

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION

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Investigation and Reporting of Complaints by Agency - Minor Matters

555 CMR 1.00: PROCEDURAL RULES

Section

1.01: Investigation and Reporting of Complaints by Agency.

- (1) Definitions. 555 CMR 1.00 incorporates all definitions and rules of construction set forth in 555 CMR 2.02: *Definitions* and 555 CMR 2.03: *Construction*, except those definitions of terms that are defined in 555 CMR 1.01(1). For the purposes of 555 CMR 1.01, the following terms have the following meanings, unless the context clearly requires otherwise:

Appointing Authority. In the case of an Officer who is an appointed Head of the Agency, the person or entity with the authority to appoint the individual as the Head of the Agency; and, in the case of any other unelected Officer, the Agency that employs the Officer.

Commission. The Massachusetts Peace Officer Standards and Training Commission established pursuant to M.G.L. c. 6E, § 2 as an agency, including its Commissioners, its staff, a Single Commissioner as defined in 555 CMR 2.02, and a Presiding Officer as defined in 555 CMR 2.02.

Complaint. A report alleging any violation of law enforcement standards by any Officer, regardless of whether the report: is oral or written; alleges a Serious Violation of Law Enforcement Standards; is labeled as a Complaint; or is received from or on behalf of an individual with personal knowledge of the material facts, from a member of an Officer's Appointing Agency, or from another source.

Excessive or Prohibited Force. Force that is not necessary, proportionate, or objectively reasonable or is otherwise prohibited by M.G.L. c. 6E, § 14, 555 CMR 6.00, or the Model Use of Force Policy jointly promulgated by the Commission and the Municipal Police Training Committee pursuant to 555 CMR 6.10(2).

Formal Discipline. Any employment action taken by the Agency that has been imposed in response to a sustained allegation of misconduct against the Officer. Such actions include, but are not limited to: terminating employment; entering into a separation agreement; issuing a suspension (including, but not limited to, a deferred suspension); requiring retraining; demoting the Officer; requiring the Officer to forfeit time off; modifying the Officer's duty schedule; or entering into a last chance agreement or an agreement to defer, forego, or limit a more serious form of discipline. For

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purposes of 555 CMR 1.01, “Formal Discipline” shall not include employment actions which solely consist of any of the following: a written or oral reprimand, job counseling, supervisor coaching, or referral for treatment by a medical or mental health provider. For purposes of 555 CMR 1.01, if an officer resigns while an internal affairs investigation is pending or after an investigation has been completed but before discipline has been imposed, such resignation shall be deemed Formal Discipline.

Head of the Agency. A “head of a law enforcement agency” as defined in 555 CMR 3.02.

Minor Complaint. Any Complaint against an Officer that does not allege any Serious Violation of Law Enforcement Standards.

Resign. Resign or retire from an Agency.

Serious Violation of Law Enforcement Standards. A violation constituting a “Serious Violation of Law Enforcement Standards” under 555 CMR 1.01(3).

- (2) Standards for Determining the Credibility of Complaints. Upon receipt of any Complaint, an Agency shall make an initial determination of credibility.
 - (a) Determination of Credibility. For the purpose of 555 CMR 1.01, every Complaint shall be initially presumed to be credible. A Complaint may be deemed non-credible by the Agency only if the Agency establishes, through an initial exercise of due diligence, that: (i) the material factual allegations of the Complaint are clearly and demonstrably false; (ii) the material factual allegations of the Complaint are based entirely on speculation or conjecture; (iii) the Complaint is made anonymously and provides no adequate basis for investigation; or (iv) the Complaint fails to allege conduct that would violate M.G.L. c. 6E; 555 CMR; or an Agency’s rules, regulations, or policies. An inference based on a fact or on evidence is not considered to be speculation or conjecture for the purposes of this definition.
 - (b) Non-Credible Complaints. When an Agency determines that a Complaint is not credible as that term is defined in 555 CMR 1.01(2)(a), the Agency need not report that Complaint to the Commission in accordance with 555 CMR 1.01(3)-(4). The Agency must, nevertheless, retain in its internal electronic files documentation of the Complaint and the Agency’s reasons for determining that the Complaint is not credible, in accordance with 555 CMR 12.03(4)(h). Such documentation shall be made available to the Division of Standards upon request.
 - (c) Duplicative Reports. An Agency need not take action on any Complaint that is duplicative of a prior Complaint submitted to the Agency, unless the Complaint includes new information that is relevant and material to a previous determination of non-credibility.

(3) Complaints Alleging Serious Violations of Law Enforcement Standards.

- (a) The Head of an Agency shall, within two business days of the Agency's receipt of a Complaint alleging one or more Serious Violations of Law Enforcement Standards, transmit a copy of the Complaint, a description of the Complaint, or both to the Division of Standards, in a form to be prescribed by the Division of Standards.
 - 1. For the purposes of 555 CMR 1.01, an Agency is not in "receipt of a Complaint" before the Agency itself obtains it, regardless of whether it has come to the attention of another unit of the same government, such as a civilian complaint review board.
 - 2. An Agency will not be deemed to be in "receipt of a Complaint," and the two-business-day period set forth in 555 CMR 1.01(3)(a) will not begin to run, during the time when the Agency initially exercises its due diligence pursuant to 555 CMR 1.01(2)(a); provided, however, that the amount of time taken initially to exercise its due diligence is reasonable under the circumstances.
 - 3. When the amount of time an Agency takes initially to exercise its due diligence exceeds two business days, the Agency shall provide the Commission with a written explanation for the amount of time it has taken initially to exercise its due diligence and shall maintain such explanation in the Agency's internal electronic files.
- (b) For the purposes of 555 CMR 1.01, a Serious Violation of Law Enforcement Standards includes any of the following forms of conduct by an Officer, whether or not the alleged conduct took place while the Officer was on duty, acting in an official capacity, or performing police duties or functions:
 - 1. Being arrested, charged, indicted, or convicted for any criminal offense in any jurisdiction;
 - 2. Using Excessive or Prohibited Force;
 - 3. Engaging in an act of harassment, intimidation, or retaliation against an Officer who intervened to prevent or stop an excessive-force incident or who made, intended to make, or was required to make a report regarding a witnessed excessive-force incident;
 - 4. Failing to intervene as required in M.G.L. c. 6E or 555 CMR to prevent another Officer from engaging in the prohibited use of unreasonable force;
 - 5. Failing to report a use of force when such reporting is required under M.G.L. c. 6E or 555 CMR;
 - 6. Failing to fulfill a duty articulated under M.G.L. c. 6E or 555 CMR regarding crowd-control planning;
 - 7. Kettling;
 - 8. Engaging in biased conduct on the basis of actual or perceived race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, or socioeconomic or professional level;

9. Engaging in profiling (including, but not limited to, racial profiling) based on any of the categories set forth in 555 CMR 1.01(3)(b)8.
 10. Engaging in conduct that constitutes a hate crime;
 11. Making a false arrest;
 12. Executing an arrest or otherwise performing police duties and functions without an active law enforcement officer certification;
 13. Intentionally obtaining a false confession;
 14. Making an untruthful statement, as the term “untruthful” is defined in M.G.L. c. 6E, § 1;
 15. Destroying evidence to create a false impression, creating or using falsified evidence, submitting a false report, or providing false testimony;
 16. Taking any adverse action against an Officer or employee or threatening to take any such action because of that individual’s provision of information to the Commission or because of that individual’s provision of testimony in any Commission proceeding;
 17. Engaging in any form of misrepresentation, fraud, or falsifying of a document in connection with the law enforcement certification process;
 18. Violating the Commonwealth’s Ethics Law, M.G.L. c. 268A, including but not limited to, its provisions governing a direct or indirect receipt of a reward, gift, or gratuity on account of official services;
 19. Violating any of the minimum standards for conducting internal affairs investigations articulated in M.G.L. c. 6E or 555 CMR;
 20. Violating any provision of M.G.L. c. 6E or 555 CMR or any regulation, rule, or order issued by the Commission;
 21. Violating or otherwise failing to act in accordance with a limitation or restriction on a law enforcement certification; and
 22. Violating any Federal or State law concerning the use of controlled substances, except for use of marijuana permitted by M.G.L. c. 94G or 94I, which shall only be considered a Serious Violation of Law Enforcement Standards if the Officer’s use of marijuana impedes the Officer’s fitness for duty or violates any policy of the Agency.
- (c) Commencement of Investigation. The Agency shall commence an investigation into the Complaint as soon as practicable and no later than 14 calendar days after the Agency’s receipt of the Complaint, or within such time as directed by the Division of Standards.
- (d) Completion of Investigation. The Agency shall complete its investigation and issue a final disposition as to each alleged violation in the Complaint as soon as practicable, but no later than 90 calendar days after the Agency’s receipt of the Complaint. Upon completion of its investigation, the Head of the Agency shall transmit a copy of an investigative report to the Division of Standards.
- (e) Submission of Report of Investigation. If, following its investigation,

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the Agency issues sustained findings of misconduct against any Officer, the Agency shall impose discipline as soon as practicable but no later than 60 calendar days after the Agency's issuance of the sustained findings against the Officer. Upon imposing discipline for any sustained allegations in the Complaint, the Head of the Agency shall immediately transmit to the Division of Standards a report of the discipline imposed.

(f) Delays.

1. If the Agency cannot timely comply with any obligation imposed by 555 CMR 1.01(3), the Agency shall promptly request an extension of time from the Division of Standards. The Division of Standards, in its discretion, may grant such a request upon a showing of good cause by the Agency. The Agency may demonstrate good cause by addressing, in its request, the following factors:
 - a. an explanation of why the Agency cannot timely comply with its obligations;
 - b. a date by which the Agency intends to comply fully with the obligations;
 - c. a detailed description of the actions and steps already undertaken in furtherance of the Agency's obligations; and
 - d. a list of the remaining actions and steps the Agency anticipates needing to take before being able to fully comply with its obligations.

(4) Minor Complaints.

- (a) An Agency shall investigate any of the following forms of Minor Complaint:
 1. When the allegations in the Minor Complaint concern the Officer's conduct during any interaction with a member of the public, except where the allegations concern only rudeness or discourteousness by an Officer;
 2. When the Minor Complaint includes any allegation that the Officer violated the Agency's body-worn camera policy;
 3. When the Minor Complaint includes any allegation that the Officer engaged in conduct unbecoming an officer, or its equivalent under Agency policy. For purposes of 555 CMR 1.01, conduct unbecoming an officer is any conduct which:
 - a. Brings the Officer's Agency into disrepute;
 - b. Brings discredit upon the Officer as a member of the Officer's Agency;
 - c. Tends to impair the operation, efficiency, or effectiveness of the Officer or the Officer's Agency;
 - d. Tends to indicate that the Officer is unable or unfit to continue as a member of the Officer's Agency; or

- e. Would violate the Agency's policy against conduct unbecoming an officer, or a substantially similar policy; or
- 4. When the Division of Standards directs the Agency to investigate the Minor Complaint.
- (b) Submission of Investigative Reports for Certain Minor Complaints.
When an Agency investigates a Minor Complaint pursuant to 555 CMR 1.01(4)(a), upon completion of that investigation into the Minor Complaint, the Head of an Agency shall transmit to the Division of Standards a final investigative report and a report of any discipline imposed, including but not limited to Formal Discipline, in a form to be prescribed by the Division of Standards.
- (c) Resolution of Other Minor Complaints. For any Minor Complaint that does not require an investigation pursuant to 555 CMR 1.01(4)(a), the Agency shall resolve the Minor Complaint in accordance with the Agency's internal resolution policy, which shall comply with any minimum requirements established by the Commission. If the Minor Complaint is resolved with the imposition of Formal Discipline upon the Officer, the Agency shall transmit to the Division of Standards a report of such Formal Discipline, in a form to be prescribed by the Division of Standards. If an Agency does not have an internal resolution policy, the Head of the Agency shall refer the matter to an Agency internal investigation unit or internal investigation officer for investigation and appropriate action.
- (d) Retention of Records. An Agency shall retain all records associated with its receipt and handling of Minor Complaints and shall make such records available to the Division of Standards upon request, for any purpose, including, but not limited to, an audit pursuant to M.G.L. c. 6E, § 8.
- (5) Tolling of Investigation. An Agency's obligations to investigate any Complaint under 555 CMR 1.01 may be tolled, with the approval of the Division of Standards, if the Agency informs the Division of Standards that proceeding with the investigation would interfere with a law enforcement investigation being conducted by a District Attorney, the Attorney General, the United States Department of Justice, or a comparable law enforcement authority of another jurisdiction.
- (6) Minimum Standards for Investigation by Agency.
 - (a) When an investigation is required pursuant to 555 CMR 1.01:
 - 1. The Head of the Agency or that person's designee shall assign the investigation to an investigator employed or retained by the Agency, unless the Head of the Agency's Appointing Authority assigns the investigation to an investigator employed or retained by the Head of the Agency's Appointing Authority.
 - 2. An investigator assigned pursuant to 555 CMR 1.01(6)(a) shall be free from conflict of interest, bias, prejudice, and self-interest and shall follow the standards and procedures set forth in 555 CMR 1.01(6)(b)-

- (d).
3. For the purposes of 555 CMR 1.01(6), a person shall be deemed unable to supervise an investigation where that person is the subject of, or implicated by, the Complaint, or is otherwise unable to supervise the investigator due to a conflict of interest or the potential for bias, prejudice, or self-interest whether actual or perceived.
 4. The investigator shall report, for the purpose of the investigation, directly to the Head of the Agency or to that person's designee. When the Head of the Agency is unable to supervise an investigation for any reason stated in 555 CMR 1.01(6)(a)3., the investigator shall report directly to the Appointing Authority or to a person designated by the Appointing Authority.
- (b) An investigator assigned pursuant to 555 CMR 1.01(6)(a) shall:
1. begin the investigation by taking all reasonable steps necessary to preserve and consider all potentially relevant evidence including, but not limited to, documents, e-mails, text messages, photographs, audio- and video-recordings, and the like;
 2. notify the Officer and the head of the Officer's collective bargaining unit that an investigation is being conducted; such notification shall be made as soon as reasonably possible and to the extent such notification will not prejudice the investigation; and
 3. conduct, to the extent necessary and feasible, interviews of relevant witnesses, including, but not limited to, the complainant, the alleged victim if different from the complainant, the Officer implicated by the Complaint, and all other Officers and individuals who were present at or witnessed the incident. Such interviews should be audio-recorded if feasible. Officers and other interviewees shall have the right to be represented by counsel, union representatives, or other representatives, to the same extent that they would under their Agency's policies or other applicable authority. The Agency shall, at its expense, provide translation services where necessary to conduct an interview.
- (c) The investigation shall be conducted confidentially to the extent permitted by law.
- (d) Each investigative report shall be in a form prescribed by the Division of Standards and shall include:
1. a summary of the Complaint;
 2. the identity of any Officers of the Agency who were the subjects of the investigation;
 3. a list of all evidence considered, and the identities of all witnesses interviewed, which list shall indicate whether each interview was recorded and any reasons for not recording the interview;
 4. whether any witness or evidence was inaccessible, a description of the circumstances evidencing the unavailability of any such witness, whether any relevant evidence was destroyed or lost, and a description

- of the circumstances of such a destruction or loss;
- 5. the facts found by the investigator;
- 6. a statement by the investigator of which alleged violations of law or Agency policy were investigated, along with the investigator's recommended disposition as to each such allegation;
- 7. any disciplinary action initially recommended by the investigator or a supervising officer;
- 8. a statement indicating the final disposition imposed by the Agency;
- 9. a statement as to whether the Agency has referred its findings to a District Attorney, the Attorney General, the United States Department of Justice, or another prosecutorial entity;
- 10. whether the Officer is represented by counsel or another authorized representative; and
- 11. the signature of the investigator and the Head of the Agency or appointing authority.

(7) Discipline and Post-discipline Process.

- (a) For matters where an Agency is required to transmit an investigative report pursuant to 555 CMR 1.01, the Agency shall transmit a report of discipline, which shall be in a form prescribed by the Division of Standards and shall include the following, as well as any other information required by the Division of Standards:
 - 1. a description of the adjudicatory process;
 - 2. any discipline imposed, including, but not limited to, Formal Discipline;
 - 3. a recommendation, by or on behalf of the Head of the Agency or the Head of the Agency's Appointing Authority, as applicable, as to whether the Commission should impose disciplinary action upon any Officer of the Agency who was a subject of the investigation, including, but not limited to, retraining or a suspension or revocation of the Officer's certification;
 - 4. whether the Officer is represented by counsel or other authorized representative.
- (b) The Agency shall notify the Commission immediately upon the occurrence of any of the following:
 - 1. The filing of an appeal, request for arbitration, or similar notice or request by or on behalf of the Officer regarding the findings of the Agency's internal affairs investigation or the discipline imposed by the Agency;
 - 2. The Agency's receipt of the final decision in such appeal, arbitration, or dispute; and
 - 3. Any agreement entered into by or on behalf of the Agency and the Officer to resolve or withdraw a pending internal affairs investigation or disciplinary proceeding.
- (c) Any such agreement as described in 555 CMR 1.01(7)(b)3. or in M.G.L. c. 41, § 98H may not restrict or limit in any way any of the following:

1. the ability of any individual or entity to report the agreement or its contents to the Commission; or
 2. the ability of the Head of the Agency to make a recommendation to the Commission or a prosecutor's office, based on the independent professional judgment of the Head of the Agency, relative to:
 - a. the certification status of an Officer;
 - b. the Officer's character or fitness for employment as a law enforcement officer;
 - c. the discipline that the Commission should impose; or
 - d. the possibility that a criminal offense may have been committed.
- (8) Notice of Officer Resignation Pending Agency Internal Investigation or Discipline. If an Officer resigns prior to the conclusion of an internal investigation by the Agency or prior to the imposition of Agency discipline:
- (a) The Head of the Agency shall immediately transmit to the Division of Standards a report in a form to be prescribed by the Division of Standards, which at a minimum shall include:
 1. the Officer's full employment history, including dates of hire, resignation, any promotions, and assignments; a chronology of any Complaints, internal investigations, reprimands, discipline imposed, retraining ordered, or other sanctions; and any commendations and awards received by the Officer related to the Officer's service;
 2. a description of the circumstances surrounding the Officer's resignation and of any events and Complaints related to the Officer's resignation;
 3. the status or results of any investigation regarding those circumstances, events, or Complaints, including a statement of which alleged violations of law or Agency policy the Agency was investigating at the time of the Officer's resignation;
 4. a copy of any agreement executed by the Officer in consideration of the resignation;
 5. a statement as to whether, and if so, how, the Agency's investigation was impeded by the Officer's resignation; and
 6. a recommendation by the Head of the Agency as to whether, and if so, how, the Commission should impose disciplinary action, including suspension or revocation of the Officer's certification, or the conditions the Officer must meet prior to applying for any reinstatement or certification, if such reinstatement or certification is appropriate.
 - (b) The Agency shall complete the investigation regardless of the Officer's resignation and, once the investigation is completed, transmit to the Division of Standards a report that conforms to 555 CMR 1.01(6).
- (9) Other Notices Reportable by Agencies. The Head of the Agency shall report,

in a form to be prescribed by the Division of Standards, the following incidents to the Division of Standards within two business days following their occurrence:

- (a) The Agency removes an Officer from duty status or restricts the Officer's duty status because of a pending internal affairs investigation, a pending disciplinary matter, or a concern as to the Officer's fitness for duty;
 - (b) An Officer resigns while an internal affairs investigation is pending or after an investigation has been completed but before discipline has been imposed;
 - (c) An Officer's law enforcement certification is revoked by another jurisdiction;
 - (d) An Officer's license to carry firearms is revoked or restricted for any reason;
 - (e) An Officer is named as a defendant in a proceeding regarding an abuse prevention order or harassment prevention order;
 - (f) An Officer is named as a defendant in any civil or administrative agency proceeding involving a claim that the Officer committed a Serious Violation of Law Enforcement Standards;
 - (g) An Officer is involuntarily committed pursuant to M.G.L. c. 123, § 12 or any other law or procedure;
 - (h) An Officer receives a notice of surrender for an alleged violation of the terms of a probation sentence;
 - (i) An Officer is the subject of a dangerousness hearing, pursuant to M.G.L. c. 276, § 58A;
 - (j) An Officer discharges a firearm at or in the direction of a person, whether such discharge was intentional or not;
 - (k) An Officer is involved in an Officer-Involved Injury or Death, as that term is defined in 555 CMR 2.02;
 - (l) An Officer uses force for which a report is required, pursuant to 555 CMR 6.07;
 - (m) A Head of the Agency issues a recommendation that the Commission take action against an Officer's certification based on evidence that an Officer is unfit for duty, including, but not limited to, evidence that involves an actual or suspected medical or psychological condition or disability or actual or suspected substance or alcohol abuse; or
 - (n) An Agency obtains evidence that an Officer's certification may have been issued due to administrative error.
- (10) Failure to comply with any obligation prescribed by 555 CMR 1.01 shall constitute a violation of 555 CMR 1.01 and may subject the Agency, the Head of the Agency, or any Officer with a duty to report information to the Commission to sanctions, including, but not limited to, administrative suspension pursuant to M.G.L. c. 6E, § 9(c).

RELATED PROVISIONS TO BE ADDED / CHANGED OUTSIDE OF 555 CMR 1.00

In the provisions that follow, the new language has been placed in red font, while the language to be replaced is placed in ~~red strike-through~~ font.

555 CMR 8.03:

A complaint that must be reported to the Commission pursuant to 555 CMR 1.01(1): ~~Transmittal of Complaint by Agency to Commission~~ *Investigation and Reporting of Complaints by Agency*.

555 CMR 12.02:

Complaint. A ‘complaint’ as defined in 555 CMR 1.01(1): ~~Transmittal of Complaint by Agency to Commission~~ *Investigation and Reporting of Complaints by Agency*.

555 CMR 12.03(4)(h):

For each complaint that a law enforcement agency pursuant to 555 CMR 1.01(2)(a) determines not to be credible, the complaint and the reasons the agency deemed the complaint to be not credible.

555 CMR 12.04(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~~ *Investigation and Reporting of Complaints by Agency* if that regulation is applicable, or otherwise immediately .

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