

PEACE OFFICER STANDARDS & TRAINING COMMISSION

August 4, 2022

8:30 AM

**Peace Officer Standards and Training Commission
Remote Participation**

PUBLIC MEETING MINUTES

Documents Distributed in Advance of Meeting:

- Draft Public Meeting Minutes of June 30, 2022
- Draft Public Meeting Minutes of July 12, 2022
- Memorandum from Eric Rebello-Pradas to Commission re: FY23 Conference Committee Report & Governor's Vetoes
- Draft Regulations 555 CMR 8.00: Databases and Dissemination of Information
- Joint POST Commission and MPTC Guidance as to M.G.L. Chapter 123, §§12(a) and 12(e) and the Use of Force

In Attendance:

- Chair Margaret R. Hinkle
- Commissioner Hanya Bluestone
- Commissioner Lawrence Calderone
- Commissioner Larry Ellison
- Commissioner Marsha Kazarosian
- Commissioner Charlene Luma
- Commissioner Kimberly P. West
- Commissioner Michael Wynn

1. Call to Order

- The Chair recognized a quorum and called the meeting to order.

2. Approval of Minutes

- June 30, 2022
- July 12, 2022
- Commissioner Kazarosian moved to approve the minutes of the June 30 and July 12, 2022 meetings. Commissioner Ellison seconded the motion.
- The Chair took a roll call vote:
 - Commissioner Hanya Bluestone - Yes
 - Commissioner Lawrence Calderone - Yes
 - Commissioner Larry Ellison - Yes
 - Commissioner Marsha Kazarosian - Yes
 - Commissioner Charlene Luma - Yes
 - Commissioner Kimberly P. West - Yes
 - Commissioner Michael Wynn - Yes
 - Chair Margaret R. Hinkle- Yes

- The Commissioners unanimously approved the minutes of the June 30 and July 12, 2022 public meetings.

3. Executive Director Report – Enrique Zuniga

a. Officer Recertification (A-H)

- As of August 1, 2022, 7,757 officers have submitted applications for recertification. Of those officers, 6,856 have been recertified; 835 are conditionally recertified; 51 are under further review; and 15 were not certified. Executive Director Zuniga estimates there are 1,029 applications pending submission, which would bring the total number of officers seeking recertification to 8,806.
- The certification team continues to validate submitted data and address process questions from agencies.
- The website continues to be updated to explain conditional certifications in greater detail.

b. Conference Committee Report

- Executive Director Zuniga reviewed the report on the POST Commission's Appropriation for FY23.
- Executive Director Zuniga reported that the appropriation for the Commission for FY23, includes language that the Commission will, by March 10, 2023, provide additional reporting to the House and Senate Committees on Ways and Means, and include in its report the current caseload of the Commission for FY23, the number of complaints concerning police officer conduct received by the Commission, patterns of unprofessional police conduct identified by the Commission, and the number of police officers suspended by the Commission and the reason for the suspension.
- Executive Director Zuniga anticipates the Commission will began work on the Annual Report. The Commission has leeway as to whether it submits an annual report at the end of a fiscal year or at the end of a calendar year.
- Executive Director highlighted for the Commission new legislation adding the Animal Rescue League and MSPCA to the Commission's jurisdiction, and will provide further updates on how the agency will approach this change.

c. Administrative Update

- The Commission is contracting with a professional service vendor, Salesforce, which will be a permanent solution. The big priority will be providing a platform and building workflow for the Division of Standards to aggregate complaints, match them to disciplinary records and provide a case management platform.
- Continuing to build on JIRA solution for recertification processes. EOTTS has been very helpful.
- Executive Director Zuniga welcomed two new Commission staff members, Pauline Nguyen, Deputy General Counsel, and Jeanine Hopkins, Human Resources Manager.

- Commissioner Ellison asked how someone who did not meet the minimum standard of holding a high school diploma or GED might have policing powers. Executive Director Zuniga clarified that there are 4 instances and they have until the end of June 2024 to complete that requirement and are considered conditionally certified until that requirement is met. Commissioner Ellison asked the status of officers whose agency has not submitted their information yet due to receiving an extension. Executive Director Zuniga answered that they are conditionally certified, per the regulations and no one loses their status as a police officer. Commissioner Ellison asked if the individuals who are not being certified and their departments have been notified and made aware of the appeal process. Executive Director Zuniga responded that, yes, the 15 officers have been notified and there is an appeal process in place.

4. Draft Proposed Regulations on Dissemination of Information Concerning Law Enforcement Officers – General Counsel Ravitz

- General Counsel Ravitz introduced draft regulations on databases and the dissemination of information concerning law enforcement officers for discussion by the Commission. He stated that he was not seeking a vote by the Commission at this meeting. He anticipates he will continue working on them and present them at a future meeting for approval.
- Chapter 6E of the General Laws, the Commission's governing statute, requires that the Commission develop 4 different databases which reflect a balancing between disclosure of certain officer information and protection of more sensitive information.
- The statute requires the Commission to develop 4 databases::
 1. A database that is not public, with a list of specific forms of officer information;
 2. A public database regarding officers - the forms of information are not specified by statute, but the database needs to be developed pursuant to regulations which must account for officer health and safety;
 3. A database that need not be public with a list of specific forms of disciplinary information; and
 4. A public database with fewer forms of disciplinary information.
- The public records laws and related laws also reflect a balancing:
 - Reflect a general principle that agency records are public; and
 - Create numerous exceptions that:
 - a. Require withholding of certain information, sometimes with consequences for disclosure; and
 - b. Allow for withholding of other information
- Section 8.04 generally, with some exceptions, requires that agencies notify officers when providing information about them to the Commission.
- Section 8.05 concerning the database provides for a public database that is compliant with various requirements and reflects the balancing found in Chapter 6E, the public records laws, and other sources of law.

- Subsection 8.05(4) provides that certain information must be included, some of which is already required by statute or regulation.
- Subsection 8.05(5) prohibits information that is non-disclosable under another source, often with consequences; is intended to provide a reference for Commission personnel; and makes clear to the public why certain information is omitted.
- Subsection 8.05(6) prohibits information in a second tier that could adversely impact officer health or safety; the Commission may be required to withhold; or the Commission is allowed to withhold; accounts for the facts that provisions allowing for withholding are based on sound policy determinations; and disclosures based on incorrect determinations can have consequences.
- Subsection 8.05(7) provides guidelines on whether a matter is ongoing for purposes of G.L. c. 4, § 7, cl. 26th or other provisions.
- Subsection 8.05(8) allows latitude and gives Commissioners or Executive Director discretion to include or not include information.
- Section 8.06 governs databases generally; and provides that our databases will comply with existing legal requirements. Subsection (5) gives public employees the opportunity to exercise the right to correct or expunge inaccurate information.
- Section 8.07 concerns records requests and incorporates the existing rules that Records Access Officers can decline telephone requests; requests for all-MPTC data can be referred to the MPTC; and provides for coordination with agencies that may have received similar requests.
- Section 8.08 reflects the balancing found in the public records laws and provides a general rule of disclosure, and exceptions allowing for withholding of information.
- Section 8.09 regarding privileged information provides that only the Commissioners can waive a privilege held by the Commission and provides for other holders of a privilege to receive notice and opportunity to assert it.
- Section 8.10 regarding fees incorporates existing legal rules allowing an agency to ask the requester's purpose in deciding whether to waive fees; provides that, if the requester seeks information substantially similar to that on the public database, the maximum allowable fee will be sought; relieves the requester of paying the fee until agreeing; and relieves the Commission of providing or reviewing records until receiving the fee.
- Section 8.11 regarding compulsory legal process gives effect to an existing legal requirement to notify people if their personal data is sought by compulsory legal process; and adds related rules adopted by other agencies.
- Commissioner West noted that the statute mentions a database 4 times and asked General Counsel Ravitz to highlight each mention and state which are public vs. not public. General Counsel Ravitz answered that: one § 4(h) provides for a database that is not required to be public; § 4(j) prescribes a public-facing database; § 8(e) concerns a disciplinary database, which the statute does not say needs to be public; § 13(a), refers to a public-facing

disciplinary database. He said another place in the statute, which he believed was, § 8(g), states that any findings rendered need to be posted to the website, which is consistent with a provision of Chapter 66.

- Commissioner Bluestone emphasized the need for scientific integrity and the need to ensure that the data itself is valid, factually accurate and relevant so that it's not misleading and the Commission adheres to an ethical standard.
- Commissioner Calderone asked if the Commission itself and each officer is going to be notified and have the opportunity to review the public facing database before it appears online. Executive Director Zuniga responded that the Commission will not make anything public until 1) the regulations are voted on; 2) a public hearing is held and public comments are collected; and 3) the regulations are voted on again including any incorporated changes based on the public hearing and comments.
- Chair Hinkle asked General Counsel Ravitz if he had any suggestions for the Commissioners ahead of the next public meeting, as they review the information that was put forward. General Counsel Ravitz recommended that anyone who has thoughts or comments to forward them to him, or redline the document.
- Commissioner Luma requested that General Counsel Ravitz send the version with his talking points listed.
- Commissioner Ellison followed-up with a question for Executive Director Zuniga regarding the collected data. He asked if in large departments such as Boston, both district-level records and Internal Affairs-level records are being collected and accounted for. Executive Director Zuniga answered that it varies. Some larger agencies used a software tool to submit a summary of their records while others submitted a spreadsheet. He said the Commission is building a portal to hold this information but will need to review and validate the information it has to ensure it is uniform and accurate. This is a lengthy and ongoing process, he added.
- Commissioner Calderone asked if minor complaints reported at a district level are being submitted to the Commission and made public. Executive Director Zuniga stated that information is being captured but it is up to the Commission to decide the balance on what is released to the public.

5. Joint Guidance Section 12 and Use of Force – General Counsel Ravitz

- General Counsel Ravitz introduced a written statement titled “Joint POST Commission and MPTC Guidance as to M.G.L. Chapter 123, §§12(a) and 12(e) and the Use of Force” and asked if Commissioner Bluestone would like to speak on the topic, since she introduced the topic to the Commissioners at a previous meeting.
- Commissioner Bluestone stated that this particular issue has come up in her conversations with law enforcement officers across the Commonwealth.
- General Counsel Ravitz reviewed Section 12 of Chapter 123 of the Massachusetts General Laws which governs the admission of an individual to a general or psychiatric hospital for psychiatric evaluation and a determination

of the person's need for inpatient psychiatric treatment. Sections 12(a) and 12(e) identify the conditions under which an individual believed to have a mental illness may be brought against their will to a hospital or court for evaluation.

- Commissioner Wynn pointed out that the response mentioned the use of force generally, which is consistent with the language in the regulation, but the conclusion addresses only non-deadly use of force. He suggested the conclusion could be more comprehensive to cover all uses of force, rather than only that which is non-deadly. He stated that therefore the inclusion of the word "non-deadly" in the conclusion is unnecessary.
- Commissioner Calderone shared the same concerns regarding the use of "non deadly" use of force. He expressed concerns about how officers are instructed on what they can and cannot do.
- Commissioner Bluestone concurred with Commissioner Calderone and Wynn. She reiterated it is a complex issue because when situations develop, they can escalate and become dangerous for law enforcement officers. As such, officers need the flexibility to make a judgement call about their response that isn't restricted and to follow the use of force regulations as written by the Commission.
- Commissioner Kazarosian agreed with these concerns and recommended rewording the regulations so it refers to the use of force regulations.
- Commissioner West recommended removing the words "non-deadly," leaving the words "use of force," and adding "pursuant to the regulations."
- Commissioner Luma highlighted what Commissioner Calderone said about the complexities around training and asked if the Commission should also consider what other agencies are doing in regard to that aspect.
- Commissioner Calderone will address the organizations in the Law Enforcement Policy Group via email and ask that they forward any department policies they have and suggested the Commission could also obtain them from the Chiefs Associations.
- Chair Hinkle asked the Commissioners if they are in the position where they will gather additional information and not take any vote today, but will be prepared to deal with the additional information at their next meeting. No one expressed any concerns with Chair Hinkle's suggested approach.

6. Matters not anticipated by the Chair at the time of posting

- There was no new business.

7. Adjourn

- Commissioner Kazarosian moved to adjourn the meeting. Commissioner Calderone seconded the motion.

The Chair took a roll call vote:

- Commissioner Hanya Bluestone - Yes
- Commissioner Lawrence Calderone - Yes

- Commissioner Larry Ellison - Yes
- Commissioner Marsha Kazarosian - Yes
- Commissioner Charlene Luma - Yes
- Commissioner Kimberly P. West - Yes
- Commissioner Michael Wynn - Yes
- Chair Margaret R. Hinkle - Yes

The Commission unanimously voted to adjourn the meeting.