is currently employed by a Montana public safety agency, when that training meets the requirements of POST-approved training. Lateral POST training credit will not be entered on an officer's POST transcript, but it may be used toward POST certificates as outlined in these rules.
- (14) "MAPA" means the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.
- (15) "Misconduct" means any action or conduct that could potentially result in denial, sanction, suspension, or revocation of POST certification pursuant to ARM 23.13.702 or a violation of the code of ethics contained in ARM 23.13.803.
- (16) "Misdemeanor probation/pretrial services officer" means a public safety officer who regularly performs the following functions as part of their work assignment:
 - (a) gathers information about pretrial defendants or misdemeanants through interviews and records checks;
 - (b) reports information regarding pretrial defendants or misdemeanants to a judge so the judge can determine the propriety of pretrial supervision, detainment, or sentence revocation;
 - (c) monitors pretrial defendants' or misdemeanants' compliance with court-ordered pretrial release or misdemeanor probation conditions;
 - (d) provides information and resources to pretrial defendants or misdemeanants to help prevent violations of court-ordered conditions; and
 - (e) reports violations of court-ordered conditions to the court.
- (17) "MLEA" or "Academy" means the Montana Law Enforcement Academy.
- (18) "Notice of agency action" means the document that:
 - (a) gives an officer the notice required under 2-4-601, MCA;
 - (b) informs the officer of the denial, suspension, revocation, or sanction imposed by the POST director and the supporting reasons;

- (c) initiates the 30-day time period in which an officer may request a hearing and thus initiate a contested case proceeding under MAPA.
- (19) "Party" means one side, or its representative, in a preliminary investigation or contested case proceeding, usually the respondent and/or POST.
- (20) "POST-approved training" means training reviewed and approved by POST pursuant to these rules for which POST gives training credit, including but not limited to basic, regional, and professional courses.
- (21) "POST-certified instructor" means a public safety officer, as defined in these rules, who has met the requirements for and received an Instructor Certificate pursuant to these rules, and who may apply for and receive POST-approved training credit pursuant to these rules for trainings the officer conducts.
- (22) "Presiding officer" means the chair of the council who holds all the same powers as a hearing examiner for the purpose of contested cases.
- (23) "Public safety officer" means an officer, as defined in 44-4-401, MCA. Nothing in these rules may be construed to apply the requirements of 7-32-303 or 44-4-403, MCA, to an elected sheriff or coroner.
- (24) "Reject" or "rejection" means POST's refusal of any request or application by a public safety officer or a public safety agency, which is not a denial as defined in these rules.
- (25) "Respondent" means the public safety officer against whom an allegation of misconduct has been made, or the officer's legal representative.
- (26) "Revocation" means the permanent cancellation by the director or council of a public safety officer's POST certificate, certification, and certifiability such that the performance of public safety officer duties is no longer permitted.
- (27) "Roll call training" means instruction or training of short duration, less than two hours, within any law enforcement and/or any public safety agency, conducted when officers change shifts.
- (28) "Sanction" means a consequence or punishment for a violation of ARM 23.13.702, 23.13.803, or the laws or rules of Montana.
- (29) "Sexual misconduct" is defined as:
- (a) any sexual activity, contact, or communication which occurs while the officer is on duty;
 - (b) any sexual contact without consent as defined in 45-5-501, MCA, without regard to whether such violation results in criminal charges or a conviction, including gratuitous physical contact with suspects or other civilians, such as unnecessary searches, frisks, or pat-downs;
 - (c) any sexual activity, contact, or communication, on or off duty, which the officer facilitates with public safety agency property, resources, or information systems;
 - (d) procuring, observing, or disseminating pornographic or sexually offensive material either on duty or using department property or resources, when such procurement, observation, or dissemination is not related to the officer's official duties;
 - (e) engaging in sexual harassment as defined in applicable laws; or

- (f) any other sexual conduct which, whether committed in the officer's capacity as an officer or otherwise, is prejudicial to the administration of justice or reflects adversely on the appointing authority's integrity or the officer's honesty, integrity, or fitness as an officer.
- (30) "Substance abuse" means the use of illegal drugs, other illegal substances, or legally acquired drugs in a manner that substantially limits the officer's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health or safety of the public or a fellow officer.
- (31) "Suspension" means the annulment, for a time period set by the director or council, of a public safety officer's POST certificate, certification, and certifiability, such that the performance of public safety or peace officer duties is not permitted during that period of time.
- (32) "Voluntary surrender" means a public safety officer agrees to the revocation of the officer's certificate.

Authorizing statute(s): 2-15-2029, MCA

Implementing statute(s): 2-15-2029, 7-32-303, 44-4-403, MCA

History: NEW, 2008 MAR p. 1587, Eff. 8/1/08; AMD & TRANS, from 23.13.701, 2014 MAR p. 2951, Eff. 12/12/14; AMD, 2017 MAR p. 1953, Eff. 10/28/17; AMD, 2018 MAR p. 2518, Eff. 12/22/18; AMD, 2020 MAR p. 580, Eff. 3/28/20; AMD, 2021 MAR p. 616, Eff. 5/29/21; AMD, 2022 MAR p. 1835, Eff. 9/24/22; AMD, 2024 MAR p. 607, Eff. 3/23/24.