



CIVILIAN COMPLAINT PROCESS AND SELECT BOARD REVIEW

General Order Number: 34.3

Effective Date: December 17, 2024

I. PURPOSE:

The purpose of this policy is to encourage and enhance accountability and public confidence in, and cooperation with, the Police Department through the establishment of formal procedures for acting upon allegations of misconduct by officers or of inappropriate policies.

All allegations of misconduct shall be construed as "complaints" and shall be processed as hereinafter described.

All complaints of misconduct of officers shall be investigated in an efficient, fair, thorough, and timely manner, showing equal concern for the rights of both civilians and officers. All investigations of complaints shall strictly follow the guidelines in this policy unless there is a good reason to deviate from these guidelines and such deviation does not compromise the fairness, completeness, and reliability of the investigation. If there is a deviation from these guidelines, the reason for such deviation shall be stated in the investigation report.

II. OBJECTIVES:

1. PROTECTION OF THE PUBLIC:

The public has the right to expect efficient, fair, and impartial law enforcement. Therefore, any misconduct by Department personnel must be detected, thoroughly investigated, and properly adjudicated to assure the maintenance of these qualities.

2. PROTECTION OF THE DEPARTMENT:

The Department is often evaluated and judged by the conduct of individual members. It is imperative that the entire organization not be subjected to public censure because of the misconduct by a few of its personnel. When an informed public knows that its police department honestly and fairly investigates and adjudicates all allegations of police misconduct against its members, this public will be less likely to feel any need to raise a cry of indignation over alleged incidents of misconduct.

3. PROTECTION OF THE EMPLOYEE:

Employees must be protected against false allegations of misconduct. This can only be accomplished through a consistently thorough investigation process.

4. REMOVAL OF UNFIT PERSONNEL:

Personnel who engage in serious acts of misconduct or who have demonstrated that they are unfit for law enforcement service must be removed for the protection of the public, the Department and other police officers.

5. CORRECTION OF PROCEDURAL PROBLEMS:

The Department is continually seeking to improve its efficiency and the efficiency of its personnel. Occasionally, personnel investigations uncover or disclose faulty procedures that would otherwise have gone undetected. These procedures can then be improved upon or corrected.

III. PROCEDURES:

1. RECEIVING COMPLAINTS

A. Any person having a complaint against an officer or policy of the Police Department may register such complaint in person, in writing on a Civilian Complaint Form or otherwise, or by telephone, as follows:

- 1.** To the Office of Professional Responsibility (hereinafter referred to as the “IAO”) or, if the IAO is unavailable, to a supervisor available at the Police Station, who shall forward the complaint to the IAO as soon as possible.
- 2.** To the Select Board’s Office at Town Hall. The Select Board’s Office shall forward the complaint as soon as possible to the IAO. If the complainant reports to the Select Board’s Office, the complainant shall be informed of the following:
 - a.** The IAO, or another ranking officer designated by the Chief, is available to be present at the complainant’s interview.
 - b.** The complainant shall also be given the option of recording their statement.
 - c.** The complainant may decline both a and b and give a statement to a representative of the Select Board’s Office only.
- 3.** Submit complaints in writing and on-line via the Department’s web site, which complaints shall be forwarded as soon as possible to the IAO.

4. Complaints may also be submitted directly to the Police Commissioners Advisory Committee through the email address provided on its webpage. This email address will also be monitored by a person from the Diversity Office. The PCAC will then forward the complaint to the IAO for investigation.

B. A complaint may be resolved to the complainant's satisfaction immediately by the IAO/or other supervisor taking such complaint. In such a case, this type of resolution shall be reported in writing by the IAO/or supervisor taking the complaint and submitted to the Chief of Police (and to the IAO, if the person taking the complaint is not the IAO), and if possible, acknowledged in writing by the complainant. Some situations where a complaint may be immediately resolved are the following:

1. The incident is clearly not of a serious nature, or arises from a misunderstanding or lack of knowledge of the law or of limitations in a police officer's authority.
2. The complainant declines to participate in the formal complaint process. Under no circumstances shall a complaint be delayed, rejected or refused if the complainant wishes to initiate a formal complaint.

When a supervisor is unable to resolve a complaint to the satisfaction of the complainant, that supervisor must explain the procedure by which the complainant can file a formal complaint.

C. All Town employees shall render prompt, courteous assistance to any person wishing to register a complaint. Any employee who is informed by a civilian of information that could be construed as a complaint shall immediately refer the complainant to the IAO or, if the IAO is unavailable, to the Officer in Charge, who shall forward the complaint as soon as possible to the IAO.

D. The IAO or, if the IAO is unavailable, the Officer in Charge shall observe the following procedures and take the following actions relative to receiving a complaint:

1. If the complaint is made in person, provide a private area in which to receive the complaint. If necessary, the employee shall offer the complainant transportation so that the complainant may make the complaint in person.
2. The complaint may be taken over the telephone.
3. Ascertain the nature of the complaint.

4. If the complainant is in person, advise the complainant of the procedures to be followed in processing the complaint, including the complainant's option of registering such complaint with the Select Board's Office, anonymously, and to be accompanied by a representative of the complainant's choosing during the interview, and provide the complainant (if in person, but in any event no later than five business days after the filing of the complaint) with a copy of the Civilian Complaint Form and a brochure explaining the steps that will be followed in the complaint process.
 5. If the complaint unquestionably alleges only Class C issues (see III(3)(C) below), the IAO/Officer in Charge shall briefly explain the Town policies in question, and offer to initiate an investigation pursuant to this policy only if the complainant, after such explanation, chooses to proceed with the complaint in accordance with this policy.
 6. If it is the Officer in Charge who receives the complaint, the Officer in Charge shall forward the complaint to the IAO as soon as possible for investigation and processing pursuant to this policy.
- E. All complaints, including anonymous or third-party complaints, shall be processed in the same manner so long as there is sufficient information to warrant an investigation.
- F. Any officer who has information or evidence of another officer's misconduct shall convey it to the Chief or to the IAO.
- G. Although the complaint shall be received, it shall not be further processed if received more than six months after an alleged incident, unless either the Chief or a majority of the Select Board finds extraordinary or compelling circumstances, such as Class A complaints that appear conducive to a productive investigation notwithstanding the passage of time or newly available evidence.
- H. The IAO, within two business days, shall notify the Chief of Police verbally or in writing of all complaints in the nature of Class A and Class B complaints against departmental employee(s). The IAO shall notify the Chief of Police verbally or in writing as soon as practicable of any Class C complaints.

2. CIVILIAN COMPLAINT FORMS

- A. To the extent possible, all complaints shall be taken on an official Civilian Complaint Form.
- B. The IAO or, in the event the IAO is not available, the Officer in Charge who takes the complaint shall:

1. Attempt to obtain all information sought on the form, to the extent available to the complainant, along with any other information which could potentially assist in a subsequent investigation.
 2. Ask the complainant to specify any information included in the complaint that the complainant considers private and wishes the Department to maintain confidentially, to the extent doing so is permissible under the law.
 3. If the identity of the accused officer is not certain, facilitate a fair identification procedure. If a description, together with intradepartmental investigation, does not identify an officer, the complainant shall be given a prompt opportunity by the IAO to view up-to-date photographs of any officers who had an opportunity to participate in the alleged incident, said photographs to be inserted in a reasonable array.
 4. If the complainant alleges a physical injury caused by misconduct of an officer, attempt to document and verify such injury. The complainant shall be encouraged to seek further documental verification of such injury. Any such verification or encouragement shall be noted on the Civilian Complaint Form.
- C. Complainants who are interviewed are entitled to have a representative of their choosing present with them during their interview.
- D. The complainant shall be given an opportunity to read, and then amend, the Civilian Complaint Form. The complainant shall then be asked to sign the Civilian Complaint Form. If the complainant is unwilling to sign it, the unwillingness shall be noted on the form and the complaint shall be processed in conformity with this policy.
- E. The complainant shall immediately be given a copy of the completed Civilian Complaint Form and a brochure explaining the steps that will be followed in the complaint process.
- F. If the complaint is made by telephone or otherwise in a manner other than in person, a copy of the completed Civilian Complaint Form and the brochure shall be mailed by the IAO to the complainant along with a request that the complainant make any necessary corrections to the statements contained on the form and sign and return one copy of the latter in an enclosed, addressed, stamped envelope.
- G. Any such completed and returned Forms shall be given directly to the IAO.
- H. The IAO/Officer in Charge taking the complaint shall ascertain that the complainant understands the subsequent procedures as summarized in the brochure.

3. CLASSES OF COMPLAINTS & CONFIDENTIALITY

- A. **Class A:** allegations against an officer which, if true, could be construed as "serious", including excessive use of force; malicious and illegal arrest; unreasonable deprivation of individual rights; biased conduct or behavior based on a person's disability, ethnic origin, gender, race, religion, sexual orientation, age, economic status, cultural group, gender identity or any other identifiable group; corruption; untruthfulness; criminal activity which could be construed as a felony; or violation of Department rules which might warrant more than a five day suspension.
- B. **Class B:** any other allegations against an officer which, if true, could be construed as a violation of any laws, rules, regulations, or policies of the department, the Town, or the Commonwealth; or alleged discourteous conduct or language which would reflect negatively on the Department or the Town.
- C. **Class C:** allegations which do not question the conduct of any officer, but rather raise issues relating to the appropriateness of Department procedures or policies.
- D. **Class D:** Allegations that are clearly frivolous or for other reasons do not merit disciplinary action.
- E. The IAO or Officer in Charge shall make a preliminary designation on the Form of Class A, B, C, or D, resolving any doubt in favor of a higher classification. A complaint may be designated "C" in addition to "A" or "B".
- F. A copy of any Civilian Complaint Form which has been designated Class A shall, along with a copy of the police incident reports, be immediately provided to the Chief, who shall immediately provide such unredacted materials, marked "Confidential," to the Select Board.
- G. Prior to the conclusion of the departmental investigation (*i.e.*, through such time as the Chief sends the report to the Select Board), information concerning an investigation, other than the fact that an investigation is underway, shall remain confidential.

4. INTERNAL AFFAIRS/STAFF INSPECTION OFFICER AND PROCEDURES

- A. A Deputy Superintendent or Lieutenant shall hold the position of Internal Affairs/Staff Inspection Officer (IAO). This officer shall be answerable only to the Chief and the Select Board. The IAO shall have responsibility for the investigation and processing of complaints under this policy unless the Chief, in extraordinary circumstances, designates another superior officer to do so, in which case such superior officer shall fulfill the responsibilities of the IAO set forth in this policy.

- B.** The IAO shall conduct periodic staff inspections and shall reduce to writing to the Chief any alleged violations of departmental rules and regulations or any other allegations which, if true, could merit corrective or disciplinary action.
- C.** All investigations of complaints shall strictly follow the guidelines in this policy unless there is a good reason to deviate from these guidelines and such deviation would not compromise the fairness, completeness, and reliability of the investigation. If there is a deviation from these guidelines, the reason for such deviation shall be stated in the investigation report.
- D.** All complaints received by the Chief shall be immediately forwarded from the Chief to the IAO for investigation, unless the Chief, in extraordinary circumstances, designates another superior officer to investigate a complaint.
- E.** In the case of a Class A complaint, the IAO shall exercise all due diligence to attempt to schedule a personal interview with the complainant within 72 hours, offering to meet the complainant at any reasonable location. If the complainant insists, the complainant may be interviewed over the telephone and this shall be noted in the report.
- F.** In the case of a Class B or C complaint, the IAO shall attempt to reach the complainant by telephone within one week. The complainant shall be invited to the station to meet with the IAO, but may be interviewed on the telephone if he/she prefers.
- G.** For Class D complaints, the IAO shall review the complaint and return it to the Chief with a report recommending either reclassification, or a finding of either "exonerated" or "unfounded".
- H.** The IAO shall use any and all lawful investigative techniques including prompt and private interviews of witnesses and officers, maintaining thorough records of all conversations and investigative occurrences, and assisting both complainants and officers in identifying and locating evidence to corroborate their factual assertions.
- I.** The IAO shall make reasonable attempts to interview all witnesses identified by the complainant or subject officer, or reasonably identifiable from information obtained from either of them or from any officer on the scene of the incident or otherwise, who reasonably appear to possess information relevant to the investigation.
- J.** Witnesses who are interviewed by the investigator are entitled to have a representative of their choosing present with them during their interview.
- K.** Witnesses shall be asked to specify any information they supplied that they wish the Department to maintain confidentially, to the extent doing so is permissible under the law.

- L.** Witnesses shall be requested to sign their statements or the summary of their statements created by the IAO, if they did not supply a statement on their own.
- M.** Summaries of witness interviews shall reflect whether the interview was conducted in person or by telephone, and whether it was conducted as a joint witness interview with any other witness(es) and if so whom. As a general rule, joint witness interviews shall be avoided when possible.
- N.** Inability to interview, or lack of cooperation by the complainant, the officer, or any person, shall not foreclose further investigation.
- O.** An investigation shall go forward regardless of any potential civil or criminal liability, investigation, or charges. Should a critical witness claim a Fifth Amendment privilege because of a pending or potential criminal proceeding, the Select Board, after receiving a recommendation from the Chief, may defer the conclusion of the investigation or hearing, until the conclusion of the criminal proceeding, or until the witness is willing to testify, whichever is earlier.
- P. Subject Officer:**

 - 1.** After diligent efforts to interview the complainant, the IAO shall issue to the subject officer a written statement of the allegations and the employee's rights and responsibilities relative to the investigation and shall subsequently interview the officer, unless either step would interfere with the investigation.
 - 2.** A subject officer shall not initiate contact with the complainant or any witness. If unavoidable contact occurs, the officer shall not discuss or indirectly allude to the complaint or its allegations.
 - 3.** A subject officer may have counsel or a union representative present at any interview unless an unreasonable delay would be necessitated.
 - 4.** In interviewing or attempting to interview the subject officer, the IAO or other investigating officer shall be mindful of the provisions of state and federal law that are applicable to the questioning of public employees.
- Q.** The IAO shall respond to all reasonable inquiries by the complainant as to the status of the investigation. Any delays shall be explained to the complainant.
- R.** In the case of a Class A or B complaint, and subject to approval by the Chief and after an investigation has been completed, the IAO may attempt to act as a mediator and seek a proposed disposition, such as an apology or promise of future efforts(s) (*e.g.*, the Early Intervention System, see Section III(18) below), which is mutually agreeable to the complainant and the accused officer. Any such agreement by the officer shall not be considered an admission of fault and shall only be considered in mitigation of the severity of the disposition, if any. Neither

party shall be pressured to accept such an agreement. Any such agreement shall be subject to the approval of the Chief and Select Board as hereinafter described.

- S.** If, during an investigation, the IAO learns of any allegation (including a Class C-type allegation) beyond the scope of the complaint under investigation, the IAO shall execute a new Civilian Complaint Form and initiate the procedures herein described.
- T.** The IAO shall submit to the Chief a report containing the IAO's findings and conclusions within 30 days of commencing an investigation of a complaint. The Chief may grant an extension of no more than 30 days upon good cause. Any extensions beyond the foregoing shall require approval by a majority of the Select Board. In any case, the Department shall complete an internal affairs investigation into officer misconduct and issue a final disposition within one year of receiving a complaint or notice from the POST commission of the complaint being filed. The POST commission may, upon a showing of good cause, extend the time to complete the investigation. The findings and conclusions shall include:

 - 1.** All pertinent reports and documents, including any witness statements that were submitted in writing or reduced to writing.
 - 2.** A detailed account of all pertinent factual assertions of everyone interviewed noting times and persons present at interviews, highlighting areas of agreement and disagreement, etc.
 - 3.** Proposed factual conclusions, including the relative credibility of any conflicting factual allegations, and objective reason(s) for such conclusions, with regard to each original allegation and any others that have become apparent during the investigation. The lack, existence, quantity, or quality of corroborating evidence shall be pertinent to the weight of any evidence, but shall not be determinative.
 - 4.** A complaint may contain a single allegation of misconduct or multiple allegations of misconduct. Each allegation will be investigated and, on each allegation, a proposed finding based upon a preponderance of the evidence shall be made. In situations where a complaint makes multiple allegations, it is possible the case will have different findings for the various allegations. For example, a case could be sustained in part and unfounded in part. Investigative findings will use the following categories and definitions:

 - a.** "Unfounded" - investigation revealed that there was no misconduct.
 - b.** "Exonerated" - alleged action occurred but was reasonable and proper.
 - c.** "Not Sustained" - allegation cannot be either proven or disproved.

- d. "Sustained" - investigation indicates sufficient evidence to support the allegation.
 - e. "Mediated" - both parties agree to a proposed and described disposition (Classes A and B only).
 - f. "Misconduct Not Based on Original Complaint" – The investigation discovered misconduct that was not part of the original complaint.
 - g. "Filed" – no action necessary or possible at this time.
5. Any mitigating or aggravating circumstances which have come to the attention of the IAO.
 6. Relative to any allegations that are sustained or not sustained, a chronological list of any similar complaints against the said officer, along with the dispositions.
 7. Witness statements shall be appended to the IAO report.

U. INVESTIGATIVE TECHNIQUES:

1. All investigations under this policy shall be conducted in accordance with the normal and legal Department investigative procedures with regards to:
 - a. The use of detection equipment
 - b. Medical or laboratory examinations
 - c. Covert photographing, and photo identification
 - d. Lineups
 - e. Financial disclosure information
2. **INVESTIGATIVE TECHNIQUES GENERALLY:** In conducting investigations of alleged employee misconduct, all appropriate investigative techniques and methods shall be employed, consistent with legal requirements and all necessary concern for the individual rights of the accused employee. An internal administrative investigation shall be conducted with the same degree of professional competence as is devoted to a criminal investigation. Employees or officers will have the same rights on these matters as any individual under investigation by this Department.

The accuracy of the investigative report shall be assured by requiring the investigator to take all reasonable efforts to obtain witness statements by one or more of the following methods:

- a. Taped (audio or video) statements with consent of witness;
- b. Witness's own signed statement;
- c. Witness's verbal statement given to the IAO and reduced to writing by the investigator and reviewed for accuracy and signed by the witness, affirming that the statement is accurate.

Witnesses who do not wish to sign statements they submit or statements reduced to writing by the investigator shall not be required to do so. If the witness disagrees with the investigator's version of the witness's statement and the investigator declines to change the statement in conformity with the witness's wishes, the witness shall be asked to submit their version of what they said and asked to sign it.

- 3. **MEDICAL/LABORATORY EXAMINATION:** Upon orders of the Chief of Police or their designee, an employee may be required to submit to a medical or laboratory examination, at the Department's expense. This examination must be specifically directed and narrowly related to a particular internal affairs investigation being conducted by the Department.
- 4. **IDENTIFICATION:** A police officer may be required to be photographed and can be compelled to stand in a lineup for identification in connection with an administrative investigation when such action is material to an investigation, and a refusal can be the basis for an additional disciplinary charge of refusal to obey a lawful order. Such a lineup shall be fairly constructed and not be unfairly suggestive and shall not be used for an administrative investigation where criminal charges are contemplated.
- 5. **SEARCHES:**
 - a. A police officer's personal property, including their home, car and other property, is protected from unreasonable search and seizure under the Massachusetts Constitution, and it is possible that any evidence illegally obtained may not be used as evidence in an administrative proceeding.
 - b. Department property furnished to the officer, such as desks, lockers, or vehicles, in which it is clearly understood in advance that an officer has "no expectation of privacy," may be searched without a warrant.
- 6. **FINANCIAL DISCLOSURE:** A police officer may be compelled to submit a financial disclosure statement as part of an internal affairs investigation provided such statement is material to the investigation being conducted. Such submissions shall only be conducted in a manner that is

consistent with federal and state statutory and case law and past administrative decisions.

7. **LIE DETECTOR/POLYGRAPH TESTS:** Under the provisions of G.L. c. 149, § 19B, police officers may be required to submit to a polygraph or lie detector test in connection with an internal administrative investigation if such test is conducted by a law enforcement agency in the course of a departmental investigation of criminal activity, and under such circumstances, officers may face disciplinary action for refusal. Such tests shall be administered by trained and certified individuals in accordance with federal and state statutory and case law and past administrative decisions.

8. **AUDIO AND VIDEO RECORDINGS:** Upon orders of the Chief of Police or their designee, an employee may be required to submit to an audio or video recording of their statement if deemed necessary.

- V. On a monthly basis, the IAO shall prepare a report enumerating all complaints (including Class C and D complaints) against departmental employees and complaints against the Police Department generally that had been brought to the attention of the IAO during that month. This report will be provided to the Chief of Police and also the Police Commissioners Advisory Committee (with confidential information redacted). Included in the report will be the outcome(s) of the investigation(s) that have been completed and the status of investigations not yet completed. On an annual basis, the IAO shall compile statistical summaries of IAO investigations for the preceding year, such information to be presented to the Board within the Chief's annual departmental report to the Select Board.

- W. The Brookline Police Department shall not include a nondisclosure, non-disparagement, or other similar clause in a settlement agreement between the Brookline Police Department and a complainant in order to settle a complaint of professional misconduct by a law enforcement officer unless the complainant requests such provisions in writing.

X. TRAINING:

The IAO and other Department personnel shall be trained concerning requirements of this policy. IAO training shall include training on the weighing and evaluating of evidence, including the credibility of witnesses.

5. DISPOSITION AND NOTIFICATION BY THE CHIEF:

- A. The complainant and the subject officer shall be furnished with a copy of the IAO report within seven days of its completion, provided that the Chief shall redact 1) from any copy of the IAO report the Department furnishes to a person other than

the person the information concerns (*i.e.*, the subject officer, in the case of (a) below, and the complainant, in the case of (b) below), information relating to similar prior complaints that date in excess of two years prior to the incident that were a) made against the police officer, or b) filed by the complainant as a civilian complaint; 2) the name and other identifying information of any civilian who requests that their identity not be disclosed; and 3) any information in the report that comes within an exemption to the Massachusetts Public Records Law, G.L. c. 66, § 10 and G.L. c. 4, § 7(26). Such IAO report shall be accompanied by any witness statements that were submitted in writing or reduced to writing pursuant to this policy, which shall be redacted upon distribution to the complainant and subject officer as set forth in items 1, 2, and 3 of this Paragraph. The complainant and the police officer shall be notified that any comments concerning the IAO report, including additional statements by witnesses, may be submitted to the Police Chief within 10 days of receipt of such materials. Any such comments and statements shall be appended to the IAO report. Should any such comments and statements be received, the Chief shall take any action that the Chief deems appropriate, however, the Chief is not expected to negotiate with anyone concerning the content of the final report the Chief submits to the Select Board.

B. Upon receipt of the IAO's report containing its findings and conclusions and the passage of the allowed time for the complainant and police officer to submit comments regarding the IAO report, the Chief shall either:

1. Request a further investigation; or
2. Promptly prepare the Chief's own report setting forth the Department's final disposition with regard to the classification of the complaint, and of each allegation along with a summary of the reasons therefore. The Chief's report shall also indicate what, if any, disciplinary action or remedial measures were taken or are recommended to be taken. Such actions or measures may include the assignment of the officer to the "Early Intervention System," see Section III(18) below.

C. After completion of the report, the Chief shall promptly send:

1. To the Select Board via the Town Administrator, a copy of the Chief's complete report along with the IAO report and investigative file, in unredacted form and marked "Confidential," which the Select Board shall maintain confidentially in a secure environment.
2. To the complainant and to the police officer who is the subject of the complaint,
 - a. a Notice of Complaint Disposition Form indicating the disposition of each allegation and an Internal Investigation Appeal Form and a return, addressed envelope. Said notice shall clearly explain the right to and process for appeal for review by the Select Board; and

- b. a copy of the Chief's report, including any comments by the complainant and subject officer and additional statements by witnesses, provided that the Chief's report and accompanying materials shall be redacted in the same manner set forth in Section III(5)(A) with regard to the IAO report and accompanying materials.
- 3. To the Police Commissioners Advisory Committee, a copy of the Chief's report with confidential information redacted, so that the PCAC may review it and advise the Select Board and/or the PCAC may mediate in appropriate cases.

6. MAINTENANCE/RELEASE OF DOCUMENTS

Documents relative to internal investigations shall be maintained confidentially in a secure environment, separate from personnel records or centralized Department or Select Board's Office records. Such records shall be maintained and disseminated in accordance with those provisions of state and federal law applicable to the retention, maintenance, disclosure, dissemination, inspection and copying of public records and in conformity with this policy otherwise. In addition, this General Order prohibits the withholding of officers' disciplinary records related to a misconduct investigation as a public records exemption.

7. APPEAL TO SELECT BOARD

- A. Unless otherwise specified by the civil service laws or labor agreement, any member of the Police Department aggrieved by the Chief's Report may appeal for review by the Select Board within twenty-one days. Said appeal shall be reviewed by Town Counsel and shall proceed as hereinafter described unless civil service laws mandate alternative procedures. The twenty-one-day appeal period begins with the date of receipt of the final disposition form being day one.
- B. Any civilian aggrieved by the Chief's Report may, within twenty-one (21) days, appeal for review by the Select Board by submitting to the Town Administrator a completed Internal Investigation Appeal Form. The classification of the complaint may be the reason for such an appeal. The twenty-one-day appeal period begins with the date of receipt of the final disposition form being day one.
- C. Upon receipt of any appeal received in a manner other than through a completed Internal Investigation Appeal Form, the Town Administrator shall send to the aggrieved person an Internal Investigation Appeal Form and a return, addressed envelope.

8. REVIEW BY THE TOWN ADMINISTRATOR *(All references to the Town Administrator shall also connote and include the Deputy Town Administrator)*

- A. Upon receipt of a completed Internal Investigation Appeal Form, the Town Administrator shall:
1. Review the class designation, and amend the designation, if necessary, in their opinion, which designation shall subsequently be reviewed and either approved or changed by the vote of the Select Board (including any change that adds a Class C designation).
 2. Immediately forward an unredacted copy of the complaint, the Chief's report, the IAO report, and all supporting documents (including all witness statements and any comments of the complainant, the subject officer and witnesses with regard to the IAO report) to the Select Board, which shall be marked "Confidential" and which the Select Board shall maintain confidentially in a secure environment.
 3. Review the reports for completeness, and send the matter back to the Chief for any further investigation that the Town Administrator or any Select Board member deems helpful.
 4. Submit to the Select Board at least one interim report more than one week before the conclusion of the Town Administrator's review.
 5. Complete the review within 30 days with regard to Class A complaints and 15 days with regard to Class B and C complaints, unless such period is extended for good cause by the Select Board.
- B. All documents and reports subsequent to the Chief's findings shall remain confidential to the extent permitted under the Massachusetts Public Record Law, G.L. c. 66, §§ 10 and G.L. c. 4, § 7(26), except that such documents shall be disseminated to the complainant and the police officer as specified in this policy.
- C. If a majority of the Select Board considers a Class A or Class C complaint particularly complicated or to require additional effort or expertise, special counsel may be retained to conduct an investigation.
- D. If, at any time, the Town Administrator or any Selectman believes that allegations beyond the scope of the Department investigation, such as possible misconduct by a different officer, have been raised, a new Complaint Form shall be executed and referred to the Department for immediate and expedited investigation and processing.

9. CIVILIAN APPEAL HEARINGS, ACTION BY THE SELECT BOARD, AND DISCIPLINARY HEARINGS

- A. Within 30 days after completion of the Town Administrator's review, all appeals from dispositions of civilian complaints, except as set forth below, shall be docketed for the Select Board to hear at a Civilian Appeal Hearing at a regularly

scheduled Select Board meeting in conformity with the Massachusetts Open Meeting Law, G.L. c. 39, § 23B.

All matters involving 1) a recommendation by the Chief, thereafter approved by the vote of the Select Board and reflected in any written notice the Board issued to the officer pursuant to G.L. c. 31, § 41, for discharge, removal, suspension for a period of more than five days, layoff, transfer from a position without written consent, lowering in rank or compensation without written consent, or abolishing of a position within the meaning of G.L. c. 31, § 41, or 2) any appeal by a police officer from other forms of disciplinary actions, shall be docketed for the Select Board to hear as a Disciplinary Hearing (*see* Section III(9)(E)), which shall be scheduled and held in conformity with the Massachusetts Civil Service Laws, G.L. c. 31, the rules and regulations promulgated thereunder, the Massachusetts Open Meeting Law, G.L. c. 39, §§ 23A and 23B, and/or this policy, Section III(9)(E), as applicable. The matters set forth in this Paragraph shall proceed directly to a Disciplinary Hearing, without being heard at a Civilian Appeal Hearing and without further vote of the Select Board.

Civilian Appeal Hearings that are held in connection with appeals from dispositions of civilian complaints shall be postponed beyond 30 days as follows:

1. no more than two weeks for further investigation at the request of any Select Board member or;
 2. by vote of the Board, until the completion of the investigation of any new Complaint issued under Sections III(4)(S) and III(8)(D) above.
- B.** The procedural protections of G.L. c. 31, § 41 shall be limited to Disciplinary Hearings held pursuant to Section III(9)(E) of this policy.
- C. CIVILIAN APPEAL HEARINGS:**
1. At least two weeks notice of the Civilian Appeal Hearing to be held in connection with an appeal from the disposition of a civilian complaint shall be given to the Chief, the complainant, and, in a Class A, B or D Complaint, the accused officer.
 2. Where the appellant is a civilian who has filed a Class A, B or D Complaint, the Chief and the appellant, or their representatives, shall each be entitled to make an informal presentation before the Select Board at such Civilian Appeal Hearing. The subject officer and/or the officer's representative shall be entitled, but shall not be required, to make an informal presentation at such Civilian Appeal Hearing. In addition, the appellant and the subject officer shall each have the right, but shall not be required, to present up to three eyewitnesses to make informal presentations, each of whom shall have the right to address the Board for

no more than five minutes. By a majority vote, the Select Board may permit additional eyewitnesses to make informal presentations at such Civilian Appeal Hearing or may extend the time for such presentations.

D. ACTION BY THE SELECT BOARD:

1. By majority vote, the Select Board shall do one of the following with regard to appeals from civilian complaints after hearing informal presentations at the Civilian Appeal Hearing in the case of Class A, B or D Complaints:
 - a. After deliberation in conformity with the Massachusetts Open Meeting Law, G.L. c. 39, §§ 23B(1), take steps regarding potential disciplinary action in conformity with such law, with the Massachusetts Civil Service Law, G.L. c. 31, and with Section III(9)(E) below, as applicable (including, if and as applicable, (a) the issuance of written notice to the subject officer stating the action contemplated and the specific reason(s) for such action, and (b) the docketing and convening of a two-phase Disciplinary Hearing as described in Section III(9)(E)(2) and otherwise below); or
 - b. Refer the matter back to the Police Chief for further action; or
 - c.. Appoint one or more independent persons to conduct an investigation and write a report for the Select Board concerning the facts relating to the complainant's allegations. The person(s) selected to conduct the investigation should, depending on the nature of the complaint, be experienced in working with persons of diverse backgrounds, including racial, ethnic and cultural groups, and people of different genders, sexual orientation, and mental and physical abilities. After receipt of that report, the Select Board may take any of the steps set forth in Sections III(9)(D)(1)(a), (b), or (d); or
 - d. Dismiss the complaint and notify all parties of such.
- 2.. For Class C complaints, the Chief shall, more than one week before the Civilian Appeal Hearing, provide an explanation of the current policy, possible alternatives, factual or legal background material, and any other information requested by the Town Administrator or any Selectman.
3. For Class C complaints, any individual and/or organization may submit a written or brief oral presentation regarding the appropriateness of the Department policy or procedure, and the Select Board may invite any community group (such as the Commission on Diversity, Equity,

Inclusion and Community Relations) known to have interest or expertise to participate in the Civilian Appeal Hearing regarding such appropriateness. Where a complaint, in addition to Class C allegations, contains allegations that could subject an officer to discipline, the allegations specific to the officer shall be governed by Section III(9)(C)(2) above and any Civilian Appeal Hearing regarding the Class C allegations may be bifurcated from any Civilian Appeal Hearing regarding Class A, B or D allegations specific to the officer.

E. DISCIPLINARY HEARINGS:

- 1.. The Select Board may choose to make the convening of a Disciplinary Hearing of a Class B or D complaint contingent on the appearance by the person who filed the complaint of misconduct to appear and give testimony in accordance with these procedures.
2. The Disciplinary Hearing shall be separated into two phases, the first phase to determine a finding (*see* Section III(4)(T)(4) *supra*) on each allegation and, if an allegation against an officer is sustained, a second phase to determine the disciplinary disposition, both by vote of a majority of the Select Board.
3. Disciplinary Hearings shall proceed in accordance with the civil service law, G.L. c. 31, the regulations thereunder, and the following provisions:
 - a. The parties to a Disciplinary Hearing shall consist of the Subject Officer and the Chief or the Chief's designee as the employer-complainant. In the event that the Chief is not pursuing the matter, the Town shall be a party to such hearing as the employer-complainant.
 - b. Pursuant to G.L. c. 31, § 41, the Chief or the Town shall file a written request and notify the parties that the hearing shall be public unless:
 - i. The accused officer does not file a written request for a public Disciplinary Hearing, and
 - ii. The accused officer or the employer-complainant requests a closed Disciplinary Hearing, the requirements of G.L. c. 31, § 41 are met, and the Board votes for a closed session.
 - c. A Disciplinary Hearing shall be docketed for hearing by the Select Board promptly and in any event within any applicable timeframes established by the Civil Service Law.
 - d. Either party to a Disciplinary Hearing may bring witnesses to testify. A subpoena shall be issued at the request of the Town

Administrator or Select Board, or at the request of any party unless a majority of the Select Board deem such a subpoena unreasonable and unfair.

- e. Either party may be represented by an attorney or other designated spokesperson. A witness may be represented by counsel.
- f. The Disciplinary Hearing is administrative and need not be conducted according to technical rules of procedure, evidence or witnesses. The purpose of the Disciplinary Hearing is to determine the facts and situations surrounding a case. The Select Board, especially when counsel is not present, shall protect the rights of all parties whenever through the lack of ability, inexperience, or oversight, either side's case may seem to be improperly prejudiced.
- g. The Chairperson will conduct the Disciplinary Hearing subject to being overruled by a majority of the Board members. Members of the Board shall be finally responsible for obtaining complete and accurate facts.
- h. The first phase of the Disciplinary Hearing will proceed as follows: The employer-complainant will present the Complaint, and introduce witnesses, if any. In the case of a Class A complaint for which the person who filed the complaint of misconduct does not appear to testify, Town Counsel will perform the role of that person. The Subject Officer shall then respond to the complaint and introduce witnesses, if any. Each person testifying, and each party to the complaint, may be questioned by the Board and by the parties or their attorneys. After the Board has taken all relevant evidence, each party will be given an opportunity to make a closing statement. At the conclusion of the first phase, the Board shall take a vote to determine the finding(s) on each allegation and proceed, if appropriate, to the second phase.
- i. Oral evidence shall be taken only under oath or affirmation.
- j. Upon the request of either party or a Selectman, witnesses other than the accused officer shall be excluded from the hearing until they are called to testify.
- k. Each party to the Disciplinary Hearing shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called that witness to testify; and to rebut the evidence against the party. If the

Subject Officer does not testify on the officer's own behalf, the officer may be called and examined as if under cross-examination.

- l.** Any evidence which is relevant to the allegations in question shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
 - m.** If the Select Board decides that additional information is necessary to reach its findings, it will continue the hearing to a future date unless the parties agree to allow the Board to receive such material in writing without reconvening.
 - n.** The standard of proof for the Select Board findings of fault shall be preponderance of evidence.
 - o.** Evidence of unrelated allegations, incidents, or personnel records may be received only in the second phase of the Disciplinary Hearing.
- 5.** In addition to its deliberations and votes(s) at the Disciplinary Hearing, the Select Board shall provide a written notice of its decision and disposition to the accused officer in accordance with G.L. c. 31, § 41, to the Chief, and to Town Counsel.
- 6.** All documents relating to the Town Administrator's and the Select Board's investigations may be released in accordance with Section III(6), supra, only.
- 7.** The officer shall retain the right to further review under G.L. c. 31, § 43.

10. RELIEVING EMPLOYEE FROM DUTY:

No Officer shall be relieved from duty as a result of an Office of Professional Responsibility investigation unless such action is in accordance with G.L. c. 31, §§ 41 and 62.

11. RELIEF FROM DUTY – RIGHTS OF COMMANDERS:

The Commanding Officer of any shift or Division within the organization of the Brookline Police Department may relieve, with pay, any officer or employee under his/her command for the balance of the assigned shift only if said Commanding Officer has determined that the officer or employee is unfit or unable to perform or carry out his/her assigned duties or responsibilities. This action may or may not occur as a result of a need for disciplinary investigation or action.

Examples of relieving for non-disciplinary reasons would be as follows:

- A.** If the officer or employee is suffering from an illness and appears too sick to work effectively or safely.
 - B.** If the officer or employee reports to work injured, is injured during the performance of duties and a physician advises that the officer or employee be relieved, or is injured on duty and refuses to acknowledge the apparent danger the injury may present if the officer or employee remains on duty.
 - C.** The officer's or employee's mental state as the result of an unusual or traumatic situation presents a danger that duties and responsibilities may not be performed safely and properly.
 - D.** Any action by an officer or employee that results in death or serious injury, but not limited to the use of force.
- 12.** Commanders may also relieve any officer or employee from duty, with pay, for the balance of the assigned shift only, for any infraction or violation of the Rules, Regulations, Policies, Procedures, or Orders of the Department which would be conducive to holding the Department up to public ridicule or scorn, or would jeopardize the Department's mission to effectively provides police services to the community. Specific examples include, but may not be limited to, the following;
- A.** Reporting to duty while under the influence of alcohol or controlled substances.
 - B.** Insubordination.
 - C.** Committing a criminal offense while on or off duty.
 - D.** Improper use or operation of Department vehicles or equipment.
 - E.** Falsifying a statement or record.
 - F.** Abusing, stealing, damaging, destroying, or defacing property or equipment of the Department or others.
- 13.** Any Commanding Officer who relieves an officer or employee from duty for disciplinary reasons shall immediately notify the Chief of Police or the Chief's designee and file a

written Special Report, to the Chief of Police, containing all the details of the matter. Further investigation into the matter will be conducted in accordance with the procedures outlined previously in this directive.

14. Any Commanding Officer who relieves an officer or employee from duty for non-disciplinary reasons, except sickness on duty, shall file a complete written Special Report on the details to the Commanding Officer's immediate superior, with copies going to the Chief of Police.

15. LIAISON WITH DISTRICT ATTORNEY:

Any Office of Professional Responsibility investigation which may, or does, result in criminal charges being brought against an officer shall require the District Attorney's Office be apprised of the case for the purpose of advising on legal issues, and ultimate prosecution if necessary.

16. PUBLIC EDUCATION:

The Department shall maintain a brochure that it shall make available to complainants and other members of the public explaining the steps that will be followed in the complaint process. The brochure and any other informational materials about the civilian complaint process shall be subject to prior approval by the Select Board.

The Select Board shall ensure the creation of a plan, subject to biennial review, for educating the public about the complaint process, including on the Town Website.

17. PERIODIC ASSESSMENT:

The Police Commissioners Advisory Committee shall biennially provide the Select Board, Town Meeting, and the public with a report on the functioning of the police complaint procedures. The report should include an assessment of the investigations of civilian complaints, an assessment of the Select Board's role in the complaint process, relevant statistics, comparisons with comparable communities, civilian survey results, and recommendations for any changes. The report should also include, where appropriate, a review of the interaction between police complaint policies and other town complaint policies.

18. THE EARLY INTERVENTION SYSTEM

This Early Intervention System is designed to assist a potentially troubled police officer, improve accountability and enhance the quality of policing in Brookline.

A. STATEMENT OF PURPOSE AND POLICY

The Brookline Police Department is aware of the complexities of policing in today's society. In an effort to improve the quality of policing, the Department has instituted an early intervention system. This system is a progressive program that

involves training, counseling and discipline. It will be used to identify officers who may be having difficulties in performing police work. By identifying these officers at an early stage, intervention can take place to correct behavior patterns thereby making it less likely they will re-occur in the future. This system will also identify problem areas, training needs and issues that must be addressed in order to provide professional and effective policing.

- B.** When a complaint is received regarding the actions of an officer, the Internal Affairs Officer will conduct an investigation into the complaint. In most cases, the IAO will meet with the officer complained against at some point in this investigation. During the meeting, the officer is to be made aware of the nature of the complaint alleged. At the earliest possible time, the supervisor of the officer will also be made aware of the nature of the complaint. Upon completion of this investigation, the final determination is to be made known to the officer and the officer's supervisor. At the discretion of the Chief, Superintendent and/or the IAO, a meeting may take place between the IAO, the subject officer and the officer's supervisors. If further action is deemed necessary, input is to be received from all present regarding the necessary steps to be taken to insure actions of this type do not re-occur in the future.
- C.** Any member of the Department who receives three complaints against that member within a two year period will be subject to review. This review will include the cases that prompted the complaints to be filed against the officer. Present at this review will be the IAO, the Commander of the Division to which the officer is assigned and the officer's immediate supervisor(s). All present will be expected to provide input into the complaints, the particular officer's actions and the officer's history. During this review, participants have the opportunity to support the officer's actions, identify any particular problems the officer is having, identify potential problems areas within the Department and, if necessary, recommend possible remedies.

D. RECOMMENDATIONS:

If a problem is identified, possible remedies include:

- 1.** Counseling with Supervisors and/or Commander;
- 2.** Additional training;
- 3.** Referral for medical or psychological fitness examination;
- 4.** A combination of additional training and supervision.

In these cases a program will be developed by the supervisor of the officer, subject to the approval of the Division Deputy Superintendent, The supervisor is to explain the program, outline steps in detail and the officer and supervisor are to sign off on the plan indicating their

understanding of it. Furthermore, complete status reports are to be filed by the supervisor weekly for the first four weeks and monthly thereafter until the problem is solved. This program will include, but not limited to, ride along with a supervisor, one on one supervision, increased training and will cover a period of time not less than six months. A report is to be prepared and submitted regarding the actions recommended or taken under this system. This report is to be submitted to the Chief of Police and Superintendent.

E. REVIEW PROCESS:

1. This process of review will be ongoing. Reviews such as those set out under this system may be initiated based on a specific incident.
2. This review will not be limited to the individual police officer. This review includes potential changes to policies, procedures, and methods of operation.
2. The IAO is to conduct an on-going analysis of the type of complaints alleged against all Brookline Police Officers. Once the IAO has determined the nature of the complaints, the Department will have identified a training need.

State Law Mandates – 2020 Police Reform Law

In 2020 the legislature passed “An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth.” This law established a new Peace Officer Standards and Training (POST) Commission, which has the power to certify and decertify police officers across Massachusetts. Under the POST Commission is an entity known as the Division of Police Standards, which reports to the POST Commission. The Division of Police Standards has the power independently to investigate misconduct allegations separate from investigations conducted under this policy. The police reform law also imposes certain reporting requirements on police agencies. The below section is added to this policy to summarize the new state law and its requirements pursuant to the police reform law.

IV. PUBLICLY AVAILABLE DATABASE BY POST

Pursuant to M.G.L Chapter 6E Section 13(a)(b):

The POST Commission shall maintain a publicly available database of orders issued pursuant to section 10 of Chapter 6E on the commission’s website, including, but not limited to:

- (i) the names of all decertified officers, the date of decertification, the officer's last appointing agency and the reason for decertification;
- (ii) the names of all officers who have been suspended, the beginning and end dates of suspension, the officer's appointing agency and the reason for suspension; and
- (iii) the names of all officers ordered to undergo retraining, the date of the retraining order, the date the retraining was completed, the type of retraining ordered, and the officer's appointing agency and the reason for the retraining order.

The POST Commission shall also cooperate with the national decertification index and other states and territories to ensure officers who are decertified by the Commonwealth are not hired as law enforcement officers in other jurisdictions, including by providing information requested by those entities.

V. POST: DIVISION OF POLICE STANDARDS

Pursuant to **M.G.L. Chapter 6E Section 8:**

- (a) There shall be within the POST Commission an entity known as the *Division of Police Standards*. The purpose of the Division of Police Standards shall be to investigate officer misconduct and make disciplinary recommendations to the POST Commission.

G.L. Chapter 6E Section 8(b)(1) The head of a law enforcement agency [e.g., Brookline PD] shall transmit any complaint received by said agency within two (2) business days to the Division of Police Standards, in a form to be determined by the POST Commission;

- provided, that the form shall include, but shall not be limited to:
 - (i) the name and commission certification identification number of the subject officer
 - (ii) the date and location of the incident;
 - (iii) a description of circumstances of the conduct that is the subject of the complaint;
 - (iv) whether the complaint alleges that the officer's conduct:
 - (A) 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;
 - (B) was unprofessional;
 - (C) involved excessive, prohibited or deadly force; or

- (D) resulted in serious bodily injury or death; and
- (v) a copy of the original complaint submitted directly to the agency; provided, however, that the commission may establish a minimum threshold and streamlined process for the reporting or handling of minor complaints that do not involve the use of force or allegations of biased behavior.

(2) Upon completion of the internal investigation of a complaint, the head of each law enforcement agency shall immediately transmit to the Division of Police Standards an investigation report in a form to be determined by the POST Commission;

- provided, that the form shall include, but shall not be limited to:
- (i) a description of the investigation and disposition of the complaint;
- (ii) any disciplinary action recommended by internal affairs or the supervising officer; and
- (iii) if the recommended disciplinary action included retraining, suspension or termination, a recommendation by the head of the agency for disciplinary action by the commission including, retraining or suspension or revocation of the officer's certification.

(3) Upon final disposition of the complaint, the head of each agency shall immediately transmit to the Division of Police Standards a final report in a form to be determined by the POST Commission;

- provided, that the form shall include, but shall not be limited to:
- (i) any disciplinary action initially recommend by internal affairs or the supervising officer;
- (ii) the final discipline imposed and a description of the adjudicatory process; and
- (iii) if the disciplinary action recommended or imposed included retraining, suspension or termination, a recommendation by the head of the agency for disciplinary action by the commission including, retraining or suspension or revocation of the officer's certification.

(4) If an officer resigns during an agency investigation, prior to the conclusion of an agency investigation or prior to the imposition of agency discipline, up to and including termination, the head of said agency shall immediately transmit to the division of police standards a report in a form to be determined by the commission; provided, that the form shall include, but shall not be limited to:

- (i) the officer's full employment history;
- (ii) a description of the events or complaints surrounding the resignation;

and

- (iii) a recommendation by the head of the agency for disciplinary action by the commission, including retraining or suspension or revocation of the officer's certification.

(5) Notwithstanding any general or special law or collective bargaining agreement to the contrary, nothing shall limit the ability of the head of an agency to make a recommendation in their professional judgment to the commission relative to the certification status of an officer, after having followed the agency's internal affairs procedure and any appeal therefrom.

(c)(1) The Division of Police Standards shall initiate a preliminary inquiry into the conduct of a law enforcement officer if the POST Commission receives a complaint, report or other credible evidence that is deemed sufficient by the commission that the law enforcement officer:

- (i) was involved in an officer-involved injury or death;
- (ii) committed a felony or misdemeanor, whether or not the officer has been arrested, indicted, charged or convicted;
- (iii) engaged in conduct prohibited pursuant to section 14 {Use of Force};
- (iv) engaged in conduct prohibited pursuant to section 15 {Failed to Intervene}; or
- (v) the commission receives an affirmative recommendation by the head of an appointing agency for disciplinary action by the commission, including retraining or suspension or revocation of the officer's certification.

(2) The Division of Police Standards may initiate a preliminary inquiry into the conduct of a law enforcement officer upon receipt of a complaint, report or other credible evidence that is deemed sufficient by the POST Commission that the law enforcement officer may have engaged in prohibited conduct.

- All proceedings and records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry shall be confidential, except that the executive director may turn over to the attorney general, the United States Attorney or a district attorney of competent jurisdiction evidence which may be used in a criminal proceeding.

(3) The Division of Police Standards shall notify any law enforcement officer who is the subject of the preliminary inquiry, the head of their collective bargaining unit and the head of their appointing agency of the existence of such inquiry and the general nature of the alleged violation within thirty (30) days of the commencement of the inquiry.

(d) The Division of Police Standards may audit all records related to the complaints, investigations and investigative reports of any agency related to complaints of officer misconduct or unprofessionalism, including, but not limited to, personnel records.

- The commission shall promulgate rules and regulations establishing an audit procedure; provided, however, that said rules and regulations shall not limit the ability of the division of police standards to initiate an audit at any time and for any reason.

(e) The Division of Police Standards shall create and maintain a database containing information related to an officer's:

(i) receipt of complaints and related information, including, but not limited to: the officer's appointing agency, date, a description of circumstances of the conduct that is the subject of the complaint and whether the complaint alleges that the officer's conduct:

- (A) 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;
- (B) was unprofessional;
- (C) involved excessive, prohibited or deadly force; or
- (D) resulted in serious bodily injury or death;

- (ii) allegations of untruthfulness;
- (iii) failure to follow commission training requirements;
- (iv) decertification by the commission;
- (v) agency-imposed discipline;
- (vi) termination for cause; and
- (vii) any other information the commission deems necessary or relevant.

(f) The Division of Police Standards shall actively monitor the database to identify patterns of unprofessional police conduct. Upon identification of a pattern of unprofessional police conduct, the Division of Police Standards may recommend the evidence in its possession for review in a preliminary inquiry.

(g) The Division of Police Standards shall be a law enforcement agency and its employees shall have such law enforcement powers as necessary to effectuate the purposes of this chapter, including the power to receive intelligence on an applicant for certification or an officer certified under this chapter and to investigate any suspected violations of law.

VI. SUSPENSION OF AN OFFICER'S POST CERTIFICATION

Pursuant to M.G.L. Chapter 6E Section 9:

(a)(1) The POST Commission shall immediately suspend the certification of any officer who is arrested, charged or indicted for a felony.

(2) If, after a preliminary inquiry pursuant to paragraph (1) of subsection (c) of section 8, the POST Commission concludes by a preponderance of the evidence that a law enforcement officer has engaged in conduct that could constitute a felony and upon a vote to initiate an adjudicatory proceeding of said conduct, the commission *SHALL* immediately suspend an officer's certification.

(3) The POST Commission *MAY*, after a preliminary inquiry pursuant to paragraph (1) of subsection (c) of section 8, suspend the certification of any officer who is arrested, charged or indicted for a misdemeanor, if the commission determines by a preponderance of the evidence that the crime affects the fitness of the officer to serve as a law enforcement officer.

(4) The POST Commission *may*, pending preliminary inquiry pursuant to paragraph (1) of subsection (c) of section 8, suspend the certification of any officer if the commission determines by a preponderance of the evidence that the suspension is in the best interest of the health, safety or welfare of the public.

(5) A suspension order of the POST Commission issued pursuant to this subsection shall continue in effect until issuance of the final decision of the commission or until revoked by the commission.

(b) The POST Commission shall administratively suspend the certification of an officer who fails to complete in-service training requirements of the commission within 90 days of the deadline imposed by the commission;

- provided, however, that the commission may promulgate reasonable exemptions to this subsection, including, but not limited to, exemptions for:

- (1) injury or physical disability;
- (2) a leave of absence; or
- (3) other documented hardship.

- The commission shall reinstate the certification of an officer suspended pursuant to this subsection upon completion of the in-service training requirements of the commission.

(c) The commission shall administratively suspend the certification of an officer with a duty to report information to the commission pursuant to section 8 who fails to report such information.

- The commission shall reinstate the certificate of an officer suspended pursuant to this subsection upon completion of said report.

(d) A law enforcement officer whose certification is suspended by the commission pursuant to subsection (a), (b) or (c) shall be entitled to a hearing before a commissioner within 15 days. The terms of employment of a law enforcement officer whose certification is suspended by the commission pursuant to said subsection (a) (b) or (c)

shall continue to be subject to chapter 31 and any applicable collective bargaining agreement to which the law enforcement officer is a beneficiary.

VII. REVOCATION OF AN OFFICER'S POST CERTIFICATION

Pursuant to M.G.L. Chapter 6E Section 10:

- (a) The commission shall, after a hearing, REVOKE an officer's certification if the commission finds by clear and convincing evidence that:
 - (i) the officer is convicted of a felony;
 - (ii) the certification was issued as a result of administrative error;
 - (iii) the certification was obtained through misrepresentation or fraud;
 - (iv) the officer falsified any document in order to obtain or renew certification;
 - (v) the officer has had a certification or other authorization revoked by another jurisdiction;
 - (vi) the officer is terminated by their appointing agency, and
 - any appeal of said termination is completed,
 - based upon intentional conduct performed under the color of their office to:
 - obtain false confessions;
 - make a false arrest;
 - create or use falsified evidence, including false testimony or
 - destroying evidence to create a false impression;
 - engage in conduct that would constitute a hate crime, as defined in section 32 of chapter 22C; or
 - directly or indirectly receive a reward, gift or gratuity on account of their official services;
 - (vii) the officer has been convicted of submitting false timesheets in violation of section 85BB of chapter 231;
 - (viii) the officer knowingly files a written police report containing a false statement or commits perjury, as defined in section 1 of chapter 268;
 - (ix) the officer tampers with a record for use in an official proceeding, as defined in section 13E of chapter 268;
 - (x) the officer used force in violation of section 14;

- (xi) the officer used excessive use of force resulting in death or serious bodily injury;
- (xii) the officer used a chokehold in violation of said section 14;
- (xiii) the officer engaged in conduct that would constitute a hate crime, as defined in section 32 of chapter 22C;
- (xiv) the officer engaged in the intimidation of a witness, as defined in section 13B of chapter 268;
- (xv) the officer failed to intervene, or attempt to intervene, to prevent another officer from engaging in prohibited conduct or behavior, including, but not limited to, excessive or prohibited force in violation of section 15;
- (xvi) the officer is not fit for duty as an officer and the officer is dangerous to the public, as determined by the commission.

(b) The commission *may*, after a hearing, *suspend or revoke* an officer's certification if the commission finds by clear and convincing evidence that the officer:

- (i) has been convicted of any misdemeanor;
- (ii) 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 in their conduct;
- (iii) has a pattern of unprofessional police conduct that commission believes may escalate.
- (iv) was suspended or terminated by their appointing agency for disciplinary reasons, and any appeal of said suspension or termination is completed; or
- (v) has repeated sustained internal affairs complaints, for the same or different offenses.

(c) The commission may reinstate the certificate of an officer suspended pursuant to subsection (b) at the expiration of the suspension, if the commission finds that all conditions of the suspension were met.

(d) The commission may, after a hearing, order retraining for any officer if the commission finds substantial evidence that the officer:

- (i) failed to comply with this chapter or commission regulations, reporting requirements or training requirements;

- (ii) 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 in their conduct;
- (iii) used excessive force;
- (iv) failed to respond an incident according to established procedure;
- (v) has a pattern of unprofessional police conduct;
- (vi) was untruthful, except for a statement or action that mandates revocation pursuant to subsection (a);
- (vii) was suspended or terminated by their appointing agency for disciplinary reasons, except those reasons which mandate revocation pursuant to said subsection (a);
- (viii) fails to intervene to prevent another officer from engaging in prohibited conduct or behavior, except a failure to intervene in conduct that mandates revocation pursuant to said subsection (a); or
- (ix) would benefit in their job performance if retrained.

(e) The commission shall immediately notify the officer and the head of the appointing agency of the officer who is decertified, suspended or ordered to undergo retraining of the order.

(f) The commission shall conduct preliminary inquiries, revocation and suspension proceedings and hearings, and promulgate regulations for such proceedings and hearings, pursuant to sections 1, 8 and 10 to 14, inclusive, of chapter 30A. Any decision of the commission relative to a preliminary inquiry, revocation and suspension proceeding shall be appealable pursuant to chapter 30A. No adverse action taken against a certification by the commission pursuant to this section shall be appealable to the civil service commission established under chapter 31. No employment action taken by an appointing authority that results from a revocation by the commission pursuant to subsection (a) shall be appealable to the civil service commission established under chapter 31.

(g) The commission shall publish any revocation order and findings. The commission shall provide all revocation information to the national decertification index. No officer may apply for certification after that officer's certification has been revoked pursuant to this section.

(h) An appointing agency shall complete an internal affairs investigation into officer misconduct and issue a final disposition within one year of receiving a complaint or notice from the commission of the complaint being filed.

- The commission may, upon a showing of good cause, extend the time to complete the investigation. The commission shall not institute a revocation or suspension hearing pursuant to this section until the officer's appointing agency has issued a final disposition or 1 year has elapsed since the incident was reported to the commission, whichever is sooner.

- If the officer notifies the commission that the officer wishes to suspend such hearing pending an appeal or arbitration of the appointing agency's final disposition, the commission shall suspend the hearing. Any such suspension of the hearing shall not exceed 1 year from the officer's notice to the commission; provided, however, that at any time during which the hearing is so suspended and upon a showing of good cause by the officer, the commission shall further suspend the hearing for a period of not less than 6 months and not more than the commission determines is reasonable; provided, however, that any delay in instituting a revocation or suspension hearing shall not exceed 1 year from the officer's request. If the officer notifies the commission that the officer wishes to suspend such hearing pending the resolution of criminal charges, the commission shall suspend the hearing; provided, however, that the officer's certification shall be suspended during the pendency of any delay in such hearing. This subsection shall not impact the commission's authority to suspend a certification pursuant to section 9.

VIII. DECERTIFIED OFFICERS NOT ELIGLE FOR EMPLOYMENT

Pursuant to G.L. Chapter 6E Section 11, neither any agency, nor a sheriff, nor the executive office of public safety nor any entity thereunder shall employ a decertified officer in any capacity, including, but not limited to, as a consultant or independent contractor.

IX. PROTECTIONS FOR TESTIFYING BEFORE POST

Pursuant to G.L. Chapter 6E Section 12, no officer or employee of the Commonwealth or of any county, city, town or district shall discharge an officer or employee, change their official rank, grade or compensation, deny a promotion or take any other adverse action against an officer or employee or threaten to take any such action for providing information to the commission or testifying in any commission proceeding.