



## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

April 11, 2023

### CHAIR

Margaret R. Hinkle

### COMMISSIONERS

Hanya H. Bluestone

Lawrence Calderone

Clementina Chéry

Larry E. Ellison

Marsha V. Kazarosian

Charlene D. Luma

Kimberly P. West

Michael Wynn

### EXECUTIVE DIRECTOR

Enrique A. Zuniga

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 #36**

**April 13, 2023**

**8:30 a.m.**

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

**Meeting ID: 969 5999 9465**

- 1) Call to Order
- 2) Approval of minutes
  - a. February 16, 2023
- 3) Executive Director Report – Enrique Zuniga
  - a. Administrative Update
  - b. Finance Update – CFAO Eric Rebello-Pradas
- 4) Legal Update – General Counsel Randall Ravitz
  - a. Proposed regulations re: Initial Certification of Officers; and Initial or Renewed Certification of Independently Applying Officers, Including Constables (555 CMR 9.00)
  - b. Proposed regulations re: Specialized Certification for School Resource Officers (555 CMR 10.00)
  - c. Draft guidance to Law Enforcement Agencies regarding certain aspects of 555 CMR 1.00: *Procedural Rules*
- 5) Matters not anticipated by the Chair at the time of posting
- 6) Executive Session in accordance with the following:

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

- M.G.L. c. 30A, § 21(a)(5), in anticipation of discussion regarding the investigation of charges of criminal misconduct;
  - M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 6E, § 8(c)(2), and to the extent they may be applicable, M.G.L. c. 6, §§ 168 and 178, in anticipation of discussion regarding the initiation of preliminary inquiries and initial staff review related to the same, and regarding certain criminal offender record information; and
- a. Division of Standards request approval to conduct Preliminary Inquiries in the following cases:
- i) PI-2023-04-13-001
  - ii) PI-2023-04-13-002
  - iii) PI-2023-04-13-003
  - iv) PI-2023-04-13-004
  - v) PI-2023-04-13-005
  - vi) PI-2023-04-13-006
  - vii) PI-2023-04-13-007
  - viii) PI-2023-04-13-008
  - ix) PI-2023-04-13-009
  - x) PI-2023-04-13-010
  - xi) PI-2023-04-13-011
  - xii) PI-2023-04-13-012
  - xiii) PI-2023-04-13-013
  - xiv) PI-2023-04-13-014
  - xv) PI-2023-04-13-015
  - xvi) PI-2023-04-13-016
  - xvii) PI-2023-04-13-017
  - xviii) PI-2023-04-13-018
  - xix) PI-2023-04-13-019
  - xx) PI-2023-04-13-020
- b. Update on the following preliminary inquiry matter:
- i) PI-2022-11-22-002
- c. Approval of commencement of revocation proceedings in the following cases:
- i) PI-2022-12-13-004
  - ii) PI-2023-02-16-001

2a.

PEACE OFFICER STANDARDS & TRAINING COMMISSION

PUBLIC MEETING MINUTES

**February 16, 2023**

**1:00 PM**

**Remote Participation**

**Documents Distributed in Advance of Meeting:**

- Public Meeting Minutes of December 13, 2022 (Proposed)
- Public Meeting Minutes of January 12, 2023 (Proposed)
- Letter to Chiefs and Sheriffs of Police Departments and Law Enforcement Agencies from the Executive Director, Re: Disciplinary Records Resubmission (February 3, 2023)
- Massachusetts POST Commission Annual Report 2022 (April 1, 2021 to December 31, 2022)
- Regulations 555 CMR 8.00: Databases and Dissemination of Information (Proposed)
- Regulations 555 CMR 8.00: Databases and Dissemination of Information (Proposed) (redlined version)
- Regulations 555 CMR 11.00: Regulatory Action and Advisory Opinions (Proposed)
- Regulations 555 CMR 11.00: Regulatory Action and Advisory Opinions (Proposed) (redlined version)
- FY23 & FY24 Budget Comparison
- FY24 Budget Development
- FY24 Organizational Chart

**In Attendance:**

- Chair Margaret R. Hinkle
- Commissioner Hanya H. Bluestone
- Commissioner Lawrence Calderone
- Commissioner Clementina M. Chéry
- Commissioner Larry Ellison
- 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 Luma moved to approve the minutes of the December 13, 2022 meeting. Commissioner Ellison 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 Commissioners unanimously approved the minutes of the December 13, 2022 public meeting.
  - Commissioner Luma moved to approve the minutes of the January 12, 2023 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 Commissioners unanimously approved the minutes of the January 12, 2023 public meeting.

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

#### **a. Disciplinary Records Update – Executive Director Zuniga**

- Executive Director Zuniga reported as follows.
  - The Commission sent letters to Chiefs requesting the validation of historical disciplinary records. They were asked to re-submit and update sustained disciplinary records, excluding incidents not reportable to POST. Instructions and a new template for data integrity and enhanced reporting was included.
  - POST should provide additional guidance on complaints due to POST such as instructions regarding an informal resolution process, the two-business day requirement, and ascertaining the credibility of a complaint.
  - As of December 31, 2021, there were records of 12,088 (33%) sustained disciplinary complaints; 9,831 (27%) complaints that were not sustained; 6,654 (18%) unfounded/withdrawn complaints; and 8,233 (22%) complaints as to which the officer was exonerated, resulting in a sub-total of 38,806 records.
  - As of December 31, 2021, there were 1,126 pending records, and 1,703 records were submitted during 2022.
  - The public database will only include the sustained complaints.
  - The broad timeline for agencies to report disciplinary records and next steps includes: additional guidance on complaints (March meeting); receiving validated data from agencies (March-April 2023); aggregating/migrating and validating the data (May-June 2023); POST publishing the majority of the disciplinary records

(Summer 2023); and POST deploying a portal for submitting complaints into the Salesforce system (Fall 2023).

## **b. Certification Update – List of Not Certified Officers**

- Executive Director Zuniga reported on current numbers for certification and the publication of certified officers.
  - He stated that, as of February 10, 2023, there were 8,277 Certified individuals with last names beginning with A-H; 235 Conditionally Certified individuals (A-H); 313 Not Certified individuals (A-H); and 1,218 new certifications of individuals with last names beginning with A-Z, for a total of 10,043 individuals.
  - He added that, as of February 10, 2023, the Not Certified classification numbers were as follows: 173 on excused leave (military, sick/injury, leave of absence); 46 who resigned or retired (in good standing); 57 who failed Municipal Police Training Commission (“MPTC”) training; and 37 with a disciplinary matter (terminated, suspended, resigned/retired to avoid discipline, National Decertification Index), for a total of 313 individuals.
  - Director Zuniga recommended the Commission vote on whether to publish the names of the 140 individuals in these categories of individuals who have not been certified, excluding the 173 individuals in the excused leave category.
  - Commissioner Bluestone asked if these individuals who have not been certified will be published under the four categories listed.
  - Director Zuniga responded the plan was to publish the four categories further identifying the reasons for not certifying an individual.
  - Commissioner Bluestone recommended they publish by subcategories within the group, such as failure to meet MPTC training and termination because those subcategories are different.
  - Commissioner Luma agreed that the subcategories are important. She asked if Category II will indicate whether the individual retired or resigned.
  - Director Zuniga answered yes, they have access to that data and the subcategories can be noted.
  - Commissioner Ellison asked if there is a deadline for the 57 individuals who failed the MPTC training to come into compliance.
  - Director Zuniga answered no, the deadline for individuals with last names A-H has passed and the only recourse would be for the individuals to attend a full-time academy to come into compliance. There is a deadline in April for individuals with last names I-P.
  - Commissioner Wynn questioned the purpose of publishing the resigned or retired (in good standing) category since they are private citizens.
  - Director Zuniga pointed out there is a section of the proposed database regulations that states we can just keep the name and date of the individual’s end of duty. There is another question of how long they should be posted. They are currently in POST records since they were submitted. The Commission can decide how long the records should be retained.
  - Commissioner Calderone asked if there will be a subsection under disciplinary records that indicates anything that might be on appeal.

- Director Zuniga answered there is not a subcategory, but it would be noted.
- Commissioner Ellison asked if the resigned or retired (in good standing) category would be purged from the system if they are not looking to be recertified.
- Director Zuniga stated that the matter is not final since retiring does not prevent the officer from taking on details after retirement which also requires certification but the Commissioners can decide if the retired officers can be removed from the list after a period of time.
- Commissioner West pointed out that if the Commission does not include the excused leave category and subcategories it could create confusion when someone searches for an officer's name on the certified list. Therefore, she supports including that category.
- Commissioner Luma asked if individuals can be in two categories and if that data is captured.
- Director Zuniga said they are capturing it as one category and there is no double counting.
- Commissioner Bluestone stated that she is in agreement with Commissioner West to publish the excused leave category. She added that the resigned or retired category could skew the numbers and the published list should consist of categories that include actions or inactions.
- Commissioner Calderone asked if the excused leave category will have the subcategories presented such as military, sick, etc.
- Director Zuniga answered that excused leave is a category where it might be best for subcategories not to be shown, and Commissioners Calderone and West agreed.
- Chair Hinkle called for a motion to approve the publication of Category I (Excused Leave) with no subsets.
- Commissioner West moved to approve the publication of Category I (Excused Leave) with no subsets. 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 Luma - Yes
  - Commissioner West - Yes
  - Commissioner Wynn - Yes
  - Chair Hinkle - Yes

The Commissioners unanimously approved the publication of Category I (Excused Leave) with no subsets.

- Chair Hinkle asked for a motion to approve the publication of Category II (Resigned/Retired-In Good Standing.) There was no motion to approve.
- Chair Hinkle asked for a motion to approve the publication of Category III (Failed MPTC Training) and Category IV (Disciplinary Matter) with subsets. Commissioner West moved to approve the publication of Categories III and IV with subsets. Commissioner Luma seconded the motion.

- The Chair took a roll call vote, and the Commissioners voted as follows:
  - Commissioner Bluestone - Yes
  - Commissioner Calderone - No
  - Commissioner Chéry - Yes
  - Commissioner Ellison - Yes
  - Commissioner Luma - Yes
  - Commissioner West - Yes
  - Commissioner Wynn - Yes
  - Chair Hinkle - Yes

The Commissioners approved the publication of Categories III and IV.

- Director Zuniga reported that Not Certified Officers in the Excused Leave category must notify POST upon return to service. POST and MPTC are coordinating to verify compliance to ensure no one is inadvertently or willingly misrepresenting their status. Upon return, the officer has 90 days to complete requirements.
- Commissioner Luma asked how the officer is notified of the 90 days to complete the requirements.
- Director Zuniga answered that POST sends letters to the agency via Jira and the agency informs the individual. The upcoming system has the enhancement of contacting the officer directly as well as notifying the agency.

**c. Annual Report**

- Director Zuniga reported that the Annual Report is due to the Legislature before March 10, 2023.
- He noted that Item 0800-0000 of Section 2 of Chapter 126 of the Acts of 2022 requires that POST report the following to the Legislature before March 10, 2023:
  - Current caseload of the Commission for fiscal year 2023
  - Number of complaints concerning police office conduct received by the Commission
  - Patterns of unprofessional police conduct identified by the Commission
  - Number of police officers suspended by the Commission and the reasons for suspension
- He added that it was too early to comment on the unprofessional patterns, even with the large data, but it is something to continue analyzing and it will be reported.

**d. Personnel Update**

- Director Zuniga welcomed 3 new POST employees: Certification Specialists Dina Guanci and Barnabas Oparaugo; and Kerri Johnson, Records Access Officer.
- Director Zuniga stated that POST is currently onboarding a Digital Communications Coordinator and is currently hiring for Deputy Director of Certification; Salesforce Administrator (IT); Product Manager (IT); and Hearings Administrator.
- Commissioner Ellison asked if the Chief Technology Officer position has been filled.



- Director Zuniga answered that that position has been filled.

### **Director of the Division of Police Standards Appointment – Matthew Landry**

- Director Zuniga outlined the search process for the Director of Standards finalist, Matthew Landry, in which Chair Hinkle, Commissioners West and Kazarosian and General Counsel Ravitz participated.
- Director Zuniga recommended the appointment of Mr. Landry as POST Director of Standards.
- Director Zuniga summarized Mr. Landry’s qualifications.
- Chair Hinkle asked for a motion to ratify the selection of Mr. Landry as POST Director of Standards. Commissioner West moved to select Mr. Landry as POST Director of Standards. Commissioner Calderone 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 Commissioners unanimously approved the selection of Mr. Landry as POST Director of Standards. Mr. Landry addressed the appointment and shared that he is honored for the opportunity and inspired to join the team because of the importance of the work.

## **4. Regulations Update – General Counsel Randall E. Ravitz**

### **a. Proposed Regulations - 555 CMR 8.00: Databases and Dissemination of Information – General Counsel Ravitz**

- General Counsel Ravitz presented slides summarizing changes in the latest revised draft regulations regarding databases and dissemination of information. He stated as follows:
  - The Commission approved the draft at an earlier meeting and then there was a period of public comment and a hearing.
  - Each round of revisions took into account any comments received from inside and outside the Commission.
  - The term “conclusion” was eliminated in the latest draft, and the draft instead addressed the subject of when and how certain certification and disciplinary matters will become publicized through a set of context-specific provisions.
- Commissioner Calderone questioned what the Commissioners were being asked to vote on exactly.
- General Counsel Ravitz replied that the Commission will be asked to vote on the full body of regulations, which will govern a more extensive, permanent database.

- Counsel Ravitz stated that, with respect to disciplinary matters, the latest draft reflected a compromise between comments offered at the last Commission meeting and members of the public. He explained that:
  - Matters still pending with the Commission will not be made public
  - A final decision adverse to the officer will be made public
  - The public database will display advisories about the possibility of challenges
  - The Commissioners would be able to vote to make a matter unavailable to the general public
- Counsel Ravitz addressed certification matters. He stated that the latest draft provided that a certification status that is being challenged within the Commission would be listed as under review.
- Commissioner Wynn asked why the officer's information is set to expire from the database in 5 years as opposed to lapsing when their certification expires, stating a former officer is now a private citizen.
- General Counsel Ravitz asked Commissioner Wynn if he thinks it's suitable for the language to be changed to until 3 years after their certification.
- Commissioner Wynn believed that wording makes more sense.
- Chair Hinkle asked for a motion to approve the regulations with the modification agreed upon by Commissioner Wynn and General Counsel Ravitz. Commissioner Bluestone moved to approve the regulations. Commissioner West seconded the motion.
- The Chair took a roll call vote, and the Commissioners voted as follows:
  - Commissioner Bluestone - Yes
  - Commissioner Calderone - No
  - Commissioner Chéry - Yes
  - Commissioner Ellison - Yes
  - Commissioner Luma - Yes
  - Commissioner West - Yes
  - Commissioner Wynn - Yes
  - Chair Hinkle - Yes

The motion carried.

#### **b. Proposed Regulations - 555 CMR 11.00: Regulatory Action and Advisory Opinions**

- Counsel Ravitz presented proposed regulations showing a summary and the latest revisions.
- He explained that these proposed regulations were intended to satisfy the statutory requirement to promulgate regulations concerning petitions for regulatory action from members of the general public and prescribe procedures for the agency to exercise its power to issue an "advisory ruling."
- Two small changes were made, in that petitions would be provided to the Chair and all other Commissioners and the subject of the petition would be placed on a meeting agenda at the direction of the Chair or 4 Commissioners

- Chair Hinkle asked for a motion to adopt the regulations. Commissioner West moved to adopt the regulations. 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 Commissioners unanimously approved the adoption of 555 CMR 11.00: Regulatory Action and Advisory Opinions

## 5. Finance Update – CFAO Eric Rebello-Pradas

- CFAO Rebello-Pradas reported as follows:
  - The goal is to have the Commission vote on the budget.
  - The amount of \$9,117,976 for FY24 has been submitted to the Governor’s Office.
  - A maintenance budget is based on the same amount of goods and services provided from one fiscal year to the next without any increases.
  - POST is a growing start-up, and the FY24 budget reflects an increase of 13% and a staff of 41 employees.
  - Currently POST has 25 employees and expects to have 31 employees by end of the current fiscal year.
  - The agency is looking to move into new office space in July 2023.
- Commissioner Luma asked about the reduction in contract employees between FY23 and FY24.
- CFAO Rebello- Pradas answered that it accounted for an IT Contractor for FY23 in case there wasn’t a full-time employee in place, but that didn’t end up being the case.
- Chair Hinkle asked for a motion to approve the amount of \$9.1M for the FY24 budget. Commissioner Ellison moved to adopt the budget. Commissioners Luma and Chery 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 Commissioners unanimously approved the \$9.1M budget for FY24.

## **6. Matters not anticipated by the Chair at the time of posting**

- There was no new business.
- Chair Hinkle asked for a motion to enter an Executive Session to approve conducting preliminary inquiries and recommendations by the Division of Police Standards to suspend the certification of individuals. She stated that it is anticipated that discussions will surround the investigation of criminal charges and criminal offender record information. Commissioner West moved to go into executive session. Commissioner Wynn seconded the motion.
  - 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 Commissioners unanimously approved the Chair's request to enter an Executive Session.
- Chair Hinkle announced to members of the public that the open session would not reconvene after the Executive Session.
- Chair Hinkle concluded the open meeting.

3b.

# FY23 Q3

	FY23							
	Annual	YTD					Annual	
	BUDGET	YTD Proj Exp	YTD Act Exp	\$ Chg	% Chg	Notes	BALANCE	EST FINAL SPENDING
EMPLOYEE COMPENSATION	3,341,340	2,016,673	1,981,814	(34,859)	-1.7%		1,359,526	3,013,285
EMPLOYEE TRAVEL	25,000	22,348	2,183	(20,165)	-90.2%	Will reduce projection beginning Apr	22,817	25,000
CONTRACT EMPLOYEES	150,000	-	-	-	-		150,000	-
PAYROLL TAX/FRINGE	65,658	38,034	36,762	(1,272)	-3.3%		28,896	65,658
OFFICE SUPPLIES/POSTAGE/SUBSCRIPTIONS	74,975	31,195	25,322	(5,872)	-18.8%		49,653	74,975
OFFICE SPACE LEASE	357,552	161,063	100,555	(60,508)	-38%		256,997	247,030
CONSULTANTS/LEGAL SERVICES	435,000	235,875	124,811	(111,065)	-47.1%	Deviations from the average monthly estimate is normal for an "as needed" service	310,190	233,089
OFFICE FURNITURE/FIXTURES/EQUIPMENT	25,000	17,500	-	(17,500)	-100.0%	Expected full reversion	25,000	25,000
INFORMATION TECHNOLOGY	3,583,330	1,803,399	1,489,149	(314,250)	-17.4%	Remaining invoices will be reflected in Q4 & AP	2,094,181	3,742,981
<b>Grand Total :</b>	<b>8,057,855</b>	<b>4,326,087</b>	<b>3,760,596</b>	<b>(565,491)</b>	<b>-13.1%</b>		<b>4,297,260</b>	<b>7,427,019</b>

4a.

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

555 CMR 9.00: INITIAL CERTIFICATION OF OFFICERS; AND INITIAL OR RENEWED CERTIFICATION OF INDEPENDENTLY APPLYING OFFICERS, INCLUDING CONSTABLES

Section

- 9.01: Authority
- 9.02: Scope
- 9.03: Definitions
- 9.04: Continuation of a Certification Period
- 9.05: Application for Certification
- 9.06: Background Check
- 9.07: Oral Interview
- 9.08: Good Character and Fitness for Employment
- 9.09: Division Evaluation of an Application
- 9.10: Conditional Certification
- 9.11: Issuance of a Certification Decision
- 9.12: Possible Action Following a Decision Declining to Grant Full Certification
- 9.13: Certification Status
- 9.14: Supervisor for a Constable**
- 9.15: Powers and Duties of a Constable**

9.01: Authority

- (1) The Commission promulgates 555 CMR 9.00 pursuant to M.G.L. c. 6E, §§ 3(a) and 4.

9.02: Scope

- (1) 555 CMR 9.00 governs:
  - (a) The initial certification of an endorsed applicant;
  - (b) The initial certification of an independent applicant;
  - (c) The recertification of an independent applicant, in which case 555 CMR 9.00 supersedes 555 CMR 7.00, except where 555 CMR 9.00 expressly incorporates 555 CMR 7.00; and
  - (d) In particular, the certification of a constable.
- (2) The recertification of an endorsed applicant is not governed by 555 CMR 9.00 and remains subject to 555 CMR 7.00.
- (3) Nothing in 555 CMR 9.00 is intended to:
  - (a) Establish a standard of care or create any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection on the part of any other person or entity, except as expressly provided;
  - (b) Otherwise waive any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection that may be available to the Commission; or
  - (c) Preclude the limiting, conditioning, restricting, suspending, or revoking of any certification in accordance with law.

9.03: Definitions

- (1) 555 CMR 9.00 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 9.03(2).
- (2) For the purposes of 555 CMR 9.00, the following terms have the following meanings, unless the context requires otherwise:

Agency. An “agency” as defined in M.G.L. c. 30A, § 1.

Applicant. An individual who submits, or intends to submit, an application to the Commission.



Application. A request by an individual to be certified as an officer.

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

Authority. An individual's appointing authority or employer; the Civil Service Commission; any arbitrator or other third-party neutral with decision-making power; and any court.

Certification. An initial certification or a recertification of an individual as an officer pursuant to M.G.L. c. 6E, §§ 3(a) and 4, or pursuant to St. 2020, c. 253, § 102, regardless of whether it is subject to any condition, limitation, restriction, or suspension.

Certification Period. The period of time between the effective date and the expiration date of an individual's certification, including any period of continuation provided for under M.G.L. c. 30A, § 13 or 555 CMR 9.04 beyond the reference date.

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.

Conditional Certification. A certification of the type described in 555 CMR 9.10.

**Constable. An individual who is elected or appointed as a constable pursuant to M.G.L. c. 41, §§ 1, 91, or 91A.**

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

Denial of Certification. A Commission action declining to grant or renew a certification, made pursuant to M.G.L. c. 6E, §§ 3(a) and 4, an action distinct from a revocation or a suspension of certification.

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

Endorsed Applicant. An applicant whose application is endorsed or supported by an endorsing law enforcement agency.

Endorsing Law Enforcement Agency. A law enforcement agency that is a current or prospective employer of an applicant and endorses or supports the applicant's application.

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 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 certification or the expiration of the time to satisfy any such conditions, and thus not including a decision granting a conditional certification.

Full Certification. A certification granted for three years pursuant to M.G.L. c. 6E, § 4(f)(3), without any condition, limitation, restriction, or suspension imposed pursuant to M.G.L. c. 6E, § 3(a) or another provision.

Good Character and Fitness for Employment. “Good moral character and fitness for employment in law enforcement,” as that phrase is used in M.G.L. c. 6E, § 4(f)(1)(ix).

Independent Applicant. An individual who submits, or intends to submit, an application to the Commission without the endorsement of an endorsing law enforcement agency.

Law Enforcement Agency. A “law enforcement agency” as defined in M.G.L. c. 6E, § 1.

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

**Municipal Executive. A mayor, select board, town manager, town administrator, or comparable executive official of a municipality.**

Professional Reference. An individual who is personally familiar with an applicant’s work as an officer or an applicant’s qualifications to serve as an officer, has no familial relation to the applicant, and voluntarily agrees to provide the Commission with information regarding the applicant.

Reference Date. The end date for an applicant’s certification provided for in St. 2020, c. 253, § 102 or the end date of a prior certification issued to an applicant by the Commission, whichever is later, without regard to any period of continuation provided for by M.G.L. c. 30A, § 13 or 555 CMR 9.04.

**Supervisor. When used in relation to a constable, an individual or entity performing, or responsible for performing, the duties of a supervisor specified in 555 CMR 9.14.**

9.04: Continuation of a Certification Period

- (1) Pursuant to M.G.L. c. 30A, § 13, the certification period for an applicant who is certified at the time of submitting an application shall continue after the reference date for the applicant, if a document that substantially satisfies the requirements of 555 CMR 9.05 or is otherwise deemed by the Commission to be a sufficient application for purposes of 555 CMR 9.04 is submitted:
  - (a) In advance of the reference date for the applicant;
  - (b) In advance of any applicable deadline established by the Commission; and
  - (c) In accordance with any procedures established by the Commission.
- (2) A certification period continued pursuant to 555 CMR 9.04 will end upon the issuance of a final decision regarding certification.

9.05: Application for Certification

- (1) The Division shall develop, and shall make available on the Commission website, the following:
  - (a) An application form for an endorsed applicant, which shall, at a minimum:
    1. Direct the endorsing law enforcement agency to:
      - a. Conduct a background check in accordance with 555 CMR 9.06;
      - b. Conduct an oral interview on behalf of the Commission in accordance with 555 CMR 9.07;
      - c. Assess whether the applicant possesses good character and fitness for employment in accordance with 555 CMR 9.08;
    2. Inform the agency that it may not serve as an endorsing law enforcement agency for the applicant if it has not determined that the applicant possesses such character and fitness;
    3. Instruct the agency that, if it determines that the applicant possesses such character and fitness, it must:

- a. Complete a character and fitness attestation form in accordance with 555 CMR 9.08;
  - b. Indicate whether the applicant satisfies each other applicable standard set forth in 555 CMR 9.09(2);
  - c. Ensure that a representative affirms the veracity of the information provided under the pains and penalties of perjury and/or the risk of disciplinary action pursuant to M.G.L c. 6E, §§ 3(a), 4(f)(4), 5(c), 8, 9, and/or 10;
  - d. Maintain documentation concerning the applicant; ~~and~~
  - 4. Inform the agency that such documentation may be requested by the Commission;
  - 5. Request that the agency identify the head of the applicant's collective bargaining unit, if any; and
  - 6. Require the agency to provide an email address that may be used for correspondence related to the certification process for each of the following:
    - a. The agency;
    - c. The applicant; and
    - d. The head of the applicant's collective bargaining unit, if the unit head is identified by name in the application.
  - (b) An application form for an independent applicant, which shall, at a minimum:
    - 1. Direct the applicant to:
      - a. Submit, or cause to be submitted, the information and materials identified in 555 CMR 9.05(5);
      - b. Affirm the veracity of the information provided under the pains and penalties of perjury and/or the risk of disciplinary action pursuant to M.G.L c. 6E, §§ 3(a), 4(f)(4), 8, 9, and/or 10; and
      - c. Maintain documentation relevant to the application; and
    - 2. Inform the applicant that such documentation may be requested by the Commission;
    - 3. Request that applicant identify the head of the applicant's collective bargaining unit, if any; and
    - 4. Require the applicant to provide an email address that may be used for correspondence related to the certification process for each of the following:
      - a. The applicant;
      - b. The applicant's appointing authority, if any;
      - c. The head of the applicant's collective bargaining unit, if the unit head is identified by name in the application; and
      - d. The applicant's proposed supervisor, if any, if the applicant is a constable.**
  - (c) A character and fitness attestation form for an endorsed applicant, which shall direct an endorsing law enforcement agency to discuss its assessment of the applicant's good moral character and fitness for employment in a specified manner;
  - (d) A professional reference form for an independent applicant, which shall, at a minimum:
    - 1. Recite the standards set forth in 555 CMR 9.09(2);
    - 2. Request that the professional reference discuss the extent to which the applicant possesses good character and fitness for employment;
    - 3. Request that the professional reference maintain documentation concerning the applicant; and
    - 4. Inform the professional reference that such documentation may be requested by the Commission;
  - (e) A background check form for an independent applicant, by which the applicant may authorize a background check by the Commission in accordance with 555 CMR 9.06; **and**
  - (f) A constable supervisor form for an independent applicant who is a constable, which shall, at a minimum:**
    - 1. Recite the requirements and obligations stated in 555 CMR 9.14; and**
    - 2. Request that the proposed supervisor address whether the proposed supervisor satisfies the requirements set forth in 555 CMR 9.14.**
- (2) The Commission shall prescribe a fee for the Commission to conduct its own

background check concerning an applicant in accordance with 555 CMR 9.06, pursuant to M.G.L. c. 6E, § 3(a)(22).

(3) The Executive Director shall set a deadline by which an independent applicant who is certified must submit an application in order to benefit from 555 CMR 9.04.

(a) The Executive Director may extend the initial deadline or any revised deadline for good cause, provided that no extension exceeds 30 calendar days.

(4) An endorsed applicant will be considered for certification only where the endorsing law enforcement agency:

(a) Submits to the Division a completed application form that:

1. Is accompanied by a completed character and fitness attestation form in accordance with 555 CMR 9.08;

2. Addresses whether the applicant satisfies each other applicable standard set forth in 555 CMR 9.09(2); and

3. Is signed by a representative of the agency under the pains and penalties of perjury and/or the risk of disciplinary action pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 5(c), 8, 9, and/or 10; ~~and~~

4. An employment and disciplinary record for the applicant that, at a minimum, includes information on:

a. Each position in law enforcement in which the applicant has served;

b. Each complaint concerning the applicant's conduct while serving in law enforcement; and

c. Each form of discipline to which the applicant was subject while serving in law enforcement.

(5) An independent applicant will be considered for certification only where the applicant:

(a) Submits to the Division a completed application form that:

1. Addresses whether the applicant satisfies each standard set forth in 555 CMR 9.09(2);

2. Is signed by the applicant under the pains and penalties of perjury and/or the risk of disciplinary action pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 8, 9, and/or 10.

(b) Causes the following to be submitted to the Division:

1. Professional reference forms completed by three professional references, at least one of which is a certified law enforcement officer, that address whether the applicant possesses good character and fitness for employment;

2. Either of the following:

a. All information generated by a background check conducted by a law enforcement agency in accordance with 555 CMR 9.06; or

b. A completed background check form providing authorization from the applicant for the Commission to conduct a background check in accordance with 555 CMR 9.06, along with any prescribed background check fee; ~~and~~

3. An employment and disciplinary record for the applicant that, at a minimum, includes information on:

a. Each position in law enforcement in which the applicant has served;

b. Each complaint concerning the applicant's conduct while serving in law enforcement; and

c. Each form of discipline to which the applicant was subject while serving in law enforcement; and

**43. If the applicant is a constable, a constable supervisor form completed by a proposed supervisor that addresses whether the proposed supervisor satisfies the requirements set forth in 555 CMR 9.14.**

#### 9.06: Background Check

(1) To be sufficient for evaluation under 555 CMR 9.00, any background check must at least include the following, consistent with M.G.L. c. 6E, §§ 4(f)(1)(v) and 4(f)(2):

- (a) A state and national check of the applicant's background;
  - (b) Fingerprinting;
  - (c) A full employment history;
  - (d) An evaluation of the applicant's full employment record, including complaints and discipline, if the applicant has been previously employed in law enforcement in any state or United States territory or by the federal government; and
  - (e) A determination of whether the applicant has been convicted of a felony.
- (2) With respect to an endorsed applicant:
- (a) The endorsing law enforcement agency must conduct a background check in accordance with 555 CMR 9.06(1);
  - (b) The endorsing law enforcement agency shall provide the applicant with the results of any background check;
  - (c) The Division shall refrain from determining that the applicant has failed the background check without first affording the applicant 14 calendar days in which to submit a response to any background check or to indicate that no response will be submitted; and
  - (d) In any evaluation of whether the applicant has passed a background check, the Division shall rely on the results of any sufficient background check conducted by the endorsing law enforcement agency, as well as any response provided by the applicant pursuant to 555 CMR 9.06(2)(c).
- (3) With respect to an independent applicant:
- (a) A law enforcement agency may assess a reasonable fee for conducting a background check at the applicant's request;
  - (b) The Division shall provide the applicant with the results of any background check obtained by the Division in connection with the application that the applicant has not previously received;
  - (c) The Division shall refrain from determining that the applicant has failed a background check without first affording the applicant 14 calendar days in which to submit a response to any such background check or to indicate that no response will be submitted; and
  - (d) In any evaluation of whether an independent applicant has passed a background check, the Division shall rely on:
    - 1. The results of any sufficient background check conducted by a law enforcement agency and provided to the Division, and any response provided by the applicant pursuant to 555 CMR 9.06(3)(c); or
    - 2. If the Division has not received such results, a sufficient background check conducted by the Division, provided that the applicant has tendered any background check fee prescribed by the Commission pursuant to 555 CMR 9.05(2); as well as any response provided by the applicant pursuant to 555 CMR 9.06(3)(c); and
  - (e) If the Division does not conduct its own background check, it shall return to an applicant any background check fee that the applicant tendered to the Commission.

9.07: Oral Interview

- (1) Any oral interview of an endorsed applicant shall be administered by the Division and conducted:
- (a) By a supervisory officer in the endorsing law enforcement agency;
  - (b) In accordance with Commission guidelines, which may provide:
    - 1. A set of questions to be asked;
    - 2. A set of topics to be discussed; and/or
    - 3. A written questionnaire to be completed in advance by the applicant and discussed in the interview.
- (2) Any oral interview of an independent applicant shall be administered by the Division and conducted:
- (a) By one or more of the following:
    - 1. Commission staff members;
    - 2. Willing Commissioners;
    - 3. Willing MPTC members or MPTC staff members; or
    - 4. Other willing individuals deemed suitable by the Commission;

- (b) On a date and time that are agreeable to the interviewer(s) and the applicant; and
- (c) In accordance with Commission guidelines, which may provide:
  1. A set of questions to be asked;
  2. A set of topics to be discussed; and/or
  3. A written questionnaire to be completed in advance by the applicant and discussed in the interview.

9.08: Good Character and Fitness for Employment

(1) Any assessment of whether an applicant possesses good character and fitness for employment, by an endorsing law enforcement agency or by the Division:

- (a) Shall involve due consideration of:
  1. The results of a background check conducted in accordance with 555 CMR 9.06;
  2. The applicant’s responses to any questionnaire that the Commission prescribed for use in such a certification process;
  3. Any available information regarding the statements and conduct of the applicant in an oral interview conducted in accordance with 555 CMR 9.07;
  4. Commission records concerning the individual, including:
    - a. Those related to any prior certification applications filed on behalf of the individual; and
    - b. Those concerning any disciplinary proceedings against the individual;
  54. All other available information regarding the applicant; and
  65. The applicant’s on-duty and off-duty conduct; ~~and~~

- (b) May also take into account:
  1. Whether the applicant adheres to state and federal law, acts consistently with recognized standards of ethics and conduct as set forth in the October 1957 Law Enforcement Code of Ethics and July 2019 Standards of Conduct adopted by the International Association of Chiefs of Police, and is worthy of the public trust and of the authority given to law enforcement officers;
  2. Questionnaires, performance reviews, relevant education, specialized training, professional awards, achievements, commendations by law enforcement agencies or officials or others, instances of imposed discipline, patterns of misconduct, and any other evidence of past performance;
  3. Information regarding the applicant that has been obtained by:
    - a. Requesting that the applicant provide names of or letters from professional references, in addition to any who provided letters in connection with the application, and contacting those professional references to discuss the applicant;
    - b. Posting a notice concerning the application on a website, and inviting members of the public to provide comment on the application within a reasonable period of time;
    - c. Affording the applicant further opportunities to respond to any information or allegations that have surfaced; or
    - d. Taking other reasonable steps;

- (c) Shall not, unless there has been an allegation that an applicant has engaged in multiple instances of similar or related misconduct, or protocols adopted by the Commission provide otherwise, take into account an allegation of a particular instance of misconduct, where:
  1. An authority has made a decision in the applicant’s favor on the merits of a complaint alleging such misconduct;
  2. The alleged misconduct is currently the subject of a pending investigation or adjudication by any authority;
  3. The applicant has complied, or is in the process of complying, with any disciplinary action or other adverse decision by an authority, in relation to the alleged misconduct, and the applicant has not engaged in any similar conduct since the discipline or decision;
  4. The alleged misconduct did not result in either a disciplinary proceeding or court action, and the employer, if any, has not offered a reasonable explanation as to why no such proceeding or action was commenced; or

- 5. The allegation is not specifically and credibly supported; and
  - (d) Shall otherwise conform to any protocols developed by the Commission.
- (2) After a law enforcement agency completes an assessment of whether an applicant possesses good character and fitness for employment:
- (a) If the agency concludes that the applicant possesses such character and fitness, the agency must execute an attestation to that effect in a form prescribed by the Commission in order to serve as an endorsing law enforcement agency for the applicant;
  - (b) If the agency does not conclude that the applicant possesses such character and fitness, the agency may not serve as an endorsing law enforcement agency for the applicant; and
  - (c) The agency shall provide documentation concerning the applicant and the agency's assessment upon request by the Commission.

9.09: Division Evaluation of an Application

- (1) Except as otherwise provided in 555 CMR 9.09(2), the Division may:
  - (a) Evaluate an application against the certification standards set forth in 555 CMR 9.09(2) in any order that the Division considers expedient; and
  - (b) Refrain from evaluating any standard upon determining that an applicant's failure to satisfy any other standard is sufficient to warrant denial of the application.
- (2) Except as provided in 555 CMR 9.10, the Division may grant an application only if the Division determines that:
  - (a) The application satisfies the requirements of 555 CMR 9.05;:
  - ~~(b)~~ The applicant and any endorsing agency have provided all information required of them as part of the application process;
  - ~~(c)~~ If the applicant was certified at the time of submitting the application, the applicant satisfies the standards stated in the following provisions:
    - 1. 555 CMR 7.06(1): *Attaining the Age of 21*;
    - 2. 555 CMR 7.06(2): *Successful Completion of a High School Education or Equivalent*;
    - 3. 555 CMR 7.06(3): *Successful Completion of Basic Training Program*;
    - 4. 555 CMR 7.06(4): *Successful Completion of a Physical and Psychological Fitness Evaluation*;
    - 5. 555 CMR 7.06(6): *Successful Completion of an Examination*; and
    - 6. 555 CMR 7.06(7): *Possession of Current First Aid and Cardiopulmonary Resuscitation Certification*;
  - ~~(d)~~ If the applicant was not certified at the time of submitting the application, the applicant satisfies the following standards:
    - 1. Attaining the age of 21;
    - 2. Successfully completing a high school education or obtaining a General Educational Development (GED) certification from an accredited program;
    - 3. Successfully completing a basic training program approved by the MPTC;
    - 4. Successfully completing a physical and psychological fitness evaluation that was required:
      - a. For graduation from an academy or training program certified by the MPTC;
      - b. For graduation from a training program prescribed by M.G.L. c. 22C; or
      - c. Pursuant to a policy adopted by the Commission;
    - 5. Passing an examination that was required for completion of a basic training program approved by the MPTC; and
    - 6. Possessing current first aid and cardiopulmonary resuscitation certificates or the equivalent;
  - ~~(e)~~ The applicant has passed a state and national background check conducted in accordance with 555 CMR 9.06;
  - ~~(f)~~ The applicant has successfully completed an oral interview conducted in accordance with 555 CMR 9.07;
  - ~~(g)~~ The applicant possesses good character and fitness for employment, based on

the standards set forth in 555 CMR 9.08;

~~(hg)~~ The applicant has not been convicted of a felony;

~~(ih)~~ The applicant is not listed in the National Decertification Index or in the database of decertified law enforcement officers maintained by the Commission pursuant to M.G.L. c. 6E, § 13(a)(i);

~~(ji)~~ The Division has not concluded that, while previously employed in law enforcement in any state or United States territory or by the federal government, the applicant would have had a certification revoked by the Commission if employed by a law enforcement agency in the Commonwealth, which determination shall take into account:

1. The results of a background check of the applicant conducted in accordance with 555 CMR 9.06;

2. Any available information regarding the statements and conduct of the applicant in an oral interview conducted in accordance with 555 CMR 9.07;

3. An assessment of whether the applicant possesses good character and fitness for employment conducted in accordance with 555 CMR 9.08;

4. A determination of whether the applicant is listed in the National Decertification Index or in the database of decertified law enforcement officers maintained by the Commission pursuant to M.G.L. c. 6E, § 13(a)(i); and

5. All other available information regarding the applicant;

~~(kj)~~ The applicant has successfully completed all in-service training and retraining that was required by the MPTC or the Commission within the preceding three years, which determination shall take into account:

6. Information obtained from the MPTC;

7. Information obtained from the Division of Police Standards established pursuant to M.G.L. c. 6E, § 8,; **and**

~~(lk)~~ **The applicant has a supervisor who satisfies the requirements of 555 CMR 9.14, if the applicant is a constable.**

(3) If the Division determines that the applicant has not satisfied any of the certification standards set forth in 555 CMR 9.09(1), and has not found the circumstances described in 555 CMR 9.10(1)(a) to apply, the Division shall deny the application in accordance with 555 CMR 9.11.

#### 9.10: Conditional Certification

(1) If the Division determines that an applicant has not satisfied any certification standard set forth in 555 CMR 9.09(1), the Division may conditionally certify the applicant where:

(a) The applicant has been unable to meet such a certification standard solely due to circumstances that are beyond the applicant's control and that are attributable to a current or former employer of the applicant, to the MPTC, or to the Commission; and

(b) A conditional certification is warranted by other appropriate circumstances, including, but not limited to, where:

1. The application is substantially complete and does not reveal any basis for denying certification, but certain additional details need to be supplied or certain information needs to be verified;

2. The applicant has been unable to satisfy a certification standard because the applicant was on approved leave during the relevant time or because of another valid reason;

3. The applicant has experienced a demonstrable hardship which has interfered directly with the applicant's ability to meet a certification standard; or

4. The applicant has taken all required steps in connection with the certification process, but circumstances beyond the applicant's control have delayed a final decision on the application.

(2) If the Division determines that an applicant has satisfied all certification standards set forth in 555 CMR 9.09(1), the Division may nevertheless conditionally certify the applicant where it deems a conditional certification warranted, pursuant to M.G.L. c. 6E, §§ 3(a) and 4.



- (3) Where the Division conditionally certifies an applicant pursuant to 555 CMR 9.10(1) or (2), it shall set appropriate conditions that must be met in order for the applicant to maintain a certification.
- (4) In any case, the Division may attach to an applicant's certification any limitations or restrictions that it deems warranted, pursuant to M.G.L. c. 6E, §§ 3(a) and 4.
- (5) Where an applicant is conditionally certified:
  - (a) If the applicant was certified at the time of applying and is lawfully serving as an officer when the application is granted, the Division shall stipulate that the applicant need not satisfy any condition attached to a conditional recertification, and that no time periods associated with any such condition will 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 9.12; and
  - (b) In other instances, the Division may, in its discretion, so stipulate.
- (6) When an applicant fails to satisfy a condition of a conditional certification within the time allowed, taking into account the provisions of 555 CMR 9.10(5), the Division shall terminate the applicant's certification, unless good cause for an extension of time for the applicant to satisfy the condition has been shown.
- (7) When an applicant satisfies all conditions of a conditional certification within the time allowed, taking into account the provisions of 555 CMR 9.10(5), and the Commission has not otherwise limited, restricted, or suspended the applicant's certification, the Division shall convert the conditional certification into a full certification with an expiration date of three calendar years from the date of issuance of the conditional certification under 555 CMR 9.13(2).
- (8) An applicant's failure to act in accordance with a limitation or restriction on a certification may constitute grounds for disciplinary action pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 8, 9, and/or 10.
- (9) In all other respects, an individual who holds a conditional, limited, or restricted certification is "certified," as that term is used in M.G.L. c. 6E.

#### 9.11: Issuance of a Certification Decision

- (1) The Division shall issue a decision on an application within a reasonable time.
- (2) As a decision declining to grant full certification is distinct from decertification, the procedures prescribed by M.G.L. c. 6E, § 10 need not be followed before such a decision is issued.
- (3) The Division shall provide written notification of a decision on an application by email to:
  - (a) The applicant;
  - (b) The applicant's endorsing law enforcement agency, if any;
  - (c) The head of the applicant's collective bargaining unit, if named in the application; **and**
  - (d) **The applicant's proposed supervisor, if the applicant is a constable.**
- (4) If the Division's decision on an application provides for anything other than full certification, the notification described in 555 CMR 9.11(3) shall also inform the applicant of:
  - (a) Any condition, limitation, or restriction attached to the certification, and any associated terms; and
  - (b) The ability to seek review by the Executive Director as provided for in 555 CMR 9.12(1) and a hearing as provided for in 555 CMR 9.12(2).

#### 9.12: Possible Action Following a Decision Declining to Grant Full Certification

- (1) An applicant who receives a decision from the Division declining to grant a full certification may seek review by the Executive Director as follows.

- (a) Within 21 days of service by email of the Division’s decision, the applicant or an endorsing law enforcement agency may submit a written petition to the Executive Director requesting review of the decision.
  - 1. If an endorsed applicant files the petition, the applicant shall provide a copy of the petition to any endorsing law enforcement agency at the time of its filing.
  - 2. If an endorsing law enforcement agency files the petition, the agency shall provide a copy of the petition to the endorsed applicant at the time of its filing.
  - 3. If the applicant is a constable, the applicant shall provide a copy of the petition to the applicant’s proposed supervisor, if any.**
- (b) 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.
  - 1. At any such meeting, the Executive Director shall have discretion to determine the extent to which an individual who does not have a right to appear may attend and participate.
- (c) The Executive Director shall, within a reasonable time, provide a written decision on the petition to:
  - 1. The applicant;
  - 2. The applicant’s endorsing law enforcement agency, if any; **and**
  - 3. The applicant’s proposed supervisor, if any, if the applicant is a constable.**

(2) Following the process described in 555 CMR 9.12(1), an applicant or an endorsing law enforcement agency may request a hearing before the Commission concerning an application in accordance with 555 CMR 1.10: *Final Disciplinary Hearings and Appeals of Certification Decisions*.

(3) The Commission may place an individual’s SRO certification on restricted status while review pursuant to 555 CMR 9.12(1) or a hearing pursuant to 555 CMR 9.12(2) is pending.

~~(4)~~ Where an applicant has received a decision declining to grant a full certification, the Commission may attach conditions, limitations, or restrictions on the applicant’s ability to reapply.

9.13: Certification Status

- (1) An application process shall be deemed ongoing and not “finally determined,” as that term is used in M.G.L. c. 30A, § 13, absent a final decision.
- (2) When an application is granted pursuant to 555 CMR 9.00, the new certification shall be deemed to have been issued on, and the three-year period prescribed by M.G.L. c. 6E, § 4(f)(3) shall be deemed to commence on:
  - (a) The reference date for the officer, if the applicant was certified at the time of applying and is lawfully serving as an officer when the application is granted; and
  - (b) In all other instances, the later of:
    - 1. The date upon which the application is granted; or
    - 2. The date upon which the applicant lawfully becomes an officer.
- (3) The granting of a certification shall not preclude the conditioning, limiting, restricting, suspending, or revoking of the certification in accordance with law, when warranted.

(4) An individual whose certification is suspended may not perform police duties and functions, and an individual whose certification has been revoked may not perform police duties and functions or serve as a law enforcement officer.

~~(5)~~ The Commission may reconsider, and revise or vacate, a decision on an application for certification, when such action is warranted.

~~(6)~~ If a decision to certify an applicant is vacated, the applicant shall be deemed to have been certified during the period of time between the decision to certify and the decision to vacate.

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

**9.14: Supervisor for a Constable**

- (1) To qualify as a supervisor for a constable, an entity must:
- (a) Be either:
    - 1. A municipal executive of a Massachusetts municipality in which the constable desires to serve; or
    - 2. The principal law enforcement agency of a Massachusetts municipality in which the constable desires to serve, provided that such agency has not been barred from serving as the constable's supervisor by a municipal executive of the municipality.
  - (b) Be the same entity as any law enforcement agency that, at the time of the constable's application, is serving as the constable's sponsoring agency under the MPTC regulations found at 550 CMR 3.00;
  - (c) Agree in writing to serve as the constable's supervisor; and
  - (d) Designate one or more individuals who:
    - 1. Are under the entity's control and supervision;
    - 2. Are certified officers;
    - 3. Have no familial relation to the constable;
    - 4. Have sufficient resources and experience to perform the duties specified in 555 CMR 9.14(1)(d)5; and
    - 5. Will be responsible for performing the following duties, without regard to whether any conduct by the constable was undertaken within the supervisor's jurisdiction:
      - a. Obtaining periodic reports from the constable regarding the constable's exercise of duties as a constable, in a form prescribed by the Commission;
      - b. Taking steps to ensure that the constable complies with 555 CMR 9.15;
      - c. Immediately informing the Commission of any allegation of misconduct of the type identified in M.G.L. 6E, §§ 9 or 10 by the constable;
      - d. Immediately informing the Commission of any failure by the constable to timely complete any required in-service training or retraining;
      - e. Investigating alleged misconduct by the constable, and submitting complaints, reports, and recommendations to the Commission regarding the constable, in accordance with M.G.L. c. 6E, §§ 8 and 10(h);
      - f. Receiving reports, consistent with M.G.L. c. 6E, §§ 14(e), 15(b), and 15(c), regarding uses of force or methods of the type described therein by the constable;
      - g. Making records regarding the constable available for audit or inspection pursuant to M.G.L. c. 6E, §§ 3(a) and 8(d); and
      - h. Providing notifications to the constable at the direction of the Commission.
- (2) A constable's supervisor must ensure that the duties specified in 555 CMR 9.14(1)(d)5 are performed.
- (3) An officer who is designated by a constable's supervisor pursuant to 555 CMR 9.14(1)(d) must perform the duties specified in 555 CMR 9.14(1)(d)5.
- (4) The failure of a supervisor to satisfy an obligation under 555 CMR 9.14(2), or the failure of an officer to satisfy an obligation under 555 CMR 9.14(3), may constitute grounds for conditioning, limiting, restricting, or suspending the certification of the constable pursuant to M.G.L. c. 6E, § 3(a).

- (5) The failure of a supervisor that is a law enforcement agency to satisfy an obligation under 555 CMR 9.14(2) may constitute grounds for investigating and taking appropriate action against the law enforcement agency pursuant to M.G.L. c. 6E, §§ 3(a) and 5(c).
- (6) The failure of an officer who is designated by a supervisor pursuant to 555 CMR 9.14(1)(d) to satisfy an obligation under 555 CMR 9.14(3) may constitute grounds for investigating and taking appropriate action against the officer pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 8, 9, and/or 10.

**9.15: Powers and Duties of a Constable**

- (1) A constable who is certified, or who executes an arrest without being certified, shall, for the remainder of any service as a constable:
- (a) Be subject to all the provisions of M.G.L. c. 6E and 555 CMR governing officers, except where they expressly provide otherwise;
  - (b) Perform police duties and functions only if the constable possesses a certification that allows for the performance of the same and the constable is otherwise allowed by law to do so;**
  - ~~(b)~~ Comply with any other applicable policies established by the Commission;
  - ~~(d)~~ Comply with the provisions of M.G.L. c. 6E, § 14(e) that are applicable to police departments;
  - ~~(e)~~ Report uses of force of the type described in M.G.L. c. 6E, § 15(b) by another officer to that officer's supervisor; and
  - ~~(f)~~ When reporting abuse on the part of other law enforcement personnel, be subject to the protections of any antiretaliation policy or procedure consistent with M.G.L. c. 6E, § 15(c) that is maintained by a law enforcement agency that employs such personnel.
- (2) An individual may execute an arrest as a constable only if:
- (a) The individual possesses a certification that has not been suspended and that has not been conditioned, limited, or restricted in a manner that precludes the execution of such an arrest; and
  - (b) The individual otherwise possesses the legal authority to execute arrests of the type involved as a constable.
- (3) If an individual executes an arrest as a constable absent satisfaction of the requirements of 555 CMR 9.15(2), or otherwise violates M.G.L. c. 6E or any Commission rule, regulation, or order, the Commission may take any appropriate action, including, but not limited to, the following, to the extent allowed by law:
- (a) Disqualifying the individual from obtaining a certification for a specified period of time, pursuant to M.G.L. c. 6E, §§ 3(a) and 4(f)(2);
  - (b) Conditioning, limiting, restricting, suspending, or revoking any certification the individual may possess, or the powers that the individual may exercise, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 8, 9, and/or 10;
  - (c) Ordering the individual to undergo retraining, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), and/or 10(d); and
  - (d) Assessing the individual a reasonable civil fine of up to \$5,000 for each impermissible arrest, pursuant to M.G.L. c. 6E, §§ 3(a)(4), 3(a)(22), and 4(f)(4).
- (4) ~~Other than granting the power to execute arrests, e~~Certification by the Commission does not expand the scope of authority of a constable beyond those powers authorized by M.G.L. c. 41, § 94 and the common law.

REGULATORY AUTHORITY

555 CMR 9.00: M.G.L. c. 6E, §§ 3(a) and 4

4b.

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
- 10.05: Application for SRO Certification
- 10.06: Division Evaluation of SRO Certification Application
- 10.07: Conditional SRO Certification
- 10.08: Possible Action Following Decision Declining to Grant Full SRO Certification
- 10.09: SRO Certification Status
- 10.10: In-service SRO Training
- 10.11: ~~Number of Alternate~~ SROs
- 10.12: Sub-specialties
- 10.13: Restricted Status

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 10.09(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 10.09 and 10.10.
- (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 10.07.

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 ~~under~~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~~ and established ~~under~~ 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.

Operating Procedures. A set of operating procedures to provide guidance to SROs about daily operations, policies and procedures.

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) 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) ~~An individual must possess~~ ~~Only if an individual possesses~~ an SRO certification that has not been suspended ~~or restricted in order for:~~

- (a) ~~May~~†The individual, an agency, or an officer ~~to~~ represent that the individual is an SRO; or
- (b) ~~May~~†The individual ~~to~~ 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 circumstances other than those described in 555 CMR 10.04(1).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).~~

#### 10.05: 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 10.05(3) are submitted to the Division; ~~and~~
- (b) Require the officer to agree that, when acting as an SRO, the officer will not: serve as a school disciplinarian, an enforcer of school regulations or in place of licensed school psychologists, psychiatrists or counselors; or use police powers to address traditional school discipline issues, including non-violent disruptive behavior;
- ~~(c)~~ Require the applicant to make any assertions in the application under the pains and penalties of perjury; ~~and~~
- (d) Request that the applicant identify the head of the applicant's collective bargaining unit, if any; and
- (e) Require the applicant to provide an email address that may be used for correspondence related to the SRO certification process for each of the following:
  - 1. The applicant;
  - 2. The individual for whom SRO certification is sought;
  - 3. The individual's appointing authority; and
  - 4. The head of the individual's collective bargaining unit, if the unit head is identified by name in the application.

(2) The Executive Director shall set a deadline for the submission of applications for SRO certification for individuals who are serving as SROs on the effective date of 555 CMR 10.00.

- 1. 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.
- 2. 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 10.05(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 that addresses whether the individual would strive to foster an optimal learning environment and educational community that promotes a strong partnership between school and police personnel;
  - 5. Addresses whether the individual has completed any SRO training that was required by the MPTC pursuant to M.G.L. c. 6, § 116H or otherwise, as well as the reasons why any such training was not completed; and
  - 6. 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 training was not completed; ~~and~~
- (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; ~~and~~

- (c) An employment and disciplinary record for the individual that, at a minimum, includes information on:
  - 1. Each position in law enforcement in which the individual has served;
  - 2. Each complaint concerning the individual's conduct while serving in law enforcement; and
  - 3. Each form of discipline to which the individual was subject while serving in law enforcement.

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

10.06: 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) The Division shall evaluate Commission records concerning the individual, including:
  - 1. Those related to any prior certification applications filed on behalf of the individual;
  - 2. Those concerning any disciplinary proceedings against the individual; and
  - 3. Others contained in Commission databases.

(b) The Division may obtain and consider additional information regarding the individual by:

- 1. ~~(a)~~ Requesting that the individual complete a questionnaire;
- 2. ~~(b)~~ Requesting that the applicant provide names of or letters from references, and contacting those references to discuss the individual;
- 3. ~~(c)~~ Obtaining additional 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;
- 4. ~~(d)~~ Affording the individual or the appointing authority an opportunity to respond to any information or allegations received by the Division; and
- 5. ~~(e)~~ Taking other reasonable steps.

(c) The Division may take into account the extent to which the individual appears to possess the personal characteristics identified in M.G.L. c. 71, § 37P as relevant to service as an SRO.

(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), the Division may grant an SRO certification to an individual only if the Division determines that:

(a) The individual and the individual's appointing authority have provided all information required of them as part of the application process;

(~~b~~a) The individual possesses an officer certification that is not suspended;

(~~c~~b) The Division has obtained no not received information demonstrating that the individual would presently be ineligible for an officer certification;

(~~d~~e) 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;

(~~e~~d) 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~~

(fe) 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;~~ and

(g) The Division has obtained no information demonstrating that the individual would not strive to foster an optimal learning environment and educational community that promotes a strong partnership between school and police personnel.

(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 by email to:

1. The individual for whom SRO certification is sought;
2. The individual's appointing authority; and
3. 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 10.06(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 10.08(1) and a hearing as provided for in 555 CMR 1.10 and 555 CMR 10.08(2).

#### 10.07: Conditional SRO Certification

(1) If an officer has satisfied all requirements listed in 555 CMR 10.06(3) except the training requirements referenced in 555 CMR 10.06(3)(c)4 or 10.06(3)(c)5:

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

1. Certain details need to be supplied or certain information needs to be verified;
2. 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. 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.

(2) The Division shall attach the following to an SRO certification that it grants an officer pursuant to 555 CMR 10.06(3) or 10.07(1):

(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 10.08.
- (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 30 ~~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 10.07(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 10.07(3), and neither the officer's SRO certification nor the officer's officer certification is otherwise limited, restricted, or suspended, 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).

10.08: 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 service by email of its 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.
    1. At any such meeting, the Executive Director shall have discretion to determine the extent to which an individual who does not have a right to appear may attend and participate.
  - (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 10.08(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) The Commission may place an individual's SRO certification on restricted status while review pursuant to 555 CMR 10.08(1) or a hearing pursuant to 555 CMR 10.08(2) is pending.

(4) The Commission may decline to afford review or a hearing where an application was denied because it was not timely filed.

~~(53)~~ Where an individual has received a final decision denying a full SRO certification, the Commission may attach limitations, conditions, or restrictions on the individual's ability to reapply.

#### 10.09: 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 10.05 through 10.09 shall expire three calendar years after the effective date recognized by the Commission.

(5) SRO Certification does not expand the scope of authority of an officer beyond that which is otherwise provided to SROs by law.

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

~~(75)~~ 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.

~~(86)~~ A decision regarding an individual's application for SRO certification shall not, by itself, affect an individual's officer certification.

~~(97)~~ If an individual's officer certification is suspended, the individual's SRO certification shall be automatically deemed suspended.

~~(108)~~ If an individual's officer certification is revoked, the individual's SRO certification shall be automatically deemed revoked.

~~(119)~~ The Division shall terminate an SRO certification upon receiving a written request for such termination from the certified individual.

(12) An officer who possesses an SRO certification must promptly notify the Commission of any change in:

(a) Contact information for the officer that has been provided to the Commission;

(b) The officer's place of employment; or

(c) The officer's work status, including on-leave status.

(13) The Division shall make information concerning each SRO's certification status, appointing authority, and current schools of assignment on its website.

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 any deadline or as soon as reasonably possible thereafter, 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: Number of Alternate SROs

- (1) The Commission may prescribe the number of SROs that a given municipality must ordinarily maintain.
- (2) 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 an SRO as an alternate who may serve in place of a regularly assigned SRO when needed, 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.

10.13: Restricted Status

- (1) Upon receiving a report that an individual with an SRO certification is serving as an SRO without being subject to both a sufficient MOU and sufficient Operating Procedures, the Division shall investigate the matter.
- (2) If the Division determines that such individual is serving as an SRO without being subject to both a sufficient MOU and sufficient Operating Procedures, the Division may place the individual's SRO certification on restricted status.
  - (a) Any such determination shall be based on a comparison between the provisions of M.G.L. c. 71, § 37P and any terms governing the individual's work as an SRO.
  - (b) In deciding whether to place the individual's SRO certification on restricted status, the Division shall take into account all available information and circumstances known to it, including the impact on the individual's appointing authority and any school in which the individual has been serving.
- (3) The Division shall terminate the restriction on the individual's SRO certification upon determining that the individual is subject to a sufficient MOU and sufficient Operating Procedures.

REGULATORY AUTHORITY

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

4c.





# Massachusetts POST Commission

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

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## **GUIDANCE TO LAW ENFORCEMENT AGENCIES AND PROSECUTING OFFICES REGARDING CERTAIN ASPECTS OF 555 CMR 1.00**

The Massachusetts Peace Officer Standards and Training Commission provides this clarification and guidance on the application of certain sections of 555 CMR 1.00: *Procedural Rules*.<sup>1</sup> Those sections include: 555 CMR 1.01: *Review of Complaints by Agency*; 555 CMR 1.03: *Confidentiality of Preliminary Inquiries*; and 555 CMR 1.07: *Reports Following Preliminary Inquiries*.<sup>2</sup>

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

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

1. Provisions governing agencies are inapplicable to entities that do not fall within the definition of “law enforcement agency” (or “agency”) in M.G.L. c. 6E, § 1.
2. Provisions governing officers are inapplicable to individuals who do not fall within the definition of “law enforcement officer” (or “officer”) in M.G.L. c. 6E, § 1.

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<sup>1</sup> This Guidance is issued pursuant to M.G.L. c. 6E, § 3(a) and 555 CMR 1.00. It pertains only to matter in which the cited provisions of 555 CMR 1.00 should be applied, and should not necessarily be relied on in other contexts. The Guidance is intended to offer explanations and details that are consistent with the relevant statutes and regulations. The Commission reserves the ability to revise this Guidance in the future.

<sup>2</sup> As used in this Guidance:

- “Agency” refers to a “law enforcement agency” as defined in M.G.L. c. 6E, § 1;
- “Commission” refers to the Massachusetts Peace Officer Standards and Training Commission established under M.G.L. c. 6E, § 2;
- “Division of Police Standards” and “Division of Standards” refer to the Division of Police Standards established under M.G.L. c. 6E, § 8;
- “Executive Director” refers to the Executive Director of the Commission appointed under M.G.L. c. 6E, § 2;
- “Law Enforcement Officer” and “Officer” refer to a “law enforcement officer” as defined in M.G.L. c. 6E, § 1;
- “Officer-involved Injury or Death” has the meaning set forth in 555 CMR 202; and
- “Serious Bodily Injury” has the meaning set forth in 555 CMR 2.02.

3. Thus, for example, such provisions do not impose any obligations on civilian complaint review boards that are not subject to M.G.L. c. 6E.

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

555 CMR 1.01(1) provides, in accordance with M.G.L. c. 6E, § 8(b)(1), that “[t]he head of an agency shall” take certain steps “within two days of their receipt of a complaint, which is any credible report, written or oral, evidencing or alleging the misconduct of an officer from a member of the public, personnel at the agency, or any other source.”

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

**Minor and Non-minor Matters**

Under 555 CMR 1.01(1), the steps that an agency must take with respect to a complaint depend in part on whether the complaint relates to “minor matters, a category that includes discourtesy and basic work rule violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions.” And 555 CMR 1.01(1)(b) provides that, “if the complaint does not relate to minor matters,” the agency must transmit certain information regarding the complaint to the Commission. Such provisions are consistent with M.G.L. c. 6E, § 8(b)(1), which authorizes the Commission to “establish a minimum threshold and streamlined process for the reporting or handling of minor complaints that do not involve the use of force or

allegations of biased behavior.”

1. For these purposes, an agency should treat a complaint that contains any allegation or evidence of a non-minor matter as one that “does not relate to minor matters.”
2. As the “comparable infractions” category is a subset of the “basic work rule violations” category, it includes only those infractions that constitute “basic work rule violations.”
3. “Basic work rule violations” are those that relate to the internal functioning of the agency and do not involve interactions with the public or the handling of finances.
4. The “minor matters” category does not include any matter involving one of these subjects referenced in 555 CMR 1.01(1)(a):
  - a. “bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, or socioeconomic or professional level”;
  - b. “excessive, prohibited, or deadly force”; or
  - c. “an action which resulted in serious bodily injury or death”.
5. Matters that ordinarily should be treated as non-minor include, but are not limited to, forms of officer misconduct involving:
  - a. Violation of a criminal law;
  - b. Physical or financial harm to another person;
  - c. Use of force; or an improper threat, by language or conduct, to use force;
  - d. Dishonesty;
  - e. Endangerment of another;
  - f. An arrest or other legal action, or a threat of arrest or other legal action, in retaliation for an individual’s bringing or expressing an intent to bring a complaint, or for any other improper purpose;
  - g. A determination by a government official, acting in an official capacity, of wrongdoing by the officer;
  - h. A similarity to inappropriate conduct that the officer was alleged by another individual to have committed, with respect to the same or another situation; and
  - i. An officer who has received an unusually high number of complaints, taking into account the nature of the officer’s work and the number of complaints against other officers performing comparable work.

### **Pattern of Complaints**

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

1. The above requirement applies without regard to whether the complaints at issue relate to minor or non-minor matters.

2. An agency that forwards a pattern of complaints under 555 CMR 1.01(1)(c)3. should include all information prescribed by 555 CMR 1.01(1)(b) with respect to each such complaint, to the extent it is available.

### **Internal Complaint Resolution**

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

1. An agency’s “internal resolution policy” should, at a minimum, include adherence to the following provisions of 555 CMR 1.01(1)(a):
  - a. “[T]he agency shall maintain any documentation of the complaint, the name and commission certification identification number of the subject officer, a brief summary of the nature of the conduct that is the subject of the complaint, and any other documentation that the agency deems material to an understanding of the complaint and the agency’s handling of the complaint or that the commission directs the agency to maintain”; and
  - b. “[The agency shall] make any such complaint available to the commission upon request, or under any policy that may be established by the commission.”
2. Documentation maintained by an agency for these purposes should, at a minimum, be included in the officer’s personnel file.

### **Allegations of Unprofessional Conduct**

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

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

### **Discretionary Forwarding of Complaints**

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

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

### **Confidentiality of Agency Investigations**

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

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

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

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

1. The best practice is to record and retain interviews. Recording generally promotes accuracy and precision in the recitation of statements made by interviewees and in factual determinations. It thus helps avoid misrepresentation and misunderstanding, and enhances the fairness of the process and the quality of decision-making.
2. Recording an interview ordinarily will be “feasible” unless such a step would make it impossible, or extremely or unreasonably difficult, to obtain an interview of the individual.
3. Agencies and officers should remain mindful of the fact that 555 CMR 1.01(c)(3) requires an agency head to submit, as part of an investigation report, “a list of any witnesses interviewed, whether each interview was recorded and if not, the reasons for not recording the interview, and a description of all evidence collected.” Where an

interview has not been recorded: the Commission and others may have questions or concerns about the reason offered; they may draw inferences that are adverse to the person or entity that did not wish to have the interview recorded; and they may otherwise take into account the failure to record in making determinations of credibility and fact.

4. For the reasons offered above, the Commission additionally encourages agencies to make audio recordings of disciplinary proceedings other than interviews.

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

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

1. Such provisions must be read in conjunction with the following:
  - a. M.G.L. c. 6E, § 8(b), which requires certain actions to be taken by agencies within certain timeframes;
  - b. M.G.L. c. 6E, § 10(h), which governs the timing of, and interplay between, agency and Commission disciplinary proceedings; and
  - c. 555 CMR 2.00: *Construction; Application of Rules; Notice*, which, among other things: defines terms used in Commission regulations; provides that “[a]ny act that must be performed ‘immediately’ under a provision of 555 CMR or M.G.L. c. 6E shall be performed as soon as the exercise of reasonable diligence will enable such performance”; and establishes rules for computing time periods referenced in Commission regulations.
2. In light of the above statutory and regulatory provisions, barring any extension of time:
  - a. An agency has two business days after receiving a complaint in which to take certain steps, including forwarding information regarding the complaint to the Commission where appropriate. M.G.L. c. 6E, § 8(b)(1); 555 CMR 1.01(1), 2.03(2).
  - b. An agency has fourteen calendar days after receiving a complaint in which to commence an investigation regarding a complaint as to which it has forwarded information to the Commission. 555 CMR 1.01(2)(a), 2.03(2).
  - c. An agency has ninety calendar days after receiving a complaint in which to complete an investigation. 555 CMR 1.01(2)(e), 2.03(2). Upon completing the investigation, the agency must transmit an investigation report as soon as reasonable diligence will allow. M.G.L. c. 6E, § 8(b)(2); 555 CMR 1.01(3), 2.03(3).
  - d. Where an officer under investigation resigns before the agency must conclude its investigation or its imposition of discipline, the agency must report the resignation as soon as reasonable diligence will allow. M.G.L. c. 6E, § 8(b)(4); 555 CMR 1.01(5), 2.03(3).
  - e. An agency has one year after receiving a complaint, or notice of a complaint from the Commission, in which to complete an investigation *and issue a final disposition*. M.G.L. c. 6E, § 10(h). Upon doing so, the agency must transmit an

investigation report as soon as reasonable diligence will allow. M.G.L. c. 6E, § 8(b)(3); 555 CMR 1.01(4), 2.03(3).

- f. An agency has until the issuance of its final disposition or one year since the incident was reported to the Commission, whichever is earlier, before the Commission may institute a revocation or suspension hearing pursuant to M.G.L. c. 6E, § 10. M.G.L. c. 6E, § 10(h).
- g. Any time period that would end on weekend or legal holiday is extended to the end of the next business day. 555 CMR 2.03(2).

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

Multiple provisions of 555 CMR 1.01 call for certain actions to be taken by the “head of [an] agency,” consistent with M.G.L. c. 6E, § 8(b). Additionally, 555 CMR 1.01(2)(b) provides, in part, that an agency’s investigator “shall report, for the purpose of the investigation, directly to the head of the agency, or to a designated official immediately subordinate to the head of the agency, unless the head of the agency or immediate subordinate is the subject of, or implicated by, the complaint, or is otherwise unable to supervise the investigator due to conflicts of interest, or the potential for bias, prejudice, or self-interest whether apparent or perceived.”

1. Such provisions must be read in conjunction with 555 CMR 2.03(5), which provides that, “[i]n any instance in which an individual has a conflict precluding that person from exercising their authority under 555 CMR, their duties shall be exercised by the next most senior supervisor within the Agency, or if there is no such supervisor without a conflict of interest within the Agency, by an individual designated by the most senior disqualified individual’s appointing authority.”

### **Recommended or Imposed Disciplinary Action**

Multiple provisions of 555 CMR 1.01 direct an agency to report to the Commission regarding disciplinary action that was recommended or imposed with respect to an officer.

1. For these purposes, an informal, verbal reprimand, without more, is not deemed a form of disciplinary action.

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

555 CMR 1.00 in part governs the handling, investigation, and reporting by agencies of information alleging or evidencing officer misconduct, including those involving uses of force, injuries, or deaths.

1. 555 CMR 1.00 must be read in conjunction with 555 CMR 6.00: *Use of Force by Law Enforcement Officers*, which sets forth various requirements for agencies and officers concerning uses of force, injuries, and deaths.
2. Neither set of regulations relieves agencies or officers of any obligations they may have under the other set.

**Complaints Submitted by the Public Directly to the Commission**

555 CMR 1.01 governs the handling by agencies of officer-misconduct complaints that they receive.

1. The regulations do not restrict or govern the public’s submission of complaints directly to the Commission.
2. Members of the public may submit complaints directly to the Commission by following the instructions found on the Commission’s website.

**Confidentiality of Information Regarding Commission Preliminary Inquiries**

555 CMR 1.03 provides that “[a]ll proceedings and records relating to a preliminary inquiry by the division of standards, including any internal review to determine whether there is sufficient credible evidence to initiate a preliminary inquiry, shall be kept strictly confidential pursuant to M.G.L. c. 6E, § 8(c)(2) and M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definitions of public records.” Likewise, 555 CMR 1.07(2) states that “[t]he division of standards’ report on its preliminary inquiry shall remain confidential to the extent permitted by law including, but not limited to, the redaction of certain information pursuant to M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definitions of public records.” However, 555 CMR 1.04 provides that “[t]he division of standards shall, within 30 days of the commission’s vote to authorize a preliminary inquiry, notify the officer who is subject of the inquiry, the head of the agency, the head of the officer’s collective bargaining unit, and a district attorney of competent jurisdiction of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue.” 555 CMR 1.04 adds that “[n]othing [therein] shall prevent the division of standards from notifying any other prosecuting attorney, upon reasonable request, of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue.” Also, 555 CMR 1.03 and 1.07(2), consistent with M.G.L. c. 6E, §§ 3(a) and 8(c)(2), allow the Commission’s Executive Director to provide otherwise-confidential information “to the attorney general, the United States Attorney, or a district attorney of competent jurisdiction” for possible use in a criminal investigation or prosecution.

1. Neither 555 CMR 1.03 nor 555 CMR 1.07(2) restricts a prosecuting office’s ability to provide information to a criminal defendant or the defendant’s attorney, or to otherwise use the information in connection with a criminal investigation or prosecution.
2. The Commission requests that, when a prosecuting office contemplates disseminating information of the type described in 555 CMR 1.03 or 555 CMR 1.07(2) in such a manner, it considers seeking a protective order or confidentiality agreement to the extent that may be appropriate.
3. The Commission requests that, in all other circumstances, the recipient of any information regarding a preliminary inquiry maintain its confidentiality.



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