



MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

September 26, 2024

CHAIR

Margaret R. Hinkle

COMMISSIONERS

Lester Baker

Hanya H. Bluestone

Lawrence Calderone

Eddy Chrispin

Deborah Hall

Marsha V. Kazarosian

Charlene D. Luma

Rev. Clyde D. Talley

EXECUTIVE DIRECTOR

Enrique A. Zuniga

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

NOTICE OF CERTIFICATION POLICY SUBCOMMITTEE MEETING AND AGENDA

Public Meeting #7

October 1, 2024

10:00 a.m.

84 State Street, Suite 200, Boston MA 02109

and

Remote Participation via [Zoom](#)

Meeting ID: 952 5294 0565

1. Call to Order
2. Approval of minutes
 - a. September 10, 2024
3. Draft Plan for Recertification – Executive Director and Legal Division
 - a. Good Moral Character and Fitness for Employment in Law Enforcement
 - b. Plan for Recertification
4. Public comment
5. Matters not anticipated by the Chair at the time of posting
6. Adjourn

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mass.gov/orgs/post-commission

MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

Note that M.G.L. c. 66, § 6A(d) provides that “[a]n electronically produced document submitted to an agency . . . for use in deliberations by a public body shall be provided in an electronic format at the time of submission.”

2a.

MASSACHUSETTS PEACE OFFICER STANDARDS AND TRAINING COMMISSION
Certification Policy Subcommittee Meeting Minutes
September 10, 2024
10:00 a.m.
By Zoom and in-person

Documents Distributed in Advance of Meeting

- Minutes from July 25, 2024 Subcommittee Meeting
- Memo - Re: Character and Fitness
- Comparison Chart - Character and Fitness Standards: Proposed Regulation and International Association of Chiefs of Police (IACP) Standards of Conduct
- Good Moral Character and Fitness Proposal – July Draft
- Massachusetts Coalition of Police (MCOP) Letter/Written Testimony

In Attendance

- Commissioner Lawrence Calderone, Subcommittee Chair
- Commissioner Hanya H. Bluestone (Virtual)
- Commissioner Marsha V. Kazarosian
- Executive Director Enrique A. Zuniga
- General Counsel Randall E. Ravitz
- Deputy General Counsel Pauline Nguyen
- Director of Certification Steven R. Smith
- Outside Counsel Lon F. Povich

1. Call to Order

- At 10:14 a.m., Chair Calderone welcomed the public to the Commission’s sixth Subcommittee meeting and called the meeting to order.

2. Approval of July 25, 2024 Minutes

- Chair Calderone asked for a motion to approve the minutes.
- Commissioner Kazarosian seconded the motion.
- The Commissioners voted as follows:
 - Chair Calderone – Yes
 - Commissioner Kazarosian – Yes
 - Commissioner Bluestone – Yes

3. Draft Plan for Recertification – Enrique A. Zuniga, Executive Director

- POST Executive Director Zuniga stated that the purpose of the meeting is to continue the conversation on the topic of good moral character and fitness for employment as a law enforcement officer; comparing the IACP code of conduct to the current regulations, as well as hearing an overview of the steps POST has taken to date, relevant to this topic.

4. Certification Policy Subcommittee Meetings Between February and September 2024 Presentation – Randall E. Ravitz, General Counsel

- General Counsel Ravitz provided a presentation highlighting the topics covered,

materials made available, and opportunities for discussion and public comment, in past 2024 meetings held on February 1st, February 27th, April 11th, May 23rd, and July 25th.

5. Character and Fitness – Pauline Nguyen, Deputy General Counsel

- Deputy General Counsel Nguyen provided a summary of the documents distributed for the meeting, including the Comparison Chart of Proposed Regulation and IACP Standards of Conduct, which the Commissioners began to review.
- Commissioner Bluestone suggested that the Committee decide whether to adopt their own language and if so, revisit each item in the document to rephrase in a more consistent manner.
- Commissioner Kazarosian recommended they review each item.
- Chair Calderone also agreed they should review each item and clarified that they will not be voting on any matters at the meeting, until the public provides comments prior to the Subcommittee bringing the topic to the full Commission.
- Recommended changes to the character and fitness standards in 555 CMR 7.05(2):
 - 555 CMR 7.05(2)(b)2.: Commissioner Bluestone recommended adding the word “regulations.”
 - 555 CMR 7.05(2)(b)4.: Commissioner Bluestone inquired if the term “conduct unbecoming” is a well understood term and standard within the law enforcement profession. Chair Calderone responded that it is not a well understood phrase, with a demeaning, condescending broad perspective.
 - 555 CMR 7.05(2)(b)9.: Chair Calderone recommended adding the word “knowingly.”
- Recommended changes to the types of information a law enforcement agency may rely on when making a character and fitness assessment in 555 CMR 7.05(2):
 - 555 CMR 7.05(2)(c)10.: Chair Calderone recommended changing the word “allegations.” General Counsel Ravitz suggested using a term in between “allegations” and “substantiated allegations” such as “non-frivolous,” “credible,” or “allegations that have not been rejected.” Commissioners Kazarosian and Bluestone preferred the term “credible.” Chair Calderone did not agree with the term “credible” but instead preferred “substantiated.” Commissioner Bluestone recommended they highlight this particular item for further discussion with the full Commission.
 - 555 CMR 7.05(2)(c): Commissioner Kazarosian recommended adding the phrase “the following, which includes but not limited to” following “they may rely on”

6. Public comment

- Chair Calderone invited attendees to provide testimony.
 - **John Nelson, Vice President of the Massachusetts Coalition of Police (MCOP) introduced Attorney Nick Adams**, who provided oral testimony, as well as detailed written comments submitted the day before. Attorney Adams provided background on their 3 general concerns regarding Proposed 555 CMR 7.00, while more detailed examples were provided in their written testimony.
 - **Natick Police Chief and Chair of the Massachusetts Municipal Police Training Committee (MPTC) James Hicks** provided oral testimony. Chief Hicks briefly stated that the MPTC is prepared and ready to work together with

POST to hold further discussions, but is not ready to provide public comment at this time. Chief Hicks also pointed out that the term “conduct unbecoming” should be removed from Section C, #15 in the proposed regulation language/comparison chart document that was discussed earlier in the meeting, which the Commissioners agreed with.

- Chair Calderone read public comments that were sent via the Zoom Q&A feature:
 - **Dennis Galvin, Massachusetts Association of Professional Law Enforcement (MAPLE)** submitted the following comments throughout the meeting:
 - 1) “Conduct unbecoming has a long history in both military regulations and in police regulations. It refers to conduct that brings disrepute upon the organization that the member belongs to. It has been part of Mass State Police regulations since the inception of the original Mass State Police uniformed branch in 1921”
 - 2) “Regulation 9 needs to be clarified. It should be emphasized that personal relationships not professional interaction is the subject of concern.”
 - 3) “The word ‘finding’ should replace allegations.”
 - 4) “The word Allegation needs handled with care. It is used tactically to discredit active and effective police officers for intimidation. Must keep in mind that policing like our courts has an adversarial nature. You must keep this in mind.”
 - 5) “There must be a finding with regard to any allegations otherwise they should be disregarded, given the nature of the policing that is the only fair way to deal with these issues.”
 - 6) “It is a matter of procedural justice requires that a finding be made on allegations. Unsubstantiated allegations if consider are open the door to smearing.”

- Chair Calderone requested a motion to adjourn the meeting. Commissioner Kazarosian made the motion to adjourn. Commissioner Bluestone seconded the motion. The Subcommittee voted as follows.
 - Commissioner Bluestone – Yes
 - Commissioner Kazarosian – Yes
 - Commissioner Calderone – Yes

- The motion was unanimously carried, and the meeting was adjourned.

3a.

PROPOSED REGULATORY AMENDMENT – CHARACTER AND FITNESS:

These regulations incorporate changes discussed by the POST Commission’s subcommittee at its September 10, 2024 meeting and is provided for your reference. Any new change proposed has not been incorporated into this document. Finally, there may be ministerial changes to the regulations in this document, such as the numbering or certain global change to promote consistency.

7.02: Definition

Good Character and Fitness for Employment. “Good moral character and fitness for employment in law enforcement,” as that phrase is used in M.G.L. c. 6E, § 4(f)(1)(ix). Character and fitness means to have qualities that the public, other members of law enforcement, and the Commission have the right to demand of an officer, which qualities include, but are not limited to, honesty, integrity, diligence, reliability, fairness, candor, trustworthiness, respect for and obedience to the law, and respect for the rights of others and the judicial process.

Employing Agency. The law enforcement agency for which an officer is employed or, in the case of the head of the agency, the head’s the appointing authority, that is responsible for submitting documentation concerning an officer’s recertification to the commission.

...

7.06: Determination of Character and Fitness

(1) General Standards Utilized by Employing Agency and Commission. Any assessment of whether an applicant possesses character and fitness, as that term is defined in 555 CMR 7.02, shall take into account on-duty and off-duty conduct. Good moral character can be assessed through the consideration of the totality of the circumstances, weighing all factors, both favorable and unfavorable. No one factor is necessarily dispositive.

(2) Submission by Appointing Authority.

- (a) Each applicant’s appointing authority shall provide a submission to the Commission concerning whether an officer possesses character and fitness, in accordance with Commission policy.
- (b) In assessing character and fitness, an appointing authority may take into account whether an officer, both on duty and off duty:

1. Follows any mission and values statement developed or approved by the Commission or the law enforcement agency;

- ~~1-2.~~ Adheres to state and federal laws, regulations, and orders;
 3. Demonstrates accountability and responsibility;
 4. Engages in ~~conduct unbecoming a law enforcement officer, such as conduct that casts doubt on~~ demonstrates a problem with ~~regarding~~ the officer's integrity, honesty, moral judgment, or character; brings discredit to the law enforcement agency; or impairs the law enforcement agency's efficient and effective operation;
 5. Is untruthful, as defined by M.G.L. c. 6E, § 1, in any matter;
 6. Neglects the duties of a law enforcement officer;
 - ~~2-7.~~ Engages in misconduct towards the public or other law enforcement officers;
 - ~~3-8.~~ Abuses one's law enforcement authority or position;
 4. Knowingly engages in prohibited associations with individuals or prohibited visitation of establishments; or
- ~~5-9.~~ Is worthy of the public trust and of the authority given to law enforcement officers.

(c) In making such an assessment, the law enforcement agency also may rely on the following, which includes but is not limited to:

1. Questionnaires;
2. Any ~~g~~Guidance or forms approved by the Commission;
3. Performance reviews;
4. Relevant education;
5. Specialized training;
6. Professional awards;
7. Achievements;
8. Commendations by law enforcement agencies or officials or others;
9. Instances of imposed discipline;
10. ~~patterns~~ Credible allegations of misconduct,
11. The applicant's age at the time of any conduct;
12. The amount of time since any conduct;
13. The reliability of the information concerning the conduct;
14. The seriousness of the conduct;
15. The type of substantiated allegations (e.g., -untruthfulness, excessive force);
16. The type of discipline imposed for each substantiated complaint;
17. Decision from a body or person of authority;
18. Whether the conduct would subject the individual to discipline under M.G.L. c. 6E;
19. The cumulative effect of conduct or information;
20. The evidence of rehabilitation;
21. The applicant's positive social contributions since the conduct;
22. The applicant's positive contributions to public welfare and safety since

the conduct;

23. The applicant's candor in the certification process;

24. The materiality of any omissions or misrepresentations;

25. The length of service in law enforcement at the federal, state, and municipal levels; and

26. Any ~~o~~Other evidence of past performance.

SOURCES

A. Statute:

M.G.L. c. 6E, § 1:

“Untruthful” or “untruthfulness”, knowingly making an untruthful statement concerning a material fact or knowingly omitting a material fact: (i) on an official criminal justice record, including, but not limited to, a police report; (ii) while testifying under oath; (iii) to the commission or an employee of the commission; or (iv) during an internal affairs investigation, administrative investigation or disciplinary process.

M.G.L. c. 6E, § 4(f)(1):

The division of police certification and the municipal police training committee established in section 116 of chapter 6 shall jointly establish minimum certification standards for all officers that shall include, but not be limited to:

...

(ix) being of good moral character and fit for employment in law enforcement, as determined by the commission.

B. Regulation:

7.05: Determination of Good Character and Fitness for Employment

- (1) General Standards Utilized by Employing Agency and Commission. Any assessment of whether an officer possesses good character and fitness for employment shall take into account on-duty and off-duty conduct.
- (2) Submission by Employing Agency.
 - (a) Each officer’s employing agency shall provide a submission to the commission concerning whether an officer possesses good character and fitness for employment, in accordance with commission policy.

In assessing good character and fitness for employment, an employing agency may take into account whether an officer

adheres to state and federal law,

acts consistently with recognized standards of ethics and conduct adopted by the employing agency or as set forth in the Law Enforcement Code of Ethics and Standards of Conduct most recently adopted by the International Association of Chiefs of Police, and

is worthy of the public trust and of the authority given to law enforcement officers.

In making such an assessment, the agency also may rely on questionnaires, any guidance or forms approved by the Commission, performance reviews, relevant education, specialized training, professional awards, achievements, commendations by law enforcement agencies or officials or others, instances of imposed discipline, patterns of misconduct, and any other evidence of past performance.

...

(4) Consideration of Particular Matters. In rendering a determination regarding an officer's good character and fitness for employment, unless there have been allegations that an officer has engaged in multiple instances of similar or related misconduct or protocols adopted by the commission provide otherwise, neither the employing agency nor the division of certification shall consider an allegation of a particular instance of misconduct, where:

- (a) An authority has made a decision in the officer's favor on the merits of a complaint alleging such misconduct;
- (b) The alleged misconduct is currently the subject of a pending investigation or adjudication by any authority;
- (c) The officer has complied, or is in the process of complying, with any disciplinary action or other adverse decision by an authority, in relation to the alleged misconduct, and the officer has not engaged in any similar conduct since the discipline or decision;
- (d) The alleged misconduct did not result in either a disciplinary proceeding or court action, and the employing agency has not offered a reasonable explanation as to why no such proceeding or action was commenced; or
- (e) The allegation is not specifically and credibly supported.

C. Incorporated into the POST Commission's regulations by reference:

1. International Association of Chiefs of Police (IACP), Law Enforcement Code of Ethics: <https://www.theiacp.org/resources/law-enforcement-code-of-ethics>
2. International Association of Chiefs of Police (IACP), Standards of Conduct, <https://www.theiacp.org/sites/default/files/2020-06/Standards%20of%20Conduct%20June%202020.pdf>

To: Subcommittee on Certification Policy
From: Pauline Nguyen, Deputy General Counsel
Date: September 27, 2024
Re: Character and Fitness

Following the last subcommittee meeting, this memorandum focuses on the public comments the Commission has received on the character and fitness standards. To date, the Commission has received public comments on character and fitness from two organizations, the American Civil Liberties Union of Massachusetts and the Massachusetts Coalition of Police. Those two documents are included in the packet for you.

Please take note that during the official promulgation process – meaning after the full Commission votes to approve a set of proposed regulations – there will be a public comment period during which the public will be provided with opportunity to submit public comments on the proposed changes.

Finally, having the full Commission consider the proposals below is also an option. This would be similar to the subcommittee's decision to have the full Commission determine the use of the term "credible" versus "substantiated" in the relevant subsection.

1. Imposing clear and specific criteria in the evaluation of character and fitness would be beneficial.

Both commenters suggest that providing clear and specific character and fitness standards and a definition would be beneficial. The subcommittee has been working towards doing so. In summary, the subcommittee has engaged in several discussions about the definition, standards, and documentation that may be considered in applying the character and fitness standards and has come to agreement on the proposed language.

Having a definition and clear standards promotes more objectivity in the process of assessing an officer's character. This is helpful both to those making that assessment and to an officer who is the subject of the assessment. As one public comment noted, "[o]fficers should have clear notice of what is expected of them in order to have their certification renewed." It is also helpful to our agency in making such an assessment. And we have consistently discussed the importance of balancing the goal to make the standards as objectively concrete as possible with the inherent need for some measure of flexibility for the POST Commission in its role.

While the Commission has authority through this promulgation process to change the standards to be current and to account for changes to local community perspectives and customs, based on discussion by the subcommittee, the standards are similar to the IACP's standards. In order to be

responsive, the proposals below further consider the public comments we have received on character and fitness.¹

Policy Decision: Whether to remove from the character and fitness standards a consideration of the law enforcement agency’s mission and values statement.

The following proposal addresses the public comment that stated, “it is entirely possible, if not likely, different appointing authorities will have different assessments of similarly qualified candidates, or for the same appointing authority to apply different criteria or different assessments to similarly situated officers within their agency.”

The subcommittee previously proposed the addition of “or the law enforcement agency” to this criterion. One potential modification to the draft regulation is to remove this language to further standardize the criteria used to evaluate an officer’s character and fitness. It avoids the issue of relying on differing values in each agency. It also does not preclude a law enforcement agency from developing its own mission and values statement or an appointing authority from making an assessment that is not based on this.

Current proposed regulation:

Follows any mission and values statement developed or approved by the Commission or the law enforcement agency;

New proposed regulation:

Follows any mission and values statement developed or approved by the Commission ~~or the law enforcement agency;~~

Policy Decision: Whether to make the consideration of the listed standards mandatory when an officer’s character and fitness is evaluated.

Both public commenters noted that the consideration of the character and fitness standards were not necessarily mandated under the regulations. One public comment stated, “[t]he definition provides an option, rather than direction: ‘In assessing character and fitness, an appointing authority *may* take into account whether an officer, both on duty and off duty.... In making such an assessment, the law enforcement agency also *may rely on*....’ The appointing authority is not required to apply any criteria, let alone any criteria with internal consistency.” (Emphasis in original.) The other public comment stated, “[the character and fitness standards lay] out some

¹ Given that the most recent comment was emailed to the Commission on September 9, 2024, some of these proposals were not incorporated into the draft sent to the subcommittee for the September 10, 2024 subcommittee meeting.

discretionary factors that an agency ‘may take into account’ or ‘may rely on’ to make this character assessment, but it provides no mandatory criteria. 555 CMR 7.05(2)(a).”

The proposal below includes a potential amendment to address these comments. Such a proposal would require the appointing authority to rely on the character and fitness standards provided by the Commission and not on any other criteria not included in the regulation. This proposal would also apply to the Commission when applying and enforcing these standards.

Current proposed regulation:

(b) In assessing character and fitness, an appointing authority may take into account whether an officer, both on duty and off duty:

New proposed regulation:

(b) In assessing character and fitness, an appointing authority ~~may~~ shall take into account whether an officer, both on duty and off duty:

...

() An appointing authority shall not base a determination of character and fitness on any factor other than those identified in 555 CMR 7.06(2)(b).

(The citation for this new provision is left blank for staff to determine its location in the regulations should the subcommittee approve this language.)

Policy Decision: Whether to require law enforcement agencies to provide a written explanation for a positive attestation as well.

One public comment stated that “agencies have no affirmative obligation under the regulations to explain any determination that an officer does possess good character, even if an officer is known to have engaged in misconduct or has been repeatedly alleged to have engaged in a pattern of the same or similar misconduct.” Another public comment noted that “[appointing authorities] are required to merely attest to character and fitness without any explanation.”

The following proposal aims to address these comments. This proposal requires that any positive attestation must be supported in writing and all attestations are collected by the Commission in the recertification process. The implementation of, including administrative tasks, of the requirement to collect all attestations, positive and negative, should be considered and weighed against the benefit of understanding an appointing authority’s determination that an officer does possess the requisite character and fitness. Furthermore, the proposal requires that an agency not just make supporting documentation available, but also prepare a written report. It also includes items that a written report should contain.

Other options may be: 1) to require the written report, but to collect it only on request by the Commission; or 2) to require a written report for a positive attestation only in certain circumstances, based on a standard defined by our agency.

The added language below mirrors the written report already required for a negative attestation.

Current proposed regulation:

If an appointing authority determines that an applicant possesses character and fitness, the appointing authority shall provide, upon request by the Commission, documentation supporting such a determination.

New proposed regulation:

If an appointing authority determines that an applicant possesses character and fitness, the appointing authority shall ~~provide, upon request by the Commission, documentation supporting such a determination~~ make a written report to the commission.

1. The written report shall contain an explanation for the appointing authority's determination including, but not limited to, a description of specific conduct supporting the appointing authority's determination. The written report must be sufficient to permit the Commission to evaluate the basis for the appointing authority's determination, and to permit the Commission to determine whether the officer possesses character and fitness.

2. As to each instance of specific misconduct or suspected misconduct cited in the appointing authority's report, the appointing authority shall address:

a. Any discipline imposed or decision issued by a body or person of authority as a result of the conduct, or the reasons why there was no discipline or decision;

b. The extent to which the applicant complied with any such discipline or decision;

c. Any similar conduct allegedly undertaken by the applicant subsequent to any such discipline or decision; and

d. The dates of each instance of conduct, and imposition of discipline or issuance of a decision.

Policy Decision: In lieu of protocols adopted by the Commission under 555 CMR 7.05(4), insert instances of misconduct that can be considered by the law enforcement agency.

Current proposed regulation:

(4) Consideration of Particular Matters. In rendering a determination regarding an applicant's character and fitness, unless there have been allegations that an applicant has engaged in multiple instances of similar or related misconduct or protocols adopted by the Commission provide otherwise, neither the appointing authority nor the Division shall consider an allegation of a particular instance of misconduct, where:

- (a) A body or person of authority has made a decision in the applicant's favor on the merits of a complaint alleging such misconduct;
- (b) The alleged misconduct is currently the subject of a pending investigation or adjudication by any authority;
- (c) The applicant has complied, or is in the process of complying, with any disciplinary action or other adverse decision by a body or person of authority, in relation to the alleged misconduct, and the applicant has not engaged in any similar conduct since the discipline or decision;
- (d) The alleged misconduct did not result in either a disciplinary proceeding or court action, and the appointing authority has not offered a reasonable explanation as to why no such proceeding or action was commenced; or
- (e) The allegation is not specifically and credibly supported.

New proposed regulation:

(4) Consideration of Particular Matters. In rendering a determination regarding an officer's good character and fitness for employment, unless there have been allegations that an officer has engaged in multiple instances of similar or related misconduct ~~or protocols adopted by the commission provide otherwise~~, neither the employing agency nor the division of certification shall consider an allegation of a particular instance of misconduct, where:

- (a) An authority has made a decision in the officer's favor on the merits of a complaint alleging such misconduct;
- (b) The alleged misconduct is currently the subject of a pending investigation or adjudication by any authority;
- (c) The officer has complied, or is in the process of complying, with any disciplinary action or other adverse decision by an authority, in relation to the alleged misconduct, and the officer has not engaged in any similar conduct since the discipline or decision;
- (d) The alleged misconduct did not result in either a disciplinary proceeding or court action, and the employing agency has not offered a reasonable explanation as to why no such proceeding or action was commenced; or
- (e) The allegation is not specifically and credibly supported.

(5) XXX

(f) Notwithstanding 555 CMR 7.05(4), the appointing authority and the Division may consider allegations of the following types of misconduct even where an applicant may have engaged in only a single instance of the alleged misconduct.

1. Misconduct that infringes on the rights of another individual, including, but not limited to:
 - a. Being biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level in their conduct;
 - b. Sexual misconduct;
2. Untruthfulness;
3. Abuse of law enforcement authority or one's position;
4. Misconduct that requires the Commission to mandatorily revoke an officer's certification pursuant to M.G.L. c. 6E, § 10(a);
5. Violation of the conflict of interest law, M.G.L. c. 268A;

3b.

555 CMR 7.00: RECERTIFICATION

Section

- 7.01: Authority and Scope
- 7.02: Definitions
- 7.03: Submission of Information to the Commission
- 7.04: Continuation of Certification Period
- 7.05: Conditional Certification
- 7.06: Determination of Character and Fitness
- 7.07: In-service Training
- 7.08: Division Evaluation of an Application
- 7.09: Satisfaction of Certification Requirements
- 7.10: Performance Review
- 7.11: Issuance of Decision
- 7.12: Possible Action Following Decision Declining to Grant Full Certification
- 7.13: Certification Status
- 7.14: Supervision by the Executive Director
- 7.15: Enforcement and Disciplinary Action

Note:

- This draft set of regulations is intended in part to:
 - Incorporate ideas for how the recertification process can be refined beginning with the July 1, 2025 class of applicants;
 - Limit the regulations to establishing certain key rules governing the recertification process, leaving the details of the implementation to be further developed and modified;
 - Harmonize the recertification regulations with 555 CMR 9.00, which govern all initial certifications and the recertification of independent applicants; and
 - Incorporate suggestions for improvement that have been offered over time, based on the Commission’s experience in applying the recertification regulations, many of which have already been incorporated into 555 CMR 9.00 or the current draft of 555 CMR 12.00.
- The redlined version of this draft shows changes that have been made since the Certification Policy Subcommittee meeting of May 23, 2024, except changes that were based on phrasing adjustments made throughout the draft, formatting, ordering of items, numbering, or punctuation.

7.01: Authority and Scope

Note:

- This “Authority and Scope” section in part confirms that these regulations would apply only to endorsed applicants for recertification who seek to serve in appointed positions within law enforcement agencies, while 555 CMR 9.00 would continue to govern independent applicants for recertification, including applicants in elected positions, as well as initial certifications.
- It now includes language clarifying that the regulations do not require action that would result in a violation of a legally recognized privilege or other law.

- (1) 555 CMR 7.00 is promulgated pursuant to M.G.L. c. 6E, §§ 3(a) and 4.
- (2) 555 CMR 7.00:
 - (a) Governs the recertification of an applicant whose application is endorsed or supported by an appointing authority.
 - (b) Does not govern the initial certification of an individual.
 - (c) Does not govern the recertification of an individual who submits, or intends to submit, an application to the Commission without the endorsement of an appointing authority, and whose recertification is thus governed by 555 CMR 9.00.
- (3) No person or entity shall be required to comply with any provision of 555 CMR 7.00 or any order issued thereunder if:
 - (a) Compliance would result in:
 1. A violation of a privilege against disclosure recognized by law and held by that person or entity, including, but not limited to, the attorney-client privilege and any privilege against self-incrimination; or
 2. A federal or state constitutional or statutory provision; and

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- (b) The person or entity so informs the Commission, citing the pertinent privilege, protection, or provision.
- (4) Nothing in 555 CMR 7.00 is intended to:
 - (a) Establish a standard of care;
 - (b) Create any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection on the part of any person or entity other than the Commission, except as expressly provided;
 - (b) Otherwise waive any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection that may be available to the Commission; or
 - (c) Preclude the limiting, conditioning, restricting, suspending, or revoking of any certification in accordance with law.

7.02: Definitions

Public Comments Relevant to this “Definitions” Section:

- MCOP:
 - The definition of “Appointing Authority” should be revised to make clear that a person or entity with the authority to appoint an agency head is the “appointing authority” only for an agency head, as opposed to being an alternative appointing authority for any and all applicants.

Note:

- This “Definitions” section is intended in part to address certain issues of terminology.
- Among other things, the regulations:
 - Make clear that a recertification is a type of certification, not a wholly different action, and thus simply speak in terms of certification, as opposed to both certification and recertification; and
 - Make clear that “recertification” and “renewal” are synonymous.
- Other changes to the terminology used in the recertification regulations can be highlighted if helpful.

(1) 555 CMR 7.00 incorporates all definitions and rules of construction set forth in 555 CMR 2.02: *Definitions* and 2.03: *Construction*, except those definitions of terms that are defined in 555 CMR 7.02(2).

(2) For the purposes of 555 CMR 7.00, the following terms have the following meanings, unless the context requires otherwise:

Applicant. An individual on whose behalf an application is submitted to the Commission.

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

Appointing Authority. In the case of an applicant who seeks to begin serving or continue serving as an appointed head of a law enforcement agency, the person or entity with the authority to appoint the individual as the law enforcement agency head; and in the case of all other applicants, the law enforcement agency that seeks to begin employing or continue employing an applicant in an unelected position as an officer.

Body or Person of Authority. An officer’s appointing authority; any supervisor of the officer therein; the Civil Service Commission; any arbitrator or other third-party neutral with decision-making power; and any court.

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

Certification Period. The period of time between the effective date and the expiration date of an individual’s certification as an officer, including any period of continuation provided for under M.G.L. c. 30A, § 13 or 555 CMR 7.04 beyond the third anniversary of the officer’s last certification.

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

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means to have qualities that the public, other members of law enforcement, and the Commission have the right to demand of an officer, which qualities include, but are not limited to, honesty, integrity, diligence, reliability, fairness, candor, trustworthiness, respect for and obedience to the law, and respect for the rights of others and the judicial process.

Commission. The Massachusetts Peace Officer Standards and Training Commission established pursuant to M.G.L. c. 6E, § 2, including its Commissioners and its staff.

Conditional Certification. A certification of the type described in 555 CMR 7.05.

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

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

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

Executive Director. The Executive Director of the Commission appointed pursuant to M.G.L. c. 6E, § 2(g), or that person's designee for relevant purposes.

Final Decision. The ultimate Commission decision on an application, following any review or hearing pursuant to 555 CMR 7.12 or the expiration of the time afforded for an applicant to seek such review or hearing, and following the satisfaction of any conditions attached to a conditional certification or the expiration of the time to satisfy any such conditions, and thus not including a decision granting a conditional certification.

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

Identified CBU Head. An individual identified by an applicant or an applicant's appointing authority as being the head of the applicant's collective bargaining unit.

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

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

Officer. A "law enforcement officer" as defined in M.G.L. c. 6E, § 1, or an individual who possesses an officer certification.

Recertification. A type of certification involving a renewal of a previously granted certification.

Suspension. A suspension of a certification, including an administrative suspension, pursuant to M.G.L. c. 6E, §§ 3, 9, and/or 10.

7.03: Submission of Information to the Commission

Note:

- This "Submission of Information to the Commission" section and others shift certain functions from the Executive Director to the Division of Police Certification. However, Section 7.14 below affirms that all staffers operate under the supervision and direction of the Executive Director.
- While applications would likely be submitted by agencies, as opposed to officers, this section gives the Division the latitude to require or allow either approach.
- This section, like 555 CMR 9.00, provides that, if an agency has not found an individual to possess character and fitness, the agency is precluded from endorsing the individual and submitting an application on the individual's behalf. Rather, the applicant would need to proceed independently under 9.00.

- (1) The Division may establish the deadline by which, and the manner in which, any

application, form, or information related to certification is to be submitted to the Commission by an applicant or appointing authority.

(2) The Division may extend any deadline that it establishes one or more times for good cause, provided that no single extension exceeds 30 calendar days. Any applicant or appointing authority seeking an extension must submit to the Commission, with its first request for an extension, a roster of officers as to whom it intends to seek certification and requires an extension.

(3) An appointing authority may not submit an application on behalf of an individual, or endorse an individual's application, unless the appointing authority has determined that the individual possesses character and fitness as defined in 555 CMR 7.02(2).

7.04: Continuation of Certification Period

Note:

- This "Continuation of Certification Period" section, which is similar to its predecessor, enables an officer to maintain an existing certification if the officer's recertification application has not been fully processed by the date on which the prior certification would normally expire.
- This section would also enable the Division to pursue its intended approach of shifting expiration dates to the birthdays or birth-months of applicants. At the same time, this section would not compel such an approach.
- It would allow the Division to fashion ways for agencies and officers to satisfy the application requirement.
- Where an applicant's original certification period extends beyond the applicant's birthday because the applicant is pursuing a challenge to an adverse decision, the Division will be able to make the start date for any new certification period retroactive to the applicant's birthday (or another date), provided the date is not less than three years since the applicant's last certification, pursuant to Section 7.13(2) below.

(1) Pursuant to M.G.L. c. 30A, § 13, the certification period for an applicant shall continue after the third anniversary of the applicant's last certification, if:

- (a) The application, in a form prescribed by the Division, is submitted in advance of such anniversary;
- (b) The application is submitted in advance of any applicable deadline, and in conformity with any procedures, established by the Division; and
- (c) The Division finds the application to be sufficient.

(2) The Division may establish that the inclusion of an applicant's name in a roster submitted in accordance with 555 CMR 7.03(2) or Division guidelines shall be considered an application for purposes of 555 CMR 7.04(1)(a).

(3) A certification period continued pursuant to 555 CMR 7.04 will end upon the issuance of a final decision.

7.05: Conditional Certification

Note:

- This "Conditional Certification" section was revised with the goal of condensing it, avoiding redundancy, and addressing grounds for conditional certification globally as opposed to requirement-by-requirement.
- The section addresses two types of conditional certification:
 - Those provided where the Division has not yet found an individual to have satisfied all certification requirements but there are grounds for temporarily certifying the individual nonetheless; and
 - Those provided where the Division has found an individual to have satisfied all requirements but still finds grounds to add a condition.
- The phrase "unable to grant a full certification" is intended to apply to:
 - Situations where an individual has not satisfied all requirements; and
 - Situations where the Division has been unable to complete the certification process.
- This section, like its predecessor, provides protection for officers who, for example, failed to satisfy a requirement through no fault of their own or because of an understandable reason.
- At the same time, this section is less forgiving than its predecessor, given that officers and agencies

now have had more notice of the requirements and have more familiarity with the system, and there is no longer the same need to “equalize” the three thirds of the alphabet.

- The list of grounds for granting a conditional certification should not extend to failures such as:
 - Failing a background check;
 - Lacking character and fitness;
 - Having a felony conviction;
 - Being listed in a decertification database;
 - Having a background event that would have led to decertification in Massachusetts; and
 - Failing to complete training without having been excused.
- A policy question is whether to allow for conditional certification in situations involving failures other than those listed, such as not possessing current first aid and CPR certificates.

(1) The Division shall conditionally certify an applicant if it is unable to grant a full certification and the inability is directly and solely attributable to one of the following or a combination of the following:

- (a) A failure to satisfy training requirements, where the applicant has been afforded additional time to satisfy such requirements by the MPTC;
- (b) Circumstances that are beyond the applicant’s control and are attributable to a current or former employer of the applicant, the MPTC, or the Commission; or
- (c) The applicant’s having been on approved leave, the applicant’s having experienced a demonstrable hardship, or circumstances beyond the applicant’s control.

(2) The Division otherwise may conditionally certify an applicant if:

- (a) The provisions of 555 CMR 7.07(3) are satisfied;
- (b) The applicant’s application is substantially complete and does not reveal any basis for denying certification, but the Division is unable to grant a full certification because certain additional details need to be supplied or certain information needs to be verified; or
- (c) The Division determines that an applicant has satisfied all requirements for certification, but nevertheless deems a conditional certification warranted.

(3) Where the Division conditionally certifies an applicant, it shall set appropriate conditions that must be met in order for the applicant to maintain a certification.

(4) An applicant shall not be required to satisfy any conditions attached to a conditional certification, nor shall any time periods associated with any such conditions begin to elapse, before the conclusion of any review or hearing pursuant to 555 CMR 7.12, or the expiration of the time afforded for the applicant to seek such review or hearing, pursuant to 555 CMR 7.12.

(5) When an applicant fails to satisfy a condition of a conditional certification within the time allowed, taking into account the provisions of 555 CMR 7.05(4), the Division shall terminate the applicant’s certification, unless good cause for an extension of time for the applicant to satisfy the condition has been shown.

(6) When an officer satisfies all conditions of a conditional certification within the time allowed, taking into account the provisions of 555 CMR 7.05(4), and the Commission has not otherwise limited, restricted, or suspended the officer’s certification, the Division shall convert the conditional certification into a full certification and may set an effective date for the certification according to 555 CMR 7.13(2).

7.06: Determination of Character and Fitness

Note:

This “Determination of Character and Fitness” section is being given further consideration and separate treatment.

7.07: In-service Training

Note:

- This “In-service Training” subsection is discussed further in a separate document.

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- (1) The annual in-service training requirements and deadlines for the Commission shall be the same as those established by the MPTC.
- (2) Where an applicant is unable to satisfy the annual in-service training requirements, the applicant may be conditionally certified and receive a temporary exemption from the administrative-suspension provisions of M.G.L. c. 6E, § 9(b) if:
 - (a) The applicant applies to the applicant's appointing authority for such a conditional certification and temporary exemption;
 - (b) The applicant provides documentation to the appointing authority that sufficiently establishes that the applicant has been unable to complete required in-service training due to injury, physical disability, or a leave of absence;
 - (c) The applicant otherwise meets all qualifications for certification; and
 - (d) The applicant's appointing authority certifies that the applicant meets the criteria for a conditional certification and temporary exemption described in 555 CMR 7.07.

7.08: Division Evaluation of an Application

Note:

- This "Division Evaluation of an Application" section is based on provisions of 555 CMR 9.00.

- (1) The Division shall evaluate each substantially complete application that it receives.
- (2) The Division may:
 - (a) Evaluate whether an applicant has satisfied the requirements set forth in 555 CMR 7.09 in any order that the Division considers expedient; and
 - (b) Refrain from evaluating whether any requirement has been satisfied after having determined that an applicant's failure to satisfy any other requirement is sufficient to warrant denial of the application.
- (3) Except as provided in 555 CMR 7.05, the Division may grant an application only if the Division determines that:
 - (a) The Division has received sufficient information relevant to the application; and
 - (b) The applicant satisfies all requirements set forth in 555 CMR 7.09.
- (4) If the Division determines that the applicant has not satisfied any of the requirements set forth in 555 CMR 7.09, and has not found the circumstances described in 555 CMR 7.05(1) or (2) to apply, the Division shall deny the application in accordance with 555 CMR 7.11.

7.09: Satisfaction of Certification Requirements

Note:

- This "Satisfaction of Certification Requirements" section now expressly references the relevant statutory provisions.
- Unlike its predecessor, this section incorporates the provisions of M.G.L. c. 6E, § 4(f)(2) (no felony conviction; no listing in a decertification database; would not have been decertified previously; and satisfying certification standards in Commission regulations) in addition to the requirements of M.G.L. c. 6E, § 4(f)(1).
- The subsections below use the phrase "if, and only if" as a way of establishing that certain actions: will be sufficient to satisfy a requirement; and must be undertaken in order for the requirement to be satisfied.
- As noted above, this section no longer addresses whether a failure to satisfy a requirement can be cured through a conditional certification or must instead lead to a denial of certification. That subject is instead addressed globally through Section 7.05 above.
- This section no longer refers to the Bridge Academy, as the program will be concluding.

Except as otherwise provided in 555 CMR 7.05 and 7.10, the Division shall evaluate whether the applicant has satisfied the requirements for certification established by M.G.L. c. 6E, §§ 4(f)(1), 4(f)(2), and 4(i), and 555 CMR 7.00, as follows.

Note:

- The predecessor of the “Age 21” subsection below automatically afforded officers until July 1, 2024 to satisfy the requirement of attaining age 21. These regulations afford no additional time, because: the prior deadline of July 1, 2024 will soon be reached; it no longer appears necessary to “equalize” officers; and it seems inconceivable that any presently serving officer could be found not to satisfy the requirement while having cause to complain of unfair surprise.
- As a practical matter, the Division will already have sufficient information from the previous certification process to evaluate this requirement.

(1) Age 21. The requirement of attaining the age of 21, established by M.G.L. c. 6E, § 4(f)(1)(i), shall be deemed satisfied if, and only if, the applicant attained the age of 21 before the third anniversary of the applicant’s last certification.

Note:

- The predecessor of the “High School Education or Equivalent” subsection below automatically afforded officers until July 1, 2024 to satisfy the requirement of successfully completing high school or its equivalent. These regulations afford no additional time, for the same reasons offered above.
- As a practical matter, the Division will already have sufficient information from the previous certification process to evaluate this requirement.

(2) High School Education or Equivalent. The requirement of successful completion of a high school education or equivalent, as determined by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(ii), shall be deemed satisfied if, and only if, the applicant successfully completed a high school education or obtained a General Educational Development (GED) certificate from an accredited program before the third anniversary of the applicant’s last certification.

Note:

- An officer who fails to satisfy the “Basic Training program” requirement below can, as noted above, obtain a conditional certification only in limited circumstances under Section 7.05.

(3) Basic Training Program. The requirement of successful completion of the basic training program approved by the MPTC, established by M.G.L. c. 6E, § 4(f)(1)(iii), shall be deemed satisfied if, and only if, at any point in time prior to the third anniversary of the applicant’s last certification, the applicant successfully completed either: a basic training program approved by the MPTC; or a reserve training program approved by the MPTC and all additional training and service required by the MPTC pursuant to St. 2020, c. 253, § 102(b).

Public Comments Relevant to the “Physical and Psychological Fitness Evaluation” Subsection Below:

- MCOP:
 - Any requirement should be deemed satisfied not by “an evaluation that conforms to Commission specifications” but if “the appointing authority attests that the officer satisfies, or does not violate, the applicable fitness requirements of the law enforcement agency, including any exceptions granted to the officer”; “[t]he officer provides a letter from a licensed healthcare provider verifying physical and psychological fitness”; and “[t]he appointing authority attests that they have made resources related to physical and mental wellbeing available to the officer.”
 - The provision requiring the preservation of documentation should be stricken.

Note:

- The “Physical and Psychological Fitness Evaluation” subsection below cites the statutory section that lists the successful completion of such an evaluation among the minimum certification requirements, M.G.L. c. 6E, § 4(1)(iv).
- Notably, another statutory section provides that “[t]he commission shall have all powers necessary or convenient to carry out and effectuate its purposes, including, but not limited to, the power to” “adopt, amend or repeal regulations in accordance with chapter 30A for the implementation, administration and enforcement of [Chapter 6E], including, but not limited to, regulations” “establishing a physical and psychological fitness evaluation pursuant to section 4 that measures said fitness to ensure officers are able to perform essential job duties.” M.G.L. c. 6E, § 3(a).
- The subsection below calls for completion of a Commission-prescribed evaluation.
- The subsection further calls for the preservation of any recording or documentation of the evaluation, without requiring the making of any recording or documentation or requiring the automatic provision of any recording or documentation to the Commission.
- Also, Section 7.15 below would also authorize the Commission to require agencies to create,

preserve, and provide information, records, or other items.

- Additionally, separate regulations that would require agencies to create, maintain, and provide specific forms of information are being developed.
- Another alternative would be to provide in this subsection that any recording or documentation must be preserved, but refrain from treating the preservation of such items as a prerequisite for finding that the evaluation requirement has been satisfied.
- The details regarding the implementation of these provisions could continue to be developed.
- This subsection is being given further consideration and separate treatment.

(4) Physical and Psychological Fitness Evaluation. The requirement of successful completion of a physical and psychological fitness evaluation approved by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(iv), shall be deemed satisfied if, and only if:

- (a) Between the applicant's last certification and the third anniversary of the applicant's last certification, there has been an evaluation that conforms to Commission specifications; and
- (b) Any documentation or recording of questions posed, topics discussed, statements made, or assessments rendered in such an evaluation are preserved as directed by the Commission.

Public Comments Relevant to the "State and National Background Check" Subsection Below:

- ACLUM:
 - Agencies should be required to provide the Commission with documentation concerning the results of background checks.
 - Any questionnaire should include questions that capture additional aspects of an officer's history, such as adverse civil judgments and judicial findings, and admissions of misconduct.

Note:

- The "State and National Background Check" subsection below does not call for a collection and evaluation of information that presumably would have been collected and evaluated in a prior certification process, either under 555 CMR 7.00 or 555 CMR 9.00.
- It instead focuses on ensuring that the Commission has received, or will receive, information on certain matters that occurred within the last certification period.
- Such information concerns discipline, arrests, criminal prosecutions, civil actions, and administrative agency actions.
- The subsection states, "as established and further described in the statute," because the statute adds a proviso stating that, "if the applicant has been 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 discipline, shall be evaluated in the background check."

(5) State and National Background Check. The requirement of successful completion of a state and national background check, including, but not limited to, fingerprinting and a full employment history, established and further described by M.G.L. c. 6E, § 4(f)(1)(v), shall be deemed satisfied if, and only if:

- (a) The applicant's appointing authority either:
 1. Certifies that, between the applicant's last certification and the third anniversary of the applicant's last certification, it has provided the Commission with information conforming to Commission guidelines concerning any of the following occurring during that time period:
 - a. Discipline imposed on the applicant in relation to a matter reportable to the Commission under 555 CMR 1.01;
 - b. An arrest of the applicant;
 - c. The commencement, continuation, or termination of:
 1. A criminal prosecution against the applicant;
 2. A civil action against the applicant related to the applicant's service in law enforcement; or
 3. An administrative agency action against the applicant related to the applicant's service in law enforcement; or
 2. Provides to the Commission any information of the type described in 555 CMR 7.09(5)(a) that it has not previously provided to the Commission; and
- (b) The Division does not discern any basis for finding the requirement unmet.

Public Comments Relevant to the "Examination" subsection below:

- ACLUM:

- The examination requirement should need to be satisfied anew in each certification period, with officers completing examinations based on current training standards.
- MCOP:
 - This requirement should be deemed to have been satisfied upon completion at the hiring stage. Thereafter, the process should focus on whether the officer is in good standing and any statutory disqualifier applies.
 - Agencies should not be required to undertake additional steps without adequate funding.

Note:

- The “Examination” subsection below requires passage of an examination each certification period, in part because:
 - It can be presumed that the Legislature intended to require as much, in light of:
 - The provision of M.G.L. c. 6E, § 4(i) stating, “The commission shall not recertify any person as a law enforcement officer unless the commission certifies that the applicant for recertification continues to satisfy the requirements of [M.G.L. c. 6E, § 4(f)]”; and
 - The nature of Chapter 6E and the larger session law through which it was adopted in their entirety, and the events surrounding the law’s enactment;
 - Requiring as much can contribute to the goal of improving law enforcement; and
 - An examination can be administered each certification period in a manner that does not create undue burden.
- An examination:
 - Does not need to be developed by the Commission, but can be approved by the Commission after being developed by others;
 - Does not need to be written;
 - Could be developed by a committee of law enforcement professionals; and/or
 - Could be administered online, perhaps using software that the MPTC will be acquiring.
- More specifically, the Commission could take a page from the State Ethics Commission’s conflict-of-interest training exam, which: is completed online; focuses on the law administered by the Commission and the consequences of violating the law; largely presents clear right/wrong issues, as opposed to debatable ones; allows those who answer questions incorrectly to keep trying, while providing explanatory information; thus focuses on educating, as opposed to passing and failing; and highlights certain rules that are more complex or less obvious.
- Thus, for example, the Commission could develop an exam that tests an officer’s understanding of:
 - Matters on which Chapter 6E focuses:
 - Adherence to law, and avoidance of criminal conduct;
 - Policing without bias, particularly bias based on enumerated characteristics;
 - Policing with integrity, and avoidance of corrupt practices and conduct prejudicial to the administration of justice; and
 - Properly using force, refraining from using force, intervening when witnessing improper uses of force, and avoiding injuries and deaths; and
 - The disciplinary, civil, and criminal consequences of violations.
- If necessary, exam questions could be drawn from fact patterns in judicial opinions.

(6) Examination. The requirement of passage of an examination approved by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(vi), shall be deemed satisfied if, and only if, the applicant successfully completes a Commission-prescribed examination between the applicant’s last certification and the third anniversary of the applicant’s last certification.

Note:

- The “First Aid and Cardiopulmonary Resuscitation Certificates” subsection below does not automatically allow for conditional certification of up to 90 days for those who fail to satisfy the requirement to possess such certifications, unlike the prior regulations.
- A policy question is whether to take a more forgiving approach.
 - On the one hand, officers now have had more notice of the requirement and time to comply.
 - On the other hand, an officer in this situation presumably once satisfied the requirement but simply allowed the certificates to expire without timely renewing them. And it should not be difficult for an officer to attain compliance.

(7) First Aid and Cardiopulmonary Resuscitation Certificates. The requirement of possession of current first aid and cardiopulmonary resuscitation certificates or equivalent, as determined by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(vii), shall be deemed satisfied if, and only if, the applicant possesses such certificates or the equivalent that will not expire before the third anniversary of the applicant’s last certification.

Public Comments Relevant to the “Oral Interview” Subsection Below:

- ACLUM:
 - Agencies should be required to record each oral interview and provide a copy of the recording to the Commission.
- MCOP:
 - This interview requirement should be deemed to have been satisfied upon completion of an interview at the hiring stage.
 - “In the first round of recertifications, there was an oral interview requirement that most departments did not complete. Reasons included that it is too burdensome on already cashstrapped and understaffed departments to dedicate personnel to compete these unnecessary tasks.”
 - As to the questions that were developed previously:
 - They “serve[d] no legitimate purpose because they [were] not asked or received by the Commission . . . unless the POST request[ed] them.”
 - “It is doubtful that any agency needs to ask or receive answers to these questions in order to decide whether an officer should be recommended for recertification,” and “[t]here is no evidence that . . . [they] provided any useful guidance to recommendations by agencies for officers to be recertified or of POST to make recertification decisions.”
 - “[T]he substance of the questions pertain to fitness and conduct issues that are best addressed locally through disciplinary process or evaluations.”
 - Questions regarding personal interactions with the criminal justice system, domestic violence, neglect, physical altercations, bankruptcy, social media use, and alcohol and cannabis use concern matters that can be addressed through the disciplinary process, are unrelated to effectiveness in policing, do not involve a widespread problem, are overreaching and too broad, and/or involve issues that should be dealt with individually with a goal of assistance and recovery.
 - Any requirement should be deemed satisfied not by an oral interview “in accordance with Commission guidelines” but if the appointing authority representative “meets with the applicant to discuss the application for recertification and provides an opportunity to discuss any concerns of the appointing authority or applicant.”
 - The provision requiring a recording and its preservation should be stricken.

Note:

- The “Oral Interview” subsection below would require an oral interview to be conducted during each certification period.
- It would need to be conducted in accordance with Commission guidelines, which may require:
 - A set of questions to be asked and answered;
 - A set of written questionnaire questions to be answered and discussed;
 - A set of topics to be discussed; or
 - A performance review to be conducted.
- The subsection would also require an agency to record an oral interview.
- It would not require an agency to automatically provide the Commission with the recording, but it would require preservation of the recording.
- Also, Section 7.15 below would also authorize the Commission to require agencies to create, preserve, and provide information, records, or other items.
- Additionally, separate regulations that would require agencies to create, maintain, and provide specific forms of information are being developed.
- The details regarding the implementation of such provisions could continue to be developed.
- The Commission could provide, for example, that the interview should cover:
 - The applicant’s achievements;
 - Challenges faced by the applicant;
 - Discipline imposed on the applicant, and how it might have been avoided;
 - An officer’s appreciation for matters on which Chapter 6E focuses, as listed above; and/or
 - Matters that the Commission believes should be better understood by members of law enforcement.
- Performance reviews are addressed in greater depth below.
- Another alternative would be to provide in this subsection that a recording must be made and preserved, but refrain from treating the making and preservation of a recording as a prerequisite for finding that the applicant has satisfied the oral interview requirement.

(8) Oral Interview. The requirement of successful completion of an oral interview administered by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(viii), shall be deemed satisfied if, and only if:

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- (a) Between the applicant’s last certification and the third anniversary of the applicant’s last certification, the head of the applicant’s appointing authority or the head’s designee orally interviews the applicant in accordance with Commission guidelines, which may require: a set of questions to be asked and answered, a set of written questionnaire questions to be answered and discussed, a set of topics to be discussed, or a performance review to be conducted; and
- (b) Any such interview is audio-recorded and preserved as directed by the Commission.

Note:

- The “Character and Fitness” requirement below is being given further consideration and separate treatment .

(9) Character and Fitness. The requirement of being of good moral character and fit for employment in law enforcement, as determined by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(ix), shall be deemed satisfied if, and only if, the Division determines that the applicant meets the criteria set out in 555 CMR 7.06.

Note:

- The “No Felony Conviction” subsection below treats the requirement as satisfied where the Division finds no conviction after a diligent search.

(10) No Felony Conviction. The requirement of not having been convicted of a felony, established by M.G.L. c. 6E, § 4(f)(2)(ii), will be deemed satisfied if, and only if, the Division does not find the applicant to have ever been so convicted, after the Division diligently takes steps to ascertain such fact.

Note:

- The “No Listing in a Decertification Database” subsection below makes clear that the NDI is the database maintained by IADLEST.

(11) No Listing in a Decertification Database. The requirement of not being listed in the National Decertification Index or the database of decertified law enforcement officers maintained by the Commission pursuant to M.G.L. c. 6E, § 13(a)(i), established by M.G.L. c. 6E, § 4(f)(2)(ii), shall be deemed satisfied if, and only if, the Division does not find the applicant to have ever been so listed, after the Division diligently takes steps to ascertain such fact. The National Decertification Index to be consulted is the database of the same name maintained by the International Association of Directors of Law Enforcement Standards and Training.

Note:

- The “Would Not Have Been Decertified Previously” subsection below concerns the statutory requirement that an applicant “while previously employed in law enforcement in any state or United States territory or by the federal government, would [not] have had their certification revoked by the commission if employed by an agency in the commonwealth.”
- The subsection makes clear that the phrase “any state or United States territory or by the federal government” includes Massachusetts.
- It focuses on whether a certification would have been revoked pursuant to M.G.L. 6E, § 10(a)—which concerns mandatory decertification—if, at the relevant time, the applicant had been employed by an agency in Massachusetts and M.G.L. c. 6E, § 10(a) had been in effect.
- M.G.L. c. 6E, § 10(a) provides as follows:

The commission shall, after a hearing, revoke an officer’s certification if the commission finds by clear and convincing evidence that:

- (i) the officer is convicted of a felony;
- (ii) the certification was issued as a result of administrative error;
- (iii) the certification was obtained through misrepresentation or fraud;
- (iv) the officer falsified any document in order to obtain or renew certification;
- (v) the officer has had a certification or other authorization revoked by another jurisdiction;
- (vi) the officer is terminated by their appointing agency, and any appeal of said termination is completed, based upon intentional conduct performed under the color of office to: obtain false confessions; make a false arrest; create or use falsified evidence, including false testimony or destroying evidence to create a false impression; engage in conduct that would constitute a hate crime, as defined in [M.G.L. c. 22C, § 32]; or directly or indirectly receive a reward, gift or

gratuity on account of their official services;

(vii) the officer has been convicted of submitting false timesheets in violation of [M.G.L. c. 231, § 85BB];

(viii) the officer knowingly files a written police report containing a false statement or commits perjury, as defined in [M.G.L. c. 268, § 1];

(ix) the officer tampers with a record for use in an official proceeding, as defined in [M.G.L. c. 268, § 13E];

(x) the officer used force in violation of [M.G.L. c. 6E, § 14];

(xi) the officer used excessive use of force resulting in death or serious bodily injury;

(xii) the officer used a chokehold in violation of said [M.G.L. c. 6E, § 14];

(xiii) the officer engaged in conduct that would constitute a hate crime, as defined in [M.G.L. c. 22C, § 32];

(xiv) the officer engaged in the intimidation of a witness, as defined in [M.G.L. c. 268, § 13B];

(xv) the officer failed to intervene, or attempt to intervene, to prevent another officer from engaging in prohibited conduct or behavior, including, but not limited to, excessive or prohibited force in violation of [M.G.L. c. 6E, § 15]; [or]

(xvi) the officer is not fit for duty as an officer and the officer is dangerous to the public, as determined by the commission.

- A policy question is whether to extend the focus to non-mandatory grounds for decertification.

(12) Would Not Have Been Decertified Previously. The requirement that the applicant, while previously employed in law enforcement in any state or United States territory or by the federal government, would not have had their certification revoked by the Commission if employed by an agency in the Commonwealth, established by M.G.L. c. 6E, § 4(f)(2)(iii), shall be addressed as follows. The requirement will be deemed satisfied if, and only if, the Division does not conclude that the applicant, while so employed within or outside of Massachusetts, would ever have had a certification revoked pursuant to M.G.L. c. 6E, § 10(a) if, at the relevant time, the applicant had been employed by an agency in Massachusetts and M.G.L. c. 6E, § 10(a) had been in effect.

Note:

- The “In-service Training” requirement below is being addressed separately.

(13) In-service Training. An applicant must successfully complete all in-service training mandated by the MPTC as a requirement for certification. This requirement, established pursuant to M.G.L. c. 6E, §§ 3(a) and 4, shall be deemed satisfied if, and only if, the Division determines that the applicant successfully completed all in-service training required for the period of time between the effective date of the applicant’s last certification and June 30 prior to the third anniversary of the applicant’s last certification.

7.10: Performance Review

Public Comments Relevant to this “Performance Review” Section:

- MCOP:
 - “[P]erformance evaluations are a mandatory subject of bargaining and many, if not all, departments have some sort of formal, or informal, procedure for evaluating their officers that was properly negotiated with their bargaining units.”
 - “We are opposed to any reduction in collective bargaining rights that govern how our members are evaluated.”
 - “The POST could encourage or mandate evaluations, but it should not dictate the method, criteria or implementation of them.”
 - The subsection allowing the Commission to require performance reviews should be stricken, as regulating performance evaluations goes beyond the Commission’s statutory charge with respect to certification and addressing misconduct.

Note:

- This “Performance Review” section would generally provide that the Commission may allow agencies to utilize performance review as alternative vehicles for satisfying and evaluating the satisfaction of statutory certification requirements.
- A performance review could potentially encompass, for example:
 - An oral interview;
 - An examination;
 - A background check;
 - A check into first aid and CPR certificates;
 - A character and fitness evaluation;

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- A form of physical and psychological evaluation; and/or
- Anything else that the Commission deems appropriate.
- A performance review could be designed to test an officer's appreciation for matters on which Chapter 6E focuses, as listed above.
- A policy question is whether to further develop such a provision or to leave it more general.

The Commission may establish that one or more requirements for certification set forth in 555 CMR 7.09 may be satisfied through a performance review, in lieu of any method prescribed by 555 CMR 7.09.

Note:

- Sections 7.11 through 7.13 below blend provisions found in the prior recertification regulations and those found in 555 CMR 9.00.
- Among these are provisions of 9.00 stating that:
 - A certification shall be active only while one is serving as an officer for a law enforcement agency; and
 - An individual is precluded from executing arrests or otherwise performing police duties and functions in various circumstances.
- Such sections provide additional forms of notice for identified CBU heads.

7.11: Issuance of a Certification Decision

Public Comments Relevant to this "Issuance of a Certification Decision" Section:

- MCOP:
 - Provide that any denial of recertification must be supported by clear and convincing evidence.

(1) The Division shall provide notification of a decision on the application by email to each of the following:

- (a) The applicant;
- (b) The applicant's appointing authority; and
- (c) Any identified CBU head for the applicant.

(2) As a decision declining to grant full certification is distinct from decertification, the procedures prescribed by M.G.L. c. 6E, § 10 need not be followed before such a decision issued.

(3) If the Division's decision on an application provides for anything other than full certification, the notification described in 555 CMR 7.11(1) shall also inform the applicant of:

- (a) Any condition, limitation, or restriction attached to the certification, and any associated terms; and
- (b) The ability to seek review by the Executive Director as provided for in 555 CMR 7.12(1) and a hearing as provided for in 555 CMR 1.10 and 555 CMR 7.12(2).

7.12: Possible Action Following Decision Declining to Grant Full Certification

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

- (a) Within 21 days of service by email of the Division's decision, the applicant or the applicant's appointing authority may submit a written petition to the Executive Director requesting review of the decision.

1. If an applicant files the petition, the applicant shall provide a copy of the petition to the applicant's appointing authority and any identified CBU head for the applicant at the time of its filing.

2. If an appointing authority files the petition, the appointing authority shall provide a copy of the petition to the applicant and any identified CBU head for the applicant at the time of its filing.

- (b) The Executive Director may ask any entity or individual to provide additional information, orally or in writing, or to appear at a meeting concerning the matter. At any such meeting, the Executive Director shall have discretion to determine the extent to which an individual who does not have a right to appear may attend and participate.

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- (c) The Executive Director shall, within a reasonable time, provide a written decision on the petition to:
1. The applicant;
 2. The applicant's appointing authority; and
 3. Any identified CBU head for the applicant.

(2) Following the process described in 555 CMR 7.12(1), an applicant or an applicant's appointing authority may request a hearing before the Commission concerning an application in accordance with 555 CMR 1.10: *Final Disciplinary Hearings and Appeals of Certification Decisions*.

(3) The Commission may place an individual's certification on restricted status while review pursuant to 555 CMR 7.12(1) or a hearing pursuant to 555 CMR 7.12(2) is pending.

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

7.13: Certification Status

(1) An application process shall be deemed ongoing and not "finally determined," as that term is used in M.G.L. c. 30A, § 13, absent a final decision.

(2) Notwithstanding the provisions of 555 CMR 7.04, a final decision to certify an applicant made after the third anniversary of the applicant's last certification may be made retroactive to a date on or after such anniversary.

(3) The granting of a certification shall not preclude the conditioning, limiting, restricting, suspending, or revoking of the certification in accordance with law, when warranted.

(4) Except as expressly provided herein, an individual who holds a conditional, limited, or restricted certification is "certified," as that term is used in M.G.L. c. 6E.

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

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

(7) A certification granted pursuant to 555 CMR 7.00 shall be active only while the certified individual is serving as an officer for a law enforcement agency, and shall otherwise be restricted.

(8) The following individuals may not execute any type of arrest, as that term is defined in 555 CMR 9.02(2), or otherwise perform police duties and functions:

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

7.14: Supervision by the Executive Director

Notwithstanding any other provision of 555 CMR 7.00, each member of the Commission staff shall be subject to the supervision and direction of the Executive Director in implementing any aspect of such regulations.

7.15: Cooperation, Enforcement, and Disciplinary Action

Public Comments Relevant to this “Cooperation, Enforcement, and Disciplinary Action” Section:

- ACLUM:
 - Agencies should not be allowed to submit an attestation supporting an officer without providing proof that qualifications have been met.

Note:

- Neither this “Cooperation, Enforcement, and Disciplinary Action” section nor any other section of these regulations would require agencies to automatically provide the Commission with proof that requirements have been met. But, as noted above:
 - The regulations would authorize the Commission to require agencies to create, preserve, and provide information, records, or other items;
 - These regulations would also preclude an agency from endorsing an applicant, and submitting an application for the applicant, where the agency has not found the applicant to possess character and fitness; and
 - Separate regulations that would require agencies to create, maintain, and provide specific forms of information are being developed.
 - The subsections concerning the maintenance and reporting of certain records and information were struck on the assumption that such subjects will be addressed through 555 CMR 12.00, when they are finally promulgated.
 - The subsections regarding enforcement were revised to take into account feedback regarding these regulations and 555 CMR 12.00 and now mirror those included in the latest draft of 555 CMR 12.00.

(1) Law enforcement agencies and officers are prohibited from engaging in the following forms of conduct:

- (a) Failing to comply with 555 CMR 7.00, an order of the Commission issued thereunder, or a limitation or restriction on a certification;
- (b) “Untruthfulness” as defined in M.G.L. c. 6E, § 1; or
- (c) Harassing, intimidating, or retaliating against any individual for taking any step, or interference with one’s taking of any step, that is required by M.G.L. c. 6E, 555 CMR, or the Commission.

(2) If an officer violates 555 CMR 7.15(1):

- (a) The Commission may administratively suspend the officer’s certification for a specified period of time or until specified conditions are satisfied; and
- (b) Upon issuing any such administrative suspension, the Commission shall follow the procedures specified in M.G.L. c. 6E, § 9(d) and 555 CMR 1.09: *Single Commissioner Review of Suspensions*.

(3) Conduct by an officer in violation of 555 CMR 7.15(1) may be treated as a form of “prohibited conduct” under M.G.L. c. 6E, § 8(c)(2) and 555 CMR 1.02(4).

(4) The Commission may refer information that it obtains in the certification process to an appropriate government office for possible criminal or civil enforcement action, pursuant to M.G.L. c. 6E, §§ 3(a) and/or 8(c)(2).

REGULATORY AUTHORITY

555 CMR 7.00: MG.L. c. 6E.

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

555 CMR 7.00: RECERTIFICATION

Section

- 7.01: Authority and Scope
- 7.02: Definitions
- 7.03: Submission of Information to the Commission
- 7.04: Continuation of Certification Period
- 7.05: Conditional Certification
- 7.06: Determination of Character and Fitness
- 7.07: In-service Training
- 7.08: Division Evaluation of an Application
- 7.09: Satisfaction of Certification Requirements
- 7.10: Performance Review
- 7.11: Issuance of Decision
- 7.12: Possible Action Following Decision Declining to Grant Full Certification
- 7.13: Certification Status
- 7.14: Supervision by the Executive Director
- 7.15: Enforcement and Disciplinary Action

Note:

- This draft set of regulations is intended in part to:
 - Incorporate ideas for how the recertification process can be refined beginning with the July 1, 2025 class of applicants;
 - Limit the regulations to establishing certain key rules governing the recertification process, leaving the details of the implementation to be further developed and modified;
 - Harmonize the recertification regulations with 555 CMR 9.00, which govern all initial certifications and the recertification of independent applicants; and
 - Incorporate suggestions for improvement that have been offered over time, based on the Commission’s experience in applying the recertification regulations, many of which have already been incorporated into 555 CMR 9.00 or the current draft of 555 CMR 12.00.
- The redlined version of this draft shows changes that have been made since the Certification Policy Subcommittee meeting of May 23, 2024, except changes that were based on phrasing adjustments made throughout the draft, formatting, ordering of items, numbering, or punctuation.

7.01: Authority and Scope

Note:

- This “Authority and Scope” section in part confirms that these regulations would apply only to endorsed applicants for recertification who seek to serve in appointed positions within law enforcement agencies, while 555 CMR 9.00 would continue to govern independent applicants for recertification, including applicants in elected positions, as well as initial certifications.
- It now includes language clarifying that the regulations do not require action that would result in a violation of a legally recognized privilege or other law.

- (1) 555 CMR 7.00 is promulgated pursuant to M.G.L. c. 6E, §§ 3(a) and 4.
- (2) 555 CMR 7.00:
 - (a) Governs the recertification of an applicant whose application is endorsed or supported by a law enforcement agency that is a current or prospective employer of an applicant an appointing authority.
 - (b) Does not govern the initial certification of an individual.
 - (c) Does not govern the recertification of an individual who submits, or intends to submit, an application to the Commission without the endorsement of an endorsing-law enforcement agency appointing authority, and whose recertification is thus governed by 555 CMR 9.00.
- (3) No person or entity shall be required to comply with any provision of 555 CMR 7.00 or any order issued thereunder if:
 - (a) Compliance would result in:
 1. A violation of a privilege against disclosure recognized by law and held by that person or entity, including, but not limited to, the attorney-client privilege and any privilege against self-incrimination; or

2. A federal or state constitutional or statutory provision; and
(b) The person or entity so informs the Commission, citing the pertinent privilege, protection, or provision.

- (43) Nothing in 555 CMR 7.00 is intended to:
- (a) Establish a standard of care;
 - (b) ~~or e~~ Create any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection on the part of any ~~other~~ person or entity other than the Commission, except as expressly provided;
 - (b) Otherwise waive any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection that may be available to the Commission; or
 - (c) Preclude the limiting, conditioning, restricting, suspending, or revoking of any certification in accordance with law.

7.02: Definitions

Public Comments Relevant to this “Definitions” Section:

- MCOP:
 - The definition of “Appointing Authority” should be revised to make clear that a person or entity with the authority to appoint an agency head is the “appointing authority” only for an agency head, as opposed to being an alternative appointing authority for any and all applicants.

Note:

- This “Definitions” section is intended in part to address certain issues of terminology.
- Among other things, the regulations:
 - Make clear that a recertification is a type of certification, not a wholly different action, and thus simply speak in terms of certification, as opposed to both certification and recertification; and
 - Make clear that “recertification” and “renewal” are synonymous; ;
- Other changes to the terminology used in the recertification regulations can be highlighted if helpful.

(1) 555 CMR 7.00 incorporates all definitions and rules of construction set forth in 555 CMR 2.02: *Definitions* and 2.03: *Construction*, except those definitions of terms that are defined in 555 CMR 7.02(2).

(2) For the purposes of 555 CMR 7.00, the following terms have the following meanings, unless the context requires otherwise:

Applicant. An individual on whose behalf an application is submitted to the Commission.

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

Appointing Authority. In the case of an applicant who seeks to begin serving or continue serving as an appointed head of a law enforcement agency, the person or entity with the authority to appoint the individual as the law enforcement agency head; and in the case of all other applicants, the law enforcement agency that seeks to begin employing or continue employing an applicant in an unelected position as an officer~~The law enforcement agency that employs or seeks to employ an individual as an officer, or the person or entity with the authority to appoint an individual as the head of a law enforcement agency.~~

Body or Person of Authority. An officer’s appointing authority; ~~or~~ any supervisor of the officer therein; the Civil Service Commission; any arbitrator or other third-party neutral with decision-making power; and any court.

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

Certification Period. The period of time between the effective date and the expiration date of an individual’s certification as an officer, including any period of continuation provided for under M.G.L. c. 30A, § 13 or 555 CMR 7.04 beyond the third anniversary of the officer’s last certification.

Character and Fitness. Good moral character and fitness for employment in law enforcement, as that phrase is used in M.G.L. c. 6E, § 4(f)(1)(ix). Character and fitness means to have qualities that the public, other members of law enforcement, and the Commission have the right to demand of an officer, which qualities include, but are not limited to, honesty, integrity, diligence, reliability, fairness, candor, trustworthiness, respect for and obedience to the law, and respect for the rights of others and the judicial process.

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

Conditional Certification. A certification of the type described in 555 CMR 7.05.

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

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

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

Executive Director. The Executive Director of the Commission appointed pursuant to M.G.L. c. 6E, § 2(g), or that person's designee for relevant purposes.

Final Decision. The ultimate Commission decision on an application, following any review or hearing pursuant to 555 CMR 7.12 or the expiration of the time afforded for an applicant to seek such review or hearing, and following the satisfaction of any conditions attached to a conditional certification or the expiration of the time to satisfy any such conditions, and thus not including a decision granting a conditional certification.

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

Identified CBU Head. An individual identified by an applicant or an applicant's appointing authority as being the head of the applicant's collective bargaining unit.

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

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

Officer. A "law enforcement officer" as defined in M.G.L. c. 6E, § 1, or an individual who possesses an officer certification.

Recertification. A type of certification involving a renewal of a previously granted certification.

Suspension. A suspension of a certification, including an administrative suspension, pursuant to M.G.L. c. 6E, §§ 3, 9, and/or 10.

7.03: Submission of Information to the Commission

Note:

- This "Submission of Information to the Commission" section and others shift certain functions from the Executive Director to the Division of Police Certification. However, Section 7.14 below affirms that all staffers operate under the supervision and direction of the Executive Director.
- While applications would likely be submitted by agencies, as opposed to officers, this section gives the Division the latitude to require or allow either approach.
- This section, like 555 CMR 9.00, provides that, if an agency has not found an individual to possess character and fitness, the agency is precluded from endorsing the individual and submitting an application on the individual's behalf. Rather, the applicant would need to proceed independently

under 9.00.

- (1) The Division may establish the deadline by which, and the manner in which, any application, form, or information related to certification is to be submitted to the Commission by an applicant or appointing authority.
- (2) The Division may extend any deadline that it establishes one or more times for good cause, provided that no single extension exceeds 30 calendar days. Any applicant or appointing authority seeking an extension must submit to the Commission, with its first request for an extension, a roster of officers as to whom it intends to seek certification and requires an extension.
- (3) An appointing authority may not submit an application on behalf of an individual, or endorse an individual's application, unless the appointing authority has determined that the individual possesses character and fitness as defined in 555 CMR 7.02(2).

7.04: Continuation of Certification Period

Note:

- This [“Continuation of Certification Period”](#) section, which is similar to its predecessor, enables an officer to maintain an existing certification if the officer's recertification application has not been fully processed by the date on which the prior certification would normally expire.
- This section would also enable the Division to pursue its intended approach of shifting expiration dates to the birthdays or birth-months of applicants. At the same time, this section would not compel such an approach.
- It would allow the Division to fashion ways for agencies and officers to satisfy the application requirement.
- Where an applicant's original certification period extends beyond the applicant's birthday because the applicant is pursuing a challenge to an adverse decision, the Division will be able to make the start date for any new certification period retroactive to the applicant's birthday (or another date), provided the date is not less than three years since the applicant's last certification, pursuant to Section 7.13(2) below.

- (1) Pursuant to M.G.L. c. 30A, § 13, the certification period for an applicant shall continue after the third anniversary of the applicant's last certification, if:
 - (a) The application, in a form prescribed by the Division, is submitted in advance of such anniversary;
 - (b) The application is submitted in advance of any applicable deadline, and in conformity with any procedures, established by the Division; and
 - (c) The Division finds the application to be sufficient.
- (2) The Division may establish that the inclusion of an applicant's name in a roster submitted in accordance with 555 CMR 7.03(2) or Division guidelines shall be considered an application for purposes of 555 CMR 7.04(1)(a).
- (3) A certification period continued pursuant to 555 CMR 7.04 will end upon the issuance of a final decision.

7.05: Conditional Certification

Note:

- This [“Conditional Certification”](#) section was revised with the goal of condensing it, avoiding redundancy, and addressing grounds for conditional certification globally as opposed to requirement-by-requirement.
- The section addresses two types of conditional certification:
 - Those provided where the Division has not yet found an individual to have satisfied all certification requirements but there are grounds for temporarily certifying the individual nonetheless; and
 - Those provided where the Division has found an individual to have satisfied all requirements but still finds grounds to add a condition.
- The phrase “unable to grant a full certification” is intended to apply to:
 - Situations where an individual has not satisfied all requirements; and
 - Situations where the Division has been unable to complete the certification process.

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- This section, like its predecessor, provides protection for officers who, for example, failed to satisfy a requirement through no fault of their own or because of an understandable reason.
- At the same time, this section is less forgiving than its predecessor, given that officers and agencies now have had more notice of the requirements and have more familiarity with the system, and there is no longer the same need to “equalize” the three thirds of the alphabet.
- The list of grounds for granting a conditional certification should not extend to failures such as:
 - Failing a background check;
 - Lacking character and fitness;
 - Having a felony conviction;
 - Being listed in a decertification database;
 - Having a background event that would have led to decertification in Massachusetts; and
 - Failing to complete training without having been excused.
- A policy question is whether to allow for conditional certification in situations involving failures other than those listed, such as not possessing current first aid and CPR certificates.

(1) The Division shall conditionally certify an applicant if it is unable to grant a full certification and the inability is directly and solely attributable to one of the following or a combination of the following:

- (a) A failure to satisfy training requirements, where the applicant has been afforded additional time to satisfy such requirements by the MPTC;
- (b) Circumstances that are beyond the applicant’s control and are attributable to a current or former employer of the applicant, the MPTC, or the Commission; or
- (c) The applicant’s having been on approved leave, the applicant’s having experienced a demonstrable hardship, or circumstances beyond the applicant’s control.

(2) The Division otherwise may conditionally certify an applicant if:

- (a) The provisions of 555 CMR 7.07(3) are satisfied;
- (b) The applicant’s application is substantially complete and does not reveal any basis for denying certification, but the Division is unable to grant a full certification because certain additional details need to be supplied or certain information needs to be verified; or
- (c) The Division determines that an applicant has satisfied all requirements for certification, but nevertheless deems a conditional certification warranted.

(3) Where the Division conditionally certifies an applicant, it shall set appropriate conditions that must be met in order for the applicant to maintain a certification.

(4) An applicant shall not be required to satisfy any conditions attached to a conditional certification, nor shall any time periods associated with any such conditions begin to elapse, before the conclusion of any review or hearing pursuant to 555 CMR 7.12, or the expiration of the time afforded for the applicant to seek such review or hearing, pursuant to 555 CMR 7.12.

(5) When an applicant fails to satisfy a condition of a conditional certification within the time allowed, taking into account the provisions of 555 CMR 7.05(4), the Division shall terminate the applicant’s certification, unless good cause for an extension of time for the applicant to satisfy the condition has been shown.

(6) When an officer satisfies all conditions of a conditional certification within the time allowed, taking into account the provisions of 555 CMR 7.05(4), and the Commission has not otherwise limited, restricted, or suspended the officer’s certification, the Division shall convert the conditional certification into a full certification and may set an effective date for the certification according to 555 CMR 7.13(2).

7.06: Determination of Character and Fitness

Note:

This “Determination of Character and Fitness” subject section is being given further consideration and separate treatment discussed further in a separate document is being addressed separately.

(1) — General Standards Utilized by Employing Agency and Commission. Any assessment of whether an applicant possesses character and fitness, as that term is defined in 555-

~~CMR 7.02, shall take into account on-duty and off-duty conduct. Character and fitness can be assessed through the consideration of the totality of the circumstances, weighing all factors, both favorable and unfavorable. No one factor is necessarily dispositive.~~

~~(2) Submission by Appointing Authority.~~

~~(a) Each applicant's appointing authority shall provide a submission to the Commission concerning whether an officer possesses character and fitness, in accordance with Commission policy.~~

~~(b) In assessing character and fitness, an appointing authority may take into account whether an officer, both on-duty and off-duty:~~

- ~~1. Follows any mission and values statement developed or approved by the Commission;~~
- ~~2. Adheres to laws and orders;~~
- ~~3. Demonstrates accountability and responsibility;~~
- ~~4. Engages in conduct unbecoming a law enforcement officer, such as conduct that casts doubt on the officer's integrity, honesty, moral judgment, or character; brings discredit to the law enforcement agency; or impairs the law enforcement agency's efficient and effective operation;~~
- ~~5. Is untruthful, as defined by M.G.L. c. 6E, § 1, in all matters;~~
- ~~6. Neglects the duties of a law enforcement officer;~~
- ~~7. Engages in misconduct towards the public;~~
- ~~8. Engages in misconduct towards other law enforcement officers;~~
- ~~9. Abuses one's law enforcement authority or position;~~
- ~~10. Engages with prohibited associates or establishments; or~~
- ~~11. Is worthy of the public trust and of the authority given to law enforcement officers.~~

~~(c) In making such an assessment, the law enforcement agency also may rely on:~~

- ~~1. Questionnaires;~~
- ~~2. Any guidance or forms approved by the Commission;~~
- ~~3. Performance reviews;~~
- ~~4. Relevant education;~~
- ~~5. Specialized training;~~
- ~~6. Professional awards;~~
- ~~7. Achievements;~~
- ~~8. Commendations by law enforcement agencies or officials or others;~~
- ~~9. Instances of imposed discipline;~~
- ~~10. Patterns Allegations of misconduct;~~
- ~~11. The applicant's age at the time of the conduct;~~
- ~~12. The amount of time since the conduct;~~
- ~~13. The reliability of the information concerning the conduct;~~
- ~~14. The seriousness of the conduct;~~
- ~~15. The type of substantiated allegations (e.g., conduct unbecoming an officer, untruthfulness, excessive force);~~
- ~~16. The type of discipline imposed for each substantiated complaint;~~
- ~~17. Any decision from a body or person of authority an arbitrator, the Civil Service Commission, or a court;~~
- ~~18. Whether the conduct would subject the individual to discipline under M.G.L. c. 6E;~~
- ~~19. The cumulative effect of conduct or information;~~
- ~~20. The evidence of rehabilitation;~~
- ~~21. The applicant's positive social contributions since the conduct;~~
- ~~22. The applicant's positive contributions to public welfare and safety since the conduct;~~
- ~~23. The applicant's candor in the certification process;~~
- ~~24. The materiality of any omissions or misrepresentations;~~
- ~~25. The length of service in law enforcement at the federal, state, and municipal levels as an officer at any law enforcement agency, including, but not limited to, federal, state, and municipal law enforcement agencies; and~~
- ~~26. Any other evidence of past performance.~~

~~(d) If an appointing authority determines that an applicant possesses character and fitness, the appointing authority shall provide, upon request by the Commission, documentation supporting such a determination.~~

~~(e) — If an appointing authority determines that it cannot find that an applicant possesses character and fitness, the appointing authority shall make a written report to the Commission, a copy of which shall be simultaneously provided to the applicant and the applicant's identified CBU head.~~

~~1. — The written report shall contain an explanation for the appointing authority's determination including, but not limited to, a description of specific conduct supporting the appointing authority's determination. The written report must be sufficient to permit the Commission to evaluate the basis for the appointing authority's determination, and to permit the Commission to determine whether the officer possesses character and fitness.~~

~~2. — As to each instance of specific conduct cited in the appointing authority's report as evidence that the applicant may lack character and fitness, the appointing authority shall address:~~

~~a. — Any discipline imposed or decision issued by a body or person of authority as a result of the conduct, or the reason(s) why there was no discipline or decision;~~

~~b. — The extent to which the applicant complied with any such discipline or decision;~~

~~c. — Any similar conduct allegedly undertaken by the applicant subsequent to any such discipline or decision; and~~

~~d. — The dates of each instance of conduct, and imposition of discipline or issuance of a decision.~~

~~(f) — Response by Applicant. Within 14 calendar days of the submission of the report to the Commission, or a longer period of time allowed by the Commission upon a showing of good cause, the applicant may submit a written response to the Commission, a copy of which shall be simultaneously provided to the applicant's appointing authority.~~

~~(3) — Assessment and Determination by Commission.~~

~~(a) — The Division shall render an initial determination as to whether an applicant possesses character and fitness, in accordance with any protocols adopted by the Commission, upon giving due consideration to all information available to it including, but not limited to, the following:~~

~~1. — An attestation that an applicant possesses character and fitness and accompanying information;~~

~~2. — Any report by an appointing authority of the type described in 555 CMR 7.06(2)(e); and~~

~~3. — Any response by an applicant of the type described in 555 CMR 7.06(2)(f).~~

~~(b) — The Division may, to the extent reasonably possible, obtain additional information that may prove helpful in determining whether an applicant possesses character and fitness.~~

~~(4) — Consideration of Particular Matters. In rendering a determination regarding an applicant's character and fitness, unless there have been allegations that an applicant has engaged in multiple instances of similar or related misconduct or protocols adopted by the Commission provide otherwise, neither the appointing authority nor the Division shall consider an allegation of a particular instance of misconduct, where:~~

~~(a) — A body or person of authority has made a decision in the applicant's favor on the merits of a complaint alleging such misconduct;~~

~~(b) — The alleged misconduct is currently the subject of a pending investigation or adjudication by any authority;~~

~~(c) — The applicant has complied, or is in the process of complying, with any disciplinary action or other adverse decision by a body or person of authority, in relation to the alleged misconduct, and the applicant has not engaged in any similar conduct since the discipline or decision;~~

~~(d) — The alleged misconduct did not result in either a disciplinary proceeding or court action, and the appointing authority has not offered a reasonable explanation as to why no such proceeding or action was commenced; or~~

~~(e) — The allegation is not specifically and credibly supported.~~

Note:

- This [“In-service Training” subsection](#) is discussed further in a separate document ~~subject is being addressed separately.~~

(1) The annual in-service training requirements and deadlines for the Commission shall be the same as those established by the MPTC.

~~(2) In order to receive a certification free of any condition, limitation, restriction, or suspension, an applicant must have completed, in advance of the third anniversary of the applicant’s last certification, all annual in-service training that the applicant was required to complete by that point.~~

(2) Where an applicant is unable to satisfy the annual in-service training requirements, the applicant may be conditionally certified and receive a temporary exemption from the administrative-suspension provisions of M.G.L. c. 6E, § 9(b) if:

- (a) The applicant applies to the applicant’s appointing authority for such a conditional certification and temporary exemption;
- (b) The applicant provides documentation to the appointing authority that sufficiently establishes that the applicant has been unable to complete required in-service training due to injury, physical disability, or a leave of absence;
- (c) The applicant otherwise meets all qualifications for certification; and
- (d) The applicant’s appointing authority certifies that the applicant meets the criteria for a conditional certification and temporary exemption described in 555 CMR 7.07(3).

7.08: Division Evaluation of an Application

Note:

- This [“Division Evaluation of an Application” section](#) is based on provisions of 555 CMR 9.00.

(1) The Division shall evaluate each substantially complete application that it receives.

(2) The Division may:

- (a) Evaluate whether an applicant has satisfied the requirements set forth in 555 CMR 7.09 in any order that the Division considers expedient; and
- (b) Refrain from evaluating whether any requirement has been satisfied after having determined that an applicant’s failure to satisfy any other requirement is sufficient to warrant denial of the application.

(3) Except as provided in 555 CMR 7.05, the Division may grant an application only if the Division determines that:

- (a) The Division has received sufficient information relevant to the application; and
- (b) The applicant satisfies all requirements set forth in 555 CMR 7.09.

(4) If the Division determines that the applicant has not satisfied any of the requirements set forth in 555 CMR 7.09, and has not found the circumstances described in 555 CMR 7.05(1) or (2) to apply, the Division shall deny the application in accordance with 555 CMR 7.11.

7.09: Satisfaction of Certification Requirements

Note:

- This [“Satisfaction of Certification Requirements” section](#) now expressly references the relevant statutory provisions.
- Unlike its predecessor, this section incorporates the provisions of M.G.L. c. 6E, § 4(f)(2) (no felony conviction; no listing in a decertification database; would not have been decertified previously; and satisfying certification standards in Commission regulations) in addition to the requirements of M.G.L. c. 6E, § 4(f)(1).
- The subsections below use the phrase “if, and only if” as a way of establishing that certain actions will be sufficient to satisfy a requirement; and must be undertaken in order for the requirement to be satisfied.
- As noted above, this section no longer addresses whether a failure to satisfy a requirement can be

cured through a conditional certification or must instead lead to a denial of certification. That subject is instead addressed globally through Section 7.05 above.

- This section no longer refers to the Bridge Academy, as the program will be concluding.

Except as otherwise provided in 555 CMR 7.05 and 7.10, the Division shall evaluate whether the applicant has satisfied the requirements for certification established by M.G.L. c. 6E, §§ 4(f)(1), 4(f)(2), and 4(i), and 555 CMR 7.00, as follows.

Note:

- The predecessor of the “Age 21” subsection below automatically afforded officers until July 1, 2024 to satisfy the requirement of attaining age 21. These regulations afford no additional time, because: the prior deadline of July 1, 2024 will soon be reached; it no longer appears necessary to “equalize” officers; and it seems inconceivable that any presently serving officer could be found not to satisfy the requirement while having cause to complain of unfair surprise.
- As a practical matter, the Division will already have sufficient information from the previous certification process to evaluate this requirement.

(1) Age 21. The requirement of attaining the age of 21, established by M.G.L. c. 6E, § 4(f)(1)(i), shall be deemed satisfied if, and only if, the applicant attained the age of 21 before the third anniversary of the applicant’s last certification.

Note:

- The predecessor of the “High School Education or Equivalent” subsection below automatically afforded officers until July 1, 2024 to satisfy the requirement of successfully completing high school or its equivalent. These regulations afford no additional time, for the same reasons offered above.
- As a practical matter, the Division will already have sufficient information from the previous certification process to evaluate this requirement.

(2) High School Education or Equivalent. The requirement of successful completion of a high school education or equivalent, as determined by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(ii), shall be deemed satisfied if, and only if, the applicant successfully completed a high school education or obtained a General Educational Development (GED) certificate from an accredited program before the third anniversary of the applicant’s last certification.

Note:

- An officer who fails to satisfy the “Basic Training program” requirement below can, as noted above, obtain a conditional certification only in limited circumstances under Section 7.05~~As noted above, Section 7.05 allows an officer who failed to satisfy the training requirement below to obtain a conditional certification only in limited circumstances.~~

(3) Basic Training Program. The requirement of successful completion of the basic training program approved by the MPTC, established by M.G.L. c. 6E, § 4(f)(1)(iii), shall be deemed satisfied if, and only if, at any point in time prior to the third anniversary of the applicant’s last certification, the applicant successfully completed either: a basic training program approved by the MPTC; or a reserve training program approved by the MPTC and all additional training and service required by the MPTC pursuant to St. 2020, c. 253, § 102(b).

Public Comments Relevant to the “Physical and Psychological Fitness Evaluation” Subsection Below:

- MCOP:
 - Any requirement should be deemed satisfied not by “an evaluation that conforms to Commission specifications” but if “the appointing authority attests that the officer satisfies, or does not violate, the applicable fitness requirements of the law enforcement agency, including any exceptions granted to the officer”; “[t]he officer provides a letter from a licensed healthcare provider verifying physical and psychological fitness”; and “[t]he appointing authority attests that they have made resources related to physical and mental wellbeing available to the officer.”
 - The provision requiring the preservation of documentation should be stricken.

Note:

- The “Physical and Psychological Fitness Evaluation” subsection below cites the statutory section that lists the successful completion of such an evaluation among the minimum certification requirements, M.G.L. c. 6E, § 4(1)(iv).

- Notably, another statutory section provides that “[t]he commission shall have all powers necessary or convenient to carry out and effectuate its purposes, including, but not limited to, the power to” “adopt, amend or repeal regulations in accordance with chapter 30A for the implementation, administration and enforcement of [Chapter 6E], including, but not limited to, regulations” “establishing a physical and psychological fitness evaluation pursuant to section 4 that measures said fitness to ensure officers are able to perform essential job duties.” M.G.L. c. 6E, § 3(a).
- The subsection below calls for completion of a Commission-prescribed evaluation.
- The subsection further calls for the preservation of any recording or documentation of the evaluation, without requiring the making of any recording or documentation or requiring the automatic provision of any recording or documentation to the Commission.
- Also, Section 7.15 below would also authorize the Commission to require agencies to create, preserve, and provide information, records, or other items.
- Additionally, separate regulations that would require agencies to create, maintain, and provide specific forms of information are being developed.
- Another alternative would be to provide in this subsection that any recording or documentation must be preserved, but refrain from treating the preservation of such items as a prerequisite for finding that the evaluation requirement has been satisfied.
- The details regarding the implementation of these provisions could continue to be developed.
- This subsection is being given further consideration and separate treatment is discussed further in a separate document. The requirement below is being addressed separately.

- (4) Physical and Psychological Fitness Evaluation. The requirement of successful completion of a physical and psychological fitness evaluation approved by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(iv), shall be deemed satisfied if, and only if:
- (a) Between the applicant’s last certification and the third anniversary of the applicant’s last certification, there has been an evaluation that conforms to Commission specifications; and
 - (b) Any documentation or recording of questions posed, topics discussed, statements made, or assessments rendered in such an evaluation are preserved as directed by the Commission.

Public Comments Relevant to the “State and National Background Check” Subsection Below:

- **ACLUM:**
 - Agencies should be required to provide the Commission with documentation concerning the results of background checks.
 - Any questionnaire should include questions that capture additional aspects of an officer’s history, such as adverse civil judgments and judicial findings, and admissions of misconduct.

Note:

- The “State and National Background Check” background-check subsection below does not call for a collection and evaluation of information that presumably would have been collected and evaluated in a prior certification process, either under 555 CMR 7.00 or 555 CMR 9.00.
- It instead focuses on ensuring that the Commission has received, or will receive, information on certain matters that occurred within the last certification period.
- Such information concerns discipline, arrests, criminal prosecutions, civil actions, and administrative agency actions.
- The subsection states, “as established and further described in the statute,” because the statute adds a proviso stating that, “if the applicant has been 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 discipline, shall be evaluated in the background check.”

- (5) State and National Background Check. The requirement of successful completion of a state and national background check, including, but not limited to, fingerprinting and a full employment history, established and further described by M.G.L. c. 6E, § 4(f)(1)(v), shall be deemed satisfied if, and only if:

- (a) The applicant’s appointing authority either:
 - 1. Certifies that, between the applicant’s last certification and the third anniversary of the applicant’s last certification, it has provided the Commission with information conforming to Commission guidelines concerning any of the following occurring during that time period:
 - a. Discipline imposed on the applicant in relation to a matter reportable to the Commission under 555 CMR 1.01;
 - b. An arrest of the applicant;
 - c. The commencement, continuation, or termination of:

1. A criminal prosecution against the applicant;
 2. A civil action against the applicant related to the applicant's service in law enforcement; or
 3. An administrative agency action against the applicant related to the applicant's service in law enforcement; or
2. Provides to the Commission any information of the type described in 555 CMR 7.09(5)(a) that it has not previously provided to the Commission; and
- (b) The Division does not discern any basis for finding the requirement unmet.

Public Comments Relevant to the "Examination" subsection below:

- **ACLUM:**
 - The examination requirement should need to be satisfied anew in each certification period, with officers completing examinations based on current training standards.
- **MCOP:**
 - This requirement should be deemed to have been satisfied upon completion at the hiring stage. Thereafter, the process should focus on whether the officer is in good standing and any statutory disqualifier applies.
 - Agencies should not be required to undertake additional steps without adequate funding.

Note:

- The "Examination" subsection below requires passage of an examination each certification period, in part because:
 - It can be presumed that the Legislature intended to require as much, in light of:
 - The provision of M.G.L. c. 6E, § 4(i) stating, "The commission shall not recertify any person as a law enforcement officer unless the commission certifies that the applicant for recertification continues to satisfy the requirements of [M.G.L. c. 6E, § 4(f)]"; and
 - The nature of Chapter 6E and the larger session law through which it was adopted in their entirety, and the events surrounding the law's enactment; ~~and~~
 - Requiring as much can contribute to the goal of improving law enforcement; and
 - An examination can be administered each certification period in a manner that does not create undue burden.;
- An examination:
 - Does not need to be developed by the Commission, but can be approved by the Commission after being developed by others;
 - Does not need to be written;
 - Could be developed by a committee of law enforcement professionals; and/or
 - Could be administered online, perhaps using software that the MPTC will be acquiring.
- More specifically, the Commission could take a page from the State Ethics Commission's conflict-of-interest training exam, which: is completed online; focuses on the law administered by the Commission and the consequences of violating the law; largely presents clear right/wrong issues, as opposed to debatable ones; allows those who answer questions incorrectly to keep trying, while providing explanatory information; thus focuses on educating, as opposed to passing and failing; and highlights certain rules that are more complex or less obvious.
- Thus, for example, the Commission could develop an exam that tests an officer's understanding of:
 - Matters on which Chapter 6E focuses:
 - Adherence to law, and avoidance of criminal conduct;
 - Policing without bias, particularly bias based on enumerated characteristics;
 - Policing with integrity, and avoidance of corrupt practices and conduct prejudicial to the administration of justice; and
 - Properly using force, refraining from using force, intervening when witnessing improper uses of force, and avoiding injuries and deaths; and
 - The disciplinary, civil, and criminal consequences of violations.
- If necessary, exam questions could be drawn from fact patterns in judicial opinions.

(6) Examination. The requirement of passage of an examination approved by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(vi), shall be deemed satisfied if, and only if, the applicant successfully completes a Commission-prescribed examination between the applicant's last certification and the third anniversary of the applicant's last certification.

Note:

- The "First Aid and Cardiopulmonary Resuscitation Certificates" subsection below ~~The prior regulations does not~~ automatically allowed for conditional certification of up to 90 days for those who failed to satisfy the ~~first aid and CPR~~ requirement below to possess such certifications, unlike

the prior regulations. ~~These regulations do not do so.~~

- A policy question is whether to take a more forgiving approach.
 - On the one hand, officers now have had more notice of the requirement and time to comply.
 - On the other hand, an officer in this situation presumably once satisfied the requirement but simply allowed the certificates to expire without timely renewing them. And it should not be difficult for an officer to attain compliance.

(7) First Aid and Cardiopulmonary Resuscitation Certificates. The requirement of possession of current first aid and cardiopulmonary resuscitation certificates or equivalent, as determined by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(vii), shall be deemed satisfied if, and only if, the applicant possesses such certificates or the equivalent that will not expire before the third anniversary of the applicant’s last certification.

Public Comments Relevant to the “Oral Interview” Subsection Below:

- ACLUM:
 - Agencies should be required to record each oral interview and provide a copy of the recording to the Commission.
- MCOP:
 - This interview requirement should be deemed to have been satisfied upon completion of an interview at the hiring stage.
 - “In the first round of recertifications, there was an oral interview requirement that most departments did not complete. Reasons included that it is too burdensome on already cashstrapped and understaffed departments to dedicate personnel to compete these unnecessary tasks.”
 - As to the questions that were developed previously:
 - They “serve[d] no legitimate purpose because they [were] not asked or received by the Commission . . . unless the POST request[ed] them.”
 - “It is doubtful that any agency needs to ask or receive answers to these questions in order to decide whether an officer should be recommended for recertification,” and “[t]here is no evidence that . . . [they] provided any useful guidance to recommendations by agencies for officers to be recertified or of POST to make recertification decisions.”
 - “[T]he substance of the questions pertain to fitness and conduct issues that are best addressed locally through disciplinary process or evaluations.”
 - Questions regarding personal interactions with the criminal justice system, domestic violence, neglect, physical altercations, bankruptcy, social media use, and alcohol and cannabis use concern matters that can be addressed through the disciplinary process, are unrelated to effectiveness in policing, do not involve a widespread problem, are overreaching and too broad, and/or involve issues that should be dealt with individually with a goal of assistance and recovery.
 - Any requirement should be deemed satisfied not by an oral interview “in accordance with Commission guidelines” but if the appointing authority representative “meets with the applicant to discuss the application for recertification and provides an opportunity to discuss any concerns of the appointing authority or applicant.”
 - The provision requiring a recording and its preservation should be stricken.

Note:

- The “Oral Interview” subsection below would require an oral interview to be conducted during each certification period.
- It would need to be conducted in accordance with Commission guidelines, which may require:
 - A set of questions to be asked and answered;
 - A set of written questionnaire questions to be answered and discussed;
 - A set of topics to be discussed; or
 - A performance review to be conducted.
- The subsection would also require an agency to record an oral interview.
- It would not require an agency to automatically provide the Commission with the recording, but it would require preservation of the recording.
- Also, Section 7.15 below would also authorize the Commission to require agencies to create, preserve, and provide information, records, or other items.
- Additionally, separate regulations that would require agencies to create, maintain, and provide specific forms of information are being developed.
- The details regarding the implementation of such provisions could continue to be developed.
- The Commission could provide, for example, that the interview should cover:
 - The applicant’s achievements;

- Challenges faced by the applicant;
- Discipline imposed on the applicant, and how it might have been avoided;
- An officer's appreciation for matters on which Chapter 6E focuses, as listed above; and/or
- Matters that the Commission believes should be better understood by members of law enforcement;
- Performance reviews are addressed in greater depth below.
- Another alternative would be to provide in this subsection that a recording must be made and preserved, but refrain from treating the making and preservation of a recording as a prerequisite for finding that the applicant has satisfied the oral interview requirement.

(8) Oral Interview. The requirement of successful completion of an oral interview administered by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(viii), shall be deemed satisfied if, and only if:

- (a) Between the applicant's last certification and the third anniversary of the applicant's last certification, the head of the applicant's appointing authority or the head's designee orally interviews the applicant in accordance with Commission guidelines, which may require: a set of questions to be asked and answered, a set of written questionnaire questions to be answered and discussed, a set of topics to be discussed, or a performance review to be conducted; and
- (b) Any such interview is audio-recorded and preserved as directed by the Commission.

Note:

- The "Character and Fitness" requirement below is being given further consideration and separate treatment discussed further in a separate document being addressed separately.

(9) Character and Fitness. The requirement of being of good moral character and fit for employment in law enforcement, as determined by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(ix), shall be deemed satisfied if, and only if, the Division determines that the applicant meets the criteria set out in 555 CMR 7.06.

Note:

- The "No Felony Conviction" subsection below treats the requirement as satisfied where the Division finds no conviction after a diligent search.

(10) No Felony Conviction. The requirement of not having been convicted of a felony, established by M.G.L. c. 6E, § 4(f)(2)(ii), will be deemed satisfied if, and only if, the Division does not find the applicant to have ever been so convicted, after the Division diligently takes steps to ascertain such fact.

Note:

- The "No Listing in a Decertification Database" subsection below makes clear that the NDI is the database maintained by IADLEST.

(11) No Listing in a Decertification Database. The requirement of not being listed in the National Decertification Index or the database of decertified law enforcement officers maintained by the Commission pursuant to M.G.L. c. 6E, § 13(a)(i), established by M.G.L. c. 6E, § 4(f)(2)(ii), shall be deemed satisfied if, and only if, the Division does not find the applicant to have ever been so listed, after the Division diligently takes steps to ascertain such fact. The National Decertification Index to be consulted is the database of the same name maintained by the International Association of Directors of Law Enforcement Standards and Training.

Note:

- The "Would Not Have Been Decertified Previously" subsection below concerns the statutory requirement that an applicant "while previously employed in law enforcement in any state or United States territory or by the federal government, would [not] have had their certification revoked by the commission if employed by an agency in the commonwealth."
- The subsection makes clear that the phrase "any state or United States territory or by the federal government" includes Massachusetts;
- It focuses on whether a certification would have been revoked pursuant to M.G.L. c. 6E, § 10(a)—which concerns mandatory decertification—if, at the relevant time, the applicant had been employed by an agency in Massachusetts and M.G.L. c. 6E, § 10(a) had been in effect.

- M.G.L. c. 6E, § 10(a) provides as follows:
 - The commission shall, after a hearing, revoke an officer’s certification if the commission finds by clear and convincing evidence that:
 - (i) the officer is convicted of a felony;
 - (ii) the certification was issued as a result of administrative error;
 - (iii) the certification was obtained through misrepresentation or fraud;
 - (iv) the officer falsified any document in order to obtain or renew certification;
 - (v) the officer has had a certification or other authorization revoked by another jurisdiction;
 - (vi) the officer is terminated by their appointing agency, and any appeal of said termination is completed, based upon intentional conduct performed under the color of office to: obtain false confessions; make a false arrest; create or use falsified evidence, including false testimony or destroying evidence to create a false impression; engage in conduct that would constitute a hate crime, as defined in [\[M.G.L. c. 22C, § 32\]](#)~~section 32 of chapter 22C~~; or directly or indirectly receive a reward, gift or gratuity on account of their official services;
 - (vii) the officer has been convicted of submitting false timesheets in violation of [\[M.G.L. c. 231, § 85BB\]](#)~~section 85BB of chapter 231~~;
 - (viii) the officer knowingly files a written police report containing a false statement or commits perjury, as defined in [\[M.G.L. c. 268, § 1\]](#)~~section 1 of chapter 268~~;
 - (ix) the officer tampers with a record for use in an official proceeding, as defined in [\[M.G.L. c. 268, § 13E\]](#)~~section 13E of chapter 268~~;
 - (x) the officer used force in violation of [\[M.G.L. c. 6E, § 14\]](#)~~section 14~~;
 - (xi) the officer used excessive use of force resulting in death or serious bodily injury;
 - (xii) the officer used a chokehold in violation of said [\[M.G.L. c. 6E, § 14\]](#)~~section 14~~;
 - (xiii) the officer engaged in conduct that would constitute a hate crime, as defined in [\[M.G.L. c. 22C, § 32\]](#)~~section 32 of chapter 22C~~;
 - (xiv) the officer engaged in the intimidation of a witness, as defined in [\[M.G.L. c. 268, § 13B\]](#)~~section 13B of chapter 268~~;
 - (xv) the officer failed to intervene, or attempt to intervene, to prevent another officer from engaging in prohibited conduct or behavior, including, but not limited to, excessive or prohibited force in violation of [\[M.G.L. c. 6E, § 15\]](#)~~section 15~~; [\[or\]](#)
 - (xvi) the officer is not fit for duty as an officer and the officer is dangerous to the public, as determined by the commission.
- A policy question is whether to extend the focus to non-mandatory grounds for decertification.

(12) Would Not Have Been Decertified Previously. The requirement that the applicant, while previously employed in law enforcement in any state or United States territory or by the federal government, would not have had their certification revoked by the Commission if employed by an agency in the Commonwealth, established by M.G.L. c. 6E, § 4(f)(2)(iii), shall be addressed as follows. The requirement will be deemed satisfied if, and only if, the Division does not conclude that the applicant, while so employed within or outside of Massachusetts, would ever have had a certification revoked pursuant to M.G.L. c. 6E, § 10(a) if, at the relevant time, the applicant had been employed by an agency in Massachusetts and M.G.L. c. 6E, § 10(a) had been in effect.

Note:

- The [“In-service Training”](#) requirement below is being addressed separately.

(13) In-service Training. An applicant must successfully complete all in-service training mandated by the MPTC as a requirement for certification. This requirement, established pursuant to M.G.L. c. 6E, §§ 3(a) and 4, shall be deemed satisfied if, and only if, the Division determines that the applicant successfully completed all in-service training required for the period of time between the effective date of the applicant’s last certification and June 30 prior to the third anniversary of the applicant’s last certification.

7.10: Performance Review

Public Comments Relevant to this “Performance Review” Section:

- MCOP:
 - “[P]erformance evaluations are a mandatory subject of bargaining and many, if not all, departments have some sort of formal, or informal, procedure for evaluating their officers that was properly negotiated with their bargaining units.”
 - “We are opposed to any reduction in collective bargaining rights that govern how our members are evaluated.”
 - “The POST could encourage or mandate evaluations, but it should not dictate the method,

criteria or implementation of them.”

- The subsection allowing the Commission to require performance reviews should be stricken, as regulating performance evaluations goes beyond the Commission’s statutory charge with respect to certification and addressing misconduct.

Note:

- This “Performance Review” section would generally provide that the Commission may ~~require~~ allow agencies to utilize performance reviews as alternative a-vehicles for satisfying and evaluating the satisfaction of statutory certification requirements.
- ~~It would essentially provide a trade-off: officers and agencies could be required to conduct performance reviews; but conducting such performance reviews could relieve them of having to satisfy certification requirements in other ways.~~
- A performance review could potentially encompass, for example:
 - An oral interview;
 - An examination;
 - A background check;
 - A check into first aid and CPR certificates;
 - A character and fitness evaluation;
 - A form of physical and psychological evaluation; and/or
 - Anything else that the Commission deems appropriate.
- A performance review could be designed to test an officer’s appreciation for matters on which Chapter 6E focuses, as listed above.
- A policy question is whether to further develop such a provision or to leave it more general.

~~(1) — The Commission may require law enforcement agencies to conduct performance reviews of officers according to Commission guidelines.~~

(2) — The Commission may establish that one or more requirements for certification set forth in 555 CMR 7.09 may be satisfied through a performance review, in lieu of any method prescribed by 555 CMR 7.09.

Note:

- Sections 7.11 through 7.13 below blend provisions found in the prior recertification regulations and those found in 555 CMR 9.00.
- Among these are provisions of 9.00 stating that:
 - A certification shall be active only while one is serving as an officer for a law enforcement agency; and
 - An individual is precluded from executing arrests or otherwise performing police duties and functions in various circumstances.
- Such sections provide additional forms of notice for identified CBU heads.

7.11: Issuance of a Certification Decision

Public Comments Relevant to this “Issuance of a Certification Decision” Section:

- MCOP:
 - Provide that any denial of recertification must be supported by clear and convincing evidence.

(1) The Division shall provide notification of a decision on the application by email to each of the following:

- (a) The applicant;
- (b) The applicant’s appointing authority; and
- (c) Any identified CBU head for the applicant.

(2) As a decision declining to grant full certification is distinct from decertification, the procedures prescribed by M.G.L. c. 6E, § 10 need not be followed before such a decision issued.

(3) If the Division’s decision on an application provides for anything other than full certification, the notification described in 555 CMR 7.11(1) shall also inform the applicant of:

- (a) Any condition, limitation, or restriction attached to the certification, and any associated terms; and
- (b) The ability to seek review by the Executive Director as provided for in 555

CMR 7.12(1) and a hearing as provided for in 555 CMR 1.10 and 555 CMR 7.12(2).

7.12: Possible Action Following Decision Declining to Grant Full Certification

- (1) An applicant who receives a decision from the Division declining to grant a full certification may seek review by the Executive Director as follows.
 - (a) Within 21 days of service by email of the Division's decision, the applicant or the applicant's appointing authority may submit a written petition to the Executive Director requesting review of the decision.
 1. If an applicant files the petition, the applicant shall provide a copy of the petition to the applicant's appointing authority and any identified CBU head for the applicant at the time of its filing.
 2. If an appointing authority files the petition, the appointing authority shall provide a copy of the petition to the applicant and any identified CBU head for the applicant at the time of its filing.
 - (b) The Executive Director may ask any entity or individual to provide additional information, orally or in writing, or to appear at a meeting concerning the matter. At any such meeting, the Executive Director shall have discretion to determine the extent to which an individual who does not have a right to appear may attend and participate.
 - (c) The Executive Director shall, within a reasonable time, provide a written decision on the petition to:
 1. The applicant;
 2. The applicant's appointing authority; and
 3. Any identified CBU head for the applicant.
- (2) Following the process described in 555 CMR 7.12(1), an applicant or an applicant's appointing authority may request a hearing before the Commission concerning an application in accordance with 555 CMR 1.10: *Final Disciplinary Hearings and Appeals of Certification Decisions*.
- (3) The Commission may place an individual's certification on restricted status while review pursuant to 555 CMR 7.12(1) or a hearing pursuant to 555 CMR 7.12(2) is pending.
- (4) Where an applicant has received a decision declining to grant a full certification, the Commission may attach conditions, limitations, or restrictions on the applicant's ability to reapply.

7.13: Certification Status

- (1) An application process shall be deemed ongoing and not "finally determined," as that term is used in M.G.L. c. 30A, § 13, absent a final decision.
- (2) Notwithstanding the provisions of 555 CMR 7.04, a final decision to certify an applicant made after the third anniversary of the applicant's last certification may be made retroactive to a date on or after such anniversary.
- (3) The granting of a certification shall not preclude the conditioning, limiting, restricting, suspending, or revoking of the certification in accordance with law, when warranted.
- (4) Except as expressly provided herein, an individual who holds a conditional, limited, or restricted certification is "certified," as that term is used in M.G.L. c. 6E.
- (5) The Commission may reconsider, and revise or vacate, a decision on an application, when such action is warranted.
- (6) If a decision to certify an applicant is vacated, the applicant shall be deemed to have been certified during the period of time between the decision to certify and the decision to vacate.
- (7) A certification granted pursuant to 555 CMR 7.00 shall be active only while the certified individual is serving as an officer for a law enforcement agency, and shall otherwise be restricted.

- (8) The following individuals may not execute any type of arrest, as that term is defined in 555 CMR 9.02(2), or otherwise perform police duties and functions:
- (a) An individual who is serving as a law enforcement officer as that term is defined in M.G.L. c. 6E, § 1 – whether as an officer of a law enforcement agency; a special state police officer; a special sheriff; a deputy sheriff; a constable; or a special, reserve, or intermittent police officer – but is not certified;
 - (b) An individual whose certification is suspended;
 - (c) An individual whose certification has been revoked;
 - (d) An individual whose certification has been conditioned, limited, or restricted in a manner that precludes the relevant form of activity; and
 - (e) An individual who otherwise lacks the legal authority to engage in the relevant form of activity.

7.14: Supervision by the Executive Director

Notwithstanding any other provision of 555 CMR 7.00, each member of the Commission staff shall be subject to the supervision and direction of the Executive Director in implementing any aspect of such regulations.

7.15: Cooperation, Enforcement, and Disciplinary Action

Public Comments Relevant to this “Cooperation, Enforcement, and Disciplinary Action” Section:

- **ACLUM:**
 - Agencies should not be allowed to submit an attestation supporting an officer without providing proof that qualifications have been met.

Note:

- Neither this “Cooperation, Enforcement, and Disciplinary Action” section nor any other section of these regulations would not require agencies to automatically provide the Commission with proof that requirements have been met. But, as noted above:
 - The regulations would authorize the Commission to require agencies to create, preserve, and provide information, records, or other items;
 - These regulations would also preclude an agency from endorsing an applicant, and submitting an application for the applicant, where the agency has not found the applicant to possess character and fitness; and
 - Separate regulations that would require agencies to create, maintain, and provide specific forms of information are being developed.
 - The subsections concerning the maintenance and reporting of certain records and information were struck on the assumption that such subjects will be addressed through 555 CMR 12.00, when they are finally promulgated.
 - The subsections regarding enforcement were revised to take into account feedback regarding these regulations and 555 CMR 12.00 and now mirror those included in the latest draft of 555 CMR 12.00.

~~(1) — The Commission may direct an applicant or a law enforcement agency to take steps to facilitate the processing and evaluation of certification applications, including but not limited to, the following:~~

- ~~(a) — Creating, preserving, or providing information, records, or other items;~~
- ~~(b) — Ensuring that an individual affirms the veracity of information provided to the Commission under the pains and penalties of perjury and/or the risk of disciplinary action pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 5(e), 8, 9, 10, and/or 12;~~
- ~~(c) — Identifying the head of the applicant’s collective bargaining unit, if any; and~~
- ~~(d) — Providing an email address that may be used for correspondence related to the certification process for: the applicant; the agency; the applicant’s appointing authority; and any identified CBU head.~~

~~(2) — An applicant or certified officer must promptly notify the Commission of any change in:~~

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

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

(1) Law enforcement agencies and officers are prohibited from engaging in the following forms of conduct:

- (a) Failing to comply with 555 CMR 7.00, an order of the Commission issued thereunder, or a limitation or restriction on a certification;
- (b) “Untruthfulness” as defined in M.G.L. c. 6E, § 1; or
- (c) Harassing, intimidating, or retaliating against any individual for taking any step, or interference with one’s taking of any step, that is required by M.G.L. c. 6E, 555 CMR, or the Commission.

(2) If an officer violates 555 CMR 7.15(1):

- (a) The Commission may administratively suspend the officer’s certification for a specified period of time or until specified conditions are satisfied; and
- (b) Upon issuing any such administrative suspension, the Commission shall follow the procedures specified in M.G.L. c. 6E, § 9(d) and 555 CMR 1.09: *Single Commissioner Review of Suspensions*.

(3) Conduct by an officer in violation of 555 CMR 7.15(1) may be treated as a form of “prohibited conduct” under M.G.L. c. 6E, § 8(c)(2) and 555 CMR 1.02(4).

~~(3) The Commission may take disciplinary action against an agency or an officer, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 5(c), 8, 9, 10, and/or 12, provided other applicable provisions of M.G.L. c. 6E and 555 CMR are satisfied, based on the following, in relation to the certification process:~~

- ~~(a) A failure to act in accordance with M.G.L. c. 6E, 555 CMR, a Commission order, or a limitation or restriction on a certification;~~
- ~~(b) A failure to be accurate in any recordkeeping or any representations to the Commission;~~
- ~~(c) Harassment, intimidation, or retaliation against any individual for taking any step, or interference with one’s taking of any step, that is required by M.G.L. c. 6E, 555 CMR, or the Commission; or~~
- ~~(d) Evidence of misconduct that is uncovered by the Commission.~~

~~(4) The Commission may, by a vote taken in accordance with M.G.L. c. 6E, § 2(e), levy and collect assessments, fees, and fines, and impose penalties and sanctions against an agency or an officer, pursuant to M.G.L. c. 6E, § 3(a), based on a ground listed in 555 CMR 7.15(3)(a)-(d).~~

~~(45) The Commission may refer information that it obtains in the certification process to an appropriate government office for possible criminal or civil enforcement action, pursuant to M.G.L. c. 6E, §§ 3(a) and/or 8(c)(2).~~

REGULATORY AUTHORITY

555 CMR 7.00: MG.L. c. 6E.



“The Only Union for Police Officers and 911 Dispatchers”

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September 6, 2024

Massachusetts Peace Officer Standards and Training Commission
Subcommittee on Recertification Regulations
84 State Street
2nd Floor
Boston, MA 02109

Dear Chairperson Calderone and Members of the Subcommittee:

The Massachusetts Coalition of Police, which is the largest labor representative of rank-and-file police officers in Massachusetts,¹ hereby provides commentary for the subcommittee’s consideration of draft recertification regulations. Needless to say, recertification is perhaps the most critical term and condition of employment for our members across the entirety of the Commission’s regulations. The initial certification and recertification of law enforcement officers since the passage of Chapter 253 of the Acts of 2020 has confirmed what we have known all along – incumbent police officers demonstrate the appropriate moral character and fitness of our vocation. The number of suspended or decertified officers represents less than 0.4% of officers. The Commission’s delegation of responsibility for determining qualifications for recertification to Chiefs and their designees created unnecessary work – forcing officers to submit to unnecessary and unproductive interviews that asked irrelevant or unconstitutional questions.

The proposed regulations for recertification should recognize this status quo. We are concerned that the proposed regulations unnecessarily complicate the perfunctory assessment and could be exploited or misread to allow for retroactive application of new standards.

We set forth general and specific concerns about the proposed regulations, which, in several cases, exceed the Commission’s authority.

General Concerns About Proposed 555 CMR 7.00.

1. The Commission lacks statutory authority to order, administer, or require examinations as a condition of recertification.

The draft regulation proposes that police officers, as a condition of recertification, complete an examination, a physical evaluation, a psychological evaluation and an oral interview. The statute does not provide authority for the Commission to make such requirements. Commission staff has cited G.L. c. 6E, Section 3(28)(iv) and Section 4(i) in support of this authority. Neither provision is availing.

¹ The Boston Police Superior Officers Federation hereby joins in this statement.
Member of National Association of Police Organization, N.A.P.O.

The former statute clearly refers to fitness standards as a condition of obtaining certification. It empowers the Commission to promulgate regulations “establishing a physical and psychological fitness evaluation pursuant **to section 4** that measures said fitness to ensure officers are able to perform essential job duties.” (emphasis added). Section 4(f)(1) requires the Commission to establish minimum certification standards to include “**successful completion** of a physical and psychological fitness evaluation approved by the commission.” (emphasis added). Section 3(28) therefore allows the Commission to create such standards for certification.

This analysis is not altered by Section (4)(i), which provides: “The commission shall not recertify any person as a law enforcement officer unless the commission certifies that the applicant for recertification continues to satisfy the requirements of subsection (f).” (emphasis added). The legislature made it clear which particular requirements of certification are of an ongoing nature. The statute uses different tenses to demarcate between requirements that must be completed one time for certification and those requirements of an ongoing nature. For instance, the legislature used “successful completion,” which signifies finality of certain tasks or one-time requirements, in reference to “high school education or equivalent”; “basic training program” and, at issue, “physical and psychological fitness evaluation”. There can be no plausible suggestion that the Legislature intended certified officers to redo high school education or basic training as a condition of recertification. As such, the successful completion of other tasks, such as examination, evaluations and interview, must be interpreted similarly. When the Legislature intended officers to have an ongoing obligation, the Legislature used present tense language: (vii) possession of **current** first aid and cardiopulmonary resuscitation certificates or equivalent..., and (ix) **being** of good moral character and fit for employment in law enforcement, as determined by the commission.” (emphasis added).

In summary, the legislature clearly intended POST to have a significant, and larger, role in entry-level standards for incoming police officers, but not for officers already certified by the Commission.²

2. The Proposed Regulations Create Significant Due Process Concerns

Officers should have clear notice of what is expected of them in order to have their certification renewed. The regulations, however, seek to impose new standards as conditions of recertification for which officers may lack adequate time to prepare and attain. For instance, an officer should have notice of the Commission’s interpretation of “good moral character and fitness” and be provided opportunity to meet that standard. The Commission expands the definition to possibly broaden the scope of the inquiry beyond what has been sufficient for officers to obtain recertification.

² The Subcommittee/Commission lacks the capacity to determine appropriate physical and psychological standards for a profession that can span 44 years, or ages 21 to 65. Any requirement would impose significant unfunded liability for law enforcement agencies, monies that are better spent on training, education, and, if the employer so chooses, social services.

3. The Regulations Should Confirm that Recertification Can Be Denied Only By Clear and Convincing Evidence.

The draft regulations do not set forth the quantum of evidence or the standard of review applied to recertification decisions. In recognition of the significant property and liberty interests attendant to possession of certification, the legislature required that any suspension or revocation of an existing certification be supported by “clear and convincing” evidence. The clear implication of this standard is that a denial of recertification also must be supported by clear and convincing evidence. It does not make sense that the same evidence could be insufficient to terminate an officer’s existing certification but adequate to deny recertification. The regulation therefore should close this loophole.

Specific Objections.

1. Proposed 7.02: Definitions: The Definition of Appointing Authority is, in certain cases, ambiguous.

The draft regulations give entities constituting an officer’s “appointing authority” extensive powers and duties to make determinations on an officer’s recertification status. Therefore, it is vital for the definition of an “appointing authority” to be clear to avoid conflict within agencies over which entity has the power or duty to perform the assessments required under these draft regulations. The current definition fails to provide such clarity.

The current definition states that an “appointing authority” can either be “the law enforcement agency that employs or seeks to employ an individual as an officer, **or** the person or entity with the authority to appoint an individual as the head of a law enforcement agency.” It seems these alternatives are intended to prevent a situation where the head of a law enforcement agency is effectively responsible for rendering a decision on their own recertification. This definition, however, does not make clear in which circumstances each entity constitutes the “appointing authority” and therefore possesses the attendant powers and duties under these draft regulations. To effectuate its purpose, the language must be modified to make clear that the law enforcement agency serves as the appointing authority in the case of recertification of individual officers, except that, in the case of recertification of the head of a law enforcement agency, the entity with the authority to appoint the head of the law enforcement agency constitutes the “appointing authority.”

Proposed Modification:

“Appointing Authority. The law enforcement agency that employs or seeks to employ an individual as an officer, or, **only if the applicant is the head of a law enforcement agency**, the person or entity with the authority to appoint an individual as the head of a law enforcement agency.”

2. Proposed 7.06: Determination of Character and Fitness

a. The Definition of an Officer's Good Moral Character and Fitness is Subject to Intra-and Inter-Agency Variation.

Good moral character and fitness is a standard used throughout the statute and regulations. It is an assessment that can occur at the level of the Appointing Authority, the Division of Police Certification, the Executive Director and the Commission. There is insufficient effort under the regulation to coordinate or attempt a coherent and considered determination of good moral character and fitness within the Commission or among law enforcement agencies of the Commonwealth.

As a result, the regulations permit appointing authorities to apply different standards of good moral character and fitness both within and without their departments. The definition provides an option, rather than direction: "In assessing character and fitness, an appointing authority *may* take into account whether an officer, both on duty and off duty.... In making such an assessment, the law enforcement agency also *may rely on*...." (emphasis added). The appointing authority is not required to apply any criteria, let alone any criteria with internal consistency. Thus it is entirely possible, if not likely, that different appointing authorities will have different assessments of similarly qualified candidates, or for the same appointing authority to apply different criteria or different assessments to similarly situated officers within their agency. The variety, vagueness, and choice in the draft regulations allow for subjectivity, inconsistency and bias, which the Commission was enacted to challenge.

The regulations should acknowledge the existing practice: that the appointing authority's assessment is effectively ministerial. They are required to merely attest to character and fitness without any explanation.

b. 7.06(1)-(4):

i. Certified Officers Should be Presumed to be of Good Moral Character and Fitness

An officer who successfully obtained certification already has been established by the Commission and their employer to be of good moral character and fit for employment. Appointing authorities generally attest to character and fitness of their certified officers and the Commission rarely questions, let alone reverses, that endorsement. For instance, the Executive Director has, in the overwhelming majority of cases, exercised his discretion to determine an officer has sufficient character and fitness for (re)certification. The regulations therefore should recognize the practical reality – certified officers have proven to possess good moral character and fitness. An officer subject to recertification therefore should be presumed to have maintained that standard, and the appointing authority and the Commission must provide sufficient, or in this case, clear and convincing evidence to rebut that presumption.

Proposed Modification:

7.06(1) “An officer who has been certified by the Commission and is employed without substantial restriction related to moral character and fitness by their law enforcement agency shall be presumed to have good moral character and fitness unless the appointing authority provides clear and convincing evidence to rebut that presumption.”

ii. Appointing Authority Assessments Must be Based upon Sustained Findings Consistent with Due Process and Just Cause.

Neither the appointing authority nor the Commission should be able to determine fitness and character based upon mere allegations, or findings or beliefs not in accord with accepted internal affairs practices or collective bargaining procedures. This consideration is implied by proposed 7.06(4), which prohibits reliance on allegations that are pending investigation or adjudication; resulted in a finding in favor of the member or, even if they resulted in adverse findings, the officer satisfied disciplinary or corrective consequences without recurrence; or where no disciplinary action resulted and there is no reasonable explanation for such disciplinary forbearance. If sustained allegations resulting in single instance of discipline cannot be relied upon to determine good moral character and fitness, then uninvestigated allegations also should be insufficient to support a determination that an officer is not of good moral character or fitness. Stated another way, the Commission should make clear that an uninvestigated allegation is not “specifically and credibly supported” under 7.06(4)(e).

The Commission needs to reconcile 7.06(4) with 7.06(2). The regulations should make it clear that assessments of officer conduct must comport with due process, including but not limited to the constitutional and statutory law (e.g., G.L. c. 31 & 150E) and collective bargaining agreement. For instance, 7.06(2) suggests an appointing authority’s assessment to rely on “misconduct towards the public.”³ It cannot be the mere suspicion or belief that an officer has engaged in such misconduct. Any such assessment should be based on allegations that were subject to appropriate investigation that provided due process to the officer, sustained findings, and were not reversed on appeal. Similarly, a determination that the officer performs inadequately should be based upon established evaluation procedures, rather than vague

³ Proposed 7.06(2)(b) includes a number of issues for which mere allegations arguably could be considered.

1. Follows any mission and values statement developed or approved by the Commission;
2. Adheres to laws and orders;
3. Demonstrates accountability and responsibility;
4. Engages in conduct unbecoming a law enforcement officer, such as conduct that casts doubt on the officer’s integrity, honesty, moral judgment, or character; brings discredit to the law enforcement agency; or impairs the law enforcement agency’s efficient and effective operation;
5. Is untruthful, as defined by M.G.L. c. 6E, § 1, in all matters;
6. Neglects the duties of a law enforcement officer;
7. Engages in misconduct towards the public;
8. Engages in misconduct towards other law enforcement officers;
9. Abuses one’s law enforcement authority or position;
10. Engages with prohibited associates or establishments; or
11. Is worthy of the public trust and of the authority given to law enforcement officers.

impressions of a supervisor or appropriate authority.

The appointing authority also should be required to provide notice to the officer of any negative attestation and an opportunity to respond.

Proposed Modification:

7.06(2): Add:

“(c) In making such an assessment, the law enforcement agency also may rely on...

10. **Substantiated** allegations of misconduct.”

“Assessments must be based upon sustained and final findings consistent with 555 CMR 1.00, G.L. c. 31, law enforcement agency rules and any collectively bargained practices or procedures.”

“(d) Prior to determining it cannot find an applicant possesses character and fitness, the appointing authority shall provide notice and opportunity to meet and discuss such preliminary determination to the applicant and the applicant’s CBU head.”

7.06(4):

“(e) The allegation is not specifically and credibly supported. An allegation is not specifically and credibly supported if it was not investigated pursuant to established internal affairs procedures, including due process, consistent with just cause, and applicable collective bargaining procedures and statutes.”

3. Proposed 7.09: Satisfaction of Certification Requirements

a. 7.09(4): Physical and Psychological Fitness Evaluation.

Assuming *arguendo* the Commission has authority to require successful completion of physical and psychological fitness as a condition of recertification, the Commission should presume certified officers possess physical and psychological fitness, provided that the appointing authority affirms that the officer is compliant with any applicable standards or practices within the agency and has been afforded appropriate physical and mental health services.

There currently are no uniform or minimum standards for police officer fitness. Fitness has been determined at the local level. See, e.g., City of Newton v. CERB, 104 Mass. App. Ct. 203 (2024). This has allowed localities to accommodate officers injured in the line of duty or off-duty who nonetheless can contribute to the mission of the agency. Town of Andover, 23 MLC 3 (1996); City of Springfield, 11 MLC 1116, MUP-5365 (1984).

Proposed Modification:

(4) Physical and Psychological Fitness Evaluation. The requirement of successful completion of a physical and psychological fitness evaluation approved by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(iv), shall be deemed satisfied **by an officer applying for recertification** if, and only if:

(a) Between the applicant's last certification and the third anniversary of the applicant's last certification, the appointing authority **attests that the officer satisfies, or does not violate, the applicable fitness requirements of the law enforcement agency, including any exceptions granted to the officer** ~~there has been an evaluation that conforms to Commission specifications;~~ and

~~(b) Any documentation or recording of questions posed, topics discussed, statements made, or assessments rendered in such an evaluation are preserved as directed by the Commission.~~ **The officer provides a letter from a licensed healthcare provider verifying physical and psychological fitness; and**

(c) The appointing authority attests that they have made resources related to physical and mental wellbeing available to the officer.

b. 7.09(8): Oral Interview.

Though Chapter 253 requires the Commission to administer the interview, the Commission delegated that statutory duty to municipalities. Agencies were required to ask certified officers a series of questions, the answers of which were already known to the agency, such as history of discipline or litigation. It is inconceivable that a single oral interview elicited relevant or helpful information. The task is even more absurd where agencies have an obligation to notify the Commission of relevant complaints and investigations within strict time periods.

Assuming *arguendo* that successful completion of an oral interview is a requirement for certification and that such task may be delegated to agencies, the requirement should be deemed satisfied if the appointing authority makes themselves available to the certified officer to discuss the recertification process.

Proposed Modification:

(8) Oral Interview. The requirement of successful completion of an oral interview administered by the Commission, established by M.G.L. c. 6E, § 4(f)(1)(viii), shall be deemed satisfied if, and only if:

~~(a) Between the applicant's last certification and the third anniversary of the applicant's last certification, the head of the applicant's appointing authority or the head's designee orally interviews the applicant in accordance with Commission guidelines, which may require: a set of questions to be asked and answered, a set of written questionnaire questions to be answered and discussed, a set of topics to be discussed, or a performance review to be conducted; and~~

~~(b) Any such interview is audio-recorded and preserved as directed by the Commission.~~

4. Proposed 7.10, Performance Evaluation: The Commission lacks authority to Order Agencies Evaluate Performance

Chapter 253 empowered the Commission to establish, inter alia, certain minimum criteria for law enforcement officers, to hold officers accountable for violations of those criteria or the law, and to establish minimum standards for agency internal affairs procedures. Once the officers have been certified, the legislature left it up to each agency to determine appropriate evaluation of performance. Absent a determination that the officer does not meet the standards for certification or has otherwise engaged in misconduct requiring or allowing suspension or revocation under the law, the Committee has no jurisdiction to have their performance assessed or reviewed. (The legislature limited evaluation procedures to school resource officers, and to a special legislative commission, which also studied hiring, recruitment, and disciplinary procedures. St.2020, c.253, Section 107(d)&(e).)

Proposed modification:

~~"(1) The Commission may require law enforcement agencies to conduct performance reviews of officers according to Commission guidelines.~~

(1) ~~(2)~~ The Commission may establish that one or more requirements for certification set forth in 555 CMR 7.09 may be satisfied through a performance review, in lieu of any method prescribed by 555 CMR 7.09.

(2) Any performance review conducted by an appointing authority shall be conducted in accordance with the law enforcement agency's bargaining obligations under M.G.L. c. 150E and in accordance with any guidelines established thereunder."

We may supplement or amend these concerns and modifications going forward. We thank you for your consideration of these important matters and look forward to continued discussions and opportunities for input.

Sincerely,

Scott Hovsepian

Scott A. Hovsepian, President
Massachusetts Coalition of Police

John Nelson

John E. Nelson, Vice President
Massachusetts Coalition of Police



February 26, 2024

Via Email

Enrique Zuniga, Executive Director
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Peace Officer Standards and Training (POST) Commission
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Re: Comment on Regulations on and Proposed Plan for Recertification, 555 CMR 7.00

Dear Commissioners:

The American Civil Liberties Union of Massachusetts, Inc. (ACLUM) submits this comment on the “Recertification” regulations, 555 CMR 7.00, *et seq.*, and the POST Commission’s proposed revisions to the same as discussed during the February 2nd Certification Subcommittee meeting. ACLUM thanks the Commission for inviting public comment and for its serious consideration of the same when promulgating regulations and policies in the past. ACLUM previously submitted comments on the then-proposed regulations on “Procedural Rules” at 555 CMR 1.00 and on “Databases and Disseminations of Information” at 555 CMR 8.00. We, like the Commission, are committed to promoting unbiased and ethical policing within the Commonwealth.

The regulations being considered concern a centerpiece of the 2020 police reform law and the core duties of the Commission to certify officers for duty in consideration of the totality of the officer’s career and conduct. In submitting this comment, we have the benefit of having seen how the recertification process has worked in practice and acknowledge that we all stand in a different position than we did four years ago. Thus, while we understand that the recertification regulations represent the Commission’s best effort to fulfill the goals of the 2020 law based on the information it had at that time, ACLUM writes to now suggest changes to the regulations that may better meet the goals of the certification process and the reform law. Specifically, ACLUM writes to express two primary concerns with the current regulations and recertification process.

First, in 555 CMR 7.01, 7.05, and in the “Requirements and Plan for Recertification of Certain Law Enforcement Officers” adopted by the Commission in 2022 [hereafter the “2022 Recertification Plan”], the Commission delegated its statutory obligation to determine if an officer possesses good moral character to the individual law enforcement agencies, *i.e.*, the officer’s

employing agency. But it did so without clearly defining “good moral character” beyond mere reference to the POST statute and without establishing mandatory criteria which agencies were required to use in assessing an officer’s character. Under this system, several officers with recent criminal convictions for, and findings of, egregious misconduct have been certified without conditions.

Second, the Commission delegated to the agencies the task of conducting oral interviews as required by statute, *see* 555 CMR 7.06, and of ensuring that officers met certain statutorily required minimum certification standards, such as passage of a qualifying exam and background check. This authority was delegated without any requirements that the agencies submit proof of the same to the Commission, *e.g.*, a recording of the oral interviews or proof of the qualifying exam score.

Without safeguards, police departments are still policing themselves with little to no oversight, which was the exact problem the Commission was established to address. If the Commission is going to delegate its duties to the agencies, it should provide clearer guidance and criteria as to the meaning of good character and require agencies to provide documentation that certification standards have been met. Thus, to ensure all officers within the Commonwealth operate under a certification process that seriously takes into account an officer’s character and which leaves POST as the arbiter of whether certification standards have been met, ACLUM urges the Certification Subcommittee to recommend revisions to the recertification regulations (consistent with the below) so as to remove any grant of unfettered discretion to agencies.

- I. **The Subcommittee should recommend a clear definition of “good character” be added to the regulations along with nondiscretionary criteria an agency must use in assessing the same, and the Subcommittee should recommend the regulations require agencies to explain their assessment in certain circumstances.**

To be certified, an officer must “be[] of good moral character and fit for employment in law enforcement, *as determined by the commission.*” G.L. c. 6E, § 4(f)(1)(ix) (emphasis added). Under the regulations, the Commission delegated the authority to determine if an officer meets the character standard to the employing law enforcement agencies, *see* 555 CMR 7.05, and it did so without first establishing any mandatory criteria or a clear definition for what it means for an officer to possess the requisite character. Thus, under the current process, the agencies’ unguided judgment stands in the place of the Commission’s in certain key regards and in disregard of the statutory requirement that POST be the entity to make the character judgment.

To cure this issue, ACLUM urges the Subcommittee to recommend a clearer definition of “good moral character and fitness for employment” to be added to 555 CMR 7.01 and the addition of mandatory criteria agencies must use when making character assessments under 555 CMR 7.05. In addition, ACLUM suggests that 555 CMR 7.05(2)(b) be revised so as to require agencies to submit a written report explaining why they believe an officer possesses good moral character where

that officer has been found to have engaged in misconduct or has a pattern of complaints (regardless if sustained) alleging the same or similar misconduct.

- a. ***The regulations fail to define or establish mandatory criteria for the good moral character standard, and they do not require the Commission to oversee the application of the standard.***

Under the regulations, “[e]ach officer’s employing agency shall provide a submission to the commission concerning whether an officer possesses good character and fitness for employment, in accordance with commission policy.” *Id.* The regulations define “good character and fitness for employment” as “[g]ood moral character and fitness for employment in law enforcement,” M.G.L. c. 6E, § 4(f)(1)(ix).” *Id.* at 7.01. It lays out some discretionary factors that an agency “may take into account” or “may rely on” to make this character assessment, but it provides no mandatory criteria. 555 CMR 7.05(2)(a). Notably, the regulations do not require that agencies consider “any guidance or forms approved by the Commission,” though it is suggested that they do. *Id.*

Further, unlike the requirements that agencies explain any determination that an officer does not meet the character standard, agencies have no affirmative obligation under the regulations to explain any determination that an officer does possess good character, even if an officer is known to have engaged in misconduct or has been repeatedly alleged to have engaged in a pattern of the same or similar misconduct. Under the regulations, “[i]f an employing agency determines that an officer possesses good character and fitness for employment, the agency shall provide, *upon request by the commission*, documentation supporting such a determination.” 555 CMR 7.05(2)(b) (emphasis added). This process stands in contrast to the requirement that “the employing agency *shall* make a written report to the commission” with certain delineated findings if it “determines that it *cannot* find that an officer possesses good character and fitness.” 555 CMR 7.05(2)(c) (emphasis added). This imbalance was exacerbated in the 2022 Recertification Plan. Under the plan, “[w]here . . . the employing agency attests that the officer currently possesses good moral character and fitness . . . , this standard will be deemed satisfied.” The plan makes no mention of the ability of the Commission under the regulations to request written documentation justifying this character assessment.

- b. ***In the absence of clear guidance from POST, in practice several agencies applied a toothless “good moral character” standard that led to the recertification of several officers with numerous incidents of egregious misconduct and criminal convictions.***

The regulatory grant of unfettered discretion to agencies to determine whether an officer meets the good moral character standard may be the cause for the certification of officers who have engaged in recent, egregious misconduct. The Commission’s “officer disciplinary records database” lists at least 15 certified officers with sustained findings of criminal conduct since 2010 that range from destruction of public property out of state to assault and battery on a family or household member. In addition to these instances, several certified officers have civil findings of liability for civil rights violations, adverse judicial findings, including that the officer lied on the stand, and have

admitted to misconduct before grand juries; these findings are not listed in the database. It is unclear what weight, if any, the respective agencies gave these sustained findings of criminality and other misconduct when assessing an officer's character. Indeed, they may not have been considered at all, given that the regulations did not require the agencies to consider the findings or any other particular information about an officer's history.

Perhaps no Massachusetts law enforcement agency is more emblematic of the problem inherent in the Commission's decision to allow agencies unguided discretion than the Springfield Police Department (SPD). *See generally Graham v. District Attorney for Hampden District*, 493 Mass. 348 (2024). In July 2020, the U.S. Department of Justice (DOJ) issued a report in which it stated its findings of "systemic deficiencies in policies, accountability systems, and training" within the SPD.¹ Although the SPD entered into a consent decree with the DOJ in April 2022, efforts to enact promised reforms within the department remain ongoing. Nevertheless, the current recertification system gave the SPD unguided discretion to determine whether its officers possess good moral character.

For example, Springfield reportedly recommended Officers Christian Cicero and Daniel Billingsley for recertification immediately after they were convicted of the off-duty assault and battery of three Black men outside a bar in Springfield. Juries ultimately found Billingsley and Cicero guilty in March 2022 of three counts of misdemeanor assault and battery. The officers received a suspended two-year sentence to the house of correction pending probation, were ordered to stay 100 yards away from the bar, and were ordered to have no direct or indirect contact with the three victims, among other obligations. Prior to their convictions, both officers had years of complaints filed against them alleging excessive force, notably including allegations that they kicked or punched multiple individuals in the head or face. Allegations against Billingsley include that he participated in punching and/or kicking multiple complainants. For Cicero, in 2015 alone, at least four complaints were filed against him alleging that he was among officers that punched and/or kicked multiple complainants.

That both officers were certified by the Commission without condition is not an isolated incident. A special master found that SPD Deputy Chief Steven Kent testified before a grand jury in 2018 that he had given false information to SPD investigators and false testimony to grand jurors.² This admission is consistent with a statement by a U.S. Magistrate Judge in 2017 that it could be inferred from evidence that Kent and 2 other SPD officers "were prepared to be untruthful when it suited their purposes."³ In addition, Kent has been the subject of several civil lawsuits, including one

¹ "Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau," U.S. Department of Justice (July 8, 2020) ("DOJ Report"), <https://www.justice.gov/opa/pr/justice-department-announces-findings-investigation-narcotics-bureau-springfield>.

² Report of Special Master in *Graham*, 493 Mass. 348.

³ *Douglas v. City of Springfield*, 2017 WL 123422, at *10 (D. Mass. 2017) (adopting report and recommendation).

which the City settled for reportedly \$175,000⁴ that alleged that Kent filed a false report against an individual justifying charges for which that individual was eventually acquitted after video evidence surfaced showing that it was the officers who used excessive force against him. This claim backed by video evidence is consistent with the DOJ's finding that SPD Narcotics Bureau officers, of which Kent was a part, routinely falsified reports to conceal unlawful uses of force,⁵ and the Hampden District Attorney's Office's identification of Kent as one of the officers implicated in the misconduct identified by the DOJ, *Graham*, 493 Mass. at 357. Notably, the Supreme Judicial Court has stated unequivocally that “[c]oncealing police brutality against an arrestee, whether by the officer or a fellow officer, or making false statements that might lead to an unjust conviction are for law enforcement officers the equivalent of high crimes and misdemeanors.” *Matter of a Grand Jury Investigation*, 485 Mass. 641, 652 (2020).

None of the above information about Deputy Chief Kent is reported in the Commission's database, and it is unclear if SPD leadership factored this history into the assessment of Kent's good moral character. Certainly, the regulations provided no mandate that the agency was required to consider it. And the questionnaire used by the Commission would not have required Kent, Cicero, or Billingsley to report on any of this past behavior or these allegations. While we use the SPD as an example of the inherent problem, it should be obvious that it is the current regulatory framework and not any specific police department that has created the issue.

c. The regulations must define “good moral character” and outline the specific criteria that the agencies must evaluate in making this character assessment.

ACLUM urges the Certification Subcommittee to recommend a clear definition of “good moral character” for addition to 555 CMR 7.01 and to recommend mandatory criteria that agencies must use in assessing the same under 555 CMR 7.05. For example, the term “good moral character” is defined for admission as an attorney to the Massachusetts state bar as “embody[ing] that degree of honesty, integrity and discretion that the public and members of the bench and the bar have the right to demand of a lawyer.” Mass. Board of Bar Examiners Rules, Rule V.⁶ The Rule specifies that the Board of Bar Examiners “takes into consideration all available pertinent information as to past conduct of the candidate,” and that “[a] record manifesting a significant deficiency in the honesty, trustworthiness, diligence or reliability of a candidate may constitute a basis for denial of a recommendation for admission.” *Id.* It lays out specific criteria that applicants must meet to be deemed of good moral character. *Id.* Indeed, the term “good moral character” is defined in various rules governing an individual's ability to practice various professions. ACLUM would be happy to

⁴ Dugan Arnett, ‘One of the worst police departments in the country’: Reign of brutality brings a reckoning in Springfield, *The Boston Globe* (July 25, 2020), <https://www.bostonglobe.com/2020/07/25/metro/one-worst-police-departments-country/>.

⁵ DOJ Report at 2.

⁶ <https://www.mass.gov/professional-conduct-rules/board-of-bar-examiners-rule-v-character-and-fitness-standards-for-admission>

provide input as the Commission decides how to define the term for the purposes of certification of a law enforcement officer.

In addition, ACLUM urges a revision of 555 CMR 7.05(2)(b) that would require police departments to explain their determinations that an officer meets the character and fitness standard where an officer has a known history of misconduct or pattern of similar allegations of misconduct. To ensure that all certified officers meet this new standard, any recertification plan should require that agencies provide a report as to the character of any officers with a finding of misconduct since 2015 or with a pattern of complaints alleging the same or similar misconduct; any new recertification plan should not simply ask whether there have been any changes since the last certification. Alternatively, if the agencies are unable to meet these new requirements, the Commission should reclaim for itself the role as arbiter of character as was designated under the POST statute, and it should determine whether officers who have engaged in misconduct meet the character standard for certification.

II. The Subcommittee should require that agencies provide actual documentation that the relevant criteria have been satisfied rather than accept mere attestations.

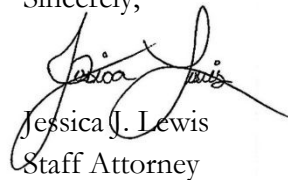
In other regards as well, the regulations delegated unchecked authority to agencies to attest that an officer met certain standards without requiring that they provide any proof of the same to the Commission. Most notably, this occurs in the requirement that the officers “complet[e] an oral interview administered by the commission.” G.L. c. 6E, § 4(f)(1)(viii), but it also occurs everywhere that the regulations and recertification plan allow agencies to attest without proof that an officer has met a standard, such as the successful completion of a background check or exam. To remove undue reliance on an agency’s assertions that a standard has been met and ensure that the Commission retains authority over the recertification process, all oral interviews intended to meet the certification standard should be recorded and a copy of the same should be provided to the Commission. Further, where an agency attests that a standard is met, appropriate documentation should be provided for verification by the Commission.

In order to leave no room for doubt that all standards have been met by each certified officer, the Commission should not adopt any recertification plan that allows standards to be met only once. The Subcommittee is currently considering whether to require that certain certification standards be met once, such as the oral interview and physical and psychological fitness exams, or to require that standards be met every certification round. ACLUM urges the Commission to require that officers continuously meet all certification standards, particularly in light of the above stated concerns.

For the reasons stated above, ACLUM asks that the Certification Subcommittee recommend the following to the Commission:

- (1) a clear definition of “good character and fitness” to be added to 555 CMR 7.01;
- (2) nondiscretionary criteria that an agency must consider when assessing character to be added to 555 CMR 7.05(2)(a);
- (3) a requirement under 555 CMR 7.05(2)(b) that agencies provide a written explanation for a determination that an officer possesses good character where that officer engaged in recent misconduct or has a pattern of complaints alleging the same or similar misconduct;
- (4) an adoption of a new recertification plan that enacts the above requirement retroactively such that an agency must explain their determination that an officer that has engaged in misconduct since 2015 meets the character standard;
- (5) the addition of questions to the questionnaire to capture all aspects of an officer’s history, including any adverse judicial credibility determinations consistent with *Graham*, 493 Mass. 383, civil findings of liability for civil rights violations, and other admissions of misconduct;
- (6) a requirement under 555 CMR 7.06(8) that all oral interviews be recorded and a copy of the recording be provided to the Commission;
- (7) no longer allowing agencies to attest without providing proof that a qualification standard has been met; and
- (8) an adoption of a recertification plan that ensures that officers are continuing to meet all minimum requirements for recertification, including physical and psychological fitness and the passages of examinations based on current training standard.

Sincerely,



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Sample Agency Questionnaire

Thank you for participating in our survey. We aim to gather detailed information on physical and psychological fitness resources and programs available to law enforcement agencies across Massachusetts as part of the POST Commission's charge to periodically recertify all law enforcement officers in the Commonwealth. Your input will help us assess and enhance the physical and psychological fitness and support available to our officers. This survey should take approximately 5-10 minutes to complete.

These questions apply to officers seeking recertification, including command staff.

Basic Information

1. Name of Agency
2. Number of sworn officers () Full time () Part time ()

Physical Fitness

3. Does your agency have any physical fitness requirements for officers?
 - Yes
 - No
 - 3a. If yes, what are those requirements? (Please select all that apply)
 - o Cooper Test
 - o Physical Ability Test (PAT)
 - o Physical examination by doctor
 - o Other (please specify)
 - 3b. How often does your agency require officers to meet those requirements?
 - o Annually
 - o Every other year
 - o Every three years
 - o Every five years
 - o Only if an individual shows signs of being unable to meet the physical requirements of their assignment
 - o Other (please specify)
4. What fitness facilities, opportunities, or resources does your agency offer, including any voluntary programs? (Please select all that apply)
 - On-site gym/fitness center
 - Free or discounted access to off-site gym/fitness center
 - Free or discounted fitness classes (yoga, Pilates, CrossFit, etc.)
 - Strength training programs organized or sponsored by the agency
 - On-site cardio programs (high-intensity interval training (HIIT), boxing, etc.)
 - Outdoor fitness activities (sports league, hiking, etc.) organized or sponsored by the agency
 - Physical fitness workshops and other educational activities
 - On-duty time to exercise (please specify amount of time or associated requirements)
 - Reimbursement/stipend

- Other (Please specify):
- 5. To what extent do officers take advantage of the resources offered?
 - High participation (more than 60%)
 - Moderate participation (30% - 60%)
 - Low participation (less than 30%)
- 6. What physical fitness facilities, opportunities, or resources has your agency found to yield a high level of participation and results?
- 7. What are some of the challenges to maintaining physical fitness for officers in your agency? (Please select all that apply)
 - Time
 - Expense
 - Lack of resources
 - Information
 - Motivation
 - Other (Please specify):
- 8. Does your agency have a process and/or policy to identify and support individuals for whom physical fitness is a concern? If so, please describe.
- 9. What do you think physical fitness requirements should be?

Psychological Fitness

- 10. Does your agency have any psychological fitness requirements or associated programs?
 - Yes
 - No
 - 10a. What are those requirements or programs? (Please select all that apply)
 - o Optional wellness visit
 - o Ad-hoc referrals to a licensed psychologist
 - o Written psychological exam
 - o Mandatory exam by licensed mental health provider
 - o Other (please specify)
 - 10b. How often does your agency require officers to meet those requirements?
 - o Annually
 - o Every other year
 - o Every three years
 - o Every five years
 - o After a critical incident or significant emotional event
 - o Only if an individual shows signs of needing support / follow up
 - o Other (please specify)
- 11. What psychological fitness programs, opportunities, or resources does your agency offer, including voluntary programs? (Please select all that apply)
 - On-staff clinician/psychologist
 - Peer support network
 - Employee assistance program (EAP)
 - Mental health days and/or paid time off for counseling visit

- Other (please specify)
12. To what extent to officers take advantage of the resources offered?
- High participation (more than 60%)
 - Moderate participation (between 30% and 60%)
 - Low participation (less than 30%)
13. What mental health resources has your agency found to yield a high level of participation and results?
14. What are the biggest barriers to maintaining psychological fitness for officers in your agency? (Please select all that apply)
- Stigma
 - Time
 - Expense
 - Availability or proximity to resources
 - Information
 - Motivation
 - Other (Please specify):
15. Does your agency have a process and/or policy to identify and support individuals for whom psychological well-being is a concern? If so, please describe.
16. What do you think psychological fitness requirements should be?

Wrapping Up

17. Would you be open to follow-up communication and/or additional information?
- Yes
 - No
- 17a. If yes, please provide your email address and phone number.