



MASSACHUSETTS ASSOCIATION
For
PROFESSIONAL LAW ENFORCEMENT

P.O. Box 323
Westford, MA 01886

Justice, Integrity, Competence, Courage, Compassion

Email: galsix90aol.com

www.maple-online.com

Phone: 978-846-2635

July 30, 2024

TO: Enrique Zuniga, Director Mass POST Commission
Randy Ravitz, POST Commission General Counsel
Annie Lee, Project Director, Agency Certification Standards

FROM: Dennis J. Galvin, President, Mass Association for Professional Law Enforcement

SUBJECT: Review of Proposed Draft Regulations, Reference 555 CMR 12.00

REFERENCE: Maintenance, Reporting and Audits of Law Enforcement Records and Information

I. Introduction:

On Friday July 12, 2024, the POST Commission invited the Massachusetts Association for Professional Law Enforcement to submit comments with regard to a regulatory proposal involving 555 CMR 12.00 relative to the maintenance, reporting and audits of law enforcement records and information. We gratefully accepted this invitation and submitted it for review to our Board of Directors, Standards Committee and Police Leadership Committee. Approximately 20 members have reviewed this draft, all of them are accomplished law enforcement and public safety professionals. The following comments are submitted for your reference and review.

II. Comments and Recommendations:

12.04 Agency Creation and Maintenance of Records:

Section (1)

- (b3): This section lacks specificity as to what types of interviews are to be included. It would appear overly broad. For example; many departments utilize "*Letters of Counseling*" in order to guide and manage subordinates. These letters usually address very temporary and transitory performance matters between subordinates and supervisors. They are used to memorialize coaching and mentoring for reference purposes and are expunged following an evaluation period. These should not be part of a formal record because this would have the effect of elevating these operational encounters to a higher level of supervisory sanction, than they are intended to be. We would urge that you exempt, "*Letters of Counseling*" in this provision. To do otherwise will create a "chilling effect" on the relationship between supervisors and their subordinates and impede the normal process of mentoring and coaching, a process that is sorely needed in the police service today.

- (c3): This would be a very cumbersome requirement. Department policies can be voluminous. The general practice is to file a pre-written endorsement letter, signed by the officer, referencing a specific policy that was issued. The officer signs the letter, which establishes his receipt of it. It is also important to note whether the officer received training on the policy and that should be recorded as well. One of the principal issues that we see is the issuance of policies, which are in some cases very complicated, with no training to ensure clarification and understanding.
- (d1,d2): This is an important policy section. We would urge the Commission to consider in addition to the fact, that a complaint was filed against an officer, recording what the disposition of that complaint was.
 - Traditionally, there have been four outcomes related to complaint dispositions. These are sustained, not sustained, unfounded and exonerated. Sustained means that a competent internal investigation of some sort was conducted and the allegations were upheld. Not sustained means that an investigation was undertaken and insufficient evidence was found to corroborate it. Unfounded means that the complaint was false or groundless, and exonerated means that the officer performed in accordance with the law, policy and expectation.
 - A standard of proof needs to be established for sustaining complaints. We recommend that either “preponderance of the evidence or clear and convincing” be utilized.
 - We have noticed that in some POST disciplinary hearings involving determinations of suitability for certification, arguments have been offered by POST attorneys that complaints alone should be a factor in considering the suitability of officers for certification. We strongly object to that position in that it violates the principle of procedural justice and that it is unrealistic. There are certain aspects of policing that are inherently adversarial. This will never change. Utilizing a standard, where all complaints are viewed with the same credibility, creates a policy presumption that can be exploited by nefarious individuals who would seek to intimidate dedicated police officers from performing the arduous task of enforcing the law. It risks fostering de-policing.
 - We would also suggest that departments be given discretion to expunge all un-sustained and unfounded complaints against officers after a period of time (possibly three years).
- (d11): We urge the Commission to reconsider its use of prosecutorial determinations with regard to evaluating police officer suitability. The processes used in these matters may lack fundamental due process safeguards. The process is solely directed by a politically elected district attorney. In some jurisdictions slandering police officers garners political dividends. Allegations involving police officer credibility are very serious. They fall within the auspices of the POST Commission’s charge. Our recommendation is to omit this section. District Attorneys should file complaints directly to the POST Commission, if they have issues with the credibility of an officer. We are concerned that many District Attorneys offices are maintaining their own personnel files on police officers. We do not want to institutionalize this, which this provision would do. This constitutes a duplication of effort and it is a violation of an officer’s due process rights. The POST Commission has been designated as the quality control element for the police in this Commonwealth and all complaints and sanctions, along with commensurate records, outside of the agencies themselves should be exclusively submitted to the Commission.
- (e) We recommend that actual scores on examinations and firearms qualifications be recorded and filed when mitigation is involved.

Section (3)

- (b) This section appears to be a restatement of a previous section and is therefore redundant
- (e) These are official department records that pertain to the overall department. They should not be placed in each individual personnel file. This is a needlessly cumbersome provision.

- (g) These are official department records that pertain to departmental business and its administration. They should be available to the Commission, but it is not necessary to place them in individual personnel files.
- (h1) This appears to be an overly cumbersome provision. We suggest that during an audit an inventory of the records examined, be prepared and then signed by both the Commission's auditor and the department representative. This would be sufficient.

12.07: Officer Maintenance and Reporting Information

Section (1)

- (1b2) Information regarding collective bargaining contacts and union membership appears to be beyond the scope of the POST statute. We don't see the necessity for this.
- (1b4) Same as above.

12.08: Procedures For Audits

Section (4)

- This section would seem to allow the delegation of POST authority to other agencies. This appears to exceed the POST Commission charge. We see no problem with referrals to agencies on issues uncovered during audits, where those agencies have specific jurisdiction over the issues, but we would object to any provision that would allow any agency other than the Commission to shoe horn their way into an agency and execute duties, which are specifically assigned to the POST Commission. The POST Commission should safeguard its own jurisdiction because in doing so it safeguards its own credibility.

Section 12:12 Enforcement and Disciplinary Action

Section (1)

- (a) any disciplinary action should be predicated upon proof of "willfulness or negligence" with regard to compliance. It should not be a matter of strict liability. While this is aimed at an agency, no doubt the person responsible for the failure will face disciplinary action. Procedural Justice would seem to dictate that there should some showing of intent and/or irresponsibility before a sanction is imposed. (Example: repeated letters requesting compliance, personal contact, final warnings to the Chief etc.)
- Same as above

Respectfully submitted

**Dennis Galvin
President
MAPLE**



"The Only Union for Police Officers and 911 Dispatchers"

Scott A. Hovsepian, President
sah@masscop.org

John E. Nelson, First Vice-President
jen@masscop.org

Robert W. Murphy, Secretary/Treasurer
rwm@masscop.org
(508) 581-9336
fax (508) 581-9564

July 30, 2024

Peace Officer Standards and Training Commission
83 State Street
Boston, MA 02109

Dear Executive Director Zuniga,

The Massachusetts Coalition of Police submits the following written testimony relating to proposed regulation 555 CMR 12.00 *Maintenance, Reporting, and Audits of Law Enforcement Records and Information*:

While the Massachusetts Coalition of Police supported reasonable regulation of law enforcement to strengthen legitimacy of public safety, we have consistently expressed that reform not be built on back of rank-and-file officers, or subject officers to forfeiture for roles traditionally performed by public employers. With Governor Baker during the early conceptual discussions of Chapter 253 of the Acts of 2020, we voiced a primary concern revolving around the shift of responsibility from employer to employee. We did not want to see the traditional roles of police departments as employers now being placed squarely on the backs of police officers.

The draft 555 CMR 12.00 suggests officers now will be responsible for matters traditionally handled by their employer. Specifically, 12.07 (1)(a) where an officer is responsible for maintaining all records listed in 555 CMR 12.04 (1) that relate to, and come into possession of, the officer. Traditionally, employers maintained all records relating to employment. In fact, most of the documents required to maintain are in fact, generated by the employer. There was no mandate that an individual officer maintain these records and be subject to a possible audit of said records. To believe that over a thirty-two plus year career, an officer should be responsible for every single email, record, piece of paper, that they have ever received relating to things such as; the date and nature of leave time taken, a summary of any interview, response to any questionnaire question, any letter of reference or endorsement, every record relating to any complaint and/or investigation, all training records, and these are just a few categories of items that shall be maintained, is overreaching. We submit to you that in addition to the shift work, details, overtime, forced shifts, compliance with own department and state oversight agency regulations, and other work required to be a law enforcement officer in Massachusetts, to now be required to maintain copious records on top of all else is overburdensome, time consuming, and an unnecessary risk for discipline.¹ Employment record keeping has always been, and

¹ By imposing an affirmative requirement to maintain records, it is unclear if an officer satisfies the requirement by passively keeping electronic copies on the servers of the employer, or if the officer should be expected to print or maintain such records on a non-Agency device.

should remain, the responsibility of the employer which uniquely has budgets and staff to accomplish such tasks. While officers can be encouraged to maintain their records, they should not be subject to mandates and possible discipline, especially where their employer is required to maintain those records. An officer should not face investigation or decertification for a failure to maintain a copy of an electronic request for paid leave.

Therefore, we would suggest a modification to the proposed regulation that eliminates the requirement for individual officer audits and retain the responsibility exactly where it belongs, on the employer/agency, under 12.04.

As a second issue, the proposal to place all such records in an officer's *personnel* file is concerning. Traditionally, a personnel file includes documents kept for the purpose of assignment, promotion, and discipline. G.L. c. 149, §52C: ("a record kept by an employer that identifies an employee, to the extent that the record is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation or disciplinary action."). Employees have the right to notice before documents are placed in their record and to contest inclusion of particular documents. Furthermore, the contents of a personnel file can be subject to collective bargaining (provided that public records law is not violated). This new mandate sets forth what must be included in a personnel record and unnecessarily overrides G.L. Chapter 149, §52C and Chapter 150E. Plus, this mandate will create large unruly personnel files with large amounts of records that may or may not be related to the personnel files intended purpose. Therefore, we would suggest the modification of the proposed regulation to create a POST Personnel File separate and distinct from the traditional personnel file to maintain the employer required documents for POST. This will ensure that all required records are contained in one location for audit purposes and do not conflict with other traditional personnel file functions.

Thank you in advance for you anticipated consideration of this written testimony on this proposed regulation.

If you have any questions, please feel free to contact me.

Sincerely,



Scott A. Hovsepien, President
Massachusetts Coalition of Police



**Committee for Public Counsel Services
Strategic Litigation Unit**

75 Federal Street, 6th Floor, Boston, MA 02110
Tel: (617) 482-6212 – Fax: (617) 502-6326

ANTHONY J. BENEDETTI
CHIEF COUNSEL

July 31, 2024

Peace Officer Standards and Training (POST) Commission
84 State Street, 2nd Floor
Boston, MA 02109
POSTC-Comments@mass.gov

Re: Comment on Proposed Regulations on Maintenance, Reporting, and
Audits of Law Enforcement Records and Information at 555 CMR
12.00, *et seq.*

Dear Commissioners:

The Committee for Public Counsel Services (CPCS) submits this comment on the Peace Officer Standards and Training Commission's (POST or the Commission) regulations pertaining to the maintenance, reporting, and auditing of law enforcement records, proposed at 555 CMR 12.00, *et seq.* CPCS thanks the Commission for its important work and commends the ways in which the current draft regulations impose separate and independent responsibilities on both the individual officer and the broader agency to keep records *and* to report them to POST. CPCS also appreciates the scope of the Commission's audit authority and the general importance of setting minimal standards for how records are maintained in police agencies across the Commonwealth.

CPCS urges the Commission to improve the draft regulations by making four changes: 1) specifically list complaints of evidence mismanagement, lack of candor, or other misconduct that impairs the integrity of the judicial process in 555 CMR 12.04(1)(d); 2) require agencies to permit relevant prosecutors to review disciplinary files so that they can fulfill their Brady duties; 3) provide a mechanism for whistleblowers and members of the public to request that a certain practice in an agency be audited; and 4) support public records access by segregating the records contained in 12.04(d) in a disciplinary file, not a personnel file.

I. The Commission should specifically require agencies to keep disciplinary records of misconduct that could affect the integrity of judicial proceedings.

Police officers are professional witnesses. Their testimony plays a critical role in nearly every trial of nearly every defendant in the Commonwealth. For that reason, the integrity of the whole criminal law system in Massachusetts is inextricably bound to the personal integrity of its law enforcement officers, who every day are called to tell factfinders what they saw, heard, and did. If the Commission is to fulfill its mission to improve policing and enhance public confidence in law enforcement, it must pay special attention to instances of police misconduct that affect the integrity of judicial proceedings. An officer who lies in court or tampers with evidence, wrongfully engages the whole machinery of the criminal law system – courts, prisons, probationary supervision. This kind of police misconduct not only substantially harms individuals, but also undermines public confidence in policing and the whole legal system. Just as the Commission pays special attention to the use of excessive force, it should also track those instances of malfeasance that impact the integrity of judicial proceedings.

For this reason, CPCS respectfully asks that the Commission add specific categories to its list of disciplinary investigations and alleged misconduct which affect the integrity of criminal proceedings. Specifically, CPCS proposes that the commission add the following subcategories to the list of items that must be maintained by the department articulated in 555 CMR. 12.04 (1)(d):

(13) Any accusation or determination that the officer suppressed, destroyed, lost, or mishandled evidence, or that the officer failed to follow department policy on evidence preservation and handling.

(14) Any accusation or determination from a judge, magistrate, hearing officer, or other tribunal, which comes to the attention of the agency, that an officer was not merely mistaken but was instead dishonest in a police report, affidavit, testimony, or other official record.¹

¹ The language CPCS proposes here is a consolidation of relevant parts of the Department of Justice's longstanding Giglio policy, which was commended by the Supreme Judicial Court in Matter of a Grand Jury Investigation, 485 Mass. 641, 660 (2020). In the alternative, the Commission could directly adopt language from that policy which pertains to officer untruthfulness.

II. The Commission should require Law Enforcement Agencies to produce disciplinary records to prosecutors upon request.

As the Commission is aware, “[t]he due process clauses of the Federal Constitution and the Massachusetts Declaration of Rights require that the Commonwealth disclose to a defendant material, exculpatory evidence in its possession or control.” Graham v. Dist. Att’y for Hampden Dist., 493 Mass. 348, 361 (2024) (citation omitted). Exculpatory evidence can include evidence of prior police misconduct. Matter of a Grand Jury Investigation, 485 Mass. 641, 647 (2020). Such evidence is within the possession or control of the Commonwealth, and hence falls within a prosecutor’s Brady obligations, if it is known to members of the prosecution team, including police officers involved in the case. Graham, 493 Mass. at 362.

To carry out this important constitutional duty, some prosecutor’s offices have implemented policies and procedures to identify and disclose exculpatory information about their law enforcement teammates’ prior misdeeds. See Matter of a Grand Jury Investigation, 485 Mass. at 660 (strongly recommending prosecutor offices adopt a policy like the Department of Justice’s “Giglio policy”). Not all have done so. Ideally, police officers are partners in this process, protecting the due process rights of defendants by openly disclosing their own mistakes and prior misconduct, regardless of whether it impacts the case. However, this does not always happen.

In its regulations, however, the Commission has an important opportunity to help ensure exculpatory materials are routinely disclosed and improve the integrity of the entire criminal law system. Under its authority to regulate how law enforcement agencies maintain and report records, the Commission should require law enforcement agencies to grant any prosecutor who is contemplating calling one of its officers as a witness, full and prompt access to the disciplinary records it keeps. This will ensure that the Supreme Court’s long operative premise – “that the prosecutor has the means to discharge the government’s Brady responsibility if he will,” might be true in practical effect. Kyles v. Whitley, 514 U.S. 419, 438 (1995). To that end, CPCS requests that the Commission add the following language to 555 CMR 12.05:

- (4) If a prosecutor or prosecutor’s office requests access to an officer’s disciplinary history in contemplation of calling that officer as a witness, the agency shall, without delay, furnish to the prosecutor those records maintained in accordance with 555 CMR 12.04 (1)(d).

III. The Commission should provide a mechanism whereby whistleblowers, members of the public, and other criminal law stakeholders can request the Commission conduct audits of specific agencies.

Massachusetts has learned through hard experience how systemic failures can ripple through the entire criminal legal system. The drug lab scandals, for example, were about more than the individual misconduct of individual chemists. Properly understood, those cases are about the failures of oversight, accountability, and supervision that allowed chemists to tamper with evidence undetected for years. Indeed, there are far too many recent examples of systemic misconduct percolating undetected within law enforcement agencies for long periods of time. See, e.g., Graham, 493 Mass. at 352 (summarizing DOJ report finding “reasonable cause to believe’ that the narcotics bureau engaged in a ‘pattern or practice of excessive force’ [and] that it was ‘not uncommon’ for narcotics bureau officers to write ‘false or incomplete’ reports to justify their use of force.”); Travis Anderson, Judge: State Police violated wiretap law in drug cases in Worcester County, BOSTON GLOBE (July 10, 2024)(“As a result of these cases, it was discovered that 181 cases existed in which covert recordings were not disclosed [to prosecutors], spanning 10 counties of the Commonwealth, as well as the United States Attorney’s Office and Attorney General’s Office,’ [Judge] LoConto wrote.”);² Deborah Becker, State misconduct puts 27,000 drunken driving convictions at risk, Mass. high court rules, WBUR (Updated Apr. 27, 2023),³ Matt Rocheleau, How a trooper’s alleged racist remark ignited the State Police overtime scandal, BOSTON GLOBE (Aug. 17, 2019) (Motorist’s complaint helped expose “a massive, years-long scam within the State Police, in which dozens of troopers allegedly wrote phony tickets, falsified time sheets with phantom overtime shifts, and fleeced the public. The scandal is the largest to hit the troubled agency, implicating 46 troopers.”).⁴

Just as the Commission receives and investigates complaints into the conduct of specific officers, so too it should create a mechanism to receive complaints of systemic problems in a particular agency. It should create a pathway by which members of the public or whistleblowers within an agency can request that the Commission use its substantial audit powers to uncover and correct systemic problems, before they result in wrongful convictions, widespread violations of rights,

² Available at: <https://bostonglobe.com/2024/07/10/metro/judge-state-police-violated-wiretap-law-in-drug-cases-in-worcester-county/#:~:text=State%20Police%20repeatedly%20violated%20the,in%20connection%20with%20the%20probe>.

³ Available at: <https://www.wbur.org/news/2023/04/26/massachusetts-drunk-driving-oui-cases>.

⁴ Available at: <https://www.bostonglobe.com/metro/2019/08/17/how-one-trooper-alleged-racist-remark-ignited-state-police-overtime-fraud-scandal/xrzYDzQHFRFA9RTIhWPDHP/story.html>.

and years of litigation. The Commission should also take steps to protect whistleblowers within agencies, which might rightly fear retaliation from their colleagues. Specifically, CPCS respectfully asks the Commission to add the following language to the text of 555 CMR 12.08 (1):

(1) The Commission may, [on its own motion, or in response to information or complaints received](#), at any time, conduct or cause to be conducted an audit of the records referenced in M.G.L. c. 6E, § 8(d) or other records of an agency officer.

[\(a\) The Commission shall publish on its website a designated email address or webform whereby any law enforcement officer or member of the public can submit complaints, information, or evidence tending to show systemic or widespread violations of policy within an agency, or agency patterns and practices that the complainant believes warrant investigation and auditing by the Commission.](#)

IV. The Commission should require that disciplinary records be stored separately from an officer’s personnel file to ensure proper public records access.

In the same act that created the POST Commission, “[a]n Act relative to justice, equity and accountability in law enforcement in the Commonwealth,” the legislature amended an exemption to the definition of public records found in G. L. c. 4, § 7, twenty-sixth (c) (“exemption (c)”). See St. 2020, c. 253, § 2. Generally, the provision exempts from public records disclosure “personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.” *Id.* The 2020 revision, however, added the following language: “provided, however, that this subclause shall not apply to records related to a law enforcement misconduct investigation.” *Id.*

The plain text of the revised exemption (c) should preclude agencies from invoking it to withhold the records found in 555 CMR 12.04(1)(d), that is, records “reflecting each type of complaint against, investigation of, and discipline of the officer.” Such records are “related to a law enforcement misconduct investigation” and therefore fall outside exemption (c) and into the definition of public record. If no other exemption applies, they should be produced in a public records request. However, the clarity of this amended text has not prevented recalcitrant agencies from making dubious arguments about what counts as being “related to a law enforcement misconduct investigation.” See Mack v. Dist. Att’y for Bristol Dist., 494 Mass. 1, 11 (2024) (district attorney arguing that investigation into shooting death of civilian was not a law enforcement misconduct investigation because no misconduct was ultimately found).

To prevent any confusion about the application of exemption (c) and to foreclose time-consuming litigation, CPCS suggests that the commission segregate those documents found in 555 CMR 12.04(1)(d) into a distinct “disciplinary file” which is kept separate and apart from the officer’s ordinary personnel file. Specifically, CPCS suggests adding the following language to 555 CMR 12.04 (1):

(1) For each officer that an agency employs, the agency shall create and maintain the following records, with the officer identified by name, and if practicable, shall place an original or a copy of each record within the relevant officer’s personnel file. [Except, those records in subsection \(d\) shall be placed separate and apart from the officer’s personnel file in a “disciplinary records” file.](#)

V. Conclusion

Any effort to improve policing, improve public confidence in policing, or to properly hold police accountable for misconduct depends on rigorous, careful record keeping. For this reason, CPCS thanks the Commission for its careful attention to this matter and respectfully asks that its suggestions be incorporated.

Sincerely,

Rebecca Jacobstein
Director of Strategic Litigation



THE GENERAL COURT OF MASSACHUSETTS
STATE HOUSE, BOSTON 02133-1053

August 1, 2024

Randall Ravitz
General Counsel
Massachusetts Peace Office Standards and Training Commission
84 State Street, Suite 200
Boston, Massachusetts 02109

RE: Comment on Regulations 555 C.M.R 12.00

Dear General Counsel Ravitz,

As House Vice Chair of the Joint Committee on the Judiciary, I am pleased to offer comments pertaining to the POST Commission's proposed regulations, 555 C.M.R 12.00: Maintenance, Reporting, and Audits of Law Enforcement Records and Information.

Overall, I appreciate the Commission's approach to drafting these regulations. However, a major challenge with the current officer disciplinary records database is the lack of standardized reporting. A critical tenet of the police reform law includes ensuring clear data regarding officers for other agencies and the public.

The lack of standardization in the database of officer disciplinary records, including the actions taken after adverse events, makes the information difficult to understand and track. I recommend creating universal reporting categories to prevent vague or differing levels of information across departments. In addition, I recommend creating one standard for sharing investigations or discipline for any actions by the department. For instance, currently a number of disciplinary actions are listed as 'other,' which adds no further clarity.

Furthermore, I support greater standardization for department reports regarding officers' reasons for leaving. In the current database, it appears that some officers may have resigned or retired to avoid discipline, while for others the reason is less clear. Providing clarity on reasons for leaving when related to discipline would help to understand department policies, as well as ensure that other departments have needed information when potentially hiring these officers in the future.

I agree with the proposed audit process to aid in enforcement of reporting disciplinary complaints. When first released, the database cited 167 departments as having no sustained complaints, although some of these communities had publicly publicized incidents in recent years. While some of these errors have since been addressed, audits would ensure that law enforcement agencies understood reporting guidelines and were trained to provide appropriate information.

I appreciate the POST Commission for drafting regulations that continue to implement police reform in a way that best serves the residents of Massachusetts.

Sincerely,

A handwritten signature in black ink, consisting of the letters 'C' and 'B' in a cursive, flowing style.

Christine Barber
State Representative
34th Middlesex District

ORGANIZED
NOVEMBER 3, 1887



INCORPORATED
MAY 2, 1949

EXECUTIVE DIRECTOR
CHIEF MICHAEL J. BRADLEY, JR. (RET.)
GENERAL COUNSEL
ERIC R. ATSTUPENAS, ESQ.

BUSINESS OFFICE
353 PROVIDENCE ROAD, SOUTH GRAFTON, MA 01560
TEL: (508) 839-5723 / FAX: (508) 839-3702

E-MAIL: OFFICE@MASSCHIEFS.ORG
WEBSITE: WWW.MASSCHIEFS.ORG

In Unity There Is Strength

August 1, 2024

2024 OFFICERS

President

Chief Eric P. Gillis
Agawam

1st Vice President

Chief Christopher D. Delmonte
Bridgewater

2nd Vice President

Chief John F. Carmichael, Jr.
Newton

3rd Vice President

Chief Shane D. Woodson
Southbridge

Sergeant-at-Arms

Chief Robert P. Pistone, Jr.
Haverhill

Treasurer

Chief Normand A. Crepeau, Jr.
Grafton

EXECUTIVE COMMITTEE

Chief Thomas W. Fowler
Salisbury (Past President - 2023)

Chief Michael J. Bradley, Jr.
Upton (Past President -2022)

Chief James F. Golden
Provincetown (Barnstable & Islands)

Chief Stephen E. O'Brien
Lenox (Berkshire)

Chief Brian M. Clark
Norton (Bristol)

Chief Russell M. Stevens
Hamilton (Essex)

Chief John P. Paciorek, Jr.
Deerfield (Franklin)

Chief Robert Stocks
Longmeadow (Hampden)

Chief Gary Thomann
Pelham (Hampshire)

Chief Jack D. Buckley
Medford (Major City Chiefs)

Chief James G. Hicks
Natick (Middlesex)

Chief Ryan Columbus
Tewksbury (Middlesex)

Chief Jeffrey J. Bukunt
Avon (Norfolk)

Chief Joseph M. Perkins
Middleborough (Plymouth)

Chief Terence Delehanty
Winthrop (Suffolk)

Chief Ernest F. Martineau
Fitchburg (Worcester)

Chief Michael Bennett
Templeton (Worcester)

Chief Deborah Crafts
MA College of Art & Design
(Campus)

Life Member
Chief Loring Barrett (Ret.)
Ashburnham

Massachusetts Peace Officers Standards and Training Commission
84 State Street, 2nd Floor
Boston, MA 02109

Re: Concerns Regarding Proposed Regulations 555 CMR 12.00

Dear Members of the POST Commission,

We are writing on behalf of the Massachusetts Chiefs of Police Association, Inc. (MCOPA), which represents nearly 370 municipal and campus law enforcement executives from across the Commonwealth of Massachusetts. We appreciate the opportunity to provide our comments on the proposed regulations 555 CMR 12.00 regarding the Maintenance, Reporting, and Audits of Law Enforcement Records and Information.

While we recognize the importance of maintaining accurate and transparent records within law enforcement agencies, we have identified several significant concerns with the proposed regulations that we believe warrant reconsideration and revision. Our primary concerns are outlined below:

1. Unfunded Mandates and Resource Allocation

The proposed regulations impose extensive record-keeping and reporting requirements that will necessitate significant additional resources, including personnel and technology. Many law enforcement agencies, especially smaller municipal departments, may lack the necessary funding and infrastructure to comply with these mandates. We urge the Commission to consider the financial and logistical impacts on law enforcement agencies.

2. Data Privacy and Security Concerns

The increased reporting and auditing requirements raise substantial concerns regarding the privacy and security of sensitive law enforcement records. It is essential to ensure that any data shared or audited is adequately protected against unauthorized access and breaches. We recommend the inclusion of robust data privacy and security measures in the regulations to safeguard sensitive information.

3. Operational Impact and Administrative Burden

The proposed regulations, as currently drafted, could impose a considerable administrative burden on law enforcement agencies. The extensive documentation, reporting, and audit requirements could divert critical resources from essential policing activities, potentially affecting public safety and operational efficiency. We recommend a more balanced approach that minimizes administrative burdens while achieving the intended objectives of transparency and accountability.

4. Concerns with Personnel File Inclusions

The draft regulations refer to creating certain records and placing them into an officer's personnel file. Section 12.04(1) provides that "For each officer that an agency employs, the agency shall create and maintain the following records..." While the phrase "and if practicable" attempts to mitigate this requirement, there remains considerable confusion about what should and should not be placed in an employee's personnel file.

Including all records identified in the draft regulations in an employee's personnel file could violate federal and state laws and best practices. It could also conflict with existing policies, procedures, and collective bargaining agreements. For instance, some agreements stipulate that certain disciplinary documentation must be removed from the personnel file after a specified period, although not destroyed. This removal is meant to exclude the consideration of those instances from future personnel actions and employment decisions.

Certain documents either should not or must not be included in a personnel file:

- Employment Eligibility Verification forms should be kept separate from personnel files to limit access during inspections.
- Federal laws such as HIPAA and the ADA mandate that medical records be kept confidential and separate from other business records.
- Information about an employee's SSN, age, race, gender, etc., should be kept in a private, separate folder.
- Supervisory documentation for managing an employee's work should be filed separately.
- Investigation materials should reside in a separate investigation file.
- Equal Employment Opportunity records should be kept confidential and separate.
- Certain hiring records, including background reports, should be separate from personnel files.
- Personal criminal conviction history and arrest reports should be kept separate from personnel files.

5. Conflict with Massachusetts Records Retention Schedules

The draft regulations suggest that they will supersede existing Massachusetts Records Retentions Schedules. By requiring an agency to "create and maintain" specific records without specifying a retention period, it implies that agencies may no longer lawfully dispose of records pursuant to the Public Records Law and existing retention schedules. Some documentation may have already been lawfully destroyed, and requiring agencies to recreate such records is impractical and often impossible. The regulations should state explicitly that they do not supersede existing retention schedules or require the recreation of previously lawfully destroyed records.

6. Ambiguity in Reporting Work Status Changes

Section 12.05(1)(i) requires agencies to report any change in an “officer’s work status, including on-leave status.” It is unclear whether this includes vacation, sick days, bereavement days, etc. Clarification is necessary to avoid misinterpretation.

7. Requirement for Officers to Maintain Records

Section 12.07(1)(a) requires officers to maintain all records, enumerated elsewhere, that come into their possession. This requirement is vague and burdensome, and clarification is needed regarding its scope and intent.

8. Vague Obligations to Ensure Accuracy

Section 12.07(1)(d)(2) requires officers to ensure accuracy in all representations made to any “body or person of authority.” This term is vague and needs clarification. Does it refer only to statements made in an official capacity as an officer?

9. Use of Non-Employees for Audits

Section 12.08(3) permits the Commission to retain non-employees to conduct audits. Clarification is needed on why non-employees would be used and what qualifications they must possess to ensure the integrity and confidentiality of audits.

10. Subjectivity in Audit Criteria & Premature Establishment of Audit Procedures

Section 12.09(1)(a)(2)(m) refers to “generally accepted law enforcement standards” without defining them. If the Commission is to audit compliance, these standards must be clearly defined.

Section 12.09(1)(a)(3) lists subjective factors such as “adequacy,” “completeness,” and “appropriateness” for evaluating agencies. This is akin to conducting a performance evaluation of an employee without first establishing clear criteria and metrics. Clear, objective standards should be established to guide these evaluations.

Section 12.09(1)(a)(4)(e) includes the audit of internal and external communications, including interactions with complainants, victims, and witnesses. Disclosure of ongoing investigation communications could jeopardize those investigations. The regulations should specify qualifications for auditors and ensure the confidentiality of reviewed records, including adherence to any DCJIS requirements.

We are concerned that the POST Commission is seeking to establish audit procedures before clearly defining the requisite criteria that departments will be evaluated on. This approach is akin to putting the cart before the horse. Before auditing other agencies, the POST Commission should focus on clearly establishing and communicating the standards and criteria by which departments will be evaluated and to provide the department with any necessary training. Moreover, while the Commission has the authority to conduct these audits, it is imperative to consider whether it is necessary and appropriate at this moment. Implementing audits without a solid foundation of established criteria can lead to confusion and inconsistent evaluations. It is crucial for POST to ensure its own procedures and standards are fully developed and transparent before imposing audit requirements on law enforcement agencies.

11. Concerns with Constable Records

Section 12.04(2) requires law enforcement agencies to create and maintain records related to constables in their jurisdiction. Constables are elected officials and do not work for the law enforcement agency. These records should be maintained by the municipality, not the police department.

12. Overreach in Audit Initiation

Section 12.08(1) permits the POST Commission to initiate an audit at any time. Typically, audits from outside oversight agencies are triggered by a complaint or other notice of non-compliance. Allowing the Commission to initiate audits without such triggers seems overreaching and could lead to unnecessary disruptions.

13. Statements Under Penalty of Perjury

Section 12.10(1) permits the POST Commission to require an officer to provide a statement regarding records under the pains and penalties of perjury. Where officers are required to provide a statement and where their continued employment is directly connected to their certification from POST, has POST considered the impact of existing jurisprudence on the issue of compelled interviews? For instance, under the Weingarten decision, officers who are in a union are to be afforded the opportunity to have a union representative join them when subjected to investigatory interviews. Furthermore, employees may have additional rights to transactional immunity under the Carney decision when compelled to make a statement that could result in criminal charges. Again, while POST is not the employer, the officer's employment is inextricably interwoven with their continued certification, which is controlled by POST.

14. Undefined Assessments, Fees, and Fines

Section 12.12(2) permits the POST Commission to levy and collect assessments, fees, and fines, and impose penalties and sanctions against an agency or officer but does not address what kind of assessments, fees, and fines are permitted. As written, it would provide POST with unbridled discretion to assess sanctions. This should be limited and specified.

In conclusion, while we support efforts to enhance the integrity and accountability of law enforcement through improved record-keeping and oversight, we believe that the proposed regulations 555 CMR 12.00 require significant revisions to address the concerns outlined above. We respectfully request the Commission to consider our recommendations and to work collaboratively with law enforcement agencies to develop regulations that are clear, feasible, and effective.

Thank you for your attention to these important matters. We look forward to working with the Commission to achieve our shared goal of promoting professional and accountable law enforcement in Massachusetts.

Sincerely,

Michael J. Bradley, Jr.
Michael J. Bradley, Jr.,
Executive Director

Eric R. Atstupenas, Esq.
Eric R. Atstupenas, Esq.
General Counsel



FRANK G. FREDERICKSON
DIRECTOR OF GOVERNMENTAL AFFAIRS
P.O. Box 765 BARNSTABLE, MA 02630
DIRECT CELL: 508-294-2403 EMAIL: FRANKF@MASSFOP.ORG

Date: 8-1-24

To: Massachusetts Peace Officers and Standards Commission

Subject: Written Testimony Regarding POSTC Hearing on 8-1-24 Re. Audits of Law Enforcement

Commissioner's,

Please accept this information as you consider 555 CMR 12.00. It is understood that you are tasked with creating CMR's to comply with the legislation that created the POST Commission. I have read the proposed regulations, and I had the advantage to listen to Attorney Atstupena's testimony today. As a former Police Chief and now Director of Governmental Affairs for the Fraternal Order of Police, I strongly support everything that he pointed out.

It appears to me that this proposal goes beyond what the law calls for. Often when we go beyond the boundaries, albeit admittedly somewhat undefined, regulations become overly complicated and will be subject to challenges and difficulty to comply. I implore you to review the proposal with an eye to keeping it straightforward and simple.

In addition to Attorney Atstupenas' testimony, here are some areas of concern:

- 12.04 1 (d)11 Prosecutor's offices across the state use different standards. Until the standards are consistent, this should not be included.
- 12.04 1(g) Eliminate.
- 12.04 2 Constable language has no place in this CMR.
- 12.04 3(h&g) Eliminate – goes beyond the scope of POST ?
- 12.05 1© Eliminate “other agency member”
- 12.07 Needs to be carefully reviewed line by line to see to there is authority and if labor rights are being dismissed. This section is overly broad.
- 12.09 3 It is not clear if this is necessary and questions what the goal is.
- 12.09 (g-j) Eliminate

Our law enforcement Officers want POST to work well and to be treated fairly. I am concerned this proposal will not accomplish this. Additionally, there will be an elevated level of staffing commitment and expense for departments which are already understaffed and underfunded.

I am willing to work with the POST commission to refine this proposal.

Respectfully,

Frank Frederickson
Director of Governmental Affairs
Massachusetts Fraternal Order of Police

Formal Comment to the Massachusetts POST Commission on standards for law enforcement agencies.

Dated: August 1, 2024

As authorized by:

[M.G.L. Ch. 6E, section 5 . . . establish minimum standards . . . :

The police testimony at the POST Hearing was gratifyingly open-minded and constructive, and the police testimony contains many helpful and insightful comments. For example, exempting letters of counseling, or some simple notes to a personnel file by a supervisor might be a good idea. Even expungement after a period of time may be wise. But, it is critical to not defang or render the Mass. POST commission weak, and unable to improve policing in Massachusetts.

In the police comments, no evidence was provided that there are violations of federal or state law in the proposed standards that are a major problem. It is a normal part of the drafting process to resolve these issues through a group drafting process.

To facilitate this the POST Commission should place on its website all of the comments, not just a summary, so that the public has input on those comments. After a suitable period of time, the POST Commission should re-open the comment period so that the public (including me) can comment on the comments. This can be expected to result in a better ultimate product: standards that are careful, well-thought out, and take into account all points of view.

The police testimony includes the question of whether these changes are “necessary and appropriate at this moment.” The direct response is that we have a national problem of intentional, unintentional, and unprofessional misconduct by police. It is not limited to a department, like the Mass. State Police, the Boston

Police Department, or the Springfield Police Department, but rather includes the majority of police departments (more than 50%).

Look at the [REDACTED] or [REDACTED] cases for why the proposed MASS POST regulations should be strengthened (for an example see my first comment on related civil or criminal litigation not delaying police disciplinary hearings) and not watered down.

Our problems are not confined to Massachusetts—this is a cancer eating at American policing. Decisive action is required.