



## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

July 7, 2023

### CHAIR

Margaret R. Hinkle

### COMMISSIONERS

Hanya H. Bluestone

Lawrence Calderone

Clementina Chéry

Larry E. Ellison

Marsha V. Kazarosian

Charlene D. Luma

Kimberly P. West

Michael Wynn

### EXECUTIVE DIRECTOR

Enrique A. Zuniga

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

### NOTICE OF MEETING AND AGENDA

**Public Meeting #39**

**July 12, 2023**

**8:30 a.m.**

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

**Meeting ID: 973 8944 4517**

- 1) Call to Order
- 2) Approval of minutes
  - a. June 15, 2023
- 3) Executive Director Report – Enrique Zuniga
  - a. Certification Update
  - b. Process for Publishing Review Decisions, Conditionally Certified Status
  - c. Administrative Update
- 4) Legal Update – General Counsel Randall Ravitz
  - a. Proposed Regulations 555 CMR 11.00 - Regulatory Action & Advisory Opinions
  - b. Revisions to Proposed Regulations 555 CMR 9.00 – Initial Certification of Officers and Initial or Renewed Certification of Independently Applying Officers
  - c. Further Guidance to Constables
- 5) Division of Standards Update – Executive Director Enrique Zuniga and Director Matthew Landry

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

- 6) Matters not anticipated by the Chair at the time of posting
- 7) Executive Session in accordance with the following:
  - M.G.L. c. 30A, § 21(a)(5), in anticipation of discussion regarding the investigation of charges of criminal misconduct;
  - M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 6E, § 8(c)(2), and to the extent they may be applicable, M.G.L. c. 6, §§ 168 and 178, in anticipation of discussion regarding the initiation of preliminary inquiries and initial staff review related to the same, and regarding certain criminal offender record information; and
  - M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 30A, §§ 22(f) and (g), in anticipation of discussion and approval of the minutes of prior Executive Sessions.
- a. Division of Standards request for approval to conduct Preliminary Inquiries in the following cases:
  - i) PI-2023-07-12-001
  - ii) PI-2023-07-12-002
  - iii) PI-2023-07-12-003
  - iv) PI-2023-07-12-004
  - v) PI-2023-07-12-005
  - vi) PI-2023-07-12-006
- b. Approval of commencement of revocation proceedings for the following cases:
  - i) PI-2023-03-16-002
  - ii) PI-2023-05-11-003
  - iii) PI-2022-11-22-003
  - iv) PI-2022-11-22-004
- c. Approval of the minutes of the Executive Sessions of 5/11/23 and 6/15/23

2a.



# Massachusetts POST Commission

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

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

**June 15, 2023**

**8:30 a.m.**

**Remote Participation**

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

- Minutes of Public Meeting of May 11, 2023 (Proposed)
- Executive Director Report dated June 15, 2023
- Memorandum re: Certification Update – Collecting Officer Information dated June 9, 2023
- Letter from Peter J. Perroni, Esq., re: Personal Contact Information dated June 9, 2023
- Table re: FY24 Budget Progression
- Guidance to Law Enforcement Agencies and Prosecuting Offices Regarding 555 CMR 1.00 and 6.00 (Proposed)

### **In Attendance:**

- Commission Chair Margaret R. Hinkle
- Commissioner Hanya H. Bluestone
- Commissioner Lawrence Calderone
- Commissioner Larry Ellison
- Commissioner Marsha V. Kazarosian
- Commissioner Charlene D. Luma
- Commissioner Kimberly P. West
- Commissioner Michael J. Wynn

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

- At 8:34 a.m., Chair Hinkle recognized a quorum. She called the meeting to order.

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

- Commissioner Kazarosian moved to approve the minutes of the May 11, 2023, meeting.
- Commissioner Luma seconded the motion.
- Chair Hinkle took a roll call vote, and the Commissioners voted as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Ellison – Yes
  - Commissioner Kazarosian – Yes
  - Commissioner Luma – Yes

- Commissioner West – Yes
  - Commissioner Wynn – Yes
  - Chair Hinkle – Yes
  - The Commissioners unanimously approved the minutes of May 11, 2023.
- 3. Executive Director Report – Executive Director Enrique A. Zuniga**
- a. Certification Update**
- The Executive Director reported as follows:
    - POST is 16 days away from the deadline for agencies to submit recertification information for officers with last names I through P.
    - The POST staff continues to train, grant access to, and support agencies in the submission of recertification information for officers I-P.
    - The portal is working as intended.
    - The focus is on communicating and ensuring agencies submit information before the deadline.
    - As of last Friday, June 9, 2023, the following metrics were received: 735 user log-ins were assigned, there were 525 users who have logged in at least once, there are 435 agencies in scope that POST expects to hear from, and 345 agencies have requested access.
    - The other 90 agencies are taking the necessary steps to complete the certification process and are aware of the deadline. POST continues to communicate with those agencies.
    - A majority of agencies have interacted with the portal but have yet to submit officer information. 48% of agencies have reported information, which covers 23% of officers. Agencies may request an extension past the deadline.
    - Included in the packets to Commissioners is a memorandum from the Executive Director and a letter from one of the unions relative to concerns they have on the information POST is collecting as part of the recertification process.
    - The policy question is: Should POST reconsider the approach of collecting officer personal information or require agencies to serve notices?
    - POST has had some past challenges with reaching officers directly when it comes to certain notices from POST.
      - POST has provided this guidance: in addition to confirming officer work email, officers should provide one of two addresses (a personal email or a physical mailing address, which does not have to be a home address).
      - Officers expressed concerns about public disclosure and/or unauthorized access to this information.
      - POST believes it is ultimately in the officers’ interest to have this information on file and explained that POST does not consider this a public record and has taken additional steps to safeguard the information, primarily segregating data.
      - POST believes it should have the information on file. Should POST place the burden of serving officers on the agencies or should this be optional for the agency?
  - Chair Hinkle asked for confirmation that the Executive Director was suggesting a universal policy and not a policy depending on the individual agency.
  - The Executive Director responded that the guidance is that an agency is to submit

information, including one of two addresses, a personal email address or a physical address. One of the unions said that is a good option to have, but the question is whether, if the officer wants to use the work address, that would mean the agency would be required to serve the officer with the POST notification, as opposed to agencies having the option. This union wants the Commission to change its current approach, which is to give the agency the option.

- Commissioner Calderone is unaware of what union requested the documents be sent to their organization. The organizations he has been in contact with are recommending the email version as opposed to the officer's residential address or union address. It would be incumbent upon the union to make sure the documents are delivered. That is quite troublesome, because officers retire, they change addresses, and sometimes even the unions do not know where their members may be residing. He stated that they are taking the position that a new email address be dedicated to the POST Commission and used for any documents.
- The Executive Director stated the guidance allows for the flexibility of officers and agencies to enter an email address, one they can create for this purpose, or a physical address, that can be a Post Office box. The officers can choose one or the other and POST would confirm that delivery.
- Commissioner Bluestone expressed concern about having the law enforcement officers' addresses in one database, stating that POST should ensure the database is secure. She is in favor of finding other ways to ensure communication rather than having physical addresses in a POST database.
- Commissioner Wynn stated he agrees with Commissioner Calderone and that a dedicated email address is best. He added that, when he has disciplined somebody, or if they have resigned or been terminated, they will never be found again. He thinks the Commission should put some responsibility on the individual officer.
- Commissioner Luma agreed with Commissioner Wynn. The officer needs to notify the Commission if there are changes to the address and update it, she added. She does not see how that can be the responsibility of the agency.
- The Executive Director stated there will be no change in policy. The officer could enter the agency's address but that would be up to the agency. The officer will continue to have options, pursuant to the current policy.

**b. Disciplinary Records Update**

The Executive Director reported as follows:

- 4,292 sustained disciplinary actions have been validated and migrated to the POST database.
- POST staff has undertaken a great effort to validate disciplinary records.
- There are 416 instances of errors that still need some form of validation and POST is within days of completing the validation.
- POST will generate a report to publish but anticipates periodic updates to the database.
- POST is in position to publish the information within the next couple of weeks. The information will now be provided because of the validation efforts.

**c. Finance FY 24 Budget & Administrative Update – Chief Financial and Administrative Officer Eric Rebello-Pradas**

CFAO Rebello-Pradas provided the following update:

- In February 2023 the Commission approved sending the FY24 request of \$9,117,976 to the Governor’s office. The Governor’s budget was less than expected.
- After successful meetings with the Legislature, the Legislature’s build-back to \$8.5M restores major areas of growth.
- Unspent funds will be moved forward to FY24, and this will fully restore the Commission to the original budget request. There is only a small possibility of deviation from the numbers.
- The FY23 budget update is as follows:
  - The final year-end spending will be \$7.1M;
  - That includes \$2.9M for IT infrastructure and Salesforce development; and
  - Forecast reversions are holding at about \$850k for unspent money balanced forward to FY24.
- A hiring update as follows:
  - The agency is currently at 30 employees, and will be at 31 by June 30;
  - It recently hired two compliance agents, one budget & financial operations manager, and three legal summer interns;
  - There are two open positions: data analyst (posted for Certification); and enforcement counsel (the third for Standards);
  - The agency will be reassessing staffing needs for FY24 once the budget passes; and
  - It is predicting there will be 41 staffers at the end of FY24.
- Chair Hinkle asked about the background of the legal interns.
- CFAO Rebello-Pradas responded that two interns are coming from University of Massachusetts School of Law and one intern from Boston University Law School.
- d. Administrative Update - Executive Director Enrique A. Zuniga**  
 POST had a discussion with the MPTC regarding participation in in-service training.
  - As part of in-service training for FY24 (ending June 30, 2024) MPTC and POST will collaborate to deliver a 2-hour virtual training.
  - It is a unique opportunity to present to all officers in the Commonwealth.
  - It will provide an overview of POST and demystify efforts at police reform.
  - The topics will include certification requirements, the disciplinary process, adjudicatory proceedings, etc.
- Commissioner Ellison, as the Treasurer, commended Executive Director Zuniga and CFAO Rebello-Pradas, on keeping him informed in real time and on the cost savings for the taxpayers with onboarding of the legal team, which has been a huge cost savings for the Commission.
- Executive Director Zuniga and CFAO Rebello-Pradas both thanked Commissioner Ellison for the good working relationship.
- 4. Legal Update – General Counsel Randall E. Ravitz**  
 General Counsel Ravitz provided the following information.
  - a. General Counsel Ravitz provided a presentation on Draft Guidance to Law Enforcement Agencies and Prosecuting Offices Regarding 555 CRM 1.00 and 6.00**
    - The draft guidance is directed to law enforcement agencies and prosecuting

offices re: 555 CMR 1.00 and 555 CMR 6.00.

- 555 CMR6.00 is the Commission’s regulation dealing with uses of force.
- The goals of the guidance are to address questions and suggestions from inside and outside Commission; clarify and fill in details regarding existing provisions, without creating new obligations; define terms and concepts (some of which are based on definitions in other sources); and call attention to how provisions found in different statutes and sets of regulations work in conjunction and impact each other.
- The subjects addressed in the draft guidance include a law enforcement agency’s handling of complaints:
  - An agency not in “receipt of a complaint” before agency itself receives it.
  - A credible report is one capable of belief by a reasonable person, and not just based on speculation or conjecture; this is drawn from other definitions of what is credible.
  - The two business-day period for reporting to the Commission does not elapse while the agency is determining credibility.
  - “Unprofessional” conduct is contrary to the standards of the profession.
  - A “pattern” arises regardless of whether complaints are minor or non-minor. It must be reported, and the report should describe the pattern and provide information on each complaint.
  - An agency’s reporting and investigating obligations apply without regard to whether conduct was in-state or out-of-state.
  - They do not apply if the agency addressed the complaint before the regulations became effective, or all liability would be barred by a statute of limitations.
  - Basic work-rule violations refer to matters of internal functions and would be a minor matter.
  - A matter involving bias, excessive force, or serious bodily injury or death would never be a minor matter.
  - The guidance lists a series of things that would not be included in the category of minor matters.
  - Audio-recording of interviews is described as a best practice and encouraged.
  - Recording is “feasible” unless impossible or unreasonably difficult.
  - The guidance would provide for reporting serious bodily injuries, and officer involved injuries and deaths:
    - Agency policies shall provide for these to be reported to the Commission and agency.
  - With respect to the timing requirements found in various statutes and regulations,
    - The guidance collects them, shows how they impact each other, and arranges deadlines chronologically.
  - As to the scope of provisions regarding the confidentiality of agency and Commission proceedings:
    - The regulations do not bar agencies from sharing information with prosecutors, or prosecutors from sharing information with defendants or using it in criminal matters.
    - Prosecutors are asked to consider seeking confidential orders or agreements.



- Recipients are otherwise asked to maintain confidentiality.
  - The guidance would also address the Commission’s own handling of complaints:
    - Any complaint may be submitted directly to the Commission.
    - The Commission may forward the complaint to a law enforcement agency or otherwise address any complaint.
    - The Commission is not bound by agency determinations.
  - The Commission invites feedback, and it expects that this issue and the guidance will be placed before the Commission again at a future meeting.
- General Counsel Ravitz invited questions from the Commissioners.
  - Commissioner Ellison thanked General Counsel Ravitz for his report and for being on ground doing the outreach work.
  - The General Counsel stated if anyone has comments they can submit them on the website.
- b. General Counsel Ravitz next addressed the Public Hearing from June 6, 2023, regarding proposed 555 CMR 9.00 and 11.00**
  - 555 CMR 9.00 is proposed, the Commission has initially approved the regulation, but the regulation has not been promulgated.
  - The hearing process is an important part of the process.
  - Proposed 555 CMR 9.00 concerns initial certification of officers and initial or renewed certification of independently applying officers, including Constables.
  - Proposed 555 CMR 11.00 concerns regulatory action and advisory opinions.
  - Around 100 people attended the Zoom hearing, and 15 people spoke and comments were made in the chat.
- All the comments at the hearing addressed the parts of 555 CMR 9.00 dealing with the Constables:
  - One person supported 555 CMR 9.00 and expressed that when the Constables are out there exercising arrest powers, they should be required to meet the same standards as anyone else who is exercising arrest powers.
  - All the other commentors were opposed to 555 CMR 9.00
  - Questions were raised by commentors about the Commission’s power to adopt such regulations.
  - One comment was that the only time that a Constable comes under the provisions of the POST law is when making an arrest.
  - There were comments that Constables are elected, and they report to the public and the voters, and that is who they should answer to.
  - There were comments that there could be constitutional issues, such as separation of powers issues, with the Commission setting additional requirements.
  - Another category of comments focused on the idea that Constables, as result of the enactment of chapter 6E and in the draft new regulations, would not be able to serve civil process.
  - A commentor stated that it is important for people to obtain relief, like collecting on debts or judgments, and in domestic matters and that is an important part of the judicial system.
  - There was some opposition, substantively, to provisions regarding the power of arrest.

- It was stated in the hearing that it is rare for Constables to arrest somebody. Comments suggested they would like to have that power but should not have to fulfill the same requirements as law enforcement officers, and that the skill set and duties are different.
- One person said that lately Constables have been getting assaulted more, and now they are being told they can no longer defend themselves. General Counsel said he did not know what this comment was based on.
- Another commentor stated that, in the definition of arrest, within the draft regulation, the last line provides that an exercise of the powers of Constables that's facilitated by the use or display of a weapon is something that would constitute an arrest. The commentor stated that constables generally don't carry weapons so that line should be cut.
- There were comments that few people would be willing to accept the responsibilities of serving as a supervisor for a Constable, and a supervisor who is a police officer might not know anything about being a Constable.
- It was stated that the opportunities for training have been insufficient and that should be resolved first.
- It was also said that few people will apply for certification under these new rules, and that as a result, people will be forced to rely on sheriffs who don't necessarily have the resources and don't make services quickly.
- There are people who said that Constables serve with honor, and they serve without incident.
- It was stated in the hearing that the Commission should work more closely with the Constable associations, and that hearings should be in person.
- Commissioner Ellison stated he was on that Zoom hearing, and he inquired whether the elected Constables are treated like elected sheriffs under the applicable provisions governing the Commission.
- The General Counsel responded that the Commission adopted an interpretation of that part of the statute that defines law enforcement officer and law enforcement agency. The interpretation was that the rule with sheriffs would be the same rule with as deputy sheriffs and special sheriffs in the statute. If they are exercising police duties and functions, then they are in scope. If not, then they are out of scope.
- The General Counsel further stated as follows.
  - A commentor during the hearing said that the only time a constable comes under the provisions of the POST law is when making an arrest for any reason, and not at any other time or any other circumstance.
  - The language about making an arrest for any reason is only in one place in the statute—in the definition section that speaks about a law enforcement officer or officer. Those term includes a Constable executing an arrest for any reason.
  - The Commission has essentially proceeded on the belief that, if a Constable executes an arrest or expects to do so, then that person stays subject to the jurisdiction of the Commission.
  - For the commentor's interpretation to work, one would have to conclude that that definition only extends to a Constable while executing an arrest and not otherwise.
  - That is the only way to get to the commentor's conclusion.

- In interpreting a statute, courts will try to divine the Legislature’s intent by looking at the statute as a whole, the surrounding context, and the problem or issue the Legislature was trying to address, and trying to avoid interpretations that would lead to absurd or illogical results.
- One part of the statute, M.G.L. c. 6E, § 10(a), deals with instances in which the Commission is required to decertify someone. In that instance there would be no discretion and the most severe consequence, after a hearing, based on certain conduct.
- A lot of things listed could occur, or would occur, separate from an arrest, including conviction of a felony, submitting false timesheets, knowingly filing a written police report, tampering with a record, engaging in conduct that would constitute a hate crime, engaging in the intimidation of a witness, and failing to intervene when somebody else is using excess of force.
- If the Commission finds that they did engage in that type of conduct, that police officer has to be decertified, and they have to be permanently barred from law enforcement, because those forms of conduct are so serious.
- The question is, did the Legislature intend that, if a Constable arrested somebody yesterday but today they’re not arresting anybody, but they did engage in one of those forms of conduct, ? there would be no decertification, and this provision would have no application to them Or, did the Legislature most likely intend that in this type of situation the Constable, just like the police officer who executed an arrest yesterday, but not today, but today engaged in a hate crime, for example, that was not connected to an arrest, also needs to be decertified?
- That is the question for the Commission. The Commission has so far taken the view that a Constable who executed the arrest yesterday would be subject to the same consequences, even if they engaged in something on that list while not executing an arrest.
- Another recurring theme in the hearing was that Constables have not been able to and would not be able to simply serve civil process, such as delivering documents without making an arrest.
- The Commission, however, has never put out the message that if a Constable is just serving the papers, but not making any arrest, that is now prohibited.
- Commissioner West stated that the notion about a Constable not being able to serve process if they didn’t have the power to arrest seems absurd, because those types of interactions between people happen every day. In the case of Constables, they have authority to intervene and seize a person in public like no other public employee. So, if a Constable has the power to arrest, she does not see why they are not susceptible to the POST regulations. They are exercising an incredibly powerful position in interactions with the public. They should be under the scope of POST if they have the power to arrest.
- Commissioner Wynn said he left the hearing more confused than when the Commission started working on the regulations. What he has heard from the Constables are questions about serving the writ, without actually physically apprehending someone. Commissioner Wynn agrees with Commissioner West, that if the Constable is arresting people, they need to be certified.

- Commissioner Bluestone concurs with Commissioner Wynn and said she was confused after the hearing. She is concerned with the supervision and that it is a difficult arrangement for a Constable to find a supervisor. She asked the Commission to consider if it is looking for supervision, because in her profession supervision implies legal responsibility for someone else's work. She is wondering if the Commission is looking for supervision, or more for a reporting expectation, or a consultation requirement, or a review of any incident in which they are actually involved in making an arrest.
- Commissioner Kazarosian wanted to follow up on something that Commissioner Wynn stated, about serving the writ but with no arrest, and asked if what they are doing is like serving a summons to appear in court.
- Commissioner Wynn responded that the Constable has a court order to serve and would state that a person has to come with them.
- Commissioner Ellison responded to Commissioner Bluestone, stating the Constables all act as independent agents and it would be difficult to supervise all these agents. He concurs with Commissioners West and Wynn, stating one cannot have it both ways. He added that one cannot have arrest powers, but not conform to how everyone else with arrest powers has to operate.
- Chair Hinkle asked for clarification before the next meeting on the service of process issue, stating that there has to be something in the rules of court or a statute which addresses that particular issue.
- The Executive Director suggested based on the comments received that the Commission review the comments and come back with a revised or updated version of the regulations before they are promulgated.

#### **5. Certificate of Appreciation to Commissioners West and Wynn**

- The Executive Director read certificates of appreciation into the record for both Commissioners.
- Commissioner West was presented with a certificate of appreciation as a founding member of the POST Commission, recognizing, among other things, her legal experience and consummate professionalism.
- Commissioner Wynn was presented with a certificate of appreciation for service to the POST Commission as a founding member, recognizing, among other things, his decades-long experience and role as a liaison with the law enforcement community.
- Commissioner West noted the importance of the agency, the successes, and how honored she is to have served.
- Commissioner Wynn expressed how honored he is to have engaged in this work and the regret he has to not be able to continue with the good work of the Commission, particularly facilitated by the professional staff.
- Chair Hinkle stated how grateful the Commission is for the work the Commissioners contributed.

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

- There were no matters not anticipated by Chair Hinkle at the time of posting.
- Chair Hinkle asked for a motion to enter into Executive Session in accordance with [M.G.L. c. 30, § 21\(a\)\(5\)](#) 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 Kazarosian moved to go into executive session.
- Commissioner Kazarosian seconded the motion.
- Chair Hinkle took a roll call vote, and the Commissioners voted as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Ellison – Yes
  - Commissioner Kazarosian – Yes
  - Commissioner Luma – Yes
  - Commissioner West – Yes
  - Commissioner Wynn – Yes
  - Chair Hinkle – Yes
- The Commissioners unanimously approved the Chair’s request to enter into Executive Session.
- Chair Hinkle announced to members of the public that the open session would not reconvene after the Executive Session.
- Chair Hinkle concluded the open meeting.
- The Commissioners took a 10-minute recess before moving into Executive Session.
- At 9:47 a.m., the public meeting was adjourned.

3.



# Executive Director Report

July 12, 2023



# Agenda

1. Certification Update
2. Dissemination of Information Update:
  - a) Process for Publishing Review Decisions
  - b) Conditionally Certified Officers
3. Administrative Update



# 1. Certification Update

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## The initial phase of the recertification of I-P was successful

- June 30 was the deadline for submission of recertification information for officers with last names I – P
- The new LEA portal worked very well and review process is on-going
- 921 portal authorized users. Approximately 696 users are interacting with POST on a regular basis
- POST is on track to certify most officers submitted
- Thank you to all 696 users, heads of agencies and POST Staff!

# 1. Certification Update

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## Recap of the Process Undertaken to Date

- Development of permanent solution (LEA Portal) began August 2022
- Coordinated effort to streamline recertification process
- LEA Portal deployed on May 22, 2023
- 17 office hours and training sessions, training materials available in portal, all documentation is complete
- Continuous communication with LEA's, authorized users, heads of agencies
- Mostly positive feedback received. Continue to work on improving user experience

# 1. Certification Update



## Preliminary Recertification Figures

Recertification Information I – P	Expected	Actual *	Difference
Agencies submitting information prior to deadline	441	381	60
Agencies that requested extension	N/A	8	8
Officers' information submitted for recertification	6,406	5,609	797
Officers from agencies with extension		240	
Officers whose information is pending	557**		557**

\* Actuals are as of Friday July 7, 2023

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

# 1. Certification Update

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## Recertification (I –P) Work Ahead

- Certification team reaching out to agencies without submission to confirm no submission needed (no officers I – P)
- Algorithm in technology platform calculates provisional certification result
- Certification team audits, cross references with MPTC and other information before issuing certification notices
- Review process takes place during July, and notices are expected to be sent beginning in August

# 1. Certification Update



## Provisional Recertification Results

Officers with Last Name I – P	Preliminary Figures	%
Slated to be certified	5,269	82.3%
Slated to be conditionally certified	272	4.2%
Requiring further review *	68 *	1.1%
Subtotal	5,609	
Estimate pending submission **	797 **	12.4%
Estimated Total	6,406	100%

\* Includes individuals who may be out on excused leave

\*\* Includes individuals whose agency requested an extension

## 2. Dissemination of Information Update

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### POST will begin uploading to website previous decisions in favor of officers

- If division of certification declines to issue a certification, officer can seek review of the Executive Director. Executive Director issues written decision in the first instance (adverse decisions of the ED are reviewable by the Commission)
- ED has issued several decisions in favor of officers. These decisions will begin to be uploaded to POST website
- Some aspects of these decisions may contain information that is redactable
- Approach will be to ask officer's representants to highlight redactions and legal department will decide/apply 555 CMR 8.00
- Memorandum in packet describes the proposed approach

# 2. Dissemination of Information Update

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## Conditionally Certified Individuals

- To date, POST has not published Conditionally Certified individuals
- Propose to publish the certification status of these individuals if:
  - ✓ Division of Certification has confirmed officer has received notice
  - ✓ Officer is not challenging the decision
  - ✓ At least 21 days have passed since notice (in accordance with 555 CMR 7.10(1)(a))
  - ✓ This period may be longer (e.g. 6 months) and established by policy by the Commission

## 2. Dissemination of Information Update

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### POST working on publishing streamlined and comprehensive versions of Certification Reports

- In the coming weeks, POST will be releasing database with all officers that are certified, *conditionally certified*, not certified or under review (as one report)
- Report by last name and by agency
- Additional database to include disciplinary records reports
- Staff spends significant time updating these records
- These will be the legitimate source of officer certification and disciplinary information and will be updated on an on-going basis



### 3. Administrative Update



# Administrative Update

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## Hiring Update

- Welcome Recent Hires:
  - Matt Wardle – Compliance Agent
  - Beth Wolfsen – Compliance Agent
  - Bob Wong - Budget & Finance Operations Manager
  - Ben Alpert, Jason Lee, Nick Santiago – Legal Interns
- On-boarding Enforcement Counsel #3 for end of July. Wrapped up interviews for two additional Data Analyst (Certification and IT) positions.
- Posted for Intake Coordinator #2 and Enforcement Counsel #4.
- 2 additional legal staff – posting job descriptions

# Administrative Update

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## POST New Offices

- Permanent Headquarters in Downtown Boston
- Additional space, including space to conduct public meetings and hearings
- Target move-in late August

# Division of Standards Update



# Division of Police Standards Update



## Complaint Case Load for Fiscal Year 2023

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

\* FY23 numbers are preliminary

- Division receives approximately 15-20 new public complaints weekly
- Agencies submit approximately 25 notices/reports weekly for review
- Division team expanding to support statutory mandate
- Additional Topic: MPTC Test Integrity

# Division of Police Standards Update



## Current Caseload – as of July 5, 2023

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

"All proceedings and records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry shall be confidential . . . ." M.G.L. c. 6E, § 8

As per 555 CMR 1.06 the certification of an officer may be suspended during the course of a preliminary inquiry.



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

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3b.





## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

July 5, 2023

### CHAIR

Margaret R. Hinkle

### COMMISSIONERS

Hanya H. Bluestone

Lawrence Calderone

Clementina Chéry

Larry E. Ellison

Marsha V. Kazarosian

Charlene D. Luma

Kimberly P. West

Michael Wynn

### EXECUTIVE DIRECTOR

Enrique A. Zuniga

### MEMORANDUM

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

#### **PROCESS FOR PUBLISHING EXECUTIVE DIRECTOR REVIEW DECISIONS AND ADDITIONAL RELEASE OF CERTIFICATION INFORMATION**

As we have briefed Commissioners in the past, the Division of Certification is the group that makes the initial determination regarding the certification of an officer. The Division receives information that is submitted to POST and corroborates compliance with the certification requirements, contained both in c. 6E and the recertification regulations (555 CMR 7.00). The initial decision of the Division may be to assign a status of certified, conditionally certified (with conditions specific to the officer), or not certified (for a variety of reasons).<sup>1</sup>

If an officer wants reconsideration of that initial decision, the officer has in the first instance the opportunity to seek review by the Executive Director (“Executive Director Review” or “ED Review”). This first level of review has been implemented successfully and there have been several officers who have received determinations in their favor after that review.

When I, the Executive Director in my capacity as the first-level reviewer, make a determination in favor of an officer, the officer is notified, and their certification status is updated accordingly. In that event, the matter is deemed final. If the first level of review is not in favor of the officer, and the officer wants any aspect of that decision reconsidered in some way, they can seek review by the Commission.<sup>2</sup>

When the first level of review decision is final and is in favor of the officer, and POST has ascertained that the officer is not challenging any aspect of that

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<sup>1</sup> An officer’s certification may be labeled “under review” if their case is pending before the Division, the Executive Director, or the Commission, as per 555 CMR 8.06(3)(a)(2)

<sup>2</sup> At her discretion, the Chair of the Commission may designate a hearing officer to hear this second level of review.

# MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

decision, the written record (decision) is both a public record and a matter of public interest.

## **I. Process for Publishing Executive Director Review Decisions**

We come to the Commission to describe the steps we propose to take prior to posting the Executive Director Review written decisions to our website.

The ED Review decision typically includes findings of fact, a discussion of applicable standards for the review and a determination. Those decisions may include information that should be withheld from public disclosure and thus subject to redaction.

To ensure the most efficient way to implement those redactions, our planned approach is to first give the representatives of those officers a certain amount of time to propose redactions. The proposed redactions would be reviewed by the Commission's office of the General Counsel. If the General Counsel agrees with the proposed redactions, those would be implemented, and the redacted document would be posted to our website. This process would also have the effect of confirming that the officer is no longer seeking any kind of further review of the decision.

In considering the redactions, the parties (officer's counsel and the Commission's General Counsel) would look to the applicable sections of the public records laws as well as the dissemination of information regulations (555 CMR 8.00), and thus consider the health and safety of officers. In the event of disagreement between the parties as to what may or should be redacted, the matter could be discussed with the Secretary of the Commission, for her determination and final approval. If any of those instances give rise to a matter of policy, the Secretary of the Commission may direct the staff to bring the question to the full Commission at a subsequent Commission meeting.

**Recommendation: That the Commission approve the process outlined in this memorandum to redact and publish decisions of the Executive Director.**

## **II. Publishing the Names of Officers with the Status of "Conditionally Certified"**

To date, POST has not yet published the names of officers who are categorized as "conditionally certified." This includes officers with last names A-H. There will also soon be additional officers (currently under review by the Division of Certification), and include officers with last names I-P.

The dissemination of information regulations 555 CMR 8.06(3)(a)(2) states that the following information shall be part of the public database:

*The officer's current certification status in Massachusetts, provided that, if the officer is challenging, or has the opportunity to challenge, a certification decision before the Commission or any of its personnel in accordance with a Commission regulation or policy, the officer's status shall be listed as under review or described in a comparable manner.*

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

There are several officers with the status of “conditionally certified” who have not brought a challenge to their status within the 21 days allowed under 555 CMR 7.10(1)(a). These instances mostly include officers who attended the Bridge Academy, have complied with all recertification requirements, and still have a work requirement to be completed (2,400 experience hours before January 1, 2027).

We come to the Commission to seek approval of our proposed publishing of names of officers with the status of conditionally certified, where the staff knows the officer is not challenging that determination.

It is still possible that an officer who has not challenged a conditional certification may decide to challenge it a later time. The Commission could therefore adopt a policy to publish conditionally certified individuals if the Division of Certification ascertains that such individual is not challenging the decision, and a period of time longer than 21 days (e.g., 6 months) has passed since the officer and the agency have been notified. Further, as per 555 CMR 8.08 – Objections Concerning Data, if an officer chooses to challenge a conditional certification after it has been published, the officer can file a petition for relief with the Executive Director who shall promptly make a determination if the relief requested is warranted.

**Recommendation: That the Commission approve publishing the status of conditionally certified individuals once the conditions described above are met.**

4a.

555 CMR 11.00: REGULATORY ACTION AND ADVISORY OPINIONS

Section

- 11.01: Authority
- 11.02: Scope
- 11.03: Definitions
- 11.04: Petition for Regulatory Action or an Advisory Opinion
- 11.05: Initial Processing of a Petition
- 11.06: Regulatory Action
- 11.07: Issuance of an Advisory Opinion
- 11.08: Effect of an Advisory Opinion
- 11.09: Representation by an Attorney at Law

11.01: Authority

- (1) The Commission promulgates 555 CMR 11.00 pursuant to M.G.L. c. 6E, § 3(a), and M.G.L. c. 30A, §§ 4 and 8.

11.02: Scope

- (1) 555 CMR 11.00 governs:
  - (a) The submission, consideration and disposition of a petition requesting regulatory action, pursuant to M.G.L. c. 30A § 4;
  - (b) Regulatory action by the Commission other than in response to a petition, pursuant to M.G.L. c. 6E and c. 30A;
  - (c) The submission, consideration, and disposition of a petition requesting the issuance of an advisory opinion, pursuant to M.G.L. c. 30A, § 8; and
  - (d) The issuance of an advisory opinion by the Commission other than in response to a petition, pursuant to M.G.L. c. 6E, § 3(a).
- (2) Nothing in 555 CMR 11.00 is intended to:
  - (a) Obligate the Commission to take or decline to take any regulatory action, or to issue or decline to issue any advisory opinion;
  - (b) Preclude the Commission from taking regulatory action or issuing an advisory opinion in the absence of a request, or from issuing other types of opinions, answers to questions, or forms of guidance;
  - (c) Create an attorney-client, principal-agent, or confidential relationship between the Commission, any Commissioners, or any member of the Commission's staff and any petitioner, other person, or other entity;
  - (d) 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; or
  - (e) Otherwise waive any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection that may be available to the Commission.

11.03: Definitions

- (1) 555 CMR 11.00 incorporates all definitions and rules of construction set forth in 555 CMR 2.02: *Definitions* and 2.03: *Construction*, except those definitions of terms that are defined in 555 CMR 11.03(2).
- (2) For the purposes of 555 CMR 11.00, the following terms have the following meanings, unless the context requires otherwise:

Advisory Opinion. An advisory ruling with respect to the applicability to any person, property, or state of facts of any statute or regulation enforced or administered by the Commission, under M.G.L. c. 30A, § 8, or any other opinion that relates to the Commission's authority or

responsibilities and is formally issued in writing by the Commission.

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

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.

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.

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

Officer. A “law enforcement officer” as defined in M.G.L. c. 6E, § 1.

Petition. A request for regulatory action or the issuance of an advisory opinion submitted to the Commission.

Petitioner. A person or entity who submits a request for regulatory action or the issuance of an advisory opinion to the Commission.

Regulation. A “regulation” as defined in M.G.L. c. 30A, § 1.

Regulatory Action. The adoption, amendment, or repeal of a regulation.

Vote of the Commissioners. A vote sufficient to satisfy the requirements of M.G.L. c. 6E, § 2(e).

11.04: Petition for Regulatory Action or an Advisory Opinion

- (1) Any person or entity may submit to the Commission a petition requesting the adoption, amendment, or repeal of a regulation, or the issuance of an advisory opinion, concerning a matter related to the Commission’s authority and responsibilities.
- (2) A petitioner should:
  - (a) Submit a written petition containing the following:
    1. The petitioner’s name;
    2. The petitioner’s certification number, if the petitioner has been certified as a law enforcement officer by the Commission;
    3. The name, an address, a telephone number, and an email address of an attorney at law who is representing the petitioner in relation to the matter, if the petitioner is so represented;
    4. An address, a telephone number, and an email address of the petitioner, if the petitioner is not represented by an attorney at law in relation to the matter;
    5. The name of each organization on behalf of which the petitioner is submitting the petition, and any title or role that the petitioner has with each such organization, if the petitioner is submitting the petition on behalf an organization;
    6. A clear indication at the outset of the petition whether the petitioner is requesting regulatory action or the issuance of an advisory opinion;
    7. A precise description of the action being requested;
    8. A clear and concise statement of any facts relevant to the petition, which statement may be relied on by the Commission in rendering any opinion;
    9. Citations to applicable sources of law that could be identified with reasonable effort;
    10. A listing of any other governmental regulations or advisory opinions concerning the same subject matter that have been issued

or requested and could be identified with reasonable effort;

11. The signature of the petitioner or any attorney at law representing the petitioner in relation to the matter, which shall constitute a certification that the signer has read the petition and that any facts recited therein are true to the best of the signer's belief; and

12. A certificate of service, stating the name and contact information of each person and entity upon which a copy of the petition was served pursuant to 555 CMR 11.04(2)(c);

(b) Submit the petition in an electronic format, by electronic means, and using any form or email address designated for such a purpose on the Commission's website; and

(c) Serve a copy of the petition upon each person and entity that can fairly be deemed to be in a direct, adverse position to the petitioner with respect to the matter.

(3) The Commission further requests that the petitioner include in the petition:

(a) The text of any regulation or regulatory amendment desired by the petitioner, if the petitioner is requesting regulatory action;

(b) Any arguments against the action requested by the petitioner; and

(c) Names of persons and entities that would be impacted by the action requested by the petitioner, and the form and extent of such impact.

(4) A petitioner may also include in the petition any supporting data, views, or arguments that the petitioner believes to be pertinent.

(5) A petitioner should immediately notify the Commission if, at any point in time, the petitioner or any attorney at law representing the petitioner in relation to the matter becomes aware that any facts recited in a petition are inaccurate or any circumstances referenced in the petition have changed.

(6) Officers and law enforcement agencies are obligated to ensure the accuracy of any information that they submit to the Commission in relation to a petition, or in relation to any other regulatory action or issuance of an advisory opinion by the Commission, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), and 5(c).

(a) The failure of an officer or a law enforcement agency to comply with 555 CMR 11.04(6) may constitute grounds for disciplinary action, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 5(c), 8, 9, and/or 10.

#### 11.05: Initial Processing of a Petition

(1) Where a petitioner has taken all steps listed in 555 CMR 11.04(2)(a)-(c):

(a) The Commission staff shall, with reasonable promptness, acknowledge to the petitioner that the petition was received;

(b) The Commission staff shall ensure that the petition is provided to the Commissioners and the Executive Director;

(c) At the direction of the Chair or the request of four Commissioners, the subject of the petition shall be placed on the agenda of a Commission meeting to be held in accordance with M.G.L. c. 6E, § 2(e) and c. 30A; and

(d) If the subject of the petition is placed on the agenda for a public Commission meeting, the Commission shall provide notice to the petitioner of that fact with reasonable promptness, and in no event less than two business days before the meeting.

(2) Where a petitioner has not taken all steps listed in 555 CMR 11.04(2)(a)-(c), the Commission may nevertheless follow the steps listed in 555 CMR 11.05(1) or otherwise consider the petition in accordance with any applicable provisions of law.

(3) The Commission may provide a copy of a petition to any other person or entity, and may utilize any information provided in a petition in any manner, where not precluded from doing so by law.

- (4) The Commission shall maintain a copy of any petition received.
- (5) With respect to any matter involving regulatory action or the issuance of an advisory opinion, or contemplation of the same, whether or not the Commission has received a petition related to the matter:
  - (a) The Commission should take steps to communicate with any other governmental entity that possesses interests, powers, or duties that may be implicated with respect to the matter; and
  - (b) The Commission may:
    - 1. Issue a request for public comment about the matter;
    - 2. Request information or advocacy about the matter from any person or entity; or
    - 3. Ask any person or entity to speak about the matter, or otherwise appear, at a Commission meeting.

11.06: Regulatory Action

- (1) The Commission may take or decline to take any regulatory action, whether or not such action is requested by a petitioner, provided the action is allowed by law.
- (2) In pursuing any regulatory action, the Commission shall proceed in accordance with M.G.L. c. 30A and 950 CMR 20.00: *Preparing and Filing Regulations*.
- (3) If the Commission schedules any public hearing or commences any other public comment process related to proposed regulatory action in response to a petition, the Commission shall provide notice of the public hearing or other public comment process to:
  - (a) The petitioner, or where there are multiple petitioners, to any one of the petitioners; and
  - (b) Each person or entity referenced in any certificate of service that accompanied the petition, unless such a step would be impracticable.
- (4) At any hearing conducted by the Commission with respect to proposed regulatory action, the presiding official:
  - (a) Shall be designated by the Chair;
  - (b) May impose reasonable restrictions on the speaking time or the presentation of testimony or materials; and
  - (c) May adjourn and continue the hearing to a specified time and place upon determining that the initial time allotted for the hearing has proven to be insufficient.
- (5) Following any public hearing or other public comment process concerning proposed regulatory action, the Commission may, by a vote of the Commissioners, approve revisions to the proposed regulatory action, whether or not such revisions were suggested in such a public hearing or other public comment process.
- (6) If the Commission takes any regulatory action in response to a petition, the Commission shall provide notice of the action to:
  - (a) The petitioner, or where there are multiple petitioners, to any one of the petitioners; and
  - (b) Each person or entity referenced in any certificate of service that accompanied the petition, unless such a step would be impracticable.
- (7) If the Commission decides not to take a regulatory action requested by a petitioner:
  - (a) The Commission shall provide notice of the decision to the petitioner with reasonable promptness; and
  - (b) Unless the Commission expressly indicates otherwise, the decision shall not represent an affirmative adoption of a position contrary to the



petitioner's, and no weight should be assigned to the decision.

(8) Following the Commission's approval of any regulation, any statement in response to a petition, or any related document, the Commission staff may make revisions to the document that are not substantive and are needed to correct clear errors in names, dates, numbers, citations, quotations, spelling, typography, or formatting.

11.07: Issuance of an Advisory Opinion

(1) The Commission may issue or decline to issue any advisory opinion, whether or not such action is requested by a petitioner, provided the action is allowed by law.

(2) The Commission shall issue an advisory opinion only if its issuance and its general substance are approved by a vote of the Commissioners, either before or after the development of a draft advisory opinion.

(3) Any advisory opinion:  
(a) Shall be in writing;  
(b) Shall be issued in the name of the Commission;  
(c) Shall include a statement of reasons supporting any conclusion reached; and  
(d) May be signed by an individual on behalf of the Commission.

(4) If the Commission issues an advisory opinion in response to a petition, the Commission:

- (a) Shall provide a copy of the advisory opinion to:
  - 1. The petitioner, or where there are multiple petitioners, to any one of the petitioners; and
  - 2. Each person or entity referenced in any certificate of service that accompanied the petition, unless such a step would be impracticable;
- (b) Shall afford the petitioner the opportunity to request, within a reasonable and specified period of time, that the Commission omit the petitioner's name from any publicized version of the opinion;
- (c) Shall honor any timely request made under 555 CMR 11.07(4)(b), unless the Commission decides otherwise by a vote of the Commissioners;
- (d) Shall maintain a copy of the advisory opinion; and
- (e) Except as provided in 555 CMR 11.07(4)(c), may publish an advisory opinion on its website or otherwise, where such publication is not precluded by law.

(5) If the Commission decides not to issue an advisory opinion in response to a petition:

- (a) The Commission shall provide notice to the petitioner of the decision with reasonable promptness; and
- (b) Unless the Commission expressly indicates otherwise, the decision shall not represent an affirmative adoption of a position contrary to the petitioner's, and no weight should be assigned to the decision.

(6) Following the Commission's approval of any advisory opinion, any statement in response to a petition, or any related document, the Commission staff may make revisions to the document that are not substantive and are needed to correct clear errors in names, dates, numbers, citations, quotations, spelling, typography, or formatting.

11.08: Effect of an Advisory Opinion

(1) The Commission's issuance of an advisory opinion shall, in any Commission proceeding, provide a defense to a person or entity that acted in accordance with that opinion, where:

- (a) The circumstances at issue in the Commission proceeding are not

materially different than those upon which the advisory opinion was based;

(b) The person or entity has not acted inconsistently with 555 CMR 11.04(5); and

(c) The person or entity has not failed to comply with an obligation under 555 CMR 11.04(6).

(2) At any time, the Commission may rescind or revise an advisory opinion.

(a) Where the original advisory opinion was issued in response to a petition, the Commission shall promptly provide notice to the petitioner of any rescission or revision.

(3) An advisory opinion shall have no force or effect:

(a) With respect to circumstances that are materially different than those upon which it was based;

(b) If it is rescinded;

(c) If it is materially revised in relevant part;

(d) If it is rendered invalid by a change in law; or

(e) If a court issues a binding decision that is inconsistent with it.

(4) The circumstances described in 555 CMR 11.08(3) shall not invalidate or negate any prior Commission action or decision other than an advisory opinion, unless the Commission or any source of law expressly requires the invalidation or negation of such action or decision.

#### 11.09: Representation by an Attorney at Law

(1) Any action that 555 CMR 11.00 contemplates being taken by a petitioner may be taken on a petitioner's behalf by an attorney at law representing the petitioner in relation to the matter.

(2) Where a petitioner, another person, or another entity is represented by an attorney at law in relation to a petition, any communication between the Commission and that petitioner, person, or entity should be made through the attorney, unless the attorney authorizes otherwise in writing.

#### REGULATORY AUTHORITY

555 CMR 11.00: M.G.L. c. 6E, § 3(a), and M.G.L. c. 30A, §§ 4 and 8.

4b.

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; and
  - (c) The recertification of an independent applicant, in which case 555 CMR 9.00 supersedes 555 CMR 7.00: *Recertification*, 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: *Definitions* and 2.03: *Construction*, 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 official powers ~~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; and
      - 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; and
  - d. Maintain documentation concerning the applicant;
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;
    - b. The applicant; and
    - c. 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;
  2. Inform the applicant that such documentation may be requested by the Commission;
  3. Request that the 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; and
    - 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; and
- (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);
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); and
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;
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**

~~4. 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;
  - (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; and
  - (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;
  - 5. All other available information regarding the applicant; and
  - 6. The applicant's on-duty and off-duty conduct;
- (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;
  - (h) The applicant has not been convicted of a felony;

- (i) 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);
- (j) 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;
- (k) 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:
  - 1. Information obtained from the MPTC; and
  - 2. Information obtained from the Division of Police Standards established pursuant to M.G.L. c. 6E, § 8, ~~and~~

~~(l) 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(2), 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(2), 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(2), 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 a law enforcement officer with a law enforcement agency ~~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; and
  - (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; and

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 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 a law enforcement officer with a law enforcement agency 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 a law enforcement officer with a law enforcement agency 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.~~

~~(45)~~ The Commission may reconsider, and revise or vacate, a decision on an application for certification, when such action is warranted.

~~(56)~~ 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.

~~(67)~~ A certified officer must promptly notify the Commission of any change in:

- (a) Contact information for the officer that has been provided to the Commission;
- (b) The officer's place of employment; or
- (c) The officer's work status, including on-leave status.

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

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

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

### 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: *Requirements for Law Enforcement Officer Training*;~~
- ~~(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;~~
- ~~(c) — 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(e) 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) — 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