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Margaret R. Hinkle

COMMISSIONERS

Hanya H. Bluestone
Lawrence Calderone
Clementina Chéry
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Marsha Kazarosian
Charlene Luma
Kimberly West
Michael Wynn

**EXECUTIVE
DIRECTOR**

Enrique Zuniga

PEACE OFFICERS STANDARDS AND TRAINING COMMISSION

January 11, 2022

In accordance with Sections 18-25 of Chapter 30A of the Massachusetts General Laws and [An Act Extending Certain COVID-19 Measures Adopting During the State of Emergency](#), notice is hereby given of a meeting of the Peace Officer Standards and Training Commission. The meeting will take place as noted below.

PEACE OFFICER STANDARDS AND TRAINING COMMISSION

January 14, 2022

8:30 AM

Public Meeting #15

Remote Participation via [Zoom](#)

Meeting ID: 912 1231 6028

PUBLIC MEETING AGENDA

1. Call to Order
2. Approval of Minutes
 - a. December 14, 2021
 - b. November 22, 2021
3. Executive Director Report
 - a. Administrative update
 - b. Disciplinary Records Report
4. Certification Standards Update
 - a. Certifications Issued– Gina Joyce, Senior Certification Specialist
 - b. Certification Questionnaire and Attestations – General Counsel Ravitz
5. Certification Process
 - a. Special State Police Officer (SSPO)– Gina Joyce, Senior Certification Specialist
 - b. School Resource Officer (SRO) – General Counsel Ravitz
6. Process for Issuance of Advisories – General Counsel Ravitz



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PEACE OFFICERS STANDARDS AND TRAINING COMMISSION

7. Draft Phase 1 Regulations: Review of Complaints by an Agency, Preliminary Inquiries, Suspensions and Disciplinary Hearings – Attorneys Lon Povich, Mina Makarious and Annie Lee
8. Public comment
9. Matters not anticipated by the Chair at the time of posting
10. Executive Session to discuss a candidate for employment with the POST Commission, pursuant to M.G.L. c. 30A, s 21(a)(1), if approved by a majority of members through a roll-call vote, pursuant to M.G.L. c. 30A, s 21(b)(2)

PEACE OFFICER STANDARDS & TRAINING COMMISSION

December 14, 2021

8:30 AM

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

PUBLIC MEETING MINUTES

Documents Distributed in Advance of Meeting:

- Revised Draft Background Attestation Form for Law Enforcement Officer Applicants
- Revised Draft Questionnaire for Law Enforcement Officer Applicants
- Revised Draft Phase I Regulations
- Memorandum from Executive Director Enrique Zuniga to Commission Regarding Law Enforcement Officer Certification Standards
- Law Enforcement Officer Certification Standards
- Motion to Approve Certification Standards and Certain Related Documents and Motion to Authorize Subsequent Refinement of Certification Standards and Certain Related Documents

In Attendance:

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

1. Call to Order

- The Chair recognized a quorum.
- The Commission will review the agenda out of order and discuss law enforcement officer certification standards first.

2. Discussion of Certification Standards: Chapter 6E section 4(f)(j) – Commissioner West

- Commissioner West summarized the logistical problems of having to certify law enforcement candidates already in police academies.
- To address concerns raised at the last Commission meeting, the background questionnaire has been revised to include an instruction allowing a respondent to state that they have a good faith belief that they cannot answer a question completely and accurately without waiving a privilege or protection recognized by law; to allow designees to conduct background interviews, where appropriate; and to remove requests for social media passwords. Other revisions are limited to clarifying language.

- Commissioner Kazarosian raised a concern that the questionnaire does not cover accusations of sexual harassment in the workplace.
- Commissioner Wynn raised a concern that small police departments do not have access to CopLink. Commissioner West clarified that use or non-use of CopLink will not make or break a background check; a successful background check does not require checking every single box on the background attestation form.
- Commission Ellison raised a question about the police chief's liability when they are a citizen.
- Commissioner Calderone suggested the background questionnaire be revised to ask about convictions for operating under the influence, instead of merely requests to perform a field sobriety test. Commissioner West responded that positive answers to questions are not automatic disqualifications; instead, they are meant to prompt discussion. Commissioner Kazarosian asked if a Conviction Without a Finding qualifies as a conviction. Commissioner Calderone raised further concerns that asking about anything less than a conviction would slow down the certification process, and potentially prevent successful certification.
- Commissioner Calderone also raised various concerns about the propriety of questions regarding accusations of domestic violence, child support, and violations of restraining orders.
- Commissioner Calderone raised concerns that a question regarding being asked to leave school was overly broad. Commissioner Luma agreed the question as written was too broad and could be misinterpreted, and asked the Commission to consider that certain communities have been disproportionately impacted in the realm of academics. Commissioner West agreed that the question could be narrowed to be asked about leaving attendance at school.
- Commissioner Calderone also raised concerns about the breadth of the social media question. Commissioner West suggested adding a time limitation to the question. Various Commissioners engaged in a discussion about what the time limitation should be, and agreed that consistency was important. Commissioner Bluestone reminded the Commission that its goal is to move towards unbiased policing and agreed with Commissioner Luma that the time limitation should go back to the age of 18.
- Based on concerns raised by Executive Director Zuniga and Mr. Povich about the need to certify law enforcement officers by the 22nd and the volume of discussion, the Chair suggested approving all other certification documents, except for the background questionnaire.
- The Commission discussed the standards for certifying law enforcement officers. Commissioner Bluestone raised a concern about the need to standardize the psychological evaluation and in particular, who is qualified to provide a psychological evaluation.
 - The Chair asked for a motion to approve the standards, subject to two modifications. Commissioner Kazarosian moved to approve the standards, subject to two modifications. Commissioner Wynn seconded the motion. The Commission unanimously approved the standards subject to two modifications.

- The Commission reviewed the background investigation attestation form. There was no substantive discussion.
 - The Chair asked for a motion to approve the background attestation form. Commissioner Wynn moved to approve the background attestation form. Commissioner Calderone seconded the motion. The Commission unanimously voted to approve the background investigation attestation form.
 - Commissioner Wynn asked if the investigation questionnaire could be approved as to concept, and delegated to a working group. General Counsel Ravitz advised that if the delegation was defined, it would be permissible. Commissioner Calderone expressed his disagreement with delegating the questionnaire and suggested the questionnaire be tabled until the next Commission meeting. Commissioner Wynn raised concerns about the timing of the graduating police academy class and the need to certify those officers. Various Commissioners again raised concerns about specific questions in the interview questionnaire.
 - The Chair suggested someone make a motion to approve Mr. Povich’s suggestion that, for the December 22 graduating class, an interview by a chief is sufficient, and the chief would need to decide on the content of the interview, and the Commission would strive to finalize a questionnaire for use with the January graduating class.
 - Commissioner Calderone so moved. Commissioner West seconded the motion. The Commission unanimously voted in favor of the motion.
 - The Chair also suggested a motion authorizing Commissioner West and General Counsel Ravitz to make non-material and non-substantive corrections to the standards for certifying law enforcement officers and the background investigation attestation form.
 - Commissioner Wynn moved to authorize Commissioner West and General Counsel Ravitz to make non-material and non-substantive corrections to the standards for certifying law enforcement officers and the background investigation attestation form. Commissioner Ellison seconded the motion. The Commission unanimously approved authorizing Commissioner West and General Counsel Ravitz to make non-material and non-substantive corrections to the standards for certifying law enforcement officers and the background investigation attestation form.
3. Draft Phase 1 Regulations: Review of Complaints by an Agency, Preliminary Inquiries, Suspensions and Disciplinary Hearings – Lon Povich, Mina Makarious and Annie Lee, Anderson & Kreiger
- Mr. Povich explained edits made to the definition of what is a “minor” complaint and what types of complaints do not need to be forwarded to the Commission.
 - Various Commissioners asked questions about the drafted language and Mr. Povich clarified.
 - Mr. Makarious explained that to address concerns about the single commissioner selection process, he inserted language requiring the selection to be pursuant to Commission policy. Mr. Makarious also explained various changes to the timing of revocation, suspension, and disciplinary hearings.

- Commissioner Calderone asked when the Commission could review a draft policy for selecting single commissioners. Mr. Makarios explained that such a policy could be developed while the hearing regulations are still in the promulgation process.
 - Ms. Lee explained additions made to the definition section.
 - Commissioner Calderone raised a concern about the breadth of “altercations.” Ms. Lee agreed and clarified that the definition may be redrafted.
 - Mr. Povich asked the Commissioners to provide their feedback on the draft Phase I regulations prior to December 25.
4. Executive Director Report
- The Commission recently welcomed Detective Lieutenant Gina Joyce and is in the process of hiring for seven more positions. Another two positions related to technology and communications/stakeholder engagement are being developed.
 - Executive Director Zuniga is developing the Commission’s staffing and fiscal plan with Commissioner Ellison. Executive Director Zuniga plans to present the Commission’s FY2023 plan at the Commission’s January meeting.
 - The Commission is narrowing in on a proposal for office space that would allow the Commission to have furnished office space ready for occupancy in mid-January.
 - The Commission only received two responses for its request for outside counsel. The Commission will go through the procurement process again in the hopes of attracting additional responses. Executive Director Zuniga expressed his hope that the two respondents would respond again. In the meantime, the emergency contract between the Governor’s office and Anderson & Kreiger LLP for outside counsel services will continue.
 - The Commission plans to receive records of transferred officers and terminated officers.
 - Commissioner Calderone moved to authorize the Executive Director and the General Counsel to approve extensions for good cause. Commissioner Wynn seconded the motion. The Commission unanimously extended the deadline by which those records need to be received by the Commission.
 - The Chair suggested the Commission form screening committees to evaluate candidates for the positions of director of certification and director of standards. The Chair announced the screening committee for the position of director of certification would comprise of Commissioners Calderone, Chery, and Bluestone, Executive Director Zuniga and General Counsel Ravitz. The screening committee for the position of director of standards would comprise of the Chair, Commissioners Kazarosian and West, Executive Director Zuniga, and General Counsel Ravitz.
5. Public comment
- The public raised questions relative to the interview questionnaire.
 - A member of the public raised a concern about certain questions re-traumatizing applicants. The Commission agreed to reconsider such questions.
 - A member of the public raised a question about anonymous complaints and department self-audits.

- A member of the public raised a question about the decision to follow a high degree of probability standard, instead of clear and convincing. The question was already addressed in the Phase I regulations.
6. Matters not anticipated by the Chair at the time of posting
 - The Chair did not have any new business.
 7. Adjourn
 - Commissioner Calderone moved to adjourn the meeting.
 - Commissioner Luma seconded the motion.
 - The Commission unanimously voted to adjourn the meeting.

PEACE OFFICER STANDARDS & TRAINING COMMISSION

November 22, 2021

8:30 AM

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

PUBLIC MEETING MINUTES

Documents Distributed in Advance of Meeting:

- Draft Meeting Minutes of October 18, 2021
- Memorandum from Executive Director Zuniga to Commission regarding Law Enforcement Officer Certification Standards
- Statutory Law Enforcement Officer Certification Requirements, Recommendations, and Considerations
- Draft Questionnaire for Law Enforcement Officer Applicants
- Draft Background Attestation Form for Law Enforcement Officer Applicants
- Draft Phase I Regulations

In Attendance:

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

1. Call to Order

- The Chair recognized a quorum.
- The Chair welcomed Randall Ravitz, the Commission's General Counsel.

2. Approval of Minutes of October 18, 2021 – VOTE

- Commissioner Calderone moved to approve the minutes.
- Commissioner Luma seconded the motion.
- The Commission unanimously voted to approve the minutes.

3. Executive Director Report

- Executive Director Zuniga continues to work with EOTSS on developing a database for accepting reports of complaints and MPTC on certification matters.
- The Request for Responses for outside counsel closes on November 22. Commissioners Kazarosian and West will serve on a subcommittee with Executive Director Zuniga to review responses.

- a. Staffing update
 - A conditional offer has been made for the position of an Administrative Assistant, pending a background check. If successful, that candidate will likely start in a week or two.
 - The Commission is undertaking its due diligence on candidates for the position of Chief Technology Officer.
 - The application period for the position of Chief Financial Officer has closed.
 - Postings for the Directors of Certification and Standards, including job descriptions and link to the application, are available on the website and candidates have begun applying.
- b. Office space
 - The process of obtaining office space has been progressing slower than desired. The Commission is looking to acquire space in Boston, but has only received one adequate response. However, there is at least one more response that will come in such that there may be four adequate responses.
 - Commissioner Ellison stated that he has been receiving calls from community organizations curious to learn more about the Commission and how it is functioning. There appears to be an appetite within the community for engaging with the Commission. To that end, diverse communities should receive information about open job postings. Executive Director Zuniga agreed, and suggested that Commission Ellison could begin by sharing the job postings on LinkedIn and with organizations that could further distribute the postings.
 - Commissioner Bluestone inquired if a non-attorney could assist with the review of Request for Responses for outside counsel. Chair Hinkle asked the Commission if others would be interested in joining the subcommittee and Commissioners Bluestone and Ellison expressed their interest. Chair Hinkle said she would speak with Executive Director Zuniga about the size of the subcommittee, and Executive Director Zuniga would follow up with Commissioner Bluestone.
 - Commissioner Calderone volunteered to serve on any subcommittees as needed.
 - Executive Director Zuniga clarified that there was no subcommittee reviewing the Requests for Responses for outside counsel.
 - Commissioner Luma expressed her agreement with Commissioner Bluestone about diversifying the professions and disciplines represented in any working group.
4. Discussion of Certification Standards: Chapter 6E section 4(f)(j) – Commissioner West
 - Commissioner West explained that the Commission’s enabling statute requires the establishment of minimum standards for law enforcement officer certification, as described in Executive Director Zuniga’s memo. Under the statute, officers are automatically certified prior to December 1, but post December 1, the Commission must certify law enforcement officers.
 - Under current practices, candidates who attend the Police Academy typically already have jobs with towns. Thus, the certification process should begin at the beginning of the process when candidates are interviewing for employment at the department level before attending the Police Academy.

- However, as described in Executive Director Zuniga’s memo, the Commission has to do this certification process on the back end as candidates are graduating from the Police Academy, rather than at the beginning of the employment process as would normally happen.
- The statute requires elements for certification that are already occurring, like completing a high school education and basic training.
- Three elements in the statute require more effort – a background check, an oral interview, and the determination of good moral character and fitness. Those elements could potentially happen at the front end of the employment process by local police chiefs with oversight by the Commission. To address that gap, Commissioner West has drafted a questionnaire for candidates and police chiefs to complete to ensure that the Commission is comfortable with those three elements that have presumably already happened at the local department level.
 - With regards to the background attestation, local police chiefs would attest that a candidate has successfully completed a background check. The list distributed includes items that are typically covered in a background check. Commissioner West also drew from the state police background check process.
 - In the future, police chiefs will be asked to do this work on the front end so candidates going through the Police Academy have already complied with these requirements.
 - Commissioner West has drafted a questionnaire for candidates to complete and for police chiefs to review with them, and interview and discuss any topics that a candidate answers in the affirmative.
 - General Counsel Ravitz advised that any restrictions in statute about what can be asked regarding criminal history is likely trumped by the Commission’s enabling statute, which gives the Commission broad powers to gather information and conduct interviews related to officer qualifications. However, sealing and expungement statutes may apply, if not also trumped by the Commission’s enabling statute.
 - Commissioner West clarified that the purpose of the questionnaire is to meet the minimum certification standards required by statute, but there are some items that are informed by the state police’s procedure, as well as standards in other states.
 - Commissioner Ellison asked how police chiefs will be held accountable when they are not always the party to conduct background checks. Commissioner West clarified that where the questionnaire is only meant to be a short-term solution, it is unlikely to come up, but agreed that the concern was well raised.
 - Commissioner Wynn added that police chiefs do not always make hiring decisions and raised concerns about the differences between levels of resources available to the state police and small towns. Commissioner Wynn also raised concerns about asking questions that may be covered by medical privacy and disability law. Commissioner West responded that the current class of candidates

does not implicate many small towns, but expressed her understanding that there may be some growing pains. She also clarified that the Commission was obligated to ask health-related questions because it is required in the enabling statute.

- Commissioner Calderone expressed his wishes that he had been included in the working group with the MPTC, and expressed concerns that the questionnaire was too far reaching, particularly with respect to social media.
 - Executive Director Zuniga clarified that the intent of the question is to discover membership in groups that may be set to “private.”
 - The Chair encouraged the Commissioners to direct their questions about these materials to Commissioner West via email.
5. Draft Phase 1 Regulations: Review of Complaints by an Agency, Preliminary Inquiries, Suspensions and Disciplinary Hearings – Lon Povich and Mina Makarious, Anderson & Kreiger
- Mr. Povich explained that in order for the Commission to decertify officers, it must first be able to accept complaints regarding those officers. These drafted regulations cover what is an actionable complaint and how to process and resolve those complaints.
 - Mr. Povich then explained the process for initially screening complaints.
 - Commissioner Bluestone asked if there was any discussion regarding age when identifying groups that may be subject to biased policing. Mr. Povich clarified that the groups identified are the groups listed in the Commission’s enabling statute, but provided that the Commission can expand on that identification.
 - Commissioner Ellison raised a concern that minor complaints may be a major issue if there are multiple minor complaints. Commissioner Luma agreed with the concern.
 - Commissioner Luma asked whether the Commission or the local police departments would determine if a complaint alleging bias was substantiated.
 - Commissioner Chery asked if there was any mechanism for an individual to directly complain to the Commission, and Mr. Povich confirmed there was.
 - Commissioner Wynn provided that the IACP had an alert system for officers who are accused of certain offenses, and that he would add those criteria to the regulations.
 - Mr. Povich next explained the internal investigation procedures.
 - Mr. Makarious then reviewed the preliminary inquiry and adjudication procedures.
 - Commissioner Ellison asked if the Commission was responsible for dealing with the financial aspects of suspending an officer. Mr. Makarious confirmed that the Commission is only responsible for licensing decisions and cannot affect bargained-for rights.
 - Mr. Makarious then reviewed the single commissioner review procedure.
 - Commissioners Calderone and Ellison expressed concerns about transparency and procedures for selecting a single commissioner to

preside over reviews. Mr. Makarios advised that as an internal decision among the Commission, that procedure did not have to be detailed in the regulations and that the Chair and Executive Director could provide guidelines or procedures in a separate policy.

- Mr. Makarios next reviewed the certification revocation procedures.
 - Commissioners Calderone, Bluestone, and West again raised concerns about the transparency of selecting single Commissioners. Mr. Povich suggested that he would try to draft a procedure for the Commission's feedback.
 - Commissioner Kazarosian expressed that she had concerns and asked where she could raise those. Mr. Povich directed her to raise it with Commission staff.
 - Mr. Makarios explained definitions and rules of constructions.
 - Ms. Lee reviewed the process for promulgating procedures.
6. Recent stakeholder meetings and outreach
- Commissioner Wynn briefed the Commission on the Chiefs' association's annual meeting. The Chair, Commissioner Wynn, Executive Director Zuniga, and Mr. Povich sat on a panel and were able to answer questions and receive feedback.
 - Executive Director Zuniga provided that he has received requests for meetings, and engaged in such meetings with various Commissioners, with community groups.
 - Commissioners Luma and Calderone expressed their interest in being part of those meetings.
7. Public comment
- There were no questions from the public.
8. Matters not anticipated by the Chair at the time of posting
- The Chair did not have any new business to raise.
9. Adjourn
- Commissioner Kazarosian moved to adjourn the meeting.
 - Commissioner Ellison seconded the motion.
 - The Commission unanimously voted to adjourn the meeting.

MEMORANDUM

TO: CHAIR MARGARET HINKLE
COMMISSIONER HANYA BLUESTONE
COMMISSIONER LAWRENCE CALDERONE
COMMISSIONER CLEMENTINA CHERY
COMMISSIONER LARRY ELLISON
COMMISSIONER MARSHA KAZAROSIAN
COMMISSIONER CHARLENE LUMA
COMMISSIONER KIMBERLY WEST
COMMISSIONER MICHAEL WYNN

FROM: ENRIQUE ZUNIGA

SUBJECT: DISCIPLINARY RECORDS SUBMITTALS REPORT

DATE: JANUARY 10, 2022

CC: COMMISSION PACKET JANUARY 14, 2022 MEETING

The following provides a summary of the process for submitting disciplinary records for active and transferred officers and reports on the status of the submittals by Law Enforcement Agencies (LEA's) as of January 8, 2022.

BACKGROUND:

Prior to issuing guidelines, and in anticipation of the statutory milestone for submitting disciplinary records of *active* personnel, some Law Enforcement Agencies began submitting a summary of those records, using a format that had been circulated, to the POSTCReports mailbox. On September 30, 2021, and in recognition that we needed uniformity in those submittals, POST provided a simplified format for the submittal of those records and extended the deadline to December 31, 2021.

In addition, and in anticipation of the statutory requirement to submit disciplinary records of *transferred* officers, POST began distributing agency-specific lists containing the names of individuals who had been employed by that agency, but still active in a different agency in the Commonwealth. We generated 378 individual lists with the help of the MPTC database and query capabilities and began distributing those lists to each of those agencies during December 2021. We note that there were 69 agencies which MPTC records indicated they had no former officers still active elsewhere. As the statute also provides, we have made available a list of all active law enforcement officers in the Commonwealth, so that LEA's can look up any individual who worked within their agency in the past, as the records of those individuals are also to be submitted to POST. The list of active officers is available on our website.

We provided instructions to deal with some discrepancies that we anticipated from those individualized lists, as well as the requirement to submit records for individuals who had resigned after April 1, 2021 to avoid discipline. The deadline for the submission of disciplinary records of transferred officers is January 31, 2022.

We have begun receiving some requests for extensions of the deadlines above and have been granting those requests if LEA's show good cause.

DISCIPLINARY RECORDS UPDATE:

As of January 8, 2022, there have been 1,137 different transmittals to the POSTCReports mailbox, that have been categorized as follows:

Disciplinary Records of Active Officers	Instances
Agencies that have submitted disciplinary records	320
Agencies requested and granted an extension *	9
Agencies with disciplinary records pending or not submitted **	118
Total number of Agencies	447

* 14 agencies requested extensions but 5 have already submitted

** A few agencies submitted a link to a "DropBox" or google doc drive (and have been placed as "pending")

In addition to the submissions above, 87 agencies have also submitted disciplinary records of transferred officers.

It is important to note that a fair amount of the transmittals have been resubmission, given that as mentioned above, a number of agencies began submitting records with the September 30 deadline in mind. We envision that there will be a fair amount of reconciliation to ensure we are in position of the most up to date information, and there is no duplication of records.

We also note that several submittals have been in a format that was not the format we specified (pdf, links to a cloud drive, etc.). We will begin the process of requesting that those agencies that submitted a different format, or modified the format we specified, re-submit those records in excel format. This will eventually facilitate the aggregating and compiling the disciplinary record data in a structured way in the centralized system that we are also currently designing and building. We envision that this process may be resource intensive, including the fact that several agencies will be asked to re-submit their data.

We will also be reaching out to agencies that have not submitted the records of active officers and shortly thereafter we will be reaching out to agencies that our records show should submit records of transferred officers with a reminder to also submit those records.

COMPLAINTS UPDATE:

As the statute provides, and when the Phase 1 regulations become effective, complaints are due to POST within 48 hours of receipt of such complaints. Although the regulations are not yet promulgated, and a form not yet specified by POST, LEA's have begun submitting complaints to POSTCReports mailbox, given guidance previously provided. These submittals are typically a scanned copy of the original complaint, sometimes handwritten by the complainant, and the submittals often include other supporting documentation (a complaint, a request for an investigation, an assignment of an investigation and a final report). These types of documents have begun flowing into the POSTCReports mailbox.

Complaints	Instances
Total number of complaints received to date *	695
Number of agencies with at least one complaint submitted	97

* Several agencies have submitted complaints/backup material that refer to information already in the disciplinary records.

Similar to the technology efforts of the disciplinary records described above, we are currently building a system to receive information on complaints in a structured way. We envision to have a form in our website that would capture the key fields in a complaint so that we begin aggregating that data and eventually analyzing and processing that information.

As we have been doing, we will continue to review and monitor the activity in this mailbox, as well as reconcile, aggregate and review information submitted to POST. Further, we will continue to provide these periodic reports to the Commission.

MEMORANDUM

TO: CHAIR MARGARET HINKLE
COMMISSIONER HANYA BLUESTONE
COMMISSIONER LAWRENCE CALDERONE
COMMISSIONER CLEMENTINA CHERY
COMMISSIONER LARRY ELLISON
COMMISSIONER MARSHA KAZAROSIAN
COMMISSIONER CHARLENE LUMA
COMMISSIONER KIMBERLY WEST
COMMISSIONER MICHAEL WYNN

FROM: GINA JOYCE

SUBJECT: LAW ENFORCEMENT OFFICER CERTIFICATION STANDARDS
UPDATE

DATE: JANUARY 14, 2022

CC: COMMISSION PACKET FOR JANUARY 14, 2022, MEETING

This memo provides an update in certifications issued to new law enforcement officers upon graduation from an approved academy after December 1, 2021.

The short-term certification process has been successful in ensuring candidates are certified and authorized to work as law enforcement officers as soon as possible. The current process is as follows:

1. POST-C collaborates with MPTC and/or directly obtains a list of academy officer candidates with information relative to
 - a. Name,
 - b. Date of birth,
 - c. Email address,
 - d. Hiring department,
 - e. Whether a psychological evaluation has been conducted, and if so, by whom (name and license number of licensed professional), and
 - f. Whether an oral interview was conducted, and by whom.
2. The Background Investigation and Character and Fitness Attestations are received by POST-C for each candidate directly from the hiring agency.
3. POST-C confirms with hiring departments that the candidate has successfully completed training on the date of graduation.

4. Certification notifications are emailed to the individual officer with a copy sent to the hiring department.

The certification notifications are available to be distributed upon graduation. For the MBTA class in December, the majority of officers were certified within 1-2 days of graduation. The delay in certification was due to pending receipt of attestations. For the Boston Police Department academy class, all officers were certified on the day of graduation.

A summary of certifications issued is provided below:

Academy	Graduation Date	# LE Agencies	# Officers Certified
MBTA	December 22, 2021	12	25*
Boston Police Dept	January 7, 2022	3	90
		15 Total	115 Total

*27 graduated with 2 certifications not issued; 2 are to be employed as auxiliary officers (with no police powers)

Attachment:
Example of Certification Notification



CHAIR

Margaret R. Hinkle

COMMISSIONERS

Hanya H. Bluestone
Lawrence Calderone
Clementina Chéry
Larry Ellison
Marsha V. Kazarosian
Charlene Luma
Kimberly West
Michael Wynn

**EXECUTIVE
DIRECTOR**

Enrique Zuniga

PEACE OFFICER STANDARDS AND TRAINING COMMISSION

Certification Notification

This notification certifies that

Jane Donahue

Date of Birth: 10/01/1996

has met statutory law enforcement certification requirements and is authorized by the Peace Officer Standards and Training (POST) Commission to legally work as a police officer in the Commonwealth of Massachusetts effective:

January 7, 2022

The following is the designated certification number assigned by the POST Commission to the above individual and this certification number will remain with the individual regardless of agency transfer:

DON-2022-89

(first three letters of last name – year of certification issuance – certification # for that year)

This certification is considered active for three (3) years from date of issuance unless it is suspended or revoked, or the officer is otherwise declared decertified.

Peace Officer Standards and Training Commission

Agency Official's Attestation Regarding Candidate Background Check

Pursuant to M.G.L. c. 6E, § 4(f)(1)(v), I attest that a state and a national background check was conducted on applicant _____. The background check included the following. (Please individually check off each action/query that was completed.)

- Fingerprinting
- Full employment history (where the applicant was previously employed in law enforcement in any state or United States territory or by the federal government, the applicant's full employment record, including complaints and disciplinary records, was reviewed). This includes a reference check with agencies where the individual was previously employed.
- KQ: Driver History
- BOP: MA Criminal History
- Q5: MA Suicide Check
- QWA: CJIS/NCIC Wanted/Missing Person/Vehicle
- WMS: MA Warrants
- SX: MA Sex Offender
- DQ: Out-of-State Driver's License
- BOPFI: MA License to Carry (LTC)/Firearms Identification Card (FID)
- FSI: MA Firearms Ownership
- QH/QR: Criminal History NCIC/III (AFIS-R)
- Coplink
- R3: MA Driver's License

I attest that the applicant has successfully completed the checked items above pursuant to the background check.

In addition, pursuant to M.G.L. c. 6E, § 4(f)(2)(ii)-(iii), I attest that the applicant has not been convicted of a felony and is not listed in the national decertification index (<https://www.iadlest.org/our-services/ndi/about-ndi>), and after conducting due diligence, mindful of the terms of Chapter 6E of the Massachusetts General Laws, I have not concluded that, if the

applicant was previously employed in law enforcement in any state or United States territory or by the federal government, the applicant would have had their certification revoked by the POST Commission if employed by an agency in the Commonwealth.

Signature: _____

Chief: _____

Agency: _____

Date: _____

Peace Officer Standards and Training Commission

Agency Official's Attestation Regarding Candidate's Character and Fitness

Instructions for Agency Head:

Your continued efforts to ensure that the Commonwealth's law enforcement officers are qualified and deserving of the public's trust are greatly appreciated. In order to be certified as a law enforcement officer by the Peace Officer Standards and Training (POST) Commission in accordance with Chapter 6E of the Massachusetts General Laws, an individual must be of good moral character and fit for employment in law enforcement. The POST Commission thus asks that you provide this attestation form to the individual within your agency who has been charged with evaluating the character and fitness of the relevant candidate. That individual should review the results of background checks concerning the candidate, conduct an oral interview of the candidate, and take other steps necessary to diligently complete a thorough examination of whether the candidate possesses the requisite character and fitness. After completing those steps, the evaluator should execute the attestation below. Ultimately, the evaluator's determination as to a candidate's character and fitness for employment should be based on the totality of the information obtained. Please be advised that, if the evaluator attests that the candidate does possess such character and fitness without having thoroughly or diligently investigated the candidate, the evaluator's actions may be reported to the POST Commission and considered a complaint against the evaluator that is subject to investigation and possible sanction by the Commission.

Attestation:

I, _____ (name of agency official charged with evaluating candidate's character and fitness), a member of the _____ (name of agency), attest that I have reviewed the results of background checks concerning _____ (name of candidate), conducted an oral interview of the candidate, and taken other steps necessary to diligently complete a thorough examination of whether the candidate possesses good moral character and fitness for employment in law enforcement. I believe that the candidate _____ (does / does not) possess good moral character and fitness for employment in law enforcement, and specifically as an officer with the agency. I additionally state as follows (optional):

I make this attestation under the pains and penalties of perjury.

Signature: _____

Date: _____

Peace Officer Standards and Training Commission
Questionnaire for Applicants

Instructions for Applicant: Thank you for your interest in serving the People of Massachusetts as a law enforcement officer. Your desire to devote yourself to keeping our communities safe is commendable. In light of the importance of the role of peace officer, the responsibility that it entails, and the benefits of ensuring public confidence in law enforcement, your candidacy will be evaluated carefully. To facilitate a thorough evaluation process, you are asked to complete this questionnaire. Please note that affirmative responses to the questions below will not necessarily disqualify you from serving as an officer. The agency to which you are applying is encouraged to discuss any such affirmative response with you, to consider the severity of the circumstances and the length of time that has passed since the occurrence of any event that you identify, and to base any determination of your character and fitness for employment on the totality of the information that it obtains. If a particular question is not applicable to you, write "N/A" in the space below the question. If you have a good faith belief that you cannot answer a question completely and accurately without waiving a privilege, protection, or right recognized by law, you may state that belief in lieu of answering. However, it is important that any answer you provide is complete and accurate. If you intentionally make any false statements, or intentionally omit any pertinent information other than as provided above, your application will need to be disqualified and, if you have been certified as a law enforcement officer, the matter will need to be reported to the POST Commission and considered a complaint subject to investigation and possible sanction by the Commission.

Instructions for Agency Head or Designee: Your continued efforts to ensure that the Commonwealth's law enforcement officers are qualified and deserving of the public's trust are greatly appreciated. This questionnaire is designed to further that same objective. Please administer the questionnaire to each applicant. Note that affirmative responses to the questions below will not necessarily disqualify an applicant, and they should not automatically be treated by your agency as a basis for finding that an applicant lacks the requisite character and fitness for employment. Rather, you should discuss the details of any affirmative response with the applicant, and you are encouraged to consider the severity of the circumstances and the length of time that has passed since any event that the applicant identifies. Ultimately, your determination as to a candidate's character and fitness for employment should be based on the totality of the information that you obtain.

1. Have you ever applied to any other law enforcement or corrections agency? If so, were you offered the position for which you applied? If you were not offered the position, what was

the reason, if you know? Please provide the requested information as to each such application.

2. Have you ever been found by an employer to have engaged in harassment or by a school to have violated a Title IX policy (that is, one that prohibits sex-based discrimination in any school or other education program that receives federal funds)? If so, please provide details as to each such occurrence.
3. In any other prior employment or employer/employee setting, have you ever been found to have violated M.G.L. c. 151B, which concerns unlawful discrimination because of race, color, religious creed, national origin, ancestry or sex?
4. Were you ever expelled from, or asked to terminate your enrollment at, a school based on disciplinary issues? If so, please provide details as to each such event.
5. Have you ever been expelled, been released, been dismissed, or resigned from a law enforcement academy or law enforcement training course in any jurisdiction, for any reason other than an injury? If yes, please provide the details, including the jurisdiction and your dates of attendance, as to each such occurrence.
6. Have you ever been flagged or restricted by a social media network for comments you made that violated the policies of the social media network? Have you had comment or posts removed from any network?
7. Have you been involved in a physical altercation with any other person within the last five years? If yes, please provide details as to each such altercation.

I _____ (name of candidate) hereby swear or affirm under penalties of perjury that the information provided within my application is true and complete.

Signature: _____

Date: _____

Date: _____

Peace Officer Standards and Training Commission

Questions and Instructions for Law Enforcement Officer Applications

The Peace Officer Standards and Training Commission directs each law enforcement agency to ask all questions listed below to each candidate for appointment as a law enforcement officer, within a written application for appointment. The Commission further directs each such agency to incorporate the “Instructions for Applicant” provided below, or substantially similar instructions, into any such application; and to provide the “Instructions for Agency Head or Designee” stated below, or substantially similar instructions, to any personnel who may administer or review such an application.

To ensure that such questions are asked, and to aid in the implementation of M.G.L. c. 6E, § 4(f), the Commission requests that the Municipal Police Training Committee incorporate the questions provided below, as well as the “Instructions for Applicant” stated below, or substantially similar instructions, into any standard application for appointment as a law enforcement officer that the Committee may develop. The Commission further requests that the Committee incorporate the “Instructions for Agency Head or Designee” stated below, or substantially similar instructions, into any guidelines for administering applications that it may develop for agencies.

Instructions

Instructions for Applicant: Thank you for your interest in serving the People of Massachusetts as a law enforcement officer. Your desire to devote yourself to keeping our communities safe is commendable. In light of the importance of the role of peace officer, the responsibility that it entails, and the benefits of ensuring public confidence in law enforcement, your candidacy will be evaluated carefully. To facilitate a thorough evaluation process, you are asked to complete this application. Please note that affirmative responses to the questions below will not necessarily disqualify you from serving as an officer. The agency to which you are applying is encouraged to discuss any such affirmative response with you, to consider the severity of the circumstances and the length of time that has passed since the occurrence of any event that you identify, and to base any determination of your character and fitness for employment on the totality of the information that it obtains. If a particular question is not applicable to you, write “N/A” in the space below the question. If you have a good faith belief that you cannot answer a question completely and accurately without waiving a privilege, protection, or right recognized by law, you may state that belief in lieu of answering. However, it is important that any answer you provide is complete and accurate. If you intentionally make any false statements, or intentionally omit any pertinent information other than as provided above, your application will need to be disqualified and, if you have been certified as a law enforcement officer, the matter will need to be reported to the POST Commission and considered a complaint subject to investigation and possible sanction by the Commission.

Instructions for Agency Head or Designee: Your continued efforts to ensure that the Commonwealth’s law enforcement officers are qualified and deserving of the public’s trust are

greatly appreciated. This application is designed to further that same objective. Please administer the application to each applicant. Note that affirmative responses to the questions below will not necessarily disqualify an applicant, and they should not automatically be treated by your agency as a basis for finding that an applicant lacks the requisite character and fitness for employment. Rather, you should discuss the details of any affirmative response with the applicant, and you are encouraged to consider the severity of the circumstances and the length of time that has passed since any event that the applicant identifies. Ultimately, your determination as to a candidate's character and fitness for employment should be based on the totality of the information that you obtain.

Questions

1. Have you ever been arrested or been the subject of a criminal complaint as an adult or as a juvenile? If so, please indicate the disposition of each case, including any dismissal or other disposition not resulting in a conviction.
2. Have the police ever been called to your current residence or any former residence of yours, while you were a resident or occupant therein, based on a complaint about your conduct? If so, please give the address of each residence and the date of each occurrence.
3. Has a report pursuant to M.G.L. c. 119, § 51A, regarding suspected abuse or neglect of a child in your household ever been filed by a mandated reporter? If so, please give the date and circumstances of each such report.
4. Have you received more than three traffic citations in the last three years? If yes, please give the details, date, and location of each citation.
5. Has your license to drive ever been suspended or revoked? Have you ever had an occupational license suspended or revoked? If either answer is yes, please provide details for each such suspension or revocation.
6. Have you ever been charged with a violation of M.G.L. c. 90 § 24, which concerns driving while under the influence of drugs or alcohol? If yes, please give the details, date, and court where the action was initiated.
7. Have you ever served in the armed forces? If so, please give the details of your service. Was your discharge anything other than honorable? If so, please explain.
8. Have you ever been found delinquent in paying child support? If so, please provide details regarding each such instance.
9. Have you ever been the subject of a restraining order or any other court order that restricted, or imposed consequences based on, your conduct? Have you ever been found in violation of either? If so, please give the details regarding each order, including the timeframe in which it was issued and the identity of the court that issued it.

10. Have you ever been dismissed or asked to resign from any employment? Have you ever been dismissed from, or not re-appointed to, a position in law enforcement? If the answer to either question is yes, please provide details as to each such instance.
11. Have you ever been subjected to disciplinary action in connection with any employment? If yes, please give details as to each such incident.
12. If you have been previously employed in a law enforcement capacity in any jurisdiction other than Massachusetts, please provide the full employment and disciplinary file.
13. Are you current in all tax payments? This includes federal and state taxes as well as property and excise taxes. (Note: if you are subject to and in compliance with a payment plan established by the federal or state government, you may answer “yes” to this question.) If no, please explain.
14. Have you ever declared bankruptcy? If the answer is yes, please provide the timeframe and details, as well as the court, as to each such occurrence.
15. Have you ever been flagged or restricted by a social media network for comments you made that violated the policies of the social media network? Have you had comment or posts removed from any network?
16. In the last five years, have you ever sent or displayed a public communication on social media that you believe could be perceived as biased against anyone based on their actual or perceived race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status, or socioeconomic or professional level, provided you were at least 18 years old at the time? If yes, please provide each such public communication, and details. For these purposes, “communications” include, without limitation, posts, comments, and messages; and “public” communications are those that were made available to three or more people other than you.
17. Please list every social media network as to which you have ever maintained an account, and every name by which you have identified yourself in using each network.
18. Do you currently belong, or have you ever belonged, to any organization that, at the time you belonged, unlawfully discriminated (including by limiting membership) on the basis of actual or perceived race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status, or socioeconomic or professional level? If so, please provide details regarding each such organization.
19. Have you ever tested positive for illegal drugs? If so, please state when and for what substances.
20. Do you consume alcohol? Do you use cannabis recreationally? If yes, please describe the frequency and amount of your consumption.

21. Have you ever been involved in a civil suit in which it was alleged that you acted violently or abusively towards another person? If so, please provide details as to each such suit.
22. Have you ever received a license or permit to possess or carry a firearm, of any type? If so, for each such license or permit, please indicate the issuing jurisdiction or official; indicate whether any such license or permit has ever been revoked or suspended; and if it has been revoked or suspended, provide details.
23. Thinking broadly, do you have any knowledge or information, in addition to that specifically addressed in the preceding questions, which is or which may be relevant, directly or indirectly, to your eligibility or fitness to be appointed as a law enforcement officer with this law enforcement agency? This would include, but is not limited to, knowledge or information concerning your character, temperament, habits, employment, education, criminal records, traffic violations, residence, or otherwise.

MEMORANDUM

TO: CHAIR MARGARET HINKLE
COMMISSIONER HANYA BLUESTONE
COMMISSIONER LAWRENCE CALDERONE
COMMISSIONER CLEMENTINA CHERY
COMMISSIONER LARRY ELLISON
COMMISSIONER MARSHA KAZAROSIAN
COMMISSIONER CHARLENE LUMA
COMMISSIONER KIMBERLY WEST
COMMISSIONER MICHAEL WYNN

FROM: GINA JOYCE

SUBJECT CERTIFICATION PROCESS FOR SPECIAL STATE POLICE OFFICERS

DATE: JANUARY 14, 2022

CC: COMMISSION PACKET FOR JANUARY 14, 2022, MEETING

This memo describes a plan to finalize a temporary process for Special State Police Officer (SSPO) certification. With approval by the Commission, we are hoping to begin certifying SSPOs in the Commonwealth to meet the needs of the agencies and the specific communities they serve.

Special State Police Officers get their police powers through appointment by the Colonel of the Massachusetts State Police in accordance with MGL c. 22C S 51-69 for the purpose of providing public safety services throughout the Commonwealth for institutions or facilities such as universities, colleges, health care institutions, and railway corporations. The institutions are granted approval by the Colonel, then the president of the facility/institution must designate a Qualified Officer who is responsible for all SSPOs employed by that agency. The Qualified Officer submits completed application packages to the MSP Certification Unit for processing and sworn members of the unit conduct background investigations and ensure training and educational standards have been met. Once approved, each SSPO is issued a warrant of appointment granting them police powers on all grounds owned or occupied by the hiring agency or institution. All SSPOs must adhere to 515 CMR 5.01 Chapter 5.00: Standards of Skill for Special State Police Officers.

Special State Police Officers get their police powers through appointment by the Colonel of the Massachusetts State Police in accordance with MGL c. 22C S 51-69 for the purpose of providing public safety services throughout the Commonwealth for institutions or facilities such as universities, colleges, health care institutions, and railway corporations. The institutions are granted approval by the Colonel, then the president of the facility/institution must designate a Qualified Officer who is responsible for all SSPOs employed by that agency. The Qualified Officer submits completed application packages to the MSP Certification Unit for processing and sworn members of the unit conduct background

investigations and ensure training and educational standards have been met. Once approved, each SSPO is issued a warrant of appointment granting them police powers on all grounds owned or occupied by the hiring agency or institution. All SSPOs must adhere to 515 CMR 5.01 Chapter 5.00: Standards of Skill for Special State Police Officers.

The added step of POST Commission certification is now required prior to the warrant of appointment by the Colonel.

The current warranted SSPO statistics are as follows:

# SSPO Facilities	# Active SSPOs
90	1363*

*This number changes daily due to renewals, expirations, and newly appointed officers.

In consultation with the MSP Certification Unit and MPTC, we determined the following is the preferred process to issue certifications to SSPOs upon their completion of an academy and fulfillment of other statutory requirements.

1. The hiring law enforcement agency conducts an interview and provides a conditional offer of employment. The hiring agency conducts their own due diligence and advises the MSP Certification Unit that they believe their hire is of good moral character based on their findings.
2. The hiring agency will obtain a verification letter from MPTC that the proper training has been obtained with no breaks in service and will:
 - a. Forward a minimum of three letters of reference to the MSP Certification Unit
 - b. Upload the application into the MSP Certification database along with attached documents
 - c. Confirm a psychological evaluation was conducted and provide the name and license number of the professional to the MSP Certification Unit
 - d. Conduct the oral interview (administer questionnaire when approved)
 - e. Complete the Character and Fitness Attestation.
3. The MSP Certification Unit collects and/or performs the following:
 - a. Completes the Background Investigation Attestation (background and fingerprint-based queries performed by MSP)
 - b. Obtains and reviews three letters of reference
 - c. Obtains and reviews SSPO application
 - d. Collects and reviews Character and Fitness Attestation (performed by hiring agency)
 - e. Confirms the passing of a psychological evaluation
 - f. Confirms the completion of the oral interview with names of interviewers (reviews questionnaire when approved)
 - g. Verifies other criteria (age, high school degree/equivalent, etc.) and ensures MPTC training requirements have been obtained.
4. MSP Certification Unit forwards the completed information to POST-C.

5. POST-C issues the certification for the SSPO and sends it directly to the MSP Certification Unit.
6. MSP issues the SSPO warrant and sends the warrant, along with POST Commission Certification Notification to the SSPO

**PEACE OFFICER STANDARDS AND TRAINING COMMISSION
PROTOCOL FOR CERTIFYING SCHOOL RESOURCE OFFICERS
(PROPOSED)**

A. Definitions.

As used herein:

1. “Application” refers to an application for certification.
2. “Appointing authority” refers to the law enforcement agency that appointed an individual to serve as an SRO.
3. “Certification” and “certify” refer to the specialized SRO certification provided for by M.G.L. c. 6E, § 3(b).
4. “Evaluation date” means: with respect to past or present appointees, July 1, 2021 or the date of appointment to serve as an SRO, whichever is later; and with respect to prospective appointees, the date of the application.
5. “Executive Director” refers to the Executive Director of the POST Commission.
6. “Initial Certification Process” refers to the process described in Section D below.
7. “MOU” refers to a memorandum of understanding.
8. “MPTC” refers to the Municipal Police Training Committee established pursuant to M.G.L. c. 6, § 116.
9. “Present or past appointee” refers to an individual who has served by appointment as an SRO for any period of time between July 1, 2021 and the conclusion of the Initial Certification Process.
10. “POST Commission” means the Peace Officer Standards and Training Commission established pursuant to M.G.L. c. 6E.
11. “Prospective appointee” means an individual other than a past or present appointee for whom certification is sought.
12. “SRO” means “school resource officer” as that term is currently defined by statute:
[1] a duly sworn municipal police officer with all necessary training, [sic] up-to-date certificates, including special

school resource officer certification as required by [M.G.L. c. 6E, § 3(b)] or [2] a special officer appointed by the chief of police charged with: (i) providing law enforcement; (ii) promoting school safety and security services to elementary and secondary public schools; and (iii) maintaining a positive school climate for all students, families and staff. M.G.L. c. 71, § 37P (bracketed text added). An individual does not fall within the second definition unless she or he is charged with performing all three of the duties listed.

B. Temporary Certification

An individual who is serving by appointment as an SRO on the date of this protocol's adoption shall be temporarily certified until the conclusion of the Initial Certification Process.

C. Application

1. Each application shall include an attestation that addresses whether the requirements set forth in Section G are satisfied.
2. Neither an application nor an attestation will be deemed sufficient unless it has been executed and submitted by an appointing authority, except where the Executive Director, in his discretion, allows otherwise.

D. Initial Certification Process for Past or Present Appointees

1. Each appointing authority shall submit an application for a past or present appointee by February 14, 2022, unless the Executive Director, in his discretion, allows submission after that date.
2. Except as provided in Subsections F.2 and F.3, a past or present appointee shall be certified if the application includes a sufficient attestation that the requirements in Section G are satisfied, and otherwise shall not be certified.
3. The certification of a past or present appointee pursuant to the Initial Certification Process shall be retroactive to the evaluation date.
4. The Executive Director shall, in his discretion, determine the date of conclusion of the Initial Certification Process.

E. Prospective Appointees

Except as provided in Subsections F.2 and F.3, a prospective appointee shall be certified if the application includes a sufficient attestation that the requirements set forth in Section G are satisfied, and otherwise shall not be certified.

F. Decision on Certification

1. Except as provided in Subsections F.2 and F.3, a decision on certification shall be rendered within a reasonable time.
2. The Executive Director may, in his discretion, withhold a decision regarding an individual's certification for any reason, including to seek advice or direction from members of the Commission.
3. The members of the Commission may collectively decide: to deny certification where the requisite requirements are satisfied; to grant certification where the requisite requirements are not satisfied; or to otherwise suspend or deviate from any aspect of this protocol, in their discretion.

G. Requirements for Certification

Except as provided in Subsections F.2 and F.3, certification requires:

1. All the following, as of the evaluation date:
 - a. The appointing authority's development of SRO operating procedures that substantially conform to the requirements of M.G.L. c. 71, § 37P(d), fourth paragraph.
 - b. The appointing authority's development of a sufficient MOU concerning the SRO arrangement. For these purposes, an MOU is sufficient if it is consistent with either: M.G.L. c. 71, § 37P(b), fourth and fifth paragraphs; M.G.L. c. 71, § 37P(b), third and fourth paragraphs, as they appeared on December 30, 2020; or the model MOU that was issued by the Massachusetts Attorney General, Executive Office of Public Safety and Security, and Department of Elementary and Secondary Education and dated September 5, 2018.
 - c. The appointing authority's determination that the individual for whom certification is sought passed a background check that was consistent with either: the Law Enforcement Officer Certification Standards adopted by the POST Commission and the MPTC in December 2021; or the provisions concerning background checks of current or prospective school personnel found at M.G.L. c. 71, § 38R and 603 CMR 51.00.

2. Successful completion, by the individual for whom certification is sought, of any SRO training offered by the MPTC; or an assurance, by the appointing authority, that the individual will be required to complete such training.

1.01 Review of Complaints by Agency.

- (1) Transmittal of Complaint by Agency to Commission. The head of an agency shall, within two (2) business days of their receipt of a complaint alleging the misconduct of an officer from a member of the public, from personnel at the agency, or from any other source, do the following:
- (a) if the complaint does not involve allegations of (1) bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status or socioeconomic or profession level; (2) excessive, prohibited or deadly force; or (3) actions which resulted in serious bodily injury or death; and the complaint is related to minor matters, a category that includes discourtesy and basic work rule violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions:
 - (i) refer the complaint for resolution under the agency's informal resolution policy, if the agency has such a policy and such a policy is in full compliance with the minimum requirements for such policies as set out by the commission;
 - (ii) if the agency does not have an informal resolution policy or such a policy is not in full compliance with the minimum requirements for such a policy set out by the commission, or if the matter cannot be resolved under xxx CMR 1.01(1)(a)(i) for any other reason:
 - (a) maintain the written complaint, the name and commission certification identification number of the subject officer, a brief summary of the nature of the conduct that is the subject of the complaint, and any other documentation that the agency deems material to an understanding of the complaint and the agency's handling of the complaint or that the commission directs the agency to maintain; and
 - (iii) make such complaints available to the commission upon request, or under any policy that may be established by the commission.
 - (b) if the complaint is not of the type described in XXX CMR 1.01(1)(a), transmit a description of the written complaint and a copy of any written complaint to the division of standards, and provide the following information, if known, in a form to be prescribed by the commission:
 - (i) the name and commission certification identification number of the subject officer;
 - (ii) the date and location of the incident giving rise to the complaint;

- (iii) the identity of the alleged victim of the misconduct described in the complaint;
 - (iv) the alleged victim's race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, socioeconomic or professional level, and any other relevant demographic information if the victim volunteered such information, provided that nothing herein should be construed to require that such information be elicited from the alleged victim or complainant;
 - (v) whether the complainant alleges that the officer's conduct: (i) was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status or socioeconomic or professional level; (ii) was unprofessional; (iii) involved excessive, prohibited or deadly force; or (iv) resulted in serious bodily injury or death.
- (c) notwithstanding the foregoing:
- (i) Anonymous complaints that do not provide an adequate basis for investigation need not be forwarded to the commission.
 - (ii) An agency need not forward to the commission any investigatory materials that were necessarily compiled out of the public view by law enforcement or other investigatory officials, the disclosure of which materials to the commission would prejudice the possibility of effective law enforcement to the extent that such disclosure would not be in the public interest.
 - (iii) An agency may forward any complaint or any pattern of complaints to the commission at the agency's discretion.

(2) Minimum Standards for Internal Agency Review.

- (a) The agency shall commence, as soon as practicable, but in any case within fourteen (14) days, of the receipt of the complaint by the agency, an internal investigation of the subject matter of any complaint forwarded to the division of standards under XXX CMR 1.01(1)(b).
- (b) The internal investigation may, but in the case of a complaint alleging an officer-involved injury or death, improper use of force or biased behavior shall, be assigned to an investigator employed by the agency or to an outside investigator retained by the agency. The investigator shall be free from conflict of interest, bias, prejudice or self-interest, and shall report, for the purpose of the investigation, directly to the head of the agency, or to a designated official immediately subordinate to the head of the agency,

unless the head of the agency or immediate subordinate is the subject of or implicated by the complaint, or is otherwise unable to supervise the investigator due to conflicts of interest, or the potential for bias, prejudice, or self-interest whether apparent or perceived.

- (c) The investigator shall:
 - (i) begin the investigation by taking all reasonable steps necessary to preserve, and consider, all potentially relevant evidence, including but not limited to documents, e-mails, text messages, photographs, audio and video recordings and the like;
 - (ii) conduct, to the extent feasible, interviews of relevant witnesses, including but not limited to the complainant, the alleged victim if different from the complainant, the officer implicated by the complaint, and all other officers and individuals who were present at or were witness to the incident. Such interviews should be audio recorded if feasible. Officers shall have the right to be represented by counsel, union representatives or other representatives to the same extent they would under their Agency's policies. Other interviewees shall have an opportunity to be represented by counsel, or other representatives at their own expense. The agency shall, at its expense, provide translation services where necessary to conduct an interview;
- (d) The investigation shall be conducted confidentially to the extent permitted by law; and
- (e) The investigation shall be completed as soon as practicable, but in any case, within ninety (90) days of the agency's receipt of the complaint. If the agency anticipates that the investigation will take longer than 90 days, the agency shall promptly request an extension of time from the division of standards and provide in the request a proposed schedule for completion of the investigation and the reasons for the need for additional time to complete the investigation, prior to the expiration of the 90 days.

(3) Internal Investigation Reports.

Upon completion of the internal investigation, the head of the agency shall immediately transmit an investigation report signed by the investigator to the division of standards, in a form to be prescribed by the division of standards, which includes:

- (a) a statement of the allegation of the complaint;
- (b) a description of the investigation and disposition of the complaint, including any disciplinary action recommended by the investigator or a

supervising officer to the head of the agency and any disciplinary action imposed by the head of the agency;

- (c) a list of any witnesses interviewed, whether each interview was recorded and if not, the reasons for not recording the interview, and a description of all evidence collected;
- (d) whether any witnesses or evidence were inaccessible and a description of the circumstances evidencing the unavailability of said witnesses, and whether any relevant evidence was destroyed or lost and a description of the circumstances of such a destruction or loss;
- (e) the facts found by the investigator;
- (f) a determination by the investigator of whether the facts sufficiently reflect conduct proscribed by law or standards applicable to officers;
- (g) the reasons for any delay in completion of the investigation report beyond the 180 days set forth in XXX CMR 1.01(2)(e);
- (h) if any disciplinary action recommended by the investigator or imposed by the head of the agency included retraining, suspension or termination, a recommendation by the head of the agency as to whether and how the commission should impose disciplinary action, including but not limited to retraining, or suspension or revocation of the officer's certification; and
- (i) whether the officer is represented by counsel or other authorized representative.

(4) Final Disposition of Internal Investigations by an Agency.

Upon determining the final disposition of the complaint and final discipline to be imposed by the agency, if any, the head of the agency shall immediately transmit to the division of standards a final report in a form to be prescribed by the commission, which shall include:

- (a) a description of the adjudicatory process that resulted in any discipline;
- (b) any disciplinary action initially recommended by the investigator or a supervising officer;
- (c) any discipline imposed by the head of the agency;
- (d) if the disciplinary action recommended by the investigator or imposed by the head of the agency included retraining, suspension or termination: a recommendation by the head of the agency with supporting facts based on the investigation report and other relevant information as to whether and how the commission should impose the recommended disciplinary action,

including retraining, or suspension or revocation of the officer's certification; and

- (e) whether the officer is represented by counsel or other authorized representative.

(5) Notice of Officer Resignation Pending Agency Internal Investigation or Discipline.

If an officer resigns prior to the conclusion of an internal investigation by the agency or prior to the imposition of agency discipline:

- (a) The head of the agency shall immediately transmit to the division of standards a report in a form to be prescribed by the commission, which at a minimum shall include:

- (i) the officer's full employment history; including dates of hire, resignation, retirement, any promotions and assignments; a chronology of any complaints, internal investigations, reprimands, discipline imposed, retraining, or other applicable sanctions; and any commendations and awards received by the law enforcement officer related to his/her duty as a law enforcement officer.

- (ii) a description of the circumstances, events or complaints surrounding the officer's resignation;

- (iii) the status or results of any investigation as of the date of the transmission of the report to the commission regarding those events or complaints; and

- (iv) a recommendation by the head of the agency as to whether and how the commission should impose disciplinary action by the commission, including suspension or revocation of the officer's certification, or the conditions the officer must meet prior to applying for any reinstatement or certification, if such reinstatement or certification is appropriate.

- (b) The agency shall, nonetheless, complete the investigation regardless of the officer's resignation, and, once the investigation is completed, transmit a final report that conforms to XXX CMR 1.01(4) to the division of standards.

1.02 Preliminary Inquiries.

- (1) Upon receipt and initial review of every complaint, the division of standards shall make a determination as to whether the complaint:

- (a) does not involve allegations of (1) bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status or socioeconomic or profession level; (2) excessive, prohibited or deadly force; or (3) actions which resulted in serious bodily injury or death; and
- (b) the complaint is related to minor matters, a category that includes discourtesy and basic work rule violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions.

If the division of standards determines that the complaint has characteristics (a) and (b), then it shall not be required to take any further action relative to the complaint.

- (2) If the division of standards cannot, upon receipt and initial review, make the determination described in XXX CMR 1.02(1), the division of standards shall present the complaint and any related information, report or evidence in the possession, custody or control of the division of standards that may be relevant to the consideration of the complaint, to the chair and the executive director for review. If, at any time, the division of standards, the executive director, or the chair recommends that the division of standards conduct a preliminary inquiry pursuant to M.G.L. c. 6E, § 8(c)(1), the chair shall place the question of whether to conduct such an inquiry on the next available commission agenda, or call a meeting for the purposes of discussion of that question.
- (3) Notwithstanding the foregoing, the commission shall direct the division of standards to conduct a preliminary inquiry if the head of an agency submits, at any time, an affirmative recommendation for disciplinary action by the commission, including retraining, or suspension or revocation of the officer's certification, or if the commission, at any time, concludes that there is sufficient credible evidence that the officer:
 - (a) was involved in an officer-involved injury or death;
 - (b) committed a felony or misdemeanor, whether or not the officer has been arrested, indicted, charged or convicted; or
 - (c) engaged in conduct prohibited by M.G.L. c. 6E, §§ 14 or 15.
- (4) At the recommendation of the division of standards, the commission may, at any time, direct the division of standards to conduct a preliminary inquiry if the commission determines that there is sufficient evidence that the officer engaged in prohibited conduct other than the conduct described in XXX CMR 1.02(3)(c)(1)-(c)(3).

1.03 Confidentiality of Preliminary Inquiries. All proceedings and records relating to a preliminary inquiry by the division of standards, including any internal review to determine whether there is sufficient credible evidence to initiate a preliminary inquiry, shall be kept strictly confidential to the extent permitted by law, except that the executive director may provide evidence which may be used in a criminal investigation to the attorney general, the United States attorney, or a district attorney of competent jurisdiction.

1.04 Required Notification of Preliminary Inquiries. The division of standards shall, within thirty (30) days of the commission's vote to authorize a preliminary inquiry, notify the officer who is subject to the inquiry, the head of the agency, and the head of the officer's collective bargaining unit, of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue.

1.05 Conduct of Preliminary Inquiries.

(a) Collection of Information.

(i) The division of standards may, in connection with a preliminary inquiry, obtain or provide pertinent information, including any information regarding grants of immunity, regarding officers, agencies, witnesses, or complainants, from or to law enforcement agencies and other domestic, federal or foreign jurisdictions, including the Federal Bureau of Investigation, and may transmit or receive such information electronically or via other secure methods.

(ii) To support its own preliminary inquiry the division of standards may request, by writing to the head of the agency, that the agency produce all records relating to its internal investigation of a complaint. The agency shall produce all such records to the division of standards within fifteen (15) days of the division of standards' demand, unless the division of standards allows a longer period of time.

(iii) Upon written request by the division of standards, the agency shall make its best efforts to make witnesses available to the division of standards, or if requested by the division of standards, to coordinate its internal investigation with the division of standards' preliminary inquiry.

(b) Subpoenas. The division of standards is authorized in the name of the commission to issue subpoenas in the conduct of preliminary inquiries, to compel the attendance of witnesses, to compel the production of documents and records at any place within the commonwealth, to administer oaths, and to require testimony under oath. Subpoenas may be served by commission employees and agents, including contracted

investigators. The form of subpoenas shall adhere, in so far as practicable, to the form used in civil cases before the courts, and witnesses shall be summoned in the same manner as witnesses in civil cases before the courts.

- (c) Contractor Investigators. The commission may retain qualified contractor investigators, either directly or pursuant to contracts with private investigative businesses or other qualified entities, to assist the division of standards in conducting preliminary inquiries. Before a contractor investigator can participate in any preliminary inquiry, the investigator shall execute a certification acknowledging: the investigator's full understanding and acceptance of the authority given; the investigator's freedom from conflict of interest, bias, prejudice or self-interest; applicable confidentiality provisions; and appropriate limits to the investigator's authority.

1.06 Suspension of Certification Pending Preliminary Inquiry; Interim Reports.

- (a) If at the time the commission authorizes a preliminary inquiry, or at any time during the course of the preliminary inquiry, the division of standards concludes that the suspension of the officer is warranted pending completion of the preliminary inquiry, the division of standards shall recommend such a suspension to the chair and provide to the chair the evidence supporting that recommendation. If, based on such evidence, the chair agrees with the division of standards' recommendation that the officer be suspended pending completion of the preliminary inquiry, the chair shall place the question of whether to suspend the officer pending completion of the preliminary inquiry on the next available commission agenda, or call a meeting for the purposes of deciding that question.
- (b) The commission may suspend an officer pending completion of the preliminary inquiry if it determines by a preponderance of the evidence that such suspension is in the best interest of the health, safety, or welfare of the public.
- (c) Any suspension issued by the commission pursuant to this section XXX CMR 1.06 shall continue in effect until issuance of the final decision of the commission or until the suspension is revoked by the commission.

1.07 Reports Following Preliminary Inquiries.

- (1) Any preliminary inquiry by the division of standards pursuant to XXX CMR 1.05 to XXX CMR 1.06 shall be completed within sixty (60) days of the commission's vote to authorize such a preliminary inquiry, or within any such additional time as authorized by the chair. Within ten (10) days of the completion of the preliminary inquiry by the division of standards, the division of standards shall provide the commission with a detailed report on the conclusions and determinations resulting

from its preliminary inquiry. The report on the preliminary inquiry shall include, at a minimum:

- (a) a copy of any written complaint that is the basis of the preliminary inquiry;
 - (b) a clear statement of all the allegations considered by the division of standards;
 - (c) the material relative to the complaint and allegations contained therein that were obtained by the division of standards from the agency, and whether any material was withheld, lost or otherwise inaccessible;
 - (d) any investigative report issued by the agency;
 - (e) a list of witnesses subpoenaed, interviewed, or contacted to testify by the division of standards, and if any witnesses were unavailable or did not appear for interview or to testify, the reasons therefor;
 - (f) the facts found by the division of standards to support any recommendations or conclusions of the division of standards as a result of the preliminary inquiry; and
 - (g) whether the division of standards recommends a suspension of the officer's certification and the reasons therefor.
- (2) The division of standards' report on its preliminary inquiry, and any interim report, shall remain confidential to the extent permitted by law, except that the executive director may provide the report for use in a criminal proceeding or investigation to the attorney general, the United States attorney, or a district attorney of competent jurisdiction.

1.08 Suspensions of Certifications Following Arrests, Criminal Charges or Indictments for Felonies, or Following Preliminary Inquiries; Administrative Suspensions.

- (1) The commission shall immediately suspend the certification of any officer who is arrested, charged or indicted for a felony. A sworn statement by the arresting officer, or a certified copy of the charge or indictment, shall be sufficient evidence for immediate commission action pursuant to this section.
- (2) In addition to issuing suspensions under XXX CMR 1.08(1), the commission, within thirty (30) days of its receipt of a report of the division of standards following a preliminary inquiry:
 - (a) shall immediately vote to suspend the officer's certification if the commission concludes by a preponderance of the evidence that the report on the preliminary inquiry, and any supplemental information provided by

the division of standards, reflect that the officer has engaged in conduct that could constitute a felony;

- (b) may suspend the certification of the officer if the commission concludes by a preponderance of evidence that the division of standards' report on the preliminary inquiry, and any supplemental information provided by the division of standards, reflect that an officer has been arrested, charged or indicted for a misdemeanor that affects the fitness of the officer to serve; or
- (c) may suspend the certification of the officer if the commission concludes by a preponderance of the evidence that the division of standards report on the preliminary inquiry, and any supplemental information provided by the division of standards, reflect that suspension of the officer is in the best interests of the health, safety, or welfare of the public.

- (3) Any commission decision to suspend the certification of an officer pending or following a preliminary inquiry by the division of standards shall be transmitted immediately to the officer involved, the head of the agency, and the head of the officer's collective bargaining unit, and shall be effective upon head of the agency's receipt of that decision, or the officer's receipt of that decision, whichever occurs first.
- (4) Any suspension issued by the commission pursuant to this section XXX CMR 1.08 shall continue in effect until issuance of the final decision of the commission or until revoked by the commission.

1.09 Single Commissioner Review of Suspensions

- (1) An officer whose certification is suspended by the commission pursuant to XXX CMR 1.06 or 1.08 may request a hearing before a single commissioner pursuant to M.G.L. c. 6E, §9(d) in accordance with this section XXX CMR 1.09.
- (2) All requests for a hearing pursuant to this section XXX CMR 1.09 must be filed by the officer or their counsel or other representative with the executive director no later than five (5) days from the date of the officer's notice of the commission's suspension unless the officer is granted an extension of the time to request a hearing. Such a request for an extension of time shall be made in writing to the commission within the same period of five (5) days, and shall include the bases for the request. A request for an extension of time shall be determined by a single commissioner upon review of the request, and shall be granted only upon a demonstration of good cause. The failure to timely request a hearing or an extension of time to request a hearing may result in a waiver of the right to a hearing.
- (3) The request for a hearing shall include:

- (a) The name and contact information of the officer and the commission certification identification number of the officer,
 - (b) the name and contact information of counsel or other individual representing the officer, if any;
 - (c) the agency at which the officer was employed when the complaint was filed and the head of that agency;
 - (d) a brief description of the basis for the request for the hearing; and
 - (e) a statement regarding whether the officer seeks to invoke or waive the officer's right under M.G.L. c. 6E, § 9(d) to a hearing within fifteen (15) days of the effective date of the suspension.
- (4) The executive director shall, immediately upon a receipt of a request for a hearing under this section XXX CMR 1.09: notify the chair of that request; schedule a hearing between five (5) and fifteen (15) days after the effective date of the suspension if the officer has not waived the right to a hearing in the time frame set forth in M.G.L. c. 6E, § 9(d); and notify the requesting party and the chair of the date thereof. The chair shall, within two (2) business days after receiving the request for a hearing and the scheduled hearing date from the executive director, assign any single commissioner to conduct the requested hearing.
- (5) The single commissioner assigned to conduct a hearing under this section XXX CMR 1.09 shall be selected pursuant to a policy to be established by the commission.
- (6) Hearings held before a single commissioner pursuant to XXX CMR 109.01 shall be adjudicatory proceedings conducted in accordance with M.G.L. c. 30A, §§ 10 and 11. All hearings shall comply with XXX CMR 105.00, as applicable, and 801 CMR 1.01: *Formal Rules*, except that the provisions of 801 CMR 1.01(1), (2), (6), (11) and (14) shall not apply, and that the following additional rules shall supersede any inconsistent rules provided in 801 CMR 1.01:
- (a) Standard of Proof. The single commissioner shall affirm the suspension of the certification of an officer unless the single commissioner determines that the officer has demonstrated by a preponderance of the evidence before the single commissioner, which shall include the evidence presented to the commission and additional evidence provided by the officer, that the suspension is not warranted. If the single commissioner determines that the officer has so demonstrated, the single commissioner shall recommend that the commission revoke the suspension of the officer's certification.

- (i) The rules of evidence observed by courts shall not apply to hearings held by the single commissioner, but the rules of privilege recognized by law shall be observed.
 - (ii) Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs. The single commissioner may exclude irrelevant, unreliable, and repetitive evidence.
- (b) Discovery. No discovery shall be permitted in connection with a hearing held pursuant to XXX CMR 1.09 except upon a motion made to the single commissioner at least seven (7) days before such hearing, which motion may be granted for good cause shown.
- (c) Public Access to Hearings. All or portions of an adjudicatory hearing conducted under XXX CMR 109.01 may be closed to the public only where the single commissioner determines that such action is necessary to protect privacy interests and will not be contrary to the public interest.
- (d) Decisions. Upon completion of the hearing, the single commissioner shall render a written decision as promptly as administratively feasible, in accordance with M.G.L. c. 30A, § 11(8). The written decision of the single commissioner shall be the final decision of that single commissioner. The filing of any appeal of a final decision of the single commissioner shall be to the Superior Court in accordance with M.G.L. c. 30A, § 14.
- (e) Judicial Review. Appeals to the Superior Court shall not stay enforcement of the single commissioner's decision, but by motion to the commission within ten (10) days of the single commissioner's decision, the commission may for good cause shown stay enforcement of the decision pending appeal to the Superior Court, or pending the final decision of the commission pursuant to XXX CMR 1.10.
- (f) Administrative Record for Judicial Review. Pursuant to M.G.L. c. 30A, § 11(4), all documents, testimony and other evidence offered and accepted into evidence by the single commissioner shall become part of the administrative record. For purposes of judicial review, the record shall include the final decision issued pursuant to XXX CMR 1.09(5)(e). Any evidence offered at the hearing, but not accepted by the single commissioner, will be marked for identification purposes only and be included in the record.

1.10 Final Disciplinary Hearings.

- (1) Applicability. The following types of adjudicatory disciplinary hearings shall be held by the full commission, but may, in the chair's discretion, be heard in the first instance by a presiding officer selected pursuant to a policy established by the commission:
- (a) M.G.L. c. 6E, §10(a) hearings regarding mandatory revocation of an officer's certification;
 - (b) M.G.L. c. 6E, § 10(b) hearings regarding discretionary revocation or suspension of an officer's certification; and
 - (c) M.G.L. c. 6E, § 10(d) hearings regarding officer retraining.
- (2) Timing of Hearings
- (a) The commission shall not institute a revocation or suspension hearing regarding a complaint against an officer until an officer's appointing agency has issued a final disposition regarding a complaint or one year has elapsed since the incident was reported to the commission, whichever is sooner.
 - (b) If the officer notifies the commission that the officer wishes to suspend such hearing pending an appeal or arbitration of the appointing agency's final disposition, the commission shall suspend the hearing. Any such suspension of the hearing shall not exceed one year from the officer's notice to the commission; provided, however, that at any time during which the hearing is so suspended and upon a showing of good cause by the officer, the commission shall further suspend the hearing for a period of not less than six months and not more than the commission determines is reasonable; provided, however, that any delay in instituting a revocation or suspension hearing shall not exceed one year from the officer's request.
 - (c) If the officer notifies the commission that the officer wishes to suspend such hearing pending the resolution of criminal charges, the commission shall suspend the hearing; provided, however, that the officer's certification shall be suspended during the pendency of any suspension in the hearing.
- (3) Conduct of Hearings. Hearings held pursuant to XXX CMR 1.10 shall be adjudicatory proceedings conducted in accordance with M.G.L. c. 30A, §§ 10 and 11. All hearings shall further comply with 801 CMR 1.01: *Formal Rules*, except that the provisions of 801 CMR 1.01(1), (2), (6), (11) and (14) shall not apply and that the following additional rules shall supersede those provided in 801 CMR 1.01: (prescribed by G.L. c 6E, §10(f))
- (a) Public Access to Hearings. All or portions of an adjudicatory hearing, conducted under XXX CMR 1.10, except deliberations by a panel of

presiding officers or the commission regarding a decision, may be closed to the public only where the presiding officer or presiding officers determine that such action is necessary to protect privacy interests and will not be contrary to the public interest. All deliberations by a panel of presiding officers or the commission regarding a decision following an adjudicatory hearing conducted under XXX CMR 1.10 shall be closed to the public.

(b) Evidence.

- (i) The rules of evidence observed by courts shall not apply to hearings held under XXX CMR 1.10, but the rules of privilege recognized by law shall be observed.
- (ii) Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs. The presiding officer may exclude irrelevant, unreliable, and repetitive evidence

(c) Standard of Proof.

- (i) The commission may not order the revocation or suspension of an officer's certification unless the commission finds by clear and convincing evidence that such revocation or suspension is warranted pursuant to M.G.L. c. 6E, §§ 10(a) or 10(b).
- (ii) The commission may not order the retraining of an officer unless the commission determines, based on substantial evidence, that retraining is warranted pursuant to M.G.L. c. 6E, § 10(d).

(d) Collection of Information, Subpoenas and Testimony for Use in Hearings. The commission is authorized to use the same investigatory tools, including the collection of documents, issuance of subpoenas, and requirement for testimony under oath in connection with hearings under this section XXX CMR 1.10 as it is permitted to use with respect to preliminary inquiries pursuant to XXX CMR 1.05(b).

(e) Decisions.

- (i) Upon completion of a hearing held before the full commission, the commission shall render a written decision as promptly as administratively feasible, in accordance with M.G.L. c. 30A, § 11(8). The written decision of the full commission shall be the final decision of the commission. The filing of any appeal of a final decision of the full commission shall be to the Superior Court in accordance with M.G.L. c. 30A, § 14. Appeals to the Superior Court shall not stay enforcement of the commission's decision, but

by motion to the commission within ten (10) days of the commission's decision, the commission may for good cause shown stay enforcement pending appeal to the Superior Court.

- (ii) Upon completion of a hearing held before a presiding officer other than the full commission, the presiding officer shall render a decision as provided in M.G.L. c. 30A § 11(8). The decision of the presiding officer shall be called an "initial decision."
- (a) The presiding officer shall promptly provide the officer with a copy of the presiding officer's initial decision and file a copy of the same with the commission.
 - (b) Upon receipt of the presiding officer's initial decision, if there is objection by the officer to the presiding officer's findings and recommendations, the commission shall set dates for submission of briefs and for any further hearing which the commission in its discretion deems necessary. The commission shall review, and may revise, the findings of fact, conclusions of law and recommendation of the presiding officer, giving deference to the presiding officer's evaluation of the credibility of the testimony and other evidence presented at the hearing.
 - (c) The commission may affirm and adopt the initial decision in whole or in part, and it may recommit the matter to the presiding officer for further findings or a revised initial decision as it may direct. The same procedural provisions applicable to the initial filing of the initial decision shall apply to any refiled or revised initial decision after recommittal. If the commission does not affirm and adopt the whole of the initial decision, as originally submitted or as revised, it shall provide an adequate reason for rejecting those portions of the initial decision it does not affirm and adopt.
 - (d) The final written decision of the commission upon review of the initial decision shall be the final decision of the commission. The filing of any appeal of a final decision of the commission shall not stay enforcement of the commission's decision, but by motion to the commission within ten (10) days of the commission's decision, the commission may for good cause shown stay enforcement pending appeal to the Superior Court.
 - (e) If the commission fails to issue a final decision within 180 days of the presiding officer's filing or refile of the initial

decision, the initial decision shall become the final decision of the commission, and not be subject to further commission review.

- (4) Administrative Record for Judicial Review. Pursuant to M.G.L. c. 30A, § 11(4), all documents, testimony and other evidence offered and accepted into evidence by the presiding officer shall become part of the administrative record. For purposes of judicial review, the record shall include the final decision issued pursuant to XXX CMR 1.10(2)(e). Any evidence offered at the hearing, but not accepted by the presiding officer, will be marked for identification purposes only and be included in the record.

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CONSTRUCTION; APPLICATION OF RULES; NOTICE

- 2.01 Authority and Scope
- 2.02 Definitions
- 2.03 Construction
- 2.04 Notices to Public

2.01 General Authority of the Commission Pursuant to M.G.L. c. 6E

XXX CMR 1.00 and all regulations contained in this title are issued under and pursuant to the authority of M.G.L. c. 6E § 3(a)(28).

2.02 Definitions

As used in XXX CMR, the following words and phrases shall have the following meaning, unless the context clearly requires otherwise:

“Agency”, a law enforcement agency.

“Appointing agency”, the agency appointing a law enforcement officer.

“Chair”, the chair of the commission.

“Commission”, the Massachusetts Peace Officer Standards and Training Commission established pursuant to M.G.L. c. 6E, §1.

“Commissioner”, a member of the commission.

“Division of standards”, the division of police standards established pursuant to M.G.L. c. 6E, §18

“Division of certification”, the division of police certification established pursuant to M.G.L. c. 6E, §4.

“Executive director”, the executive director of the commission appointed pursuant to M.G.L. c. 6E, §2(g).

“Law enforcement agency”, (i) a state, county, municipal or district law enforcement agency, including, but not limited to: a city, town or district police department, the office of environmental law enforcement, the University of Massachusetts police department, the department of the state police, the Massachusetts Port Authority police department, also known as the Port of Boston Authority police department, and the Massachusetts Bay Transportation Authority police department; (ii) a sheriff’s department in its performance of police duties and functions; or (iii) a public or private college, university or other educational institution or hospital police department.

“Law enforcement officer” or “officer”, any officer of an agency, including the head of the agency; a special state police officer appointed pursuant to M.G.L. c. 22C, §§ 58 or 63; a special sheriff appointed pursuant to M.G.L. c. 37, § 4 performing police duties and functions; a deputy sheriff appointed pursuant to section M.G.L. c. 37, § 3 performing police duties and functions; a constable executing an arrest for any reason; or any other special, reserve or intermittent police officer.

“Officer-involved injury or death”, any event during which an officer: (i) discharges a firearm, as defined in M.G.L. c. 140, § 121, actually or proximately causing injury or death to another; (ii) discharges any stun gun as defined in said M.G.L. c. 140, § 121, actually or proximately causing injury or death to another; (iii) uses a chokehold, actually or proximately causing injury or death of another; (iv) discharges tear gas or other chemical weapon, actually or proximately causing injury or death of another; (v) discharges rubber pellets from a propulsion device, actually or proximately causing injury or death of another; (vi) deploys a dog, actually or proximately causing injury or death of another; (vii) uses deadly force, actually or proximately causing injury or death of another; (viii) fails to intervene, as required by M.G.L. c. 6E, § 15, to prevent the use of excessive or prohibited force by another officer who actually or proximately causes injury or death of another; or (ix) engages in a physical altercation with a person who sustains serious bodily injury or requests or receives medical care as a result, provided that such medical care relates to an actual condition or injury that is more than de minimis. An injury is more than de minimis where it produces an observable injury or medical condition, the customary medical response to which would include that a person visit an emergency room, or have a doctor or other medical professional attend to, give an opinion regarding, diagnose, and/or provide medical treatment for the injury or condition.

“Presiding Officer,” the commissioner, panel of commissioners, or special hearing officer or panel of special hearing officers designated by the chair to conduct an adjudicatory proceeding pursuant to XXX CMR 1.10(1).

“Serious bodily injury”, bodily injury that results in: (i) permanent disfigurement; (ii) protracted loss or impairment of a bodily function, limb or organ; or (iii) a substantial risk of death.

“Single commissioner,” the commissioner assigned to conduct a hearing pursuant to XXX CMR 1.04.

2.03 Construction

- (1) Title XXX CMR shall be liberally construed to permit the commission to effectively carry out its statutory functions and to secure a just and expeditious determination of issues properly presented to the commission.
- (2) Unless otherwise specified, computation of any time period referred to in XXX CMR shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the

time period is seven (7) days or less, intervening Saturdays, Sundays, and legal holidays shall be excluded in the computation. When a time period is greater than seven (7) days, each intervening calendar day shall be included in the computation.

- (3) Any act that must be performed “immediately” under a provision of XXX CMR or M.G.L. c. 6E shall be performed as soon as the exercise of reasonable diligence will enable such performance.
- (4) A finding by clear and convincing evidence requires more than a preponderance of the evidence, but less than the proof beyond a reasonable doubt required in criminal cases.
- (5) If any portion of this title XXX CMR or the application thereof to any person or circumstance shall be held to be invalid by a court of competent jurisdiction for any reason, said portion shall be deemed a separate, distinct, and independent provision, and the validity of the other regulations shall not be affected.
- (6) In any instance in which an individual has a conflict precluding that person from exercising their authority under these regulations, their duties shall be exercised by the next most senior supervisor within the Agency, or if there is no such supervisor without a conflict of interest within the Agency, by an individual designated by the most senior disqualified individual’s appointing authority.

2.04

Notices to Public

- (1) The commission shall maintain a list of individuals or entities that request notice of commission proceedings. Individuals or entities may request notice from the commission by completing a form available on the commission’s website, or by mailing a request for notice with contact information to the commission’s offices.
- (2) Notice shall be provided, in a time and manner to be determined by the commission, to those individuals or entities on the list in advance for:
 - (a) Meetings or hearings of the commission or a subcommittee thereof; and
 - (b) Other events determined by the commission, in its discretion.
- (3) The individual or entity is responsible for ensuring that the information provided to the commission for the purpose of receiving notice remains current.