

PEACE OFFICER STANDARDS & TRAINING COMMISSION

PUBLIC MEETING MINUTES

**September 8, 2022**

**8:30 AM**

**Remote Participation**

**Documents Distributed in Advance of Meeting:**

- Public Meeting Minutes of August 4, 2022 (Proposed)
- Memorandum from Chief Financial and Administrative Officer Eric Rebello-Pradas to Commission re: Finance & Administrative Update
- Regulations 555 CMR 8.00: Databases and Dissemination of Information (Proposed)
- Approval of Recertification Regulations on a Permanent Basis (Proposed)
- Regulations 555 CMR 7.00: Recertification
- Approval of Certification for Certain Humane Society Officers (Proposed)
- Regulations 555 CMR 10.00: Specialized Certification for School Resource Officers (Proposed)
- Joint POST Commission and MPTC Guidance as to M.G.L. Chapter 123, §§12(a) and 12(e) and the Use of Force (Proposed)

**In Attendance:**

- Chair Margaret R. Hinkle
- Commissioner Hanya H. Bluestone
- Commissioner Lawrence Calderone
- Commissioner Clementina M. Chéry
- Commissioner Larry Ellison
- Commissioner Marsha V. Kazarosian
- Commissioner Charlene D. Luma
- Commissioner Kimberly P. West
- Commissioner Michael J. Wynn

**1. Call to Order**

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

**2. Approval of Minutes**

- Commissioner Kazarosian moved to approve the minutes of the August 4, 2022 meeting. Commissioner Bluestone seconded the motion.
- The Chair took a roll call vote, and the Commissioners voted as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chéry – Yes
  - Commissioner Ellison – Yes
  - Commissioner Kazarosian – Yes

- Commissioner Luma – Yes
- Commissioner West – Yes
- Commissioner Wynn – Yes
- Chair Hinkle – Yes
- The Commissioners unanimously approved the minutes of the August 4, 2022 public meeting.

### **3. Executive Director Report – Executive Director Enrique A. Zuniga**

#### **a. Officer Recertification Update (A-H) – Executive Director Zuniga**

- As of August 31, 2022, 7,908 officers have submitted applications for recertification. Of those officers, 7,005 have been recertified; 840 have been conditionally recertified; 50 are under further review; and 15 were not certified. An estimated 886 applications from the Boston Police Department (“BPD”) are pending submission, which would bring the total number of officers seeking recertification to 8,794.
- The total numbers have been stable since the August 2022 reporting; however, there has been fluctuation within the categories, as previously reported.
- There have been more submissions since August 1, 2022, which have come from departments that were subject to extended deadlines from the POST Commission.
- As of August 31, 2022, BPD is the only department that still must submit information to the POST Commission, which it must do by September 15, 2022; BPD’s delay is due in part to a transition in its leadership.
- The certification team continues to address conditional certifications. Approximately 840 individuals have been conditionally certified; and the first milestone for conditional certification is 90 days after June 30, 2022 deadline, or September 30, 2022, the date by which certain individuals must meet conditions.
- The POST Commission has started to receive and process information updating conditions, including those related to basic training, Bridge Academy training and in-service training; departments have to submit information to MPTC within 90 days of June 30, 2022, or by September 30, 2022; and MPTC is providing the POST Commission with information as whether to remove conditions or investigate further.
- The POST Commission sent 10 individuals correction letters because they did not complete Bridge Academy training and would need full academy training to be certified; 2 individuals listed in the National Decertification Index (“NDI”) received letters from the POST Commission; and the 2 individuals requested further review by the POST Commission.
- There have been 598 new graduate certifications since December 1, 2022; 107 of these are Special State Police Officers (“SSPOs”); there will be 2 additional classes in September 2022 (consisting of approximately 50 cadets); and BPD and the Massachusetts State Police will graduate 293 officers in October 2022. Required POST Commission forms need to be submitted to the Commission

prior to graduation from academies in order for individuals to start without interruption after graduation.

- The Commission is contracting with a professional service vendor, Salesforce, which will provide a permanent technology solution. The first task order with Slalom is being executed for duration of 8 weeks at a cost of (\$363,000; small, short task orders are preferred and the best practice in the industry; therefore, the scope and budget are still fluctuating.
- The Commission is continuing to build on Jira, an interim solution for recertification processes, including by developing after-action reports and updates to forms as the POST Commission contemplates the next wave of recertification and the intake process for recertification of individuals with last names of I-P in June 2023. A solution will be developed in the next few months for agencies to have sufficient time to submit information by June 30, 2023.

**b. Finance & Administrative Update – Chief Financial and Administrative Officer Rebello-Pradas**

- CFAO Rebello-Pradas reviewed the report on the POST Commission's appropriation for FY23.
- FY22 concluded on June 30, 2022, and the Commission spent \$2 million out of a \$4.9 million budget; the projected balance forward to FY23 is \$2.9 million. The balance forward is to be used for an IT solution, particularly Salesforce.
- The Governor included \$2.9 million in his final deficiency supplemental budget.
- Spending plans were submitted to Administration and Finance ("A&F") on September 7, 2022, in line with the Commission vote on June 30, 2022, with the exception of employment payroll and IT updates.
- The FY24 budget is in development; maintenance requests should go to A&F in October 2022, and plans should go to A&F in November 2022.
- Contracts update – The Commission has finished the procurement plans for outside legal counsel; drafted a one-year contract with Anderson & Krieger LLP; and finished a statement of work on a contract with Slalom and Smartronix for \$363,000 through mid-October 2022.
- Hiring Update – The Commission is adding 4 new staff members for the Division of Standards, consisting of 2 enforcement counsels, 1 compliance agent, and 1 paralegal; and the POST Commission staff now totals 22 members and remains on target to reach 27 by the end of FY23.
- In terms of HR, the background check process will now be completely conducted in-house; and trained in-house staff will utilize resources to save time.
- The Annual Report is underway and will coincide with the fiscal year, which ended on June 30, 2022; the Commission will wait for the accounts payable period in July and August 2022 to make last minute bill payments and file a report ideally at the end of September 2022 (maybe slightly later than the projected time).

- The FY23 budget included a line item requiring the reporting of information, which is due in March 2023. The annual reporting can include the information that is due in March 2023.
- Commissioner Ellison asked how many employees of the 22 are full-time and how many are part-time.
- CFAO Rebello-Pradas said that, out of the 22, 5 are considered part-time; they are retired employees; the amount of their hours is limited by law; and the cap was waived for calendar year 2022 by Legislature.
- Commissioner Ellison asked, with respect to the certification cases that require further review, how many would need further review by the Commissioners.
- Director Zuniga said the short answer is that he does not know and hopes to bring a better update on those numbers soon. The number started at approximately 60 and is down to 50.
- Commissioner Ellison asked if officers are currently still able to operate in their full capacity with full police powers in their agency.
- Director Zuniga said yes, even if they are under further review, they are conditionally certified. The regulations do not set a deadline for POST Commission review, and the review should not be extended into the next year.

#### **4. General Counsel Update – General Counsel Randall E. Ravitz**

##### **a. Joint Guidance as to Chapter 123, Section 12 and the Use of Force – General Counsel Ravitz**

- A few changes were made in response to comments since the August 4, 2022, meeting to provide clarification and explain that there is no tension between Section 12 and the Use of Force regulations that were promulgated jointly by the POST Commission and MPTC.
- The first change since the last version was the addition of citations to the POST Commission’s own version of the regulations; Title 555 houses those regulations.
- The second change was to eliminate the last paragraph, thus avoiding the risk that “such non-deadly force” could be construed to mean that officers cannot use deadly force where otherwise warranted, while also avoiding the risk that a substitute phrase like “such force that is deemed to be both necessary and proportionate” could be construed to allow for the use of deadly or non-deadly force without sufficient limitations. The paragraph was struck as not to detract from the main message being sent by the Guidance.
- The Guidance is intended to provide limited forms of clarification. It states that none of the sources listed prohibits officers from using force in Section 12 situations where the regulatory standard is met. Also, it states that where officers have a duty under Section 12, those sources do not relieve them of that duty when there is a likelihood of serious harm only to the person at issue and not to the public. Then, it states that the regulations do not allow officers to substitute their judgment for that of mental health professionals after a determination under Section 12(a).

- The Guidance does not relax obligations officers have to use de-escalation before using force; does not impose any new duty on officers in Section 12 mental-health situations; and does not impose new restrictions on officers.
- More can be done, and this Guidance is not an attempt to provide comprehensive guidelines on how to handle difficult Section 12 situations.
- Commissioner Bluestone offered her perspective as a mental health professional and explained the history over past six months in speaking with stakeholders about the complexities of Section 12 transports by law enforcement to a hospital for evaluations and the application of use of force regulations.
- Commissioner Bluestone acknowledged an August 31, 2022, letter from the Massachusetts Association for Mental Health, and commented that the POST Commission is not discussing the role of law enforcement in the Section 12 process but is clarifying that the Commission's use of force regulations apply in Section 12 cases.
- Commissioner Bluestone said the Legislature provided through special legislation that it shall assign a special commission to explore complex issue of role of law enforcement in emergency hospitalizations. She sees this, as Commissioner Luma previously stated, as primarily a training issue and therefore it should be kept simple, and the POST Commission should offer guidance to balance existing requirements.
- Commissioner Wynn reiterated that the purpose of this Guidance was limited. If there needs to be look at the overall framework of Section 12, it is on the Legislature, and law enforcement has been requesting that for years but that is not the Commission's role. The Commission needs to give immediate guidance to balance the existing requirements of Section 12 with the use of force regulations so officers know what is expected of them.
- Commissioner Calderone stated that officers on the street have a different view than the Guidance, specifically where it makes the point that officers cannot substitute their own judgment on the scene. Maybe some rank-and-file and street police officers who answer calls daily on the street should be part of the conversation with the Commission and MPTC.
- Chair Hinkle indicated that this is the third time the Commission has addressed the Guidance and that public comments have been welcome and taken into consideration. The Guidance can be promulgated and adjusted as things develop, and the Commission can take up further developments regarding the Guidance.
- Commissioner Ellison said there will always be an issue of law enforcement being on the premises as a precautionary measure. Medical personnel will not enter without law enforcement present, and this raises anxiety.
- Commissioner Luma said some of what the Commission was discussing is beyond the scope of the Commission, and there is a training issue that has to involve police officers and mental health professionals. It is a much-needed discussion as the Commission thinks about collaboration between police officers and mental health professionals and moving forward with Section 12.
- Commissioner Calderone said there should be a special legislative body put

together according to the law. There should be a multi-professional response on a Section 12, which is probably in the best interest of the person involved. There should be a team that includes an EMS and a mental health professional, and it should not be incumbent on the rank-and-file police officer to handle certain aspects of the situation. Also, Commissioner Calderone stated that he previously forwarded comments received from people to the POST Commission.

- Commissioner Bluestone said the law states that it is the mental health professional who can make the determination and, in the absence of one, it can be a police officer if a person needs to be transported for evaluation. Officers are merely being asked to follow the law.
- Commissioner Wynn said the POST Commission issues guidance for the entire Commonwealth, which includes communities with part-time ambulance services and no mental health provider, where the only person available to go on the call is an officer. This makes it difficult for a multi-agency response.
- The Chair called for a vote on the Guidance. Commissioner Kazarosian moved to approve the Guidance; Commissioners Wynn and Luma seconded the motion.
- The Commissioners voted as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – No
  - Commissioner Chéry – Yes
  - Commissioner Ellison – Yes
  - Commissioner Kazarosian – Yes
  - Commissioner Luma – Yes
  - Commissioner West – Yes
  - Commissioner Wynn – Yes
  - Chair Hinkle – Yes
- The Guidance was approved by a vote of 8 to 1.

**b. Draft Regulations on Databases and Dissemination of Information – General Counsel Ravitz**

- General Counsel Ravitz highlighted the changes from the previous version of draft regulation 555 CMR 8.00 and the proposed changes that take into account a set of regulations promulgated by the Executive Office of Administration and Finance under the Fair Information Practices Act (“FIPA”), 801 CMR 3.00.
- FIPA restricts the dissemination and handling of information that is not a public record, not CORI, and not within certain other categories; the POST Commission would be promulgating its own regulations under the statute, and the POST Commission would therefore not be subject to that A&F regulation.
- Other changes in the proposed regulation: provide that the Executive Director may delegate functions to a designee; spell out what will be included in a public database, such as information on officers who are conditionally certified, not recertified, and have a pending certification; add the word “active” before officer to make clear the provisions pertain to serving officers;

provide for the inclusion of summaries of officer disciplinary records, with the exception of unsustained complaints; provide for the ability to compile or aggregate the total number of complaints from the database; and include matters under investigation or subject to legal action by another body within the category of ongoing matters.

- A new section would allow for officers to be able to object to data that was incorrect. If an officer makes a challenge to data, it would be governed by a new regulation that supersedes the A&F regulation; the regulation would extend the ability to raise challenges to personal data and data that would be a matter of public record and CORI; it would allow for objections on grounds including accuracy and relevance with respect to a broader range of data; and it would allow individuals to respond to an adverse decision through a written petition and statement to the Executive Director, which statement would be included with the data. A similar provision is included in the statute governing personnel records, allowing a statement to be maintained along with personnel records.
- Commissioner West asked for clarification about the language that broadens an officer's ability to challenge information maintained by the Commission.
- General Counsel Ravitz responded that, under FIPA and regulations promulgated by A&F that currently govern the POST Commission, an individual has the ability to challenge personal data, which excludes public records, CORI, and certain other data. The individual has the ability to raise objections to the agency regarding accuracy and completeness. The proposed POST Commission regulation applies to challenges to any data involving the individual that would be maintained by the Commission – not just personal data, but a wider category of data.
- Commissioner Bluestone asked whether Section 8.07(1)-(5) allows the person in the role of the Executive Director to unilaterally remove data from the database without the Commission being aware of that removal.
- General Counsel Ravitz responded that the Executive Director would have the ability at the outset to make a change if he finds it is warranted, but the regulation does not specify that the Commission would be notified of the change.
- Commissioner Bluestone requested that the regulation include a statement that the Commission be made aware of any independent action by the Executive Director to remove information from the database. General Counsel Ravitz stated that the change could be included.
- Commissioner Calderone asked, regarding Section 8.05(4)(a)10., whether there would be something in the record on officers' exoneration of complaints. Executive Director Zuniga answered yes, the summary will contain exonerations. Commissioner Calderone recommended that such a provision should be added in writing.
- Commissioner Kazarosian recommended adding "included but not limited to" if exonerations were to be added.
- Commissioner Calderone asked, with respect to Section 8.5(7)(d), whether there is such a thing as an unreasonable amount of time that passes before

something has been decided not to be pursued. That is, is there a timeframe that the Commission can agree to, with respect to what is reasonable and what is not?

- Commissioner Ellison noted that, at BPD, oral reprimands are written in one's folder but there is no course of appeal and the reprimand will show up unfavorably in an officer's record.
- Commissioner Wynn said his understanding is that an officer has the ability to appeal anything that goes into a personnel file and has the right to file a written response, including to oral reprimands (but maybe not at the supervisor level). Executive Director Enrique Zuniga stated that certain complaints that are not reportable to the POST Commission are excluded from the regulation.
- Commissioner Calderone asked, as to the provision in Section 8.07 referring to a good-faith, reasonable belief, whether the Commission will know everything that has been decided on the Executive Director or Chair level, or they will have a chance to vote on it.
- General Counsel Ravitz stated that the section refers to personnel records maintained by the employer; it provides that if the POST Commission knows that there is information in the employer's personnel record that could be inaccurate, the officer can exercise the right to correct the information in the employer's record before the POST Commission utilizes the information.
- Executive Director Zuniga raised the point that Commissioner West and Commissioner Bluestone requested the addition of language requiring the Executive Director to notify the Commission of what information should be removed.
- Chair Hinkle deferred the vote on this agenda item until it is redrafted. There were no objections to that procedure.
- After one hour and 28 minutes, Commissioner Kazarosian announced that she needed to leave the meeting; the meeting proceeded with a quorum.

**c. Recertification Regulations, 555 CMR 7.00 – General Counsel Ravitz**

- General Counsel Ravitz outlined the process for promulgating the regulations and what the law requires in order for the staff to take the necessary steps to make the emergency regulations permanent.
- General Counsel Ravitz and Executive Director Zuniga stated that the emergency regulations were useful in practice in the implementation of the certification efforts and now need to be permanent to continue in effect.
- The Chair asked for a motion to approve the Recertification Regulations (emergency) on a permanent basis.
- Commissioner West moved to approve the Recertification Regulations on a permanent basis. Commissioner Bluestone seconded the motion.
- The Commissioners voted as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chéry – Yes
  - Commissioner Ellison – Yes



- Commissioner Luma – Yes
- Commissioner West – Yes
- Commissioner Wynn – Yes
- Chair Hinkle – Yes

**d. Certification of Humane Society Officers – General Counsel Ravitz**

- The Legislature recently added Humane Societies and officers to the definitions of law enforcement agencies and officers; inserted a provision stating they need to be certified; and made the changes retroactive. The Legislature did not automatically certify those officers for a period of time and did not provide for a grace period.
- The certification proposal for Humane Society Officers would: provide a way for officers to obtain temporary conditional certification through a summary application process (by which an agency head can submit an attestation that the requirements were met); allow conditional certification for those who did not satisfy a training requirement as a result of a documented hardship; provide for certification to be made retroactive to July 1, 2022, for this group only; and add that agencies can still submit full applications.
- Commissioner Wynn emphasized the importance of protecting and covering these officers, noting calls he received from colleagues on this long-pending issue of importance.
- Commissioner Luma asked whether, in making certifications retroactive, new employees might not necessarily be covered.
- General Counsel Ravitz answered that the proposed plan would allow the Commission to make certifications for this group of people retroactive to July 1, 2022, but that retroactivity provision only applies to the group of people already employed. This group is small in number, 11 total, and the entire group is covered under this proposal.
- Commissioner West asked if this is putting this particular group of people into the same category as everyone else.
- General Counsel Ravitz answered yes.
- Commissioner Wynn indicated that these organizations were put on the out-of-scope list and they did not fit at the time in the evaluative process. Now that there was a legislative amendment, they had to be added.
- Chair Hinkle called for a motion to approve the certification of the Humane Society Officers. Commissioners Luma and Wynn moved to approve the certification of the Humane Society Officers. Commissioner Calderone seconded the motion.
- The Commissioners voted as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chéry – Yes
  - Commissioner Ellison – Yes
  - Commissioner Luma – Yes
  - Commissioner West – Yes
  - Commissioner Wynn – Yes

- Chair Hinkle – Yes
  - The motion was unanimously carried by those in attendance.
- e. Draft Regulations for Certification of School Resource Officers (“SROs”) – General Counsel Ravitz**
- The Commission has the power to issue specialized certifications for SROs, and one cannot serve as an SRO unless that person is specially certified by the Commission; the statute thus requires some type of certification process for SROs to continue; but the statute does not elaborate on the standards or procedure for certification.
  - The statute makes reference to Chapter 71, Section 37P, which sets forth requirements and restrictions regarding the appointment and supervision of SROs and requires municipalities to adopt operating procedures and MOUs; and another statute requires the MPTC to develop a training program for SROs.
  - The draft regulations set forth provisions regarding basic administrative procedures, deadlines for those currently serving, application information, training, and background checks; and they would only allow the Certification Division to grant an SRO certification to an individual who possesses an officer certification that is not suspended.
  - An alternative would be to eliminate the certification requirements of having sufficient operating procedures and a sufficient MOU, thus leaving the evaluation of the sufficiency of those documents for other agencies and providing for the certification of an individual to look at things more personal to the individual being considered.
  - The regulations further provide that: one can obtain review by the Executive Director modeled on the procedures in the recertification regulations; a certification lasts for three years; it is deemed valid until vacated; and one cannot be appointed as SRO unless certified as SRO and in possession of officer certification.
  - Commissioner Ellison stated that: Boston does not have an MOU in effect; Boston is unique in that officers are not assigned in buildings; and there is some confusion as to whether some officers have to be certified as SROs since they do not work in a full-time capacity with students, but go into schools periodically for presentations, etc. He asked if they have to be trained to be inside the building.
  - General Counsel Ravitz responded that the statute that defines the term SRO leaves room for interpretation as to how things are categorized. Of significance here, he reads the definition to say that: an SRO is appointed by the Chief of Police and charged with performing all of the duties listed in the regulation; but, if someone is not charged with performing all of the duties, but called into schools to deal with a situation that arises, they would not fall within the SRO definition and they would not need to comply with the rules regarding SROs.
  - The regulation can be made explicit with respect to the range of officers who fall within the definition of SRO.

- Members of the public and the Commissioners can send General Counsel Ravitz an email and redline the document with changes on this agenda item.

## **5. Matters not anticipated by the Chair at the time of posting**

- There was no new business.

## **6. Adjournment**

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