



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

COMMISSION MEETING

Wednesday, June 1, 2022
10 AM

COMMISSION MEMBERS PRESENT:

Jeff Myers (Chair), Chief, Hoquiam Police Department
Ryan Dreveskracht, Attorney Presiding over Law Enforcement Practices and Accountability
Nickeia Hunter, Citizen at Large
Katrina Johnson, Citizen at Large
Walter Kendricks, Citizen at Large
Bart Logue, Civilian Oversight over Law Enforcement
Trishandra Pickup, Citizen at Large
Walter Kendricks, 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
Mike Webb, Attorney General Designee

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:

OPENING

Jeff Myers, Commission Chair

Chair Myers called the meeting to order at 10:08 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.

NEW BUSINESS

Preliminary Review of Certification WAC

WAC 139-17-010 Complaint Submission and Investigation

Commissioner Johnson made a motion to add language to the WAC. **Commissioner Reynon** clarified that the intent is to not have the involved agency participating in the investigation of an officer subject to a complain of misconduct. **Chair Myers** wondered if the Commission has the legal authority to deny an agency the ability to investigate their own officer. **Justin Kato** indicated that a statutory change would be needed to give jurisdiction to the Commission. **Chair Myers** stated that the Commission is seeking impartiality and that the WAC might need to be modified to recognize the Commission can conduct their own investigations. **Commissioner Johnson** mentioned the possibility to revisit this WAC if there becomes an issue with impartiality. **Chair Myers** felt the final section of the motion, "*Referral for criminal investigation does not preclude CJTC from taking appropriate action to investigate decertification related aspects of the complaint and, where appropriate, from taking action to revoke, deny, or suspend certification,*" is important and merits inclusion. **Deborah Jacobs** acknowledges that the Commission will be tracking, also that the Commission can make a recommendation to an agency that the investigation is outsourced, and that the commission can notify the prosecuting attorney's office in the county of the affected agency. **Derek Zable** indicated that preclusion of the criminal investigation is contained in subsection 3 of the WAC. **Chad Arceneaux** stated that the WAC relates to referrals and not mandates. **Commissioner Satterberg** added that referring investigations to agencies without interlocal agreements between the two agencies can cause a lot of confusion and that jurisdiction can be difficult, asking if agreements do not exist, how would the Commission choose which department to refer an investigation to and how would that department know what to do with the referral. **Chair Myers** stated even if an investigation is referred to another agency with collateral jurisdiction, the agency receiving the referral might be reluctant to operate outside of established jurisdiction. **Commissioner Dreveskracht** suggested including in the referral a recommendation is made that the agency outsource the investigation including the language which gives the Commission the authority to grant referrals.

Commissioner Johnson reiterated that ensuring the Commission has independent authority is critical as well as notifying the jurisdiction's prosecuting attorney. **Chair Myers** pointed out that when making a referral to the prosecuting attorney that the Commission can recommend that the criminal investigation is referred to an outside agency. **Chair Myers** shared a concern that while the referral can be confidential, the more people know about a criminal investigation, and with the referral to the prosecuting attorney's office being a public record, it risks alerting the suspected individual of the investigation. **Commissioner Satterberg** clarified that any

communication between the Commission and a prosecutor's office is a public record and does not violate the Brady List, additionally stating that alerting the prosecuting office does not resolve anything until the investigation is concluded. **Chair Myers** added that being as confidential as possible is critical when conducting a criminal investigation of an officer. **Derek Zable** indicated RCW 42.46.241 could provide cover for confidentiality. **Chair Myers** asked if that RCW covered only citizens or if it included the Commission as well. **Derek Zable** indicated it included the Commission. **Commissioner Johnson** stated a goal to ensure local agencies cannot sit on criminal investigations of officers. **Commissioner Robinson** proposed embedding in the motion the language referencing the WAC that guarantees confidentiality. **Commissioner Satterberg** cautioned that the Commission might not be able to exempt from the Public Records Act something that is a public record. **Chair Myers** stated that ongoing investigations would be noted as such. **Derek Zable** spoke of the confidential referrals of criminal investigations being released as third-party records stating that the Commission would receive a third-party notice which could allow the Commission to freeze that record. **Justin Kato** informed the Commission that when records are disseminated to multiple agencies, control over those records is lost, noting that the exemption belongs to the agency which holds the record, and as such, the Commission cannot control what is done with the record as once it goes to another agency, that agency can make a release if they want to regardless to whether an exemption applies as they can choose to exercise the exemption or ignore it. **Justin Kato** added that if an agency does not exercise the exemption, the agency can provide a third-party release information if they desire but are not required to, further stating that the release of this information can pull the Commission into more litigation if the Commission wishes to protect the records from dissemination under RCW 42.56.540. **Chair Myers** noted that public records are a big consideration regarding this process and the Commission will have to see how the process goes, adding that it will be easy for public record requests to be made asking for a blanket request for officers under investigation, which can jeopardize a criminal or decertification case.

Commissioner Johnson moved to approve the WAC with the following language in subsection 2, *"The Commission, for a criminal complaint, will recommend to the agency that they seek outside independent investigation, that a referral will be made to the prosecuting attorney's office that has jurisdiction over the matter which will include a notice that it could jeopardize an ongoing investigation that the record is not subject to public disclosure under Title 43, and that referral for criminal investigation does not preclude CJTC from taking appropriate action to investigate decertification related aspects of the complaint and, where appropriate, from taking action to revoke, deny, or suspend certification."* **Commissioner Reynon** seconded the motion. **The motion passed unanimously.**

WAC 139-17-010 Complaint Submission and Investigation

Commissioner Satterberg asked if the Commission is intending to retain accepting anonymous complaints. **Deborah Jacobs** stated it was staff's intention to continue this practice. **Chair Myers** shared that if there is to be a complaint that someone has the nature of the facts of the complaint and cautions the Commission to receive anonymous third-party complaints, explaining that while there will be officers who file complaints against other offices and the worries of safety upon filing a complaint that these are judicial matters, and the complaining officer would need to step forward at some point. **Chair Myers** noted that some officers would be more comfortable filing anonymous complaints. **Commissioner Satterberg** asked about the difference between anonymous and confidential complaints. **Mike Devine** informed the Commission that anonymous complaints will still be considered as they are

submitted, explaining that the investigation team will flesh out the complaints to determine the merit behind them and if more information exists. **Chair Myers** asked if staff is outlining an ability to allow for confidentiality. **Mike Devine** answered that a disclaimer is being added to the complaint process to keep the complainant anonymous to others except the Commission. **Deborah Jacobs** reminded the Commission that there is a policy addressing this issue. **Commissioner Hunter** reminded the commissioners that requirements to identify complainants can have chilling effects on the willingness to file a complaint, with anonymity protecting an individual from retaliation, and the lack of anonymity could dissuade legitimate complaints from being filed. **Chair Myers** agreed with that sentimentality and will address these issues when the policy is reviewed.

Commissioner Dreveskracht moved to approve the WAC with the suggested amendments from **Commissioner Johnson**. **Commissioner Sapp** seconded the motion. **The motion passed unanimously.**

WAC 139-06-010 Certification

Commissioner Hunter noted that the approved language in WAC 139-06-010 had been changed and wanted to discuss how staff follows through with the motions to amend the language of the WACs which are approved using certain language. **Deborah Jacobs** shared that after a Commission Meeting ends, a second meeting takes place where the recommendations and motions are processed, where in some instances the prescribed language is used, though there is some discretion left to staff to get the language correct who will highlight and changes made in this manner. **Derek Zable** mentioned changing “*employing agency*” to “*hiring agency*” as changes were made to be consistent with other language used and instructions provided by RCW. **Commissioner Reynon** asked for clarification regarding why subsection *iii* was changed from, “*applicant meets the standard,*” to, “*would attain or retain certification.*” **Derek Zable** explained that this was done to accommodate lateral officers who already have certification. **Director Alexander** added that it is important that lateral officers meet Washington State standards, stressing a need to ensure lateral certifications meets the standards of Washington before certification is retained. **Chair Myers** asked what the referenced RCW references. **Derek Zable** explained that it references disqualifying misconduct. **Chair Myers** recalled that the Commission is attempting to address when agencies conduct a background check that the agency is looking for disqualifying conduct or qualifying misconduct as defined in the statute regardless of whether the applicant is lateral or entry level. **Commissioner Reynon** recommended keeping the language as it was originally written and approved in the previous Commission Meeting on May 18, 2022.

Commissioner Reynon moved to change the language back to what was moved and voted upon in the May 18, 2022, Commission Meeting while changing “*employing agency*” to “*hiring agency,*” to read as follows, “*The hiring 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 Hunter** seconded the motion. **The motion passed unanimously.**

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

Chair Myers recommended staff wordsmith as section 5 of the WAC as written is clunky. **Commissioner Reynon** noted in section 5 that the word “*certification*” should be “*waiver.*”

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

Commissioner Reynon asked about the changes in section 1 which address when an applicant or certified officer is found to have committed misconduct, wondering about the discrepancy between the hearing panel reviewing the facts instead of determining the facts and recommends replacing “*review*” with “*determine*.” **Chair Myers** stated that changes were done to name the panel as the body performing certain actions, not staff or the Commission directly.

Derek Zable added that additional language was added to clarify what the hearing panel is, what their powers are, and what this section of the WAC is designed to accomplish.

Commissioner Reynon asked if “*review*” should be replaced with “*determine*.” **Derek Zable** explained that the term “*determined*” was used in the following section and did not want to overuse the statement, recommended instead changing the language to, “*review the facts of the investigation*,” for more clarity. **Chair Myers** mentioned that the hearing panel will review all the provided material, noting the inclusion of “*review*” is not without merit as the WAC later discusses reviewing evidence and what can be included as was as a determination which occurs later and is also referenced.

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

Commissioner Robinson noted that since this newest draft excluded reference to the Northwest Polygraph association who is responsible for determining the minimum polygraph standards. **Deborah Jacobs** explained that some changes to this WAC occurred due to concerns raised by outside stakeholders having pointed out that the WAC endorsed the Northwest Polygraph association in exclusion of others while there are other standard bodies through Washington State and the country, in addition to the change occurring to not wanting the WAC beholden to changing standards. **Commissioner Reynon** shared a desire wanting to ensure polygraphs are credible and inquired about who sets the standards the WAC follows.

Chair Myers noted that this can be corrected in policy and that it is not unreasonable to mandate what standards the Commission needs done by polygraphers. **Deborah Jacobs** stated that wordsmithing can be done on the language in the WAC clarifying where the minimum current standards derive while noting that this clarification can occur in policy and not the WAC. **Commissioner Reynon** expressed wanting to verify there are not differing standards throughout the state. **Chair Myers** sought to ensure the minimum standard hits specific points and is content with any organization that falls under that umbrella. **Chad Arceneaux** pointed out that WACs are rules for individuals subject to the Commission’s authority, expressing a desire to explore what might be more appropriate setting for standards for police polygraphers as WACs are online and accessible while policies are not as accessible.

Chair Myers also reiterated that WACs have the appropriate notice of law. **Chad Arceneaux** recommends that the commissioners approach this as a WAC issue and not a policy issue. **Derek Zable** referenced RCW 43.101.095 as the Commission needing to establish WAC and not policy. **Chair Myers** detailed the need for everybody to understand the minimum needing to be done regarding polygraphy tests so that the polygraph has value, suggesting that the Commission come up with language regarding what the Commission recognizes and what it does not. **Mike Devine** confirmed the request of staff to set minimum standards or find an appropriate organization that has standards that can be referenced in WAC. **Commissioner Thomas** requested a clean copy of all the WACs be provided to Commissioners prior to the next meeting.

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

Chair Myers indicated in subsections 2A, 2B, 2C, and 2D that a placeholder was left for alternative options that could be used but was removed from the WAC while subsection 9 addresses other technology. **Deborah Jacobs** explained that a statement was removed

detailing a polygraph statement of dishonesty would disqualify an applicant as the hiring of the applicant ultimately lands with the hiring agency and not the Commission as well as the polygraph test showing reactions, not dishonesty. **Commissioner Reynon** asked if a polygraph test makes a finding of dishonesty. **Chair Myers** answered that a polygraph test will be conducted and, as a Chief, he will receive a report if an applicant hits on a question, expanding that one of the concerns articulated is that reactions can occur when an applicant is not being dishonest, furthering noting that his polygrapher will indicate when dishonesty is present, at which point the agency takes the information and performs their due diligence and subsequent background checks. **Commissioner Reynon** indicated that as this line was new to the WAC, its removal feels like it is authorizing dishonesty and lessening standards. **Chair Myers** inquired about the ability to insert into section 1 that the intent of the polygraph is to be used as a tool to disqualify candidates who demonstrate dishonesty. **Derek Zable** informed the Commission of the desire to not use the word dishonesty instead suggesting using the tool to determine facts, history, or reasonings of a situation of an individual officer. **Dusty Pierpoint** added that there exists subjectivity when determining qualified candidates who undergo the psychological and polygraph tests which makes a pass-fail determination cloudy. **Chair Myers** stated that an individual could be brutally honest and pass the polygraph while divulging disqualifying information. **Mike Devine** clarified that the agency is looking at the polygraph as an assessment tool used by a hiring agency as opposed to a disqualifying component. **Chair Myers** stated that as the Commission is looking to encapsulate professional standards it is imperative to make clear that the polygraph is a tool used to determine an individual's history, adding that the intent is to see if an applicant is being dishonest while acknowledging the potential for bias and discrimination.

WAC 139-06-020 Agency Reporting Requirements – Force, Separation, and Investigation

Deborah Jacobs informed the commissioners that community stakeholders asked for clarification in section 7 of the WAC where there is mention of a \$10,000 fine that the Commission is entitled to charge, asking if the fine referenced the agency, the individual officer, or both, adding that the referenced RCW includes fines to both the agency and the individual officer. **Deborah Jacobs** stated that staff feels most of the instance where fines would occur would be levied against the agency and attempted to be responsive to concerns in the removal of the term “*officers*” while leaving in “*agency*,” with further feedback suggesting both are removed as it is duplicative with the referenced RCW. **Deborah Jacobs** asked the commissioners if there would be a preference to remove section 7 of the WAC or to retain its inclusion. **Chair Myers** stated that the RCW is as the law says, recommending to not create ambiguity, further inquiring about the process for the Commission to enact a civil penalty. **Justin Kato** stated that the Commission issues a civil penalty which has a means for appeal via the Administrative Procedures Act. **Chair Myers** noted a preference to leave reference to the RCW in the WAC.

WAC 139-06-010 Certification

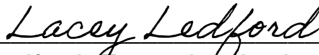


Justin Kato noted that in subparagraph 1A(ii) the Commission had granted itself the authority to establish standards for background checks, indicating that the Commission cannot grant itself authority in WACs, suggesting the language be changed to, “*Commission will establish standards.*” **Chair Myers** asked if this is redundant with standards included in another WAC. **Justin Kato** added that this statement might not be necessary for inclusion. **Chair Myers** stated a desire for the Commission to clarify it could review or audit that background checks are being completed. **Commissioner Reynon** indicated that this statement does not read as the Commission granting itself authority but rather stating that the Commission possesses the

authority, adding a desire for clarity in ensuring an ability to establish standards and audit background checks to verify standards are met. **Derek Zable** offered that the word, “*authority*” could be changed to, “*duty to establish.*” **Chair Myers** cautioned that confusion could occur when a WAC speaks of what the Commission will do when that task has already been done. **Derek Zable** added that auditing powers are not clear within the RCW, noting a timing issue for the auditing process as the RCW states that auditing of a background check can only occur when signing certification or when a background check is conducted, further suggesting the benefits of a legal review to establish clear authority. **Chair Myers** stated that if the Commission establishes requirements, then it should be allowed to review from time to time or when a complaint is received. **Deborah Jacobs** stated that for privacy concerns, onsite inspections of records could occur while noting that the Commission could ask the state auditor to perform audits, asking of the drafted language would allow for the opportunity to outsource audits. **Chair Myers** answered that the phrase “*at its discretion*” would address privacy concerns and that agencies are required to comply with the Commission’s request to audit a background check.

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 12:14 PM.

Next Meeting: June 8, 2022, 10 AM, WSCJTC

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