

555 CMR: PEACE OFFICER STANDARDS AND TRAINING COMMISSION
DRAFT IN DEVELOPMENT

555 CMR 3.00: LAW ENFORCEMENT AGENCIES, OFFICERS, AND FUNCTIONS
SUBJECT TO REGULATION

Section

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3.01: Scope

- (1) 555 CMR 3.00 establishes:
 - (a) The Commission's understanding of the meaning of the following terms, as they are used in M.G.L. 6E; and how such terms should be construed, as they are used in 555 CMR:
 - 1. Arrest;
 - 2. Head of a law enforcement agency;
 - 3. Law enforcement agency;
 - 4. Law enforcement officer;
 - 5. Officer of a law enforcement agency; and
 - 6. Police duties and functions;
 - (b) Certain restrictions on the execution of arrests and the performance of police duties and functions; and
 - (c) The circumstances in which a law enforcement agency will be deemed responsible for conduct by an individual or an entity.
- (2) 555 CMR 3.00 also confirms that the Commission may obtain information that it needs to make determinations under such regulations.
- (3) The provisions of 555 CMR 3.00 supersede any inconsistent provisions of any policy, construction of the scope of M.G.L. c. 6E, guidance, or advisory previously issued by the Commission.
- (4) Nothing in 555 CMR 3.00 is intended to:
 - (a) Limit any obligations that any individual or entity otherwise has under M.G.L. c. 6E, 555 CMR, or another source of authority;
 - (b) Establish a standard of care;
 - (c) 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
 - (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.

3.02: Definitions

- (1) 555 CMR 3.00 incorporates all definitions and rules of construction set forth in 555 CMR 2.02: *Definitions* and 2.03: *Construction*, except those definitions of terms that are defined in 555 CMR 3.02(2).
- (2) For the purposes of 555 CMR 3.00, the following terms have the following meanings, unless the context requires otherwise:

Arrest. An actual or constructive seizure or detention of a person, performed with the intention to effect an arrest and so understood by the person detained. For purposes of applying this definition, 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. An arrest does not include the mere service of papers, without more.

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, administrative suspension, or other suspension.

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

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

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

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

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

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

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

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

Member. An individual who, with respect to a particular law enforcement agency: is the agency's head; is an agency employee; works for the agency as an independent contractor; is the agency's agent under principles of agency law; is subject to the agency's direction and control as to relevant matters, whether because another employer or principal has made the individual available for service to the agency or otherwise; maintains one of the foregoing relationships with another entity, if that entity is engaged in a joint venture with the agency as to relevant matters.

Officer of a Law Enforcement Agency. An "officer of a law enforcement agency" described in 555 CMR 3.06.

Performance of Police Duties and Functions. The "performance of police duties and functions" described in 555 CMR 3.08.

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

Sheriff's Office. The office of a Massachusetts Sheriff as an agency, including the Sheriff and other personnel serving under the Sheriff, as well as any "sheriff's department" contemplated by M.G.L. c. 6E.

3.03: Law Enforcement Agencies

- (1) For purposes of M.G.L. c. 6E and 555 CMR, law enforcement agencies include:
- (a) Each city, town, and district police department;
 - (b) The Massachusetts Office of Environmental Law Enforcement;
 - (c) The University of Massachusetts Police Department;
 - (d) The Massachusetts Department of State Police;
 - (e) The agency alternatively known as the Massachusetts Port Authority Police Department and the Port of Boston Authority Police Department;
 - (f) The Massachusetts Bay Transportation Authority Police Department;
 - (g) A state, county, municipal, or district law enforcement agency that principally performs law enforcement functions that are the same as, or substantially similar to, those performed by the agencies listed in 555 CMR 3.03(1)(a)-(f);
 - (h) Any part of a Sheriff's Office, unless:
 - 1. The Sheriff or a designee attests that the members of that part of the office:
 - a. Are not authorized by the Sheriff to execute arrests;
 - b. Are not authorized by the Sheriff to perform most other police duties and functions; and
 - c. Do not devote a majority of their work time to the performance of police duties and functions; and
 - 2. The Commission determines that the part of the office is not a law enforcement agency;
 - (i) A public or private college, university, or other educational institution or hospital police department;
 - (j) The following humane society police departments referenced in M.G.L. c. 22C, § 57, *added by* St. 1991, c. 412, § 22, if they were in existence on the date of that statute's approval, December 27, 1991:
 - 1. The Massachusetts Society for the Prevention of Cruelty to Animals;
 - 2. The Berkshire Animal Protective Society, Inc.;
 - 3. The Animal Rescue League of Boston;
 - 4. The Boston Work Horse Relief Association;
 - 5. The Lowell Humane Society;
 - 6. The Worcester Animal Rescue League; and
 - 7. The Animal Rescue League of New Bedford; and
 - (k) Any other "law enforcement agency" under M.G.L. c. 6E.

3.04: Law Enforcement Officers

- (1) For purposes of M.G.L. c. 6E and 555 CMR, law enforcement officers include:
- (a) Any officer of a law enforcement agency;
 - (b) Any member of a humane society police department listed in 555 CMR 3.03(1)(j) appointed as a Special State Police Officer pursuant to M.G.L. c. 22C, § 57;
 - (c) Any member of the agency alternatively known as the Massachusetts Port Authority and the Port of Boston Authority appointed as a Special State Police Officer pursuant to M.G.L. c. 22C, § 58;
 - (d) Any member of an educational institution or hospital appointed as a Special State Police Officer pursuant to M.G.L. c. 22C, § 63;
 - (e) A Sheriff; a Deputy Sheriff appointed pursuant to M.G.L. c. 37, § 3; or a Special Sheriff appointed pursuant to M.G.L. c. 37, § 4; unless:
 - 1. The Sheriff or a designee attests that the individual:
 - a. Is not authorized by the Sheriff to execute arrests;
 - b. Is not authorized by the Sheriff to perform most other police duties and functions; and
 - c. Does not devote a majority of the individual's work time to the performance of police duties and functions; and

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2. The Commission determines that the individual is not a law enforcement officer;
 - (f) A constable who executes, or expects to execute, an arrest;
 - (g) Any special, reserve, or intermittent police officer serving on a part-time or temporary basis who is among the types of officers listed in 555 CMR 3.04(1)(a) through (f); and
 - (h) Any other “law enforcement officer” under M.G.L. c. 6E.
- (2) For purposes of M.G.L. c. 6E and 555 CMR, law enforcement officers shall also include each of the following, if recognized as such by a vote of the Commissioners:
 - (a) Any member of the Civil Defense Agency appointed as a Special State Police Officer pursuant to M.G.L. c. 22C, § 64; and
 - (b) Any member of the State Auditor’s Office’s Bureau of Special Investigations appointed as a Special State Police Officer pursuant to M.G.L. c. 22C, § 68.

3.05: Heads of Law Enforcement Agencies

- (1) For purposes of M.G.L. c. 6E and 555 CMR, unless the Commission has determined otherwise based on an analysis of an individual’s position and other relevant circumstances, the head of a law enforcement agency is the highest-level individual who exercises day-to-day supervision and control of the law enforcement activity of the agency, without regard to:
 - (a) The individual’s position title;
 - (b) Whether the individual is considered an employee of the agency; and
 - (c) Whether the individual is considered a sworn officer or a civilian.
- (2) The Commission may:
 - (a) Direct a law enforcement agency to identify the most suitable individual to be treated as the agency head for purposes of M.G.L. c. 6E and 555 CMR; and
 - (b) Itself identify the most suitable individual to be treated as the agency head for purposes of M.G.L. c. 6E and 555, where the agency fails to do so.

3.06: Officers of Law Enforcement Agencies

- (1) For purposes of M.G.L. c. 6E and 555 CMR, officers of a law enforcement agency include any member or affiliate of the agency who:
 - (a) Is the head of an agency, unless the Commission has determined otherwise based on an analysis of the individual’s position and other relevant circumstances;
 - (b) Is a police officer;
 - (c) Is authorized, or tends, to make arrests or to perform police duties and functions; or
 - (d) Represents oneself as a law enforcement officer with the agency in interacting with the public.
- (2) The Commission may determine that an individual not referenced in 555 CMR 3.06(1) is an officer of a law enforcement agency based on an analysis of the individual’s position and other relevant circumstances.
- (3) In an analysis by the Commission under 555 CMR 3.06(1) or (2):
 - (a) No one or more factors will necessarily compel or foreclose a determination that an individual is an officer of a law enforcement agency;
 - (b) The Commission may treat the following factors as weighing in favor of a conclusion that the individual is an officer of a law enforcement agency:
 1. The individual is a member of the agency;
 2. The individual devotes substantial time to matters related to law enforcement, or is expected to do so;

3. The individual personally engages in law enforcement activity, or is authorized to do so;
4. The individual tends to carry a weapon issued by the agency or the individual's employer, or is authorized to do so;
5. The individual tends to wear, carry, display, or utilize any other item suggesting that the individual is a law enforcement officer, such as a uniform, a badge, an electronic control weapon, a conducted energy device, handcuffs, or a car with an emblem or lights associated with law enforcement; or is authorized to do so;
6. The individual directly oversees or supervises law enforcement officers or law enforcement activity by others; or is authorized to do so;
7. The individual directly oversees or supervises the disciplining of law enforcement officers; or is authorized to do so;
8. The individual is part of the chain of command or supervision that submits or approves reports to the Commission pursuant to M.G.L. c. 6E or 555 CMR;
9. The individual engages in law enforcement activity without securing authorization from another; or is authorized to do so;
10. The individual is required to have education, training, or experience in law enforcement in order to hold the individual's position;
11. A law enforcement officer is designated to perform the individual's role when the individual is absent or incapacitated;
12. The individual claims the ability to take advantage of a legal rule, policy, or benefit that applies to law enforcement officers;
13. An entity with which the individual is affiliated claims the ability to take advantage of a legal rule, policy, or benefit that applies to law enforcement officers in behalf of the individual;
14. There is evidence that the Legislature or another governing body considers the holder of the individual's position to be a law enforcement officer, such as a statute, regulation, ordinance, or by-law;
15. There is evidence that an entity with which the individual is affiliated considers the holder of the individual's position to be a law enforcement officer, such as a policy or position description; and
16. The individual holds a position title that tends to be associated with, or the individual receives compensation for holding, a position that has one or more of the characteristics listed in this 555 CMR 3.06(3).

3.07: Law Enforcement Powers

- (1) Neither an entity's status as a law enforcement agency; an individual's status as a head of a law enforcement agency, as an officer of a law enforcement agency, or as a law enforcement officer; nor an individual's certification provides an entity or an individual with any jurisdiction or powers beyond those granted before the enactment of M.G.L. c. 6E.

3.08: Performance of Police Duties and Functions

- (1) For purposes of M.G.L. c. 6E and 555 CMR:
 - (a) An individual or entity engages in the performance of police duties and functions by either:
 1. Personally carrying out such duties and functions; or
 2. Supervising or overseeing another's carrying out of such duties and functions;
 - (b) Police duties and functions include the following forms of conduct, if a reasonable person would view the conduct as involving an assertion of authority over another individual or entity using, or purporting to use, law enforcement powers, and if performed outside of correctional facilities:
 1. Suppressing and preventing disturbances and disorder;

2. Dispersing people;
 3. Entering private premises to suppress breaches of the peace;
 4. Stopping, arresting, processing, and confining suspects;
 5. Searching individuals, and seizing evidence and contraband;
 6. Questioning individuals and otherwise investigating; and
 7. Carrying a weapon.
- (c) Police duties and functions do not include any of the following discrete forms of conduct, if it does not involve any conduct described in 555 CMR 3.08(1)(b):
1. Serving process;
 2. Transporting prisoners or other individuals in custody; or
 3. Directing traffic.
- (2) Except as provided in 555 CMR 3.08(4), the following will be subject to Commission sanctions for the execution of any type of arrest or the performance of any other police duty or function:
- (a) A law enforcement officer who is not certified;
 - (b) A member of, an affiliate of, or an individual that has been granted any authority by, a law enforcement agency, who is not certified;
 - (c) An individual with a certification that has been administratively suspended or otherwise suspended;
 - (d) An individual who has been decertified;
 - (e) An individual with a certification that has been conditioned, limited, or restricted in a manner that precludes the relevant form of activity;
 - (f) A law enforcement officer, a law enforcement agency member or affiliate, an individual that has been granted any authority by a law enforcement agency, or an individual that has been certified, who lacks the power under law to engage in the relevant form of activity; and
 - (g) A law enforcement agency that tolerates such conduct by an individual listed in this 555 CMR 3.08(2).
- (3) Potential Commission sanctions under 555 CMR 3.08(2) include:
- (a) Denying, limiting, conditioning, or restricting a certification for an individual pursuant to M.G.L. c. 6E, §§ 3 and 4, and 555 CMR 7.04: *Conditional Recertification*, 7.09: *Restriction or Revocation of Certification*, 9.09: *Conditional Certification*, 9.12: *Certification Status*, 10.07: *Conditional SRO Certification*, and/or 10.09: *SRO Certification Status*, applying the procedures for such actions prescribed by 555 CMR 1.00: *Procedural Rules*, 7.00: *Recertification*, 9.00: *Initial Certification of Officers*; and *Renewed Certification of Independently Applying Officers*, and/or 10.00: *Specialized Certification for School Resource Officers*, as applicable;
 - (b) Administratively suspending an individual's certification for a specified period of time or until specified conditions are satisfied pursuant to M.G.L. c. 6E, § 3, applying the procedures for administrative suspensions prescribed by M.G.L. c. 6E, § 9(d) and 555 CMR 1.09: *Single Commissioner Review of Suspensions*;
 - (c) Suspending an individual's certification pursuant to M.G.L. c. 6E, §§ 3 and 9(a)(4), applying the standards and procedures for suspensions of certification based on the best interest of the health, safety, or welfare of the public prescribed by M.G.L. c. 6E, § 9 and 555 CMR 1.00: *Procedural Rules*;
 - (d) Ordering an individual to undergo retraining pursuant to M.G.L. c. 6E, §§ 3 and 10(d)(i) and (ix), applying the standards and procedures for retraining orders prescribed by M.G.L. c. 6E, § 10 and 555 CMR 1.00: *Procedural Rules*;
 - (e) Referring information about the matter to an appropriate government office for potential criminal or civil enforcement action pursuant to M.G.L. c. 6E, §§ 3 and 8(c)(2);
 - (f) Imposing another assessment, fee, fine, penalty, or sanction upon a law enforcement officer, a law enforcement agency, or another individual

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or entity, pursuant to any applicable provisions adopted by the Commission.

(4) 555 CMR 3.08(2)-(3) shall not apply to conduct of the type described in 555 CMR 3.08(2) that is:

- (a) Either:
 - 1. Necessary to defend oneself or another against imminent harm;
 - 2. Necessary to ensure the safety and control of prisoners for transport by correctional officers; or
 - 3. Necessitated by other exigent circumstances; and
- (b) Not otherwise unlawful.

3.09: Law Enforcement Agency Responsibility for Individual Conduct

- (1) The conduct of a member of a law enforcement agency will be treated as the conduct of the agency in circumstances that include those in which:
 - (a) The conduct is tolerated by the head of the agency or another high-level agency official; or
 - (b) The conduct:
 - 1. Is of the kind that the individual has been retained to perform;
 - 2. Occurs substantially within authorized time and space limits; and
 - 3. Is motivated, at least in part, by a purpose to serve the agency.

3.10: Obtaining Information

- (1) The Commission may obtain information that it requires in order to make a determination under 555 CMR 3.00, from any individual or entity, to the extent allowed by law.

REGULATORY AUTHORITY

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