

1 STATE OF NEVADA

2 Commission on Peace Officer Standards and Training

3 Monday, November 4, 2019

4 2:00 pm - 3:00 pm

5
6 SOTO: Good.7 SHEA: You ready? Let's get it done. We're
8 recording, Chief. Go ahead.9 SOTO: Okay. Ready? Good afternoon. It is
10 November 4th, 2019 at 1431 hours. I'm going to call this meeting
11 to order. I'm going to start off with roll call. So, we'll start
12 on the left side of the room, and then we'll just work our way
13 around.

14 KETSAA: Jim Ketsaa.

15 MCKINNEY: Kevin McKinney.

16 TOGLIATTI: George Togliatti.

17 SHEA: Tim Shea.

18 ALLEN: Mike Allen.

19 MCGRATH: John McGrath.

20 SOTO: Jason Soto.

21 FREEMAN: Michele Freeman.

22 JENSEN: Mike Jensen.

23 SHERLOCK: And Mike Sherlock from POST.

24 JOHNSTON: And Scott Johnston from POST.

25

1 SOTO: All right. Sorry about those
2 technological issues. But good thing we've got Apple with us.
3 This is the time and place for a public comment hearing today.
4 The purpose of the hearing is to receive comments from all
5 interested persons regarding the adoption, amendment, and repeal
6 of regulations that pertain to Chapter 289 of the Nevada
7 Administrative Code, or NAC. This public comment hearing has been
8 previously noticed, pursuant to the requirements of NRS Chapter
9 233B.

10 The existing regulations authorize the Commission to
11 suspend, refuse, or revoke the certificate of a peace officer if,
12 among other circumstances, the peace officer one, is convicted of
13 or pleads guilty but mentally ill or nolo contendere to a felony
14 or gross misdemeanor, or two, is convicted of a misdemeanor. If
15 the peace officer is convicted of a misdemeanor and the employing
16 agency recommends the suspension or revocation, existing
17 regulations authorize the Commission to revoke or suspend the
18 certificate of the peace officer.

19 NAC 289.290. This proposed regulation authorizes the
20 Commission to suspend or revoke the certificate of the peace
21 officer without a recommendation from the employing agency if the
22 peace officer is convicted of a misdemeanor crime of domestic
23 violence as defined pursuant to federal law. I'm going to throw
24 this over to Scott Johnston for an explanation and history in
25 notices.

1 JOHNSTON: Thank you. Scott Johnston for the
2 record. The meeting today includes a public comment hearing, a
3 workshop and regularly scheduled meeting, has been posted in
4 compliance with the required regulations and statues. It was
5 emailed out to all law enforcement agencies. It was posted in the
6 POST Administrative Office in Carson City, Nevada State Capital
7 in Carson City, Blasdel State Building, Carson City, Nevada State
8 Library Archives, Carson City, Grant Sawyer Building, Las Vegas,
9 Carson City Sheriff's Office, White Pine County Sheriff's Office,
10 POST website at post.nv.gov, the notice website at notice.nv.gov,
11 and additional postings were done specifically for the public
12 comment hearing. And that requirement is to send the notice out
13 to all of the county libraries that are the primary library in
14 that county. And that was all completed, so that we're in
15 compliance with the meeting today.

16 SOTO: Thank you. Okay, I'm going to ask for
17 any comments from the public. Anybody have any comments? All
18 right. Seeing as there's none, any from the Commission? Okay.

19 Now, we're going to have a quick workshop. The purpose of
20 the workshop is to solicit comments from interested persons on
21 the following general topic that may be addressed in the proposed
22 regulations. Workshop has been, as Scott stated previously,
23 noticed pursuant to the requirements of NRS Chapter 233B. I'm
24 going to throw this workshop to Mike Sherlock for a topic
25 explanation and a little bit of background.

1 SHERLOCK: Thank you, Mr. Chairman. Mike Sherlock
2 for the record. As the Commissioner should recall at our last
3 meeting, the Commission voted to begin the rule-making process in
4 terms of amending the regulations. Specifically, currently under
5 the regulations, anyone who leaves service as a law enforcement
6 officer in the state of Nevada, after 60 months, that certificate
7 expires. It's as if they never had attended any training or went
8 to the Academy, they have to start all over at the five-year
9 mark.

10 It was proposed that that particular regulation be amended
11 to allow specifically those who transition from state employment-
12 law enforcement employment to federal employment when they are
13 assigned specifically here in Nevada during that time of working
14 in law enforcement on the federal level but within the state of
15 Nevada that that clock does not begin.

16 And also for those that work full-time in a POST-approved
17 basic training academy that also the time does not begin to toll
18 as they work for those academies. Or Academy in our case, Nevada
19 POST Academy would be the only academy that I can think of off
20 the top of my head that would fall into that category. And I
21 believe we have at least one person that would like to speak on
22 that particular topic.

23 SOTO: Okay. Well then, we will go on to
24 public comments. And anybody would like to speak on that.

1 SCHOFIELD: Good afternoon, Commissioners. My name
2 is Gary Scofield.

3 SPEAKER: Spell that.

4 SCHOFIELD: S-C-H-O-F-I-E-L-D. I am currently the
5 United States Marshal for the District of Nevada and former POST
6 Commissioner. So, it's a unique opportunity to speak before you
7 about this whole issue. I started the conversation when I
8 realized that I had employees within the Marshal Service that
9 were former - and specific, one's a Nevada Highway Patrol trooper
10 still serving under the fantastic leadership of Director George
11 Togliatti. And then also Washoe County Sheriff's Department. They
12 had gone over to the federal service. And if they stayed within
13 federal service upon retirement from federal service, they would
14 not be able to go back and get re-hired and placed within Las
15 Vegas, Clark County, and the state of Nevada without having to go
16 back through the POST Academy. And since they are still in law
17 enforcement, I thought it would be an appropriate change to the
18 rules and just kind of have a discussion here.

19 SOTO: Thank you for that. Does anybody have
20 any comment on that or questions or any additional points that
21 they wanted to bring up on this?

22 MCGRATH: Deputy Chief McGrath from Las Vegas.
23 I'm not sure that this change is the same, because there's two
24 separate issues. Could they be separated, or do we have to keep
25 it together as one change?

1 SHERLOCK: Mike Sherlock for the record. I don't
2 know if Mike, you want to comment. For us, it would be within the
3 same regulation either way. It would fall under that five-year
4 expiration. And you could separate them out. That's a language
5 issue between the two. Language, well, it may be the most
6 important part of this.

7 MCGRATH: Right.

8 SHERLOCK: But again, I think it goes back to
9 that training issue. It is similar from this point that if
10 someone is, even if they're in federal law enforcement but
11 they're assigned here in Nevada, it's likely that they are
12 somehow involved and up-to-date on current trends in Nevada law,
13 to a certain extent, just as someone who is training full-time in
14 Academy within the state that still works for POST. And I can
15 tell you for us, from the training side of it, you know, you have
16 officers assigned to Metro Academy. They don't lose their
17 certificate.

18 And so, what happens for me, in terms of recruiting, is
19 someone who comes to POST to work in the basic academy, that
20 clock starts ticking. So, there's some inequity there. Frankly, I
21 think everybody's having difficulty, including us at POST,
22 recruiting. If we are able to be able to say that you could come
23 over to the POST Academy and not lose your POST Certificate, and/
24 or at the same time, go to work for a federal law enforcement
25 agency and as long as you keep up to date, keep that POST

1 Certificate, it would help in terms of recruiting. But there are
2 similarities there.

3 JENSEN: Mike Jensen for the record. In terms
4 of whether you could split these apart, you certainly could. The
5 point that we're at in the rule-making process, it's just the
6 workshop stage, which means we don't even really have language
7 drafted at this point. It's just an opportunity for interested
8 parties to talk about the subject matter. But certainly, you
9 could set that up. And the reality is, when it goes to LCB,
10 they're going to put it in the language they want it to be in
11 anyway.

12 From a legal perspective, however, I think one of the
13 important things that I think should be taken into consideration
14 is past practice of the Commission in terms of denying
15 individuals who have come before the Commission who are outside
16 the five-year window. And it's been pretty consistent I think for
17 folks who have come to the Commission and have been denied if
18 they're outside the five years. So, I think would be important to
19 be able to tie the reason for the tolling of that five-year
20 period to something either in the existing regs or some other
21 basis for why the folks that are going to get this five-year
22 tolling are different from folks coming from out of state who go
23 out of state for a while - were certified in Nevada, go out of
24 state, then come back outside the five years. That's probably the
25 situation that the Commission sees most often.

1 So, from a legal perspective, I think that's an important
2 thing to consider. We look at it in terms of if it's challenged,
3 the challenge would be that you've acted arbitrarily or
4 capriciously, and you haven't been consistent with past practice.
5 So, it's important to keep that in mind I think when we're
6 talking about how to fashion this particular regulation.

7 SOTO: Any other comments?

8 MCKINNEY: I have a question. Kevin
9 McKinney for the record. My question is, will there be an avenue
10 for [inaudible] employees who submit their training into POST to
11 maintain their certification? Or is there training [inaudible] to
12 this period?

13 SHERLOCK: Mike Sherlock for the record.
14 So, from a practical standpoint, they could enter their training.
15 I don't know that that's necessary. All this proposal would do is
16 simply stop the tolling of time while recognizing that they
17 probably have different training requirements with that federal
18 agency. And again, I think Mike is right that we have to pretty
19 narrowly define where that sits and how that happens. But that's
20 a language issue. We already have things for reciprocity and that
21 kind of thing with federal law enforcement.

22 So, again, that's a language issue that we'd have to work
23 on moving forward. But they could enter their training. I don't
24 know that that's an issue. It's simply a change of status from
25 inactive in its expiration to remaining inactive until they

1 return to Nevada state service. Now under the regulations
2 already, if you return after four months, you have to update all
3 your training anyway. So, they would still fall under that. But
4 anybody that returned would have to do those perishable and
5 federal skills training before they could resume duties as a
6 Nevada peace officer anyway. If that makes sense.

7 SOTO: Any other questions or comments from
8 anybody?

9 SHEA: Tim Shea for the record. I read
10 through the language that's here, and I do realize you quoted a
11 much more concise and clear language than the actual statute. But
12 one of the things I'm reading here when it says, "employed full-
13 time in a training officer/supervisor/manager position at school
14 and primarily teaches a basic training course certified by POST
15 Commission." There's nothing in there that indicates a person has
16 to be involved in the instruction. It just says he has to be
17 employed at the institution.

18 So, I could be at an institution that teaches it, but I
19 have nothing to do with it. If this regulation is meant for the
20 POST Academy specifically, then why not just say "the POST
21 Academy?" Because right now, you've opened this up for other
22 places that teach this course. But I don't have to be involved.

23 SHERLOCK: Mike Sherlock for the record.
24 Again, that's a language issue that we can clean up. And if it
25 goes further, it would be up to the Commission to look at. But I

1 agree with you. One of the things that we want in there is full-
2 time because there's clearly some issues, whether or not they
3 understand all of it and are up to date on all the trends within
4 the state of Nevada. And if you have an officer that just comes
5 in and teaches a specific subject, that's another issue. And
6 that's the reason for the language of "full-time" I think. But
7 again, these are language issues that we'll clean up if the
8 decision is moving forward.

9 SHEA: Yeah, I'd just like to know the
10 specific law instead of ambiguous law, so that people have to
11 interpret somehow, some way that people have to determine what
12 our intent was back in 2019 when we passed this thing. And it
13 drives me nuts trying to figure those things out sometimes.

14 So, I like my specific thing, and the federal line the same
15 thing. It says, "recognized by the POST Commission for pursuant
16 for the training." I'd like for it to say that "are identical to
17 or approved by the training officer at POST" or something along
18 those lines.

19 SHERLOCK: Mike Sherlock for the record.
20 And that reference is just simply to federal agencies that we
21 already recognize for reciprocity. And that's why that language
22 is in there. Again, it's language.

23 SHEA: It's like, you know, use of
24 force for the state is pretty much different for the federal
25

1 government because they can do a lot of things that we can't, for
2 example.

3 SOTO: [laughs]

4 SHEA: So, I agree with the concept. I
5 think it's sound business. I just like the nice, specific
6 language [inaudible]. That's all.

7 SOTO: So, it sounds like we can work
8 on the language. If anybody has any suggestions, I'd reach out to
9 Mike and give him those suggestions. Specific to what your
10 concerns are with the language piece. Anybody else have any other
11 questions or concerns that they'd like to bring up while we have
12 this open? Okay. Well, with that, I think we can close this
13 workshop. Thank you. Thank you.

14 All right. So, now we're onto our regular scheduled
15 meeting. I want to start off real quick with the meeting by
16 recognizing Chief Ben Reed who's here with us. He's served on
17 this Commission for several years. He tirelessly gave himself to
18 make this a better Commission, and certainly gave me a lot of
19 learning advice through the years. And I just want to say thank
20 you. You are a leader, and it was nice working with you. And I
21 also enjoyed some time off with you and hanging out at the
22 ballgames and things like that, so thanks for all your work over
23 the years. And congratulations on your retirement. You earned it.

24 I just wanted to start off with a little shout-out to my
25 buddy, Ben. Okay. So, Item #1, Approval of Minutes for May 2nd

1 Meeting. Any comments on minutes from the May 2nd meeting? Okay.

2 Seeing as there's none, does somebody want to make a motion to

3 approve the minutes?

4 SHEA: I'll make a motion to approve
5 the minutes.

6 SOTO: And second?

7 FREEMAN: Michele Freeman. Second.

8 SOTO: Okay. We got a motion and second
9 from Ms. Freeman. All those in favor? [ayes all around] Opposed?
10 Motion carries unanimously. Okay. I'm going to - Item #2. I'm
11 going to throw it over to Mike Sherlock for an Executive Director
12 Report.

13 SHERLOCK: All right. I'll try to make it
14 short. I just wanted to thank Chief Ben Reed, who's retiring, for
15 his time on the Commission. And your voice will be missed.
16 There's no California people left on here, so.

17 SOTO: [laughs]

18 SHERLOCK: [inaudible] [laughter]

19 SHEA: Wait a minute.

20 SHERLOCK: Well, hey, sorry, Tim. Again,
21 Mike Sherlock for the record. I'll try to be quick. Let's start
22 with training. Many of you know Bo Turner, who was our Chief of
23 Advanced Training, retired. During a recruitment, we hired Chris
24 Carter as the new Training Division Chief. Chris has some great
25 leadership training and management background. He's a former

1 Chief of Police. He truly understands training. We're pretty
2 excited to have him on board. He's excited. And he started about
3 two weeks ago.

4 Our current Academy graduates November 14th. Everybody's
5 welcome who'd like to attend. Sorry, it's outside. It's in
6 Northern Nevada. [laughter] It might be snowing or raining. I
7 can't change the weather. We do what we can with our [inaudible].
8 Our next Academy begins in January. If you're interested in
9 sending people, get ahold of us. Basic training is telling me
10 that it's filling up quite fast for a change. Because I hear that
11 agencies are having some success in hiring. But get ahold of us
12 if you need a spot.

13 Just a reminder that we do continue to increase the
14 discipline and structure of our Academy. Some people like to call
15 it a "stress academy." That's not what I call it. But we've done
16 our own sort of study on our academies as we've increased that
17 discipline level. And we're seeing actually fewer recruits fail
18 out academically. There's a slight uptick in those who
19 voluntarily quit. But that's not necessarily a bad thing. And so,
20 we're pretty happy with the results so far on increasing that
21 discipline in our Academy.

22 As you all know, there were some monumental changes this
23 last legislative session. Some of those things we're talking
24 about today on the agenda. A couple of takeaways from last
25 legislative session, POST is doing what we can to help agencies.

1 Please understand that we received no new funding for these
2 mandates. We have put out some new objectives for domestic
3 violence training based on AB60. We just updated that document
4 again, and thank you to Metro and the Clark County DA for their
5 review and input on that. And that's on our website. And I
6 believe training's put that down to all training agencies.

7 AB478 and AB20-129 were two bills requiring training for
8 both continuing ed and in basic training. I'll talk about AB478
9 at a further agenda item. But let me say this, that if you are in
10 compliance with 478, you will likely also meet the mandate of
11 AB129. I'll talk about that later. But 129 requires training in
12 developmental disabilities and mandates that academies must
13 provide this training in their curriculum beginning on October
14 2019. We've already sent that out to our academies. But it also
15 requires incumbents to have the training. It's a one-time thing
16 by October of 2020. So, those that are currently certified under
17 AB129, they must have training in developmental disabilities by
18 October 2020. That said, 478, if you use what POST put out would
19 cover both of those, so you could kill two birds with one stone
20 when you do your mandatory training for 2020. And hopefully,
21 that'll help in terms of compliance.

22 In terms of the crime bill, as you know, this changed the
23 definition, and even in some cases, the elements of crimes. We
24 are in the process of updating all the basic training curriculum
25 to reflect these changes. We will have that new curriculum, along

1 with performance objectives, out to all the academies by January,
2 prior to that going into effect. But again, remember, we received
3 no funding. We are trying to do this as extra duties and get it
4 done.

5 In the area of professional development, we have updated
6 and revamped the supervisor's course and the management course.
7 We'll be rolling those out for 2020. One of the mandates for the
8 new training chief is to have regularly scheduled offerings with
9 both of these. That's one of the big complaints is not being able
10 to get to the supervisor school or management school. So, we'll
11 get that done.

12 We have been working with the federal DOJ, the COPS Office,
13 to try to get some training out here to Nevada. They are offering
14 a recruitment and retention seminar on December 10th in Reno. And
15 a symposium on rural policing issues on December 11th. Again, both
16 of these will be at the Reno Training Center in Reno. As most of
17 you know, the COPS Office does have funds available to pay for
18 travel and per diem for agencies that would want to attend those.
19 I believe both of these COPS Offices demand staff to attend. You
20 can check out our website for more on those two days. We are
21 working with COPS Office to bring leadership for line level
22 officer's training and leadership for executives. So, hopefully
23 we'll hear from that soon and get some of that training out.

24 On the standards side, we continue to work on obviously the
25 regulatory issues, as you see on the agenda. And hopefully coming

1 up with the next legislative session to deal with some of the
2 issues that are forthcoming there. We continue to do audits and
3 inspections to ensure compliance. Some of the usual exceptions,
4 training compliance was quite good for last calendar year. We
5 also, of course, are required to inspect standard employment
6 requirements. Namely ensuring backgrounds are done, and we
7 continue to work with agencies to improve in those areas.

8 From an administrative standpoint, budgeting, I know I've
9 talked a lot of about Marsy's Law and the projection that it
10 would affect POST's budget. So far, as we had predicted, we have
11 not seen a reduction in court assessment funds from our side. In
12 fact, we have been above authorization nearly every month so far,
13 which is quite unusual. Don't get me wrong. Just because we go
14 over authorization, we don't get to keep it. But the fact that we
15 are meeting authorization hopefully will help later in
16 negotiations in terms of improving our budget. That kind of
17 thing.

18 So, I know it's been a while since I last briefed the
19 Commission. Sorry for delaying on that. Mr. Chairman, then, I'll
20 leave it at that for now.

21 SOTO: No. You did pretty good. I'm
22 impressed. Thanks for keeping that somewhat brief.

23 FREEMAN: Michele Freeman. I have a
24 question. If you don't mind. So, for the recruitment training,
25 the workshop that's going to be December 10th, is that open to

1 non-Commission personnel as well? Or is it just for Commission
2 personnel?

3 SHERLOCK: My understanding from the COPS
4 Office, it's for sworn-

5 FREEMAN: Okay. I just wanted to verify.
6 Thank you.

7 SHERLOCK: And that's what they're looking
8 at specifically is recruiting for law enforcement.

9 FREEMAN: Yeah. So, follow-up - Michele
10 Freeman. Follow-up, just because we have a recruiter that's a
11 civilian. So, it would be advantageous for him to be able to
12 listen to some of that delivery. That's why I'm asking.

13 SHERLOCK: Yeah, Mike Sherlock for the
14 record. I would contact them; the contact is on our website.

15 FREEMAN: Okay.

16 SHERLOCK: Because they may allow them to
17 attend. I'm not sure.

18 FREEMAN: Thank you.

19 SHERLOCK: I don't know that they would pay
20 for it though.

21 FREEMAN: Okay.

22 SOTO: Any other questions from the
23 Commission for Mr. Sherlock on his report? Okay. Moving on, Item
24 #3, Discussion, Public Comment, and Possible Action Related to
25 the Workshop Item. The Commission to discuss and possibly take

1 action to continue the rule-making process to change Nevada
2 Administrative Code, Chapter 289. The Commission is considering
3 an amendment to its regulations that would toll the running of
4 the five-year time period in NAC 289.200, Section 8 during the
5 time the person is employed by a federal law enforcement agency
6 in the state of Nevada that requires its officers to complete
7 training recognized by the POST Commission, pursuant to NAC
8 289.200, Section 2. Or the person is employed full-time in a
9 training officer, supervisor, or manager position at a school
10 that primarily teaches at a basic training course certified by
11 the POST Commission. Throw this over to Mike for further
12 explanation.

13 SHERLOCK: And again, as we spoke in the
14 workshop, that the language is a different issue. Again, I think
15 it provides some help in terms of recruiting, but still
16 recognizes the need to be current on Nevada law and Nevada
17 procedure, that type of thing. And again, the language will be
18 massaged by LCB, believe me.

19 SOTO: We have any public comment on
20 this? Any discussion from anybody on the Commission? Any more
21 discussion? All right. So, I'm looking for a motion and a vote to
22 continue the rule-making process.

23 ALLEN: I'll make a motion to continue
24 the rule-making process. Mike Allen for the record.

1 SOTO: A motion from Mike Allen. A
2 second?

3 SHEA: Tim Shea, I'll second.

4 SOTO: Okay, and we have a second from
5 who?

6 SHEA: Tim Shea.

7 SOTO: From Tim Shea. Okay. Perfect.

8 All those in favor, say aye. [ayes all around] Opposed? Motion
9 carries. All right. Item #4, Discussion, Public Comment, and for
10 Possible Action, the Commission to discuss and possibly take
11 action to amend its regulations as set out in LCB file No. R006-
12 19 to provide the Commission with authority to suspend or revoke
13 a peace officer's certification upon conviction for a misdemeanor
14 crime of domestic violence as defined in 18 USC § 921(1)(33)
15 without the recommendation of the employing agency.

16 One, this is related to the pubic comment hearing just
17 held. And I'm going to throw this over to Scott Johnston for
18 explanation as to where the regulation is now.

19 JOHNSTON: Thank you, Mr. Chairman. Scott
20 Johnston for the record. Just want to outline a little bit of the
21 history on how this developed up to where it is today. Back in
22 February, this topic came up for discussion before the
23 Commission. The Commission agreed to get some more information on
24 this and see where it goes. Subsequently - that was in February.
25 In May, we had a workshop, and the Commissioners motioned to move

1 forward in the rule-making to the next process. Staff has done
2 that down to LCB, and what you have here is the finished language
3 that we got this summer. And I bring it to you today to take
4 action on it.

5 SOTO: Okay. Thank you, Scott. Do we
6 have any public comment on this? Any discussion from the
7 Commission? On this or the language? All right. So, I'm looking
8 for a motion and a vote to amend the regulation as proposed. Can
9 I get a motion from someone?

10 MCGRATH: John McGrath, I'll make a
11 motion.

12 SOTO: Thank you.

13 MCGRATH: Sorry.

14 SOTO: You saved me, John. And I'm
15 looking for a second.

16 MCGRATH: [laughs]

17 SHEA: I'll second. Tim Shea.

18 SOTO: Tim Shea seconds. All right,
19 motion and a second. All those in favor, say aye. [ayes all
20 around] And opposed? Motion carries unanimously. All right. Item
21 #5, Discussion, Public Comment, and for Possible Action. The
22 Commission to discuss and possibly take action to start the rule-
23 making process to amend NAC 289.230 to reflect the statutorily
24 mandated continuing education/training for peace officers. The
25 proposed amendment would remove the current 12-hour continuing

1 education/training requirement and add the statutorily mandated
2 training. I'm going to throw this to Mike again for explanation.

3 SHERLOCK: Thank you, Mr. Chairman. Mike
4 Sherlock for the record. As you know, AB478 required 12 hours of
5 specific training yearly for peace officers to maintain their
6 certification. NAC 289.230 also requires 12 hours of non-specific
7 training to maintain your POST certificate. We are finding some
8 confusion out with agencies. They're unclear as to whether they
9 have to do 24 hours, and how to handle the training requirements.
10 And obviously, you know, AB478 mandates very specific 12 hours.

11 I don't think, at least from staff's perspective, that the
12 Commission intends on mandating 24 hours for agencies and their
13 sworn staff. So, we would recommend that we look at some language
14 changes in 230-289.230 to reflect the new mandates under AB478.
15 And again, I'm not sure what that language would be. I would be
16 reluctant to put that specific language because we may be back in
17 two years-

18 SOTO: Well-

19 SHERLOCK: -to change it again. I know.

20 SOTO: That was going to be my
21 question.

22 SHERLOCK: But maybe there's a way that we
23 can clean that up and just refer to legislative mandates. And
24 keep the perishable and critical skills mandate at the same time.
25 But I think the big thing for us is to make sure the Commission

1 understands there is confusion. We have two different 12-hour
2 mandates. And that's where we're at statewide.

3 SOTO: Okay.

4 SHEA: Tim Shea for the record. So, I
5 looked into this quite a bit, because we earlier discussed
6 whether or not this was added. So, I went and listened to the
7 testimony for the committees of the legislator who was pushing
8 this. And clearly, he stated multiple times that this was to be
9 included within the current 12-hour requirement. He said the
10 problem with the state was we mandated 12 hours, but we didn't
11 tell the agencies what we thought was important for them to be
12 trained upon.

13 So, this was an attempt to fill some of that 12 hours of
14 required training with what the state decided was important for
15 our officers to be trained in. It was not designed to be added
16 to. Now, we can certainly go beyond the 12 hours. We can do 300
17 hours a year if we choose. But within our training hours, we must
18 do this. And if you only do 12 a year, you must do these
19 subjects.

20 Now, these subjects, according to him, might only take 20
21 minutes each. It wasn't designed to fill the 12 hours. It may
22 take 20 minutes to do each one of the subject areas. It was just
23 to be included with this. So, I think the intent [inaudible] is
24 clear. And that our part of this should match the legislative
25 intent.

1 SHERLOCK: Yeah, Mike Sherlock for the
2 record. So, as you probably know, I opposed this bill in
3 legislation. I spoke to Speaker Frierson several times about this
4 bill. And I would agree with your assessment that the problem is
5 the agreement was to remove the 12-hour requirement from the
6 mandate. That, for a variety of reasons, never occurred. So,
7 unfortunately, it does mandate 12 hours on those subjects. And
8 therein lies the confusion. And this body mandated 12 hours. And
9 now the legislature has mandated 12 hours. And so, you're right.
10 That's our intent is to try to clear that up. Clearly, you can do
11 more than 12 hours of training. That's not the issue. But the
12 mandate is the issue.

13 SOTO: Okay, thank you for that
14 explanation. Do we have any public comment on this? Yes. Come on
15 up.

16 DELEON: Hi.

17 SOTO: Hi, how are you? Please state
18 your name for the record.

19 DELEON: My name is Marco DeLeon. I am
20 the enterprise director for an organization called PoliceOne. I
21 just want to make you all aware of what we do. Because we've
22 actually helped several other states deal with situations like
23 this that have come up when the legislature comes in and passes a
24 law with mandates to do a significant amount of training. In this
25 case, Colorado did something very similar a few years back. An

1 organization and hundreds of hours of continuing education. One
2 of the things that we've done is actually had both POST certified
3 and nationally certified as well. We have a platform that allows
4 you to distribute that training, make sure it gets done. Make
5 sure compliance reports are done across the board.

6 I happen to sit on a committee on the IADLEST, part of the
7 Advisory Board, where I actually spoke with Director Sherlock for
8 a few minutes and found out that this legislation passed. So, at
9 PoliceOne, we are very much dedicated to helping our public
10 servants of that kind for 18 years. We've put some things in
11 place to help reduce costs so you guys will have man hours. So,
12 just know we're here to help. We've done it with thousands of
13 other agencies across the board when the legislature comes in and
14 makes decisions without thinking it all the way through.

15 SOTO: Well, thank you, Mr. DeLeon for
16 coming out here and giving us that information. We'll certainly
17 take it into consideration. Appreciate you. Any other public
18 comment? Any discussion or comments from the Commission?
19 Commission members? Okay. So, then I am looking for a motion and
20 a vote to start the rule-making process to amend the regulations
21 to reflect legislative changes. Can I get a motion?

22 SHEA: I'll make a motion to do what
23 you just said. [laughter]

24 SOTO: Made a motion to start the rule-
25 making process to amend the regulations. Can I get a second?

1 MCGRATH: John McGrath. Second.

2 SOTO: Second from John McGrath. Have a
3 motion and a second. All those in favor, say aye. [ayes all
4 around] Opposed? Motion carries unanimously. Okay, Item #6,
5 Discussion, Public Comment, and for Possible Action. The
6 Commission to discuss and possibly take action to delegate
7 authority to the Executive Director to make any decision
8 regarding litigation concerning any action or proceeding in which
9 the Commission or any member or employee of the Commission is a
10 party in an official capacity or participates or intervenes in an
11 official capacity. And I'm going to throw this over to Mike
12 Jensen for an explanation please.

13 JENSEN: Thank you, Mr. Chairman. All
14 right. Just to explain a little bit about why this is on your
15 agenda today. There was a Nevada Supreme Court opinion in 2018.
16 It was called Commission on Ethics v. Hansen. And the holding on
17 that case was that the Commission on Ethics had improperly
18 brought an appeal of a case to the Nevada Supreme Court because
19 they hadn't voted as a Commission to authorize the appeal.

20 And so, out of that particular case, the Nevada Legislature
21 in 2019 passed a bill: AB70. And AB70 dealt with a whole bunch of
22 different things related to the Open Meeting Law. But one of the
23 things it did was because of that decision allowed for
24 commissions within the state of Nevada to delegate authority to

25

1 make any litigation decisions to either the Chairman or the
2 Executive Director of a particular board or commission.

3 And so, based on that, we thought it would be prudent to
4 bring to the Commission this particular item to at least allow
5 you to consider whether you think it would be appropriate for
6 Commission-related litigation for the Executive Director to have
7 authority to make litigation decisions. When I talk about
8 litigation decisions, generally, the kinds of decisions that
9 would come back to the Board in a litigation case would be what
10 we call material type decisions, or what are the more important
11 kinds of decisions like settlement of a case.

12 If you had a case against the Commission and there was a
13 proposed settlement, in the past we would bring it back to the
14 Commission and you would have to approve a particular settlement
15 of a case before it could be settled. That's an example of one of
16 the types of litigation decisions. The one that was involved in
17 the Hansen case is another where the Commission's been sued, and
18 maybe there was an adverse ruling at the District Court level.
19 And there's a desire to appeal that ruling up to the Appellate
20 Court, as the Court said in the Hansen case, that would generally
21 be something that would have to be brought to the Commission in
22 order to give your authorization to do that.

23 Now, the problem with many of these things is, the
24 Commission meets four or five times a year. Litigation decisions
25 like those have timeframes attached to them, especially when it

1 comes to appeal. Generally, there has to be a notice of appeal
2 filed within about 30 days of the decision. And so, there often
3 isn't time to be able to bring those kinds of requests for
4 authorization back to the Commission in time to make those
5 deadlines.

6 And so, I think the reasoning for this one is probably to
7 bring it in to have the Commission vote consistent with kind of
8 the way that we've been doing things within the Commission staff
9 anyway, which is on those kinds of decisions with time deadlines
10 attached to them. Usually, the Executive Director in consultation
11 with the Chairman has been able to authorize moving forward on
12 those sorts of things.

13 With regard to settlements and appeals, I think it's up to
14 you guys what you're comfortable with authorizing to have them. A
15 couple of the ways that I've seen this dealt with in other
16 commissions is they've put into their authorization what they
17 call a ratification provision, which essentially would be that
18 you would authorize on certain things like settlement a decision
19 to be made.

20 But the Commission would have to ratify that decision
21 within a certain period of time after that decision was made.
22 That may be best in the situation like a settlement type
23 situation where you might want to have a say in what happens, or
24 doesn't happen, as the case may be. With appeals, a broader
25 authority to make those decisions may be prudent. Because if you

1 were to later on decide that you didn't like that particular
2 appeal, that could still be a decision made by the Commission.
3 And the appeal could be withdrawn at that point. As opposed to a
4 settlement, once it's approved, it's going to be final.

5 So, I guess what we're looking for essentially today is a
6 motion to authorize the Executive Director to make litigation
7 decisions with regard to litigation as outlined in the motion.
8 And at your preference, if you want to break out things like
9 settlement or something else, certainly that would be appropriate
10 as well.

11 SOTO: Thank you, Mike, for that
12 explanation. Any discussion from the Commission?

13 SHEA: Tim Shea for questions. I assume
14 every commission that the state has now is going through the same
15 process. So, I was wondering if there might be some boilerplate
16 type language that basically covers all the commissions and how
17 they're deciding to do this so we're not all doing it differently
18 and can take a look at what our fellow commissions are doing.

19 JENSEN: Yeah. I have some very anecdotal
20 information from the ones that I'm aware of. There has not been
21 any formed language put out, for example, by the Attorney
22 General's Office on this yet. I'm not sure if they are not going
23 to do that. But you're right, there's probably going to be some
24 inconsistency, and it's probably going to rely a lot on the
25 comfort level of a particular commission in terms of how

1 comfortable you are with the Executive Director making decisions
2 primarily in those three areas. You know, settlements, appeals,
3 and initiating new cases. Those are kind of the three areas that
4 are the big material kind of decisions. So, I'm not anticipating
5 any time in the near future any kind of boilerplate, I'm sorry to
6 say. We probably aren't going to have that for you.

7 SOTO: Any other questions from the
8 Commission? Any public comment? All right. Seeing as there's no
9 more from the Commission or the public, I'm looking for a motion
10 and a vote to delegate the authority to Executive Director for
11 litigation decisions. Can I get a motion?

12 ALLEN: Mike Allen. I'll make that
13 motion.

14 SOTO: Got a motion from Mike Allen.
15 Can I get a second from someone please?

16 FREEMAN: I'll second.

17 SHEA: Shea, I'll second.

18 SOTO: She beat you to it. Okay. We got
19 a motion and a second. All those in favor, say aye. [ayes all
20 around] Opposed? Motion carries unanimously. Okay, Item #7.

21 Discussion, Public Comment, and for Possible Action. Hearing
22 pursuant to NAC 289.290 § (1)(g) on the revocation of Bret W.
23 Theil, formerly of the Las Vegas Metropolitan Police Department,
24 certification based on felony convictions, including first-degree
25 kidnapping of a minor, lewdness with a minor under the age of 14,

1 sexual assault with a minor under 14 years of age, sexual assault
2 with a minor under 16 years of age, child abuse, neglect or
3 endangerment, and resisting a public officer with use of a
4 firearm. The Commission will decide whether to revoke Mr. Theil's
5 Category I Basic Certificate. And I'm going to throw this over to
6 Mike Jensen for it.

7 JENSEN: Thank you, Mr. Chairman. Mike
8 Jensen for the record. Today we have two revocation hearings.
9 This is the first of those two Commission hearings. And just for
10 the record, I would indicate that these hearings are being held
11 pursuant to NRS 289.510, which provides the Commission with
12 authority to adopt regulations establishing minimum standards for
13 certification and de-certification of officers.

14 Pursuant to that authority, the Commission has adopted a
15 Regulation 289.290 that establishes the cause for the Commission
16 to revoke, refuse, or suspend the certificate of a peace officer.
17 Section (1)(g) of 2-289.290 mandates that the certificate of an
18 officer will or shall be revoked upon a felony conviction. In
19 your packets today are the exhibits that I would submit and
20 [inaudible] action the Commission will take today. And I would
21 ask that those be admitted to be part of the record.

22 The exhibits, I'll just real briefly go through those.
23 Exhibit A is our form Notice of Intent to Revoke that was sent
24 and served on Mr. Theil, informing him of the Commission's
25 intended action. The law that provides for any intended action

1 and information regarding the specific convictions, upon which
2 any revocation action would be based, informed Mr. Theil the day,
3 time, and location of this hearing and his right to appear here
4 today to present evidence and cross-examine witnesses. It also
5 informed him that pursuant to your regulations, request to appear
6 generally has to be made within 15 days of the preceding
7 [inaudible] letter of the intended action of the Commission. It
8 let him know the scope of the hearing is whether or not his POST
9 certification should be revoked for a felony conviction.

10 Exhibit B shows that that Notice of Intent to Revoke was
11 served on Mr. Theil personally on September 9th, 2019, which
12 complies with both the NRS and Commission's notice requirements
13 under NAC. Exhibit C is a Personnel Action Report showing that
14 Mr. Theil's employment was terminated. The effective date on that
15 was May 3rd of 2019. Exhibit D is a certified copy of the Category
16 I Certificate of Mr. Theil that would be potentially revoked
17 today.

18 The criminal court documents start with Exhibit E, which is
19 a certified copy of the indictment, which as stated in the agenda
20 item, charged Mr. Theil with multiple felony counts of first-
21 degree kidnapping of a minor, lewdness with a minor under the age
22 of 14, sexual assault of a minor under 14 years of age, sexual
23 assault of a minor under 16 years of age, sexual assault and
24 child abuse, neglect, or endangerment. The indictment alleges

1 the—those felony offenses were committed in Clark County, Nevada
2 between the dates of August 26th, 2005 and January 5th, 2017.

3 Exhibit F is the judgment of conviction, which is the
4 primary document that would be relied upon today by the
5 Commission for any action. It is the judgment of conviction
6 pursuant to a jury trial. In this case, the jury found Mr. Theil
7 guilty of multiple felony counts as described earlier, which
8 relate to various sexual acts with a minor. Mr. Theil was
9 sentenced to an aggregate total sentence of life in prison with
10 possibility of parole after serving 323 years.

11 I think this is a pretty straightforward case based on the
12 conviction for revocation where the conviction involves sexual
13 conduct with a minor child, multiple counts. It certainly is an
14 extremely serious conviction and constitutes a gross violation of
15 public trust placed in peace officers. It's certainly
16 inconsistent [inaudible] activity convicted of and the conduct is
17 inconsistent with any activity that we would expect of our peace
18 officers. And the recommendation would be that Mr. Theil's
19 certificate be revoked.

20 SOTO: Any discussion from the
21 Commission? Any public comment? Okay. I'm looking for a motion
22 and a vote on whether to revoke Mr. Theil's basic certificate.
23 Can I get a motion?

24 MCGRATH: John McGrath for the record. I
25 make a motion to revoke Mr. Theil's Basic I Certificate.

1 SOTO: Got a motion from Commissioner
2 McGrath. Can I get a second?

3 FREEMAN: Second. Michele Freeman.

4 SOTO: Second from Ms. Freeman. All
5 those in favor, say aye. [ayes all around] All those opposed?
6 Motion carries unanimously. Item #8, Discussion, Public Comment,
7 and for Possible Action. Hearing pursuant to NAC 28-289.290 §
8 (1)(g) on the revocation of Robert J. Griffin, formerly of the
9 Clark County School District Police Department, certification
10 based on a conviction for grand larceny, a Category C felony -
11 NRS 205.220.1, 205.222.2. The Commission will decide whether to
12 revoke Mr. Griffin's Category I Basic Certificate. Again, I'm
13 going throw it to Mr. Jensen for the hearing.

14 JENSEN: Thank you, Mr. Chairman. Again,
15 this hearing is being held pursuant to NRS 289.510 and 289.290 §
16 (1)(g), which mandates a certificate be revoked for a felony
17 conviction. The exhibits that are in your packet support any
18 decision that may be made by the Commission today and I ask that
19 those exhibits A through H be admitted as part of any action the
20 Commission may take. Just real quickly go through those.

21 These start with the Notice of Intent to Revoke [inaudible]
22 Mr. Griffin, again informing him of his due process rights and
23 particular felony conviction that any action today would be
24 taken, would be based on a given opportunity to request that he
25 be able to appear and contest any action, including presenting

1 evidence, cross-examining witnesses, and hearing [inaudible]
2 hearing today.

3 Just go through the hearing again [inaudible] his
4 certificate should be revoked for a felony conviction. Exhibit B
5 is the Declaration of Service showing that he was personally
6 served with the notice on September 10th, 2019. And the
7 Commission, based on that, has complied with the legal notice
8 requirements. Exhibit C is the Personnel Action Report showing
9 Mr. Griffin's employment was terminated effective December 5th of
10 2018. Exhibit D is a certified copy of Mr. Griffin's Category I
11 Basic Certificate.

12 Exhibit E starts the court documents. The first of those is
13 the certified copy of the information that charged Mr. Griffin
14 with one felony count of grand larceny, in violation of NRS
15 205.221 and NRS-NRS 205.222 § (2). The information alleges that
16 on or between November 30th, 2018 and December 1st, 2018 within
17 Clark County, Nevada, he did then and there willfully and
18 lawfully and feloniously with intent to deprive the owner
19 permanently thereof steal, take, and carry leeway or drive away
20 property owned by West Career and Technical Academy having a
21 value over \$650. And it says a Canon camera was the object of the
22 theft.

23 Exhibit F is a guilty plea agreement where Mr. Griffin
24 agrees to plead guilty to grand larceny, a Category C felony.
25 Exhibit G is a certified copy of the court minutes, which show

1 that he entered his plea of guilty on March 20th, 2019 in open
2 court and pled guilty to grand larceny and felony, and that that
3 plea was accepted by the court. Exhibit G, again, is a certified
4 copy of the court minutes for the District Court of Clark County
5 showing that a judgment of conviction was entered against Mr.
6 Griffin for that grand larceny offense, a Category C felony.

7 He was sentenced at that time to a minimum of 12 months and
8 a maximum of 34 months in the Department of Corrections. That
9 prison sentence was suspended, and he was placed on probation for
10 an indeterminate period not to exceed five years. And one of the
11 special conditions was to pay restitution to Clark County School
12 District in the amount of \$43,473.

13 The evidence in this case shows Mr. Griffin has been
14 convicted of one count of grand larceny. That, again, is
15 extremely serious conduct for a peace officer, especially
16 involved in this type of activity of theft. It's certainly
17 inconsistent with the judgment and demeanor and conduct of a
18 peace officer and disqualifies him for being in a position of a
19 peace officer. And therefore, we would recommend his POST
20 certificate be revoked.

21 SOTO: Okay, thank you, Mr. Jensen. Any
22 discussion from the Commission? Any public comment? Seeing as
23 there's none, looking for a motion and a vote on whether to
24 revoke Mr. Griffin's Category I Basic Certificate. Can I get a
25 motion?

1 KETSAA: Jim Ketsaa for the record. I'll
2 make a motion.

3 SOTO: Okay, I got a motion. And can I
4 get a second?

5 SHEA: Tim Shea, I'll second.

6 SOTO: Have a motion and a second. All
7 those in favor, say aye. [ayes all around] Opposed? Motion
8 carries unanimously. Item #9, hearing pursuant to NAC 289.290 §
9 (1) (e) on the revocation of Earl T. Mitchell, formerly of the
10 Henderson Constable's Office, certification based on a conviction
11 for fraudulent conveyance, gross misdemeanor - NRS 205.330. The
12 Commission will decide whether to revoke Mr. Mitchell's Category
13 I Basic Certificate. This item has been withdrawn and will be
14 moved to the February meeting at the request of Mr. Mitchell's
15 attorney.

16 Item #10, Discussion, Public Comment, and for Possible
17 Action. Request from the Washoe County Sheriff's Office for their
18 employee, Deputy Chief Timothy K. O'Connor for an Executive
19 Certificate. I'm going to throw this over to Mr. Sherlock.

20 SHERLOCK: Thank you. Mike Sherlock for the
21 record. Thank you, Mr. Chairman. I do have the Executive
22 Certificates here with me. We have a bunch of them today. I'm not
23 sure if they're here. But I do have them for your presentation if
24 they are here. So, in terms of Deputy Chief O'Connor, staff did
25 review the application for the Executive Certificate and

1 determined that Deputy Chief O'Connor meets the requirements for
2 that particular certificate. We would recommend issuance of the
3 Executive Certificate.

4 SOTO: Okay. Any discussion from the
5 Commission? Any public comment? Looking for a motion and vote for
6 issuance of the Executive Certificate to Deputy Chief O'Connor.
7 Can I get a motion?

8 FREEMAN: Michele Freeman, I'll make a
9 motion.

10 SOTO: A motion. Can I get a second?

11 ALLEN: Mike Allen, I'll second.

12 SOTO: A motion and a second. All those
13 in favor, say aye. [ayes all around] Opposed? Motion carries
14 unanimously. Item #11, Discussion, Public Comment, and for
15 Possible Action. Request from the Washoe County Sheriff's Office
16 for their employee, Deputy Chief Jeffery S. Clark for an
17 Executive Certificate. Again, to Mike Sherlock.

18 SHERLOCK: Again, staff received
19 application for the Executive Certificate for Deputy Chief Clark.
20 After review, it was determined that Deputy Chief Clark meets the
21 requirements for the Executive Certificate, and staff would
22 recommend issuance of that certificate.

23 SOTO: Okay. Any discussion from the
24 Commission? Any public comment? I'm looking for a motion and a
25

1 vote for the issuance of the Executive Certificate to Deputy
2 Chief Clark. Can I get a motion? Can I get a motion?

3 TOGLIATTI: I move, Togliatti.

4 SOTO: Got a motion from Mr. Togliatti.
5 Can I get a second?

6 MCGRATH: John McGrath, I'll second.

7 SOTO: Got a motion and second. All
8 those in favor, say aye. [ayes all around] Opposed? Motion
9 carries unanimously. Item #12, request from the Carson City
10 Sheriff's Office for their employee, Captain James W. Primka for
11 an Executive Certificate. I'm going to turn this over to Mr.
12 Sherlock. I know that guy.

13 SHERLOCK: Once again, staff received an
14 application for the Executive Certificate for Captain Primka.
15 Staff found that Captain Primka met the requirements for the
16 Executive Certificate, and staff would recommend issuance of that
17 Executive Certificate.

18 SOTO: Any discussion from the
19 Commission? We have Sheriff Furlong here with us.

20 FURLONG: [inaudible] today. It's an honor
21 and privilege to receive [inaudible] through the chains of
22 commands [inaudible] educational opportunities [inaudible]. And
23 it's sincerely an honor to see that Captain Primka is awarded the
24 certificate. Thank you.

25

1 SOTO: Thank you very much, Sheriff.

2 Can I get a motion and a vote for issuance of the Executive
3 Certificate to Captain Primka? Go ahead.

4 FREEMAN: Sorry. I'll make a motion.
5 Michele Freeman.

6 SOTO: Could I get a second?

7 TOGLIATTI: Togliatti. Second.

8 SOTO: Have a motion and a second. All
9 those in favor, say aye. [ayes all around] Opposed? Motion
10 carries unanimously. Item #13, Discussion, Public Comment, and
11 for Possible Action. Request from the Henderson Police Department
12 for their employee, Deputy Chief David C. Burns for an Executive
13 Certificate. Turn this over to Mr. Sherlock.

14 SHERLOCK: Once again, we're just happy to
15 see that we have four times as many Executive Certificates as
16 revocations, so. It's a pretty good thing when that happens.
17 [laughter] The POST staff received an application for the
18 Executive Certificate for Deputy Chief Burns. After review, staff
19 determined that Deputy Chief Burns meets the requirements for the
20 Executive Certificate, and staff would recommend the issuance of
21 that certificate.

22 SOTO: Okay. Any discussion from the
23 Commission? Any public comment? All right, I'm looking for a
24 motion and vote for the issuance of the Executive Certificate to
25 Deputy Chief Burns.

1 SPEAKER: So moved.

2 SOTO: A motion. Can I get a second?

3 FREEMAN: I'll make a second. Michele
4 Freeman.

5 SOTO: Motion and a second. All those
6 in favor, say aye. [ayes all around] Opposed? Motion carries
7 unanimously. Item #14, Discussion, Public Comment, and for
8 Possible Action. Request from the Carson City Alternative
9 Sentencing for their employee, Chief Tad N. Fletcher for an
10 Executive Certificate. Again, I'll turn it over to Mr. Sherlock.

11 SHERLOCK: Thank you, Mr. Chairman. And I
12 think this is the last one for today. Staff received an
13 application for the Executive Certificate for Chief Fletcher.
14 After review, staff determined that Chief Fletcher meets the
15 requirements of the Executive Certificate, and staff would
16 recommend issuance of that certificate.

17 SOTO: Okay. Any discussion from the
18 Commission? Any public comment? I'm looking for a motion and vote
19 for issuance of the Executive Certificate to Chief Fletcher. Can
20 I get a motion?

21 ALLEN: Mike Allen, I'll make the motion
22 for the Executive Certificate for Chief Fletcher.

23 SOTO: I got a motion. Can I get a
24 second?

25 SHEA: Tim Shea, I'll second.

1 SOTO: Got a motion to adjourn. And can
2 I get a second?

3 ALLEN: Mike Allen, second.

4 SOTO: All right. Got a second. And all
5 those in favor, say aye. [ayes all around] Opposed? Motion
6 carries. Thank you for being here.

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