



STATE OF NEVADA
COMMISSION ON PEACE OFFICERS' STANDARDS AND TRAINING
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Brian Sandoval
Governor

Richard P. Clark
Executive Director

06/10/2014

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption, Amendment and Repeal

Of

Regulations of the Commission on Peace Officers' Standards and Training

PUBLIC COMMENT HEARING NOTICE: The Commission on Peace Officers' Standards and Training ("Commission") will hold a public hearing at 1:00 p.m., on July 24, 2014, at the Prospector Hotel and Casino, Ghost Train Room, 1501 E. Aultman, Ely, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment and repeal of regulations that pertain to Chapter 289 of the Nevada Administrative Code (NAC).

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. **A statement of the need for and purpose of the proposed regulations.**

NRS Chapter 289 authorizes the Commission to adopt regulations setting the minimum standards for the certification, decertification and selection of peace officers. See, NRS 289.510. The Commission has adopted regulations establishing the grounds for the suspension or revocation of a peace officer's POST certification. See, NAC 289.290. The proposed regulation will add grounds for suspension or revocation when a peace officer has entered a plea of guilty, guilty but mentally ill or nolo contendere to a gross misdemeanor or felony. The proposed regulation will authorize the Commission to suspend or revoke a peace officer's POST certificate upon entry of a plea even if there is no conviction entered for the gross misdemeanor or felony conviction. The proposed regulation also removes the requirement that a peace officer complete six units of credit from an accredited college or university to obtain a Management Certificate. See, NAC 289.260. Finally, the proposed regulation repeals the regulation providing for the issuance of an Instruction Certificate. See, NAC 289.280. The need for the proposed regulation changes is to provide the Commission with another tool to ensure peace officers who commit acts constituting a felony or gross misdemeanor may have their POST certification suspended or revoked. Additionally, through this proposed regulation, the Commission and law enforcement leaders are attempting to increase professionalism amongst law enforcement officers, and provide clarity and consistency in those regulations.

The proposed regulation, referenced as LCB File No. R051-14, contain the following sections:

Section 1. Amending NAC 289.260(6) which contains the requirements for a Management Certificate to remove the requirement for six *units of credit from an accredited college or university*. The Intermediate and Advanced Certificates already have higher education requirements. The removal of this wording is needed to remove a conflict with the new standards. Making this change will properly align the Management Certificate with the Intermediate and Advanced Certificates.

Section 2. Amending NAC 289.290(1)(e) and (1)(g), which identify circumstances which constitute causes for the Commission to revoke, refuse or suspend the certificate of a peace officer.

1. Change subsection (1)(e) to include having been convicted of, *or entry of a plea of guilty, guilty but mentally ill or nolo contendere to*, a gross misdemeanor.
2. Change subsection (1)(g) to include having been convicted of, *or entry of a plea of guilty, guilty but mentally ill or nolo contendere to*, a felony.

Section 3. Repeal NAC 289.280 which establishes the standards for an Instruction Certificate. The Commission is repealing this regulation because an Instruction Certificate has been found to be unnecessary to improve the quality of instruction of peace officers.

2. **Either the terms, or the substance of the regulations to be adopted, amended or repealed, or a description of the subjects and issues involved.**

The proposed regulations, referenced as LCB File NO. R051-14, contain the following sections:

Section 1. Amending NAC 289.260(6) which contains the requirements for a Management Certificate, to remove the requirement for *six units of credit from an accredited college or university*. The Intermediate and Advanced Certificates already have higher education requirements. The removal of this wording is needed to remove a conflict with the new standards. Making this change will properly align the Management Certificate with the Intermediate and Advanced Certificates.

Section 2. Amending NAC 289.290(1)(e) and (1)(g), which identify circumstances which constitute causes for the Commission to revoke, refuse or suspend the certificate of a peace officer.

1. Change subsection (1)(e) to include having been convicted of, *or entry of a plea of guilty, guilty but mentally ill or nolo contendere to*, a gross misdemeanor.
2. Change subsection (1)(g) to include having been convicted of, *or entry of a plea of guilty, guilty but mentally ill or nolo contendere to*, a felony.

Section 3. Repeal NAC 289.280 which establishes the standards for an Instruction Certificate. The Commission is repealing this regulation because an Instruction Certificate has been found to be unnecessary to improve the quality of instruction of peace officers.

3. **The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:**

(a) Both adverse and beneficial effects; and

(1) Adverse effects:

There are no anticipated adverse effects.

(2) Beneficial effects:

The amendment to the regulations should lead to an increased level of professionalism among peace officers employed by law enforcement agencies. The proposed regulations will ensure the Commission can revoke or suspend the POST certification of peace officers who have engaged in serious criminal behavior. The proposed regulations will also provide consistency in the requirements for the Management, Intermediate and Advanced certificates.

(b) Both immediate and long-term effects.

There are no negative immediate and long term effects.

4. The estimated cost to the agency for enforcement of the proposed regulation.

The Commission does not project any extra costs for enforcement the proposed regulations.

5. A description of and citation to any regulations of other states or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The proposed regulation does not overlap or duplicate any regulations of state, local or federal governmental agency regulating the same activity.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

The proposed regulation is not required by federal law.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provision.

There are no federal regulations that regulate the same activity.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

This regulation does not involve or establish fees.

Persons wishing to comment upon the proposed action of the Peace Officers' Standards and Training Commission may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to Richard Clark, Executive Director, POST Commission, 5587 Wa Pai Shone Avenue, Carson City, Nevada 89701. **Written submissions must be received by the POST Commission on or before 5:00 pm on July 15, 2014.** If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Peace Officers' Standards and Training Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted, amended or repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada for inspection by members of the public during business hours. Additional copies of the notice and regulations to be adopted, amended or repealed will

be available at the POST Commission Administrative Offices, 5587 Wai Pai Shone Avenue, Carson City, 89701, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us> , on the Nevada Public Notice web site at <https://notice.nv.gov> and on the POST web site at post.nv.gov. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

The Notice of Hearing has been mailed to all criminal justice agencies on the Nevada POST mailing list and posted at the following locations:

CARSON CITY

Blasdel Building, 209 East Musser Street
 Nevada State Library, 100 Stewart Street
 Capitol Building, 101 N. Carson Street
 NV POST, 5587 Wa Pai Shone Avenue

LAS VEGAS

Grant Sawyer State Building, 555 Washington Avenue

ELY

White Pine County Sheriff's Office, 1785 Great Basic Blvd

COUNTY LIBRARIES (MAIN BRANCHES)

CARSON CITY LIBRARY
 900 NORTH ROOP STREET
 CARSON CITY, NEVADA 89702

CHURCHILL COUNTY LIBRARY
 553 SOUTH MAINE STREET
 FALLON, NEVADA 89406

LAS VEGAS-CLARK COUNTY
 833 LAS VEGAS BLVD - NORTH
 LAS VEGAS, NEVADA 89101

DOUGLAS COUNTY LIBRARY
 1625 LIBRARY LANE
 MINDEN, NEVADA 89423

ELKO COUNTY LIBRARY
 720 COURT STREET
 ELKO, NEVADA 89801

ESMERALDA COUNTY LIBRARY
 FOURTH AND CROOK STREETS
 GOLDFIELD, NEVADA 89013

EUREKA COUNTY LIBRARY
 10190 MONROE STREET
 EUREKA, NEVADA 89316

HUMBOLDT COUNTY LIBRARY
 85 EAST 5TH STREET
 WINNEMUCCA, NEVADA 89445

LANDER COUNTY LIBRARY
 625 BROAD STREET
 BATTLE MOUNTAIN, NEVADA 89820

LINCOLN COUNTY LIBRARY
 93 MAIN STREET
 PIOCHE, NEVADA 89043

LYON COUNTY LIBRARY
 20 NEVIN WAY
 YERINGTON NEVADA 89447

MINERAL COUNTY LIBRARY
 FIRST AND A STREETS
 HAWTHORNE, NEVADA 89415

TONOPAH LIBRARY DISTRICT
 167 CENTRAL STREET
 TONOPAH, NEVADA 89048

PERSHING COUNTY LIBRARY
 1125 CENTRAL STREET
 LOVELOCK, NEVADA 89419

STOREY COUNTY LIBRARY
 95 SOUTH R STREET
 VIRGINIA CITY, NEVADA

WASHOE COUNTY LIBRARY
 301 SOUTH CENTER STREET
 RENO, NEVADA 89520

WHITE PINE COUNTY LIBRARY
 950 CAMPTON STREET
 ELY, NEVADA 89301

NOTE: We are pleased to make reasonable accommodations for members of the public with disabilities who wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the POST Commission, in writing, at 5587 Wai Pai Shone Avenue, Carson City, Nevada 89701, or call Scott Johnston at (775) 687-7678, Extension 3335, no later than five working days prior to the meeting.

**SEE ATTACHED COPIES OF THE PROPOSED
REGULATIONS**

**REVISED PROPOSED REGULATION OF THE PEACE
OFFICERS' STANDARDS AND TRAINING COMMISSION**

LCB File No. R051-14

June 11, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1-3, NRS 289.510.

A REGULATION relating to peace officers; revising the requirements for the granting of a management certificate to a peace officer; revising provisions governing the suspension, refusal or revocation of a certificate as a peace officer; repealing provisions providing for the issuance and maintenance of an instruction certificate; and providing other matters properly relating thereto.

Legislative Counsel's Digest

Existing law requires the Peace Officers' Standards and Training Commission to adopt regulations establishing minimum standards for the certification and training of peace officers. (NRS 289.510) Under existing regulations, the requirements a peace officer must satisfy to obtain a management certificate include, without limitation, a requirement that the officer obtain intermediate and advanced certificates. (NAC 289.260) An officer may obtain intermediate and advanced certificates by satisfying certain requirements, including, without limitation, the completion of a certain number units of credit at a college or university, a certain number of years of experience or certain combinations of both. (NAC 289.240 and 289.250, as amended by sections 2 and 3, respectively, of LCB File No. R188-12) **Section 1** of this regulation removes the requirement that an officer must successfully complete at least six units of college or university credit to obtain a management certificate. Thus, under **section 1**, an officer who obtained the intermediate and advanced certificates through obtaining years of experience would not be required to successfully complete college or university credits to obtain a management certificate.

Under existing regulations, a certificate as a peace officer may be suspended, refused or revoked if the peace officer is convicted of a crime. (NAC 289.290) **Section 2** of this regulation provides that a certificate as a peace officer may be suspended, refused or revoked if the peace officer pleads guilty, guilty but mentally ill or nolo contendere to a felony or gross misdemeanor. Thus, under **section 2**, a peace officer's certificate may be suspended, refused or revoked if he or

she: (1) is convicted of, or pleads guilty, guilty but mentally ill or nolo contendere to, a felony or gross misdemeanor; or (2) is convicted of a misdemeanor.

Section 3 of this regulation repeals provisions of existing regulations which establish requirements for the issuance and maintenance of instruction certificates.

Section 1. NAC 289.260 is hereby amended to read as follows:

289.260 The Executive Director shall grant a management certificate to an officer upon submission of proof satisfactory to the Executive Director that the officer meets the following minimum requirements:

1. A current basic certificate.
2. A current intermediate certificate.
3. A current advanced certificate.
4. A current supervisor certificate.
5. Six years of experience as a peace officer, including at least 1 year of experience in a management level position and a current assignment in a management level position. The applicant must present proof that the current assignment meets the criteria for a management level position as set forth in NAC 289.057 by submitting a letter with the application that is signed by the administrator of the agency. The letter must include an organizational chart which demonstrates the applicant's position within the agency and must describe the manner in which the applicant's current assignment meets the criteria for a management level position as set forth in NAC 289.057.
6. ~~Six units of credit from an accredited college or university.~~

~~74~~ Successful completion of 200 hours of training in a management training program certified by the Commission which includes, without limitation, courses in the following subjects:

- (a) Introduction to management;
- (b) Public administration;
- (c) Financial administration;
- (d) Personnel administration;
- (e) Management and labor relations; and
- (f) Policy formulation.

Sec. 2. NAC 289.290 is hereby amended to read as follows:

289.290 1. Each of the following constitutes cause for the Commission to revoke, refuse or suspend the certificate of a peace officer:

- (a) Willful falsification of any information provided to obtain the certificate.
- (b) A permanent or chronic physical or mental disability affecting the officer's ability to perform his or her full range of duties.
- (c) Chronic drinking or drunkenness on duty.
- (d) Addiction to or the unlawful use or possession of narcotics or other drugs.
- (e) Conviction of, *or entry of a plea of guilty, guilty but mentally ill or nolo contendere to,* a gross misdemeanor. Upon criminal indictment or filing of a criminal complaint, suspension may be imposed.
- (f) Failure to comply with the standards established in this chapter.

(g) Conviction of, *or entry of a plea of guilty, guilty but mentally ill or nolo contendere to*, a felony. Upon criminal indictment or filing of a criminal complaint, suspension may be imposed. Upon conviction ~~or~~ *or entry of a plea of guilty, guilty but mentally ill or nolo contendere*, the certificate will be revoked.

(h) Conviction of a misdemeanor. If the employing agency recommends suspension or revocation following conviction of the employee for a misdemeanor, suspension or revocation may be imposed. In determining whether to suspend or revoke the certificate, the Commission will consider the type of conviction and other information provided by the agency indicating unprofessional conduct or similar undesirable activity by the officer that resulted in disciplinary action.

2. Denial, suspension or revocation procedures will not be considered by the Commission in cases where the employment of an officer is terminated for violations of the policies, general orders or similar guidelines of operation of the employing agency which do not constitute any of the causes for denial, suspension or revocation specified in subsection 1.

3. The employing agency shall notify the Commission any time that it becomes aware that one of its officers has been charged with a crime that could result in denial, suspension or revocation procedures. Upon receipt of information alleging any of the causes enumerated in subsection 1, the Commission will determine whether to pursue revocation or suspension of the certificate of the officer.

4. The Commission will notify the officer by certified mail at the officer's last known address of any pending revocation or suspension action and of the nature of the charges and the officer's right to appear and answer the charges. The officer shall, within 15 days after the date

on the certified mail receipt, respond in writing, notifying the Commission of his or her intended action with reference to the charges.

5. If the officer fails to notify the Commission within the specified time of his or her intention to appear in answer to the pending action, the Commission will:

(a) Consider the case on its own merits, using the statement from the head of the employing agency or the substantiated information derived from any independent investigation it deems necessary;

(b) Take no action pending the outcome of possible criminal action which may be filed against the officer; and

(c) Take no action pending the outcome of an appeal.

⇒ The Commission's decision will be determined by a majority vote of the members of the Commission present.

6. When an officer notifies the Commission of his or her intention to appear and answer the charges pending against him or her, the Commission will elect to sit as a whole at a hearing or designate an independent hearing officer to hear the matter and make recommendations in writing to the Commission. The Commission will review the recommendations of any such hearing officer and arrive at a decision by majority vote of the members present.

7. The Commission will notify the officer of its decision within 15 days after the hearing.

8. An applicant for a certificate who has not been previously certified, but who would be subject to revocation for any cause set out in subsection 1, will not be granted a certificate.

9. If, upon receiving a written allegation that a peace officer is in violation of any provision of subsection 1 and that the facts and circumstances indicate that suspension rather than

revocation would be in the best interests of the agency and law enforcement in general, the Commission will suspend the officer's certificate.

10. The Commission will provide each peace officer whose certificate is suspended with written notice of the suspension by certified registered mail. The suspension becomes effective 24 hours after receipt of the certified notice. The notice will contain a statement advising the officer of the right to a hearing.

11. Suspension of a certificate is not a bar to future revocation of the certificate and any prior suspensions may be considered as a factor if revocation is being considered by the Commission.

12. Five years after the revocation of a certificate, an officer may submit a written request to the Commission to allow him or her to reinstate his or her certificate. The Commission will schedule a hearing to consider whether to reinstate the officer's certificate. The Commission will notify the agency that requested the revocation of the date and time of the hearing. After the hearing, the Commission will determine whether to reinstate the certificate. If the certificate is reinstated, the Commission may establish a probationary period during which any misconduct by the officer would result in revocation.

Sec. 3. NAC 289.280 is hereby repealed.

TEXT OF REPEALED SECTION

289.280 Instruction certificate. (NRS 289.510)

1. The Executive Director shall grant an instruction certificate in a specific subject to an officer upon submission of proof satisfactory to the Executive Director that the officer meets the following minimum requirements:

(a) Two years of experience in the subject for which the certificate is issued or 2 years of education and 1 year of experience in the subject for which the certificate is issued.

(b) Successful completion of a formal course of instruction in the:

(1) Subject for which the certificate is issued; and

(2) Development of instructors.

(c) Development and submission for approval by the Executive Director of a detailed lesson plan for the subject for which the certificate is issued, including, without limitation, objectives for the performance of the students that can be measured with a written or practical examination.

(d) Submission to the Executive Director of a current written résumé covering the areas of:

(1) Personal identification;

(2) Educational experience;

(3) Work experience;

(4) Teaching experience; and

(5) Recommendation of the employing agency.

↳ Instructors may also be certified on the basis of extraordinary experience, education or expertise in an unusually technical subject area.

2. To maintain an instructor certificate, an instructor must teach at least one class in the subject for which the certificate is issued during the year immediately preceding each anniversary date of the issuance of the certificate. An instructor must provide evidence of compliance with this requirement upon the request of the Executive Director.