



MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

August 1, 2022

CHAIR

Margaret R. Hinkle

COMMISSIONERS

Hanya H. Bluestone

Lawrence Calderone

Clementina Chéry

Larry E. Ellison

Marsha V. Kazarosian

Charlene D. Luma

Kimberly P. West

Michael Wynn

EXECUTIVE DIRECTOR

Enrique A. Zuniga

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

NOTICE OF MEETING AND AGENDA

Public Meeting #27

August 4, 2022

8:30 a.m.

Remote Participation via [Zoom](#)

Meeting ID: 923 5992 7576

1. Call to Order
2. Approval of Minutes
 - a. June 30, 2022
 - b. July 12, 2022
3. Executive Director Report – Enrique Zuniga
4. Draft Proposed Regulations on Dissemination of Information Concerning Law Enforcement Officers – General Counsel Ravitz
5. Joint Guidance Section 12 and Use of Force – General Counsel Ravitz
6. Matters not anticipated by the Chair at the time of posting
7. Adjourn

2a.

PEACE OFFICER STANDARDS & TRAINING COMMISSION

June 30, 2022

8:30 AM

**Peace Officer Standards and Training Commission
Remote Participation**

PUBLIC MEETING MINUTES

Documents Distributed in Advance of Meeting:

- Technology Services Procurement Memorandum
- FY23 Budget Memorandum
- Authorization to Pursue Amendment of Regulations Concerning Use of Force
- Letter from Joint Committee on Public Safety and Homeland Security requesting appointment to special legislative commission to study the establishment of a statewide law enforcement officer cadet program.

In Attendance:

- Chair Margaret R. Hinkle
- Commissioner Hanya Bluestone
- Commissioner Lawrence Calderone
- Commissioner Clementina Chery
- Commissioner Larry Ellison
- Commissioner Marsha Kazarosian
- Commissioner Charlene Luma
- Commissioner Kimberly P. West
- Commissioner Michael Wynn

1. Call to Order

- The Chair recognized a quorum.
- The Commission will take the agenda out of order and address technical correction to the Use of Force regulations first.

2. Use of Force regulations technical corrections – General Counsel Ravitz

- General Counsel Ravitz explained the proposed corrections are meant to correct clerical errors, and are entirely consistent with the use of force regulations approved and submitted by the Commission and the Municipal Police Training Committee to the Secretary of State.
- General Counsel Ravitz explained that the corrections also include an amendment to clarify that chokeholds are unambiguously prohibited under the use of force regulations.
- General Counsel Ravitz proposed pursuing these corrections and amendment on an emergency basis, with public comment to follow.
- Commissioners West and Kazarosian voiced their support of the amendment and pursuing it on an emergency basis, reiterating that the use of force regulations were clearly not intended to provide an exception to allow a police officer to

kneel on someone's neck or head. Commissioner West asked whether the Municipal Police Training Committee has already approved the amendment. General Counsel Ravitz stated that the amendment is consistent with what the Municipal Police Training Committee approved, but that some amount of discussion would be necessary.

- Commissioner Bluestone asked whether the amendment had any impact on the safety of law enforcement officers.
- Commissioner Wynn expressed his support of the amendment, as the amendment is consistent with what is already taught in police academies.
- Commission Ellison asked whether the Municipal Police Training Committee plans to conduct a statewide training to ensure the correct regulations are being taught. General Counsel Ravitz stated he was unable to speak for the Municipal Police Training Committee, but provided that the Municipal Police Training Committee is required to administer training on the use of force regulations.
- Commissioner Kazarosian moved to approve the corrections to the use of force regulations as an emergency regulation, as presented by General Counsel Ravitz. Commissioners Wynn and Chery seconded the motion. The Commission unanimously approved the corrections to the use of force regulations, as presented by General Counsel Ravitz.

3. Executive Director Report – Enrique Zuniga

a. Officer Recertification (A-H)

- Executive Director Zuniga stated the Commission is on track to recertify the majority of officers with last names A-H inclusive by July 1, 2022, based on a high degree of confidence that those officers have met the requirements and standards for recertification. The Commission will provide departments recertification packets listing the names of recertified officers, as well as individual notification letters.
- Of the 431 agencies within the Commission's scope, 399 agencies, submitted applications for recertification, 21 agencies have extensions, 10 officers have no officers with last names A-H, and only 1 agency's application remains pending.
- Of the 21 agencies with extension, 16 agencies have sought extension in accordance with Commission policy, and Executive Director Zuniga anticipates the other 5 agencies will do so shortly.
- In total, 6,336 officers have successfully submitted applications for recertification, 2,181 have sought extensions, and approximately 20 officers have outstanding applications.
- Of officers who have successfully submitted applications for recertification, 88% of officers will be fully recertified, 10.9% will be conditionally recertified, 1% will require further review and 0.1% will fail to be recertified.
- Executive Director Zuniga stated the Commission anticipates posting a list of recertified officers on its website by July 5, and plans to periodically update the list as more applications and processed.
- Executive Director Zuniga stated the Commission also plans to create a webpage to help officer understand their certification status.
- The Chair and Commissioner Bluestone thanked Executive Director Zuniga and his staff for their tireless efforts in recertifying nearly 10,000 officers.

- b. Technology Procurement Update
 - Executive Director Zuniga reviewed the need for a permanent solution to manage data submission and workflows for things like the recertification process. Executive Director Zuniga stated he was seeking authorization to finalize negotiations and enter into a contract with the apparently successful bidder.
 - Commissioner Kazarosian moved to authorize Executive Director Zuniga to finalize negotiations and enter into a contract with the successful bidder for technology and workflow infrastructure. Commissioner Wynn seconded the motion. The Commission unanimously approved to authorize Executive Director Zuniga to finalize negotiations and enter into a contract with the successful bidder for technology and workflow infrastructure.
4. Cadet Commission Chapter 6E Section 108
 - Executive Director Zuniga reviewed the Commission’s obligation to provide a member to the special legislative commission to study the establishment of a statewide law enforcement officer cadet program. The special legislative commission’s first meeting is scheduled for July 12, and its goal is to report its findings by the end of the calendar year.
 - Executive Director Zuniga suggested Commissioner Bluestone would be well suited to serve on the special legislative commission. Commissioner Bluestone expressed her willingness to serve on the special legislative commission.
 - Chair Hinkle nominated Commissioner Bluestone to serve on the special legislative commission. Commissioner Kazarosian seconded the nomination. The Commission unanimously approved Commissioner Bluestone to serve on the special legislative commission.
5. FY23 Budget – CFAO Rebello-Pradas
 - Chief Financial and Administrative Officer Rebello-Pradas summarized the Commission’s incurred and proposed expenditures to date.
 - Commissioner Bluestone asked Mr. Rebello-Pradas to explain the forecasted expenditures relative to outside legal services and staff salaries. Mr. Rebello-Pradas and Executive Director Zuniga explained the context of the Commission’s expenditures on the two items to date, and the proposed expenditures in the next fiscal year.
6. Matters not anticipated by the Chair at the time of posting
 - There was no new business.
7. Executive Session to discuss strategy with respect to litigation, specifically *Scott Hovsepian, et al. v. Massachusetts Peace Officer Standards and Training Commission*, No. 2284CV00906, Suffolk Superior Court, and *New England Police Benevolent Association, Inc. et al. v. Massachusetts Peace Officer Standards and Training Commission*, No. 2285CV00555, Worcester County Superior Court.
 - The Chair stated that the Commission would next take a vote to enter into executive session to discuss strategy in the two pending litigation matters, which are now consolidated in Suffolk Superior Court.
 - Commissioner Kazarosian moved to enter into executive session to discuss strategy in the two pending litigation matters. Commissioner Bluestone seconded

the motion. The Commission unanimously voted to enter into executive session to discuss the two pending litigation matters.

2b.

PEACE OFFICER STANDARDS & TRAINING COMMISSION

July 12, 2022

8:30 AM

**Peace Officer Standards and Training Commission
Remote Participation**

PUBLIC MEETING MINUTES

Documents Distributed in Advance of Meeting:

- Draft Public Meeting Minutes of June 8, 2022, 2:15 PM
- Draft Public Meeting Minutes of June 8, 2022, 3:00 PM
- Draft Public Meeting Minutes of June 21, 2022
- Memorandum from Enrique Zuniga, Steven Smith and Gina Joyce to Commission re: Status Report on Certification of Officers A-H
- Memorandum from Eric Rebello-Pradas to Commission re: FY23 Budget

In Attendance:

- Chair Margaret R. Hinkle
- Commissioner Hanya Bluestone
- Commissioner Lawrence Calderone
- Commissioner Clementina Chéry
- Commissioner Larry Ellison
- Commissioner Marsha Kazarosian
- Commissioner Charlene Luma
- Commissioner Kimberly P. West
- Commissioner Michael Wynn

1. Call to Order

- The Chair recognized a quorum.

2. Approval of Minutes

- a. June 8, 2022
- b. June 21, 2022

- Commissioner Kazarosian moved to approve the minutes of the June 8, 2:15 and 3:00 PM, and June 21, 2022 meetings. Commissioner Chéry seconded the motion. The Commissioners unanimously approved the minutes of the June 8, 2:15 and 3:00 PM, and June 21, 2022 meetings.

3. Executive Director Report – Enrique Zuniga

a. Officer Recertification (A-H)

- On July 1, 2022, the Commission successfully notified 6,309 officers of their recertification status.
- All 431 agencies in the Commission’s scope have either submitted applications for recertification or requested an extension. There are fewer than 13 agencies with extensions pending submission.

- The certification team continues to validate submitted data and address process questions from agencies.
 - To date, 740 officers have received conditional certifications. The majority of conditional certifications are based on technical exceptions (i.e., failure to complete basic training, background check, have current first aid and CPR certificates, complete an oral interview), which the Commission anticipates will be satisfied in the next 90 days.
 - Executive Director Zuniga reviewed the certification process of officers on approve leaves of absence.
 - Executive Director Zuniga then reviewed the process for reviewing officer applications that require further review. He stated the most common reason an officer's application for recertification requires further review is the Chief's failure to attest to an officer's good moral character.
- b. Administrative Update
- Executive Director Zuniga welcomed two new Commission staff members, LaRonica Lightfoot, Deputy General Counsel, and Ally Trahan, Finance and Budget Manager.
 - Commissioner Ellison asked how many of the conditionally recertified officers require the Commission's immediate attention. Executive Director Zuniga clarified that only a subset of conditionally recertified officers require the Commission's attention, and reviewed the differences between officers who are conditionally recertified and those whose conditional recertifications are based on technical exceptions.
 - Commissioner Bluestone raised concerns about conditionally recertified and non-certified officers, and asked Executive Director Zuniga to speak about those officer who did not achieve recertification. Executive Director Zuniga clarified that the recertification regulations speak to the circumstances in which an officer does not achieve recertification, and the applicable review and appeal procedures. Chair Hinkle suggested the topic could be effectively addressed at a later time.
4. FY23 Budget – CFAO Rebello-Pradas
- Chief Financial and Administrative Officer Rebello-Pradas reviewed the Commission's FY22 expenditures to date and expected FY23 budget and expenditures. He noted the largest expected expenditures cover payroll and technology, but also noted expected expenditures are subject to change.
 - Mr. Rebello-Pradas said the Commission would begin working on its FY23 budget in October 2022. He stated he expected the Commission's expenditures would continue to grow as the Commission grows.
 - Commissioner Luma asked when the Commission could expect its budget to be approved. Mr. Rebello-Pradas reviewed the process for approving the Commission's budgeting, starting with approval from Administration and Finance.
 - Commissioner West moved to approve the proposed FY23 budget. Commissioner Chéry seconded the motion. Commissioners Calderone, Chéry, Ellison, Kazarosian, Luma, West, Wynn and Chair Hinkle voted to approve the proposed FY23 budget. Commissioner Bluestone voted against approving the proposed FY23 budget.

5. Proposed POST Policy on Dissemination of Information Concerning Law Enforcement Officers – General Counsel Ravitz
 - General Counsel Ravitz explained his presentation today was not meant to inform a vote, but was meant to frame the issues surrounding the development of guidelines regarding the dissemination of information on law enforcement officers – an issue which the Commission has begun to see more and more, and which raises various complexities and challenges.
 - General Counsel Ravitz reviewed statutory provisions prohibiting and at times penalizing disclosure of certain information, and the policy and practical considerations underlying those provisions. He also reviewed the 2020 legislature’s preferences and its balancing approach relative to law enforcement records.
 - General Counsel Ravitz then presented potential guidelines the Commission could adopt regarding the dissemination of information on law enforcement officers.
 - Executive Director Zuniga noted that General Counsel Ravitz would likely return to the Commission with a proposed policy for approval in the future.
6. Matters not anticipated by the Chair at the time of posting
 - There was no new business.
7. Adjourn
 - a. Commissioner Kazarosian moved to adjourn the meeting. Commissioners Luma and Chéry seconded the motion. The Commission unanimously voted to adjourn the meeting.

3.

Executive Director Report
August 4, 2022





Certification Update (A-H)

Initial Classification	June 30, 2022	August 1, 2022
Certified	5,606	6,856
Conditionally Certified	693	835
Further Review	60	51
Not Certified	7	15
Subtotal Submitted	6,366	7,757
Estimate of Pending Submission	2,201	1,029
Total	8,567	8,806



Certification Update (ctd.)

Agencies Still with an Extension (Pending Submission)*	Roster #'s
Boston PD	887
New Bedford	121
Swampscott	16
Sutton	5
Total	1,029

As of July 15, 2022: 13 Agencies Pending Submission



Conditional Certifications

Exceptions	Instances *
No High School Diploma	5
No Basic Training	402
No Exam Passed	95
No In-Service Training	306
No Background Check	17
No CPR Certification	175
Oral Interview Not Conducted	187

Total # of Instances \neq Total # of Officers Conditionally Certified



Conditional Certifications (ctd.)

Conditional Certifications	Percent
One Condition	33%
Two Conditions	41%
Three Conditions	21%
Four or more Conditions	5%



Other Certification Metrics

Criteria / Question	Instances
Under the Age of 21	None
Convicted of a Felony	None
No Physical Test	37
No Psychological Evaluation	793



Certification Update (A-H)

- Technical Corrections Continue
 - Name, DOB, etc.
- Notifications on a rolling basis
- Updated Website
 - Conditional Certifications Explained
- Documenting changes to status
- Technical solution for managing and sending notifications of status changes is on going



Correction Letters

- In the coming days POST will be sending Correction Letters to previously certified or conditionally certified individuals
 - Individuals who answered “Yes” to Basic Training/Bridge Academy (but answer should have been “No”) – after corroborating information with MPTC
 - One individual listed in NDI (answered “No” in submission form)



Conference Committee Report

Appropriation for POST for FY23 includes following language

- *For the operation of the Peace Officer Standards and Training Commission; provided, that not later than March 10, 2023, the commission shall submit a report to the house and senate committees on ways and means that shall include, but not be limited to: (a) the current caseload of the commission for fiscal year 2023; (b) the number of complaints concerning police officer conduct received by the commission; (c) patterns of unprofessional police conduct identified by the commission; and (d) the number of police officers suspended by the commission and the reason for said suspension*
- Statute requires additional reporting requirements
- Will begin work on an Annual Report (FY End or Calendar Year End)



Administrative Update

- Contracting with Professional Services Vendor
 - Salesforce (permanent solution)
 - Priority: Division of Standards (complaints, disciplinary records and case management)
- Continue solutioning of recertification processes (JIRA)
- Need to capture and manage additional information (contacts, changes in employment status, etc.)



Administrative Update

- Welcome New Staff:
 - Deputy General Counsel – Pauline Nguyen
 - Human Resources Manager - Jeanine Hopkins

MEMORANDUM

TO: Commissioners
FROM: Eric Rebello-Pradas
CC: Enrique Zuniga; Randall Ravitz; Ally Trahan
DATE: July 29, 2022
RE: **FY23 Conference Committee Report & Governor's Vetoes**

The Legislature approved the FY23 Conference Committee Report on July 18th, sending it to the Governor's desk for his review. Taking the full ten days, the Governor returned his vetoes and amendments on Thursday, July 28th. As expected, POST ended up with the \$5 million appropriation. The final inside language was the House's version which included some reporting language:

For the operation of the Peace Officer Standards and Training Commission; provided, that not later than March 10, 2023, the commission shall submit a report to the house and senate committees on ways and means that shall include, but not be limited to: (a) the current caseload of the commission for fiscal year 2023; (b) the number of complaints concerning police officer conduct received by the commission; (c) patterns of unprofessional police conduct identified by the commission; and (d) the number of police officers suspended by the commission and the reason for said suspension

The table below shows three provisions we were tracking which had some relation to POST. The most prominent is the provision adding Humane Society to the definition of "law enforcement agency."

Title	Description/Analysis	Version	CCR	GOV
Special Commission to Study and Examine the Civil Service Law Extension	Extends the civil service commission (created under the Police Reform Law) for an additional three years.	HOU	132	Returned w/Amendment
Humane Society Law Enforcement	Adds the Humane Society to the definition of "law enforcement agency."	SEN	7, 8, 14	Signed
First Responder Suicide Prevention	Inserts a \$500K earmark within the EOPSS local program account (8000-0313) for resources to support police officer mental wellness and suicide prevention, as prescribed by the Police Reform Law.	SEN	8000-0313	Signed

Unfortunately, the CCR did not include our suggested clarification language for the Humane Society provision. As a result, Humane Society LEOs will not be included in the third tranche for certifications (last name Q-Z), but will be subject to the same deadlines as all other officers. As a result, we have discussed the matter with the MSPCA and Boston Animal Rescue League. We suggest addressing the issue administratively by allowing the LEOs to be *conditionally* certified until they have sufficient time to formally apply for certification. Of course, this proposal would need to be brought before the Commission for approval.

Although not affecting POST directly, the Governor returned the Extension of the Civil Service Special Commission with an amendment. The amendment removes the requirement to automatically re-appoint the same members of the Special Commission, thereby allowing the appointing authorities to appoint different members if they wish.

4.

555 CMR 8.00: DATABASES AND DISSEMINATION OF INFORMATION

Section

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

8.01: Authority

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

8.02: Scope

- (1) 555 CMR 8.00 applies to databases that the Commission must maintain pursuant to M.G.L. c. 6E, §§ 4(h), 4(j), 8(e), and 13, as well as Commission responses to requests for records served upon it pursuant to M.G.L. c. 66, § 10.
- (2) 555 CMR 8.00 does not apply to any of the following:
 - (a) A response by the Commission to compulsory legal process, except as provided in 555 CMR 8.11;
 - (b) A response by the Commission to a court order relative to the disclosure of information;
 - (c) An inquiry or request concerning personal data, made on behalf of the subject of the data, under M.G.L. c. 66A, § 2(i); or
 - (d) The Commission's treatment of evidence that it knows to be relevant to a pending criminal case or exculpatory.
- (3) Nothing in 555 CMR 8.00 is intended to:
 - (a) Foreclose the Commission's invocation of any provision, privilege, or doctrine, regardless of whether it is cited in 555 CMR 8.00;
 - (b) Establish a standard of care or create any independent private right, remedy, or cause of action on the part of any person or entity on account of any action the Commission takes or fails to take; or
 - (c) Otherwise waive any power, right, privilege, protection, or immunity that may be available to the Commission.
- (4) Neither 555 CMR 8.00, nor the Commission's provision of any information through a public database or in response to a request for records, is intended to:
 - (a) Create an attorney-client relationship, a principal-agent relationship, or a confidential relationship with any person or entity;
 - (b) Make the Commission a part of the prosecution team, the defense team, or the litigation team of any other party in relation to any criminal or civil action or controversy;
 - (c) Impose upon the Commission any duty or obligation of any other party to criminal or civil litigation, or of any other public agency; or
 - (d) Otherwise surrender the Commission's independence.

8.03: Definitions

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

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

Commission. The Massachusetts Peace Officer Standards and Training Commission established under M.G.L. c. 6E, § 2 as an agency, including its Commissioners and its staff.

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

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

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

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

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

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

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

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

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

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

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

8.04: Submission of Information by Agencies

- (1) When an agency provides information concerning an officer to the Commission, it must notify the officer of that fact in accordance with any other provision of 555 CMR that requires notification. In the absence of any such provision, the agency must provide such notification within seven calendar days, unless such notification would compromise an ongoing investigation or the security of any person or entity, or would be precluded by law.

8:05: Public Database

- (1) The Commission shall maintain a public database of information concerning officers who are certified, officers whose certifications are suspended, and officers who have been

decertified.

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

(3) In determining what information to include in the public database, the Commission shall consider the health and safety of officers, in accordance with M.G.L. c. 6E, § 4(j).

(4) Except as provided in 555 CMR 8.05(5) or (6), the public database shall provide the following forms of information, to the extent that such forms of information are possessed by the Commission, in accordance with guidelines established by the Commissioners, or, if no such guidelines are established, in accordance with guidelines established by the Commission's Executive Director:

(a) For each officer:

1. The officer's first name and surname;
2. The officer's current certification status in Massachusetts;
3. The dates on which the officer was first certified and was most recently certified in Massachusetts;
4. All of the officer's employing law enforcement agencies in Massachusetts and elsewhere, and the dates of such employment;
5. Commendations received by the officer in connection with the officer's service in law enforcement;
6. The date of, and reason for, any decertification by the Commission or by a comparable body in any other jurisdiction;
7. The beginning date and end date of, and the reason for, any suspension of certification by the Commission;
8. The date of, and reason for, any retraining order issued by the Commission; the type of any retraining ordered; and the date of completion of any ordered retraining;
9. A copy of each final opinion, decision, order, set of findings, and vote issued by the Commission pursuant to M.G.L. c. 6E, § 10 in connection with any proceedings concerning the officer, accessible in a commonly available electronic format; and
10. A summary of the officer's disciplinary record, based on information provided by agencies that have employed the officer.

(b) Aggregations of, or ways for public users to aggregate, information regarding the following:

1. Decisions by the Commission and comparable bodies in other jurisdictions to decertify officers;
2. Decisions by the Commission to suspend the certification of officers;
3. Decisions by the Commission to order the retraining of officers; and
4. Officers who have served in a particular department.

(5) The public database shall not include any of the following forms of information:

(a) Information relating to a preliminary inquiry, or initial staff review used to determine whether to initiate an inquiry, that is confidential under M.G.L. c. 6E, § 8(c)(2), or 555 CMR 1.03 or 1.07(2);

(b) Other information related to disciplinary proceedings that is confidential under 555 CMR 1.01(2)(d), 1.09(6)(c), or 1.10(4)(a);

(c) Personal contact information of public employees or members of their families that is generally non-disclosable under M.G.L. c. 66, §§ 10B and 15;

(d) Criminal offender record information, criminal history information, or criminal history record information that cannot be communicated under M.G.L. c. 6, §§ 168 or 178, 803 CMR 2.19(1), or 803 CMR 7.10 through 7.14;

(e) Sealed or expunged records that are confidential or unavailable for inspection under M.G.L. c. 276, §§ 100L, 100O, or 100Q;

(f) Juvenile delinquency records that must be withheld under M.G.L. c. 119, § 60A, or juvenile criminal records that cannot be communicated under M.G.L. c. 6, §§ 168 and 178.

(g) Police-log information pertaining to arrests of juveniles that is non-disclosable under M.G.L. c. 41, § 98F;

(h) Police-log information pertaining to handicapped individuals that is non-disclosable under M.G.L. c. 41, § 98F;

- (i) Police-log information pertaining to alleged domestic violence or sex offenses that is non-disclosable under M.G.L. c. 41, § 98F;
 - (j) Reports of domestic violence or sex offenses, and associated communications, that are not public reports and are to be treated by police departments as confidential under M.G.L. c. 41, § 97D;
 - (k) Information in court and police records that identifies alleged victims of sex offenses or trafficking and is non-disclosable under M.G.L. c. 265, § 24C;
 - (l) Personal contact, employment, or educational information of victims of crimes or domestic violence, or members of their families, that is non-disclosable under M.G.L. c. 66, §§ 10B and 15;
 - (m) Personal contact, employment, or educational information of victims, members of their families, or witnesses that is non-disclosable under M.G.L. c. 258B, §§ 3(h) and 3(w);
 - (n) Personal contact, employment, or educational information of family-planning personnel or members of their families that is non-disclosable under M.G.L. c. 66, §§ 10B and 15;
 - (o) Personal data that is non-accessible under M.G.L. c. 66A, M.G.L. c. 214, § 3B, and 801 CMR 3.03;
 - (p) Forms of “personal information” referenced in M.G.L. c. 93H, § 1, other than the names of individuals;
 - (q) Data that the Commission is precluded from disclosing pursuant to a court order;
 - (r) Information the disclosure of which may constitute an unreasonable, substantial or serious interference with a person’s privacy under M.G.L. c. 214, § 1B; and
 - (s) Any other information that is non-disclosable under federal or Massachusetts law.
- (6) The public database also shall not include:
- (a) The following forms of information, the revelation of which could potentially impact officer health or safety, including by facilitating attempts to coerce officers or exploit any individual vulnerabilities:
 - 1. Information relating to a member of an officer’s family, except where such family member is an officer and any relation between the two officers is not revealed;
 - 2. Information concerning an officer’s personal finances that is not otherwise publicly available;
 - 3. Information that could readily be used to facilitate identity theft or breaches of data security, including, but not limited to, an officer’s date of birth, passwords, and entry codes;
 - 4. Information concerning an officer’s medical or psychological condition;
 - 5. Specific assessments of whether an officer possesses good moral character or fitness for employment in law enforcement under M.G.L. c. 6E, § 4(f)(1)(ix);
 - 6. Information concerning an officer’s conduct as a juvenile;
 - 7. Information concerning any firearm, or firearms license or permit, that an officer currently possesses in a personal capacity;
 - 8. Law enforcement information, including information concerning the following subjects, if disclosure could compromise law enforcement or security measures:
 - a. Undercover operations;
 - b. Confidential informants;
 - c. Clandestine surveillance;
 - d. Secretive investigative techniques;
 - e. Passwords and codes;
 - f. The details of security being provided to a person or place; or
 - g. Subjects of comparable sensitivity.
 - 9. Information concerning a disciplinary matter before the Commission that has not reached a conclusion; and
 - 10. Any other information that could readily be used in an attempt to coerce action or inaction, or exploit individual vulnerabilities, of an officer.

- (b) Agency data that is subject to an ongoing audit by the Commission pursuant to M.G.L. c. 6E, §§ 3(a)(9), 3(a)(21), and 8(d);
 - (c) Records associated with Commission meetings that may be withheld under M.G.L. c. 30A, § 22;
 - (d) Personal data that an individual has the ability to have corrected or amended under M.G.L. c. 66A, § 2(j), 801 CMR 3.04, or 555 CMR 8.06.
 - (e) Information in a personnel record that an employee has the right to have corrected or expunged pursuant to M.G.L. c. 149, § 52C;
 - (f) Information that is subject to a privilege held by the Commission;
 - (g) Information that is subject to a privilege held by a person or entity other than the Commission;
 - (h) Data that is non-disclosable under any formal agreement or memorandum of understanding between the Commission and any other unit of the government of the Commonwealth, including, but not limited to, any Commonwealth of Massachusetts Data Sharing Memorandum of Understanding, and any Data Use License Agreement between the Commission and the MPTC;
 - (i) Information that a court has expunged, placed under seal, impounded, or relieved the Commission of having to disclose;
 - (j) Information the confidentiality of which is the subject of dispute in litigation or an administrative proceeding; and
 - (k) Information that otherwise does not constitute a public record under M.G.L. c. 4, § 7, cl. 26.
- (7) For purposes of determining whether a matter is ongoing, as that question relates to the applicability of exemptions under M.G.L. c 4, § 7, cl. 26 or other provisions or doctrines, the following guidelines shall apply.
- (a) A certification matter should be deemed subject to Commission oversight, and ongoing, beginning upon the earliest of the following:
 - 1. The Commission's receipt of an application for certification on behalf of an officer, including one made pursuant to M.G.L. c. 6E, § 4, M.G.L. c. 30A, § 13, or 555 CMR 7.03; or
 - 2. An agency's receipt from an officer of an application for certification or any materials required for the agency to complete an application for certification on the officer's behalf.
 - (b) A certification matter should be deemed no longer ongoing upon the conclusion of the matter.
 - (c) A disciplinary matter should be deemed subject to Commission oversight, and ongoing, beginning upon the earliest of the following:
 - 1. The Commission's receipt of a complaint or information warranting a determination of whether to initiate a preliminary inquiry under M.G.L. c. 6E, § 8; or
 - 2. An agency's receipt of a complaint that must or will be reported to the Commission under 555 CMR 1.01.
 - (d) A disciplinary matter should be deemed no longer ongoing upon the earliest of the following:
 - 1. The conclusion of the matter;
 - 2. The Commission's decision not to pursue any disciplinary action; or
 - 3. An officer's communication to the Commission of a decision not to challenge any disciplinary action.
- (8) The Commission may include in the public database, or exclude from the public database, other forms of information not specifically referenced in 555 CMR 8.05(4), (5), or (6), in accordance with guidelines established by the Commissioners, or, if no such guidelines are established, in accordance with guidelines established by the Commission's Executive Director.

8.06: Electronic Recordkeeping Systems and Databases Generally

- (1) The Commission's RAO and its Chief Technology Officer shall consult with each other, and with the Commission's Executive Director, its Chief Financial and Administrative Officer, or the Massachusetts Executive Office of Technology Services and Security to ensure that, to the extent feasible, any electronic recordkeeping system or database that the Commission maintains is capable of

providing data in a commonly available electronic, machine readable format.

- (2) To the extent feasible, any database should allow for information storage and retrieval methods that permit the segregation and retrieval of public records and redacting of exempt information in order to provide maximum public access.
- (3) The Commission shall not enter into any contract for the storage of electronic records that:
 - (a) Prevents or unduly restricts the RAO from providing public records in accordance with M.G.L. c. 66;
 - (b) Relieves the Commission of its obligations under M.G.L. c. 66A or 801 CMR 3.00; or
 - (c) Omits provisions that are necessary to ensure compliance with M.G.L. c. 66A and 801 CMR 3.00.
- (4) When the subject of personal data that is maintained by the Commission, or the subject's authorized representative, in accordance with 801 CMR 3.04, contests the accuracy, completeness, pertinence, timeliness, relevance or dissemination of the subject's personal data or the denial of access to such data maintained in any personal data system of the Commission, or requests that personal data be corrected or amended, the Commission shall address the matter as provided in 801 CMR 3.04.
- (5) If the Commission has a good-faith, reasonable belief that a public employee may possess a right to have data in a personnel record corrected or expunged pursuant to M.G.L. c. 149, § 52C, the Commission shall make reasonable efforts to give the employee the opportunity to exercise the right.

8:07: Receipt and Referral of Records Requests

- (1) The Commission may decline to accept Records Requests by telephone, pursuant to 950 CMR 32.06(1)(a).
- (2) If the Commission receives a Records Request and determines that the MPTC is the data owner as to all responsive materials, the Commission shall refer the Records Request to the MPTC and request that the MPTC respond in accordance with any Data Use License Agreement between the Commission the MPTC, and the Commission may presume that the MPTC will assume responsibility for responding.
- (3) If the Commission receives a Records Request, it may consult with a law enforcement agency to determine if similar requests have been received by the agency. The Commission may also establish a process by which agencies that receive Records Requests for documents that are also held by the Commission be required to provide the Commission with timely notice of the Records Request, a copy of any response to the Records Request, and copies of any documents produced.

8:08: Responses to Records Requests

- (1) Except as provided in 555 CMR 8.08(2), (3), or (4), a record requested through a Records Request shall be provided in accordance with M.G.L. c. 66 and 950 CMR 32.00.
- (2) If a record includes information identified in 555 CMR 8.05(5), such information shall not be disclosed;
- (3) If a record includes information identified in 555 CMR 8.05(6), taking into account the provisions of 555 CMR 8.05(7), such information shall not be disclosed, unless:
 - (a) Disclosure is required under M.G.L. c. 66A, § 2 or any other source of federal or Massachusetts law; or
 - (b) Disclosure:
 1. Is not prohibited by federal or Massachusetts law;
 2. Will not jeopardize any law enforcement efforts or the security of any person or entity; and
 - a. Will be made to the person or entity who is the subject of the information;

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

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

8:09: Privileged Information

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

8:10: Fees for Producing Records

- (1) In response to any Records Request that does not address the requester's eligibility for a waiver of fees under M.G.L. c. 66, § 10(c)(v) and 950 CMR 32.07(2)(k), the Commission may seek information from the requester regarding the purpose of the Records Request, in accordance with M.G.L. c. 66, § 10(d)(viii) and 950 CMR 32.06(2)(h).
- (2) Where a requester requests records that are substantially similar to information available through the public database prescribed by 555 CMR 8.05, the Commission shall direct the requester to the database and, if that does not satisfy the requester's request, then decline to provide records without payment of the maximum fee permitted by law, notwithstanding the provisions of M.G.L. c. 66, § 10(c)(v) and 950 CMR 32.07(2)(k).
- (3) Where the Commission has determined that records are not to be provided without payment of a fee:
- (a) The requester shall not be obligated to pay any fee without having agreed to do so;
 - (b) The Commission may decline to continue assembling or reviewing potentially responsive documents until the full fee has been paid; and
 - (c) The Commission shall not provide documents until the full fee has been paid.

8:11: Compulsory Legal Process

- (1) When any person or entity seeks personal data maintained by the Commission through compulsory legal process, the Commission, except as provided in 555 CMR 8.11(3):
- (a) Shall notify the data subject in reasonable time that the data subject may seek to have the process quashed; and
 - (b) If appearing or filing any paper in court related to the process, shall notify the court of the requirement of M.G.L. c. 66A, § 2(k).
- (2) The Commission need not provide the notification described in 555 CMR 8.11(2) if a court orders otherwise upon a finding that notice to the data subject would probably so prejudice the administration of justice that good cause exists to delay or dispense with such notice.

5.

Joint POST Commission and MPTC Guidance as to M.G.L. Chapter 123, §§12(a) and 12(e) and the Use of Force

Section 12 of Chapter 123 of the Massachusetts General Laws governs the admission of an individual to a general or psychiatric hospital for psychiatric evaluation and a determination of the person's need for inpatient psychiatric treatment. Sections 12(a) and 12(e) identify the conditions under which an individual believed to have a mental illness may be brought against their will to a hospital or court for evaluation.

Section 12(a) provides that following an examination, certain appropriately qualified and licensed mental health professionals "may restrain or authorize the restraint of [a] person," or in an emergency when such a mental health professional is not available, a police officer may "restrain [a] person," when there is "reason to believe that a failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness."

Section 12(e) provides that if any person makes an "application to a district court justice or a justice of the juvenile court department for a 3-day commitment to a facility of a person with a mental illness if the failure to confine such person would cause a likelihood of serious harm," following a hearing, said justice "may issue a warrant for the apprehension and appearance before the court of the alleged person with a mental illness if in the court's judgment the condition or conduct of such person makes such action necessary or proper."

On October 1, 2021, the Peace Officer Standards and Training Commission ("the POST Commission") and the Municipal Police Training Committee ("the MPTC") jointly promulgated 550 CMR 6.00, as required by M.G.L. c. 6E, §15(d), which provides regulations for the use of force by law enforcement officers.

The Commission and the MPTC have received questions regarding situations in which the involuntary restraint, apprehension and transport of a person, in effecting a hospitalization pursuant to either §12(a) or §12(e), requires law enforcement officers to use non-deadly force or deadly force to "effect the lawful . . . detention" of a person or "prevent imminent harm to a person." 550 CMR 6.04, 6.05.

In response, the Commission and the MPTC provide additional guidance.

In the view of the Commission and the MPTC, nothing in Section 12, in Chapter 6E of the General Laws, in Chapter 253 of the Acts of 2020, or in 550 CMR 6.00 prohibits law enforcement officers from using "necessary" and "proportionate" force when "de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances" in order to bring an individual against their will to a hospital for evaluation pursuant to §12(a) or §12(e).

Similarly, nothing in the General Laws or relevant regulations relieve law enforcement officers of the duty under §12(a) or §12(e) to effect, as required under the statute, a hospitalization of a person believed to have a mental illness when the likelihood of serious harm is to themselves, and not to others. The regulations in 550 CMR 6.00 do not allow officers to substitute their own

judgement for those of licensed mental health professionals after a determination has been made under M.G.L. c.123, §12(a).

Accordingly, if the circumstances warrant, law enforcement officer may use such non-deadly force that is deemed to be both necessary and proportionate to either gain or regain control and overcome any such resistance by said person for purposes of restraining said person so that they may be transported to the appropriate medical facility for evaluation.