



# MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

September 16, 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 [M.G.L. c. 30A, §§ 18-25](#), and [St. 2021, c. 20](#), as amended by [St. 2022, c. 22](#), by [St. 2022, c. 107](#), and by [St. 2023, c. 2](#), notice is hereby given of a meeting of the Peace Officer Standards and Training Commission. The meeting will take place as noted below.

## NOTICE OF MEETING AND AGENDA

**Public Meeting #54**

**September 19, 2024**

**8:30 a.m.**

**Remote Participation via [Zoom](#)**

**Meeting ID: 910 7322 6241**

- 1) Call to Order
- 2) Approval of minutes
  - a. August 15, 2024
- 3) Executive Director Report – Enrique A. Zuniga
- 4) Finance & Administrative Update – Eric Rebello-Pradas
- 5) Legal Update – Randall E. Ravitz and Annie E. Lee
  1. 555 CMR 12.00: Maintenance, Reporting, and Audits of Law Enforcement Records and Information, revised version
  2. Agency Certification Initiative
    - a. Additional comments
    - b. Use of Force
    - c. Use of Force Reporting
    - d. Code of Conduct
- 6) Matters not anticipated by the Chair at the time of posting
- 7) Executive Session in accordance with the following:

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Boston, Massachusetts 02109

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[mass.gov/orgs/post-commission](https://mass.gov/orgs/post-commission)

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

- M.G.L. c. 30A, § 21(a)(1), to discuss “the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, . . . or individual”;
  - M.G.L. c. 30A, § 21(a)(5), to discuss the investigation of charges of criminal misconduct;
  - M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 6E, § 8(c)(2), and to the extent they may be applicable, M.G.L. c. 6, §§ 168 and 178, to discuss the initiation of preliminary inquiries and initial staff review related to the same, and regarding certain criminal offender record information;
  - M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 30A, §§ 22(f) and (g), to discuss and approve the minutes of prior Executive Sessions; and
  - M.G.L. c. 30A, § 21(a)(3), to discuss strategy with respect to litigation, as an open meeting may have a detrimental effect on the litigating position of the POST Commission.
- a. Reports of Preliminary Inquiry in the following cases:
- i) PI-2024-027
  - ii) PI-2022-11-22-005
  - iii) PI-2024-037
- b. Division of Standards request to enter into voluntary decertification or suspension agreement in the following cases:
- i) PI-2023-04-13-009; SU-2022-12-13-001
  - ii) PI-2022-11-22-004
  - iii) PI-2024-018
- c. Division of Standards request for approval to conduct Preliminary Inquiries in the following cases:
- i) PI-2024-055
  - ii) PI-2024-056
  - iii) PI-2024-057
  - iv) PI-2024-058
  - v) PI-2024-059
  - vi) PI-2024-060

## MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

- d. Approval of the minutes of the Executive Session of August 15, 2024

*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**  
**Public Meeting Minutes**  
**August 15, 2024**  
**8:30 a.m.**

**Documents Distributed in Advance of Meeting**

- July 18, 2024, Public Meeting Minutes
- Executive Director Report
- Legal Update, including:
  - 555 CMR 12.00: Maintenance, Reporting, and Audits of Law Enforcement Records and Information
  - 555 CMR 13.00: Law Enforcement Agency Certification Standards
- Proposed Policies, including:
  - Updated Policy Prohibiting Unauthorized Possession of Weapons in Commission Offices and Designated Facilities
  - Policy for Appointment of Hearing Officers
  - Policy for Appointment of Single Commissioners

**In Attendance**

- Commission Chair Margaret R. Hinkle
- Commissioner Hanya H. Bluestone
- Commissioner Lawrence Calderone
- Commissioner Eddy Chrispin
- Commissioner Deborah Hall
- Commissioner Marsha V. Kazarosian
- Commissioner Charlene D. Luma
- Commissioner Clyde Talley

**1. Call to Order**

- The meeting began at about 8:33 a.m.
- Chair Hinkle took a roll call of the Commissioners present. The roll call proceeded as follows:
  - Commissioner Bluestone – Present
  - Commissioner Calderone – Present
  - Commissioner Chrispin – Present
  - Commissioner Hall – Present
  - Commissioner Kazarosian – Present
  - Commissioner Luma – Present
  - Commissioner Talley – Present
- Chair Hinkle noted that Commissioner Baker would be absent for this meeting.

**2. Approval of Minutes**

- The Commissioners voted to approve the July 18, 2024, public meeting minutes as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chrispin – Yes
  - Commissioner Hall – Yes

- Commissioner Kazarosian – Yes
- Commissioner Luma – Yes
- Commissioner Talley – Yes
- The minutes were approved.
- 3. **Executive Director Report – Enrique A. Zuniga**
- Executive Director Zuniga shared a PowerPoint presentation, which started with an update on the agency’s certification efforts. He stated as follows.
  - There is a recent effort to confirm the status of individuals whose certification status has expired.
  - These are individuals who are certified by statute because they were active on July 1, 2021, but their names were not necessarily submitted for recertification since then.
  - There is an ongoing process to confirm that these individuals were not inadvertently left out of the certification application submissions in the past three years, and that they are not retired and working details (which requires a certification).
  - The names of officers whose certification has expired will be published on the Peace Officer Standards and Training Commission website, along with their Municipal Police Training Committee (MPTC) ID number.
- Executive Director Zuniga also provided an update on the state-level certification figures. He stated the following.
  - The numbers listed below are statewide metrics for sworn officers currently at a police department, as well as those who may have retired or resigned in good standing since they were last certified:
    - Certified Officers: 20,080
    - Certified School Resource Officers (SROs): 440
    - Conditionally Certified Officers: 454
    - Further Review/Not Certified-On Leave: 319
    - Not Certified: 281
    - Suspended: 60
  - These figures are updated and reported on the website monthly, and the names of the officers who are in each of these categories will be searchable and easily available to the public.
- Executive Director Zuniga then discussed the historical disciplinary records. He explained as follows.
  - As the process of publishing and analyzing disciplinary records continues, evidence has shown that certain agencies did not resubmit historical disciplinary records when they were instructed to do so at the beginning of last year.
  - Records from the first submission have been analyzed as a part of the ongoing data quality effort.
  - It is estimated that 150 records should have been resubmitted, which represents 46 agencies.
  - There may be good reasons why the records were not resubmitted, specifically given that the agencies were instructed to leave out minor matters.
  - It is suspected that in some instances this allowed exclusion may have been interpreted too broadly by certain agencies that are in this group.

- Agencies will continue to be contacted to ensure that they resubmit the necessary records. As updates from these agencies are received, they will be incorporated into the public database.
- Executive Director Zuniga next provided a hiring update, stating as follows.
  - There have been two new additions to the General Counsel’s Office: Gerry Cahill, joining as a Counsel, and Penny Walker, joining as a Paralegal.
  - These new hires bring the total of POST Commission employees to 47 (excluding interns, Hearing Officers, and Commissioners).
  - There is a pending offer for a fourth Enforcement Counsel, given that there was a vacancy created when Shaun Martinez was promoted to the Deputy Director position.
  - A third Counsel with the Legal Division will also be joining the team later this week.
  - Alia Spring has been promoted to the position of Communications & Media Relations Manager.
- Executive Director Zuniga then began the financial and administrative update, which proceeded as follows.
  - The fiscal and administrative team will be reconciling the final spending for fiscal year 2024.
  - The accounts payable period would close later that month, and the end-of-year results will be presented at the September Commission Meeting.
  - The fiscal year 2025 hiring forecast will be presented at the September Commission Meeting when the Commission is updated on the fiscal year 2025 spending plans.
  - Since the last Commission Meeting, the Governor signed the budget for the state, which includes a figure of \$8.75 million for the POST Commission in fiscal year 2025.
- Executive Director Zuniga also gave an administrative update focusing on the new POST Commission website. He explained the following.
  - The new website of the POST Commission is now live and can be found at the new URL: [www.mapostcommission.gov](http://www.mapostcommission.gov).
  - New functionality on the website allows users to search individuals’ names, agencies, and certification categories, supporting the goal of having a searchable and publicly available database on officer information.
  - Executive Director Zuniga then gave a tutorial on the new website search tool.
- Executive Director Zuniga concluded his report and opened the floor for any questions or comments.
- Commissioner Talley asked whether the public could view pending cases, or the Commission’s determinations, through the website search tool.
- Executive Director Zuniga stated that no, they will not be able to view any pending cases.
- Commissioner Hall stated that the functionality of the database was fantastic, but that the site seemed to be law-enforcement focused, and didn’t seem welcoming to her as a community member.
- Executive Director Zuniga thanked her for the feedback and stated that it would be considered as changes are made.

- Chair Hinkle thanked Executive Director Zuniga for his presentation and moved on to the next item on the agenda.

#### **4. Election of the Treasurer & Secretary**

- Chair Hinkle stated that since Commissioner Ellison departed from the Commission, the Commission has not had a Treasurer.
- Chair Hinkle then welcomed any nominations for the position of Treasurer of the Commission.
- Commissioner Kazarosian nominated Commissioner Luma.
- Commissioner Luma confirmed that she would be interested in serving as Treasurer.
- Chair Hinkle took a roll call vote on Commissioner Luma serving as the Treasurer of the Commission. The roll call proceeded as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chrispin – Yes
  - Commissioner Hall – Yes
  - Commissioner Kazarosian – Yes
  - Commissioner Talley – Yes
  - Chair Hinkle – Yes
- Chair Hinkle congratulated Commissioner Luma on her new position as the Treasurer of the Commission.
- Chair Hinkle then welcomed any nominations for the position of Secretary.
- Commissioner Calderone nominated Commissioner Kazarosian.
- Commissioner Kazarosian confirmed that she would be interested in staying in that role.
- Chair Hinkle took a roll call vote on Commissioner Kazarosian serving as the Secretary for the Commission. The roll call proceeded as follows:
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chrispin – Yes
  - Commissioner Hall – Yes
  - Commissioner Luma – Yes
  - Commissioner Talley – Yes
- Chair Hinkle congratulated Commissioner Kazarosian on her position as the Secretary for the Commission and thanked Commissioner Kazarosian and Commissioner Luma for their willingness to serve.

#### **5. Legal Update – Randall E. Ravitz and Annie E. Lee**

- General Counsel Ravitz shared a PowerPoint presentation regarding a set of regulations concerning maintaining, reporting, and auditing law enforcement records and information. He explained as follows.
  - The initiative began in May of 2023 with an introductory presentation on the subject, followed by a presentation later that year discussing the process of drafting these regulations.
  - At the May 2024 Commission Meeting, a revised draft set of regulations was introduced along with a presentation focused on the changes that had been made.
  - The Commissioners voted unanimously to begin the process of promulgating that revised set of regulations.

- Between June and August of 2024, emails were sent to interested parties seeking public comment, and a public hearing for verbal comments was held on August 1.
- General Counsel Ravitz stated that all public comments that have been made, as well as the current presentation, will be made available to the public.
- The goal is to return to the September Commission Meeting with a revised set of draft regulations that considers the comments that have been offered by members of the public as well as any others offered from within the agency itself.
- General Counsel Ravitz then began summarizing the comments which have been received. He stated as follows:
  - Regarding the category of requirements for agencies to maintain records, some commenters would add to those requirements.
  - With respect to disciplinary matters, as well as officers' reasons for leaving employment, members of the public offered more specifics regarding what the Commission's role may look like.
  - Additionally, commentors stated that the regulations should state that they do not require the recreation of records that were lawfully destroyed previously, or that they should allow for expungement of records, perhaps after a period of time.
  - Some comments asked that it not be required for individual officers to provide information regarding the heads of their collective bargaining units.
  - It was requested that more provisions intending to protect the privacy of information, and the confidentiality of sensitive information, be added.
  - Regarding audits, it was requested that members of the public can request that the Commission audit an agency, that more qualifications are added to those auditing the agencies, and that more standards for the auditing process are developed.
  - Another commentor asked that the Commission require agencies and officers to complete certain attestations and to attest to the fact that records are complete and contain genuine information.
  - Yet another commentor asked for a better definition of the standards the Commission would apply if it were taking disciplinary action or imposing penalties against someone for violating the regulations.
  - Comments other than those discussed in the meeting were received, but they were either general or already under consideration.
- General Counsel Ravitz then asked if the Commission had any questions or comments.
- Commissioner Calderone asked what the intent of the presentation was, and whether the intent was to have a vote on the matter that day.
- General Counsel Ravitz stated that the Commission would not be asked to vote on the matter at this meeting.
- Commissioner Talley expressed concerns that agencies seem to not want to maintain the files being discussed.
- General Counsel Ravitz responded by stating that an important consideration with this policy is whether the agencies should be excused from maintaining files they deem irrelevant, or if they should be required to maintain those files regardless of their perceived importance.
- Commissioner Calderone stated that he feels the burden should be on the agencies, and he is concerned that it will be left on the officer.

- Commissioner Bluestone asked if there are any known statistics regarding the status of recordkeeping within these agencies.
- General Counsel Ravitz stated that this is something they are still learning more about, and that the public comments have provided insight into this.
- Executive Director Zuniga added that when documents such as letters of counseling are removed from personnel files, they will no longer be considered in future decisions.
- With no more questions from the Commission, the Chair directed Counsel Annie E. Lee to begin her presentation on agency certifications.
- Counsel Lee shared a PowerPoint Presentation and began by discussing the law enforcement agency certification standards. She stated as follows.
  - The statute calls for the Commission to certify agencies based on at least eight topics which are outlined within the statute.
  - However, other agency certification programs in the country require agencies to meet over one hundred standards.
  - At the end of the June meeting, the Commission decided to hear from stakeholders prior to setting any additional standards.
  - As of August 9, the Commission had received 19 comments from a variety of individuals, organizations, and entities.
- Counsel Lee then began a high-level review of the comments to provide a general sense of what is being recommended by the public. She summarized the following.
  - The Massachusetts Association for Law Enforcement, the Sheriffs' Association, and the Justice Revenue Institute suggested that the Commission should refrain from implementing additional mandates.
  - The Attorney General's Office's Police Accountability Unit encouraged the Commission to adopt a separate standard related to bias-free policing.
  - The Commission received comments stating that agencies would benefit from some amount of equipment, and, in turn, that members of the public would benefit from knowing which weapons are used by officers in various circumstances.
  - The Massachusetts Police Accreditation Commission (MPAC) stated that agency standards on prisoner processing and temporary detention, as well as holding facilities, are necessary. Counsel Lee recommended that the Commission adopt standards on these two topics.
  - MPAC also made a comment regarding legal process, to which Counsel Lee recommended an agency standard be created.
  - There were comments suggesting that the Commission set a conflict-of-interest standard for agencies.
  - The most popular comment was regarding data collection, analysis, and reporting, and a need for clear disclosure to the public.
  - The Civil Service Commission suggested that the Commission adopt a standard regarding the requirement of an agency to report a list of Civil Service appointees to the Human Resources Department of the state.
  - Many comments stressed the importance of dialogue between an agency and the community it serves, and proposed ideas of how the community can engage and collaborate with its agency.
  - Comments regarding agency wellness and whether officers have access to proper resources were also received.

- Counsel Lee ended her presentation and opened the floor for any comments or questions.
- Commissioner Hall suggested that sexual harassment be added to the list of potential agency standards due to the number of cases regarding the topic that are seen.
- Counsel Lee took note of the suggestion.
- Commissioner Chrispin emphasized the importance of bias-free policing and expressed that the current standards are not rigorous enough.
- Commissioner Calderone asked Counsel Lee if he would be able to view the submitted comments in full.
- Counsel Lee stated that they were sent to the Commissioners prior to the meeting, but that they will be sent again.
- Commissioner Luma asked how the request for an agency standard regarding conflicts of interest would differ from what the state currently requires from public employees.
- Counsel Lee responded that it would not differ in substance from it but would create a standard for how individuals are held accountable if a violation of the conflict-of-interest law occurs.
- Commissioner Bluestone thanked Counsel Lee for her presentation and advocated for a standard on officer wellness.
- Counsel Lee asked Commissioner Bluestone if she was referring to a standard for officer wellness or agency wellness.
- Commissioner Bluestone responded that she believes they are both intertwined but feels the Commission should start by focusing on the agency level.
- Commissioner Chrispin brought up the issue of equipment, mentioning how duty belts have resulted in many officers needing hip replacements.
- Commissioner Kazarosian asked Counsel Lee if it is worth reviewing these agency standards incrementally, so that they receive the attention they deserve.
- Counsel Lee stated that her suggestion moving forward is to begin with the first eight standards, reviewing them standard by standard, prior to going through the additional standards being discussed today.
- Commissioner Luma suggested that a timeline regarding the review process be drafted so that they can determine the standards on which to focus.
- Counsel Lee said that she would prepare that for the next meeting.
- Counsel Lee then began discussing the use-of-force and reporting-of-use-of-force standard, stating:
  - Based on current law, regulations and guidance, as well as the best practices identified by researchers, it is clear there are elements that are key to developing a use-of-force standard.
  - The key elements that appeared through the conducted research were as follows:
    - De-escalation;
    - Authorization of use of force;
    - Specific and comprehensive requirements for use of non-deadly and deadly force;
    - Use of force devices;
    - Mass demonstrations and crowd management;
    - Prohibitions against excessive force;
    - Duty to intervene;

- Duty to render medical aid;
      - On-duty debriefings and reviews.
    - The elements outlined above are not necessarily new standards but are intended to make the expectations of a use of force standard clear.
  - Chair Hinkle thanked Counsel Lee for her presentation and then welcomed Deputy General Counsel LaRonica K. Lightfoot to begin her policy discussion.
- 6. Policy Discussion – LaRonica K. Lightfoot**
- Deputy General Counsel Lightfoot stated that she had three policies to present to the Commission for their consideration and vote.
  - Deputy General Counsel Lightfoot then introduced the first policy, which concerned the prohibition of weapons in Commission offices and designated facilities. She stated as follows:
    - The Commission voted to make the current policy effective on September 14, 2023.
    - The current policy prohibits weapons, such as everything from firearms to blunt objects, chemical sprays, and any other item the Commission deems dangerous, and likely to present a threat to the safety and security of the building or its occupants.
    - However, it is important to note that this policy does not apply to law enforcement officers serving as Commissioners.
    - Deputy General Counsel Lightfoot then directed the Commission to the highlighted areas of the text, which showed the revisions to the policy.
    - The revisions to the policy primarily grant the Executive Director, or a designee, the ability to authorize the possession of weapons.
  - Deputy General Counsel Lightfoot then asked if there were any questions or comments from the Commission.
  - Commissioner Bluestone asked that if there is an authorization of a weapon to be brought into the facility, it be disclosed to the participants in any meeting or those in that environment.
  - Executive Director Zuniga stated that the change can be incorporated.
  - Commissioner Talley asked if there would be a checkpoint to reinforce this policy.
  - Deputy General Counsel Lightfoot stated that she believes that is implied.
  - Executive Director Zuniga stated that this revision to the policy is primarily intended to address circumstances such as when chiefs come in uniform to meetings.
  - The Chair asked for a roll call vote on the policy, as amended. The vote was unanimous.
  - Deputy General Counsel Lightfoot then moved to discuss the second policy, which addressed the Chair’s authority to appoint Hearing Officers in adjudicatory proceedings involving the denial, revocation, or suspension of law enforcement certification. She explained as follows:
    - In December 2022, the Commission authorized the Chair to utilize the services of retired Massachusetts judges in adjudicatory proceedings until the Commission voted to establish a policy.
    - The Chair’s authority to make such appointments resides primarily in 555 CMR 1.10.



- Despite the Chair receiving the authority to appoint Hearing Officers, the ultimate authority to make an independent, final determination of all issues continues to reside with the Commission.
- The Hearing Officers are required to get advice from the State Ethics Commission, when necessary, attend programs developed or recommended by the General Counsel, and draft the Initial Decisions that come before the Commission.
- Deputy General Counsel Lightfoot then asked if there were any questions or comments from the Commission.
- Commissioner Kazarosian pointed out that the Commission has benefitted from having retired Superior Court Judges presiding over these hearings. She recommended that the policy call for the use of a “retired Massachusetts Superior Court Judge” rather than a “retired Massachusetts Judge.”
- Commissioner Luma asked if the policy states how many Hearing Officers should be appointed at one time.
- Deputy General Counsel Lightfoot stated that it does not, and that it will depend on the caseload moving forward.
- Commissioner Luma asked if this should be added to the policy to avoid concerns regarding budgeting.
- Chair Hinkle stated that the Commission should monitor the workload of the Hearing Officers and move forward from there.
- Commissioner Calderone asked if the change to the policy requested by Commissioner Kazarosian could be clarified.
- Deputy General Counsel Lightfoot stated that the change will be in sections (1) and 2(a) and will state “who has previously served as a Massachusetts Superior Court Judge.”
- The Chair asked for a roll call vote on the policy, as amended. The vote was unanimous in favor of the policy.
- Deputy General Counsel Lightfoot then moved to discuss the third policy, which addressed the Chair’s authority to appoint a Single Commissioner to serve in proceedings that involve requests to stay suspensions. She explained as follows.
  - The Single Commissioner can be any of the current Commissioners whom the Chair chooses to appoint.
  - Matters before the Single Commissioner are adjudicatory proceedings. Therefore, they are subject to the relevant legal obligations.
  - Commissioners serving in this capacity will be provided with some guidance prior to, and possibly during, the process.
  - There is a requirement that the Single Commissioner attend programs developed, administered, or recommended by the General Counsel to provide guidance on conducting these adjudicatory proceedings.
- Deputy General Counsel Lightfoot then asked if there were any questions or comments from the Commission.
- Commissioner Calderone expressed concerns about the training process not being stringent enough, and he recommended that the Commission rely on the Hearing Officers rather than a Single Commissioner.

- Deputy General Counsel Lightfoot stated that Single Commissioners are necessary for conducting these types of hearings, but that individuals who are not comfortable acting as a Single Commissioner will not be chosen for the position.
- Chair Hinkle stated that she is mindful of the extent to which each Commissioner is occupied with their own professional matters, and that she will take that into consideration while appointing a Single Commissioner.
- Commissioner Luma acknowledged Commissioner Calderone’s concern but asserted that she has faith in the legal training that the Legal Team will provide to the Single Commissioner.
- Commissioner Bluestone stated that she too has faith in her fellow Commissioners as well as the Chair to appoint the Single Commissioner.
- The Chair asked for a roll call vote on the policy. The vote was unanimous in favor of the policy.

**Matters Not Anticipated by the Chair at the Time of Posting**

- The Chair indicated that she did not believe there were any matters not anticipated at the time of the posting of the meeting notice.

**8. Executive Session**

- The Chair raised the issue of moving into executive session in accordance with M.G.L. c. 30A, § 21(a)(5), in anticipation of discussion regarding the investigation of charges of criminal misconduct; under M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 6E, § (8)(c)(2), and to the extent they may be applicable, M.G.L. c. 6, §§ 168 and 178, in anticipation of discussion regarding the initiation of preliminary inquiries and initial staff review related to the same, and regarding certain criminal offender record information; and M.G.L. c. 30A, § 21(a)(7), combined with M.G.L. c. 30A, § 22(f) and (g), in anticipation of discussion and approval of the minutes of the prior executive session.
- The Chair stated that:
  - The Commissioners will be considering reports of preliminary inquiries in 3 cases.
  - They will be addressing requests for approval to conduct preliminary inquiries in 8 cases.
  - They will be considering requests from the Division of Police Standards to approve preliminary inquiries in 8 cases.
  - They will also be hearing a motion to approve the minutes of the executive session of the July 18<sup>th</sup> meeting.
  - They will be discussing the existing litigation in Suffolk Superior Court. This discussion will be closed to the public, as an open meeting to discuss that issue would have a detrimental impact on the litigating position of the agency.
- The Chair informed members of the public that the Commission would not reconvene its public meeting after the executive session.
- There was a motion to enter executive session by Commissioner Hall.
- The Chair took a roll call vote on the motion. The Commissioners voted as follows.
  - Commissioner Bluestone – Yes
  - Commissioner Calderone – Yes
  - Commissioner Chrispin – Yes
  - Commissioner Hall – Yes
  - Commissioner Kazarosian – Yes

- Commissioner Luma – Yes
  - Commissioner Talley – Yes
  - Chair Hinkle – Yes
- The motion unanimously carried.
- The Chair informed members of the public that the Commission would not reconvene its public meeting after the executive session.
- The Chair thanked the public, and the public meeting was adjourned at 10:45 a.m.

3.



# Executive Director Report

September 19, 2024



# Agenda

1. Stakeholder Engagement
2. Reports due to POST
3. Finance & Administrative Update

# Stakeholder Engagement

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## Presentations and Other Stakeholder Engagement

- MACLEA Meeting (9/13)
- Springfield Board of Police Commissioners (9/11)
- Mass Chiefs annual meeting (9/17 – 9/19)
- Chairs of the Joint Committee on Children & Families (9/10)
- IADLEST POST Directors Summit at FLETC, Glynco GA (9/24 - 9/25)
- IACP Conference in Boston (10/18 – 10/21)
- Public Safety & Police Accountability, Harvard Kennedy School (10/22 – 10/23)
- POST workshop at Yale Law School (11/15 – 11/16)

# Reports Due to POST

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## 3 Categories of Records that Require Update in Portal by Agencies

1. Open Complaints and Incident Reports (identifying overdue complaints/incidents > 90 days)
2. I/A Closed but Discipline Is Pending
3. Public complaints forwarded by POST - awaiting information



# Reports Due to POST

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## 84 Agencies with at least one open report or incident

- POST e-mailed individualized report to chiefs and users of requirement
- 4 Agencies with more than 10 records to update as follows:

<b>Agencies with Records that need to be updated</b>	<b># of Records</b>
Massachusetts State Police	88
Boston Police Department	50
Springfield Police Department	18
Lawrence Police Department	11

# Reports Due to POST



## Additional Agencies with Records Due

- 11 Agencies with 4 to 6 records due as follows:

Department with records Due	Department with records Due
Haverhill Police Department (6)	New Bedford Police Department (5)
Revere Police Department (6)	Stoneham Police Department (5)
Canton Police Department (5)	Brockton Police Department (4)
Belmont Police Department (5)	Holyoke Police Department (4)
Bridgewater State University (5)	Wareham Police Department (4)
Cambridge Police Department (5)	10 Agencies with 3 Records Due
	26 Agencies with 2 Records Due
	43 Agencies with 1 Record Due

# Finance & Administrative Update

# FY24 Activity



## Total Balance Reverted

<b>Budgeted</b>		<b>Spent</b>		<b>Reversion</b>	
\$	8,500,000.00	\$	7,658,721.00	\$	841,279.00
\$	1,278,534.00	\$	-	\$	1,278,534.00
<b>\$</b>	<b>9,778,534.00</b>	<b>\$</b>	<b>7,658,721.00</b>	<b>\$</b>	<b>2,119,813.00</b>

# FY25 Spending Plan

## Summary



### PST 0800-0000

Object Code Description	FY25 SPENDING PLANS		
	FY25 Final GAA	FY25 PST BGTS	FY25 SP
EMPLOYEE COMPENSATION (AA) TOTAL	6,497,238	(90,000)	6,407,238
EMPLOYEE TRAVEL (BB) TOTAL	25,000	0	25,000
CONTRACT EMPLOYEES (CC) TOTAL	70,800	60,000	130,800
PAYROLL TAX/FRINGE (DD) TOTAL	167,225	(40,000)	127,225
OFFICE SUPPLIES/POSTAGE/SUBSCRIPTIONS (EE) TOTAL	220,531	(19,000)	201,531
FACILITY OPERATIONS (FF) TOTAL	36,000	4,000	40,000
OFFICE SPACE LEASE (GG) TOTAL	631,157	0	631,157
CONSULTANTS/LEGAL SERVICES (HH) TOTAL	169,840	(18,000)	151,840
SUPPORT/AUXILIARY SERVICES (JJ) TOTAL	55,707	18,000	73,707
OFFICE FURNITURE/FIXTURES/EQUIPMENT (KK) TOTAL	3,000	0	3,000
OFFICE EQUIPMENT LEASE (LL) TOTAL	4,264	0	4,264
OFFICE MAINTENANCE/REPAIRS (NN) TOTAL	5,000	15,000	20,000
OBJECT CLASS TT TOTALS	0	0	0
INFORMATION TECHNOLOGY (UU) TOTAL	861,714	70,000	931,714
<b>Grand Total :</b>	<b>8,747,476</b>	<b>0</b>	<b>8,747,476</b>

# FY25 Spending Plan

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## Largest Areas of Spending

- Payroll - \$6.4M
  - Onboarding additional 5 Employees
  - Total of 53 Employees by June 30<sup>th</sup>
  - 3% COLA
- Information Technology - \$932K
  - Development is Complete
  - Salesforce Maintenance
- Office Space - \$681K
  - Includes Utilities, Taxes, and Maintenance

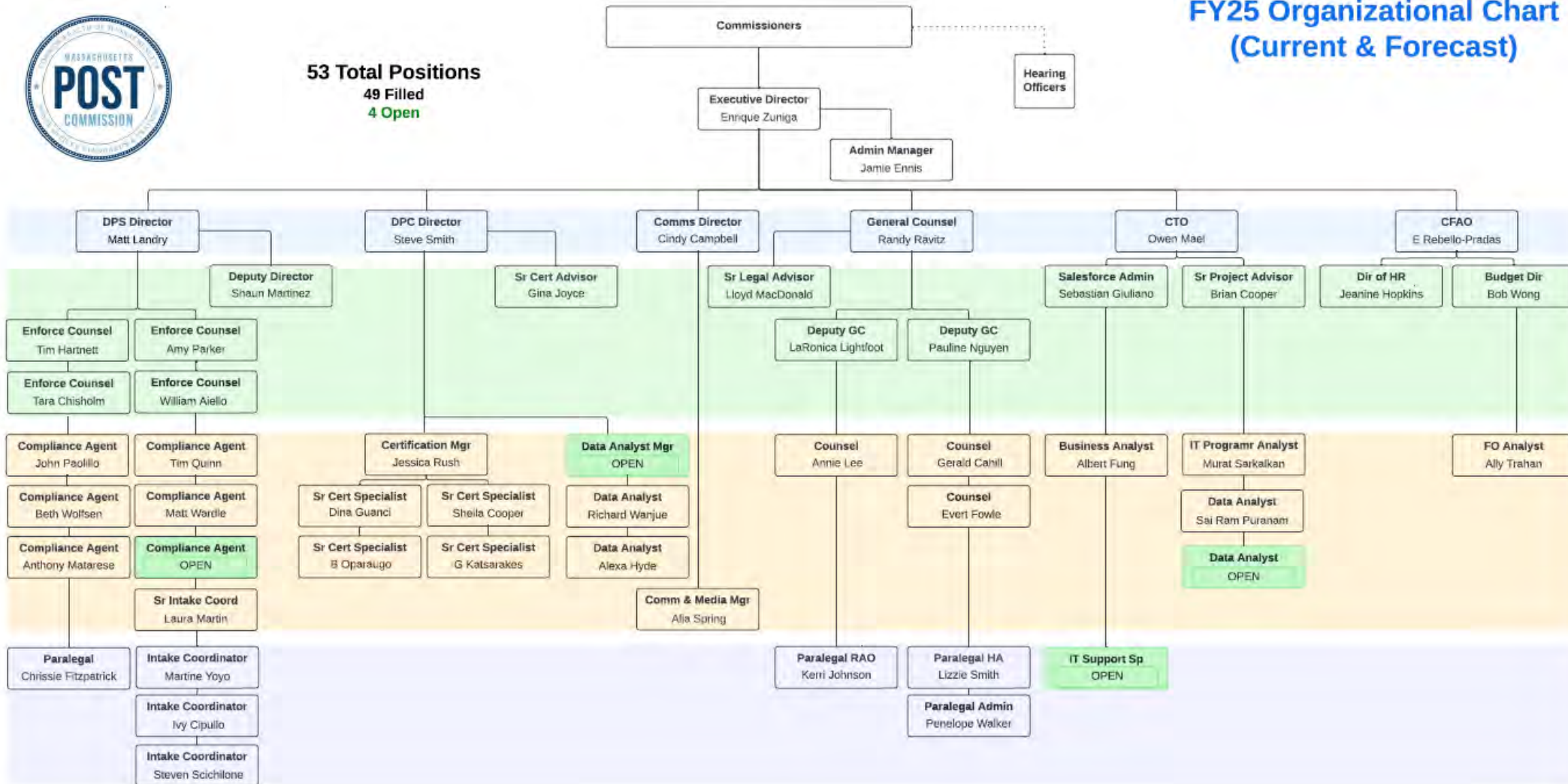


# FY25 Spending Plan



**53 Total Positions**  
**49 Filled**  
**4 Open**

## FY25 Organizational Chart (Current & Forecast)



# F&A Update

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## Hiring

### Welcome Recent Hires

- William Aiello – Enforcement Counsel
- Evert Fowle – Counsel
- Kimberly Shatford – Legal Fellow
- Mia Katterman – Legal Intern





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Massachusetts Peace Officer Standards & Training  
POSTC-comments@mass.gov  
[www.mass.gov/orgs/post-commission](http://www.mass.gov/orgs/post-commission)  
617-701-8401

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4.



MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

**MEMO**

**TO:** Commissioners  
**FROM:** Finance & Administration  
**CC:** Enrique Zuniga  
**DATE:** September 19, 2024  
**RE:** FY25 Spending Plans

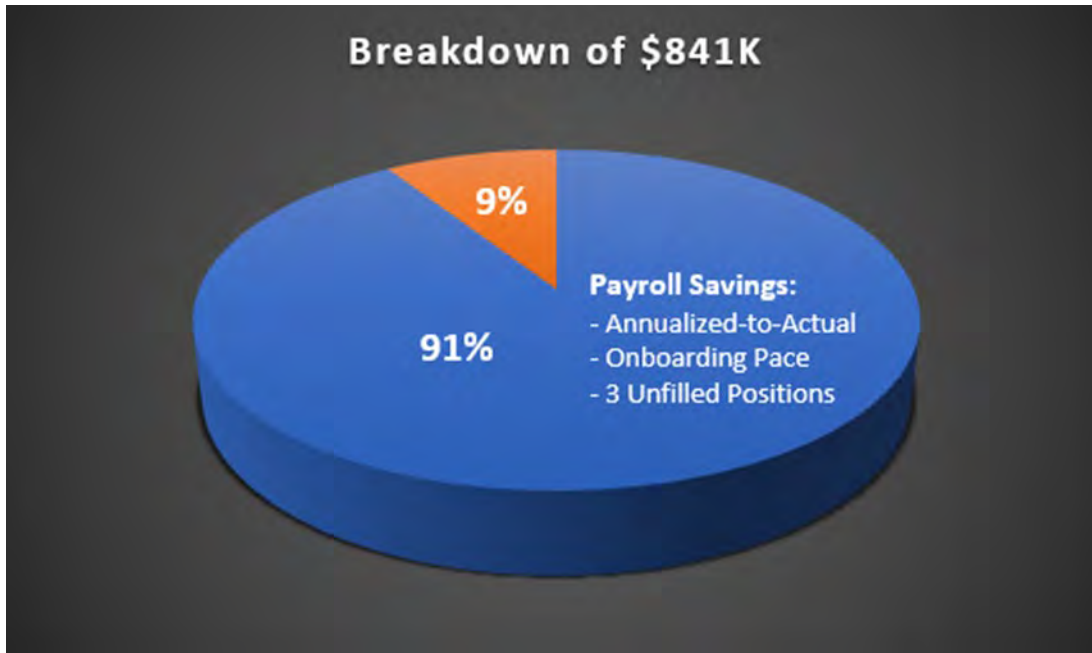
**FY24 Year-End**

The 2024 fiscal year officially ended on June 30<sup>th</sup>. You may recall final accounting for the fiscal year is shored up during July and August (aka *Accounts Payable Period*). Final agency expenditures totaled \$7.66 million, thereby leaving a leftover balance of \$2.12 million. Keep in mind that the majority of the leftover balance consists of unused funds that were carried over from FY23. The Legislature allowed these funds to be carried forward (aka PAC) in order to give POST a flexible budget during its initial start-up phase. In the end, however, POST did not need this additional funding.

	<b>Budgeted</b>	<b>Spent</b>	<b>Reversion</b>
Principal	\$ 8,500,000.00	\$ 7,658,721.00	\$ 841,279.00
PAC	\$ 1,278,534.00	\$ -	\$ 1,278,534.00
	<b>\$ 9,778,534.00</b>	<b>\$ 7,658,721.00</b>	<b>\$ 2,119,813.00</b>

POST did spend 90% of the total principal amount that was budgeted for FY24: \$8.5 million. For several months our estimated spending ranged between \$7.75 million and \$8 million. Therefore, we expected to have a principal reversion of approximately \$500K-\$750K. Most of the \$841K principal reversion is made up of payroll savings.

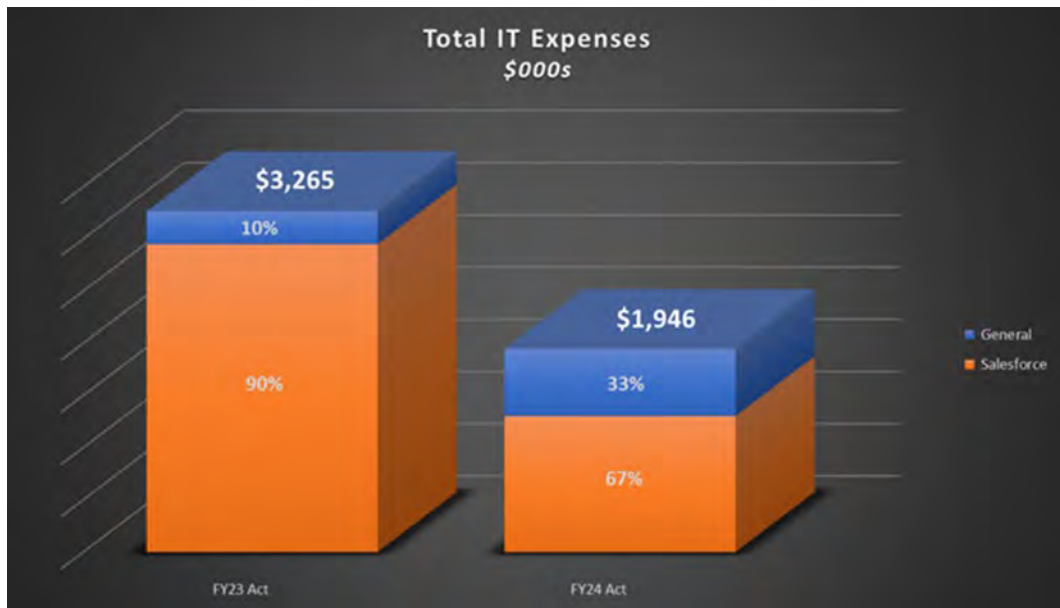
Since our payroll estimates are largely annualized, actual payroll typically ends up being less than what is estimated in spending plans. While we initially projected a total of 48 regular employees (headcount) by June 30<sup>th</sup>, our final total ended up being 45. Three positions remained unfilled until FY25 Q1: Enforcement Counsel, Counsel, and Paralegal. Therefore, for FY24 we ended up onboarding 14 employees. With such a large number of positions to fill, we knew we would accumulate savings from any delays in hiring. Consequently, the \$841K principal reversion is a combination of savings from annualized payroll estimates, delayed hires, and 3 unfilled positions.



Of the \$7.66 million in total spending, \$4.55 million was expended on payroll for 45 regular employees, nine commissioners, and three part-time hearing officers (see attached FY24 Organizational Chart).

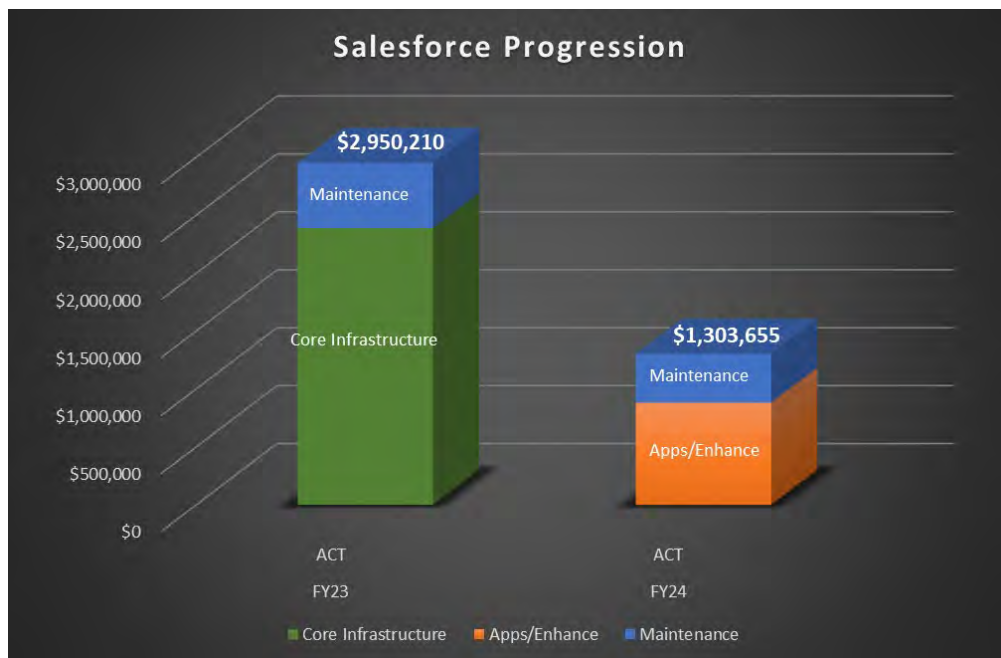
Spending Category	FY24 Budget (w/out PAC)	FY24 Final Spending	Final vs Budget
EMPLOYEE COMPENSATION (AA)	\$ 5,316,050	\$ 4,551,446	\$ (764,604)
EMPLOYEE TRAVEL (BB)	\$ 25,000	\$ 16,155	\$ (8,845)
CONTRACT EMPLOYEES (CC)	\$ 12,000	\$ 36,211	\$ 24,211
PAYROLL TAX/FRINGE (DD)	\$ 142,265	\$ 96,750	\$ (45,515)
OFFICE SUPPLIES/POSTAGE/SUBSCRIPTIONS (EE)	\$ 192,700	\$ 199,152	\$ 6,452
FACILITY OPERATIONS (FF)	\$ 51,000	\$ 28,308	\$ (22,692)
OFFICE SPACE LEASE (GG)	\$ 507,540	\$ 479,177	\$ (28,363)
CONSULTANTS/LEGAL SERVICES (HH)	\$ 135,000	\$ 136,391	\$ 1,391
SUPPORT/AUXILIARY SERVICES (JJ)	\$ 40,000	\$ 21,908	\$ (18,092)
OFFICE FURNITURE/FIXTURES/EQUIPMENT (KK)	\$ 65,000	\$ 59,075	\$ (5,925)
OFFICE EQUIPMENT LEASE (LL)	\$ 5,440	\$ 1,638	\$ (3,802)
OFFICE MAINTENANCE/REPAIRS (NN)	\$ 89,050	\$ 86,414	\$ (2,636)
INFORMATION TECHNOLOGY (UU)	\$ 1,918,955	\$ 1,946,094	\$ 27,139
<b>Total</b>	<b>\$ 8,500,000</b>	<b>\$ 7,658,721</b>	<b>\$ (841,279)</b>

The other large concentration in spending was in IT. Of the \$1.95 million expended in this category, \$1.30 million (or 67%) was dedicated to the continued development of the Salesforce IT Solution.



As originally planned, total Salesforce spending in FY24 was dedicated to one-time applications and enhancements, as well as recurring maintenance costs. These applications and enhancements represented the second phase of a two-phase development:

**Phase I - Core Infrastructure**  
**Phase II – Applications/Enhancements**



## FY25 Spending Plans

Spending Plans for the current fiscal year are required to be submitted to ANF per State Finance Law following passage of the state budget, or GAA (General Appropriations Act). Since so much time elapses from when the Governor’s budget is filed at the beginning of the calendar year to when the GAA is signed in July, it is necessary to make adjustments to certain spending categories, especially payroll and IT. Moreover, the Legislature typically adds earmarks and other spending priorities that may be over and above an agency’s targeted budget number. The Spending Plan process allows agencies to account for variations from its targeted number, which is why the process is a major part of what is known as the state’s *Budget Cycle*.

The total amount appropriated to POST in FY25 is \$8.75 million. Commissioners may recall, POST originally requested \$9.17 million for its FY25 budget. Looking to limit overall spending growth, ANF reduced the request to \$8.75 million in the Governor’s FY25 Budget Recommendation (H2). This figure was what eventually made it into the GAA.

## PST 0800-0000

	FY25 SPENDING PLANS			
	FY24 Final Expenditures	FY25 Final GAA	FY25 PST BGTS	FY25 SP
<b>EMPLOYEE COMPENSATION (AA) TOTAL</b>	4,551,446	6,497,238	(90,000)	6,407,238
<b>EMPLOYEE TRAVEL (BB) TOTAL</b>	16,155	25,000	0	25,000
<b>CONTRACT EMPLOYEES (CC) TOTAL</b>	36,211	70,800	60,000	130,800
<b>PAYROLL TAX/FRINGE (DD) TOTAL</b>	96,750	167,225	(40,000)	127,225
<b>OFFICE SUPPLIES/POSTAGE/SUBSCRIPTIONS (EE) TOTAL</b>	199,152	220,531	(19,000)	201,531
<b>FACILITY OPERATIONS (FF) TOTAL</b>	28,308	36,000	4,000	40,000
<b>OFFICE SPACE LEASE (GG) TOTAL</b>	479,177	631,157	0	631,157
<b>CONSULTANTS/LEGAL SERVICES (HH) TOTAL</b>	136,391	169,840	(18,000)	151,840
<b>SUPPORT/AUXILIARY SERVICES (JJ) TOTAL</b>	21,908	55,707	18,000	73,707
<b>OFFICE FURNITURE/FIXTURES/EQUIPMENT (KK) TOTAL</b>	59,075	3,000	0	3,000
<b>OFFICE EQUIPMENT LEASE (LL) TOTAL</b>	1,638	4,264	0	4,264
<b>OFFICE MAINTENANCE/REPAIRS (NN) TOTAL</b>	86,414	5,000	15,000	20,000
<b>OBJECT CLASS TT TOTALS</b>	0	0	0	0
<b>INFORMATION TECHNOLOGY (UU) TOTAL</b>	1,946,094	861,714	70,000	931,714
<b>Grand Total :</b>	<b>7,658,721</b>	<b>8,747,476</b>	<b>0</b>	<b>8,747,476</b>

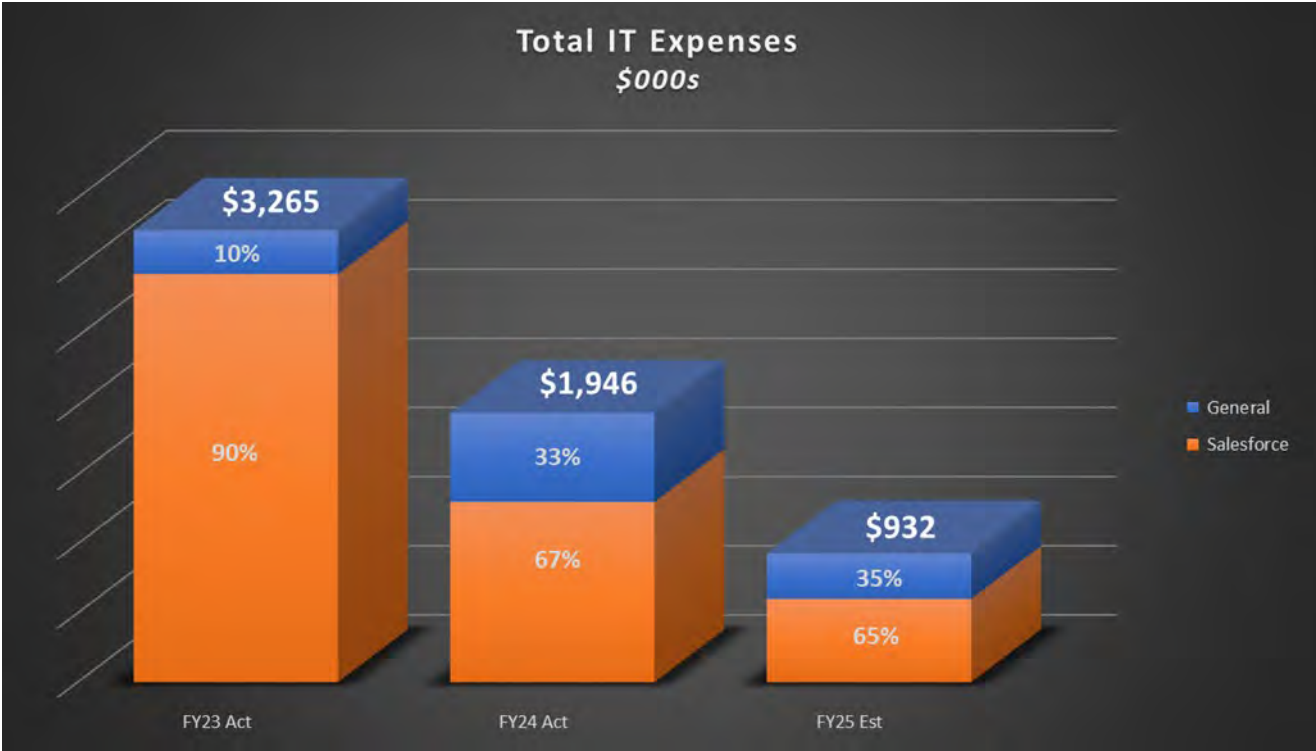
Note: “BGTS” is a state accounting term indicating when money is moved from one category to another, resulting in an overall net-zero allocation.

As with the prior fiscal year, most of POST’s spending will be dedicated to payroll and IT. Forecasted payroll is estimated at \$6.41 million (73% of the total budget) and includes an additional five employees from where we ended in FY24. The projected total for FY25 is **53 employees** (see attached FY25 Organizational Chart). Fifty-three refers to the headcount of regular (part-time & full-time) employees. The nine commissioners and six hearing officers are not included in this figure.

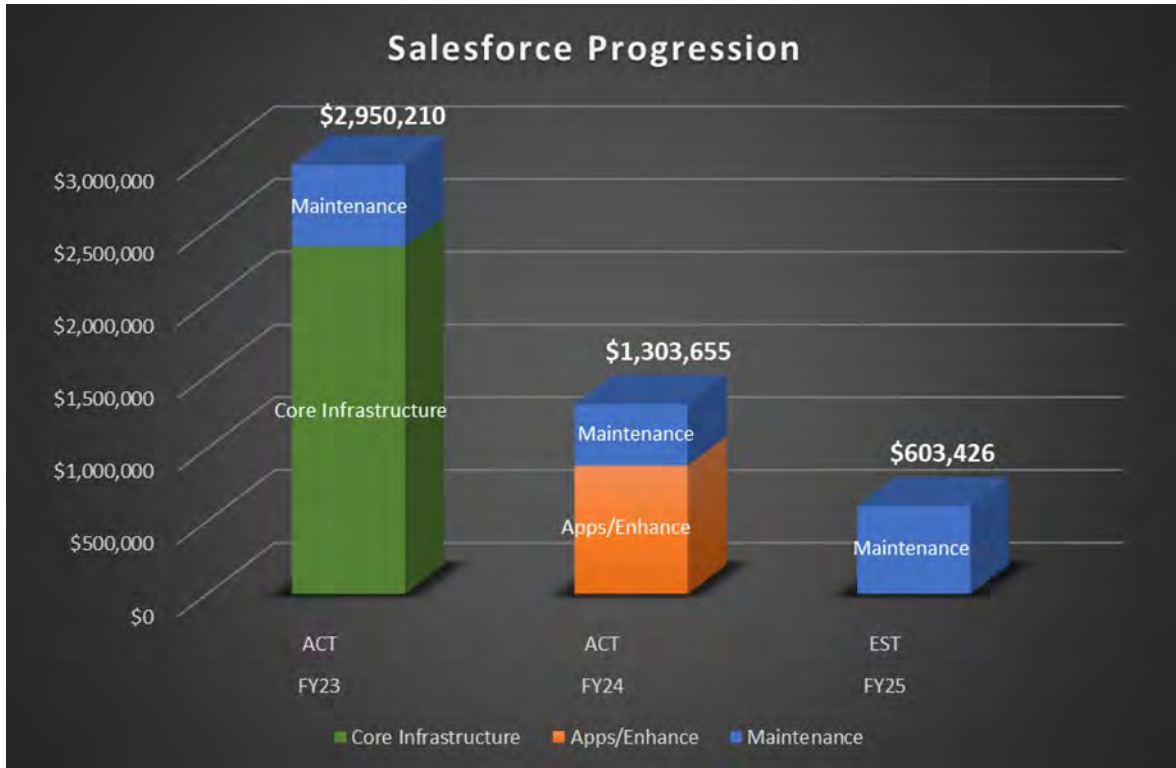


<b>FY25 Payroll</b>	
9 Commissioners + 3% COLA	404,894
53 Regular Employees + 3% COLA	5,942,344
6 Hearing Officers	60,000
	<b>6,407,238</b>

Wrapping up development of the Salesforce IT Solution in FY24, FY25 Salesforce expenses will consist mostly of recurring maintenance costs. These estimated expenditures will make up about two-thirds of POST's total IT budget. Overall, IT costs have been significantly reduced as a result of completing the Salesforce project. The current fiscal year is expected to see just shy of \$1 million in IT spending. This represents more than a 50% reduction since last year, and a 70% reduction compared to FY23.



Recurring maintenance costs for the Salesforce product include licensing, file storage, AWS hosting, and engineering support. These costs will amount to about two-thirds of the overall IT budget, or \$603K. Since Salesforce’s inception, maintenance costs have been fairly consistent.



**Next Steps**

At next month’s commission meeting, we will review spending for Q1 and a preliminary look at budget development for FY26.

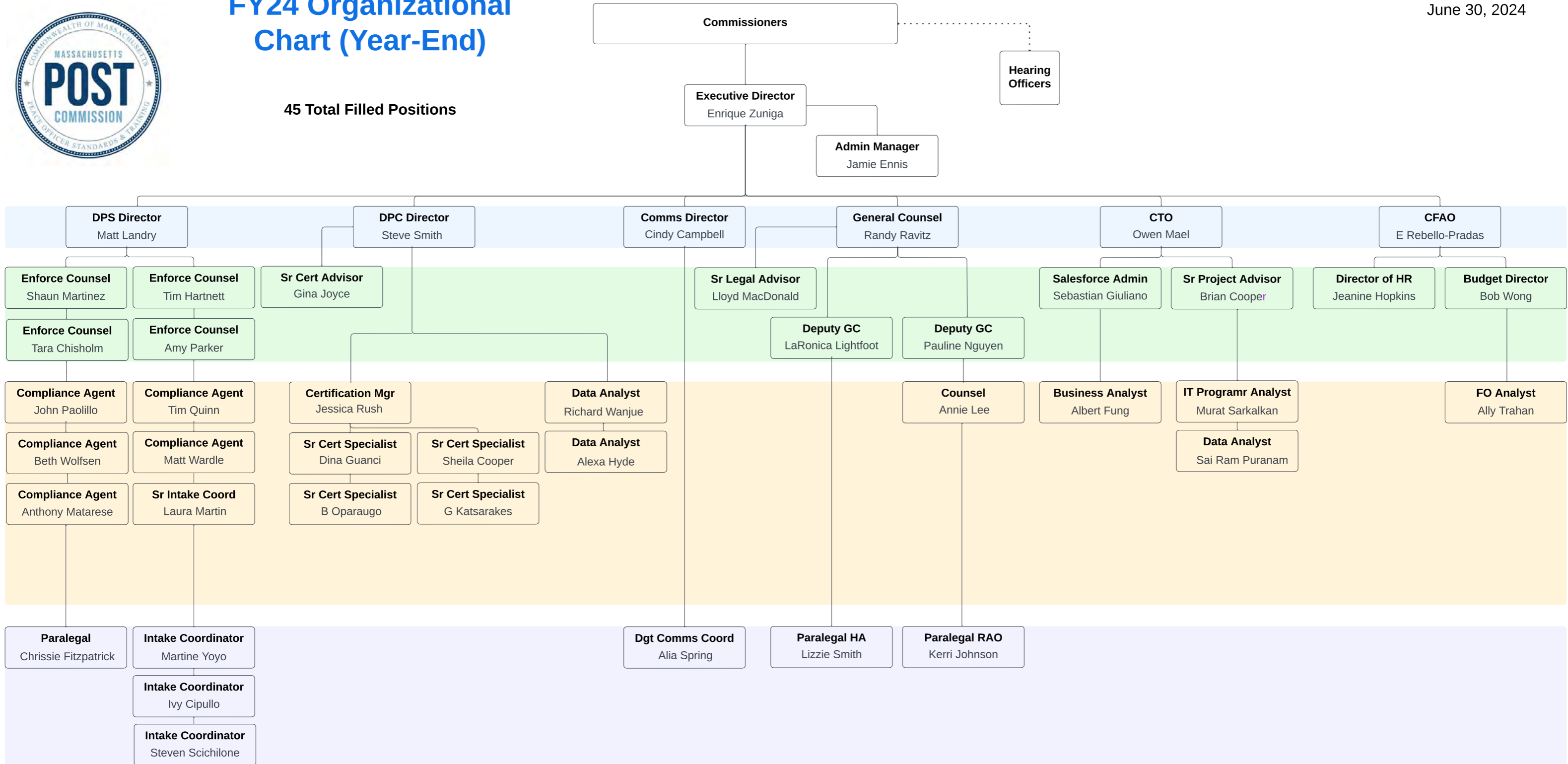




# FY24 Organizational Chart (Year-End)

June 30, 2024

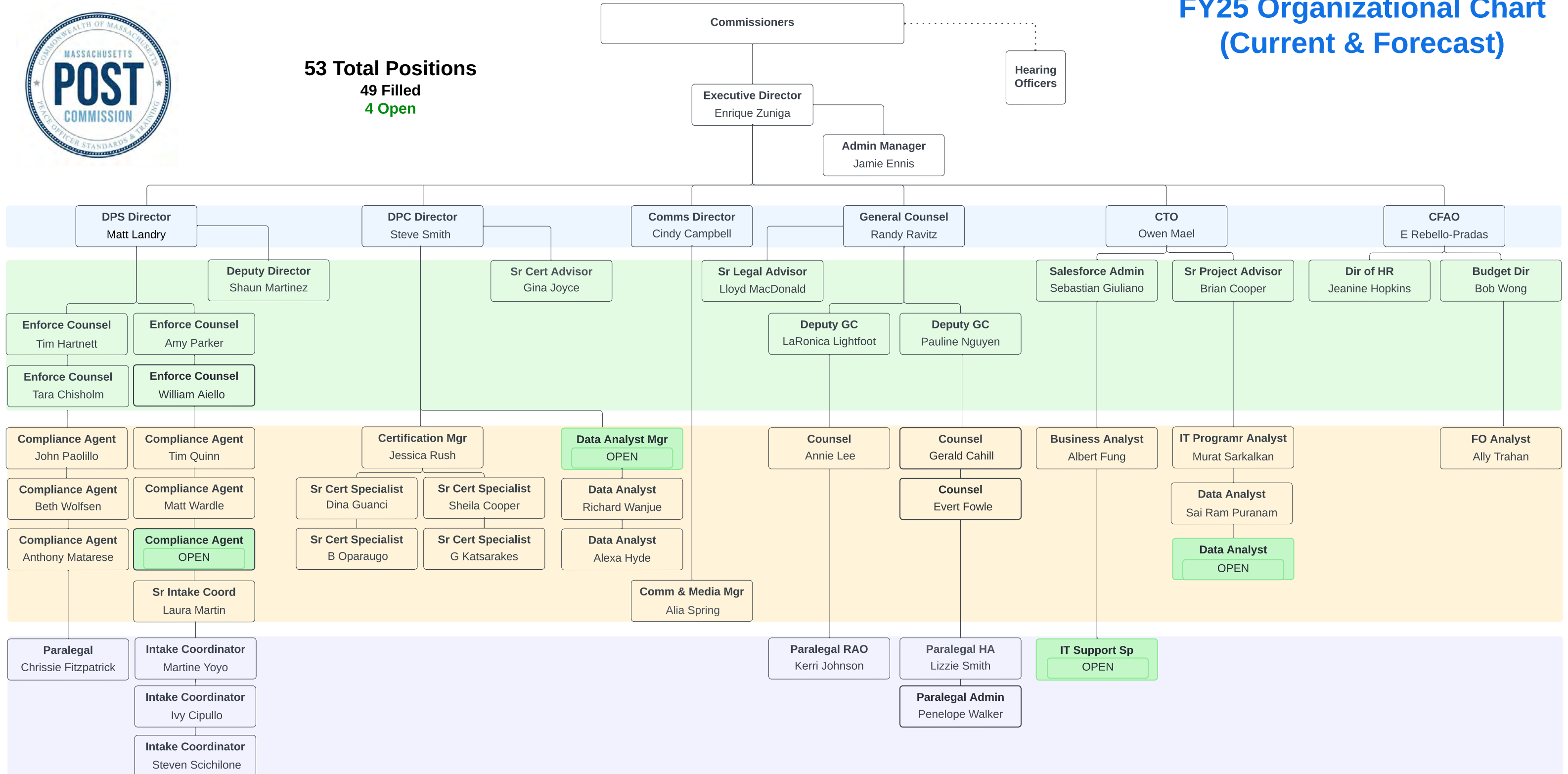
45 Total Filled Positions





**53 Total Positions**  
**49 Filled**  
**4 Open**

# FY25 Organizational Chart (Current & Forecast)



5.1



# MAINTAINING, REPORTING, AND AUDITING OF LAW ENFORCEMENT RECORDS AND INFORMATION

Randall E. Ravitz, General Counsel  
September 2024



# THE REGULATION DEVELOPMENT PROCESS

- **MAY 2023 COMMISSION PUBLIC MEETING**
  - Introductory presentation on the subject.
- **NOVEMBER 2023 COMMISSION PUBLIC MEETING**
  - Follow-up presentation discussing the drafting process.
- **DECEMBER 2023 COMMISSION PUBLIC MEETING**
  - Introduction of draft regulations.
  - Presentation on the key aspects of the draft and the process.



- **MAY 2024 COMMISSION PUBLIC MEETING**

- Circulation of December 2023 presentation.
- Introduction of revised draft regulations.
- Presentation focusing on changes made and an example of what an audit might look like and how it can be used.
- Unanimous vote by the Commissioners to begin promulgating the revised regulations.
- An understanding that a revised draft will include procedures for agencies to object, appeal, or seek reconsideration regarding the timing, nature, procedural aspects, or outcome of an audit.



- **JUNE TO AUGUST 2024 PUBLIC NOTICE & COMMENT PROCESS**
  - Publication of notices and emails to interested individuals beginning in late June.
  - Public hearing on August 1.
  - Receipt of 7 sets of written comments.
  - Receipt of additional comments as responses to the separate request for input on the agency certification process.



- **MAY 2024 COMMISSION PUBLIC MEETING**

- Circulation of written comments and a summary of them.
- Presentation focusing on the same.

- **THIS SEPTEMBER 2024 COMMISSION PUBLIC MEETING**

- Introduction of revised draft regulations for the Commissioners' consideration.
  - Including language of the type proposed in the May 2024 public meeting.
  - Taking into account some additional comments received.





# LARGER COMMENTS

- **AGENCY MAINTENANCE OF RECORDS**

- Require agencies to:

- Maintain more specific forms of information concerning separations from employment (12.04(1)(a)). **Changed.**
- Maintain records on investigations by outside entities (12.04(1)(2)d.). **Changed.**
- Maintain records of whether officers received training on policies (12.04). **Changed.**
- Maintain records of scores on examinations and qualifications (12.04). **Changed.**
- Maintain materials used in training or records of them (12.04(1)(e)). **Changed.**
- Use standardized terminology regarding dispositions and reasons for leaving employment (12.04(1), (3)). **Changed.**



- Do not require agencies to:
  - Insert all records into individual personnel files (12.04(1), 12.04(3)). **Changed.**
  - Maintain all contracts (12.04(3)(g)). **Not changed, given potential relevance, utility of not destroying information, and ultimate ability to view in context, as with most others not changed below.**
  - Maintain all records exchanged with, and reports of, auditors, analysts, evaluators, consultants, and accreditors (12.04(3)(h)). **Not changed as to reports. Changed in part as to other records.**
  - Maintain letters of counseling (12.04(1), 12.04(3)). **Not changed.**
  - Maintain prosecutors' determinations (12.04(1)(d)(11)). **Not changed.**
  - Maintain information on constables (12.04(2)). **Not changed.**



- Additionally:
  - State that the regulations do not require the re-creation of records that were lawfully destroyed previously (12.04). **Changed.**
  - Allow for expungement of records, perhaps after a period of time (12.04(1), (3)). **Not changed.**
  - Do not require individual officers to maintain records (12.07).
    - However, another commenter stated the opposite. **Changed.**
  - Do not allow for Commission to add to the list of records to be maintained (12.04(1)(g)). **Not changed.**



- **REPORTING OF INFORMATION**

- Do not require agencies to report information on criminal matters involving agency members who are not officers (12.05(1)(c)). **Changed.**
- Do not require individual officers to provide information on the heads of their collective bargaining units to agencies or the Commission (12.07(1)(b)(2)). **Changed in part.**
- Add provisions to help protect privacy, security, and confidentiality of sensitive information (12.05, 12.07, 12.08). **Changed in part, in light of other sources and lack of need to require in these regulations.**
- Allow Commission to obtain materials from training or records of them (12.05(2)(a)). **Changed.**
- Require reporting of certain civil service information where required by statute (12.05). **Changed.**



- **AUDITING**

- Enable others to request a Commission audit (12.08). **Changed.**
- Define the necessary qualifications of auditors (12.08). **Changed.**
- Once again, add provisions to help protect privacy, security, and confidentiality of sensitive information (12.05, 12.07, 12.08). **Changed in part.**
- Better define the standards and criteria by which auditees will be evaluated in an audit (12.09). **Changed indirectly throughout, while maintaining flexibility.**
- Do not provide for auditing of individual officers (12.08). **Changed.**



- OTHER MATTERS

- Reconsider the provisions requiring certain attestations (12.10). **Changed in part, such as through privilege provisions.**
- Better define the standards for the Commission to take disciplinary action or impose penalties for violating these regulations (12.12). **Changed.**
- Require agencies to permit inspections by prosecutors (12.04(4)). **Changed in part.**



- **ADDITIONAL COMMENTS NOT DIRECTLY ADDRESSED ABOVE**

- Some are addressed by other provisions of these regulations or by statutory provisions. **Some changed.** **Some not changed.**
- Others relate to matters beyond the scope of these regulations and relate more to other regulations or functions. **Not changed.**
- Some raise issues that can be easily clarified. **Changed.**
- Others raise more general considerations, as opposed to specific textual changes.
- Still others were offered as responses to the request for input on agency certification standards, may or may not warrant treatment in these particular regulations, and can be evaluated further. **Some changed.** **Some not changed.**

- **OTHER, SMALLER CHANGES MADE THROUGHOUT**



- **PRIVILEGES AND LEGAL REQUIREMENTS**

- New 12.01(2).

(2) Neither a law enforcement agency nor an officer shall be required to comply with any provision of 555 CMR 12.00 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 agency or officer, 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 agency or officer so informs the Commission, citing the pertinent privilege, protection, or provision.





- **REPORTING TO OTHER ENTITIES**

- New 12.03(1)(f)(3), 12.04(3).
- The regulations generally do not attempt to cover reporting to entities other than the Commission, but make these exceptions.
- Repeat the requirement found in the use of force regulations to report information to the FBI's National Use of Force Data Collection Database.
- Require reporting of certain civil service information if required by statute.
- Require, to the extent feasible, reporting to:
  - The Justice Department's National Law Enforcement Accountability Database; and
  - The CDC's National Violent Death Reporting System.



- **ACCURACY AND TRUTHFULNESS**

- New 12.03(8), 12.05(2)(f), 12.06(1)(c), and 12.12(1).
- Take into account discussion in Certification Policy Subcommittee.
  - Including concerns about innocent mistakes, mere imprecision, and immaterial errors.
- Instead of requiring agencies and officers to ensure accuracy in records and representations:
  - Requires them to make diligent efforts to ensure accuracy.
  - And prohibits them from engaging in “untruthfulness” as defined in M.G.L. c. 6E, § 1.



- **QUALIFICATIONS OF AUDITORS**

- New 12.07(3), 12.07(4), 12.07(5).
- Commission auditors must satisfy the requirements for contractor investigators in the regulations regarding complaints.
- Agency auditors must satisfy the requirements for agency investigators in the same regulations.
- The Commission and agencies, when feasible, shall give preference to those with certifications or demonstrated experience in auditing of law enforcement or other government agencies.



- APPEALS OF COMMISSION AUDITING ACTIONS

- New 12.10(2), 12.11, 12.12.
- Notice is to be given by email to agency head of an audit's initiation, parameters, final report, and any final order.
- Before the initiation:
  - The agency can request less-formal review by the Executive Director, as done in the certification context.
  - A possibility is to allow further less-formal review by a presiding officer.



- After the final report and any final order:
  - The agency can request less-formal review by the Executive Director.
  - If there was an order to act or refrain from acting, the agency can request further formal review, tracking the adjudicatory regulations.
  - If there was no such order, the agency can request further less-formal review by a presiding officer.



- ENFORCEMENT

- New 12.13.
- Strikes the general language about assessments, fees, fines, penalties, and sanctions that was based on M.G.L. c. 6E, § 3(a).
- Provides that a violation can result in an administrative suspension, with an opportunity for review based on the same procedures for other administrative suspensions.



- Provides that a violation may be treated as a form of prohibited conduct, and thus could warrant a preliminary inquiry, implicating provisions associated with such inquiries.
- If there is cause for more severe disciplinary action based on the usual statutory grounds, it can be pursued, as would be the case in any event.
- Maintains the provision allowing for a referral, which would also be allowed in any event.



*Thank you.*



555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

555 CMR 12.00: MAINTENANCE, REPORTING, AND AUDITS OF LAW ENFORCEMENT RECORDS AND INFORMATION

Section

- 12.01: Scope
- 12.02: Definitions
- 12.03: Law Enforcement Agency Creation and Maintenance of Records
- 12.04: Law Enforcement Agency Reporting of Information
- 12.05: Law Enforcement Agency Liaison to Commission
- 12.06: Officer Reporting of Information
- 12.07: Procedures for Audits
- 12.08: Areas of Examination in Audits
- 12.09: Verification of Information
- 12.10: Notice by the Commission
- 12.11: Review of Commission Decision to Conduct Audit
- 12.12: Review of Commission Action Following Audit
- 12.13: Enforcement and Disciplinary Action

12.01: Scope

- (1) 555 CMR 12.00 governs:
  - (a) The creation and maintenance of records by agencies and officers;
  - (b) The reporting of information by agencies and officers; and
  - (c) The auditing of agencies and officers by or on behalf of the Commission, pursuant to M.G.L. c. 6E, § 8(d) or otherwise.
- (2) Neither a law enforcement agency nor an officer shall be required to comply with any provision of 555 CMR 12.00 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 agency or officer, 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 agency or officer so informs the Commission, citing the pertinent privilege, protection, or provision.
- (3) Nothing in 555 CMR 12.00 is intended to:
  - (a) Limit any obligations that law enforcement agencies and officers otherwise have under M.G.L. c. 6E, 555 CMR, or another source of authority; or any practices that are consistent with generally accepted law enforcement or human resources standards;
  - (b) Require a law enforcement agency or officer to obtain or re-create any record that was lawfully destroyed prior to the effective date of 555 CMR 12.00;
  - (c) Limit the ability of the Commission to initiate an audit at any time and for any reason;
  - (d) Establish a standard of care;
  - (e) 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; or
  - (f) 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.

12.02: Definitions

- (1) 555 CMR 12.00 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 12.02(2).

(2) For the purposes of 555 CMR 12.00, the following terms have the following meanings, unless the context requires otherwise:

Appointing Authority. 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.

Audit. An audit of a law enforcement agency records conducted by or on behalf of the Commission pursuant to M.G.L. c. 6E, §§ 3(a) and/or 8(d), or otherwise.

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.

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

Complaint. A "complaint" as defined in 555 CMR 1.01(1): *Transmittal of Complaint by Agency to Commission.*

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

Compulsory Legal Process. A summons, subpoena, judicial order, administrative agency order, or civil investigative demand.

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.

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

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

Maintain. With respect to a record, to preserve all parts of the record, including those that are not easily visible, and to store it in a manner that will enable it to be easily retrieved.

Member. An officer, employee, or independent contractor.

SRO MOU. An "MOU" as defined in 555 CMR 10.03(2).

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.

Officer Certification. A 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, regardless of whether it is subject to any condition, limitation, restriction, or suspension.

Official. Authorized or approved by a proper authority.

SRO Operating Procedures. “Operating procedures” as defined in 555 CMR 10.03(2).

Policy. Any policy, rule, regulation, protocol, standard, guideline, operating procedures, other procedure, decree, directive, mandate, manual, handbook, guide, advisory, form of guidance, plan, mission statement or comparable statement, organizational chart, or memorandum of understanding that is duly approved by appropriate personnel and issued in writing.

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

Record. Any form of record, book, paper, document, written material, data, or information, regardless of whether it is a type of record referenced in M.G.L. c. 6E, § 8(d), and regardless of whether it is a “public record” under M.G.L. c. 4, § 7, cl. 26.

SRO. A “school resource officer” as defined in 555 CMR 10.03(2).

SRO Certification. An initial specialized certification of an individual as a school resource officer pursuant to M.G.L. c. 6E, §§ 3(a) and 3(b), regardless of whether it is subject to any condition, limitation, restriction, or suspension.

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

#### 12.03: Law Enforcement Agency Creation and Maintenance of Records

(1) For each officer that a law enforcement 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 a “POST Commission file” for the officer:

(a) A record reflecting each of the following forms of personnel information:

1. The date of hiring;
2. With respect to any separation from employment:
  - a. The date of the separation from employment;
  - b. The nature of any separation, including whether the separation resulted from a retirement, another form of resignation, or a termination;
  - c. The reason for the separation that was provided to the officer;
  - d. Whether the officer was terminated for cause, and if so, the nature of the cause;
  - e. Whether the separation occurred while the appointing authority or any other body or person of authority was conducting an investigation of the officer based on allegations that the officer violated any rule, policy, procedure, regulation, or other law, or engaged in other misconduct or improper action;
3. The date and nature of any leave time taken;
4. Any professional award, achievement, or commendation;
5. An email address that the Commission may use to correspond with the officer; and
6. Either of the following items, with respect to a collective bargaining unit:
  - a. The name of a unit to which the officer belongs, and the name and an email address of the head of that unit, or if

- the unit has no head, the name and an email address of a representative of the unit;
  - b. A statement signed by the officer indicating that the officer is not a member of any unit; or
  - c. A statement signed by the officer indicating that the officer does not wish to have Commission communications concerning the officer transmitted to a representative of a collective bargaining unit, and waives the benefit of any provision that would otherwise require such a transmission.
- (b) A record reflecting each of the following matters, to the extent they were associated with an officer certification process:
- 1. Information generated by any background check;
  - 2. Information resulting from any physical or psychological evaluation;
  - 3. A summary of any interview;
  - 4. Each response to any questionnaire question;
  - 5. Any agency determination of whether an individual possesses good moral character and fitness for employment in law enforcement;
  - 6. Any other determination of whether an individual satisfies a qualification for certification;
  - 7. Any letter of reference or endorsement;
  - 8. An officer's satisfaction or failure to satisfy the conditions attached to any conditional certification; and
  - 9. Any other information required by statute, regulation, or Commission policy related to certification;
- (c) The following with respect to any SRO certification or service:
- 1. A record reflecting each of the matters listed in 555 CMR 12.03(1)(b);
  - 2. Each SRO MOU that is required by law;
  - 3. Each set of SRO operating procedures that is required by law;
  - 4. A record reflecting each form of training that the officer completed with respect to SRO service; and
  - 5. A record reflecting the officer's places and dates of assignment as an SRO;
- (d) A record reflecting each type of complaint against, investigation of, and discipline of the officer, including any and each:
- 1. Complaint against the officer;
  - 2. Investigation of the officer by:
    - a. An internal affairs unit, an internal review board, a civilian oversight board, or a comparable body; and
    - b. A consultant, an investigative service, or a comparable entity retained by the officer's appointing authority;
  - 3. Discipline imposed on the officer, including any last chance agreement or separation agreement;
  - 4. Arrest of the officer;
  - 5. Criminal prosecution against the officer;
  - 6. Civil action against the officer that is related to the officer's service in law enforcement;
  - 7. Investigation or inquest arising from a fatality involving the officer;
  - 8. Civil Service Commission proceeding involving any allegation that the officer engaged in misconduct;
  - 9. Written reprimand of the officer;
  - 10. Suspension of the officer's employment or order that the officer take a leave from employment;
  - 11. Determination by a prosecutor's office's that the officer has engaged in, or has been accused of, misconduct that warrants not calling the officer as a witness in court or that must be disclosed to defendants; and

12. Complaint, investigation, or disciplinary matter vacated or resolved in favor of the officer;
  - (e) The following with respect to the officer's training:
    1. A record reflecting each form of in-service training, retraining, and training on policies that the officer completed;
    2. Any materials provided or presented to the officer in connection with each such form of training, or a record reflecting where such materials can be located;
    3. A record reflecting each score on an examination or firearms qualification obtained by the officer;
    4. A record reflecting the officer's failure to complete any required training, and any mitigating factor or other explanation offered by the officer for any such failure;
  - (f) The following records concerning uses of force, crowd control, injuries, and deaths:
    1. All records, including all policies, procedures, forms, reports, statements, plans, communications, and notifications, that are required to be created pursuant to 555 CMR 6.00: *Use of Force by Law Enforcement Officers* or any Commission policy;
    2. A record reflecting each "serious bodily injury" and "officer-involved injury or death" as those terms are defined in 555 CMR 6.03: *Definitions*, regardless of whether the injury or death was suffered by an officer or a member of the public; and
    3. A record reflecting the full content of each report submitted to:
      - a. The National Use of Force Data Collection database maintained by the Federal Bureau of Investigation;
      - b. The National Law Enforcement Accountability Database maintained by the United States Department of Justice; and
      - c. The National Violent Death Reporting System maintained by the United States Centers for Disease Control; and
  - (g) All other records, or categories of records, designated by the Commission.
- (2) For each individual that is appointed or elected to serve as a constable within a law enforcement agency's area of jurisdiction, the agency shall create and maintain the following records, with the constable identified by name, and if practicable, shall place an original or a copy of each record within an individual file for the constable:
  - (a) A record reflecting an address, telephone number, and email address for the constable; and
  - (b) A record reflecting the beginning and end dates of the constable's term or terms of appointment or election.
- (3) Each law enforcement agency shall additionally maintain the following records, and if practicable, shall place an original or a copy of each record within a "POST Commission file" for the officer:
  - (a) Each set of fingerprints of an agency member that the agency has obtained;
  - (b) Each record pertaining to a type of complaint against, investigation of, or discipline of an agency officer, including each type listed in 555 CMR 12.03(1)(d); and
  - (c) Each final and official description of the duties, powers, or functions of an agency member.
- (4) Each law enforcement agency shall also maintain the following records:
  - (a) Each agency policy;
  - (b) Each official communication by the agency to its personnel regarding its policies and applicable regulatory requirements;
  - (c) Each final and official annual report or periodic report for the agency or one of its units;

- (d) Each final and official description of the duties, powers, or functions of the agency or one of its units;
  - (e) Each contract to which the agency is a party;
  - (f) With respect to any audit, analysis, or evaluation of the agency's records, finances, budget, personnel, resources, performance, compliance with legal requirements, satisfaction of accreditation or other standards, by any internal or external auditor, analyst, evaluator, consultant, or accreditor:
    - 1. An inventory of all records made available to the auditor, analyst, evaluator, consultant, or accreditor; and
    - 2. Each final report resulting from the audit, analysis, or evaluation; and
  - (g) Any other records, or categories of records, designated by the Commission.
- (5) Each law enforcement agency shall use the following terms, as defined below, in addressing disciplinary matters involving officers:
- (a) Sustained: The investigation produced a preponderance of evidence to prove the allegation of an act that was determined to be misconduct.
  - (b) Not Sustained: The investigation failed to produce a preponderance of evidence to either prove or disprove the allegation.
  - (c) Exonerated: The allegation in fact did occur but the actions of the agency employee were legal, justified, proper and in conformance with the law and the agency policy and procedure.
  - (d) Unfounded: The allegation concerned an act by an agency employee that did not occur.
- (6) The Commission may require a law enforcement agency to:
- (a) Employ certain terminology regarding the disposition of complaints or other matters, incorporating Commission-prescribed definitions; and
  - (b) Employ certain recordkeeping practices; and
  - (c) Produce certain records, or categories of records, to prosecutors.
- (7) Each law enforcement agency head shall ensure that the agency complies with M.G.L. c. 149, § 52C.
- (8) Each law enforcement agency head shall make diligent efforts to ensure accuracy in representations made within agency records.

12.04: Law Enforcement Agency Reporting of Information

- (1) Each law enforcement agency shall report to the Commission regarding the following, without request, pursuant to 555 CMR 1.01: *Review of Complaints by Agency* if that regulation is applicable, or otherwise immediately:
- (a) The satisfaction of conditions associated with an agency officer's conditional officer certification or conditional SRO certification;
  - (b) Each placement of an agency officer's name, or change of an agency officer's status or listing, on the National Decertification Index maintained by the International Association of Directors of Law Enforcement Standards and Training;
  - (c) The arrest of any agency officer, lodging of any criminal charge against such an individual, or disposition of any criminal charge against such an individual;
  - (d) The assertion and disposition of any claim against any agency officer or other agency member in a civil action that relates to the member's service in law enforcement;
  - (e) The completion of in-service training required of an agency officer whose officer certification or SRO certification has been administratively suspended pursuant to M.G.L. c. 6E, §§ 3 and/or 9;

- (f) The satisfaction of conditions required of an agency officer whose officer certification or SRO certification has been suspended, restricted, or limited pursuant to M.G.L. c. 6E, §§ 3, 9, and/or 10;
  - (g) The completion of retraining required of an agency officer pursuant to M.G.L. c. 6E, §§ 3 and/or 10(d); and
  - (h) Each material change in any circumstances, condition, or matter that provided the foundation for:
    - 1. Any agency recommendation that the Commission suspend or revoke an individual's officer certification or SRO certification;
    - 2. Any agency recommendation that the Commission order an officer to undergo retraining;
    - 3. Any action by the Commission or any part of the Commission to pursue a suspension or revocation of the officer certification or SRO certification of an agency officer; or
    - 4. Any order that an agency officer undergo retraining;
  - (i) Any change in:
    - 1. Contact information for the officer that has been provided to the Commission;
    - 2. Whether the officer is employed by the agency;
    - 3. Whether the officer is on an agency-imposed suspension;
    - 4. Whether the officer is on a period of leave of four weeks or more; or
    - 5. Information regarding the officer's collective bargaining unit, or a representative of such a unit, that has previously been provided to the Commission.
- (2) Each law enforcement agency shall also provide the following to the Commission, in accordance with Commission instructions:
- (a) Records of completion of training by officers;
  - (b) Any materials provided or presented to officers in connection with any training;
  - (c) Records concerning individuals elected or appointed to serve as constables within the agency's area of jurisdiction; and
  - (d) Any other records, or categories of records, designated by the Commission.
- (3) Each law enforcement agency shall additionally:
- (a) Report information to the National Use of Force Data Collection Database maintained by the Federal Bureau of Investigation pursuant to 555 CMR 6.08(2);
  - (b) Make all reports required by M.G.L. c. 31, § 67, if not exempt from the statute's requirements.
  - (c) To the extent feasible, report information to:
    - 1. The National Law Enforcement Accountability Database maintained by the United States Department of Justice; and
    - 2. The National Violent Death Reporting System maintained by the United States Centers for Disease Control.
- (4) Each law enforcement agency shall make diligent efforts to ensure accuracy in reporting information to the Commission or otherwise reporting information pursuant to 555 CMR 12.00.

12.05: Law Enforcement Agency Liaison to Commission

- (1) Each law enforcement agency shall designate one or more of its members to serve as a liaison to the Commission with respect to all areas in which information is exchanged between the agency and the Commission.
- (2) A law enforcement agency liaison shall be responsible for taking the following steps, in accordance with Commission instructions:
  - (a) Providing the Commission with an email address that may be used for correspondence with the Commission;

- (b) Regularly monitoring the mailbox associated with the email address provided;
- (c) Ensuring that the agency makes required reports, and transmissions of information, to the Commission;
- (d) Receiving information from the Commission;
- (e) Ensuring that Commission policies, notices, and communications are transmitted to appropriate agency members;
- (f) Making diligent efforts to ensure accuracy in all agency representations to the Commission; and
- (g) Any other steps required by the Commission or the agency.

12.06: Officer Reporting of Information

- (1) Each officer shall:
  - (a) Provide the following to the law enforcement agency that employs the officer, or if there is no such agency, to the Commission, in accordance with any Commission instructions:
    - 1. An email address that the Commission may use to correspond with the officer;
    - 2. Either of the following items, with respect to a collective bargaining unit:
      - a. The name of a unit to which the officer belongs, and the name and an email address of the head of that unit, or if the unit has no head, the name and an email address of a representative of the unit;
      - b. A statement signed by the officer indicating that the officer is not a member of any unit; or
      - c. A statement signed by the officer indicating that the officer does not wish to have Commission communications concerning the officer transmitted to a representative of a collective bargaining unit, and waives the benefit of any provision that would otherwise require such a transmission.
    - 3. Any change in:
      - a. Contact information for the officer that has been provided to the Commission;
      - b. Information regarding the officer's collective bargaining unit, or a representative of such a unit, that has previously been provided to the Commission.
  - (b) Regularly monitor the mailbox associated with the email address that is provided pursuant to 555 CMR 12.06(1)(a)1. for messages from the Commission.
  - (c) Make diligent efforts to ensure accuracy in representations made, in an official capacity as an officer:
    - 1. Within records related to the individual's service as an officer;
    - 2. To any body or person of authority; and
    - 3. To the Commission; and
  - (d) Take any other steps required by the Commission.

12.07: Procedures for Audits

- (1) The Commission may, at any time, at the request of any individual or entity or on its own initiative, conduct, or cause to be conducted, an audit of the records referenced in M.G.L. c. 6E, § 8(d) or other records or operations of a law enforcement agency.
- (2) Steps that may be taken in a Commission audit include the following, where not precluded by law:
  - (a) Requiring a law enforcement agency auditee to:
    - 1. Identify one or more members who have sufficient authority to ensure that required actions are taken and recommendations will be evaluated;
    - 2. Identify one or more members who will be available to take administrative steps that may be required as part of the audit;



3. Direct agency personnel to comply with the audit;
  4. Provide any auditor with sufficient access to the agency head;
  5. Provide any auditor with sufficient access to agency records;
  6. Provide any auditor with materials or information that sufficiently explain the structure and operation of the agency's electronic and non-electronic recordkeeping systems;
  7. Provide any auditor with appropriate administrative and technical assistance;
  8. Provide records in a designated electronic or non-electronic format;
  9. Cooperate in developing and implementing an audit plan;
  10. Ensure that appropriate personnel complete training necessary for the audit to be effective;
  11. Provide written or unwritten responses to recommendations by an auditor;
  12. Create or contribute to creating, and follow, a plan for future action, based on the audit;
  13. Inform other government officials or members of the public of certain findings made by Commission auditors, to the extent appropriate; and
  14. Take certain steps following the audit's conclusion, including filing reports with the Commission or complying with one or more subsequent audits;
- (b) Requiring a member of a law enforcement agency auditee to:
1. Participate in a recorded or an unrecorded interview; and
  2. Complete a questionnaire or self-assessment;
- (c) Requiring an officer auditee to:
1. Cooperate in developing and implementing an audit plan;
  2. Provide any auditor with sufficient access to records of the auditee;
  3. Participate in a recorded or an unrecorded interview;
  4. Complete a questionnaire or self-assessment;
  5. Provide written responses to recommendations by an auditor;
  6. Create or contribute to creating, and follow, a plan for future action, based on the audit; and
  7. Take steps following the conclusion of the audit, including filing reports with the Commission or complying with one or more subsequent audits;
- (d) Reviewing any records referenced in 555 CMR 12.03 or other records;
- (e) Obtaining relevant information from individuals and entities other than the auditee;
- (f) Developing a plan for the auditee to follow, or a set of recommendations for the auditee, based on the audit;
- (g) Issuing an order for the auditee to take or refrain from taking any specified action;
- (h) Informing other government officials or members of the public of certain findings made by Commission auditors, to the extent appropriate;
- (i) Executing a confidentiality agreement, or otherwise maintaining confidentiality, with respect to the auditee's records and/or aspects of the audit, to the extent confidentiality is not precluded by law;
- (j) Publicizing progress, achievements, and commendable practices by agencies and officers, and offering information on such matters in informing others in law enforcement about best practices; and
- (k) Taking any other step that is consistent with the Commission's authority, or with generally accepted government auditing standards.
- (3) Commission auditors may include individuals who are not Commission employees, but are retained by the Commission and subject to Commission oversight, provided that any auditor satisfies the requirements for an investigator of 555 CMR 1.05(3): *Contractor Investigators*.

(4) The Commission may also direct a law enforcement agency to conduct an internal audit of its own records and/or operations according to Commission guidelines, provided that any auditor satisfies the requirements for an investigator of 555 CMR 1.01(2)(b).

(5) In selecting auditors, the Commission and law enforcement agencies shall, when feasible, give preference to individuals with a certification and/or demonstrated experience in the auditing of law enforcement agencies or other government agencies.

(6) If the Commission concludes an audit by developing a plan for the auditee to follow, developing a set of recommendations for the auditee, or issuing an order for the auditee to take or refrain from taking any specified action, the Commission shall either:

- (a) Cite a preexisting source that supports each determination or action by the Commission; or
- (b) Acknowledge that it could locate no such source, if that is the case.

#### 12.08: Areas of Examination in Audits

(1) In conducting an audit, the Commission may examine any areas related to the Commission's statutory charge, including:

- (a) Law enforcement agency or officer functioning, generally or with respect to a particular matter, in the following areas:
  - 1. Recordkeeping or reporting of information, within the agency, to the Commission, and to other entities;
  - 2. Compliance with directives, sources of authority, policies, and standards related to law enforcement and agency management, including:
    - a. M.G.L. c. 6E;
    - b. 555 CMR;
    - c. Commission policies and standards;
    - d. Commission certification conditions, restrictions, and limitations;
    - e. Commission-issued compulsory legal process;
    - f. Other Commission directives;
    - g. M.G.L. c. 6, §§ 167 through 178B;
    - h. Other statutes and regulations;
    - i. Court judgments, consent decrees, orders, or rules;
    - j. Decisions by other bodies or persons or authority;
    - k. Other compulsory legal process; and
    - l. Agency policies.
  - 3. The adequacy of investigations and determinations, including:
    - a. The adequacy of background investigations concerning active and prospective agency members;
    - b. The adequacy of other investigations and analysis;
    - c. The accuracy and completeness of reports and factual recitations;
    - d. The adequacy of notifications to affected individuals;
    - e. The appropriateness of interview procedures;
    - f. The prevalence and adequacy of recordings and transcriptions;
    - g. The reliability of factfinding;
    - h. The appropriateness of the time devoted to processes;
    - i. The fairness of processes, and how they compare to those in comparable cases;
    - j. The sufficiency of documentation generated;
    - k. The honoring of individual rights; and
    - l. The equity and justness of results, and how they compare to those in comparable cases;

4. Internal and external communication, including:
    - a. The communication of Commission and agency policies, and required notifications, to agency personnel;
    - b. The treatment of information that one agency member has reported to another;
    - c. Other communication and interaction with agency personnel;
    - d. Communication and interaction with the Commission and other agencies; and
    - e. Communication and interaction with complainants, victims, witnesses, and other members of the public; and
  5. Other aspects of performance, including the sufficiency, fairness, equity, justness, soundness, timeliness, efficiency, and effectiveness of policies and operations; and
- (b) Substantive information that may warrant analysis or aid the Commission in developing or recommending policies or informing the public.

(2) A Commission audit may focus on subjects that are referenced in M.G.L. c. 6E, § 8(d) or are otherwise related to the Commission's statutory charge, including:

- (a) Officer certification;
- (b) SRO certification and activity, SRO MOUs, and SRO operating procedures;
- (c) Law enforcement agency certification, including standards concerning:
  1. Use of force and reporting of use of force;
  2. Officer code of conduct;
  3. Officer response procedures;
  4. Criminal investigation procedures;
  5. Juvenile operations;
  6. Internal affairs and officer complaint investigation procedures;
  7. Detainee transportation; and
  8. Collection and preservation of evidence;
- (d) Complaints, investigations, disciplinary matters, and misconduct involving officers, including conduct involving improper:
  1. Racial profiling or other forms of bias;
  2. Violence or dangerousness;
  3. Dishonesty;
  4. Nonintervention;
  5. Harassment, intimidation, or retaliation;
  6. Unlawfulness or obstruction of justice; or
  7. Unprofessionalism;
- (e) In-service training and retraining;
- (f) Uses of force, crowd control, injuries, and deaths;
- (g) The law concerning:
  1. The handling of evidence that may be exculpatory or otherwise relevant with respect to a criminal matter;
  2. Civil rights;
  3. Other aspects of criminal procedure;
  4. Labor and employment; and
  5. Public records, criminal record information, record retention, information disclosure, and fair information practices;
- (h) Other law enforcement activity;
- (i) Patterns on the part of single individuals, multiple individuals within a law enforcement agency, or multiple individuals in different agencies; and
- (j) Any other area relevant to the development of public policy or another matter of public interest.

- (1) The Commission, where not otherwise precluded by law, may require any law enforcement agency or officer to provide responses to inquiries verbally or in writing, including those the pains and penalties of perjury, addressing one or more of the following:
- (a) Whether certain information in a record is accurate;
  - (b) Whether a record is authentic;
  - (c) Whether a record is a true and accurate copy of another;
  - (d) The contents or disposition of an original record;
  - (e) The circumstances surrounding the making of the record or similar records;
  - (f) Efforts made to locate a record;
  - (g) How records are kept and maintained; and
  - (h) Whether a record has certain characteristics that may have relevance to its authenticity or evidentiary admissibility.

12.10: Notice by the Commission

- (1) Notice by the Commission to a law enforcement agency, an officer, or the head of a collective bargaining unit, in implementing any aspect of M.G.L. c. 6E, 555 CMR, or a Commission policy, shall be sufficient if provided using an email address or other address that was furnished to the Commission, by or on behalf of the addressee or officer at issue, for such purpose.
- (2) The Commission shall, in addition to any other notification it deems appropriate:
- (a) Provide notification of any Commission decision to undertake an audit of a law enforcement agency, and the parameters of the intended audit, by email to the head of the agency at least 21 days in advance of the expected date of commencement of the audit; and
  - (b) Provide notification any final Commission report, and any Commission order to take or refrain from taking any specified action, as a result of a concluded audit by email to the head of the agency.

12.11: Review of Commission Decision to Conduct Audit

- (1) Within seven days of receiving notice of a Commission decision to undertake an audit pursuant to 555 CMR 12.10(2)(a), a law enforcement agency may submit a written petition, signed by the agency head, requesting review of the decision by the Executive Director and one or more specified forms of relief.
- (2) If the Executive Director receives a petition from a law enforcement agency pursuant to 555 CMR 12.11(1), the Executive Director:
- (a) May ask the agency to provide additional information, orally or in writing, or to appear at a meeting concerning the matter; and
  - (b) Shall, within a reasonable time, provide the agency with a written decision, which shall be the final Commission decision on the petition.

**Alternative:**

- (1) *Within seven days of receiving notice of a Commission decision to undertake an audit pursuant to 555 CMR 12.10(2)(a), a law enforcement agency may submit a written petition, signed by the agency head, requesting review by the Executive Director and one or more specified forms of relief.*
- (2) *If the Executive Director receives a petition from a law enforcement agency pursuant to 555 CMR 12.11(1), the Executive Director:*
- (a) *May ask the agency to provide additional information, orally or in writing, or to appear at a meeting concerning the matter; and*
  - (b) *Shall, within a reasonable time, **provide the agency with a written decision on the petition.***
- (3) *Within seven days of receiving a decision from the Executive Director pursuant to 555 CMR 12.11(2)(b), a law enforcement agency may submit to the*

*Executive Director a written petition, signed by the agency head, requesting further review and one or more specified forms of relief.*

- (4) If the Executive Director receives a petition from a law enforcement agency pursuant to 555 CMR 12.11(3):**
- (a) The Executive Director shall promptly forward the petition to the Chair;**
  - (b) The Chair shall promptly assign a presiding officer to review the matter; and**
  - (c) The assigned presiding officer:**
    - 1. May ask the agency to provide additional information, orally or in writing, or to appear at a meeting concerning the matter; and**
    - 2. Shall, within a reasonable time, provide the agency with a written decision, which shall be the final Commission decision on the petition.**

12.12: Review of Commission Action Following Audit

- (1) Within 30 days of receiving a final Commission report and/or a final Commission order to take or refrain from taking any specified action as a result of a concluded audit pursuant to 555 CMR 12.10(2)(b), the agency may submit a written petition, signed by the agency head, requesting review by the Executive Director and one or more specified forms of relief.
- (2) If the Executive Director receives a petition from a law enforcement agency pursuant to 555 CMR 12.11(3), the Executive Director:
- (a) May ask the agency to provide additional information, orally or in writing, or to appear at a meeting concerning the matter; and
  - (b) Shall, within a reasonable time, provide the agency with a written decision on the petition.
- (3) Within 30 days of receiving a decision from the Executive Director pursuant to 555 CMR 12.11(4)(b), a law enforcement agency may submit to the Executive Director a written petition, signed by the agency head, requesting further review and one or more specified forms of relief.
- (4) If the Executive Director receives a petition from a law enforcement agency pursuant to 555 CMR 12.11(5) in which the agency requests relief from a Commission order to take or refrain from taking any specified action:
- (a) A hearing on the matter shall be held by the full Commission, but may, in the Chair's discretion, be heard in the first instance by a presiding officer selected pursuant to a policy established by the Commission;
  - (b) The matter shall proceed in conformance with 555 CMR 1.10(4)-(5), except that:
    - 1. Instead of following the provisions concerning notice of 555 CMR 1.10(4)(e)2.a., the presiding officer shall promptly provide the agency head with a copy of the presiding officer's initial decision and file a copy of the same with the Commission.
    - 2. Provisions of 555 CMR 1.10(4)(e)2.b. referring to an officer shall instead apply to the agency.
    - 3. Instead of applying the provisions of 555 CMR 1.10(4)(c): *Standard of Proof*, the Commission shall grant an agency relief such relief as is warranted by a preponderance of the evidence.
- (5) If the Executive Director receives a petition from a law enforcement agency pursuant to 555 CMR 12.11(5) that does not request relief from a Commission order to take or refrain from taking any specified action:
- (a) The Executive Director shall promptly forward the petition to the Chair;
  - (b) The Chair shall promptly assign a presiding officer to review the matter; and
  - (c) The assigned presiding officer:

1. May ask the agency to provide additional information, orally or in writing, or to appear at a meeting concerning the matter; and
2. Shall, within a reasonable time, provide the agency with a written decision, which shall be the final Commission decision on the petition.

12.13: Enforcement and Disciplinary Action

- (1) Law enforcement agencies and officers are prohibited from engaging in the following forms of conduct:
  - (a) Failing to comply with 555 CMR 12.00 or an order of the Commission issued thereunder;
  - (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, the Commission, or a Commission audit.
- (2) If an officer violates 555 CMR 12.12(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 12.12(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 through an audit 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 12.00: M.G.L. c. 6E, §§ 3(a), 8(d).



555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

555 CMR 12.00: MAINTENANCE, REPORTING, AND AUDITS OF LAW ENFORCEMENT RECORDS AND INFORMATION

Section

- 12.01: Authority
- 12.02: Scope
- 12.03: Definitions
- 12.04: Agency Creation and Maintenance of Records
- 12.05: Agency Reporting of Information
- 12.06: Agency Liaison to Commission
- 12.07: Officer Maintenance and Reporting of Information
- 12.08: Procedures for Audits
- 12.09: Areas of Examination in Audits
- 12.10: Verification of Information
- 12.11: Sufficiency of Notice
- 12.12: Enforcement and Disciplinary Action

Overview:

- In green are brief summaries of comments received from members of the public, along with parenthetical notations of the identities of the commenters. The summaries represent a good faith effort to succinctly capture commenters' recommendations, but they do not reflect all the reasoning provided by commenters and they may be imperfect. Fuller explanations of commenters' views may be found in their comment letters.
- While the Commission appreciated receiving comments that were supportive of provisions in the draft regulations as well as broader observations and policy views, the summaries below generally focus on suggestions for changes. However, under 12.07(1)(a), one supportive comment was summarized in order to show that the comments on a particular issue were not unanimous.
- Two comments were not summarized, as it was not clear which provisions they were referencing.
- This document generally does not include summaries of comments regarding recordkeeping, reporting, and auditing that were submitted to the Commission as responses to its request for comments on the agency certification initiative, mistakenly or otherwise.
- The summaries are generally not followed by responses from the Commission staff. However, in a few cases, there are italicized notes paraphrasing statutes or regulations that may have a bearing on the issue raised.

12.01: Authority

- (1) The Commission promulgates 555 CMR 12.00 pursuant to M.G.L. c. 6E, §§ 3(a) and 8(d).

12.02: Scope

- (1) 555 CMR 12.00 governs:
  - (a) The creation and maintenance of records by agencies and officers;
  - (b) The reporting of information by agencies and officers; and
  - (c) The auditing of agencies and officers by or on behalf of the Commission, pursuant to M.G.L. c. 6E, § 8(d) or otherwise.
- (2) Nothing in 555 CMR 12.00 is intended to:
  - (a) Limit any obligations that law enforcement agencies and officers otherwise have under M.G.L. c. 6E, 555 CMR, or another source of authority; or any practices that are consistent with generally accepted law enforcement or human resources standards;
  - (b) Limit the ability of the Commission to initiate an audit at any time and for any reason;
  - (c) Establish a standard of care or 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, except as expressly provided; or



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- (d) 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) Nothing in 555 CMR 12.00 is intended to require an agency or officer to furnish any item that is protected by a privilege against disclosure recognized by law and held by that agency or officer.

12.03: Definitions

(1) 555 CMR 12.00 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 12.03(2).

(2) For the purposes of 555 CMR 12.00, the following terms have the following meanings, unless the context requires otherwise:

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

Audit. An audit of agency or officer records conducted by or on behalf of the Commission pursuant to M.G.L. c. 6E, §§ 3(a) and/or 8(d), or otherwise.

Body or Person of Authority. An officer's appointing authority or employer; the highest-ranking officer in the law enforcement agency; 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.

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

Complaint. A complaint as defined in 555 CMR 1.01(1).

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

Compulsory Legal Process. A summons, subpoena, judicial order, administrative agency order, or civil investigative demand.

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.

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

Maintain. With respect to a record, to preserve all parts of the record, including those that are not easily visible, and to store it in a manner that will enable it to be easily retrieved.

Member. An officer, employee, or independent contractor.

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.

Officer Certification. A 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, regardless of whether it is subject to any condition, limitation, restriction, or suspension.

Official. Authorized or approved by a proper authority.

Policy. Any policy, rule, regulation, protocol, standard, guideline, operating procedures, other procedure, decree, directive, mandate, manual, handbook, guide, advisory, form of guidance, plan, mission statement or comparable statement, organizational chart, or memorandum of understanding that is duly approved by appropriate personnel and issued in writing.

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

Record. Any form of record, book, paper, document, written material, data, or information, regardless of whether it is a type of record referenced in M.G.L. c. 6E, § 8(d), and regardless of whether it is a “public record” under M.G.L. c. 4, § 7, cl. 26.

SRO. A school resource officer as defined in 555 CMR 10.03(2).

SRO Certification. An initial specialized certification of an individual as a school resource officer pursuant to M.G.L. c. 6E, §§ 3(a) and 3(b), regardless of whether it is subject to any condition, limitation, restriction, or suspension.

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

#### 12.04: Agency Creation and Maintenance of Records

(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:

- 12.04(1): Strike the provision regarding the placement of records in personnel files, and instead require the creation of a separate and distinct POST Personnel File, to avoid requiring any steps that may differ from the requirements in statutes or collective bargaining agreements concerning personnel files, and to avoid creating unduly large files. (Massachusetts Coalition of Police)
- 12.04(1): Strike the provision regarding the placement of records in personnel files, at least with respect to certain specified records, and perhaps provide for certain types to be kept separate from others. (Massachusetts Chiefs of Police Association).
- 12.04(1): Strike the provision regarding the placement of records in personnel files, at least with respect to the records listed in (d), and instead provide for such records to be segregated in a disciplinary file. (Committee for Public Counsel Services (CPCS))

(a) A record reflecting each of the following forms of personnel information:

1. The date of hiring;
2. The date of any separation from employment and the nature of any separation, including suspension, resignation, retirement or termination;
3. The reason for any separation from employment, including whether the separation was based on misconduct or whether the separation occurred while the appointing agency was conducting

an investigation of the officer for a violation of an appointing agency's rules, policies, or procedures or for other misconduct or improper action;

- 12.04(1)(a)(3): Provide for greater standardization and clarity with respect to department reports regarding officers' reasons for leaving (e.g., whether it was to avoid discipline). (Rep. Christine Barber)

4. The date and nature of any leave time taken;
5. Any professional award, achievement, or commendation;
6. An email address that the Commission may use to correspond with the officer; and
7. The name and an email address of the head of the officer's collective bargaining unit, if any;

(b) A record reflecting each of the following matters, with respect to officer certification:

1. Information generated by any background check;
2. Information resulting from any physical or psychological evaluation;
3. A summary of any interview;
  - 12.04(1)(b)(3): Consider providing more specificity as to the types of interviews to be included. (Massachusetts Association for Professional Law Enforcement (MAPLE))
  - 12.04(1)(b)(3): Exempt letters of counseling, in light of how they are used and in order to avoid discouraging their use as a method of mentoring and coaching. (Massachusetts Association for Professional Law Enforcement (MAPLE))
  - 12.04(1)(b)(3): "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." (Jack Lu).
    - *Note: Based on the introductory language in 12.04(1)(b), the summaries of interviews are confined to those "with respect to officer certification."*
4. Each response to any questionnaire question;
5. Any agency determination of whether an individual possesses good moral character and fitness for employment in law enforcement;
6. Any other determination of whether an individual satisfies a qualification for certification;
7. Any letter of reference or endorsement;
8. An officer's satisfaction or failure to satisfy the conditions attached to any conditional certification; and
9. Any other information required by statute, regulation, or Commission policy related to certification;

(c) The following with respect to any SRO certification or service:

1. A record reflecting each of the matters listed in 555 CMR 12.04(1)(b);
2. Each memorandum of understanding, as defined in 555 CMR 10.03(2), that is required by law;
3. Each set of operating procedures, as defined in 555 CMR 10.03(2), that is required by law; and
  - 12.04(1)(c)(3): Consider revising this provision, as department policies can be voluminous, making the requirement cumbersome. (Massachusetts Association for Professional Law Enforcement (MAPLE))
    - *Note: Based on the introductory language in 12.04(1)(c), the terms of 12.04(1)(c)(3), and the definition of "operating procedures" in 555 CMR*

*10.03(2), the operating procedures are confined to those that “provide guidance to SROs about daily operations, policies and procedures” and are required by law (such as M.G.L. c. 71, § 37P).*

- 12.04(1)(c)(3): Consider requiring a record of whether the officer received training on the policy at issue. (Massachusetts Association for Professional Law Enforcement (MAPLE))
4. A record reflecting the officer’s places and dates of assignment as an SRO;
- (d) A record reflecting each type of complaint against, investigation of, and discipline of the officer, including any and each:
1. Complaint against the officer;
  2. Investigation of the officer by an internal affairs unit, an internal review board, a civilian oversight board, or a comparable body;
    - 12.04(1)(d)(1), (d)(2): Consider requiring a record of the disposition of each complaint, perhaps using the traditional dispositions of “sustained,” “not sustained,” “unfounded,” and “exonerated.” (Massachusetts Association for Professional Law Enforcement (MAPLE))
    - 12.04(1)(d)(1), (d)(2): Give departments the discretion to expunge all un-sustained and unfounded complaints after a period of time, such as three years. (Massachusetts Association for Professional Law Enforcement (MAPLE))
    - 12.04(1)(d)(1), (d)(2): Establish a standard of proof for sustaining complaints, such as “preponderance of the evidence” or “clear and convincing.” (Massachusetts Association for Professional Law Enforcement (MAPLE))
      - *Note: These regulations are currently confined to the subjects listed in 12.02(1).*
    - 12.04(1)(d)(1), (d)(2): Consider rejecting the view that “complaints alone should be a factor in considering the suitability of officers for certification.” (Massachusetts Association for Professional Law Enforcement (MAPLE))
      - *Note: These regulations are currently confined to the subjects listed in 12.02(1).*
  3. Discipline imposed on the officer, including any last chance agreement or separation agreement;
  4. Arrest of the officer;
  5. Criminal prosecution against the officer;
  6. Civil action against the officer that is related to the officer’s service in law enforcement;
  7. Investigation or inquest arising from a fatality involving the officer;
  8. Civil Service Commission proceeding involving any allegation that the officer engaged in misconduct;
  9. Written reprimand of the officer;
  10. Suspension of the officer’s employment or order that the officer take a leave from employment;
  11. Determination by a prosecutor’s office’s that the officer has engaged in, or has been accused of, misconduct that warrants not calling the officer as a witness in court or that must be disclosed to defendants; and
    - 12.04(1)(d)(11): Strike this requirement, as prosecutors’ offices have inconsistent standards. (Frank Frederickson, Massachusetts Fraternal Order of Police)

- 12.04(1)(d)(11): Strike this requirement, as there are reasons to be concerned about prosecutors’ determinations and their maintenance of files on officers. Instead, “District Attorneys should file complaints directly to the POST Commission, if they have issues with the credibility of an officer.” (Massachusetts Association for Professional Law Enforcement (MAPLE))
- 12.04(1)(d)(11): Reconsider the Commission’s “use of prosecutorial determinations with regard to evaluating police officer suitability,” as there are reasons to be concerned about prosecutors’ determinations. (Massachusetts Association for Professional Law Enforcement (MAPLE))
  - *Note: These regulations are currently confined to the subjects listed in 12.02(1).*

12. Complaint, investigation, or disciplinary matter vacated or resolved in favor of the officer;

- 12.04(1)(d): Add to this list any complaint of evidence mismanagement, lack of candor, or other misconduct that impairs the integrity of the judicial process. (Committee for Public Counsel Services (CPCS))
  - *Note: In light of the definitions of “complaint” and “including” in 555 CMR 12.03(2), the introductory language of 12.04(1) and 12.04(1)(d), and the specific language in 12.04(1)(d)(1), the regulations provide for the creation and maintenance of a record of any and each “complaint,” as that term is defined in 555 CMR 1.01(1), against an officer. Also, 12.04(3)(b) provides for the maintenance of each record that pertains to a complaint against an officer.*

(e) A record reflecting all in-service training and retraining that the officer completed, the officer’s failure to complete any required in-service training or required retraining, and any mitigating factor or other explanation offered by the officer for any such failure;

- 12.04(1)(e): Require the recording and filing of actual scores on examinations and firearms qualifications when mitigation is involved. (Massachusetts Association for Professional Law Enforcement (MAPLE))

(f) The following records concerning uses of force, crowd control, injuries, and deaths:

1. All records, including all policies, procedures, forms, reports, statements, plans, communications, and notifications, that are required to be created pursuant to 555 CMR 6.00: *Use of Force by Law Enforcement Officers* or any Commission policy;
2. A record reflecting each serious bodily injury and officer-involved injury or death, as those terms are defined in 555 CMR 6.03, regardless of whether the injury or death was suffered by an officer or a member of the public; and
3. A record reflecting the full content of each report submitted to the National Use of Force Data Collection database maintained by the Federal Bureau of Investigation; and

(g) All other records, or categories of records, designated by the Commission.

- 12.04(1)(g): “Eliminate.” (Frank Frederickson, Massachusetts Fraternal Order of Police)

(2) For each individual that is appointed or elected to serve as a constable within an agency’s area of jurisdiction, the agency shall create and maintain the following records, with the constable identified by name, and if practicable, shall place an original or a copy of each record within an individual file for the constable:

- (a) A record reflecting an address, telephone number, and email address for the constable; and
  - (b) A record reflecting the beginning and end dates of the constable’s term or terms of appointment or election.
    - 12.04(2): Consider striking this subsection, as constables do not work for law enforcement agencies and so these records should instead be maintained by the municipality. (Massachusetts Chiefs of Police Association)
    - 12.04(2): Consider striking this subsection, as “[c]onstable language has no place in this CMR.” (Frank Frederickson, Massachusetts Fraternal Order of Police)
- (3) Each agency shall additionally maintain the following records, and if practicable, shall place an original or a copy of each record within the relevant officer’s personnel file:
- (a) Each set of fingerprints of an agency member that the agency has obtained;
  - (b) Each record pertaining to a type of complaint against, investigation of, or discipline of an agency officer, including each type listed in 555 CMR 12.04(1)(d);
    - 12.04(3)(b): Consider striking this provision, as it appears to be a restatement of a previous section. (Massachusetts Association for Professional Law Enforcement (MAPLE))
      - *Note: 12.04(1)(d)(1) provides for the creation and maintenance of a record of each complaint, investigation, or form of discipline, while 12.04(3)(b) provides for the maintenance of each record that pertains to a complaint, investigation, or form of discipline.*
  - (c) Each agency policy, as defined in 555 CMR 12.03;
  - (d) Each official communication by the agency to its personnel regarding its policies and applicable regulatory requirements;
  - (e) Each final and official annual report or periodic report for the agency or one of its units;
    - 12.04(3)(e): Strike any requirement that these records be placed in individual personnel files, as they are pertain to the overall department, making such a requirement cumbersome. (Massachusetts Association for Professional Law Enforcement (MAPLE))
  - (f) Each final and official description of the duties, powers, or functions of the agency, or one of its units or members;
  - (g) Each contract to which the agency is a party;
    - 12.04(3)(g): Strike any requirement that these records be placed in individual personnel files, as they are pertain to departmental business and administration, though they “should be available to the Commission.” (Massachusetts Association for Professional Law Enforcement (MAPLE))
    - 12.04(3)(g): Consider striking this provision, as it may “go[] beyond the scope of POST.” (Frank Frederickson, Massachusetts Fraternal Order of Police)
  - (h) With respect to any audit, analysis, or evaluation of the agency’s records, finances, budget, personnel, resources, performance, compliance with legal requirements, satisfaction of accreditation or other standards, by any internal or external auditor, analyst, evaluator, consultant, or accreditor:
    1. Each record exchanged between the agency and the auditor, analyst, evaluator, consultant, or accreditor; and
      - 12.04(3)(h)(1): Strike this provision, out of concern about it being too cumbersome, and replace it with one providing for an inventory of the records examined that is signed by the auditor and department representative. (Massachusetts Association for Professional Law Enforcement (MAPLE))



2. Each final report resulting from the audit, analysis, or evaluation; and
  - 12.04(3)(h): Consider striking this subsection, as it may “go[] beyond the scope of POST.” (Frank Frederickson, Massachusetts Fraternal Order of Police)
- (i) Any other records, or categories of records, designated by the Commission.
- (4) The Commission may require an agency to:
  - (a) Employ certain terminology, incorporating Commission-prescribed definitions, regarding the disposition of complaints or other matters; and
    - 12.04(4)(a): Require the creation of “universal reporting categories to prevent vague or differing levels of information across departments,” and “create[e] one standard for sharing investigations or discipline for any actions by [a] department” (e.g., not listing a disciplinary action as “other”). (Rep. Christine Barber)
  - (b) Employ certain recordkeeping practices.
    - 12.04(4)(b): Require agencies to permit appropriate prosecutors to review disciplinary files so that they can fulfill their obligations under the doctrine emanating from Brady v. Maryland. (Committee for Public Counsel Services (CPCS))
- (5) Each agency head shall ensure that the agency complies with M.G.L. c. 149, § 52C.
- (6) Each agency head shall take adequate steps to ensure accuracy in representations made within agency records.
  - 12.04: State that the regulations do not supersede existing Massachusetts Records Retention Schedules. (Massachusetts Chiefs of Police Association)
  - 12.04: State that the regulations do not require the re-creation of records that were lawfully destroyed previously. (Massachusetts Chiefs of Police Association)

12.05: Agency Reporting of Information

- (1) Each agency shall report to the Commission regarding the following, without request, pursuant to 555 CMR 1.01 if that regulation is applicable, or otherwise immediately:
  - (a) The satisfaction of conditions associated with an agency officer’s conditional officer certification or conditional SRO certification;
  - (b) Each placement of an agency officer’s name, or change of an agency officer’s status or listing, on the National Decertification Index maintained by the International Association of Directors of Law Enforcement Standards and Training;
  - (c) The arrest of any agency officer or other agency member, lodging of any criminal charge against such an individual, or disposition of any criminal charge against such an individual;
    - 12.05(1)(c): Strike “other agency member.” (Frank Frederickson, Massachusetts Fraternal Order of Police)
  - (d) The assertion and disposition of any claim against any agency officer or other agency member in a civil action that relates to the member’s service in law enforcement;
  - (e) The completion of in-service training required of an agency officer whose officer certification or SRO certification has been administratively suspended pursuant to M.G.L. c. 6E, §§ 3 and/or 9;
  - (f) The satisfaction of conditions required of an agency officer whose officer certification or SRO certification has been suspended, restricted, or limited pursuant to M.G.L. c. 6E, §§ 3, 9, and/or 10;
  - (g) The completion of retraining required of an agency officer pursuant to M.G.L. c. 6E, §§ 3 and/or 10(d); and

- (h) Each material change in any circumstances, condition, or matter that provided the foundation for:
1. Any agency recommendation that the Commission suspend or revoke an individual's officer certification or SRO certification;
  2. Any agency recommendation that the Commission order an officer to undergo retraining;
  3. Any action by the Commission or any part of the Commission to pursue a suspension or revocation of the officer certification or SRO certification of an agency officer; or
  4. Any order that an agency officer undergo retraining;
- (i) Any change in:
- (1e) Contact information for the officer that has been provided to the Commission;
  - (2d) The officer's place of employment;
  - (3e) The officer's work status, including on-leave status; or
    - 12.05(1)(i)(3e): Clarify this provision to avoid any misinterpretation as to "whether this includes vacation, sick days, bereavement days, etc." (Massachusetts Chiefs of Police Association)
  - (4f) The name of, or contact information for, the head of the officer's collective bargaining unit, if any.
- (2) Each agency shall additionally provide the following to the Commission, in accordance with Commission instructions:
- (a) Records of completion of training by officers;
  - (b) Records concerning individuals elected or appointed to serve as constables within the agency's area of jurisdiction; and
  - (c) Any other records, or categories of records, designated by the Commission.
- (3) Each agency shall ensure accuracy in all representations it makes to the Commission.

#### 12.06: Agency Liaison to Commission

- (1) Each agency shall designate one or more of its members to serve as a liaison to the Commission with respect to all areas in which information is exchanged between the agency and the Commission.
- (2) A liaison shall be responsible for taking the following steps, in accordance with Commission instructions:
- (a) Providing the Commission with an email address that may be used for correspondence with the Commission;
  - (b) Regularly monitoring the mailbox associated with the email address provided;
  - (c) Ensuring that the agency makes required reports, and transmissions of information, to the Commission;
  - (d) Receiving information from the Commission;
  - (e) Ensuring that Commission policies, notices, and communications are transmitted to appropriate agency members;
  - (f) Ensuring accuracy in all agency representations to the Commission; and
  - (g) Any other steps required by the Commission or the agency.

#### 12.07: Officer Maintenance and Reporting of Information

- (1) Each officer shall:
- (a) Maintain all records listed in 555 CMR 12.04(1) that relate to, and come into the possession of, the officer;
    - 12.07(1)(a): Strike this requirement, on the idea that such record maintenance is traditionally the employer's responsibility; out of concerns about overreaching, the time and burden that would be required, and the risk of discipline; and as "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.”

(Massachusetts Coalition of Police)

- 12.07(1)(a): Revise this provision out of concerns about vagueness, burdens, and lack of clarity as to its scope and intent. (Massachusetts Chiefs of Police Association)
- 12.07(1)(a): Continue to “impose separate and independent responsibilities on both the individual officer and the broader agency to keep records *and* to report them to POST.” (Committee for Public Counsel Services (CPCS))

(b) Provide the following to the officer’s employing agency, or if the officer has no employing agency, to the Commission, in accordance with any Commission instructions:

1. An email address that the Commission may use to correspond with the officer;
2. The name and an email address of the head of the officer’s collective bargaining unit, if any;
  - 12.07(1)(b)(2): Consider striking this provision, as “[i]nformation regarding collective bargaining contacts and union membership appears to be beyond the scope of the POST statute,” making the provision unnecessary. (Massachusetts Association for Professional Law Enforcement (MAPLE))
    - *Note: M.G.L. c. 6E, § 8(c)(s) provides that “[t]he division of police standards shall notify any law enforcement officer who is the subject of [a] preliminary inquiry, the head of their collective bargaining unit and the head of their appointing agency of the existence of such inquiry and the general nature of the alleged violation within 30 days of the commencement of the inquiry.” Commission regulations affirm that officers will receive such a benefit in that context and others. See 555 CMR 1.01(2)(c)(2), 1.04, 1.08(3), 1.10(4)(e)(2)(a), 7.05(2)(c), 7.07(1), 9.10(3)(c), 10.06(6)(c).*
3. Any change in:
  - a. Contact information for the officer that has been provided to the Commission;
  - b. The officer’s place of employment;
  - c. The officer’s work status, including on-leave status; or
  - d. The name of, or contact information for, the head of the officer’s collective bargaining unit, if any;
4. A report of each matter listed in 555 CMR 12.05(1) that relates to the officer, immediately and without request; and
  - 12.07(1)(b)(4): “Same as above [sic].” (Massachusetts Association for Professional Law Enforcement (MAPLE))
5. Records of completion of training;

(c) Regularly monitor the mailbox associated with the email address that is provided pursuant to 555 CMR 12.07(1)(b)1. for messages from the Commission;

(d) Ensure accuracy in all representations made:

1. Within records related to the individual’s service as an officer;
2. To any body or person of authority; and
  - 12.07(1)(d)(2): Clarify whether this provision “refer[s] only to statements made in an official capacity as an officer.” (Massachusetts Chiefs of Police Association)

- 12.07(1)(d)(2): Clarify the term “body or person of authority.” (Massachusetts Chiefs of Police Association)
  - *Note: The term “body or person of authority” is defined in Section 12.03(2).*
- 3. To the Commission; and
- (e) Take any other steps required by the Commission.
  - 12.07(1): This subsection “[n]eeds to be carefully reviewed line by line to see to there is authority and if labor rights are being dismissed” and out of concern about overbreadth. (Frank Frederickson, Massachusetts Fraternal Order of Police)

12.08: Procedures for Audits

- (1) The Commission may, 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 or an officer.
- 12.08(1): Provide a mechanism for whistleblowers and members of the public to request that a certain practice in an agency be audited. (Committee for Public Counsel Services (CPCS))
  - 12.08(1): Eliminate the requirement that officers submit to audits, for the reasons stated under 12.07(1)(a). (Massachusetts Coalition of Police)
  - 12.08(1): Consider striking or revising the provision allowing the Commission to initiate an audit at any time, as opposed to being “triggered by a complaint or other notice of non-compliance,” out of concerns about overreaching and unnecessary disruptions. (Massachusetts Chiefs of Police Association)
    - *Note: This phrase “at any time” was derived from the language in M.G.L. c. 6E, § 8(d) providing that the Commission’s “rules and regulations establishing an audit procedure” “shall not limit the ability of the division of police standards to initiate an audit at any time and for any reason.”*
- (2) Steps that may be taken in a Commission audit include the following, where not precluded by law:
- (a) Requiring an agency auditee to:
1. Identify one or more members who have sufficient authority to ensure that required actions are taken and recommendations will be evaluated;
  2. Identify one or more members who will be available to take administrative steps that may be required as part of the audit;
  3. Direct agency personnel to comply with the audit;
  4. Provide any auditor with sufficient access to the agency head;
  5. Provide any auditor with sufficient access to agency records;
  6. Provide any auditor with materials or information that sufficiently explain the structure and operation of the agency’s electronic and non-electronic recordkeeping systems;
  7. Provide any auditor with appropriate administrative and technical assistance;
  8. Provide records in a designated electronic or non-electronic format;
  9. Cooperate in developing and implementing an audit plan;
  10. Ensure that appropriate personnel complete training necessary for the audit to be effective;
  11. Provide written or unwritten responses to recommendations by an auditor;
  12. Create or contribute to creating, and follow, a plan for future action, based on the audit;
  13. Inform other government officials or members of the public of certain findings made by Commission auditors, to the extent appropriate; and

14. Take certain steps following the audit’s conclusion, including filing reports with the Commission or complying with one or more subsequent audits;
  - (b) Requiring a member of an agency auditee to:
    1. Participate in a recorded or an unrecorded interview; and
    2. Complete a questionnaire or self-assessment;
  - (c) Requiring an officer auditee to:
    1. Cooperate in developing and implementing an audit plan;
    2. Provide any auditor with sufficient access to records of the auditee;
    3. Participate in a recorded or an unrecorded interview;
    4. Complete a questionnaire or self-assessment;
    5. Provide written responses to recommendations by an auditor;
    6. Create or contribute to creating, and follow, a plan for future action, based on the audit; and
    7. Take steps following the conclusion of the audit, including filing reports with the Commission or complying with one or more subsequent audits;
  - (d) Reviewing any records referenced in 555 CMR 12.04 or other records;
  - (e) Obtaining relevant information from individuals and entities other than the auditee;
  - (f) Developing a plan for the auditee to follow, or a set of recommendations for the auditee, based on the audit;
  - (g) Informing other government officials or members of the public of certain findings made by Commission auditors, to the extent appropriate;
  - (h) Executing a confidentiality agreement, or otherwise maintaining confidentiality, with respect to the auditee’s records and/or aspects of the audit, to the extent confidentiality is not precluded by law;
  - (i) Publicizing progress, achievements, and commendable practices by agencies and officers, and offering information on such matters in informing others in law enforcement about best practices; and
  - (j) Taking any other step that is consistent with the Commission’s authority, or with generally accepted government auditing standards.
  
- (3) Commission auditors may include individuals who are not Commission employees, but are retained by the Commission and subject to Commission oversight.
  - 12.08(3): Clarify “why non-employees would be used.” (Massachusetts Chiefs of Police Association)
  - 12.08(3): Clarify “what qualifications [non-employees] must possess to ensure the integrity and confidentiality of audits.” (Massachusetts Chiefs of Police Association)
  
- (4) The Commission may also direct an agency to conduct an internal audit according to Commission guidelines.
  - 12.08(4): Consider striking or revising this provision, so as not to “allow the delegation of POST authority to other agencies.” (Massachusetts Association for Professional Law Enforcement (MAPLE))
    - *Note: Based on the definition of “agency” in 12.03(2) and the use of “internal” in 12.08(4), this subsection only provides for the Commission to direct a law enforcement agency to audit itself.*

12.09: Areas of Examination in Audits

- (1) In conducting an audit, the Commission may examine any areas related to the Commission’s statutory charge, including:
  - (a) Agency or officer functioning, generally or with respect to a particular matter, in the following areas:
    1. Recordkeeping or reporting of information, within the agency, to the Commission, and to other entities;

2. Compliance with directives, sources of authority, policies, and standards related to law enforcement and agency management, including:
  - a. M.G.L. c. 6E;
  - b. 555 CMR;
  - c. Commission policies;
  - d. Commission certification conditions, restrictions, and limitations;
  - e. Commission-issued compulsory legal process;
  - f. Other Commission directives;
  - g. M.G.L. c. 6, §§ 167 through 178B;
  - h. Other statutes and regulations;
  - i. Court judgments, consent decrees, orders, or rules;
  - j. Decisions by other authorities;
  - k. Other compulsory legal process;
  - l. Agency policies; and
  - m. Generally accepted law enforcement standards;
    - 12.09(1)(a)(2)(m): Clearly define “generally accepted law enforcement standards.” (Massachusetts Chiefs of Police Association)
  
3. The adequacy of investigations and determinations, including:
  - a. The adequacy of background investigations concerning active and prospective agency members;
  - b. The adequacy of other investigations and analysis;
  - c. The accuracy and completeness of reports and factual recitations;
  - d. The adequacy of notifications to affected individuals;
  - e. The appropriateness of interview procedures;
  - f. The prevalence and adequacy of recordings and transcriptions;
  - g. The reliability of factfinding;
  - h. The appropriateness of the time devoted to processes;
  - i. The fairness of processes, and how they compare to those in comparable cases;
  - j. The sufficiency of documentation generated;
  - k. The honoring of individual rights; and
  - l. The equity and justness of results, and how they compare to those in comparable cases;
    - 12.09(1)(a)(3): Establish clear, objective standards to guide these evaluations (regarding, e.g., “adequacy,” “completeness,” and “appropriateness”). (Massachusetts Chiefs of Police Association)
  
4. Internal and external communication, including:
  - a. The communication of Commission and agency policies, and required notifications, to agency personnel;
  - b. The treatment of information that one agency member has reported to another;
  - c. Other communication and interaction with agency personnel;
  - d. Communication and interaction with the Commission and other agencies; and
  - e. Communication and interaction with complainants, victims, witnesses, and other members of the public; and
    - 12.09(1)(a)(4)(e): Specify qualifications for auditors and ensure the confidentiality of reviewed records, including adherence to any requirements of the Massachusetts Department of Criminal Justice Information Services (DCJIS), out of concerns about jeopardizing ongoing investigations. (Massachusetts Chiefs of Police Association)

5. Other aspects of performance, including the sufficiency, fairness, equity, justness, soundness, timeliness, efficiency, and effectiveness of policies and activity; and
  - (b) Substantive information that may warrant analysis or aid the Commission in developing or recommending policies or informing the public.
- (2) A Commission audit may focus on subjects that are referenced in M.G.L. c. 6E, § 8(d) or are otherwise related to the Commission’s statutory charge, including:
- (a) Officer certification;
  - (b) SRO certification, activity, memoranda of understanding, and operating standards;
  - (c) Agency certification, including standards concerning:
    1. Use of force and reporting of use of force;
    2. Officer code of conduct;
    3. Officer response procedures;
    4. Criminal investigation procedures;
    5. Juvenile operations;
    6. Internal affairs and officer complaint investigation procedures;
    7. Detainee transportation; and
    8. Collection and preservation of evidence;
  - (d) Complaints, investigations, disciplinary matters, and misconduct involving officers, including conduct involving improper:
    1. Racial profiling or other forms of bias;
    2. Violence or dangerousness;
    3. Dishonesty;
    4. Nonintervention;
    5. Harassment, intimidation, or retaliation;
    6. Unlawfulness or obstruction of justice; or
    7. Unprofessionalism;
  - (e) In-service training and retraining;
  - (f) Uses of force, crowd control, injuries, and deaths;
  - (g) The law concerning:
    1. The handling of evidence that may be exculpatory or otherwise relevant with respect to a criminal matter;
    2. Civil rights;
    3. Other aspects of criminal procedure;
    4. Labor and employment; and
    5. Public records, criminal record information, disclosure, and fair information practices;
  - (h) Other law enforcement activity;
  - (i) Patterns on the part of single individuals, multiple individuals within an agency, or multiple individuals in different agencies; and
  - (j) Any other area relevant to the development of public policy or another matter of public interest.

- 12.09: “[F]ocus on clearly establishing and communicating the standards and criteria by which departments will be evaluated and . . . provide the department with any necessary training” before auditing agencies. (Massachusetts Chiefs of Police Association).

12.10: Verification of Information

- (1) The Commission, where not otherwise precluded by law, may require any agency or officer to furnish a statement, including one under the pains and penalties of perjury, addressing one or more of the following:
  - (a) Whether certain information in a record is accurate;
  - (b) Whether a record is authentic;
  - (c) Whether a record is a true and accurate copy of another;
  - (d) The contents or disposition of an original record;
  - (e) The circumstances surrounding the making of the record or similar records;



- (f) Efforts made to locate a record;
  - (g) How records are kept and maintained; and
  - (h) Whether a record has certain characteristics that may have relevance to its authenticity or evidentiary admissibility.
- 12.10(1): Consider the impact of jurisprudence regarding compelled interviews. (Massachusetts Chiefs of Police Association)
    - *Note: Section 12.02(3) provides, “Nothing in 555 CMR 12.00 is intended to require an agency or officer to furnish any item that is protected by a privilege against disclosure recognized by law and held by that agency or officer.”*

#### 12.11: Sufficiency of Notice

Notice by the Commission to an agency, an officer, or the head of a collective bargaining unit, in implementing any aspect of M.G.L. c. 6E, 555 CMR, or a Commission policy, shall be sufficient if provided using an email address or other address that was furnished to the Commission, by or on behalf of the addressee or officer at issue, for such purpose.

#### 12.12: Enforcement and Disciplinary Action

(1) 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:

- (a) A failure to comply with 555 CMR 12.00, or with a Commission audit or directive thereunder;
  - 12.12(1)(a): Provide for any disciplinary action to be predicated upon proof of willfulness or negligence with regard to compliance (e.g., “repeated letters requesting compliance, personal contact, final warnings to the Chief etc.”), as opposed to strict liability, out of concerns about the consequences to individuals. (Massachusetts Association for Professional Law Enforcement (MAPLE))
- (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, the Commission, or a Commission audit; or
- (d) Evidence of misconduct that is uncovered through a Commission audit.

(2) 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 12.12(1)(a) through (d).

- 12.12(2): Limit and add specificity to this provision, such as by “address[ing] what kind of assessments, fees, and fines are permitted,” in part to avoid giving the Commission “unbridled discretion to assess sanctions.” (Massachusetts Chiefs of Police Association)
  - *Note: M.G.L. c. 6E, § 3(a) provides in part 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: . . . (4) . . . fine a person certified for any cause that the commission deems reasonable; . . . [and] (22) levy and collect assessments, fees and fines and impose penalties and sanctions for a violation of this chapter or any regulations promulgated by the commission.” Also, 12.12(2) refers to assessments, fees, fines, penalties, and sanctions based only on one of the four grounds listed under 12.12(1).*

(3) The Commission may refer information that it obtains through an audit 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).

- 12.00 Generally: “[C]onsider the financial and logistical impacts on law enforcement agencies,” such as the need for “significant additional resources, including personnel and technology,” as well as the lack of “necessary funding and infrastructure” in many agencies, especially smaller ones. (Massachusetts Chiefs of Police Association)
- 12.00 Generally: Take “a more balanced approach that minimizes administrative burdens while achieving the intended objectives of transparency and accountability,” in light of the potential for “considerable administrative burden” and the “diver[sion of] critical resources from essential policing activities, potentially affecting public safety and operational efficiency.” (Massachusetts Chiefs of Police Association)
- 12.00 Generally: Include “robust data privacy and security measures,” out of concerns about “the privacy and security of sensitive law enforcement records,” and the risk of “unauthorized access and breaches.” (Massachusetts Chiefs of Police Association)

REGULATORY AUTHORITY

555 CMR 12.00: M.G.L. c. 6E, §§ 3(a), 8(d).

5.2





# Massachusetts POST Commission

84 State Street, Suite 200, Boston, MA 02109

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To: Chair Margaret R. Hinkle  
Commissioner Lester Baker  
Commissioner Hanya H. Bluestone  
Commissioner Lawrence Calderone  
Commissioner Eddy Chrispin  
Commissioner Deborah Hall  
Commissioner Marsha V. Kazarosian  
Commissioner Charlene D. Luma  
Commissioner Clyde Talley

CC: Enrique A. Zuniga, Executive Director  
Randall E. Ravitz, General Counsel

From: Annie E. Lee, Counsel

Re: Law Enforcement Agency Certification Timeline

Date: September 19, 2024

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At the Commission's August meeting, the Commission suggested it would benefit from a timeline outlining the steps and suggested deadlines for developing an agency certification regulation. A proposed timeline is as follows:

- I. June (June 20, 2024)
  - a. Agency certification overview – present
  - b. Additional standards – present
  
- II. August (August 15, 2024)
  - a. Public comments on additional standards – present
  - b. Standards: Use of force – present
  - c. Standards: Use of force reporting – in packet <sup>1</sup>

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<sup>1</sup> A draft use of force reporting standards was provided to the Commission in its August meeting packet, but was not discussed due to time constraints.

- III. September (September 19, 2024)
  - a. Standards: Use of force reporting – present
  - b. Standards: Use of force – vote
  - c. Standards: Use of force reporting – vote
  - d. Standards: Code of conduct – present
  
- IV. October (October 17, 2024)
  - a. Standards: Code of conduct – vote
  - b. Standards: Officer response procedures – present
  - c. Standards: Criminal investigation procedures – present
  
- V. November (November 21, 2024)
  - a. Standards: Officer response procedures – vote
  - b. Standards: Criminal investigation procedures – vote
  - c. Standards: Juvenile operations – present
  
- VI. December (December 19, 2024)
  - a. Standards: Juvenile operations – vote
  - b. Standards: Internal affairs – present
  - c. Standards: Officer complaint investigation procedures – present
  
- VII. January 2025 (January 16, 2025)
  - a. Standards: Internal affairs – vote
  - b. Standards: Officer complaint investigation procedures – vote
  - c. Standards: Detainee transportation – present
  - d. Standards: Collection and preservation of evidence – present
  
- VIII. February 2025 (TBD)
  - a. Standards: Detainee transportation – vote
  - b. Standards: Collection and preservation of evidence – vote
  - c. Initial compliance – present
  - d. Assessment – present
  
- IX. March 2025 (TBD)
  - a. Initial compliance – vote
  - b. Assessment – vote
  - c. Maintaining compliance<sup>2</sup> – present
  - d. Re-assessment – present

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<sup>2</sup> Where “initial compliance” refers to actions agencies must take to come into compliance with the Commission’s certification standards, “maintaining compliance” refers to agencies’ obligations to *continue* to be in compliance with the Commission’s certification standards and how agencies may act while still being in compliance with the Commission’s certification standards.

- X. April 2025 (TBD)
  - a. Maintaining compliance – vote
  - b. Re-assessment – vote
  - c. Waivers – present
  
- XI. May 2025 (TBD)
  - a. Waivers – vote
  - b. Enforcement procedures – present
  
- XII. June 2025 (TBD)
  - a. Enforcement procedures – vote
  - b. Sanctions – present
  
- XIII. July 2025 (TBD)
  - a. Sanctions – vote
  
- XIV. August 2025 (TBD)
  - a. Agency certification regulation – vote for initial promulgation
  
- XV. October 2025 (TBD)
  - a. Agency certification regulation – public hearing
  - b. Agency certification regulation comments – present
  
- XVI. November 2025 (TBD)
  - a. Agency certification regulation – vote for final promulgation

As discussed during the Commission’s August meeting, the intent is to present parts of a future agency certification regulation part-by-part due to the broad nature of agency certification and the number of key policy decisions the Commission will have to make throughout the process of developing an agency certification regulation. Once the Commission has reviewed, discussed, and voted on all parts of a future agency certification regulation, the complete agency certification regulation will be presented to the Commission for review as a whole and to begin the promulgation process.

At any time prior to voting on a final regulation – that is, throughout the part-by-part process and the promulgation process – the Commission may return to any part of the regulation for discussion and revisions. Additionally, where the promulgation process calls for the Commission

to solicit public comment, the Commission will have the opportunity to receive public feedback on any part of the regulation and may choose to make revisions accordingly.<sup>3</sup>

The structure of presenting part of the regulation at one meeting and then voting at the following meeting is intended to allow the Commission time to consider the information presented to it and discuss key policy decisions before voting to approve that part of the regulation for inclusion in the larger regulation.

Please note, the above timeline does not account for the development of any standards in addition to the eight mandated by statute at M.G.L. c. 6E, § 5(b); the above timeline prioritizes the development and promulgation of the eight mandatory standards and the development of an agency certification regulation based on those eight standards and assumes that additional standards will be developed and promulgated as amendments to the Commission's first agency certification regulation. If the Commission is interested in developing and promulgating additional standards in its first agency certification regulation, the above timeline would likely be lengthened.

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<sup>3</sup> Even after the regulation is adopted, the Commission may return to any part of the regulation for discussion and revisions, the difference being that the regulation will already be effective and revisions must take place through the amendment and promulgation process with the Secretary of State to be effective.

5.2a

## Lee, Annie (PST)

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**From:** POSTCcomments (PST)  
**Sent:** Friday, August 16, 2024 1:30 PM  
**To:** Lee, Annie (PST); Ravitz, Randall E (PST)  
**Subject:** FW: ACLUM Comment on LEA Certification Standards  
**Attachments:** POST Commission - ACLUM Comment on Law Enforcement Agency Certifications - Aug. 9, 2024.pdf

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**From:** Jessica Lewis <jlewis@aclum.org>  
**Sent:** Friday, August 9, 2024 1:34 PM  
**To:** POSTCcomments (PST) <POSTC-comments@mass.gov>  
**Cc:** Gavi Wolfe <gwolfe@aclum.org>; Carol Rose <CRose@aclum.org>  
**Subject:** ACLUM Comment on LEA Certification Standards

**CAUTION:** This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Counsel Lee and To Whom It May Concern:

Please find attached a comment from the ACLU of Massachusetts, Inc. on the law enforcement agency certification standards. Thank you

All the best,

**Jessica Lewis**

Staff Attorney

American Civil Liberties Union of Massachusetts

One Center Plaza, Ste 850, Boston, MA 02108

Website: <https://www.aclum.org/>

Tel.: (617) 482-3170 x334 | [jlewis@aclum.org](mailto:jlewis@aclum.org)



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August 9, 2024

**Via Email**

Enrique Zuniga, Executive Director  
Peace Officer Standards and Training (POST) Commission  
100 Cambridge Street, 14th Floor  
Boston, MA 02114  
POSTC-comments@mass.gov

Re: Comment on Law Enforcement Agency Certification Standards, 555 CMR 13.00

Dear Commissioners:

The American Civil Liberties Union of Massachusetts, Inc. (ACLUM) submits this public comment on law enforcement agency (LEA) certification standards for possible inclusion in 555 CMR 13.00. ACLUM understands that the Commission is considering standards in the categories of administration, personnel and training, and operations, including, as is relevant here, bias-free policing.

ACLUM thanks the Commission for continuing to invite public comment. ACLUM previously submitted comments on various issues for the Commission's consideration. It writes here to suggest the addition of an operational standard requiring officers to record all field encounters in a de-identified manner, where appropriate, to enable LEAs to detect and address potential bias.<sup>1</sup>

To detect racial bias, law enforcement agencies must have policies requiring officers to record officer-initiated field encounters such as stops, frisks, and searches. Officers routinely stop individuals alleging reasonable suspicion that the person has engaged, is engaging, or will engage in criminal activity; officers may also contact individuals in the absence of reasonable suspicion during consensual encounters.

Yet only some LEAs require officers to record field encounters. Of the departments that do mandate such recording, not every department requires the recording of all such encounters and not all require officers to record whether a search was conducted or the outcome thereof. For example, the Fall River Police Department (FRPD) Operations Manual<sup>2</sup> states that "[a]n officer shall complete a Field Interview Report whenever" the officer observes, detains, or interrogates a person suspected

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<sup>1</sup> The Commission should consider adding an audit of any such records as part of 555 CMR 12.00 *et seq.* concerning maintenance, reporting, and audits of law enforcement records.

<sup>2</sup> Policy No. SOP-OPER.05.7, issued April 7, 2006, and last reviewed Sept. 2018.



of unlawful design, even in circumstances where reasonable suspicion does not exist. FRPD also requires officers to record frisks and searches. In contrast, BPD Rule 323<sup>3</sup> limits the purpose of a “Field Interaction/Observation/Encounter (FIOE) Report” to documenting and accumulating “up-to-date information concerning known criminals and their associates.” It does not require officers to record every field encounter or outcome. The Worcester Police Department (WPD) takes it further. WPD Policy No. 480<sup>4</sup> gives officers the discretion to record a field encounter. It states, “The decision to file a ‘Field Interview Report’ lies with the individual officer who has made contact with a subject.”

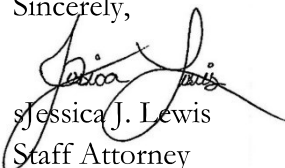
While field encounters are but only one aspect of policing, they reflect the day-to-day interactions between officers and private individuals. They can help show whether individuals of any one race are being treated unequally. Put plainly, the recording and analysis of field encounter reports can help Massachusetts detect and address the problem most often described as “living while Black.” And where field encounters are recorded and analyzed for disparities, they can lead to much needed reforms within police departments. For example, in 2014, the BPD and ACLUM released reports showing that in Boston, Black people were disproportionately targeted for field encounters and repeat police encounters. *See Commonwealth v. Warren*, 475 Mass. 530, 539-40 (2016). That finding led to significant reforms within the BPD aimed at decreasing harmful contacts and over-policing.

In addition, where field encounters are memorialized but show an absence of racial and other disparities, such a finding can certainly foster public trust. As the Supreme Judicial Court recognized, “This type of data collection would help protect [individuals] from racially discriminatory [] stops, and also would protect police officers who do not engage in such discriminatory stops.” *See Commonwealth v. Long*, 485 Mass. 711, 734 (2020).

Indeed, it is axiomatic that “bias-free policing” cannot be achieved without data by which to determine whether an officer is or is not engaging in biased policing. Thus, for POST to take seriously its mandate to address perceived and actual bias in policing, it must require agencies to keep and analyze reports of officer-initiated field encounters.

ACLUM urges the Commission to mandate as part of the LEA certification standards that agencies have policies in place requiring the documentation of officer-initiated field encounters and the review of the same for the identification of racial bias.

Sincerely,



Handwritten signature of Jessica J. Lewis in black ink, written over the typed name.

Jessica J. Lewis  
Staff Attorney

(617) 482-3170 ext. 334

[jlewis@aclum.org](mailto:jlewis@aclum.org)

---

<sup>3</sup> Available at <https://police.boston.gov/rules-procedures/>.

<sup>4</sup> Available at <https://public.powerdms.com/WorcesterPolice/documents/1515683>.

## Lee, Annie (PST)

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**From:** POSTCcomments (PST)  
**Sent:** Friday, August 16, 2024 1:30 PM  
**To:** Lee, Annie (PST); Ravitz, Randall E (PST)  
**Subject:** FW: LEA Certification Standards  
**Attachments:** POST LEA Certification Program - MCOPA Comments.pdf

### Cindy Campbell

Director of Communications and Community Engagement  
Peace Officer Standards and Training Commission (POST)

**Phone** 617-701-8420

**Media Inquiries** 617-701-8404

**Web** [www.mapostcommission.gov](http://www.mapostcommission.gov)

**Email** [Cynthia.a.campbell@mass.gov](mailto:Cynthia.a.campbell@mass.gov)

84 State Street, Boston MA 02109



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**From:** Michael J Bradley, Jr <mbradley@masschiefs.org>  
**Sent:** Friday, August 9, 2024 4:35 PM  
**To:** POSTCcomments (PST) <POSTC-comments@mass.gov>  
**Subject:** LEA Certification Standards

**CAUTION:** This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Please find attached LEA Certification Standards comments from MCOPA

Chief Michael J. Bradley, Jr.  
Executive Director  
Massachusetts Chiefs of Police  
Association, Inc.  
353 Providence Road  
South Grafton, MA 01560

Office: (774) 293-2587  
Cell: (508) 400-5430



*"In Unity There Is Strength"*

ORGANIZED  
NOVEMBER 3, 1887



INCORPORATED  
MAY 2, 1949

EXECUTIVE DIRECTOR  
CHIEF MICHAEL J. BRADLEY, JR. (RET.)  
GENERAL COUNSEL  
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## In Unity There Is Strength

August 9, 2024

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Agawam

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Haverhill

*Treasurer*  
Chief Normand A. Crepeau, Jr.  
Grafton

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Salisbury (Past President - 2023)

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

Chief James F. Golden  
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Chief Deborah Crafts  
MA College of Art & Design  
(Campus)

Life Member  
Chief Loring Barrett (Ret.)  
Ashburnham

Massachusetts Peace Officer Standards and Training Commission  
84 State Street, Suite 200  
Boston, MA 02109

### Re: LEA Certification Standards

I am writing on behalf of the Massachusetts Chiefs of Police Association, Inc. (MCOA), the voice of nearly 370 municipal and campus law enforcement executives across Massachusetts. We are grateful for the opportunity to provide our insights on the Law Enforcement Agency Certification Program and stand firmly behind the Massachusetts Police Accreditation Commission's (MPAC) certification program.

At present, MPAC collaborates with 257 Massachusetts law enforcement agencies, and 132 of them currently hold active awards. With close to three decades of experience in certifying and accrediting law enforcement agencies across the Commonwealth, MPAC upholds exceptionally high standards, adhering to national accreditation benchmarks. As an independent credentialing body for the United States Department of Justice, Community Oriented Policing Services (COPS) Office, MPAC has considerable experience certifying Massachusetts Law Enforcement Agencies, both within and outside of their program.

MPAC has outlined seventeen specific standards within its program, directly aligned with police reform legislation and/or POST requirements. These standards encompass 96 standard statements or questions, many of which contain multiple requirements or years that necessitate documentation, totaling over 200 questions that must be answered and confirmed affirmatively for an agency to earn credit and remain compliant with the standards. We firmly believe that the invaluable expertise of MPAC is essential in fulfilling POST's mandate to meticulously and transparently certify agencies through a stringent and well-documented process.

Additionally, we propose that the POST Commission should initially prioritize the examination of the eight policy areas identified in the statute during the certification of agencies before considering the expansion of policies and oversight that are not explicitly outlined in the legislation.

Although we wholeheartedly endorse the adoption of best practices in policing by our law enforcement agencies, we advocate for a comprehensive review and assessment of unfunded mandates and resource allocation before any implementation takes place.

Sincerely,

*Michael J. Bradley, Jr.*

Michael J. Bradley, Jr.,  
Executive Director

## Lee, Annie (PST)

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**From:** POSTCcomments (PST)  
**Sent:** Friday, August 16, 2024 1:31 PM  
**To:** Lee, Annie (PST); Ravitz, Randall E (PST)  
**Subject:** FW: Law Enforcement Agency Certification Standards  
**Attachments:** August 9, 2024-Letter to POST-C re\_ Proposed Standards on Use of Force for Animals & Training on Animal CrueltyAugust 4th Public Meeting (1).pdf

### Cindy Campbell

Director of Communications and Community Engagement  
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84 State Street, Boston MA 02109



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**From:** Legier, Lynsey <llegier@mspca.org>  
**Sent:** Friday, August 9, 2024 5:54 PM  
**To:** POSTCcomments (PST) <POSTC-comments@mass.gov>  
**Cc:** Holmquist, Kara L. <KHOLMQUIST@mspca.org>; 'ablanck@arlboston.org' <ablanck@arlboston.org>  
**Subject:** Law Enforcement Agency Certification Standards

**CAUTION:** This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Attorney Lee and Members of POSTC:

Attached please find a joint letter from both Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA) and Animal Rescue League of Boston (ARL) in response to your July 12, 2024 letter inviting comments on what additional standards in the categories of administration, personnel and training, and operations the Commission should require law enforcement agencies to meet as a prerequisite to certification.

Thank you for the opportunity to offer our insight and expertise. Have a great weekend and please feel free to reach out to either of our organizations with any follow-up questions or concerns.

Best,  
Lynsey

*Lynsey M. Legier, Esq.*  
Staff Attorney  
Animal Protection Division  
MSPCA-Angell  
350 S. Huntington Avenue  
Boston, MA 02130  
[legier@mspca.org](mailto:legier@mspca.org)  
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August 9, 2024

Annie E. Lee, Esq.  
Counsel  
Peace Officers Standards and Training Commission  
84 State Street, Suite 200  
Boston, MA 02109

Re: Law Enforcement Agency Certification Standards

Dear Attorney Lee:

The Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA) and the Animal Rescue League of Boston (ARL) are organizations with law enforcement departments employing special state police officers (SSPOs) appointed under M.G.L. c. 22C § 57. Our law enforcement officers enforce the laws preventing cruelty to animals, across the Commonwealth, and are subject to the certification requirements of POSTC.

At its June 20, 2024 meeting, the Commission discussed whether it would require law enforcement agencies (LEAs) to meet any standards in addition to the eight that are statutorily mandated. This letter is in response to the Commission's July 12, 2024 letter inviting interested parties to submit comments on LEA certification and specifically, on what additional standards in the categories of administration, personnel and training, and operations, the Commission should require LEAs to meet as a prerequisite to certification.

As explained below, there are two specific areas we suggest LEAs should be required to include in their training programs for officers, as a prerequisite to certification. We believe we are uniquely qualified, given our training and expertise of our own law enforcement agencies and our respective animal welfare organizations as a whole, to recommend these training topics as proposed standards.

**1. Training in recognizing and enforcing MA laws preventing cruelty to animals.**

MSPCA and ARL have been integral in the training of new and veteran municipal and state police officers, animal control officers, prosecutors, and others within the law enforcement community. Both organizations have actively sought out opportunities to continue to train individuals on the investigation and criminal prosecution of violations of animal protection laws. In addition to hosting these trainings, other organizations have sought out our expertise for training in this area of the law across the Commonwealth. MSPCA and ARL trained the Chiefs of Police at their yearly meeting in 2019. The organizations worked with the Attorney General's Office to put together a 3 hour in-service training through MPTC that was mandatory for all officers of all ranks from patrol through Chiefs across the Commonwealth. The program included training of the trainers and over the course of the following year, all other municipal officers were required to complete the program.

MSPCA and ARL are constantly contacted by other law enforcement departments to assist in their own investigations relating to violations of animal protection laws. We have, on numerous occasions, offered resources such as necropsies, veterinary experts, and the use of their shelters and facilities to hold animals during the pendency of criminal cases, where oftentimes these agencies



have no other access to such resources. It is not uncommon to hear from other LEAs, and individually from their officers, that they do not receive training in these areas in the academy, and if they have received any specialized training, it is only because they have sought it out. Although the in-service training program was a beginning, it only touched on this area of the law and we know that officers need more in-depth and routine training in order to properly enforce these very complex and intricate cases, and to keep up with changes in the law that continue to increasingly protect both people and their pets.

In the summer of 2024, Massachusetts Governor Maura Healey signed **H. 4744, *An Act to prevent abuse and exploitation*** (Chapter 118 of the Acts of 2024) which, among other important provisions, amends the definition of “Abuse” under Chapter 209A, § 1 to include acts of “coercive control.” The definition of “Coercive control” includes “threatening to commit cruelty or abuse” or “committing or attempting to commit abuse” to an animal connected to the family or household member. This new definition of “Abuse” which includes “coercive control” will take effect on September 18, 2024. This change in the law recognizes the well-documented link between interpersonal violence and animal cruelty. Officers should be aware of this important change and trained in order to properly protect both humans and their animals. Training in just domestic violence alone is not enough.

In the past, MSPCA has spoken to MPTC about adding a specialized animal cruelty training program to the MPTC training schedule. They have expressed interest and believe it is important for officers to receive this training. Although offering this as a specialized training that officers can take voluntarily is helpful, we believe this area should be part of mandatory training, just like other areas of mandatory training.

ARL attends each MSP training academy and presents a short block on animal cruelty investigations. Just yesterday, MSPCA and ARL had their very first training of a small group of Boston Police personnel, including a small number of command staff, patrol officers, supervisors, and detectives. In attendance at this training was a superior officer assigned to the Boston Police Academy and, after the training, expressed the need for this training for *all* of the Boston Police Officers. A plan has been made to include this topic to be presented to recruits in the future in upcoming academy classes, as well as in training for newly promoted Detectives and Supervisors. One of the largest police departments in our state recognizes how important it is for officers to receive training in this area. We urge that animal cruelty training should be a standard for all LEAs when creating their requirements for training of their officers.

## **2. Use of Force Relating to Animals.**

When your agency was in the process of drafting the current regulations regarding *Use of Force*, they reached out to us to provide some insight regarding the subject of use of force with respect to animals. At that time, your agency was working with the MPTC to develop additional guidance, model policies, and reporting forms concerning uses of force by law enforcement officers.

MSPCA and ARL previously provided your agency with some information on use of force with animals and we still strongly believe that standards or guidelines in this area should be incorporated. There is not a world in which one can imagine an officer who would ever want to be forced to shoot and kill someone’s dog, no matter how justified it might be.

According to a January 2024 Forbes Advisor editorial article: *Pet Ownership Statistics 2024*<sup>1</sup>, “Pet ownership in the U.S. has jumped significantly over the past three decades. As of 2024, 66% of U.S. households (86.9 million homes) own a pet. That’s up from 56% in 1988, pet ownership statistics show. From companionship to emotional support, pets are a vital part of their owners’ lives. In fact, 97% of pet owners consider their pets to be a part of their family.”

Monday morning quarterbacking won’t change what occurs in any one particular scenario, but with what seems to be a growing number of households and people with dogs, we urge there to be more training/guidance on this area for law enforcement.

Officers should not have to risk being bitten, nor should an animal have to get hurt, if preventable. There should be requirements and/or guidelines for use of non-lethal or less-than-lethal alternatives for dealing with animal encounters, and having to fire a weapon should be a last resort. We are not aware of what individual departments require their law enforcement officers to carry for non-lethal or less-than-lethal tools for use of force with animals, but there is really a high probability of officers having these types of animal encounters, and it is not something that any department should take lightly. The negative media coverage profession that is subject to increased public scrutiny is certain with these scenarios. The potential for civil liability is high, since people are generally litigious already, and love their dogs like family members.

Thank you for the opportunity to offer our insight and expertise and to offer recommendations for what we believe should be areas that LEAs should be required to include as standards for training as a prerequisite for certification.

Please contact us with any questions.

Sincerely,

**Lynsey M. Legier, Esq.**

Staff Attorney, Animal Protection Division

Massachusetts Society for the Prevention of Cruelty to Animals

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617-500-2958

**Allison Blanck**

Director of Advocacy

Animal Rescue League of Boston

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<sup>1</sup> [https://www.forbes.com/advisor/pet-insurance/pet-ownership-statistics/#sources\\_section](https://www.forbes.com/advisor/pet-insurance/pet-ownership-statistics/#sources_section)

## Lee, Annie (PST)

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**From:** POSTCcomments (PST)  
**Sent:** Monday, August 19, 2024 10:56 AM  
**To:** Lee, Annie (PST)  
**Cc:** Ennis, Jamie (PST)  
**Subject:** FW: LEA Certification Standards  
**Attachments:** OCA Comments to POST 8.19.24.pdf

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**From:** Threadgill, Melissa (OCA) <Melissa.Threadgill@mass.gov>  
**Sent:** Monday, August 19, 2024 10:29 AM  
**To:** POSTCcomments (PST) <POSTC-comments@mass.gov>  
**Cc:** Mossaides, Maria (OCA) <maria.mossaides@mass.gov>; Polizzano, Kristine (OCA) <Kristine.Polizzano@mass.gov>  
**Subject:** LEA Certification Standards

Good morning,

Attached you'll find comments from the Office of the Child Advocate in response to your recent call for public comments on LEA Certification Standards. We apologize for not getting these in by the requested August 9<sup>th</sup> deadline – the combination of the hectic end to the Legislative session and some staff vacations delayed our response. We hope these comments are useful to the POST, and we welcome any follow up questions or need for conversation these may prompt.

Please reach out any time we can be helpful!

Best,  
Melissa

### **Melissa Threadgill**

*Senior Director of Policy & Implementation*  
Office of the Child Advocate

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Boston, MA 02108  
Office: 617-979-8368  
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**THE COMMONWEALTH OF MASSACHUSETTS**  
**OFFICE OF THE CHILD ADVOCATE**  
ONE ASHBURTON PLACE, 11<sup>TH</sup> FLOOR • BOSTON, MA 02108  
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**MARIA Z. MOSSAIDES**  
DIRECTOR

August 19, 2024  
Annie Lee, Counsel  
Massachusetts POST Commission  
84 State Street, Suite 200, Boston, MA 02109

Re: Law Enforcement Agency Certification Standards Comments  
*Via Email*

Dear Counsel Lee,

Thank you for the opportunity to submit comments on the development of the Commission's law enforcement agency (LEA) certification standards. The Office of the Child Advocate (OCA) is an independent executive branch agency with oversight and ombudsperson responsibilities. Our office's mission is to ensure that children receive appropriate, timely and quality state services, with a particular focus on ensuring that the Commonwealth's most vulnerable and at-risk children have the opportunity to thrive. As Director of the OCA, I serve as the chair of the Juvenile Justice Policy and Data Board (JJPAD), which was created by the Legislature in Chapter 69, Section 89 of the Acts of 2018. The Board was charged by the Legislature with evaluating juvenile justice system policies and procedures and making recommendations to improve outcomes.

Through the work of the JJPAD Board, my office has spent a significant amount of time understanding gaps in our juvenile justice system, interviewing professionals in the field, analyzing state data, and researching best practices in the field. Through this mixed-methods approach, we make recommendations for ways in which our Commonwealth can improve outcomes for young people involved in the juvenile justice system, as well as improving public safety.

As Chair of the JJPAD Board and Director of the OCA, I submit these recommendations for your consideration. The table that follows details our recommendations to the POST Commission for several standards for LEA certification as well as the reasoning for our recommendation. Should you have any questions or require follow-up conversation, my team is available and happy to support this work. Please direct any follow-up to Melissa Threadgill, Senior Policy & Implementation Director ([melissa.threadgill@mass.gov](mailto:melissa.threadgill@mass.gov)) at the OCA.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Maria Z. Mossaides", with a long horizontal flourish extending to the right.

Maria Z. Mossaides  
Director  
cc: Enrique Zuniga, Executive Director

Standard	Recommendation	Reason
<p><b>Juvenile Operations/Trainings</b></p>	<p>Law enforcement agencies (LEA) should have a written directive that establishes policy and procedures for handling juvenile matters in compliance with state statute. These policies and procedures should be trauma informed and responsive and take research on adolescent developmental psychology into consideration.</p> <p>This directive should include guidance and limitations on when (i.e., in which circumstances) to use an arrest, when to issue a summons, and when to divert youth/offer a warning for youth alleged of committing an offense. Directives should explain that issuing a summons is preferred (by law) over an arrest when deciding to bring a youth into Juvenile Court, especially for misdemeanor allegations and acts that do not threaten public safety.</p> <p>As detailed further in the Admin./Operations standard recommendations below, the directive should include data collection by officers and public reporting by LEA of these decision points, specifically including officer documentation of <i>why</i> an arrest was issued over a summons for all misdemeanor offenses, at a minimum.</p> <p>Officers should be trained on this directive.</p>	<p>As the JJPAD Board has noted in its <a href="#">most recent Annual Report</a>, there has been an increase in juvenile justice system use in recent years, after an initial decline post-<i>Criminal Justice Reform Act (2018)</i> implementation. The goal of this legislation was to limit the number of youth coming into contact with the juvenile justice system to avoid, to the extent possible, the negative consequences associated with system involvement for youth and public safety that research has documented over the past two decades. Data suggests that an increase in alleged assaultive behavior is not driving the increase in arrests. In fact, the data indicate that the increase in system use in the Commonwealth starts with an increase in arrests, specifically for cases involving youth alleged of misdemeanor/lower-level offenses.</p> <p>The data also indicate that there is greater variability from year to year in the way misdemeanor offenses reach the Juvenile Court compared to felony offenses, suggesting a police officer’s decision making about whether to make an arrest, particularly for lower-level offenses, is driving the change in the cases coming to the Juvenile Court’s attention.</p> <p>Further, it is clear in the data that there are racial/ethnic disparities in whether a youth is arrested versus issued a summons. Compared to white youth in the state:</p> <ul style="list-style-type: none"> <li>• Black youth were 3.85 times more likely to have charges filed against them via an application for complaint, but 4.89 times more likely to have been arrested and brought to court. They were 2.98 more times likely to be summonsed into court than white youth.</li> <li>• Latino/Hispanic youth were 2.35 times more likely to have charges filed against them via an application for complaint, but 2.89 times more likely to have been arrested and brought to court. They were 1.93 times more likely to be summonsed into court than white youth.</li> </ul>

Massachusetts Office of the Child Advocate Comments for LEA Certification Standards

		<p>The JPAD Board <a href="#">published a brief</a> on the issue of racial and ethnic disparities at this stage of our system which showed – based on available data-- the disparities are due to a combination of factors including offense severity, offense type, regional differences and police department policies/practices. Each factor could explain part, but not all, of the racial and ethnic disparities seen in our system.</p> <p>Currently, guidance varies across police departments, leading to potential inequities across the state. Many police departments include language in their policies stating, “Whenever reasonable and possible, an officer will request a summons for a juvenile rather than taking him/her into custody” (e.g., <a href="#">Malden</a>) However, some departments use more explicit language. For example, the <a href="#">Everett</a> police department’s juvenile arrest procedures state, “Youth should be taken into custody as a last resort; where possible issuance of written citations and summonses should be used first.”</p> <p>Departments should –at a minimum—adopt language similar to Everett’s policy and go further to provide specific example of types of offenses that would warrant an immediate custodial arrest and ones that are –more often than not—appropriate for a court summons.</p>
	<p>Law enforcement agencies (LEA) should have a written directive which establishes policy and procedures for officer responses to congregate care placement sites as well as for trainings with local child welfare providers. Some topic areas to be addressed in collaboration with local providers include: chain of commands at each agency, diversion strategies and protocols for referring youth alleged of delinquent acts to diversion programming/issuing a warning, information sharing, roles/responsibilities of officers for responding to runaway calls</p>	<p>During the Board’s research into the states’ Child Requiring Assistance (CRA) system, OCA staff conducted numerous interviews with police, congregate care providers, and the Department of Children and Families. In these interviews, we heard a consistent theme of frustration, disconnect, and discontent with the way each agency reacted (or didn’t) to youth in crisis or who were alleged of committing delinquent offenses while residing in these facilities. For example, providers frequently expressed that the police “did nothing” when they were called to facilities and police departments cited many provider agencies called police hundreds of times (which was too much according to the interviewees) and for non-delinquent offenses. Further police departments said they were often not made aware when a youth returned back to congregate care after being called into the police department as “missing.”</p>



Massachusetts Office of the Child Advocate Comments for LEA Certification Standards

	<p>and feedback mechanisms for when a youth returns to a placement, the role of providers to respond to youth behavior vs. when it rises to a delinquent offense.</p>	<p>While recommendations for improvements in this relationship was outside the Board’s scope of its 2022 <a href="#">report</a>, the sentiment is what led the Board to make recommendation to EOHHS collaborate to identify program models that better meet the needs of youth struggling in out-of-home placements.</p> <p>Further the OCA continues to hear this theme in our interviews on a current JJPAD project related to youth with both child welfare and juvenile justice system involvement.</p> <p>One recent example of an effective provider/LEA partnership we have heard about in our work was the relationship established between Walpole PD and the Home for Little Wanderers. For example, there was clear role clarity for police to work with the Home to bring runaway youth back on a voluntary basis. There are also two liaisons in the department. These are officers whose role it is to work directly with staff and youth from the home, respond to calls and educate the provider agency on what the department can/can’t do. LEAs may look to Walpole for guidance on agency directives on relationships with congregate care settings.</p> <p>To effectively address these pain points, collaboration from all agencies – HHS, LEAs, and providers – is necessary. By having individual LEAs create policy and procedures on responses to congregate care facilities, the state can start to craft standard protocols for all agencies.</p>
<p>Law enforcement agencies (LEA) should have a written directive which establishes policy and procedures for School Resource Officer as well as responses at schools generally. Officers should be trained on the policies and procedures.</p>		<p>In 2019, the JJPAD Board <a href="#">recommended</a> that the Legislature designate a state agency or agencies to track and review MOUs and standard operating procedures and provide feedback and assistance when a school district or police department is not in full compliance</p> <p>The Legislature subsequently passed the 2020 Policing Act, which created a state “Model SRO MOU Commission” which helped design a model SRO MOU that was released by EOPSS and DESE in</p>

Massachusetts Office of the Child Advocate Comments for LEA Certification Standards

	<p>February 2022. In accordance with the law, this model MOU included minimum standards for all school districts with an SRO to follow. Further, the 2020 Policing Act also included a requirement that the Municipal Police Training Committee (MPTC) establish an in-service training for SROs. Since then, the MPTC has hosted SRO trainings under this guidance. Training topics included the role of the SRO, childhood trauma, youth engagement, information sharing, and diversion strategies.</p> <p>The JPAD Board <a href="#">reported</a> in its 2022 annual report that 20% of schools that have SROs had not submitted an MOU yet. Further, of the 80% that did submit an MOU, not all followed the model SRO MOU. While it is DESE’s responsibility to collect information on MOUs and ensure compliance with the law, each LEA should have department policies and directives in place that align with the state standard. Additionally, LEAs should collaborate with their local school district to ensure the MOU is in compliance.</p> <p>Further, while progress has been made on the SRO training front, police/school interaction is not limited to the role of an SRO. The entire country has been grappling with how to effectively intervene and prevent mass shootings in schools. In Massachusetts, the Department of Mental Health (DMH) is working on a federal grant through <a href="#">SAMHSA</a> established by the bipartisan Safer Communities Act to prevent violence and school shootings. As our state continues to implement school shooting prevention measures, departments should have policies/procedures crafted for responding to school-based violence that accounts for level and type of intervention commensurate with the event (i.e., a different response for a mass shooting than a fight on school grounds outside of school hours than an allegation of possession of a weapon) regardless of whether a school has an SRO or not.</p>
<p><b>Administration/Operations</b></p>	<p>Law enforcement agencies (LEA) should have a written directive which establishes policy and procedures for data collection</p> <p>The JPAD Board has <a href="#">documented</a> its concerns with the accuracy of police department data to on contacts with youth. This is also a matter of national concern, as documented by a recent <a href="#">National Institute of</a></p>



	<p>and public reporting to NIBRS. Data collection and reporting should -- at a minimum -- include the following data elements related to juvenile contacts with demographic breakdowns (i.e., race/ethnicity, age, gender): use of field interrogation/observation contacts, diversion, use of custodial arrest, use of summons.</p>	<p><a href="#">Justice report</a> which recommends -- among other things--mandated data collection and federal guidelines on data reporting. Massachusetts should aim to be an example state across the nation when it comes to police data collection and reporting. The JJPAD Board has noted the following concerns with data collection/reporting across certain police contact points that must be addressed in LEA policies and procedures for data collection and public reporting:</p> <ul style="list-style-type: none"> <li>• <u>Police use of field interrogation contacts:</u> As highlighted in the JJPAD Board’s 2022 <a href="#">report</a>, <i>how</i> youth come into contact with the juvenile justice system matters and racial and ethnic disparities are largest at the “front door” of our system. However, as JJPAD Board member Citizens for Juvenile Justice have <a href="#">documented</a>, police departments do not consistently disaggregate field interrogation and stops from general field observation data. By accurately collecting and disaggregating this data, police departments can review their own internal data with an eye toward improving racial and ethnic disparities, as recommended by the JJPAD Board’s 2022 report.</li> <li>• <u>Police use of diversion:</u> Although the NIBRS database can capture this information and some police departments report it, there is no requirement that police departments report this data to EOPSS/FBI and it is not consistently reported across departments.</li> <li>• <u>Police use of custodial arrests:</u> While this is reported more consistently compared to other measures, the data are often not complete. For example, demographic data is not often reported. To inform the "Bias-free policing" standard this group may set (see below), accurate data reporting will need to be prioritized. These data are important considering -- as highlighted above --that the use of custodial arrests for youth is <a href="#">increasing in recent years</a> specifically for misdemeanor</li> </ul>
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		<p>offenses rather than felonies. When we dig into the data more, it is clear this is an area for improving the racial and ethnic disparities in our system and perhaps the "bias-free policing" standard this commission may address.</p> <ul style="list-style-type: none"> <li>• <u>Police use of summons</u>: Use of summons is not consistently reported across the state by police departments via their arrest reporting system to the NIBRS database. This is important data collection/reporting for all police interactions, but specifically for youth given that, common law, Massachusetts' general law, the MPTC and the POST commission all offer similar guidance and instruction that a summons is the preferred method on bringing a juvenile to court.</li> </ul> <p>If we do not have accurate data reporting of these measures and how they are used for youth, the state will be limited in making data-informed policy recommendations for improvements.</p>
<p><b>Bias-free policing</b></p>	<p>A written directive should establish policy and procedures for internal quality control mechanisms aimed at understanding data and practices at the department level. This directive should offer:</p> <ul style="list-style-type: none"> <li>• processes and procedures on how the department intends on regularly re-examining which department policies and practices may be contributing to racial and ethnic disparities including those regarding how decision on where (e.g., what neighborhood), when (e.g., during the day, school, overnight), how (e.g., traffic stops, foot patrol, in schools), and in what manner (e.g., stop and first) police departments enforce public safety.</li> </ul>	<p>As we have highlighted in our reasoning for other recommendations, above, the JJPAD Board has <a href="#">reported</a> that racial and ethnic disparities in our juvenile justice system start – and are largest – at the “front door” of our state’s system. For police, this is reflected in the disparities that exist between issuing a summons, arrest or offering diversion.</p> <p>While we applaud the work done to train individuals on implicit biases, we believe accurate data collection, public reporting, and evaluation at the individual officer and department levels needs to happen to combat the racial and ethnic disparities we see in our system.</p>

- mechanisms for internal quality control checks for all data, but specifically regarding the impact of policing on racial and ethnic disparities. For example, PD's should look at the racial distribution of instances when diversion or a warning were issued as well as data on arrests and summons by: the specific charge type (e.g., assault and battery, possession of a firearm, possession of a controlled substance), specific locations of arrests (e.g., school, zip code), specific time of arrests (e.g., overnight, during school hours), offense type and severity (e.g., felony person offense, misdemeanor drug offense).



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

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**ANTHONY J. BENEDETTI**  
CHIEF COUNSEL

August 9, 2024

**By Email**

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

Re: Comment on Law Enforcement Certification Standards

Dear Commissioners:

The Committee for Public Counsel Services (CPCS) thanks the Peace Officer Standards and Training Commission (POST or the Commission) for soliciting CPCS's input as it begins the important work of certifying law enforcement agencies. As the Commission well understands, any effort to enhance the public's confidence in law enforcement must not only focus on individual officers, but should also engage the policies and norms under which those officers operate and the agency cultures that shape police behavior.

As it builds its certification framework, CPCS asks the Commission to pay particular attention to standards aimed at protecting the constitutional rights of people who are targets of police surveillance, investigation, and arrest. This concern for constitutional rights runs through many of the standards the Commission is statutorily required to set, for example, for use of force, criminal investigation procedures, and the collection and preservation of evidence. But other accreditation programs have standards that specifically address the preservation of constitutional rights in a variety of contexts. See, e.g., Commission on Accreditation for Law Enforcement Agencies (CALEA), *Standard 1.2.3 Compliance with Constitutional Requirements*; N. Y. St. Law Enforcement Accreditation Program, *Standards and*

*Compliance Verification Manual*, Standard 50.1(D) at pg. 139 (Dec. 2023).<sup>1</sup> POST should too.

Therefore, CPCS asks the Commission to make clear throughout the standards it sets — whether it adds categories to the eight areas named by the statute or interprets them broadly — that the preservation of constitutional rights is a priority in good policing.

While all constitutional rights are important, CPCS emphasizes the particular importance of standards that protect the right to counsel. The “right to appointed counsel is essential to ensuring fairness in our criminal justice system because it affords defendants, regardless of their financial circumstances, access to the legal assistance they need to assert all their other rights.” *Carrasquillo v. Hampden Cnty. Dist. Cts.*, 484 Mass. 367, 379 (2020). To that end, CPCS asks the Commission to set standards that require police to scrupulously honor the right to counsel during interrogations, follow specific procedures for giving Miranda warnings, and ensure that attorneys have adequate, confidential access to clients who are detained.

CPCS also emphasizes the importance of setting standards aimed at ensuring that all exculpatory evidence is produced for every prosecution. “Officers involved in the prosecution of a case are members of the prosecution team, such that prosecutors are duty-bound to disclose exculpatory facts in [the officers’] possession.” *Graham v. Dist. Att’y for Hampden Dist.*, 493 Mass. 348, 364 (2024). Exculpatory facts include prior “adverse credibility findings about a police witness” which “fall within the scope of a prosecutor’s disclosure obligations and must be shared with the defense.” *Id.* CPCS therefore requests that the Commission set standards governing how police preserve and produce exculpatory evidence – both evidence that is specific to the case at hand and evidence which pertains to an officer’s prior adverse credibility findings.

In order to fully protect the constitutional rights of all people, it is crucial for the Commission to emphasize the importance of bias-free policing, cultural competency, and language access within their certification standards. Ensuring that law enforcement officers operate without bias, possess a deep understanding of, and have an ability to communicate with the diverse communities they serve is fundamental to building trust and safeguarding these rights. Standards that promote unbiased policing practices, cultural competency training, and language access will not only enhance the effectiveness of law enforcement but also foster a more equitable and just society. It is essential that POST integrates these principles, ensuring that officers are equipped to serve all communities with fairness and respect.

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<sup>1</sup> Available at:

[www.criminaljustice.ny.gov/ops/docs/accred/Standards%20and%20Compliance%20Verification%20Manual\\_Revision\\_%20December2023.pdf](http://www.criminaljustice.ny.gov/ops/docs/accred/Standards%20and%20Compliance%20Verification%20Manual_Revision_%20December2023.pdf).

Finally, CPCS notes that, to be effective, any standards POST sets regarding adoption or promulgation of certain policies by law enforcement agencies must specify baseline minimum substantive content. It is not enough to simply require that an agency *has* a use of force policy, for example. What that policy says is crucially important, both to civilian safety and to the Commission's mission. While there ought to be some flexibility to account for the different agency sizes, budgets, and jurisdictions, the Commission should articulate minimum substantive content to any standard that it sets.

CPCS again thanks the Commission for seeking its input and looks forward to future collaboration in this important work.

Sincerely,

Rebecca Jacobstein  
Director of Strategic Litigation

5.2c



# Massachusetts POST Commission

84 State Street, Suite 200, Boston, MA 02109

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To: Chair Margaret R. Hinkle  
Commissioner Lester Baker  
Commissioner Hanya H. Bluestone  
Commissioner Lawrence Calderone  
Commissioner Eddy Chrispin  
Commissioner Deborah Hall  
Commissioner Marsha V. Kazarosian  
Commissioner Charlene D. Luma  
Commissioner Clyde Talley

CC: Enrique A. Zuniga, Executive Director  
Randall E. Ravitz, General Counsel

From: Annie E. Lee, Counsel

Re: Law Enforcement Agency Certification Standards – Use of Force and Reporting

Date: September 19, 2024

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Enclosed for the Commission's review is (1) a draft use of force standard and (2) a draft use of force reporting standard. These standards are presented to the Commission for a vote on whether to include them in a future agency certification regulation.<sup>1</sup>

The draft use of force standard was last before the Commission during its August meeting. During that meeting, the Commission reviewed key elements of a draft standard. Those elements were as follows:

- Key principles. Among the key principles underlying agencies' use of force policies are (1) the dignified and respectful treatment of all members of the public and (2) the fair and unbiased practice of the use of force and its related subjects. These principles are consistent with the M.G.L. c. 6E's strong emphasis on improving policing interactions and ensuring bias-free policing.

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<sup>1</sup> As discussed during the Commission's August meeting and in the memorandum *Re: Law Enforcement Agency Certification Timeline* dated September 19, 2024 and included in the Commission's meeting packet, the intent is to present parts of a future agency certification regulation, including certification standards, part-by-part, due to the breadth of many certification standards. Once all the parts of a future agency certification regulation, including all certification standards, have been reviewed, discussed, and voted on by the Commission, the complete agency certification regulation with all certification standards will be presented to the Commission for review as a whole and to begin the promulgation process.



- De-escalation. While the Commission’s use of force regulations, 555 CMR 6.00, define “de-escalation tactics” and require de-escalation tactics to be attempted or to be infeasible prior to an officer’s using force, de-escalation is not otherwise addressed. There is a growing movement among both law enforcement professionals and academics to emphasize de-escalation, as the complement to use of force. Requiring agencies to develop and implement a de-escalation policy will reinforce the importance of prioritizing de-escalation at all available opportunities and safely resolving an encounter, rather than focusing on force.
- Authorization of use of force. Consistent with 555 CMR 6.00 and de-escalation priorities, agencies’ use of force policies should authorize force only when (1) de-escalation tactics have been unsuccessful or are not feasible and (2) no reasonably effective, safe, and feasible alternative appears to exist.
- Specific and comprehensive requirements for use of non-deadly and deadly force. Literature also suggests that it is critical for a use of force policy to be specific and comprehensive. Combining this suggestion with 555 CMR 6.00, this section of the regulation calls for agencies to set forth specific and comprehensive requirements for the use of non-deadly and deadly force consistent with the requirements contained in 555 CMR 6.00.
- Use of force devices. The Commission’s use of force regulations, with two exceptions, do not address the role of devices in use of force. The first of those exceptions is firearms, but in the limited context of shooting into or at a moving motor vehicle. The second exception relates to tear gas, chemical weapons, kinetic impact devices, rubber pellets and bullets, electronic control weapons and devices, and dogs in the context of mass demonstrations and crowd management. The use of force regulations, however, do not otherwise address devices for the general application of force. Consistent with the suggestion for a specific and comprehensive use of force policy, the Commission should require agencies to develop a policy concerning devices available for the application of force, regardless of the specific circumstances in which such devices are used.
- Mass demonstrations and crowd management. Consistent with 555 CMR 6.00, agencies should have a policy concerning the use of force in the context of mass demonstrations and for the purposes of crowd management.
- Prohibitions against excessive force. The Commission’s use of force regulations require officers to “use only the amount of [non-deadly] force necessary” and prohibit officers from using deadly force “at any point in time when there is no longer an objectively reasonable belief that an individually currently and actively poses an immediate threat of serious bodily harm or death.” 555 CMR 6.04(2) and 6.05(5). The Commission’s use of force regulations also require officers to intervene when they observe another officer using excessive force. The commonality across these mandates is a prohibition against excessive force. To emphasize that prohibition, agencies should be required to explicitly prohibit excessive force in their use of force policies.

- Duty to intervene. Consistent with 555 CMR 6.00, agencies should include as part of their use of force policies a duty to intervene when witnessing another officer using excessive force.
- Duty to render medical aid. Consistent with 555 CMR 6.00, agencies should include as part of their use of force policies a duty to render medical aid when requested or appropriate.
- On-duty de-briefings and reviews. To engrain de-escalation priorities and the proper use of force, agencies should not only require their officers to be appropriately trained, both during recruitment and in-service, but should reinforce that training through regular discussion and review. Doing so would encourage officers to think about how they employed de-escalation tactics and force, and to identify what was successful and what could have been better for the purposes of improving their de-escalation and force practices in the future. Doing so is not only beneficial for the officer whose practices are being discussed and reviewed, but also for the other officers engaging in this exercise with them.
- Training. In order for officers to properly utilize de-escalation tactics and force, it is paramount that agencies require their officers to be properly trained in use of force.

Following the Commission’s August meeting, the Commission sought the feedback of the Municipal Police Training Committee (“MPTC”) and Eric Daigle, who is assisting both the Commission and the MPTC in developing a model use of force policy.<sup>2</sup> Based on that feedback, the draft use of force standard was revised to make certain clarifications for the purposes of better aligning the standard with the realities faced by officers in the field and for the purposes of helping agencies effectively develop policies more consistent with the intent of the standard. Those revisions, which constitute the majority of revisions, are minor and do not alter the substance of the standard.

There were, however, a small number of substantive revisions, which are reflected in the enclosed standard. Those revisions are as follows:

- Sub-policy relating to the use of force in animal encounters. Based on a comment received from the Massachusetts Society for Prevention of Cruelty to Animals and the Animal Rescue League, jointly, suggesting the inclusion of a use of force standard relating to animals and the inclusion of “a humane society police department” in the definition of “law enforcement agency” in M.G.L. c. 6E, § 1, the standard was revised to require agencies to include in their use of force policies a sub-policy relating to the use of force in animal encounters.

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<sup>2</sup> The Commission and MPTC have engaged Eric Daigle of the Daigle Law Group to assist with the development of a model use of force policy, as called for in 555 CMR 6.10(2), which states that “[t]he Commission and the [MPTC] shall jointly develop a model use of force policy.”

- Post-encounter use of force or de-escalation reports. To support the continual training of de-escalation and use of force, officers should be required to prepare post-encounter reports regarding de-escalation efforts or the use of force. Such reports also have the benefit of facilitating post-encounter discussions and post-encounter reviews with supervisors.

***Recommendation: Move that the Peace Officer Standards and Training Commission approve the draft use of force standard, as presented and discussed today, for inclusion in a future agency certification regulation.***

Also enclosed is a draft use of force reporting standard.<sup>3</sup> The key elements of a draft use of force reporting standard are as follows:

- Use of force incidents. Consistent with the Commission’s use of force regulations, agencies’ use of force reporting policies should instruct officers to report use of force incidents in accordance with the procedures and requirements set forth in 555 CMR 6.00
- Excessive force. Consistent with the Commission’s use of force regulations, agencies’ use of force reporting policies should also instruct officers to report excessive use of force incidents in accordance with the procedures and requirements set forth in 555 CMR 6.00.
- Public complaints. Consistent with a member of the public’s ability to file a complaint about an officer and M.G.L. c. 6E’s emphasis on law enforcement accountability and transparency, agencies’ use of force reporting policies should also include an explicit provision setting forth requirements for how members of the public may file a complaint concerning a use of force incident.
- Investigation, analysis, and resolution. Where the purpose of reporting use of force incidents is to better understand how use of force occurs with the goal of improving how use of force is practiced, agencies should also be required to include as part of their use of force reporting policies requirements concerning the investigation, analysis, and resolution of such complaints to further that goal. One such way of furthering that goal is using the information from reported use of force incidents to develop an “early warning system” where agencies take the data gathered from reported use of force incidents to identify officers who are involved in a disproportionate share of use of force reports and complaints for the purposes of intervening and ultimately improving that officer’s use of force behavior and practices.
- Record and evidence maintenance. To facilitate the investigation and analysis of use of force reports, agencies should include in their use of force reporting policies requirements concerning record and evidence maintenance. Because M.G.L. c. 6E, § 5(b) calls for the Commission to develop a standard concerning “collection and preservation of evidence,”

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<sup>3</sup> The draft use of force reporting standard was provided to the Commission in its August meeting packet, but was not discussed due to time constraints.

the requirements of the use of force reporting policy will have to be consistent with the collection and preservation of evidence standard.

- Training. To facilitate the larger initiative of collecting and analyzing data on use of force incidents, officers need to be trained on their use of force reporting requirements.

***Recommendation: Move that the Peace Officer Standards and Training Commission approve the draft use of force reporting standard, as presented and discussed today, for inclusion in a future agency certification regulation.***

555 CMR 13.00: LAW ENFORCEMENT AGENCY CERTIFICATION STANDARDS

Section

- 13.01: Purpose and Scope
- 13.02: Definitions
- 13.03: Standards
- 13.04: Compliance
- 13.05: Assessment
- 13.06: Maintaining Compliance
- 13.07: Re-Assessment
- 13.08: Waiver
- 13.09: Enforcement and Disciplinary Action
- 13.10: Severability

13.01: Definitions

As used in 555 CMR 13.00, the following words and phrases shall have the following meanings, unless the context clearly indicates otherwise:

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

Commission. The Massachusetts Peace Officer Standards and Training Commission as established in M.G.L. c. 6E, § 2.

Deadly Force. Deadly force as defined in 555 CMR 6.03.

De-escalation. The process of slowing down, stabilizing, and reducing the intensity of an ~~incident~~encounter in an attempt to avoid or mitigate the need to use force and to avoid or reduce threats, gain the voluntary compliance of the member of the public involved in the ~~incident~~encounter, and safely resolve the ~~incident~~encounter without further jeopardizing the safety of any member of the public witness to or involved in the ~~incident~~encounter.

De-escalation Tactics. De-escalation Tactics as defined in M.G.L. c. 6E, § 1 and 555 CMR 6.03.  
~~The use of force is not a de-escalation tactic.~~

IncidentEncounter. An ~~encounter~~incident, interaction, event, or occurrence between an officer and a member of the public.

Force. Force as defined in 555 CMR 6.03.

Incident. An encounter in which an officer used force.

Non-deadly Force. Non-deadly Force as defined in 555 CMR 6.03.

Officer. A Law Enforcement Officer as defined in M.G.L. c. 6E, § 1.

13.03: Standards

All agencies shall develop and implement written policies on the following topics that meet or exceed the following standards:

- (1) Use of force. An agency's use of force policy shall:
  - (a) Emphasize the dignified and respectful treatment of all members of the public witness to and involved in an incident encounter;
  - (b) ~~Instruct~~Direct officers to implement their agency's use of force policy and sub-policies in a manner that is fair and unbiased;
  - (c) Include a sub-policy concerning de-escalation that:
    1. ~~Instruct~~Directs officers to focus on de-escalation throughout an incident encounter, while ensuring the safety of themselves and any member of the public witness to or involved in the encounter;
    2. ~~Instruct~~Directs officers on the use of various de-escalation tactics, including:
      - a. Actively and empathetically listening;
      - b. Explaining what the officer is doing and why;
      - c. Remaining calm;
      - d. Exhibiting patience;
      - e. Waiting;
      - f. Verbal communication;
      - g. Non-verbal communication;
      - h. Creating physical distance between the officer and a member of the public;
      - i. Placing barriers or using existing structures to provide a shield or other protection between the officer and a member of the public;
      - j. Requesting and using additional support and resources; and

- k. Utilizing critical thinking skills to ~~pivot-consider to~~ other de-escalation tactics in response to changing dynamics.
- 3. ~~Instruct~~Directs officers to utilize de-escalation tactics at all available and appropriate opportunities, including before initially arriving at a scene, before using force, ~~and~~ before ~~escalating any escalation of~~ the use of force, and throughout the encounter;
  - 4. ~~Instruct~~Directs officers on the importance of situational awareness; and
  - 5. ~~Instruct~~Directs officers, when time and circumstances reasonably permit, to:
    - a. Consider whether a member of the public’s apparent negative fear-based reaction or lack of compliance is a deliberate attempt to resist or ~~an inability to comply is~~ based on non-criminal factors including:
      - i. Mental illness;
      - ii. Developmental disability;
      - iii. Medical condition;
      - iv. Physical limitation;
      - ~~v.~~ Language and cultural barriers;
      - ~~v.~~vi. Cultural reasons;
      - ~~vi.~~vii. Emotional, personal, or trauma-based crisis;
      - ~~vii.~~viii. Fear, panic, or acute anxiety;
      - ~~ix.~~ Confusion;
      - ~~viii.~~x. Drug or alcohol ~~interaction~~influence;
      - ~~ix.~~xi. The legacy of policing on vulnerable populations; ~~and~~
      - ~~x.~~xii. The agency’s history with the public; ~~and~~

- b. Employ developmentally and age appropriate, trauma informed, racially equitable, and culturally relevant de-escalation tactics including:
  - i. Using a calm and natural demeanor;
  - ii. Avoiding ~~threatening~~ language that is likely to escalate an encounter; and
  - iii. Other tactics consistent with the Commission’s guidance entitled *Developmentally Appropriate De-escalation and Disengagement Tactics, Techniques and Procedures and Other Alternatives to the Use of Force for Minor Children (2021)*:-
- c. Modify their use of force as appropriate.
- (d) Emphasize de-escalation in accordance with the standards specified in 555 CMR 13.03(1)(c);
- (e) Authorize the use of force in accordance with the requirements specified in 555 CMR 6.04 and 6.05; only when:
  - ~~1. All available and appropriate de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances; and (M.G.L. c. 6E, § 14(a); CMR 6.04(1) and 6.05(1))~~
  - ~~2. No reasonably effective, safe, and feasible alternative appears to exist.~~
- (f) Set forth comprehensive and specific requirements governing the use of non-deadly force that meet or exceed the requirements specified in 555 CMR 6.04;
- (g) Set forth comprehensive and specific requirements governing the use of deadly force that meet or exceed the requirements specified in 555 CMR 6.05;
- (h) For each device available to an officer for the application of force, including firearms and less lethal substances and devices, include a sub-policy concerning the use of that device that:
  - 1. Sets forth comprehensive and specific requirements governing the use, including the drawing, pointing, or discharging, of the device; and



2. ~~Instruct~~Direct officers to consider their surroundings and potential risks to members of the public, to the extent reasonable, before using the device.;

~~(i)~~ (i) Include a sub-policy concerning the use of force during mass demonstrations and for the purposes of crowd management that sets forth comprehensive and specific requirements that meet or exceed the requirements specified in 555 CMR 6.08;

~~(+)(j)~~ (+)(j) Include a sub-policy concerning the use of force in animal encounters that encourages officers to utilize non-deadly or less-than-deadly force when available and appropriate;

~~(+)(k)~~ (+)(k) InstructDirect officers to ~~immediately~~ de-escalate force without delay ~~when as~~ resistance decreases;

~~(+)(l)~~ (+)(l) InstructDirect officers to ~~immediately~~ stop using force without delay when the member of the public with whom the officer is engaging ~~with~~ stops resisting, the threat has been overcome, or the member of the public with whom the officer is engaging ~~with~~ is secured or in custody;

~~(+)(m)~~ (+)(m) Prohibit officers from using tactics designed to escalate the level of force necessary to resolve an ~~incident~~encounter;

~~(+)(n)~~ (+)(n) Prohibit officers from using excessive force;

~~(+)(o)~~ (+)(o) InstructDirect officers present and observing another officer using or attempting to use force beyond that which is necessary or objectively reasonable based on the totality of the circumstances to intervene in accordance with the requirements specified in 555 CMR 6.06;

~~(+)(p)~~ (+)(p) InstructDirect officers to ~~promptly~~ provide an appropriate and timely medical response to, or otherwise ~~promptly~~ procure appropriate medical assistance in a timely manner for, members of the public when safe and tactically feasible in accordance with the requirements specified in 555 CMR 6.04(4) and 6.05(7);

(q) Direct officers to prepare post-encounter reports regarding de-escalation efforts or the use of force;

~~(+)(r)~~ (+)(r) InstructDirect officers to ~~conduct~~ engage in post-~~incident~~encounter de-briefingsdiscussions regarding de-escalation efforts or the use of force;

~~(e)~~(s) ~~Instruct~~**Direct** supervisors to routinely conduct de-escalation reviews to identify officer behaviors that may have successfully prevented force and accompanying injuries;

~~(e)~~(t) ~~Instruct~~**Direct** supervisors to routinely conduct use-of-force reviews to identify officer behaviors that, if altered, could have prevented force and accompanying injuries; and

~~(e)~~(u) Ensure that all officers are trained in use of force in accordance with all applicable training requirements.

(2) Reporting of use of force. An agency's use of force reporting policy shall:

(a) ~~Instruct~~**Direct** officers to report use of force incidents in accordance with the procedures and requirements specified in 555 CMR 6.07, 6.08(4), and 6.09;

(b) ~~Instruct~~**Direct** officers who observe another officer using force beyond that which is necessary or objectively reasonable based on the totality of the circumstances to report the incident in accordance with the procedures and requirements specified in 555 CMR 6.07(4);

(c) ~~Instruct~~**Direct** members of the public on how they may file a complaint concerning a use of force incident;

(d) Set forth comprehensive and specific procedures and requirements governing the timely investigation, analysis, and resolution of allegations of use of force incidents~~violations~~, which shall include provisions addressing:

1. The collection, preservation, and use of evidence, consistent with the requirements specified in 555 CMR 13.03(8); and

2. The appropriate administration of discipline.

(e) Provide for the agency to analyze use of force reports and complaints on at least an annual basis to:

1. Identify trends in use of force over time;

2. Identify officers who are involved in a disproportionate share of use of force reports and complaints, for the purposes of determining whether intervention would be beneficial to intervening and improving the officer's use of force behavior and practices, and intervening to improve the officer's use of force behavior and practices when a positive determination is made; and

3. Issue an annual summary of use of force reports and complaints to the public, which shall be maintained on the agency's website and available on agency premises for inspection, for the purposes of increasing transparency and community trust;:-
  - (f) Provide for the agency to maintain records and evidence concerning use of force and complaints in accordance with the requirements specified in 555 CMR 6.07(8) and ~~CMR~~-12.04(1)(f); and
  - (g) Ensure that all officers are trained in use of force reporting in accordance with all applicable training requirements.

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# Massachusetts POST Commission

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To: Chair Margaret R. Hinkle  
Commissioner Lester Baker  
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CC: Enrique A. Zuniga, Executive Director  
Randall E. Ravitz, General Counsel

From: Annie E. Lee, Counsel

Re: Law Enforcement Agency Certification Standards – Code of Conduct

Date: September 19, 2024

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As discussed, M.G.L. c. 6E, § 5(b) requires the Commission to develop at least eight agency certification standards, of which an “officer code of conduct” is one.

Enclosed for the Commission’s review is a draft code of conduct standard. This standard is presented to the Commission for discussion, and is ***not*** presented to the Commission for a vote at this time.<sup>1</sup>

The draft code of conduct standard can be separated into two sections: (1) affirmative obligations (i.e., requirements) and (2) negative obligations (i.e., prohibitions).

Affirmative obligations can be further sorted into two sets: (1) priorities and values and (2) compliance.

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<sup>1</sup> As discussed in the memorandum *Re: Law Enforcement Agency Certification Timeline* dated September 19, 2024 and included in the Commission’s meeting packet, the intent is to present a topic for discussion at one meeting and then vote on that topic at the following meeting. The intent behind this approach is to allow the Commission adequate time to consider the information presented to it and to discuss key policy matters before voting.

The first set of affirmative obligations is meant to reflect the priorities and values underlying the passage of Chapter 253 of the Acts of 2020, *An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth* (the “Act”). The Act, in addition to creating the Commission, created chapter 6E of the Massachusetts General Laws, which sets forth the Commission’s mission to improve policing and enhance public confidence in law enforcement and various mandates for the Commission, law enforcement agencies, and law enforcement officers in pursuit of that mission. Based on the Act and M.G.L. c. 6E, the following priorities and values should be articulated in agencies’ code of conduct policies: professionalism and ethical behavior; treating others with dignity and respect; respect for life and bodily integrity; impartial and unbiased policing; protection of vulnerable populations; service to the public; worthiness of public trust and the authority given to law enforcement; transparency, accountability, and responsibility; truthfulness.

These obligations are not only consistent with the Act and M.G.L. c. 6E, but are also consistent with the International Association Chiefs of Police’s *Code of Ethics and Standards of Conduct*, which the Commission has incorporated by reference into the criteria for assessing officers’ good character and fitness for employment. *See* 555 CMR 7.05(2)(a) and 9.07(1)(b)(1).

The second set of affirmative obligations is meant to reflect officers’ ongoing compliance responsibilities, whether set by federal or state law, rules, or regulations or applicable policies. Agencies should therefore be required to include in their code of conduct policies officers’ compliance with: the Constitution; equal employment opportunity obligations; training requirements; certification requirements; and all other applicable laws, rules, regulations, policies, mission or value statements, and judicial or regulatory orders.

With respect to negative obligations, officers must be prohibited from engaging in certain conduct in order to further the priorities and values underlying the Act, M.G.L. c. 6E and to fulfill their ongoing compliance obligations. Agencies should therefore prohibit in their code of conduct policies: criminal activity; sexual misconduct; prohibited associations and visitations; retaliation; action prejudicial to the administration of justice; neglect of duties; abuse of authority or position as an officer; and conduct unbecoming.

These prohibitions not only further legislative and statutory priorities and compliance obligations, but also proactively address behavior that has historically formed the basis for many complaints against law enforcement officers.

Lastly, because officers are also employees in a larger organization, agencies should require officers to adhere to their code of conduct not only in the execution of their official duties in the public but also in the workplace with their colleagues, whether they be other officers or civilian employees, as well as in their private lives unless other prohibited.

555 CMR 13.00: LAW ENFORCEMENT AGENCY CERTIFICATION STANDARDS

Section

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13.01: Definitions

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

MPTC. The Municipal Police Training Committee as defined in M.G.L. c. 6, § 116.

Sexual Harassment. Unwelcome conduct of a sexual nature that creates an intimidating, hostile, or offensive environment. Sexual harassment includes unwelcome sexual advances and requests for sexual favors or acts, whether verbal, physical, graphic, or otherwise.

Sexual Misconduct. Conduct of a sexual nature or conduct based on sex or gender that is nonconsensual or has the effect of threatening, intimidating, or coercing a person. Sexual misconduct includes sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, stalking, and retaliation.

Officer. A Law Enforcement Officer as defined in M.G.L. c. 6E, § 1.

13.03: Standards

All agencies shall develop and implement written policies on the following topics in accordance with the following standards:

- (3) Officer code of conduct. An agency's officer code of conduct policy shall:
  - (a) Require officers to act professionally and ethically;
  - (b) Require officers to treat others with dignity and respect;
  - (c) Require officers to evince a respect for life and bodily integrity;

Agency Certification Standards – Draft Mandatory Standards (annotated)

- (d) Require officers to act impartially and avoid the appearance of bias, and prohibit officers from harassing and discriminating against others based on bias, including bias on the basis of actual or perceived race, color, ethnicity, national origin, immigration or citizenship status, limited English proficiency, accent, religion, sex, sexual orientation, gender identity, mental or physical disability, genetic information, ancestry, pregnancy or a condition related to said pregnancy, status as a veteran, marital status, parental status, public assistance reciprocity, socioeconomic level, education level, or professional level except where prohibiting the behavior would conflict with applicable law, rules, regulations, or judicial and regulatory orders;
- (e) Require officers to act in the best interests of the most vulnerable populations of the public, including children and young people; people experiencing medical, behavioral, or mental health crises; unhoused people; survivors of domestic violence, sexual assault, or human trafficking; differently-abled people; people living in poverty; veterans; and people historically harmed by policing;
- (f) Require officers to act with an ethic of service to the public;
- (g) Require officers to be worthy of the public trust and of the authority given to officers;
- (h) Require officers to uphold transparency, accountability, and responsibility principles;
- (i) Require officers to be truthful in any matter related to the officer's execution of their official duties, and prohibit officers from lying, falsifying, concealing, purposely distorting, diminishing, embellishing, or failing to disclose facts associated with the officer's execution of their official duties, except those matters in which there is a legitimate need for deception or non-disclosure of information in furtherance of the officer's execution of their official duties;
- (j) Require officers to comply with constitutional requirements, including those concerning:
  1. Investigatory stops;
  2. Traffic stops;
  3. Searches;
  4. Seizures;



Agency Certification Standards – Draft Mandatory Standards (annotated)

5. Arrests;
  6. No-knock entries;
  7. Interviews;
  8. Interrogations;
  9. Access to counsel;
  10. Exculpatory evidence; and
  11. Free assembly and expression.
- (k) Require officers to support the equal opportunity in employment throughout the workplace to all persons, regardless of actual or perceived race, color, ethnicity, national origin, immigration or citizenship status, proficiency in a language other than English, accent, religion, sex, sexual orientation, gender identity, mental or physical disability, genetic information, ancestry, pregnancy or a condition related to said pregnancy, status as a veteran, marital status, public assistance reciprocity, socioeconomic level, or education credential not material to job performance where it does not conflict with existing laws, rules, regulations, or judicial and regulatory orders;
- (l) Require officers to attend all required initial and ongoing training, including those trainings required by the MPTC;
- (m) Require officers to attain and maintain good moral character and fitness for employment in law enforcement necessary for certification in accordance with the requirements specified in 555 CMR 7.05 and 9.07;
- (n) Require officers to adhere to all applicable mission and values statements;
- (o) Require officers to adhere to their agency's policies and subpolicies;
- (p) Require officers to comply with all other applicable laws, rules, regulations, and judicial and regulatory orders;
- (q) Prohibit officers from engaging in criminal activity;
- (r) Prohibit officers from engaging in sexual misconduct;
- (s) Prohibit officers from engaging in prohibited associations with individuals or prohibited visitations of establishments;

Agency Certification Standards – Draft Mandatory Standards (annotated)

- (t) Prohibit officers from engaging in any retaliatory action, including harassment and intimidation, against any other person based on that person's involvement in a report, complaint, participation in an inquiry or investigation, or testimony against that officer or any other officer;
- (u) Prohibit officers from taking action that is prejudicial to the administration of justice;
- (v) Prohibit officers from neglecting their duties as an officer;
- (w) Prohibit officers from abusing their authority or position as an officer;
- (x) Prohibit officers from engaging in any other action that demonstrates a problem with the officer's integrity, honesty, moral judgment, or character; brings discredit to the agency; or impairs the efficient and effective operation of the agency; and
- (y) Apply equally in an officer's execution of their official duties, in the workplace, and in their private life unless prohibited by applicable law, rules, regulations, and judicial or regulatory orders.