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CHAPTER 32 IN A NUTSHELL



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June 1, 2019

MACRS 2019 SPRING CONFERENCE

BOOK TWO

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Death Prior to Retirement/ Local Options



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June 1, 2019

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Death Prior to Retirement

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Death Prior to Retirement

- Section 9
- Section 11
- Section 100
- Section 12(2)(d)

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NOTES:

Accidental Death Benefit

G.L. c. 32, s.9

- A member in service dies as a result of and while in the performance of his duties.
- All sums credited in his annuity account immediately disbursed to his beneficiary or beneficiaries of record.
- Surviving spouse to receive pension equal to seventy-two percent of member's annual rate of compensation on date of death.

4

Return of Accumulated Deductions

G.L. c. 32, s. 11

- A beneficiary may be entitled to a return of a member's annuity account when the member dies before retirement.
- The member should designate a beneficiary or beneficiaries on the PERAC form.
- Taxable as if withdrawn by member.

5

NOTES:

Killed in the Line of Duty Benefit

G.L. c. 32, s. 100

- Available only to certain named employees such as police officers or firefighters.
- Death under certain conditions triggers this section, which pays 100% of member's salary to surviving spouse.
- A spouse is required.
- Children taking benefit without spouse limited to 72% and must go to a Section 9 not Section 100.
- Section 100A.

6

Option D

G.L. c. 32, s. 12(2)(d)

- The "Member Survivor Allowance"
- Provides beneficiary with the allowance the member would have received under Option C as if they had retired on the date of their death.
- Calculation depends upon date of entry into service.

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NOTES:

Group 1 - Section 12(2)(d)

Member Prior to April 2, 2012

- If under age 55, age factor bumped up to age 55. If over, actual age used.
- Beneficiary bumped up same amount.
- Age 55 factor: 1.5

Member On or After April 2, 2012

- If under age 60, bumped up to age 60. If over, actual age used.
- Beneficiary bumped up same
- Age 60 factor: 1.45

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Group 2 - Section 12(2)(d)

Member Prior to April 2, 2012

- If under age 55, age factor bumped up to age 55. If over, actual age used.
- Beneficiary bumped up the same amount.
- Age 55 factor: 2.0

Member On or After April 2, 2012

- If under age 55, age factor bumped up to age 55. If over, actual age used.
- Beneficiary bumped up the same amount.
- Age 55 factor: 1.45

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NOTES:

Group 4 - Section 12(2)(d)


Member Prior to April 2, 2012

- If under age 55, age factor bumped up to age 55. If over, actual age used.
- Beneficiary bumped up the same amount.
- Age 55 factor: 2.5

Member On or After April 2, 2012

- If under age 55, age factor bumped up to age 55. If over, actual age used.
- Beneficiary bumped up the same amount.
- Age 55 factor: 2.2

NOTES:



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Local Options

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What Are We Going to Cover?

- Member-Survivor Minimum Allowance;
- Group 4 for EMTs;
- Retirement Board Member Compensation;
- COLA Increase;
- Supplemental Allowance for Dependents of Accidental Disability Retirees;
- Increasing Benefits for Surviving Children of Accidental Disability Retirees;
- Increase in Section 101 Benefit;
- Disability Retirement Benefits for Veterans;
- Remote Participation.

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NOTES:

Member-Survivor Minimum Allowance

G.L. c. 32, s. 12(2)(d)

- Beginning April 2, 2012, the normal monthly member-survivor allowance provided for under this option to a spouse of a deceased member shall not be less than \$500 for members of the state teachers' and state employees' retirement system. This paragraph shall take effect for the members of a retirement system of any other political subdivision by a majority vote of the board of such system and by the local legislative body. For the purpose of this paragraph, a vote of the legislative body shall take place in the following manner: in a city, by a vote of the city council subject to its charter; in a town, by a vote at a town meeting; in a county, by a vote of the county retirement board advisory council; in a region, by a vote of the regional retirement board advisory council; in a district, by a vote of the district members; and for an authority, by a vote of its governing body. Acceptance shall be deemed to have occurred upon the filing of a certification of such vote with the commission.

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Group 4 for EMTs

G.L. c. 32, s. 3(2)(g)

- A municipality may elect to place in Group 4 uniformed employees of a municipal or public emergency medical service who are certified at any level by the department of public health as an emergency medical technician. This section shall take effect in a municipality upon its acceptance in the following manner: in a city having a Plan D or Plan E charter, by majority vote of its city council and approved by the manager; in any other city by majority vote of the city council and approved by the mayor; in a town, by vote of the board of selectmen.

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NOTES:

Retirement Board Member Compensation

G.L. c. 32, s. 20(6)

- The elected and appointed members of a city, town, county, regional, district or authority retirement board upon the acceptance of the appropriate legislative body shall receive a stipend; provided, however, that the stipend shall not be less than \$3,000 per year and not more than \$4,500 per year; provided, further, that the stipend shall be paid from funds under the control of the board as shall be determined by the commission; and provided, further, that an ex-officio member of a city, town, county, district or authority retirement board upon the acceptance of the appropriate legislative body shall receive a stipend of not more than \$4,500 per year in the aggregate for services rendered in the active administration of the retirement system.

15

COLA Base Increase

G.L. c. 32, s. 103(j)

- Notwithstanding paragraph (a), the board of any system that establishes a schedule pursuant to section 22D or 22F, may increase the maximum base amount on which the cost-of-living adjustment is calculated, in multiples of \$1,000. Each increase in the maximum base amount shall be accepted by a majority vote of the board of such system, subject to the approval of the legislative body. For the purpose of this section, "legislative body" shall mean, in the case of a city, the city council in accordance with its charter, in the case of a town, the town meeting, in the case of a district, the district members, and, in the case of an authority, the governing body. In the case of a county or region, acceptance shall be by the county or regional retirement board advisory council at a meeting called for that purpose by the county or regional retirement board that shall notify council members at least 60 days before the meeting. Upon receiving notice, the treasurer of a town belonging to the county or regional retirement system shall make a presentation to the town's chief executive officer, as defined in paragraph (c) of subdivision (8) of section 22, regarding the impact of the increase in the cost-of-living adjustment base, the failure of which by a treasurer shall not impede or otherwise nullify the vote by the advisory council. Acceptance of an increase in the maximum base amount shall be deemed to have occurred upon the filing of the certification of such vote with the commission. A decision to accept an increase in the maximum base amount may not be revoked.

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NOTES:

Supplemental Allowance For Dependents of Accidental Disability Retirees

G.L. c. 32, s. 7(2)(a)(iii)

- Beginning July first, nineteen hundred and eighty-eight, the additional pension provided by the supplemental dependent allowance shall be fixed at a rate of four hundred and fifty dollars for each eligible child. Beginning July first, nineteen hundred and eighty-nine, the supplemental dependent allowance rate shall be increased by an amount equal to the percentage increase of the cost of living determination made by the general court for such year pursuant to section one hundred and two. Systems may adopt the supplemental dependent allowance by an affirmative vote of the retirement board, ratified by the chief executive officer and legislative body as defined in paragraph (c) of subdivision (8) of section twenty-two. Adoption of the supplemental allowance by any system may not be revoked.
- Memo 24 of 2018 set the rate at \$924.60.

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Increasing Benefits For Surviving Children of Accidental Disability Retirees

G.L. c. 32, s. 9(2)(d)(ii)

- (ii) Any system which has adopted the supplemental dependent allowance under clause (iii) of paragraph (a) of subdivision (2) of section 7, may accept the provisions of this clause by an affirmative vote of the retirement board, ratified by the chief executive officer and legislative body as defined in paragraph (c) of subdivision (8) of section 22, but, in a regional retirement system, the "chief executive officer and legislative body" shall mean the regional retirement board advisory council, and the additional pension shall be fixed at a rate equal to the additional pension determined by the actuary under said clause (iii) of said paragraph (a) of said subdivision (2) of said section 7 and shall be increased by an amount equal to the percentage increase of the cost-of-living increase determination made by the general court for each year under section 102. Any increased benefits provided by the acceptance of this clause shall be paid from the date of acceptance and shall not be paid retroactively. Acceptance of this clause may not be revoked. Acceptance of this clause shall be considered to have occurred upon the filing of certification of this vote with the commission.
- Memo 24 of 2018 set the rate at \$924.60.

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NOTES:

Increase in Section 101 Benefit

G.L. c. 32, s. 101

- In the event of the death of any former employee who had been retired under the provisions of this chapter after having been found to be incapacitated for further duty by reason of injuries sustained while in the performance of his duties, or who had been retired for ordinary disability under the provisions of this chapter, under which retirement he was unable to provide for any annual allowance to be paid to his widow at the time of his death, there shall be paid to such widow an annual allowance in the amount of either **\$6,000** or, in a retirement system accepting the supplemental annual allowance as provided in this section, \$9,000, or, in a retirement system accepting the supplemental annual allowance provided in the third paragraph, \$12,000, subject to the provisions of paragraph (e) of section one hundred and two; provided, however, that any allowance payable under this section shall be in the alternative to any allowance to which such widow would be entitled under the provisions of any other section of this chapter. Any allowance which such widow may be receiving or any allowance which she may have potential rights to receive, based on her own service to the commonwealth or any political subdivision thereof, shall not make her ineligible to receive the allowance provided in this section. The allowance provided by this section shall be paid by the same retiring authority and from the same source as the allowance payable to the deceased former employee referred to in this section.

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Increase in Section 101 Benefit *(Continued)*

G.L. c. 32, s. 101

- Notwithstanding the previous paragraph, a retirement system may accept a supplemental annual allowance fixed at the rate of **\$9,000**, by a majority vote of the board of each such system, subject to the approval of the legislative body thereof. For the purposes of this section, "legislative body" shall mean, in the case of a city, the city council in accordance with its charter, in the case of a town, the town meeting, in the case of a county, the county retirement board advisory council, in the case of a region, the regional retirement board advisory council, in the case of a district, the district members and, in the case of an authority, the governing body of such authority. Acceptance shall be deemed to have occurred upon the filing of a certification of such votes with the commission.
- Any retirement system may accept the supplemental annual allowance, provided for by this paragraph and fixed at the rate of **\$12,000**, by a majority vote of the board of each such system, subject to the approval of the legislative body. Acceptance shall be deemed to have occurred upon the filing of a certification of such votes with the commission. For purposes of this section, the state teachers' and state employees' retirement systems shall be deemed to have accepted this paragraph.

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NOTES:

Disability Retirement Benefits For Veterans

- Chapter 157 of the Acts of 2005
 - Two Local Options
 - \$15 per year of creditable service for veterans in Group 1, 2, or 4 who are retired for disability .
 - Retroactive payment of the veteran's benefit back to the date of retirement.

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Disability Retirement Benefits For Veterans (Continued)

G.L. c. 32, s. 7(2)(e)

- Any member of Group 1 or Group 2 or Group 4, who is a veteran as defined in section 1, shall receive an additional yearly retirement allowance of \$15 for each year of creditable service or fraction thereof, but the total amount of this additional yearly retirement allowance shall not exceed \$300. This paragraph shall only take effect upon its acceptance by the majority vote of the board of a system, subject to the approval of the legislative body. For purposes of this paragraph, legislative body shall mean in the case of a city the city council in accordance with its charter, in the case of a town the town meeting, in the case of a county the county retirement board advisory council, in the case of a district the district members, in the case of an authority the governing body and in the case of a regional retirement system, the regional retirement board advisory council.

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NOTES:

Disability Retirement Benefits For Veterans; Retroactive Payment

- An additional yearly retirement allowance which would have been payable under section 1 of this act, if that provision had been in effect and for which a member in service would have been eligible at the time of the member's retirement, shall be paid retroactively to the date of each such veteran's retirement. A veteran shall be eligible for payment of a retroactive additional yearly retirement allowance under this section only upon filing an application no later than 120 days after the effective date of this act, in a form that the appropriate retirement board, as defined in chapter 32 of the General Laws, shall prescribe. Payment under this section shall be made in a lump sum or in installments and shall be made in full within 1 year of the receipt of a completed and satisfactory application by the board. No payment shall be made under this act with respect to a person who is deceased. The appropriate retirement board shall provide reasonable notice to eligible retirees about the application process prescribed by this section. This section shall only take effect upon its acceptance by the majority vote of the board of a system, subject to the approval of the legislative body. For purposes of this paragraph, legislative body shall mean, in the case of a city, the city council in accordance with its charter, in the case of a town, the town meeting, in the case of a county, the county retirement board advisory council, in the case of a district, the district members, in the case of an authority, the governing body and in the case of a regional retirement system, the regional retirement board advisory council.

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Remote Participation

- Simple majority of the Board may vote to allow remote participation.
- If a member is participating remotely then all votes of the Board must be by roll call.
- Member no longer needs to specify reason for participating remotely.
- Attorney General Regulations 940 CMR 29.
- Board should notify PERAC upon acceptance.

24

NOTES:

Conclusion

- One of the best attributes of Chapter 32 is that most of its provisions are uniform from system to system, however, there are a number of provisions that each retirement board may adopt via local options that enhance benefits for their members.

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NOTES:

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What to Expect When You're Expecting (to Retire)

Topics to Cover With Soon-To-Be Retirees



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June 1, 2019

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Introduction

- Soon-to-be retirees likely will have many questions about various issues related to their retirement.
- This presentation is intended to help address some of the questions they may have and to put them on notice of some retirement issues that they may not be aware of (and may be shocked to discover!).

2

How Retirement Allowances Are Paid Out

- A retirement allowance consists of two parts, the annuity portion and the pension portion. The annuity portion is basically a repayment to the member of the contributions they've made throughout their working career (Annuity Savings Fund balance). The ASF gets drawn down each month based only on the monthly annuity portion of the benefit.

3

NOTES:

Retirement Options

- Option A
- Option B
- Option C
- These options are available to superannuation, termination, ordinary disability and accidental disability retirees.

4

Option A

- Gets the largest possible retirement allowance, known as “Life Annuity.”
- Upon the member’s death, the retirement benefit stops.
- Exception: Member’s estate will receive a pro-rated payment for the final month.
 - For example, if the member dies on the 16th of September, his estate will be due 16 days of retirement allowance.

5

NOTES:

Option B

- May be selected by a retiree.
- It is also the “default” option to which those who fail to select an option are assigned.
- Option B provides a lifetime allowance that is generally 1% to 5% less per month than Option A.
- The member’s annuity account is gradually depleted by an amount equal to the annuity portion of his retirement allowance.

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Option B *(Continued)*

- Generally, the annuity account will be depleted sometime between 10-12 years after retirement.
- Member still gets full allowance after depletion.
- Upon member’s death, beneficiary gets whatever amount is remaining in the annuity account, if any, in a one-time lump sum.

7

NOTES:

Who May Be Designated as an Option B Beneficiary?

- Any person or entity.
- More than one person or entity may be designated.
 - For example: “50% to Patrick Charles and 50% to the Boy Scouts of America.”
- The Option B beneficiary may be changed by the member at any point prior to death (so even after retirement).

8

Option C

- A/k/a “the joint and last survivor allowance.”
- Amount of benefit depends on the life expectancies of member and beneficiary.
- Allowance will generally be 7 - 15% less than that which a person would receive under Option A.
- Upon the retiree’s death the beneficiary will be paid a monthly allowance of 2/3 of the member’s Option C allowance for life.
- See PERAC Memo #37/2004 for more information.

9

NOTES:

Who Can Be Designated as Option C Beneficiary?

- A member may only designate ONE Option C beneficiary.
- The beneficiary may be the spouse, parent, former spouse who has not remarried, sibling or child of the member.
- Eligibility of the beneficiary is determined at the time the option is selected at retirement.

10

What If the Option C Beneficiary Dies Before the Member?

- No new beneficiary is selected.
- Member's allowance "pops up" to Option A.
- Member paid as if receiving an Option A from date of death of the beneficiary to the day he dies.

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NOTES:

How Long Will It Take For a Retiree To Receive His First Payment?

- Retirement allowances are paid on the last business day of each month.
- When a retiree receives his first payment depends greatly on the size of the retirement system and when he applied for the allowance.
- Member should prepare to cover the time between his last paycheck and his first retirement allowance at the end of the month.

12

Taxes

- A superannuation retirement allowance will be subject to Federal Income Tax, but will not be taxed by Massachusetts.
- The pension portion of an accidental disability retirement allowance will not be subject to either Federal or Massachusetts Income tax, but the annuity portion of the allowance will be subject to Federal Income Tax.
- Notwithstanding the above, a soon-to-be retiree may want to consult his tax preparer to determine and confirm his tax status.

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NOTES:

Social Security Questions

- These are outside of PERAC's area of expertise and questions about this should be directed to your local Social Security office.
- Two Social Security issues which may impact Massachusetts public employees:
 - Windfall Elimination Provision ("WEP")
 - Governmental Pension Offset ("GPO")
- Recommend viewing presentation given at Spring 2016 MACRS conference by Hank Kim, the Executive Director and Counsel to NCPERS, regarding WEP and GPO offsets.

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WEP

- Affects members who have enough covered earnings to receive a Social Security benefit based on their own work.
- Purpose is to remove the heavy weighting in the regular Social Security benefit formula that is intended to boost benefits for life-long, low-paid earners.

15

NOTES:

GPO

- Affects government retirees who receive two benefits:
 1. A government pension not covered by Social Security, AND
 2. A Social Security dependent spousal benefit.
- GPO requires that the Social Security dependent spousal benefits be offset by 2/3 of the non-covered Government pension.

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Disability Retirees Return to Service

- Section 8 provides the blueprint for a disability retiree to be returned to service.
- PERAC's Disability Unit will assist.
- Member is entitled to creditable service for the period of time he was a disability retiree.

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NOTES:

Reinstatement

- Section 105 provides the blueprint for a retiree to be reinstated.
- Rather onerous process.
 - The member must pay to the retirement system an amount equal to the total amount of any retirement allowance he received, with buyback interest.
 - If the member works less than five years after reinstatement, he shall receive a refund of the payments made, and shall not be entitled to any creditable service.

18

Health Insurance

- Retirement boards do not handle health insurance matters.
- Recommend that members get their coverage options/premiums information from the insurer prior to retirement in order to plan accordingly.

19

NOTES:

Affidavit

- Every other year, a retiree must confirm his status as a pensioner.
- Given thirty days to respond. Failure to respond will result in the suspension of the member's retirement benefit.

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Pre-Retirement Awareness of Anti-Spiking Provisions

- Chapter 176 of the Acts of 2011.
- Two anti-spiking provisions were added to Chapter 32 by:
 - Section 14 of Chapter 176 - amended § 5(2)(a)
 - Section 18 of Chapter 176 - amended § 5(2)(f)

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NOTES:

Section 14 of Chapter 176

- If in the last five years of creditable service, the rate of regular compensation increases by more than 100% (i.e. more than doubles) between two consecutive years, then Section 14 is violated.
- If Section 14 is violated, you must use the average of the last 5 years of creditable service.
- No exceptions.

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Section 18 of Chapter 176

- In determining the 3-year (or 5-year) average of regular compensation, if regular compensation in any year exceeds the average of the regular compensation of the previous two years by more than 10%, then Section 18 is violated.
- In calculating the benefit, the board cannot include regular compensation in excess of 10% of the average of the previous two years.

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NOTES:

Exceptions to Section 18

- If the increase in regular compensation is from one of the following, then Section 18 is not violated:
 - Increase in the number of hours worked.
 - Bona fide change in position.
 - Modification in salary negotiated for bargaining unit members of Chapter 150E.
 - Salary amount is specified by law.
 - Payments for specific tasks limited to teachers only.

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Payments Made in Lieu of Unused Sick and Vacation Time

- Pursuant to recent legal decisions, payments made in lieu of unused sick and vacation time do not constitute regular compensation, and should not be included in a retirement calculation.
- Matter is under appeal, but effective November 6, 2018, such payments are not regular compensation.
- PERAC Memorandum # 33/2018.

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NOTES:

COLAs

- Retirement boards vote a Cost of Living Adjustment (COLA) each year effective July 1st of that year. A retiree must pass the award of a COLA before he is eligible for this increase.
- For example, if a member retires on September 3, 2018, he will pass the July 1, 2019 COLA then receive his first on July 1, 2020.

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Domestic Relations Orders

- Court can direct a portion of a member's retirement allowance to be paid to a former spouse.
- Divorce after retirement does not affect the option selected at retirement.
- Former spouse who has not remarried can be named as the Option C beneficiary.

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NOTES:

Pension Forfeiture

- A retiree's pension can be forfeited.
- § 15(4) provides: "In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement allowance..."
- Example: *Watertown Retirement Board v. Deignan*, Appeals Court (No. 2017-P-1379).

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Conclusion

- Although there is no way to prepare for every possible question that a soon-to-be retiree may have, hopefully this presentation will provide some guidance.

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COMMONWEALTH OF MASSACHUSETTS

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