Peace Officer Standards & Training Commission

PUBLIC MEETING MINUTES

**November 22, 2022**

**8:30 AM**

**Remote Participation**

**Documents Distributed in Advance of Meeting:**

* Public Meeting Minutes of October 13, 2022 (Proposed)
* Executive Director’s Report Presentation
* Regulations 555 CMR 9.00: Initial Certification of Officers; And Initial or Renewed Certification of Independently Applying Officers, Including Constables (Proposed)
* Proposal for the Authorization to Publish List of Certified Officers on the Commission’s Website
* Proposal for the Delegation of Authority to Issue Certain Suspensions of Certification

**In Attendance**:

* Chair Margaret R. Hinkle
* Commissioner Hanya H. Bluestone
* Commissioner Lawrence Calderone
* Commissioner Clementina 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.
1. **Approval of Minutes**
* Commissioner Kazarosian moved to approve the minutes of the October 13,2022 meeting. Commissioner Chéry 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 October 13, 2022 public meeting.
1. **Executive Director Report – Executive Director Enrique A. Zuniga**
2. **Officer Recertification Update (A-H) – Executive Director Zuniga**

Executive Director Zuniga reported as follows.

The Commission continues to make progress with certification of new graduates and recertification of individuals with last names beginning with A-H.

The first level of review of those with a negative attestation during the recertification process is with the Division of Certification; the second level of review is a meeting with Executive Director; and the third level of review will eventually be before the Commission or a hearing officer, as the Chair decides.

The Division of Certification will classify individuals out on leave as not certified—on leave and then will conditionally certify them for 90 days after they return to duty.

As of November 16, 2022, 8,846 officers have submitted applications for recertification. Of those officers, 8,322 have been recertified; 269 have been conditionally recertified; and 243 were not certified (these numbers include the following categories: 133 who were out on leave; 63 who failed the Bridge Academy; 21 who retired or resigned; and 26 who have faced a disciplinary matter). The category of further review has been phased out, and there has been added a potential inquiry/hearing/suspension category of 12. Last month, there were 44 officers with validation errors, with a few involving duplicate applications.

Commissioner Bluestone asked for clarification on the potential inquiry language in relation to Executive Director review.

Executive Director Zuniga emphasized that the potential inquiry category is not yet final but continues to go through the pipeline and he did want to assume the result. A potential inquiry is handled by the Division of Standards.

Commissioner Ellison asked if notifications have gone out to the 12 individuals in the potential inquiry/hearing/suspension category and what the timeline is for them to respond.

Executive Director Zuniga answered that they have not been notified yet, as they will be seeking approval from the Commission for that designation. If it is approved, they will be notified as soon as practical. He stated that there is a 60-day timeframe for the Commission to conduct a preliminary inquiry and asked General Counsel Ravitz whether that was correct. General Counsel Ravitz stated yes, adding that there was a period of time within which a report needs to be made, so that would be 60 days.

Commissioner Ellison asked whether a Department or an officer has the burden to notify the Commission when an officer returns from injury or other leave.

Executive Director Zuniga answered that the staff prefers notification from the Department but can also accept notification from the officers themselves.

Commissioner Ellison indicated that notification from the Department is a better protocol to align the start times for return.

1. **Web-based Public Complaint Form**
	* Executive Director Zuniga provided an overview of the web-based public complaint form, which is now live, and explained the content, including required fields. Also, he explained that there is a reporting tab for law enforcement agencies.
	* Chair Hinkle asked about the basis for permitting anonymity as to the person making the complaint.
	* Executive Director Zuniga answered that the Commission stipulates in its regulations that the Commission will accept anonymous complaints so long as there is a basis for investigating them. Also, the forms allow for people to submit complaints on behalf of others.
	* Commissioner West pointed out that there are ways to allow people to submit a complaint and obtain contact information, with anonymity, such as via a third party like a lawyer who might submit the complaint on the person’s behalf.
	* Executive Director Zuniga indicated that the staff can make the field required or look for alternatives, if the Commission determines that is necessary.
	* Commissioner Bluestone pointed out that the Commission should plan on how to respond to individuals presenting complaints in a disrespectful or threatening manner. The Commission needs to think about how to manage those situations, she said.
	* Commissioner Chéry asked what the timeline is from when a public complaint is submitted to the point when the Commission responds to it.
	* Executive Director Zuniga answered that it is a fairly quick turnaround. The person who submits a complaint receives an immediate message that the complaint was received or that a field was missing. There is coordination with the law enforcement agencies. There is direct follow-up with individuals, but more resources will be needed to accommodate the number of complaints. The Commission has good coordination with law enforcement agencies.
	* Commissioner Luma said she would like to see a way for an individual to remain anonymous in the event they do not feel safe in submitting a complaint.
	* Executive Director Zuniga pointed out that there is a field allowing someone else to submit a complaint on behalf of others.
	* Executive Director Zuniga reported that there have been approximately 1,650 complaints submitted to date, with 23% (350) submitted from a small group, and with some not being credible complaints for a variety of reasons.
	* Executive Director Zuniga announced other changes to the Commission website such as the addition of areas regarding staff contact information, public records requests, and the ability to sign-up for mailing lists.
2. **Finance and Administrative Update - Executive Director Enrique A. Zuniga**

Executive Director Zuniga announced that Governor Baker signed the FY22 close-out supplementary budget on November 10th and that the $2.9M leftover balance has officially rolled over into FY23.

Executive Director Zuniga stated that under the employee performance evaluation process, there will be a merit rating of “meets” or “exceeds” which will equal an “up to” 1% or 2% salary increase depending on hire date. Eligible employees will receive a 2.5% COLA.

Executive Director Zuniga welcomed two new Commission staff members: Chrissie Fitzpatrick, Paralegal in the Division of Standards; and Albert Fung, Business Analyst in IT. The Commission is currently hiring a Paralegal under the Legal Division as well as a Digital Communications Division Digital Manager. The Commission is currently at 22 employees with a projected number of 28 by June 30th.

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

**a. Proposed draft regulations Re: Initial Certification, Independent Applicants and Constables (555 CMR 9.00) – General Counsel Ravitz**

* General Counsel Ravitz presented proposed draft regulations regarding initial certification, independent applicants and constables for discussion by the Commission. He explained as follows.
	+ - * These regulations would govern any initial certification, expanding on what the Commission has already done. They would also govern the certification of any officer who applies independently, instead of applying with the endorsement of an employing agency, whether that officer seeks an initial or a renewed certification—including any constable.
* A prior presentation highlighted four issues with constables and certification: (1) how we know who fits in the category of constable executing an arrest for any reason; (2) how the certification process should proceed in light of their independence, such as how the background check, oral interview, and character and fitness requirements are applied; (3) ways in which constables can satisfy training; and (4) how they are subject to oversight and consequences.
* The regulations generally apply the same standards and processes that the Commission adopted for the recertification process. But, with respect to independent applicants, including constables, these regulations provide that, to satisfy the background check requirement, the applicant can either request that a law enforcement agency conduct one, for which it may charge a fee; or request that the Commission conduct one, for which it would charge a fee.
* To administer an oral interview, the Commission would arrange for it to be conducted by one of several approved individuals; and may prescribe the asking of certain questions, the coverage of certain topics, or the use of a questionnaire.
* As to character and fitness, the Commission would make an assessment based on certain information collected in the process and a set of guidelines, including: the identification of three professional references, one of which must be a certified officer.
* The regulations include some additional provisions regarding constables. They provide that:
	+ - * To be certified, a constable must have a monitor that is the constable’s appointing authority or a law enforcement agency; that agrees to serve; and that would need to designate one or more individuals who will take personal responsibility for overseeing the constable and taking steps that Chapter 6E requires of supervisors.
* A law enforcement agency or officer that serves in such a role is subject to discipline for nonperformance.
* A constable who is certified or executes an arrest is subject to Chapter 6E’s provisions regarding officers, some regarding agencies, and Commission regulations and policies.
* A constable may execute an arrest only if certified and otherwise allowed.
* A constable who executes an arrest without certification, or otherwise violates the above, may be restricted, disciplined, or fined up to $5,000 for each impermissible arrest.
* Certification does not grant powers beyond those granted by existing law.
* Chapter 6E extends to “a constable executing an arrest for any reason.” In this definition of “arrest,” the first sentence is nearly identical to a definition found in Massachusetts case law.
* The second sentence takes into account: judicial decisions treating the use or display of a weapon as something that militates in favor of an action being found to constitute an arrest.
* Also, the Commission’s previously expressed view that the carrying of a weapon should bring a constable within the scope of the statute is taken into account.
* There is a need to have a rule that can be applied broadly and in advance of action by a constable.
* Another option is to add that an arrest also includes any service of a capias or arrest warrant because service of that form of process is restrictive. This is a policy matter, and no vote on the regulations will be requested today.
* Section 9.08 and Section 9.08(2) provide that, if an agency has not determined that an applicant possesses character and fitness, the applicant can only proceed as an independent applicant.
* In Section 9.06, subsections (3)(b)-(d), regarding endorsed and independent applicants, both provide that the applicant will receive the results of a background check and 14 days to respond before the Division determines that the applicant failed. The Division could also post notice on the Commission’s website inviting comments from members of the public.
* Section 9.09(2) enables the Division to evaluate the certification standards in any order that is expedient and to stop after finding one standard unmet; and thus relieves the Division of having to undertake the more onerous aspects where that would be futile, such as the background check and character and fitness test.
* The recertification regulations provide that a serving officer is not subject to a condition until after the conclusion of review or the time for seeking it. Subsections 9.10(1) and (2) do the same with respect to any serving officer seeking recertification independently but give the Division discretion to decide whether to do so with respect to an applicant seeking initial certification and are based on the idea that there may be a need for more caution with someone who is not already serving as an officer. Failure to honor a limitation may be grounds for discipline. Certification doesn’t commence until the job is assumed, and the Commission can reconsider certification.
* Commissioner West asked if the definition of arrest includes taking someone into custody.
* General Counsel Ravitz said that would fall into that definition if someone was taken into custody but oftentimes the person is not taken into custody but given an opportunity to appear.
* Chair Hinkle reiterated that no vote would be taken on the regulation at this time.

**b. Dissemination of Information on Certified Status**

* Deputy General Counsel Pauline Nguyen presented a proposal for the Commission to publish a list of certified officers on the Commission website.
* Certified officers include graduates from the Academy and officers who have been granted initial certification by the Commission after December 15, 2021, with last names beginning with A-H and were granted full recertification.
* Full certification means recertification with no limitation, condition, or restriction imposed. The proposal includes the release of names, employing agencies and certification statuses of officers falling within this category.
* The Commission’s authority is set forth in Chapter 6E, as it is tasked with creating and maintaining a public database. The Public Records Law requires release of information in 10 days, and release of certified officers will permit directing requestors to the website.
* There will be an opportunity to officers and their chiefs to report errors if the officers are posted on the website.
* Chair Hinkle asked for a motion to authorize the POST Commission to publish a list of certified officers on the POST Commission website.
* Commissioner Kazarosian moved to publish the list of officers.
* Commissioner Bluestone 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 motion was carried by those in attendance.

**c. Delegation of Authority for Immediate and Administrative Suspensions**

Deputy General Counsel Pauline Nguyen presented a proposal for the delegation of authority for immediate and administrative suspensions (3 specific types) and adoption of certain requirements and exemptions related to in-service training. She stated as follows.

Under 9(a)(1), suspension is for arrest, charge, or indictment for a felony; 9(b) and (c) contain provisions for administrative suspensions under specific conditions, such as in-service training and failure to report officer-alleged misconduct.

There is no need for a preliminary inquiry or prior hearing to impose these suspensions. The Commission would be able to act more promptly and immediately with the delegation of authority to Executive Director. The Executive Director’s actions are subject to review with a hearing before a Single Commissioner within 15 days of imposition of the suspension.

The staff was seeking a delegation of authority from the Commission to the Executive Director to issue suspensions under M.G.L. c. 6E, §§ 9(a)(1), (b), and (c), and the adoption of the requirements and deadlines for in-service trainings established by the MPTC as the requirements and deadlines of the Commission.

Commissioner Calderone asked for clarification on Section 9(c) as it pertains to Subsection 8 and the completion of the report. He asked whether it applied to the officer or the chief.

Deputy General Counsel Nguyen answered that it refers to the requirement to report certain alleged misconduct to the Commission which is provided in Section 8.

Executive Director Zuniga explained that it would be the person who failed to report certain information, including the chief.

General Counsel Ravitz stated that, if someone has a duty to make a report in Section 8, but fails to do so, the statute says that person can be administratively suspended until they make the report. At the time of making the report, the suspension would be lifted.

Commissioner Calderone asked if the proposal is asking to give the Executive Director the ability to make a decision based on a misdemeanor by an officer or by a chief.

General Counsel Ravitz answered that Section 9 is referring to the officer who is suspected of committing a misdemeanor.

Executive Director Zuniga explained that the misdemeanor provision is permissive and not the topic of delegation from the Commission to the Executive Director.

Commissioner Calderone asked for a clarification that the 9(c), failure to make a report, refers specifically to the head of the agency for suspension, not the officer.

Executive Directory Zuniga asked the “head of agency,” or their designee, be included for the larger agencies.

Commissioner Ellison says that the current language does not cover the Boston Police Commissioner since he is a civilian, not an appointed authority and the language of designee is therefore important with regard to suspension of the individual.

General Counsel Ravitz stated that 9(c) says “an officer with a duty to report” and you could read the statute to require the suspension of that person.

Commissioner Bluestone asked if there is the same level of urgency around suspending the officer with a duty to report, as with the other two suspensions.

Chair Hinkle asked for a motion to approve the proposed amendments.

Commissioner Calderone made a motion to amend number of the original motion by adding language to clarify that 9(c) in this instance should say the head of the agency, the designee, or the supervisor in charge.

Commissioner Kazarosian seconded the motion.

* The Commissioners voted as follows:
* Commissioner Bluestone - Yes
* Commissioner Chéry - Yes
* Commissioner Ellison - Yes
* Commissioner Luma - Yes
* Commissioner West - Yes
* Commissioner Wynn - Yes
* Chair Hinkle - Yes
* The motion was unanimously carried.
1. **Matters not anticipated by the Chair at the time of posting**
* There was no new business.

Chair Hinkle asked for a motion to enter an Executive Session to approve conducting preliminary inquiries and recommendations by the Division of Police Standards to suspend the certification of individuals. She stated that it is anticipated that discussions will surround the investigation of criminal charges and criminal offender record information.

* Commissioner Bluestone - Yes
* Commissioner Calderone - Yes
* Commissioner Chery - Yes
* Commissioner Ellison - Yes
* Commissioner Kazarosian - Yes
* Commissioner Luma - Yes
* Commissioner West - Yes
* Commissioner Wynn - Yes
* Chair Hinkle - Yes
* The Commissioners unanimously approved the Chair’s request to enter an Executive Session.
* Chair Hinkle announced to members of the public that the open session would not reconvene after the Executive Session.
* Chair Hinkle concluded the open meeting.