



Pete Ricketts  
Governor

STATE OF NEBRASKA  
NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE  
Darrell Fisher  
Executive Director

**REGULAR MEETING OF THE  
POLICE STANDARDS ADVISORY COUNCIL  
January 20, 2016**

**I. CALL TO ORDER**

Vice chairman Matt McCarthy called the monthly meeting of the Police Standards Advisory Council to order. A current copy of the Nebraska Open Meetings Act was on hand and available for reference. Notice of the meeting was published in the Lincoln Journal Star on Friday, January 8, 2016 at 9:05 AM. Roll call of members present; Matthew McCarthy, Chief Timothy Larby, Sheriff Larry Koranda, Lieutenant Colonel Thomas Schwarten, Sheriff Jerry Watson. Captain Genelle Moore was not present.

**II. APPOINTMENT OF CHAIR**

**MOTION**

Chief Larby nominated Mr. Matthew McCarthy for Chairman. Lieutenant Colonel Schwarten seconded the nomination. There was no further discussion and nominations were closed. Voting in favor of the nomination; Chief Timothy Larby, Sheriff Larry Koranda, Lieutenant Colonel Thomas Schwarten, and Sheriff Jerry Watson. Mathew McCarthy abstained.

**III. NOMINATION AND ELECTION OF VICE-CHAIR**

**MOTION**

Chief Larby nominated Sheriff Jerry Watson for Vice Chair. Lieutenant Colonel Schwarten seconded the nomination. There was no further discussion and nominations were closed. Voting in favor of the nomination; Chief Timothy Larby, Sheriff Larry Koranda, Lieutenant Colonel Thomas Schwarten, Matthew McCarthy. Sheriff Jerry Watson abstained.

**IV. APPROVAL OF DECEMBER 16, 2015 P.S.A.C. MINUTES**

**MOTION**

Sheriff Koranda moved to approve the December 2015 minutes. Sheriff Watson seconded the motion. Voting in favor; Sheriff Larry Koranda, Lieutenant Colonel Thomas Schwarten, Matthew McCarthy, Sheriff Jerry Watson, and Chief Timothy Larby.

## **V. ACADEMY REPORTS**

### **A. Director – N.L.E.T.C.**

Mr. Muldoon reviewed the Director's Report and stated the Training Center's new Registrar, Molly Tebo, started January 19<sup>th</sup>.

A couple weeks ago a student found a bedbug in a dorm room and it was dealt with immediately. This was a Department of Administrative Services Buildings Division issue to correct and mitigate and we are making sure they can assure our students and customers, but you also need to be mindful and read up on these things.

### **B. Deputy Director of Training – N.L.E.T.C.**

We are in week 13 and still at 54 students. Graduation is February 19<sup>th</sup>. The weeks between basics we will hold Jail Management, Defensive Tactics Instructor, and Crash Class; in addition the Monday after graduation NSP will begin their Recruit camp.

Our next class will begin March 26<sup>th</sup> and I fully anticipate 60 students. We have modified the schedule to accommodate a student teacher ratio wherein our skills areas won't have any more than 20 students in a particular skill at a time. I was able get all the training in 16 weeks instead of 17.

Two instructors will be going to Kansas City in April for the Blue Courage Instructor course. When they complete that, all of our instructional staff will have attended the course. During this particular basic we have implemented many modules of that program to include presentations by each of the 6 teams. They were given the Mobility of Policing book and told to select one story and give a 15-minute presentation to include a video clips and research.

This Saturday I will attend Lincoln Police Department's entrance physical testing. I have also reached out to Omaha when they have their next class. I will probably check in on the Patrol when they do their first day as well.

The 4th Circuit U.S. Court of Appeals came out with a decision on the case commonly referred to as Bower vs. Holder. Bower was the FBI applicant, Holder was the Attorney General at the time, the ruling at the time sent back the original decisions which said you couldn't do age and gender because there were physiological differences between men and women and for fitness standard not abilities, you can use gender norms. The Feds have an age cutoff, so they don't really deal with a 55 year old man coming in theirs. It is just simply gender. That ruling tells us, using gender norm is okay; and it addresses Sheriff Hebbert's discussion with the Council last month about having flat standards. We are trying to determine the student's fitness level at the front end coming in the door not your abilities level, that's what we want to see when you go out the door; and your abilities are your specific job tasks that you have to do for the job.

Monday we start the Reciprocity/Reactivation Course, I believe we are sitting at about 10 students; 7 reactivation and 3 reciprocity.

### **C. Nebraska State Patrol**

Captain Duis addressed the Council stating the Patrol was on their third in-service since the last meeting.

Sergeant Paro presented Crate training January 11<sup>th</sup> to the Crime Lab personnel.

Trooper Plate conducted Level B Federal Inspection training.

Lieutenant Roby assisted with the administrative review board and hiring process. 28 people from that process are scheduled to do our final interviews February 2-4. Camp will start February 22<sup>nd</sup>.

### **VI. CRIME COMMISSION REPORT**

Mr. Fisher reported Legislature began January 6<sup>th</sup> with today being the last day for Bills to drop. Bills relevant to the Crime Commission are LB 679, introduced on our behalf by Senator Krist used to shore up some language and issues we have in Community Corrections Act. LB 831 is the Automatic License Plate Reader Privacy Act, that will require agencies who utilize license plate readers to report to the Commission on the number of data points and there is a list in that bill. LB 845 Juvenile Solitary Confinement Bill; LB 846 Witness ID Bill we are to develop a model policy for Witness ID and LB 920 will add 2 members to the Police Standards Advisory Council.

LB 991 and LB1000 were both dropped yesterday. LB 991 redefined the term victim and predefinition includes third degree assault. We currently don't pay third degree assaults because we don't have funds to pay for third degree assault and LB 1000 requires agencies that utilize body cameras to develop and submit their policies to the Crime Commission on body cameras.

There has been a spike in complaint revocation cases, we now have 6 pending. I will be moving for dismissal on 2 by the Crime Commission on Friday.

The other case, the investigative review is complete and the 30<sup>th</sup> of the December the Attorney General's Office filed their formal complaint for revocation. The Respondent has been notified through his attorney that the date has been set for that revocation hearing it is currently set for February 26<sup>th</sup> and that has to be in Lincoln, there are witnesses involved and by the administrative rule, those witnesses can only be brought 100 miles so it cannot be held in Grand Island.

One other case pending the respondent was charged with a class one misdemeanor for obstruction of governmental operations and was found guilty and sentenced on July 17<sup>th</sup> for a jail term of 30 days. The respondent appealed and requested an extension based upon his appeal and was granted till October 12<sup>th</sup>. Subsequently the Commission learned the sentence was upheld by the District Court and the respondent has subsequently resigned his position from the department and the resignation to the governing board and the case was sent to the academy for the investigative review. We are currently waiting because the respondent has appealed to the state appeals court.

We did have a case that was filed on December 9<sup>th</sup>; complaint was acknowledged and the respondent was also notified the respondent replied on December 23<sup>rd</sup>, denying the allegations and the allegations were such that I like to have an investigation completed on that and that packet has been sent to the Training Center and is in the process of being reviewed.

We have another case December 28<sup>th</sup> the complainant was acknowledged and the respondent was also notified and replied by telephone a couple of days ago and asked for more time to compose his written response and was granted until the 27<sup>th</sup> and after that date I will send it to the academy for an investigative review by the academy.

## **VII. OLD BUSINESS**

No old business

## **VIII. NEW BUSINESS**

### **A. 2015 Sheriff's Continuing Education Violation Report**

Ms. Fielding reported that all the sheriff's had completed their continuing education.

### **B. Annual Individual Firearms Certification Violation Report**

Items B and D were discussed together.

### **C. Annual Handgun Qualification Course Violation(s) Title 79, Chapter 11, section 008.01A**

Mr. Muldoon reported there were still about 9 waivers needed for the firearms report. No action was needed; it will be taken at the February meeting.

### **D. 2015 Continuing Education**

Mr. Muldoon asked to be allowed an opportunity to go through the report as no action was needed from the Council at this time. If no waiver is filed, the Director through no action of the Council's, automatically suspends the certificate, then you revert back to Title 79, Chapter 4 on how to lift the suspension. So what you will be dealing with in February are those waivers to decide both for firearms and continuing education whether they meet the rule and regulation requirements for granting those waivers and then if they don't then they are suspended at that time as an action of the council.

### **E. Waiver of Management Training In-Lieu-Of (LPO) provided by IACP Lieutenant Brent Bockstadter, NSP**

Mr. Muldoon requested that this course be accepted as meeting the statutory requirement of Management.

## MOTION

Chief Larby motioned to grant the waiver. Sheriff Watson seconded the motion. Chief Larby amended his motion with the contingency on the legal portion being taken online. Sheriff Watson amended his second. **Voting in favor:** Lieutenant Colonel Schwarten, Sheriff Watson, Mr. McCarthy, Chief Larby, and Sheriff Koranda. Motion Carried.

### **F. Waiver of One-Year Training Requirement** Deputy Travis Prokupek, Polk County Sheriff's Office

Deputy Prokupek was hired May 27, 2015 and then made a trainee due to a medical issue on October 1, 2014. Deputy Prokupek was moved to a full-time officer again on November 3, 2015 and will be about 13 days over his one year by the time the 193<sup>rd</sup> graduates on July 16, 2016 or till he completes the 193<sup>rd</sup> Basic. He does have a seat in the next class.

## MOTION

Sheriff Koranda made a motion to grant a waiver of the one-year requirement for Deputy Travis Prokupek of Polk County Sheriff's Office with the understand that he does not exercise any law enforcement duties until he graduates from the 193<sup>rd</sup> Basic Training that he is enrolled in after the 13 days that he is over his one-year of employment. Lieutenant Colonel Schwarten seconded the motion as amended by Sheriff Koranda. **Voting in favor:** Sheriff Watson, Mr. McCarthy, Chief Larby, Sheriff Koranda, and Lieutenant Colonel Schwarten. Motion Carried

### **G. Firearms Instructor Recertification Question** Cherry County Sheriff's Office

Mr. Muldoon addressed the new letter received by Rusty Osburn prior to the meeting and passed out. Stating his question was if the Council or the rule had been changed to require the 90% then he would understand it better. Right now our rule still says 70% and we made it an administrative assignment that they do the 90% and he is questioning that aspect of what we have done. When I went back and researched we had brought this to the Council, I did remember Bruce coming and talking, but I thought it was in the form of a motion, but we were unable to find a motion where this was actually voted motion. In the second to last he was asking if he had met regulations as set forth in Title 79, 006.04 or not. If so, I would like to know what my status is with the State of Nebraska as a Firearms Instructor. I think he is appealing his dismissal from the class that he wasn't allowed to complete because he didn't shoot the 90% and where we got the 90%. He shot an 86%.

Discussion followed.

Mr. Stolz stated I think he is saying looking at 006.04 it talks about Students in either the Firearms Instructor Course or Firearms Instructor Recertification Course must successfully complete all course assignments including scoring a 70% on both a written examination and the prescribed handgun qualification course. I think his argument is that it only says 70% here so why are you saying 90%.

My educated knowledge is that if the Council took action under complete all course assignments, and scoring 90 as a course assignment, then okay he is fine but he didn't see that anywhere.

Sheriff Watson questioned if Dave seen any standing to his argument.

Mr. Stolz stated that part of the problem goes back to when he took the course; he states it was December 10, 2015. So he was separated from training at that point. And so now is this his appeal based on that and are we within our window of our appeal. Second it does say 70% but then you have this phrase, complete all course assignments; so what does that mean.

Sheriff Larby, personally my feelings on it, course assignment, doesn't trump the written 70%. The normal person reading that would say how they would construe that is 70%. My question to you is can they legally have a group, really a peer review, if you want to look at it, unwritten of whose on this peer review.

Mr. Stolz quoted 006.06; "Every three years commencing in 1990, the Training Center, after consultation with firearms instructors in the State of Nebraska, shall make recommendations to the Council regarding curriculum revisions on the Firearms Instructor and Recertification Courses. So I think they can, but it has to be done by this body."

Mr. Muldoon stated that he supplied the actual exert from the Council meeting but it was talking about rifle qualification and then they made reference to it. I think it would be cleaner if we could go back and show minutes and a motion. I couldn't come up with it. Is this body of the belief that the 90% was appropriate?

Mr. Stolz questioned what the body wanted to do. Hearing the Director, there was never any official action taken. The first thing this body needs to do is decide what the standard is and what is meant by 006.05. If it is a 70% on both the written and handgun qualification course; what are you going to do?

Chief Larby, I think we need to go back to the 2009 and clean it up, check out all the scores and see how many people failed.

Ms. Urbanek stated from October of 2013 when Joe took over in the firearms Instructor Recertification since April of 2014 there have been 219 enrolled, 207 pass, 12% fail, for 5% failure rate. None of those were written failures; it was all on actual skill.

Chief Larby stated he took one of the first implementation courses in Norfolk. I took that course and one of the biggest rubs wasn't the score itself of a 90% but rather the actual course of fire; from the holster you had three shots, if you missed the time, it was a factor, if you missed the shot, it was a factor, etc. The course of fire has changed since then. What is the prescribed qualification course?

Mr. Stolz stated there were a couple things; course assignments including a 70% on both a written examination and the prescribed handgun qualification course. The 90% was never voted on is the problem I see.

Sheriff Watson stated even at this point for us to say okay 70% is it for now.

He still isn't recertified because he didn't continue with the course.

Mr. McCarthy stated Sheriff Osburn's last sentence is, I would like to know what my status is with the State of Nebraska as a Firearms Instructor.

Ms. Urbanek stated as of December 31, 2015 it would have expired.

Mr. Stolz stated he was removed through the Training Center because we wouldn't let him do it.

Sheriff Watson questioned if the Council could grant him a waiver.

Ms. Urbanek stated the next class didn't start until March or April.

Mr. Stolz stated 007.02 Outlines when a person can ask for an extension of a firearms recertification and this is not one of those, so how do we make this right?

Captain Duis addressed the Council stating if you look at his first letter, he says that he completed all course assignments, passed the written exam and scored a 70, which means he meet everything that's documented. If you take the original letter at face value, he met every requirement that you set forward.

Mr. Stolz stated the problem you have with changing the standard right now as it is written is, where does it say that?

Sheriff Koranda stated with Joe Hayes as the instructor, you shoot right away, participate in everything else, take the test, and then right before you leave you can reshoot if you didn't pass, then you have 30 days to come back and retake.

Mr. Muldoon stated we would want to check the other 12 who failed.

Sheriff Watson stated there is no point in the other 12 coming back if the new rule and regulation and retroactively being a firearms instructor for the last 2 1/2 years if the new standard is 90%.

Mr. Stolz stated a couple things here; I'm not sure agenda Item H. is in its ready to go form, I would ask this body to take it back and review it and trouble shoot it yourselves and then having either a working group look it over with Mr. Stevenson, perhaps myself or you can bring it back at another council meeting and vote on it. Then we have to send it to the Governor's PRO Office so they can do a pre-checklist screening which will take 3-4 months and once we get it back then we have to target a public hearing before the crime commission and then once we do that it's got to the Attorney General's Office back to PRO and then we wait a couple more months. If you elect to implement a new standard in Chapter 11, that isn't going to take place for about a year.

Mr. Muldoon stated the instructors talked about it and they wanted to maintain the 90% so the one thing to consider was to get feedback from them.

Sheriff Watson stated in his view this Council didn't take action on the 90 so it's 70, that's what's in the book and we didn't have any action to take a motion on, is that correct?

Mr. Stolz stated I think you have to interpret it as is and then you have to apply it to what the Sheriff here is requesting; what is my status, and then as a secondary note even though it's not an agenda item I think you, and I don't think it requires an agenda item, I would be willing to direct the Training Center to say now we need to correct this.

Ms. Urbanek stated Mr. Hayes would have records of those 13 students to see who passed the written exams.

Mr. Stolz stated if it is the opinion of the Council that 70% means 70% we've taken no action to change that, it's 70%. I don't think it requires anything additional, but what could be required is based on how it is written and then how it's been interpreted, the Training Center needs to correct, send letter of notice to the people saying a mistake was made and we are going to fix it.

Lieutenant Colonel Schwarten when this was heard in 2009 and it was discussed with Mr. Bombeck and there appears to be, from the minutes that there was discussion in front of this Council, was there a reason it wasn't pushed forward and I didn't skim all that email in there, or part of that letter, but it doesn't appear that it was presented.

Mr. Muldoon recollected that it was presented, and there was support, what I would have liked to have seen in looking back at it is an actual motion because Kay can capture all the motions and then I think it has more of an affect. I can brief you on all sorts of stuff, it's a briefing, and I think that is what exactly what happened by the evidence as what is reflected in the minutes. So if there was a motion there I think we would be a lot more sound in what we did and what we said and what my recollection is, but absent a motion and looking at the minutes, I know this board was consulted and I know we had a green light but it's not backed up with a motion so I don't think we did anything outlandish without consultation with you but in retrospect and looking at being confronted with our own rule it is hard in 2016 to stand firm like we had before especially when we're also looking at a rule change to put the higher standard in there. In effect we kind of put the higher standard in without the rule change counted as an assignment and now it makes sense that's it's a whole different course of fire, that was the assignment, shot a 90% as opposed to the state qualification shot at 70% now it's making sense how we did that.

Mr. Stolz stated it was carried under old business, it wasn't even handgun qualification, it appeared as a agenda item Rifle Instructor training, it almost comes up antidotally as a side note, maybe that's why there was never any action taken, because it was never an action item.

Lieutenant Colonel Schwarten stated the minutes reflect where Mr. Bombeck talked about the requirement for every 3 years and prepping attendees for the coming impending date, the written test which will be 70% and the instructor qualifications for the instructor's course shooters/instructors

have to qualify at a 90% level. When we last did it our last rule and regulation state you have to pass at 70% qualification for the practical qualification and instructor recertification course so that we will stick with and that is what we will stick with currently the 90% level is not a way of thinning the herd there are approximately 450 instructors in the state, just trying the raise the bar a little and raise the professionalism of the group. That's from 2009.

Sheriff Watson stated since there was not action taken by the Council, I think we are at the 70% mark and I think my opinion is the Training Center staff needs to go back and address those people that didn't make mark and open that door back up for them based upon that and then we can address that issue when, I think it is on the agenda today. That would be my opinion. I don't know if it should be a motion or if everybody would be in agreement to that?

Mr. McCarthy agreed with Sheriff Watson that it sits at 70%.

Lieutenant Colonel Schwarten stated he would disagree with what Mr. Bombeck was trying to do, I think your instructors, you want everybody at that level because they are instructing the masses.

Ms. Urbanek stated for Patrol Rifle the first day of class they have to shoot a course at a certain percent level with the idea being if you can't shoot coming in the door, we don't have time in this week to teach you how to shoot and teach you how to teach people how to teach people how to shoot. So it's almost an admission requirement that they have to have this certain level of skill coming in the door.

Chief Larby stated it was a 92% percent level requirement and there was pre-requirement work that needed to be done prior to showing up for class as well.

Ms. Urbanek stated that fell under prescribed course work. But was uncertain of the 92% requirement.

Discussion followed.

Chief Larby stated I think we need to go back to your original motion and I would second and then we can move on.

Sheriff Watson, stated it's a default; 70% is where we are at.

Ms. Urbanek stated we could go back and check the records to ensure he meet all the requirements and passed all at 70% and if that information is correct, then you can go back to the default of the 70%, and issue his firearms certification.

Sheriff Watson, good until the three year time period.

Contingent upon confirmation upon confirmation of the provided information

Mr. Stolz stated if you are saying that 70% means that you can't require the 90% and if the contingences are met, he's a firearms instructor. If on the other hand you are saying, 70% only applies to this but there is a different 90% standard, well then I guess he isn't.

Lieutenant Colonel Schwarten is the notation in there where he is talking about, where we were told to pass we had to have an 80%, is that a typo on his part, or is he confusing the 90 and the 70?

Mr. Muldoon stated that was state qualification for all of us.

Mr. Stolz if he has met these other requirements then notify him that he has meet the state certification for firearms and recertification.

Sheriff Watson stated he would agree to that. Chief Larby seconded that.

The meeting broke at 10:40 AM and resumed at 10:51 AM.

Mr. McCarthy stated the direction for the Training Center staff was contingent upon if the sheriff had passed all the other parts of that course and he had shot above the 70% he will be sent his certificate.

Chief Larby stated we were also going to look into the prior effected and bring those back to the Council next month.

Ms. Urbanek stated if I find that it is similar to the Sheriff's situation, where all the other coursework was passed and they shot above a 70% do you want us to just go ahead and issue the certificate with a letter that says this issue has come before the Council based on your scores, we are going to issue a certificate, and would that be good from when they took the course or when we send the letter?

Members agree it would be from when they took the course.

Ms. Urbanek the last point of clarification for me, going forward, everything is a 70%, coming in your shooting abilities, going out shooting abilities, written tests. Check Sheriff Osburn and see if he has met all the requirements, and issue him a certificate effective date of course. Check the other students from 2013 on and check the course work and if they have met all that and send them a letter explaining why they are now getting their certificate and if they didn't meet it, if they left before, they do not get anything.

Sheriff Watson stated until further action is taken.

#### **H. Title 79 – Law Enforcement – Police Standards Advisory Council Chapter 11 – Firearms Certification Standards**

Mr. Stolz stated the attachment was the proposed changes to Chapter 11 largely brought about to incorporate a Patrol Rifle Certification standard and by doing that it includes and Patrol Rifle Instructor standard. Mr. Stephenson has met with the Omaha Police Department, Lincoln Police

Department, Nebraska State Patrol and I believe others to include Joe Hayes, NLETC's Firearms Instructor and they have come up with this draft.

They tried to setup parameters without setting up such ridged course as the state firearms handgun qualification. You will notice there is cleanup regarding the handgun qualification and more importantly the instructor certification and recertification. You will notice the 90% on page 5, 006.04.

I would encourage the Council to not take action today but rather take this back and either setup a working group or carry this as old business until you are ready to go forward with it.

### MOTION

Sheriff Watson motioned to table Title 79, Chapter 11 till February. Sheriff Koranda seconded the motion. Voting in favor; Mr. McCarthy, Chief Larby, Sheriff Koranda, Lieutenant Colonel Schwarten, and Sheriff Watson. Motion carried.

The Council agreed to establish a working group at the February meeting.

#### **I. Professional Instructor Certification/Recertification Professional Certification**

Matthew Worm, Omaha Police Department

### MOTION

Sheriff Koranda motioned to grant Matthew Worm of the Omaha Police Department a Professional Certification. Lieutenant Colonel Schwarten seconded the motion. Voting in favor; Chief Larby, Sheriff Koranda, Lieutenant Colonel Schwarten, Sheriff Watson, and Mr. McCarthy. Motion carried.

#### **IX. OTHER BUSINESS**

##### **A. Date, Time & Location of Next Meeting**

February 17, 2016, 9:00; Library, Nebraska Law Enforcement Training Center,  
3600 North Academy Road, Grand Island, Nebraska 68801

Hearing no further business, the meeting adjourned at 11:06 AM.

Respectfully,

  
Kay Fielding,  
Secretary to the Council