

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

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

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9.01: Authority

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

9.02: Scope

- (1) 555 CMR 9.00 governs:
  - (a) The initial certification of an endorsed applicant;
  - (b) The initial certification of an independent applicant;
  - (c) The recertification of an independent applicant, in which case 555 CMR 9.00 supersedes 555 CMR 7.00: *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 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;
    - c. The head of the applicant's collective bargaining unit, if the unit head is identified by name in the application; and
    - d. The applicant's proposed supervisor, if any, if the applicant is a constable;
- (c) A character and fitness attestation form for an endorsed applicant, which shall direct an endorsing law enforcement agency to discuss its assessment of the applicant's good moral character and fitness for employment in a specified manner;
- (d) A professional reference form for an independent applicant, which shall, at a minimum:
1. Recite the standards set forth in 555 CMR 9.09(2);
  2. Request that the professional reference discuss the extent to which the applicant possesses good character and fitness for employment;
  3. Request that the professional reference maintain documentation concerning the applicant; and
  4. Inform the professional reference that such documentation may be requested by the Commission;
- (e) A background check form for an independent applicant, by which the applicant may authorize a background check by the Commission in accordance with 555 CMR 9.06; and
- (f) A constable supervisor form for an independent applicant who is a constable, which shall, at a minimum:
1. Recite the requirements and obligations stated in 555 CMR 9.14; and
  2. Request that the proposed supervisor address whether the proposed supervisor satisfies the requirements set forth in 555 CMR 9.14.
- (2) The Commission shall prescribe a fee for the Commission to conduct its own background check concerning an applicant in accordance with 555 CMR 9.06, pursuant to M.G.L. c. 6E, § 3(a)(22).

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

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

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

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

1. Is accompanied by a completed character and fitness attestation form in accordance with 555 CMR 9.08;
2. Addresses whether the applicant satisfies each other applicable standard set forth in 555 CMR 9.09(2);
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 an officer when the application is granted, the Division shall stipulate that the applicant need not satisfy any condition attached to a conditional recertification, and that no time periods associated with any such condition will begin to elapse, before the conclusion of any review or hearing, or the expiration of the time afforded for the officer to seek such review or hearing, pursuant to 555 CMR 9.12; and
  - (b) In other instances, the Division may, in its discretion, so stipulate.
- (6) When an applicant fails to satisfy a condition of a conditional certification within the time allowed, taking into account the provisions of 555 CMR 9.10(5), the Division shall terminate the applicant's certification, unless good cause for an extension of time for the applicant to satisfy the condition has been shown.
- (7) When an applicant satisfies all conditions of a conditional certification within the time allowed, taking into account the provisions of 555 CMR 9.10(5), and the Commission has not otherwise limited, restricted, or suspended the applicant's certification, the Division shall convert the conditional certification into a full certification with an expiration date of three calendar years from the date of issuance of the conditional certification under 555 CMR 9.13(2).
- (8) An applicant's failure to act in accordance with a limitation or restriction on a certification may constitute grounds for disciplinary action pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 8, 9, and/or 10.
- (9) In all other respects, an individual who holds a conditional, limited, or restricted certification is "certified," as that term is used in M.G.L. c. 6E.

#### 9.11: Issuance of a Certification Decision

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

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

- (1) An applicant who receives a decision from the Division declining to grant a full certification may seek review by the Executive Director as follows.
  - (a) Within 21 days of service by email of the Division's decision, the applicant or an endorsing law enforcement agency may submit a written petition to the Executive Director requesting review of the decision.

1. If an endorsed applicant files the petition, the applicant shall provide a copy of the petition to any endorsing law enforcement agency at the time of its filing.
  2. If an endorsing law enforcement agency files the petition, the agency shall provide a copy of the petition to the endorsed applicant at the time of its filing.
  3. If the applicant is a constable, the applicant shall provide a copy of the petition to the applicant's proposed supervisor, if any.
- (b) The Executive Director may ask any entity or individual to provide additional information, orally or in writing, or to appear at a meeting concerning the matter.
1. At any such meeting, the Executive Director shall have discretion to determine the extent to which an individual who does not have a right to appear may attend and participate.
- (c) The Executive Director shall, within a reasonable time, provide a written decision on the petition to:
1. The applicant;
  2. The applicant's endorsing law enforcement agency, if any; and
  3. The applicant's proposed supervisor, if any, if the applicant is a constable.
- (2) Following the process described in 555 CMR 9.12(1), an applicant or an endorsing law enforcement agency may request a hearing before the Commission concerning an application in accordance with 555 CMR 1.10: *Final Disciplinary Hearings and Appeals of Certification Decisions*.
- (3) The Commission may place an individual's certification on restricted status while review pursuant to 555 CMR 9.12(1) or a hearing pursuant to 555 CMR 9.12(2) is pending.
- (4) Where an applicant has received a decision declining to grant a full certification, the Commission may attach conditions, limitations, or restrictions on the applicant's ability to reapply.

#### 9.13: Certification Status

- (1) An application process shall be deemed ongoing and not "finally determined," as that term is used in M.G.L. c. 30A, § 13, absent a final decision.
- (2) When an application is granted pursuant to 555 CMR 9.00, the new certification shall be deemed to have been issued on, and the three-year period prescribed by M.G.L. c. 6E, § 4(f)(3) shall be deemed to commence on:
  - (a) The reference date for the officer, if the applicant was certified at the time of applying and is lawfully serving as an officer when the application is granted; and
  - (b) In all other instances, the later of:
    1. The date upon which the application is granted; or
    2. The date upon which the applicant lawfully becomes an officer.
- (3) The granting of a certification shall not preclude the conditioning, limiting, restricting, suspending, or revoking of the certification in accordance with law, when warranted.
- (4) An individual whose certification is suspended may not perform police duties and functions, and an individual whose certification has been revoked may not perform police duties and functions or serve as a law enforcement officer.
- (5) The Commission may reconsider, and revise or vacate, a decision on an application for certification, when such action is warranted.
- (6) If a decision to certify an applicant is vacated, the applicant shall be deemed to have been certified during the period of time between the decision to certify and the decision to vacate.
- (7) A certified officer must promptly notify the Commission of any change in:
  - (a) Contact information for the officer that has been provided to the Commission;
  - (b) The officer's place of employment; or

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

9.14: Supervisor for a Constable

- (1) To qualify as a supervisor for a constable, an entity must:
- (a) Be either:
    1. A municipal executive of a Massachusetts municipality in which the constable desires to serve; or
    2. The principal law enforcement agency of a Massachusetts municipality in which the constable desires to serve, provided that such agency has not been barred from serving as the constable's supervisor by a municipal executive of the municipality;
  - (b) Be the same entity as any law enforcement agency that, at the time of the constable's application, is serving as the constable's sponsoring agency under the MPTC regulations found at 550 CMR 3.00: *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(c) that is maintained by a law enforcement agency that employs such personnel.
- (2) An individual may execute an arrest as a constable only if:
- (a) The individual possesses a certification that has not been suspended and that has not been conditioned, limited, or restricted in a manner that precludes the execution of such an arrest; and
  - (b) The individual otherwise possesses the legal authority to execute arrests of the type involved as a constable.
- (3) If an individual executes an arrest as a constable absent satisfaction of the requirements of 555 CMR 9.15(2), or otherwise violates M.G.L. c. 6E or any Commission rule, regulation, or order, the Commission may take any appropriate action, including, but not limited to, the following, to the extent allowed by law:
- (a) Disqualifying the individual from obtaining a certification for a specified period of time, pursuant to M.G.L. c. 6E, §§ 3(a) and 4(f)(2);
  - (b) Conditioning, limiting, restricting, suspending, or revoking any certification the individual may possess, or the powers that the individual may exercise, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 8, 9, and/or 10;
  - (c) Ordering the individual to undergo retraining, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), and/or 10(d); and
  - (d) Assessing the individual a reasonable civil fine of up to \$5,000 for each impermissible arrest, pursuant to M.G.L. c. 6E, §§ 3(a)(4), 3(a)(22), and 4(f)(4).
- (4) 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