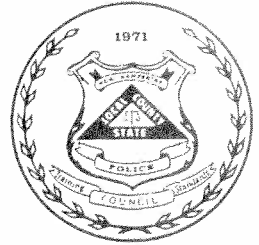




Sheriff Michael L. Prozzo, Jr.  
Chairman

State of New Hampshire  
**POLICE STANDARDS & TRAINING COUNCIL**  
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Donald L. Vittum  
Director

*Minutes*

*December 22, 2009*

*Call to Order*

The 391<sup>st</sup> meeting of the New Hampshire Police Standards and Training Council was called to order at 9:05 a.m. by Chairman Michael Prozzo, Sheriff of Sullivan County, in the John D. Morton conference room at the Arthur D. Kehas Law Enforcement Training Facility and Campus in Concord, New Hampshire.

NOTE: Colonel Booth arrived at 9:20 a.m.

**Members Present:** Chairman Michael Prozzo, Sheriff of Sullivan County; Associate Justice Stephen H. Roberts, Dover District Court; Chief James Sullivan, Hampton Police Department; Chief Gregory C. Dodge, Epping Police Department; Associate Justice Norman E. Champagne, Manchester District Court; Colonel Frederick H. Booth, New Hampshire State Police; Chief Anthony Colarusso, Dover Police Department; Vice Chancellor Charles Annal, Community College System of New Hampshire; Chief Peter Morency, Berlin Police Department; and, Attorney General Michael Delaney.

**Members Absent:** William L. Wrenn, Jr., Commissioner of the New Hampshire Department of Corrections, and Richard Foote, Sheriff of Cheshire County.

**Staff Present:** Director Donald Vittum, Captain Benjamin Jean, Captain Mark Varney, Captain Thomas McCabe, Chief (ret.) Timothy Merrill, Lieutenant Mark Bodanza, Lieutenant Stephen Kerlee, Investigative Paralegal Anne Paquin, and Council Secretary Kathryn Day. Also, Jean Medeiros, Business Administrator, and other Police Standards and Training Council staff members were present as the Council recognized Ms. Medeiros for her years of service.

**Guests Present:** CO Jessica Riendeau, New Hampshire Department of Corrections

*Approval of Minutes*

Mr. Annal moved for the Council to approve the minutes of November 24, 2009. Following a second by Chief Morency, the voice vote of the Council was unanimous in support, 7-0, with Chief Dodge and Chief Sullivan abstaining. NOTE: Colonel Booth was not present for this vote.

*Director's Report*

There were no comments or questions on the Director's report, and the Director had no additional remarks. Chairman Prozzo inquired about the dates for the planning session (in April 2010) and subsequent discussion concluded with the dates being moved to May 3 and 4, 2010. (See discussion at "General" on Page 8.)

*Previous and/or Unfinished Business*

**PUBLIC HEARING**

Chairman Prozzo convened a public hearing on the Rules change proposed to Pol Part 401.01 Lapse in Service approved by the Council at their meeting on October 27, 2009, at 9:16 a.m.

Chief Merrill presented the proposed change:

Add to Pol 401.01 Lapse in Service:

- (d) The certification of a police, corrections or probation/parole officer who is subject to an involuntary layoff shall not lapse if the officer is recalled and reinstated by the same agency as a police, corrections or probation/parole officer within a period of three years after the date of the involuntary separation.

Chief Merrill explained that the period for submitting written comments will be extended through the end of January 4, 2010. If the Council chooses to modify the proposed change after considering input from the public, changes will be made and the revised proposed change will be resubmitted to the Joint Legislative Committee on Administrative Rules. If no changes are needed in the proposed language, the proposed change approved by the Council will be resubmitted as a final proposal for approval by JLCAR at their meeting on January 15, 2010.

Chairman Prozzo stated that any member of the public who wished to comment may come forward and address the Council. Hearing no request to comment (no members of the public were present), the Chairman closed the public hearing at 9:21 a.m. Hearing no questions from the Council, the Chairman proceeded to the next order of business.

*New Business*

**Voluntary Surrender of New Hampshire Law Enforcement Certification**

Major Mark Peirce has notified the Council that he voluntarily relinquishes his New Hampshire law enforcement certification, effective with the date of his resignation from the Rockingham County Sheriff's Office on November 24, 2009.

Chief Morency moved that the Council accept Major Mark Peirce's voluntary surrender of his New Hampshire law enforcement certification, effective November 24, 2009. Following a second by Chief Colarusso, the Council voted 9-0 in favor of the motion, with Attorney General Delaney abstaining.

**CONSENT CALENDAR**

The Council reviewed staff recommendations for all items presented on the Consent Calendar. One request for an extension through the end of the 152<sup>nd</sup> Full-Time Police Officer Academy was withdrawn by the New Castle Police Department.

The revised Consent Calendar received unanimous approval following a motion by Chief Morency, seconded by Chief Colarusso, on a vote of 10-0.

One request for full-time certification based on prior training and experience was approved.

**Officer Timothy McClare, Greenland Police Department** will be granted full-time certification based on prior training and experience providing that First Aid and CPR certification is current. Officer McClare is not required to take the entrance fitness test because his certification did not lapse during his transition from part-time with unlimited hours to full-time.

One request for part-time certification based on prior training and experience was approved.

**Officer Frank M. Rossi, Hampton Police Department** will be granted part-time certification based on prior training and experience upon successful completion of entrance fitness test, medical exam, and the Law Package of the Part-Time Police Academy, with the stipulation that Officer Rossi continue working only in the direct presence of a certified officer until his certification is granted.

The Council approved funding for one request for specialized training grant funds:

**Hooksett Police Department** will be granted funds for Officer Justin Crotty to attend the Field Training and Evaluation Program at Roger Williams University in Portsmouth, Rhode Island, for five days beginning on March 1, 2010. **Amount: \$876.00**

### **(END OF APPROVED CONSENT CALENDAR)**

#### **NONPUBLIC SESSION: Requests for Fitness Testing Extension**

Extensions were granted for medical reasons to allow additional time for officers to comply with ongoing physical fitness testing requirements. As provided in RSA 91-A:3, II (a), discussion concerning the details of personnel matters took place in a nonpublic session, following a motion by Chief Dodge, a second by Chief Morency, and the 10-0 roll call vote of the members present, the nonpublic session commenced at 9:40 a.m.

A motion to seal the minutes of the nonpublic session was put forth by Chief Dodge and seconded by Chief Morency. The Council supported the motion without exception.

Following a motion by Chief Dodge, seconded by Chief Morency, the Council voted unanimously 10-0 to exit the nonpublic session. The nonpublic session concluded at 9:42 a.m.

In public session, Justice Champagne moved that the Council approve extensions for the following officers for six months beyond the date for compliance, until July 1, 2010:

**Officer William Duffy, Weare Police Department**

**CO Paul D. Cote, New Hampshire Department of Corrections**

**Officer Stacie Fiske, Northfield Police Department**

**CO Colleen Gagne, New Hampshire Department of Corrections**

**Officer Brian Landry, Windham Police Department**

**Officer Matthew C. Lockhart, Charlestown Police Department**

**Officer Sean McCarty, Gilmanton Police Department**

**Officer Peter Moisakis, Hampton Police Department**

**Officer Royce Pelkey, Jr., Hinsdale Police Department**

**Officer Scott A. Talbot, Surry Police Department**

**Officer Daniel Whitman, Fremont Police Department**

Colonel Booth seconded the motion, and the requests were unanimously approved by the members, 10-0, in a voice vote.

**NONPUBLIC SESSION: Corporal Jessica Riendeau, No. Country Correctional Facility**

In her letter dated December 16, Corporal Riendeau requested an opportunity to address the Council concerning her request for an extension of time to comply with requirements for ongoing physical fitness testing. Corporal Riendeau appeared on December 22 and stated that she wished to be heard in a nonpublic session.

As provided in RSA 91-A:3, II (a), discussion concerning the basis for Corporal Riendeau's request for an extension for medical reasons took place in a nonpublic session, following a motion by Chief Dodge, a second by Chief Sullivan, and the unanimous roll call vote of the members present (10-0). The nonpublic session commenced at 9:50 a.m.

After meeting in nonpublic session for some time, Chief Dodge, seconded by Chief Morency, moved for the minutes of the nonpublic session to be sealed. The Council supported the motion without exception.

Chief Dodge moved for the Council to exit the nonpublic session. Following a second by Chief Morency, a roll call vote of the Council passed the motion, 10-0. The nonpublic session concluded at 10:31 a.m.

A motion was put forward by Justice Stephen Roberts and seconded by Attorney General Michael Delaney:

**MOVED:** That the Council grant a waiver to CO Jessica Riendeau regarding compliance with the requirement for ongoing physical fitness testing through January 26, 2010, pursuant to RSA 188-F:27, III-j, to permit her to undergo a medical examination by a physician chosen by the Council, pursuant to RSA 188-F:27, III-e.

Justice Roberts stipulated that III-j, the basis for granting the waiver, gives the Council the authority to grant a waiver to the extent required to comply with federal or state law and that the basis for the request, III-e, provides that CO Riendeau has a right to request an additional medical examination, and that her request is documented in her letter to the Director dated December 16, 2009. He also stated that the basis for the duration of the waiver was the date of the next scheduled Council meeting.

The Director will move forward in scheduling an appointment for Corporal Riendeau to have an additional physical examination by a physician selected by the Council prior to the Council meeting on January 26, 2009. In the interim, some of the questions that remain open and will need to be reviewed with legal counsel are:

- Following a failed test, an officer is permitted a period of two years beyond the date for compliance to successfully pass a test. If medical clearance has not been given for an officer to take the test in the year they are due to comply, extensions of time are granted in six-month increments for a maximum period of two years. Are these two-year periods expected to run concurrently?
- If the additional time is needed for medical reasons, does the two years begin with the initial request for fitness testing extension, even if that will exceed two years beyond the date of compliance?
- Clarification is needed to better understand the intent of the statute, in particular, RSA 188-F:27, III-j: *To the extent required to comply with federal or state law, the council may grant a waiver, with respect to employment at a specific agency, to an officer who cannot meet the standards in paragraphs III-d through III-g.*

The Council approved the motion on a voice vote of 8-2, with Chief Dodge and Justice Champagne opposed.

#### *Other New Business*

#### **Request for Consideration: Officer Shayna K. Leibowitz, Roxbury Police Department**

Officer Leibowitz requested the Council consider granting her part-time certification based on her having completed the Law Package of the Part-Time Police Officer Academy. Officer Leibowitz did not attend the Council meeting and the Roxbury Chief of Police was invited to appear but he has indicated to the Director that he will defer to the pleasure of the Council in this matter. The Council considered the background information provided to Police Standards and Training Council and summarized by Captain Thomas McCabe:

On August 19, 2008, Chief Gary LaFreniere, Cheshire County Fair Association, sent a letter outlining his background investigation of Shayna Leibowitz for the position of Cheshire County Fair Association Security Officer. Subsequently, Ms. Leibowitz enrolled in the 254<sup>th</sup> Part-Time Police Academy as a law package student.

In October 2008 Chief LaFreniere was advised by Director Donald Vittum that Ms. Leibowitz would be required to attend the 255<sup>th</sup> Academy to repeat Search & Seizure due to a failing grade on a retest; also, she would be required to attend Constitutional Law due to an absence during the 254<sup>th</sup> Academy. Ms. Leibowitz completed the law package over the course of the next academy session. On February 27, 2009, Chief LaFreniere was notified that Ms. Leibowitz had achieved a passing grade for the Law Package of the Part-Time Officer Academy.

On November 16, 2009, a Form A was submitted to notify Police Standards and Training that Roxbury Police Department had hired Ms. Leibowitz as a part-time police officer. This Form A was returned by fax on November 20, 2009, to Roxbury Police Department

for corrections to Item 8 (indicated both full- and part-time) and Item 14-c (possible error). The response to Item 12, "Prior Law Enforcement Experience" was "No." The Form A as submitted indicated a negative response to Item 13 – "We are requesting certification based on prior training and experience."

An amended Form A was submitted on November 30, 2009, with the correct responses: Item 8 was corrected to indicate only part-time and Item 14-c was changed to indicate "Yes" instead of "No." On this same date, Page 10 of Form D was resubmitted with the physician recommendation section completed; also received that date was a Form E requesting consideration of prior training (and experience), on which Chief LaFreniere noted "NH Law Package" at Item 17.

To summarize, the Director stated that Officer Leibowitz attended the Law Package of the Part-Time Police Officer Academy as a Cheshire County Fair security officer. She did not receive training in firearms or driving and she was not subject to entrance fitness testing. For these reasons, the staff recommends granting part-time certification upon successful completion of the medical exam, entrance fitness test, and the entire program of study for the Part-Time Police Officer Academy, with the stipulation that Officer Leibowitz continue to work only in the direct presence a certified officer.

Chief Morency supported the staff recommendation for Officer Leibowitz to complete the full program of study and recounted that (in January 2008 for the 252<sup>nd</sup> Academy) the Council implemented an expanded curriculum for the Part-Time Officer Academy and then, (in August 2009, the 256<sup>th</sup> Academy), an entrance fitness test. This was done to strengthen the program, and the Council also clarified the requirement for direct supervision of officers not previously certified to address potential liability issues.

Concerning the recommendation for Officer Leibowitz to continue to work only in the direct presence of a certified officer, the Director stated that this was based on information provided to this agency that indicates her lack of any law enforcement experience and/or training.

Chief Dodge moved that Officer Shayna Leibowitz be granted certification upon successful completion of the medical exam, entrance fitness test, and the entire program of study for the Part-Time Police Officer Academy, with the stipulation that Officer Leibowitz continue to work only in the direct presence a certified officer. Chief Morency seconded the motion and the Council voiced their support, 10-0.

### **Compliance with Ongoing Physical Fitness Testing Requirements**

The Director asked the Council to make recommendations for a protocol for administering the physical test and to provide guidance on how to ensure compliance with the statute and with Council-directed protocols. Issues that have been raised include:

- Is a Rules change necessary to prohibit certain interventions, such as pushing, pulling, or running beside an officer performing the 1.5 mile run? What about offering verbal encouragement or otherwise motivating the officer vocally? Are any of these practices recommended by the Council?
- Should the officer performing the 1.5 mile run be permitted to wear a watch?

- Is it acceptable for an officer to take their test prior to January 1 of the year they are required to comply?
- What should be required of the officer administering the test/signing the verifying documents?
- If it is apparent that a test was not administered properly, what authority does the Council have to require an additional test administered by PST and performed at the Police Standards and Training Council facility?

Lieutenant Bodanza has been advised by legal counsel that “the current statute allows for medical clearance screenings by someone of the Council’s choosing to be done if the Council has reasonable grounds to believe the medical examination was not performed according to protocols. However, if the Council has reasonable grounds to doubt the validity of the fitness test, then the Council must adopt a rule containing such language allowing for the ability to mandate the officer(s) to come to PSTC for such required testing.”

With regard to administering the fitness test, Lieutenant Bodanza stated that the individual must be certified as physical fitness instructor by Police Standards and Training Council or an entity that offers training approved by the Council. The methodology for the sequence of activities (situps, then pushups, then the 1.5 mile run) is based on scientific data that is upheld by the Cooper Institute. It is recommended that the 1.5 mile run take place on a level surface that is clear of debris; however, there is no clear guideline in Council Rules that prohibits, for example, a course that is run downhill. There is no requirement to measure the course to verify that it is in fact 1.5 miles in length; does the Council wish to have distance verified?

Though the Council members had varying opinions on verbal interventions by the fitness instructor, they did not support physical contact. Cooper standards address the issue of pacing the runner, i.e. running beside them; physical intervention is not addressed. Lieutenant Bodanza said that it is typical during an entrance PT for the instructor to periodically announce the number of laps completed and/or remaining; thereafter, when the 50<sup>th</sup> percentile must be achieved, verbal encouragement is offered.

### **Conclusions:**

Pursuant to RSA 188-F:27 III-f, the Council has the statutory authority to adopt protocols for conducting ongoing physical fitness testing. The staff will propose standardized guidelines for conducting ongoing physical fitness testing at local agencies and the Council will consider adoption of these for inclusion in the protocols.

The Council recommended that the qualified fitness testing instructor administering ongoing physical fitness testing sign documentation to certify that the exact distance of the 1.5 mile running course has been verified, provide a description of the location and time of day, and the weather conditions, if the run is performed outdoors. The officer performing the test should also sign this documentation as confirmation that a test was performed. These requirements are considered elements of a protocol and may be adopted by the Council without requiring a Rule change.

If the issue is falsification of records, authority for Council to take action on the officer who files such documentation is given in Pol 402.02 (a) (4) g. Typically, a violation of this nature is referred directly to the Attorney General’s Office; additionally, the officer is noticed to appear

before the Council and they may take action to suspend or revoke certification. The Council agreed that it is appropriate that only written complaints are investigated by the Director.

According to advice from legal counsel, a Rule change is required to give the Council the authority to require a retest; the Council requested that the Director draft a proposed Rule change. Specifically, if a written complaint is received regarding an improper test, language will be proposed for inclusion in Pol 404.06 and Pol 404.07 that the Council has the authority, based on "reasonable grounds" that suggest that protocols were not met, to require the officer to take an additional test administered by a qualified fitness testing instructor designated by the Council at the Arthur D. Kehas Law Enforcement Training Facility in Concord, New Hampshire. Changes would also be made in the form(s) filed by the officer administering the test.

### **2009 Ongoing Fitness Testing Compliance**

Director Vittum confirmed with Investigative Paralegal Anne Paquin that a number of officers due to test in 2009 have not yet tested and have not submitted a request for an extension (as of December 22, 2009). The Council instructed Ms. Paquin to continue to accept requests for extension through the end of December 31, 2009, and granted the Director the authority to submit these requests for the Council's approval at their meeting on January 26, 2010. Effectively, only requests for medical waivers received by December 31, 2009, will be recommended for the Council's approval and these officers will be held harmless regarding compliance until the Council acts on January 26, 2010.

**Chief Morency, with a second by Justice Roberts, moved for the Council to consider further requests for fitness testing extensions for medical waivers that are received by December 31, 2009, at their meeting on January 26, 2010. The Council voted 10-0 in favor.**

### ***General***

#### **Annual Planning Session in 2010**

Chairman Prozzo stated that the Director has proposed dates for the 2010 annual planning session: April 26 and April 27, with April 27 being the date of the regularly scheduled meeting that month. To continue minimizing the cost of this exercise, Director Vittum recommended two locations for the 2010 planning session: Littleton or Keene, New Hampshire, at a regional training site or another suitable location. Captain Jean advised that the funds for overnight accommodations are available in the budget. Chief Morency supported holding the meeting off site and commented that holding regional meetings is highly recommended by the Governor and Executive Council.

Justice Roberts and Attorney General Delaney advised that school vacations are scheduled for this week and another date would be preferable. Monday and Tuesday, May 3 and 4, were suggested as alternative dates and the Council agreed that guests would be invited to participate on the first day and the regular business meeting of the Council would take place on May 4. As a result, the Council agreed that it would not be necessary to meet as currently scheduled on Tuesday, April 27, 2010. The meeting scheduled for May 25 was not affected.

Director Vittum asked the Council to come to an agreement on where to hold the planning session, advising that this event has traditionally taken place off site and that chief law enforcement officers in the vicinity are encouraged to participate. In 2008, the session took place



in Gorham, New Hampshire; in 2009, it was held at the regional training site at Great Bay Community College in Portsmouth. After a brief discussion, the consensus of the members was to hold the event at the regional training site in Littleton, New Hampshire, May 3 and 4, 2010.

Director Vittum asked the Council members to give some thought to what issues should be included in the agenda for the planning session and he confirmed that JusticeWorks would again facilitate the discussion. Topics for discussion may be communicated to the Director by the next Council meeting on January 26, 2010.

#### **Recognition of Retiring Staff Member – Jean E. Medeiros**

Director Vittum announced that Police Standards and Training's Business Administrator, Jean Medeiros, will retire from full-time service at the end of 2009; she will continue to work with the agency on a part-time basis to allow time for her replacement to be trained. Fellow staff members assembled in the meeting room and Chairman Prozzo read from a commendation presented on behalf of the Council and staff:

*"With appreciation for your dedicated service to the New Hampshire Police Standards and Training Council and for your sixteen years of continuous employment with the State of New Hampshire, the Police Standards and Training Council recognizes your dedication to our agency, your contribution to our mission, your support of our vision, and your commitment to our core values of integrity and professionalism. On the occasion of your retirement, this commendation is presented by the Council and the staff to express our gratitude for having had the privilege of working with you and our best wishes for you in the future."*

Chairman Prozzo also took the opportunity to recognize the dedication and work performed by the staff as a whole. He lauded the agency as the "number one" law enforcement training organization in the United States and he attributed that reputation to the efforts of staff members in serving the law enforcement community in New Hampshire.

Following a round of hearty applause, Captain Benjamin Jean introduced Ms. Medeiros' replacement, Christine Hanks, and the Council extended to her a warm welcome and their sincere best wishes.

#### **Performance Evaluation for Director Vittum**

Director Vittum reminded the Council members that his annual performance evaluation needs to be submitted by February 2010. The Chairman asked the members to comment and make recommendations for goals for the Director in 2010. This communication should reach Chairman Prozzo prior to January 26, 2010.

#### ***Other Business***

#### **SWAT/SOU Discussion**

Director Vittum stated that Lieutenant Kerlee has met with nearly every one of the New Hampshire special operations units. The next step is to organize a committee, as recommended by Colonel Booth, to review the information gathered about the teams and their input. The Director recommended that the committee should include a member of the State Police

designated by Colonel Booth, Deputy Attorney General Bud Fitch, a member of the New Hampshire Tactical Officers Association (NHTOA), a police chief, a representative from one of the Sheriff's Offices, and Lieutenant Stephen Kerlee of this agency.

Chief Sullivan moved that the Council support the Director's recommendation to appoint a member of the State Police designated by Colonel Booth, Deputy Attorney General Bud Fitch, a member of the New Hampshire Tactical Officers Association (NHTOA), a police chief, a representative from one of the Sheriff's Offices, and Lieutenant Stephen Kerlee of this agency. Chief Morency moved to second. A voice vote of the Council carried the motion, 10-0.

***Next Meeting Date/Adjournment***

The next meeting of the New Hampshire Police Standards and Training Council will be held on Tuesday, January 26, 2010, at nine o'clock in the morning.

Upon a motion by Chief Dodge, seconded by Chief Morency, the Council voted unanimously to adjourn the meeting at 11:32 a.m.

Respectfully submitted,

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Chairman Michael L. Prozzo, Jr.