



Overview: An Act Relative to Justice, Equity, and Accountability in Law Enforcement

Arlington Police Civilian Advisory Board
Study Committee

Douglas W. Heim, Town Counsel

- 139 Page Bill
- Revisions & Tensions with Prior Reforms
- Emergency Law
- Staggered Effect Dates for provisions:
 - Immediate (December 31, 2021)
 - July 1, 2021
 - December 1 or 31, 2021



JEALE ACT SCALE

Outline of Overview

Prohibited Practices & Mandates of JEAL Act

- Racial Profiling prohibited & Bias-Free Policing Mandated,
- Use of Force Reforms
 - De-escalation mandatory,
 - Choke holds prohibited
 - Duty to Intervene
 - Mass Demonstrations

Establishes “POST” Peace Officer Standards and Training Commission w/ power to:

- Certify and De-Certify both officers and agencies
- Revises and establishes new training and certification standards
- Receive & Investigate Misconduct Complaints Independent from LEOs and State and Local Authorities
- Subpoena & Audit

School Reform

- School Resource Officer Optional
- SRO Specialized Training
- Model MOUs

Miscellaneous Legal Issues:

- Revises Qualified Immunity for MCRA claims
- No-Knock Warrants
- Prohibits Settlement NDAs
- AG “Pattern and Practice” Case Jurisdiction

JEALE ACT SCOPE & FOCUS

Scope

- Most Law Enforcement
 - Local Police Departments
 - State Police
 - Specialized law enforcement officers, i.e. Env. Police
 - Corrections & Juveniles*

Focus

- Increased Police Accountability
- Increased Transparency
- Civilian Oversight
- Specific Issues
 - Qualified Immunity
 - Demilitarization
 - School Resource Officers

Bias & Profiling Free Policing

Racial Profiling

A law enforcement agency... shall not engage in racial *or other profiling*.

- Profiling = *differential treatment by a law enforcement officer based on actual or perceived race, color, ethnicity, national origin, immigration or citizenship status, religion, gender, gender identity or sexual orientation in conducting a law enforcement action, whether intentional or evidenced by statistically-significant data showing disparate treatment*
- Profiling" ≠ use of such characteristics, in combination with other factors, to apprehend a specific suspect based on a description that is individualized, timely and reliable.
- AG Authorized to bring suit to enforce

Bias-Free

Training and additional regulations for "bias-free" policing

- Bias-free policing = policing decisions made by and conduct of law enforcement officers that shall not consider a person's race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level; including decisions.
- Bias-free can include decisions:
 - (1) based on a law enforcement purpose or reason which is non-discriminatory, or which justifies different treatment; or
 - (2) consider a person's race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level because such factors are an element of a crime.

Prohibitions & Mandates: Use of Force

- Bans use of chokeholds
- Requires de-escalation before use of force
- Deadly force not authorized to effect arrest or prevent escape
- Prohibit firing at moving vehicle (unless necessary to prevent imminent harm)
- Commission on force rules in corrections
- Regulations to be Promulgated by POST and MPTC, but force should be:
 - Necessary
 - Proportionate
 - Non-deadly
 - After de-escalation

Section 14(a) Use of Force Articulated

An Officer shall not use physical force upon another person:

1. *Unless de-escalation tactics have been attempted and failed, or are not feasible based on the totality of the circumstances; AND*
2. Such force is necessary to:
 - a) effect the lawful arrest or detention of a person; or
 - b) prevent the escape from custody of a person; or
 - c) prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm;
3. Provided, however,
 - a) that a law enforcement officer may use necessary, proportionate and non-deadly force in accordance with the *regulations promulgated jointly by the commission and the municipal police training committee pursuant to subsection (d) of section 15.* and/
 - (b) A law enforcement officer shall not use deadly force upon a person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to prevent imminent harm to a person and the amount of force used is proportionate to the threat of imminent harm.

Prohibitions & Mandates:

Duty to Intervene and Report

Intervene

(a) An officer present and observing another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances, shall intervene to prevent the use of unreasonable force unless intervening would result in imminent harm to the officer or another identifiable individual.

Report

(b) An officer who observes another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances shall report the incident to an appropriate supervisor as soon as reasonably possible but not later than the end of the officer's shift. The officer shall prepare a detailed written statement describing the incident consistent with uniform protocols. The officer's written statement shall be included in the supervisor's report.

Agency Process

(c) A law enforcement agency shall develop and implement a policy and procedure for law enforcement personnel to report abuse by other law enforcement personnel without fear of retaliation or actual retaliation.

Regulations

(d) POST & MPTC Rules and Regulations for the Use of force & Duty to Intervene

Prohibitions & Mandates: Mass Demonstrations

Consistent with force principles – no tear gas, non-lethal rounds, etc. but as needed for public safety.

- Encourage prospective de-escalation planning
- Require reporting and review

18 Commissions & Task Forces

- ❖ Permanent Commission on *Status of African Americans*;
- ❖ Permanent Commission on Status of Latinos/Latinas;
- ❖ Permanent Commission on the Status of Persons with Disabilities;
- ❖ Permanent Commission on the Social Status of Black Men and Boys;
- ❖ Review Commission for Model School Resource Officer Memorandum
- ❖ Commission on Training of Correction Officers and Juvenile Detention Officers
- ❖ Task Force on the Implementation of Body Worn Camera Program
- ❖ Special Legislative Commission on Use of Facial Recognition Technology
- ❖ Special Legislative Commission on Emergency Hospitalizations
- ❖ Special Legislative Commission to Study and Examine the Civil Service
- ❖ Special Legislative Commission on Statewide LEO Cadet Program
- ❖ Special Legislative Commission on Structural Racism in Correctional Facilities
- ❖ Special Legislative Commission on Structural Racism in Parole
- ❖ Special Legislative Commission on Structural Racism in the Massachusetts Probation Service
- ❖ MPTC to Study on Consolidating Police Academies
- ❖ Special Legislative Commission on Qualified Immunity
- ❖ The Community Policing and Behavioral Health Advisory Council
- ❖ The Massachusetts Peace Officer Standards and Training Commission (POST)

P.O.S.T. Membership & Structure

Commonwealth of Massachusetts

Peace Officers Standards & Training Commission

POST Commission Membership

G.L Chapter 6E

Appointments Effective 4/1/21
9 Members (3 Gov, 3 AG, 3 Joint)

Guv: Police Chief

Guv: (Retired) Superior Court Justice

Guv: Social Worker

AG: LE Policy Group Chair

AG: LEO (MAMLEO)

AG: Attorney (Civil Rights/Social Justice)

Guv / AG: MCAD Appointee

Guv / AG: Non-LE Appointee

Guv / AG: Non-LE Appointee

Note: Chair is chosen by Guv / Term = 5 years
Quorum = 7 / Meet Monthly / Broad Powers ALL LE
Agencies: > "Certified" by POST

Executive Office Of
Public Safety/Security

MPTC

15 Total Members

- 4 Regional Chiefs
- 1 MCOPA Chief
- Transit
- BPD;MSP
- AG;EOPSS
- MPA
- 2 County Sheriffs
- MAWLE
- MAMLEO



POST Executive Director
(Selected by POST)
Non-LE Officer

Law Enforcement Agency:

Local, County, State,
Environmental,
UMass,MassPort, Transit,
Sheriffs, Public/Private
College/University,
Hospital Police

Division of Police Standards

Investigate Misconduct

- Maintain Complaint Database
- May Conduct audit of IA Files
- Shall be a Law Enforcement Agency

Certification Director

Division of Police Certification

DPC+MPTC = minimum

Certification standards for ALL LE
Officers

DPC>Maintain Database for all LE
DPC+MPTC+Post = LE Agency
Certification Standards



P.O.S.T. Features

Independent of Executive Office of Public Safety Services

Majority Civilian (6-3) with non-EOPSS Civilian Director

Proceeds by Majority Vote

Division of Certification Works with EOPSS Division on Training, Certification and Regulations – the Massachusetts Police Training Commission

Division of Police Standards receives, and has authority to investigate complaints from *any* source

- ❖ Subpoena and audit powers
- ❖ De-Certification process
- ❖ Implications for civil liability

P.O.S.T. OVERSIGHT

Certification Arm: Div. of Police Certification

De-Certification Arm: Division of Police Standards

- Develops training and minimum standards for certification to serve as a police officer
 - Including Police Academies
- Works with Massachusetts Police Training Commission (MPTC on training and standards)
- Background checks

- Database for all officers
 - Certifications & De-Certifications
 - Arrests & Convictions
 - Complaints at POST and Local
 - Prior Separations from LEAs
- Investigation & Remedial Directives/De-Certification

Division of Police Standards: Preliminary Investigations

- Pro-active and reactive investigatory powers
 - ✓ Receive complaints directly
 - ✓ Reporting requirement of local complaints to police departments
 - ✓ Tracks all complaints
 - ✓ 30-Day Notice to LLEOs, Appointing Authority and Union

- May investigate on evidence it deems sufficient and must investigate most serious cases. Preliminary invest is confidential, but may refer.
 - ✓ Likely *prima facie* approach
 - ✓ Preliminary investigations confidential
 - ✓ May refer to any state or federal entity

- May *suspend certification* after preliminary investigation on *prima facie* case.
 - ✓ Preponderance of the evidence standard;
 - ✓ Employment consequences of preliminary suspension subject to bargaining and civil service.
 - ✓ Hearing within 15-days

Division of Police Standards: Final Decertification

- Final decertification or suspension goes forward *after* agency action
 - ✓ One Year Limit for agency investigation
 - ✓ One Year, *upon request* one for appeals
 - ✓ Indefinite delay to resolve criminal charges

- Decertify or suspend after finding of serious violations
 - ✓ Clear and convincing evidence
 - ✓ Majority vote

- **No civil service appeal of either decertification or termination due to decertification.**

- **No employment of decertified officers.**

Decertification Standards

Mandatory

- Felony Convictions
- Error, fraud, or falsification in Certification
- Revocation of Certification by another jurisdiction
- Law enforcement integrity violation – false testimony or police reports, willful destruction of evidence, witness intimidation
- Public service integrity violation: false timesheets, pay for service
- Use of force in violation resulting in death or serious bodily injury
- Failure to intervene as defined
- Not fit for duty and public safety risk

Discretionary

- Conviction of misdemeanor
- Acted with bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level
- Pattern of unprofessional conduct + escalation
- Terminated for disciplinary reasons
- Repeated sustained internal complaints

Other Division of Standards Relief & Consequences

- Suspension
- Re-Training
- New Training
- Database
- Qualified Immunity re MCRA*

Civil Relief and Criminal Consequence Reforms

- MCRA Action revisions to qualified immunity defense & loss of QI following de-certification*;
- Prohibit NDAs in Police Misconduct Civil Cases*
- Overtime Fraud Offense
- Authorizes AG “pattern and practice” Suits

School Resource Officers

❖ SROs Not Mandated

- Superintendent determines

❖ Model MOU between SRO and school officials

- MOU review commission to create a template

❖ Standards for sharing student information between schools and police departments

- ❖ Must be connected to specific unlawful incident suspected specific illegal activity

❖ Specialized training and certification for SROs



Miscellaneous

- No-Knock Warrants for Specific Safety Concerns only
- Facial Recognition require Court Orders or Emergencies