

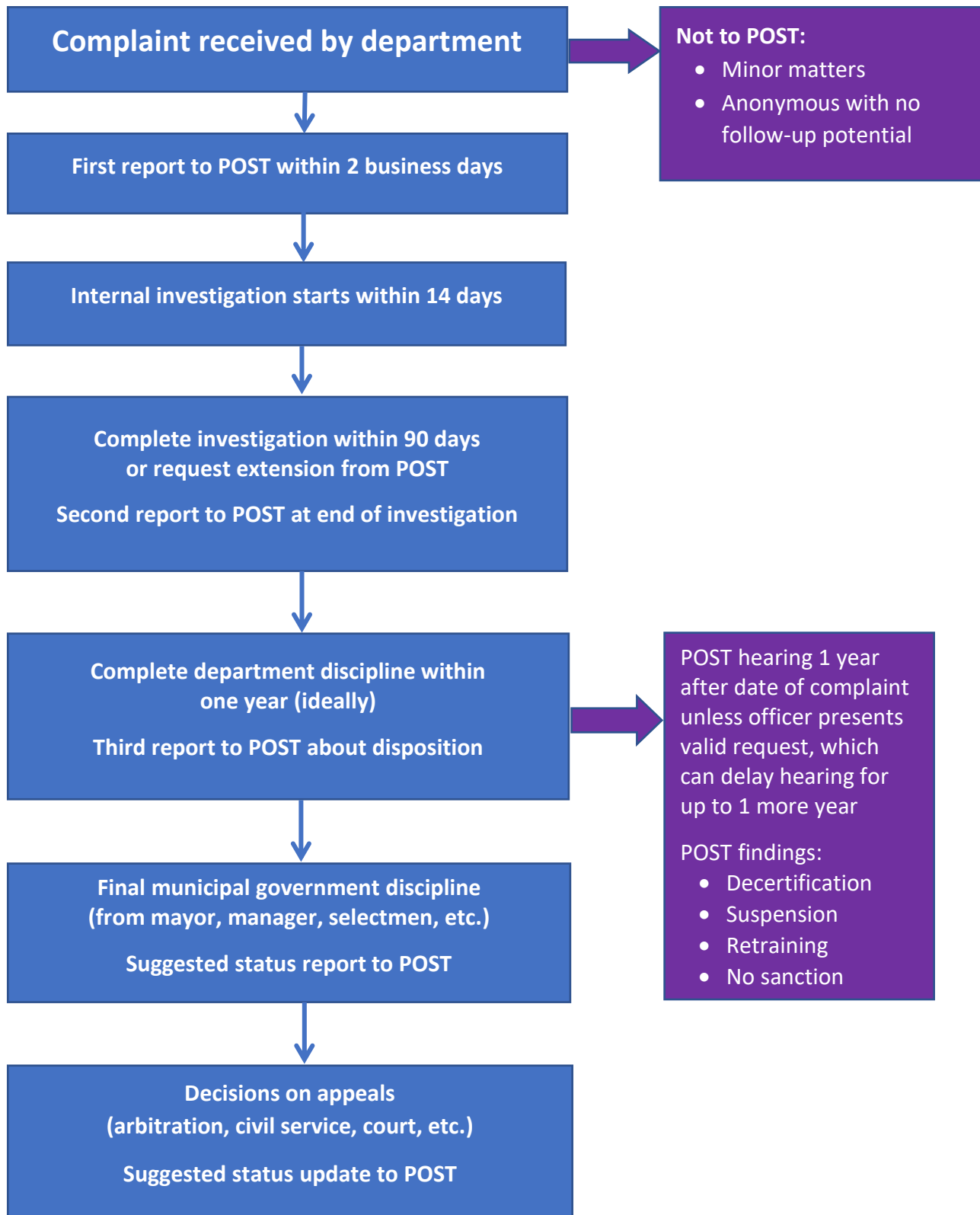
POST-COMPLIANT INTERNAL AFFAIRS INVESTIGATIONS



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

POST Process

Department Complaint — Investigation — Disposition



POST-Compliant Complaint Investigations

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Contents

POST-Compliant Internal Investigations

POST Oversight of Internal Investigations	1
POST Rules & Police Internal Investigations	2
Agency Action on Initial Complaint	2
What is a Complaint?	2
Complaint Intake	3
IA Policy Options Concerning Citizen Untruthfulness	5
Initial Report to POST on Complaint — First Report	8
Internal Resolution Policy for Minor Matters	9
POST Standards for Internal Investigations	10
Assigning an Investigator	10
Investigation Duties & Recommended Practices	11
The Internal Investigation	12
Investigation Burden of Proof & Dispositions	12
General Investigation Considerations	13
Sources of Evidence	14
Interviewing the Witnesses, Complainant, & Victim	16
Interviewing Officers	17
Immunity Concerns for Officers	18
Structure & Composition of the IA Report	20
Follow-up Reports to POST	21
Completed Investigation — Second Report	21
Final Agency Disposition — Third Report	22
Resignation During Investigation or Disciplinary Process	23
Update POST on Discipline Appeals	24
Routine Use of Force Reporting	24
Working with POST on an IA Investigation	25
Department Process After POST Discipline	25
Related Provisions	26
Action by POST on Complaints	26
POST Investigations	26
Decertification, Suspension, & Retraining	27
Interim Suspension	27
Timing of the POST Final Hearing	28
POST Hearings & Final Dispositions	29
Decertification, Suspension, or Retraining	29
Appeals of Non-Certification	31
Administrative Suspensions & Fines	31
Appeals	32
No Retaliation	32
Public Information	32

Appendix A: POST Reports

A1: Complaint Form

A2: Complaint Form

B: Initial Report of Complaint to POST

C1: Second Report (Investigation Complete) to POST

C2: Second Report (Witness List) to POST

C3: Second Report (Evidence) to POST

D: Third Report (Final Agency Disposition) to POST

E: Report to POST: Resigned Under Investigation/ Before Discipline

Appendix B: IA Forms

Form 1: Analysis of Conflict of Interest and Bias

Form 2: Internal Affairs Investigation Event Record Summary

Form 3: Internal Affairs Investigation Checklist, Internal Sources

Form 4: Internal Affairs Investigation Checklist, Internal Sources

Form 5: Administrative Interview

Form 6: Order-Notice-Rights

POST-Compliant Internal Investigations

POST OVERSIGHT OF INTERNAL INVESTIGATIONS

The Peace Officer Standards and Training Commission (POST) oversees police department investigations of officers. The commission has the authority to:

- Receive or demand information about complaints against an officer and other officer misconduct;
- Enact standards that a police department must follow as the department conducts its internal affairs (IA) investigations; and
- Review all IA investigations, conduct its own investigations of those same or other complaints, and — in addition to any department action — take its own administrative action regarding the officer's certification.
- Receive complaints about officers directly from the public.

Law enforcement agencies are themselves certified by POST. 6E, § 5. POST has the specific authority to provide certification standards, including for policies governing internal affairs and officer complaint investigations. 6E, § 5(b).

POST and MPTC have issued 555 CMR 1.00 to regulate IA investigations performed by all Massachusetts law enforcement agencies.

Police department internal investigations are meant to be completed before POST acts on a complaint. The police reform law does not replace department IA investigations with POST investigations! When there is a complaint about officer misconduct, the officer's own department has up to one year to complete its internal investigation and discipline process before the Commission may hold a disposition hearing.¹ 6E, § 10(h). The POST regulations set even stricter deadlines for a police department to do its work, and to report on that work to POST.

¹ The Commission may dispose of a complaint through decertification, suspension of certification, requiring retraining, or finding no cause to take action.

POST RULES & POLICE INTERNAL INVESTIGATIONS

The POST regulation on IA investigations divides a police department's work into three parts. Each part requires the department to file a separate report with POST. Those parts are: (1) taking the initial complaint, (2) conducting and completing the investigation, and (3) imposing department discipline for proven misconduct.

AGENCY ACTION ON INITIAL COMPLAINT

WHAT IS A COMPLAINT?

A law enforcement agency must document all complaints against an officer. A "complaint" is "any credible report, written or oral, evidencing or alleging the misconduct of an officer from a member of the public, personnel at the agency, or any other source." 555 CMR 1.01(1). This means that all complaints about an officer, whether from the public or generated inside the agency, must be documented.

What is "misconduct?" The simplest definition is that misconduct is a violation of a law that applies to a police officer in his or her duties, or of a law that would tend to affect the officer's ability or reputation, or a violation of a police department or employer policy governing the officer's performance of duty or behavior.

Is a supervisor's direct action regarding minor misconduct witnessed by the supervisor a "complaint?" Is it a report of misconduct?

There need be no report to POST when a supervisor:

- **Detects misconduct directly.** Hears, sees, or otherwise notes the problem *without* someone telling him or her about it;
- **Has the authority to act and does act to correct the problem.** The officer's conduct falls within a range of behavior that a supervisor is expected to correct and the supervisor does take action; and
- **Records the problem and the action taken.** Creating a record in the supervisor's notes is necessary.

Every other credible report of misconduct is a complaint if:

- A member of the public reports it to the police department; or
- A police officer reports it to a supervisor; or
- A police supervisor brings it to a more senior officer because the supervisor lacks the authority to properly investigate and impose discipline for the alleged conduct.

COMPLAINT INTAKE

Complaint intake from the public is critical. Department policy must provide direction.

Who must take a complaint from the public. Typically, only supervisors are required to take a complaint from a member of the public. Department policy must make clear which supervisors in which assignments must receive complaints and be strict in forbidding those supervisors from suggesting a complainant come back later or talk to someone else.

Employees not required to receive complaints must have department instructions on what to say. Even if the complaint is about the officer himself or herself, officers must respond to a citizen's question about making a complaint.

- "You can go to the police station and ask for the officer in charge."
- "You can call 781-555-1212 and ask to speak to the officer in charge."
- "You can go to www.alewife.police.com and click the FILE A COMPLAINT button."
- If a person demands more information, an officer should notify a supervisor.

See "Complaint Form, A1."

A form for receiving the complaint is necessary. Printed complaint forms should be available for supervisors to either use or to hand out to a person who does not wish to file immediately. The complainant may fill out the form or have the receiving supervisor assist. A best practice is to put the complaint form and instructions for filing on the department website as well.

The initial complaint report need not be exhaustive. In serious matters, an investigator's follow up interview will happen. But, because certain complaints require classification under POST's regulations, the complaint-taking supervisor should record statements that provide information about whether:

- The officer's conduct resulted in death or serious bodily injury;
- The officer's conduct included use of excessive, prohibited, or deadly force;
- The officer's conduct showed bias based on *prohibited characteristics* (see below).

If needed, the complainant or the complaint-taking supervisor may add pages to the complaint form.

If the complainant is anonymous, the complaint-taking supervisor must get all the information possible from the complainant. With an anonymous complainant, there may be a follow up investigation.

A photocopy of the initial complaint form should be given to the complainant as a receipt.

See "Complaint Form, A2"

A department must report to POST on the demographic characteristics of the alleged victim. 555 CMR 1.01(b)4. A second part of the initial complaint form, one that is not provided to the complainant, should address complainant demographics and internal procedure.

The characteristics of concern, from 6E, § 1, are those upon which a police decision generally may not be based (**prohibited characteristics**): **race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status, or socioeconomic or professional level.**

The supervisor taking a complaint is *not* required to *ask* the complainant for this information, probably because it may cause offense or suspicion with some complainants. 555 CMR 1.01(1)(b)(4). A complaint taker may gather this demographic information by listening to the complainant's statements about the incident, by asking if the complainant knows why the officer behaved as he or she did, and, if the complainant is the alleged victim, by directly observing the complainant's obvious demographics. The complaint-taking supervisor should record these observations on the second part of the complaint.

For comparison, POST has provided its own online opportunity for people who wish to complain about an officer directly to POST: <https://policecomplaints.mass.gov/complaint>.

Actions taken by reporting supervisor. In addition to taking the report, further action may be required by a supervisor. These actions should be recorded on the internal portion of the complaint form. Specifically:

- **Notice to a superior officer.** Department policy should provide guidance on when a reporting supervisor must contact a superior officer, such as when a serious or ongoing crime has been reported in a complaint or when immediate investigative action by a superior officer may be needed. The reporting supervisor should record this on the internal portion of the complaint.
- **Preliminary investigation.** A complaint may concern the actions of an officer that are occurring at the time of the complaint or has just occurred. Policy may give the reporting supervisor a duty to gather information or evidence immediately to confirm or contradict facts provided by the complainant or evidence that is contraband or perishable. These actions by the supervisor should be recorded.
- **Action on minor matters.** Complaints about “**minor matters**” (see below) do not require a report to POST. The regulation intends for them to be handled purely within the department pursuant to policy. 555 CMR 1.01(1)(a). If the subject of a complaint is an officer under the control of the complaint-taking supervisor, it is appropriate for that supervisor to handle the complaint immediately when possible. To do this, supervisors need policy and training on what a minor matter is and is not, and on the department's rules about disposing of minor matters. Immediate action should be recorded on the internal portion of the complaint.

IA POLICY OPTIONS CONCERNING CITIZEN UNTRUTHFULNESS

Option 1: All complainants sign an intake form “under the penalties of perjury”

G.L. c. 268, § 1A makes it a crime to sign any written declaration “under the penalty of perjury.”² *Galvin v. Town Clerk of Winchester*, 369 Mass. 175 (1975). The document does not have to be handwritten. *Comm. v. Cervený*, 373 Mass. 345 (1977). The document does not have to be a formal affidavit or other writing prepared by a judicial officer.³ *Comm. v. Zhan Tang Huang*, 87 Mass. App. Ct. 65 (2015) (defendant lied in his homeowner’s insurance policy that his rental property was owner-occupied).

The lie in the written statement must be about a significant fact concerning the allegation of officer misconduct. See *Comm. v. Kelley*, 33 Mass. App. Ct. 934 (1992).

As a result, it is legally possible for a police department to require that civilian complainants sign a written statement or complaint form with a “perjury warning.” Any citizen who then lies about an important aspect of their misconduct allegation would be eligible for perjury prosecution.

While this approach is legally feasible, the overwhelming view in contemporary policing is that having a “perjury warning” is a bad idea because it does more to prevent citizens from making a report in the first place, than it does to prevent dishonest claims against officers.

The IA function serves as “the primary method of reassuring the community that the police can and will aggressively address and resolve unethical behavior.”⁴ At least at the initial stage, the goal is to avoid intimidating citizens who have taken the often difficult step of reporting officer misconduct.⁵ This is especially true in cases where, as sometimes happens, the IA complainant was involved in illegal, even immoral, conduct at the same time he experienced police misconduct.⁶ An open IA process can accomplish the goals of: (1) learning about the majority of potential police misconduct incidents; (2) without sabotaging the prosecution of complainants for the crimes they commit; while (3), at the same time, later pursuing charges against complainants in those cases where they knowingly abused the IA process by clearly lying.

2 268, § 1A reads: “No written statement required by law shall be required to be verified by oath or affirmation before a magistrate if it contains or is verified by a written declaration that it is made under the penalties of perjury. Whoever signs and issues such a written statement containing or verified by such a written declaration shall be guilty of perjury and subject to the penalties thereof if such statement is willfully false in a material matter.” The penalty for perjury appears in 268, § 1. The offender may be punished by state prison for up to 20 years, or the house of correction for up to 2½ years, and/or a fine up to \$1,000.

3 Verbal perjury, under oath, is different. Unlike written perjury, it is limited to a formal judicial or legislative proceeding. *Comm. v. Dawson*, 399 Mass. 465 (1987) (police officer, accused of stealing cocaine from the evidence locker, repeatedly lied in a transcribed statement given under oath to a State Police lieutenant in the District Attorney’s office; this did not qualify as perjury).

4 U.S. Department of Justice, Office of Community Oriented Policing Services, *Building Trust Between the Police and the Citizens They Service: An Internal Affairs Promising Practices Guide for Local Law Enforcement*, page 3.

5 See, e.g., *City of Boston v. Boston Police Patrolman’s Association*, 443 Mass. 813 (2005).

6 Recently, consent decrees from the Justice Department even recommend that departments, during use of force (UOF) investigations, provide suspects with a separate interview and immunity so they feel free to discuss the officers’ use of force without feeling pressured that their statements will compromise the underlying criminal prosecution against them for the crimes they committed prior to police involvement.

Contrary to what some officers, especially union officials, believe, the action of documenting a complaint does not mean that there is a presumption of officer wrongdoing. It is the opposite. Nationwide experience shows that departments that openly receive and review officer complaints from a variety of sources (including anonymous) — without pushing a “perjury warning” at citizens — are no more likely to discipline and punish, yet they enjoy a higher level of citizen credibility *when they do decide in an officer’s favor*.⁷

Option 2: Complainants are not warned initially but, after investigation, cases of dishonesty may be prosecuted. Rather than provide a blanket “perjury warning” to every citizen that reports misconduct, and risk losing valuable input about officer behavior, the better practice is to deal with complainant dishonesty *after* the preliminary investigation when it is typically identified and confirmed. This allows the IA investigator to assess the extent and content of any lies, and to seek command and/or prosecutorial input about the best approach. It is important that officer representatives understand: The ability to charge and prosecute offenders who abuse the IA process is not compromised by waiting until the investigation is complete.

Offenses relevant to those citizens who lie to IA are:

- **Obstruction of Justice. 268, § 13B.** Among other things, this complex statute prohibits any citizen from: (1) directly or indirectly misleading; (2) a police officer; (3) with the intent to interfere or “harm”; (4) any criminal investigation. This is a felony punished by up to 10 years in prison, 2½ years in the house of correction, and/or a fine between \$1,000 and \$5,000.

The SJC defined the term “mislead” in *Comm. v. Figueroa*, 464 Mass. 365 (2013), a case where the defendant was convicted of lying to his parole officer about his whereabouts on Halloween night. “Mislead” means:

- Knowingly making a false statement; or
- Intentionally leaving out information to create a false impression; or
- Deliberately recommending that authorities rely on a false written statement,⁸ photograph, or other item.

Proof of a defendant’s motive for lying is not required. *Comm. v. Fortuna*, 80 Mass. App. Ct. 45 (2011) (Fortuna claimed that he was shot from far away when police responded, but gunshot residue on his clothing proved that he lied. Either he had been shot at close range and knew his attacker, or his wound was self-inflicted by an unlawfully possessed firearm).

Also, retracting a false statement does not negate the original crime. *Comm. v. Caminero*, 2015 WL 4249147 (Appeals Court) (defendant was still guilty of misleading a police officer even though she voluntarily told police that, two days earlier, she had lied to officers about her brother’s whereabouts after an arson in which he was a suspect).

⁷ Issues surrounding the “sustain rate” are discussed at length in Walker, S., *Police Accountability: The Role of Citizen Oversight*, pages 120–122 and 134–135.

⁸ This basis for punishment would apply to an intake statement produced for IA even without the “perjury warning” mandated by 268, § 1A. Officer representatives may see this as a good compromise because 268, § 13B accomplishes legally what the “perjury warning” does, without “chilling” legitimate citizen reports.

As you can see, 268, § 13B is very effective in the internal affairs context because most false allegations about police officers involve criminal conduct – e.g., “I came because the officer punched me”; “The officer lied in his report that I had cocaine in my pocket”; etc. The minute a dishonest citizen alleges police crime, the lie misleads the investigating officer from IA about a criminal investigation. *Comm. v. Paquette*, 475 Mass. 793 (2016) (to qualify as misleading, the defendant’s statement has to be a lie or incomplete in a way that is likely to lead the investigator in the wrong direction).

- **False Report of Crime to Police. 269, § 13A.** This offense is a misdemeanor punishable by up to 1 year in the house of correction. Applied to internal affairs, a violation occurs when a complainant: (1) intentionally makes, or causes another person to make, (2) a false report of a crime, (3) to the police.

Comm. v. Fortuna, 80 Mass. App. Ct. 45 (2011) clarified that § 13A requires a “substantially inaccurate” account of a crime — not just an untrue detail about it. See, e.g., *Comm. v. Salyer*, 84 Mass. App. Ct. 346 (2013) (defendant gave police a copy of a threatening email she claimed was sent by her ex-boyfriend; she obviously fabricated the email because her ex-boyfriend’s email address for the past 10 years was misspelled). *Comm. v. Dahdah*, 2014 WL 470358 (Appeals Court) (defendant falsely told police that a Burger King manager had grabbed his arm and twisted it behind his back; witnesses stated that the manager never touched the defendant and that he had threatened to make the report if the manager called police).⁹

- **Conspiracy. 274, § 7.** In the rare instance where a dishonest complaint is the product of citizen collaboration, the offense of conspiracy might also apply. The punishment varies depending on the crime that is the object of the conspiracy.¹⁰

A conspiracy is complete at the time of agreement — no overt act is necessary. *Comm. v. Royce*, 20 Mass. App. Ct. 221 (1985) (conspiracy found when defendant suggested robbery and negotiated a 10% share; fact that he did not participate in actual robbery was irrelevant). Conspiracy must often be proven by circumstantial evidence because there is no direct evidence of agreement. *Comm. v. Taskey*, 78 Mass. App. Ct. 787 (2011).

- **Perjury. 268, § 1 and § 1A.** Finally, in extreme cases, where a false allegation of officer misconduct has been presented to the grand jury under oath, the law of verbal perjury would apply.¹¹

Conclusion. To satisfy the goals of IA — encourage citizens to come forward and deter dishonest reports — a department should *not* impose a blanket “perjury warning” on its complaint form. Instead, it should openly receive any citizen complaint and then, if investigation reveals significant dishonesty, pursue appropriate criminal charge(s) after consultation with the District Attorney. This strategy will maintain community support while deterring and punishing those citizens who lie about officers.

⁹ Notice how, unlike the felony of 268, § 13B, false report under 269, § 13A does not require that the lie have the potential to mislead the police. Even if the police know the truth up front, and the offender still presents the false report, prosecution under 13A is still in play. Compare *Comm. v. Paquette*, 475 Mass. 793 (2016).

¹⁰ See Law Enforcement Dimensions’ 2022 *Criminal Law Police Manual*, page 2-9.

¹¹ See Law Enforcement Dimensions’ 2022 *Criminal Law Police Manual*, page 35-17.

INITIAL REPORT TO POST ON COMPLAINT — FIRST REPORT

See “*Initial report of complaint to POST, B*”

Complaint review, categorization, assignment, and initial report to POST. Because the department must report many complaints to POST within two business days of receipt [555 CMR 1.01(1)], the agency will need a policy to accomplish a swift review of each. The reviewer will apply the correct category (according to the regulation) and transmit the complaint to POST. The POST regulations require the department to assign the complaint for investigation. The person overseeing IA investigations is a good choice for complaint review, but the two day deadline for a report to POST means that policy must identify an alternate reviewer to cover absences. The reviewer can record his or her review on the internal part of the complaint, apply the complaint category, and direct the next step before signing the form.

There are three paths for a complaint: minor, anonymous, and everything else — plus patterns. The decision on what category a complaint belongs in must be made within two business days by the reviewing supervisor.

- **Complaints about minor matters do not get sent to POST.** 555 CMR 1.01(1)(a). Minor matters include discourtesy and basic work rule violations (e.g. tardiness, inattention to detail, equipment violations, grooming violations) or comparable infractions. Minor matters should be resolved under a department’s “internal resolution policy” 555 CMR 1.01(1)(a)(i). (See below for **internal resolution policy** suggestions.)

Minor matters never include an allegation pointing at an officer’s bias against the **prohibited characteristics**, or an allegation of **excessive, prohibited or deadly force**, or an allegation of conduct resulting in **serious injury or death**. 555 CMR 1.01(1)(a). These are always part of the “everything else” that must go to POST.

- **Anonymous complaints** (i.e., the complainant is unknown) that do not provide an adequate basis for further investigation, must be documented by the agency but need not be sent to POST. 555 CMR 1.01(1)(c)(i). If the complaint provides information that may be confirmed or discovered without help from the anonymous complainant, then the complaint will fall either into the minor matters or everything else category, and will be handled accordingly.
- **The agency must send everything else to POST within two business days.** 555 CMR 1.01(1)(b).
- **An agency must also send to POST “any pattern of complaints”** alleging an officer’s misconduct. 555 CMR 1.01(1)(c)(iii). The reviewing supervisor will need access to check for previous complaints (not just those that have been sustained). Since everything else already must go to POST, this means that minor matters and anonymous complaints about an officer must be considered under this standard.

Since “pattern” is not defined in the regulation, it is reasonable to suggest that three or more generally similar complaints are a pattern.

Exception on reporting to POST: Active criminal investigations. An agency need not forward to POST nonpublic, investigatory materials when disclosure to POST would necessarily prejudice effective law enforcement and would also be not be in the public interest.¹² 555 CMR 1.01(1)(c)(ii).

A decision under this exception should be examined carefully. The exception does not cover all criminal misconduct reported about an officer, just dissemination of information that would endanger an actual or likely criminal investigation.

The department's initial complaint report to POST. 6E, § 8(b)(1) and 555 CMR 1.01(b). Within 2 business days, the agency shall transmit to POST's Division of Standards (DS) information about a complaint on a form prescribed by POST.¹³

- A description of the original complaint and a copy of any written complaint;
- The name and certification number of the subject officer;
- The date and location of the incident;
- Whether the victim possesses one or more of the **prohibited characteristics** or has “any other relevant demographic information” if volunteered by the victim;
- Whether the complaint alleges that the officer's conduct:
 - Was biased on the basis of one of the **prohibited characteristics**;
 - Was unprofessional;
 - Was excessive, prohibited, or involved deadly force; or
 - Resulted in serious bodily injury or death.

At its discretion, a department may forward any complaint to POST. 555 CMR 1.01(1)(c)(iv). A decision to do this should come from the chief or a supervisor specifically given this authority.

INTERNAL RESOLUTION POLICY FOR MINOR MATTERS

POST leaves resolving complaints about minor matters to the department. A department should have a policy for how to handle complaints about minor matters. These smaller infractions may or may not require some investigation, but are the sort of concerns that likely will end in counseling, training, oral warning, or written reprimand — unless they are part of a pattern.

The basics of a policy for resolving a minor complaint. The regulation states this policy must comply with POST guidelines, which have yet to be published. In the meantime, a department policy for minor matters should provide:

- The complaint is documented;

¹² This language generally tracks the language for the “investigatory” exception to the definition of public records found in 6, § 9 cl. 26(f).

¹³ No form has been prescribed yet. Currently departments are directed to email the report to POST.

- A supervisor investigates, if necessary, or at minimum speaks with an officer about the complaint;
- What the supervisor says is documented;
- What the employee says is documented; and
- Any personnel action, if there is one, is documented.

A department without a compliant policy for resolving minor matters must preserve documentation for later review by POST.¹⁴

POST STANDARDS FOR INTERNAL INVESTIGATIONS

A department must investigate any complaint it sends to POST. The work should begin as soon as possible, but no later than 14 days. 555 CMR 1.01(2)(a).

Delays caused by another agency's investigation. If the agency cannot commence its investigation because of another governmental body's investigation, the agency shall promptly request an extension from POST, supported by reasons for the delay and a proposed schedule for the investigation. 555 CMR 1.01(2)(a).

ASSIGNING AN INVESTIGATOR

See **"Analysis of Conflict of Interest and Bias, Form 1"**

An "investigator" must handle certain complaints. Allegations concerning officer-involved injury or death,¹⁵ improper use of force, or biased conduct shall be assigned to an investigator¹⁶ employed by the department or retained from outside the agency. The investigator must report to the agency head or a direct subordinate of the agency head. 555 CMR 1.02(2)(b). Other complaints may be handled by personnel besides an investigator, such as the officer's supervisor.

The investigator and the investigator's supervisor must be free of conflicts or bias. An investigator "shall be free from conflict of interest, bias, prejudice or self-interest." 555 CMR 1.01(2)(b). Furthermore, an agency head or immediate subordinate is "unable to supervise the investigator" if that person [555 CMR 1.01(2)(b)]:¹⁷

- Is the subject of the complaint or implicated by it; or

¹⁴ The department must preserve, for POST to look at later, the complaint, identification information about the officer, a summary of the conduct that is the subject of the complaint, any related documents material to understanding the complaint, and how the agency handled the complaint. 555 CMR 1.01(1)(a)(3)(b).

¹⁵ "Officer-involved injury or death" is defined in 6E, §1. This long definition is covered below in this booklet under the heading "ROUTINE USE OF FORCE REPORTING."

¹⁶ Investigator is not defined, but probably means someone other than the officer's supervisor. POST may, in a future advisory, provide qualifications.

¹⁷ In any instance where a person has a conflict precluding that person from exercising authority, the duties shall be exercised by the next most senior supervisor in the agency. If there is no such supervisor without a conflict, then a person must be designated by the most senior disqualified official's appointing authority. 555 CMR 2.03(6).

- Has conflicts of interest; or
- Has the potential for bias, prejudice, or apparent or perceived self-interest.

These ethical standards must be carefully assessed. A state regulation now imposes a requirement that the investigator be free of involvement in the complaint, bias, prejudice, or self-interest. Also, a person, including the chief, is not permitted to supervise the investigation if he or she does not meet this standard as well! This test is not limited to a conflict of interest or self-interest in regards to the victim or complainant or witnesses. The test also applies to the officer being investigated. Family or business connections or competitions for promotions or positions within the department may bar an investigator, the investigator's supervisor, or even the chief from having a role in the investigation. (See Chapter 268A for the definitions, procedures, and penalties related to public employee conflicts of interest.)

Policy should address potential conflicts in advance. Among the options:

- **For investigators:**
 - Form a mutual aid agreement with another department to provide an investigator; or
 - Hire an independent, private investigator.
- **For the investigation supervisor:**
 - Defer investigation supervision upward to the next level of government; or
 - Form a mutual aid agreement with another department's chief to supervise; or
 - Hire an independent, private investigator or attorney for this purpose.

INVESTIGATION DUTIES & RECOMMENDED PRACTICES

See "Internal Affairs Investigation Event Record Summary, Form 2"

Notice to officer subject to investigation. As soon as reasonably possible *after* taking all steps necessary to preserve all potential evidence, and to the extent it will not prejudice the internal investigation, the investigator will notify the subject of the investigation and that officer's collective bargaining unit. 555 CMR 1.01(2)(c)(ii).

See "Internal Affairs Investigation Checklist—Internal Sources, Form 3 and Internal Affairs Investigation Checklist—External Sources, Form 4"

Investigators shall act to preserve all forms of evidence. 555 CMR 1.01(2)(c)(i). Evidence includes documents, e-mails, text messages, photographs, audio and video recordings, and the like. All forms of evidence must be considered by the investigator.

Interviews by investigators shall [555 CMR 1.01(2)(c)(iii)]:

- **Include all relevant witnesses** (the complainant, victim, subject officer, other officers and persons present);
- **Be audio recorded if feasible** [Note: This is an essential best practice];

- **Permit the opportunity for representation** by counsel, union officials, or “other representatives” to the extent they would be permitted representation by agency policy or “other applicable authority,” and
- **Provide translation services at agency expense when necessary.**

The investigation shall be conducted confidentially to the extent permitted by law. 555 CMR 1.01(2)(d).

The investigation shall be completed within 90 days of receipt of the complaint. If the department believes more time will be needed, it should notify the DS promptly within the 90 days and provide the reasons for the extension together with a schedule for completion. 555 CMR 1.01(2)(e).

THE INTERNAL INVESTIGATION

INVESTIGATION BURDEN OF PROOF & DISPOSITIONS

In an internal investigation, the civil “preponderance of the evidence” standard applies. The burden is on the police department to prove that it is more likely than not that the accused officer engaged in misconduct. When the 51 percent or greater standard is reached, the department may take disciplinary action against an officer including termination.

The investigator and department should look at the investigative findings from the perspective of a neutral hearing officer. The department is not required to present its findings to a neutral hearing officer, but an appeal of disciplinary action does go to an arbitrator, a civil service hearing officer, or a judge. Keeping in mind how the evidence will look to that official helps ground an investigation in the practical world.

Traditional dispositions of misconduct allegations. The investigation into allegations determines that they are sustained, not sustained, unfounded, or exonerated:

- **Sustained** — The investigative findings are that the factual allegations are substantially true and the conduct violates a department policy and/or law.
- **Not sustained (or unsustained)** — The investigation could not establish by a preponderance of the evidence that the factual allegations are true.
- **Unfounded** — The investigation established that the factual allegations were not true or did not involve department personnel.
- **Exonerated** — The investigation established that the factual allegations were substantially true, but the alleged conduct complied with department policy and/or law.

A single allegation may be broken down into partial complaints or partial findings. The complaint: “Officer Smith arrested me when I had not done anything wrong. He used excessive force when he did, and then struck me in the face at the booking desk while I was handcuffed. Sergeant Jones saw me being slapped and did nothing.” The investigation could determine the proper complaint dispositions are:

- **Exonerated** as to wrongful arrest (there was probable cause for an arrestable offense);

- **Not sustained** as to excessive force during the arrest (there were no outside witnesses or video evidence, the officer and complainant provided different but independently credible stories, and the physical and other evidence favored neither side);
- **Sustained** as to the being struck in the face at booking (video showed the slap and that there was no resistance by the prisoner to justify it); and
- **Unfounded** as to Sergeant Jones (the sergeant was on video in the sally port at the time when Officer Smith slapped the arrestee).

GENERAL INVESTIGATION CONSIDERATIONS

Local rules concerning investigations. In addition to POST regulations, collective bargaining agreements, personal employment contracts, and municipal or other regulations may apply to investigations, including about notice to the officer that an IA investigation has commenced.

Employer sexual harassment or discrimination investigation policies. Most IA investigations operate under a police department policy, but it is common for the larger government (or institution) employer to have a policy regarding complaints about misconduct like sexual harassment. These policies may require actions or reporting structures different than the department's IA policy.

Parallel criminal and IA investigations. When an officer faces both criminal and IA investigations for the same conduct, typically there will be two investigators or teams, one for each investigation. This is fair since there are different interests in each type of investigation. Often investigators can share information and even conduct joint interviews. However, if the internal investigator becomes privy to evidence protected by **use immunity** (see below), the sharing must stop because there is a risk that information protected by immunity will pass from the internal investigator, where it is permissible, to the criminal investigator, where its use is prohibited.

Perspectives on parallel investigations:

- **The officer's position.** The officer's attorney will usually say the officer is not free to respond to internal affairs questions while a criminal investigation or case is pending, therefore, the internal investigation should wait until after the criminal investigation is completed. However, even after an investigation or case is concluded, an officer still may choose to assert constitutional rights against self-incrimination.
- **The district attorney's position.** When it is overseeing an investigation, the prosecutor's office may prefer to avoid any potential conflict with the criminal investigation or the prosecution may have with an IA investigation, particularly if the IA gathers information protected by use immunity.
- **The department's position.** A police department has a personnel problem to deal with.
 - Waiting for a criminal investigation and prosecution to conclude may take years, during which time the officer is likely on paid administrative leave.¹⁸

¹⁸ If the officer is indicted for misconduct in office, he or she may be suspended without pay. 268A, § 25.

- The longer the internal investigation is delayed, the harder may be to obtain information.
- The department's stakeholders may not understand a delay in determining whether an officer is unsuitable for employment.
- The criminal conviction standard of proof beyond a reasonable doubt is irrelevant to the lower threshold, preponderance of the evidence, applicable to the employment decision the department will make.

Issues when the complainant is a criminal defendant. When a criminal defendant is the complainant, victim, or even witness about the officer involved in the case, the investigation will produce information that the prosecutor must know about to consider for discovery. The fact there is an IA investigation must be communicated to the prosecutor. If and how the IA information gets to the defendant in the criminal case will be a matter for the prosecutor and the court to determine.

Interview of a potential or current criminal defendant. When a person makes a complaint against a police officer, that person does not lose their protection against self-incrimination. With this in mind:

- **Avoid conducting an IA interview in the police station when a person may be criminally charged in the future.** This will help avoid having to administer a *Miranda* warning.
- **If the complainant, victim, or witness is in custody, attention to *Miranda* is required.** A prisoner who complains about an officer typically initiates or re-initiates contact with the police. Fresh *Miranda* warnings and a waiver will be required.
- **If a complainant, victim, or witness has been arraigned or indicted, Article 12 rights have attached.** The investigator should contact the person's attorney prior to an interview.

All statements made by a person who is a criminal defendant must go to the prosecutor in their criminal case.

Working with the police department's attorney. Police officers know how to investigate crimes, but it is assistant district attorneys who turn a criminal investigation into a criminal case. In a similar way, it is the city or town solicitor, or an attorney contracted for this purpose, who turns an internal investigation into a case that can be won at arbitration, before the civil service commission, in court, or even resolved by agreement.

An internal investigator may be an experienced police officer and understand the criminal court environment very well, but should understand that labor and employment law have many complex features. Communication with and advice from the police department's attorney during a serious internal investigation is wise.

SOURCES OF EVIDENCE

Decisions about gathering evidence. Some evidence is easy to get. Other evidence is difficult to obtain. It is natural to have one eye on the seriousness of the allegation — i.e., the potential consequences of the reported misconduct for the complainant, the officer, the department, and the public — and the other eye on the importance of particular evidence to resolving facts relevant to the complaint.

Evidence inside the police department (See “IA Checklist Internal Sources”):

- **Consider all written records**, from the dispatcher’s call entry through the officer’s report or reports. Do not neglect supplemental reports, like tow slips, property inventories, etc. Do not neglect checking the log of electronically recorded changes for reports.
- **Consider all communications records**, from recordings of telephone calls to radio transmissions to MDT transmissions (including time stamps). Also, department emails and text messages on department-owned phones may prove useful.
- **Consider video records**, from officer body cameras to police station security cameras.
- **Request additional reports as needed**. Subject officers, witness officers, and supervisors may be directed to report in a “to-from” interdepartmental memorandum on relevant activities on duty.
- **Conduct interviews as needed** of subject officers, witness officers, and supervisors.

Evidence from outside the police department (See “IA Checklist External Sources”):

- **Written records**. Documents from other LE agencies, other town or college departments, court records (including transcripts), and incident reports from many other government and organizational sources may bear on the investigation.
- **Video recordings**. Many allegations nowadays are accompanied by videos purporting to show misconduct. Be ready to preserve recordings whether delivered from the public directly, posted to websites (noting the source and any statements which might accompany posted video), or simply discovered among the many potential sources of surveillance video.
- **Communications records**. Communications (texts, emails, direct messages, etc.) from or to the subject officer may be provided to the investigator. (Seeking such records when they are not provided voluntarily requires additional action.)
- **Court hearings**. Attend 209A, harassment prevention order, and motion hearings, or trials.
- **Interview witnesses**. Actively inquire about witnesses and seek interviews.
- **Interview the complainant**. As information is gathered from all sources, it may be necessary to speak to the complainant or victim more than once. *Note*: The refusal of a complainant to speak to the investigator cannot, by itself, end an investigation in the POST era. Noncooperation by the complainant may deprive an investigator of facts, but noncooperation, or even a request to withdraw the complaint, does not permit police to terminate the IA investigation on this basis alone.

INTERVIEWING THE WITNESSES, COMPLAINANT, & VICTIM

POST regulations require recorded interviews.

- **Do not ask permission to record.**¹⁹ The best practice is to turn on the device and tell subjects they are being recorded. There is no need to ask for permission. *Comm. v. Alleyne*, 474 Mass. 771 (2016). If the subject objects, explain that the law directs you to record the interview and that it is fair. If the subject still will not consent, record the subject's statement that he or she will not go through with an interview that is recorded — then turn off the recording device, conduct the interview, and document it in writing.
- **Record entire interview.** "[T]here is a potential for abuse if the recorder is started and stopped . . . The [best] practice is to record the entire interview, including the [subject's] silences and emotional outbursts." *Comm. v. Fernette*, 398 Mass. 658 (1986).
- **Explain any time the recorder is shut off.** For example: "Okay, I am going to shut off the recorder so that Candace Complainant can eat lunch. It is 12:24 p.m. by my watch. [Tape is shut off . . . then turned on] We are now resuming the interview with Candace Complainant. It is 1:15 p.m. and we are still located in the first-floor interview room of the Alewife Police Department. So Candace, we were talking about Officer A's visit to your home on October 10th . . ."
- **Alternative location.** Consider an interview location away from the police station if the complainant/witness is legitimately afraid or at risk.

Basic framework for an effective IA interview:

- **Minimize anxiety.** Outside of the interview room, thank the subject for coming, etc.
- **Introduction on recording.** Show professionalism, courtesy, and neutrality.
 - Establish purpose for recording; date, time, IA number, and individuals in the room.
 - Basic background of subject — name, cell number, address, etc. (Tip: If subject shows resistance in giving this information, move on and come back to it at the end.)
 - If complainant, ask why and how they filed complaint (Goal: Learn motivation; whether represented by counsel; and whether department properly received complaint.)
 - Go over IA process.
- **Interview process.**
 - *Start with open-ended questions.* For example, "I want to learn everything you can tell me about what happened [during the car stop] [when police came to your home] [that made you file this complaint] . . . Please start where you think you should start and end where you think you should end." Try not to interrupt the narrative, merely prompt with, "What happened next?" The narrative form will take more time but it also provides more information *and* has a better chance of allowing an investigator to detect when parts of the story have been omitted or added.

¹⁹ 272, § 99 requires only that the recording not be secret.

- *Close-ended questions* help elicit more detailed, focused information — e.g., “What color was the car?” “Do you remember exactly what the officer said when you were leaving?” “Did you go to the hospital?”
- *Conclusion.* “Is there anything else I should have asked?” Also, find out the goal of the complainant (consider mediation); explain next steps in the process; and thank the subject.
- **Other issues.**
 - *Mark exhibits prior to interview.* This creates a clear record when someone later listens to the tape or writes their report — e.g., “I’m showing what’s been marked as Exhibit 1. Do you recognize it?” Answer: “Yes, that’s a police incident report written by Officer C.”
 - *Describe motions, visual acts* — e.g., “Candace Complainant is making a punching motion with her left hand.” “William Witness is making a hard kicking motion with his right leg.”
 - *Avoid leading questions* which can distort the subject’s memory because they contain suggested facts — e.g., “Was the car red?” “Did the officer demand that you pay him \$200 in 10’s and 20’s?”
 - *Don’t argue with the subject.* Instead of interrupting during the narrative, take notes about inconsistencies, then ask about those issues later on during or at the end of the interview — e.g., “Help me understand . . . Why would . . . ?” “Another witness said this . . . Are they lying . . . ?” “Did you sign a complaint form two weeks ago? Why did you not mention that Officer T drew his gun and pointed it at you?”
 - *Don’t ask rapid fire questions.* Let the subject answer. The perception is that the interviewer is being unfair to the subject. Take your time!

INTERVIEWING OFFICERS

See the “Administrative Interview, Form 5”

Officers are required to attend an interview and provide information. The department’s investigator may ask questions that are narrowly and specifically drawn regarding the officer’s performance of duties, professional responsibilities, and fitness to perform those duties. Failure to answer questions may be grounds for disciplinary action, up to and including termination. *Carney v. City of Springfield*, 403 Mass. 604 (1988).

Right to union representative. When an officer who is a union member has a reasonable belief that an interview may lead to disciplinary action, he or she has the right to have a union representative present during the interview. *National Labor Relations Board v. Weingarten*, 420 U.S. 251 (1975). These *Weingarten* rights are as follows:

- The department does not have to advise the officer of this right, but needs to honor it upon request.
- The right belongs to the officer, not to the union.
- The union representative may be another member, union officer, business agent, or union attorney.

- The choice of representative belongs to the officer, within reason, but the department does not have to permit the presence of a representative who is also a target or witness in the same investigation.
- An officer being interviewed as a witness, and who is not subject to disciplinary action, does not have a right to a union representative *unless* the nature of the interview changes to one that is accusatory.

IMMUNITY CONCERNS FOR OFFICERS

Constitutional rights against self-incrimination. Like all citizens, police officers have rights under the United States and Massachusetts constitutions not to incriminate themselves. These federal and state rights have different consequences for an internal investigation. If there is potential that officers may have committed a crime, officers have the privilege not to answer questions that may incriminate.

- **Fifth Amendment — use and derivative use immunity.** When a government investigator demands that a government employee answer a question or face discipline for failing to do so, this is authorized *unless* the answer might incriminate the officer in criminal conduct. Then, the officer may assert his or her Fifth Amendment privilege.

Under *Garrity v. New Jersey*, 385 U.S. 493 (1967) and *Gardner v. Broderick*, 392 U.S. 273 (1968), a government employer has the power to require employees to talk about how they have done their jobs as long as the employer grants *use and derivative use immunity*. *Use immunity* means that any compelled statement may not be used in a criminal case against the employee. The department may only use the statement against the employee for discipline purposes.

Derivative use immunity means that the employer may not also use evidence later discovered or derived from the employee's original compelled statement.²⁰

- **Article 12 — transactional immunity.** *Carney v. City of Springfield*, 403 Mass. 604 (1988) explained that Massachusetts' Article 12 provides more protection to a government employee than the Fifth Amendment. *Carney* grants *transactional immunity*, meaning that the employee may not be forced to provide any incriminating statement unless guaranteed that there will be no prosecution concerning the subject matter of the statement, regardless of the source of the evidence. Under a grant of *transactional immunity*, the information provided by the officer may *only* be used to support discipline.

Officers may not be punished solely for asserting their Fifth Amendment or Article 12 right against self-incrimination. However, the officers must attend their interview even if they intend to assert their constitutional rights. When asked a question, officers must either provide a truthful answer or assert their right not to answer because their response may incriminate. This privilege may be invoked when the information from officers could possibly provide "a link in the chain of evidence" to convict. Only when the answer "cannot possibly" tend to incriminate does it fall outside the privilege. *Hoffman v. United States*, 341 U.S. 479 (1956). *Comm. v. Funches*, 379 Mass. 283 (1979). *In the Matter of a Special Grand Jury*, 27

²⁰ The concept of derivative use immunity is similar to the concept of fruit of the poisonous tree.

Mass. App. Ct. 693 (1989) (right to assert privilege against self-incrimination depends only on possibility, not likelihood, of prosecution). *Broderick v. Police Commissioner of Boston*, 368 Mass. 33 (1975) (off-duty conduct also covered).

IA's four options when officers refuse to answer allegedly incriminating questions.

- **Answers cannot possibly incriminate.** The answers to some questions — e.g., about sleeping on duty, about chronic lateness — cannot possibly incriminate the accused officer. In this situation, officers may be ordered to answer and, if they fail to do so, may be disciplined for their non-cooperation without any grant of immunity.
- **Answers may incriminate, but investigator simply honors officer's right to remain silent and investigation continues.** This option may be pursued in cases where the evidence of criminal wrongdoing is so strong that the IA investigator and/or prosecutor does not need to grant immunity in order to facilitate future discipline or discharge of the officer.

Typically, if the officer is already suspended pending the results of a criminal investigation, the IA investigator will simply avoid interviewing him or her and wait until the criminal investigation ends, since those findings will usually determine the potential for administrative discipline, including termination.

- **Answers may incriminate, but officer asserts Fifth Amendment and waives Article 12.** In this common situation, the investigator should present officers with Form 6, and let them assert their Fifth Amendment right against self-incrimination and receive *use and derivative use immunity* while, at the same time, waive their Article 12 right of *transactional immunity*. Although Article 12 is waived at the outset of the interview, officers still may assert Article 12 on a question-by-question basis. IA investigators should, when faced with a specific Article 12 claim, move on to the next question, since they cannot compel the accused officer to answer absent a promise of transactional immunity, which they are *never* in a position to grant. See discussion in the next paragraph.
- **Answers may incriminate; officer asserts Article 12 at outset; and prosecutor grants transactional immunity.** When officers assert Article 12, the only way to compel them to answer questions is to secure a grant of transactional immunity from the prosecutor's office. Police or municipal officials should *never* state, or even imply, that they have the authority to grant *transactional immunity* under Article 12. See *Comm. v. Dormady*, 423 Mass. 190 (1996).²¹ Instead, when faced with a blanket assertion of Article 12, IA investigators should explain that they must suspend the hearing and confer with the prosecutor to determine whether there will be a grant of transactional immunity. This complex legal decision is outside the authority of a police commander and/or investigator.²²

See "Order-Notice-Waiver, Form 6"

²¹ In *Dormady*, during a disciplinary hearing, the police chief and town counsel led the accused officer and his attorney to believe that they could grant him transactional immunity under *Carney*. On this basis, the SJC prohibited a later decision by the Attorney General to indict this same officer for larceny related to the behavior that was the subject of his disciplinary hearing.

²² Aside from the extreme consequences of transactional immunity — the accused officer can never, regardless of the amount of evidence, be prosecuted for criminal conduct that he mentioned during his statement — there is the complexity of how the prosecutor and police authorities may grant this immunity. Compare *Comm. v. Dalrymple*, 428 Mass. 1014 (1998) with 233, §§ 20C-20H and *Baglioni v. Chief of Police of Salem*, 421 Mass. 229 (1995).

The use of an adverse inference. When an officer asserts a constitutional right not to answer a question that may prove incriminatory, the invocation of his right in response to a question can be helpful to investigators. Unlike when the right is asserted before a criminal trial, the finder of fact (either a hearing officer, investigator, judge, or jury) in a civil matter *may* draw an adverse inference — an inference that the answer would have been unfavorable to the person asserting this right.

Here is an example. In response to a complaint from John Smith that Officer Jones needlessly struck Smith with a baton during an arrest when Smith was not resisting, the investigator interviews Officer Jones, and this exchange occurs:

Q: “Did you ever strike Smith with your baton?”

A: “I assert my rights not to answer that question under the Fifth Amendment and Article 12.”

If Officer Jones had not struck Smith with the baton, the officer could have answered “no” without providing an incriminatory response. The fact that the officer asserted his right not to answer the question permits the investigator to infer that the officer would have probably answered “yes” if he had not been able refuse to answer.²³

Before an adverse inference may be drawn, the investigator must ask the specific question and get the assertion of rights in response. It is not enough that the officer (or an attorney on the officer’s behalf) states at the beginning of an interview that he intends to assert his right not to answer questions during the interview.

STRUCTURE & COMPOSITION OF THE IA REPORT

An IA report should include:

- A summary of the initial complaint;
- Documentation of compliance with the department’s internal affairs policy;
- A list of evidence considered (documents, recordings, objects, interviews, etc.) by the investigator;
- A summary of oral statements to the investigator that were not recorded;
- A narrative of events that is supported by the preponderance of the evidence, taking note of significant differences in statements, gaps in the evidence, and witness credibility assessments;
- A list of the policies that the officer may have violated, for example:

²³ The best way to use an adverse inference is when it is supported by facts derived from another source. In the example, the other sources of information might be Smith’s statement to the investigator that he had been struck by a baton, an injury on Smith’s body consistent with a baton strike, and/or medical records documenting the injury.

7-1 Prohibited conduct

An officer shall not commit any felony or misdemeanor in violation of the criminal laws or statutes of the United States, of any state, or of any local jurisdiction.

An officer shall not commit any specific act or acts of immoral, improper, disorderly, or intemperate personal conduct which reflects discredit upon the officer himself/herself, upon his/her fellow officers, or upon the Department.

An officer shall not engage in any conduct on or off duty that would constitute conduct unbecoming a police officer.

- The investigator's summary of facts, which led to a conclusion, by a preponderance of the evidence, that the policy was violated or was not violated. For example:

Officer Jones consumed alcoholic beverages during that night. The amount consumed is unknown, in part because he asserted his right not to answer questions about how much alcohol he consumed. He also drove a motor vehicle home. There is not enough information available to make a conclusion to a preponderance of the evidence that the officer did so while under the influence of liquor.

The woman involved arrived afterward at the officer's dwelling. While inside, the woman broke a mirror. There is no evidence that the officer committed any crime or public disturbance during this time.

The woman has stated to me that the officer committed no crimes against her and also stated she has no concern the officer might do so in the future.

There is not a preponderance of the evidence that Officer Jones engaged in misconduct in violation of the Prohibited Conduct Policy 7-1 on the night of June 1 into 2, 2022.

- A place where the investigative recommendations are set out for the chief to sign off indicating agreement or disagreement with the conclusions that policies were or were not violated.

FOLLOW-UP REPORTS TO POST

COMPLETED INVESTIGATION — SECOND REPORT

See "Second Report (INVESTIGATION COMPLETE) to POST, C1"

Report on the department's investigation. When the department completes its internal investigation of a complaint, it will immediately transmit the results to the DS. 6E, § 8(b) (2) and 555 CMR 1.01(3). The regulation sets a 90-day deadline for investigations unless the department explains to POST why more time is required.

The investigation is complete when the highest reviewer within the police department (typically the chief) signs off on the facts established by the investigation and the conclusions that violations of law or policy were or were not proven by a preponderance of the evidence. This is the point at which the matter is ready for a final disposition, either by notifying the

officer no misconduct was found or by providing notice that discipline will be imposed or a hearing on discipline will be held.

- **If the reviewer returns the investigation** for further work, the investigation is not complete.
- **If the reviewer substitutes different facts** or conclusions for those in the final IA report and then approves the report, the investigation is complete.

The packet sent to POST at this point must include:

(See also “Second Report (WITNESS LIST) to POST, C2” and “Second Report (EVIDENCE) to POST, C3.”)

- A statement of the evidence relating to the complaint;
- A description of the investigation.
- A list of any witness interviewed (and whether they were recorded or why they were not) and a description of all evidence collected;
- Whether any witness was unavailable and why, or whether evidence was inaccessible, and whether any evidence was lost or destroyed, and a description of why evidence was lost or destroyed;
- The facts found by the investigator;
- Whether the facts reflect conduct proscribed by law or applicable standards;
- The reasons for any delay in completing the investigation report beyond 90 days;
- Any disciplinary action imposed by the agency head;
- If discipline is recommended by agency personnel or imposed by the agency, the agency head must recommend whether POST should impose discipline — including retraining, suspension, or decertification.²⁴
- The identity of the officer’s counsel or other representative, if any.

FINAL AGENCY DISPOSITION — THIRD REPORT

See “Third Report (Final Agency Disposition) to POST, D”

Report on complaint disposition. The department shall immediately transmit to DS a report on the final complaint disposition and final discipline **imposed by the department**, if any. 6E, § 8(b)(3) and 555 CMR 1.01(4).

The final *department* disposition may be different from the final disposition *imposed by a higher level of government* (and different from the final disposition *imposed following appeals* to

²⁴ No contrary law or collective bargaining agreement prevents an agency head from making recommendations to POST about an officer’s certification status, or restricts what the agency head may recommend after adhering to the department’s internal investigation policy and appeals therefrom. 6E, 8(b)(5).

arbitration, the civil service commission, or a court). Massachusetts general and special laws provide various procedures to discipline police officers that may involve a police chief, a police commissioner, a police commission, select board, a city or town manager, or a mayor.²⁵ POST also regulates law enforcement officers and agencies.

The department should report its complaint disposition when the department's chief:

- Decides no misconduct was proven, or
- Decides that proven misconduct did not warrant formal disciplinary action, or
- Issues a written warning or reprimand and/or orders training for the officer, or
- Imposes a suspension without pay, punishment duty, or forfeiture of vacation time, or
- Imposes a suspension without pay for five days and recommends to a higher level of government a longer suspension or termination, or
- Imposes (if within the chief's power) a suspension without pay for more than five days or termination.

The packet sent to POST for this final report must include:

- A description of the adjudicatory process that resulted in any final discipline;
- Any discipline recommended by the investigator or supervisor;
- Any discipline imposed by the head of the agency;
- If discipline is recommended or imposed by the agency, the agency head must make a recommendation on whether and how POST should impose discipline — including retraining, suspension, or decertification. The agency head also must set out facts from the investigation supporting this recommendation.
- The identity of the officer's counsel or other representative, if any.

RESIGNATION DURING INVESTIGATION OR DISCIPLINARY PROCESS

See "Report to POST: Resigned Under Investigation/Before Discipline, D"

Report required when officer resigns while under investigation or while discipline is pending. If an officer resigns prior to the conclusion of an agency investigation or imposition of discipline, the department head shall immediately transmit a report to the DS. § 8(b)(4) and 555 CMR 1.01(5). The report will include:

- The officer's full employment history (dates of hire, resignation, and retirement; promotions and assignments; a chronology of complaints, internal investigations, reprimands, discipline imposed, retraining or other sanctions, and commendations and awards received);

25 The colonel of the State Police and sheriffs have their own sets of laws dealing with officer discipline. Public college and university police departments have yet another set of laws, while private colleges and universities have still a different framework for officer discipline, including oversight by MSP, which licenses all special state police officers.

- A description of the events or complaints surrounding the resignation, which should include a copy of any separation agreement;
- The current status and results of any investigation; and
- A recommendation by the agency head as to whether and how POST should impose discipline — including retraining, suspension, or decertification.

Following resignation, the department shall nonetheless complete the investigation and transmit a final department disposition report to the DS. 555 CMR 1.01(5)(b).

UPDATE POST ON DISCIPLINE APPEALS

When action occurs outside the department on a complaint, update POST. The police chief's resolution of an investigation often is not the final discipline. As an officer's case moves forward through hearings or appeals, the department should send updates to POST.

ROUTINE USE OF FORCE REPORTING

POST has a duty to provide annual reports that include information on each law enforcement agency's "officer-involved injury or death" incidents. 6E, § (16)(1). Agencies must be prepared to keep records of "officer-involved" incidents and be prepared to provide them to POST whether or not there is a complaint.

An officer was involved in an **officer-involved injury or death**, as defined in 6E, § 1, if the following actions result in *injury or death* to another:

- Discharging a firearm;
- Discharging a stun gun (aka taser);
- Using a chokehold;
- Using tear gas or other chemical weapon;
- Shooting rubber pellets;
- Deploying a K-9;
- Using deadly force;
- Failing to intervene;

OR

- If the officer engaged in a physical altercation with a person who sustains serious bodily injury or who requests or receives medical care. (555 CMR 2.02 adds that the injury must be more than *de minimus*: "[T]hat such medical care relates to an actual condition or injury that . . . produces an observable injury or medical condition, the customary medical response to which would include that a person visit an emergency room, or have a doctor or other medical professional attend to, give an opinion regarding, diagnose, and/or provide medical treatment for the injury or condition.")

Mandatory reports are not a complaint. A department must report these uses of force even when no complaint has been filed, and POST will have a legal obligation to conduct its own investigation of certain uses of force, but the mere fact that an officer used force is not equivalent to a complaint.²⁶

WORKING WITH POST ON AN IA INVESTIGATION

POST has the authority to work separately from or together with a department on an investigation. This may prove useful to a department IA because POST has investigatory powers a police department lacks.

A preliminary inquiry by the DS may include:

- POST subpoenas, served by POST employees, that require sworn testimony or the production of records. 555 CMR 1.05(1)(c);²⁷
- Exchanging information with a law enforcement agency. 555 CMR 1.05(1)(a);
- A request that the agency coordinate its internal investigation with the DS preliminary inquiry. 555 CMR 1.05(1)(c);
- A request for records of the police agency's internal investigation. The records must be delivered within 15 days. 555 CMR 1.05(1)(b); and
- A request that the agency make witnesses available to the DS. 555 CMR 1.05(c).

The authority of POST to deliver subpoenas for records and sworn testimony may add substantially to a department's investigatory reach, which typically does not include subpoena power.

DEPARTMENT PROCESS AFTER POST DISCIPLINE

A POST commission hearing may have results different than the department's IA and discipline process. Though POST suspension and decertification decisions require clear and convincing evidence, POST may have in front of it more evidence, or evidence not available to the department. Even on the same evidence, POST is free to make decisions that differ from those made by a department, civil service commission, or arbitrator. POST probably will not be bound by a judge's decision unless POST is a party to the case.

A department may not employ a person as a law enforcement officer unless they are certified by POST. 6E, § 4(g). A department may not employ a decertified officer for any job! *Recommendation:* The department should make clear that the burden is on the officer to keep his or her certification in good standing, and the failure to do so will be cause for discipline independent of any officer misconduct that may underlie the POST decision.

²⁶ Obviously a citizen's complaint may follow a use of force, or department personnel may discover a problem with a use of force. In these situations, this is a complaint and should be reported as such to POST.

²⁷ A subpoenaed witness may petition POST to vacate or modify a subpoena.

A department should have a policy and contractual provisions covering pre-hearing interim suspensions of certification by POST. While an officer's certification is under an interim suspension by POST, the terms of an officer's employment are subject to civil service law and the officer's contract. 6E, § 9(5)(d).

RELATED PROVISIONS

POST must certify all law enforcement agencies. POST must certify all law enforcement agencies. 6E, § 5(a). The Division of Police Certification (DC) together with the MPTC shall establish minimum certification standards for agencies, including for "internal affairs and officer complaint investigation procedures." 6E, § 5(b).

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).

ACTION BY POST ON COMPLAINTS POST INVESTIGATIONS

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

POST investigations. POST automatically receives a vast quantity of information about potential officer misconduct from police agencies. The DS conducts the investigations, called "preliminary inquiries." 6E, § 8(g).

POST may receive complaints of officer misconduct directly. 6E, § 3(a)(5). Whether these complaints will be referred to the appropriate agency or may be acted on directly is not stated.

Required and discretionary preliminary inquiries. The law and regulations require the DS to start preliminary inquiries in certain matters. 6E, 8(c)(1) and 555 CMR 1.02(3). POST has discretion to start preliminary inquiries in any other situation involving potential violations of 6E, 8(c)(2) and 555 CMR 1.02(4).

DS is not required to investigate a complaint that:

- Does not involve evidence of bias on the basis of the **prohibited characteristics**, excessive, prohibited, or deadly force, or an action which resulted in serious bodily injury or death; 1.02(1)(a), and
- Does concern "minor matters." 555 CMR 1.02(1)(b).

POST shall order a preliminary inquiry at any time the agency head recommends that POST impose discipline on an officer. 6E, § 8(c) and 555 CMR 1.02(3).

POST shall order a preliminary inquiry if POST receives a complaint, report or other credible evidence (6E, § 8(c)(1)(i)-(v) and 555 CMR 1.02(3)(a)-(c)) that:

- An officer was involved in an **officer-involved injury or death**;
- An officer committed a **crime**, whether or not the officer was convicted, indicted, charged, or arrested; or
- An officer engaged in conduct prohibited by 6E, § 14 (**use of force**) or § 15 (**duty to intervene in and report excessive force**).

POST may direct a preliminary inquiry regarding any other prohibited conduct. 555 CMR 1.02(4).

A preliminary inquiry and its records are confidential to the extent permitted by law. POST, however, may make a referral to a federal or state prosecutor. 6E, § 8(c)(2) and 555 CMR 1.03.

Notice of POST investigation. The DS *shall* notify an officer, the head of the officer's collective bargaining unit, the agency head, and the appropriate district attorney of the inquiry and its general nature within 30 days of the inquiry's commencement. 6E, § 8(c)(3) and 555 CMR 1.04.

POST may hire qualified contractors as investigators. 555 CMR 1.05(3).

The product of a preliminary inquiry is a report for use by POST. 555 CMR 1.07(1). The requirements of DS inquiry report are similar to those for an agency's internal investigation report. The DS report should be completed within 60 days after POST authorizes the inquiry, but the POST Commission may extend the deadline.

DECERTIFICATION, SUSPENSION, & RETRAINING

INTERIM SUSPENSION

Required and discretionary interim suspensions. 6E, § 9. The law and regulations sometimes require POST to suspend an officer's certification during a preliminary inquiry or prior to a full hearing. Sometimes POST has discretion regarding an interim suspension.

While a complaint is pending, POST shall suspend an officer's certification:

- **Immediately, when arrested or charged with a felony.** 6E, 9(a)(1) and 555 CMR 1.08(1). A sworn statement by the arresting officer or true copy of the complaint or indictment is sufficient evidence for the suspension.
- **After receiving a preliminary inquiry report showing the officer's felonious conduct.** 6E, § 9(a)(2) and 555 CMR 1.08(2)(a). If POST finds *by a preponderance of the evidence* that an officer engaged in conduct that could constitute a felony, POST *shall* immediately suspend the officer's certification.

While a complaint is pending, POST may suspend an officer's certification:

- **During a preliminary inquiry.** 6E, § 9(a)(4) and 555 CMR 1.06(1) and 1.06(2). If POST finds *by a preponderance of the evidence* that a suspension is in the best interest of the health, safety, or welfare of the public, it may suspend the officer's certification.
- **After receiving a preliminary inquiry report for an officer charged with a misdemeanor.** 6E, § 9(a)(3) and 555 CMR 1.08(2)(b). If POST finds *by a preponderance of the evidence* the misdemeanor affects the officer's fitness to serve, it may suspend the officer's certification.
- **After receiving a preliminary inquiry report.** 6E, § 9(a)(4) and 555 CMR 1.08(2)(c). If POST finds *by a preponderance of the evidence* that a suspension is in the best interest of the health, safety, or welfare of the public, it may suspend the officer's certification.

Interim suspension orders are effective upon receipt by the officer and remain in effect until further action by POST. 6E, § 9(a)(5), 555 CMR 1.06(3), and 1.08(4). The order is transmitted also to the officer's agency, collective bargaining unit, and the appropriate district attorney.

A suspended officer has a right to an appeal hearing within 15 days. 6E, § 9(d) and 555 CMR 1.09(1). The hearing must be requested no later than 5 business days after notice to the officer of the suspension. 555 CMR 1.09(2). As an alternative, during those 5 days the officer may request an extension of time to request the hearing.

A single member of the commission conducts an administrative hearing. 555 CMR 1.09(6). The rules of evidence used by courts do not apply. Documents submitted for the hearing shall be confidential to the extent permitted by law. The hearing is open to the public unless the commissioner determines closure is necessary to protect privacy interests and is not contrary to the public interest. 555 CMR 1.09(c)(i) and (ii).

No discovery. Unless allowed by the single commissioner for good cause, there is no discovery. 555 CMR 1.09(6)(b).

The commissioner shall uphold the suspension unless the evidence shows it was unwarranted. The standard of proof is by a *preponderance of the evidence*. 555 CMR 1.09(6)(a).

During the interim suspension, the terms of the officer's employment are controlled by civil service laws and/or collective bargaining agreements. 6E, § 9(5)(d).

Appeals of a commissioner's decision on interim suspension are to the Superior Court. 555 CMR 1.09(6)(e).

TIMING OF THE POST FINAL HEARING

A police agency generally will complete its internal investigation and impose agency discipline before POST takes final action. 6E, § 10(h) and 555 CMR 1.10(2)(a). Prior to beginning a hearing for final action under § 10, POST must wait either for the officer's agency to reach its disciplinary conclusion, or until 1 year has passed since the incident was reported to POST. Section 10(h) also allows:

- **Officer request for 1 year delay.** On the request of an officer who has an appeal or arbitration

of the agency discipline pending, POST will suspend its hearing for up to 1 year (and for up to another year on showing of good cause). 555 CMR 1.10(2)(b).

- **Criminal proceedings.** If an officer requests, POST shall postpone a hearing while criminal charges are pending. The officer's certification is automatically suspended during the delay. 555 CMR 1.10(2)(c).

POST HEARINGS & FINAL DISPOSITIONS

"First instance" hearings by a "presiding officer" are permitted. 555 CMR 1.10(1). POST's chair may assign a presiding officer²⁸ to hold a hearing and write an "initial decision." The presiding officer's initial decision will be provided to the full commission and the officer. The officer may file with the full commission any objections, additional information, or request for a further hearing. 555 CMR 1.10(4)(e)(ii)(2).

The full POST commission holds the final hearing. 555 CMR 1.10(3)(e). The full POST commission is permitted to hear the presentation of all the evidence in each case directly. More often, POST will use the first instance hearing prior to voting on officer discipline. After review of the initial decision, together with the officer's submissions, the full commission may adopt, reject, or revise the presiding officer's findings of fact, conclusions of law, and recommendations for POST action. The full commission may take final action or order further review. 555 CMR 1.10(4)(c)(ii)(3).

POST hearings by a presiding officer or the full commission are administrative. 555 CMR 1.10(4). The rules of evidence used by courts do not apply. 555 CMR 1.10(4)(b)(i). Documents submitted for the hearing shall be confidential to the extent permitted by law. The hearing is open to the public unless the commissioner determines closure is necessary to protect privacy interests and is not contrary to the public interest. 555 CMR 1.10(4)(a)(i) and (ii).

POST shall issue its final decision on discipline 180 days after the presiding officer files or refiles their decision with the full commission. 555 CMR 1.10(4)(e)(ii)(5). POST will notify the officer if the commission is not able to meet this deadline.

Appeals of POST's decisions on final disposition are to the Superior Court. 555 CMR 1.10(4)(e)(i).

DECERTIFICATION, SUSPENSION, OR RETRAINING

Mandatory decertification occurs when POST finds *by clear and convincing evidence*²⁹ any of the following [6E, § 10(a)(i)–(xvi)]:

- The officer was **convicted** of a felony;³⁰

28 The chair of POST has the discretion to select a presiding officer for a disciplinary hearing under a policy adopted by POST. The "presiding officer" may be one or more commissioners or one or more "special hearing officers." 555 CMR 2.02.

29 The "clear and convincing evidence" standard is higher than a preponderance of the evidence but lower than proof beyond a reasonable doubt. It is the high level of proof a probate court must find to take away a parent's rights.

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

- 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);³¹
- 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*.
- When the officer is not fit for duty and is **dangerous to the public**.

Non-mandatory decertification or suspension may be ordered if POST finds *clear and convincing evidence* that [6E, § 10(b)]:

- The officer was **convicted³² 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 sustained 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 the commission's conditions (such as retraining) have been completed. 6E, § 10(c).

31 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.*

32 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!** 6E, § 1.

Retraining may be ordered for an officer if POST finds *by substantial evidence*³³ that an officer [6E, 10(d)(i)–(ix)]:

- 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 procedures during an incident;
- Has a pattern of unprofessional conduct;
- Was untruthful (except for a form of untruthfulness requiring decertification),³⁴
- Failed to intervene;
- Was suspended or terminated by their agency; or
- Would benefit from retraining in their job performance.

However, retraining is not an option when revocation of certification is mandated.

POST must immediately:

- **Notify the agency head** if it decertifies, suspends, or orders retraining of an officer. 6E, § 10(e).
- **Publish on POST’s website** the names, time periods, and reasons for decertification, suspension, and/or retraining. 6E, § 13(a).
- **Publish any revocation order and inform the national decertification index.** 6E, § 10(g).

APPEALS OF NON-CERTIFICATION

If POST declines to certify or recertify an officer, the officer may request a hearing.

555 CMR 1.10(3)(a). The request must come within 30 days of POST’s decision. 55 CMR 1.10(30)(b). POST will not reverse a decision to deny certification or recertification unless POST finds *substantial evidence* that certification is warranted. 555 CMR 1.10(4)(c)(iii).

ADMINISTRATIVE SUSPENSIONS & FINES

Administrative suspension is imposed for:

- Failing to complete in-service training within 180 days of the deadline (except if due to injury, leave of absence, or documented hardship). 6E, § 9(b); or

³³ 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.

³⁴ Untruthfulness has a special definition in Chapter 6E. See below for further information.

- Failing to report information to POST required by 6E, § 8.³⁵ POST must reinstate the officer once he or she provides the information. 6E, § 9(c).

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.

APPEALS

Officers may appeal a final POST 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 or other POST action, which the superior court judge reviews to see if the decision was reasonably based on the evidence. (For an appeal, the action of a single commissioner upholding an interim suspension is also a final decision.) See 30A, §§ 1,8, 10–14.

Officers may not appeal any adverse POST decision to the Civil Service Commission. 6E, § 10(f).

NO RETALIATION

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 (no officer or employee of the Commonwealth or any county, city, town, or district shall discharge an officer or employee; change their rank, grade, or compensation; deny a promotion; or take or threaten any other adverse action).

PUBLIC INFORMATION

The new law authorizes the immediate release of “records related to a law enforcement misconduct investigation.”³⁶ 4, § 7 cl. 26(c).³⁷

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.

³⁵ This is the statute that authorizes POST to conduct investigations about officer misconduct.

³⁶ Agencies still may not release an officer’s home address, personal email address, and telephone number. 4, § 7 cl. 26(o).

³⁷ 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).

Appendix A

POST Reports

Alewife Police Department

Complaint Form

A1

Date: _____ Time: _____ CAD number: _____

Complaint taken by: _____ Method: _____
(in person, telephone, email, etc.)

Summary of complaint:

Approximate date/time of incident: _____ -

Officers identified: _____

Location: _____

Complainant: _____

(name, address, telephone #, email address)

(If complainant chooses not to identify, conduct full interview)

Witnesses identified: _____
(name, address, telephone, email address)

This statement is true to the best of my knowledge:

Complainant: _____
Printed name Signature

Copy of Department of Complaint provided to complainant? ☐ Yes ☐ No

Complaint taker: _____
Printed name Signature

Alewife Police Department

Complaint Form

A2

Not for complainant

Victim's demographics:

Observed by complaint taker: _____

From complainant: _____

Actions taken by report taker (investigation of complaint, notice to superior officers)

Complaint taker's suggested disposition:

- ☐ Minor matter ☐ Anonymous w/out follow up info ☐ Professional standards follow-up
☐ Minor matter handled by complaint-taker? (Record details on reverse or attach a report).

Internal Affairs Disposition Review

IA report number: _____

Reviewer: _____ Date/Time: _____

☐ Pattern of violations, 555 CMR 1.01(1)(c)(3)

☐ Assigned for investigation Assigned to: _____

☐ Assigned as minor matter Assigned on: _____

This is:

☐ Minor matter ☐ Anonymous w/out follow up info ☐ Reportable to POST

Discretionary submission to POST (555 CMR 1.01(1) (c)(4)): _____

Chief's signature

Alewife Police Department

Initial Report of Complaint to POST

B

Day of week, date, and time of complaint: _____
Month/Day/Year

POST due date (second business day following business day of receipt): _____

Agency IA number: _____

Description of complaint (brief description): _____

Date and time of incident: _____

Complaint form attached: ☐ Yes ☐ No

Subject Officer(s):

Name

Certification Number(s)

☐ See supplement for more officers

Victim's demographic: _____
(race, ethnicity, sex, gender identity, sexual orientation, religion, mental/physical disability, immigration status, socioeconomic or professional level and/or other data volunteered by victim)

This complaint sets out the following allegations:

☐ Conduct was biased based on a prohibited characteristic.

☐ Conduct was unprofessional.

☐ Conduct was excessive, prohibited, or deadly force.

☐ Conduct resulted in serious bodily injury or death.

Investigating agency contact: _____ Telephone: _____

Transmitted to POST on date: _____ Time: _____ Method: _____

Transmitting officer: _____
Name Signature

Alewife Police Department

Second Report (Investigation Complete) to POST

C1

Agency IA number: _____ Investigator: _____

Subject Officer(s):

Name

Certification Number

☐ See supplement)

Statement of allegations: _____

☐ For witnesses interviewed (and unavailable witnesses) see attachment C2.

☐ For evidence collected (and unavailable) see attachment C3.

Factual findings by investigator: _____

The factual findings supported violation of these laws or policies: _____

90-day date: _____ Completed by 90-day date: ☐ Yes ☐ No

Reasons for delay: _____

Discipline imposed by Chief: _____

Chief's recommendation for POST action: _____

Chief's: _____
Printed name

Signature

Date

Transmitted to POST on date: _____

Method: _____

Transmitting officer: _____
Printed name

Signature

Alewife Police Department

Second report (WITNESS LIST) to POST

C2

Agency IA number: _____ Investigator: _____

Witnesses interviewed (if interview was not recorded indicate by "NR" after name):

Name	Phone	Address
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Witnesses unavailable:

_____	_____	_____
Name	Phone	Address
Reason unavailable: _____		

_____	_____	_____
Name	Phone	Address
Reason unavailable: _____		

_____	_____	_____
Name	Phone	Address
Reason unavailable: _____		

_____	_____	_____
Name	Phone	Address
Reason unavailable: _____		

C3

Evidence Collected:

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Reason: _____

Alewife Police Department

Third Report (Final Agency Disposition) to POST

D

Agency IA number: _____ Investigator: _____

Subject Officer(s):

Name

Certification Number

☐ See supplement)

Adjudicatory process description: _____

Discipline recommended by investigator: _____

Discipline imposed by Chief: _____

Discipline recommended by Chief to appointing authority: _____

Chief's recommendation for POST action: _____

Factual findings supporting POST action: _____

Chief: _____
Printed name Signature Date

Transmitted to POST on date: _____ Method: _____

Transmitting officer: _____
Printed name Signature

Alewife Police Department

Report to POST: Resigned Under Investigation/Before Discipline



Agency IA number: _____ Investigator: _____

Subject Officer: _____
Name Certification Number

The officer submitted a resignation effective on _____ that was

- ☐ Prior to the conclusion of the investigation, or
- ☐ Following the conclusion of the investigation but before the agency had imposed disciplinary action.
- ☐ The resignation was in writing. (The resignation and any associated agreement is attached.)
- ☐ A record of the officer's employment is attached, including:
 - ☐ Dates of hire, resignation, and retirement;
 - ☐ A list of complaints, internal investigations, reprimands, disciplinary actions, retraining or other sanctions; and
 - ☐ A list of commendations and awards.
- ☐ A description of the events or complaints surrounding the resignation is attached.

The investigation is:

- ☐ Complete and has been reported to POST previously. (See that report for the investigation results.)
- ☐ Complete and the department's report on the investigation is submitted with this report. (See that report for the investigation results.)
- ☐ Not complete but will continue as required. (The results to date may be found attached to this report).

I, _____, recommend POST take the following action:

Police [Chief, Commissioner, Superintendent]

Transmitted to POST on date: _____ Method: _____

Transmitting officer: _____
Printed name Signature

Appendix B

IA Forms

Alewife Police Department

Analysis of Conflict of Interest and Bias (Form 1)

Agency IA number: _____ Investigator: _____

Subject Officer(s): _____

☐ Officer-involved injury or death? ☐ Improper force? ☐ Biased conduct?

Investigator(s): _____

Investigation Supervisor: _____

The investigator(s) and investigation supervisor:

- Are not the parent, child, sibling, or spouse of a complainant, victim, or subject officer.
☐ True ☐ Not true
- Are not the parent, child, or sibling of the spouse of a complainant, victim, or subject officer.
☐ True ☐ Not true
- Have no business interest or financial interest in common with a complainant, victim, or subject officer or the spouse of a complainant, victim, or subject officer. ☐ True ☐ Not true
- Are not currently competing against a subject officer for a promotion, appointment, or position within the police department, the parent organization, or another organization.
☐ True ☐ Not true
- Are not subjects of nor implicated by the complaint. ☐ True ☐ Not true
- Have no other apparent or perceived conflict of interest regarding a complainant, victim, or subject officer.
☐ True ☐ Not true
- Have no potential for bias or prejudice against a complainant, victim, or subject officer.
☐ True ☐ Not true

Explanation (if required): _____

Conflict analysis by: _____
Printed name Signature Date

Chief's approval: _____
Printed name Signature Date

Internal Affairs Investigation Event Record Summary (Form 2)

Description:

[illegible]

Alewife Police Department

Internal Affairs Investigation Checklist — Internal Sources (Form 3)

IA Number: _____

Investigator: _____

Checklist:

	Number or date/time or officer	In-file date
Dispatch entry:	_____	_____
Officer report:	_____	_____
	_____	_____
	_____	_____
	_____	_____
Telephone call(s):	_____	_____
	_____	_____
Radio traffic:	_____	_____
Body camera(s):	_____	_____
	_____	_____
	_____	_____
Cruiser camera(s):	_____	_____
	_____	_____
	_____	_____
MDT records:	_____	_____
Booking video:	_____	_____
Police surveillance video:	_____	_____
Other department video:	_____	_____
Payroll records:	_____	_____

Alewife Police Department

Internal Affairs Investigation Checklist, External Sources (Form 4)

IA Number: _____

Investigator: _____

Documents

Source/description	#	Date in file
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Audio recordings

Source/description	#	Date in file
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Video recordings

Source/description	#	Date in file
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Outside interviews

Source/description	#	Date in file
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Outside communications (phone, text, social media, email)

Source/description	#	Date in file
_____	_____	_____
_____	_____	_____

Alewife Police Department

Administrative Interview (Form 5)

Tape Recorder Test

Once the recording device is placed where it will be during the interview, speak from the location where the farthest speaker will be sitting.

The date is _____, the time is _____. This is **(name/rank)**, at **(name/location)**. Present with me is **(name/rank)**. We are about to interview **(subject/name/rank)** in connection with **(case number)**, which occurred on **(date of incident)**. I am testing the tape recorder in preparation of the interview.

Play back to ensure recorder is working and then fast forward to the conclusion of the tape recorder test.

Statement of Rights and Warning

For the record, I will make the following statement and to advise all parties present that this proceeding is being recorded. **(Name of employee/officer)** you are not in custody, and you are not under arrest. You are free to leave but may be subject to disciplinary action, up to and including termination, if you leave prior to the conclusion of this interview.

You are required to answer questions that are narrowly and specifically drawn regarding the performance of your duties, your professional responsibilities, and your fitness to perform those duties. You are required to answer all questions truthfully and to the best of your knowledge. Failure to do so will result in disciplinary action up to and including dismissal. In addition to intentionally making false statements or reports, the intentional omission of significant or pertinent facts is also considered untruthfulness.

If the answer you would give to a question may tend to incriminate you, you may assert your rights not to answer the question under the Fifth Amendment of the U.S. Constitution and/or Article 12 of the Massachusetts Declaration of Rights. You will not be subject to disciplinary action solely for properly invoking your rights.

In addition to causing departmental discipline, untruthfulness during this investigation must be reported to the Peace Officer Standards and Training Commission.

Please state your rank and name for the purpose of identification on the recording.

- 1) Today is **(day of week and date)**. The time is _____
- 2) My name is **(title and full name)**
- 3) Present with me representing the department is **(name)**. Please state your rank and name for identification on the recording.

(over)

- 4) I am conducting an internal investigation into **(case number)**
- 5) The interview is taking place at **(location)**, recorded on **(method: digital or tape recording)**
- 6) Officer, for the record please state your name, rank, and current assignment.
- 7) You have someone present and acting as your union/legal representative. Please state your position and name for identification on the recording.
- 8) **(If anyone else is present, ask them to identify themselves for the recording.)**

Your union representative or attorney is here to advise you and will not be allowed to answer questions for you. If at any time you believe that the answer you may give to a question may incriminate you, you may ask to consult with your representative and you will be given reasonable time to do so. However, you may not unreasonably delay the interview. Failure to answer questions directly, or the continued interruption of the interview, will not be tolerated and shall be grounds for discipline. At the conclusion of the interview, you or your representative will be allowed to make a statement, express concerns, or give a summary of your position. Do you understand this ground-rules?

- 9) Officer you are being interviewed as a **(subject/witness)** in this matter.

ALEWIFE POLICE DEPARTMENT

Order-Notice-Rights (Form 6)

Date: _____

To: _____

From: _____

You are ordered to participate in this investigative interview by providing complete and truthful answers to all questions posed to you concerning the performance of your duties, your fitness to perform those duties, and your professional responsibilities in your employment by the Town of Alewife.

However, you have the right to remain silent when your answer to a question would tend to incriminate you in a criminal matter. If an answer may tend to incriminate you, the invocation of your rights against self-incrimination under the Fifth Amendment to the US Constitution and/or Article 12 of the Massachusetts Declaration of Rights is sufficient to comply with your obligation to obey the order to answer that question. Assertion of your right to remain silent must be done on a question-by-question basis and may only be done when your answer to a specific question might tend to incriminate you.

The failure to provide a complete and truthful answer to any question is considered a failure to obey an order unless you assert a constitutional right to remain silent. The failure to obey an order could result in disciplinary action being taken against you, up to and including termination of employment.

PLEASE READ THE FOLLOWING, CHECK THE APPROPRIATE BOX, THEN SIGN AND DATE THIS NOTICE

- ☐ I wish to claim my constitutional protections under the U.S. Constitution's Fifth Amendment and the Massachusetts Declaration of Rights, Article 12.

- ☐ I wish to assert my Fifth Amendment privilege against self-incrimination, but agree to waive my Article 12 privilege. I will answer questions because I am ordered to do so, but my answers may not be used against me in a criminal proceeding. I understand I may still assert my Article 12 rights in response to any particular question(s). I also understand that a criminal proceeding can be initiated against me based upon evidence obtained from other sources.

Employee signature: _____

Date: _____

Witness: _____

Date: _____



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.