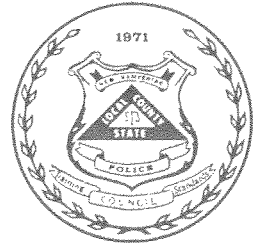




Sheriff Michael L. Prozzo, Jr.  
Chairman

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

*Minutes*

*January 27, 2009*

The 380th meeting of the New Hampshire Police Standards and Training Council was called to order at 9:05 a.m. by Chairman Michael L. Prozzo Jr., 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.

**Members Present:** Richard A. Foote, Sheriff of Cheshire County; Chief Gregory C. Dodge, Epping Police Department; Associate Justice Norman E. Champagne, Manchester District Court; Colonel Frederick H. Booth, New Hampshire State Police; Chief Peter Morency, Berlin Police Department; Associate Justice Stephen H. Roberts, Dover District Court; Chief Timothy Russell, Henniker Police Department; and, Attorney General Kelly Ayotte.

**Members Absent:** Chief Michael J. Magnant, Portsmouth Police Department; Commissioner William L. Wrenn, Jr., New Hampshire Department of Corrections; and, Vice Chancellor Charles Annal, New Hampshire Community College System

**Staff Present:** Director Donald Vittum, Major Robert B. Stafford, Jr., Investigative Paralegal Anne Paquin, Mr. Keith Lohmann, Chief (ret.) Timothy Merrill, Captain Benjamin Jean, and Council Secretary Kathryn Day.

**Guests Present:** Chief (ret.) Michael French, Lyndeborough Police Department; Officer Joseph Pivrotto and Chief Kevin Kaye, Wentworth Police Department; Chief Patrick Manthorn, Seabrook Police Department; and, Lieutenant Ron Gagliardi and Corrections Officer Marc Theriault, New Hampshire Department of Corrections.

***Call to Order***

Chairman Prozzo called the meeting to order at 9:05 a.m.

***Approval of Minutes***

Chief Dodge moved that the Council approve the minutes of December 16, 2008, as submitted. Following a second by Justice Roberts, the voice vote of the Council was unanimous in favor.

### ***Director's Report***

The Council declined to raise questions for the Director and the Director had no additional comment.

### ***Previous and/or Unfinished Business***

#### **Rules Change**

Following the public hearing held on December 16, 2008, on changes proposed for Part Pol 301.04, Pol 301.07, and Pol 301.08, to implement entrance fitness testing for the Part-Time Officer Academy, no public comments have been received. Mr. Lohmann asked the Council to approve the final proposal.

Chief Morency moved that the Council give their final approval for the proposed rule changes for submission to the Joint Legislative Committee on Administrative Rules. The motion was seconded by Chief Russell.

The approved changes are:

Amend Pol 301.04 (a), effective 8-1-08 (Doc #9224), so that Pol 301.04 intro and Pol 301.04(a) are cited and read as follows:

Pol 301.04 Physical Examination. Each applicant shall meet the following requirements relative to the applicant's physical examination:

- (a) Each uncertified person employed as a ~~full-time~~ police or corrections officer, after being issued a conditional offer of probationary employment by the hiring authority, shall undergo a physical examination by a New Hampshire licensed physician. For the purposes of this rule, "licensed physician" shall also include a licensed health care provider.

Repeal Pol 301.07, effective 8-1-08 (Doc. #9224), as follows:

~~Pol 301.07 Medical Standards for Part-Time Officers. All uncertified part-time police officers, corrections officers, and probation/parole officers employed by the state of New Hampshire, and all part-time police officers employed by local units of government who have accepted this requirement by approving the necessary funding, shall, prior to hiring, successfully pass the same medical examination according to the same protocols as are required of full-time officer in Pol 301.04.~~

Readopt and renumber Pol 301.08 and Pol 301.09, effective 8-1-08 (Doc. #9224), as Pol 301.07 and Pol 301.08 to read as follows:

~~Pol 301.08~~ Pol 301.07 Psychological Screening Test. Each applicant shall meet the following requirements relative to the applicant's psychological screening:

(a) All uncertified police officers, correctional officers, and probation/parole officers employed by the state of New Hampshire, full-time or part-time, and all police officers, full-time or part-time who are employed by local units of government who have accepted this requirement by approving the necessary funding shall, prior to hiring, successfully pass a psychological screening test battery administered under the direction of a licensed psychologist or psychiatrist.

(b) Such test battery shall be normed for law enforcement occupations and shall be designed to detect both mental illness and behavioral traits that could adversely affect the person's ability to successfully perform the essential functions of a law enforcement, corrections or probation/parole officer.

(c) Such an examination shall be valid for a period of 12 months from the date of administration for purposes of application for such employment, and a valid test given by one department within such time frame may be used by another agency if the second agency has access to the test results.

(d) For the purpose of this section, "administered under the direction of a licensed psychologist or psychiatrist" shall include a test battery of the type herein prescribed that the hiring authority procured from a person, firm or corporation where the scoring and reporting of the results is done by a psychologist or psychiatrist who currently holds a valid license under the laws of any state.

(e) No person shall be hired as a police, corrections or probation/parole officer if the results of the psychological test battery indicate that the candidate is currently suffering from a diagnosable mental illness or exhibits behavioral traits that, in the opinion of the psychologist or psychiatrist, could adversely affect such person's ability to perform the essential functions of a law enforcement officer, or, who, in the opinion of the psychologist or psychiatrist or the hiring authority exhibits a psychological profile that is incompatible with that which is required for law enforcement duties.

(f) Examples of an incompatible profile shall include but not be limited to:

- (1) A lack of impulse control;
- (2) A lack of anger management;
- (3) A propensity for assaultive behavior; and
- (4) A propensity for illegal sexual behavior.

(g) No person shall be denied employment as the result of such a testing process unless they have been given the opportunity for a personal interview with a licensed psychologist or psychiatrist employed by the agency.

~~Pol 301.09~~ Pol 301.08 Testing Fees Allowed. The following shall apply to the application of testing fees.

- (a) An agency, at its option, may assess to applicants a testing fee to cover all or part of the cost of any medical or psychological examination required under this part in cases where the applicant has been tendered a conditional offer of employment; and
- (b) An agency may also make repayment of a testing fee part of a training or hiring contract that establishes a minimum term of employment for such an officer.

The voice vote of the Council unanimously supported the motion to approve the changes.

#### **All-Hazards Incident Management Team Development Plan**

Chief Morency recommended that the Council reserve judgment regarding the plan proposed by the New Hampshire Chiefs of Police Association Regional Incident Management Advisory Committee. Placing unfunded mandates on local agencies and upon Police Standards and Training is a concern. The consensus of the Council and the Director was to wait for the outcome of the proposed study of best practices for SWAT/SOU that still needs to get underway, and the Council agreed that it would be premature to make a recommendation or take any action at this time regarding the All-Hazards Incident Management Team Development Plan proposed by the Regional Incident Management Advisory Committee.

#### **Decertification Hearing**

#### **NONPUBLIC SESSION: Corrections Officer Marc Theriault**

CO Marc Theriault was accompanied by Lieutenant Ron Gagliardi of the New Hampshire Department of Corrections. CO Theriault appeared to show cause why his certification should not be suspended pursuant to Pol 402.02 (a) (4). CO Theriault acknowledged that he had been informed on the hearing procedure and indicated that he wished for the matter to be held in nonpublic session.

Chief Dodge moved that the Council enter into a nonpublic session, as provided in RSA 91-A, II (a) for the purpose of discussing personnel matters. Following a second by Chief Morency, the roll call vote of the Council was affirmative, 9-0. The nonpublic session commenced at 9:12 a.m.

Chief Dodge moved to seal the minutes of the nonpublic session. The Council voiced their unanimous consent, following a second by Chief Russell.

Chief Dodge moved that the Council exit the nonpublic session, a motion seconded by Judge Champagne. Again, the roll call vote of the Council supported the motion, 9-0. The nonpublic session concluded at 9:36 a.m.

Upon return to public session, Justice Champagne put forth the following motion that was seconded by Justice Roberts:

MOVED: That the Council, pursuant to Pol 402.02 (a) (4), suspend the Corrections Officer certification of Marc Theriault for a period of six months, effective immediately.

Upon a voice vote of the Council, the motion carried, 9-0

### **CONSENT CALENDAR**

The Council considered the following **PT&E Request (Full-Time)**:

**Officer Gregory A. Jordan, Stratham Police Department**

(DOH: 11/07/08) requests consideration for full-time certification based upon prior training and experience. Staff recommends granting certification upon successful completion of the entrance fitness test, medical exam, and NH Law Package for the next Full-Time Police Officer Academy, and First Aid/CPR certification, if lapsed.

The Council reviewed the staff recommendations for **Requests for Extensions**:

**Michael A. Gagnon, Plymouth State University Police Department**

(DOH: 12/15/08 **Part-time certified**) extension through the end of the 149<sup>th</sup> Academy.

**Officer Blaine R. Hall, Whitefield Police Department**

(DOH: 4/6/08 **Part-time certified**) extension through the end of the 149<sup>th</sup> Academy.

**Forest Ranger Jason A. Huter, DRED Division of Forests & Lands**

(DOH: 12/05/08 **Certified Corrections Officer; not part-time certified**) extension through the end of the 149<sup>th</sup> Academy, with the stipulation that Ranger Huter continues to work under the supervision of a full-time certified officer.

**Officer John Melia, Swanzey Police Department**

(DOH: 07/08/07 **Part-time certified**) extension through the end of the 149<sup>th</sup> Academy.

**Officer Frederick A. Nicosia, Brookline Police Department**

(DOH: 10/15/07 **Part-time certified**) extension through the end of the 149<sup>th</sup> Academy.

**Officer Dennis M. Orbino, Alton Police Department**

(DOH: 11/03/08 **Not part-time certified**) extension through the end of the 149<sup>th</sup> Academy, with the stipulation that Officer Orbino continues to work under the supervision of a full-time certified officer.

**Officer Kevin M. O'Reilly, Meredith Police Department**

(DOH: 07/31/08 **Not part-time certified**) extension through the end of the 149<sup>th</sup> Academy, with the stipulation that Officer O'Reilly continues to work under the supervision of a full-time certified officer.

**Officer Robert D. Smith, Newmarket Police Department**

(DOH: 12/15/08 **Not part-time certified**) extension through the end of the 149<sup>th</sup> Academy, with the stipulation that Officer Smith continues to work under the supervision of a full-time certified officer.

Chief Dodge, seconded by Chief Morency, moved that the Council approve the staff recommendations for the preceding requests. The voice vote of the Council was in favor, 9-0.

Five **Requests for Fitness Testing Extension** were recommended for Council approval.

**Officer Stephen Akerstrom, Belmont Police Department**

**Officer Brian Dubois, Plymouth State University Police**

**CO Silvia Preda, New Hampshire Department of Corrections**

**Deputy Maxim F. Schultz, New Hampshire Fire Marshal's Office**

**CO Timothy Whitaker, North Country Correctional Facility**

A motion for the Council to approve extensions for each of the officers for six months beyond the date for compliance with ongoing physical fitness testing until June 30, 2009 was put forth by Justice Champagne and seconded by Chief Morency. A voice vote of the Council supported the motion without exception.

**(END OF APPROVED CONSENT CALENDAR)**

**Training Grant Requests**

The Director informed the Council that four of five requests for specialized training grants had been withdrawn by the requesting agencies.

The Council considered one of two requests submitted by the Seabrook Police Department. Chief Patrick Manthorn addressed the Council in support of the Department's request to send two officers to the Taser International (IPICD) In-Custody Death Prevention Instructor Course scheduled for May 4 and 5, 2009, in Scottsdale, Arizona. The amount requested for two officers is \$1,630.51.

Chief Manthorn stated that this course was a priority for his department in helping to address the medical and liability issues associated with Taser use. Allowing his officers to participate and become certified instructors with a specialized focus on preventing sudden deaths and in-custody deaths would benefit the Academy, as well. Seabrook's trained instructor(s) and the materials received from the course would be made available to conduct the training at the Academy. The Council agreed this would be of value and a good investment in the future of New Hampshire law enforcement training.

Chief Morency clarified that training grant requests submitted in December were approved based on the specific training having been approved in the past and that sufficient monies were currently available in the training grant fund.

Considering that the funds currently available will not be replenished until the new fiscal year and since the current balance is only \$3,346.07, the Council agreed to approve funds for only one Seabrook officer to attend the requested training. Chief Russell moved that the Council approve funds for one officer (i.e. a maximum of \$815.25). Attorney General Ayotte seconded this motion and the Council supported it unanimously in a voice vote.

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

#### **Winchester Police Department Request for Statutory Waiver**

Officer Breau's request for full-time certification based on prior training and experience was approved by the Council in October 2007. Since that time, Officer Breau has been attempting to meet the requirement to successfully pass the entrance fitness test to attend the Law Package of the Full-Time Academy. The Council has already granted three six-month extensions. A fourth six-month extension would exceed the statutory limit of two years from his date of hire. On June 2, 2009, the Winchester Police Department will be required to change Officer Breau's status from full time to part time.

Sheriff Foote, having personal knowledge of Officer Breau's current status, stated that Officer Breau has been working full-time during the past year and two months.

Major Stafford explained that injuries have been the primary reason that Officer Breau has been unable to pass the physical test. Justice Champagne questioned whether the officer's condition could be expected to improve if an extension were granted through June 2, 2009. The Director remarked that even if Officer Breau's status became part-time, he would still need to comply with ongoing three-year physical fitness testing requirements by December 31, 2010. Officer Breau would then be allowed two years to successfully pass the ongoing three-year fitness testing.

Chief Morency was not inclined to agree to a waiver of the statute or Council rules specifically. Chairman Prozzo suggested that the Council may want to request Officer Breau to appear before the Council.

Major Stafford clarified that Officer Breau is part-time certified and that returning him to part-time status in June would dictate that he cannot work in excess of 1,300 hours in 2009. Essentially, the hours he has worked so far in 2009 would count toward this number and by June he would be at or near the maximum of 1,300 hours.

Justice Champagne moved that the Council deny Officer Warren Breau's request for an additional extension through June 2, 2009. Following a second by Chief Russell, the Council supported the motion in a unanimous voice vote.

### **Lyndeborough Police Department**

Chief (Ret.) Michael T. French requested the Council's approval for Officer Jacob Poole to be excused from attending certain classes included in the curriculum for the 255<sup>th</sup> Part-Time Officer Academy, because Officer Poole is already certified as an instructor in these areas.

Mr. French stated that the cost of ammunition and of compensating Officer Poole for attending the Academy on Saturdays was creating a financial burden for the Lyndeborough PD. Mr. French also stated that Lyndeborough Police Department has so far restricted Officer Poole from patrolling and this will continue until he completes the Academy and becomes certified.

Major Stafford established that Officer Poole is currently required to attend five Saturday sessions to complete the 255<sup>th</sup> Academy. Officer Poole is currently a member of the class of 37 recruits.

Director Vittum stated that no such waiver has been granted in the past and advised that doing so would create an undesirable precedent. And, although Officer Poole has been certified as an instructor by the Council, his practical experience in law enforcement is limited and that Officer Poole can only benefit from participating in the complete curriculum required for part-time certification, especially firearms and defensive tactics. Chief Morency echoed this sentiment.

Justice Champagne, seconded by Chief Dodge, moved that the Council deny the request of Lyndeborough Police Department on behalf of Officer Jacob Poole, requiring him to participate in the full schedule of classes required to complete the Academy and become certified. The Council voiced their unanimous support.

### **State of New Hampshire Voluntary Accreditation Program**

Major Stafford presented two changes proposed for updating the State Voluntary Accreditation Program Manual to conform to CALEA and recommended for the Council's approval.

Major Stafford read through Law Enforcement Standard 71.1.1 and Standard 71.5.1 that CALEA has added to their recognition program. Staff is requesting that the Council formally approve adding these two standards to the State Manual under **Chapter 71: Processing and Temporary Detention** and approve replacing "109 Standards" on Page 6 and Page 10 with "111 Standards."

With the understanding that the desire of the Council is for the State program to continue to remain consistent with CALEA standards, Justice Champagne moved that the Council approve the staff recommendations for updating the State Voluntary Accreditation Program Manual. Following a second by Chief Morency, the voice vote of the Council was unanimous in favor.



### ***Other Business***

#### **NONPUBLIC SESSION: Wentworth Police Department**

Chief Dodge moved for the Council to enter into a nonpublic session, pursuant to RSA 91-A, II (a), for the purposes of discussing personnel matters with Chief Kevin Kay of the Wentworth Police Department.

Chief Morency seconded the motion and the roll call vote of the Council was 8-0 in support, with Colonel Booth excused briefly from the meeting. The nonpublic session commenced at 10:22 a.m., and Colonel Booth returned a few moments later.

Chief Dodge moved that the Council seal the minutes of the nonpublic session. The motion, seconded by Chief Morency, carried without opposition on a voice vote of the Council.

Chief Dodge moved for the Council to exit the nonpublic session. Following a second by Chief Morency, the roll call vote of the Council, 9-0, carried the motion.

Upon returning to public session and with input from the Council, Colonel Booth, with a second by Chief Russell, put forth the following motion:

MOVED: That the Council accept Officer Pivrotto's prior training and experience and grant part-time certification upon successful completion of the Law Package of the Part-Time Officer Academy, and that Officer Pivrotto is limited to 1,200 work hours in 2009.

The Council unanimously endorsed the motion in a voice vote.

Before departing the meeting, Chief Kay submitted a current Form E for Officer Joseph Pivrotto and thanked the Council for their support.

#### **Annual Compliance**

Director Vittum asked the Council to provide guidance on what action should be taken regarding police chiefs whose officers are not in compliance after January 31, when annual compliance requirements must be met and documents received by Police Standards and Training. As of the date of this meeting, 82 agencies have not submitted the required documents to certify that their officers have completed the required four hours of firearms training and eight hours of in-service training, as well as annual reporting required by the 1,300-hour limit on work hours for part-time officers.

In an effort to ensure that police chiefs comply with annual compliance reporting requirements, the Director and the staff made every effort during the last few months of 2008 to inform the chiefs of the consequences for noncompliance, verbally and in writing. In addition to contacting 82 police departments by telephone, the following communication from the Director was included in a mass mailing to all law enforcement agencies in January 2009.

“Because a large number of agencies have still not sent in their annual compliance reports, we are sending this notice to them as a reminder to submit the reports to us on time.

The Council, at their meeting February 19, 2008, asked that each hiring authority/Chief Law Enforcement Officer be notified that end-of-year reports as required by Pol 302.12 (b) Limitation of Hours, Part-Time Officers, Pol 403.01 (b) Refresher Training and Pol 404.04 (a) Annual Certification are required to be filed within 30 days after the end of the calendar year, and that extensions to the deadline would not be given.

Failure to provide such documentation exposes the hiring authority and Chief Law Enforcement Officer to sanction by the Council under Pol 302.11 and/or Pol 402.02 (a) (8), up to and including decertification of the Chief Law Enforcement Officer and/or inability of the agency to access Council services.

On November 3, 2008 we sent to each law enforcement agency a notice that reminded agencies that the yearly compliance reports were due in this office. With this notice we included copies of the following forms that needed to be filled out and returned to us:

1. Affidavit of Hours Worked for Part-Time Officers
2. Annual In-Service Training Compliance report
3. Annual Firearms Qualification

As another reminder to send us the annual reports, we will be calling the agencies that we have not received information from. If you have questions concerning this notice, then please contact Major Stafford at 271-1798.”

The Council agreed on the following points:

- Under Pol 402.02 (8) and (10), the Council may order the suspension or revocation of the certification of a chief law enforcement officer who has not complied with annual reporting requirements.
- The deadline for submitting the required documentation should be extended to the close of business on Monday, February 2, because the deadline for compliance falls on Saturday, January 31.
- Although it is the individual officer who is responsible for completing the training requirements, the chief law enforcement officer is the individual responsible for filing the required reporting of such with Police Standards and Training Council on or before the deadline.
- The Council must enforce the rules in a fair and consistent matter. Therefore, those police chiefs who are in violation should be compelled to appear before the Council to show just cause for not complying.
- The Council should notify the hiring authority in writing that their employee, the chief law enforcement officer, has caused the Council to issue an order for their employee to show just cause for their noncompliance with Council rules.

Chief Dodge moved that the Director will notify the chief law enforcement officer of any agency that is not in compliance by February 2, 2009, they are expected to appear at the Council meeting scheduled for February 24, 2009, for a show cause hearing and that failing to appear and/or show cause could result in the suspension or revocation of their certification. Chief Morency seconded the motion and the voice vote of the Council was unanimous in favor.

The Director asked if any extension of time will be provided to individual officers who are not in compliance to allow them to complete the required 8 hours of in-service training after the deadline. The consensus of the Council was that those officers, also, will be compelled to appear before the Council to show cause and that failing to appear and/or show cause could result in the immediate suspension or revocation of their certification. The Director noted that exceptions may be made for reasons of military service obligations. If the justification they provide is acceptable, the 2008 required training must be completed as soon as possible, in addition to completing the 2009 requirement by December 31, 2009, or suspension/revocation would be imposed effective with the conclusion of the show cause hearing. This circumstance is not expected to include a large number of officers and hearings could occur in February or in March.

Sheriff Prozzo suggested that failure to comply with annual firearms range qualification should probably result in automatic suspension to ensure that the Council is not held liable in the case of an incident involving the officer's use of his weapon.

Mr. Lohmann concurred that Pol 402.02 (a) (10) gives the Council the authority to suspend certification until applicable firearms training and in-service training is completed. However, agencies are not required to submit the paperwork until January 31, so the Council may not be made aware of the noncompliance until after the deadline for compliance.

#### **Police Standards and Training Council & Staff Retreat**

The Council discussed holding a planning session with representatives from local agencies to determine training needs for the next biennium and, among other things, to hear from those who oppose the current procedure for ongoing three-year physical fitness testing, as well as those who support the current procedure. The first day of the session will feature a facilitated group exercise using laptop computers; the participants will review and comment on a wide range of issues related to training in general and give input on how the Police Standards and Training Council can serve the training needs of the New Hampshire law enforcement community in the future.

The Council agreed to convene the planning session at 9 a.m. on Monday, April 6, 2009. This event will take place at Pease Tradeport in Portsmouth. The Director has invited six representative chief law enforcement officers to attend and participate with the staff and the Council members for the full day. The possibility of retaining an outside facilitator will be contingent on their willingness to serve for a minimal fee.

### **Funding for Police Training**

The Director assured the Council that the funding for the agency through the next biennium appears sufficient to sustain the current level of training. In budget discussions with the Governor and his staff, the Director was encouraged by their support for finding alternative funding for Police Standards and Training. Governor Lynch emphasized that public safety is a top priority for him and that he believes training is very important.

### **NONPUBLIC SESSION: Contract Issues**

Chief Dodge moved that the Council enter into a nonpublic session for the purpose of discussing contract negotiations, as provided in RSA 91-A:3, II, (d). Chief Morency seconded the motion and the roll call vote of the Council was 9-0 in support. The nonpublic session commenced at 11:14 a.m.

A motion to seal the minutes of the nonpublic session moved by Chief Dodge and seconded by Chief Morency carried with a unanimous voice vote of the Council.

Chief Dodge further moved that the Council exit the nonpublic session. Following a second by Chief Morency and the unanimous roll call of the Council, the nonpublic session concluded at 11:20 a.m.

### **SWAT/SOU RFP Subcommittee Recommendation**

The deadline for submitting items for the next meeting of the Governor and Executive Council will occur before the next Police Standards and Training Council meeting. Since all of the terms agreed to are supported by the Council, the Council agreed that it would be appropriate to authorize the Director to go forward.

Justice Roberts moved that the Council approve the contract between the New Hampshire Police Standards and Training Council and the National Tactical Officers Association (NTOA) subject to the approval of the Governor and Executive Council. Sheriff Foote seconded the motion and the voice vote of the Council was in favor, without exception.

### ***Next Meeting Date/Adjournment***

The next meeting of the New Hampshire Police Standards and Training Council will be held on Tuesday, February 24, 2009, 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 11:26 a.m.

Respectfully submitted,

  
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Chairman Michael L. Prozzo, Jr.