



WASHINGTON STATE
CRIMINAL JUSTICE TRAINING COMMISSION
19010 1ST AVENUE SOUTH, BURIEN, WA 98148

COMMISSION MEETING

Wednesday, March 30, 2022

10 AM

COMMISSION MEMBERS PRESENT:

Jeff Myers (Chair), Chief, Hoquiam Police Department
De'Sean Quinn (Vice-Chair), Councilman, Tukwila
Jeffrey Anaya, Officer, Vancouver Police Department
John Batiste, Chief, Washington State Patrol
Jared Couch, Sergeant, Upper Skagit Police Department
Ryan Dreveskracht, Attorney Presiding over Law Enforcement Practices and Accountability
Nickeia Hunter, Citizen at Large
Katrina Johnson, Citizen at Large
Sonia Joseph, Citizen at Large
Walter Kendricks, Citizen at Large
Anita Khandelwal, Public Defender
Bart Logue, Civilian Oversight over Law Enforcement
Trishandra Pickup, Citizen at Large
Tim Reynon, Tribal Representative, Puyallup Tribe
Kurtis Robinson, Citizen at Large
Penelope Sapp, Chief, Kitsap County Jail
Dan Satterberg, Prosecuting Attorney, King County
Robert Snaza, Sheriff, Lewis County
Annaesa Thomas, Citizen at Large
Mike Webb, Attorney General Designee

WSCJTC STAFF PRESENT:

Monica Alexander, Executive Director
Jerrell Wills, Deputy Director
Kevin Zeller, Assistant Director
Lacey Ledford, Executive Assistant
Marisa Peer, Manager, HR
Bart Hayes, Manager, Advanced Training Division
Dave Campbell, Commander, Basic Training Division
Sean Hendrickson, Manager, Applied Skills Division
Megan Saunders, Manager, Communications
Jeff Wilcox, Manager, Information Technology Unit
Valerie Jenkins-Weaver, Program Manager, Certifications Division
Renee Berry, Confidential Secretary
Norma Moreno, Confidential Secretary
Kayla Wold, Hearings Coordinator
Ethan Swenson, Administrative Assistant, Information Technology Unit

GUESTS PRESENT:

Justin Kato, Assistant Attorney General, WA State Attorney General

OPENING

Jeff Myers, Commission Chair

Chair Myers called the meeting to order at 10:01 AM.

Lacey Ledford conducted a roll call of the Commissioners. A quorum was present.

Chair Myers announced that this meeting was being hosted on Zoom instead of in-person.

Chair Myers alerted the Commissioners to an incident occurring in his jurisdiction which might prove a distraction and apologized. By the end of the meeting, **Chair Myers** informed the Commission that the situation had been successfully de-escalated.

Commissioner Couch announced to the Commission that while he is serving as interim police chief for his department, he will be recusing himself from any voting that may occur.

Approval of Meeting Minutes

Chair Myers called for review and approval of the meeting minutes from the March 9, 2022, Commission Meeting.

Commissioner Kendricks moved to approve the minutes. **Commissioner Quinn** seconded the motion. The motion passed unanimously.

NEW BUSINESS**Discussion on Certification Retroactive Investigations**

Chair Myers pointed out to the Commission a draft policy for Investigative Misconduct Related to Officer Certification which addresses Senate Bill 5051 and RCW 43.101, specifically detailing holding police officers accountable for misconduct which occurred prior to July 25, 2021, indicating that no decisions had been made but rather this is intended as a discussion. **Chair Myers** stated that Commissioners needs to consider the statutory side, the constitutional side, and the procedural side of what the Commission is capable of doing and what is realistic given the resources available to CJTC. **Chair Myers** asked how far back in time do they look for misconduct, stating if an officer knew they were committing misconduct at the time, retroactive investigations should apply, as the Commission needs to ensure officers are suited and qualified to fulfill their duties, noting some stakeholders feel a level of fairness and level of notice matters.

Commissioner Robinson stated that Commissioners need to consider the moral responsibility of ensuring care for everybody in Washington State, that responsibilities include consequences for actions, which is how individuals evolve, grow, develop abilities and capabilities.

Commissioner Robinson agreed that the Commission needs to consider the statutes, the constitutional, and procedural aspects but also address the moral responsibilities embedded in the law enforcement industry. **Commissioner Robinson** shared that he was a victim of serious maltreatment by law enforcement officers and that due diligence is incumbent upon the Commission to uphold a moral standard in holding criminal acts of law enforcement officers accountable and protecting the rest of the state from officers welding power in an inappropriate and inhumane way. **Commissioner Robinson** stated the importance of using this opportunity

to cement in place a standard to hold individuals accountable, adding that a disservice has been done to the law enforcement industry by not holding these acts of misconduct accountable.

Vice-Chair Quinn echoed the lived experience shared by **Commissioner Robinson**, adding that the Commission is looking at systems change, which takes intentional and concerted effort and does not stop at law enforcement, as the criminal justice system is a large component.

Vice-Chair Quinn shared that in his experience in the municipality system, arbitration can get in the way of accountability, adding a fear that lines will be crossed if the Commission does not take the time and attention to do their due diligence while also emphasizing the community aspect of policing.

Commissioner Satterberg stated the enormity of the responsibility as a new line of business and shared a need to have a bright line of jurisdiction with new statutes in place to assist with the application of retroactive decertification, adding that the case law on retroactivity is squishy and that a successful decertification process will have case law brought up by the defense.

Commissioner Satterberg indicated that the importance of a manageable caseload, pointing out that the Commission has never had to step up to this degree, and emphasized the importance of establishing a timeframe for retroactivity, start slow, and figure out how to handle this workload correctly without the myriad of complications involved. **Commissioner**

Satterberg worried that there exists a distinct possibility that this process becomes overloaded with old cases, which will make those cases more complicated but also slow down newer cases.

Chair Myers suggested the importance of a timeframe, and while there is a moral obligation and that Commissioners know what is hoping to be accomplished, there must be procedures and statutes and constitutional law addressing all parties involved, pointing out potential issues with the statute's reporting requirements with regards to retroactive investigations. **Chair Myers** worried that if the Commission does not create sustainable and credible processes that has the same integrity expected of law enforcement officers then the result may not be what is intended.

Commissioner Reynon expressed that a successful process needs to help restore credibility and trust of law enforcement within communities and ignoring misconduct committed prior to July 25, 2021, does not reestablish trust, as misconduct occurring prior to that date is still misconduct and should not be a permissible standard for law enforcement officers.

Commissioner Reynon stated that there cannot be different standards for newer and older law enforcement officers as accountability does not have a deadline, that behavior needs to be held accountable regardless of when it occurred. **Chair Myers** shared that from a law enforcement perspective, conduct is held accountable in the criminal justice system to an extent, as there are statutes of limitations.

Commissioner Thomas worried about a pattern of conduct, believing in the importance of looking not just as specific incidences of an officer brought to light but also looking at a pattern of conduct. **Commissioner Thomas** shared that misconduct can be condoned in many instances and individuals who misuse and abuse their position tend to commit misconduct more than once, further echoing the stance to create a bright line establishing unacceptable conduct and that the Commission reviews patterns of behavior, adding that she has a problem not looking at a pattern of conduct that predates the July 25, 2021, mandate. **Commissioner**

Thomas further stated that law enforcement officers need to be held to a higher standard as a public servant in the public eye, that at a moral level these individuals understand when they perform misconduct. **Chair Myers** indicated that ongoing and past conduct and patterns of conduct is included in the draft proposal.

Commissioner Dreveskracht warned the Commission that as an adjudicatory body cannot arbitrarily limit its own authority, that while discussions can occur on individual cases taking into account the passage of time and all the reasons for statute of limitations, the Commission needs to be careful about unnecessarily limiting itself. **Commissioner Dreveskracht** shared that his researched opinion matched the Attorney General's summary, stating that previous reform legislation he worked on did not have a need for specific retroactivity language as the language used referred to actions that occurred in the past, negating the need for a retroactivity clause.

Chair Myers stated the need to have a policy to provide to CJTC staff of when retroactivity should or should not be applied, as some decertifying misconducts are mandatory, as the agency cannot get stuck not doing something they should be doing. **Chair Myers** added that there are provisions in the statute where any conduct that has a 15-day reporting requirement trigger this investigation process, and that there exists this intention that the accountability of imposition of sanctions when misconduct occurs is trying to establish trust with the process with regards to the community.

Commissioner Webb shared his opinion that the Commission should look at conduct that violates Senate Bill 5051 prior to July 25, 2021, but states that issues will be raised in the defense, bringing up four categories of cases: The first case type is illegal conduct or violations of the law that occurred prior to July 25, 2021, will not be an issue since the old law would have allowed for decertification; The second case type of information that comes to light after July 25, 2021, but occurred before that date should not be an issue; The third case type consists of violations of agency policy with respect to organizational challenges, legal issues are minimized due to the conduct violating agency policy, and as such, the retroactive decertification policy should look before the July 25, 2021, date for misconduct that violates agency policy which resulted in separation as the old law would have allowed for decertification, but for situations where misconduct occurred before July 25, 2021, violated agency policy, but did not result in separation presents operational challenges where meeting the burden of proof is more difficult; and The fourth case type where misconduct violates Senate Bill 5051 but does not violate agency policy will be difficult to prosecute. **Commissioner Webb** suggested a conservative approach to mitigate these challenges where the legal risk is greatest.

Commissioner Robinson asked if the law was good enough, why is this even being discussed, further asking how much risk the Commission is willing to take, pointing out that the previous law created loopholes which allowed for this behavior to exist, and morally cannot allow the gross misconduct in this state to continue. **Commissioner Robinson** lamented the suicide rates of law enforcement officers, adding that a disservice has been done to the law enforcement industry by not holding officers accountable, adding to a lot of stress behind the badge. **Commissioner Robinson** stated that multiple cultural shifts need to occur, and the Commission needs to lead. **Chair Myers** shared that there are opportunities for law enforcement to be held accountable as the original decertification now applies to both peace and corrections officers, however it was only triggered when there was a separation. **Chair Myers** further stated that law enforcement officers who do not commit misconduct do not want the officers who commit misconduct to wear a badge anymore than their communities do, but reiterates that when talking about accountability and punishment, the Commission needs to remember that everybody on both sides are human.

Commissioner Logue shared that accountability is difficult for everybody involved as witnessed across the country but that a decision point has come to Washington State where it realized there was not enough accountability, based on historical actions. **Commissioner Logue** stated that he would not be in favor of limiting the Commission's authority to look at

misconduct which occurred prior to July 25, 2021, as use of force can have lifetime and generational impacts on families. **Commissioner Logue** brought up the fact that Chiefs and Sheriffs have concerns about their limited ability to hold officers accountable as arbitration can put an officer back into rotation while they are being investigated, adding that labor contracts can even remove instances of misconduct have time has lapsed. **Commissioner Logue** shared his opinion that if the Commission is allowed to offer certification on a case-by-case basis then the Commission should be allowed to look at decertification on a case-by-case basis, stating that officers on the Brady List and actions of a one-time event should be cases the Commission addresses. **Chair Myers** informed the Commission that officers are represented by PERC, Public Employment Relations Commission, adding that there have been cases where officers or deputies have been terminated, have fought that termination through PERC, and through process are given their jobs back. **Chair Myers** stated that previous there have been times where municipalities will intervene in fear of a lawsuit and not report misconduct to the Commission, who then could not act against the offending individual, warning that with this new statute, there will be a time when the Commission will exercise its authority to investigate an officer without the cooperation of the agency involved.

Commissioner Pickup expressed that the Commission and CJTC does not have time to look at each agency's policies when using agency policies as a determining standard for retroactivity, adding an awareness of numerous investigations on departmental policies where it was deemed an offending officer did not break policy, indicating that some agencies use this policy review process to avoid responsibilities. **Commissioner Pickup** further added that the 15-day reporting requirement added in Senate Bill 5051 was implemented to hold agencies accountable as some agencies tend to guard the actions of their officers, defending those who commit the misconduct.

Commissioner Dreveskracht specified the need to recognize the obstruction police unions can create as this tool can be used to circumvent the accountability the Commission is looking to implement. **Chair Myers** expressed that once this policy is implemented, it will become a case-by-case basis on where the Commission will invest their time in investigations but added that when a complaint is received and reviewed, sent off to the Attorney General's office, a prosecutor will determine if a case can be made or not. **Chair Myers** added that egregious conduct is a threat to public safety and should come to the top of the list.

Commissioner Reynon asked if there is a deadline for adopting a policy regarding retroactivity. **Chair Myers** answered that there is not a deadline. **Commissioner Reynon** suggested creating a stakeholder workgroup to receive input from all sides so that when the policy is presented to the Commission for consideration that it has been vetted with input provided by all parties. **Chair Myers** clarified that this policy will be internal and that the Commission is providing guidance to the staff, discouraging the creation of a workgroup, stating that the Commission is large and diverse enough to make these decisions. **Chair Myers** further clarified that this resultant policy is not a WAC and can be changed. **Commissioner Reynon** expressed that the policy will inform agencies on how to act and the Commission on how to act upon, that there needs to be a balanced approach to developing the policy. **Chair Myers** suggested a panel appointed by the executive director would help ensure that there are no single point failures.

Commissioner Joseph stated that Senate Bill 5051 was passed to punish officers who commit misconduct and that the draft policy was created as an opportunity to hold officers accountable and to remove bad law enforcement officers from their positions of power, and as such there

should not be a statute limiting how far back the Commission can investigate misconduct, adding that the Commission has the authority to fire or decertify officers when agencies do not.

Commissioner Robinson shared the sentiment of creating a bright line and a standard, adding that credibility and trust us on a table, that there must be a higher standard where the Commission does not limit itself with knowledge of the potential legal issues. **Commissioner Robinson** made a motion to include recommended language for the Commission to use in its policy creation.

Commissioner Satterberg asked the executive director how many employees the agency has to handle this work through the whole process. **Director Alexander** answered that CJTC has 100 FTE with Certifications Division in the process of hiring, stating that in the past other agencies have done investigations, which are reviewed and handed off to the Attorney General's Office, who conducts their own reviews, but currently there are three individuals, the Assistant Director, Certifications Manager, and an investigator. **Commissioner Satterberg** confirmed that there are three people on staff to handle these duties but that the agency has authority to hire more. **Director Alexander** added that funding exists for six investigative positions. **Chair Myers** opined that the current funding may be inadequate for the work the Commission is asking of the agency.

Commissioner Webb spoke in strong favor of the motion, thanking **Commissioner Robinson** for hitting all the points he wanted to make, also adding that the Attorney General's Office will figure out the budgetary challenges. **Commissioner Webb** strongly supported the prosecutorial discretion the Commission will have, hoping that the Commission will look carefully at cases prior to July 25, 2021, where an officer committed misconduct knowingly violating agency policy, where the Chief or Sheriff attempted to fire the officer, but labor practices and PERC stopped the separation, and the Commission did not have jurisdiction to decertify.

Commissioner Snaza wondered how far back the Commission looks and the appropriateness of going back too far, adding that as a Sheriff there is nothing worse than having a bad officer, as he has seen abuse and it puts a bad light on all law enforcement officers, and has fired individuals who have gotten their jobs back. **Commissioner Snaza** asked what stipulations are in place and what is the timeline. **Chair Myers** stated that this policy does not have to be contrary to law as the Commission is only providing guidance to staff. **Commissioner Sapp** agreed that a timeframe should be provided as it would be easy to overwhelm CJTC with documents in the effort of transparency.

Commissioner Anaya asked which policy violations the Commission will consider, as minor policy violations committed five years ago could lead to inundation, stating the Commission should provide clear guidance. **Chair Myers** stressed the importance of the criteria provided in RCW 43.101.105, which talks about the jurisdiction the Commission presides over.

Commissioner Thomas stated that the statute is a good list to utilize when creating priorities of investigations, but officers found innocent of violating agency policies but violate morality need to be remembered, as behavioral pieces and patterns cannot be ignored. **Chair Myers** cautioned the Commission that the definition of misconduct is already in statute.

Commissioner Johnson shared the desire stated by **Commissioner Dreveskracht** to ensure the Commission is not limiting itself, adding that since most of the bad apples have been weeded out, as mentioned by **Commissioner Snaza**, then CJTC should not be inundated with decertification cases. **Commissioner Johnson** further stated that as the Commission moves

forward that it does not get too narrow in focus that it misses other issues. **Chair Myers** reminded the Commission that corrections officers are now being certified and the volume of corrections decertification investigations is yet unknown.

Commissioner Logue spoke of a concern pointing toward certain policies and asked if there exist actions in Washington State that shock the conscience, further wondering if any portion of policy can be used to come up with a scenario larger than what is being discussed. **Chair Myers** answered that the catch-all already exists in statute, adding that the Commission must remain within the confines of the law and the authority granted, otherwise the Commission would not have authority, integrity, or fairness. **Commissioner Satterberg** added that with the pent-up demand for historical accountability that he worries the Commission is setting up expectations that will then have difficulties meeting, stating current misconduct cases cannot be ignored, nor should the agency be paralyzed with an inability to meet the expectations of the community.

Commissioner Reynon asked what occurs when an agency fails to meet the 15-day reporting requirement. **Chair Myers** mentioned that a reference to a penalty can be included in the policy. **Commissioner Reynon** added that qualifying misconduct is included in the statute and should also be included in the policy, also stating that there is no community representation in the workgroup. **Commissioner Reynon** further shared that the draft policy includes a process regarding receiving identified alleged misconduct which starts with a single point of contact and wondered if a complaint is sent to CJTC and does not go to that specific individual if it nullifies the complaint. **Chair Myers** shared that the original point of contact was a phone number, email address, and a website form, and referenced that this process needs to be inclusive and accessible by all. **Commissioner Reynon** also worried that creating a lengthy, unyielding form could serve as a barrier for complaints coming in, reiterating a desire for the development of this policy needing input from community groups, whether it is internal within the Commission.

Chair Myers cautions the Commission for participating in the creation of this policy as Commissioners could serve on a decertification process panel and individuals cannot do both, warning that if a person is in the process of deciding, they also cannot be in the process of adjudicating.

Mike Devine added that CJTC does have in place a complaint process which is a phone number, an email address, and a public facing website, that an internal policy is underway addressing the process if someone needs assistance filling out the form that CJTC will assist with that process. Mike Devine further added that work is underway on a triage plan for outstanding complaints that are received regarding egregious, serious, public safety misconduct, stating that several WACs will come forward regarding policy and procedure.

Commissioner Robinson moved to recommend the inclusion in the pending policy the standards and processes under RCW 43.101.105 regarding probation, remedial training, suspension, denial, and revocation, applies to conduct occurring both before and after July 25, 2021, and specifically to conduct the officer knew or should have known violated law or policy and that impacts suitability to serve, or where there is a pattern of misconduct that continues after July 25, 2021, date. **Commissioner Webb** seconded the motion. **The motion passed.**

EXECUTIVE SESSION

Chair Myers announced that there would be no executive session. **Chair Myers** asked if anyone had anything further. Hearing none, he thanked the Commissioners and adjourned the meeting at 11:57 AM.

Next Meeting: April 27, 2022, 10 AM, WSCJTC

Written by:	<u>Lacey Ledford</u> Lacey Ledford, Executive Assistant	<u>6/15/22</u> Date
Reviewed by:	<u>Monica Alexander</u> Monica Alexander, Executive Director	<u>6/15/22</u> Date
Approved by:	<u>Jeff Myers</u> Jeff Myers, Commission Chair	<u>6/15/22</u> Date