



## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

October 19, 2023

### CHAIR

Margaret R. Hinkle

### COMMISSIONERS

Lester Baker

Hanya H. Bluestone

Lawrence Calderone

Larry E. Ellison

Deborah Hall

Marsha V. Kazarosian

Charlene D. Luma

Rev. Clyde D. Talley

### EXECUTIVE DIRECTOR

Enrique A. Zuniga

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 #43**

**October 24, 2023**

**8:30 a.m.**

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

**Meeting ID: 928 9593 3949**

- 1) Call to Order
- 2) Approval of minutes
  - a. September 14, 2023
- 3) Executive Director Report – Enrique Zuniga
  - a. Certification Update
  - b. Disciplinary Records Update
  - c. Finance & Administrative Update
- 4) Legal Update – General Counsel Randall Ravitz
  - a. Process for Relinquishing Certification
  - b. Update on Publication of Regulations
- 5) Matters not anticipated by the Chair at the time of posting
- 6) 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

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

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-2023-10-24-002
    - ii) PI-2023-10-24-003
    - iii) PI-2023-10-24-004
    - iv) PI-2023-10-24-005
    - v) PI-2023-10-24-006
  - b. Division of Standards request to draft voluntary disciplinary agreement in the following case:
    - i) PI-2023-04-13-019
  - c. Approval of commencement of revocation proceedings for the following cases:
    - i) PI-2023-01-12-004
    - ii) PI-2023-04-13-010
  - d. Approval to close preliminary inquiry
    - i) PI-2023-02-16-002
  - e. Division of Standards request to suspend certification in the following case:
    - i) PI-2023-10-24-001
  - f. Approval of the minutes of the Executive Sessions of 9/7/23 and 9/14/23

2a.

# COMMONWEALTH OF MASSACHUSETTS

## MASSACHUSETTS PEACE OFFICER STANDARDS AND TRAINING COMMISSION

### PUBLIC MEETING MINUTES

**September 14, 2023**

**8:30 a.m.**

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

- Minutes of Public Meeting of July 12, 2023, and Minutes of Public Meeting of August 10, 2023 (Proposed)
- Executive Director Report, dated September 14, 2023
- Memorandum from Chief Financial and Administrative Officer Eric Rebello-Pradas, dated September 14, 2023
- Memorandum from Executive Director, dated August 7, 2023, re: Credentials for Law Enforcement Officers with POST Certification Number
- Guidance to Law Enforcement Agencies and Prosecuting Offices Regarding 555 CMR 1.00 and 6.00 (Proposed)
- Guidance to Law Enforcement Agencies and Prosecuting Offices Regarding 555 CMR 1.00 and 6.00 (Proposed and redlined)
- Guidance for Constables and Other Law Enforcement Personnel Regarding 555 CMR 9.00 (Promulgation Pending) (Proposed)
- 555 CMR 8.00: Databases and Dissemination of Information
- Memorandum dated August 3, 2023, re: Policy Prohibiting Possession of Weapons in Commission Offices and Facilities and Workplace Safety Policy (Proposed)

#### **In Attendance**

- Commission Chair Margaret R. Hinkle
- Commissioner Lester Baker
- Commissioner Hanya H. Bluestone
- Commissioner Lawrence Calderone
- Commissioner Larry Ellison
- Commissioner Deborah Hall
- Commissioner Marsha V. Kazarosian
- Commissioner Charlene D. Luma
- Commissioner Clyde Talley

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

- Chair Hinkle welcomed new Commissioners Deborah Hall and Clyde Talley, who are replacing Commissioners West and Chéry and expressed her gratitude to Commissioners West and Chéry for their service.
- At 8:34 a.m. the meeting was called to order.
- Chair Hinkle took a roll call of all the Commissioners present. It proceeded as follows:
  - Commissioner Baker – Present
  - Commissioner Bluestone – Present
  - Commissioner Calderone – Present
  - Commissioner Ellison – Present
  - Commissioner Hall – Present

- Commissioner Kazarosian – Present
  - Commissioner Luma – Present
  - Commissioner Talley – Present
  - Chair Hinkle said all nine members were present and recognized a quorum.
2. **Approval of minutes**
- Commissioner Kazarosian moved to approve the minutes of the July 12, 2023 meeting and the August 10, 2023 meeting.
  - Commissioner Ellison seconded the motion.
  - The Commission took a vote to the extent the Commissioners were present. The vote went as follows:
    - Commissioner Baker – was not present for the July meeting but approved the August minutes.
    - Commissioner Bluestone – yes
    - Commissioner Calderone – yes
    - Commissioner Ellison – yes
    - Commissioner Kazarosian – yes
    - Commissioner Luma – approved the July minutes but was not present for the August meeting.
    - Chair Hinkle – yes.
  - The July and August meeting minutes were approved.
3. **Executive Director Report – Executive Director Enrique A. Zuniga**
- Certification Update (last names I – P)
    - All agencies reported recertification information for officers with last names I – P.
    - The Division of Certification confirmed there are 5,645 individuals with last names I – P that need to be recertified.
    - There are very few officers not in compliance with recertification requirements.
    - 96.6% of officers with last names I – P are certified or conditionally certified.
    - POST has sent 3,667 certification letters to certified officers with last names I – P.
    - The Division of Certification used the new portal to process officer certification letters.
  - Disciplinary Records Update
    - Since the August Commission meeting, POST released the first batch of historical disciplinary records on August 22, 2023.
    - Executive Director Zuniga outlined the process for receiving and validating disciplinary records.
    - Records were validated by matching officers in the online database with those listed on the spreadsheet that was submitted by agencies.
    - If there was not an exact match between unique identifiers like name, date of birth, or MPTC ID number, the records were not migrated.
    - Before the data could be published, POST had to redact personal information and CORI information.
    - After the disciplinary records were published to the website, POST was notified that some records needed to be corrected.
    - POST met with different law enforcement groups that asked for the disciplinary

records to be taken down until the corrections were made.

- Executive Director Zuniga recommended the Commission keep the disciplinary records up and continue correcting and adding information.
- Executive Director Zuniga noted that the data was submitted on January 31, and some records have changed since then.
- Executive Director Zuniga said the first round of corrections were issued on September 1. POST will update the report as needed.
- About 4.5% of the published disciplinary records needed to be corrected. Most of the corrections were made in the September 1 update.
- There were a number of retired officers that asked to have their disciplinary records taken down. POST regulations provide that the records of individuals no longer serving as law enforcement officers are public records up to three years from their last certification. Therefore, POST will not remove the disciplinary records of individuals who recently retired.
- POST is being more judicious in its corrections. If the information was properly validated, it will not get taken down from the website.
- The report now includes information on an officer's current employing agency and the agency that reported the discipline.
- There are two additional datasets that will be released in the coming months.
- Executive Director Zuniga invited questions from the Commissioners.
- Commissioner Ellison asked if certification letters were also sent out to officers with last names A – H.
- Executive Director Zuniga replied that POST issued individual letters to agencies and asked the agencies to distribute the letters to the officers.
- For last names I – P, letters were sent directly to officers with their departments copied.
- Commissioner Ellison asked if independent officers and constables with police powers are certified and whether the Commission is able to track whether they are certified.
- Executive Director Zuniga replied that they should not be exercising police powers unless they are certified by POST. Independent officers and constables were not included in the certification numbers.
- Commissioner Ellison asked, as a follow-up question, whether anything is sent to constables and independently applying officers notifying them that they are not in compliance with POST.
- Executive Director Zuniga replied that further guidance to constables and independently applying officers will be provided in the General Counsel update later in the meeting.
- Commissioner Calderone asked for clarification regarding the State Police written warning protocol.
- Executive Director Zuniga replied that POST's interpretation of the regulation is that, when a matter is expunged or dismissed, it will no longer be listed in the database.
- Commissioner Bluestone asked whether retired individuals could have their records removed from the database. She asked whether POST considered offering retired

- officers the option to end their certification and have their records removed.
- Executive Director Zuniga replied that this option has not been considered. POST could look into it further and see whether it fits within existing regulations and guidance.
  - General Counsel Ravitz added that the regulations are written to allow Commissioners to vote to make exceptions. The regulations are written with an assumption that certification is good for three years. He said the legal team could prepare something for consideration that the Commission could vote on in terms of relinquishment of certification.
  - Commissioner Baker made a comment about the errors in the disciplinary records. He said moving forward, the list should be 100% correct before it is published. He said the Commission should notify police chiefs and conduct an audit before releasing disciplinary records.
  - Commissioner Baker also talked about the letters of counseling. He explained that they are conversations between an employee and his or her manager. He said to publicly publish that conversation is inappropriate.
  - Commissioner Luma asked what the process is for addressing incidents that were reported in error. She also asked whether agencies have the opportunity to address errors prior to the records being published.
  - Executive Director Zuniga replied that the spreadsheets only have summaries of incidents, so POST can look more into the underlying facts if necessary.
  - Commissioner Luma clarified her question. She asked, if there is such a discrepancy in what constitutes discipline, what POST should do so agencies better understand what they should submit.
  - Executive Director Zuniga said more guidance will be provided later in the meeting.
  - Commissioner Kazarosian commented that POST does not create the records. She acknowledged the importance of 100% accuracy, but there are humans involved with developing the database. Whether because of reporting from agencies or an issue with the database, records will never be 100% accurate. She said POST needs to be transparent and this is the most important step in transparency.
  - Commissioner Talley asked if there is a validation or filtering process before data is accepted into the system.
  - Executive Director Zuniga said there are a number of validations that happen prior to records getting published. During the validation process, records with errors were sent back to agencies to correct and resubmit information. He said that is why there is some data missing.
  - Commissioner Talley clarified he was asking about the content submitted.
  - Executive Director Zuniga said POST provided detailed instructions for resubmission. The deadlines in the statute were aggressive and POST had to send spreadsheets to agencies and get the corrected information back.
  - Commissioner Ellison provided an example from the Boston Police Department. Oral reprimands are documented and sent over to POST as part of the disciplinary packet. Officers cannot appeal oral reprimands even though it is part of their file.
  - Commissioner Calderone suggested POST develop a system of checks and

balances and do another check of information before releasing the second batch of records.

- Commissioner Luma acknowledged the need for a system of checks and balances but emphasized the need to remain transparent and accountable to the public.

4. **Financial Update – Chief Financial and Administrative Officer Eric Rebello-Pradas**

- CFAO Rebello-Pradas provided the following update.
  - The governor signed the new fiscal year 2024 budget in August. During fiscal year 2023, POST projected total spending at around \$7 million. Actual spending was \$6.6 million. \$5 million went toward the regular operating budget. There was \$2.9 million of unspent money from the previous fiscal year. This went toward the Salesforce IT solution. There was a leftover balance from the regular operating budget of about \$1.3 million. The forecasted unspent balance was about \$850,000, so the actual unspent balance was about \$400,000 more than that. This is mostly attributed to Salesforce coming in under budget.
  - CFAO Rebello-Pradas provided a quick summary of the fiscal year 2024 spending plan. The signed budget is \$8.5 million. With the \$1.3 million unspent from FY 23, the total available funding amounted to \$9.8 million.
  - CFAO Rebello-Pradas predicted POST will have 46 employees by the end of FY 24. This is five more than was initially forecasted.
  - Of the 46 total positions, 36 were filled as of September 14.
  - POST adopted a hybrid work model, and office space can be reserved through hoteling software accessible on cellphones.
  - CFAO Rebello-Pradas invited questions from Commissioners.
  - Commissioner Bluestone asked how POST will ensure the new office space is being well-utilized on a regular basis.
  - CFAO Rebello-Pradas said the office space is designed for around 30 employees. As long as POST retains about 50 employees, the office space will be efficiently used. Other Commissions that are part of law enforcement reform may also share the office space.
  - Commissioner Bluestone asked if, under the hybrid model, is there a way to ensure people come in and utilize the office space.
  - Executive Director Zuniga said POST looked at what other agencies have done. Moving forward, he will meet with directors to have their teams come in on certain days.
  - Commissioner Bluestone asked for clarification on the Hearing Officers' position in the organizational chart and if they report to anyone.
  - Executive Director Zuniga said the chart was designed that way because Hearing Officers are meant to be independent. Because they were appointed by the Chair, they would likely report to the Commission.
  - Commissioner Bluestone recommended denoting that in the organizational chart so it is clear they have oversight.
  - Commissioner Luma asked if the organizational chart reflected full-time employees. She also asked if POST still works with contractors for some work.
  - CFAO Rebello-Pradas said the only contractors POST has currently are a couple of legal interns. They are not included in the organizational chart because they do not count as full-time employees.



**5. Credentials for Law Enforcement Officers with POST Certification Number – Executive Director Zuniga**

- Executive Director Zuniga stated that the Commission received an update about a proposal from the Massachusetts Chiefs Association to reflect the POST certification number and expiration date on credentials issued to officers. The proposal includes an estimated cost of \$80,000 - \$100,000 annually. The goal is to have every officer carry an official credential.
- Commissioner Luma asked for an example of when credentials would need to be produced by an officer.
- Executive Director Zuniga stated that officers are not required to display their credentials, because the uniform and the badge serve significant purposes. It would provide, however, the officer's certification number and status if the officer is ever questioned.
- Chair Hinkle asked members of the Commission who are in law enforcement to comment.
- Commissioner Ellison stated that he does not see the benefit.
- Commissioner Calderone agreed with Commissioner Ellison that it seemed like an unnecessary expense.
- Commissioner Kazarosian stated that she agreed, and it would be impossible to keep the information upgraded and there are other means to determine an officer's status.
- Commissioner Bluestone asked that the timelines be consistent, if the Commission moved forward.
- Commissioner Baker agreed.

**6. Legal Update – General Counsel Randall E. Ravitz**

- Guidance to Law Enforcement Agencies and Prosecuting Offices Regarding 555 CMR 1.00 and 6.00 (revised version)
  - A draft of the guidance was previously discussed.
  - The guidance is intended to provide clarifying details about what are minor and non-minor matters, but not to create new regulations
  - The path to developing the guidance started in April and June 2023 when a draft was included in public meeting packets and placed on the Commission's website.
  - Numerous comments were received after the guidance being posting and the packet being placed on the website.
  - Presumptively non-minor matters include those that the Legislature or the Commission has previously determined may warrant a preliminary inquiry, discipline, referral to other authorities, or special treatment in recordkeeping or reporting.
  - The guidance clarifies that, where a credibility determination by an agency regarding an allegation may not have been made, the allegation does not rise to the level of a complaint but is an initial report.
  - The term complaint in the regulation has a specific meaning so the language should be clear.
  - An agency should provide an explanation where its credibility determination takes more than three days and offer more precision.
  - The guidance calls attention to 555 CMR 8.04, within the regulations on Databases and Dissemination of Information, which requires an agency to notify officers.

- The head of an agency may delegate certain functions but remains accountable.
- The Commission can review conduct that predates its establishment, and the Commission can decide on a case-by-case basis to forward an initial report to the officer's agency.
- Provisions regarding confidentiality and referrals to prosecuting offices state that: the regulations do not govern the conduct of those prosecuting offices; anyone who receives the information is asked to consider its confidentiality and take into account its confidential nature.
- Regulations on the Use of Force include a definition of De-escalation Tactics. Under its last sentence, an officer is not compelled to issue a summons in any particular circumstance; rather, the sentence highlights one possible approach.
- The Commission is submitting corrections to the Secretary of the Commonwealth's Office to correct certain errors.
- The Commission is developing additional regulatory provisions concerning recordkeeping, reporting, and auditing of agency regulations; reevaluating the public complaint form and revising it; seeking to better inform people about their ability to submit complaints to the Commission if not specifically referenced in the regulations, and developing other ways to inform people on the adjudicatory process.
- The Commission is considering discussions on matters that should be treated as non-minor, conduct that is threatening and intimidating, matters involving youths, patterns of unprofessionalism or misconduct, anonymous complaints, and items considered weapons under the regulations on use of force.
- In response to a question from General Counsel Ravitz, Chair Hinkle inquired about the past practice of having guidance placed on the Commission's website in final form and if a vote was required to accept it.
- General Counsel identified examples of guidance that were voted on but stated that it is still a relatively new procedure.
- Commissioner Calderone moved to have the Commission adopt the guidance and have it placed on the website.
- Commissioner Kazarosian seconded the motion.
- The Commission took a roll call vote as follows:
  - Commissioner Baker – yes
  - Commissioner Bluestone – yes
  - Commissioner Ellison – yes
  - Commissioner Hall – yes
  - Commissioner Luma – yes
  - Commissioner Talley – yes
  - Chair Hinkle – yes.
- The motion carried.
- Guidance to Constables and Other Law Enforcement Personnel Regarding 555 CMR 9.00
  - The Commission has voted to adopt the regulation and it needs to be published by the Secretary of State's Office.
  - Comments specifically regarding constables were removed in light of public comment.

- Key points in the regulation address the definition of arrest and certain types of conduct. The guidance clarifies that an arrest does not include the mere service of papers and a constable may obtain a certification that is active only while the constable serves as a law enforcement officer for a law enforcement agency.
- The individual is prohibited from executing an arrest or performing police duties and clarifies how a constable can come into scope as a law enforcement officer.
- Specific language is helpful and useful to the guidance and revision process.
- Commissioner Luma moved to adopt the guidance.
- Commissioner Bluestone seconded the motion.
- The Commission took a roll call vote as follows:
  - Commissioner Baker – yes
  - Commissioner Calderone – yes
  - Commissioner Ellison – yes
  - Commissioner Hall – yes
  - Commissioner Kazarosian – yes
  - Commissioner Talley – yes
  - Chair Hinkle – yes.
- The motion carried unanimously.
- Update on Other Regulatory Action
  - The Commission adopted a set of regulations dealing with Regulatory Action and Advisory Opinions, 555 CMR 11.00, that has been published and is in effect.
  - The regulations provided that the staff is enabled to correct typos and make minor corrections.
  - The staff will request corrections to citation errors and typos to 555 CMR 1.00 and 2.00.
  - 555 CMR 9.00 is on its way to being published and official.
- 7. **Workplace Safety Policy – Deputy General Counsel LaRonica K. Lightfoot**
  - Deputy General Counsel Lightfoot provided an overview of the proposed safety policy.
  - She stated that it is intended to provide notice to the public regarding POST's weapons policy.
  - This proposed policy was included in the August meeting packet but could not be addressed without a quorum present.
  - Similar agencies such as the Civil Service Commission and the Ethics Commission were considered when this policy was written. The agencies engage with the same members of the public as POST.
  - Deputy General Counsel Lightfoot asked the Commissioners to give attention to what is considered a weapon in the policy.
  - Since the packet was released to the public, POST has received one response questioning the fact that POST cannot store weapons. It said weapons are stored at the federal courthouse and suggested we reexamine that part of the policy.
  - It is Deputy General Counsel Lightfoot's understanding that POST does not have the appropriate personnel that could escort or secure a weapon from a law

enforcement officer.

- In 2009, the Civil Service Commission implemented the same policy after a state trooper was removed from Ashburton Place because they did not have the ability to facilitate the storage of weapons.
- The policy will become effective after a vote from the Commission.
- Deputy General Counsel Lightfoot brought up a point of discussion for Commissioners. The policy may not necessarily have an absolute ban on weapons.
- The Civil Service Commission and State Ethics Commission have policies that ban everyone, including law enforcement officers, from carry weapons into Commission facilities.
- She mentioned that POST may have public hearings that Commissioners will be present for and there are three law enforcement officers serving on the Commission.
- The policy before the Commission may not make a concession for Commissioners, so she opened up a discussion of that caveat.
- Commissioner Calderone said there are three police officers that sit on the Commission and carry their firearms. He said they attend these meetings while they are working and go to and from their places of employment. He put a motion forward to except Commissioners from the policy.
- Commissioner Ellison agreed with Commissioner Calderone.
- Commissioner Baker agreed, saying it would be impossible for them to attend meetings without their firearms.
- Commissioner Calderone moved to approve the policy with the exception to allow Commissioners to carry. Commissioner Bluestone seconded the motion.
- The Commission took a roll call vote as follows:
  - Commissioner Baker – yes
  - Commissioner Ellison – yes
  - Commissioner Hall – yes
  - Commissioner Luma – yes
  - Commissioner Talley – yes
  - Chair Hinkle – yes
- The motion was unanimously carried.

8. **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 Baker – yes
  - Commissioner Bluestone – yes
  - Commissioner Calderone – yes
  - Commissioner Ellison – yes
  - Commissioner Hall – yes
  - Commissioner Kazarosian – yes
  - Commissioner Luma – yes
  - Commissioner Talley – 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

October 24, 2023



# Agenda

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



# 1. Certification Update

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## Recertification I-P Figures

Recertification Information I – P	Sept 8	Oct 20
Agencies submitted information	438	438
Agencies on extension or pending submission	N/A	N/A
Officers' information submitted for recertification	5,645	5,645
Officers whose information may be pending	N/A	N/A

# 1. Certification Update



## Actual Recertification Results

Officers with Last Name I – P *	Preliminary (Aug 4)	Preliminary (Sept 8)	Actual (Oct 20)	%
Certified	5,361	5,377	5,359	94.9%
Conditionally certified	229	88	111	1.96%
Not Certified	15	14	16	0.3%
Not Certified – On Leave	49	161	153	2.71%
Requiring further review	11	5	1	
Subtotal	5,665	5,645	5,645**	100 %
Estimate pending submission *	51	N/A	N/A	

**\* Numbers do not include additional ~ 867 academy graduates certified this year**

**\*\* POST has sent out 5,645 letters. Will be reported publicly on November 1**

# Disciplinary Records Update

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## Requests to Modify Previously Submitted and Validated Records

1. Letters of Counseling or similar (documented verbal reprimands expunged after a period)
2. Disciplinary action for behavior that occurred not as Law Enforcement Officer (i.e., dispatcher)
3. Claims that incident should not have been reported, or does not constitute discipline (but was indeed reported and validated)
4. Modify category previously selected or modify description
5. Recently retired individuals (Relinquishing Certification - Legal Update)

# Disciplinary Records Update

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## 1. Documented Discipline that is Expunged, Vacated or Reversed

- 555 CMR 8.06 § 4(b)(1)(j) stipulates that information concerning a decision or action that has been reversed or vacated will not be part of the public database
- Letters of counseling (or similar) are eligible to be “expunged” after a period (MSP: one year in the officer’s file, eligible to be removed at officer's request)
- Approach: Where POST receives affirmative confirmation that the letter of counseling has been expunged and/or decision reversed or vacated, POST will remove from the public database

# Disciplinary Records Update

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## 2. Disciplinary Action for Instances that Occurred not as a Law Enforcement Officer

- 555 CMR 8.06 (3)(a)(10) provides that *"... the public database shall contain a summary of the officer disciplinary record which may include information provided by law enforcement agencies that have employed the officer."*
- Because the regulation refers in both instances as the officer and not the individual or person, we interpret that the public database is meant to reflect discipline that occurred as an officer and not in a different capacity (i.e., dispatcher, student candidate or other non-sworn law-enforcement).
- Recommendation to eliminate these instances from the public database

# Disciplinary Records Update

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## 3. Claims that discipline should not have been reported or does not constitute discipline

- Where the disposition was reported with agency-imposed discipline such as retraining, written reprimand, or other discipline (i.e., loss of time off, discipline held in abeyance, suspension, etc.), POST is reluctant to accept that it should be eliminated from the public database.
- Will analyze nature of discipline considering recent guidance on submitting complaints (where “Basic Work Rule Violations” are further defined to exclude interactions with the public, handling finances, violations to code of ethics)
- Unless the discipline has been vacated or reversed

# Disciplinary Records Update

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## 4. Modify Category Previously Selected or Modify Description

- Prefer to enter additional information that may enhance description or provide additional context (as opposed to delete, eliminate or obfuscate description or use a generic category like “other”)
- Approach will also include prefacing description or notes with “Agency reports correction...”
- Example: complaint of bias, where bias was not found, but officer was disciplined for violating policy. Explain and add context (notes) as opposed to eliminate.

# Disciplinary Records Update

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## Upcoming Releases

- Three different releases/updates to date (August 22; September 1 & 15)
- Initially planned for two more releases:
  - November Release – 396 records (606 allegations)
  - December Release – Approximately 550 additional records
- Looking to combine next two releases (~946 records) in the coming weeks



# Disciplinary Records Update

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## Additional Projects in Disciplinary Records

1. Additional records (after January 31, 2023)
  - Partially populate into the Complaint portal in the coming weeks.
  - Will be available to agencies when portal is rolled out.
2. Rollout of Portal planned for December
  - Agencies will submit complaints / records through the portal in real time
  - Validation and update will be done in real time
  - Aging reports to ensure adherence to timing requirements

# 3. Administrative Update: FY23 Close

Books Officially Close October 31<sup>st</sup>



## PST 0800-0000

	FY23 Final Expenditures
<b>EMPLOYEE COMPENSATION (AA) TOTAL</b>	<b>2,907,856</b>
<b>EMPLOYEE TRAVEL (BB) TOTAL</b>	<b>4,678</b>
<b>CONTRACT EMPLOYEES (CC) TOTAL</b>	<b>4,120</b>
<b>PAYROLL TAX/FRINGE (DD) TOTAL</b>	<b>53,871</b>
<b>OFFICE SUPPLIES/POSTAGE/SUBSCRIPTIONS (EE) TOTAL</b>	<b>55,001</b>
<b>FACILITY OPERATIONS (FF) TOTAL</b>	<b>435</b>
<b>OFFICE SPACE LEASE (GG) TOTAL</b>	<b>152,576</b>
<b>CONSULTANTS/LEGAL SERVICES (HH) TOTAL</b>	<b>177,076</b>
<b>SUPPORT/AUXILIARY SERVICES (JJ) TOTAL</b>	<b>0</b>
<b>OFFICE FURNITURE/FIXTURES/EQUIPMENT (KK) TOTAL</b>	<b>0</b>
<b>OFFICE EQUIPMENT LEASE (LL) TOTAL</b>	<b>0</b>
<b>OFFICE MAINTENANCE/REPAIRS (NN) TOTAL</b>	<b>0</b>
<b>INFORMATION TECHNOLOGY (UU) TOTAL</b>	<b>3,265,283</b>
<b>Grand Total :</b>	<b>6,620,896</b>

# 3. Administrative Update: FY24 Activity

17% of Budget Spent



## Treasurer's Report: FY24 Q1

		Expenditures			
	FY24 FIN SP	JUL	AUG	SEP	BALANCE
		ACT	ACT	ACT	
EMPLOYEE COMPENSATION (AA) TOTAL	5,737,656	283,073	309,576	320,075	4,824,933
EMPLOYEE TRAVEL (BB) TOTAL	25,000	0	30	1,578	23,393
CONTRACT EMPLOYEES (CC) TOTAL	60,000	8,400	7,650	1,538	42,413
PAYROLL TAX/FRINGE (DD) TOTAL	142,265	7,141	7,772	7,879	119,472
OFFICE SUPPLIES/POSTAGE/SUBSCRIPTIONS (EE) TOTAL	242,300	0	4,041	33,941	204,318
FACILITY OPERATIONS (FF) TOTAL	51,000	0	0	0	51,000
OFFICE SPACE LEASE (GG) TOTAL	507,540	0	0	0	507,540
CONSULTANTS/LEGAL SERVICES (HH) TOTAL	239,101	0	0	9,559	229,542
SUPPORT/AUXILIARY SERVICES (JJ) TOTAL	40,000	0	0	555	39,445
OFFICE FURNITURE/FIXTURES/EQUIPMENT (KK) TOTAL	140,000	0	0	0	140,000
OFFICE EQUIPMENT LEASE (LL) TOTAL	5,440	0	0	0	5,440
OFFICE MAINTENANCE/REPAIRS (NN) TOTAL	89,050	0	0	38,217	50,833
INFORMATION TECHNOLOGY (UU) TOTAL	2,499,182	154,020	7,983	251,915	2,085,263
Grand Total :	9,778,534	452,634	337,052	665,256	8,323,591

# 3. Administrative Update: FY24 Activity

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## HR Update

- **Posted Six New Positions:**  
Compliance Agent (1) – Enforcement Counsel (1) – Certification Counsel (1) – Counsel (1)  
IT Programmer Analyst (1) – Data Analyst (1)
- **Reviewing Resumes for Two Intake Coordinators**
- **Laura Martin Promoted to Senior Intake Coordinator**

# 3. Administrative Update: FY25 Budget

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## Governor's Budget to be Filed in January

- Developing a “Maintenance” Budget
  - Due to ANF by Oct 30<sup>th</sup>
- Similar to Last Year, POST will Submit an “Evolving” Budget
- Detail Provided at the Next Commission Meeting



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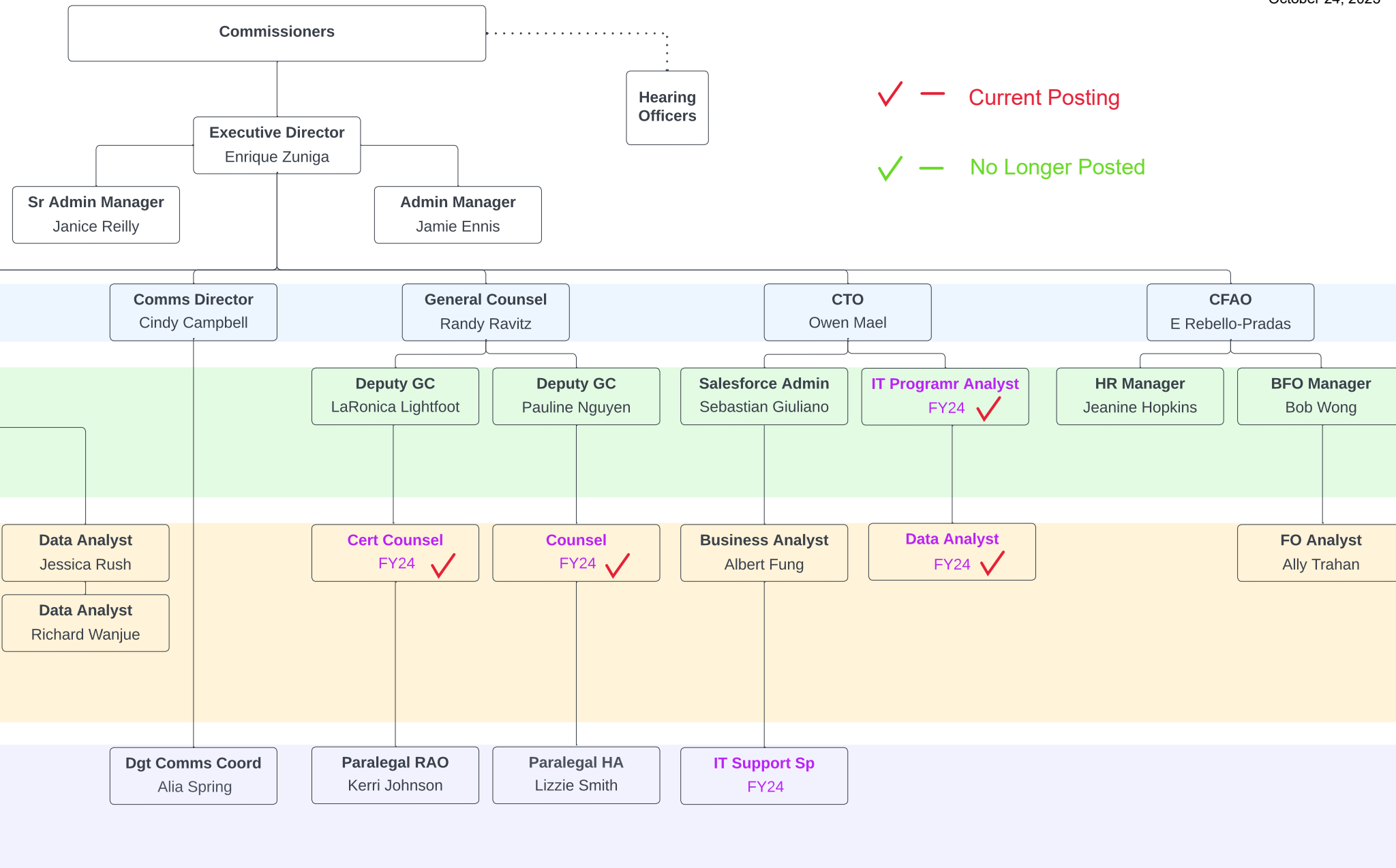
Massachusetts Peace Officer Standards & Training  
POSTC-comments@mass.gov  
[www.mass.gov/orgs/post-commission](http://www.mass.gov/orgs/post-commission)  
617-701-8401

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3c.



**46 Total Positions**  
**36 Filled**  
**10 Open**





4a.



# Massachusetts POST Commission

84 State Street, Suite 200, Boston, MA 02109

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## **POLICY ON VOLUNTARY RELINQUISHMENT OF CERTIFICATION** **(Proposed)**

The Massachusetts Peace Officer Standards and Training Commission hereby adopts this policy concerning the voluntary relinquishment of an individual's certification as a law enforcement officer.

### **I. TERMS OF POLICY**

- A. For purposes of this Policy:
  - 1. The term "Commission" refers to the Massachusetts Peace Officer Standards and Training Commission established under M.G.L. c. 6E, § 2 as an agency, including its Commissioners and its staff;
  - 2. The term "Commissioners" refers to the Commissioners of the Commission appointed pursuant to M.G.L. c. 6E, § 2(a), collectively;
  - 3. The term "Executive Director" refers to the Executive Director of the Commission appointed pursuant to M.G.L. c. 6E, § 2(g), or that person's designee for relevant purposes; and
  - 4. The terms "law enforcement agency" and "law enforcement officer" have the meanings ascribed to those terms in M.G.L. c. 6E, § 1.
- B. An individual who has been certified as a law enforcement officer may apply to voluntarily relinquish their certification by completing an application for voluntary relinquishment ("Application") in a form approved by the Commission's Executive Director and submitting it to the Executive Director.
- C. The Application form shall inform the applicant that, if the applicant voluntarily relinquishes their certification:
  - 1. The Commissioners may, pursuant to M.G.L. c. 6E, §§ 2(e) and 3(a) and 555 CMR 8.06(4)(b)12., vote to make information concerning complaints and disciplinary matters against the applicant unavailable to members of the general public in the public database established by the Commission in accordance with 555 CMR 8.06;
  - 2. The relinquishment will not constitute a revocation of certification, also known as a decertification;
  - 3. The Commissioners will give the applicant notice of any conditions that would be attached to a voluntary relinquishment and will provide the

- applicant with an opportunity to withdraw the Application before any voluntary relinquishment with conditions becomes effective;
4. Pursuant to M.G.L. c. 6E, § 4(g), the applicant will be ineligible to be appointed or employed as a law enforcement officer by a law enforcement agency in any capacity, including through a detail assignment that constitutes such an appointment or employment, within Massachusetts;
  5. Pursuant to 555 CMR 9.12(8), the applicant will be ineligible to execute arrests or to exercise other police duties and functions in any manner, including through a detail assignment, within Massachusetts;
  6. Information concerning complaints and disciplinary matters against the applicant, even if made unavailable to the general public in the public database established by the Commission in accordance with 555 CMR 8.06:
    - a. May still be made accessible to particular individuals to the extent not precluded by law, pursuant to 555 CMR 8.06(5);
    - b. Will still be maintained in one or more “Division Databases” established in accordance with 555 CMR 8.05, if otherwise warranted under that regulation;
    - c. May still be disseminated:
      - i. In response to a public records request pursuant to M.G.L. c. 66, § 10;
      - ii. In response to a request pursuant to the Fair Information Practices Act, M.G.L. c. 66A;
      - iii. In response to compulsory legal process;
      - iv. Pursuant to any other requirement of law; or
      - v. At the discretion of the Executive Director or by a vote of the Commissioners pursuant to M.G.L. c. 6E, § 2(e); and
  7. The Commission may still pursue disciplinary action against the applicant based on actions or inactions during the time that the applicant was serving as a law enforcement officer.

- D. The Application form shall additionally inform the applicant that, in order for the Application to be considered, the applicant must:
1. Provide details regarding each criminal conviction, indictment, charge, and arrest of the applicant in any jurisdiction;
  2. Provide details regarding each civil action and disciplinary proceeding against the applicant that is currently pending in any jurisdiction;
  3. Expressly agree to relinquish their certification as a law enforcement officer;
  4. Expressly state that they are no longer appointed or employed as a law enforcement officer by a law enforcement agency, or that they will resign from any such position they currently hold upon relinquishing their certification;
  5. Expressly acknowledge that, upon relinquishing their certification:
    - a. Pursuant to M.G.L. c. 6E, § 4(g), they will be ineligible to be appointed or employed as a law enforcement officer by a law

- enforcement agency in any capacity, including through a detail assignment that constitutes such an appointment or employment, within Massachusetts; and
    - b. Pursuant to 555 CMR 9.12(8), they will be ineligible to execute arrests or to exercise other police duties and functions in any manner, including through a detail assignment, within Massachusetts; and
  - 6. Attest to the veracity of all information in the Application under the pains and penalties of perjury.
- E. Upon receiving an Application, the Executive Director shall:
  - 1. Provide a copy of the Application to all Commission divisions and afford each division a reasonable time within which to inform the Executive Director of any issues related to the Application;
  - 2. Review the following:
    - a. Any records relating to criminal prosecutions, civil actions relevant to law enforcement, and disciplinary proceedings against the applicant;
    - b. Any information regarding the applicant within the National Decertification Index; and
    - c. Any information regarding the applicant within Commission databases; and
  - 3. If the Application satisfies all the requirements in Section I.D above:
    - a. Provide the Application and any other appropriate information to the Commissioners; and
    - b. Ask the Commission Chair to place the following issues on the agenda of an upcoming meeting of the Commissioners:
      - i. Whether to approve the Application; and
      - ii. Whether to attach conditions to any such approval upon giving the applicant notice of those conditions and an opportunity to withdraw the Application before the voluntary relinquishment becomes effective.
- F. The Commission reserves the ability to rescind or amend this Policy at any time.

## II. **KEY SOURCES OF AUTHORITY**

### M.G.L. c. 6E, § 1

As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Agency”, a law enforcement agency.

....

“Chair”, the chair of the commission.

....

“Commission”, the Massachusetts peace officer standards and training commission

established pursuant to section 2.

“Commissioner”, a member of the commission.

....

“Decertified”, an officer whose certification is revoked by the commission pursuant to section 10.

....

“Executive director”, the executive director of the commission appointed pursuant to subsection (g) of section 2.

“Law enforcement agency”, (i) a state, county, municipal or district law enforcement agency, including, but not limited to: a city, town or district police department, the office of environmental law enforcement, the University of Massachusetts police department, the department of the state police, the Massachusetts Port Authority police department, also known 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 section 57 of chapter 22C.

“Law enforcement officer” or “officer”, any officer of an agency, including the head of the agency; a special state police officer appointed pursuant to section 57, section 58 or section 63 of chapter 22C; a special sheriff appointed pursuant to section 4 of chapter 37 performing police duties and functions; a deputy sheriff appointed pursuant to section 3 of said chapter 37 performing police duties and functions; a constable executing an arrest for any reason; or any other special, reserve or intermittent police officer.

....

#### M.G.L. c. 6E, § 2

....

(e) Seven commissioners shall constitute a quorum and the affirmative vote of a majority of commissioners present and voting shall be required for an action of the commission. The commission shall meet monthly and at other times as it shall deem necessary or upon the written request of 4 commissioners or the chair; provided, however, that notice of all meetings shall be given to each commissioner and to other persons who request such notice. The commission shall adopt regulations establishing procedures, which may include electronic communications, by which a request to receive notice shall be made and the method by which timely notice may be given.

#### 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:

...

(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;

...

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(13) enter into agreements or other transactions with a person, including, but not limited to, a public entity or other governmental instrumentality or authority in connection with its powers and duties under this chapter;

...

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

...

(28) adopt, amend or repeal regulations in accordance with chapter 30A for the implementation, administration and enforcement of this chapter, including, but not limited to, regulations: (i) governing the conduct of proceedings hereunder; (ii) determining whether an applicant has met the standards for certification; (iii) establishing minimum standards for internal agency review of complaints of officer-involved injuries or deaths and recommendations to the commission regarding retraining, suspension or revocation of officer certification to ensure consistency across agencies; (iv) establishing a physical and psychological fitness evaluation pursuant to section 4 that measures said fitness to ensure officers are able to perform essential job duties; and (v) identifying patterns of unprofessional police conduct, including, but not limited to, patterns of: (A) escalating behavior that may lead to the use of excessive force or conduct that is biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level; (B) an increase in the frequency of complaints regarding an individual officer or agency; or (C) the number of complaints regarding an officer or agency that are at least 1 standard deviation above the mean for similarly situated officers or agencies for a defined period; .

...

#### M.G.L. c. 6E, § 4

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[f](3) The commission may issue a certificate to a qualified applicant consistent with the provisions of this chapter. The commission shall determine the form and manner of issuance of a certification. A certification shall expire 3 years after the date of issuance.

....

(g) No agency shall appoint or employ a person as a law enforcement officer unless the person is certified by the commission.

#### M.G.L. c. 6E, § 10

....

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(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 [setting forth definitions], 8 [concerning advisory rulings by agencies] and 10 to 14, inclusive [concerning, respectively: adjudicatory proceedings and appeals; damage to the environment, intervention in an adjudicatory proceeding, and procedure; adjudicatory proceedings, and additional requirements; studies of state boards, commissions, and authorities, and notice to a city or town affected; hearings in

municipalities; adjudicatory proceedings and subpoenas; licenses and their revocation, hearings, exception, student loan defaulters; issuance and renewal of licenses, the social security number of applicant, information provided to IV-D agency; and judicial review], of chapter 30A. Any decision of the commission relative to a preliminary inquiry, revocation and suspension proceeding shall be appealable pursuant to chapter 30A. No adverse action taken against a certification by the commission pursuant to this section shall be appealable to the civil service commission established under chapter 31. No employment action taken by an appointing authority that results from a revocation by the commission pursuant to subsection (a) shall be appealable to the civil service commission established under chapter 31.

St. 2020, c. 253, § 102

(a) Notwithstanding section 4 of chapter 6E of the General Laws, a law enforcement officer, as defined in section 1 of said chapter 6E, who has completed an academy or training program certified by the municipal police training committee or the training programs prescribed by chapter 22C of the General Laws on or before the effective date of this section and is appointed as a law enforcement officer as of the effective date of this section, shall be certified as of the effective date of this section. Notwithstanding section 4 of chapter 6E of the General Laws or the preceding sentence, a law enforcement officer, as defined in section 1 of said chapter 6E, who has completed an academy or training program certified by the municipal police training committee or the training programs prescribed by chapter 22C of the General Laws on or before December 1, 2021, and is appointed as a law enforcement officer as of December 1, 2021, shall be certified as of the effective date of this section. No officer who is certified pursuant to this section shall be required to complete or repeat a basic training program if such officer previously completed a basic training program provided or approved by the municipal police training committee or its predecessor, the criminal justice training council or received previous basic training that the municipal police training committee deems equivalent to Massachusetts training standards.

(b) All law enforcement officers who have completed a reserve training program on or before the effective date of this section shall be certified as of the effective date of this section. Prior to the expiration of that certification, the officer shall complete additional training as required by the municipal police training committee.

(c) Any training waiver or exemption granted by the municipal police training committee prior to the effective date of this section shall expire 6 months after the effective date of this section. Any person who has not completed an academy or training program certified by the municipal police training committee or the training programs prescribed by said chapter 22C on or before the effective date of this section, and has been appointed to a law enforcement position as of the effective date of this section, shall not exercise police powers following the expiration of any training waiver or exemption under this section. Prior to the expiration of this 6-month period, the person may obtain from the municipal police training committee a waiver or an extension of time necessary to complete training according to a work plan approved by the municipal police training

committee.

(d) The certification of a law enforcement officer who has graduated from an academy or training program certified by the municipal police training committee or the training programs prescribed by said chapter 22C who is certified as a result of this section and whose last names begin with: (i) A to H, inclusive, shall expire 1 year after the effective date of this section; (ii) I to P, inclusive, shall expire 2 years after the effective date of this section; and (iii) Q to Z, inclusive, shall expire 3 years after the effective date of this section.

St. 2020, c. 253, § 122

Sections 1, 4, 6, 9, 18, 26, 30, 37 to 39, inclusive, 67 to 70, inclusive, 73, 80, 84 to 86, inclusive, and 102 shall take effect on July 1, 2021.

M.G.L. c. 30A, § 1

For the purposes of this chapter--

(1) "Adjudicatory proceeding" means a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing. Without enlarging the scope of this definition, adjudicatory proceeding does not include (a) proceedings solely to determine whether the agency shall institute or recommend institution of proceedings in a court; or (b) proceedings for the arbitration of labor disputes voluntarily submitted by the parties to such disputes; or (c) proceedings for the disposition of grievances of employees of the commonwealth; or (d) proceedings to classify or reclassify, or to allocate or reallocate, appointive offices and positions in the government of the commonwealth; or (e) proceedings to determine the equalized valuations of the several cities and towns; or (f) proceedings for the determination of wages under section twenty-six T of chapter one hundred and twenty-one.

(2) "Agency", any department, board, commission, division or authority of the state government or subdivision of any of the foregoing, or official of the state government, authorized by law to make regulations or to conduct adjudicatory proceedings, but does not include the following: the legislative and judicial departments; the governor and council; military or naval boards, commissions or officials; the department of correction; the department of youth services; the parole board; the division of dispute resolution of the division of industrial accidents; the personnel administrator; the civil service commission; and the appellate tax board.

(3) "Party" to an adjudicatory proceeding means:-- (a) the specifically named persons whose legal rights, duties or privileges are being determined in the proceeding; and (b) any other person who as a matter of constitutional right or by any provision of the General Laws is entitled to participate fully in the proceeding, and who upon notice as required in paragraph (1) of section eleven makes an appearance; and (c) any other



person allowed by the agency to intervene as a party. Agencies may by regulation not inconsistent with this section further define the classes of persons who may become parties.

(4) “Person” includes all political subdivisions of the commonwealth.

(4A) “Proposed regulation”, a proposal by an agency to adopt, amend or repeal an existing regulation.

(5) “Regulation” includes the whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it, but does not include (a) advisory rulings issued under section eight; or (b) regulations concerning only the internal management or discipline of the adopting agency or any other agency, and not substantially affecting the rights of or the procedures available to the public or that portion of the public affected by the agency’s activities; or (d) regulations relating to the use of the public works, including streets and highways, when the substance of such regulations is indicated to the public by means of signs or signals; or (e) decisions issued in adjudicatory proceedings.

....

#### M.G.L. c. 30A, § 10

In conducting adjudicatory proceedings, as defined in this chapter, agencies shall afford all parties an opportunity for full and fair hearing. Unless otherwise provided by any law, agencies may (1) place on any party the responsibility of requesting a hearing if the agency notifies him in writing of his right to a hearing and of his responsibility to request the hearing; (2) make informal disposition of any adjudicatory proceeding by stipulation, agreed settlement, consent order or default; (3) limit the issues to be heard or vary the procedures prescribed by section eleven, if the parties agree to such limitation or variation; and (4) allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose, as the agency may order.

#### M.G.L. c. 30A, § 13

“License”, as used in this section, includes any license, permit, certificate, registration, charter, authority or similar form of permission required by law. Except as otherwise provided in this section, no agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with sections ten, eleven and twelve. If a licensee has, in accordance with any law and with agency regulations, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the agency. Any agency that has authority to suspend a license without first holding a hearing shall promptly upon exercising such authority afford the licensee an opportunity for hearing in conformity

with sections ten, eleven and twelve.

This section shall not apply--

- (1) Where a provision of the General Laws expressly provides that an agency is not required to grant a hearing in regard to revocation, suspension or refusal to renew a license, as the case may be; or
- (2) Where the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a court conviction or judgment; or
- (3) Where the revocation, suspension or refusal to renew is based solely upon failure of the licensee to file timely reports, schedules, or applications, or to pay lawfully prescribed fees, or to maintain insurance coverage as required by any law or by regulation; or
- (4) Where there is a refusal to renew the license of a foreign insurance company by . . . .

#### 1.09: Single Commissioner Review of Suspensions

....

(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:

....

#### 1.10: Final Disciplinary Hearings and Appeals of Certification Decisions

....

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

....

#### 555 CMR 7.09: Restriction or Revocation of Certification

The granting of a recertification shall not preclude the limiting, conditioning, restricting, suspending, or revoking of the certification in accordance with law, when warranted, including but not limited to circumstances where an officer has made a material misrepresentation to the commission or the officer's employing agency in connection with the recertification process.

555 CMR 7.10: Possible Action Following Decision Declining to Grant Full Recertification

....

(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.*

....

555 CMR 8.06: Public Database

(1) The Commission shall establish, by a date adopted by a vote of the Commissioners, and thereafter shall maintain, a public database of information concerning individuals who, at any point since July 1, 2021, have served as an officer or have been certified.

(2) The public database must be searchable and accessible to the public through the Commission's official website.

(3) Except as provided in 555 CMR 8.06(4), the public database shall make the following available to the general public, to the extent that the information is possessed by the Commission:

(a) These forms of information for each officer identified in 555 CMR 8.06(1): . .  
..

(4) Except as provided in 555 CMR 8.06(5), the public database shall not make available to members of the general public:

(a) The following forms of information:

...

(b) The following additional forms of information:

...

12. Information concerning a complaint or disciplinary matter that the Commission, by vote of the Commissioners, has decided not to make available to members of the general public;

13. Information concerning any individual who is no longer serving as an officer and who last received a certification more than three years earlier, but who has not been decertified; . . .

(5) The public database may be designed to allow particular individuals to access certain forms of information that are listed in 555 CMR 8.06(4) to the extent that the Commission is not precluded by law from making such information available to those individuals.

(6) The Commission may make other determinations concerning the content, the accessibility of information, and the format of the public database as follows:

(a) Any such determination shall be made in accordance with guidelines

established by a vote of the Commissioners following an opportunity for public input, or, if no such guidelines are established, in accordance with guidelines established by the Commission's Executive Director;

(b) Such a determination may provide for forms of information that are not specifically referenced in 555 CMR 8.06(3) or (4) to be made available, or to be made unavailable, to the general public or to particular individuals;

(c) Any such determination must be consistent with 555 CMR 8.00 and other relevant provisions of law; and

(d) Any such determination must be made with due consideration for the health and safety of officers.

#### 555 CMR 8.08: Objections Concerning Data

(1) An individual who is identified in data maintained by the Commission, or the individual's representative, may raise objections related to the accuracy, completeness, pertinence, timeliness, relevance, or dissemination of the data, or the denial of access to such data by filing a written petition for relief with the Executive Director, in a form prescribed by the Commission, at any time.

(2) Upon receiving a petition filed pursuant to 555 CMR 8.08(1), the Executive Director shall promptly evaluate the petition, including by obtaining relevant information.

(3) If the Executive Director determines that the relief requested in a petition filed pursuant to 555 CMR 8.08(1) is warranted, the Executive Director shall promptly:

(a) Take appropriate steps to grant such relief, or comparable relief;

(b) Make information concerning the action taken available to the Commissioners;

(c) Notify the petitioner of the status of the petition.

(4) After the Executive Director takes the steps prescribed by 555 CMR 8.08(3):

(a) The Chair may take any further action allowed by law with respect to the petition filed pursuant to 555 CMR 8.08(1); and

(b) The Executive Director shall notify the petitioner regarding any change in the status of the petition.

(5) If the Executive Director determines that the relief requested in a petition filed pursuant to 555 CMR 8.08(1) is unwarranted, the Executive Director shall:

(a) Within a reasonable time, notify the petitioner in writing that such determination was made and that the petitioner shall have the opportunity to submit a statement reflecting the petitioner's position regarding the data;

(b) At or around the same time, make information concerning the determination available to the Commissioners; and

(c) Cause any such statement to be included with the data and with any subsequent disclosure or dissemination of the data.

(6) After the Executive Director takes the steps prescribed by 555 CMR 8.08(5):

- (a) The Chair may take any further action allowed by law with respect to the petition filed pursuant to 555 CMR 8.08(1); and
- (b) The Executive Director shall notify the petitioner regarding any change in the status of the petition.

(7) Within 30 days of receiving a notification pursuant to 555 CMR 8.08(3)(c), (4)(b), 5(a), or 6(b), a petitioner may file a written request for further review with the Executive Director.

(8) The Executive Director shall provide any request for further review made pursuant to 555 CMR 8.08(7) to the Chair promptly upon receiving it.

(9) The Chair may take any action allowed by law with respect to a request for further review made pursuant to 555 CMR 8.08(7).

(10) If the Commission has a good-faith, reasonable belief that an employee possesses a right to have information that is contained in a personnel record maintained by an employer corrected or expunged by an employer pursuant to M.G.L. c. 149, § 52C, the Commission shall not disclose such information without first giving the employee the opportunity to exercise the right, unless the law requires otherwise.

#### 555 CMR 9.01: Scope

....

(3) Nothing in 555 CMR 9.00 is intended to:

- (a) Establish a standard of care or create any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection on the part of any other person or entity, except as expressly provided;
- (b) Otherwise waive any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection that may be available to the Commission; or
- (c) Preclude the limiting, conditioning, restricting, suspending, or revoking of any certification in accordance with law.

#### 555 CMR 9.11: Possible Action Following a Decision Declining to Grant Full Certification

....

(2) Following the process described in 555 CMR 9.11(1), an applicant or an endorsing law enforcement agency may request a hearing before the Commission concerning an application in accordance with 555 CMR 1.10: *Final Disciplinary Hearings and Appeals of Certification Decisions*.

....

#### 555 CMR 9.12: Certification Status

(1) An application process shall be deemed ongoing and not “finally determined,” as that

term is used in M.G.L. c. 30A, § 13, absent a final decision.

(2) 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 at 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.

(3) The granting of a certification shall not preclude the conditioning, limiting, restricting, suspending, or revoking of the certification in accordance with law, when warranted.

(4) The Commission may reconsider, and revise or vacate, a decision on an application for certification, when such action is warranted.

(5) If a decision to certify an applicant is vacated, the applicant shall be deemed to have been certified during the period of time between the decision to certify and the decision to vacate.

- (6) A certified officer must promptly notify the Commission of any change in:
- (a) Contact information for the officer that has been provided to the Commission;
  - (b) The officer's place of employment; or
  - (c) The officer's work status, including on-leave status.

(7) 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.

(8) The following individuals may not execute any type of arrest, as that term is defined in 555 CMR 9.02(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.