



CHAIR

Margaret R. Hinkle

COMMISSIONERS

Hanya H. Bluestone
Lawrence Calderone
Clementina Chéry
Larry Ellison
Marsha V. Kazarosian
Charlene Luma
Kimberly West
Michael Wynn

**EXECUTIVE
DIRECTOR**

Enrique Zuniga

PEACE OFFICER STANDARDS AND TRAINING COMMISSION

April 28, 2022

In accordance with Sections 18-25 of Chapter 30A of the Massachusetts General Laws and [An Act Extending Certain COVID-19 Measures Adopting During the State of Emergency](#), notice is hereby given of a meeting of the Peace Officer Standards and Training Commission. The meeting will take place as noted below.

PEACE OFFICER STANDARDS AND TRAINING COMMISSION

May 3, 2022

8:30 AM

Public Meeting #19

Remote Participation via [Zoom](#)

Meeting ID: 981 4482 0363

PUBLIC MEETING AGENDA

1. Call to Order
2. Approval of Minutes
 - a. April 4, 2022
3. Executive Director Report – Enrique Zuniga
 - a. Administrative Update
 - b. Frequently Asked Questions – Recertification
 - c. Disciplinary Records Update
4. Phase 1 Regulations 555 CMR 1.00 *et seq.* – Attorney Povich, General Counsel Ravitz
5. Exceptions to re-certifications – General Counsel Ravitz
6. Budget Update – 3rd Quarter FY22 – CFAO Rebello-Pradas
7. Public comment
8. Matters not anticipated by the Chair at the time of posting



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9. Executive Session to discuss strategy with respect to litigation, specifically *Scott Hovsepian, et al. v. Massachusetts Peace Officer Standards and Training Commission*, No. 2284CV00906, Suffolk Superior Court.

2a.

RPEACE OFFICER STANDARDS & TRAINING COMMISSION

April 4, 2022

8:30 AM

**Peace Officer Standards and Training Commission
Remote Participation**

PUBLIC MEETING MINUTES

Documents Distributed in Advance of Meeting:

- Draft Meeting Minutes of March 16, 2022
- Letter from Executive Director Zuniga to Heads of Massachusetts Law Enforcement Agencies re: Recertification Process for Officers Whose Last Names Begin With Letters A Through H (Inclusive)
- Recertification Packet: Part 2 Officer Questionnaire (Questionnaire for Law Enforcement Officer Recertification)
- Construction of Scope of Chapter 6E of the Massachusetts General Laws (Proposed)

In Attendance:

- Chair Margaret R. Hinkle
- Commissioner Hanya Bluestone
- Commissioner Lawrence Calderone
- Commissioner Clementina M. Chéry
- Commissioner Larry Ellison
- Commissioner Marsha Kazarosian
- Commissioner Charlene D. Luma
- Commissioner Kimberly P. West

1. Call to Order

- The Chair recognized a quorum.

2. Approval of Minutes

a. March 16, 2022

- Commissioner Bluestone moved to approve the minutes from the March 16, 2022 meeting. Commissioner Ellison seconded the motion. Commissioners Bluestone, Calderone, Chéry, Ellison, Luma, West and the Chair voted to approve the minutes from the March 16, 2022 meeting. Commissioner Kazarosian abstained as she was not present on March 16, 2022.

3. Executive Director Report – Enrique Zuniga

a. Personnel Update

- Director of Standards Appointment – William Bloomer
 - Executive Director Zuniga introduced Mr. Bloomer as the final candidate for the position of Director of Standards. Mr. Bloomer is currently an Assistant U.S. Attorney in the National Security Division of the United States Attorney’s Office in Boston.

- Commissioner Kazarosian expressed her enthusiasm for the selection of Mr. Bloomer as the Director of Standards.
 - Commissioner Kazarosian moved to approve Mr. Bloomer for the position of Director of Standards. Commissioners West and Bluestone seconded the motion. Commissioners Bluestone, Calderone, Chéry, Ellison, Kazarosian, Luma, West and the Chair voted to approve Mr. Bloomer for the position of Director of Certification.
 - Mr. Bloomer thanked the Commission for the opportunity.
- b. Administrative & Staffing Update
- The Commission continues to recruit for a variety of staff positions. Executive Director Zuniga expressed his gratitude for those who have performed those functions in the interim.
 - The Commission has begun increasing its communication efforts and is undertaking a more proactive communication approach, including by presenting at conferences and stakeholder meetings.
 - Executive Director Zuniga will present the Commission’s third quarter financial report at the next Commission meeting.
 - The Commission continues to receive questions relative to the Use of Force regulations, School Resource Officers, and in scope agencies and individuals. The Commission plans to review these issues with the Commission at future meetings, and will share the results with the public by issuing advisory opinions and responding to written requests for opinions.
 - The Commission has communicated with approximately 660 individuals in 448 agencies about the process for recertifying the approximately 10,000 officers with last names A-H. The Commission encourages agencies and individuals to access the latest information on recertification on the Commission’s website.
 - Executive Director Zuniga reviewed key differences between the Commission’s past certification process and the upcoming recertification process, and provided preliminary answers to questions about potential exceptions for some individuals.
 - Commissioner Ellison encouraged Executive Director Zuniga to provide guidance or an advisory opinion relative to School Resource Officers. Executive Director Zuniga said the Commission would answer any such questions as they arise.
 - Mr. Povich relayed a question from a member of the public participating on the Zoom platform concerning an exception to the June 15 deadline for submitting recertification forms. Executive Director Zuniga clarified that only officers with last names A-H are up for recertification this year. Commissioner West explained measures the Commission had developed to help Law Enforcement Agencies expedite the recertification process, such as allowing chiefs to delegate the interview process to other qualified individuals.

- Commissioner Calderone asked whether the questionnaire could be shared with Law Enforcement Agencies and other individuals. The Chair clarified that question would be taken up next, per the meeting agenda.
4. Commission re-certifications of officers with last name A-H – Executive Director Zuniga
- Attestation Form (Questionnaire Part 2) – Draft
 - As inputs to the Commission’s upcoming recertification decisions, the Commission will collect information on officers from their Law Enforcement Agencies.
 - Executive Director Zuniga reviewed the Officer Questionnaire for Law Enforcement Officer Recertification and each question within the Questionnaire.
 - Commissioner Calderone asked whether the first question could be modified to add in a provision relative to an officer’s knowledge. Executive Director Zuniga explained that there is a “to the best of your knowledge” general provision to address that concern, but agreed that it could be added.
 - Commissioner Calderone next expressed his concern that the third question relative to civil suits would be repetitive, as an officer’s Law Enforcement Agency would already be aware of such a suit. Commissioner Calderone expressed a similar concern relative to the fifth and seventh questions. Commissioner West raised a question as to whether an officer is obligated to raise such issues with their Law Enforcement Agency. Commissioner Calderone responded that Boston officers are required to submit information of any suit. Commissioner West responded that these questions were developed at the suggestion of a chief, so they potentially are not aware of these kinds of actions. Commissioner Calderone suggested adding a qualifier to the effect of “not already known.”
 - Commissioner Luma asked whether the second question should be expanded to include whether an applicant has an active license or permit to carry a firearm. Executive Director Zuniga clarified the intent of the question is to ascertain whether an individual has ever had such a license or permit revoked.
 - Commissioner Calderone suggested the fourth question should be modified to read “responsible for,” rather than “in violation of” due to concerns of false accusations and suggested the question be removed. The Chair responded that findings do not always involve determinations of responsibility, and suggested the question could be modified to clarify that an officer was found in violation of a restraining order, and that restraining order was not revoked. Commissioner Kazarosian expressed her disagreement with modifying the fourth question because a violation of a restraining order provides a basis for a criminal charge. Commissioner Ellison expressed his agreement with Commissioners West and Kazarosian because not every Law Enforcement Agency has the same reporting requirements.

- Commissioner Calderone also suggested the fifth question be removed from the questionnaire and moved to the Law Enforcement Agency’s attestation form because the officer is not always in the best position of knowledge. Commissioner Luma asked whether a Law Enforcement Agency would be aware of any discipline or violations occurring out of state. Commissioner West clarified that the question is meant to capture suits that are not related to an officer’s policing duties and agreed with Commissioner Luma that the Commission needs to be aware of any activities out of state. The Chair agreed that question four is meant to capture civil matters, in addition to criminal matters.
 - Commissioner Calderone asked to clarify whose perspective is relevant relative to question six regarding perceptions of bias. Commissioner West expressed her support of the question, and responded that she believed the question was aimed at self-reporting. Commissioners Kazarosian and Bluestone expressed their agreement with Commissioner West.
 - Commissioner Calderone expressed his concerns for the due process rights of officers who are not approved by their chiefs.
 - Commissioner Calderone asked if knowledge and awareness language could be added to the seventh question. Commissioner Kazarosian raised a concern that where the language is generally applicable, but also inserted in specific questions, it could potentially create problems or questions where that language is not inserted. Commissioner Calderone agreed with Commissioner Kazarosian.
 - Mr. Povich relayed questions from members of the public relative to who is responsible for the attestation, concerns about officer knowledge of suits, the subjectivity of disciplinary action, and the psychological and fitness requirements for certification. Executive Director Zuniga responded.
 - Commissioner Ellison asked who would be responsible for the attestation when the individual being recertified is the Chief. Mr. Povich responded that the Chief’s appointing authority would be responsible for the attestation.
 - Commissioner Kazarosian moved to approve the Questionnaire as presented, with the understanding the Questionnaire may later be revised as deemed necessary. Commissioners Luma and West seconded the motion. Commissioners Bluestone, Chéry, Kazarosian, Luma, West and the Chair voted to approve the Questionnaire as present, with the understanding the Questionnaire may later be revised as deemed necessary. Commissioner Calderone voted against the motion. Commissioner Ellison abstained.
5. Discussion of In Scope Out of Scope Agencies – General Counsel Ravitz
- General Counsel Ravitz reviewed the Proposed Construction of Scope of Chapter 6E of the Massachusetts General Laws, which was presented at a prior meeting. General Counsel Ravitz reviewed changes that had been made to the Proposed Construction since that meeting, particularly to sheriffs and elected sheriffs.

- Commissioner Ellison asked General Counsel Ravitz to clarify how sheriffs would be restricted by this proposed construction. General Counsel Ravitz responded.
 - Commissioner West suggested the construction should include sheriffs and constables who have meaningful interactions with the public. Commissioner Kazarosian agreed with Commissioner West's comment, but asked whether that suggestion would encompass sheriffs and constables who effectuate service of process. General Counsel Ravitz clarified that if a sheriff's or constable's duties are limited to serving process, he would propose they not be considered a law enforcement officer for purposes of chapter 6E. General Counsel Ravitz suggested that if they performed other more traditional functions, aside from service of process or transporting individuals housed at correctional facilities, then they would be a law enforcement officer subject to 6E; if an officer later decides they want greater responsibilities, they can then apply for certification.
 - Mr. Povich relayed a concern from a member of the public relative to public's inability to perceive the difference between law enforcement officers with differing functions upon sight. General Counsel Ravitz understood, but stated that it was an inherent difficulty created by statutory language. Commissioner West invited further discussion on the topic.
 - General Counsel Ravitz reviewed and responded to comments from the MSPCA and ARL regarding animal cruelty prevention officers. General Counsel Ravitz recommended against including those officers within the scope of 6E for a number of reasons and explained those reasons.
 - Commissioner West moved to approve the Proposed Construction of Scope of Chapter 6E of the Massachusetts General Laws, as presented by General Counsel Ravitz with an amendment accounting for constables or sheriffs who carry firearms. Commissioner Kazarosian seconded the motion. Commissioners Calderone, Chéry, Ellison, Luma, and West voted to approve the Proposed Construction of Scope of Chapter 6E of the Massachusetts General Laws, as presented by General Counsel Ravitz with an amendment accounting for constables or sheriffs who carry firearms. Commissioner Bluestone and the Chair abstained.
6. Public comment
- There was one question from the media and one question relative to campus law enforcement. Mr. Povich suggested those questions be addressed one-on-one with Executive Director Zuniga.
7. Matters not anticipated by the Chair at the time of posting
- The Commission approved a motion to adjourn.

4.

**PEACE OFFICER STANDARDS AND TRAINING COMMISSION
PROPOSED REGULATIONS AT 555 CMR 1.00, *et seq.*
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1.01 Review of Complaints by Agency.

- (1) Transmittal of Complaint by Agency to Commission. The head of an agency shall, within two (2) days of their receipt of a complaint, which is any credible report, written or oral, evidencing or alleging the misconduct of an officer from a member of the public, personnel at the agency, or any other source, do the following:
- (a) if the complaint is related to minor matters, a category that includes discourtesy and basic work rule violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions and the complaint does not involve evidence or an allegation of (1) bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, or socioeconomic or professional level; (2) excessive, prohibited, or deadly force; or (3) an action which resulted in serious bodily injury or death;
 - (i) refer the complaint for resolution under the agency's internal resolution policy, which shall comply with any minimum requirements established by the commission;
 - (ii) if the agency does not have an internal resolution policy, if the agency's internal resolution policy is not in compliance with the minimum requirements established by the commission, or if the matter cannot be resolved under 555 CMR 1.01(1)(a)(i) for any other reason, the agency shall maintain any documentation of the complaint, the name and commission certification identification number of the subject officer, a brief summary of the nature of the conduct that is the subject of the complaint, and any other documentation that the agency deems material to an understanding of the complaint and the agency's handling of the complaint or that the commission directs the agency to maintain; and
 - (iii) make any such complaint available to the commission upon request, or under any policy that may be established by the commission.
 - (b) if the complaint does not relate to minor matters as described in 555 CMR 1.01(1)(a), transmit a description of the complaint, whether or not the complaint was written, and a copy of any documentation of the complaint to the division of standards, and provide the following information, if known, in a form to be prescribed by the commission:
 - (i) the name and commission certification identification number of the subject officer;

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- (ii) the date and location of the incident giving rise to the complaint;
- (iii) the identity of the alleged victim of the misconduct described in the complaint;
- (iv) the alleged victim's race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, socioeconomic or professional level, and any other relevant demographic information if the victim volunteered such information, provided that nothing herein should be construed to require that such information be elicited from the alleged victim or complainant; and
- (v) whether the complainant alleges that the officer's conduct: (i) was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, or socioeconomic or professional level; (ii) was unprofessional; (iii) involved excessive, prohibited, or deadly force; or (iv) resulted in serious bodily injury or death.

(c) notwithstanding the foregoing:

- (i) Anonymous complaints that do not provide an adequate basis for investigation need not be forwarded to the commission.
- (ii) An agency need not forward to the commission any investigatory materials that were necessarily compiled out of the public view by law enforcement or other investigatory officials, the disclosure of which materials to the commission would prejudice the possibility of effective law enforcement to the extent that such disclosure would not be in the public interest.
- (iii) An agency shall forward any pattern of complaints alleging the misconduct of an officer to the commission.
- (iv) An agency may forward any complaint other than those set out in 555 CMR 1.01(1)(b) at the agency's discretion.

(2) Minimum Standards for Internal Investigation by Agency.

- (a) The agency shall commence, as soon as practicable, but in any case within fourteen (14) days of the receipt of the complaint by the agency, an internal investigation of the subject matter of any complaint forwarded to the division of standards under 555 CMR 1.01(1)(b). If the agency anticipates that the investigation cannot be commenced within fourteen (14) days due to investigatory efforts by another governmental body, the

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agency shall promptly request an extension of time from the division of standards and provide in the request a proposed schedule for commencing the investigation and the reasons for the need for additional time to commence the investigation, prior to the expiration of the fourteen (14) days.

- (b) The internal investigation may, but in the case of a complaint alleging an officer-involved injury or death, improper use of force, or biased behavior shall, be assigned to an investigator employed by the agency or to an outside investigator retained by the agency. The investigator shall be free from conflict of interest, bias, prejudice, or self-interest, and shall report, for the purpose of the investigation, directly to the head of the agency, or to a designated official immediately subordinate to the head of the agency, unless the head of the agency or immediate subordinate is the subject of, or implicated by, the complaint, or is otherwise unable to supervise the investigator due to conflicts of interest, or the potential for bias, prejudice, or self-interest whether apparent or perceived.
- (c) The investigator shall:
- (i) begin the investigation by taking all reasonable steps necessary to preserve, and consider, all potentially relevant evidence, including but not limited to documents, e-mails, text messages, photographs, audio and video recordings, and the like;
 - (ii) after taking all reasonable steps necessary to preserve all potentially relevant evidence as described in 555 CMR 1.01(2)(c)(i), as soon as reasonably possible, to the extent it will not prejudice the internal investigation, notify the officer and the head of their collective bargaining unit that an internal investigation is being conducted; and
 - (iii) conduct, to the extent feasible, interviews of relevant witnesses, including but not limited to the complainant, the alleged victim if different from the complainant, the officer implicated by the complaint, and all other officers and individuals who were present at or witnessed the incident. Such interviews should be audio recorded if feasible. Officers and other interviewees shall have the right to be represented by counsel, union representatives, or other representatives, to the same extent they would under their Agency's policies or other applicable authority. The agency shall, at its expense, provide translation services where necessary to conduct an interview.
- (d) The investigation shall be conducted confidentially to the extent permitted by law.

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- (e) The investigation shall be completed as soon as practicable, but in any case, within ninety (90) days of the agency's receipt of the complaint. If the agency anticipates that the investigation will take longer than ninety (90) days, the agency shall promptly request an extension of time from the division of standards and provide in the request a proposed schedule for completion of the investigation and the reasons for the need for additional time to complete the investigation, prior to the expiration of the ninety (90) days.

(3) Internal Investigation Reports.

Upon completion of the internal investigation, the head of the agency shall immediately transmit an investigation report signed by the investigator to the division of standards, in a form to be prescribed by the division of standards, which shall include:

- (a) a statement of the evidence or allegation of the complaint;
- (b) a description of the investigation and disposition of the complaint, including any disciplinary action recommended by the investigator or a supervising officer to the head of the agency and any disciplinary action imposed by the head of the agency;
- (c) a list of any witnesses interviewed, whether each interview was recorded and if not, the reasons for not recording the interview, and a description of all evidence collected;
- (d) whether any witness or evidence was inaccessible and a description of the circumstances evidencing the unavailability of said witness, and whether any relevant evidence was destroyed or lost and a description of the circumstances of such a destruction or loss;
- (e) the facts found by the investigator;
- (f) a determination by the investigator of whether the facts sufficiently reflect conduct proscribed by law or standards applicable to officers;
- (g) the reasons for any delay in completion of the investigation report beyond the ninety (90) days set forth in 555 CMR 1.01(2)(e);
- (h) if any disciplinary action recommended by the investigator or a supervising officer, or imposed by the head of the agency included retraining, suspension, or termination, a recommendation by the head of the agency as to whether and how the commission should impose the recommended disciplinary action, including but not limited to retraining, suspension, or revocation of the officer's certification; and

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- (i) whether the officer is represented by counsel or other authorized representative.

(4) Final Disposition of Internal Investigations by an Agency.

Upon determining the final disposition of the complaint and final discipline to be imposed by the agency, if any, the head of the agency shall immediately transmit to the division of standards a final report in a form to be prescribed by the commission, which shall include:

- (a) a description of the adjudicatory process;
- (b) any disciplinary action initially recommended by the investigator or a supervising officer;
- (c) any discipline imposed by the head of the agency;
- (d) if the disciplinary action recommended by the investigator or a supervising officer, or imposed by the head of the agency included retraining, suspension, or termination, a recommendation by the head of the agency with supporting facts based on the investigation report and other relevant information as to whether and how the commission should impose the recommended disciplinary action, including but not limited to retraining, suspension, or revocation of the officer's certification; and
- (e) whether the officer is represented by counsel or other authorized representative.

(5) Notice of Officer Resignation Pending Agency Internal Investigation or Discipline.

If an officer resigns prior to the conclusion of an internal investigation by the agency or prior to the imposition of agency discipline:

- (a) The head of the agency shall immediately transmit to the division of standards a report in a form to be prescribed by the commission, which at a minimum shall include:
 - (i) the officer's full employment history, including dates of hire, resignation, retirement, any promotions and assignments; a chronology of any complaints, internal investigations, reprimands, discipline imposed, retraining, or other applicable sanctions; and any commendations and awards received by the officer related to their duty as an officer;
 - (ii) a description of the circumstances, events, or complaints surrounding the officer's resignation;

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- (iii) the status or results of any investigation as of the date of the transmission of the report to the commission regarding those events or complaints; and
 - (iv) a recommendation by the head of the agency as to whether and how the commission should impose disciplinary action by the commission, including suspension or revocation of the officer's certification, or the conditions the officer must meet prior to applying for any reinstatement or certification, if such reinstatement or certification is appropriate.
- (b) The agency shall, nonetheless, complete the investigation regardless of the officer's resignation, and, once the investigation is completed, transmit a report that conforms to 555 CMR 1.01(3) to the division of standards.

1.02 Preliminary Inquiries.

- (1) Upon receipt and initial review of every complaint, the division of standards shall make a determination as to whether the complaint:
- (a) does not involve evidence or an allegation of (1) bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, or socioeconomic or professional level; (2) excessive, prohibited or deadly force; or (3) an action which resulted in serious bodily injury or death; and
 - (b) the complaint is related to minor matters, a category that includes discourtesy and basic work rule violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions.

If the division of standards determines that the complaint has characteristics (a) and (b), then it shall not be required to take any further action relative to the complaint.

- (2) If the division of standards cannot, upon receipt and initial review, make the determination described in 555 CMR 1.02(1), the division of standards shall present the complaint and any related information, report, or evidence in the possession, custody, or control of the division of standards that may be relevant to the consideration of the complaint, to the chair and the executive director for review. If, at any time, the division of standards, the executive director, or the chair recommends that the division of standards conduct a preliminary inquiry pursuant to M.G.L. c. 6E, § 8(c)(1), the chair shall place the question of whether to conduct such an inquiry on the next available commission agenda, or call a meeting of the commission for the purposes of discussion of that question.

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- (3) Notwithstanding the foregoing, the commission shall direct the division of standards to conduct a preliminary inquiry if the head of an agency submits, at any time, an affirmative recommendation for disciplinary action by the commission, including retraining, suspension, or revocation of the officer's certification, or if the commission, at any time, concludes that there is sufficient credible evidence that the officer:
- (a) was involved in an officer-involved injury or death;
 - (b) committed a felony or misdemeanor, whether or not the officer has been arrested, indicted, charged or convicted; or
 - (c) engaged in conduct prohibited by M.G.L. c. 6E, §§ 14 or 15.

- (4) At the recommendation of the division of standards, the commission may, at any time, direct the division of standards to conduct a preliminary inquiry if the commission determines that there is sufficient evidence that the officer engaged in prohibited conduct other than the conduct described in 555 CMR 1.02(3)(a)-(c).

1.03 Confidentiality of Preliminary Inquiries. All proceedings and records relating to a preliminary inquiry by the division of standards, including any internal review to determine whether there is sufficient credible evidence to initiate a preliminary inquiry, shall be kept strictly confidential pursuant to M.G.L. c. 6E, § 8(c)(2) and M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definitions of public records, except that the executive director may provide evidence which may be used in a criminal proceeding or investigation to the attorney general, the United States Attorney, or a district attorney of competent jurisdiction. Nothing in this section shall prevent the division of standards from notifying any other prosecuting attorney, upon reasonable request, of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue.

1.04 Required Notification of Preliminary Inquiries. The division of standards shall, within thirty (30) days of the commission's vote to authorize a preliminary inquiry, notify the officer who is subject of the inquiry, the head of the agency, the head of the officer's collective bargaining unit, and a district attorney of competent jurisdiction of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue. Nothing in this section shall prevent the division of standards from notifying any other prosecuting attorney, upon reasonable request, of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue.

1.05 Conduct of Preliminary Inquiries.

- (1) Collection of Information.

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- (a) The division of standards may, in connection with a preliminary inquiry, obtain or provide pertinent information, including any information regarding grants of immunity, regarding officers, agencies, witnesses, or complainants, from or to law enforcement agencies and other domestic, federal or foreign jurisdictions, including the Federal Bureau of Investigation, and may transmit or receive such information electronically or via other secure methods.
- (b) To support its own preliminary inquiry the division of standards may request, by writing to the head of the agency, that the agency produce all records relating to its internal investigation of a complaint. The agency shall produce all such records to the division of standards within fifteen (15) days of the division of standards' demand, unless the division of standards allows a longer period of time.
- (c) Upon written request by the division of standards, the agency shall make its best efforts to make witnesses available to the division of standards, or if requested by the division of standards, to coordinate its internal investigation with the division of standards' preliminary inquiry.
- (2) Subpoenas. The division of standards is authorized in the name of the commission to issue subpoenas in the conduct of preliminary inquiries, to compel the attendance of witnesses, to compel the production of documents and records at any place within the commonwealth, to administer oaths, and to require testimony under oath. Subpoenas may be served by commission employees and agents, including contracted investigators. Any witness summoned may petition the commission to vacate or modify a subpoena issued in its name. After such investigation as the commission considers appropriate, the commission may grant the petition in whole or in part upon a finding that the testimony, or the evidence whose production is required, does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested. The commission shall exercise all legal remedies available to it to enforce any subpoenas issued under this section.
- (3) Contractor Investigators. The commission may retain qualified contractor investigators, either directly or pursuant to contracts with private investigative businesses or other qualified entities, to assist the division of standards in conducting preliminary inquiries. Before a contractor investigator can participate in any preliminary inquiry, the investigator shall execute a certification acknowledging: the investigator's full understanding and acceptance of the authority given; the investigator's freedom from conflict of interest, bias, prejudice, or self-interest; applicable confidentiality provisions; and appropriate limits to the investigator's authority.

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1.06 Suspension of Certification Pending Preliminary Inquiry.

- (1) If at the time the commission authorizes a preliminary inquiry, or at any time during the course of the preliminary inquiry, the division of standards concludes that the suspension of the officer's certification is warranted pending completion of the preliminary inquiry, the division of standards shall recommend such a suspension to the chair and provide to the chair the evidence supporting that recommendation. If, based on such evidence, the chair agrees with the division of standards' recommendation that the officer's certification be suspended pending completion of the preliminary inquiry, the chair shall place the question of whether to suspend the officer's certification pending completion of the preliminary inquiry on the next available commission agenda, or call a meeting for the purposes of deciding that question.
- (2) The commission may suspend an officer's certification pending completion of the preliminary inquiry if it determines by a preponderance of the evidence that such suspension is in the best interest of the health, safety, or welfare of the public.
- (3) Any suspension issued by the commission pursuant to this section 555 CMR 1.06 shall continue in effect until issuance of the final decision of the commission or until the suspension is revoked by the commission.

1.07 Reports Following Preliminary Inquiries.

- (1) Any preliminary inquiry by the division of standards pursuant to 555 CMR 1.05 to 555 CMR 1.06 shall be completed within sixty (60) days of the commission's vote to authorize such a preliminary inquiry, or within any such additional time as authorized by the chair. Within ten (10) days of the completion of the preliminary inquiry by the division of standards, the division of standards shall provide the commission with a detailed report on the conclusions and determinations resulting from its preliminary inquiry. The report on the preliminary inquiry shall include, at a minimum:
 - (a) a copy of any written complaint that is the basis of the preliminary inquiry;
 - (b) a clear statement of all the evidence or allegations considered by the division of standards;
 - (c) the material relative to the complaint and evidence or allegations contained therein that were obtained by the division of standards from the agency, and whether any material was withheld, lost or otherwise inaccessible;
 - (d) any investigative report issued by the agency;

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- (e) a list of witnesses subpoenaed, interviewed, or contacted to testify by the division of standards, and if any witnesses were unavailable or did not appear for interview or to testify, the reasons therefor;
 - (f) the facts found by the division of standards to support any recommendations or conclusions of the division of standards as a result of the preliminary inquiry; and
 - (g) whether the division of standards recommends a suspension of the officer's certification and the reasons therefor.
- (2) The division of standards' report on its preliminary inquiry, shall remain confidential to the extent permitted by law, including but not limited to the redaction of certain information pursuant to M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definitions of public records, except that the executive director may provide the report for use in a criminal proceeding or investigation to the attorney general, the United States Attorney, or a district attorney of competent jurisdiction.

1.08 Suspensions of Certifications Following Arrests, Criminal Charges or Indictments for Felonies, or Following Preliminary Inquiries.

- (1) The commission shall immediately suspend the certification of any officer who is arrested, charged or indicted for a felony. A sworn statement by the arresting officer, or a certified copy of the charge or indictment, shall be sufficient evidence for immediate commission action pursuant to this section.
- (2) In addition to issuing suspensions under 555 CMR 1.08(1), the commission, within thirty (30) days of its receipt of a report of the division of standards following a preliminary inquiry:
- (a) shall immediately vote to suspend the officer's certification if the commission concludes by a preponderance of the evidence that the report on the preliminary inquiry, and any supplemental information provided by the division of standards, reflect that the officer has engaged in conduct that could constitute a felony;
 - (b) may suspend the certification of the officer if the commission concludes by a preponderance of evidence that the division of standards' report on the preliminary inquiry, and any supplemental information provided by the division of standards, reflect that an officer has been arrested, charged, or indicted for a misdemeanor that affects the fitness of the officer to serve; or
 - (c) may suspend the certification of the officer if the commission concludes by a preponderance of the evidence that the division of standards' report

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on the preliminary inquiry, and any supplemental information provided by the division of standards, reflect that suspension of the officer is in the best interests of the health, safety, or welfare of the public.

- (3) Any commission decision to suspend the certification of an officer pending or following a preliminary inquiry by the division of standards shall be transmitted immediately to the officer involved, the head of the agency, the head of the officer's collective bargaining unit, and a district attorney of competent jurisdiction and shall be effective upon head of the agency's receipt of that decision, or the officer's receipt of that decision, whichever occurs first. Nothing in this section shall prevent the commission from transmitting to any other prosecuting attorney, upon reasonable request, the commission's decision to suspend the certification of an officer pending or following a preliminary inquiry by the division of standards.
- (4) Any suspension issued by the commission pursuant to this section 555 CMR 1.08 shall continue in effect until issuance of the final decision of the commission or until the suspension is revoked by the commission.

1.09 Single Commissioner Review of Suspensions.

- (1) An officer whose certification is suspended by the commission pursuant to 555 CMR 1.06 or 1.08 may request a hearing before a single commissioner pursuant to M.G.L. c. 6E, §9(d) in accordance with this section 555 CMR 1.09.
- (2) All requests for a hearing pursuant to this section 555 CMR 1.09 must be filed by the officer or their counsel or other representative with the executive director no later than five (5) days from the date of the officer's notice of the commission's suspension unless the officer is granted an extension of the time to request a hearing. Such a request for an extension of time shall be made in writing to the commission within the same period of five (5) days, and shall include the bases for the request. A request for an extension of time shall be determined by a single commissioner upon review of the request, and shall be granted only upon a demonstration of good cause. The failure to timely request a hearing or an extension of time to request a hearing may result in a waiver of the right to a hearing.
- (3) The request for a hearing shall include:
 - (a) The name and contact information of the officer and the commission certification identification number of the officer;
 - (b) the name and contact information of counsel or other individual representing the officer, if any;

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- (c) the agency at which the officer was employed when the complaint was filed and the head of that agency;
 - (d) a brief description of the basis for the request for the hearing; and
 - (e) a statement regarding whether the officer seeks to invoke or waive the officer's right under M.G.L. c. 6E, § 9(d) to a hearing within fifteen (15) days of the effective date of the suspension.
- (4) The executive director shall, immediately upon a receipt of a request for a hearing under this section 555 CMR 1.09: notify the chair of that request; schedule a hearing not less than five (5) days and not more than fifteen (15) days after the effective date of the suspension if the officer has not waived the right to a hearing in the time frame set forth in M.G.L. c. 6E, § 9(d); and notify the requesting party and the chair of the date thereof. The chair shall, within two (2) days after receiving the request for a hearing and the scheduled hearing date from the executive director, assign any single commissioner to conduct the requested hearing.
- (5) The single commissioner assigned to conduct a hearing under this section 555 CMR 1.09 shall be selected pursuant to a policy to be established by the commission.
- (6) Hearings held before a single commissioner pursuant to 555 CMR 1.09 shall be adjudicatory proceedings conducted in accordance with M.G.L. c. 30A, §§ 1, 8 and 10 to 14, inclusive. All hearings shall comply with 555 CMR 1.05, as applicable, and 801 CMR 1.01: *Formal Rules*, except that the provisions of 801 CMR 1.01(1), (2), (6), (11) and (14) shall not apply, and that the following additional rules shall supersede any inconsistent rules provided in 801 CMR 1.01:
- (a) Standard of Proof. The single commissioner shall affirm the suspension of the certification of an officer unless the single commissioner determines that, determines by a preponderance of the evidence presented to the commission and additional evidence provided by the officer, the suspension is not warranted. If the single commissioner so determines, the single commissioner shall stay the commission's suspension of the officer's certification.
 - (i) The rules of evidence observed by courts shall not apply to hearings held by the single commissioner, but the rules of privilege recognized by law shall be observed.
 - (ii) Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs. The single

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commissioner may exclude irrelevant, unreliable, and repetitive evidence.

- (b) Discovery. No discovery shall be permitted in connection with a hearing held pursuant to 555 CMR 1.09 except upon a motion made to the single commissioner at least seven (7) days before such hearing, which motion shall be granted for good cause shown.
- (c) Public Access.
- (i) Records. The single commissioner shall treat all documents submitted to or created by them as confidential to the extent permitted by law, including by, but not limited to, withholding or redacting such records pursuant to M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definition of public records.
- (ii) Hearings. During the course of an adjudicatory hearing conducted under 555 CMR 1.10, the single commissioner shall make all reasonable efforts to protect the confidentiality of any documents submitted or considered during the course of a hearing, to the extent permitted by law and as described in 555 CMR 1.09(6)(c)(i). A hearing conducted under 555 CMR 1.09 shall be open to the public unless the single commissioner determines that closure is necessary to protect privacy interests and will not be contrary to the public interest.
- (d) Decisions. Upon completion of the hearing, the single commissioner shall render a written decision as promptly as administratively feasible, in accordance with M.G.L. c. 30A, § 11(8). The written decision of the single commissioner shall be the final decision of that single commissioner. The filing of any appeal of a final decision of the single commissioner shall be to the Superior Court in accordance with M.G.L. c. 30A, § 14.
- (e) Judicial Review. Appeals to the Superior Court shall not stay enforcement of the single commissioner's decision, but by motion to the commission within ten (10) days of the single commissioner's decision, the commission may for good cause lift the stay of the single commissioner pending appeal to the Superior Court, or pending the final decision of the commission pursuant to 555 CMR 1.10.
- (f) Administrative Record for Judicial Review. Pursuant to M.G.L. c. 30A, § 11(4), all documents, testimony and other evidence offered and accepted into evidence by the single commissioner shall become part of the administrative record. For purposes of judicial review, the record shall include the final decision issued pursuant to 555 CMR 1.09(6)(d). Any

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evidence offered at the hearing, but not accepted by the single commissioner, will be marked for identification purposes only and be included in the record.

1.10 Final Disciplinary Hearings and Appeals of Certification Decisions.

(1) Applicability. The following types of adjudicatory hearings shall be held by the full commission, but may, in the chair's discretion, be heard in the first instance by a presiding officer selected pursuant to a policy established by the commission:

- (a) M.G.L. c. 6E, §10(a) hearings regarding mandatory revocation of an officer's certification;
- (b) M.G.L. c. 6E, § 10(b) hearings regarding discretionary revocation or suspension of an officer's certification;
- (c) M.G.L. c. 6E, § 10(d) hearings regarding officer retraining; and
- (d) Appeals of a decision by the commission declining to certify or recertify a law enforcement officer pursuant to M.G.L. c. 6E, § 4.

(2) Timing of Revocation or Suspension Hearings.

- (a) The commission shall not institute a revocation or suspension hearing regarding a complaint against an officer until an officer's appointing agency has issued a final disposition regarding a complaint or one year has elapsed since the incident was reported to the commission, whichever is sooner.
- (b) If the officer notifies the commission that the officer wishes to suspend such hearing pending an appeal or arbitration of the appointing agency's final disposition, the commission shall suspend the hearing. Any such suspension of the hearing shall not exceed one year from the officer's notice to the commission; provided, however, that at any time during which the hearing is so suspended and upon a showing of good cause by the officer, the commission shall further suspend the hearing for a period of not less than six months and not more than the commission determines is reasonable; provided, however, that any delay in instituting a revocation or suspension hearing shall not exceed one year from the officer's request for further suspension.
- (c) If the officer notifies the commission that the officer wishes to suspend such hearing pending the resolution of criminal charges, including any conviction, the commission shall suspend the hearing; provided, however, that the officer's certification shall be suspended during the pendency of any suspension in the hearing.

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- (3) Timing of Appeals from a Decision Declining to Certify or Recertify.
- (a) An officer whose certification has not been granted or renewed by the commission pursuant to M.G.L. c. 6E, § 4 may request a hearing, which shall be conducted in accordance with section 555 CMR 1.10(5).
 - (b) All requests for a hearing pursuant to this section 555 CMR 1.10(3) must be filed by the officer or their counsel or other representative with the executive director no later than thirty (30) days from the date of the commission's decision.
 - (c) The request for a hearing shall include:
 - (i) The name and contact information of the officer and the commission certification identification number of the officer,
 - (ii) the name and contact information of the officer's counsel or other representative, if any; and
 - (iii) a brief description of the basis for the request for the hearing.
- (4) Conduct of Hearings. Hearings held pursuant to 555 CMR 1.10 shall be adjudicatory proceedings conducted in accordance with M.G.L. c. 30A, §§ 1, 8 and 10 to 14, inclusive. All hearings shall further comply with 801 CMR 1.01: *Formal Rules*, except that the provisions of 801 CMR 1.01(1), (2), (6), (11) and (14) shall not apply and that the following additional rules shall supersede those provided in 801 CMR 1.01: (prescribed by G.L. c 6E, §10(f))
- (a) Public Access.
 - (i) Records. The commission shall treat all documents submitted to or created by the presiding officer or commission as confidential to the extent permitted by law, including by, but not limited to, withholding or redacting such records pursuant to M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definition of public records.
 - (ii) Hearings. During the course of an adjudicatory hearing conducted under 555 CMR 1.10, the presiding officer and commission shall make all reasonable efforts to protect the confidentiality of any documents submitted or considered during the course of an adjudicatory hearing, to the extent permitted by law and as described in 555 CMR 1.10(4)(a)(i). An adjudicatory hearing conducted under 555 CMR 1.10, except deliberations by a panel of presiding officers or the commission regarding a decision, shall be public except where the presiding officer or presiding officers determine that closure is necessary to protect privacy interests and

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will not be contrary to the public interest. All deliberations by a panel of presiding officers or the commission regarding a decision following an adjudicatory hearing conducted under 555 CMR 1.10 shall be closed to the public.

(b) Evidence.

- (i) The rules of evidence observed by courts shall not apply to hearings held under 555 CMR 1.10, but the rules of privilege recognized by law shall be observed.
- (ii) Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs. The presiding officer may exclude irrelevant, unreliable, and repetitive evidence

(c) Standard of Proof.

- (i) The commission may not order the revocation or suspension of an officer's certification unless the commission finds by clear and convincing evidence that such revocation or suspension is warranted pursuant to M.G.L. c. 6E, §§ 10(a) or 10(b).
- (ii) The commission may not order the retraining of an officer unless the commission determines, based on substantial evidence, that retraining is warranted pursuant to M.G.L. c. 6E, § 10(d).
- (iii) The commission may not reverse a prior decision to deny the certification or recertification of an officer unless the commission determines, based on substantial evidence, that certification is warranted pursuant to M.G.L. c. 6E, § 4.

(d) Collection of Information, Subpoenas and Testimony for Use in Hearings.

The commission is authorized to use the same investigatory tools, including the collection of documents, issuance of subpoenas, and requirement for testimony under oath in connection with hearings under this section 555 CMR 1.10 as it is permitted to use with respect to preliminary inquiries pursuant to 555 CMR 1.05(b).

(e) Decisions.

- (i) Upon completion of a hearing held before the full commission, the commission shall render a written decision as promptly as administratively feasible, in accordance with M.G.L. c. 30A, § 11(8). The written decision of the full commission shall be the final decision of the commission. The filing of any appeal of a

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final decision of the full commission shall be to the Superior Court in accordance with M.G.L. c. 30A, § 14. Appeals to the Superior Court shall not stay enforcement of the commission's decision, but by motion to the commission within ten (10) days of the commission's decision, the commission may for good cause shown stay enforcement pending appeal to the Superior Court. A motion for reconsideration before the full commission shall not toll the thirty (30) requirement for the filing of any appeal of a final decision of the full commission to the Superior Court in accordance with M.G.L. c. 30A, § 14.

(ii) Upon completion of a hearing held before a presiding officer other than the full commission, the presiding officer shall render a decision as provided in M.G.L. c. 30A § 11(8). The decision of the presiding officer shall be called an "initial decision."

(1) The presiding officer shall promptly provide the officer, the officer's counsel or other authorized representative, the head of the officer's agency, the head of the officer's collective bargaining unit, and a district attorney of competent jurisdiction with a copy of the presiding officer's initial decision and file a copy of the same with the commission

(2) Upon receipt of the presiding officer's initial decision, if there is objection by the officer in writing to the executive director regarding the presiding officer's findings and recommendations, the commission shall set dates for submission of briefs and for any further hearing which the commission in its discretion deems necessary. The commission shall review, and may revise, the findings of fact, conclusions of law and recommendation of the presiding officer, giving deference to the presiding officer's evaluation of the credibility of the testimony and other evidence presented at the hearing. Failure by the officer to object to the presiding officer's initial decision within thirty (30) days shall constitute a waiver of the officer's right to appeal under M.G.L. c. 30A, § 14.

(3) The commission may affirm and adopt the initial decision in whole or in part, and it may recommit the matter to the presiding officer for further findings or a revised initial decision as it may direct. The same procedural provisions applicable to the initial filing of the initial decision shall apply to any refiled or revised initial decision after recommitment. If the commission does not affirm and adopt

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the whole of the initial decision, as originally submitted or as revised, it shall provide an adequate reason for rejecting those portions of the initial decision it does not affirm and adopt.

- (4) The final written decision of the commission upon review of the initial decision shall be the final decision of the commission. The filing of any appeal of a final decision of the commission shall not stay enforcement of the commission's decision, but by motion to the commission within ten (10) days of the commission's decision, the commission may for good cause shown stay enforcement pending appeal to the Superior Court.
- (5) The commission shall issue a final decision within one-hundred eighty (180) days (or thirty (30) days in the case of the denial of certification or recertification) of the presiding officer's filing or refiling of the initial decision. In the event that the commission is unable to issue a final decision within the one-hundred eighty (180) or thirty (30) day period, the executive director shall notify all parties.
- (5) Administrative Record for Judicial Review. Pursuant to M.G.L. c. 30A, § 11(4), all documents, testimony, and other evidence offered and accepted into evidence by the presiding officer shall become part of the administrative record. For purposes of judicial review, the record shall include the final decision issued pursuant to 555 CMR 1.10(2)(e). Any evidence offered at the hearing, but not accepted by the presiding officer, will be marked for identification purposes only and be included in the record.

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1.01 Review of Complaints by Agency.

~~(0)~~(1) Transmittal of Complaint by Agency to Commission. The head of an agency shall, within two (2) ~~business~~ days of their receipt of a complaint, which is any credible report, written or oral, evidencing or alleging the misconduct of an officer from a member of the public, ~~from~~ personnel at the agency, or ~~from~~ any other source, do the following:

(a) if the complaint is related to minor matters, a category that includes discourtesy and basic work rule violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions and the complaint does not involve evidence or an allegations of (1) bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental ~~of or~~ physical disability, immigration status, or socioeconomic or professional level; (2) excessive, prohibited, or deadly force; or (3) an actions which resulted in serious bodily injury or death; ~~and the complaint is related to minor matters, a category that includes discourtesy and basic work rule violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions:~~

(i) refer the complaint for resolution under the agency's informal internal resolution policy, which shall comply with any minimum requirements established by the commission~~if the agency has such a policy and such a policy is in full compliance with the minimum requirements for such policies as set out by the commission;~~

~~(ii)~~ if the agency does not have an informal internal resolution policy, if the agency's internal resolution policy is not in compliance with the minimum requirements established by the commission, or such a policy is not in full compliance with the minimum requirements for such a policy set out by the commission, or if the matter cannot be resolved under ~~xxx~~555 CMR 1.01(1)(a)(i) for any other reason,
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~~(a)~~(ii) the agency shall maintain any documentation of the written complaint, the name and commission certification identification number of the subject officer, a brief summary of the nature of the conduct that is the subject of the complaint, and any other documentation that the agency deems material to an understanding of the complaint and the agency's handling of the complaint or that the commission directs the agency to maintain; and

(iii) make any such complaints available to the commission upon request, or under any policy that may be established by the commission.

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- (b) if the complaint does not relate to minor matters as described in 555 CMR 1.01(1)(a) is not of the type described in XXX CMR 1.01(1)(a), transmit a description of the ~~written~~ complaint, whether or not the complaint was written, and a copy of any documentation of the -written complaint to the division of standards, and provide the following information, if known, in a form to be prescribed by the commission:
- (i) the name and commission certification identification number of the subject officer;
 - (ii) the date and location of the incident giving rise to the complaint;
 - (iii) the identity of the alleged victim of the misconduct described in the complaint;
 - (iv) the alleged victim's race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, socioeconomic or professional level, and any other relevant demographic information if the victim volunteered such information, provided that nothing herein should be construed to require that such information be elicited from the alleged victim or complainant; and
 - (v) whether the complainant alleges that the officer's conduct: (i) was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, or socioeconomic or professional level; (ii) was unprofessional; (iii) involved excessive, prohibited, or deadly force; or (iv) resulted in serious bodily injury or death.
- (c) notwithstanding the foregoing:
- (i) Anonymous complaints that do not provide an adequate basis for investigation need not be forwarded to the commission.
 - (ii) An agency need not forward to the commission any investigatory materials that were necessarily compiled out of the public view by law enforcement or other investigatory officials, the disclosure of which materials to the commission would prejudice the possibility of effective law enforcement to the extent that such disclosure would not be in the public interest.
 - (iii) An agency shall forward any pattern of complaints alleging the misconduct of an officer to the commission.

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~~(iii)(iv)~~ An agency may forward any complaint other than those set out in 555 CMR 1.01(1)(b) at the agency's discretion. or any pattern of complaints to the commission at the agency's discretion.

(2) Minimum Standards for Internal Agency Investigation by Agency Review.

(a) The agency shall commence, as soon as practicable, but in any case within fourteen (14) days, of the receipt of the complaint by the agency, an internal investigation of the subject matter of any complaint forwarded to the division of standards under ~~XXX-555~~ CMR 1.01(1)(b). If the agency anticipates that the investigation cannot be commenced within fourteen (14) days due to investigatory efforts by another governmental body, the agency shall promptly request an extension of time from the division of standards and provide in the request a proposed schedule for commencing the investigation and the reasons for the need for additional time to commence the investigation, prior to the expiration of the fourteen (14) days.

(b) The internal investigation may, but in the case of a complaint alleging an officer-involved injury or death, improper use of force, or biased behavior shall, be assigned to an investigator employed by the agency or to an outside investigator retained by the agency. The investigator shall be free from conflict of interest, bias, prejudice, or self-interest, and shall report, for the purpose of the investigation, directly to the head of the agency, or to a designated official immediately subordinate to the head of the agency, unless the head of the agency or immediate subordinate is the subject of, or implicated by, the complaint, or is otherwise unable to supervise the investigator due to conflicts of interest, or the potential for bias, prejudice, or self-interest whether apparent or perceived.

(c) The investigator shall:

(i) begin the investigation by taking all reasonable steps necessary to preserve, and consider, all potentially relevant evidence, including but not limited to documents, e-mails, text messages, photographs, audio and video recordings, and the like;

(ii) after taking all reasonable steps necessary to preserve all potentially relevant evidence as described in 555 CMR 1.01(2)(c)(i), as soon as reasonably possible, to the extent it will not prejudice the internal investigation, notify the officer and the head of their collective bargaining unit that an internal investigation is being conducted; and

~~(ii)(iii)~~ conduct, to the extent feasible, interviews of relevant witnesses, including but not limited to the complainant, the alleged victim if

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different from the complainant, the officer implicated by the complaint, and all other officers and individuals who were present at or ~~were witnessed to~~ the incident. Such interviews should be audio recorded if feasible. Officers and other interviewees shall have the right to be represented by counsel, union representatives, or other representatives, to the same extent they would under their Agency's policies or other applicable authority. ~~Other interviewees shall have an opportunity to be represented by counsel, or other representatives at their own expense.~~ The agency shall, at its expense, provide translation services where necessary to conduct an interview.;

- (d) The investigation shall be conducted confidentially to the extent permitted by law.;
- ~~and~~
- (e) The investigation shall be completed as soon as practicable, but in any case, within ninety (90) days of the agency's receipt of the complaint. If the agency anticipates that the investigation will take longer than ninety (90) days, the agency shall promptly request an extension of time from the division of standards and provide in the request a proposed schedule for completion of the investigation and the reasons for the need for additional time to complete the investigation, prior to the expiration of the ninety (90) days.

(3) Internal Investigation Reports.

Upon completion of the internal investigation, the head of the agency shall immediately transmit an investigation report signed by the investigator to the division of standards, in a form to be prescribed by the division of standards, which shall include:

- (a) a statement of the evidence or allegation of the complaint;
- (b) a description of the investigation and disposition of the complaint, including any disciplinary action recommended by the investigator or a supervising officer to the head of the agency and any disciplinary action imposed by the head of the agency;
- (c) a list of any witnesses interviewed, whether each interview was recorded and if not, the reasons for not recording the interview, and a description of all evidence collected;
- (d) whether any witnesses or evidence ~~were was~~ inaccessible and a description of the circumstances evidencing the unavailability of said witnesses, and whether any relevant evidence was destroyed or lost and a description of the circumstances of such a destruction or loss;

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- (e) the facts found by the investigator;
- (f) a determination by the investigator of whether the facts sufficiently reflect conduct proscribed by law or standards applicable to officers;
- (g) the reasons for any delay in completion of the investigation report beyond the ~~180-ninety (90)~~ days set forth in ~~XXX-555~~ CMR 1.01(2)(e);
- (h) if any disciplinary action recommended by the investigator or a supervising officer, or imposed by the head of the agency included retraining, suspension, or termination, a recommendation by the head of the agency as to whether and how the commission should impose the recommended disciplinary action, including but not limited to retraining, suspension, or revocation of the officer's certification; and
- (i) whether the officer is represented by counsel or other authorized representative.

(4) Final Disposition of Internal Investigations by an Agency.

Upon determining the final disposition of the complaint and final discipline to be imposed by the agency, if any, the head of the agency shall immediately transmit to the division of standards a final report in a form to be prescribed by the commission, which shall include:

- (a) a description of the adjudicatory process ~~that resulted in any discipline~~;
- (b) any disciplinary action initially recommended by the investigator or a supervising officer;
- (c) any discipline imposed by the head of the agency;
- (d) if the disciplinary action recommended by the investigator or a supervising officer, or imposed by the head of the agency included retraining, suspension, or termination, ~~;-~~ a recommendation by the head of the agency with supporting facts based on the investigation report and other relevant information as to whether and how the commission should impose the recommended disciplinary action, including but not limited to retraining, suspension, or revocation of the officer's certification; and
- (e) whether the officer is represented by counsel or other authorized representative.

(5) Notice of Officer Resignation Pending Agency Internal Investigation or Discipline.

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If an officer resigns prior to the conclusion of an internal investigation by the agency or prior to the imposition of agency discipline:

- (a) The head of the agency shall immediately transmit to the division of standards a report in a form to be prescribed by the commission, which at a minimum shall include:
 - (i) the officer's full employment history⁵; including dates of hire, resignation, retirement, any promotions and assignments; a chronology of any complaints, internal investigations, reprimands, discipline imposed, retraining, or other applicable sanctions; and any commendations and awards received by the ~~law enforcement~~ officer related to their duty as an ~~law enforcement~~ officer⁵;
 - (ii) a description of the circumstances, events, or complaints surrounding the officer's resignation;
 - (iii) the status or results of any investigation as of the date of the transmission of the report to the commission regarding those events or complaints; and
 - (iv) a recommendation by the head of the agency as to whether and how the commission should impose disciplinary action by the commission, including suspension or revocation of the officer's certification, or the conditions the officer must meet prior to applying for any reinstatement or certification, if such reinstatement or certification is appropriate.
- (b) The agency shall, nonetheless, complete the investigation regardless of the officer's resignation, and, once the investigation is completed, transmit a ~~final~~ report that conforms to ~~XXX555~~ CMR 1.01(43) to the division of standards.

1.02 Preliminary Inquiries.

- (1) Upon receipt and initial review of every complaint, the division of standards shall make a determination as to whether the complaint:
 - (a) does not involve ~~evidence or an~~ allegations of (1) bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, or socioeconomic or professional level; (2) excessive, prohibited or deadly force; or (3) ~~an~~ actions which resulted in serious bodily injury or death; and
 - (b) the complaint is related to minor matters, a category that includes discourtesy and basic work rule violations such as tardiness, inattention to

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detail, equipment violations, grooming violations, or comparable infractions.

If the division of standards determines that the complaint has characteristics (a) and (b), then it shall not be required to take any further action relative to the complaint.

- (2) If the division of standards cannot, upon receipt and initial review, make the determination described in ~~XXX555~~ CMR 1.02(1), the division of standards shall present the complaint and any related information, report, or evidence in the possession, custody, or control of the division of standards that may be relevant to the consideration of the complaint, to the chair and the executive director for review. If, at any time, the division of standards, the executive director, or the chair recommends that the division of standards conduct a preliminary inquiry pursuant to M.G.L. c. 6E, § 8(c)(1), the chair shall place the question of whether to conduct such an inquiry on the next available commission agenda, or call a meeting of the commission for the purposes of discussion of that question.
- (3) Notwithstanding the foregoing, the commission shall direct the division of standards to conduct a preliminary inquiry if the head of an agency submits, at any time, an affirmative recommendation for disciplinary action by the commission, including retraining, suspension, or revocation of the officer's certification, or if the commission, at any time, concludes that there is sufficient credible evidence that the officer:
 - (a) was involved in an officer-involved injury or death;
 - (b) committed a felony or misdemeanor, whether or not the officer has been arrested, indicted, charged or convicted; or
 - (c) engaged in conduct prohibited by M.G.L. c. 6E, §§ 14 or 15.
- (4) At the recommendation of the division of standards, the commission may, at any time, direct the division of standards to conduct a preliminary inquiry if the commission determines that there is sufficient evidence that the officer engaged in prohibited conduct other than the conduct described in ~~XXX-555~~ CMR 1.02(3)(~~e~~)(~~1a~~)-(c)(~~3~~).

1.03 Confidentiality of Preliminary Inquiries. All proceedings and records relating to a preliminary inquiry by the division of standards, including any internal review to determine whether there is sufficient credible evidence to initiate a preliminary inquiry, shall be kept strictly confidential pursuant to M.G.L. c. 6E, § 8(c)(2) to the extent permitted by law, and M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definitions of public records, except that the executive director may provide evidence which may be used in a criminal proceeding or investigation to the attorney general, the United States ~~attorney~~Attorney, or a district attorney of

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competent jurisdiction. Nothing in this section shall prevent the division of standards from notifying any other prosecuting attorney, upon reasonable request, of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue.

- 1.04 Required Notification of Preliminary Inquiries. The division of standards shall, within thirty (30) days of the commission's vote to authorize a preliminary inquiry, notify the officer who is subject ~~of~~ the inquiry, the head of the agency, ~~and~~ the head of the officer's collective bargaining unit, and a district attorney of competent jurisdiction of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue. Nothing in this section shall prevent the division of standards from notifying any other prosecuting attorney, upon reasonable request, of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue.

1.05 Conduct of Preliminary Inquiries.

~~1.05~~

(1) Collection of Information.

~~(a)~~

(a) The division of standards may, in connection with a preliminary inquiry, obtain or provide pertinent information, including any information regarding grants of immunity, regarding officers, agencies, witnesses, or complainants, from or to law enforcement agencies and other domestic, federal or foreign jurisdictions, including the Federal Bureau of Investigation, and may transmit or receive such information electronically or via other secure methods.

~~(i)~~

(b) To support its own preliminary inquiry the division of standards may request, by writing to the head of the agency, that the agency produce all records relating to its internal investigation of a complaint. The agency shall produce all such records to the division of standards within fifteen (15) days of the division of standards' demand, unless the division of standards allows a longer period of time.

~~(ii)~~

(c) Upon written request by the division of standards, the agency shall make its best efforts to make witnesses available to the division of standards, or if requested by the division of standards, to coordinate its internal investigation with the division of standards' preliminary inquiry.

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~~(iii)~~—

(2) Subpoenas. The division of standards is authorized in the name of the commission to issue subpoenas in the conduct of preliminary inquiries, to compel the attendance of witnesses, to compel the production of documents and records at any place within the commonwealth, to administer oaths, and to require testimony under oath. Subpoenas may be served by commission employees and agents, including contracted investigators. ~~The form of subpoenas shall adhere, in so far as practicable, to the form used in civil cases before the courts, and witnesses shall be summoned in the same manner as witnesses in civil cases before the courts. Any witness summoned may petition the commission to vacate or modify a subpoena issued in its name. After such investigation as the commission considers appropriate, the commission may grant the petition in whole or in part upon a finding that the testimony, or the evidence whose production is required, does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested. The commission shall exercise all legal remedies available to it to enforce any subpoenas issued under this section.~~

~~(b)~~—

~~(e)~~(3) Contractor Investigators. The commission may retain qualified contractor investigators, either directly or pursuant to contracts with private investigative businesses or other qualified entities, to assist the division of standards in conducting preliminary inquiries. Before a contractor investigator can participate in any preliminary inquiry, the investigator shall execute a certification acknowledging: the investigator's full understanding and acceptance of the authority given; the investigator's freedom from conflict of interest, bias, prejudice, or self-interest; applicable confidentiality provisions; and appropriate limits to the investigator's authority.

1.06 Suspension of Certification Pending Preliminary Inquiry; ~~Interim Reports.~~

~~(a)~~(1) If at the time the commission authorizes a preliminary inquiry, or at any time during the course of the preliminary inquiry, the division of standards concludes that the suspension of the officer's certification is warranted pending completion of the preliminary inquiry, the division of standards shall recommend such a suspension to the chair and provide to the chair the evidence supporting that recommendation. If, based on such evidence, the chair agrees with the division of standards' recommendation that the officer's certification be suspended pending completion of the preliminary inquiry, the chair shall place the question of whether to suspend the officer's certification pending completion of the preliminary inquiry on the next available commission agenda, or call a meeting for the purposes of deciding that question.

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~~(b)~~(2) The commission may suspend an officer's certification pending completion of the preliminary inquiry if it determines by a preponderance of the evidence that such suspension is in the best interest of the health, safety, or welfare of the public.

~~(e)~~(3) Any suspension issued by the commission pursuant to this section ~~XXX-555~~ CMR 1.06 shall continue in effect until issuance of the final decision of the commission or until the suspension is revoked by the commission.

1.07 Reports Following Preliminary Inquiries.

~~(0)~~(1) Any preliminary inquiry by the division of standards pursuant to ~~XXX-555~~ CMR 1.05 to ~~XXX-555~~ CMR 1.06 shall be completed within sixty (60) days of the commission's vote to authorize such a preliminary inquiry, or within any such additional time as authorized by the chair. Within ten (10) days of the completion of the preliminary inquiry by the division of standards, the division of standards shall provide the commission with a detailed report on the conclusions and determinations resulting from its preliminary inquiry. The report on the preliminary inquiry shall include, at a minimum:

- (a) a copy of any written complaint that is the basis of the preliminary inquiry;
- (b) a clear statement of all the evidence or allegations considered by the division of standards;
- (c) the material relative to the complaint and evidence or allegations contained therein that were obtained by the division of standards from the agency, and whether any material was withheld, lost or otherwise inaccessible;
- (d) any investigative report issued by the agency;
- (e) a list of witnesses subpoenaed, interviewed, or contacted to testify by the division of standards, and if any witnesses were unavailable or did not appear for interview or to testify, the reasons therefor;
- (f) the facts found by the division of standards to support any recommendations or conclusions of the division of standards as a result of the preliminary inquiry; and
- (g) whether the division of standards recommends a suspension of the officer's certification and the reasons therefor.

~~(1)~~(2) The division of standards' report on its preliminary inquiry, ~~and any interim report,~~ shall remain confidential to the extent permitted by law, including but not limited to the redaction of certain information pursuant to M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definitions of public records, except that the

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executive director may provide the report for use in a criminal proceeding or investigation- to the attorney general, the United States ~~attorney~~Attorney, or a district attorney of competent jurisdiction.

1.08 Suspensions of Certifications Following Arrests, Criminal Charges or Indictments for Felonies, or Following Preliminary Inquiries;~~Administrative Suspensions.~~

~~(0)~~(1) The commission shall immediately suspend the certification of any officer who is arrested, charged or indicted for a felony. A sworn statement by the arresting officer, or a certified copy of the charge or indictment, shall be sufficient evidence for immediate commission action pursuant to this section.

~~(1)~~(2) In addition to issuing suspensions under ~~XXX~~555 CMR 1.08(1), the commission, within thirty (30) days of its receipt of a report of the division of standards following a preliminary inquiry:

- (a) shall immediately vote to suspend the officer's certification if the commission concludes by a preponderance of the evidence that the report on the preliminary inquiry, and any supplemental information provided by the division of standards, reflect that the officer has engaged in conduct that could constitute a felony;
- (b) may suspend the certification of the officer if the commission concludes by a preponderance of evidence that the division of standards' report on the preliminary inquiry, and any supplemental information provided by the division of standards, reflect that an officer has been arrested, charged, or indicted for a misdemeanor that affects the fitness of the officer to serve; or
- (c) may suspend the certification of the officer if the commission concludes by a preponderance of the evidence that the division of standards' report on the preliminary inquiry, and any supplemental information provided by the division of standards, reflect that suspension of the officer is in the best interests of the health, safety, or welfare of the public.

~~(2)~~(3) Any commission decision to suspend the certification of an officer pending or following a preliminary inquiry by the division of standards shall be transmitted immediately to the officer involved, the head of the agency, ~~and~~ the head of the officer's collective bargaining unit, ~~and a district attorney of competent jurisdiction~~ -and shall be effective upon head of the agency's receipt of that decision, or the officer's receipt of that decision, whichever occurs first.
Nothing in this section shall prevent the commission from transmitting to any other prosecuting attorney, upon reasonable request, the commission's decision to suspend the certification of an officer pending or following a preliminary inquiry by the division of standards.

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~~(3)~~(4) Any suspension issued by the commission pursuant to this section ~~XXX-555~~ CMR 1.08 shall continue in effect until issuance of the final decision of the commission or until the suspension is revoked by the commission.

1.09 Single Commissioner Review of Suspensions.

~~(0)~~(1) An officer whose certification is suspended by the commission pursuant to ~~XXX~~ 555 CMR 1.06 or 1.08 may request a hearing before a single commissioner pursuant to M.G.L. c. 6E, §9(d) in accordance with this section ~~XXX-555~~ CMR 1.09.

~~(+)~~(2) All requests for a hearing pursuant to this section ~~XXX-555~~ CMR 1.09 must be filed by the officer or their counsel or other representative with the executive director no later than five (5) days from the date of the officer's notice of the commission's suspension unless the officer is granted an extension of the time to request a hearing. Such a request for an extension of time shall be made in writing to the commission within the same period of five (5) days, and shall include the bases for the request. A request for an extension of time shall be determined by a single commissioner upon review of the request, and shall be granted only upon a demonstration of good cause. The failure to timely request a hearing or an extension of time to request a hearing may result in a waiver of the right to a hearing.

~~(2)~~(3) The request for a hearing shall include:

- (a) The name and contact information of the officer and the commission certification identification number of the officer~~;~~;
- (b) the name and contact information of counsel or other individual representing the officer, if any;
- (c) the agency at which the officer was employed when the complaint was filed and the head of that agency;
- (d) a brief description of the basis for the request for the hearing; and
- (e) a statement regarding whether the officer seeks to invoke or waive the officer's right under M.G.L. c. 6E, § 9(d) to a hearing within fifteen (15) days of the effective date of the suspension.

~~(3)~~(4) The executive director shall, immediately upon a receipt of a request for a hearing under this section ~~XXX-555~~ CMR 1.09: notify the chair of that request; schedule a hearing ~~between~~ not less than five (5) days and not more than fifteen (15) days after the effective date of the suspension if the officer has not waived the right to a hearing in the time frame set forth in M.G.L. c. 6E, § 9(d); and notify the requesting party and the chair of the date thereof. The chair shall, within two (2)

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~~business~~ days after receiving the request for a hearing and the scheduled hearing date from the executive director, assign any single commissioner to conduct the requested hearing.

~~(4)~~(5) The single commissioner assigned to conduct a hearing under this section ~~XXX~~ 555 CMR 1.09 shall be selected pursuant to a policy to be established by the commission.

~~(5)~~(6) Hearings held before a single commissioner pursuant to ~~XXX~~555 CMR 1.09-01 shall be adjudicatory proceedings conducted in accordance with M.G.L. c. 30A, §§ 1, 8 and 10 ~~to and 114, inclusive~~. All hearings shall comply with ~~XXX~~555 CMR 1.05-00, as applicable, and 801 CMR 1.01: *Formal Rules*, except that the provisions of 801 CMR 1.01(1), (2), (6), (11) and (14) shall not apply, and that the following additional rules shall supersede any inconsistent rules provided in 801 CMR 1.01:

(a) Standard of Proof. The single commissioner shall affirm the suspension of the certification of an officer unless the single commissioner determines that, ~~determines by a preponderance of the evidence the officer has demonstrated by a preponderance of the evidence before the single commissioner, which shall include the evidence~~ presented to the commission and additional evidence provided by the officer, ~~that~~ the suspension is not warranted. If the single commissioner so determines ~~that the officer has so demonstrated~~, the single commissioner shall ~~recommend that the commission revoke~~ stay the commission's the suspension of the officer's certification.

(i) The rules of evidence observed by courts shall not apply to hearings held by the single commissioner, but the rules of privilege recognized by law shall be observed.

(ii) Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs. The single commissioner may exclude irrelevant, unreliable, and repetitive evidence.

(b) Discovery. No discovery shall be permitted in connection with a hearing held pursuant to ~~XXX~~555 CMR 1.09 except upon a motion made to the single commissioner at least seven (7) days before such hearing, which motion ~~may~~ shall be granted for good cause shown.

~~(c) Public Access to Hearings. All or portions of an adjudicatory hearing conducted under XXX CMR 109.01 may be closed to the public only where the single commissioner determines that such action is necessary to protect privacy interests and will not be contrary to the public interest.~~

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- (i) Records. The single commissioner shall treat all documents submitted to or created by them as confidential to the extent permitted by law, including by, but not limited to, withholding or redacting such records pursuant to M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definition of public records.
- (ii) Hearings. During the course of an adjudicatory hearing conducted under 555 CMR 1.10, the single commissioner shall make all reasonable efforts to protect the confidentiality of any documents submitted or considered during the course of a hearing, to the extent permitted by law and as described in 555 CMR 1.09(6)(c)(i). A hearing conducted under 555 CMR 1.09 shall be open to the public unless the single commissioner determines that closure is necessary to protect privacy interests and will not be contrary to the public interest.

- ~~(e)~~
- (d) Decisions. Upon completion of the hearing, the single commissioner shall render a written decision as promptly as administratively feasible, in accordance with M.G.L. c. 30A, § 11(8). The written decision of the single commissioner shall be the final decision of that single commissioner. The filing of any appeal of a final decision of the single commissioner shall be to the Superior Court in accordance with M.G.L. c. 30A, § 14.
- (e) Judicial Review. Appeals to the Superior Court shall not stay enforcement of the single commissioner's decision, but by motion to the commission within ten (10) days of the single commissioner's decision, the commission may for good cause lift the stay of the single commissioner shown stay enforcement of the decision pending appeal to the Superior Court, or pending the final decision of the commission pursuant to ~~XXX555~~ CMR 1.10.
- (f) Administrative Record for Judicial Review. Pursuant to M.G.L. c. 30A, § 11(4), all documents, testimony and other evidence offered and accepted into evidence by the single commissioner shall become part of the administrative record. For purposes of judicial review, the record shall include the final decision issued pursuant to ~~XXX555~~ CMR 1.09(~~56~~)(ed). Any evidence offered at the hearing, but not accepted by the single commissioner, will be marked for identification purposes only and be included in the record.

1.10 Final Disciplinary Hearings and Appeals of Certification Decisions.

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- (1) Applicability. The following types of adjudicatory ~~disciplinary~~ hearings shall be held by the full commission, but may, in the chair's discretion, be heard in the first instance by a presiding officer selected pursuant to a policy established by the commission:
- (a) M.G.L. c. 6E, §10(a) hearings regarding mandatory revocation of an officer's certification;
 - (b) M.G.L. c. 6E, § 10(b) hearings regarding discretionary revocation or suspension of an officer's certification; ~~and~~
 - ~~(c)~~ M.G.L. c. 6E, § 10(d) hearings regarding officer retraining; ~~and-~~
 - ~~(e)-(d)~~ Appeals of a decision by the commission declining to certify or recertify a law enforcement officer pursuant to M.G.L. c. 6E, § 4.
- (2) Timing of Revocation or Suspension Hearings.
- (a) The commission shall not institute a revocation or suspension hearing regarding a complaint against an officer until an officer's appointing agency has issued a final disposition regarding a complaint or one year has elapsed since the incident was reported to the commission, whichever is sooner.
 - (b) If the officer notifies the commission that the officer wishes to suspend such hearing pending an appeal or arbitration of the appointing agency's final disposition, the commission shall suspend the hearing. Any such suspension of the hearing shall not exceed one year from the officer's notice to the commission; provided, however, that at any time during which the hearing is so suspended and upon a showing of good cause by the officer, the commission shall further suspend the hearing for a period of not less than six months and not more than the commission determines is reasonable; provided, however, that any delay in instituting a revocation or suspension hearing shall not exceed one year from the officer's request for further suspension.
 - (c) If the officer notifies the commission that the officer wishes to suspend such hearing pending the resolution of criminal charges, including any conviction, the commission shall suspend the hearing; provided, however, that the officer's certification shall be suspended during the pendency of any suspension in the hearing.
- (3) Timing of Appeals from a Decision Declining to Certify or Recertify.

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- (a) An officer whose certification has not been granted or renewed by the commission pursuant to M.G.L. c. 6E, § 4 may request a hearing, which shall be conducted in accordance with section 555 CMR 1.10(5).
- (b) All requests for a hearing pursuant to this section 555 CMR 1.10(3) must be filed by the officer or their counsel or other representative with the executive director no later than thirty (30) days from the date of the commission's decision.
- (c) The request for a hearing shall include:
 - (i) The name and contact information of the officer and the commission certification identification number of the officer,
 - (ii) the name and contact information of the officer's counsel or other representative, if any; and
 - (iii) a brief description of the basis for the request for the hearing.

~~(3)~~(4) Conduct of Hearings. Hearings held pursuant to ~~XXX~~555 CMR 1.10 shall be adjudicatory proceedings conducted in accordance with M.G.L. c. 30A, §§ 1, 8 and 10 to and 14, inclusive. All hearings shall further comply with 801 CMR 1.01: *Formal Rules*, except that the provisions of 801 CMR 1.01(1), (2), (6), (11) and (14) shall not apply and that the following additional rules shall supersede those provided in 801 CMR 1.01: (prescribed by G.L. c 6E, §10(f))

- (a) Public Access.
 - (i) Records. The commission shall treat all documents submitted to or created by the presiding officer or commission as confidential to the extent permitted by law, including by, but not limited to, withholding or redacting such records pursuant to M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definition of public records.
 - ~~(a)~~(ii) to Hearings. During the course of an adjudicatory hearing conducted under 555 CMR 1.10, the presiding officer and commission shall make all reasonable efforts to protect the confidentiality of any documents submitted or considered during the course of an adjudicatory hearing, to the extent permitted by law and as described in 555 CMR 1.10(4)(a)(i). ~~All or portions of a~~ An adjudicatory hearing, conducted under ~~XXX~~555 CMR 1.10, except deliberations by a panel of presiding officers or the commission regarding a decision, shall be may be closed to the public except only where the presiding officer or presiding officers determine that such action ~~closure~~ is necessary to protect privacy interests and will not be contrary to the public interest. All

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deliberations by a panel of presiding officers or the commission regarding a decision following an adjudicatory hearing conducted under ~~XXX555~~ CMR 1.10 shall be closed to the public.

(b) Evidence.

- (i) The rules of evidence observed by courts shall not apply to hearings held under ~~XXX555~~ CMR 1.10, but the rules of privilege recognized by law shall be observed.
- (ii) Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs. The presiding officer may exclude irrelevant, unreliable, and repetitive evidence

(c) Standard of Proof.

- (i) The commission may not order the revocation or suspension of an officer's certification unless the commission finds by clear and convincing evidence that such revocation or suspension is warranted pursuant to M.G.L. c. 6E, §§ 10(a) or 10(b).

~~(ii)~~ The commission may not order the retraining of an officer unless the commission determines, based on substantial evidence, that retraining is warranted pursuant to M.G.L. c. 6E, § 10(d).

~~(ii)~~(iii) The commission may not reverse a prior decision to deny the certification or recertification of an officer unless the commission determines, based on substantial evidence, that certification is warranted pursuant to M.G.L. c. 6E, § 4.

(d) Collection of Information, Subpoenas and Testimony for Use in Hearings.

The commission is authorized to use the same investigatory tools, including the collection of documents, issuance of subpoenas, and requirement for testimony under oath in connection with hearings under this section ~~XXX-555~~ CMR 1.10 as it is permitted to use with respect to preliminary inquiries pursuant to ~~XXX555~~ CMR 1.05(b).

(e) Decisions.

- (i) Upon completion of a hearing held before the full commission, the commission shall render a written decision as promptly as administratively feasible, in accordance with M.G.L. c. 30A, § 11(8). The written decision of the full commission shall be the final decision of the commission. The filing of any appeal of a final decision of the full commission shall be to the Superior Court

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in accordance with M.G.L. c. 30A, § 14. Appeals to the Superior Court shall not stay enforcement of the commission's decision, but by motion to the commission within ten (10) days of the commission's decision, the commission may for good cause shown stay enforcement pending appeal to the Superior Court. A motion for reconsideration before the full commission shall not toll the thirty (30) requirement for the filing of any appeal of a final decision of the full commission to the Superior Court in accordance with M.G.L. c. 30A, § 14.

(ii) Upon completion of a hearing held before a presiding officer other than the full commission, the presiding officer shall render a decision as provided in M.G.L. c. 30A § 11(8). The decision of the presiding officer shall be called an "initial decision."

(1) The presiding officer shall promptly provide the officer, the officer's counsel or other authorized representative, the head of the officer's agency, the head of the officer's collective bargaining unit, and a district attorney of competent jurisdiction -with a copy of the presiding officer's initial decision and file a copy of the same with the commission

(2) Upon receipt of the presiding officer's initial decision, if there is objection by the officer in writing to the executive director regarding the presiding officer's findings and recommendations, the commission shall set dates for submission of briefs and for any further hearing which the commission in its discretion deems necessary. The commission shall review, and may revise, the findings of fact, conclusions of law and recommendation of the presiding officer, giving deference to the presiding officer's evaluation of the credibility of the testimony and other evidence presented at the hearing. Failure by the officer to object to the presiding officer's initial decision within thirty (30) days shall constitute a waiver of the officer's right to appeal under M.G.L. c. 30A, § 14.

(3) The commission may affirm and adopt the initial decision in whole or in part, and it may recommit the matter to the presiding officer for further findings or a revised initial decision as it may direct. The same procedural provisions applicable to the initial filing of the initial decision shall apply to any refiled or revised initial decision after recommitment. If the commission does not affirm and adopt the whole of the initial decision, as originally submitted or

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as revised, it shall provide an adequate reason for rejecting those portions of the initial decision it does not affirm and adopt.

(4) The final written decision of the commission upon review of the initial decision shall be the final decision of the commission. The filing of any appeal of a final decision of the commission shall not stay enforcement of the commission's decision, but by motion to the commission within ten (10) days of the commission's decision, the commission may for good cause shown stay enforcement pending appeal to the Superior Court.

~~(ii)~~(5) The commission ~~fails shall to~~ issue a final decision within one-hundred eighty (180) days (or thirty (30) days in the case of the denial of certification or recertification) of the presiding officer's filing or refiling of the initial decision. In the event that the commission is unable to issue a final decision within the one-hundred eighty (180) or thirty (30) day period, the executive director shall notify all parties.

~~(4)~~(5) Administrative Record for Judicial Review. Pursuant to M.G.L. c. 30A, § 11(4), all documents, testimony, and other evidence offered and accepted into evidence by the presiding officer shall become part of the administrative record. For purposes of judicial review, the record shall include the final decision issued pursuant to ~~XXX555~~ CMR 1.10(2)(e). Any evidence offered at the hearing, but not accepted by the presiding officer, will be marked for identification purposes only and be included in the record.

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CONSTRUCTION; APPLICATION OF RULES; NOTICE**

CONSTRUCTION; APPLICATION OF RULES; NOTICE

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2.02	Definitions
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2.01 General Authority of the Commission Pursuant to M.G.L. c. 6E.

XXX CMR 1.00 and all regulations contained in this title are issued under and pursuant to the authority of M.G.L. c. 6E § 3(a)(28).

2.02 Definitions.

As used in XXX CMR, the following words and phrases shall have the following meaning, unless the context clearly requires otherwise:

“Agency”, a law enforcement agency.

“Appointing agency”, the agency appointing a law enforcement officer.

“Chair”, the chair of the commission.

“Commission”, the Massachusetts Peace Officer Standards and Training Commission established pursuant to M.G.L. c. 6E, §1.

“Commissioner”, a member of the commission.

“Conviction,” an adjudication of a criminal matter resulting in any outcome except wherein the matter is dismissed or the accused is found to be not guilty, including, but not limited, to an adjudication of guilt with or without the imposition of a sentence, a plea of guilty, a plea of nolo contendere, an admission to sufficient facts, a continuance without a finding or probation.

“Division of standards”, the division of police standards established pursuant to M.G.L. c. 6E, §18

“Division of certification”, the division of police certification established pursuant to M.G.L. c. 6E, §4.

“Executive director”, the executive director of the commission appointed pursuant to M.G.L. c. 6E, §2(g).

“Law enforcement agency”, (i) a state, county, municipal or district law enforcement agency, including, but not limited to: a city, town or district police department, the office of environmental law enforcement, the University of Massachusetts police department, the department of the state police, the Massachusetts Port Authority police department, also known

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as the Port of Boston Authority police department, and the Massachusetts Bay Transportation Authority police department; (ii) a sheriff's department in its performance of police duties and functions; or (iii) a public or private college, university or other educational institution or hospital police department.

"Law enforcement officer" or "officer", any officer of an agency, including the head of the agency; a special state police officer appointed pursuant to M.G.L. c. 22C, §§ 58 or 63; a special sheriff appointed pursuant to M.G.L. c. 37, § 4 performing police duties and functions; a deputy sheriff appointed pursuant to section M.G.L. c. 37, § 3 performing police duties and functions; a constable executing an arrest for any reason; or any other special, reserve or intermittent police officer.

"Officer-involved injury or death", any event during which an officer: (i) discharges a firearm, as defined in M.G.L. c. 140, § 121, actually or proximately causing injury or death to another; (ii) discharges any stun gun as defined in said M.G.L. c. 140, § 121, actually or proximately causing injury or death to another; (iii) uses a chokehold, actually or proximately causing injury or death of another; (iv) discharges tear gas or other chemical weapon, actually or proximately causing injury or death of another; (v) discharges rubber pellets from a propulsion device, actually or proximately causing injury or death of another; (vi) deploys a dog, actually or proximately causing injury or death of another; (vii) uses deadly force, actually or proximately causing injury or death of another; (viii) fails to intervene, as required by M.G.L. c. 6E, § 15, to prevent the use of excessive or prohibited force by another officer who actually or proximately causes injury or death of another; or (ix) engages in a physical altercation with a person who sustains serious bodily injury or requests or receives medical care as a result, provided that such medical care relates to an actual condition or injury that is more than de minimis. An injury is more than de minimis where it produces an observable injury or medical condition, the customary medical response to which would include that a person visit an emergency room, or have a doctor or other medical professional attend to, give an opinion regarding, diagnose, and/or provide medical treatment for the injury or condition.

"Presiding Officer," the commissioner, panel of commissioners, or special hearing officer or panel of special hearing officers designated by the chair to conduct an adjudicatory proceeding pursuant to XXX CMR 1.10(1).

"Serious bodily injury", bodily injury that results in: (i) permanent disfigurement; (ii) protracted loss or impairment of a bodily function, limb or organ; or (iii) a substantial risk of death.

"Single commissioner," the commissioner assigned to conduct a hearing pursuant to XXX CMR 1.04.

2.03 Construction.

- (1) Title XXX CMR shall be liberally construed to permit the commission to effectively carry out its statutory functions and to secure a just and expeditious determination of issues properly presented to the commission.

**PEACE OFFICER STANDARDS AND TRAINING COMMISSION
PROPOSED REGULATIONS AT 555 CMR 2.00, *et seq.*
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- (2) Unless otherwise specified, computation of any time period referred to in XXX CMR shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the time period is seven (7) days or less, intervening Saturdays, Sundays, and legal holidays shall be excluded in the computation. When a time period is greater than seven (7) days, each intervening calendar day shall be included in the computation.
- (3) Any act that must be performed “immediately” under a provision of XXX CMR or M.G.L. c. 6E shall be performed as soon as the exercise of reasonable diligence will enable such performance.
- (4) A finding by clear and convincing evidence requires more than a preponderance of the evidence, but less than the proof beyond a reasonable doubt required in criminal cases.
- (5) If any portion of this title XXX CMR or the application thereof to any person or circumstance shall be held to be invalid by a court of competent jurisdiction for any reason, said portion shall be deemed a separate, distinct, and independent provision, and the validity of the other regulations shall not be affected.
- (6) In any instance in which an individual has a conflict precluding that person from exercising their authority under these regulations, their duties shall be exercised by the next most senior supervisor within the Agency, or if there is no such supervisor without a conflict of interest within the Agency, by an individual designated by the most senior disqualified individual’s appointing authority.

2.04 Notices to Public.

- (1) The commission shall maintain a list of individuals or entities that request notice of commission proceedings. Individuals or entities may request notice from the commission by completing a form available on the commission’s website, or by mailing a request for notice with contact information to the commission’s offices.
- (2) Notice shall be provided, in a time and manner to be determined by the commission, to those individuals or entities on the list in advance for:
 - (a) Meetings or hearings of the commission or a subcommittee thereof; and
 - (b) Other events determined by the commission, in its discretion.
- (3) The individual or entity is responsible for ensuring that the information provided to the commission for the purpose of receiving notice remains current.

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CONSTRUCTION; APPLICATION OF RULES; NOTICE

2.01	Authority and Scope
2.02	Definitions
2.03	Construction
2.04	Notices to Public

2.01 General Authority of the Commission Pursuant to M.G.L. c. 6E.

XXX CMR 1.00 and all regulations contained in this title are issued under and pursuant to the authority of M.G.L. c. 6E § 3(a)(28).

2.02 Definitions.

As used in XXX CMR, the following words and phrases shall have the following meaning, unless the context clearly requires otherwise:

“Agency”, a law enforcement agency.

“Appointing agency”, the agency appointing a law enforcement officer.

“Chair”, the chair of the commission.

“Commission”, the Massachusetts Peace Officer Standards and Training Commission established pursuant to M.G.L. c. 6E, §1.

“Commissioner”, a member of the commission.

“Conviction,” an adjudication of a criminal matter resulting in any outcome except wherein the matter is dismissed or the accused is found to be not guilty, including, but not limited, to an adjudication of guilt with or without the imposition of a sentence, a plea of guilty, a plea of nolo contendere, an admission to sufficient facts, a continuance without a finding or probation.

“Division of standards”, the division of police standards established pursuant to M.G.L. c. 6E, §18

“Division of certification”, the division of police certification established pursuant to M.G.L. c. 6E, §4.

“Executive director”, the executive director of the commission appointed pursuant to M.G.L. c. 6E, §2(g).

“Law enforcement agency”, (i) a state, county, municipal or district law enforcement agency, including, but not limited to: a city, town or district police department, the office of environmental law enforcement, the University of Massachusetts police department, the department of the state police, the Massachusetts Port Authority police department, also known

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5.

6.

POST Operating Budget

FY21	Beginning Balance	\$5,000,000	
	Payroll	(\$23,058)	
	Legal Service	(\$72,673)	
	Total Expenditures	(\$95,731)	
FY21	Ending Balance	\$4,904,269	
FY22	Beginning Balance	\$4,904,269	
	Payroll	(\$393,920)	
	Legal/Comms Consult	(\$324,843)	
	InfoTech	(\$423,263)	
	Rent	(\$25,015)	
	Misc	(\$4,916)	
Q1-Q3	Subtotal Expenditures	(\$1,171,957)	
	Payroll	(\$797,277)	
	Legal/Comms Service	(\$162,000)	
	InfoTech	(\$32,847)	
	Rent	(\$37,522)	
	Misc	(\$4,771)	
Q4	Subtotal Expenditures	(\$1,034,417)	
	Total Expenditures	(\$2,206,374)	
FY22	Ending Balance	\$2,697,895	

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	FY21			FY22					
	BUDGET	ACTUAL	BALANCE FORWARD	BUDGET	INCURRED EXPEND Q1-Q3	ACTUAL EXPEND Q1-Q3	BALANCE = BUDGET - INCURRED	ESTIMATED EXPEND Q4	FINAL BALANCE = BALANCE - EST EXP
EMPLOYEE COMPENSATION	3,920,000	22,620	3,897,380	1,150,876	388,772	388,772	762,104	762,104	-
EMPLOYEE EXPENSES	50,000	-	50,000	25,000	167	167	24,833	1,000	23,833
CONTRACT EMPLOYEES	-	-	-	17,308	-	-	17,308	17,308	-
PAYROLL TAX/FRINGE	80,000	438	79,562	23,013	5,148	5,148	17,865	17,865	-
OFFICE SUPPLIES/POSTAGE/SUBSCRIPTIONS	250,000	-	250,000	48,000	3,768	3,768	44,232	1,771	42,461
FACILITY/OPERATIONAL	-	-	-	-	-	-	-	-	-
OFFICE SPACE LEASE	400,000	-	400,000	132,000	25,015	-	106,985	37,522	69,463
CONSULTANTS/LEGAL SERVICES	200,000	72,673	127,327	729,039	324,843	252,039	404,196	162,000	242,196
TEMP SERVICES	-	-	-	-	-	-	-	-	-
OFFICE FURNITURE/FIXTURES/EQUIPMENT	50,000	-	50,000	48,000	981	981	47,019	2,000	45,019
OFFICE EQUIPMENT LEASE	-	-	-	-	-	-	-	-	-
OFFICE MAINTENANCE/REPAIRS	50,000	-	50,000	-	-	-	-	-	-
INFORMATION TECHNOLOGY	-	-	-	1,100,000	423,263	7,543	676,737	32,847	643,890
RESERVES	-	-	-	1,631,033	-	-	1,631,033	-	1,631,033
Grand Total :	5,000,000	95,731	4,904,269	4,904,269	1,171,957	658,418	3,732,312	1,034,417	2,697,895