

PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY
CONSTABLES' EDUCATION AND TRAINING BOARD

Approved Minutes of the November 7, 2019 Meeting

Members Present

Thomas Brletic, MDJ, Allegheny Co.
John Bruno, Constable, Dauphin Co.
Major Thomas E. Dubovi, PSP
Francis Peitz Jr., Constable, Allegheny Co.
Rodney Ruddock, Indiana County Commissioner
Craig Westover, Constable, Venango Co.

Commission Staff Present

Sherry Leffler, Constables' Program
Wayne Hower, Constables' Program
Tracy Beaver, Constables' Program
John Pfau, PCCD
Debra Sandifer, PCCD
Beth Romero, PCCD
Megan Staub, PCCD
Mike Pennington, Executive Director, PCCD

Visitors

Deidre Beiter, Temple University
Alex Farganis, Lancaster Co.
Anthony Luongo, Temple University
Michael Wystepek, Penn State Fayette
Jack Garner, Dauphin Co.

Brian Webster, Perry Co.
Casey Grove, Centre Co.
Daniel Hollenbaugh, Adams Co.
Antione Malloy, Allegheny Co.

I. Call to Order:

The Constables' Education and Training Board (Board) meeting was held at 9:00 a.m. on Thursday, November 7, 2019 at the Pennsylvania Commission on Crime and Delinquency (PCCD), 3101 N. Front Street, Harrisburg, Pennsylvania.

Chair John Bruno called the meeting to order at 9:02 a.m. and asked all to join him in the Pledge of Allegiance. Board and Staff introductions were then made to audience members. Chair Bruno asked the PCCD's new Executive Director, Michael Pennington, to introduce himself. Mr. Pennington was appointed on September 16, 2019, but has worked for PCCD for 17 years. Mr. Pennington is looking forward to working with the Board.

II. Action Items:

Chair Bruno asked if there were any questions regarding the August 08, 2019 Board Meeting Minutes. Hearing none, he asked for a motion to approve the August 08, 2019 Board Meeting Minutes.

A motion was made by Commissioner Rodney Ruddock to accept the Board Meeting Minutes of August 08, 2019 and the motion was seconded by Constable Francis Peitz.

VOTING AYE: Brletic, Bruno, Dubovi, Peitz, Ruddock, Westover

VOTING NAY: None

ABSTAINING: None

The motion carried unanimously.

Chair Bruno asked Staff for a legal opinion about constables working outside the court system. Mr. John Pfau deferred the question to Chief Counsel Debra Sandifer. Ms. Sandifer stated that the Board's underlying issue appeared to be how the Board can stop the draining of the Fund, which occurs when constables are trained at the expense of the Commonwealth but work outside the court system. She thinks the Board should explore ways of requiring individuals who take advantage of the free training to pay into the Fund if that person works outside the court system. The Board brought up the matter of the constables who were arrested while working in the private sector. Ms. Sandifer cautioned that they were not arrested because it is unlawful for individuals to take advantage of the free training then go to work outside the court system. The constables in question were arrested for representing themselves as constables engaged in the business of the Commonwealth while they were, in fact, working for a private entity. This is a violation of the law. While the Board cannot restrict the employment of an individual who has undergone the free training by requiring that they only work for the judicial system, the Board would be within its legislative mandate to assess and charge a fee that constables would pay unless they worked for the courts and put money back into the Fund. Judge Thomas Brletic asked what if a fee was enacted for everyone, but the constable who did work for the courts was reimbursed for that fee? Ms. Sandifer thought that idea would get the Board closer to a solution that involves replenishment of fees rather than restricting the right to choose employment. Although the legislation does not specifically task the Board with protecting the Fund, it does task the Board with training and certifying constables, and the depletion of the Fund would have a direct negative effect on training. Therefore, the Board's actions to protect the Fund by focusing on ways of replenishing fees for the purpose of the future training would be reasonable. Commissioner Rodney Ruddock asked about the fiduciary responsibility of the Board to protect the integrity of the Program and stated that this is something that members can take under advisement and move forward. Constable Craig Westover questioned what the fiscal responsibility of the Board actually is, and whether it would allow for the Board permitting the Fund to run out of money and end the Board's ability to provide training as required by statute. Ms. Sandifer thinks the circumstances are the cause of the Fund running out of money, and not any violation of fiduciary duty on the part of the Board. If everything that has been done was reasonable, and the Board has taken successful steps to conserve dollars by making changes to the training curriculum, if the Fund ran out of money there would be clear indication that the Board has done all that could be done to comply with the legislation to provide training. Constable Westover asked if there is a mechanism in mind, legally, that can be used to accomplish this change in policy to charge fees for training, such as charging an upfront fee, then requiring individuals to pay back some sort of reimbursement if the individual works for the courts. Ms. Sandifer deferred to Mr. Pfau to speak to this from a fiscal and administrative viewpoint. Mr. Pfau stated that Staff would have to work with fiscal on the administrative process of reimbursing constables. Constable Westover asked whether any Commonwealth or other government agency has actually gone broke. Mr. Pfau said the only precedent he is aware of is the Deputy Sheriff Fund which faced a similar situation during 1997-1998. It resulted in legislation being passed to increase the surcharge, but then the Board had to pay back reimbursements that were held. Constable Westover asked if the comptroller was the one with the authority to shut down the Program. Mr. Pfau stated it is really a call from the comptroller. They may say you can do a contract for a year at a time, or shorter increments. Constable Westover asked if there was any time to prepare for this situation. Mr. Pfau stated Staff have the existing

contracts and the contractors submit a new budget every year. He looked back at the same line in 2018 when the Program's total expenditures for the first quarter were \$653,000, and now the expenditures are about \$200,000. Mr. Pfau stated that the cuts that were implemented for 2019 are paying off. Last year commitments were about \$3 million, now the commitments are about \$1.6 million. In November 2018, Staff had predictions of an estimated saving of \$630,000.00 for 2019. The savings are on track of about \$649,000.00. Roughly \$200,000.00 had been committed to online training, but that leaves about \$450,000.00 as our real savings for 2019. Revenues have not really changed at all in 25 years, but training costs have continued to increase. Constable Westover stated that is where it would be helpful to have some sort of inflationary device in the legislation. Mr. Pfau stated in the 1995 Fiscal Report, the expenditures for training was about \$1.6 million and for 2019 (these are not final numbers as everything is not in), about \$1.5 million. The same amount of money is coming into the Fund, but there are less hours of training; that has to do with inflationary costs of training over the past 25 years. Constable Westover asked Ms. Sandifer if the Board could represent to the General Assembly with a clear conscience that it has done everything that needed to be done. Ms. Sandifer replied that the Board absolutely could, and the results support this. Commissioner Ruddock cautioned that the 2015 ending balance of \$4.3 million will go down to \$868,000 by 2023. Even with the good things that Staff has done to try and balance this situation, something drastic must be done to change the financial picture. Unless the Board acts, the Fund is going to hit that bottom number and then the Program is done. Mr. Pfau stated the steps the Board has taken bought a little more time.

The next Action Item on the Agenda was the Financial Report of September 30, 2019, presented by Ms. Beth Romero. The Financial Report can be found on pages 8-12 of the Board Packet and is for State Fiscal Year 2019-2020. Under receipts, the balance carried forward from the previous fiscal year was \$1,792,024.50. The fees collected for the first quarter were \$444,671.65. The total funds available as of September 30, 2019 were \$2,177,053.65. Under Expenditures and Commitments, the total cumulative expenditures as of September 30, 2019 were \$203,008.49. The total cumulative expenditures and commitments as of September 30, 2019 were \$1,896,669.32 and that includes \$263,237.25 of the Administrative Expenses and Commitments. The total of uncommitted funds as of September 30, 2019 is \$208,384.33.

A motion was made by Judge Thomas Brletic to accept the Financial Report of September 30, 2019 and the motion was seconded by Constable Francis Peitz.

VOTING AYE: Brletic, Bruno, Dubovi, Peitz, Ruddock, Westover

VOTING NAY: None

ABSTAINING: None

The motion carried unanimously.

The third Action Item is the Act 233 Stipend Payments for Training Year 2019. Ms. Sherry Leffler stated in the past years, the Program had provided this training stipend for constables. The last time in which payment was made was in 2009 for the 2008 Training Year. Based on the status of the Fund, Program Staff recommends that no payments be made under Title 44, Section 7149(f) to constables and deputy constables for the training Year 2019 until sufficient funds are available to allocate those surplus funds to a stipend payment.

A motion was made by Constable Craig Westover to accept Staff recommendations that no Act 233 Stipend payments be made, and the motion was seconded by Commissioner Rodney Ruddock.

VOTING AYE: Brletic, Bruno, Dubovi, Peitz, Ruddock, Westover

VOTING NAY: None

ABSTAINING: None

The motion carried unanimously.

The fourth Action Item was review of the Instructor Certification by Mr. Wayne Hower. He reviewed the application and gave Staff recommendations as follows:

Penn State Fayette:

Matthew Piroth:

Requested Topic Certifications: General, Law, Communications, Physical Skills, and Firearms

A motion was made by Constable John Bruno to accept the candidate for Instructor Certification and the motion was seconded by Judge Thomas Brletic.

VOTING AYE: Brletic, Bruno, Dubovi, Peitz, Ruddock, Westover

VOTING NAY: None

ABSTAINING: None

The motion carried unanimously.

The fifth Action Item is the Revised 2020 Board Meeting Schedule. Ms. Leffler advised there were two conflicts for the meeting schedule for 2020. The Board was asked to move the dates for the May and November 2020 meetings. The May meeting is moved forward a week to May 7, 2020 and the November week is moved a week back to November 19, 2020. Constable Westover questioned if the meetings would still coincide with the Commission Meetings. Ms. Leffler advised yes, the Board's meeting would still be before the Commission Meetings.

A motion was made by Constable Francis Peitz to accept the revised 2020 Board Meeting Schedule and the motion was seconded by Major Thomas Dubovi.

VOTING AYE: Brletic, Bruno, Dubovi, Peitz, Ruddock, Westover

VOTING NAY: None

ABSTAINING: None

The motion carried unanimously.

III. Discussion Items:

No discussion items were brought forth for the meeting.

IV. Informational Items:

The first Informational Item was the 2020 Curriculum and Online Training Update. Mr. Pfau introduced Ms. Megan Staub, who is the Program's new curriculum manager. Ms. Staub presented the student view of the 2020 Continuing Education module that will be completed online. She showed a little bit of what the training module looks like and what constables will experience when they go through the online training. Constable Westover questioned if there was an opportunity to print out a certificate after completing the exam. He questioned this just in case there would be a technological malfunction. Mr. Pfau advised there is no certificate, but the grades will be sent to the Constables' Certification, Education, and Training System (CCETS). Canvas and CCETS will be integrated so grades will automatically be populated in CCETS. Ms. Staub advised constables could do a printout of the screen if they were worried about the test grade being submitted properly. Constable Bruno asked if you did fail the exam the first time, could a constable go back and review the course material. Mr. Pfau stated once a course module has been completed, you can go back through and navigate through any of the modules in no particular order. Constable Antoine Malloy questioned if the exam would give you the correct answers to the questions you missed. Mr. Pfau advised at this point, you will not get the correct answers. Canvas does have this option; however, this does require a large test bank of questions and in trying to get the project running quickly, this was not a feasible task due to time constraints. Constable Daniel Hollenbaugh questioned if there would be an option of group training where constables could get together and maybe have a PCCD instructor there to run the class and offer guidance. Mr. Pfau stated this would not be an option and Judge Brletic stated it then becomes an issue of integrity. Mr. Pfau advised whatever the associations want to do, Staff cannot stop them. Individuals are still responsible to take the test on their own. Mr. Jack Garner questioned if all of the bonus material had to be completed or if it was just the required material. Ms. Staub advised it is only the required material. Mr. Garner questioned if any of the test questions will be from the bonus material to which Ms. Staub replied the text questions will only be from the course modules and required materials. Mr. Garner asked if there was a way to print out the case laws, so that way during the exam you could have them in front of you to study for and refresh your memory for the exam. Mr. Pfau advised they all open up as PDF files and you could print the material from there. Ms. Staub advised that if you do not know the material for the exam, the time limit of 30 minutes for the exam is not going to be enough time to peruse the printed documents to find the correct answer.

The second Informational Item is the Update on Class Registration and CCETS Login. Mr. Pfau advised the registration process for CCETS is changing due to the Commonwealth wanting to update the login system. This change has caused the Program to hold off on some changes to CCETS and integration of the Learning Management System (LMS). Staff are working with Temple to mass enroll all constables behind the scenes and then Temple will create the user accounts, and this is why constables have to have a valid email address on their CCETS profile. Constables will still register for the 8-Hour classroom portion like normal. Eventually, that online registration will be built in so when a constable registers for a classroom, it will automatically enroll you into the online training requirement for the year. Ms. Leffler stated all current users, that are within CCETS, will have to go and re-register for Keystone Login. Staff will have a Training Bulletin devoted entirely to the Keystone Login. Staff wanted to eliminate the second registration through Temple Canvas, which is why Staff is having Temple register everyone to avoid confusion between the Temple Canvas registration process and the Keystone Login process. The Temple User ID and username will be in the CCETS profile. Mr. Pfau emphasized it is not going to be perfect and Staff ask the training population to be patient. Constable Westover advised if a constable gets hung up during this process, there will be a help desk available for constables to call. Mr. Pfau advised Ms. Leffler just had a meeting last week where Staff walked through trying to anticipate problem areas. Constable Westover stated the associations need to go through the process and if they see specific issues,

they can have an association meeting to address some places where constables may get hung up on and what the fix is. Mr. Pfau advised a tutorial is going to be made available on the PCCD webpage so that even before constables get into Canvas, they can go through the tutorial video and at least have some familiarity for when they log in. Constable Bruno questioned if this is the first of two online trainings. Mr. Pfau advised in 2021, there will be a second module added to the online training. The biggest part in the integration is to make the system automatic and once that is established, developing and building curriculum into the Canvas platform will be easier. Constable Bruno asked how long a constable has to complete the online training. Mr. Pfau stated the training will be available from January until December 4, 2020. Constable Bruno questioned about the constables who are not CCETS users? Ms. Leffler advised Staff has already sent letters to those who are not CCETS users or do not have a valid email address. Constables are going to have to become CCETS users to access the 4-Hour online module to maintain certification. Constable Bruno questioned about those who do not have computers or internet access. Ms. Leffler advised those constables can go to the public library or hook up with another constable who does have a computer and can sit with them to go through the online process to help assist them with the process.

The third Informational Item is the 4-Hour Annual Firearms Qualification Update. Ms. Leffler wanted to give an update on the failures for the firearms and the statistics. There was a total of 58 firearms classes offered last year with a total of 1,060 seats available. 5 classes were cancelled resulting in only 53 classes held this year, with a total of 863 constables completing the training and passing the annual qualification. Out of these 53 classes, there was still over 200 seats that were not filled. There was a total of 81 failures, 13 of which were double failures, meaning they came and took the training class, failed, paid, and came back to take the second class and failed the second class. The overall failure rate is about 9%, which is less than what was being predicted. 3 constables failed on Phase 1 after 2 attempts. 75 constables failed on Phase 2 after 2 attempts, and 3 constables failed on the written test after two attempts. There were quite a few no shows, some malfunctions, and two firearms safety issues that were documented for this year. As far as failures by region, there were 40 failures in the west, 21 in the central region, and 20 in the east. Mr. Pfau advised Staff has been out monitoring some of these annual qualification classes and as the year went on, the failure rate increased because constables who were not practicing, or were marginal shooters, waited until the end of the year to qualify. When looking at the qualification sessions that happened in the beginning of the year, there were very few failures. Those who were good shooters, qualified at the beginning of the year. He monitored a couple firearms courses and it really comes down to the individual constable going out and practicing and knowing how to manipulate the weapon. Ms. Leffler stated some individuals who failed earlier in the year were trying to get into the last couple of classes of the year. Unfortunately, if a constable failed the weekend before the last class, it is hard for Staff to get the payment and get the constable enrolled into another class. Judge Brletic questioned what the historical firearms failures rate has been in comparison to previous years? Mr. Pfau stated historically it was about 3-4% failure rate.

The fourth Informational Item was the Status of Certifications presented by Ms. Leffler to the Board. As of October 16, 2019, there were 1,125 constables and deputy constable currently listed as active and certified. Of these, 900 or 80% were also certified to carry a firearm in the performance of their constable duties.

Since the inception of the Program in 1996, there have been a total of 4,609 individuals who successfully completed basic training or the waiver examination and were certified by the Board.

The fifth Information Item was Constables' Certification, Education, and Training System (CCETS) Registered User Update. Ms. Leffler reported as of October 16, 2019, there are 1,682 active registered constables and deputy constables who are CCETS users. These are constables and deputy constables who have a valid term of office in CCETS.

A total of 1,097 active and certified constables and deputy constables are CCETS users, which is 97.5% of the currently active and certified constable population. Active and certified indicates that they have a valid term of office, have valid professional liability insurance and have met the training requirements to be certified.

Of the total active registered CCETS users of 1,682; 1,187 have chosen email as their preferred correspondence method.

Of the total active registered CCETS user of 1,644; 561 active registered constables and deputy constables are sharing their personal information in CCETS.

There are currently 76 registered users from 35 County Clerk of Courts Offices.

V. Executive Session:

Chair Bruno asked to go into Executive Session at 10:12 am.

A motion was made by Commissioner Rodney Ruddock to go into Executive Session and the motion was seconded by Major Thomas Dubovi.

VOTING AYE: Brletic, Bruno, Dubovi, Peitz, Ruddock, Westover

VOTING NAY: None

ABSTAINING: None

The motion carried unanimously.

Executive Session ended at 10:30 am.

A motion was made by Commissioner Rodney Ruddock to adjourn Executive Session and the motion was seconded by Constable Craig Westover.

VOTING AYE: Brletic, Bruno, Dubovi, Peitz, Ruddock, Westover

VOTING NAY: None

ABSTAINING: None

The motion carried unanimously.

A motion was made by Judge Thomas Brletic to grant a waiver for John Johnson's August 2019 Continuing Education Self Aid/Buddy Aid module due to a prior officer involved shooting in Delaware County and the motion was seconded by Constable Craig Westover.

VOTING AYE: Brletic, Bruno, Dubovi, Peitz, Ruddock, Westover

VOTING NAY: None
ABSTAINING: None

The motion carried unanimously.

V. Public Voice:

Daniel Hollenbaugh (Constable, Adams County) wanted to know if there was any research into how much of a savings it is for new constables to pay for the training. Mr. Pfau advised it is going to make the Basic Training cost neutral. It is not going to put any extra money into the Fund, it just covers the cost of running a Basic Training. Constable Hollenbaugh stated it has to help somewhere as the most expensive line items are the Basic Firearms and ammunition and now it not going to be paid out of the Fund anymore. Mr. Pfau advised Staff calculated what to charge and if there are not enough constables enrolled into a class, the class is not going to run. Constable Hollenbaugh questioned if this has been approved. Mr. Pfau advised it was approved by the Board and the Commission. Constable Hollenbaugh stated the Workgroup discussed requiring newly elected constable, who want to go through Basic Training, to take a prerequisite course that describes what to expect when becoming a new constable. Now that constables are required to pay and Canvas is available, is there any way to do a quick presentation for constables before they sign up and spend money to go through Basic Training? Mr. Pfau advised it will not happen in 2020. It could happen in 2021, along with moving the firearms test and safety briefing online. Constable Hollenbaugh questioned why has it been the Board's decision to suspend the firearms certification immediately for a constable who fails an annual qualification course, even though they are still qualified throughout the rest of the year? Constable Bruno advised the constable has demonstrated they no longer have the ability to properly operate the firearm. The constable may have had the ability five or ten months ago, but something now has shown the Board, from a liability perspective, that they demonstrated right then and there that they no longer have the ability.

Brian Webster (Constable, Perry County) wanted to comment that in his own personal opinion, it is 2020 and he is in favor of the online training and the "Show-and-Shoot." The question he has is there are a lot of constables questioning about qualification of second weapons for 2020. Has there been any thought that the Board would allow constables to pay for a PCCD instructor or Municipal Police Officers' Education and Training Commission (MPOETC) instructor with the proper paperwork to certify someone outside with a second gun and submit it to the Program? Mr. Pfau stated that exact approach has not been considered. Constable Webster advised it would be revenue neutral for PCCD and it would be the constables' expense. Mr. Pfau advised Staff can look at that approach. Constable Webster stated a lot of constables have contact with Certified PCCD instructors and MPEOTC instructors and would be able to submit paperwork through CCETS. Mr. Pfau stated that is something Staff can work on and bring to the Board. Ms. Leffler stated about having a PCCD sponsored second weapon qualification class. Mr. Pfau specified what was talked about for 2021, is that 40 Annual Qualifications classes are run and add another ten to fifteen classes around the state that are second weapon classes.

Antione Malloy (Constable, Allegheny County) questioned the Board about why there were so many failures on the western side. Several members have expressed their concern about a number of constables failing. One suggestion is starting from the closer distances and working back as opposed to the firearms class that he took where they started right at the 25-yard line. Constable Malloy feels it should be uniform across the board and those constables who started closer had a distinct advantage over those who

have to start at the farther distance and work their way forward. Mr. Pfau stated he does agree and Staff have discussed consistency and will be talking with the schools. Constable Bruno stated a constable should be proficient to the point that it should not matter where the course of fire starts. Mr. Pfau stated constables need to be proficient with their weapon. Constable Malloy questioned why there are there no Basic Training classes in the western part of the state. Mr. Pfau stated the facility used for the Basic Training is free. Ms. Leffler stated the Workgroup discussed having a centralized training facility for all of the trainings.

Jack Garner (Public Citizen, Dauphin County) stated on page 7 of the Board packet, he is concerned about a statement Mr. Pfau made about sworn law enforcement officers, not security, the question he has is when law enforcement call into PCCD and they ask if a constable a sworn law enforcement officer, what answer is provided? Ms. Leffler advised the comment on page 7 was in relation to the Safe Schools Act. Mr. Pfau refers them to case law and what is in the training, and it is up to them to make that determination. Ms. Leffler states her personal answer is that they are an elected official. Constable Westover stated he has had those questions asked of him as a Board member. The issue is that there is no clear definition of a constable. Mr. Garner stated it could come from a General Counsel opinion and a policy statement from the Agency. Constable Westover stated it needs to come from the Attorney General. Counsel Sandifer stated the Legal Office at PCCD is not the General Counsel; she is the Chief Counsel to the Agency. The General Counsel is her boss and if there would be an opinion it would come from the General Counsel at the direction of the Governor. Judge Brletic stated the appellate courts have not waived for years saying that constables have the same authority in breach of peace offenses as common citizens.

Chair Bruno addressed County Commission Rodney Ruddock and thanked him for his service to the Board, as this is his last meeting. Commission Ruddock stated he stayed longer than anticipated as he has been with the Board for seven years. He thanked Staff and Board members for all of the leadership that is here, and the Staff has done a tremendous job in moving forward. He wished all a great journey from here on out. Judge Brletic spoke on behalf of the fellow Board members in saying how much Commissioner Ruddock's guidance was appreciated.

VI. Adjournment:

Chair Bruno asked for a motion to adjourn the meeting at 11:08 a.m. A motion was made by Constable Francis Peitz to adjourn the meeting and the motion was second by the Judge Thomas Brletic.

VOTING AYE: Brletic, Bruno, Dubovi, Peitz, Ruddock, Westover

VOTING NAY: None

ABSTAINING: None

The motion carried unanimously.

The next Board meeting will be held on February 13, 2020 at PCCD's Office in Harrisburg.