

POLICE & POST

A Law Seeking Increased Law Enforcement Accountability



***Law
Enforcement
Dimensions LLC***
policing with perspective

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Disclaimer: The final version of this law was signed by Governor Baker today, December 31, 2020, and will be incorporated into Chapter 253 of the Acts of 2020. This version was not available to Law Enforcement Dimensions (LED) to create this summary. While LED does not anticipate any differences between the official texts that it relied on and the text the Governor signed, it is a possibility.

Excluded from coverage: This document does not cover certain issues that were also addressed in the legislation and amendments by the Governor (transmitted December 10, 2020). The specific issues not included are the use of facial recognition by law enforcement; restrictions on no-knock search warrants; a future evaluation on the use of body-worn cameras by police officers; administrative changes to the state police; standards for expunging or sealing criminal records; and several commissions to evaluate concerns pertaining to racial, ethnic, and disabled minorities.

POLICE USE OF FORCE

6E, § 14

Police officers were heard by legislators and the Governor. The rush during the summer to pass police reform was slowed to a more appropriate pace when legislators heard from police officers, particularly regarding proposed new restrictions on force. The legislature's final draft, included more realistic force restrictions, and gave police vital training time to adapt to the new law.

A statute will authorize police use of force. In Massachusetts a police officer's authority to use force has been based on common law and constitutional law. On December 1, 2021, police officers will look to a statute, 6E, § 14, for the authority to use force. Many states now control police use of force by statute.¹

Non-deadly Force under 6E, § 14(a)

When de-escalation is not feasible or has failed, an officer may use the force necessary to:

- **Conduct a lawful arrest or detention;**
- **Prevent an escape from custody;**
- **Prevent imminent harm** if the amount of force is proportionate to the threat; or
- **Accomplish an objective permitted by regulations** to be adopted by the Municipal Police Training Committee (MPTC).²

Deadly Force under 6E, § 14(b)

When de-escalation is not feasible or has failed, an officer may use deadly force to prevent imminent harm to a person, provided the amount of force is proportionate to the threat.

Chokeholds under 6E, § 14(c)

Officers shall not use a chokehold. Officers must not be trained to use chokeholds, regardless of what the technique is called.³

¹ In New Hampshire, for example, NH Rev Stat § 627:5 has authorized and controlled police use of non-deadly force for nearly 50 years.

² Wisely, this part of the statute directs the MPTC to adopt regulations authorizing police use of force in circumstances not thought of by the legislature. See 6E, § 15(d).

³ The definition of "chokehold" includes "the placement of any part of a law enforcement officer's body on or around a person's neck in a manner that limits the persons breathing or blood flow with the intent of or the result of causing bodily injury, unconsciousness or death." While the author is unaware of any MPTC approved training in neck restraints, defensive tactics instructors should consider carefully whether this new law may prohibit the "brachial stun."

Shooting at Vehicles under 6E, § 14(d)

Officers may not shoot at or into a “fleeing” motor vehicle unless shooting is necessary to prevent imminent harm and is proportionate to the threat.⁴

De-escalation under 6E, § 14

De-escalation tactics are proactive approaches to stabilize a law enforcement situation so that more time, options, and resources are available to gain voluntary compliance and reduce or eliminate the need for force. These approaches include:

- Verbal persuasion,
- Warnings,
- Slowing down the pace of an incident,
- Waiting out a person,
- Creating distance between the officer and a threat, and
- Requesting additional resources to resolve the incident (e.g., calling in medical or mental health professionals).

None of these tactics are new to professional police officers.

De-escalation tactics must be considered prior to the use of force when feasible. The term “feasible” is not defined in the law, but its normal meaning is “capable of being used successfully.”⁵

- **When an officer is confronted with a danger of *imminent* harm to himself or another person, de-escalation may not be feasible.** At other times, officers will consider “slowing down the pace of an incident,” “waiting out a person,” and “verbal persuasion.” Good officers have been doing this for a long time.
- **There are competing values, not set forth in the statute, inherent in a determination about whether de-escalation continues to be feasible.** For example, at 3 a.m. the subject is drunk and screaming on the front porch of a stranger’s house and insisting that he has arrived home. It may be *possible* to “wait the person out” in hopes that he will fall asleep or sober up, but is it *socially acceptable* to inflict on the home’s occupants more fear and sleeplessness in order to wait for voluntary compliance?
- **Their report is a critical tool for officers to explain their use of force.** The report should include a description of the tactics used. If moving from de-escalation to force, the report must evaluate the success or failure of de-escalation.

⁴ Interestingly, this standard is less restrictive than many existing department policies.

⁵ This definition is found on line in both the Merriam-Webster and American Heritage dictionaries.

Mass Demonstrations under 6E, § 14(e)

The law creates additional requirements to reduce the use of force at a “planned mass demonstration.” This term is not defined. When a police department *learns* of a planned mass demonstration:

- The department shall engage in a **good faith effort to communicate with organizers** to discuss “logistical plans,” strategies to avoid conflict, and communications between police and event participants.
- The department will **appoint an officer in charge of developing de-escalation plans** and communicating them throughout the department.

No officer shall use or order any of the following types of force *unless* de-escalation was not feasible or failed *and* the measures used are necessary to prevent imminent harm *and* are proportionate to the threat of harm:

- Tear gas or any other chemical weapon,⁶
- Rubber pellets,⁷ or
- A dog to influence or control a person’s behavior.

If police make use of any of these forms of force, the agency must explain their use in a report to POST.⁸

Duty to Intervene

Officers must act to prevent excessive force. Remember, intervention to prevent another officer from using unreasonable force is already a constitutional duty for all officers. *Comm. v. Adams*, 416 Mass. 558 (1993). 6E, § 15(a) states: “An officer present and observing another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances, shall intervene to prevent the use of unreasonable force unless intervening would result in imminent harm to the officer or another identifiable individual.”

Officers must also report the incident to their department. 6E, § 15(b). Each department must implement a procedure for officers to make reports without retaliation. 6E, § 15(c).

Penalties for Non-compliance

Criminal. It has long been possible to charge a police officer with A&B or other crimes. Officers typically argue “self-defense” or the privilege to make an arrest. The prosecutor must prove any charge beyond a reasonable doubt.

⁶ Chemical weapon is not defined, leaving the status of pepper spray uncertain.

⁷ Also not defined.

⁸ Massachusetts Peace Officer Standards and Training Commission.

Civil. The authority to use force now comes with the precondition that de-escalation was not feasible or failed. Still, judges and juries have always factored into their decision-making the possibility of de-escalation, so officers should not overrate this feature of the new 6E, § 14.

One civil liability change that has attracted a lot of attention concerns qualified immunity. The new law specifies that an officer loses the protection of qualified immunity for the purpose of the *state's* civil rights law if the same act for which the officer is sued also leads to the officer's decertification by POST. Thus, action by POST must come first, prior to the resolution of the civil rights lawsuit. And the action that POST must take is decertification, which requires "clear and convincing evidence" of misconduct. This legal standard exists between "preponderance of the evidence" (more likely than not) and "proof beyond a reasonable doubt" (moral not mathematical certainty).

An officer may be fired upon a showing of serious misconduct by a preponderance of the evidence, and the termination will typically be upheld by an arbitrator or the civil service commission under the same preponderance standard. A plaintiff wins a lawsuit against an officer based on the preponderance standard too.

This means the loss of qualified immunity depends on POST finding officer misconduct by a *higher* standard of proof than is required for job termination or a plaintiff's verdict in a civil suit.

Administrative. When proven to POST by clear and convincing evidence, an officer "shall" be decertified for a violation of the use of force standards set out in 6E, § 14 or for failing in his or her obligations to intervene or file a report under 6E, § 15.

CERTIFICATION OF LAW ENFORCEMENT OFFICERS

Through certification, the Peace Officer Standards and Training Commission (POST) will oversee a police officer's career. The new commission has the authority to:

- Provide initial certification for a new officer;
- Follow an officer's career, ensuring the officer receives annual in-service training;
- Receive or demand information about criminal charges or citizen complaints against an officer; and
- Suspend an officer's certification or decertify the officer.

POST will consist of the commission and two divisions. The Division of Police Certification (DC) will work with the Municipal Police Training Committee (MPTC) on training standards for officers and will keep records for certified officers. The Division of Police Standards (DS) will be the investigative and enforcement arm of POST.

Definition of law enforcement officers includes "the head of the agency; a special state police officer appointed pursuant to [22C, § 58 or 63]; a special sheriff . . . performing police duties and functions; a deputy sheriff . . . performing police duties and functions; a constable executing an arrest for any reason; or any other special, reserve, or intermittent police officer." 6E, § 1.

No law enforcement officer may work without POST certification. No agency shall employ a law enforcement officer not certified by POST. 6E, § 4(g). No agency (including a sheriff or the Executive Office of Public Safety and Security) may employ, in any capacity, a person who has been decertified by POST. 6E, § 11.

INITIAL CERTIFICATION & RENEWAL

Standards for initial certification of new officers. Under 6, § 116 and 6E, § 4, the MPTC and POST's DC will jointly set standards for an officer's initial certification. The standards include requirements that candidates [6E, § 4(f)(1) and (2)]:

- Are 21 years old;
- Have a high school education or equivalency;
- Complete of a MPTC-approved basic training program;
- Complete POST-approved physical and psychological evaluations;
- Pass a state and national background check;⁹

⁹ This includes fingerprinting and a "full employment history," with a further provision that for candidates previously employed in any law enforcement capacity, there must be a review of the applicant's "full employment records, including complaints and discipline."

- Pass an examination approved by POST;
- Possess first aid and CPR certificates;
- Successfully complete an interview administered by POST; and
- Be of good moral character for law enforcement employment in POST's judgment.

Certification shall not be issued to a candidate:

- Who has been convicted of a felony;
- Whose name is listed in the national officer decertification database; or
- Whose actions in a previous law enforcement position would have led to decertification by POST had it occurred in Massachusetts.

Responsibility for training standards divided between MPTC and State Police. The MPTC will be responsible for training [6, § 116]:

- **Municipal** police officers,
- **MBTA transit** police officers,
- **Environmental** police officers,
- **University of Massachusetts** police officers,
- **Campus** police officers who attend MPTC-approved academies or programs, and
- **Deputy sheriffs** when performing police duties.

The colonel of the State Police prescribes training for state troopers under 22C, § 20.

Initial certification for current officers. Under Section 102 of the reform bill, any officer is certified who completed a training program approved by the MPTC or colonel as of July 1, 2021.

Officers who complete a reserve-intermittent training program before July 1, 2021, and are appointed by an agency are certified. However, before the expiration of this initial certification, the officer must complete additional training required by MPTC.¹⁰ Section 102(b).

These initial certifications have staggered expiration dates. Officers whose last names begin with A to H have certifications that expire after 1 year. Officers from I to P have certifications for 2 years. Officers from Q to Z have certifications for 3 years. Section 102(d).

A past MPTC training waiver or exemption expires in 6 months after the effective date of Section 102. The officer shall not exercise police powers following expiration unless he or she completes approved training or receives a new waiver or extension. Section 102(c).

¹⁰ It appears the reserve-intermittent level of training will not be sufficient in the future for certification.

POST enforces completion of in-service training. POST is authorized to track an officer's attendance at MPTC in-service training and "shall administratively suspend the certification of an officer who fails to complete in-service training requirements . . . within 90 days of the deadline." Reasonable extensions may be granted for hardship. Upon completion of training, certification is reinstated. 6E, § 9(5)(b).

Renewal of certification. An officer's certification is valid for 3 years. 6E, § 4(f)(3). The officer must apply for renewal before expiration. 6E, § 4(i).

POST INVESTIGATIONS

POST will have substantial involvement in citizen complaints of misconduct. The new law provides POST with authority to track allegations of misconduct, demand information from police agencies, and investigate officers directly.

POST investigations. Under the new law, POST automatically receives a vast quantity of information about potential officer misconduct from police agencies. *See agency reporting requirements below.* POST may "receive complaints from any source." 6E, § 8(c)(5). The Division of Police Standards (DS) conducts the investigations, called "preliminary inquiries" in the law. The DS shall have law enforcement powers to carry out the purposes of Chapter 6E. These powers include receiving intelligence on a certified officer or applicant and investigating suspected violations.

The DS shall begin an investigation if POST receives any sufficient, credible evidence [6E, § 8(c)(1)]:

- An officer was involved in an officer-involved **injury or death**;¹¹
- An officer committed a **crime**, whether or not an arrest, indictment, or charge followed;
- An officer engaged in conduct **prohibited** by 6E, § 14 (**use of force**) or § 15 (**duty to intervene in and report excessive force**); or
- The **head of an agency affirmatively recommends** action by POST for retraining, for suspension of an officer's certification, or for decertification.

The DS may initiate an investigation into an officer's conduct upon any sufficient, credible evidence of prohibited conduct. 6E, § 8(c)(2).

Before commencing an actual decertification hearing, POST must allow time for an agency's investigation, appeal of discipline, and resolution of criminal charges. *See suspension and decertification below.* Nothing prevents the DS from investigating at the same time as the agency conducts its own investigation.

Suspension of an officer's certification pending a final resolution is authorized in many circumstances. 6E, § 9.

¹¹ Officer-involved injury or death is defined in 6E, § 1. It includes, at the lower limit, when an officer "engages in a physical altercation with a person who . . . requests or receives medical care as a result."

Notice of POST investigation. The DS *shall* notify an officer, the head of the officer's collective bargaining unit, and the head of the appointing agency of the inquiry and its general nature within 30 days of the inquiry's commencement.

SUSPENSION & DECERTIFICATION

The appointing agency should conduct an investigation before a decertification hearing. Prior to beginning a hearing for decertification or suspension under 6E, § 10(a) or (b), POST must wait for the officer's appointing agency to reach a final disposition, or until 1 year has passed since the incident was reported to POST or the agency.¹²

POST must delay a hearing by at least 18 months while the officer pursues an appeal or arbitration of the appointing authority's final disposition. POST shall postpone a hearing while criminal charges are being resolved, provided that during this delay the officer's certification shall be suspended.

These requirements for delays of decertification hearings under 6E, § 10 do not affect the separate authority POST has under 6E, § 9 to suspend a certification during an investigation or prior to a POST disposition.

Interim Suspension

Suspension of certification under 6E, § 9. POST is empowered to suspend certification in situations where an officer has been charged with a crime or when POST or an agency will be conducting a misconduct investigation.

- **POST shall immediately suspend the certification of an officer arrested or charged with a felony.** If POST finds *by a preponderance of the evidence* that an officer engaged in conduct that could constitute a felony and votes to start an adjudicatory proceeding against the officer, POST *shall* immediately suspend the officer's certification. 6E, § 9(a).
- **POST may suspend the certification of an officer arrested or charged with a misdemeanor** if POST determines *by a preponderance of the evidence* that the crime affects the officer's fitness to serve.
- **POST may suspend a certification in the best interest of the health, safety, or welfare of the public.** The standard is also *by a preponderance of the evidence*. 6E, § 9(a).
- **Suspension orders continue in effect** until either a final decision by POST or until removed by POST.
- **Administrative suspension** is imposed for failing to complete in-service training or for failing to report information to POST required by 6E, § 8.¹³ 6E, § 9(c).

¹² The appointing agency has one year to complete an investigation of officer misconduct and issue a final disposition after receiving "a complaint or notice from [POST] of the complaint being filed." For good cause, POST may extend the time to complete the investigation. 6E, § 10(h).

¹³ This is the statute that authorizes POST to conduct investigations about officer misconduct.

An officer whose certification is suspended has a right to a hearing before a POST commissioner within 15 days. During the suspension of certification, the terms of the officer's employment are controlled by civil service laws and/or collective bargaining agreements. 6E, § 9(d).

Decertification

6E, § 10(a) provides 16 separate circumstances where POST shall decertify a law enforcement officer and, in § 10(b), 5 circumstances where POST may decertify.

Mandatory decertification occurs when POST finds *by clear and convincing evidence* any of the following [6E, § 10(a)]:

- The officer was **convicted of a felony**;¹⁴
- The officer's **certification was issued in error**, was obtained through misrepresentation or fraud, or was issued or renewed based upon an officer's falsified documents;
- The officer's certification was **revoked in another jurisdiction**;
- The officer knowingly filed a **false police report**, committed perjury (268, § 1), or was convicted of submitting false time sheets (231, § 85BB);¹⁵
- The officer **tampered with a record** to be used in an official proceeding (268, § 13E);
- The officer engaged in the **intimidation of a witness** (268, § 13B) or engaged in conduct that would constitute a **hate crime** as defined in 22C, § 32;
- The officer **used force in violation of 6E, § 14**, used a chokehold, or used excessive force resulting in death or serious bodily injury;
- The officer **failed to intervene** to prevent another officer from engaging in prohibited conduct, including excessive force, in violation of 6E, § 15;
- The officer is **terminated by the appointing agency** (and any appeal is completed) because the officer's intentional conduct resulted in obtaining a **false confession**, making a **false arrest**, creating or using **falsified evidence**, engaging in a **hate crime**, or receiving a reward, gift, or **gratuity** on account of official services; or
- When the officer is not fit for duty and is **dangerous to the public**.

¹⁴ Conviction carries a special definition, found in 6E, § 1, and includes all dispositions of a case other than straight dismissal or a not guilty verdict!

¹⁵ This refers to the new misdemeanor where a law enforcement officer submits or relies on false information when seeking payment. *See law enforcement false claims below.*

Decertification or suspension of certification is an option if POST finds *clear and convincing evidence* that (6E, § 10(b)):

- The officer was **convicted**¹⁶ of a misdemeanor;
- The officer 's conduct "was **biased** on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level";
- Was **suspended or terminated by their appointing agency** for disciplinary reasons (and any appeal has been completed); or
- Has **repeated and substantiated internal affairs complaints** for the same or different offenses;
- Has a **pattern of unprofessional police conduct** that POST believes may escalate.

At the end of the suspension period POST may reinstate the certification if its conditions (such as retraining) have been completed. 6E, § 10(c).

Other Sanctions

Retraining. POST may order retraining for any officer if it finds "substantial evidence"¹⁷ that the officer (6E, 10(d)):

- Failed to comply with Chapter 6E or with a POST regulation, reporting, or training requirement;
- Engaged in a violation of bias-free policing;
- Used excessive force;
- Failed to use established procedure during an incident;
- Has a pattern of unprofessional conduct;
- Was untruthful;
- Failed to intervene;
- Was suspended or terminated by their agency; or
- Would benefit their job performance.

Retraining is not an option when revocation of certification is mandated.

¹⁶ Defined in 6E, § 1.

¹⁷ Substantial evidence is "such evidence as a reasonable mind might accept as adequate to support a conclusion," 30A, § 1. POST may order retraining for an officer on a lesser standard of proof than required for a suspension or decertification.

Fines. POST has the power to “fine a person certified for any cause that the commission deems reasonable” and to levy and collect fines for violations of Chapter 6E and POST regulations. 6E, § 3(a)(4) and (22). Interestingly, no minimum or maximum fine amounts are listed.

Rules applicable to POST actions and an officer’s right of appeal. Official decisions by POST about an officer’s certification must follow the procedures set out in Chapter 6E, POST regulations, and administrative rules found in Chapter 30A (“State Administrative Procedure”). An officer may appeal a final decision to Superior Court. This form of appeal is usually not a “do over” with live testimony. It is based on the record of the hearing in front of POST, which the superior court judge reviews to see if the decision was reasonably based on the evidence.

Protection for providing information to POST. Retaliation against an officer or employee who provides information or testifies at a POST hearing is prohibited. 6E, § 12.

LAW ENFORCEMENT AGENCY REPORTING REQUIREMENTS

Reporting duties of law enforcement agencies. The new law requires law enforcement agencies to deliver a great deal of information to POST's Division of Police Standards (DS).

Initial complaint against officer. Within 2 business days, the agency shall transmit to the DS any complaint¹⁸ received by the law enforcement agency [6E, § 8(b)(1)] in a form that POST determines, including:

- The name and certification number of the subject officer;
- The date and location of the incident;
- A description of the circumstances;
- Whether the complaint alleges:
 - Bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level;
 - Unprofessional conduct;
 - Excessive, prohibited, or deadly force; or
 - Serious bodily injury or death; and
- A copy of the original complaint submitted directly to the agency.

POST may establish a minimum threshold and streamlined process for minor complaints that do not involve the use of force or allegations of bias.

Report on agency's investigation. When the agency completes its internal investigation of a complaint, it will immediately transmit to the DS [6E, § 8(b)(2)] in a form POST determines:

- A description of the investigation and disposition of the complaint;
- Any disciplinary action recommended by IA or the supervising officer; and
- Whether that disciplinary recommendation included retraining, suspension, or termination — and/or a recommendation by the agency head for POST disciplinary action (including retraining, suspension, or decertification).

Report on complaint disposition. The agency shall immediately transmit to DS its final report and complaint disposition. 6E, § 8(b)(3).

Report on resignation while under investigation. If an officer resigns prior to the conclusion of an agency investigation or imposition of discipline, the agency head shall immediately transmit to the DS [§ 8(b)(4)] a report, including:

¹⁸ Complaint is not defined.

- The officer's full employment history;
- A description of the events or complaints surrounding the resignation; and
- A recommendation by the agency head for POST discipline, including decertification or suspension of certification.

An agency head may freely make recommendations to POST. No law or collective bargaining agreement shall limit an agency head's recommendation to POST about the certification status of an officer after the agency's internal affairs procedure and appeal are completed. 6E, § 8(b)(5).

All previous agency disciplinary records must be submitted to POST. Before September 30, 2021, every law enforcement agency must provide POST with "a comprehensive disciplinary record" for every officer employed by the agency, including every complaint, all disciplinary records, and discipline imposed. In addition, before December 2021, POST will provide each agency with a list of all officers currently employed in Massachusetts. Each agency must find on that list any officer formerly employed by the agency and provide POST with his or her disciplinary record. See Section 99.

Division of Police Standards database. The DS will create and review a database to detect patterns of unprofessional police conduct. 6E, § 8(f).

Agency Certification

POST must certify all law enforcement agencies. The Division of Police Certification (DC) together with MPTC shall establish minimum certification standards for agencies. Of particular concern for POST certification are policies on [6E, § 5(b)]:

- Use of force and reporting;
- Officer code of conduct;
- Officer response procedures;
- Criminal investigation procedures;
- Juvenile operations;
- Internal affairs and complaint investigation procedures;
- Detainee transportation; and
- Collection and preservation of evidence.

Further, the agency must remain in compliance with the requirements of Chapter 6E and all rules and regulations promulgated by POST. 6E, § 5(c).

BIAS-FREE PROFESSIONAL POLICING

The public is given a right to bias-free professional policing. The new law defines bias-free policing, requires officers to comply with this standard, and allows the Attorney General or a citizen harmed by biased policing to bring a lawsuit.

Bias-free policing defined by 6E, § 1: “Policing decisions made by and conduct of law enforcement officers . . . shall not consider a person’s race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status¹⁹ or socioeconomic or professional level.” This definition does not include decisions made by, or the conduct of, law enforcement officers:

- Based on a law enforcement purpose or reason that is non-discriminatory, or that justifies different treatment; or
- Based on a person’s race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level because such factors are an element of a crime.²⁰

Bias as a basis for decertification, suspension, or retraining. When POST finds by *clear and convincing evidence* that an officer was biased against one of the protected classes set forth in the definition, POST may decertify or suspend the officer. 6E, § 10(b)(ii). Upon a lesser finding of *substantial evidence* that an officer was biased against one of the protected classes, POST may order retraining. 6E, § 10(d).

Bias as a basis for a state civil rights lawsuit. 12, § 11H(b) declares: “All persons shall have the right to bias-free professional policing,” which makes this a civil right. When a law enforcement officer is biased and, as a result, decertified, these consequences follow:

- The behavior violated 12, 11H(a), which sets out the elements of a state civil rights lawsuit; and
- Decertification removed the officer’s qualified immunity protection from a lawsuit.²¹

¹⁹ This marks the first time that “immigration status” has become a protected class in state laws applicable to policing.

²⁰ These important qualifications were added by the Governor.

²¹ The standard of evidence required to be decertified (clear and convincing evidence) is *higher* than the standard (preponderance of the evidence) required for an officer to lose the civil rights lawsuit in the first place.

OTHER DEVELOPMENTS

SEX CRIMES BY PUBLIC SAFETY PERSONNEL

The new law adds protections against sexual abuse for persons in the custody or control of public safety personnel.

Rape. Under new 265, § 22(c), rape includes sexual intercourse by public safety personnel with any person in their custody or control. Consent is not a defense. Public safety personnel specifically include all police officers, prosecutors, EMTs, deputy sheriffs, correction officers, court officers, probation and parole officers, constables, and anyone impersonating these officials.

Indecent A&B. Under new 265, § 13H½, the exact same public safety personnel previously mentioned are prohibited from completing an indecent A&B on anyone in their custody or control. Consent is not a defense. If victim 14 and over, SP NMT 5 years; if elder, disabled, intellectually disabled, or child under 14, SP NMT 10 years.

SCHOOL RESOURCE OFFICERS

School Resource Officers (SROs) will require special POST certification. 6E, § 3(b). Currently serving SROs may continue in that role, but must obtain certification by December 31, 2021. See Section 103.

6, § 116H directs the MPTC to provide in-service training to SROs in handling the behaviors and problems specific to youths, including police interactions and de-escalation efforts.

Restrictions on sharing gang or immigration information. Under 71, § 37L, SROs (along with other school personnel) are forbidden to share (formally or informally) with law enforcement agencies or officers, or with intelligence or gang databases, the following student (or family member) information:

- Immigration status;
- Citizenship;
- Neighborhood of residence;
- Religion;
- National origin;
- Ethnicity; or
- Suspected, alleged, or confirmed gang affiliation.

Important: *The information above may be shared to prevent or investigate a specific unlawful incident.*²²

There currently is a model MOU and standard operating procedures (SOPs) in effect for schools and SROs. Under 71, § 37P, enacted two years ago, much of this work has already been completed. See *LED's Juvenile Law Manual, Chapter 17* for complete SRO guidance.

LAW ENFORCEMENT FALSE CLAIMS

231, § 85BB punishes an officer who submits false information about hours worked for payment, or conspires with another to do so. Penalty: 3 times the amount of the fraudulent wages paid or HC NMT 2 yrs. Right of arrest: Complaint.

PUBLIC INFORMATION

More information will be a public record. The new law authorizes the immediate release of “records related to a law enforcement misconduct investigation.”²³ 4, § 7 cl. 26(c).²⁴

POST will host a public database of law enforcement officers. POST must maintain a searchable database of law enforcement officer records. POST will consider the “health and safety” of officers when deciding what should be available to the public. 6, § 4(j). The database will include information about decertified and suspended officers, along with those ordered to undergo retraining. 6, § 15.

22 It is also permissible to provide this information in reports to DCF under 51A; in reports to police chiefs regarding weapons on school grounds; in response to a court order or subpoena; or with the written consent of the student, parent, or guardian.

23 Agencies still may not release an officer’s home address, personal email address, and telephone number. 4, § 7 cl. 26(o).

24 See *Worcester Telegram & Gazette v. Chief of Police of Worcester*, 58 Mass. App. Ct. 1 (2003) (chief’s disposition memorandum to disciplined officer was protected from public disclosure, but not most of the IA investigation report).



Sir Robert Peel's 9 Principles of Policing

The essence of policing with perspective — originally developed in 1830.

1. The basic mission for which the police exist is to prevent crime and disorder.
2. The ability of the police to perform their duties is dependent upon public approval of police actions.
3. Police must secure the willing co-operation of the public in voluntary observance of the law to be able to secure and maintain the respect of the public.
4. The degree of cooperation of the public that can be secured diminishes proportionately to the necessity of the use of physical force.
5. Police seek and preserve public favor not by catering to the public opinion but by constantly demonstrating absolute impartial service to the law.
6. Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient.
7. Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.
8. Police should always direct their action strictly towards their functions and never appear to usurp the powers of the judiciary.
9. The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it.