



# Massachusetts POST Commission

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## **GUIDANCE FOR CONSTABLES AND OTHER LAW ENFORCEMENT PERSONNEL REGARDING 555 CMR 9.00**

The Massachusetts Peace Officer Standards and Training Commission provides this clarification and guidance on the application of certain sections of 555 CMR 9.00: *Initial Certification of Officers; and Initial or Renewed Certification of Independently Applying Officers*. This Guidance is issued pursuant to M.G.L. c. 6E, § 3(a) and 555 CMR 11.00: *Regulatory Action and Advisory Opinions*. The Guidance is intended to offer explanations and details that are consistent with the relevant statutes and regulations. The Commission reserves the ability to revise its regulations and this Guidance in the future.

### **I. ARRESTS GENERALLY**

#### **A. Source**

The term “Arrest” is presently defined in 555 CMR 9.02(2) as follows:

An actual or constructive seizure or detention of a person, performed with the intention to effect an arrest and so understood by the person detained. For purposes of applying this definition, the following shall constitute seizures: an application, to the body of a person, of physical force that objectively manifests an intent to restrain; a show of authority, through words or conduct, that a reasonable person would consider coercive; and an exercise of official powers that is facilitated by the use or display of a weapon.

#### **B. Guidance**

1. Under the definition above, an “arrest” includes certain types of conduct involving physical contact, a coercive show of authority, a weapon, or another form of seizure.
2. But an “arrest” does not include the mere service of papers, without more.

**II. ARRESTS, AND POLICE DUTIES AND FUNCTIONS, BY UNCERTIFIED INDIVIDUALS, AND PARTICULARLY, CONSTABLES, AND DEPUTY AND SPECIAL SHERIFFS**

**A. Sources**

A subsection of 555 CMR 9.12 provides:

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

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- (c) An individual whose certification has been revoked;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

555 CMR 9.12(8).<sup>1</sup>

The terms “law enforcement officer” and “officer” are defined in M.G.L. c. 6E, § 1 in the following manner:

any officer of an agency, including the head of the agency; a special state police officer appointed pursuant to [M.G.L. c. 22C, § 57, which concerns agents of humane societies; § 58, which concerns employees of the Port of Boston Authority; or § 63, which concerns employees of educational institutions and hospitals]; a special sheriff appointed pursuant to [M.G.L. c. 37, § 4] performing police duties and functions; a deputy sheriff appointed pursuant to [M.G.L. c. 37, § 3] performing police duties and functions; a constable executing an arrest for any reason; or any other special, reserve or intermittent police officer.

The term “agency,” used in the above definition, refers to “a law enforcement agency,” which, in turn, “ha[s] the following meaning[]”:

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<sup>1</sup> “For the purposes of 555 CMR 9.00,” the term “[c]ertification” means “[a]n initial certification or a recertification 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,” “unless the context requires otherwise.” 555 CMR 9.02(2).

(i) a state, county, municipal or district law enforcement agency, including, but not limited to: a city, town or district police department, the office of environmental law enforcement, the University of Massachusetts police department, the department of the state police, the Massachusetts Port Authority police department, also known as the Port of Boston Authority police department, and the Massachusetts Bay Transportation Authority police department; (ii) a sheriff's department in its performance of police duties and functions; (iii) a public or private college, university or other educational institution or hospital police department; or (iv) a humane society police department in [M.G.L. c. 22C, § 57].

M.G.L. c. 6E, § 1 (setting forth definitions of terms, as used in M.G.L. c. 6E, “unless the context clearly requires otherwise”); accord 555 CMR 9.02(2).

## **B. Guidance**

1. 555 CMR 9.12(8)(a), by its terms, applies to a “law enforcement officer,” as defined in M.G.L. c. 6E, § 1.

2. Under 555 CMR 9.12(8), an individual who falls under the statutory definition of “law enforcement officer” but is not certified may not execute an arrest, or perform police duties and functions. Such an individual also should not be appointed or employed as a “law enforcement officer” by a “law enforcement agency,” as those terms are defined by statute. See M.G.L. c. 6E, § 4(g) (“No agency shall appoint or employ a person as a law enforcement officer unless the person is certified by the commission.”).

3. A constable who executes an arrest would become a “law enforcement officer” under the definition of M.G.L. c. 6E, § 1, because that definition extends to “a constable executing an arrest for any reason.” The constable would thus become subject to the provisions of M.G.L. c. 6E, 555 CMR 9.00, and other Commission regulations, which apply to “law enforcement officers” and “officers.”

4. At the same time, if the constable is not certified, that individual would simultaneously be violating 555 CMR 9.12(8) by executing an arrest, or by performing other police duties and functions.

5. Similarly, a deputy or special sheriff who performs police duties and functions becomes a “law enforcement officer” under the definition of M.G.L. c. 6E, § 1, because that definition extends to “a special sheriff appointed pursuant to [M.G.L. c. 37, § 4] performing police duties and functions” and “a deputy sheriff appointed pursuant to [M.G.L. c. 37, § 3] performing police duties and functions.” The individual would thus be subject to the provisions of M.G.L. c. 6E, 555 CMR 9.00, and other Commission regulations, which apply to “law enforcement officers” and “officers.”

6. If the deputy or special sheriff is not certified at the time, the individual would simultaneously be violating 555 CMR 9.12(8) by performing police duties and functions, or by executing an arrest.

7. However, an individual who does not fall under the statutory definition of “law enforcement officer” is not subject to 555 CMR 9.12(8)(a).

8. Thus, for example, 555 CMR 9.12(8)(a) does not extend to a deputy or special sheriff who does not perform police duties and functions and thus is not a “law enforcement officer,” as that term is defined by statute.

### **III. CERTIFICATION OF CONSTABLES UNDER 555 CMR 9.00**

#### **A. Sources**

555 CMR 9.00, among other things, establishes a process by which an individual who is not endorsed by a law enforcement agency may apply for and be granted an initial certification or a renewed certification as a law enforcement officer.

A subsection of 555 CMR 9.12 provides:

When an application is granted pursuant to 555 CMR 9.00, the new certification shall be deemed to have been issued on, and the three-year period prescribed by M.G.L. c. 6E, § 4(f)(3) shall be deemed to commence on:

- (a) The reference date for the officer, if the applicant was certified a the time of applying and is lawfully serving as a law enforcement officer *with a law enforcement agency* when the application is granted; and
- (b) In all other instances, *the later of*:
  1. The date upon which the application is granted; or
  2. The date upon which the applicant lawfully becomes a law enforcement officer *with a law enforcement agency*.

555 CMR 9.12(2) (emphasis added).<sup>2</sup>

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<sup>2</sup> “For the purposes of 555 CMR 9.00, the following [additional] terms have the following meanings, unless the context requires otherwise:”

- “Applicant. An individual who submits, or intends to submit, an application to the Commission.”
- “Application. A request by an individual to be certified as an officer.”
- “Certification Period. The period of time between the effective date and the expiration date of an individual’s certification, including any period of continuation provided for under M.G.L. c. 30A, § 13 or 555 CMR 9.03 beyond the reference date.”
- “Reference Date. The end date for an applicant’s certification provided for in St. 2020, c. 253, § 102 or the end date of a prior certification issued to an applicant by

Another subsection provides:

A certification granted pursuant to 555 CMR 9.00 shall be active only while the certified individual is serving as a law enforcement officer *for a law enforcement agency*, and shall otherwise be restricted.

555 CMR 9.12(7) (emphasis added).

**B. Guidance**

1. A constable who is not endorsed by a law enforcement agency may apply for certification, and be granted certification if warranted, under 555 CMR 9.00.

2. However, under 555 CMR 9.12(2) and (7), that certification would be active only while the individual serves as a “law enforcement officer” for a “law enforcement agency.”

**IV. CONTINUED DEVELOPMENT OF PROCEDURES FOR CONSTABLES**

**A. Guidance**

1. The Commission will continue working on the development of a certification process, and likely on other provisions, regarding constables.

2. As always, the Commission will collaborate closely with the Municipal Police Training Committee.

3. Constables and others are invited to offer additional feedback, and to engage in further discussion, regarding these matters.

4. Feedback is most helpful where it suggests specific changes to the text of a draft set of regulations or other proposal, or offers specific new language. Thus, constables and others are encouraged to submit copies of the version of 555 CMR 9.00 that was released for public comment in May 2023, with redlining showing suggested changes.

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the Commission, whichever is later, without regard to any period of continuation provided for by M.G.L. c. 30A, § 13 or 555 CMR 9.03.”  
555 CMR 9.02(2).