



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

COMMISSION MEETING

Wednesday, May 11, 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
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
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
Robert Snaza, Sheriff, Lewis County
Annalesa Thomas, Citizen at Large

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
Mike Devine, Manager, Certifications Division
Dusty Pierpoint, Investigator, Certifications Division
Valerie Jenkins-Weaver, Program Manager, Certifications Division
Deborah Jacobs, Policy Specialist
Renee Berry, Confidential Secretary
Norma Moreno, Confidential Secretary
Derek Zable, Records Manager
Kayla Wold, Hearings Coordinator
Ethan Swenson, Administrative Assistant, Information Technology Unit

GUESTS PRESENT:

Justin Kato, Assistant Attorney General, WA State Attorney General
Teresa Taylor, Executive Director, WACOPS
TVW

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 indicated that if anybody is abstaining from voting to please note for the record.

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.

NEW BUSINESS

Preliminary Review of Certification WAC

WAC 139-05-300 Requirement for In-Service Training

Director Alexander suggested replacing the reference of the deputy director as the approver and replacing it with executive director or designee. **Chair Myers** stated it is best to try to stay within clarity of a guaranteed position, agrees that using executive director or designee allows the ability to assign staff to review waivers.

Chair Myers moved to amend the WAC to replace deputy director with, “*Executive Director or designee of the Commission.*” **Commissioner Snaza** seconded the motion. **The motion passed unanimously.**

WAC 139-06-040 Investigation and Appeals: Procedures and Misconduct

Chair Myers introduced this WAC and informed the commissioners that previously the Commission did not have the ability to regulate conduct unless an officer was terminated with everything being dependent upon what information was provided by an agency. **Mike Devine** added that the Commission now has the authority to initiate investigations based on outside public complaints or based on reporting requirements mandating agencies to report uses of force that may cause injury outside of policy or law as well as disciplinary actions or suspensions based on violations of an agency’s internal policies. **Commissioner Snaza** asked if there is a time limit set on suspensions determined by the Commission, wondering if a suspended officer will know what needs to be done to have their certification reenabled.

Deborah Jacobs answered that a two-party agreement will be put in place where the terms of the suspension, retraining, or probation can be addressed and where the path back to reinstatement is understood, adding that staff discussed having a limit of no more than a year as there needs to exist a capacity to monitor suspensions. **Director Alexander** stated the importance of this being a partnership with the Sheriff or Chief, their employee, and the Commission. **Commissioner Snaza** agreed that this process should be collaborative with the Sheriff or Chief as a year is a long time, further stressing the important aspect is finding success in the individual. **Chair Myers** also agreed that there must be buy-in by the agency in this process.

Vice-Chair Quinn added that while suspensions make sense and the Commission has the responsibility, how this process occurs is important, adding the need to figure out this collaborative nature and work out a clear process with clear timelines. **Chair Myers** mentioned that investigations often exceed several months, and when in partnership with an agency, panels will want to know if an officer has been on paid administrative leave or what has been done during that time to get an officer back on track, as an agency paying an individual while on suspension can report that individual for mandatory training. **Commissioner Robinson** noted that WAC 139-06-150 addresses a lot of the questions surrounding timelines. **Chair Myers** clarified that there is an implied final order, but that WAC does not address collaboration. **Vice-Chair Quinn** pointed out that interactions have occurred with municipalities who refuse to communicate or cooperate, wondering if there is a way for the WAC to get the Commission where it needs to go but also does not create an opportunity for refusals to cooperate. **Chair Myers** stated that when talking about terms of suspension and training there must be collaboration as the Commission could recommend suspension while the employing agency might want to terminate the officer, or vice versa. **Commissioner Reynon** stressed the importance of not creating loopholes for agencies to circumvent decisions made by the Commission. **Deborah Jacobs** recommended that this collaborate is written into policy and not WAC and suggested appointing a work group to look at this in the future. **Mike Devine** mentioned that the one-year suspension was suggested due to after a suspension taking place, there would be an agreement that the affected officer will go through a retraining process and wanted to give the officer enough time to attending the training when it was offered, as trainings might not be immediately available. **Mike Devine** also pointed out that subsection 5a addresses the Commission monitoring and ensuring that all conditions of suspension are met prior to certification being reinstated. **Chair Myers** observed that there could be an instance where an agency did not want a suspended individual back but if that individual fulfills the training requirements, they will receive their certification even if they are not employed. **Mike Devine** indicated that if certification is reinstated then the officer would be in good standing, but if a case rose to charges while an officer was in suspension, the case would rise to a hearing panel.

Vice-Chair Quinn moved to approve the WAC as written. **Commissioner Dreveskracht** seconded the motion. **The motion passed unanimously.**

WAC 139-06-050 Statement of Charges and Notification for Hearing

Kayla Wold indicated that updates included fine tuning the hearing process and provided timelines for the process for filing documents for conferences and hearings including the first steps. **Chair Myers** appreciated that this WAC recognized an officer might not be employed but the same agency during which the alleged conduct occurred. **Commissioner Robinson** shared concerns about officers who may not cooperate with the notification to appear and proposed a motion to address those concerns. **Commissioner Snaza** asked about the ability to add the ability for an individual to have an excused absence. **Justin Kato** mentioned that the included statement of law is already how the process operates, that adding it to the WAC could be appropriate for clarification purposes but will not functionally change how hearing panels operate, further suggesting administrative law judges will be providing notice to officers if their certification has been revoked. **Justin Kato** also clarified that authorized excuses can be accomplished by challenging an order of default, which has an established precedent. **Commissioner Thomas** asked where information regarding that process can be found to ensure excuses, extensions, or reviews are verified. **Justin Kato** answered that statute lays out default processes in RCW 34.05.440 which includes the process for these hearings, specifying

subsection 3 which defines that within 7-days of service of a default order, a written motion may be filed, at which point an administrative law judge will require evidence be presented as part of the challenge, including in the form of a sworn declaration, which can lead to a finding of perjury and decertification if an officer lied in a sworn declaration. **Chair Myers** shared a concern regarding the potential to contradict the Administrative Procedures Act. **Kayla Wold** clarified that section 3 of this WAC further addresses this direction.

Commissioner Robinson moved to amend the WAC in section 1a to read, “*That the statement shall inform the officer that failure to request a hearing or attending a hearing requested will result in certification being denied and revoked.*” **Commissioner Dreveskracht** seconded the motion. **The motion passed unanimously.**

WAC 139-06-050 Statement of Charges and Notification for Hearing

Commissioner Reynon indicated that in subsection 4 an officer may waive the right to a hearing and sought understanding on how that process worked. **Chair Myers** mentioned that waiving the right to a hearing becomes an order of default and certification is revoked.

Commissioner Reynon suggested stating that directly. **Justin Kato** stated that the intent was to create an opportunity for a proactive approach in working with an officer who takes responsibility for actions done and agrees to retraining, waiving their rights to a hearing while accepting suspension and retraining, something like a plea bargain. **Chair Myers** noted a lack of clarity regarding who is making this plea bargain agreement, which is normally done between the defense and the prosecuting attorney, pointing out that since this process varies from what is the norm, the WAC should be clear. **Director Alexander** pointed out that an Assistant Attorney General works directly with certification and in the past has been the one to make that decision. **Chair Myers** indicated that the confusing aspect is when an officer waives their right to a hearing and a path is provided where an officer is not decertified that this does not go before a hearing panel, adding that if a statement of charges is subject to decertification and the officer does not wish to fight the statement of charges, they should be decertified. **Director Alexander** offered that if an officer is not fighting on their own behalf, then neither should the Commission. **Deborah Jacobs** mentioned that when developing the WACs that staff had not envisioned making suggestions regarding suspension or revocation, that over time you want credible consistency that can be developed, and as such only hearing panels will make those decisions. **Kayla Wold** added that this language was folded into two different scenarios, where if someone denies a hearing then their certification is revoked but if it is deemed retraining is necessary then it should go to a hearing panel. **Chair Myers** spoke of paths, one to decertification and one to the hearing panel, cautioning the Commission on creating a third path.

Vice-Chair Quinn moved to approve the WAC as clarified, stating, “*certification will be revoked by the Commission in a final order.*” **Commissioner Kendrick** seconded the motion. **The motion passed unanimously.**

WAC 139-06-060 Hearing Panels

Kayla Wold presented to the Commission this WAC which incorporates who is eligible to apply for a hearing panel, the steps included, and the makeup of panels for all certifications, as well as the expansion and makeup that includes community, commissioners, and experts in police accountability. **Chair Myers** pointed out that as Commissioners were appointed to their positions by the Governor that they do not need to apply, adding that statute provides certain members of the Commission can participate in hearing panels and as such do not have to submit applications. **Commissioner Thomas** verified that when given notice that a

commissioner could serve on a hearing panel for decertification, the impression was given that an application was needed, as well as a recommendation, stating the need for clarification which spells out what a commissioner needs to do to serve on a panel. **Chair Myers** reiterated that the point is that commissioners are already appointed by the Commission and suggested amending the language in subsection 1b. **Commissioner Logue** suggested clarifying language to replace subsection 1b.

Commissioner Thomas moved to approve the WAC as amended to read, "*Commissioners may be appointed to the hearing panel by the Commission without additional application.*" **Vice-Chair Quinn** seconded the motion. **The motion passed unanimously.**

WAC 139-06-070 Conferences and Hearings

Kayla Wold introduced this WAC having eliminated the preconference hearing WAC, wrapping it into this WAC which speaks of the partnership with the Office of Administrative Hearings who is responsible for appointing an Administrative Law Judge and the responsibilities of each.

Commissioner Pickup referenced RCW 43.101.380 which stated that a hearing panel will have access to the same materials provided to an Administrative Law Judge, making a motion detailing what information should be included to the hearing panelists. **Kayla Wold** informed the Commission that panel members receive a witness list and statement of charges, but that staff disagreed with panel members receiving prehearing orders as those can provide bias and do not hold weight in the hearing. **Justin Kato** cautioned the Commission on receiving prehearing orders, as the prehearing process is done to get to the hearing itself and panel members are not a part of the prehearing process, adding that including the prehearing orders where an Administrative Law Judge makes determinations of what evidence is included or excluded and why can often be prejudicial to one party which is why it is excluded before the hearing. **Chair Myers** pointed out an issue with the panel reviewing material that is not allowed opens excluded objected and overturned rulings as evidence which can influence decisions.

Justin Kato informed commissioners that in previous cases the Commission and respondents have used information which is not pertinent to the case that has been excluded prior to the hearing occurring. **Commissioner Pickup** amended her motion to exclude prehearing orders.

Commissioner Reynon asked why the hearing panel would not be privy to the same information as the Administrative Law Judge if the hearing panel is intended to make the final decision, adding his reluctance to remove prehearing materials from the information panelists receive as the information should be available with the hearings being open to the public.

Justin Kato indicated that the RCW 43.101 details the administrative process of hearings which include a panel and an Administrative Law Judge wherein the Administrative Law Judge makes all procedural and legal decisions leading up to the hearing itself, whereupon once you get to the hearing, the Administrative Law Judge makes decisions on objections that might occur while the final legal and factual decisions are made by the hearing panel with a recommendation from the Administrative Law Judge. **Justin Kato** further added that the developed process is that hearing panels will deliberate; inform the Administrative Law Judge of the factual decision; the Administrative Law Judge will make the recommended order after which the hearing panel can use that recommended order, replace portions of the recommended order, or reject the recommended order and generate their own order. **Justin Kato** also informed the commission that the question of why some Administrative Law Judges are privy to evidentiary decisions that the hearing panel is not privy is due to one is the decider of fact and the other is the decider of law, adding that the legislative intent is for there to be a finder of facts- who is meant to be the hearing panel, which is presented relevant evidence which was determined by the Administrative Law Judge. **Chair Myers** added that current hearing panels consist of officers

and citizen members without an Administrative Law Judge and the legislative intent was to remove the responsibility of determining what to consider and what not to consider away from lay people and into the hands of an Administrative Law Judge. **Justin Kato** expanded on that statement adding that hearing panels would choose a presiding member who steps in as an individual who makes determinations, adding that some individuals have more experience than others, with some allowing all evidence, some denying most evident, with the other members of the panel privy only to the evidence provided by the presiding member. **Chair Myers** pointed out the issue being that the Commission was conducting a quasi-judicial process without a judge as the presiding member could be an officer, Sheriff, or Chief. **Commissioner Robinson** stated that for a law enforcement community that has sacrificed to do the work they have done, they should want a hearing panelist to consider the history and would want to be able to take past issues under consideration to have the ability to conceptualize a view in how to restoratively decide on how to include or exclude an order. **Chair Myers** informed the commissioners that there exists certain criteria for information to be included in a hearing or court, that there are procedural safeguards that officers understand and accept, adding that if the Commission is considering suspensions in the event an officer is redeemable, a hearing panel almost must look beyond the narrow focus of the incident and view the full totality of the individual, adding caution that sharing documents that are illegal could cause a case to be overturned. **Commissioner Anaya** agreed that the totality of the individual is important but added that what happened five to fifteen years ago does not apply to what happened to an incident in question, that the hearing panel should only focus on the narrow incident. **Chair Myers** shared with the Commission concern from citizens who want to look at the pattern of conduct if it is misconduct but added that patterns of misconduct should be included in the statement of charges. **Commissioner Thomas** had concerns regarding the totality of an individual and who decides to bring this totality forward, arguing that if the totality of an officer's behavior is not brought forward when there is a pattern of behavior that we focus too closely on one incident and not all past behaviors.

Vice-Chair Quinn added that due to the change in legislation that the Commission will receive more information and agencies will have more obligations to provide information, and as a result, the Commission will need to protect the decisions of the hearing panel so that these decisions can be made and not challenged and overturned, adding that Administrative Law Judges are sworn to uphold a process and add accountability to the proceedings.

Commissioner Robinson added that when considering what evidence to include there is a time and a place for appropriate, restorative, and meaningful consequences, it would be crucial to have information available that details patterns of misconduct even if that misconduct, codified or not, leads to no finding of official misconduct. **Chair Myers** stated that if there is information available that there is a pattern of misconduct then that needs to be incorporated in the current statement of charges, adding that agencies can include in an entire package other incidences which did not result in disciplinary actions, warning the commissioners that if the Commission goes too far or too wide that courts will overturn their actions, that providing to the hearing panel illegal evidence the Administrative Law Judge denies will result in overturned rulings. **Commissioner Robinson** pointed out that the Commission is in this situation due to some individuals in positions of power have risen there having been supported by the backing of a lax law. **Chair Myers** added that Senate Bill 5051 has provided the law to correct this oversight, to correct the biggest limitations of only being able to act if there was a separation between an officer and an agency. **Commissioner Reynon** clarified that the request is not for access to excluded evidence but instead is wanting the full record of the prehearing order provided to the panelists. **Chair Myers** stated that the Administrative Law Judge comes from a

different state agency adding that their job is to make determinations, compared to the current process of having hearing panel members making decisions that is much more susceptible for evidential manipulations. **Vice-Chair Quinn** indicated that in the past, when egregious behavior is recorded, it has been dishonesty which has ultimately been what is an officer's undoing, stating that the system needs to be lifted instead of causing the focus to be on one issue and not a more severe issue or both. **Chair Myers** added that the goal is to put a new system in place. **Commissioner Snaza** stated his frustration as an administrator that when you know someone is culpable can keep their jobs due to the system and the law, adding that officers need to be held accountable and this new opportunity allows for that accountability. **Commissioner Snaza** further stated that if an individual is presented to the panel under consideration of decertification that they are there for a reason and wants to ensure that decisions made by the panel are permanent and cannot be overturned and that these individuals cannot come through this process found guilty of the charges but find themselves with their certification intact working elsewhere in the state.

Commissioner Pickup moved to approve the WAC with the addition that panelists will receive information including the witness list and a statement of charges. **Commissioner Reynon** seconded the motion. **The motion passed unanimously.**

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 recessed the meeting at 12:04 PM.

Next Meeting: May 18, 2022, 10 AM, WSCJTC

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