

State of Connecticut  
Department of Administrative Services  
State Marshal Commission  
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W. Martyn Philpot, Jr., Esq.  
Chairperson

Jeffrey Beckham  
Staff Director

Draft Minutes  
STATE MARSHAL COMMISSION SPECIAL MEETING  
November 9, 2016

Members present: Chairperson W. Martyn Philpot, Jr., Esq., Vice-Chairperson Michael Cronin, Esq. (via teleconference call), Sarah Fryxell, Esq. (via teleconference call), Tracy L. Dayton, Esq., and Michael Desmond. Also present were Ex-Officio Lisa Stevenson (non-voting member), Staff Director Jeffrey Beckham, Staff Attorney Jennifer Y. Montgomery, and State Marshal David Hubbs. Commissioners Mildred Torres-Ferguson, Honorable Elizabeth A. Bozzuto, Robert P. LaTorraca, and Ex-Officio Thomas Burke were not present.

Chairperson W. Martyn Philpot, Jr., Esq. called the meeting to order at 3:19 p.m.

1. Minutes: October 27, 2016 meeting

The Commission, after a motion by Tracy Lee Dayton, Esq., seconded by Michael Desmond, voted 5-0 to adopt the minutes from the October 27, 2016 meeting.

2. Revised Use of Force Policy

Attorney Jennifer Montgomery introduced the issue of the Revised Use of Force Policy and the suggested revisions thereto proposed by the Advisory Board. Commissioner Tracy Lee Dayton, Esq. directed some questions to Ex-Officio Lisa Stevenson and State Marshal David Hubbs regarding their proposed changes.

Commissioner Dayton first inquired about the Advisory Board's proposed revision expanding the policy to include uses of force outside the civil capias context. Jeffrey Beckham noted that the existing policy was directed toward the execution of capias warrants and he would not recommend an expansion. He noted that, to the extent that a use of force is evaluated outside of the capias context, the law applicable to all citizens concerning self-defense would apply. He also noted that Commission staff would not recommend discipline of a marshal for lawful conduct. He believed the scope of the policy was capias warrants and firearms alone. Marshal Hubbs noted that handcuffs are considered a use of force and raised the scenario where a marshal utilizes handcuffs while on an eviction. Attorney Montgomery clarified that the proposed draft policy precludes the use of handcuffs outside of the capias context. Commissioner Dayton suggested that the introduction to the policy be revised slightly to clarify that capias arrests are a required use of force (i.e. an arrest).

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There was further discussion about the policy introduction and the Commissioners present agreed to minimal revisions to clarify that whether or not a use of force is found to be legally excessive, the actions may still violate the policy. The Commissioners decided to retain language indicating that state marshals do not have the authority to enforce criminal law.

The “Use of Physical Force” section was minimally revised to remove a general definition of “physical force” which does not exist in the Connecticut General Statutes. Attorney Montgomery clarified that the policy tracks the statute with respect to “invalid warrants.”

Commissioner Dayton suggested that the definition of “deadly physical force” be clarified to delineate that intentional discharge of a firearm is an example of deadly physical force.

The Commissioner present agreed with the Advisory Board’s suggested change to expand the excessive force standard to include not just force against the subject of the warrant but also a third party.

With respect to the reporting requirement for rendering medical aide, Marshal Hubbs raised the Advisory Board’s modification to require that reporting as soon as practicable rather than within 48 hours. Jeffrey Beckham and Attorney Montgomery noted that this was meant to provide a time certain for such reporting. The Commissioners present determined that they would expand from 48 hours to 72 hours.

As to the proposed reporting requirement for where a marshal draws his or her firearm, Marshal Hubbs noted that marshals are trained to draw their weapons upon entering a building. He raised the concern that, should they be required to report every instance of drawing their weapons, they will potentially be required to make several reports each week. Commissioner Dayton noted that the policy could limit reporting to instances when a marshal draws his or her weapon and points it at someone or something. The Commissioners present agreed.

As to the proposed changes with the required training, Jeffrey Beckham explained that he had met with officials at the POSTC academy and they are tailoring a training module specifically for state marshals. He noted that the proposal would be sensitive to the marshal’s time limitations but also address the Commission’s concern about the need for increased training. He noted that it was important to hold training at the Academy to create consistency. Attorney Montgomery noted that the Academy would be specifically tailoring the civil liability, defensive tactics, and medical training courses to the needs of state marshals.

Marshal Hubbs noted that he did not object to increasing the training requirements. He raised his concern that the first responder requirement was excessive. Attorney Montgomery noted that state police and most municipal police officers are first responders and noted that the course mandated by the policy would not be this extensive. Attorney Beckham noted that staff would be refining the curriculum requirements and would welcome State Marshals Hubbs and Stevenson to be part of the process. He further noted that the Commission could entertain, after one cycle, requiring recertification rather than certification in the subject areas. Marshal Stevenson inquired about the cost for training. Attorney Beckham noted that firearms training is traditionally not paid for by the Commission. Marshal Hubbs reiterated that he was chiefly concerned about practicality, cost, and time. Attorney Montgomery noted that the Academy is considering holding the coursework in the evenings and on weekends. Marshal Hubbs raised that there have been instances where the marshals get limited notice about training opportunities. Attorney Beckham noted that he was not with the Commission then and that this would not occur going forward.

Attorney Montgomery raised the proposed requirement that a marshal carry a baton and pepper spray whenever he or she carries a firearm to provide a menu of less lethal options for the marshal to

choose. Marshal Hubbs raised that, if conducting service of process, a marshal may not want to carry a full utility belt as it may create a state of alarm. The Commissioners present agreed to revise the requirement to require that the marshal carry either a baton or pepper spray while carrying a firearm.

Marshal Hubbs raised his recommendation that the marshals not be limited to firearm platforms that are utilized by law enforcement agencies. Commissioner Dayton noted her belief that the language simply limits the caliber and not the brand.

With respect to the process for temporary suspension under the policy, Ex-Officio Stevenson and Attorney Montgomery clarified that this tracks the current process for temporary suspensions. Should a marshal kill or seriously injure someone with a firearm, the Commission could suspend pending the investigation, could revoke firearm authorization or could choose not to retain a suspension pending investigation after a temporary suspension hearing.

Attorney Montgomery described her proposed changes to the section on medical attention and described how they were meant to spell out those instances where a marshal must secure transport to the hospital. Ex-Officio Stevenson raised that it should be understood. The Commissioners present revised slightly to address the concerns.

Attorney Montgomery explained that the sections on firearms safety simply restate the statutes. She suggested simply cross referencing the statutes rather than restating them. The Commissioners present agreed.

As to capias training, Attorney Montgomery noted that this training was still being refined and further noted that the POST Academy could craft a training module that encompassed all of these requirements. Attorney Beckham noted that capias training is not due for another three years. Marshal Hubbs raised his belief that when police officers are recertified, they are offered different, more relevant courses. The marshals end up taking the same courses over and over. He noted that he has arrested 5000 people and would not be likely to learn much from a handcuffing course. He suggested adding different course work. Attorney Montgomery noted that this policy is a floor and the Academy is going address recertification.

With respect to conducted energy weapons, Marshal Hubbs raised that state marshals may not have access to law enforcement grade CEWs. He also noted that TASER will not sell to non-law enforcement agencies and they may require the sale to be to DAS. The Commissioners present decided to strike the CEW section of the revised policy and table for future consideration by a subcommittee. Attorney Beckham suggested that there be a separate CEW policy adopted after these issues are addressed.

Ex-Officio Stevenson raised concerns about language in the existing policy regarding offensive use of batons. The Commissioners present agreed to strike.

Commissioner Dayton noted that, under this policy, marshals are not authorized to carry handcuffs unless they are on the Capias Unit and conducting a capias arrest. Marshal Hubbs sought clarification as to whether a trained Capias Unit marshal could carry and use handcuffs during an eviction. Attorney Beckham noted that there was no statutory authority for this.

Attorney Montgomery noted that she would make the changes discussed at the special meeting and circulate a final draft policy for the next Commission meeting.

The Commission, after a motion by Tracy Lee Dayton, Esq., seconded by Michael Desmond voted 5-0 to adjourn the meeting at 4:42 p.m.