



MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

October 7, 2022

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

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](#), and by [Chapter 107 of the Acts of 2022](#), 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 #29

October 13, 2022

8:30 a.m.

Remote Participation via [Zoom](#)

Meeting ID: 940 9168 4241

1. Call to Order
2. Approval of Minutes
 - a. September 8, 2022
3. Executive Director Report – Enrique Zuniga
 - a. Finance & Administrative Update – CFAO Rebello-Pradas
4. General Counsel Update – General Counsel Ravitz
 - a. Draft Regulations on Databases and Dissemination of Information
 - b. Proposed Amendments to Use of Force Regulations, 555 CMR 6.00
 - c. Draft Regulations for Certification of School Resource Officers
 - d. Presentation on Constable Certification
5. Matters not anticipated by the Chair at the time of posting
6. Adjourn

2a.

PEACE OFFICER STANDARDS & TRAINING COMMISSION

PUBLIC MEETING MINUTES

September 8, 2022

8:30 AM

Remote Participation

Documents Distributed in Advance of Meeting:

- Public Meeting Minutes of August 4, 2022 (Proposed)
- Memorandum from Chief Financial and Administrative Officer Eric Rebello-Pradas to Commission re: Finance & Administrative Update
- Regulations 555 CMR 8.00: Databases and Dissemination of Information (Proposed)
- Approval of Recertification Regulations on a Permanent Basis (Proposed)
- Regulations 555 CMR 7.00: Recertification
- Approval of Certification for Certain Humane Society Officers (Proposed)
- Regulations 555 CMR 10.00: Specialized Certification for School Resource Officers (Proposed)
- Joint POST Commission and MPTC Guidance as to M.G.L. Chapter 123, §§12(a) and 12(e) and the Use of Force (Proposed)

In Attendance:

- 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
- Commissioner Kimberly P. West
- Commissioner Michael J. Wynn

1. Call to Order

- The Chair recognized a quorum and called the meeting to order.

2. Approval of Minutes

- Commissioner Kazarosian moved to approve the minutes of the August 4, 2022 meeting. Commissioner Bluestone seconded the motion.
- The Chair 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
- Commissioner West – Yes
- Commissioner Wynn – Yes
- Chair Hinkle – Yes
- The Commissioners unanimously approved the minutes of the August 4, 2022 public meeting.

3. Executive Director Report – Executive Director Enrique A. Zuniga

a. Officer Recertification Update (A-H) – Executive Director Zuniga

- As of August 31, 2022, 7,908 officers have submitted applications for recertification. Of those officers, 7,005 have been recertified; 840 have been conditionally recertified; 50 are under further review; and 15 were not certified. An estimated 886 applications from the Boston Police Department (“BPD”) are pending submission, which would bring the total number of officers seeking recertification to 8,794.
- The total numbers have been stable since the August 2022 reporting; however, there has been fluctuation within the categories, as previously reported.
- There have been more submissions since August 1, 2022, which have come from departments that were subject to extended deadlines from the POST Commission.
- As of August 31, 2022, BPD is the only department that still must submit information to the POST Commission, which it must do by September 15, 2022; BPD’s delay is due in part to a transition in its leadership.
- The certification team continues to address conditional certifications. Approximately 840 individuals have been conditionally certified; and the first milestone for conditional certification is 90 days after June 30, 2022 deadline, or September 30, 2022, the date by which certain individuals must meet conditions.
- The POST Commission has started to receive and process information updating conditions, including those related to basic training, Bridge Academy training and in-service training; departments have to submit information to MPTC within 90 days of June 30, 2022, or by September 30, 2022; and MPTC is providing the POST Commission with information as whether to remove conditions or investigate further.
- The POST Commission sent 10 individuals correction letters because they did not complete Bridge Academy training and would need full academy training to be certified; 2 individuals listed in the National Decertification Index (“NDI”) received letters from the POST Commission; and the 2 individuals requested further review by the POST Commission.
- There have been 598 new graduate certifications since December 1, 2022; 107 of these are Special State Police Officers (“SSPOs”); there will be 2 additional classes in September 2022 (consisting of approximately 50 cadets); and BPD and the Massachusetts State Police will graduate 293 officers in October 2022. Required POST Commission forms need to be submitted to the Commission

prior to graduation from academies in order for individuals to start without interruption after graduation.

- The Commission is contracting with a professional service vendor, Salesforce, which will provide a permanent technology solution. The first task order with Slalom is being executed for duration of 8 weeks at a cost of (\$363,000; small, short task orders are preferred and the best practice in the industry; therefore, the scope and budget are still fluctuating.
- The Commission is continuing to build on Jira, an interim solution for recertification processes, including by developing after-action reports and updates to forms as the POST Commission contemplates the next wave of recertification and the intake process for recertification of individuals with last names of I-P in June 2023. A solution will be developed in the next few months for agencies to have sufficient time to submit information by June 30, 2023.

b. Finance & Administrative Update – Chief Financial and Administrative Officer Rebello-Pradas

- CFAO Rebello-Pradas reviewed the report on the POST Commission’s appropriation for FY23.
- FY22 concluded on June 30, 2022, and the Commission spent \$2 million out of a \$4.9 million budget; the projected balance forward to FY23 is \$2.9 million. The balance forward is to be used for an IT solution, particularly Salesforce.
- The Governor included \$2.9 million in his final deficiency supplemental budget.
- Spending plans were submitted to Administration and Finance (“A&F”) on September 7, 2022, in line with the Commission vote on June 30, 2022, with the exception of employment payroll and IT updates.
- The FY24 budget is in development; maintenance requests should go to A&F in October 2022, and plans should go to A&F in November 2022.
- Contracts update – The Commission has finished the procurement plans for outside legal counsel; drafted a one-year contract with Anderson & Krieger LLP; and finished a statement of work on a contract with Slalom and Smartronix for \$363,000 through mid-October 2022.
- Hiring Update – The Commission is adding 4 new staff members for the Division of Standards, consisting of 2 enforcement counsels, 1 compliance agent, and 1 paralegal; and the POST Commission staff now totals 22 members and remains on target to reach 27 by the end of FY23.
- In terms of HR, the background check process will now be completely conducted in-house; and trained in-house staff will utilize resources to save time.
- The Annual Report is underway and will coincide with the fiscal year, which ended on June 30, 2022; the Commission will wait for the accounts payable period in July and August 2022 to make last minute bill payments and file a report ideally at the end of September 2022 (maybe slightly later than the projected time).

- The FY23 budget included a line item requiring the reporting of information, which is due in March 2023. The annual reporting can include the information that is due in March 2023.
- Commissioner Ellison asked how many employees of the 22 are full-time and how many are part-time.
- CFAO Rebello-Pradas said that, out of the 22, 5 are considered part-time; they are retired employees; the amount of their hours is limited by law; and the cap was waived for calendar year 2022 by Legislature.
- Commissioner Ellison asked, with respect to the certification cases that require further review, how many would need further review by the Commissioners.
- Director Zuniga said the short answer is that he does not know and hopes to bring a better update on those numbers soon. The number started at approximately 60 and is down to 50.
- Commissioner Ellison asked if officers are currently still able to operate in their full capacity with full police powers in their agency.
- Director Zuniga said yes, even if they are under further review, they are conditionally certified. The regulations do not set a deadline for POST Commission review, and the review should not be extended into the next year.

4. General Counsel Update – General Counsel Randall E. Ravitz

a. Joint Guidance as to Chapter 123, Section 12 and the Use of Force – General Counsel Ravitz

- A few changes were made in response to comments since the August 4, 2022, meeting to provide clarification and explain that there is no tension between Section 12 and the Use of Force regulations that were promulgated jointly by the POST Commission and MPTC.
- The first change since the last version was the addition of citations to the POST Commission’s own version of the regulations; Title 555 houses those regulations.
- The second change was to eliminate the last paragraph, thus avoiding the risk that “such non-deadly force” could be construed to mean that officers cannot use deadly force where otherwise warranted, while also avoiding the risk that a substitute phrase like “such force that is deemed to be both necessary and proportionate” could be construed to allow for the use of deadly or non-deadly force without sufficient limitations. The paragraph was struck as not to detract from the main message being sent by the Guidance.
- The Guidance is intended to provide limited forms of clarification. It states that none of the sources listed prohibits officers from using force in Section 12 situations where the regulatory standard is met. Also, it states that where officers have a duty under Section 12, those sources do not relieve them of that duty when there is a likelihood of serious harm only to the person at issue and not to the public. Then, it states that the regulations do not allow officers to substitute their judgment for that of mental health professionals after a determination under Section 12(a).

- The Guidance does not relax obligations officers have to use de-escalation before using force; does not impose any new duty on officers in Section 12 mental-health situations; and does not impose new restrictions on officers.
- More can be done, and this Guidance is not an attempt to provide comprehensive guidelines on how to handle difficult Section 12 situations.
- Commissioner Bluestone offered her perspective as a mental health professional and explained the history over past six months in speaking with stakeholders about the complexities of Section 12 transports by law enforcement to a hospital for evaluations and the application of use of force regulations.
- Commissioner Bluestone acknowledged an August 31, 2022, letter from the Massachusetts Association for Mental Health, and commented that the POST Commission is not discussing the role of law enforcement in the Section 12 process but is clarifying that the Commission's use of force regulations apply in Section 12 cases.
- Commissioner Bluestone said the Legislature provided through special legislation that it shall assign a special commission to explore complex issue of role of law enforcement in emergency hospitalizations. She sees this, as Commissioner Luma previously stated, as primarily a training issue and therefore it should be kept simple, and the POST Commission should offer guidance to balance existing requirements.
- Commissioner Wynn reiterated that the purpose of this Guidance was limited. If there needs to be look at the overall framework of Section 12, it is on the Legislature, and law enforcement has been requesting that for years but that is not the Commission's role. The Commission needs to give immediate guidance to balance the existing requirements of Section 12 with the use of force regulations so officers know what is expected of them.
- Commissioner Calderone stated that officers on the street have a different view than the Guidance, specifically where it makes the point that officers cannot substitute their own judgment on the scene. Maybe some rank-and-file and street police officers who answer calls daily on the street should be part of the conversation with the Commission and MPTC.
- Chair Hinkle indicated that this is the third time the Commission has addressed the Guidance and that public comments have been welcome and taken into consideration. The Guidance can be promulgated and adjusted as things develop, and the Commission can take up further developments regarding the Guidance.
- Commissioner Ellison said there will always be an issue of law enforcement being on the premises as a precautionary measure. Medical personnel will not enter without law enforcement present, and this raises anxiety.
- Commissioner Luma said some of what the Commission was discussing is beyond the scope of the Commission, and there is a training issue that has to involve police officers and mental health professionals. It is a much-needed discussion as the Commission thinks about collaboration between police officers and mental health professionals and moving forward with Section 12.
- Commissioner Calderone said there should be a special legislative body put

together according to the law. There should be a multi-professional response on a Section 12, which is probably in the best interest of the person involved. There should be a team that includes an EMS and a mental health professional, and it should not be incumbent on the rank-and-file police officer to handle certain aspects of the situation. Also, Commissioner Calderone stated that he previously forwarded comments received from people to the POST Commission.

- Commissioner Bluestone said the law states that it is the mental health professional who can make the determination and, in the absence of one, it can be a police officer if a person needs to be transported for evaluation. Officers are merely being asked to follow the law.
- Commissioner Wynn said the POST Commission issues guidance for the entire Commonwealth, which includes communities with part-time ambulance services and no mental health provider, where the only person available to go on the call is an officer. This makes it difficult for a multi-agency response.
- The Chair called for a vote on the Guidance. Commissioner Kazarosian moved to approve the Guidance; Commissioners Wynn and Luma seconded the motion.
- The Commissioners voted as follows:
 - Commissioner Bluestone – Yes
 - Commissioner Calderone – No
 - Commissioner Chéry – Yes
 - Commissioner Ellison – Yes
 - Commissioner Kazarosian – Yes
 - Commissioner Luma – Yes
 - Commissioner West – Yes
 - Commissioner Wynn – Yes
 - Chair Hinkle – Yes
- The Guidance was approved by a vote of 8 to 1.

b. Draft Regulations on Databases and Dissemination of Information – General Counsel Ravitz

- General Counsel Ravitz highlighted the changes from the previous version of draft regulation 555 CMR 8.00 and the proposed changes that take into account a set of regulations promulgated by the Executive Office of Administration and Finance under the Fair Information Practices Act (“FIPA”), 801 CMR 3.00.
- FIPA restricts the dissemination and handling of information that is not a public record, not CORI, and not within certain other categories; the POST Commission would be promulgating its own regulations under the statute, and the POST Commission would therefore not be subject to that A&F regulation.
- Other changes in the proposed regulation: provide that the Executive Director may delegate functions to a designee; spell out what will be included in a public database, such as information on officers who are conditionally certified, not recertified, and have a pending certification; add the word “active” before officer to make clear the provisions pertain to serving officers;

provide for the inclusion of summaries of officer disciplinary records, with the exception of unsustained complaints; provide for the ability to compile or aggregate the total number of complaints from the database; and include matters under investigation or subject to legal action by another body within the category of ongoing matters.

- A new section would allow for officers to be able to object to data that was incorrect. If an officer makes a challenge to data, it would be governed by a new regulation that supersedes the A&F regulation; the regulation would extend the ability to raise challenges to personal data and data that would be a matter of public record and CORI; it would allow for objections on grounds including accuracy and relevance with respect to a broader range of data; and it would allow individuals to respond to an adverse decision through a written petition and statement to the Executive Director, which statement would be included with the data. A similar provision is included in the statute governing personnel records, allowing a statement to be maintained along with personnel records.
- Commissioner West asked for clarification about the language that broadens an officer's ability to challenge information maintained by the Commission.
- General Counsel Ravitz responded that, under FIPA and regulations promulgated by A&F that currently govern the POST Commission, an individual has the ability to challenge personal data, which excludes public records, CORI, and certain other data. The individual has the ability to raise objections to the agency regarding accuracy and completeness. The proposed POST Commission regulation applies to challenges to any data involving the individual that would be maintained by the Commission – not just personal data, but a wider category of data.
- Commissioner Bluestone asked whether Section 8.07(1)-(5) allows the person in the role of the Executive Director to unilaterally remove data from the database without the Commission being aware of that removal.
- General Counsel Ravitz responded that the Executive Director would have the ability at the outset to make a change if he finds it is warranted, but the regulation does not specify that the Commission would be notified of the change.
- Commissioner Bluestone requested that the regulation include a statement that the Commission be made aware of any independent action by the Executive Director to remove information from the database. General Counsel Ravitz stated that the change could be included.
- Commissioner Calderone asked, regarding Section 8.05(4)(a)10., whether there would be something in the record on officers' exoneration of complaints. Executive Director Zuniga answered yes, the summary will contain exonerations. Commissioner Calderone recommended that such a provision should be added in writing.
- Commissioner Kazarosian recommended adding "included but not limited to" if exonerations were to be added.
- Commissioner Calderone asked, with respect to Section 8.5(7)(d), whether there is such a thing as an unreasonable amount of time that passes before

something has been decided not to be pursued. That is, is there a timeframe that the Commission can agree to, with respect to what is reasonable and what is not?

- Commissioner Ellison noted that, at BPD, oral reprimands are written in one's folder but there is no course of appeal and the reprimand will show up unfavorably in an officer's record.
 - Commissioner Wynn said his understanding is that an officer has the ability to appeal anything that goes into a personnel file and has the right to file a written response, including to oral reprimands (but maybe not at the supervisor level). Executive Director Enrique Zuniga stated that certain complaints that are not reportable to the POST Commission are excluded from the regulation.
 - Commissioner Calderone asked, as to the provision in Section 8.07 referring to a good-faith, reasonable belief, whether the Commission will know everything that has been decided on the Executive Director or Chair level, or they will have a chance to vote on it.
 - General Counsel Ravitz stated that the section refers to personnel records maintained by the employer; it provides that if the POST Commission knows that there is information in the employer's personnel record that could be inaccurate, the officer can exercise the right to correct the information in the employer's record before the POST Commission utilizes the information.
 - Executive Director Zuniga raised the point that Commissioner West and Commissioner Bluestone requested the addition of language requiring the Executive Director to notify the Commission of what information should be removed.
 - Chair Hinkle deferred the vote on this agenda item until it is redrafted. There were no objections to that procedure.
 - After one hour and 28 minutes, Commissioner Kazarosian announced that she needed to leave the meeting; the meeting proceeded with a quorum.
- c. Recertification Regulations, 555 CMR 7.00 – General Counsel Ravitz**
- General Counsel Ravitz outlined the process for promulgating the regulations and what the law requires in order for the staff to take the necessary steps to make the emergency regulations permanent.
 - General Counsel Ravitz and Executive Director Zuniga stated that the emergency regulations were useful in practice in the implementation of the certification efforts and now need to be permanent to continue in effect.
 - The Chair asked for a motion to approve the Recertification Regulations (emergency) on a permanent basis.
 - Commissioner West moved to approve the Recertification Regulations on a permanent basis. Commissioner Bluestone seconded the motion.
 - The Commissioners voted as follows:
 - Commissioner Bluestone – Yes
 - Commissioner Calderone – Yes
 - Commissioner Chéry – Yes
 - Commissioner Ellison – Yes

- Commissioner Luma – Yes
- Commissioner West – Yes
- Commissioner Wynn – Yes
- Chair Hinkle – Yes

d. Certification of Humane Society Officers – General Counsel Ravitz

- The Legislature recently added Humane Societies and officers to the definitions of law enforcement agencies and officers; inserted a provision stating they need to be certified; and made the changes retroactive. The Legislature did not automatically certify those officers for a period of time and did not provide for a grace period.
- The certification proposal for Humane Society Officers would: provide a way for officers to obtain temporary conditional certification through a summary application process (by which an agency head can submit an attestation that the requirements were met); allow conditional certification for those who did not satisfy a training requirement as a result of a documented hardship; provide for certification to be made retroactive to July 1, 2022, for this group only; and add that agencies can still submit full applications.
- Commissioner Wynn emphasized the importance of protecting and covering these officers, noting calls he received from colleagues on this long-pending issue of importance.
- Commissioner Luma asked whether, in making certifications retroactive, new employees might not necessarily be covered.
- General Counsel Ravitz answered that the proposed plan would allow the Commission to make certifications for this group of people retroactive to July 1, 2022, but that retroactivity provision only applies to the group of people already employed. This group is small in number, 11 total, and the entire group is covered under this proposal.
- Commissioner West asked if this is putting this particular group of people into the same category as everyone else.
- General Counsel Ravitz answered yes.
- Commissioner Wynn indicated that these organizations were put on the out-of-scope list and they did not fit at the time in the evaluative process. Now that there was a legislative amendment, they had to be added.
- Chair Hinkle called for a motion to approve the certification of the Humane Society Officers. Commissioners Luma and Wynn moved to approve the certification of the Humane Society Officers. Commissioner Calderone seconded the motion.
- The Commissioners voted as follows:
 - Commissioner Bluestone – Yes
 - Commissioner Calderone – Yes
 - Commissioner Chéry – Yes
 - Commissioner Ellison – Yes
 - Commissioner Luma – Yes
 - Commissioner West – Yes
 - Commissioner Wynn – Yes

- Chair Hinkle – Yes
 - The motion was unanimously carried by those in attendance.
- e. Draft Regulations for Certification of School Resource Officers (“SROs”) – General Counsel Ravitz**
- The Commission has the power to issue specialized certifications for SROs, and one cannot serve as an SRO unless that person is specially certified by the Commission; the statute thus requires some type of certification process for SROs to continue; but the statute does not elaborate on the standards or procedure for certification.
 - The statute makes reference to Chapter 71, Section 37P, which sets forth requirements and restrictions regarding the appointment and supervision of SROs and requires municipalities to adopt operating procedures and MOUs; and another statute requires the MPTC to develop a training program for SROs.
 - The draft regulations set forth provisions regarding basic administrative procedures, deadlines for those currently serving, application information, training, and background checks; and they would only allow the Certification Division to grant an SRO certification to an individual who possesses an officer certification that is not suspended.
 - An alternative would be to eliminate the certification requirements of having sufficient operating procedures and a sufficient MOU, thus leaving the evaluation of the sufficiency of those documents for other agencies and providing for the certification of an individual to look at things more personal to the individual being considered.
 - The regulations further provide that: one can obtain review by the Executive Director modeled on the procedures in the recertification regulations; a certification lasts for three years; it is deemed valid until vacated; and one cannot be appointed as SRO unless certified as SRO and in possession of officer certification.
 - Commissioner Ellison stated that: Boston does not have an MOU in effect; Boston is unique in that officers are not assigned in buildings; and there is some confusion as to whether some officers have to be certified as SROs since they do not work in a full-time capacity with students, but go into schools periodically for presentations, etc. He asked if they have to be trained to be inside the building.
 - General Counsel Ravitz responded that the statute that defines the term SRO leaves room for interpretation as to how things are categorized. Of significance here, he reads the definition to say that: an SRO is appointed by the Chief of Police and charged with performing all of the duties listed in the regulation; but, if someone is not charged with performing all of the duties, but called into schools to deal with a situation that arises, they would not fall within the SRO definition and they would not need to comply with the rules regarding SROs.
 - The regulation can be made explicit with respect to the range of officers who fall within the definition of SRO.

- Members of the public and the Commissioners can send General Counsel Ravitz an email and redline the document with changes on this agenda item.

5. Matters not anticipated by the Chair at the time of posting

- There was no new business.

6. Adjournment

- Commissioner Ellison moved to adjourn the meeting. Commissioner Wynn seconded the motion.
- The Chair took a roll call vote, and the Commissioners voted as follows:
 - Commissioner Bluestone – Yes
 - Commissioner Calderone – Yes
 - Commissioner Chéry – Yes
 - Commissioner Ellison – Yes
 - Commissioner Luma – Yes
 - Commissioner West – Yes
 - Commissioner Wynn – Yes
 - Chair Hinkle – Yes
- The Commission unanimously voted to adjourn the meeting.

3a.



MEMORANDUM

TO Commissioners

FROM Eric Rebello-Pradas

DATE October 7, 2022

SUBJECT F&A Update

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

FY22 Close

The 2022 fiscal year ended on June 30th. However, the Commonwealth does not *officially* close the books on FY22 until October 31st. Final expenditures for POST totaled just under \$2.0 million, thereby leaving a leftover balance of \$2.9 million.

	Beginning Balance	\$5,000,000
FY21 Activity	Expenditures	(\$95,731)
	Ending Balance	\$4,904,269
	Beginning Balance	\$4,904,269
FY22 Activity	Expenditures	(\$1,989,257)
	Ending Balance	\$2,915,012

Consistent with most state agency budgets, the majority of expenses for FY22 were concentrated in employee compensation (42%, or \$833K). In addition to the statutorily appointed nine commissioners, POST had 14 employees as of June 30th. Consultant services, such as legal and media affairs, was the second highest expense (26%, or \$525K), and information technology was the third (24%, or \$487K). Most of the \$487K in IT expenses was concentrated in support for the interim solution (Jira).

As mentioned previously, the majority of the \$2.9 million balance leftover from FY22 is expected to rollover to FY23.¹

FY23 Q1

September 30th closed the first quarter of the fiscal year. For this three-month period all major categories of spending are under budget (see report entitled *FY22 Final & FY23 Q1*).

- Employee Compensation is 12% under projections due to the pace of onboarding and fluctuations in hours worked
- Legal Services is slightly below estimates due to fewer hours billed
- Monthly billing for Information Technology is slightly less than estimated

IT Solution (Salesforce)

Although being POST's largest IT expense, Salesforce development and support activity will not be reflected in our financials until Q2. Smartronix/Slalom is finishing up the 6th week of a 7-week project (or task order). Although no invoices have been received thus far, our weekly tracking of hours is estimating a total cost of \$231K, to date (first five weeks). The task order for the full seven weeks of work cannot exceed \$362K. With an average weekly cost of \$45K,

¹ Per Section 2C.I of the FY22 Final Deficiency Supplemental Appropriations Bill (H5260), as filed by the Governor on August 31, 2022.

MEMORANDUM

we can expect the first task order to cost \$30K-\$40K *less than* estimated. However, in keeping with conservative estimates, it is too soon to predict whether or not spending will fall below the projected \$1.9 million cost for the full fiscal year.

Salesforce Cashflow	
Salesforce Development & Support Allocation	\$ 1,900,000
Task Order 1 (Aug 30 - Oct 14)	\$ (362,916)
Task Order 2 (Oct 15 - Dec/Jan)	(In Development)
Balance	\$ 1,537,084

As previously mentioned, POST is closely monitoring work and expenses through incremental task orders. We expect to begin drafting the second task order sometime next week.

Potential Exposures

As part of its FY23 Spending Plan submittal to ANF, POST identified two potential budgetary exposures: \$150K in payroll, and \$500K in IT. Delayed hiring has led to a significant savings in forecasted payroll, completely erasing the \$150K exposure. However, we are still holding to the potential \$500K IT deficiency. As mentioned above, Salesforce development expenses are being closely monitored to help keep costs to a minimum. Albeit a *worse-case* scenario, it is entirely possible a deficiency could materialize if the pace of development accelerates. Once again, it is too early in the fiscal year to make a solid prediction.

Hiring Status

As mentioned in the prior update, the Division of Police Standards is beginning to staff up. Two Enforcement Counsels, and one Compliance Agent have already been onboarded. DPS' first paralegal is scheduled to begin mid-October. In addition, POST's IT Division will be onboarding a Business Analyst and a Senior Project Manager. The Senior Project Manager will assist the CTO and the TSS technology team in transitioning to Salesforce in developing a case management solution. At this point POST will have a total of 24 employees. We are still forecasting the hiring of three additional positions by the end of FY23.

FY24 Budget Development

Development of the FY24 operating budget begins in October. Although ANF has not officially kicked-off budget development season, F&A has already begun the process by meeting with the commission's division heads, collecting feedback, and putting together the first of several drafts. Although not yet confirmed, we anticipate ANF will be looking for agency budget requests just before Thanksgiving. The transition from one administration to another will occur throughout the month of December. We would expect the new administration to start building its maiden budget (H1) throughout most of January and February. Therefore, we anticipate presenting final numbers to the commission sometime in January.

New Office Space

One key area of the FY24 budget will likely be a new office lease. POST began working with DCAMM in May to identify permanent office space in Boston. While there are still a good number of steps remaining in the process, we are anticipating a potential move to a new office beginning in July. Nothing has been confirmed at this point, and we will keep the commission apprised of major developments.

4a.

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

555 CMR 8.00: DATABASES AND DISSEMINATION OF INFORMATION

Section

- 8.01: Authority
- 8.02: Scope
- 8.03: Definitions
- 8.04: Submission of Information by Agencies
- 8.05: Public Database
- 8.06: Maintenance of Databases and Electronic Recordkeeping Systems Generally
- 8.07: Objections Concerning Data
- 8.08: Receipt and Referral of Records Requests
- 8.09: Responses to Records Requests
- 8.10: Privileged Information
- 8.11: Fees for Producing Records
- 8.12: Compulsory Legal Process

8.01: Authority

- (1) The Massachusetts Peace Officer Standards and Training Commission promulgates 555 CMR 8.00 pursuant to M.G.L. c. 6E, §§ 3(a) and 4(j), and 801 CMR 3.01(2).

8.02: Scope

- (1) 555 CMR 8.00 applies to:
 - (a) Databases that the Commission must maintain pursuant to M.G.L. c. 6E, §§ 4(h), 4(j), 8(e), and 13(a);
 - (b) Other databases and electronic recordkeeping systems maintained by the Commission; and
 - (c) Commission responses to requests for records served upon it pursuant to M.G.L. c. 66, § 10.
- (2) 555 CMR 8.00 does not apply to any of the following:
 - (a) A response by the Commission to compulsory legal process, except as provided in 555 CMR 8.12;
 - (b) A response by the Commission to a court order relative to the disclosure of information;
 - (c) An inquiry or request concerning personal data, made on behalf of the individual to whom the personal data refers~~subject of the data~~, under M.G.L. c. 66A, §§ 2(g) or 2(i); or
 - (d) The Commission's treatment of evidence that it knows to be relevant to a pending criminal case or exculpatory as to any criminal case.
- (3) With respect to matters to which 555 CMR 8.00 applies, it is intended to supersede 801 CMR 3.00.
- (4) Nothing in 555 CMR 8.00 is intended to:
 - (a) Foreclose the Commission's invocation of any provision, privilege, or doctrine, regardless of whether it is cited in 555 CMR 8.00;
 - (b) Establish a standard of care or create any independent private right, remedy, or cause of action on the part of any person or entity on account of any action the Commission takes or fails to take; or
 - (c) Otherwise waive any power, right, privilege, protection, or immunity that may be available to the Commission.
- (5) Neither 555 CMR 8.00, nor the Commission's provision of any information through a public database or in response to a request for records, is intended to:
 - (a) Create an attorney-client relationship, a principal-agent relationship, or a confidential relationship with any person or entity;
 - (b) Make the Commission a part of the prosecution team, the defense team, or the litigation team of any other party in relation to any criminal or civil action or controversy;
 - (c) Impose upon the Commission any duty or obligation of any other ~~party to criminal or civil litigation, or of any other public agency~~entity or person; or

- (d) Otherwise surrender the Commission's independence.

8.03: Definitions

- (1) 555 CMR 8.00 incorporates all definitions set forth in 555 CMR 2.02, except those definitions of terms that are defined in 555 CMR 8.03(2).
- (2) For the purposes of 555 CMR 8.00, the following terms have the following meanings, unless the context requires otherwise:

Certification. Certification or recertification of a law enforcement officer under M.G.L. c. 6E, §§ 3(a) and 4.

Commission. 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.

Compulsory Legal Process. A demand that is issued by or through a federal or state court or party to litigation, including any demand made by summons, subpoena, discovery request, or judicial order.

Conclusion. The point at which the Commission has rendered its ultimate decision or action on a matter, no proceeding regarding the matter is pending before any court or agency, and no opportunity for further review in the normal course by any court or agency remains.

Decertification and Revocation of Certification. A revocation of certification made by the Commission pursuant to M.G.L. c. 6E, § 10, an action distinct from a denial, a nonrenewal, or an expiration of certification.

~~Employing Agency. The law enforcement agency for which an officer is employed or the appointing authority that is responsible for submitting documentation concerning an officer's certification to the Commission.~~

Executive Director. The Executive Director of the Commission, appointed pursuant to M.G.L. c. 6E, § 2(g), or that person's designee for relevant purposes.

Municipal Police Training Committee and MPTC. The agency of the same name within the Executive Office of Public Safety and Security, as established in M.G.L. c. 6, § 116.

Personal Data. Personal data under M.G.L. c. 66A, including any information concerning an individual which, because of name, identifying number, mark or description can be readily associated with a particular individual, provided that such information is not contained in a public record, as defined in M.G.L. c. 4, § 7, cl. 26, and is not intelligence information, evaluative information, or criminal offender record information, as defined in M.G.L. c. 6, § 167.

Records Access Officer and RAO. The individual designated by the Commission to perform the duties of records access officer described in M.G.L. c. 66, ~~§ 10~~ and 950 CMR 32.00, or that person's designee.

Record, Information, and Data. Any form of document, written material, or data, regardless of whether it constitutes a "public record" under M.G.L. c. 4, § 7, cl. 26 or "personal data" under M.G.L. c. 66A.

Records Request. A request for Commission records made pursuant to, and in conformance with, M.G.L. c. 66, § 10.

Requester. Any person or entity that tenders a ~~r~~Records ~~r~~Request to the Commission.

Vote of the Commissioners. A vote sufficient to satisfy the requirements of M.G.L.

c. 6E, § 2(e).

Website. The official internet website that the Commission is authorized to maintain pursuant to M.G.L. c. 6E, §§ 3(a)(27) and 13(a).

8.04: Submission of Information by Agencies

- (1) When an agency provides-supplies information concerning an officer to the Commission, the agency+:
- (a) Mmust notify the officer that it has done soof that fact in accordance with any other provision of 555 CMR that requires notification; or-
- (b) In the absence of any such provision, the agency must provide-such- notificationnotify the officer that it has done so within seven 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.

8:05: Public Database

- (1) The Commission shall maintain a public database of information concerning officers who are certified or conditionally certified;; officers whose certifications are pending, restricted, limited, or suspended;; and officers who have been decertified or not recertified.
- (2) The public database must be searchable and accessible to the public through the Commission's official website.
- (3) In determining what information to include in the public database, the Commission shall consider the health and safety of officers, in accordance with M.G.L. c. 6E, § 4(j).
- (4) Except as provided in 555 CMR 8.05(5) or (6), the public database shall provide the following forms of information, to the extent that such forms of information are possessed by the Commission, in accordance with guidelines established by a vote of the Commissioners, or, if no such guidelines are established, in accordance with guidelines established by the Commission's Executive Director:
- (a) For each active officer:
1. The officer's first name and surname;
 2. The officer's current certification status in Massachusetts;
 3. The dates on which the officer was first certified and was most recently certified in Massachusetts;
 4. All of the officer's employing law enforcement agencies in Massachusetts and elsewhere, and the dates of such-the officer's employment with such agencies;
 5. Commendations received by the officer in connection with the officer's service in law enforcement;
 6. The date of, and reason for, any decertification by the Commission or by a comparable body in any other jurisdiction;
 7. The beginning date and end date of, and the reason for, any suspension of certification by the Commission;
 8. The date of, and reason for,As to any retraining order issued by the Commission;; the date of the order, the reason for the order, the type of any- retraining ordered;; and the-any date of completion of any-the retraining ordered -retraining;
 9. A copy of each final opinion, decision, order, set of findings, and vote issued by the Commission pursuant to M.G.L. c. 6E, § 10 in connection with any proceedings concerning the officer, accessible in a commonly available electronic format;-and
 10. A summary of the officer's disciplinary record, based on information provided by agencies that have employed the officer, excluding unsustained or unfounded complaints; and
 11. Information concerning any decision that reversed or vacated an action adverse to the officer, or that exonerated the officer in relation to a particular matter, where such action or matter is referenced in the database.
- (b) To the extent reasonably feasible, a Aggregations of, or ways for public users to aggregate, information regarding the following:
1. Decisions by the Commission and comparable bodies in other

- jurisdictions to decertify officers;
 - 2. Decisions by the Commission to suspend the certification of officers;
 - 3. Decisions by the Commission to order the retraining of officers;
 - 4. Officers who have served in a particular department; and
 - 5. The total number of complaints reportable to the Commission pursuant to 555 CMR 1.00.
- (5) The public database shall not include any of the following forms of information:
- (a) Information relating to a preliminary inquiry, or initial staff review used to determine whether to initiate an inquiry, that is confidential under M.G.L. c. 6E, § 8(c)(2), or 555 CMR 1.03 or 1.07(2);
 - (b) Other information related to disciplinary proceedings that is confidential under 555 CMR 1.01(2)(d), 1.09(6)(c), or 1.10(4)(a);
 - (c) Personal contact information of public employees or members of their families that is generally non-disclosable under M.G.L. c. 66, §§ 10B and 15;
 - (d) Criminal offender record information, criminal history information, or criminal history record information that cannot be communicated under M.G.L. c. 6, §§ 168 or 178, 803 CMR 2.19(1), or 803 CMR 7.10 through 7.14;
 - (e) Sealed or expunged records that are confidential or unavailable for inspection under M.G.L. c. 276, §§ 100L, 100O, or 100Q;
 - (f) Juvenile delinquency records that must be withheld under M.G.L. c. 119, § 60A, or juvenile criminal records that cannot be communicated under M.G.L. c. 6, §§ 168 and 178.
 - (g) Police-log information pertaining to arrests of juveniles that is non-disclosable under M.G.L. c. 41, § 98F;
 - (h) Police-log information pertaining to handicapped individuals that is non-disclosable under M.G.L. c. 41, § 98F;
 - (i) Police-log information pertaining to alleged domestic violence or sex offenses that is non-disclosable under M.G.L. c. 41, § 98F;
 - (j) Reports of domestic violence or sex offenses, and associated communications, that are not public reports and are to be treated by police departments as confidential under M.G.L. c. 41, § 97D;
 - (k) Information in court and police records that identifies alleged victims of sex offenses or trafficking and is non-disclosable under M.G.L. c. 265, § 24C;
 - (l) Personal contact, employment, or educational information of victims of crimes or domestic violence, or members of their families, that is non-disclosable under M.G.L. c. 66, §§ 10B and 15;
 - (m) Personal contact, employment, or educational information of victims, members of their families, or witnesses that is non-disclosable under M.G.L. c. 258B, §§ 3(h) and 3(w);
 - (n) Personal contact, employment, or educational information of family-planning personnel or members of their families that is non-disclosable under M.G.L. c. 66, §§ 10B and 15;
 - (o) Personal data that is non-accessible under M.G.L. c. 66A and M.G.L. c. 214, § 3B;
 - (p) Forms of “personal information” referenced in M.G.L. c. 93H, § 1, other than the names of individuals;
 - (q) Data that the Commission is precluded from disclosing pursuant to a court order;
 - (r) Information the disclosure of which may constitute an unreasonable, substantial or serious interference with a person’s privacy under M.G.L. c. 214, § 1B; and
 - (s) Any other information that is non-disclosable under federal or Massachusetts law.
- (6) The public database also shall not include:
- (a) The following forms of information, the revelation of which could potentially impact officer health or safety, including by facilitating attempts to coerce officers or exploit any individual vulnerabilities:
 - 1. Information relating to a member of an officer’s family, except where such family member is an officer and any relation between the two officers is not revealed;
 - 2. Information concerning an officer’s personal finances that is not otherwise publicly available;

3. Information that could readily be used to facilitate identity theft or breaches of data security, including, but not limited to, an officer's date of birth, passwords, and entry codes;
 4. Information concerning an officer's medical or psychological condition;
 5. ~~Specific~~ assessments of whether an officer possesses good moral character or fitness for employment in law enforcement under M.G.L. c. 6E, § 4(f)(1)(ix), made pursuant to 555 CMR 7.05 or 7.06(9) or otherwise;
 6. Information concerning an officer's conduct as a juvenile;
 7. Information concerning any firearm, or firearms license or permit, that an officer currently possesses in a personal capacity;
 8. Law enforcement information, including information concerning the following subjects, if disclosure could compromise law enforcement or security measures:
 - a. Undercover operations;
 - b. Confidential informants;
 - c. Clandestine surveillance;
 - d. Secretive investigative techniques;
 - e. Passwords and codes;
 - f. The details of security being provided to a person or place; or
 - g. Subjects of comparable sensitivity.
 9. Information concerning a disciplinary matter before the Commission that has not reached a conclusion; and
 10. Any other information that could readily be used in an attempt to coerce action or inaction, or exploit individual vulnerabilities, of an officer.
- (b) Agency data that is subject to an ongoing audit by the Commission pursuant to M.G.L. c. 6E, §§ 3(a)(9), 3(a)(21), and 8(d);
 - (c) Records associated with Commission meetings that may be withheld under M.G.L. c. 30A, § 22;
 - (d) Personal data that an individual has the ability to have corrected or amended under M.G.L. c. 66A, § 2(j) or 555 CMR 8.076.
 - (e) Information in a personnel record that an employee has the right to have corrected or expunged pursuant to M.G.L. c. 149, § 52C;
 - (f) Information that is subject to a privilege held by the Commission;
 - (g) Information that is subject to a privilege held by a person or entity other than the Commission;
 - (h) Data that is non-disclosable under any formal agreement or memorandum of understanding between the Commission and any other unit of the government of the Commonwealth, including, but not limited to, any Commonwealth of Massachusetts Data Sharing Memorandum of Understanding, and any Data Use License Agreement between the Commission and the MPTC;
 - (i) Information that a court has expunged, placed under seal, impounded, or relieved the Commission of having to disclose;
 - (j) Information the confidentiality of which is the subject of dispute in litigation or an administrative proceeding; and
 - (k) Information that otherwise does not constitute a public record under M.G.L. c. 4, § 7, cl. 26.

(7) For purposes of determining whether a matter is ongoing, as that question relates to the applicability of exemptions under M.G.L. c 4, § 7, cl. 26 or other provisions or doctrines, the following guidelines shall apply.

- (a) A certification matter should be deemed subject to Commission oversight, and ongoing, beginning upon the earliest of the following:
 1. The Commission's receipt of an application for certification on behalf of an officer, including one made pursuant to M.G.L. c. 6E, § 4, M.G.L. c. 30A, § 13, or 555 CMR 7.03; or
 2. An agency's receipt from an officer of an application for certification or any materials required for the agency to complete an application for certification on the officer's behalf.
- (b) A certification matter should be deemed no longer ongoing upon the conclusion of the matter.
- (c) A disciplinary matter should be deemed subject to Commission oversight, and ongoing, beginning upon the earliest of the following:

1. The Commission's receipt of a complaint or information warranting a determination of whether to initiate a preliminary inquiry under M.G.L. c. 6E, § 8; or
 2. An agency's receipt of a complaint that must or will be reported to the Commission under 555 CMR 1.01.
- (d) A disciplinary matter should be deemed no longer ongoing upon the earliest of the following:
1. The conclusion of the matter;
 2. The point at which all entities that the Commission knows to have been investigating the matter have decided not to pursue any associated disciplinary or legal action; or
 3. An officer's communication to the Commission of a decision not to challenge any disciplinary action.

(8) To the extent allowed by law, ~~t~~The Commission may include in the public database, or exclude from the public database, other forms of information not specifically referenced in 555 CMR 8.05(4), (5), or (6), in accordance with guidelines established by a vote of the Commissioners, or, if no such guidelines are established, in accordance with guidelines established by the Commission's Executive Director.

8.06: Maintenance of Databases and Electronic Recordkeeping Systems Generally

- (1) The Commission's RAO and its Chief Technology Officer shall consult with each other, and with the Commission's Executive Director, its Chief Financial and Administrative Officer, or the Massachusetts Executive Office of Technology Services and Security to ensure that, to the extent feasible, any electronic recordkeeping system or database that the Commission maintains is capable of providing data in a commonly available electronic, machine readable format.
- (2) To the extent feasible, any database should allow for information storage and retrieval methods that permit the segregation and retrieval of public records and redacting of exempt information in order to provide maximum public access.
- (3) The Commission shall not enter into any contract for the storage of electronic records that:
 - (a) Prevents or unduly restricts the RAO from providing public records in accordance with M.G.L. c. 66;
 - (b) Relieves the Commission of its obligations under M.G.L. c. 66A or any governing regulations promulgated thereunder; or
 - (c) Omits provisions that are necessary to ensure compliance with M.G.L. c. 66A or any governing regulations promulgated thereunder.

8.07: 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 8.07(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 8.07(1) isto be warranted, the Executive Director shall promptly: take appropriate steps to grant such relief, or comparable relief, and notify the petitioner in writing of the action taken.
 - (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 8.07(3):

(a) ~~The Chair may take any further action allowed by law with respect to the petition filed pursuant to 555 CMR 8.07(1); and~~

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

(54) If the Executive Director determines that the relief requested in a petition filed pursuant to 555 CMR 8.07(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; and

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

(65) Within thirty days of receiving a notification pursuant to 555 CMR 8.07(54)(a), a petitioner may file a written request for further review with the Executive Director.

(76) The Executive Director shall provide any request for further review made pursuant to 555 CMR 8.07(65) to the Chair promptly upon receiving it.

(87) The Chair ~~may take any action allowed by law with respect to~~ shall have discretion to ~~determine the manner of addressing~~ a request for further review made pursuant to 555 CMR 8.07(65).

(98) If the Commission has a good-faith, reasonable belief that a public employee may possess a right to have data in a personnel record ~~that is maintained by an employer~~ corrected or expunged pursuant to M.G.L. c. 149, § 52C, the Commission shall make reasonable efforts to give the employee the opportunity to exercise the right.

8:08: Receipt and Referral of Records Requests

(1) The Commission may decline to accept ~~r~~Records ~~r~~Requests by telephone, pursuant to 950 CMR 32.06(1)(a).

(2) If the Commission receives a ~~r~~Records ~~r~~Request and determines that the MPTC is the data owner as to all responsive materials, the Commission shall refer the ~~r~~Records ~~r~~Request to the MPTC and request that the MPTC respond in accordance with any Data Use License Agreement between the Commission the MPTC, and the Commission may presume that the MPTC will assume responsibility for responding.

(3) If the Commission receives a ~~r~~Records ~~r~~Request, it may consult with a law enforcement agency to determine if similar requests have been received by the agency.

(4) The Commission may ~~also~~ establish a ~~policy providing for~~ process by which agencies that receive ~~r~~Records ~~r~~Requests for documents that are also held by the Commission ~~to~~ be required to provide the Commission with timely notice of the ~~r~~Records ~~r~~Request, a copy of any response to the ~~r~~Records ~~r~~Request, and copies of any documents produced.

8:09: Responses to Records Requests

(1) Except as provided in 555 CMR 8.09(2), (3), or (4), a record requested through a ~~r~~Records ~~r~~Request shall be provided in accordance with M.G.L. c. 66 and 950 CMR 32.00.

(2) If a record includes information identified in 555 CMR 8.05(5), such information shall not be disclosed;

(3) If a record includes information identified in 555 CMR 8.05(6), taking into account the provisions of 555 CMR 8.05(7), such information shall not be disclosed, unless:

(a) Disclosure is required under M.G.L. c. 66A, § 2 or any other source of federal or Massachusetts law; or

(b) Disclosure:

1. Is not prohibited by federal or Massachusetts law;

2. Will not jeopardize any law enforcement efforts or the security of any person or entity; and

- a. Will be made to the person or entity who is the subject of the information;
- b. Will be made to a law enforcement agency or a criminal justice agency in Massachusetts or elsewhere;
- c. Is warranted by public interests that are substantially greater than any interests in non-disclosure; or
- d. Has previously been made publicly by the officer at issue or the Commission in litigation.

(4) If a record constitutes a public record and is made available on a public website pursuant to M.G.L. c. 66, § 19(b), M.G.L. c. 7, § 14C, 555 CMR 8.05, or any other appropriately indexed and searchable public website, the RAO may furnish the record by providing reasonable assistance in locating it on the public website, pursuant to M.G.L. c. 66, § 6A(d).

8:10: Privileged Information

(1) Where information that is responsive to a ~~r~~Records ~~r~~Request is subject to a privilege recognized by law:

- (a) If the Commission is the holder of the privilege, the privilege may be waived only through ~~a vote~~ ~~a decision~~ of the Commissioners ~~made in accordance with M.G.L. c. 6E, § 2(e); and~~
- (b) If a person or entity other than the Commission is the holder of the privilege, the Commission shall:
 1. Notify the holder regarding the ~~r~~Records ~~r~~Request; and
 2. Make reasonable efforts to give the holder the opportunity to protect the information.

8:11: Fees for Producing Records

(1) In response to any ~~r~~Records ~~r~~Request that does not address the requester's eligibility for a waiver of fees under M.G.L. c. 66, § 10(c)(v) and 950 CMR 32.07(2)(k), the Commission may seek information from the requester regarding the purpose of the ~~r~~Records ~~r~~Request, in accordance with M.G.L. c. 66, § 10(d)(viii) and 950 CMR 32.06(2)(h).

(2) Where a requester requests records that are substantially similar to information available through the public database prescribed by 555 CMR 8.05, the Commission shall direct the requester to the database and, if that does not satisfy the requester's ~~request~~, then decline to provide records without payment of the maximum fee permitted by law, notwithstanding the provisions of M.G.L. c. 66, § 10(c)(v) and 950 CMR 32.07(2)(k).

(3) Where the Commission has determined that records are not to be provided without payment of a fee:

- (a) The requester shall not be obligated to pay any fee without having agreed to do so;
- (b) The Commission may decline to continue assembling or reviewing potentially responsive documents until the full fee has been paid; and
- (c) The Commission shall not provide documents until the full fee has been paid.

8:12: Compulsory Legal Process

(1) When any person or entity seeks personal data maintained by the Commission through compulsory legal process, the Commission, except as provided in 555 CMR 8.12(2):

- (a) Shall notify the ~~individual to whom the personal data refers~~ ~~data subject~~ in reasonable time that the ~~individual~~ ~~data subject~~ may seek to have the process quashed; and
- (b) If appearing or filing any paper in court related to the process, shall notify the court of the requirement of M.G.L. c. 66A, § 2(k).

(2) The Commission need not provide the notification described in 555 CMR 8.12(1) if a court orders otherwise upon a finding that notice to the ~~individual to whom the personal data refers~~ ~~data subject~~ would probably so prejudice the administration of justice that good cause exists to delay or dispense with such notice.

REGULATORY AUTHORITY

555 CMR 8.00: M.G.L. c. 6E, §§ 3(a) and 4(j), and 801 CMR 3.01(2).

4b.

MASSACHUSETTS PEACE OFFICER STANDARDS AND TRAINING COMMISSION
APPROVAL OF AMENDMENTS TO REGULATIONS REGARDING USE OF FORCE
ON A PERMANENT BASIS
(Proposed, Contingent on Outcome of Public Hearing and Commission Meeting)

I. BACKGROUND

- A. The Peace Officer Standards and Training Commission and the Municipal Police Training Committee jointly promulgated regulations regarding the use of force by law enforcement officers, pursuant to M.G.L. c. 6, § 116, M.G.L. c. 6E, § 15(d), and M.G.L. c. 30A. The regulations were codified at 550 CMR 6.00 (MPTC version) and 555 CMR 6.00 (Commission version).
- B. As originally promulgated, 550 CMR 6.04(6) and 555 CMR 6.04(6) stated, “Except to temporarily gain, regain or maintain control of an individual and apply restraints, a law enforcement officer shall not intentionally sit, kneel, or stand on an individual’s chest, neck, or spine, and shall not force an individual to lie on their stomach.”
- C. At its public meeting on June 30, 2022, the Commission approved the promulgation of amendments to the above-quoted language on an emergency basis. The amendments struck “, neck,” and added a sentence stating, “In no event may a law enforcement officer intentionally sit, kneel, or stand on an individual’s neck or head.” The MPTC approved such amendments at a public meeting on July 12, 2022.
- D. On August 5, 2022: the POST Commission filed the emergency amendments to its regulations with the Secretary of the Commonwealth; the Commission provided a sufficient description of the emergency amendments, and a copy of the

Commission's regulations showing the emergency amendments, to the Local Government Advisory Committee; and the emergency amendments became effective.

- E. On August 19, 2022, the Secretary of the Commonwealth's Office published a notice regarding the emergency amendments, and a copy of the Commission's regulations incorporating such amendments, in Issue No. 1476 of The Massachusetts Register.
- F. Between September 16 and 19, 2022, the following steps were taken on behalf of the Commission and the MPTC: notices regarding a public hearing scheduled for October 11, 2022 and a public-comment period extending until 5:00 PM on October 11, 2022, with respect to the adoption of the amendments to the two sets of regulations on a permanent basis, were filed with the Secretary of the Commonwealth's Office; Small Business Impact Statements concerning the amendments were filed with that office; and the Local Government Advisory Committee was provided with a sufficient description of the amendments, the notices regarding the public hearing and public-comment period, the Small Business Impact Statements, and copies of the two sets of regulations showing the amendments.
- G. On September 20, 2022: a major newspaper published a notice regarding the public hearing and public-comment period on behalf of the Commission and the MPTC; and the Commission posted the notices regarding the public hearing and public-comment period, and copies of the two sets of regulations showing the amendments, on its website.

- H. On September 27, 2022, the MPTC filed emergency amendments to its regulations with the Secretary of the Commonwealth's Office, which amendments corresponded to those filed by the Commission, and they became effective.
- I. On September 30, 2022, the Secretary of the Commonwealth's Office published the notices regarding the public hearing and public-comment period, and the Small Business Impact Statements, in Issue No. 1479 of The Massachusetts Register.
- J. The Commission and the MPTC jointly held a virtual public hearing regarding the amendments to the two sets of regulations on October 11, 2022. At the hearing, they provided information concerning the regulatory process and received comments. The agencies maintained a period for public comment on the amendments until 5:00 PM the same day.

II. APPROVAL

Pursuant to M.G.L. c. 6, § 116; M.G.L. c. 6E, §§ 3(a) and 15(d); and M.G.L. c. 30A:

- A. The Commission approves the adoption of the aforementioned amendments to regulations concerning the use of force on a permanent basis; and
- B. Provided the MPTC grants approval for the same, the Commission authorizes the filing of appropriate papers with the Office of the Secretary of the Commonwealth to ensure that such amendments become effective on a permanent basis.

4c.

555 CMR 10.00: SPECIALIZED CERTIFICATION FOR SCHOOL RESOURCE OFFICERS

Section

10.01: Authority

10.02: Scope

10.03: Definitions

10.04: SRO Certification Requirement

10.054: Application for SRO Certification

10.065: Division Evaluation of SRO Certification Application

10.076: Conditional SRO Certification

10.087: Possible Action Following Decision Declining to Grant Full SRO Certification

10.098: SRO Certification Status

10.10: In-service SRO Training

10.11: Alternate SROs

10.12: Sub-specialties

10.01: Authority

- (1) The Commission promulgates 555 CMR 10.00 pursuant to M.G.L. c. 6E, §§ 3(a) and 3(b).

10.02: Scope

- (1) 555 CMR 10.00 governs SRO certification pursuant to M.G.L. c. 6E, §§ 3(a) and 3(b).
- (2) 555 CMR 10.00 amends any initial certification process concerning SRO certification, and otherwise supersedes any policy or protocol concerning SRO certification, that was previously adopted by the Commission, other than as provided in 555 CMR 10.098(3), except:
 - (a) 555 CMR 10.00 does not negate any grant of SRO certification for an individual, or any effective dates of such a certification, that was previously approved by the Commission.
- (3) 555 CMR 10.00 does not govern the suspension or revocation of SRO certification, except as provided in 555 CMR 10.098.
- (4) Nothing in 555 CMR 10.00 is intended to:
 - (a) Establish a standard of care or create any independent private right, entitlement, remedy, or cause of action on the part of any person or entity on account of any action the Commission takes or fails to take;
 - (b) Otherwise waive any power, right, privilege, protection, or immunity that may be available to the Commission; or
 - (c) Preclude the limiting, conditioning, restricting, suspending, or revoking of any certification in accordance with law.

10.03: Definitions

- (1) 555 CMR 10.00 incorporates all definitions and rules of construction set forth in 555 CMR 2.02, except those definitions of terms that are defined in 555 CMR 10.03(2).
- (2) For the purposes of 555 CMR 10.00, the following terms have the following meanings, unless the context requires otherwise:

Applicant. A person or entity that submits an application for SRO certification regarding an individual to the Commission.

Application. An application for SRO certification.

Appointing Authority. A law enforcement agency that appoints, or seeks to appoint, an individual to serve as an SRO.

Chief of Police. The chief of police or the board or officer having control of the police department in a city or town.

Conditional Officer Certification. An officer certification of the type described in 555 CMR 7.04 or otherwise made subject to conditions pursuant to M.G.L. c. 6E, §§ 3(a) and 4.

Conditional SRO Certification. An SRO certification of the type described in 555 CMR 10.076.

Revocation of Officer Certification. A revocation of officer certification made by the Commission pursuant to M.G.L. c. 6E, §§ 3(a) and 10, an action that is distinct from a denial, a nonrenewal, an expiration, or a suspension of officer certification, and that is distinct from a denial, a nonrenewal, an expiration, a revocation, or a suspension of SRO certification.

Denial of SRO Certification. A Commission decision declining to grant SRO certification to an individual, made pursuant to M.G.L. c. 6E, §§ 3(a) and 3(b), an action that is distinct from a revocation or a suspension of SRO certification, and that is distinct from a revocation or a suspension of officer certification.

Division. The Division of Police Certification established pursuant to M.G.L. c. 6E, § 4.

Executive Director. The Executive Director of the Commission, appointed pursuant to M.G.L. c. 6E, § 2(g), or that person's designee for relevant purposes.

Final Decision. The ultimate Commission decision on an application for SRO certification, following any review or hearing or the expiration of the time afforded for an applicant to seek such review or hearing, and following the satisfaction of any conditions attached to a conditional SRO certification or the expiration of the time to satisfy any such conditions.

Full SRO Certification. An SRO certification granted pursuant to M.G.L. c. 6E, §§ 3(a) and 3(b), without any limitation, condition, restriction, or suspension imposed pursuant to M.G.L. c. 6E, §§ 3(a) or 3(b) or another provision.

~~Model MOU. The model MOU for SROs developed by the SRO-MOU Commission.~~

~~MOU. A memorandum of understanding concerning an SRO's: relationship with a school or school system; duties; functions; and/or powers.~~

MPTC. The Municipal Police Training Committee within the Executive Office of Public Safety and Security, as established in M.G.L. c. 6, § 116.

Officer Certification. A certification or recertification of an individual as a law enforcement officer under M.G.L. c. 6E, §§ 3(a) and 4, regardless of whether it is subject to any condition, limitation, restriction, or suspension.

POST Commission. 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.

Revocation of SRO Certification. A revocation of SRO certification made by the Commission pursuant to M.G.L. c. 6E, §§ 3(a) and 3(b), an action that is distinct from a denial, a nonrenewal, or an expiration of SRO certification, and that is distinct from a denial, a nonrenewal, an expiration, a revocation, or a suspension of officer certification.

School Resource Officer or SRO. An individual who is either:

- (a) A duly sworn municipal police officer with all necessary training and up-to-date certificates, including special SRO certification as required by M.G.L. c. 6E, § 3(b); or
- (b) ~~A special~~An officer appointed by the chief of police who is specially charged with performing all the following duties:
 - (i) Providing law enforcement;
 - (ii) Promoting school safety and security services to elementary and secondary public schools; and
 - (iii) Maintaining a positive school climate for all students, families, and staff.

SRO Certification. A specialized certification of an individual as an SRO under M.G.L. c. 6E, § 3(b).

~~SRO MOU Commission. The Model School Resource Officer Memorandum of Understanding Review Commission established under M.G.L. c. 71, § 37P(b).~~

10.04: SRO Certification Requirement

(1) Only if an individual possesses an SRO certification that has not been suspended:

(a) May the individual, an agency, or an officer represent that the individual is an SRO; or

(b) May the individual serve as an officer appointed by the chief of police who is specially charged with performing all the following duties:

- 1. Providing law enforcement;
- 2. Promoting school safety and security services to elementary and secondary public schools; and
- 3. Maintaining a positive school climate for all students, families, and staff.

(2) An individual is not required to possess an SRO certification in order to engage in activity that does not involve:

(a) A representation that the individual is an SRO; or

(b) The individual's serving in a position of the type described in 555 CMR 10.04(1)(b).

10.054: Application for SRO Certification

(1) The Division shall develop, and shall make available on the Commission website, an application form by which an officer or an officer's appointing authority may apply for SRO certification for the officer, which form shall, in part:

- (a) Direct the applicant to ensure that the information and materials identified in 555 CMR 10.054(3) are submitted to the Division; and
- (b) Require the applicant to make any assertions in the application under the pains and penalties of perjury.

(2) ~~On the effective date of 555 CMR 10.00, t~~The Executive Director shall set

a deadline for the submission of applications for SRO certification for individuals who are ~~then~~ serving as SROs ~~on the effective date of 555 CMR 10.00.~~

- (a) An officer or appointing authority may request that the Executive Director grant an extension of the initial deadline or any revised deadline, provided that the requester identifies, in writing, each individual to which the request applies.
 - (b) The Executive Director may extend the initial deadline or any revised deadline, provided that no extension exceeds 30 calendar days.
- (3) The Division shall not consider an application for SRO certification for an individual unless the Division receives:
- (a) An application that:
 - 1. Is in the form prescribed by the Division and complete;
 - 2. Is submitted on or before the deadline established under 555 CMR 10.054(2), if the application is requesting SRO certification for an individual who was serving as an SRO on the effective date of 555 CMR 10.00;
 - 3. Is executed by the applicant under the pains and penalties of perjury;
 - 4. Includes an endorsement by the individual's appointing authority;
 - ~~5. Includes a copy of SRO operating procedures prescribed by the appointing authority pursuant to M.G.L. c. 71, § 37P(d), fourth paragraph;~~
 - ~~6. Includes a copy of an MOU developed pursuant to M.G.L. c. 71, § 37P(d), third paragraph;~~
 - ~~57. Addresses whether the individual has completed any special SRO training offered that was required by the MPTC pursuant to M.G.L. c. 6, § 116H or otherwise, as well as the reasons why any such required training was not completed;~~ and
 - ~~68. Addresses whether the individual has completed any other in-service training or retraining that was required by the MPTC pursuant to M.G.L. c. 6E, §§ 116 through 118, M.G.L. c. 40, § 36C, M.G.L. c. 41, § 96B, M.G.L. c. 41, § 97B, M.G.L. c. 90, § 24M, or otherwise, or that was required by the Commission pursuant to M.G.L. c. 6E, §§ 3(a), 3(b), 9(b), or 10(d), or otherwise, as well as the reasons why any such required training was not completed.~~
 - (b) The results of a background check regarding the individual that was consistent with the provisions concerning background checks for current or prospective school personnel in M.G.L. c. 71, § 38R and 603 CMR 51.00.

~~(4) An individual may apply for SRO certification without having been designated to serve in a particular school or school system.~~

10.065: Division Evaluation of SRO Certification Application

- (1) In evaluating an application for SRO certification for an individual, the Division may obtain and consider additional information regarding the individual by:
 - (a) Requesting that the individual complete a questionnaire;
 - (b) Requesting that the applicant provide names of or letters from references, and contacting those references to discuss the individual;
 - (c) Obtaining information concerning the individual's: completion of in-service or specialized training, relevant education, performance reviews, professional awards, achievements, commendations, receipt of discipline, misconduct, and past performance;
 - (d) Affording the individual or the appointing authority an opportunity to respond to any information or allegations received by the Division; and
 - (e) Taking other reasonable steps.

- (2) The Division shall review each application for SRO certification and any other information obtained by the Division.
- (3) Except as provided in 555 CMR 10.07(1), tThe Division may grant an SRO certification to an individual only if the Division determines that:
- (a) ~~Determines that t~~The individual possesses an officer certification that is not suspended;
 - (b) The Division hHas not received information demonstrating that the individual would presently be ineligible for an officer certification;
 - ~~(c) — Determines that:~~
 - ~~1. — The appointing authority has developed an MOU that is consistent with the Model MOU and M.G.L. c. 71, § 37P;~~
 - ~~2. — The appointing authority has developed SRO operating procedures that are consistent with M.G.L. c. 71, § 37P(d), fourth paragraph;~~
 - ~~(c) 3. —~~The appointing authority has concluded that the individual passed a background check that was consistent with the provisions concerning background checks for current or prospective school personnel in M.G.L. c. 71, § 38R and 603 CMR 51.00;
 - ~~(d) 4. —~~The individual has successfully completed any SRO training that was required by the MPTC pursuant to M.G.L. c. 6, § 116H or otherwise; and
 - ~~(e) 5. —~~The individual has successfully completed any other in-service training or retraining that was required by the MPTC pursuant to M.G.L. c. 6E, §§ 116 through 118, M.G.L. c. 40, § 36C, M.G.L. c. 41, § 96B, M.G.L. c. 41, § 97B, M.G.L. c. 90, § 24M, or otherwise, or that was required by the Commission pursuant to M.G.L. c. 6E, §§ 3(a), 3(b), 9(b), or 10(d), or otherwise.
- (4) As a decision declining to provide full SRO certification is distinct from revocation of officer certification, the procedures prescribed by M.G.L. c. 6E, § 10 need not be followed before such a decision is rendered.
- (5) The Division shall render a decision on an application for SRO certification within a reasonable time.
- (6) The Division shall provide written notification of a decision on an application for SRO certification to:
- (a) The individual for whom SRO certification is sought;
 - (b) The individual’s appointing authority; and
 - (c) The head of the individual’s collective bargaining unit, if the unit head was identified by name in the application.
- (7) If the Division’s decision on an application for SRO certification provides for anything other than full certification, the notification described in 555 CMR 10.065(6) shall also inform the individual and the individual’s appointing authority of the ability to seek review by the Executive Director as provided for in 555 CMR 10.087(1) and a hearing as provided for in 555 CMR 1.10 and 555 CMR 10.087(2).

10.076: Conditional SRO Certification

- ~~(1) — The Division shall attach to an officer’s SRO certification, pursuant to M.G.L. c. 6E, §§ 3(a) and 3(b):~~
- ~~(a) — Any conditions, limitations, or restrictions that the Commission has attached to that individual’s officer certification pursuant to 555 CMR 7.04 or otherwise; and~~
 - ~~(b)(a) — Any other conditions, limitations, or restrictions that the Division deems warranted.~~

~~(12) The Division may grant a conditional SRO certification to~~ If an officer who has satisfied all requirements listed in 555 CMR 10.065(3) except the training requirements referenced in 555 CMR 10.065(3)(c)4 or 10.065(3)(c)5:

~~(a) The Division may grant the officer a conditional SRO certification in circumstances that the Division finds appropriate in circumstances found appropriate by the Division,~~ including, but not limited to, where:

~~1.(a)~~ Certain details need to be supplied or certain information needs to be verified;

~~2.(b)~~ The officer was unable to satisfy a training requirement because the officer was on approved leave, experienced a demonstrable hardship, or had another valid reason; or

~~3.(e)~~ The officer has taken all required steps in connection with the SRO certification process, but circumstances beyond the officer's control have delayed a final decision on the application; and:

(b) The Division shall require, as a condition of any such conditional SRO certification, that, within a reasonable and specified period of time, the officer complete any training that was required but not completed.

~~(24) The Division shall attach the following to an officer's SRO certification that it grants an officer pursuant to 555 CMR 10.06(3) or 10.07(1), pursuant to M.G.L. c. 6E, §§ 3(a) and 3(b):~~

~~(a) Any conditions, limitations, or restrictions that the Commission has attached to that individual's officer certification pursuant to 555 CMR 7.04 or otherwise; and~~

~~(b) Any other conditions, limitations, or restrictions that the Division deems warranted.~~

(3) The Division may determine that an officer is not required to satisfy any conditions attached to a conditional SRO certification, and that any time periods associated with any such conditions do not begin to elapse, before the conclusion of any review or hearing, or the expiration of the time afforded for the officer to seek such review or hearing, pursuant to 555 CMR 10.087.

(4) The Division may extend the time initially allowed for an officer to satisfy a condition attached to a conditional certification, provided that:

(a) The officer has requested an extension of time from the Division prior to the deadline initially set by the Division;

(b) The officer has offered good cause for an extension of time; and

(c) The extension of time does not exceed thirty calendar days, unless the Commissioners approve a longer period of time through an action taken pursuant to M.G.L c. 6E § 2(e).

(5) When an officer fails to satisfy a condition of a conditional SRO certification within the time allowed, taking into account the provisions of 555 CMR 10.076(3), the Division shall terminate the officer's SRO certification.

(6) When an officer satisfies all conditions of a conditional SRO certification within the time allowed, taking into account the provisions of 555 CMR 10.076(3), and ~~neither the officer's SRO certification nor the officer's officer certification is otherwise limited, restricted, or suspended the Commission has not otherwise limited, restricted, or suspended the officer's SRO certification or officer certification,~~ the Division shall convert the conditional SRO certification into a full SRO certification with an expiration date of three calendar years from the date on which the initial conditional SRO certification was issued.

(7) In all other respects, an officer who holds a conditional SRO certification possesses a "specialized certification" and is "specially certified" as those terms are used in M.G.L. c. 6E, § 3(b).

10.087: Possible Action Following Decision Declining to Grant Full SRO Certification

(1) An applicant that receives a decision from the Division declining to grant a full SRO certification for an individual may seek review by the Executive Director as follows.

(a) Within 21 days of the Division's decision, an applicant may submit a written petition to the Executive Director requesting review of the decision.

(b) If the petition will be submitted by the individual alone, the individual shall serve a copy of the petition upon the appointing authority by electronic mail or first-class mail prior to submitting the petition to the Executive Director, and the petition shall include a certificate of service stating the date of service, the method of service, and the address used for service.

(c) If the petition will be submitted by the appointing authority alone, the appointing authority shall serve a copy of the petition upon the individual by electronic mail or first-class mail prior to submitting the petition to the Executive Director, and the petition shall include a certificate of service stating the date of service, the method of service, and the address used for service.

(d) The Executive Director may ask any entity or individual to provide additional information, orally or in writing, or to appear at a meeting concerning the matter.

(e) The Executive Director shall provide the individual and the appointing authority with a written decision on the petition within a reasonable time.

(2) Following the process described in 555 CMR 10.087(1), an applicant may request and obtain a hearing before the Commission concerning an application for SRO certification in accordance with 555 CMR 1.10: *Final Disciplinary Hearings and Appeals of Certification Decisions*.

(3) Where an individual has received a decision denying a full SRO certification, the Commission may attach limitations, conditions, or restrictions on the individual's ability to reapply.

10.098: SRO Certification Status

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

(3) An SRO certification may be made retroactive where such action is consistent with policies or protocols approved by the Commission either prior to or subsequent to the promulgation of 555 CMR 10.00.

(4) Unless the Commission provides otherwise, an SRO certification granted pursuant to 555 CMR 10.054 through 10.098 shall expire three calendar years after the effective date recognized by the Commission.

(5) If a decision to grant an SRO certification to an individual is vacated, the individual shall be deemed to have possessed an SRO certification during the period of time between the decision to certify and the decision to vacate.

(6) A decision regarding an individual's application for SRO certification shall not, by itself, affect an individual's officer certification.

(7) If an individual's officer certification is suspended, the individual's SRO certification shall be automatically deemed suspended.

(8) If an individual's officer certification is revoked, the individual's SRO

certification shall be automatically deemed revoked.

~~(9) — If an individual's SRO certification is suspended or revoked, or the individual otherwise does not possess an SRO certification, the individual shall not serve as an SRO.~~

~~(9) The Division shall terminate an SRO certification upon receiving a written request for such termination from the certified individual.~~

10.10: In-service SRO Training

(1) Any officer who is serving as an SRO or possesses an SRO certification is required to complete all SRO training that the MPTC requires pursuant to M.G.L. c. 6, § 116H or otherwise.

(2) If an officer fails to complete the SRO training referenced in 555 CMR 10.10(1) within 90 days of the deadline to complete it, the Division may administratively suspend the officer's SRO certification.

(3) The Division shall reinstate the SRO certification of an officer who was administratively suspended pursuant to 555 CMR 10.10(2) upon the officer's completion of all required SRO training.

(4) An officer's failure to complete the SRO training referenced in 555 CMR 10.10(1) shall not, by itself, constitute grounds for administrative suspension of an officer's officer certification pursuant to M.G.L. c. 6E, § 9(b).

10.11: Alternate SROs

(1) Agencies are encouraged to seek SRO certification and SRO training for more officers than are needed to staff participating schools at a given time, and to designate alternates who may serve as substitute SROs when needed.

10.12: Sub-specialties

(1) The Division may grant an officer who has received an SRO certification an additional certification in a sub-specialty, or a specific aspect, of SRO service, pursuant to procedures that are substantially similar to those prescribed for SRO certification in 555 CMR 10.10.

REGULATORY AUTHORITY

555 CMR 10.00: M.G.L. c. 6E, §§ 3(a) and 3(b)

4d.



CONSTABLES UNDER CHAPTER 6E AND COMMISSION REGULATIONS

Randall E. Ravitz, General Counsel
September 8, 2022



ISSUE 1: When and How Constables Are Made Subject to Chapter 6E

- Section 1 includes a “a constable executing an arrest for any reason” within the definition of “law enforcement officer” or “officer.”
- The Commission has construed the statute to apply to a constable who “executes, or expects to execute, arrests.”
 - That helps avoid giving a constable “one free arrest.”
- But how can one know that a constable expects to execute an arrest?
- Must the Commission attempt to assess that, and provide advice, for each constable?



ISSUE 1: Potential Approaches

- Providing for constables to affirmatively apply for certification, at least where they seek the power to make arrests.
 - Constables would then have a method, and a burden, to signal their expectation of making arrests.
 - If a constable is certified, the Commission may approve of the constable's ability to make arrests.
 - If a constable is not certified, the Commission may disapprove of the constable's ability to make arrests.
 - That is, the Commission may provide that a constable who executes an arrest without certification is subject to, and in violation of, the legal scheme established by statute and regulation, and may face consequences.



ISSUE 2: How the Certification Process for Constables Should Proceed, in Light of Their Independence

- Again, constables typically do not work within law enforcement agencies.
- Thus, constables do not fit neatly into the certification provisions of Chapter 6E, and Commission regulations and policies.
 - How is a background check conducted?
 - How is a Commission-administered oral interview conducted?
 - How is the character and fitness standard assessed?



ISSUE 2: Potential Approaches

- Developing a certification process tailored to constables' independent status.
 - Borrowing as much as possible from other Commission regulations and policies regarding certification, including requirements, protections, and conditional certifications.
 - Allowing constables to apply for certification independently.
 - Requiring constables to secure background checks from the Commission or a law enforcement agency, for a fee if necessary.
 - Designating officials who may conduct oral interviews, and providing guidelines for interviews.
 - Requiring constables to submit letters from officials who can comment on their character and fitness.



ISSUE 3: Ways in Which Constables Can Satisfy Training Requirements

- Chapter 6E:
 - Makes “successful completion of the basic training program approved by the [MPTC]” a requirement for certification, through Sections 4(f)(1), 4(f)(2), and 4(i);
 - Requires the Commission to maintain records, within databases, regarding officers’ completion of training and “failure to follow commission training requirements,” through Sections 4(h) and 8(e);
 - Requires the Commission to “annually report” on “the frequency with which an officer who was decertified,” “suspended,” or “subject to a retraining order” “failed to meet training requirements established by the commission and their appointing agency,” through Section 16; and
 - Requires the Commission to “administratively suspend the certification of an officer who fails to complete in-service training requirements of the commission within 90 days of the deadline imposed by the commission,” where no exemption applies, through Section 9(b); and
 - Allows the Commission to “order retraining for any officer if the commission finds substantial evidence that the officer” “failed to comply with” “commission” “training requirements,” through Section 10(d).
- What training in-service requirements apply to constables?
- To what extent are constables generally able to satisfy basic and in-service training requirements?
- How would training by constables be tracked?



ISSUE 3: Potential Approaches

- Continuing to communicate with the MPTC and representatives of the Commonwealth's constables to:
 - Gather more information about the issue; and
 - Explore ways of addressing it.



ISSUE 4: The Extent to Which Constables Are Subject to Oversight and Consequences Comparable to That of Other Officers

- Several sections of Chapter 6E provide for officers to be overseen by, investigated by, and reported by supervisors.
 - They relate to, e.g., alleged misconduct and uses of force.
 - Some apply to certified officers, and some apply to “officers” generally.
- But, again, constables typically do not serve under supervisors.
- Chapter 6E also provides for restrictions on powers, and other consequences, upon the suspension or revocation of an officer’s certification.
- But certain of them, such as those precluding agency employment, may have less relevance to a constable who serves independently.



ISSUE 4: Potential Approaches (1)

- Providing that, as a requirement of certification, there must be someone who:
 - Will take personal responsibility for overseeing, investigating, and making reports concerning the constable;
 - Will perform functions comparable to those that Chapter 6E expects of supervisors, e.g.:
 - Receiving periodic activity reports from the constable, and reports about the constable's use of force;
 - Ensuring the constable's compliance with statutes and regulations;
 - Investigating alleged misconduct;
 - Reporting to the Commission concerning allegations of misconduct, certain uses of force, results of investigations, and failures to complete in-service training; and
 - Making records regarding the constable available for audit or inspection; and
 - Will be subject to Commission jurisdiction, or otherwise can be safely relied upon to perform such functions.



ISSUE 4: Potential Approaches (2)

- Providing for a constable to be subject to policies comparable to those developed for agencies, and by agencies, pursuant to Chapter 6E.
- Providing for appropriate restrictions upon a constable's authority, or other consequences, upon a suspension or revocation of certification.
- Guaranteeing constables certain rights that, under the law, are afforded to officers who serve in agencies.
 - E.g., Upon reporting abuse by another officer, being protected by an antiretaliation policy maintained by the other officer's agency.