

1 STATE OF NEVADA

2 COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

3 MEETING TRANSCRIPT

4 Monday, July 12, 2021

5
6 A Workshop and Regularly Scheduled Meeting of
7 the Commission on Peace Officer Standards and Training was held
8 on Monday, July 12, 2021 commencing at 11:02 a.m. at 5587 Wa Pai
9 Shone Avenue, Carson City, Nevada.

10
11 COMMISSIONERS:

12 Jason Soto, Chairman

13 Kevin McKinney

14 Michael Allen

15 Russ Niel

16 Timothy Shea

17 George Togliatti

18 Tyler Trouten

19
20 STAFF:

21 Kathy Floyd, POST

22 Mike Jensen, Attorney General's Office

23 Mike Sherlock, POST

24
25 TRANSCRIBED BY: Marsha Steverman-Meech

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- 3 5. Hearing pursuant to NAC 289.230(4) and NAC 289.290(1)(f)
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1 PROCEEDINGS

2 SHERLOCK: All right, Chief, whenever you're ready.

3 FLOYD: Yup.

4 SOTO: Okay. Good morning. We're going to call
5 this meeting to order. This will be POST Commission meeting for
6 main, you know, all units.

7 SHERLOCK: (Inaudible.)

8 SOTO: It is Monday, July 12, 2021. For the
9 record, the time is 1102 hours. I'm going to turn this over to
10 Kathy Floyd for information on the legal postings and open meeting
11 compliance. Again, it's July 12, 2021.

12 SHERLOCK: Sorry, Chief.

13 SOTO: I'll move (inaudible).

14 FLOYD: This meeting agenda has been posted in
15 compliance with NRS 241.020. It's been physically posted here at
16 the POST Administration Building, and electronically posted at
17 post.nv.gov and notice.nv.gov.

18 SOTO: Great. Go ahead and start with roll call.
19 I'll start with myself, Jason Soto, Reno Police Department and
20 we'll just go ahead and go around the table, starting with Chief
21 McKinney.

22 MCKINNEY: Kevin McKinney, Carlin PD.

23 NIEL: Russ Niel, Nevada Gaming Control Board.

1 ALLEN: Mike Allen, Humboldt County Sheriff's
2 Office.

3 JENSEN: Mike Jensen, Attorney General's Office.

4 SHERLOCK: Mike Sherlock from POST.

5 FLOYD: Kathy Floyd from POST.

6 SOTO: All right. And then on the phone?

7 TOGLIATTI: George Togliatti, Department of Public
8 Safety.

9 SOTO: We got George.

10 TROUTEN: Tyler Trouten, Elko PD.

11 SOTO: Got Trouten.

12 SHEA: Tim Shea, Boulder City Police.

13 SOTO: We got Tim Shea. Do we have anybody else
14 on the line? Okay. With that, we will go ahead and get started
15 with item number 1, discussion, public comment, and for possible
16 action, approval of minutes from the May 6, 2021 regularly
17 scheduled POST Commission meeting. Do we have any comments from
18 any of our Commissioners on that? (Inaudible.) Any public
19 comments? Okay, seeing as though there are none, I am looking for
20 a motion to approve these minutes.

21 MCKINNEY: Kevin McKinney. I'll move to approve the
22 minutes.

23 SOTO: I have motion for a second?

1 NIEL: I'll second.

2 SOTO: Motion and a second. All those in favor,
3 say aye.

4 MEMBERS: Aye.

5 SOTO: Any Opposed? Motion carries unanimously.
6 Item number 2, Executive Director Report. I'm going to turn it
7 over to Mike Sherlock.

8 SHERLOCK: Thank you, Chief. Mike Sherlock for the
9 record. I'll try to be brief. In terms of the POST Training
10 Division, we have a new academy beginning next week. We are
11 completely full, which is a good thing for us. We continue to
12 adjust that program, look at ways to improve the outcomes. I think
13 as I previously mentioned, we were selected as one of only six
14 academies across the country to be part of a training retention
15 study. They'll use some of our curriculum, they're sending
16 researchers out our way, and they'll observe our academy and then
17 measure that retention of the curriculum, or what they were taught
18 throughout the academy, and then at the end of the academy. We
19 have scheduled management, supervisor, and basic instructor classes
20 for the year. I just remind everyone that these fill up quick, so
21 keep an eye on our website. In the Standards Division, with the
22 pandemic and then the session, we are seeing extreme delays in
23 getting our new regulations back, but we are starting to see them
24 finally. In terms of training and compliance, we're down to two

1 individuals, I believe we'll hear about today at the meeting, that
2 are out of compliance. You know, in terms of the legislative
3 session we -- as many of you are aware, have various bills that
4 affect training, affects enforcement, and of course affects this
5 Commission. Some of the more focused bills that we were concerned
6 about don't go into effect until 2023 and there may be some changes
7 before that, at least we hope, from a fiscal standpoint on some of
8 them. There are some relatively minor changes in our training
9 program coming out of the session and we are working on curriculum
10 for those right now. Of course, one of the big areas is use-of-
11 force changes, but we'll do our best to get that curriculum up to
12 date Specifically, to AB111, that bill passed and adds two
13 civilian numbers to the POST Commission. My understanding from
14 talking to the Speaker of the Assembly, he will appoint one new
15 member, and the President of the Senate will appoint one new
16 member. There was some talk that they wanted one from the North
17 and one from the South, although that's not part of the bill, but
18 what the bill does say, a member appointed pursuant to these two
19 new positions must have expertise in one or more of the following
20 areas: implicit and explicit bias; cultural competency; mental
21 health as it relates to policing and law enforcement; working with
22 children, elderly persons, persons who are pregnant, persons
23 experiencing mental-health crisis, persons with physical,
24 intellectual, or developmental disabilities, or persons from other
25 vulnerable populations, which was added at the last moment.

1 Additionally, the governor who appoints the nine sitting
2 Commissioners that we have now, along with the Senate and Assembly
3 Leader, shall, when making any of those appointments, consider the
4 racial gender and ethnic diversity of the Commission, understanding
5 that the law-enforcement appointees are statute-driven so there is
6 some limitations there that have not changed, Category 1, 2, 3,
7 rurals as opposed to Clark County and Washoe County. I have had
8 some inquiries from LCB on the makeup of the Commission, but I'm
9 not sure where any appointments may be at this point for the two
10 new civilian positions or whether or not they'll even let me know
11 or at what point. We're not really involved with that, so I
12 expected -- the bill does say that the two positions should be
13 nominated from local government or community-based organizations so
14 we took that to mean city councils, county Commission, or any
15 community-based organization can make the recommendation to the
16 leader of the Senate and the Assembly. The only other areas, I've
17 had some questions on AB409. 409 requires us to -- well, it
18 requires that in a background investigation of a perspective peace
19 Officer that the background include inquiries into bias, explicit
20 or implicit bias, on the part of that applicant. You know, from --
21 on one hand, from our perspective, we already require psych. Most
22 employment psychs already do that so we're not too concerned at
23 this point. I will say that it may pose a problem for Category III
24 because psychs are not mandated right for -- Category III does not
25 require a psych exam in the background. I think most agencies

1 outside of DOC do it anyway, so we will take a look at that. I'll
2 work with Mike a little bit and have him look at that (inaudible)
3 and -- Mike Jensen in particular because that could be a concern in
4 terms of -- from the regulation on the Cat III side, but the
5 others, I think with the psych that we are just aware that a
6 background psych includes those types of inquiries and I think we
7 will be covered so, and as more comes up, I'm sure we'll be putting
8 things out, but at this point that's about it from.

9 SOTO: Normally -- for the record, Chief Jason
10 Soto. One thing to appoint two members to this board, it might be
11 beneficial to them and (inaudible).

12 SHERLOCK: Mike Sherlock for the record. We do have a
13 new Commissioner class that we probably didn't give you guys, but
14 it may be beneficial, especially someone coming from the outside
15 that we could put on, and we do things like open-meeting law and
16 those other things that are of concern for the Commission.

17 SOTO: Item number 3, discussion public comment,
18 and (inaudible) -- sorry, did anybody else have any input for Mike
19 Sherlock and his director report? Okay. Item number 3,
20 discussion, public comment, and for possible action, discussion on
21 the current requirements to obtain POST Executive Certificate.
22 Commission to discuss whether to begin the rulemaking process, to
23 amend NAC 289.270 to allow eligibility that includes those peace
24 officers who have authority over non-peace officer managers.

1 Current language requires the applicant to supervise two peace
2 officers -- two peace officer managers. I'm going to turn this
3 over to Mike Sherlock to give us some information on this.

4 SHERLOCK: Thank you, Chief. Mike Sherlock for the
5 record again. So I'm sure most of you remember last meeting, there
6 was an application for an executive certificate. One of the issues
7 on that was whether or not they supervise two management level
8 positions in management level from a POST perspective is very
9 specific, they have to be peace officers and that kind of thing, so
10 we were asked to maybe include this on the agenda to see whether
11 there's an appetite to enter the rulemaking process. I can tell
12 you from staff perspective, it is a bit challenging for us. We
13 have a management certificate, we try to keep the executive
14 certificate at a level above management obviously, or why have that
15 certificate? We would agree that there's some room for language
16 change on that with the changing dynamics, more civilian managers
17 taking over what were traditionally sworn-management positions so
18 we understand that, but I think I would put out to the Commission
19 that, you know, changing that language may help a little bit in
20 terms of issuing of that certificate, but it really doesn't fix the
21 underlying issue for staff when we're reviewing these. I think
22 that staff would agree we're better served and we can maintain the
23 integrity of that certificate if we simply change the language to
24 limit the availability of that certificate to the chief executive
25 and the second in command, and I think if we took out the rank

1 distinction on there, it would alleviate some of the smaller
2 agencies who may have a sergeant that's second in command and we
3 would be okay with that. The problem we're having now is it's
4 getting lower and lower -- the ranks are spreading further out and
5 we're getting executive certificates that, to lieutenants for
6 example that we would never traditionally -- that's not what that
7 certificate was designed for. Lieutenant, unless they're second in
8 command, is a management-level position from our perspective so I
9 would throw that out there. If we do go into the rulemaking
10 process and look at changing the language that perhaps not only do
11 we change the ability to receive this certificate if you supervise
12 two management positions, including civilian, but also limit those
13 in the agency to rank or level within that agency that more fits
14 the design of that executive certificate. So with that, I would
15 yield back to the chairman and that would be our comments on
16 whether or not you want to enter rulemaking, and if so, where
17 should we focus.

18 SOTO: Well, let me ask you a question before I
19 turn to (inaudible) here. On -- I'm aware of how and why we
20 brought this up. I know that for that specific challenge, we voted
21 as a Commission to that individual (inaudible) department so we did
22 that as -- and that doesn't happen too often, it's not the sort of
23 thing that's common. So if we don't change the language, we still
24 have the ability to give them that (inaudible), we work together
25 (inaudible), correct?

1 SHERLOCK: Yeah. Mike Sherlock for the record. Yeah,
2 the executive certificate is one that comes before the Commission
3 and clearly, Commission can make their decision on those based on
4 the evidence presented so, yeah, it doesn't change that.

5 SOTO: And then I seem to remember that one of the
6 challenges -- for the record, Jason Soto. One of the challenges
7 was more so for maybe more rural agencies that didn't have quite
8 the same structure that some of the larger agencies had.

9 SHERLOCK: Yes. So Mike Sherlock for the record.
10 Yeah, and that is always the issue, and we understand that. Just
11 internally before it gets to the Commission, our staff has to look
12 at that, and here's what happens: a lieutenant has been to a lot of
13 management training, and then they want to then use that training
14 and get their executive certificate so we have a lot of -- you
15 know, it gets convoluted and it's very difficult for us to separate
16 that out because what would be one person, it's -- they use it for
17 their management certificate, but now we have someone else that
18 wants to use it for their executive and it's not easy for staff to
19 look at something and go that's above management level, where if
20 you limited that certificate to position, it would be a much
21 cleaner process to be honest with you.

22 SOTO: In terms of (Inaudible), does anybody have
23 any comments on this?

24 ALLEN: This is Mike Allen for the record. On the

1 current language, do you have access to that? Could you read that?

2 SHERLOCK: Let me pull that up. Mike Sherlock for the
3 record and so just off the top of my head, that position requires
4 that the applicant supervise two management level positions; have
5 200 hours so -- they have to have a basic, intermediate, advanced
6 supervisor, and management certificate first; six years of
7 experience, at least one year in an executive level position, and
8 that's the one that sometimes is tough for us because we're issuing
9 --

10 SOTO: Six years?

11 SHERLOCK: Six years as a peace officer, but one year
12 at executive level, and so when you have someone that applies for a
13 management certificate and says they're at management level and
14 then a month later they apply for the executive certificate and say
15 they're at the executive level, you can see the confusion there.
16 You're either management or you're executive, you know, which the
17 - you know, if we change that language, we could clean that up.
18 200 hours of training at advanced management, in addition to the
19 training for the management certificate. So that's always an
20 issue, right? Someone at the lieutenant's level often has not been
21 to NA, or, you know, something of that level that we can easily
22 identify as being advanced management level. Then, they have to
23 supervise two management level positions. That's the current
24 requirements for that position.

1 ALLEN: Hey, this is Mike Allen for the record
2 again. It's always been my understanding in that executive level,
3 you hit on it earlier, was for the first and second person of the
4 agency, and I don't know if there'd be a way to strengthen the
5 language to make sure that that definition will satisfy everybody's
6 understanding of what the purpose is of that, and I think you
7 raised a good example of somebody who is a Sergeant, who is running
8 their agency. I do think that they should be recognized with that
9 next level of certification from POST. So that would be my two
10 cents. You can strengthen the language to make sure we define what
11 we're looking for as a Commission for that executive levels.

12 SOTO: For the record, Jason Soto. Let me throw
13 something out there too, and this is from an entirely different
14 side of the spectrum. For those that have larger agencies, those
15 executive certificates, I'm guessing and speculating here
16 (inaudible), that with those executive certificates comes
17 contractually oftentimes more pay and I don't want to see that get
18 abused from (inaudible). So if we look at the language, as Sheriff
19 Allen had stated, I think the approach would be to strengthen that
20 language (inaudible). It's pretty simple to me. (Inaudible), but
21 I just want to put that on record for those that aren't in the
22 larger agencies that I have seen that happen and sometimes it is
23 contractual and you get that bump, but you'd have somebody who
24 really isn't meeting the requirements to receive that certificate.

1 SHERLOCK: Sure, sure. Yeah, Mike Sherlock for the
2 record. I would agree and I think if we move away from specific
3 rank as the criteria and just go to whatever level that is, the,
4 you know, chief executive and the second in command or some
5 language along those lines may help in that area.

6 MCKINNEY: Kevin McKinney for the record. One of the
7 issues which I believe was brought up at the last meeting was
8 mainly again for the smaller agencies, the example that came up
9 with was Chief Trouten's agency, where they had a captain who did
10 not -- he didn't supervise two management positions. His issue was
11 he needs -- he's a division head, but he doesn't supervise and I
12 believe you have to have both in the current language. You have to
13 have both requirements. And so what I was -- I mean, one of the
14 things I thought of was eliminating the and in -- just in that
15 single sentence to where you could have either or.

16 SOTO: And I don't -- for the record, Jason Soto.
17 I don't have an issue with that either. I also think that maybe it
18 was probably in there anyways (inaudible) we can really strengthen
19 (inaudible) this criteria for all qualifying candidates' executive
20 certificate (inaudible),

21 SHERLOCK: Yeah, Mike Sherlock for the record. So I
22 would agree with that, and that is a way to clean that up also.
23 And just for the benefit of the Commission, how we work this is we
24 will deny these quite often but if the agency, as Sheriff Kenny,

1 you know, did last time, is if they feel that it's something they
2 want to bring to the Commission, we'd certainly put them on the
3 agenda, and that's what we last time and the Commission awarded the
4 certificate. We have no problem with that but understand that if
5 they don't meet that initial requirement that whatever the
6 regulation says, we will kick them back and deny them. So it's
7 just a more efficient process all the way around but we always will
8 allow them to come before --

9 SOTO: (Inaudible) due diligence, that is what we
10 should do if it comes to a good conclusion at the end of it, but we
11 don't know that just looking at a piece of paper.

12 SHERLOCK: Sure.

13 SOTO: We have to hear from the Sheriff himself to
14 let us know what challenges he was faced with. As Sheriff McKinney
15 said, sometimes you just don't have two people to supervise.

16 SHERLOCK: Exactly. Right. Okay.

17 SOTO: Okay, any other input from any other
18 Commissioners? Okay. So what I'm looking for then is a motion to
19 --

20 JENSEN: (Inaudible.) Sorry, Chairman.

21 SOTO: Go ahead.

22 JENSEN: I just wanted to -- a couple of legal
23 points I wanted to make for regulations you might find useful.
24 First is the importance of a condition like this, the condition

1 like this is to be specific, not to act arbitrarily so having
2 specific standards that can be followed by staff when it comes to
3 reviewing things that they feel is critical. If you start being
4 arbitrary, you know, and it's on who showed up to ask for the
5 executive (inaudible) of the individual, you run into potentially
6 problems, especially if your agencies are tying compensation to
7 that certificate, that could potentially create a problem. The
8 other is that as a Commission, you have authority to interpret your
9 own regs. By that, I mean that you can only get so specific with
10 your regs. You're going to have so many potential situations that
11 you may not be able to capture in the language. You may -- you
12 have the ability to interpret your regs consistent with the statute
13 to interpret them in a way that (inaudible). So you don't always
14 have to change the language of the reg I guess is the point of
15 that, you can interpret your regs. So those might seem like
16 conflicting things that I just said, but those are two important
17 points from the legal side of things. (Inaudible) you are having
18 trouble with that, you make sure that you're consistent and
19 interpret your regs, also consistent in your mission and your
20 statutes.

21 MCKINNEY: Kevin McKinney for the record. I would
22 agree with Mr. Jensen. However, I don't want to be in a position
23 where the Commission gets into regularly overturning the -- you
24 know, the administration's decisions. I would much rather be in
25 line, and that way we're all on the same page rather than

1 overruling decisions like that.

2 JENSEN: Yeah, and I think that's what I'm talking
3 about, consistency for staff, too. They need to have standards in
4 -- either in the regs or through your interpretation of your regs
5 that they can follow when they review, make recommendations and
6 that will help.

7 SOTO: Yeah, and I think -- for the record, Jason
8 Soto. I think that we can take a look at the language, Mike
9 Sherlock can take a look at this language and see if there's
10 something we can actually (inaudible), whatever these qualifiers
11 are that Mr. Jensen brings up so that we can have that consistency
12 (inaudible) because I would agree. We don't want to get into the
13 practice of having people come in and wanting the certificates.
14 That's not (inaudible). So at that point, I would be looking for,
15 including (inaudible) to bring back some language that strengthens
16 the language, does not weaken it, makes it more sensitive
17 (inaudible) so that large agencies and rural agencies can both
18 benefit from it. So with that, I will be looking for a motion to
19 (inaudible).

20 ALLEN: Mike Allen for the record. I'll make the
21 motion to move forward to look at the language for the executive
22 officer executive's POST certificate.

23 SOTO: (Inaudible) motion. Do I have a second?

24 NIEL: Second.

1 SOTO: Motion and second. All those in favor say
2 aye.

3 MEMBERS: Aye.

4 SOTO: Any opposed? Okay, motion carries
5 unanimously. Item number 4, discussion, public comment, and for
6 possible action of the hearing pursuant to NAC 289.230 subsection
7 (4) and NAC 289.290 subsection (1)(f), the suspension of James
8 Scally's, with the Nevada Department of Corrections,
9 certification(s) based on noncompliance with the annual training
10 requirements for 2020. The Commission will decide whether to
11 suspend Mr. Scally's Category II and Category III based
12 certificates. I'm now going to turn it over to Chief Kathy Floyd.

13 FLOYD: Kathy Floyd for the record. Pursuant to
14 NAC 289.230, a Peace Officer is required to complete specific
15 annual continuing education requirements to maintain their POST
16 certificates. The employing agency is required to ensure their
17 officers comply with the continuing education requirements,
18 including notifying their officers of the requirement and the
19 consequences of the failure to comply. An employing agency is
20 required to verify that their officers have completed the annual
21 continuing education requirements by December 31. These training
22 reports are submitted by the employing agency to POST via online
23 forms. NAC 289.230 number (4) requires the Commission to notify
24 each officer and his or her employing agency of any noncompliance,

1 and states the Commission will suspend the certificate of any
2 officer who does not complete the requirements of Subsection 1
3 within 60 days after the date on which he or she received the
4 notice of non-compliance. For the reporting year 2020, we sent
5 courtesy compliance reports biweekly, starting in December.
6 Noncompliance notices were sent to each agency administrator and
7 each SPOC approximately February 8 or 9. The two agenda items that
8 follow are results of annual training requirements that have not
9 been met. Agenda item number 4 is the suspension hearing for James
10 Scally's Category II and III basic certificates for noncompliance
11 with the annual training requirements for 2020. James Scally is
12 currently employed with the Nevada Department of Corrections.
13 Exhibit A is the email to the Department of Corrections point of
14 contact, Chief Christina Leathers, sent February 9, 2021,
15 addressing their noncompliant officers, the notices that needed to
16 be served, and a copy of the training report showing the list of
17 non-compliant officers. Exhibit B is the letter addressed to
18 Department of Corrections included in the above email, which
19 explains the attachments, the date restrictions to serve the
20 notices. Exhibit C is page 6 of the training plan compliance
21 report, which notes James Scally is non-compliant for all 2020
22 annual compliance subjects. Exhibit D is the notice of
23 noncompliance for James Scally. This notice explains he had been
24 reported by his agency as not meeting the mandatory requirement
25 pursuant to 289.230 for calendar year 2020. This notice goes on to

1 explain his Nevada Peace Officer's certifications are subject to
2 suspension if he does not remedy all reported training deficiencies
3 within 60 days of receipt of the notice. Failure to remedy the
4 training deficiencies will result in suspension. Exhibit E is the
5 declaration of service showing James Scally was served this notice
6 of noncompliance on February 10, 2021 by William Tobin. Exhibit F
7 is the email sent to Department of Corrections SPOC Chief Christina
8 Leathers requesting they serve Mr. Scally with the attached notice
9 of intent to suspend and return the declaration of service.
10 Exhibit G is the notice of intent to suspend for James Scally.
11 This notice explains to Mr. Scally that pursuant to NAC 289.230
12 number (4), the certification is subject to suspension for
13 noncompliance with the mandatory training and proficiency
14 requirements. It goes on to explain that on February 10, 2021, Mr.
15 Scally received a notice that he had not met the mandatory training
16 requirements for 2020 and has 60 days to remedy this. Sixty days
17 or more have lapsed since Mr. Scally received the notice of non-
18 compliance and the Commission has not received information showing
19 James Scally has completed all mandatory requirements. Pursuant to
20 NAC 289.290 (1) (f) person's Nevada Peace Officer certifications
21 will be suspended for failure to comply with the standards
22 established in this chapter. The notice of intent to suspend
23 includes the date, time, location of this Commission meeting, as
24 well as copies of NAC 289.230 and NAC 289.290. This notice advises
25 Mr. Scally that he had the right to appear before the Commission to

1 contest the suspension of his Peace Officer's certificate by
2 providing written notice to the executive director of the
3 Commission within 15 days of the date of the hearing. The
4 executive director of the Commission has not received any written
5 notice from James Scally. Exhibit H is the declaration of service
6 showing Mr. Scally was served the notice of intent to suspend on
7 June 3, 2021 by William Hutching (phonetic). Exhibit I provides
8 copies of James Scally's category II and (inaudible) certificates,
9 subjects of the suspension hearing. Based on the information
10 provided, staff recommends suspension of James Scally's Category II
11 and III Nevada Peace Officer's certificate.

12 SOTO: Okay, do we have any public comments on
13 this? Any comments from the Commission? The only question I have,
14 I think you said it, Kathy, (inaudible), but we haven't gotten any
15 correspondence back from Mr. Scally or the Department of
16 Corrections on this?

17 FLOYD: That is correct. Absolutely nothing.

18 SOTO: Right.

19 SOTO: Public comments or any comments from the
20 Commission (inaudible) suspend Mr. Scally's POST certificate?

21 MCKINNEY: Kevin McKinney. I'll make a motion to
22 suspend Mr. Scally's Category II and Category III certificates for
23 non-compliance.

24 SOTO: So we have a motion to suspend James

1 Scally's category II and III (inaudible). Do I have a second?

2 ALLEN: Mike Allen, I'll make the second.

3 SOTO: All those in favor, say aye

4 MEMBERS: Aye.

5 SOTO: Opposed? The motion carries unanimously.

6 Item number 5, discussion, public comment, and for possible action,
7 hearing pursuant to NAC 289.230, Subsection (4) and 289 -- NAC
8 289.290, Subsection (1)(f) on the suspension of Steven Menger's,
9 who is employed with a Laughlin Township Constable's Office,
10 certifications based on non-compliance with the annual training
11 requirements for 2020. The Commission will decide whether to
12 suspend Mr. Menger's Category I basic certificate. I am going to
13 again turn over to Chief Kathy Floyd.

14 Floyd: Kathy Floyd for the record. Agenda number 5 is the
15 suspension hearing for Steven Menger's Category I basic certificate
16 for noncompliance with annual training requirements for 2020. Mr.
17 Menger is currently employed with the Laughlin Township Constable's
18 Office. The situation happened a bit differently than the first
19 one. Sergeant Dahlheimer (phonetic), who is the point of contact,
20 called me on March 30th to notify me they had entered training in
21 error for Mr. Menger. Steven Menger had not completed the training
22 requirements to meet NAC 289.230 (b). The training was removed
23 from the database and the following information was generated:
24 Exhibit A is the email requesting the SPOC Sergeant Dahlheimer

1 arranged to serve the notice of noncompliance to Steven Menger;
2 Exhibit B is the training plan compliance report that reflects
3 Steven Menger did not complete item number 6 of his annual
4 compliance training. Item number 6 covers the topics listed under
5 289.230 (1) (b), which states complete not less than 12 hours of
6 continuing education and courses that address racial profiling,
7 mental health, the wellbeing of officers, implicit bias
8 recognition, De-escalation, human trafficking and firearms.
9 Exhibit C is the notice of non-compliance, which noted Steven
10 Menger had 60 days from receipt of this notice to complete his 2020
11 annual compliance training; Exhibit D is the declaration of service
12 showing Steven Menger was served his notice of noncompliance on
13 April 8th of 2021; Exhibit E is the email to Sergeant Dahlheimer
14 requesting he serve the attached notice of intent to suspend to
15 Steven Menger and the date range we needed it completed; Exhibit F
16 is the notice of intent to suspend for Steven Menger. It notified
17 him of his failure to complete his 2020 annual compliance, and that
18 per NAC 289.230 number (4), and NAC 289.290 (1) (f), his Nevada
19 Peace Officer certificate will be suspended for failure to comply
20 with the standards established in this chapter. The notice
21 provided him the date, time, and location of the Commission
22 meeting, and included copies of NAC 289.230 and NAC 289.290;
23 Exhibit G is the declaration of service showing Steven Menger was
24 served the notice of intent to suspend June 12, 2021; Exhibit H is
25 Steven Menger's Category I, basic certificate. Based on the

1 information provided, staff recommend suspension of Steven Menger's
2 Category I Nevada Peace Officer's certificate.

3 SOTO: Do we have any public comments on this?
4 Well, then, I'll (inaudible). (Inaudible) if not, looking for a
5 motion to suspend Mr. Steven Menger's POST certificate.

6 NIEL: Russ Niel for the record. I'll vote to
7 motion -- to approve the motion of agenda item number 5 as read
8 into the record by Chief Floyd to suspend Steven Menger's POST
9 Category I certificate.

10 SOTO: Motion. Can I get a second?

11 ALLEN: Mike Allen, I'll second.

12 SOTO: Motion and a second. All those in favor,
13 say aye.

14 MEMBERS: Aye.

15 SOTO: Opposed? Motion carries unanimously. Item
16 number 6, discussion, public comment, and for possible action,
17 request from the Carson City Sheriff's Office for a 6-month
18 extension pursuant to NRS 289.550 for their employee, Jacob
19 VanBeuge to meet certification requirements (extension to expire
20 December 26, 2021). I am going to turn it over to Mike Sherlock.

21 SHERLOCK: Thank you. Mike Sherlock for the record.
22 Clearly the pandemic has affected many aspects of employment, and
23 of course staffing, and the ability to get people trained. Here,
24 the Carson City Sheriff's Department has had trouble finding the

1 staffing levels necessary to allow certain training. With that
2 information, staff would recommend granting of the 6-month
3 extension for Mr. VanBeuge. This would give the Sheriff's
4 Department until December 26 to complete all the requirements for
5 certification, and we would recommend that.

6 SOTO: All right, do we have any public comment?
7 Comments from the Commission?

8 MCKINNEY: He is enrolled in the July 19 academy? I'm
9 sorry, Kevin McKinney for the record. Is that correct?

10 SHERLOCK: (Inaudible.) Mike Sherlock for the record.
11 I believe he has.

12 SOTO: Any other comments from the Commission?
13 Seeing as though there's not, I am looking for a motion to extend
14 the time to December 26, 2021 to complete certification for Mr.
15 VanBeuge.

16 MCKINNEY: Kevin McKinney, I'll make a motion to
17 extend Deputy VanBeuge's time for six months to December 26.

18 SOTO: I have a motion. Can I get a second?

19 NIEL: I'll second.

20 SOTO: Motion and a second. All those in favor,
21 say aye.

22 MEMBERS: Aye.

23 SOTO: Any opposed? The motion carries
24 unanimously. Right, item number 7, discussion, public comment, and

1 for possible action, requests from the Eureka County Sheriff's
2 Office for a 6-month extension pursuant to NRS 289.550 for their
3 employee, Barbara Barnum, to meet certification requirements
4 (extension to expire January 27, 2022). I am going to turn it over
5 to Mike Sherlock for details.

6 SHERLOCK: Again, Mike Sherlock for the record. Thank
7 you. The Eureka County Sheriff's Department has provided
8 information that their employee, Barbara Barnum, has sustained an
9 injury and was unable to complete the requirements of
10 certification. With treatment, she will return to full duty and be
11 able to complete the certification requirements with the extension.
12 Again, staff would recommend granting of the extension and again,
13 this would give her until January 27, 2022. I didn't confirm if
14 she's in next week's academy or not. She might be able to tell us,
15 but I don't know that.

16 SOTO: Okay. Do we have any public comment on
17 this?

18 BARNUM: I would --

19 SHERLOCK: So I'll have to explain that.

20 BARNUM: For the record, Barbara Barnum. I am
21 requesting six months extension due to super-manning over my dog a
22 day after I started my job and extending (inaudible). I've been
23 trying to find doctors over and over again. I finally found some
24 good doctors within the office today. (Inaudible) therapy, I cannot

1 do a pushup, but I'm getting there and I believe by January I'll be
2 good to go.

3 SHERLOCK: Mr. Chairman, Mike Sherlock for the record.
4 Just so the Commission is aware, our academy will start January --
5 mid-January. So in the past we've allowed this because once --
6 even though the extension may expire before the academy has been
7 completed, they're not exercising peace-officer powers within the
8 academy so it's not an issue, but the extension would allow her to
9 exercise peace-officer powers until that date, or the start of the
10 academy, either one, and we have done that in the past, just so you
11 know.

12 SOTO: All right, so I am looking for a motion to
13 grant the extension of time to be certified for Barbara Barnum
14 (inaudible).

15 ALLEN: Mike Allen. I'll make a motion to approve
16 the Eureka County Sheriff's Office request for the 6-month
17 extension for Deputy Barbara Barnum.

18 SOTO: I have a motion, do I have a second?

19 NIEL: I'll second.

20 SOTO: Motion and a second. All those in favor
21 say aye.

22 MEMBERS: Aye.

23 SOTO: Any opposed? The motion carries
24 unanimously. Item number 8, discussion, public comment, and

1 possible action. The Commission may not take any action on any
2 matter considered under this item until the matter is specifically
3 included on an agenda as an action item.

4 ALLEN: Mike Allen. I --

5 SOTO: Yeah?

6 ALLEN: -- I guess public comment on the POST
7 standards for wanting physical fitness standards for entry into the
8 POST academy. I know that this came up a while back with some of
9 us sheriffs, probably five, six years ago. Recently I attended a -
10 - the FBI National Command Course, which was just for sheriffs and
11 chiefs. It was a 40-hour training class back in the Washington DC
12 area, and I was able to look at the FBI entry-level standards for
13 their physical agility, physical fitness, and theirs is more on a
14 point system, and -- like, like, we have a candidate at this time
15 that can pass everything, but the mile-and-a-half run, and she's a
16 very quick runner, but once she gets into the mile and a half, that
17 puts her -- she fails the entire physical fitness standards. So I
18 was just wondering if there's an appetite to take a look at a new
19 system, where it would be point-based, and if you do fail one but
20 you pass everything else, there could be an opportunity to still,
21 you know, continue on with the law -- a career in law enforcement
22 at that time. So, I mean, I know that Director Sherlock has done
23 some extensive research on this, or he has the information, and I
24 was just wondering if there would be an appetite by the Commission

1 to look at this in a future meeting and (inaudible).

2 SHERLOCK: Mike Sherlock for the record, and
3 obviously, we'll put whatever you want on the agenda, if there's an
4 appetite to discuss it. I would only say this, that it's often
5 confused, the difference between different tests. Some tests are
6 about fitness level, right? So the FBI is looking at fitness level
7 and the point system works well on that, right, because you can
8 measure fitness in different ways. The issue for states like us,
9 we use a job-task related physical test so those events are not
10 about a fitness level. You can be totally out of shape. As long
11 as you can complete those critical tasks that were identified in
12 the validation study, you can still become a peace officer. So I
13 just want to make -- people often confuse the two things, a fitness
14 test and a task-related test, was what we use. So I understand
15 what you're saying and maybe that's what we could have a discussion
16 about, maybe we want to move to a fitness test. Obviously, that
17 would be something we'd have to talk to -- talk about, but right
18 now we're related to job tasks and the question always is the mile
19 and a half. Just really quick, the mile and a half is not about
20 chasing someone for a mile and half, it's about a three-minute
21 fight, and so when you look at job-task related tests, it changes
22 that perspective, right? Whether or not they can complete -- you
23 know, have the skill to complete a three-minute boxing match is the
24 difference between a fitness test, which only looks at the level of
25 that individual's fitness and so it's two different things, but

1 certainly, we can put it on the agenda for discussion at the next
2 meeting.

3 SOTO: Any comments from the Commission?

4 MCKINNEY: Kevin McKinney for the record. Idaho used
5 to have a scoring system I think similar to the FBI's. They
6 switched to our battery of tests but I believe -- and I just pulled
7 it up because I -- I -- they do have a point system that they score
8 the test on, but it's the same battery but they score it a little
9 differently. It's not just pass/fail, it's based upon certain
10 criteria. I don't know if that would be kind of a compromise or if
11 it's even worth looking at. I don't know, but that's an option.

12 SOTO: I have a question. (Inaudible.)

13 SHERLOCK: Again, Mike Sherlock for the record. I
14 think we could discuss it. There are some issues from a legal
15 standpoint I think and that kind of thing. But again, we could
16 create an agenda item to discuss that for sure.

17 SOTO: A question I have, for the record, Jason
18 Soto, from talking about folks (inaudible) in terms of physical
19 fitness tests that we provide, what is the percentage of
20 candidates, peace officers failing?

21 SHERLOCK: At least for us at the entry level it's --

22 SOTO: No, not at the entry level.

23 SHERLOCK: Oh, the certification level? I have --

24 SOTO: The reason I --

1 SHERLOCK: Not very many, I couldn't give you a
2 percentage.

3 SOTO: -- (inaudible) I'm not (inaudible). I have
4 maybe a little bit of a different take on it, but to me it's very
5 important. It's very important that you have the endurance to do
6 whatever it is that you need to do, and I don't know anything about
7 this individual that Sheriff Allen talks about (inaudible). I
8 don't know if there's something we can do as an agency to get her
9 to that level. I -- but I do know that when you're in the middle
10 of a situation that requires physical fitness, I don't want to get
11 into specifics, but it seems --

12 SHERLOCK: Yeah.

13 SOTO: -- so I have concerns on both sides, but I
14 understand it. I have candidates that are in the same boat,
15 officers that are in the same boat, and it's tough, usually
16 (inaudible).

17 SHERLOCK: Yeah. Mike Sherlock for the record. If I
18 had to put my finger on the pulse nationally right now, I think the
19 trend, which is strange to me because it is difficult to recruit
20 and hire right now, but the trend is to strengthen physical
21 fitness. We have -- well, three states now require annually that
22 you pass, maybe four now, I think you sent me one to also, Chief,
23 but that you have to pass the physical fitness test every year to
24 maintain your certificate and some of them, believe it or not, are

1 punitive. I don't want to send Mike over the edge here, but some
2 states are punitive that if you fail the PT test, they begin action
3 on your certificate and eventually take your certificate. I'm not
4 -- I'm just saying that's naturally what the trend is to strengthen
5 the physical-fitness requirements I think nationally is what we've
6 seen. So just to keep your mind around that, what's going on out
7 there.

8 SOTO: For the record, Jason Soto. I'm not
9 opposed to looking at it, I'm not, but I just think in this day and
10 age, wellness is as important as it's ever been. I think we
11 (inaudible) but I understand (inaudible). I am very open to
12 talking about it and seeing what the system looks like and learning
13 a little bit more cause I know that we had a stricter standard two
14 -- a year ago (inaudible) and I wasn't a hundred percent on board,
15 but again, challenges of recruiting. I don't want you to lose
16 great people in your department. I hope there's medium that we can
17 find that, you know. I do understand the need to have people that
18 are in fantastic that are employees and just struggling. I know
19 that's a clear-cut answer for physical fitness.

20 NIEL: Mike, I have a question. Russ Niel for the
21 record. The states that you've looked at, and I think -- I sent
22 you Texas, and they're not punitive, they're more incentive driven.
23 Are the tests that these people are taking, especially the ones who
24 are already certified or working, are they standard across the

1 board, is there a graduation scale? Because obviously when you're
2 22 going through the academy, after 25, 30 years on the job, you
3 still have to meet that annual fitness requirement. Is there an
4 adjustment for age and just getting busted up?

5 SHERLOCK: So -- yeah, Mike Sherlock for a record.
6 Generally, no. If it's a job-task related physical test, then age
7 and gender and that kind of thing do not play into it because
8 you're talking about a job task, right? A bad guy doesn't say you
9 want me to run slower cause you're old, you know that type of
10 thing. Rather than a fitness level. A fitness level is a
11 different issue, right, so that's what we see out there.
12 Connecticut just did it. Their test is very similar to us, as per
13 Vermont, one of the two, they both have it now. It is punitive
14 that they take action on that certificate.

15 SOTO: Public comment. Let's just --

16 SHERLOCK: Oh, yeah.

17 SOTO: Let's just roll with it.

18 SHERLOCK: All right.

19 SOTO: We can talk about putting it on the agenda
20 --

21 SHERLOCK: Put it on the agenda, yes.

22 SOTO: -- so we can assess in depth (inaudible).

23 Any other public comment? (Inaudible.) Item number 9, discussion,
24 public comment, and possible action, to schedule upcoming

1 Commission meeting.

2 SHERLOCK: Mike Sherlock for the record. So again,
3 with easing of the virus restrictions we hope, we hope to get back
4 on track and do two meetings in the South, two in the North each
5 year. So that means the next meeting should occur in the South.
6 We would recommend that to do that during the annual Sheriffs and
7 Chiefs Conference in November. With that, we looked at having the
8 meeting on November 8 at 1:00 PM in Las Vegas. That would be after
9 the Sheriffs and Chiefs morning meeting, first day of that
10 conference, and so that would be our recommendation for our next
11 meeting, would be November in Clark County, Las Vegas during the
12 Sheriff's and Chiefs.

13 SOTO: I will be out of town that week.

14 SHERLOCK: Okay.

15 SOTO: (Inaudible.)

16 SHERLOCK: Okay. Okay.

17 SOTO: (Inaudible.) Anybody else have any public
18 comments or Commission comments on this? All right, I am going to
19 go ahead and make it November 8. We good with that? I'm looking
20 for a motion for the next upcoming Commission meeting for November
21 8, 2021.

22 MCKINNEY: I'll make a motion we have it the afternoon
23 of November 8 for the next Commission meeting.

24 SOTO: I have a motion. Can I get a second?

1 NIEL: Second.

2 SOTO: Motion and a second. All those in favor,
3 say aye.

4 MEMBERS: Aye.

5 SOTO: The motion carries unanimously. And then
6 finally, item number 10, public comment, looking for a motion to
7 adjourn.

8 ALLEN: Mike Allen. I will make a motion to
9 adjourn.

10 NIEL: I'll second.

11 SOTO: We have a motion and a second. All those
12 in favor, say aye.

13 MEMBERS: Aye.

14 SOTO: Motion carries. We are adjourned. Thank
15 you.

16 SHERLOCK: Thanks, everyone. Thanks, guys down south.

17 [end of meeting]

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