



Arizona Peace Officer Standards and Training Board

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MINUTES OF THE SEPTEMBER 15, 2021 MEETING OF THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD DUI SUBCOMMITTEE PHOENIX, ARIZONA

A public meeting of the Arizona Peace Officer Standards and Training Board DUI Subcommittee was convened on September 15, 2021, at AZ POST, located at 2643 E. University Drive, Phoenix, AZ.

Members Present:

Chief Jeri Williams, Phoenix Police Department, Chair
Deputy Director Ken Hunter, AZ Department of Public Safety, representing Colonel Silbert
Ms. Jamie Kelly, Public Member
Officer Matt Medina, Prescott Police Department

Staff in Attendance:

Matt Giordano, Executive Director
Dan Ciernia, Video Production Supervisor
Mike Giammarino, Compliance Program Administrator
Mike Orose, Compliance Program Administrator
Sandy Sierra, Executive Assistant

Assistant Attorney General:

Mark Brachtl

A. Call to Order

Chair Williams called the meeting to order at 9:00 a.m. Roll call was taken and all four members of the Subcommittee are present.

B. Discussion, Consideration and Possible Action on the Board's practices regarding off-duty DUIs (Driving Under the Influence).

Chair Williams stated the AZPOST Board had questions regarding off-duty DUIs and how they are being handled. The Board felt that perhaps there was a way to standardize how off-duty DUIs are handled statewide. A Subcommittee was formed in order to research this further. AZPOST staff gathered information from 61 law enforcement agencies from around the state regarding the number of off-duty DUIs handled by the agency in the past 6 years, whether any discipline was imposed by the agency, and if

AZPOST was notified. She asked Executive Director Giordano to explain the results of the information gathered.

Executive Director Giordano stated that years ago, the Board determined there were disparities regarding how off-duty DUIs were handled. Some cases came to the Board and some did not. The Board determined there was no consistency. The Board then decided that the 0.15 BAC (blood alcohol concentration) level met the threshold for the cases that would be presented to the Board; absent any other aggravating factors such as a collision or an issue during the initial arrest. Once this threshold was established, this is the practice the Board has been following for the last several years. When you look at the range of discipline imposed by the agencies, you see some terminations, some suspensions and the majority are evaluated on a case-by-case basis. Since every case is different, we always want to look at the nuances. After reviewing the information gathered, we noticed there is no consistency when it comes to reporting off-duty DUIs to AZPOST. The only cases required by statute to be reported to AZPOST are those when someone terminates employment. If someone gets an off-duty DUI and they are retained by their agency, AZPOST might not be made aware of the incident, this creates some of the disparity. The current way of handling off-duty DUIs, although not perfect, seems to be working. He stated he would defer to the Board and the Subcommittee on how to proceed in order to try and create some level of consistency across all the agencies AZPOST represents.

Deputy Director Hunter stated as he understands it, cases with a 0.15 BAC will go to the Board on a consistent basis, if that is what the full Board votes on and chooses to do. That is whether the person is terminated or not terminated. What happens in a case where the charges are dropped and the county attorney does not prosecute, but the agency has a no tolerance policy and the individual is terminated. What is going to be the trigger point where it comes to the Board? Is it the arrest, the BAC, is it that it was adjudicated in criminal court? How is that going to be determined?

Executive Giordano stated it would be the BAC. There are a lot of factors in criminal arrests that may not warrant prosecution. If there is a scientifically proven BAC above 0.15, it is brought to the Board, regardless of the criminal outcome. This is no different than a domestic violence case where someone gets pre-trial diversion, they have no technical conviction, but the case is brought to the Board because the act still occurred. In this scenario, the DUI still occurred even though it was not prosecuted. If the scientific evidence came back and the BAC was over 0.15, the case would go before the Board.

Chair Williams stated whether or not a case is prosecuted does not matter, it is the act itself that matters. She stated she had a conversation with Executive Director Giordano to inquire whether AZPOST has the capability to allow for every agency to report every off-duty DUI, or if this task would be too arduous. Also, small agencies have different capabilities and if the decision is to have a zero tolerance policy, the small agencies could diminish their pool of individuals greatly. Although not a perfect system, the 0.15 BAC is at least a decent baseline to follow.

Officer Medina stated that in statute 0.15 BAC is considered an extreme DUI, anything below that is 0.08 and above. If there are extenuating circumstances such as a crash, regardless if it is below 0.15, it would still come to the Board correct?

Executive Director Giordano stated that is correct.

Ms. Kelly stated her biggest concern is consistency in the discipline that is being issued. She understands that there are many factors involved in every case. The Board could get a case that has no aggravating factors and could also have another case where there is a child in the car, those cases have to be weighed differently. She would like to see consistency where everyone is held to the same level.

Executive Director Giordano stated that in the last year and a half or so, staff has been providing the Board with guidance on recommended sanctions. Again, the Board can deviate from the recommendations, but staff started doing this for that exact reason, consistency. We need to treat an officer from the Phoenix Police Department just as we would an officer from the Snowflake-Taylor Police Department; this is very important and why staff started providing recommendations for discipline. Again, the Board has the discretion to deviate if necessary.

Deputy Director Hunter stated one of the things the Board will struggle with is the disparity between cases. An individual could have an off-duty DUI of 0.091 and get into a collision, the Board will see this case. Another individual could have an off-duty DUI of 0.12, not get into a collision and the Board will not see this case. The second person had a higher BAC, but since they did not have a worse outcome, they just got stopped for DUI, the Board will not see the case, yet will see the 0.091 case because they got into a collision.

Executive Director Giordano stated he agrees, it is not a perfect system. To the Chair's point, AZPOST could handle a caseload of every single off-duty DUI in the state being reported, it would be taxing but it could be done. These cases would then be presented to the Board and the Board would decide each case individually. That is where the inconsistencies will occur because of all the different nuances from each case. If the Board would like to see every case, we could certainly make that happen.

Chair Williams stated this is not as clean or as easy as she was hoping it was going to be. She thought perhaps we could have one standard for the entire state, but we are so diverse agency wise. If someone gets involved in one of these collisions, that is a cry for help. We need to get them help and fix them and bring them back to work, so a little bit of grace is something she thinks we need to put in place too.

Ms. Kelly stated in regards to sanctions, is it in our realm of possibility to require treatment or counseling? If someone does have an off-DUI and the Board imposes a sanction, can that sanction be that the individual needs to go through some type of treatment? Perhaps the DUI is leading into other factors that have resulted in things that

could have saved an officer's life because that DUI was a cry for assistance and support. She wishes the Board could step in and offer some other resources and help.

Assistant Attorney General Brachtel stated the answer would be no. The Board's authority is to suspend, revoke or take no action. It is not in the Board's statutes or administrative rules to allow this. The concept of probation or the concept of counseling does not exist, that is why it has never been presented as an option in a consent agreement. His recommendation is that it not exist and for the Board to proceed as it has been doing.

Chair Williams stated although not perfect, the 0.15 BAC threshold we have works for us in order to maintain consistency. This creates a form of consistency statewide. Her suggestion is leave things the way they are and if things start to spike, the Board can always reconvene another subcommittee.

Deputy Director Hunter made a motion to recommend to the full Board that the Board hear cases involving extreme DUIs at the 0.15 BAC level, and also any other cases that have mitigating or aggravating factors such as endangerment or assaults involving DUIs. The motion was seconded by Officer Medina and passed unanimously.

Chair Williams made a motion to recommend to the full Board that the Subcommittee be recessed. The motion was seconded by Deputy Director Hunter and passed unanimously.

F. Adjourn

Chair Williams adjourned the meeting at 9:18 a.m.