



## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

### UPDATED

#### CHAIR

Margaret R. Hinkle

#### COMMISSIONERS

Hanya H. Bluestone

Lawrence Calderone

Clementina Chéry

Larry E. Ellison

Marsha V. Kazarosian

Charlene D. Luma

Kimberly P. West

Michael Wynn

#### EXECUTIVE DIRECTOR

Enrique A. Zuniga

August 7, 2023

In accordance with [Sections 18-25 of Chapter 30A of the Massachusetts General Laws](#), and [Chapter 20 of the Acts of 2021](#), as amended by [Chapter 22 of the Acts of 2022](#), by [Chapter 107 of the Acts of 2022](#), and by [Chapter 2 of the Acts of 2023](#), notice is hereby given of a meeting of the Peace Officer Standards and Training Commission. The meeting will take place as noted below.

### NOTICE OF MEETING AND AGENDA

**Public Meeting #40**

**August 10, 2023**

**8:30 a.m.**

**Remote Participation via [Zoom](#)**

**Meeting ID: 93251447723**

- 1) Call to Order
- 2) Approval of minutes
  - a. July 12, 2023
- 3) Executive Director Report – Enrique Zuniga
  - a. Certification Update
  - b. Disciplinary Records Update
  - c. Administrative Update
- 4) LEA Portal User Survey Results – CTO Owen Mael
- 5) Law Enforcement Officer Credential Discussion
- 6) Legal Update – General Counsel Randall Ravitz
  - a. Guidance to Constables and other Law Enforcement Personnel
  - b. Guidance on Complaints Reportable to POST
  - c. Workplace Safety Policy

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

- 7) Matters not anticipated by the Chair at the time of posting
- 8) Executive Session in accordance with the following:
  - M.G.L. c. 30A, § 21(a)(5), in anticipation of discussion regarding the investigation of charges of criminal misconduct;
  - M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 6E, § 8(c)(2), and to the extent they may be applicable, M.G.L. c. 6, §§ 168 and 178, in anticipation of discussion regarding the initiation of preliminary inquiries and initial staff review related to the same, and regarding certain criminal offender record information; and
  - M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 30A, §§ 22(f) and (g), in anticipation of discussion and approval of the minutes of prior Executive Sessions.
- a. Division of Standards request for approval to conduct Preliminary Inquiries in the following cases:
  - i) PI-2023-08-10-001
  - ii) PI-2023-08-10-002
  - iii) PI-2023-08-10-003
- b. Approval of commencement of revocation proceedings for the following cases:
  - i) PI-2023-03-16-002
  - ii) PI-2023-04-13-006
  - iii) PI-2023-04-13-013
- c. Approval to close preliminary inquiry & petition to revoke mandatory suspension
  - i) PI-2023-05-11-006
- d. Approval to close preliminary inquiry
  - i) PI-2023-04-13-001
- e. Approval of the minutes of the Executive Session of 7/12/23

2a.



## Massachusetts POST Commission

100 Cambridge Street, 14th Floor, Boston, MA 02114

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### MASSACHUSETTS PEACE OFFICER STANDARDS AND TRAINING COMMISSION PUBLIC MEETING MINUTES

**July 12, 2023**

**8:30 a.m.**

**Remote Participation**

#### **Documents Distributed in Advance of Meeting**

- Minutes of Public Meeting of June 15, 2023 (Proposed)
- Executive Director Report, dated July 12, 2023
- Memorandum from Executive Director, dated July 5, 2023, re: Process for Publishing Executive Director Review Decisions and Additional Release of Certification Information
- Regulatory Action and Advisory Opinions, 555 CMR 11.00 (Proposed)
- Initial Certification of Officers; and Renewed Certification of Independently Applying Officers, 555 CMR 9.00 (Proposed)

#### **In Attendance**

- Commission Chair Margaret R. Hinkle
- Commissioner Hanya H. Bluestone
- Commissioner Lawrence Calderone
- Commissioner Clementina M. Chéry
- Commissioner Larry Ellison
- Commissioner Marsha V. Kazarosian
- Commissioner Charlene D. Luma

#### **1. Call to Order**

- At 8:32 a.m., Chair Hinkle recognized a quorum. She called the meeting to order.

#### **2. Approval of Minutes**

- Commissioner Kazarosian moved to approve the minutes of the June 15, 2023, meeting.
- Commissioner Ellison seconded the motion.
- Chair Hinkle took a roll call vote, and the Commissioners voted as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chéry – Yes
  - Commissioner Ellison – Yes
  - Commissioner Kazarosian – Yes

- Commissioner Luma – Yes
  - Chair Hinkle – Yes
  - The Commissioners unanimously approved the minutes of June 15, 2023.
- 3. Executive Director Report – Executive Director Enrique A. Zuniga**
- a. Certification Update**
- The Executive Director reported as follows:
    - The most recent phase of the recertification of officers with last names I through P was successful.
    - June 30 was the deadline for submission of recertification information for those officers.
    - The new law enforcement agency (“LEA”) portal worked very well, and the review process is ongoing.
    - POST is working with agencies via the new portal and mechanisms to interact with agencies on complaints.
    - There are 921 portal-authorized users, and approximately 696 users are interacting with POST on a regular basis.
    - POST is on track to certify most officers submitted.
    - Development of a permanent solution began in August 2022, when recertification of officers with last names A through H concluded.
    - The LEA portal deployed on May 22, 2023, which was a major milestone, with a coordinated effort to streamline the recertification process.
    - POST engaged in efforts to communicate and train on the LEA portal, which included 17 office hours of training sessions, training materials, and videos available on the portal.
    - POST’s social media posts are reaching an audience of 7,500 individual accounts.
    - POST has continuous communication with LEAs, authorized users, and heads of agencies, and has received mostly positive feedback. The technology vendor continues to be engaged and work on improving the user experience.
  - Preliminary recertification figures are included on the table below:

<b>Recertification Information I-P</b>	<b>Expected</b>	<b>Actual*</b>	<b>Difference</b>
Agencies submitting information prior to deadline	441	381	60
Agencies that requested extension	N/A	8	8
Officers’ information submitted for recertification	6,405	5,609	797
Officers from agencies with extension		240	
Officers whose information is pending	557**		557**

\*Actuals are as of Friday July 7, 2023.

\*\*May include non-sworn individuals (actual number may be lower).

- The following outlines the recertification of officers with last names I through P and the work ahead for POST:

- The Certification team is reaching out to agencies who have not submitted information to confirm that no submission is needed and is cleaning up the database.
- There is an algorithm in the technology platform that calculates provisional certification results based on the answers provided by the officers.
- The POST Certification team is conducting audits and cross-referencing information with the Municipal Police Training Committee (“MPTC”) before issuing certification notices to verify the names of the individuals.
- The review process is taking place during July, and notices are expected to be sent beginning in August.
- The rosters also include individuals who may be retired or have not completed training.
- Through the notification process, POST seeks to minimize the number of correction letters being sent to officers.
- The following are provisional recertification results, because the review is ongoing:

<b>Officers with the Last Name I-P</b>	<b>Preliminary Figures</b>	<b>%</b>
Slated to be certified	5,269	82.3%
Slated to be conditionally certified	272	4.2%
Requiring further review*	68*	1.1%
Subtotal	5,609	
Estimate pending submission**	797**	12.4%
Estimate total	6,406	100%

\*Includes individuals who may be out on excused leave.

\*\*Includes individuals whose agency requested an extension.

- The majority of individuals are in compliance with the certification standards.
- Commissioner Ellison asked Executive Director Zuniga if the email process was working for the individuals who were mentioned in the last meeting.
- Executive Director Zuniga responded yes, everyone that has submitted information in the portal has successfully chosen to enter a physical mailing address or an email address, with the majority of individuals submitting email addresses.
- Commissioner Ellison inquired whether the pending officers were in the larger departments.
- Executive Director Zuniga responded that it is from the smaller departments, with five or six people, and their rosters include officers who are not necessarily sworn or may be retired. Those departments might not have anyone to submit, and the Commission is currently reaching out to those agencies.
- Commissioner Ellison asked if there was a time limit for these agencies to respond.
- Executive Director Zuniga responded that there are eight agencies that submitted a request for an extension, with 240 individuals, and they have 30 days to respond.
- b. Dissemination of Information Update**
- POST will begin publishing and uploading to the website information involving previous decisions issued by the Executive Director in favor of officers.
- If the Division of Certification declines to issue a certification, an officer can seek review by the Executive Director. The Executive Director issues a written decision in the first

instance. An adverse decision of the Executive Director is reviewable by the Commission.

- The Executive Director has issued several decisions in favor of officers, which will be uploaded to the POST website.
- Some aspects of these decisions may contain information that is redactable.
- The approach to redact confidential information from the decisions will include asking the officer and/or the officer's representative to propose redactions; review of those proposed redactions by the General Counsel team; review by the Secretary of the Commission, if there is a dispute; and review of any policy issues remaining by the Commission.
- The General Counsel proposed this process based on the fact that other state agencies use this approach to redactions and will decide how to apply 555 CMR 8.00.
- The memorandum in the Commission's packet describes the proposed approach.
- Commissioner Ellison inquired if the officer has the right to appeal if they feel the decision is not appropriate and if there is something available for the appointing authority if they feel the decision was not appropriate.
- Executive Director Zuniga responded that there was one instance when the head of an agency asked for reconsideration of the Executive Director's decision. The matter went to the Division of Standards ("DOS") for DOS to gather additional information and decide if opening a preliminary inquiry was necessary.
- Commissioner Ellison inquired if that would need review by the Commissioners.
- Executive Director Zuniga responded that, in certain cases, after a couple of internal steps, the decision would need a Commission review.
- Commissioner Bluestone asked how an individual would request a redaction and how they would know that they have the right to redact the record, if they are not represented by counsel.
- Executive Director Zuniga responded that the Commission would send notification to the representative or the officer to inform them that the Commission will make the records public, and the record is subject to certain redactions.
- Commissioner Bluestone suggested that the officer be informed of the right to consult with an attorney about the redactions and asked how the Commission may review the redacted information and the request to have the information redacted.
- Executive Director Zuniga stated that, if the General Counsel's office disagrees with the level of reduction, then the matter can be taken to the Secretary of the Commission who is tasked with addressing matters regarding public records.
- Commissioner Bluestone inquired if there would be an option for a review by the Commission if the officer questioned that decision.
- Executive Director Zuniga responded that they could bring the decision back to the Commission for reconsideration. Commissioner Bluestone asked for that to be an option for these appeals.
- To date, POST has not published conditionally certified individuals.
- POST proposes to publish the certification status of these individuals if certain parameters have been met:
  - The Division of Certification has confirmed the officer has received notice.
  - The officer is not challenging the decision.

- At least 21 days have passed since notice (in accordance with 555 CMR 7.10(1)(a)).
  - This period may be longer (for example, 6 months), as established by a Commission policy.
- Commissioner Luma asked if these are officers who have not completed training or may be on leave.
- Executive Director Zuniga responded that these are officers who have not completed the work requirement of the Bridge Academy. He noted the Commission does not publish the condition and only publishes the status of conditionally certified.
- The Commission would provide the officer or their representative the opportunity to propose redactions. The legal department would look over the record, and if they disagreed with the redactions, they would bring the record to the Secretary.
- Chair Hinkle confirmed this would be subject to Commissioner Bluestone's suggestion.
- Chair Hinkle took a roll call vote:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chéry – Yes
  - Commissioner Ellison – Yes
  - Commissioner Kazarosian – Yes
  - Commissioner Luma – Yes
  - Chair Hinkle – Yes
  - The Commissioners unanimously approved the approach for implementing redactions.
- Executive Director Zuniga asked the Commissioners to vote on when POST could disclose or publish conditionally certified officers after some period has passed for the officer to have an opportunity to challenge the decision and within a timeframe the Commission is comfortable with.
- Commissioner Ellison asked for 30 days, so it is not open to interpretation.
- Commissioner Bluestone asked whether officers know they have the right to challenge decisions from POST.
- Executive Director Enrique stated that every notice sent by POST, with the exception of a notice of full certification, stipulates that the record can be challenged.
- Chair Hinkle called for a vote on the terms presented by the Executive Director regarding the conditionally certified individuals, with the 30-day modification by Commissioner Ellison.
- Chair Hinkle took a roll call vote:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chéry – Yes
  - Commissioner Ellison – Yes
  - Commissioner Kazarosian – Yes
  - Commissioner Luma – Yes
  - Chair Hinkle – Yes
  - The Commissioners unanimously approved the disclosure of conditionally certified officers.



### Dissemination of Information Update - continuation

- POST is working on publishing streamlined and comprehensive versions of certification reports and releasing a database with all officers that are certified, *conditionally certified*, not certified, or under review (as one report).
- The reports will be by last name and by agency.
- There will be an additional database to include disciplinary records reports.
- These records on the POST website will be the legitimate source of officer certification and disciplinary information and will be updated on an ongoing basis.

#### c. Administrative Update – Executive Director Zuniga

- Executive Director Zuniga provided a hiring update and welcomed recent new hires: Matt Wardle and Beth Wolfson, Compliance Agents with DOS; Bob Wong, Budget & Finance Operations Manager; and three Legal Interns, Ben Alpert, Jason Lee, and Nick Santiago.
- POST will be onboarding a third Enforcement Counsel at the end of July; finished interviews for two Data Analysts (for both Certification and IT positions); is interviewing two additional positions for Data Analyst (for both Certification and IT positions); posted jobs for a second Intake Coordinator and fourth Enforcement Counsel; and there will be postings with job descriptions for two additional legal staff members.
- POST will move to its new offices and permanent headquarters in downtown Boston in late August. The location has additional space, suitable to its size and needs, including space to conduct public meetings and hearings.
- Commissioner Ellison inquired if the budget for POST Fiscal Year 2024 has been approved.
- Executive Director Zuniga stated he has a high comfort level with the House and Senate versions being identical and not subject to reconciliation. The Governor has not yet signed the final version, but that step is imminent.
- Commissioner Bluestone stated it took a tremendous amount of work to get the certification status to the point where the data is reliable enough to publish and expressed her gratitude.
- Chair Hinkle echoed Commissioner Bluestone's comments.

#### 4. Division of Standards Update - Director of Standards Matthew P. Landry

- Director Landry discussed the complaint caseload for Fiscal Year 2023 and work over the last few months relating to citizens' complaints and preliminary inquiries through the Commission's website and email.
- He presented the following information:

Complaints & Incident Reports	Number*
Complaints submitted directly to POST (since 5/1)	162
Complaints, notices, and reports submitted from law enforcement agencies to POST	974

\*FY23 numbers are preliminary; deduplication is necessary for a more precise number.

- The Division of Standards receives approximately 15-20 new public complaints weekly.
- Most calls/complaints require initial referral to a law enforcement agency for the agency to provide information on the complaint, and DOS engages in follow up.
- Agencies submit approximately 25 notices/reports weekly for review of civilian

complaints; overall POST received 974, which included complaints filed directly with the agency and agency-led internal affairs reports regarding the intent to commence an investigation and status updates.

- The DOS team is expanding to support the statutory mandate and will add two new compliance agents, which will double DOS’s capacity, and intake coordination managers to provide initial triage.
- Director Landry outlined the current caseload, as of July 5, 2023, as set forth below:

<b>Division of Standards Cases</b>	<b>Count*</b>	<b>Notes</b>
Suspensions (Active)	35	Published on website. Updated beginning of each month
Preliminary Inquiries (Active)	38	+6 additional PIs on today’s Executive Session agenda
Preliminary Inquiries concluded with recommendation of discipline per M.G.L. c. 6E, § 10	14	Included 4 PI reports to be presented at today’s Executive Session

- Director Landry noted the confidentiality of “[a]ll proceedings and records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry....” M.G.L. c. 6E, § 8. He further noted that, pursuant to 555 CMR 1.06, the certification of an officer may be suspended during the course of a preliminary inquiry.
- He reported that 35 officers have had their certification suspended for a arrest or charge for a felony offense; DOS opened preliminary inquiries on 38 officers, and would be requesting to open six more inquiries in Executive Session.
- Director Landry stated that DOS has recommended that discipline be imposed in 14 matters, which are proceeding at various stages of the adjudicatory hearing process.
- Commissioner Ellison stated the reporting from police agencies seems to be working in the way designed and DOS is getting the reports in a timely manner.
- Director Landry responded that it has been working, and he believes it will work better with the launch of the LEA portal, which would include a system for the assignment of data fields and the ability to track deadlines in a more systematic way.
- Commissioner Ellison asked how long it takes to respond to a complainant about the status of their complaint.
- Director Landry stated that the response time varies for each complaint; and DOS contacts the agency and see what they have done, vets that information, and then responds to advise each complainant of the action to be taken.
- Commissioner Ellison asked Director Landry if the complainant receives an acknowledgment about the complaint being received.
- Director Landry responded that, when the complaint comes in through the POST website, there is an email confirmation with a tracking number.

### **Executive Director Update**

- Executive Director Zuniga provided an update on recently received information that several student officers in two Municipal Police Training Committee (“MPTC”) Academies compromised the integrity of the testing procedures and the testing materials, in violation of the MPTC Honor Code and Academy policies and possibly engaged in prohibited conduct under Chapter 6E.

- He stated that the MPTC began an initial investigation and found that four student officers had violated the policy and/or the Honor Code; the MPTC has taken steps to discipline those student officers, including through possible dismissal from the Academy; and the MPTC is retaining an independent investigator to conduct a comprehensive review of the matter.
- He stated that, if DOS finds sufficient credible evidence that an officer engaged in prohibited conduct, DOS may come to the Commission for approval to open a preliminary inquiry and this step is confidential. He added that passing the exam is a requirement for certification and, pursuant to Chapter 6E, § 10, if the certification of an officer is obtained through misrepresentation or fraud or an officer falsifies a document to obtain certification, it is prohibited conduct under the statute and therefore may result in the revocation of certification.
- Commissioner Ellison inquired if the MPTC will be sending a follow-up regarding this matter.
- Executive Director Zuniga stated that the MPTC is in the process of engaging an outside investigator to do a comprehensive review and thus far they only have evidence of four student officers who have been disciplined.
- Commissioner Ellison asked about the current status and whether the discipline included the students' being temporarily suspended from the class, adding that this is something that seemed to rise to the level of possible termination at some point.
- Executive Director Zuniga stated that he cannot share more details, other than that there were different levels of discipline because there were different levels of cooperation.
- Commissioner Bluestone stated she is curious about the lines of oversight or authority and inquired if the Commission would do a preliminary inquiry or if these student officers are excluded by virtue of not yet being certified as officers.
- Executive Director Zuniga responded that he does not have the information to determine if these student officers are under POST purview or under the MPTC, but that is part of the investigation in addition to determining if there are other people involved.
- Commissioner Bluestone stated that, given that the allegations have to do with officers in training and there is an independent investigation, POST, as a separate agency, may want to consider its role in the event there are any conflicts of interest or systemic issues.
- Executive Director Zuniga stated that he will consider Commissioner Bluestone's suggestion and consult with the Legal Division and DOS to make sure the investigation is not compromised, and the integrity is preserved, and POST will have subpoena power.

## **5. Legal Update – General Counsel Randall E. Ravitz**

### **a. Proposed Regulations 555 CMR 11.00 - Regulatory Action & Advisory Opinions**

- General Counsel Ravitz stated that these regulations, previously approved by the Commission, would satisfy the statutory requirement to promulgate regulations concerning petitions from members of the public for regulatory action by the agency and would prescribe procedures for the exercise of the statutory power to issue an "advisory ruling."
  - They address matters such as:
    - Procedures for hearings on regulations;
    - The approval and publication of advisory opinions;
    - The effect of such opinions;

- Revision of both types of documents; and
  - Associated administrative steps.
- General Counsel Ravitz informed the Commission that no feedback was received regarding these regulations at the June 6 public hearing or through written comments.
- He stated that the regulations were being resubmitted to the Commission without change, and he requested that they be approved for final promulgation.
- Commissioners had no questions.
- Chair Hinkle took a roll call vote:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chéry – Yes
  - Commissioner Ellison – Yes
  - Commissioner Kazarosian – Yes
  - Commissioner Luma – Yes
  - Chair Hinkle – Yes
  - The Commissioners unanimously approved the promulgation of 555 CMR 11.00.
- b. Revisions to Proposed Regulations 555 CMR 9.00 – Initial Certification of Officers & Renewed Certification of Independently Applying Officers**
  - General Counsel Ravitz stated that the version previously approved by the Commission covered initial certification of all officers and recertification of independently applying (or self-sponsored) officers, including constables.
  - He stated that the aspects specific to constables have been removed, but he nevertheless provided a recap of the aspects that were applicable to constables to clear up any misunderstanding, as follows:
    - If a constable executes an arrest or obtains certification, the person becomes subject to regulation like other officers;
    - One who is subject to regulation can only execute arrests or otherwise perform police duties and functions with a certification that allows for it;
    - The execution of an arrest without certification would simultaneously subject the individual to the regulatory scheme and place them in violation of it;
    - A regulated constable would be subject to supervision comparable to that provided to officers in law enforcement agencies;
    - A constable is not subject to regulation if the constable did not execute arrests or obtain certification; and
    - Constables are not precluded or subject to regulation for the mere service of papers, without more.
  - At the June 6 public hearing and through written comments, the Commission received feedback only as to the impact that the regulations would have on constables.
  - There was no feedback about the general processes for initial certification and recertification of self-sponsored individuals—individuals other than constables.
  - Taking into account the public feedback, General Counsel Ravitz stated the regulations have been resubmitted to the Commission with redlined changes, and it is requested that they be approved for final promulgation.
  - General Counsel Ravitz stated that, since the public hearing, the provisions specific to constables were removed; the certification of constables, and issues regarding their powers, duties, limitations, and supervision will continue to be worked on and discussed;

and the remaining provisions regarding initial and self-sponsored certifications generally remain intact.

- They now provide that a certification awarded pursuant to these regulations can be used only for service in a law enforcement agency where there will be supervision.
- At the same time, the regulations regroup certain concepts regarding arrests and the performance of police duties and functions.
- And they make clear that those concepts apply to all officers, whether they serve in law enforcement agencies or are constables serving independently.
- General Counsel Ravitz discussed those reconfigured provisions.
  - Revised 9.10(5)(a) now provides that a conditionally recertified officer can continue serving without being required to satisfy any conditions when the officer still has the ability to challenge them, provided the officer is serving in a law enforcement agency.
  - Revised 9.13(2) now provides that a new certification period does not start before the applicant begins serving in a law enforcement agency.
  - New 9.13(7) provides for a certification awarded under these regulations to be active only during an individual's service in a law enforcement agency.
- Commissioner Ellison stated that it seems the constables were looking for a carve-out of police powers without having to go through the training for police authority. He asked how it would be possible to have an exception for constables to perform their duties with arrest powers.
- Counsel Ravitz responded that these regulations are now structured so that a constable could seek enrollment in an Academy and satisfy the requirements in order to get certified. They could only use a certification under these regulations to work in a law enforcement agency and could not use it to work as a constable because the issues regarding supervision and oversight have not been addressed.
- Commissioner Ellison asked if a constable who falls within A through H and has been certified has police powers.
- Counsel Ravitz responded if an individual were in the A-H group they would have been automatically certified if they satisfied the requirements in the session law, which included completion of basic training, and they could execute arrests. These regulations would provide that, if somebody is not certified but they are executing arrests, then they are bringing themselves within the scope of Chapter 6E because they are a constable performing an arrest and yet at the same time they would be violating these regulations because they are executing an arrest without being certified.
- Commissioner Bluestone stated that, based on the commentary from the open meeting, a lot of constables do not initiate arrests and yet it is a power they can access in an emergency situation. Now they could find themselves in a situation where they needed to initiate an arrest and would then be in violation of the policy. She inquired if there should be a temporary status to give the constables time and not potentially compromise their ability to respond to a situation.
- General Counsel Ravitz responded that something could be developed, but this was written on the idea that, if somebody has not received all the training afforded to law enforcement officers and has not satisfied all the criteria, they should not be exercising arrests or exercising police duties and functions. They would be performing like a civilian working for a law enforcement agency.

- General Counsel Ravitz stated that, pursuant to 555 CMR 9.03(2), certain individuals may not execute any type of arrest, as that term is defined in the regulations, or otherwise perform police duties and functions.
  - The first category is an individual who is serving as a law enforcement officer—any type of law enforcement officer as defined in the statute.
  - Constables executing an arrest come within scope for purposes of Chapter 6E. They cannot execute an arrest or perform police duties and functions if they are not certified.
- Outside Counsel Lon Povich agreed with General Counsel Ravitz, and he stated that this issue with constables has been before the Commission since the very beginning, and the issue derives from the statute because it includes constables who execute arrests.
- Attorney Povich stated that he and Executive Director Zuniga met with constables several years ago on the issue. He also stated that the definition of law enforcement officer does include constables who execute arrests and that makes sense because they are exercising police powers and the Legislature decided when it passed the statute that created the Commission that constables who execute arrests should be trained, treated, and certified just like a typical law enforcement officer. He stated the dissatisfaction that constables continue to have derives from the statutory language that was passed by the Legislature and agrees with General Counsel Ravitz' s presentation on the changes and efforts that have been made to develop regulations that seek to follow the statute and are acceptable to the folks who advocate on behalf of constables.
- Executive Director Zuniga confirmed that no constable has been certified as part of the process for officers A-H.
- Commissioner Ellison asked how constables are different from special police who have lost their arrest powers because they were not properly trained and still operate as special police.
- General Counsel Ravitz responded that, if the constable wants the ability to execute arrests as part of their activity, that would move them from one category to another. That is similar to civilian employees of a law enforcement agency, as they too would be expected to satisfy all the requirements of certification for being an officer.
- Commissioner Ellison asked whether, if a constable made an arrest today, that would be a valid arrest and whether it would come to POST for review.
- General Counsel Ravitz responded, if a constable made an arrest today and they were not certified under Chapter 6E, that constable would be within the scope of the statutory scheme, would be an officer for purposes of the statute, would be uncertified, and would have violated the Commission's regulations when they made an arrest.
- Commissioner Bluestone stated that initially officers were essentially grandfathered in as certified during the period that the procedures for certification were being developed. She said the scenario Commissioner Ellison described was concerning to her because the constable could be in a position of needing to execute an arrest and they would be in violation of policy. She inquired if this is something the Commission should consider in light of the fact that the constables have not had the opportunity to pursue a certification. She added that, based on the June 6th meeting, some constables said they were elected and that they did not fall under the standards.
- Commissioner Ellison responded that, at the June 6th meeting, there was some confusion with respect to the constables that were elected and not appointed.

- Commissioner Kazarosian expressed concern about a constable making an arrest if they are not certified to act as law enforcement and how that would impact the legitimacy of the arrest. Also, she is not sure why the Commission would be carving out something for constables who have the same opportunities as any other person seeking to act as a law enforcement officer and stated that to do so could become problematic.
- Chair Hinkle asked General Counsel Ravitz what he was expecting would be done at the meeting, with respect to the draft.
- General Counsel Ravitz asked the Commission to vote on this set of regulations, which provides for a recent Academy graduate to obtain initial certification, and a path for certification for an individual who either is working in a law enforcement agency or is planning to work in a law enforcement agency and is seeking recertification but for whatever reason is not endorsed by an agency and wants to pursue certification on their own.
- Chair Hinkle took a roll call vote:
  - Commissioner Bluestone – No
  - Commissioner Calderone – Yes
  - Commissioner Chéry – Yes
  - Commissioner Ellison – Yes
  - Commissioner Kazarosian – Yes
  - Commissioner Luma – Yes
  - Chair Hinkle – Yes
  - The Commissioners approved the regulations.
- General Counsel Ravitz stated he could provide a recap of guidance for constables now that this regulation has been approved or he could put it into a separate document and make it available.
- Chair Hinkle stated that, given the nature of this discussion, it would be useful to have a document.
- Commissioner Luma agreed and stated that in the last meeting it was mentioned that there was a request by the Massachusetts Association of Constables to be consulted regarding these regulations; she inquired if that has happened.
- General Counsel Ravitz responded that it has been happening over time and, for this latest round of revisions, POST did not engage in another round of consultation because these are designed to put aside the issues regarding constables. The legal team looks forward to talking with them further.
- Commissioner Bluestone expressed her concern regarding constables who have not been afforded potentially ample time to make a decision about how to proceed. She stated that if they go forward with certification, they will need to fall under the purview of a law enforcement agency, which is one of the issues they expressed concern about given their independence.

#### **6. Matters Not Anticipated by the Chair at the Time of Posting**

- There were no matters not anticipated by Chair Hinkle at the time of posting.
- Chair Hinkle asked for a motion to enter Executive Session in accordance with:
  - M.G.L. c. 30A, § 21(a)(5), in anticipation of discussion regarding the investigation of charges of criminal misconduct;
  - M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 6E, § 8(c)(2), and to the extent they may be applicable, M.G.L. c. 6, §§ 168 and 178, in anticipation of

discussion regarding the initiation of preliminary inquiries and initial staff review related to the same, and regarding certain criminal offender record information; and

- M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 30A, §§ 22(f) and (g), in anticipation of discussion and approval of the minutes of prior Executive Sessions.
- She stated that the Commission would not be coming back to the open meeting.
- Commissioner Kazarosian moved to go into Executive Session.
- Commissioner Ellison seconded the motion.
- Chair Hinkle took a roll call vote, and the Commissioners voted as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chéry – Yes
  - Commissioner Ellison – Yes
  - Commissioner Kazarosian – Yes
  - Commissioner Luma – Yes
  - Chair Hinkle – Yes
- The Commissioners unanimously approved the Chair’s request to enter into Executive Session.
- Chair Hinkle announced to members of the public that the open session would not reconvene after the Executive Session.
- Chair Hinkle concluded the open meeting.
- At 10:02 a.m., the public meeting was adjourned.



3.



# Executive Director Report

August 10, 2023



# Agenda

1. Certification Update
2. Disciplinary Records Update
3. Administrative Update

# 1. Certification Update

---



## The Division of Certification Continues Processing Certification of Officers I-P

- Information is being corroborated for compliance with requirements
- Certification team audits, cross references with MPTC and other information before issuing certification notices
- Data sharing with MPTC in real time
- Review process is being finalized. Notices are expected to be sent in mid August

# 1. Certification Update



## Updated Recertification Figures

Recertification Information I – P	July 7	August 4
Agencies submitted information	381	438
Agencies on extension	8	0
Agencies pending submission *	60	2
Officers' information submitted for recertification	5,609	5,665
Officers whose information may be pending **	557	51

\* Some agencies had no officers I – P to submit and division of certification is corroborating.

\*\* These individuals may not be sworn or in scope officers

# 1. Certification Update



## Provisional Recertification Results

Officers with Last Name I – P	Preliminary (July 7)	Preliminary (Aug 4)	%
Slated to be certified	5,269	5,361	94.6 %
Slated to be conditionally certified	272	229	4 %
Not Certified		15	0.3 %
Not Certified – On Leave		49	0.9 %
Requiring further review *	68 *	11	0.2 %
Subtotal	5,609	5,665	100 %
Estimate pending submission **	797 **	51	

\* Includes individuals who may be out on excused leave

\*\* Includes individuals whose agency requested an extension

## 2. Disciplinary Records Update

---



POST has finalized collection and review of disciplinary records

- Two formats will be available on the website
  - Sample included in packet
  - CSV format (table)
- Historical data comes from agencies, aggregated and validated by POST
- Process for correcting data will be through agencies (not individual officers)
- Data as of January 31, 2023

# 3. Administrative Update

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## Hiring Update

- Welcome Recent Hires:
  - Amy Parker – Enforcement Counsel
  - Richard Wanjue – Data Analyst (Certification)
  - Jessica Rush – Senior Certification Specialist & Data Analyst
- On-boarding Intake Coordinator #2 (end of August)
- Interviews for Enforcement Counsel #4
- 2 additional legal staff – posting job descriptions





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Massachusetts Peace Officer Standards & Training  
POSTC-comments@mass.gov  
[www.mass.gov/orgs/post-commission](http://www.mass.gov/orgs/post-commission)  
617-701-8401

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4.

# LEA Portal Implementation Survey

## Meet the Team



**Owen Mael**  
Chief Technology Officer



**Enrique Zuniga**  
Executive Director



**Lindsey Bergin**  
Change Management



**Tom Cahill**  
Change Management



**Albert Fung**  
Business Analyst



**Sebastian Giuliano**  
Salesforce Administrator



**Mike Sarette**  
Account Lead



**Kayla Capuano**  
Project Manager



**Tricia O'Neill**  
Project Manager



**Mike Snively**  
Business Architect



**Cormac Malley**  
Quality Analyst



**Will Giacometti**  
Salesforce Developer



**Bharath Hegde**  
Salesforce Developer



**Yiling Zhang**  
Salesforce SME

# LEA Portal Implementation Survey

## Introduction

### Portal Overview

#### Problem Statement:

A need to digitize collecting and reviewing complaints and tracking certifications with an opportunity to enable efficiencies through automation and increased visibility.

#### Solution - The LEA Portal

Provides a centralized self-service portal for LEA users to:

- Submit Recertification Applications for their agency
- Track the lifecycle of office recertification application
- Submit, track, and update complaints throughout the investigation process – **Work in Progress**
- Upload and view documentation associated with officer complaints – **Work in Progress**

### Survey Introduction

#### Purpose:

Collect feedback on LEA experiences during the LEA Portal implementation to inform how POST can best support LEAs going forward.

#### Scope:

The survey covered the following topics:

Demographics

LEA Portal + Change Readiness

Training + Support

Communications

# LEA Portal Implementation Survey Results

## Notable Findings

Response Rate

**31%**

**Responded**  
(at least req. questions)



**LEAs feel the portal has improved the recert. process**



**Training resource awareness is an area of opportunity**

Demographics

**91%**

**Small Agencies**  
(0 – 100 officers)



**LEAs that attended the live sessions found them helpful**



**LEAs are satisfied with comms and prefer email**

**9%**

**Large Agencies**  
(101 – 150+ officers)



**LEAs recognize POST's dedication and customer service**

# LEA Portal Implementation Survey Results

## What's Next?



### Celebrate Wins & Successes

LEAs believe the portal has made the recertification process better. Recognize and celebrate wins internally and communicate externally to LEAs.



### Increase Training Awareness

Highlight training and support resources more in live sessions, website, communications, POST support email signatures, and calls with LEAs.



### Conduct LEA Focus Groups

Given lack of specific training feedback, work with LEAs to determine needs and gaps in training so can produce new and relevant training.



### Record Live Training Session

Record a version of the session without LEA participants (for privacy reasons) and post link in Help Docs for LEAs to access at their convenience.



### Create a Formal Comms Plan

Create a centralized comms. plan to ensure messaging alignment. Send updates and reminders early and often via email but avoid sending Fridays.



### Repeat Survey After Standards

Now that we have a baseline, gather more info and measure impact of any recommendations implemented during the standards rollout.

LEA Portal Implementation Survey Results

**Thank You**



**What Questions  
Do You Have?**

# Appendix



# POST + Slalom

## Overview

As POSTC aims to provide **enhanced oversight** and **regulation** of local police officers and departments to **improve accountability** for policing practices, police officers, and agencies, there was a need to **digitize** the effort of collecting and reviewing complaints and tracking certifications, and there was an opportunity to **enable efficiencies through automation and increased visibility**.



### Division of Certifications

- View Certification Applications digitally
- Track open Recertification Requirements
- Automatically Distribute Certification Outcome Notifications
- Provide Outbound messaging to Officers, LEAs, and other Stakeholders



### Division of Standards

- View Complaint, Allegation, Complaint Participant, Case, and Disciplinary Actions in one central location
- Report on data points collected regarding officers, agencies, or allegation types
- Provide Outbound messaging to officers, LEAs, and other Stakeholders



### LEA Portal

- Provide a Centralized Self Service Portal for LEA users to:
  - Submit Recertification Applications for their agency
  - Track lifecycle of officer recertification application
  - Submit, track, and update complaints throughout the investigation process
  - Upload and view documentation associated with officer complaints


# LEA Portal Implementation Survey Results

## Overview + LEA Portal Questions

LEA Portal + Change Readiness

Training + Support

Communications

 : Notable Number

Response Rate

**31%**

**Responded**  
(at least req. questions)

Demographics

**91%**

**Small Agencies**  
(0 – 100 officers)

**9%**

**Large Agencies**  
(101 – 150+ officers)

Response Rate of Non-Required Items: ~ 96%

Survey Items

**97%**

**Have Logged Into  
the LEA Portal \***

**92%**

**Feel Prepared to  
Perform Their Duties**

**88%**

**Are Satisfied with  
the LEA Portal**

**89%**

**Say the Portal Improved  
the Recert. Process**

\* : Required Question

# LEA Portal Implementation Survey Results

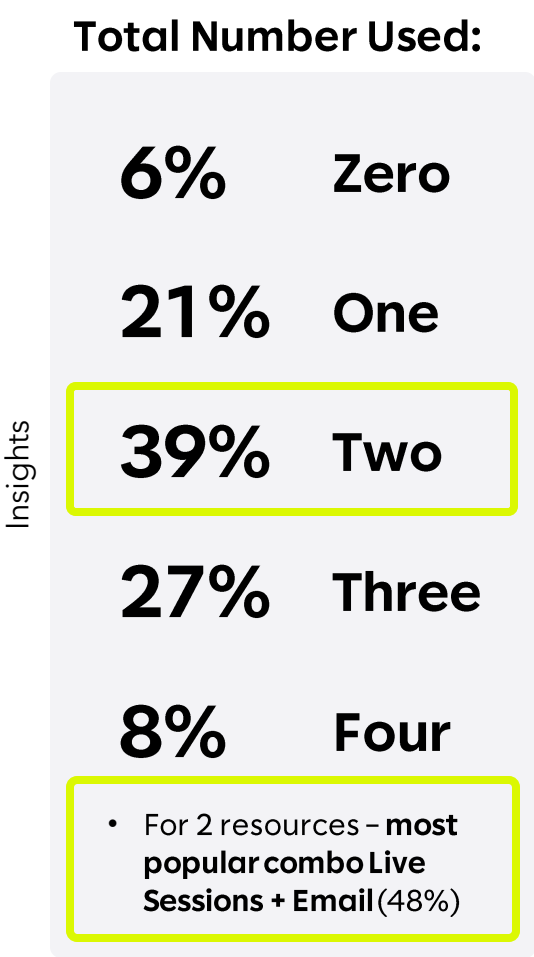
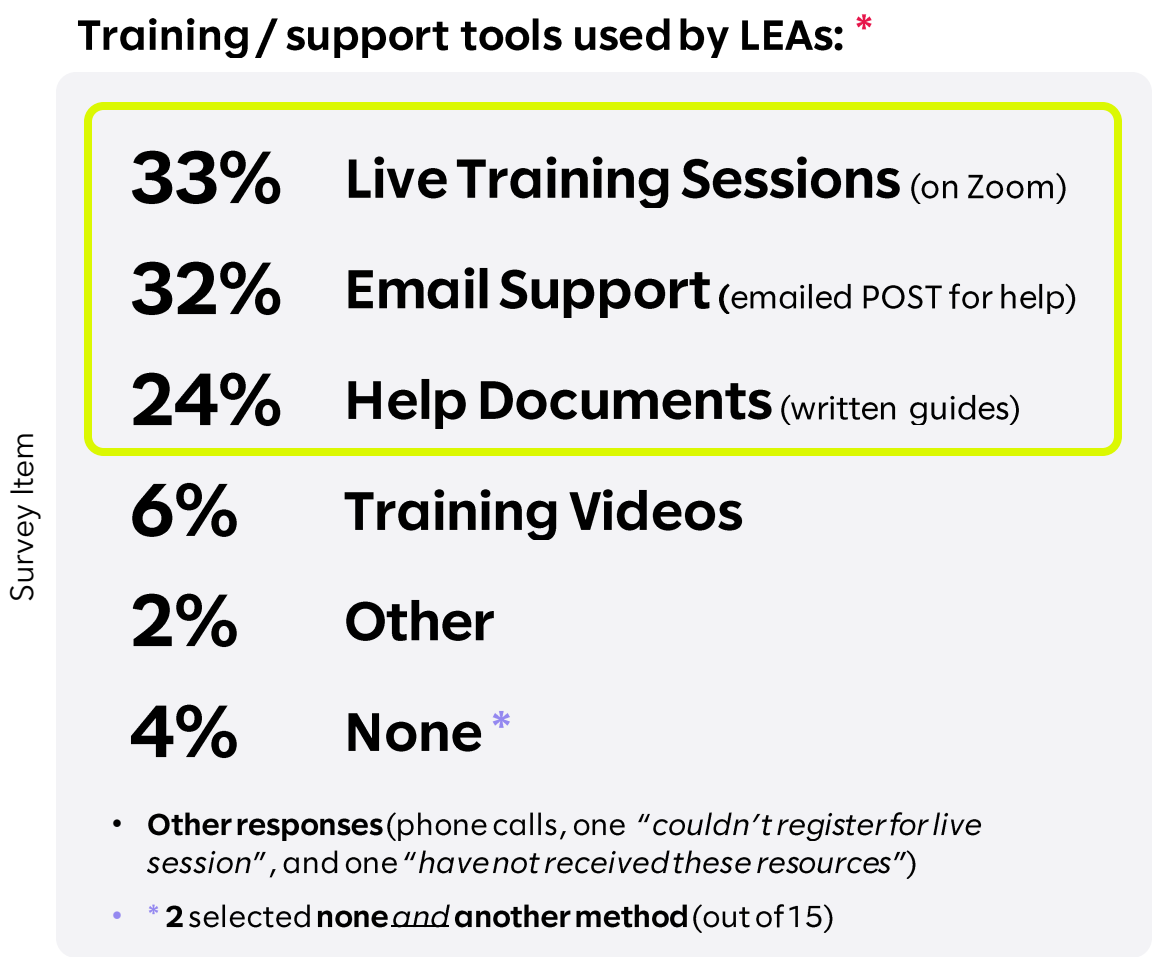
## Training + Support Utilization

LEA Portal + Change Readiness

Training + Support

Communications

: Notable Number




# LEA Portal Implementation Survey Results

## Live Sessions + Communications

LEA Portal + Change Readiness

Training + Support

Communications

 : Notable Number

Response Rate of Non-Required Items: ~ 71%

Survey Items

71%

Attended Live Training Sessions\*

93%

Said the Session Met Their Expectations

95%

Felt the Session was Easy to Understand

96%

Felt Topics Covered in the Session were Useful

Response Rate of Items: 90 - 99%

Survey Items

91%

Satisfied w/ Current Level of Comms.

93%

Found Communications Useful to Them

87%

Prefer Communication via Email

13%

Preferred Another Communication Method

5.



## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

August 7, 2023

### CHAIR

Margaret R. Hinkle

### COMMISSIONERS

Hanya H. Bluestone

Lawrence Calderone

Clementina Chéry

Larry E. Ellison

Marsha V. Kazarosian

Charlene D. Luma

Kimberly P. West

Michael Wynn

### EXECUTIVE DIRECTOR

Enrique A. Zuniga

### MEMORANDUM

**To:** Chair Hinkle, Commissioners Bluestone, Calderone, Chery, Ellison, Kazarosian & Luma  
**From:** Enrique Zuniga

**Re: Credentials for Law Enforcement Officers with POST Certification Number**

The Massachusetts Chiefs of Police Association (MACOPA), in conjunction with the Executive Office of Public Safety & Security (EOPSS) have approached POST to offer the inclusion of the POST certification number and expiration date on the current officer credentials that municipal law enforcement officers in the Commonwealth are issued.

Currently, POST issues a letter with a certification number and expiration date as part of the certification and recertification process. These letters, distributed to officers and agencies, serve as proof of the officer certification and expiration date.

The proposal to include the POST certification information on the officers' credentials would have an incremental cost to POST and would also yield certain desired outcomes. The proposed program would not substitute for the current certification letters that POST issues. The costs and benefits are discussed below.

#### Current Credentialling Program for Law Enforcement Officers:

The regulations that govern the issuance of credentials for municipal police officers and the MBTA are promulgated by EOPSS. These regulations are:

*501 CMR 15.00 – Standards for Identification Cards for Active-Duty Law Enforcement Officers<sup>1</sup>*

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<sup>1</sup> These regulations currently apply to municipal police officers and the MBTA Transit Police Department. The regulations provide that the Colonel of the State Police may elect to have the State Police participate in the program.

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

The EOPSS regulations provide that the Chief of Police issues the identification to officers within their departments in accordance with certain standards and requirements. The regulations require that *“all ID cards issued to Law Enforcement Officers shall be of the same design and appearance, manufactured by the same vendor and have the same security features<sup>2</sup>.”*

The current credentialing program is administered by MACOPA, and to comply with these regulations, the association has a contract with a statewide authorized vendor named “IDEMIA.” This vendor produces credentials with features that meet the standards and requirements detailed in 501 CMR 15.00 including features that are very hard to replicate or falsify. This vendor is also the vendor that processes the driver’s licenses in Massachusetts.

As part of the current program, the officer credentials are issued every 7 years and at different times within that timeframe (if an officer moves to another department, or changes name, rank, or job status including retirement<sup>3</sup>). The management of the program includes issuing and distributing new credentials when needed and collecting and destroying prior and expired credentials. The existing credentials include identification of the officer (picture, name, signature), and the police department/law enforcement agency. Officers are not required to display that credential, but are required to carry it with them at all times. If a credential is lost or stolen, the officer is required to report it to a supervisor, and the agency is required to enter it into the National Crime Information Center (“NCIC”) as a stolen item.

Considering police reform, EOPSS wants to continue standardizing the credentialing of law enforcement officers. Their efforts include upcoming revisions to 501 CMR 15.00 to, among other things, include Campus Police Officers in the definition of law enforcement officers<sup>4</sup>. Additional efforts toward uniformity include discussions with the Massachusetts State Police about participating in this program.

The leadership of the Massachusetts Association of Campus Law Enforcement Administrators (MACLEA) has previously asked POST about the issuance of credentials with POST certification numbers to, among other things, be recognized as the certified police officers that they are. Thus, it is fair to assume that MACLEA would welcome having 501 CMR 15.00 apply to its members.

### Proposal by MACOPA

MACOPA proposes to continue administering the credentialing program and anticipates incremental costs for doing so. The additional costs arise from the fact that these credentials would be issued within a shorter period (3 years as opposed to 7 years), to reflect the certification period required as part of chapter 6E. The estimated incremental cost is \$10 per credential. Although the total costs from year to

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<sup>2</sup> 501 CMR 15.03

<sup>3</sup> A separate but very similar set of regulations govern retired officers 501 CMR 13.00

<sup>4</sup> Campus Police Officers are not currently included in the definition of Law Enforcement Officers in 501 CMR 15.00 but are expressly included in the definition of law enforcement officers subject to POST Certification.

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

year would vary, we estimate it could range between \$65,000 - \$100,000 per year. As part of this proposal, POST would cover these incremental costs.

POST and MACOPA would have to ensure data sharing and coordination, to timely reflect the job status and information of every certified officer in the Commonwealth. However, this is part of an ongoing effort that POST, MPTC and Law Enforcement Agencies have been conducting since POST's inception. The credentialing cooperation would formalize those ongoing efforts.

If POST wanted to issue its own credential and replicate the security features of the current credentialing system, we would have to conduct due diligence, stipulate security features and requirements, and procure the services of a vendor like IDEMIA. Although the initial due diligence would not be a heavy administrative burden, the increased administrative costs of replacing and deploying new credentials and destroying old credentials would indeed represent additional administrative costs to POST. There would also be additional efforts to replicate some of the features of the existing program (like entering lost or stolen credentials into the NCIC).

Notwithstanding the additional necessary resources, if POST chose to issue its own credentials, officers would be effectively required to maintain two different credentials, those issued by the department, and those issued by POST. This would be contrary to the stated goal of EOPSS to create a single form of identification for Law Enforcement Officers throughout the state.

An added benefit to coordinating this effort with MACOPA would be to formalize the need to have the most up-to-date information when it comes to officers' change of status.

**Recommendation:** That the Commission authorize staff to continue discussions with MACOPA and EOPSS towards implementing a single credentialing program as described in this memorandum.



6a.



# Massachusetts POST Commission

100 Cambridge Street, 14th Floor, Boston, MA 02114

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## **GUIDANCE FOR CONSTABLES AND OTHER LAW ENFORCEMENT PERSONNEL REGARDING 555 CMR 9.00 (PROMULGATION PENDING)**

The Massachusetts Peace Officer Standards and Training Commission provides this clarification and guidance on the application of certain sections of 555 CMR 9.00: *Initial Certification of Officers; and Initial or Renewed Certification of Independently Applying Officers (promulgation pending)*. This Guidance is issued pursuant to M.G.L. c. 6E, § 3(a) and 555 CMR 11.00: *Regulatory Action and Advisory Opinions (promulgation pending)*. The Guidance is intended to offer explanations and details that are consistent with the relevant statutes and regulations. The Commission reserves the ability to revise its regulations and this Guidance in the future.

### **I. ARRESTS GENERALLY**

#### **A. Source**

The term “Arrest” is presently defined in 555 CMR 9.03(2) as follows:

An actual or constructive seizure or detention of a person, performed with the intention to effect an arrest and so understood by the person detained. For purposes of applying this definition, the following shall constitute seizures: an application, to the body of a person, of physical force that objectively manifests an intent to restrain; a show of authority, through words or conduct, that a reasonable person would consider coercive; and an exercise of official powers that is facilitated by the use or display of a weapon.

#### **B. Guidance**

1. Under the definition above, an “arrest” includes certain types of conduct involving physical contact, a coercive show of authority, a weapon, or another form of seizure.
2. But an “arrest” does not include the mere service of papers, without more.

**II. ARRESTS, AND POLICE DUTIES AND FUNCTIONS, BY UNCERTIFIED INDIVIDUALS, AND PARTICULARLY, CONSTABLES, AND DEPUTY AND SPECIAL SHERIFFS**

**A. Sources**

A subsection of 555 CMR 9.13 provides:

The following individuals may not execute any type of arrest, as that term is defined in 555 CMR 9.03(2), or otherwise perform police duties and functions:

- (a) An individual who is serving as a law enforcement officer as that term is defined in M.G.L. c. 6E, § 1—whether as an officer of a law enforcement agency; a special state police officer; a special sheriff; a deputy sheriff; a constable; or a special, reserve, or intermittent police officer—but is not certified;
- (b) An individual whose certification is suspended;
- (c) An individual whose certification has been revoked;
- (d) An individual whose certification has been conditioned, limited, or restricted in a manner that precludes the relevant form of activity; and
- (e) An individual who otherwise lacks the legal authority to engage in the relevant form of activity.

555 CMR 9.13(8).<sup>1</sup>

The terms “law enforcement officer” and “officer” are defined in M.G.L. c. 6E, § 1 in the following manner:

any officer of an agency, including the head of the agency; a special state police officer appointed pursuant to [M.G.L. c. 22C, § 57, which concerns agents of humane societies; § 58, which concerns employees of the Port of Boston Authority; or § 63, which concerns employees of educational institutions and hospitals]; a special sheriff appointed pursuant to [M.G.L. c. 37, § 4] performing police duties and functions; a deputy sheriff appointed pursuant to [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.

The term “agency,” used in the above definition, refers to “a law enforcement agency,” which, in turn, “ha[s] the following meaning[]”:

- (i) a state, county, municipal or district law enforcement agency, including, but

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<sup>1</sup> “For the purposes of 555 CMR 9.00,” the term “[c]ertification” means “[a]n initial certification or a recertification of an individual as an officer pursuant to M.G.L. c. 6E, §§ 3(a) and 4, or pursuant to St. 2020, c. 253, § 102, regardless of whether it is subject to any condition, limitation, restriction, or suspension,” “unless the context requires otherwise.” 555 CMR 9.03(2).

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 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; (iii) a public or private college, university or other educational institution or hospital police department; or (iv) a humane society police department in [M.G.L. c. 22C, § 57].

M.G.L. c. 6E, § 1 (setting forth definitions of terms, as used in M.G.L. c. 6E, “unless the context clearly requires otherwise”); accord 555 CMR 9.03(2).

**B. Guidance**

1. 555 CMR 9.13(8)(a), by its terms, applies to a “law enforcement officer,” as defined in M.G.L. c. 6E, § 1.

2. Under 555 CMR 9.13(8), an individual who falls under the statutory definition of “law enforcement officer” but is not certified may not execute an arrest, or perform police duties and functions. Such an individual also should not be appointed or employed as a “law enforcement officer” by a “law enforcement agency,” as those terms are defined by statute. See M.G.L. c. 6E, § 4(g) (“No agency shall appoint or employ a person as a law enforcement officer unless the person is certified by the commission.”).

3. A constable who executes an arrest would become a “law enforcement officer” under the definition of M.G.L. c. 6E, § 1, because that definition extends to “a constable executing an arrest for any reason.” The constable would thus become subject to the provisions of M.G.L. c. 6E, 555 CMR 9.00, and other Commission regulations, which apply to “law enforcement officers” and “officers.”

4. At the same time, if the constable is not certified, that individual would simultaneously be violating 555 CMR 9.13(8) by executing an arrest, or by performing other police duties and functions.

5. Similarly, a deputy or special sheriff who performs police duties and functions becomes a “law enforcement officer” under the definition of M.G.L. c. 6E, § 1, because that definition extends to “a special sheriff appointed pursuant to [M.G.L. c. 37, § 4] performing police duties and functions” and “a deputy sheriff appointed pursuant to [M.G.L. c. 37, § 3] performing police duties and functions.” The individual would thus be subject to the provisions of M.G.L. c. 6E, 555 CMR 9.00, and other Commission regulations, which apply to “law enforcement officers” and “officers.”

6. If the deputy or special sheriff is not certified at the time, the individual would simultaneously be violating 555 CMR 9.13(8) by performing police duties and functions, or by executing an arrest.

7. However, an individual who does not fall under the statutory definition of “law enforcement officer” is not subject to 555 CMR 9.13(8)(a).

8. Thus, for example, 555 CMR 9.13(8)(a) does not extend to a deputy or special sheriff who does not perform police duties and functions and thus is not a “law enforcement officer,” as that term is defined by statute.

### **III. CERTIFICATION OF CONSTABLES UNDER 555 CMR 9.00**

#### **A. Sources**

555 CMR 9.00, among other things, establishes a process by which an individual who is not endorsed by a law enforcement agency may apply for and be granted an initial certification or a renewed certification as a law enforcement officer.

A subsection of 555 CMR 9.13 provides:

When an application is granted pursuant to 555 CMR 9.00, the new certification shall be deemed to have been issued on, and the three-year period prescribed by M.G.L. c. 6E, § 4(f)(3) shall be deemed to commence on:

- (a) The reference date for the officer, if the applicant was certified a the time of applying and is lawfully serving as a law enforcement officer *with a law enforcement agency* when the application is granted; and
- (b) In all other instances, *the later of*:
  - 1. The date upon which the application is granted; or
  - 2. The date upon which the applicant lawfully becomes a law enforcement officer *with a law enforcement agency*.

555 CMR 9.13(2) (emphasis added).<sup>2</sup>

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<sup>2</sup> “For the purposes of 555 CMR 9.00, the following [additional] terms have the following meanings, unless the context requires otherwise:”

- “Applicant. An individual who submits, or intends to submit, an application to the Commission.”
- “Application. A request by an individual to be certified as an officer.”
- “Certification Period. The period of time between the effective date and the expiration date of an individual’s certification, including any period of continuation provided for under M.G.L. c. 30A, § 13 or 555 CMR 9.04 beyond the reference date.”
- “Reference Date. The end date for an applicant’s certification provided for in St. 2020, c. 253, § 102 or the end date of a prior certification issued to an applicant by the Commission, whichever is later, without regard to any period of continuation provided for by M.G.L. c. 30A, § 13 or 555 CMR 9.04.”

555 CMR 9.03(2).

Another subsection provides:

A certification granted pursuant to 555 CMR 9.00 shall be active only while the certified individual is serving as a law enforcement officer *for a law enforcement agency*, and shall otherwise be restricted.

555 CMR 9.13(7) (emphasis added).

**B. Guidance**

1. A constable who is not endorsed by a law enforcement agency may apply for certification, and be granted certification if warranted, under 555 CMR 9.00.
2. However, under 555 CMR 9.13(2) and (7), that certification would be active only while the individual serves as a “law enforcement officer” for a “law enforcement agency.”

**IV. CONTINUED DEVELOPMENT OF PROCEDURES FOR CONSTABLES**

**A. Guidance**

1. The Commission will continue working on the development of a certification process, and likely on other provisions, regarding constables.
2. As always, the Commission will collaborate closely with the Municipal Police Training Committee.
3. Constables and others are invited to offer additional feedback, and to engage in further discussion, regarding these matters.
4. Feedback is most helpful where it suggests specific changes to the text of a draft set of regulations or other proposal, or offers specific new language. Thus, constables and others are encouraged to submit copies of the version of 555 CMR 9.00 that was released for public comment in May 2023, with redlining showing suggested changes.

6b.



# Massachusetts POST Commission

100 Cambridge Street, 14th Floor, Boston, MA 02114

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## **GUIDANCE TO LAW ENFORCEMENT AGENCIES AND PROSECUTING OFFICES REGARDING 555 CMR 1.00 AND 6.00**

The Massachusetts Peace Officer Standards and Training Commission provides this clarification and guidance on the application of certain sections of 555 CMR 1.00: *Procedural Rules* and 555 CMR 6.00: *Use of Force by Law Enforcement Officers*. This Guidance is issued pursuant to M.G.L. c. 6E, § 3(a) and 555 CMR 1.00. It pertains only to matters in which the cited provisions of 555 CMR 1.00 and 6.00 should be applied, and should not necessarily be relied on in other contexts. The Guidance is intended to offer explanations and details that are consistent with the relevant statutes and regulations. The Commission reserves the ability to revise this Guidance in the future.<sup>1</sup>

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<sup>1</sup> As used in this Guidance:

- “Agency” refers to a “law enforcement agency” as defined in M.G.L. c. 6E, § 1;
- “Appointing agency” has the meaning set forth in M.G.L. c. 6E, § 1;
- “Commission” refers to the Massachusetts Peace Officer Standards and Training Commission established under M.G.L. c. 6E, § 2;
- “Conviction” has the meaning set forth in M.G.L. c. 6E, § 1;
- “Deadly force” has the meaning set forth in M.G.L. c. 6E § 1;
- “Division of Police Standards” and “Division of Standards” refer to the Division of Police Standards established under M.G.L. c. 6E, § 8;
- “Executive Director” refers to the Executive Director of the Commission appointed under M.G.L. c. 6E, § 2;
- “Initial report” refers to a “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,” 555 CMR 1.01(1);
- “Law enforcement officer” and “Officer” refer to a “law enforcement officer” as defined in M.G.L. c. 6E, § 1;
- “Officer-involved injury or death” has the meaning set forth in 555 CMR 202;
- “Serious bodily injury” has the meaning set forth in 555 CMR 2.02; and
- “Untruthfulness” has the meaning set forth in M.G.L. c. 6E, § 1.



**Agencies and Officers Subject to 555 CMR 1.00**

555 CMR 1.00 includes various provisions governing “agencies” and “officers.”

1. Provisions governing agencies are inapplicable to entities that do not fall within the definition of “law enforcement agency” (or “agency”) in M.G.L. c. 6E, § 1.
2. Provisions governing officers are inapplicable to individuals who do not fall within the definition of “law enforcement officer” (or “officer”) in M.G.L. c. 6E, § 1.
3. Thus, for example, such provisions do not impose any obligations on civilian complaint review boards that are not subject to M.G.L. c. 6E.

**Agency Action Within Two Business Days of Receiving a Credible Report Constituting a Complaint**

555 CMR 1.01(1) provides, in accordance with M.G.L. c. 6E, § 8(b)(1), that “[t]he head of an agency shall” take certain steps “within two 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.” The regulation adds, among other provisions, that “[a]nonymous complaints that do not provide an adequate basis for investigation need not be forwarded to the commission.” 555 CMR 1.01(1)(c)1.

1. The term “two days” refers to two business days. See M.G.L. c. 6E, § 8(b)(1) (requiring transmittal of complaint “within 2 business days”); 555 CMR 2.03(2) (providing that, “[w]hen the time period [prescribed in a provision of 555 CMR] is seven days or less, intervening Saturdays, Sundays, and legal holidays shall be excluded in the computation”).
2. For these purposes, an agency is not in “receipt of a complaint” before the agency itself obtains it, regardless of whether it has come to the attention of another unit of the same government, such as a civilian complaint review board.
3. Under the regulatory definition above, an initial report does not constitute a “complaint” unless it is “credible.”
4. A “credible report” is one that is capable of being believed by a reasonable person and is not based solely on speculation or conjecture.
5. An agency will not be deemed to be in “receipt of a complaint,” and the two-business-day period will not begin to run, during such time as the agency is determining whether the initial report is “credible,” provided that the amount of time is reasonable under the circumstances.
6. An agency is encouraged to provide the Commission with a written explanation for the amount of time that the agency takes to assess the credibility of an initial report where the

period of time exceeds three business days, and to maintain such explanation in the agency's files, including the officer's personnel file.

7. An agency may treat a complaint as anonymous in any circumstance where the agency, through no fault of its own, has not received the complainant's name.

### **Minor and Non-minor Matters**

Under 555 CMR 1.01(1), the steps that an agency must take with respect to a complaint depend in part on whether the complaint relates 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 555 CMR 1.01(1)(b) provides that, "if the complaint does not relate to minor matters," the agency must transmit certain information regarding the complaint to the Commission. Such provisions are consistent with M.G.L. c. 6E, § 8(b)(1), which authorizes the Commission to "establish a minimum threshold and streamlined process for the reporting or handling of minor complaints that do not involve the use of force or allegations of biased behavior."

1. For these purposes, an agency should treat a complaint that contains any allegation or evidence of a non-minor matter as one that "does not relate to minor matters."
2. "Basic work rule violations" are those that relate to the internal functioning of the agency and do not involve:
  - a. interactions with the public;
  - b. the handling of finances; or
  - c. violations of any code of ethics adopted by the agency.
3. Below is a non-exhaustive list of matters that an agency should treat as presumptively non-minor. Each has been found by the Legislature or the Commission to warrant a preliminary inquiry, disciplinary action, a referral to other authorities for investigation or possible prosecution, or special attention in reporting and recordkeeping, provided that applicable standards are satisfied:
  - a. criminal conduct, see M.G.L. c. 6E, §§ 1, 3(a)(18), (25), 8(c)(1)(ii), 8(c)(2), 9(a)(1)-(2), 9(a)(3), 10(a)(i), 10(b)(i); 555 CMR 1.02(3)(b), 1.03, 1.07(2), 1.08(1), 1.08(2)(a)-(b); see also M.G.L. c. 6E, §§ 10(a)(vi)-(ix), (xiii)-(xiv) (termination for certain conduct; submitting false timesheet; filing false statement; perjury; record tampering; hate crime; witness intimidation);
  - b. excessive, prohibited, or deadly force, see M.G.L. c. 6E, §§ 1, 8(b)(1), 8(c)(1)(iii), 8(e), 10(a)(x)-(xii), 10(d)(iii), 14, 16; 555 CMR 1.02(3)(a); 555 CMR 6.00;
  - c. a failure to intervene when there is a duty to do so, see M.G.L. c. 6E, §§ 8(c)(1)(iv), 10(a)(xv), 10(d)(viii), 15(a); 555 CMR 1.02(3)(c); 555 CMR 6.06;
  - d. an officer-involved injury or death, see M.G.L. c. 6E, §§ 8(b)(1), 8(c)(1)(i), 8(e), 10(a)(xi); 555 CMR 1.02(3)(a);
  - e. an agency head's recommendation for disciplinary action, see M.G.L. c. 6E, § 8(c)(1)(v); 555 CMR 1.02(3);
  - f. misrepresentation, fraud, or document falsification in connection with

- certification, see M.G.L. c. 6E, § 10(a)(iii)-(iv);
- g. revocation of certification by another jurisdiction, see M.G.L. c. 6E, § 10(a)(v);
  - h. an appealed agency termination based on intentionally obtaining false confessions; making a false arrest; creating or using falsified evidence, including false testimony or destroying evidence to create a false impression; engaging in conduct constituting a hate crime; or directly or indirectly receiving a reward, gift, or gratuity on account of official services, see M.G.L. c. 6E, § 10(a)(vi);
  - i. unfitness for duty and danger to the public, see M.G.L. c. 6E, § 10(a)(xvi);
  - j. racial profiling, see M.G.L. c. 6E, § 3(a)(29);
  - k. other “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,” see M.G.L. c. 6E, §§ 1, 8(b)(1), 8(e), 10(b)(ii), 10(d)(ii), 16; M.G.L. c. 12, § 11H;
  - l. untruthfulness, see M.G.L. c. 6E, §§ 1, 8(e), 10(d)(vi); see also 555 CMR 6.07(5);
  - m. failing to respond an incident according to established procedure, see M.G.L. c. 6E, § 10(d)(iv);
  - n. kettling, see 555 CMR 6.08(6);
  - o. failing to fulfil a duty regarding crowd-control planning or reporting a use of force, see M.G.L. 6E, §§ 8, 9(c), 14(e), 15(b); 555 CMR 6.07(4)-(5);
  - p. “harassment, intimidation, or retaliation against an officer who either intervened to prevent or stop an excessive force incident or made, intended to make, or [was] required to make a report regarding [a] witnessed excessive force incident,” see 555 CMR 6.07(7);
  - q. “[taking] adverse action against an officer or employee or threaten[ing] to take any such action for providing information to the commission or testifying in any commission proceeding,” see M.G.L. c. 6E, § 12; see also M.G.L. c. 6E, § 8(c)(2); 555 CMR 1.02(4);
  - r. repeated sustained internal affairs complaints, see M.G.L. c. 6E, § 10(b)(v);
  - s. an appealed agency suspension or termination for disciplinary reasons, see M.G.L. c. 6E, §§ 8(e), 10(b)(iv), 10(d)(vii);
  - t. a demonstration that the officer would benefit in job performance if retrained, see M.G.L. c. 6E, § 10(d)(ix);
  - u. “failing to act in accordance with a limitation or restriction on a certification,” see 555 CMR 9.10(8) (promulgation pending); and
  - v. executing an arrest or otherwise performing police duties and functions when prohibited, see 555 CMR 9.13(8) (promulgation pending);
  - w. other prohibited conduct, see M.G.L. c. 6E, § 8(c)(2); 555 CMR 1.02(4);
  - x. otherwise violating M.G.L. c. 6E; a Commission regulation, rule, or order; or a training or reporting requirement, see M.G.L. c. 6E, §§ 3(a)(18), (22), 4(f)(4), 8(e), 9(b)-(c), 10(d)(i); and
  - y. other unprofessional conduct, see M.G.L. c. 6E, §§ 8(b)(1), 8(e), 8(f), 10(b)(iii), 10(d)(v).
4. The Commission’s requests that agencies submit periodic reports summarizing officers’ disciplinary histories, and the guidelines accompanying those requests, are separate from, and have no bearing on, agencies’ obligations under 555 CMR 1.00.

### **Pattern of Complaints**

Under 555 CMR 1.01(1)(c)3., “[a]n agency shall forward any pattern of complaints alleging the misconduct of an officer to the commission.”

1. The above requirement applies without regard to whether the complaints at issue relate to minor or non-minor matters, and without regard to the location or date of any complaint.
2. Where an agency forwards a pattern of complaints under 555 CMR 1.01(1)(c)3., the agency should:
  - a. describe the pattern it has identified; and
  - b. with respect to each such complaint, include all information prescribed by 555 CMR 1.01(1)(b), to the extent such information is available, even if the complaint or such information may have been previously submitted to the Commission.

### **Internal Complaint Resolution**

Under 555 CMR 1.01(1), “[t]he head of an agency shall, within two [business] days of their receipt of a complaint” that “is related to minor matters” and “does not involve evidence or an allegation of” certain forms of “bias,” “force,” or “serious bodily injury or death”: “refer the complaint for resolution under the agency’s internal resolution policy, which shall comply with any minimum requirements established by the commission”; or maintain and furnish documentation regarding the complaint as provided in the regulation “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 [an internal resolution policy] for any other reason.” Such provisions are consistent with M.G.L. c. 6E, § 8(b)(1), which, as noted above, allows the Commission to “establish a minimum threshold and streamlined process for the reporting or handling of minor complaints that do not involve the use of force or allegations of biased behavior.”

1. An agency’s “internal resolution policy” should, at a minimum, include adherence to the following provisions of 555 CMR 1.01(1)(a):
  - a. “[T]he 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
  - b. “[The agency shall] make any such complaint available to the commission upon request, or under any policy that may be established by the commission.”
2. Documentation maintained by an agency for these purposes should, at a minimum, be included in the officer’s personnel file and a central file or database for such information, maintained by the agency.

3. If an agency does not have an internal resolution policy, the agency head should refer the matter to an agency internal investigation unit or internal investigation officer for investigation and appropriate action.
4. The Commission is not bound by any agency determination regarding the allegations made in an initial report or the appropriate disposition.

### **Allegations of Unprofessional Conduct**

555 CMR 1.01(1) provides, in accordance with M.G.L. c. 6E, § 8(b)(1), that “[t]he head of an agency shall, within two [business] days of their receipt of a complaint” that “does not relate to minor matters,” among other things, inform the Commission’s Division of Police Standards as to “whether the complainant alleges that the officer’s conduct . . . was unprofessional.”

1. For these purposes, a “complainant alleges that the officer’s conduct . . . was unprofessional” where a reasonable person would conclude that the form of conduct alleged would breach the rules or ethical code of the law enforcement profession or be unbecoming a member in good standing of such profession.
2. In reviewing officer conduct, sources that may be helpful include, but are not limited to, the first five paragraphs of the October 1957 Law Enforcement Code of Ethics adopted by the International Association of Chiefs of Police, and the July 2019 Standards of Conduct adopted by the same association.

### **Discretionary Forwarding of Complaints**

555 CMR 1.01(1)(c) provides that, “notwithstanding [555 CMR 1.01(1)(a)-(b)], . . . [a]n agency may forward any complaint other than those set out in 555 CMR 1.01(1)(b) at the agency’s discretion.”

1. The above provision should not be understood to suggest that an agency has discretion concerning whether to forward a “pattern of complaints alleging the misconduct of an officer to the commission,” as the forwarding of such a pattern is required under 555 CMR 1.01(1)(c)3.
2. The Commission encourages an agency to include all information prescribed by 555 CMR 1.01(1)(b) when it forwards a complaint as an exercise of its discretion under 555 CMR 1.01(1)(c).

### **Confidentiality of Agency Investigations**

Under 555 CMR 1.01(2), an agency’s “internal investigation of the subject matter of any complaint forwarded to the division of standards under 555 CMR 1.01(1)(b)” “shall be conducted confidentially to the extent permitted by law.”

1. The above provision does not restrict an agency’s ability to provide information to a

prosecuting office.

### **Audio Recording of Interviews and Other Disciplinary Proceedings**

555 CMR 1.01(2)(c) provides that an agency investigator's "interviews of relevant witnesses" "should be audio recorded if feasible."

1. The best practice is to record and retain interviews. Recording generally promotes accuracy and precision in the recitation of statements made by interviewees and in factual determinations. It thus helps avoid misrepresentation and misunderstanding, and enhances the fairness of the process and the quality of decision-making.
2. Recording an interview ordinarily will be "feasible" unless such a step would make it impossible, or extremely or unreasonably difficult, to obtain an interview of the individual.
3. Agencies and officers should remain mindful of the fact that 555 CMR 1.01(c)(3) requires an agency head to submit, as part of an investigation report, "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." Where an interview has not been recorded: the Commission and others may have questions or concerns about the reason offered; they may draw inferences that are adverse to the person or entity that did not wish to have the interview recorded; and they may otherwise take into account the failure to record in making determinations of credibility and fact.
4. For the reasons offered above, the Commission additionally encourages agencies to make audio recordings of disciplinary proceedings other than interviews.

### **Deadlines for Completion of Agency Actions**

Several provisions of 555 CMR 1.01(1) require agencies to provide items to the Commission within prescribed timeframes.

1. Such provisions must be read in conjunction with the following:
  - a. M.G.L. c. 6E, § 8(b), which requires certain actions to be taken by agencies within certain timeframes;
  - b. M.G.L. c. 6E, § 10(h), which governs the timing of, and interplay between, agency and Commission disciplinary proceedings; and
  - c. 555 CMR 2.00: *Construction; Application of Rules; Notice*, which, among other things: defines terms used in Commission regulations; provides that "[a]ny act that must be performed 'immediately' under a provision of 555 CMR or M.G.L. c. 6E shall be performed as soon as the exercise of reasonable diligence will enable such performance"; and establishes rules for computing time periods referenced in Commission regulations.

2. In light of the above statutory and regulatory provisions, the following time standards apply, barring any extension of time (the length of which cannot be inconsistent with the provision of M.G.L. c. 6E, § 10(h) that is referenced in point 2(f) below).
  - a. Within two business days after receiving a complaint, an agency head must take certain steps, including forwarding information regarding the complaint to the Commission where appropriate. M.G.L. c. 6E, § 8(b)(1); 555 CMR 1.01(1), 2.03(2).
  - b. Within fourteen calendar days after receiving a complaint as to which it has forwarded information to the Commission, an agency must commence an investigation. 555 CMR 1.01(2)(a), 2.03(2).
  - c. Where an officer under investigation resigns before the agency concludes its investigation or imposes discipline, the agency head must report the resignation as soon as reasonable diligence will allow. M.G.L. c. 6E, § 8(b)(4); 555 CMR 1.01(5), 2.03(3).
  - d. Within ninety calendar days after receiving a complaint, the agency must complete such an investigation. 555 CMR 1.01(2)(e), 2.03(2).
  - e. Upon completing such an investigation, the agency head must transmit to the Division of Police Standards an investigation report as soon as reasonable diligence will allow. M.G.L. c. 6E, § 8(b)(2); 555 CMR 1.01(3), 2.03(3).
  - f. Within one year after receiving a complaint, or notice of a complaint from the Commission, an agency must issue a final disposition, an investigation having already been completed. M.G.L. c. 6E, § 10(h).
  - g. Upon determining the final disposition and any final discipline to be imposed, the agency head must transmit a report to the Division of Police Standards as soon as reasonable diligence will allow. M.G.L. c. 6E, § 8(b)(3); 555 CMR 1.01(4), 2.03(3).
  - h. An agency has until the issuance of its final disposition or one year since the incident was reported to the Commission, whichever is earlier, before the Commission may institute a revocation or suspension hearing pursuant to M.G.L. c. 6E, § 10. M.G.L. c. 6E, § 10(h).
  - i. Any time period that would end on weekend or legal holiday is extended to the end of the next business day. 555 CMR 2.03(2).

### **Agency Officials with Personal Conflicts**

Multiple provisions of 555 CMR 1.01 call for certain actions to be taken by the “head of [an] agency,” consistent with M.G.L. c. 6E, § 8(b). Additionally, 555 CMR 1.01(2)(b) provides, in part, that an agency’s investigator “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.”

1. Such provisions must be read in conjunction with 555 CMR 2.03(5), which provides that, “[i]n any instance in which an individual has a conflict precluding that person from exercising their authority under 555 CMR, 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. If an agency head and an immediate subordinate are both disqualified from receiving investigative reports under 555 CMR 1.01(2)(b), an individual shall be designated pursuant to 555 CMR 2.03(5), and that individual should consult with the General Counsel of the Commission regarding the reporting process.

### **Reporting of Uses of Force, Injuries, and Deaths**

555 CMR 1.00 in part governs the reporting by agencies of information alleging or evidencing officer misconduct, including forms involving uses of force, injuries, or deaths. 555 CMR 6.00: *Use of Force by Law Enforcement Officers* sets forth various requirements for agencies and officers concerning uses of force, injuries, and deaths. With respect to the reporting of information, 555 CMR 6.07(1) provides in part that "agencies shall develop and implement a policy and procedure for reporting the use of force," which "shall mandate reporting such incidents including, but not limited to, officer-involved injuries or deaths as described in [the regulations]." Similarly, 555 CMR 6.09 requires, in part, that "agencies shall develop and implement a policy and procedure for reporting a use of force that results in a death or serious bodily injury." And 555 CMR 6.08(4) states, consistent with M.G.L. c. 6E, § 14(e), that, "[i]f a law enforcement officer utilizes or orders the use of kinetic impact devices, rubber bullets, [conducted energy devices (CEDs)], [tear gas or other chemical weapons (CWs)], [electronic control weapons (ECWs)], or a dog against a crowd, the law enforcement officer's appointing agency shall file a report with the Commission" with certain details.

1. 555 CMR 1.00 and 555 CMR 6.00 must be read in conjunction.
2. Neither set of regulations relieves agencies or officers of any obligations they may have under the other set.
3. The phrases "excessive, prohibited, or deadly force" and "improper use of force" in 555 CMR 1.00 should be construed by reference to the provisions of 555 CMR 6.00.
4. Agency policies and procedures shall provide for the reporting to the Commission of all serious bodily injuries, and officer-involved injuries and deaths, as those terms are defined in 555 CMR 6.03, regardless of whether the injury or death was suffered by an officer or a member of the public.

### **Location and Date of Alleged Incidents**

555 CMR 1.01 in part governs the handling by agencies of initial reports that they receive.

1. The obligations in 555 CMR 1.01 apply without regard to whether an incident allegedly occurred within the agency's jurisdiction and without regard to whether it allegedly occurred within Massachusetts.



2. The obligations in 555 CMR 1.01 do not apply to an initial report that an agency receives if: the initial report was addressed by the agency prior to the promulgation of 555 CMR 1.00 on June 24, 2022; or the initial report alleges only misconduct as to which both criminal and civil liability would be barred by applicable statutes of limitations.

### **Submissions by Members of the Public to the Commission**

555 CMR 1.01 in part governs the handling by agencies of initial reports that they receive.

1. The regulations do not restrict or govern the public's submission of initial reports directly to the Commission.
2. The Commission may receive and act on information from any source, as appropriate.
3. Members of the public may submit initial reports directly to the Commission by following the instructions found on the Commission's website, <https://policecomplaints.mass.gov/complaint>.
4. Members of the public are not precluded from submitting, and the Commission is not precluded from reviewing, matters involving alleged conduct predating the establishment of the Commission or as to which a criminal or civil action would be barred by a statute of limitations.
5. While the Commission will ordinarily forward an initial report to the employing agency or appointing authority of the officer involved, it will decide whether to do so on a case-by-case basis.
6. The Commission may render a determination regarding an initial report that differs from one reached by an agency or another person or entity.
7. The Commission's requests that agencies submit spreadsheets summarizing officers' disciplinary histories, and the guidelines accompanying those requests, are separate from, and have no bearing on, the manner in which the Commission may address any initial report that it receives.

### **Confidentiality of Information Regarding Commission Preliminary Inquiries**

By statute, "[a]ll proceedings and records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry shall be confidential." M.G.L. c. 6E, § 8(c)(2). However, "[t]he division of police standards shall notify any law enforcement officer who is the subject of the preliminary inquiry, the head of their collective bargaining unit and the head of their appointing agency of the existence of such inquiry and the general nature of the alleged violation within 30 days of the commencement of the inquiry." M.G.L. c. 6E, § 8(c)(3). In addition, "the executive director may turn over to the attorney general, the United States Attorney or a district attorney of competent jurisdiction evidence which may be used in a

criminal proceeding.” M.G.L. c. 6E, § 8(c)(2). Similarly, the Commission is authorized to “refer cases for criminal prosecution to the appropriate federal, state or local authorities” and “refer patterns of racial profiling or the mishandling of complaints of unprofessional police conduct by a law enforcement agency for investigation and possible prosecution to the attorney general or the appropriate federal, state or local authorities.” M.G.L. c. 6E, § 3(a).

Accordingly, the regulations at 555 CMR 1.00 provides that “[a]ll 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.” 555 CMR 1.03. Likewise, they state that “[t]he 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.” 555 CMR 1.07(2).

But the regulations add that “[t]he division of standards shall, within 30 [calendar] 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.” 555 CMR 1.04. They also provide that “[a]ny 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 same individuals. 555 CMR 1.08(3).

Additionally, 555 CMR 1.04 states that “[n]othing [therein] 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”; and 555 CMR 1.08(3) similarly indicates that “[n]othing [therein] 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.” Also, 555 CMR 1.03 allows the Commission’s Executive Director to provide “evidence which may be used in a criminal proceeding or investigation” to the officials listed in M.G.L. c. 6E, § 8(c)(2), and 555 CMR 1.07(2) allows the Executive Director to provide “[t]he division of standards’ report on its preliminary inquiry” “for use in a criminal proceeding or investigation” to such an official.

1. 555 CMR 1.00 does not govern the conduct of the Offices of the Massachusetts Attorney General, the United States Attorney for the District of Massachusetts, or the Massachusetts District Attorneys.
2. The Commission requests that those who receive information regarding a preliminary inquiry that was prepared by, or provided by, the Commission:
  - a. Consider taking steps to maintain such information as confidential, such as seeking a court order or agreement providing for confidentiality, to the extent that

any such steps are not inconsistent with any official, professional, legal, or ethical duties, and are otherwise appropriate and feasible; and

- b. Notify the Commission before disclosing the information to others.
3. The Commission recommends that recipients of such information obtain case-specific legal guidance from their own counsel regarding the extent to which such information must be disclosed or used, or cannot be disclosed or used, under any source of law.

### **Duties of Agency Heads**

555 CMR 1.01 requires agency heads to transmit certain information either to the Commission or within their own agencies.

1. An agency head may fulfill a duty under 555 CMR 1.01 to “refer [a] complaint for resolution under the agency’s internal resolution policy” or to transmit information to the Commission, other than a “recommendation . . . as to whether and how the commission should impose [certain] disciplinary action,” through another member of the agency acting on the agency head’s behalf.
2. In any event, an agency head remains responsible for whether and how the duties assigned to agency heads under 555 CMR 1.01 are fulfilled.

### **Notification by Agency to Officer**

555 CMR 8.04 provides as follows: “When a law enforcement agency supplies information concerning an officer to the Commission, the law enforcement agency: (a) Must notify the officer that it has done so in accordance with any other provision of 555 CMR that requires notification; or (b) In the absence of any such provision, must notify the officer that it has done so within ten calendar days, unless such notification would compromise an ongoing investigation or the security of any person or entity, or would be precluded by federal or Massachusetts law.”

1. 555 CMR 8.04 must be read in conjunction with the reporting provisions of 555 CMR 1.00 and 555 CMR 6.00.
2. 555 CMR 8.04 applies to an agency’s reporting of information to the Commission pursuant to 555 CMR 1.00 and 6.00.
3. An agency’s notification to an officer regarding the submission of a complaint to the Commission should ordinarily include the complaint or describe its substance.

### **Issuing a Summons as a Form of De-Escalation**

555 CMR 6.00 prohibits officers from using force without attempting to utilize de-escalation tactics in certain circumstances. 555 CMR 6.03 defines “De-escalation Tactics” as “[p]roactive actions and approaches used by an officer to stabilize a law enforcement situation so that more time, options and resources are available to gain a person’s voluntary compliance and to reduce

or eliminate the need to use force including, but not limited to,” certain actions and approaches listed therein; and concludes by stating that “[d]e-escalation shall include, but is not limited to, issuing a summons instead of executing an arrest where feasible.”

1. The definition of “De-escalation Tactics” does not require an officer to take any particular step. Rather, it generally defines the term and then offers a non-exhaustive list of possible actions, any one of which would constitute a de-escalation tactic.
2. In particular, the definition’s final statement does not compel an officer to issue a summons instead of executing an arrest in all circumstances or any particular ones. It simply highlights one possible approach that would be considered a form of de-escalation.





# Massachusetts POST Commission

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## **GUIDANCE TO LAW ENFORCEMENT AGENCIES AND PROSECUTING OFFICES REGARDING 555 CMR 1.00 AND 6.00**

The Massachusetts Peace Officer Standards and Training Commission provides this clarification and guidance on the application of certain sections of 555 CMR 1.00: *Procedural Rules* and 555 CMR 6.00: *Use of Force by Law Enforcement Officers*. ~~Those sections include: 555 CMR 1.01: *Review of Complaints by Agency*; 555 CMR 1.03: *Confidentiality of Preliminary Inquiries*; and 555 CMR 1.07: *Reports Following Preliminary Inquiries*.~~ This Guidance is issued pursuant to M.G.L. c. 6E, § 3(a) and 555 CMR 1.00. It pertains only to matters in which the cited provisions of 555 CMR 1.00 and 6.00 should be applied, and should not necessarily be relied on in other contexts. The ~~Guidance~~ Guidance is intended to offer explanations and details that are consistent with the relevant statutes and regulations. The Commission reserves the ability to revise this Guidance in the future.<sup>1</sup>

<sup>1</sup> As used in this Guidance:

- “Agency” refers to a “law enforcement agency” as defined in M.G.L. c. 6E, § 1;
- “Appointing agency” has the meaning set forth in M.G.L. c. 6E, § 1;
- “Commission” refers to the Massachusetts Peace Officer Standards and Training Commission established under M.G.L. c. 6E, § 2;
- “Conviction” has the meaning set forth in M.G.L. c. 6E, § 1;
- “Deadly force” has the meaning set forth in M.G.L. c. 6E § 1;
- “Division of Police Standards” and “Division of Standards” refer to the Division of Police Standards established under M.G.L. c. 6E, § 8;
- “Executive Director” refers to the Executive Director of the Commission appointed under M.G.L. c. 6E, § 2;
- “Initial report” refers to a “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,” 555 CMR 1.01(1);
- “Law ~~e~~Enforcement ~~o~~Officer” and “Officer” refer to a “law enforcement officer” as defined in M.G.L. c. 6E, § 1;
- “Officer-involved ~~i~~njury or ~~d~~eath” has the meaning set forth in 555 CMR 202; ~~and~~
- “Serious ~~b~~Bodily ~~i~~njury” has the meaning set forth in 555 CMR 2.02; ~~and~~
- “Untruthfulness” has the meaning set forth in M.G.L. c. 6E, § 1.

**Agencies and Officers Subject to 555 CMR 1.00**

555 CMR 1.00 includes various provisions governing “agencies” and “officers.”

1. Provisions governing agencies are inapplicable to entities that do not fall within the definition of “law enforcement agency” (or “agency”) in M.G.L. c. 6E, § 1.
2. Provisions governing officers are inapplicable to individuals who do not fall within the definition of “law enforcement officer” (or “officer”) in M.G.L. c. 6E, § 1.
3. Thus, for example, such provisions do not impose any obligations on civilian complaint review boards that are not subject to M.G.L. c. 6E.

**Agency Action Within Two Business Days of Receiving a Credible Report Constituting a Complaint**

555 CMR 1.01(1) provides, in accordance with M.G.L. c. 6E, § 8(b)(1), that “[t]he head of an agency shall” take certain steps “within two 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.” The regulation adds, among other provisions, that “[a]nonymous complaints that do not provide an adequate basis for investigation need not be forwarded to the commission.” 555 CMR 1.01(1)(c)1.

1. The term “two days” refers to two business days. See M.G.L. c. 6E, § 8(b)(1) (requiring transmittal of complaint “within 2 business days”); 555 CMR 2.03(2) (providing that, “[w]hen the time period [prescribed in a provision of 555 CMR] is seven days or less, intervening Saturdays, Sundays, and legal holidays shall be excluded in the computation”).
2. For these purposes, an agency is not in “receipt of a complaint” before the agency itself obtains it, regardless of whether it has come to the attention of another unit of the same government, such as a civilian complaint review board.
3. Under the regulatory definition above, an initial report does not constitute a “complaint” unless it is “credible.”
4. A “credible report” is one that is capable of being believed by a reasonable person and is not based solely on speculation or conjecture.
5. An agency will not be deemed to be in “receipt of a complaint,” and the two-business-day period will not begin to run, during such time as the agency is determining whether the initial report is “credible,” provided that the amount of time is reasonable under the circumstances.
6. An agency is encouraged to provide the Commission with a written explanation for the amount of time that the agency takes to assess the credibility of an initial report

~~complaint~~ where the period of time exceeds three business ~~a few~~ days, and to maintain such explanation in the agency's files, including the officer's personnel file.

7. An agency may treat a complaint as anonymous in any circumstance where the agency, through no fault of its own, has not received the complainant's name.

### **Minor and Non-minor Matters**

Under 555 CMR 1.01(1), the steps that an agency must take with respect to a complaint depend in part on whether the complaint relates 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 555 CMR 1.01(1)(b) provides that, "if the complaint does not relate to minor matters," the agency must transmit certain information regarding the complaint to the Commission. Such provisions are consistent with M.G.L. c. 6E, § 8(b)(1), which authorizes the Commission to "establish a minimum threshold and streamlined process for the reporting or handling of minor complaints that do not involve the use of force or allegations of biased behavior."

1. For these purposes, an agency should treat a complaint that contains any allegation or evidence of a non-minor matter as one that "does not relate to minor matters."
2. "Basic work rule violations" are those that relate to the internal functioning of the agency and do not involve:
  - a. interactions with the public;
  - b. the handling of finances; or
  - c. violations of any code of ethics adopted by the agency.
3. Below is a non-exhaustive list of matters that an agency should treat as presumptively non-minor. Each has been found by the Legislature or the Commission to warrant a preliminary inquiry, disciplinary action, a referral to other authorities for investigation or possible prosecution, or special attention in reporting and recordkeeping, provided that applicable standards are satisfied:
  - a. criminal conduct, see M.G.L. c. 6E, §§ 1, 3(a)(18), (25), 8(c)(1)(ii), 8(c)(2), 9(a)(1)-(2), 9(a)(3), 10(a)(i), 10(b)(i); 555 CMR 1.02(3)(b), 1.03, 1.07(2), 1.08(1), 1.08(2)(a)-(b); see also M.G.L. c. 6E, §§ 10(a)(vi)-(ix), (xiii)-(xiv) (termination for certain conduct; submitting false timesheet; filing false statement; perjury; record tampering; hate crime; witness intimidation);
  - b. excessive, prohibited, or deadly force, see M.G.L. c. 6E, §§ 1, 8(b)(1), 8(c)(1)(iii), 8(e), 10(a)(x)-(xii), 10(d)(iii), 14, 16; 555 CMR 1.02(3)(a); 555 CMR 6.00;
  - c. a failure to intervene when there is a duty to do so, see M.G.L. c. 6E, §§ 8(c)(1)(iv), 10(a)(xv), 10(d)(viii), 15(a); 555 CMR 1.02(3)(c); 555 CMR 6.06;
  - d. an officer-involved injury or death, see M.G.L. c. 6E, §§ 8(b)(1), 8(c)(1)(i), 8(e), 10(a)(xi); 555 CMR 1.02(3)(a);
  - e. an agency head's recommendation for disciplinary action, see M.G.L. c. 6E, § 8(c)(1)(v); 555 CMR 1.02(3);
  - f. misrepresentation, fraud, or document falsification in connection with



- certification, see M.G.L. c. 6E, § 10(a)(iii)-(iv);
  - g. revocation of certification by another jurisdiction, see M.G.L. c. 6E, § 10(a)(v);
  - h. an appealed agency termination based on intentionally obtaining false confessions; making a false arrest; creating or using falsified evidence, including false testimony or destroying evidence to create a false impression; engaging in conduct constituting a hate crime; or directly or indirectly receiving a reward, gift, or gratuity on account of official services, see M.G.L. c. 6E, § 10(a)(vi);
  - i. unfitness for duty and danger to the public, see M.G.L. c. 6E, § 10(a)(xvi);
  - j. racial profiling, see M.G.L. c. 6E, § 3(a)(29);
  - k. other “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,” see M.G.L. c. 6E, §§ 1, 8(b)(1), 8(e), 10(b)(ii), 10(d)(ii), 16; M.G.L. c. 12, § 11H;
  - l. untruthfulness, see M.G.L. c. 6E, §§ 1, 8(e), 10(d)(vi); see also 555 CMR 6.07(5);
  - m. failing to respond an incident according to established procedure, see M.G.L. c. 6E, § 10(d)(iv);
  - n. kettling, see 555 CMR 6.08(6);
  - o. failing to fulfil a duty regarding crowd-control planning or reporting a use of force, see M.G.L. 6E, §§ 8, 9(c), 14(e), 15(b); 555 CMR 6.07(4)-(5);
  - p. “harassment, intimidation, or retaliation against an officer who either intervened to prevent or stop an excessive force incident or made, intended to make, or [was] required to make a report regarding [a] witnessed excessive force incident,” see 555 CMR 6.07(7);
  - q. “[taking] adverse action against an officer or employee or threaten[ing] to take any such action for providing information to the commission or testifying in any commission proceeding,” see M.G.L. c. 6E, § 12; see also M.G.L. c. 6E, § 8(c)(2); 555 CMR 1.02(4);
  - r. repeated sustained internal affairs complaints, see M.G.L. c. 6E, § 10(b)(v);
  - s. an appealed agency suspension or termination for disciplinary reasons, see M.G.L. c. 6E, §§ 8(e), 10(b)(iv), 10(d)(vii);
  - t. a demonstration that the officer would benefit in job performance if retrained, see M.G.L. c. 6E, § 10(d)(ix);
  - u. “failing to act in accordance with a limitation or restriction on a certification,” see 555 CMR 9.10(8) (promulgation pending); and
  - v. executing an arrest or otherwise performing police duties and functions when prohibited, see 555 CMR 9.13(8) (promulgation pending);
  - w. other prohibited conduct, see M.G.L. c. 6E, § 8(c)(2); 555 CMR 1.02(4);
  - x. otherwise violating M.G.L. c. 6E; a Commission regulation, rule, or order; or a training or reporting requirement, see M.G.L. c. 6E, §§ 3(a)(18), (22), 4(f)(4), 8(e), 9(b)-(c), 10(d)(i); and
  - y. other unprofessional conduct, see M.G.L. c. 6E, §§ 8(b)(1), 8(e), 8(f), 10(b)(iii), 10(d)(v).
3. ~~The “minor matters” category does not include any matter involving one of these subjects referenced in 555 CMR 1.01(1)(a):~~
- ~~a. “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”;~~
  - ~~b. “excessive, prohibited, or deadly force”; or~~
  - ~~c. “an action which resulted in serious bodily injury or death”.~~
4. ~~Matters that ordinarily should be treated as non-minor include, but are not limited to, forms of officer misconduct involving:~~
- ~~a. Violation of a criminal law;~~
  - ~~b. Physical or financial harm to another person;~~
  - ~~c. Use of force; or an improper threat, by language or conduct, to use force;~~
  - ~~d. Dishonesty;~~
  - ~~e. Endangerment of another;~~
  - ~~f. An arrest or other legal action, or a threat of arrest or other legal action, in retaliation for an individual’s bringing or expressing an intent to bring a complaint, or for any other improper purpose;~~
  - ~~g. A determination by a government official, acting in an official capacity, of wrongdoing by the officer;~~
  - ~~h. A similarity to inappropriate conduct that the officer was alleged by another individual to have committed, with respect to the same or another situation; and~~
  - ~~i. An officer who has received an unusually high number of complaints, taking into account the nature of the officer’s work and the number of complaints against other officers performing comparable work.~~

5.4. The Commission’s requests that agencies submit periodic reports summarizing officers’ disciplinary histories, and the guidelines accompanying those requests, are separate from, and have no bearing on, agencies’ obligations under 555 CMR 1.00.

### **Pattern of Complaints**

Under 555 CMR 1.01(1)(c)3., “[a]n agency shall forward any pattern of complaints alleging the misconduct of an officer to the commission.”

1. The above requirement applies without regard to whether the complaints at issue relate to minor or non-minor matters, and without regard to the location or date of any complaint.
2. Where an agency forwards a pattern of complaints under 555 CMR 1.01(1)(c)3., the agency should:
  - a. describe the pattern it has identified; and
  - b. with respect to each such complaint, include all information prescribed by 555 CMR 1.01(1)(b), to the extent such information is available, even if the complaint or such information may have been previously submitted to the Commission.

### **Internal Complaint Resolution**

Under 555 CMR 1.01(1), “[t]he head of an agency shall, within two [business] days of their receipt of a complaint” that “is related to minor matters” and “does not involve evidence or an

allegation of” certain forms of “bias,” “force,” or “serious bodily injury or death,” ~~ordinarily, among other things,~~ “refer the complaint for resolution under the agency’s internal resolution policy, which shall comply with any minimum requirements established by the commission.”; or maintain and furnish documentation regarding the complaint as provided in the regulation “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 [an internal resolution policy] for any other reason.” Such provisions are consistent with M.G.L. c. 6E, § 8(b)(1), which, as noted above, allows the Commission to “establish a minimum threshold and streamlined process for the reporting or handling of minor complaints that do not involve the use of force or allegations of biased behavior.”

1. An agency’s “internal resolution policy” should, at a minimum, include adherence to the following provisions of 555 CMR 1.01(1)(a):
  - a. “[T]he 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
  - b. “[The agency shall] make any such complaint available to the commission upon request, or under any policy that may be established by the commission.”
2. Documentation maintained by an agency for these purposes should, at a minimum, be included in the officer’s personnel file and a central file or database for such information, maintained by the agency.
3. If an agency does not have an internal resolution policy, the agency head should refer the matter to an agency internal investigation unit or internal investigation officer for investigation and appropriate action.

2.4. The Commission is not bound by any agency determination regarding the allegations made in an initial report ~~a complaint~~ or the appropriate disposition.

### **Allegations of Unprofessional Conduct**

555 CMR 1.01(1) provides, in accordance with M.G.L. c. 6E, § 8(b)(1), that “[t]he head of an agency shall, within two [business] days of their receipt of a complaint” that “does not relate to minor matters,” among other things, inform the Commission’s Division of Police Standards as to “whether the complainant alleges that the officer’s conduct . . . was unprofessional.”

1. For these purposes, a “complainant alleges that the officer’s conduct . . . was unprofessional” where a reasonable person would conclude that the form of conduct alleged would breach the rules or ethical code of the law enforcement profession or be unbecoming a member in good standing of such profession.

- ~~1.2. In reviewing officer conduct, sources that may be helpful include, but are not limited to, the first five paragraphs of the October 1957 Law Enforcement Code of Ethics adopted by the International Association of Chiefs of Police, and the July 2019 Standards of Conduct adopted by the same association.~~

### **Discretionary Forwarding of Complaints**

555 CMR 1.01(1)(c) provides that, “notwithstanding [555 CMR 1.01(1)(a)-(b)], . . . [a]n agency may forward any complaint other than those set out in 555 CMR 1.01(1)(b) at the agency’s discretion.”

1. The above provision should not be understood to suggest that an agency has discretion concerning whether to forward a “pattern of complaints alleging the misconduct of an officer to the commission,” as the forwarding of such a pattern is required under 555 CMR 1.01(1)(c)3.
2. The Commission encourages an agency ~~that~~ to include all information prescribed by 555 CMR 1.01(1)(b) when it forwards a complaint as an exercise of its discretion under 555 CMR 1.01(1)(c). ~~to include all information prescribed by 555 CMR 1.01(1)(b).~~

### **Confidentiality of Agency Investigations**

Under 555 CMR 1.01(2), an agency’s “internal investigation of the subject matter of any complaint forwarded to the division of standards under 555 CMR 1.01(1)(b)” “shall be conducted confidentially to the extent permitted by law.”

1. The above provision does not restrict an agency’s ability to provide information to a prosecuting office.
- ~~2. 555 CMR 1.01(2) does not restrict a prosecuting office’s ability to provide information to a criminal defendant or the defendant’s attorney, or to otherwise use the information in connection with a criminal investigation or prosecution.~~
- ~~3. The Commission requests that, when a prosecuting office contemplates disseminating information of the type described in 555 CMR 1.01(2) in such a manner, it considers seeking a protective order or confidentiality agreement to the extent that may be appropriate.~~

### **Audio Recording of Interviews and Other Disciplinary Proceedings**

555 CMR 1.01(2)(c) provides that an agency investigator’s “interviews of relevant witnesses” “should be audio recorded if feasible.”

1. The best practice is to record and retain interviews. Recording generally promotes accuracy and precision in the recitation of statements made by interviewees and in factual

determinations. It thus helps avoid misrepresentation and misunderstanding, and enhances the fairness of the process and the quality of decision-making.

2. Recording an interview ordinarily will be “feasible” unless such a step would make it impossible, or extremely or unreasonably difficult, to obtain an interview of the individual.
3. Agencies and officers should remain mindful of the fact that 555 CMR 1.01(c)(3) requires an agency head to submit, as part of an investigation report, “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.” Where an interview has not been recorded: the Commission and others may have questions or concerns about the reason offered; they may draw inferences that are adverse to the person or entity that did not wish to have the interview recorded; and they may otherwise take into account the failure to record in making determinations of credibility and fact.
4. For the reasons offered above, the Commission additionally encourages agencies to make audio recordings of disciplinary proceedings other than interviews.

### **Deadlines for Completion of Agency Actions**

Several provisions of 555 CMR 1.01(1) require agencies to provide items to the Commission within prescribed timeframes.

1. Such provisions must be read in conjunction with the following:
  - a. M.G.L. c. 6E, § 8(b), which requires certain actions to be taken by agencies within certain timeframes;
  - b. M.G.L. c. 6E, § 10(h), which governs the timing of, and interplay between, agency and Commission disciplinary proceedings; and
  - c. 555 CMR 2.00: *Construction; Application of Rules; Notice*, which, among other things: defines terms used in Commission regulations; provides that “[a]ny act that must be performed ‘immediately’ under a provision of 555 CMR or M.G.L. c. 6E shall be performed as soon as the exercise of reasonable diligence will enable such performance”; and establishes rules for computing time periods referenced in Commission regulations.
2. In light of the above statutory and regulatory provisions, the following time standards apply, barring any extension of time (the length of which cannot be inconsistent with the provision of M.G.L. c. 6E, § 10(h) that is referenced in point 2(f) below):
  - a. Within two business days after receiving a complaint, an agency head must take certain steps, including forwarding information regarding the complaint to the Commission where appropriate. M.G.L. c. 6E, § 8(b)(1); 555 CMR 1.01(1), 2.03(2).
  - b. Within fourteen calendar days after receiving a complaint as to which it has forwarded information to the Commission, an agency must commence an investigation. 555 CMR 1.01(2)(a), 2.03(2).

- c. Where an officer under investigation resigns before the agency concludes its investigation or imposes discipline, the agency head must report the resignation as soon as reasonable diligence will allow. M.G.L. c. 6E, § 8(b)(4); 555 CMR 1.01(5), 2.03(3).
- d. Within ninety calendar days after receiving a complaint, the agency must complete such an investigation. 555 CMR 1.01(2)(e), 2.03(2).
- e. Upon completing such an investigation, the agency head must transmit to the Division of Police Standards an investigation report as soon as reasonable diligence will allow. M.G.L. c. 6E, § 8(b)(2); 555 CMR 1.01(3), 2.03(3).
- f. Within one year after receiving a complaint, or notice of a complaint from the Commission, an agency must issue a final disposition, an investigation having already been completed. M.G.L. c. 6E, § 10(h).
- g. Upon determining the final disposition and any final discipline to be imposed, the agency head must transmit a report to the Division of Police Standards as soon as reasonable diligence will allow. M.G.L. c. 6E, § 8(b)(3); 555 CMR 1.01(4), 2.03(3).
- h. An agency has until the issuance of its final disposition or one year since the incident was reported to the Commission, whichever is earlier, before the Commission may institute a revocation or suspension hearing pursuant to M.G.L. c. 6E, § 10. M.G.L. c. 6E, § 10(h).
- i. Any time period that would end on weekend or legal holiday is extended to the end of the next business day. 555 CMR 2.03(2).

### **Agency Officials with Personal Conflicts**

Multiple provisions of 555 CMR 1.01 call for certain actions to be taken by the “head of [an] agency,” consistent with M.G.L. c. 6E, § 8(b). Additionally, 555 CMR 1.01(2)(b) provides, in part, that an agency’s investigator “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.”

1. Such provisions must be read in conjunction with 555 CMR 2.03(5), which provides that, “[i]n any instance in which an individual has a conflict precluding that person from exercising their authority under 555 CMR, 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.”

- ~~1.~~ 2. If an agency head and an immediate subordinate are both disqualified from receiving investigative reports under 555 CMR 1.01(2)(b), an individual shall be designated pursuant to 555 CMR 2.03(5), and that individual should consult with the General Counsel of the Commission regarding the reporting process.

## **Reporting of Uses of Force, Injuries, and Deaths**

555 CMR 1.00 in part governs the ~~handling, investigation, and~~ reporting by agencies of information alleging or evidencing officer misconduct, including forms ~~those~~ involving uses of force, injuries, or deaths. 555 CMR 6.00: *Use of Force by Law Enforcement Officers* sets forth various requirements for agencies and officers concerning uses of force, injuries, and deaths. ~~In particular~~ With respect to the reporting of information, 555 CMR 6.07(1) provides, in part, that “agencies shall develop and implement a policy and procedure for reporting the use of force,” ~~that which~~ “shall mandate reporting such incidents including, but not limited to, officer-involved injuries or deaths as described in [the regulations].” Similarly, 555 CMR 6.09 requires, in part, that “agencies shall develop and implement a policy and procedure for reporting a use of force that results in a death or serious bodily injury.” And 555 CMR 6.08(4) states, consistent with M.G.L. c. 6E, § 14(e), that, “[i]f a law enforcement officer utilizes or orders the use of kinetic impact devices, rubber bullets, [conducted energy devices (CEDs)], [tear gas or other chemical weapons (CWs)], [electronic control weapons (ECWs)], or a dog against a crowd, the law enforcement officer’s appointing agency shall file a report with the Commission” with certain details.

1. 555 CMR 1.00 and 555 CMR 6.00 must be read in conjunction.
2. Neither set of regulations relieves agencies or officers of any obligations they may have under the other set.
- ~~2.3. The phrases “excessive, prohibited, or deadly force” and “improper use of force” in 555 CMR 1.00 should be construed by reference to the provisions of 555 CMR 6.00.~~
- ~~3. In particular, an agency is required to submit a report when an officer utilizes or orders the use of tear gas, or any other chemical weapon (CW), rubber bullets or pellets, a kinetic impact device, an electronic control weapon (ECW), a conducted energy device (CED), or a dog against a crowd, pursuant to M.G.L. c. 6E, § 14(e) and 555 CMR 6.08(4).~~
4. Agency policies and procedures shall provide for the reporting to the Commission of all serious bodily injuries, and officer-involved injuries and deaths, as those terms are defined in 555 CMR 6.03, regardless of whether the injury or death was suffered by an officer or a member of the public.

## **Location and Date of Alleged Incidents**

555 CMR 1.01 in part governs the handling by agencies of initial reports ~~officer misconduct complaints~~ that they receive.



1. The obligations in 555 CMR 1.01 apply without regard to whether an ~~alleged incident occurred within incident allegedly occurred within the agency's jurisdiction and without regard to whether it allegedly occurred within~~ Massachusetts ~~or outside its borders~~.
2. The obligations in 555 CMR 1.01 do not apply to ~~an initial report a complaint~~ that an agency receives if: the ~~initial report complaint~~ was addressed by the agency prior to the promulgation of 555 CMR 1.00 on June 24, 2022; or the ~~initial report complaint~~ alleges only misconduct as to which both criminal and civil liability would be barred by applicable statutes of limitations.

### **Complaints Submitted Submissions by Members of the Public to the Commission**

555 CMR 1.01 in part governs the handling by agencies of ~~officer misconduct complaints~~ initial reports that they receive.

1. The regulations do not restrict or govern the public's submission of initial reports ~~complaints~~ directly to the Commission.
2. The Commission may receive and act on information from any source, as appropriate.
- 2.3. Members of the public may submit initial reports complaints directly to the Commission by following the instructions found on the Commission's website, <https://policecomplaints.mass.gov/complaint>.
3. ~~The Commission may address any complaint that it receives from any source in any lawful manner that it deems appropriate, including, but not limited to:~~
  - a. ~~forwarding the complaint to an agency or prosecuting office for investigation or other action, as appropriate; and~~
4. Members of the public are not precluded from submitting, and the Commission is not precluded from reviewing, matters involving alleged conduct predating the establishment of the Commission or as to which a criminal or civil action would be barred by a statute of limitations.
5. While the Commission will ordinarily forward an initial report to the employing agency or appointing authority of the officer involved, it will decide whether to do so on a case-by-case basis.
5. ~~The Commission may rendering~~ a determination regarding an initial report that differs from one reached by an agency or another person or entity.
5. The Commission's requests that agencies submit spreadsheets summarizing officers' disciplinary histories, and the guidelines accompanying those requests, are separate from, and have no bearing on, the manner in which the Commission may address any initial report complaint that it receives.



### **Confidentiality of Information Regarding Commission Preliminary Inquiries**

By statute, “[a]ll proceedings and records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry shall be confidential.” M.G.L. c. 6E, § 8(c)(2). However, “[t]he division of police standards shall notify any law enforcement officer who is the subject of the preliminary inquiry, the head of their collective bargaining unit and the head of their appointing agency of the existence of such inquiry and the general nature of the alleged violation within 30 days of the commencement of the inquiry.” M.G.L. c. 6E, § 8(c)(3). In addition, “the executive director may turn over to the attorney general, the United States Attorney or a district attorney of competent jurisdiction evidence which may be used in a criminal proceeding.” M.G.L. c. 6E, § 8(c)(2). Similarly, the Commission is authorized to “refer cases for criminal prosecution to the appropriate federal, state or local authorities” and “refer patterns of racial profiling or the mishandling of complaints of unprofessional police conduct by a law enforcement agency for investigation and possible prosecution to the attorney general or the appropriate federal, state or local authorities.” M.G.L. c. 6E, § 3(a).

Accordingly, the regulations at 555 CMR 1.00 ~~555 CMR 1.03~~ provides that “[a]ll 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.” 555 CMR 1.03. Likewise, ~~555 CMR 1.07(2)~~ ~~they~~ states that “[t]he 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.” 555 CMR 1.07(2).

~~However, But the regulations add 555 CMR 1.04 provides~~ that “[t]he division of standards shall, within 30 [calendar] 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.” 555 CMR 1.04. ~~They also provide that “[a]ny 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 same individuals. 555 CMR 1.08(3).~~

Additionally, 555 CMR 1.04 ~~adds-states~~ that “[n]othing [therein] 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.”; and – 555 CMR 1.08(3) similarly indicates that “[n]othing [therein] 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.” Also, ~~555 CMR 1.03 and 1.07(2), consistent with M.G.L. c. 6E, §§ 3(a) and 8(c)(2), 555 CMR 1.03 allows~~ the Commission’s Executive Director to provide ~~otherwise confidential information~~ “evidence which may be used in a criminal proceeding or investigation” to the officials listed in M.G.L. c. 6E, § 8(c)(2), and 555 CMR 1.07(2) allows the

Executive Director to provide “[t]he division of standards’ report on its preliminary inquiry” “for use in a criminal proceeding or investigation” to such an official.~~“to the attorney general, the United States Attorney, or a district attorney of competent jurisdiction” for possible use in a criminal investigation or prosecution.~~

1. 555 CMR 1.00 does not govern the conduct of the Offices of the Massachusetts Attorney General, the United States Attorney for the District of Massachusetts, or the Massachusetts District Attorneys.
2. The Commission requests that those who receive information regarding a preliminary inquiry that was prepared by, or provided by, the Commission:
  - a. Consider taking steps to maintain such information as confidential, such as seeking a court order or agreement providing for confidentiality, to the extent that any such steps are not inconsistent with any official, professional, legal, or ethical duties, and are otherwise appropriate and feasible; and
  - b. Notify the Commission before disclosing the information to others.
3. The Commission recommends that recipients of such information obtain case-specific legal guidance from their own counsel regarding the extent to which such information must be disclosed or used, or cannot be disclosed or used, under any source of law.

~~Neither 555 CMR 1.03 nor 555 CMR 1.07(2) restricts a prosecuting office’s ability to provide information to a criminal defendant or the defendant’s attorney, or to otherwise use the information in connection with a criminal investigation or prosecution.~~

~~–~~

~~The Commission requests that, when a prosecuting office contemplates disseminating information of the type described in 555 CMR 1.03 or 555 CMR 1.07(2) in such a manner, it considers seeking a protective order or confidentiality agreement to the extent that may be appropriate.~~

~~The Commission requests that, in all other circumstances, the recipient of any information regarding a preliminary inquiry maintain its confidentiality.~~

~~The Commission recommends that those who contemplate disseminating information regarding a preliminary inquiry obtain case-specific legal guidance from its own counsel as to whether such dissemination may otherwise be unlawful.~~

### Duties of Agency Heads

555 CMR 1.01 requires agency heads to transmit certain information either to the Commission or within their own agencies.

1. An agency head may fulfill a duty under 555 CMR 1.01 to “refer [a] complaint for resolution under the agency’s internal resolution policy” or to transmit information to the

Commission, other than a “recommendation . . . as to whether and how the commission should impose [certain] disciplinary action,” through another member of the agency acting on the agency head’s behalf.

2. In any event, an agency head remains responsible for whether and how the duties assigned to agency heads under 555 CMR 1.01 are fulfilled.

### **Notification by Agency to Officer**

555 CMR 8.04 provides as follows: “When a law enforcement agency supplies information concerning an officer to the Commission, the law enforcement agency: (a) Must notify the officer that it has done so in accordance with any other provision of 555 CMR that requires notification; or (b) In the absence of any such provision, must notify the officer that it has done so within ten calendar days, unless such notification would compromise an ongoing investigation or the security of any person or entity, or would be precluded by federal or Massachusetts law.”

1. 555 CMR 8.04 must be read in conjunction with the reporting provisions of 555 CMR 1.00 and 555 CMR 6.00.
2. 555 CMR 8.04 applies to an agency’s reporting of information to the Commission pursuant to 555 CMR 1.00 and 6.00.
3. An agency’s notification to an officer regarding the submission of a complaint to the Commission should ordinarily include the complaint or describe its substance.

### **Issuing a Summons as a Form of De-Escalation**

555 CMR 6.00 prohibits officers from using force without attempting to utilize de-escalation tactics in certain circumstances. 555 CMR 6.03 defines “De-escalation Tactics” as “[p]roactive actions and approaches used by an officer to stabilize a law enforcement situation so that more time, options and resources are available to gain a person’s voluntary compliance and to reduce or eliminate the need to use force including, but not limited to,” certain actions and approaches listed therein; and concludes by stating that “[d]e-escalation shall include, but is not limited to, issuing a summons instead of executing an arrest where feasible.”

1. The definition of “De-escalation Tactics” does not require an officer to take any particular step. Rather, it generally defines the term and then offers a non-exhaustive list of possible actions, any one of which would constitute a de-escalation tactic.
2. In particular, the definition’s final statement does not compel an officer to issue a summons instead of executing an arrest in all circumstances or any particular ones. It simply highlights one possible approach that would be considered a form of de-escalation.

6c.



## MEMORANDUM

### CHAIR

Margaret R. Hinkle

### COMMISSIONERS

Hanya H. Bluestone

Lawrence Calderone

Clementina Chéry

Larry E. Ellison

Marsha V. Kazarosian

Charlene D. Luma

### EXECUTIVE DIRECTOR

Enrique A. Zuniga

**TO** Commissioners  
**FROM** LaRonica K. Lightfoot, Deputy General Counsel  
**DATE** August 3, 2023  
**SUBJECT** Policy Prohibiting Possession of Weapons in Commission Offices and Facilities

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The Hearings Administrator has received a request by an appellant for an in-person hearing before the Peace Officer Standards and Training Commission (“Commission”). This would be the Commission’s first in-person hearing of any kind. The Commission, however, can expect to receive requests for in-person hearings with some regularity. Currently, the Commission is in the process of relocating to a permanent office location, which will be accessible to the public.<sup>1</sup> Accordingly, this memorandum provides information about a proposed safety policy prohibiting any individual from possessing weapons in Commission offices and facilities designated to conduct Commission business. This policy would apply to all persons, including, but not limited to, law enforcement officers, who are attending or participating in proceedings, meetings, seminars, and other events at the Commission’s offices, or who are visiting the offices for any other purpose.<sup>2</sup> If adopted by the Commission, approved policy language should be posted in a conspicuous location at the Commission’s offices and on its website to ensure that the policy is broadly circulated and available to the public and on appropriate Commission correspondence, including, but not limited to, subpoenas and hearing notices.

Section I of this memorandum offers certain text that would be appropriate on the Commission’s website and correspondence and at the Commission’s offices and facilities where Commission business is being conducted. Next, Section II outlines the recommended process for noticing the public of the proposed weapons policy. Finally, Section III provides excerpts from the statutes and regulations that help inform the determination of what to include in a Commission policy addressing the prohibition of weapons or dangerous items which can be used as weapons.

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<sup>1</sup> The Commission’s new office space will be located at 84 State Street and managed by Lincoln Property Company.

<sup>2</sup> The applicability of this policy to exclude anyone from the category of “all persons” is subject to a vote by the Commission.

# MEMORANDUM

## **I. THE PROPOSED POLICY AND THE POLICIES OF OTHER AGENCIES**

I reviewed the policies of the Division of Capital Asset Management and Maintenance (“DCAMM”), the State Ethics Commission (“Ethics Commission”) and the Civil Service Commission (“CSC”) and found them to provide helpful guidance. The suggested language for a weapons policy unique to the Commission is adapted from the Ethics Commission’s policy prohibiting weapons of any kind in the CSC offices and largely tracks a version posted on its website.<sup>3</sup> The CSC currently enforces the same policy as the Ethics Commission that “prohibits all individuals, including law enforcement officers, from carrying firearms while visiting the offices of the Commission” and issued a firearms protocol for law enforcement officers attending CSC hearings that went into effect on March 16, 2009.<sup>4</sup> These agency guidelines strictly prohibit the possession of weapons by any individual at any agency facility or activity.

DCAMM identifies dangerous items that are not allowed in DCAMM managed facilities, except by on-duty public safety personnel as defined by DCAMM policy.<sup>5</sup> In addition to firearms, DCAMM’s policy prohibits, among other things: knives and edged devices; bats, clubs, or other blunt objects; firearms ammunitions; explosive ordnance or similar devices; fireworks; debilitating sprays, liquids, or gels such as pepper spray or other chemical agents; electronic control devices; and any other item DCAMM, within its discretion, deems dangerous that may reasonably present a threat to the safety and security of the building or its occupants.<sup>6</sup> The Commission may find it beneficial to expressly provide for the prohibition of some, if not all, of the above-listed items identified by DCAMM as dangerous.

The Commission should consider adopting a policy that applies to any “weapon” or item the Commission deems dangerous and reasonably likely to present a threat to the safety and security of the building or its occupants and includes, but is not limited to:

- firearms and ammunitions;
- knives and edged devices;
- batons, bats, clubs, and other blunt objects;
- tasers and other electronic control devices;
- chemical weapons;
- fireworks, explosive ordnance, and similar devices; and
- debilitating sprays.

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<sup>3</sup> See Attachment A - State Ethics Commission policy prohibiting weapons in the Commission offices | Mass.gov.

<sup>4</sup> See Attachment B.

<sup>5</sup> “Only on-duty uniformed and plain-clothes Public Safety Personnel, persons conducting business with the Commonwealth who are authorized by their employer to carry a weapon as part of their core job duties, contracted security personnel authorized by DCAMM, and contractors or service providers authorized by DCAMM are allowed to carry a weapon or other dangerous items while present in the building.”

<sup>6</sup> See Attachment C.

## MEMORANDUM

The Commission's weapon policy should govern all persons (including, but not limited to, law enforcement officers) who are attending or participating in proceedings, meetings, seminars, or other events at the Commission's offices and designated facilities, and who are visiting the offices and designated facilities for any other purpose. This is directly in line with the policies of both the Ethics Commission and CSC, which are agencies that have law enforcement officers and members of the general public regularly attending and participating in proceedings and meetings in the same manner as the Commission. As previously noted, DCAMM's policy permits persons conducting business with the Commonwealth who are authorized by their employer to carry a weapon in the buildings and facilities DCAMM manages.

The Commission does not have the capacity to store weapons and cannot arrange for the storage of weapons. Therefore, it should be the responsibility of persons visiting the Commission's offices or attending Commission proceedings, meetings, seminars, or other events at the Commission's offices to comply with the Commission's weapons policy and store all weapons safely before arrival. The Commission should direct that anyone found to possess a weapon in violation of the weapons policy should be directed to remove the weapon from the premises immediately or they should be denied admission to the Commission's offices, including to any proceeding, meeting, seminar, or other event. The Commission should exercise its discretion to take appropriate action against a person violating the weapons policy, which could include, but not be limited to, contacting the authorities.

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## II. SUGGESTED PROVISIONS FOR POSTING AND NOTICING THE POLICY

I recommend the Commission's website include the weapons policy, which can be found at Attachment D. Notice of the weapons policy, after it becomes effective, should be immediately posted on the Commission's website. In addition to posting a notice on its website, the Commission should consider adopting the following policy concerning the provision of notice of its weapons policy on the Commission's subpoenas and notices, and any other documents that are issued to all persons who may be attending or participating in proceedings, meetings, seminars, or other events at the Commission's offices and designated facilities:

- The Executive Director shall ensure that meeting notices and adjudicatory hearing notices in Commission matters include this statement: **"All individuals, including law enforcement officers, are prohibited from possessing weapons, including firearms, in Commission offices and facilities designated to conduct Commission business, and are expected to comply with the Commission's Policy Prohibiting Weapons in the Commission's Offices and Designated Facilities."**
- The Executive Director shall ensure that the Commission's weapons policy is posted in any reception area under the Commission's control. Anyone who arrives at the Commission's offices with a weapon will be made aware of the policy and directed to comply with it immediately.

## MEMORANDUM

- The Director of the Division of Police Standards shall ensure that summonses and subpoenas issued to witnesses in connection with interviews, depositions, and hearings in Commission matters should include the above statement.
- The Hearings Administrator shall ensure that scheduling orders and adjudicatory hearing notices in Commission matters should include the above statement.

### **III. RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **M.G.L. c. 6E, § 3**

(a) The commission shall have all powers necessary or convenient to carry out and effectuate its purposes, including, but not limited to, the power to:

(1) act as the primary civil enforcement agency for violations of this chapter;

...

(4) deny an application or limit, condition, restrict, revoke or suspend a certification, or fine a person certified for any cause that the commission deems reasonable;

...

(12) execute all instruments necessary or convenient for accomplishing the purposes of this chapter;

...

(23) restrict, suspend or revoke certifications issued under this chapter;

(24) conduct adjudicatory proceedings in accordance with chapter 30A;

...

(26) issue subpoenas and compel the attendance of witnesses at any place within the commonwealth, administer oaths and require testimony under oath before the commission in the course of an investigation or hearing conducted under this chapter; ....

#### **M.G.L. c. 6E, § 9**

(d) A law enforcement officer whose certification is suspended by the commission pursuant to subsection (a), (b) or (c) shall be entitled to a hearing before a commissioner within 15 days....

#### **M.G.L. c. 6E, § 10**

(a) The commission shall, after a hearing, revoke an officer's certification if the commission finds by clear and convincing evidence that:



## MEMORANDUM

- (i) the officer is convicted of a felony;
  - (ii) the certification was issued as a result of administrative error;
  - (iii) the certification was obtained through misrepresentation or fraud;....
- (b) The commission may, after a hearing, suspend or revoke an officer's certification if the commission finds by clear and convincing evidence that the officer:
- (i) has been convicted of any misdemeanor;
  - (ii) was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level in their conduct;
  - (iii) has a pattern of unprofessional police conduct that commission believes may escalate;....
- ...
- (d) The commission may, after a hearing, order retraining for any officer if the commission finds substantial evidence that the officer:
- (i) failed to comply with this chapter or commission regulations, reporting requirements or training requirements;
  - (ii) was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level in their conduct;
  - (iii) used excessive force;....
- ...
- (f) The commission shall conduct preliminary inquiries, revocation and suspension proceedings and hearings, and promulgate regulations for such proceedings and hearings, pursuant to sections 1, 8 and 10 to 14, inclusive, of chapter 30A....

### **555 CMR 1.05**

(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. . . The commission shall exercise all legal remedies available to it to enforce any subpoenas issued under 555 CMR 1.05(2).

## MEMORANDUM

### **555 CMR 1.09**

(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 555 CMR 1.09.

...

(4) The executive director shall, immediately upon a receipt of a request for a hearing under 555 CMR 1.09: notify the chair of that request; schedule a hearing not less than five days and not more than 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....

...

(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 through 14. 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:

...

#### (c) Public Access.

...

2. 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)1. 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.

### **555 CMR 1.10**

(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;

## MEMORANDUM

- (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.

...

(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 through 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 M.G.L. c. 6E, § 10(f)).

- (a) Public Access.

...

2. 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)1. 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 will not be contrary to the public interest....

...

(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 555 CMR 1.10 as it is permitted to use with respect to preliminary inquiries pursuant to 555 CMR 1.05(b).

### **555 CMR 7.07**

(3) If the decision [of the division of certification] provides for anything other than full recertification, the notification described in 555 CMR 7.07(1) shall also inform the officer of the ability to seek review by the executive director as provided for in 555 CMR 7.10(1) and a hearing as provided for in 555 CMR 1.10 and 555 CMR 7.10(2).

## MEMORANDUM

### **555 CMR 7.10**

(1) Executive Director Review.

(a) Within 21 days of a decision by the division of certification declining to grant full recertification, an officer may submit a written petition to the executive director requesting review of the decision, a copy of which the officer shall provide to the officer's employing agency.

(b) The executive director, or that person's designee, may ask any entity or individual to provide additional information, orally or in writing, or to appear at a meeting concerning the matter.

...

(2) Opportunity for Hearing. Following the process described in 555 CMR 7.10(1), an officer may request a hearing before the commission concerning an application for recertification in accordance with 555 CMR 1.10: Final Disciplinary Hearings and Appeals of Certification Decisions.

# Attachment A

## State Ethics Commission Policy

# State Ethics Commission policy prohibiting weapons in the Commission offices

**No weapons of any kind may be brought into the State Ethics Commission's offices.**

No weapons of any kind may be brought into the State Ethics Commission's offices located at One Ashburton Place, Room 619, Boston, Massachusetts for any reason. This policy applies to all Commission members and employees, as well as all persons (including, but not limited to, law enforcement officers) who are attending or participating in proceedings, meetings, seminars, and other events at the Commission's office, or who are visiting the office for any other purpose. Notice of this policy shall be emailed to Commission staff and posted on the Commission's website. For purposes of this policy, "weapons" includes, but is not limited to, firearms, knives, batons, tasers, and chemical weapons.

In addition to the notice posted on the website, notice of the Commission's policy regarding firearms shall be given as follows:

- The Enforcement Division Chief shall ensure that summonses and subpoenas issued to witnesses in connection with interviews, depositions and hearings in Commission matters include this statement: **"Weapons, including firearms, may not be brought to this proceeding."**
- The Legal Division Chief shall ensure that scheduling orders and adjudicatory hearing notices in Commission matters shall include this statement: **"Weapons, including firearms, may not be brought to this proceeding."**
- The Commission's weapons policy will be posted in the Commission's reception area. Anyone who arrives at the Commission's offices with a weapon will be made aware of the policy and directed to comply with it immediately.

It is the responsibility of persons visiting the Commission's offices or attending Commission proceedings, meetings, seminars or other events at the Commission's office to comply with the Commission's weapons policy and store all weapons safely before arriving at the Commission's offices. The Commission does not have the capacity to store weapons and will not arrange for the storage of weapons. Anyone found to possess a weapon in violation of this Policy will be directed to remove the weapon from the premises immediately or will be denied admission to the Commission's offices, including to any proceeding, meeting, seminar or other event. Employees in violation of this policy may be subject to disciplinary action, up to and including termination.

If you have any questions regarding this policy, please call the Commission's General Counsel at (617) 371-9500.



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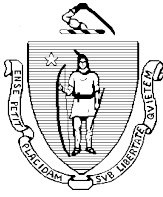
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# Attachment B

## Civil Service Commission Policy





**THE COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

One Ashburton Place, Room 503  
Boston, Massachusetts 02108  
Telephone (617) 727-2293  
Facsimile (617) 727-7590  
[www.mass.gov/csc](http://www.mass.gov/csc)

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LT. GOVERNOR

**CHAIRMAN**  
CHRISTOPHER C. BOWMAN

**COMMISSIONERS**  
DANIEL M. HENDERSON  
DONALD R. MARQUIS  
PAUL M. STEIN  
JOHN E. TAYLOR

**GENERAL COUNSEL**  
ANGELA C. McCONNEY

**ADMINISTRATIVE ASSISTANT**  
MEDES J. DIAZ

**NEW FIREARMS PROTOCOL FOR LAW ENFORCEMENT OFFICERS  
ATTENDING CIVIL SERVICE COMMISSION HEARINGS**

- The Civil Service Commission has a longstanding policy that prohibits all individuals, including law enforcement officers, from carrying firearms while visiting the offices of the Commission.
- Effective March 16, 2009, there will no longer be a State Trooper assigned to the lobby of the McCormack Building and temporary weapons storage will no longer be available.
- Law enforcement officers should plan accordingly.

---

Christopher C. Bowman  
Chairman  
(617) 727-2293, ext. 21902

# Attachment C

## DCAMM Policy



# Prohibited and Dangerous Items - DCAMM Managed Facilities

Learn which items are considered dangerous and not allowed in the these buildings.

## Prohibited items

The following items are not permitted inside the building:

- Fresh cut Christmas trees, wreaths etc.
- Open flames
- Known or suspected illicit drugs/ narcotics
- Known or suspected alcohol
- Pets or other animals, with the exception of service animals
- Appliances, such as portable heaters

## Dangerous items

The following are not permitted inside the building by anyone other than on-duty public safety personnel as defined by DCAMM policy:

- Weapons defined by Massachusetts General Law Chapter 269, section 10, to include all firearms
- Knives or edged devices not defined in MGL c. 269, s. 10
- Bats, clubs, or other blunt objects
- Firearms ammunition
- Explosive ordinance or similar device
- Fireworks
- Debilitating sprays, liquids, or gels such as pepper spray or other chemical agents
- Electronic control devices

Visitors are strictly prohibited from carrying any weapon or prohibited item while present in the building.

## Firearms

Only on-duty uniformed and plain-clothes Public Safety Personnel, persons conducting business with the Commonwealth who are authorized by their employer to carry a weapon as part of their core job duties, contracted security personnel authorized by DCAMM, and contractors or service providers authorized by DCAMM are allowed to carry a weapon or other dangerous items while present in the building.

Visitors in possession of a weapon or other dangerous items must declare the items to Security Officers on duty at the entry point. Visitors will not be provided with secure storage areas for firearms, but Security may secure other dangerous items for the duration of the visitor's time in the building. Visitors attempting to enter the McCormack with a firearm will be denied entry and advised to secure the firearm elsewhere.


The Massachusetts State Police will respond to incidents where a concealed weapon is not declared but discovered during security screening. The Massachusetts State Police reserve the right to ask for and view the owner's license or permit to carry a firearm. Individuals in possession of a firearm, and unable to produce a valid license or permit for the firearm, may be subject to arrest and confiscation of the weapon in accordance with Massachusetts General Law.


## Other prohibited items


DCAMM Security & Emergency Preparedness has the discretion to deem dangerous any other item that may reasonably present a threat to the safety and security of the building or its occupants.


Items determined to be dangerous will not be permitted into the building. At the discretion of security personnel, such items may be stored and reclaimed by the owner upon exiting the facility. DCAMM assumes no responsibility for items left pursuant to this policy.


## Additional Resources


- 


[Lindemann Occupant Handbook](#) (English, PDF 651.92 KB)
- 

[Massachusetts State Exposition Building Occupant Handbook](#) (English, PDF 564.65 KB)
- 

[McCormack Occupant Handbook](#) (English, PDF 520.64 KB)
- 

[MITC Occupant Handbook](#) (English, PDF 532.41 KB)
- 

[Pittsfield State Office Building Occupant Handbook](#) (English, PDF 371.93 KB)
- 

[Springfield Data Center Occupant Handbook](#) (English, PDF 380.69 KB)
- 

[Springfield State Office Building Occupant Handbook](#) (English, PDF 2.15 MB)

See all 7 

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# Attachment D

## Commission Weapons Policy



# Massachusetts POST Commission

100 Cambridge Street, 14th Floor, Boston, MA 02114

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## **Peace Officer Standards and Training Commission**

### **Policy Prohibiting Possession of Weapons in Commission Offices and Designated Facilities**

No weapons of any kind may be brought into the Commission's offices, or any other locations or facilities designated for Commission business for any reason. For purposes of this policy, "weapons" includes, but is not limited to, firearms and ammunitions; knives and edged devices; batons, bats, clubs, and other blunt objects; tasers, conducted energy devices, and other electronic control devices; chemical weapons; fireworks, explosive ordnance, and similar devices; tear gas, chemical weapons, and other debilitating sprays; and any other item the Commission, within its discretion, deems dangerous and reasonably likely to present a threat to the safety and security of the building or its occupants. This policy governs all persons (including, but not limited to, law enforcement officers) who are attending or participating in proceedings, meetings, seminars, or other events at the Commission's offices and designated facilities, or who are visiting the offices and designated facilities for any other purpose.

It is the responsibility of persons visiting the Commission's offices or attending Commission proceedings, meetings, seminars, or other events at the Commission's offices and designated facilities to comply with the Commission's policy and store all weapons safely before arriving at the Commission's offices or events. The Commission does not have the capacity to store weapons and will not arrange for the storage of weapons. Anyone found to possess a weapon in violation of this policy will be directed to remove the weapon from the premises immediately or will be denied admission to the Commission's offices, including to any proceeding, meeting, seminar, or other event.

In addition to posting a notice on its website, the Commission should consider adopting the following policy concerning the provision of notice of its weapons policy on the Commission's subpoenas and notices, and any other documents that are issued to all persons who may be attending or participating in proceedings, meetings, seminars, or other events at the Commission's offices and designated facilities:

- The Executive Director shall ensure that meeting notices and adjudicatory hearing notices in Commission matters include this statement: **“All individuals, including law enforcement officers, are prohibited from possessing weapons, including firearms, in Commission offices and facilities designated to conduct Commission business, and are expected to comply with the Commission’s Policy Prohibiting Weapons in the Commission’s Offices and Designated Facilities.”**
- The Executive Director shall ensure that the Commission’s weapons policy is posted in any reception area under the Commission’s control. Anyone who arrives at the Commission’s offices with a weapon will be made aware of the policy and directed to comply with it immediately.
- The Director of the Division of Police Standards shall ensure that summonses and subpoenas issued to witnesses in connection with interviews, depositions, and hearings in Commission matters should include the above statement.
- The Hearings Administrator shall ensure that scheduling orders and adjudicatory hearing notices in Commission matters should include the above statement.