Peace Officer Standards & Training Commission

PUBLIC MEETING MINUTES

**October 13, 2022**

**8:30 AM**

**Remote Participation**

Documents Distributed in Advance of Meeting:

* Public Meeting Minutes of September 8, 2022 (Proposed)
* Memorandum from Eric Rebello-Pradas to Commission re: Finance and Administrative Update
* Regulations 555 CMR 8.00: Databases and Dissemination of Information (Proposed)
* Approval of Amendments to Regulations Regarding Use of Force on a Permanent Basis (Proposed)
* Regulations 555 CMR 10.00: Specialized Certification for School Resource Officers (Proposed)
* Presentation on Constables Under Chapter 6E and Commission Regulations

**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.

1. **Approval of Minutes**

* Commissioner Kazarosian moved to approve the minutes of the September 8,2022 meeting. Commissioner Ellison seconded the motion.
* The Chair took a roll call vote, and the Commissioners voted as follows:
  + 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 September 8, 2022 public meeting.

1. **Executive Director Report – Executive Director Enrique A. Zuniga**
2. **Officer Recertification Update (A-H) – Executive Director Zuniga**

The Executive Director reported as follows.

As of October 12, 2022, 8,875 officers have submitted applications for recertification. Of those officers, 8,134 have been recertified; 603 have been conditionally recertified; 37 are under further review; and 57 were not certified. An estimated 44 applications remain pending submission and validation.

The POST Commission accepted almost 900 applications from Boston Police Department that were pending, and the majority have now been processed.

Applicants who were conditionally certified have also been processed; the original number of approximately 840 is now down to 603 because of removal to certified status.

The majority of individuals in the not certified category were so categorized because they did not satisfy training requirements, such as completing the Bridge Academy, and some were terminated.

The certification team continues to validate submitted data for approximately 44 applicants.

The POST Commission routinely addresses process questions from agencies inquiring about the status of individuals and from individuals who are transferring or seeking to be hired by another agency.

Executive Director Zuniga expressed a high degree of confidence in the individuals who are certified and asked that the Commission consider disseminating those names and making those records public, as it is a great matter of public interest with the public and agencies.

The website continues to be updated to explain conditional certifications in greater detail.

1. **Finance & Administrative Update – Chief Financial and Administrative Officer Eric Rebello-Pradas**
   * CFAO Eric Rebello-Pradas reported on FY22 Final Expenditures which totaled $1.99M. The top 3 expenses were payroll (42%), Legal/Media Services (26%), and IT (24%).
   * CFAO Rebello-Pradas then reported on FY23 Q1 activity, noting that major categories of spending are under budget mainly attributed to the delayed onboarding of new hires.
   * He stated that Salesforce development is the major IT solution for POST and is heading into the second phase which should take the Commission to the end of December or early January.
   * CFAO Rebello-Pradas also provided an update on the FY22 Annual Report, noting that revised drafts and edits are expected through the end of October and a presentation to the Commission is expected for the November meeting.
   * He reported that FY24 budget development is underway, based on comparisons with similar agencies throughout the state and other POST agencies throughout the country.
2. **Administrative Update - Executive Director Enrique A. Zuniga**

Executive Director Zuniga welcomed four new Commission staff members. From the Division of Standards: Shaun Martinez, Enforcement Counsel; John Paolillo, Compliance Agent; and Timothy Hartnett, Enforcement Counsel; and from IT: Owen Mael, IT Project Manager for three large projects as POST transitions from Jira (interim solution) to Salesforce.

Executive Director Zuniga put in context the upcoming year and explained that technology projects are gaining momentum and more people are onboarding.

Chair Hinkle asked if the budget meetings he conducted with division heads involved the heads of the Divisions of Standards and Certification or other groups as well. CFAO Rebello-Pradas responded, saying they involved all senior staff who report to the Executive Director, including members of the legal, technology, and finance and administration divisions.

Commissioner Luma asked CFAO Rebello-Pradas to review the status of the rollover. CFAO Rebello-Pradas answered that the Governor included the $2.9M rollover within his final deficiency supplemental budget. POST is proceeding on the assumption that the rollover will occur.

Commissioner Bluestone asked about the issue of how officers are being categorized into the “not certified” category and, specifically, who is making that determination.

Executive Director Zuniga answered that, per the regulations, the determination is initially made by the Division of Certification in consultation with the Division of Standards. As per our regulations, individuals who want that determination to be reconsidered can have two levels of review: one from the Executive Director and a second level of review by the Commission with developed hearing procedures.

Commissioner Ellison thanked the Finance Team for their work and briefing him, as Treasurer, on the budget process.

1. **General Counsel Update – General Counsel Randall E. Ravitz**

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

* General Counsel Ravitz presented updated draft regulations on databases and the dissemination of information concerning law enforcement officers for discussion by the Commission. He explained as follows.
* Significant changes/additions were highlighted. Most others were made for clarity, for consistency, or to correct errors.
* In Section 8.05, Item 11 provides for the database to include information regarding a reversal, vacation, or exoneration related to any form of information that is listed above or otherwise included in the database. Section 8.05(8) makes this list of items non-exclusive.
* The new language in Section 8.07 accounts for technical uncertainties when information is sought during a search of the database, such as by entering the name of a particular city to get all of the officers within that city. Language was added to account for the fact that the technology is still in development.
* Additional language states that whenever the Executive Director grants a petition and thus makes a change to the database, or denies a petition and thus makes no change, information on the action taken would be made available to the Commissioners; and the Chair would be able to take any steps deemed appropriate. This procedure is intended to balance the interest in Commissioner oversight and the interest in flexibility, given the uncertainty regarding the volume of future petitions, and the possibility that many may involve small or uncontroversial matters.
* A phrase was added in Section 8.07 to make clear that this provision concerns an employer’s personnel record.
* Commissioner Calderone thanked General Counsel Ravitz and staff for putting the documents together and for creating a method of objection when the data within departments are not kept concurrently with that of the POST Commission.
* Chair Hinkleasked for a motion to promulgate the draft regulations on databases and dissemination of information.
* Commissioner Wynn called for a motion to promulgate the draft regulations.
* Commissioner Luma seconded the motion.
* The Commissioners voted as follows:
* Commissioner Bluestone - Yes
* Commissioner Calderone - Yes
* Commissioner Ellison - Yes
* Commissioner Kazarosian - Yes
* Commissioner Luma - Yes
* Commissioner West - Yes
* Commissioner Wynn - Yes
* Chair Hinkle - Yes
* The motion was unanimously carried by those in attendance.
  + - * 1. **Proposed Amendments to Use of Force Regulations, 555 CMR 6.00– General Counsel Ravitz**

General Counsel Ravitz stated that the POST Commission and the MPTC jointly promulgated regulations concerning the use of force by law enforcement officers.

They adopted emergency amendments to Section 6.04(6) to leave no doubt that an officer is prohibited from taking certain actions that involve placing pressure on an individual’s neck or head.

An exception that, in certain ways, gives officers more latitude when they seek to “temporarily gain, regain or maintain control of an individual and apply restraints” does not relax that prohibition.

* The agencies have taken the necessary steps to enable them to make the regulations permanent. Most recently, the agencies held a public hearing and received written comments. The comments from the public did not concern the amendments, but instead concerned one aspect of the definition of De-escalation Tactics, and the previously discussed Section 12 issue.
* The agencies heard no reason not to promulgate the amendments on a permanent basis.
  + This Approval would authorize that, provided the MPTC authorizes the same.
* Commissioner Calderone asked if the Section 12 issue is included.
* General Counsel Ravitz said it does not make reference to Section 12; it only concerns the amendments relating to regulations regarding pressure on the neck and the head.
* Commissioner Ellison asked if this will be part of the MPTC training since veteran officers might not have had the training to reflect what the regulations will require.
* General Counsel Ravitz answered that it is his understanding that their training addresses the use of force and these regulations.
* Commissioner Wynn stated that this is an amendment to one sentence in the regulation that the Commission has already voted to approve. The regulation clarifies that you cannot deliberately sit, kneel or stand on the person’s head or neck.
* Executive Director Zuniga stated that POST conducted a hearing, as required, in which Commissioners Calderone and Ellison joined him in presiding. They received a couple of comments that were not related to the change in the regulations. The comments centered around Section 12 and passive resistance.
* Chair Hinkle asked for a motion to approve the proposed amendments.
* Commissioner Bluestone made a motion to approve the proposed amendments; Commissioner Kazarosian seconded the motion.
* The Commissioners voted as follows:
* Commissioner Bluestone - Yes
* Commissioner Calderone - Yes
* Commissioner Ellison - Yes
* Commissioner Kazarosian - Yes
* Commissioner Luma - Yes
* Commissioner West - Yes
* Commissioner Wynn - Yes
* Chair Hinkle - Yes

The motion was unanimously carried by those in attendance.

**c. Draft Regulations for Certification of School Resource Officers – General Counsel Ravitz**

* This version of regulations shows changes in redlining that were made since the regulations came before the Commission at the last meeting. General Counsel Ravitz focused on the highlighted parts.
* The definition of School Resource Officer and Section 10.04 clarify when an officer is, and is not, required to obtain certification to perform school-related duties.
* General Counsel Ravitz discussed the definition of School Resource Officer found in the relevant statute, M.G.L. c. 71, § 37P, and the difference in the definition in the draft regulations for Certification of School Resource Officers.
* The statute uses the phrase “special officer,” and that phrase is used in very different ways throughout the General Laws and throughout practice. The change in the regulation is meant to address the confusion.
* The regulation incorporates the second definition in terms of when a certification is needed. An officer who is only called to a school to respond to an emergency situation would not need certification, unlike those who hold themselves out as School Resource Officers.
* Another significant change cuts two requirements the officer would need to show in order to get a certification: the school system adopted operating procedures and there was an MOU between the school system and the school resource officer. These were cut to keep the focus on the individual and whether they should be certified.
* Other notable provisions include references to SRO training and provisions to encourage agencies to have alternate SROs in place to serve.
* If an officer has not completed all SRO training requirements, they would receive a conditional SRO certification and need to complete training within a reasonable and specified period of time. This would allow for flexibility.
* There is a provision allowing for certification in sub-specialties not yet fully defined.
* Commissioner Ellison asked if an officer that just transferred but found the training wasn’t available due to scheduling would be allowed to operate in that capacity as an SRO until the training is available.
* General Counsel Ravitz answered that the officer can still be certified, but on a conditional basis providing the training is completed within a reasonable time. This would not impact an officer’s general certification status.
* Commissioner Ellison asked if an officer would still be considered certified as an SRO if the MOU is still outstanding.
* General Counsel Ravitz answered that this set of regulations does not address MOU issues, which is enforced by other agencies like the Department of Elementary and Secondary Education and EOPSS. An officer can receive this certification if they satisfy the requirements.
* General Counsel Ravitz modified section 10.10 to the following with recommendations made by Commissioners Ellison and Kazarosian: If an officer fails to complete the SRO training referenced in 555 CMR 10.10(1) within 90 days of any deadline or as soon as reasonably possible thereafter, the Division may administratively suspend the officer’s SRO certification. Commissioner Wynn agreed with the modification.
* Chair Hinkle asked for a motion to approve the draft regulations for Certification of School Resource Officers as modified.
* Commissioner West made a motion to approve the proposed regulations; Commissioner Ellison seconded the motion.
* The Commissioners voted as follows:
* Commissioner Bluestone - Yes
* Commissioner Calderone - Yes
* Commissioner Ellison - Yes
* Commissioner Kazarosian - Yes
* Commissioner Luma - Yes
* Commissioner West - Yes
* Commissioner Wynn - Yes
* Chair Hinkle - Yes

The motion was unanimously carried by those in attendance.

1. **Presentation on Constable Certification – General Counsel Ravitz**

* General Counsel Ravitz highlighted four issues regarding the certification of constables, their continued service under Chapter 6E, and when Chapter 6E applies to them. There is no request for action by the Commission at this meeting.
* ISSUE 1: When and how constables are made subject to Chapter 6E. Section 1 includes a constable executing an arrest for any reason, but how can one know that a constable expects to execute an arrest? Does the Commission have to provide advice for each constable on an individual basis? One alternative is to provide for Constables to affirmatively apply for certification, which would give them the ability to make arrests.
* ISSUE 2: How the certification process for constables should proceed, in light of their independence. In large part, the current process relies on cooperation from employing agencies. Constables, however, are typically not employed by law enforcement agencies. They are elected or appointed and don’t fit squarely within the certification process developed thus far. There would be questions about conducting a background check, administering oral interviews, and determining character and fitness. One option is to develop a process tailored to constables.
* ISSUE 3: Ways in which constables can satisfy training requirements. An issue is to what extent constables are able to satisfy the basic and in-service training requirements associated with certification and recertification. POST will continue working with the MPTC and group of constables to gather information and explore ways to address these issues.
* ISSUE 4: The extent to which constables are subject to forms of oversight and consequences comparable to those provided for other officers. Suspension and revocation of certification will be more difficult to effectuate where constables serve independently. A potential approach may be to have someone identified who would take personal responsibility for overseeing the constable, including by receiving reports about uses of force and investigating misconduct, and reporting that information to the Commission.
* Commissioner Luma asked if there is data regarding how many constables there are.
* General Counsel Ravitz answered it is difficult to determine through the voluntary organizations and that data point would have to be worked on.
* Chair Hinkle asked who were the representatives of the constables meeting with the POST Commission staff members.
* General Counsel Ravitz answered that a couple of staffers, as well as Executive Director Zuniga, and outside counsel Lon Povich had initial meetings with representatives of the Massachusetts Constables Association and the Massachusetts Bay Constables Association. They may have met with members of the MPTC as well.
* Commissioner Ellison asked if all constables are licensed by one appointing authority or is it based on an individual city or town.
* General Counsel Ravitz answered it is done on a municipal basis. The approaches differ by city or town (elected, appointed, etc.).

1. **Executive Director Zuniga refers to his earlier Executive Director’s Report**

* Executive Director Zuniga asked the Commissioners whether they object to publishing the names of officers who have been recertified, or if they should wait for the process of promulgating regulations on dissemination of information to play itself out before they release any public information.
* Chair Hinkle asked General Counsel Ravitz what the timetable on the regulatory process is.
* General Counsel Ravitz answered it could be a few months for the approval of the regulation on dissemination of information.
* Attorney Povich predicted it could be 60-90 days.
* Commissioner Bluestone indicated that she was strongly in favor of posting information as quickly as possible, and it was a good starting point to provide information of individuals who have been certified. It should be anticipated that with a database of this size, there will be false positives and false negatives, she added. She said she hoped that the Commissioners have a way of being informed of those cases.
* Commissioner Calderone agreed with Commissioner Bluestone regarding false positives and negatives. If the list is incorrect in any way, it could create backlash and undue stress for officers who either appear incorrectly or don’t appear at all on the list, he said. It is extremely important to make sure the list is correct, and the Commission should take its time, he stated.
* Commissioner Luma said she believed there should be a validation process so that the Commission feels confident about moving forward and that it can address any issues that come up in a timely manner with as much transparency as possible.
* Commissioner Kazarosian agreed with all points made but expressed concern that there might not be a point in time where the list will be without errors.
* Commissioner Wynn also expressed agreement with all points made but noted his concern that releasing the names of certified officers would make it easy to determine the ones who were not, creating a burden on the municipalities.
* Commissioner Bluestone said she agreed with Commissioner Calderone’s concerns but was in favor of publishing information as quickly as possible.
* Commissioner Calderone conveyed his belief that there are ways to publish the information as quickly and accurately as possible by creating a type of checks and balances system.
* Commissioner Ellison pointed out that the list covers only A-H, and the public might not recognize that and might interpret that someone at the back of the list alphabetically was not recertified.
* Commissioner West agreed that the list should be accurate but did not know of a plan or steps to take to ensure that the list would be more accurate in a month than it was right then. There is an obligation to the public and they want to see the list, she said.
* Attorney Povich pointed out that this information is available to the public via the Public Records Act and the list would help manage these requests that the Commission has been receiving.
* Commissioner Bluestone said she believed that holding off increases the level of anxiety, the public is entitled to the information, and it should be released as quickly as possible.
* Commissioner Calderone reiterated his recommendation of bringing the list to the Commission so the body can review it.
* Commissioner Bluestone pointed out that the information related to those being recertified and believed the Commission should release that information.
* Chair Hinkle stated she is not in favor of disseminating the information at this time, though she might reconsider that at the next meeting where more information is provided.
* Commissioner Wynn suggested that officers from I-Z, who are statutorily certified, should be included in the A-H list. He also pointed out that uncertified officers will be easily identifiable by the media and that will create a burden for the municipalities.
* Chair Hinkle called for a motion on the Executive Director’s request to release the list of officers A-H who were recertified.
* Commissioner Luma recommended they identify a date to release the list.
* Commissioner West agreed that it would be helpful to have a date or an action in releasing the list.
* Commissioner Bluestone made a motion to vote on whether to publish the current list of officers that have been recertified.
* The motion was not seconded.
* Commissioner Wynn said he believes the matter should be placed as a separate agenda item at a future meeting.
* Commissioner West said she would like to see the item on the next agenda with a plan to vote on it.
* Commissioner Kazarosian pointed out that the information is already available to the public and if the Commission were to publicize the information it could limit the amount of requests.
* Commissioner Ellison asked Director Zuniga if he knows how many officers are on the back end, I-Z.
* Executive Director Zuniga answered that the Commission has not requested rosters for officers I-Z.
* Commissioner Calderone recommended that the procedure be documented, written and presented at a future meeting.

**Adjournment**

* Commissioner Kazarosian made a motion to adjourn. Commissioner Calderone seconded the motion.
* The Chair took a roll call vote, and the Commissioners voted as follows:
* Commissioner Bluestone - Yes
* Commissioner Calderone - Yes
* Commissioner Ellison - Yes
* Commissioner Kazarosian - Yes
* Commissioner Luma - Yes
* Commissioner West - Yes
* Commissioner Wynn - Yes
* Chair Hinkle - Yes
  + The Commission unanimously voted to adjourn the meeting.