



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

COMMISSION MEETING

Wednesday, May 18, 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
Trishandra Pickup, Citizen at Large
Tim Reynon, Tribal Representative, Puyallup Tribe
Penelope Sapp, Chief, Kitsap County Jail
Dan Satterberg, Prosecuting Attorney, King County
Annalesa Thomas, Citizen at Large

WSCJTC STAFF PRESENT:

Monica Alexander, Executive Director
Jerrell Wills, Deputy Director
Kevin Zeller, Assistant Director
Chad Arceneaux, Assistant Director of Certifications
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.

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

Commissioner Reynon asked in subsection 1B whether the language in the previous section speaking of statement of charges regarding the notification of a failure to request or attend is included in the statement of charges as currently the section indicates it will inform the individual but does not make it a part of a formal notification, suggesting combining the two and make it clear the statement of charges will include that statement so that officers are given proper notice. **Director Alexander** indicated that currently this statement is included in the statement of charges. **Chair Myers** stated that this inclusion would be more consistent as the WAC refers to a statement of charges and a notice while section 1B stands alone by itself, indicating 1B can be deleted and added to 1A to make it flow into the statement of charges. **Derek Zable** indicated subsection 1C references subsections 1A & 1B and would need to be amended to reflect the changes. **Commissioner Reynon** also indicated in section 4 that the use of the term "*subject to*" in reference to revocation or denial carries implications that it may or may not, stating his understanding that refusal to request a hearing or failing to appear to a requested hearing was definite, suggested changing the language to, "*will result in.*" **Commissioner Anaya** felt that inclusion was referring to the instances when an officer was deemed worthy of training instead of revocation. **Chair Myers** recalled that decision of training in lieu of revocation would need to go to a hearing panel to make that decision, and so if an officer waives their right to a hearing, they are not seeking redemption but instead acknowledging or admitting by default that their certification will be revoked, adding that redemption routes need to go through a hearing panel to make that determination.

Commissioner Reynon moved to approve the WAC with the recommended adjustments of combining subsections 1A and 1B, amending the references in 1C, and replacing instances of "*subject to*" in Section 4 to "*will result in.*" **Vice-Chair Quinn** seconded the motion. **The motion passed unanimously.**

WAC 139-06-070 Conference and Hearing Procedures

Kayla Wold introduced this WAC as a fine tuning of the current process, working in coordination with the Office of Administrative Hearings and including the use of an Administrative Law Judge. **Commissioner Reynon** noted instances of the phrase "*subject to*"

and suggested the instances be changed to "will result in." **Chair Myers** stated that there is an appeal procedure under the Administrative Hearings Act, and if the Administrative Law Judge finds the appeal compelling, certification would not be revoked. **Commissioner Reynon** indicated that a hearing panel would issue a final order prior to an officer appealing an order. **Justin Kato** clarified that changing the language would be a procedural adjustment, pointing out that according to RCW 34.05.440 default judgement statute that once an order has been issued it allows for 7-days for a party to request that the order be lifted and show reason why it should be lifted, adding that shifting the process, if left as "subject to," the Administrative Law Judge could investigate or do a fact-finding hearing, whereas if made to where the order is automatically issue, the officer would have to seek it to be lifted. **Chair Myers** stated that it sounded like commissioners would rather have order be definite and force the offenders to make the next step, as opposed to the Administrative Law Judge or staff. **Justin Kato** added that regardless of either action, both choices are legally sufficient.

Commissioner Reynon moved to approve the WAC with replacing all instances of "subject to" with "will result in." **Commissioner Dreveskracht** seconded the motion. **The motion passed unanimously.**

Teresa Taylor addressed the Commission asking when it would be appropriate to provide input and comments on the WACs. **Chair Myers** recommended submitting recommendations in writing to staff which will provide the Commission time to review the recommendations, adding that input and testimony will take place on the June 8, 2022, Commission Meeting when final WAC implementation will be voted upon. **Commissioner Thomas** indicated a desire to have ongoing input throughout the discussions.

WAC 139-06-080 Filing of Documents for Hearing

Kayla Wold indicated the only updates to this WAC were done for clarity and the inclusion of the Administrative Law Judge.

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

WAC 139-06-100 Outcomes for Determination of Misconduct – Suspension, Probation, or Retraining

Commissioner Hunter noted that the WAC lists evidence the hearing panel may review when determining appropriate sanctions and that by its terms only applies to the hearing panel adding that if the WSCJTC becomes responsible for including recommendations that there needs to be regulations developed to ensure consistency. **Deborah Jacobs** mentioned that staff has not considered making recommendations, noting that overing time the development of sentencing guidelines will provide commissioners with information regarding sanctions given over similar situations with a goal of consistency, adding that this WAC does not seek to close off the option of staff making recommendations though it is not presently implemented. **Chair Myers** stated that if there is an alternative to revocation that is needs to be the hearing panel who provides that. **Mike Devine** spoke about extensive discussions regarding staff recommendations and not having fact-based or scenario-based resolutions to make judgments on, that the discussion is that through the investigative process staff will document and obtain the information the hearing panel could use to make a recommendation in lieu of making recommendations themselves.

Vice-Chair Quinn stated a desire for the Commission to be intentional and to provide transparency and consistency throughout the process. **Chair Myers** suggesting clarifying the language to indicate it is the hearing panel appointed by the Commission can deny, suspend, or

revoke certification. **Derek Zable** suggested against that change, stating a desire to be clear of the Commission's statement of charges versus the hearing panel's outcome. **Chair Myers** stressed the need for clarity regarding that the decision is made by the hearing panel, not the Commission.

Vice-Chair Quinn moved to approve the WAC with the recommendations provided by **Commissioner Hunter** and **Chair Myers**. **Commissioner Reynon** seconded the motion. **The motion passed unanimously.**

WAC 139-06-110 Final Order

Kayla Wold introduced this WAC as speaking to the current processes and the timeline of issuance of the final order, which is 90 days, adding that the Administrative Law Judge shall make recommendations but is not allowed to vote.

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

WAC 139-06-130 Standards for Readmission to Academy, Certification After Denial, and Reinstatement of Certification

Deborah Jacobs introduced this WAC as addressing what occurs when an officer seeks reinstatement under several circumstances. **Chair Myers** asked regarding the timeframe for reversal of a criminal conviction, indicating that process can take years, noting that according to this WAC an officer could immediately apply for reinstatement. **Deborah Jacobs** stated that the time limits would fall under what has been established by other statutes. **Valerie Jenkins Weaver** added that reinstatement conditions would be determined by a hearing panel. **Director Alexander** indicated that section 4 of the WAC states 5-years after revocation. **Chair Myers** pointed out that this WAC seems to state an officer can come back after 5-years but then later states they cannot. **Director Alexander** stated that the WAC would need to make this distinction clear. **Chair Myers** reminded the Commission that this WAC is not referring to reinstatement but instead speaks to when a record is cleared and an officer can reapply to go back to the academy, indicating that there needs to be an upper end time limit. **Derek Zable** stated that the standards and policy of the Commission as written in section 5 permits standards by Commission policy. **Teresa Taylor** shared a concern regarding the 5-year window, stating it does not believe it offers anybody an opportunity, adding that if it not statutorily bound then a shorter timeframe should be considered. **Derek Zable** indicated RCW 43.101.115 references the 5-year mandate. **Chair Myers** stated that since the 5-year mandate is statutory, this is a licensing issue and not a reinstatement issue and speaks more to the ability of a license being cleared and an individual's ability to go back into the profession.

Chair Myers sent this back to staff for revisions.

WAC 139-06-140 Hearing on Petition for Eligibility for Certification or Reinstatement of Certification

Deborah Jacobs introduced this WAC as detailing the Commission holding a hearing regarding a previously certified officer's eligibility for certification or reinstatement and if a petition is denied both parties may appeal the detail utilizing the appeal process within 14-days. **Chair Myers** sought clarity regarding whether the timeframe was 14-days or 7-days, adding that the Commission is not reinstating certification if it has been more than 5-years instead the certification is cleared in which event the officer would need to apply for equivalency or the

academy. **Commissioner Reynon** pointed out that the WAC references an individual having reinstatement of eligibility for certification as opposed to having their certification reinstated. **Chair Myers** dismissed his previously voiced concerns. **Commissioner Thomas** asked if the WAC should include necessary steps. **Teresa Taylor** requested the Commission considering shortening the time frame for the panel to respond from 90-days to 30-days with justifiable extensions. **Kayla Wold** indicated the 90-days is from statute and that the Commission is unable to change or shorten the window.

Commissioner Sapp moved to approve the WAC as written. **Commissioner Anaya** seconded the motion. **The motion passed unanimously.**

WAC 139-06-150 Terms of Suspension and Retraining

Deborah Jacobs introduced this WAC as detailing suspensions and retraining opportunities when revocation is not appropriate.

Commissioner Sapp moved to approve the WAC as written. **Commissioner Satterberg** seconded the motion. **The motion passed unanimously.**

WAC 139-06-160 Miscellaneous

Deborah Jacobs introduced this WAC which clarifies if there is a conflict between administrative law model procedures and the rules adopted in this WAC chapter then the rules in this WAC chapter shall govern, as well as certified officer proceedings are distinct from proceedings before the Commission under chapter 139-03 WAC.

Commissioner Anaya moved to approve the WAC as written. **Commissioner Dreveskracht** seconded the motion. **The motion passed unanimously.**

WACs 139-06-090 & 139-06-120

Chair Myers informed the Commission of two repealed sections, WACs 139-06-090 & 139-06-120, which were incorporated in changes already approved or eliminated entirely.

Commissioner Anaya moved to repeal WACs 139-06-090 & 139-06-120. **Commissioner Sapp** seconded the motion. **The motion passed unanimously.**

WAC 139-07-010 Conditional Officers of Employment

Deborah Jacobs introduced this WAC as making it clear applicants must submit a background investigation to determine eligibility and hiring agencies cannot make a non-conditional offer of employment prior to the completion of the background check, adding that all responsibilities of the background check lies with the agencies, further noting an ongoing desire from community stakeholders for the Commission to have a greater role in background checks while noting no statute or capacity to handle that request. **Chair Myers** offered that when Certifications' investigations are up and running, it is disturbing when ignorance is offered as a response to requests for background reports. **Chair Myers** also asked for clarification regarding what is a non-conditional offer of employment. **Valerie Jenkins Weaver** mentioned it is pulled directly from the RCW. **Deborah Jacobs** stated it means that it is an offer of employment without conditions. **Commissioner Couch** asked if this would conflict with the psychological evaluation. **Director Alexander** indicated that there would be no interference. **Chad Arceneaux** provided clarity regarding a conditional offer versus a non-conditional offer stating that conditional implies that a job offer will be granted only if a set of circumstances occur, whereas a non-conditional job offer is simply awarding the job. **Chair Myers** indicated that

there is no present way to hire a peace officer in that manner due to the steps outlined in RCW. **Director Alexander** referenced a recent incident where this occurred and indicated that having this outlined in WAC is a means of protecting the Commission moving forward. **Commissioner Hunter** proposed a three-part motion.

Commissioner Couch asked what actions the Commission can take if an agency certifies the background check is done but finds out it was done by a non-law enforcement staff, noting that if a certified officer attests untruthfully they can be decertified but the Commission cannot decertify a non-law enforcement individual who attests untruthfully. **Director Alexander** indicated that in those instances then the officer is not certified while noting that the Commission does not have any authority over non-law enforcement individuals. **Chair Myers** asked if disqualifying language is listed by statute. **Justin Kato** answered that this instance would be disqualifying information as defined by RCW, adding that non-law enforcement individuals making a false or misleading statement is a gross misdemeanor in the state of Washington, which should be forwarded to law enforcement or a prosecuting attorney's office. **Derek Zable** inquired about the authority for the Commission to perform audits or if this needs to be referred to the Auditor's Office. **Commissioner Reynon** pointed out WAC 139-07-030 subsections 4 & 5 reference RCW 43.101 and speaks of requiring agencies to make background files available to the agency to allow for spot checks for training requirements, which would indicate some authority to perform these audits. **Commissioner Dreveskracht** suggested clarifying the language to ensure the authority to audit whether background checks were completed. **Chair Myers** indicated RCW 43.101.105 subsection 8 grants the Commission these powers, which inherently implied there are clear checks and balances inserted into the authority of the Commission. **Mike Devine** clarified that the suggestion is not for the Commission to perform background checks but instead to follow up regarding whether background checks were appropriately applied and conducted. **Chair Myers** pointed out that this falls under the investigative authority of the Commission. **Justin Kato** indicated a desire to investigate the matter further, noting a good argument had been made that the Commission does have these powers. **Chair Myers** felt comfortable with the authority of the Commission needed to allow the motion to move forward.

Commissioner Hunter moved to adding the following requirements to WAC 139-07-010(3)(b), and similar language be added to WAC 139-06-010(1)(a), "1. Upon completion of the background check, the employing agency must certify that the background check has been satisfactorily completed and no disqualifying information has been found. 2. CJTC has the authority to establish standards for background checks, and audit background checks under frequencies or instances at its discretion. 3. The employing agency has the duty to evaluate information obtained in the background check and assure that it is hiring officers who meet the certification standards of RCW 43.101.105(2) and (3)." **Commissioner Dreveskracht** seconded the motion. **The motion passed unanimously.**

WAC 139-07-010 Conditional Officers of Employment

Commissioner Hunter moved to approve the WAC as amended by the previous motion. **Commissioner Dreveskracht** seconded the motion. **The motion passed unanimously.**

139-07-020 Background Information

Deborah Jacobs introduced this WAC as being nearly directly from the RCW. **Chair Myers** noted the importance to having a very robust background process codified by Senate Bill 5051.

Commissioner Sapp moved to approve the WAC as written. **Commissioner Anaya** seconded the motion. **The motion passed unanimously.**

WAC 139-07-030 Psychological Examination

Deborah Miller introduced this WAC indicating that guidance was provided on what to look for regarding Traumatic Brain Injuries, Post Traumatic Stress Disorder, or potential desirable attributes, as well as adding several procedural aspects including the evaluator communicating directly with the agency head. **Deborah Jacobs** also stated to the Commission that included in the WAC is that three written psychological tests are required and if the hiring interview occurred prior to the completion of those tests, the interview would need to reoccur. **Chair Myers** pointed out that having been an administrator for 25 years has afforded him the opportunity to reflect on how eerily accurate a police psychological examination can be when looking forward. **Chair Myers** informed the commissioners that for his department the first appointment for an applicant is a series of tests, the second appointment is a meeting with the psychologist who asks questions with the psychologist following up with the Chief who discusses what they discovered and learned, sending a medical document for submission and inclusion, noting that the evaluator does not approve or disapprove but rather gives the applicant a rating. **Teresa Taylor** stated that candidates need to be carefully and thoroughly vetted with the psychological being essential but was unclear on how many iterations of evaluations were necessary as the hope is to ensure the environment created is thorough, fair, balanced, and does not exclude individuals from the process. **Chair Myers** added that the hiring authority still makes the ultimate decision.

Commissioner Reynon moved to approve the WAC as written. **Commissioner Hunter** seconded the motion. **The motion passed unanimously.**

WAC 139-07-040 Polygraph Examination or Other Truth Verification Assessment

Deborah Jacobs introduced this WAC and informed the Commission that staff discussed with the Northwest Polygraph Association and was provided a list of questions approved by this professional association with the goal of having it available as a model for agencies to utilize to ensure polygraph evaluators are asking the appropriate questions, indicating that staff received questions from community stakeholders regarding if questions were asked by polygraphers regarding sexual practices with worries about discrimination regarding LGBTQ+. **Dusty Pierpoint** added that the Northwest Polygraph Association reviews current trends for relevancy based on federal practices. **Chair Myers** asked about the process for someone to validate a different truth detection device. **Dusty Pierpoint** indicated that voice-stress analyzers have become available though was not sure if any had been utilized in Washington State, mentioning that the RCW references other devices but is unaware any are being utilized. **Chair Myers** informed the commissioners that when modifying this WAC in the past, the Commission took testimony on this process, suggesting adding a subsection on guidance for what it would take for the Commission to consider utilizing another device in Washington State, remembering that the device had to be accepted by scientific principle, adding that the voice-stress analyzer did not meet those verification standards. **Chair Myers** suggested that this WAC can be revisited, or a placeholder could be utilized in WAC. **Chair Myers** also mentioned that his department's polygrapher meets with candidates more than just during testing, adding that if candidates have been victims of sexual trauma that had not been disclosed, it can cause some issues in the testing. **Deborah Jacobs** stated that research was done looking for practitioners of other methods, but staff did not feel comfortable adding any other devices into the WAC. **Chair Myers** mentioned that eye-detection is done as a pretest, also pointing out during previous

discussions that it was learned some agencies were using voice-stress analyzers thinking it was allowed, which opened the door to needing to look at officers who were given that test instead of a polygraph, further recommending having something in the WAC stating what it would take to approve alternative truth detecting devices, which would need to go back to the Commission to be approved as alternatives to polygraphs.

Commissioner Anaya moved to approve the WAC with the addition outlining the requirements to approve an alternative technology to polygraph. **Commissioner Sapp** 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 12:03 PM.

Next Meeting: June 1, 2022, 10 AM, WSCJTC

Written by:	 _____ Lacey Ledford, Executive Assistant	<u>6/15/2022</u> Date
Reviewed by:	 _____ Monica Alexander, Executive Director	<u>6/8/2022</u> Date
Approved by:	 _____ Jeff Myers, Commission Chair	<u>6/8/2022</u> Date