555 CMR 3.00: REGULATED AGENCIES, OFFICERS, AND CONDUCT

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3.01: Scope

(1) To the extent that any provision of 555 CMR 3.00 is inconsistent with any provision of any policy, construction of the scope of M.G.L c. 6E, guidance, or advisory previously issued by the Commission, 555 CMR 3.00:

(a) Does not supersede the inconsistent provision with respect to any occurrence, or the status of any individual, entity, or matter, prior to its effective date; and

(b) Otherwise supersedes the inconsistent provision.

(2) Except as otherwise expressly provided, nothing in 555 CMR 3.00 is intended to:

(a) Limit any obligation that any individual or entity otherwise has under M.G.L. c. 6E, 555 CMR, or another source of authority;

(b) Construe, or apply to, any regulation, policy, or action of the MPTC;

(c) Establish any standard of care;

(d) 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; or

(e) Otherwise waive or limit any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection that may be available to the Commission.

3.02: Definitions

(1) 555 CMR 3.00 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 3.02(2).

(2) For the purposes of 555 CMR 3.00, the following terms have the following meanings, unless the context requires otherwise:

Appointed Candidate. An "Appointed Candidate" as defined by the MPTC in 550 CMR 3.02.

Arrest. An actual or constructive seizure or detention of a person, performed with the intention to effect an arrest and so understood by the person detained. For purposes of applying this definition, each of the following forms of conduct shall constitute a seizure, when performed in connection with law enforcement: an application, to the body of a person, of physical force that objectively manifests an intent to restrain; and a show of authority, through words or actions, that would make a reasonable person believe that the person's freedom of movement is or would be subject to restraint. For these purposes, shows of authority include each of the following: physical touching of the person, the use or display of a weapon, the threatening presence of several officials, and the

use of language or tone of voice indicating that compliance with a request might be compelled.

Certification. The certification of a law enforcement officer pursuant to M.G.L. c. 6E, §§ 3(a) and 4, or St. 2020, c. 253, § 102; or the certification of a law enforcement agency pursuant to M.G.L. c. 6E, §§ 3(a) and 5—either as an initial certification or a recertification; and regardless of whether it is subject to any condition, limitation, restriction, administrative suspension, or other suspension.

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

Constable. An individual who is elected or appointed as a constable pursuant to M.G.L. c. 41, §§ 1, 91, or 91A.

Correctional Facility. A correctional institution overseen by the Massachusetts Department of Correction; or a house of correction or jail overseen by a Sheriff's Office; but not a lockup overseen by a municipality.

Decertified. "Decertified" as defined in M.G.L. c. 6E, § 1.

Head of a Law Enforcement Agency. A "head of a law enforcement agency" described in 555 CMR 3.05.

Include (or Including). Include (or including) without limitation.

Law Enforcement Agency. A "law enforcement agency" described in 555 CMR 3.03.

Law Enforcement Officer. A "law enforcement officer" described in 555 CMR 3.04.

Member. An individual who, with respect to a law enforcement agency or an entity engaged in a joint venture with the agency: is its head; is its employee; works for it as an independent contractor; is its appointed candidate; is its sponsored candidate; is its agent under principles of agency law; or works for it and is subject to its direction and control.

MPTC. The Municipal Police Training Committee established pursuant to M.G.L. c. 6, § 116.

Officer of a Law Enforcement Agency. An "officer of a law enforcement agency" described in 555 CMR 3.04.

Police Duties and Functions. "Police duties and functions" described in 555 CMR 3.08.

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

Sheriff's Office. A "Sheriff's Office" described in 555 CMR 3.03(2).

Sponsored Candidate. A "Sponsored Candidate" as defined by the MPTC in 550 CMR 3.02.

3.03: Law Enforcement Agencies

(1) For purposes of M.G.L. c. 6E and 555 CMR, law enforcement agencies include:

(a) Each police department of a city, town, or district;

(b) The Massachusetts Office of Environmental Law Enforcement;

(c) The University of Massachusetts Police Department;
(d) The Massachusetts Department of State Police;
(e) The agency alternatively known as the Massachusetts Port Authority Police Department and the Port of Boston Authority Police Department;
(f) The Massachusetts Bay Transportation Authority Police Department;
(g) Each entity of a state, county, municipal, or district that:
1. Principally performs law enforcement functions that are the same as, or substantially similar to, those performed by the agencies listed in 555 CMR 3.03(1)(a)-(f); and
2. Is determined by the Commission to constitute a law enforcement agency;
(h) Each Sheriff's Office, except for any members or resources of the office that the Sheriff or a designee attests, and the Commission determines:
1. Are not law enforcement officers; and
2. Do not provide support for the work of law enforcement officers;
(i) The police department of each public or private college, university, or other educational institution;
(j) The police department of each public or private hospital licensed pursuant to M.G.L. c. 111, § 51; and
(k) The police department of each of the following humane societies referenced in M.G.L. c. 22C, § 57, *added by* St. 1991, c. 412, § 22, if it was in existence on the date of that statute's approval, December 27, 1991:
1. The Massachusetts Society for the Prevention of Cruelty to Animals;
2. The Berkshire Animal Protective Society, Inc.;
3. The Animal Rescue League of Boston;
4. The Boston Work Horse Relief Association;
5. The Lowell Humane Society;
6. The Worcester Animal Rescue League; and
7. The Animal Rescue League of New Bedford.

(2) For purposes of M.G.L. c. 6E and 555 CMR, the terms Sheriff's Department and Sheriff's Office:
(a) Are synonymous; and
(b) Refer to the office of a Massachusetts Sheriff as an entity, including the Sheriff, and other members and resources of the office.

3.04: Law Enforcement Officers

(1) For purposes of M.G.L. c. 6E and 555 CMR, law enforcement officers include:
(a) Each officer of a law enforcement agency;
(b) Each member of a humane society police department listed in 555 CMR 3.03(1)(k) appointed as a Special State Police Officer pursuant to M.G.L. c. 22C, § 57;
(c) Each member of the agency alternatively known as the Massachusetts Port Authority and the Port of Boston Authority appointed as a Special State Police Officer pursuant to M.G.L. c. 22C, § 58;
(d) Each member of an educational institution appointed as a Special State Police Officer pursuant to M.G.L. c. 22C, § 63;
(e) Each member of a hospital appointed as a Special State Police Officer pursuant to M.G.L. c. 22C, § 63;
(f) Each Sheriff; each Deputy Sheriff appointed pursuant to M.G.L. c. 37, § 3; and each Special Sheriff appointed pursuant to M.G.L. c. 37, § 4; unless:
1. The Sheriff of the relevant Sheriff's Office or a designee attests:
a. That the individual is not authorized by the Sheriff to execute arrests;

b. That the individual is not authorized by the Sheriff to perform substantial police duties and functions;
c. That the individual does not devote a majority of the individual's work time to the performance of police duties and functions; and
d. To the police duties and functions listed in 555 CMR 3.08(1)(a) that the individual is not authorized to perform; and

2. The Commission determines that the individual is not a law enforcement officer;

(g) Each constable who takes any action that furthers, or is intended to further, the constable's execution of an arrest; and

(h) Each special, reserve, or intermittent police officer serving on a part-time or temporary basis who is among the types of officers listed in 555 CMR 3.04(1)(a) through (g).

(2) For purposes of 555 CMR 3.04(1)(a), officers of a law enforcement agency include each member or affiliate of the agency who:

(a) Is the head of the agency, unless the Commission has determined otherwise;
(b) Is a police officer;
(c) Is authorized, or tends, to make arrests or to perform police duties and functions;
(d) Represents oneself as a law enforcement officer with the agency, through words or conduct, in interacting with the public; or
(e) Is determined by the Commission to be an officer of the agency.

(3) For purposes of M.G.L. c. 6E and 555 CMR, law enforcement officers also include each of the following, if recognized as such by a vote of the Commissioners:

(a) A member of the Civil Defense Agency appointed as a Special State Police Officer pursuant to M.G.L. c. 22C, § 64; and
(b) A member of the State Auditor's Office's Bureau of Special Investigations appointed as a Special State Police Officer pursuant to M.G.L. c. 22C, § 68.

(4) For purposes of M.G.L. c. 6E and 555 CMR, unless the Commission determines otherwise with respect to an individual:

(a) Each member of a Sheriff's Office who qualifies as a law enforcement officer under 555 CMR 3.04(1)(f) remains a law enforcement officer at all times and in all respects while serving as a member of that office; and
(b) Each constable for a certain jurisdiction who qualifies as a law enforcement officer under 555 CMR 3.04(1)(g) continues to be a law enforcement officer at all times and in all respects while serving as a constable for that jurisdiction.

3.05: Heads of Law Enforcement Agencies

(1) For purposes of M.G.L. c. 6E and 555 CMR, unless the Commission has determined otherwise based on an analysis of an individual's position and other relevant circumstances, the head of a law enforcement agency is the highest-level individual who exercises day-to-day supervision and control of the law enforcement activity of the agency, without regard to:

(a) The individual's position title;
(b) Whether the individual is considered an employee of the agency; and
(c) Whether the individual is considered a sworn officer or a civilian.

(2) The Commission may:

(a) Direct a law enforcement agency to identify the most suitable individual to be treated as the head of the agency for purposes of M.G.L. c. 6E and 555 CMR; and

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(b) Itself identify the most suitable individual to be treated as the head of the agency for purposes of M.G.L. c. 6E and 555 CMR, where the agency fails to do so.

3.06: Commission Status Determinations

(1) With respect to determinations of an individual's status under 555 CMR 3.04 or 3.05:

(a) No one or more factors will necessarily compel or foreclose a determination by the Commission as to whether an individual is an officer of a law enforcement agency, a law enforcement officer, or the head of a law enforcement agency; and

(b) The Commission may treat the following factors as weighing in favor of a conclusion that an individual is an officer of a law enforcement agency, a law enforcement officer, or the head of a law enforcement agency:

1. The individual is a member of an agency;
2. The individual devotes substantial time to matters related to law enforcement, or is expected to do so;
3. The individual personally engages in law enforcement activity, or is authorized to do so;
4. The individual tends to carry a weapon issued by an agency or the individual's employer, or is authorized to do so;
5. The individual tends to wear, carry, display, or utilize any other item suggesting that the individual is a law enforcement officer or the head of a law enforcement agency, such as a uniform, a badge, an insignia of rank, an electronic control weapon, a conducted energy device, handcuffs, or a car with an emblem or lights associated with law enforcement; or is authorized to do so;
6. The individual directly oversees or supervises law enforcement officers or law enforcement activity by others, or is authorized to do so;
7. The individual directly oversees or supervises the disciplining of law enforcement officers, or is authorized to do so;
8. The individual is part of the chain of command or supervision that submits or approves reports to the Commission pursuant to M.G.L. c. 6E or 555 CMR;
9. The individual engages in law enforcement activity without securing authorization from another, or is authorized to do so;
10. The individual is required to have education, training, or experience in law enforcement in order to hold the individual's position;
11. The individual commonly works in the headquarters, station, barracks, or facility of a law enforcement agency; or is authorized to do so;
12. A law enforcement officer is designated to perform the individual's role when the individual is absent or incapacitated;
13. The individual claims the ability to take advantage of a legal rule, policy, or benefit that applies to law enforcement officers or heads of law enforcement agencies;
14. An entity with which the individual is affiliated claims the ability to take advantage of a legal rule, policy, or benefit that applies to law enforcement officers or heads of law enforcement agencies in behalf of the individual;
15. There is evidence that the Legislature or another governing body considers the holder of the individual's position to be a law enforcement officer or the head of a law enforcement agency, such as a statute, regulation, ordinance, or by-law;
16. There is evidence that an entity with which the individual is affiliated considers the holder of the individual's position to be a law enforcement officer or the head of a law enforcement agency, such as a policy or position description; and
17. The individual holds a position title that tends to be associated with, or the individual receives compensation for

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holding, a position that has one or more of the characteristics listed in this 555 CMR 3.06(3).

3.07: Law Enforcement Powers

(1) Neither the status of an individual or entity under 555 CMR 3.03, 3.04, or 3.05 nor a certification granted to an individual or an entity by the Commission affords an individual or an entity with any additional jurisdiction or powers than the individual or entity possessed before the enactment of M.G.L. c. 6E.

3.08: Police Duties and Functions

(1) For purposes of M.G.L. c. 6E and 555 CMR:
(a) Police duties and functions include forms of activity that, regardless of whether they are undertaken during the course of conduct listed in 3.08(1)(b):
1. Would be viewed by a reasonable person as involving an assertion of authority over another individual or entity in connection with law enforcement;
2. Are undertaken, or have an effect, outside a correctional facility; and
3. Involve:
a. Suppressing and preventing disturbances and disorder;
b. Dispersing people;
c. Entering private premises to suppress breaches of the peace;
d. Stopping, arresting, processing, and confining suspects;
e. Searching individuals, and seizing evidence and contraband;
f. Questioning individuals and otherwise investigating;
g. Carrying a weapon;
h. Representing oneself as a law enforcement officer, through words or conduct, in interacting with the public; or
i. Supervising or overseeing another's performance of a form of conduct listed in 555 CMR 3.08(1)(a)3.a through h.
(b) The following discrete forms of conduct, by themselves, do not constitute police duties and functions:
1. Delivering papers;
2. Transporting prisoners or other individuals in custody; and
3. Directing traffic.

(2) Except as provided in 555 CMR 3.08(4), the following will be subject to Commission sanctions for the execution of any type of arrest or the performance of any other police duties and functions:
(a) A law enforcement officer who is not certified;
(b) A member of, an affiliate of, or an individual that has been granted any authority by, a law enforcement agency, who is not certified;
(c) An individual with a certification that has been administratively suspended or otherwise suspended;
(d) An individual who has been decertified;
(e) An individual with a certification that has been conditioned, limited, or restricted in a manner that precludes the form of activity at issue;
(f) An individual who:
1. Is a law enforcement officer, a law enforcement agency member or affiliate, an individual who has been granted any authority by a law enforcement agency, or an individual who has been certified; and
2. Lacks the power under law to engage in the form of activity at issue; and

(g) A law enforcement agency that knowingly tolerates such conduct by an individual listed in 555 CMR 3.08(2)(a) through (f), before or after it is undertaken.

(3) Potential Commission sanctions under 555 CMR 3.08(2) include:
(a) Denying, limiting, conditioning, or restricting a certification for an individual pursuant to M.G.L. c. 6E, §§ 3 and 4, and 555 CMR 7.04: *Conditional Recertification*, 7.09: *Restriction or Revocation of Certification*, 9.09: *Conditional Certification*, 9.12: *Certification Status*, 10.07: *Conditional SRO Certification*, and/or 10.09: *SRO Certification Status*, applying the procedures for such actions prescribed by 555 CMR 1.00: *Procedural Rules*, 7.00: *Recertification*, 9.00: *Initial Certification of Officers; and Renewed Certification of Independently Applying Officers*, and/or 10.00: *Specialized Certification for School Resource Officers*, as applicable;
(b) Administratively suspending an individual's certification for a specified period of time or until specified conditions are satisfied pursuant to M.G.L. c. 6E, § 3, applying the procedures for administrative suspensions prescribed by M.G.L. c. 6E, § 9(d) and 555 CMR 1.09: *Single Commissioner Review of Suspensions*;
(c) Suspending an individual's certification pursuant to M.G.L. c. 6E, §§ 3 and 9(a)(4), applying the standards and procedures for suspensions of certification based on the best interest of the health, safety, or welfare of the public prescribed by M.G.L. c. 6E, § 9 and 555 CMR 1.00: *Procedural Rules*;
(d) Ordering an individual to undergo retraining pursuant to M.G.L. c. 6E, §§ 3 and 10(d)(i) and (ix), applying the standards and procedures for retraining orders prescribed by M.G.L. c. 6E, § 10 and 555 CMR 1.00: *Procedural Rules*;
(e) Referring information about the matter to an appropriate government office for potential criminal or civil enforcement action; and
(f) Imposing an assessment, a fee, a fine, a penalty, or another sanction upon a law enforcement officer, a law enforcement agency, or another individual or entity, to the extent allowed by law.

(4) 555 CMR 3.08(2)-(3) shall not apply to conduct of the type described in 555 CMR 3.08(2) that is:
(a) Either:
1. Necessary to defend oneself or another against imminent physical harm;
2. Necessary to ensure the safety and control of prisoners for transport by correctional facility officers; or
3. Necessitated by other exigent circumstances; and
(b) Not otherwise unlawful.

3.09: Commission Jurisdiction

(1) The Commission may exercise jurisdiction with respect to matters contemplated by M.G.L. c. 6E or 555 CMR:
(a) As to entities and individuals that include the following:
1. Law enforcement agencies;
2. Individuals who exercise substantial oversight of a law enforcement agency;
3. Members of a law enforcement agency;
4. Law enforcement officers;
5. Individuals who are certified;
6. Applicants for certification;
7. Appointed candidates;
8. Sponsored candidates;
9. Individuals who undergo training pursuant to any Commission requirement, policy, or order;
10. Individuals who provide testimony in a Commission proceeding; or who are subject to a Commission subpoena or a Commission demand for testimony, items, or information;

11. Individuals in violation M.G.L. 6E, § 12; and
12. Other individuals, in relation to conduct undertaken while holding a status listed in 555 CMR 3.09(1)(a)2. through 11.; and

(b) Based on conduct and events that include those occurring:
1. Prior to or since the enactment of M.G.L. c. 6E;
2. While an individual is on duty or off duty; or
3. Within or outside Massachusetts.

3.10: Law Enforcement Agency Responsibility for Individual Conduct

(1) For purposes of M.G.L. c. 6E and 555 CMR, a law enforcement agency may be deemed responsible for the conduct of an agency member in circumstances that include those in which:

(a) The conduct:
1. Is the kind of conduct that the agency has employed or engaged the member to perform;
2. Is undertaken substantially within the authorized geographic and temporal boundaries of the member's work; and
3. Is motivated, at least in part, by a purpose to serve the agency; or

(b) The conduct:
1. Is knowingly tolerated, before or after it is undertaken, by the head or another high-level official of the agency or of an entity of which the agency is a part;
2. Is undertaken pursuant to an official policy or custom of the agency or of an entity of which the agency is a part; or
3. Results from a failure to adequately hire, train, or supervise personnel that amounts to deliberate indifference to the potential effects.

3.11: Obtaining Information

(1) The Commission may obtain information to utilize in making a determination under 555 CMR 3.00, from any individual or entity, to the extent allowed by law.

REGULATORY AUTHORITY
555 CMR 3.00: M.G.L. c. 6E, §§ 3(a), 4(f)(4), 5(c).

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