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The Commonwealth of Massachusetts
Department of State Police

Division of Administrative Services
470 Worcester Road
Framingham, MA 01702

May 16, 2023

JOHN E. MAWN JR.
COLONEL/SUPERINTENDENT

JOHN D. PINKHAM
DEPUTY SUPERINTENDENT

From: Chief Administrative Officer Michelle E. Small, Division Commander of Administrative Services

To: 89th Recruit Training Troop Candidates

Subject: Background Review / Disqualification

1. The purpose of the letter is to inform participating candidates of the Background Review Process and disqualification factors that are considered when reviewing, approving, or denying a candidate for the 89th Recruit Training Troop.

2. The Colonel/Superintendent shall appoint a board consisting of three commissioned/staff officers to review the investigation of each applicant. The Board shall meet with the representatives of the Certification Unit who shall present the findings of the integrity-based background investigation for the Board's consideration. The Board shall consider all factors in determining an applicant's suitability for employment. The Board has the authority to "recommend approval" or "recommend rejection" of an applicant based on the information available/presented. The totality of the background investigation will be considered in making all recommendations. In issuing a recommendation the Board may consider, along with other information learned during the pre-enlistment process, the following categories of information: substance use, criminal history, driving history, and financial history.

RECRUIT CANDIDATE STATUTORY/AUTOMATIC DISQUALIFICATION[1]

A candidate is, by operation of law and/or by order/directive of the Colonel, disqualified[2] if:

[1] Specific questions or concerns relating to governing statutory authorities, whether referenced within this document or absent from the same, should be directed to the Office of the Chief Legal Counsel, Commonwealth of Massachusetts State Police, 470 Worcester Road, Framingham, MA 01702 / (508) 820-2311.

[2] Pursuant to Article 10 of the Department's Rules & Regulations, promulgated pursuant to the Colonel's rule-making authority under M.G.L. c. 22C, §§2, 3, and 10, a candidate must satisfy "all statutory requirements for appointment" and "[m]eet all other eligibility and entrance requirements" at the time they are "considered for appointment" to the Academy.

1. **Not a U.S. citizen (Alien) <u>at time of appointment to Academy</u>,[3] including but not limited to an alien not maintaining lawful permanent residency and any individual who, having been a U.S. citizen, has renounced their citizenship.** (M.G.L. c. 140, §131; 18 U.S.C. §§922 (d)(7) & 922 (g)(7); and Article 10.1.1, 10.1.3 & 10.1.7 of the Department's Rules & Regulations);

2. **Not a high school graduate or a recipient of an equivalency certificate ("G.E.D." or "HSE") issued by the Massachusetts Department of Education <u>at time of appointment to Academy</u>.** (M.G.L. c. 30, §45; Classification Specifications, Article XII – Minimum Entrance Requirements; and Article 10.1.4 & 10.1.11 of the Department's Rules & Regulations);

3. **Not in possession of a valid Massachusetts Class D motor vehicle operator's license <u>at time of appointment to Academy</u>.** (M.G.L. c. 30, §45; Classification Specifications, Article XII – Minimum Entrance Requirements; and Article 10.1.8 & 10.1.11 of the Department's Rules & Regulations);

4. **Under the age of 21 years <u>on the final date for the filing of application to take a competitive examination for initial appointment, as stated in the applicable examination notice</u>. (January 27, 2021)** (M.G.L. c. 22C, §10; M.G.L. c. 140, §131; and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);

5. **Over the age of 35 years <u>on the final date for the filing of application to take a competitive examination for initial appointment, as stated in the applicable examination notice</u>. (January 27, 2021)** (M.G.L. c. 22C, §10 and Article 10.1.1 of the Department's Rules & Regulations);

6. **A smoker of any tobacco product.** (M.G.L. c. 22C, §10 and Article 10.1.1 of the Department's Rules & Regulations);

7. **Convicted (or adjudicated as a youthful offender or delinquent child),[4] in any state or federal jurisdiction, of a felony.** (M.G.L. c. 22C, §14; M.G.L. c. 140, §131 and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);

Unless otherwise indicated, a disqualification (even if capable of future remedy or removal) existing at the time of consideration (e.g., during a background investigation) shall be construed as automatic or mandatory.

[3] In <u>Fletcher v. Haas</u>, 851 F. Supp.2d 287 (USDC, Mass. 2012), the USDC of Massachusetts distinguished between a "lawful permanent resident alien" and an "illegal" or otherwise "lawfully admitted alien," concluding it was unconstitutional to prohibit licensing of a "permanent resident" alien. Other Federal Circuits have concluded otherwise. Until the issue is addressed/resolved by the Supreme Court, the decision (from the 1st Circuit) should be followed and individuals with "permanent resident alien" status should not, based upon that status alone, be automatically disqualified.

[4] The term *"delinquent child"* is defined by M.G.L. c. 119, §52 as *"a child between seven and 18 who violates any city ordinance or town by-law or who commits any offence against a law of the commonwealth."* The term *"youthful offender"* is defined by M.G.L. c. 119, §52 as *"a person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen and 18, an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed an offense which involves the infliction or threat of serious bodily harm in violation of law, or (c) has committed a violation of <u>paragraph (a), (c)</u> or <u>(d) of section ten</u> or <u>section ten E of chapter two hundred and sixty-nine</u>; provided that, nothing in this clause shall allow for less than the imposition of the mandatory commitment periods provided in <u>section fifty-eight of chapter one hundred and nineteen</u>."*

8. **Convicted of an offense punishable under M.G.L. c. 94C or convicted or adjudicated as a youthful offender or delinquent child, in any state or federal jurisdiction, of any law regulating the use possession or sale of controlled substances as defined in Section 1 of M.G.L. Chapter 94C.** (M.G.L. c. 22C, §14; M.G.L. c. 140, §131; and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);

9. **Convicted, in any state or federal jurisdiction, of a misdemeanor resulting in confinement (of any duration) to any jail or house of correction or convicted or adjudicated as a youthful offender or delinquent child, in any state or jurisdiction, of a misdemeanor punishable by imprisonment for more than two years.** (M.G.L. c. 22C, §14; M.G.L. c. 140, §131; and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);[5]

10. **Convicted in any court of a crime punishable by imprisonment for a term exceeding one year**. (18 U.S.C. §§922(d)(1) and 922(g)(1) and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);[6]

11. **Under indictment (<u>at time of appointment to Academy</u>) for a crime punishable by imprisonment for a term exceeding one year**. (18 U.S.C. §§922(d)(1) and 922(g)(1) and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);[7]

12. **Convicted or adjudicated as a youthful offender or delinquent child, in any state or federal jurisdiction, of a violent crime as defined in Section 121 of M.G.L. c. 140.** (M.G.L. c. 140, §131; M.G.L. c. 140, §121; and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations); [8]

13. **Convicted or adjudicated as a youthful offender or delinquent child, in any state or federal jurisdiction, of a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed**. (M.G.L. c. 140, §131 and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);

14. **Convicted in any court, in any state or federal jurisdiction, of a misdemeanor crime of domestic violence as defined by 18 U.S.C. 921(a)(33).** (M.G.L. c. 140, §131(d)(ii)(F); 18 U.S.C. §§921(a)(33), 922(d)(9) & 922(g)(9); and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);

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[5] 18 U.S.C. §§ 922(d)(1) and 922(g)(1) prohibit the sale or disposition of a firearm to, and the possession of a firearm by, any person under indictment for, or convicted in any court of, a crime punishable by imprisonment for a term exceeding one year. Under 18 U.S.C. §921 (a)(20) a *"crime punishable by imprisonment for a term exceeding one year"* does not include *"(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or (B) any State offenses classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less."*

[6] See Paragraphs 9, 10, & 11, and Footnote 5.

[7] See Paragraphs 9, 10, & 11, and Footnote 5.

[8] Under M.G.L. c. 140, §121 a "violent crime" is defined as *"any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult, that (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii) involves the use of explosives or (iv) otherwise involves conduct that presents a serious risk of physical injury to another."*

15. **Subject to**:

a). **a court order for suspension or surrender *(of firearms identification card or license to firearms license, firearms, rifles shotguns, machine guns and/or ammunition)* issued pursuant to Section 3B or 3C of M.G.L. Chapter 209A or similar order issued by another jurisdiction <u>at time of appointment to Academy</u>.** (M.G.L. c. 140, §131; M.G.L. c. 209A, §§3B & 3C; and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations); or

b). **a permanent or a temporary protection order issued pursuant to M.G.L. Chapter 209A or a similar order issued by another jurisdiction <u>at time of appointment to Academy</u>, including but not limited to any order described in 18 U.S.C. 922(g)(8).** (M.G.L. c. 140, §131; M.G.L. c. 209A, §§3B & 3C; and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);[9]

16. **Subject of an outstanding arrest warrant in any state or federal jurisdiction <u>at time of appointment to Academy</u>.** (M.G.L. c. 140, §131 and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);

17. **A current fugitive from justice.**[10](M.G.L. c. 140, §131;18 U.S.C. §§922(d)(2); and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);

18. **Currently or formerly committed to a hospital or institution for mental illness, alcohol or substance abuse, unless after 5 years from the date of confinement (and <u>before appointment to Academy</u>), the applicant submits (with an LTC application) an affidavit of a licensed physician or clinical psychologist attesting that such physician or psychologist is familiar with the applicant's mental illness, alcohol or substance abuse and that, in their opinion, the applicant is not disabled by such illness or abuse in a manner that shall prevent the applicant from possessing a firearm, rifle or shotgun.**[11] (M.G.L. c. 140, §131; 18 U.S.C. §§922 (d)(4) & 922 (g)(4); and Article 10.1.1, 10.1.3, & 10.1.6 of the Department's Rules & Regulations);

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[9] 18 U.S.C. §§ 922(d)(8) and 922(g)(8) prohibits the sale or disposition of a firearm to and/or the possession of a firearm by an person *"subject to a court order that…restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in any other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child" and "includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or…by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury*." The term *"intimate partner"* is defined by 18 U.S.C. §921(a)(32) to mean *"with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person."*

[10] Pursuant to 18 U.S.C. §921(a)(15), a fugitive from justice "means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding."

[11] M.G.L. c. 140, §131, amended by Section 47 of Chapter 284 of the Acts of 2014, does not define the term "committed" but would, in order to be read in harmony with other relevant provisions concerning court ordered commitments, appear to encompass physician ordered or voluntary commitments/admissions to a hospital and/or institution for mental illness and/or alcohol or substance abuse. Specifically excluded from this provision are court ordered commitments pursuant to M.G.L. c. 123, §§35 and 36. *See also*, Paragraphs 18-21 of this Document.

19. **Currently or formerly committed by COURT ORDER to a hospital or institution for mental illness, unless after 5 years from the date of commitment (and <u>before appointment to Academy</u>), the applicant presents a COURT ORDER granting a petition for relief pursuant to M.G.L. c. 123, §§36C (with an LTC application).** (M.G.L. c. 123, §§35 & 36C; M.G.L. c. 140, §131; and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);

20. **Currently or formerly subject to AN ORDER OF THE PROBATE COURT appointing a guardian or conservator for an incapacitated person on the grounds that the applicant lacked/lacks the mental capacity to contract or manage the applicant's affairs, unless the applicant was (five years after the date of such Court finding/order of a Court, but before appointment to the Academy) granted a petition for relief of such ORDER pursuant to M.G.L. c. 215, §56C.** (M.G.L. c. 140, §131; M.G.L. c. 190B; M.G.L. c. 215, §56; and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations)

21. **Currently or formerly found to be a person with an alcohol use disorder or substance use disorder or both AND currently or formerly committed by COURT ORDER pursuant to M.G.L. c. 123, §35, unless the applicant was (before appointment to the Academy) granted a petition for relief of such ORDER.** (M.G.L. c. 123, §35; M.G.L. c. 140, §131; and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations)

22. **<u>At time of appointment to Academy</u>, is an unlawful user of or addicted to any controlled substance as defined in Section 102 of the Controlled Substances Act; 21 U.S.C. §802.** (18 U.S.C. §§922(d)(3) & 922(g)(3); and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);[12]

23. **Discharged from the Armed Forces under dishonorable conditions**. (M.G.L. c. 140, §131; 18 U.S.C. §§922 (d)(6) & 922 (g)(6); and Article 10.1.1 & 10.1.3 of the Department's Rules & Regulations);

24. **Would represent a violation of PREA hiring guidelines**. The agency shall not hire anyone who—
(1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);
(2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
(3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph 2 of this section. (Prison Rape Elimination Act **28 C.F.R. Part 115.217)**

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[12] Under 21 U.S.C. §802(1) an *"addict"* is defined as *"any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction."* 21 U.S.C. §802(6) also defines *"controlled substance"* to mean *"a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of Part B of this subchapter [Subchapter I., Control and Enforcement, of Chapter 13 of Title 21 of the United State Code]* and specifically excludes *"distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986."*

25. **Currently found to be a person listed in the National Decertification Index (NDI)**. (M.G.L. c. 6E §11)

Additional Automatic Disqualification(s) established by the Colonel

Additional Automatic Disqualification(s) established by the Colonel which demonstrate a lack of good moral character, sound work ethic, decision making consistent with the Department's Oath of Office and/or that otherwise reflect unsuitability for appointment within the meaning of Article 10.1.2:[13]

1. **Discharged from the Armed Forces under less than honorable conditions, including but not limited to an "Undesirable" or "Bad Conduct" discharge.** (18 U.S.C. §§922 (d)(6) & 922 (g)(6); and Article 10.1.1, 10.1.2, & 10.1.3 of the Department's Rules & Regulations);

2. **Intentionally, knowingly and/or recklessly making false statements (and/or providing false, incomplete or inaccurate information or material) in connection with the candidacy/candidate's application for employment. (**Article 10.1.1, 10.1.2, 10.1.3 & 10.1.11 of the Department's Rules & Regulations);

3. **Convicted of operating under the influence of intoxication liquor and/or drugs, and/or has been assigned to an alcohol treatment program in accordance with M.G.L. c. 90, §24D or similar provision of any other state/jurisdiction, or received a disposition for the same under the provisions of M.G.L. c. 90, §24D or similar law of any other state/jurisdiction within seven (7) years of the time of appointment to the Academy.** (Article 10.1.1, 10.1.2, 10.1.3 & 10.1.11 of the Department's Rules & Regulations);

4. **Convicted of operating under the influence of intoxication liquor and/or drugs, and/or has been assigned to an alcohol treatment program in accordance with M.G.L. c. 90, §24D or similar provision of any other state/jurisdiction, <u>at any time as an adult</u>, on two (2) or more occasions.** (Article 10.1.1, 10.1.2, 10.1.3 & 10.1.11 of the Department's Rules & Regulations);

5. **Convicted of any crime in another state/jurisdiction that would be considered a felony under Massachusetts law**. (Article 10.1.1, 10.1.2, 10.1.3 & 10.1.11 of the Department's Rules & Regulations); and/or

6. **Adjudicated as a "habitual traffic offender" under M.G.L. c. 90, §22F or similarly designated/adjudicated under the law(s) of another state/jurisdiction.** (Article 10.1.1, 10.1.2 & 10.1.11 of the Department's Rules & Regulations).

7. **Convicted of a violation of M.G.L. c. 140 § 131C, unless more than one year has passed since the conviction AND the subsequent date upon which a previously issued FID card or firearm license was, as a result of the conviction, revoked.** (See, Section 58 of Chapter 284 of the Acts of 2014, amending M.G.L. c. 140, §131C, effective January 1, 2021; and Article 10.1.1, 10.1.2 & 10.1.11 of the Department's Rules & Regulations).

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[13] Promulgated pursuant to the Colonel's rule-making authority under M.G.L. c. 22C, §§2, 3, and 10.

8. **Convicted of a violation of M.G.L. c. 140 § 131E, unless more than two years has passed since conviction AND the date of revocation of a previously issued FID card or firearm license.** (Section 59 of Chapter 284 of the Acts of 2014, amending M.G.L. c. 140, §131C, effective January 1, 2021; and Article 10.1.1, 10.1.2 & 10.1.11 of the Department's Rules & Regulations).

Respectfully submitted,

Michelle E. Small
Division Commander, Division of Administrative Services