



# **JURISDICTION GUIDELINES for SPECIAL STATE POLICE OFFICERS**

Issued October 29, 2013

***Special State Police Officers (SSPOs) obtain their primary jurisdiction from G.L. c. 22C, § 63.*** G.L. c. 22C, § 63<sup>1</sup> grants to college, university, educational institution, or hospital police officers the power to:

- Exercise law enforcement authority -- including detentions, arrests and searches;
- Concerning *any* criminal offense;
- Occurring in or on buildings, structures, facilities, lands or roads;
- Owned, occupied or used;
- By their employing institution.

***The authority to investigate and enforce “any crime” encompasses all felonies and misdemeanors, including motor vehicle offenses.*** This means that *all* SSPOs may stop vehicles based on a reasonable suspicion of any crime, including vehicle offenses.<sup>2,3</sup>

- **Priority Offenses.** Specifically, *all* SSPOs may enforce the following high priority crimes involving motorists:
  - Operating under the influence of alcohol or drugs. G.L. c. 90, § 24(1).
  - Operating negligently or recklessly. G.L. c. 90, § 24(2).
  - Leaving the scene after personal injury or property damage. G.L. c. 90, § 24(2).
  - Refusing to stop for a police officer. G.L. c. 90, § 25.
  - Larceny of a motor vehicle. G.L. c. 266, § 28.
  - Use of a motor vehicle without authority. G.L. c. 90, § 24.
- **Low Priority Offenses.** While *all* SSPOs have the authority to enforce the following crimes, SSPOs from private institutions should *not* do so unless absolutely necessary for public safety:
  - Operating after suspension. G.L. c. 90, § 23.
  - Operating without a license. G.L. c. 90, § 10.

- Uninsured vehicle. G.L. c. 90, § 34J.
- Attaching plates. G.L. 90, § 23.

The reason for this limitation: SSPOs from private institutions may *only* stop vehicles based on a reasonable suspicion of criminal activity. Private SSPOs lack authority to issue citations for civil motor vehicle infractions (CMVIs) unlike SSPOs appointed by state colleges or universities, who may stop vehicles and issue citations for CMVIs.<sup>4</sup>

The crimes of operating after suspension, unlicensed, uninsured and attaching plates – mentioned above -- typically come to light *after* a vehicle has been pulled over for a civil infraction, which private SSPOs may not do in the first instance.

***Proper procedure for checking a license plate depends on the reason for “running” the plate.***

- **Following a lawful traffic stop.** All SSPOs may use their cruiser computer (known as a Mobile Data Terminal or MDT) or contact dispatch to “run” the plate of a lawfully stopped vehicle. The officers may then take appropriate enforcement action based on the result of the plate query. Private SSPOs may not engage in any enforcement of CMVIs that come to light during a lawful traffic stop, although they may contact local police to enforce the infraction or advise the motorist how to resolve the issue.
- **Initiating a “random query.”** All SSPOs may “run” plates on a random basis -- provided that: (1) they are not motivated, to any degree, by racial or ethnic bias<sup>5</sup>; and (2) that they initially observe the vehicle operating or parked on campus property.<sup>6</sup> Based on the results of a proper random query, it is recommended that all SSPOs handle a “hit” on a plate in the following manner:
  - ***Active default or arrest warrant.*** Approach a stationary vehicle or engage in a traffic stop if the vehicle is being operated. Identify the motorist. If the motorist or any occupant is the person identified as having an active warrant, then arrest should typically follow.

If the vehicle travels beyond campus property, SSPOs may follow and notify the municipal or state police agency of jurisdiction to initiate the traffic stop or provide transferred authority for the SSPOs to initiate the stop.

- ***Driver’s license status or vehicle status at issue.*** Approach a stationary vehicle or engage in a traffic stop if the vehicle is being operated on campus. Briefly detain the driver and/or occupants and interview them about the situation.

Notify them about any illegalities; consider towing the vehicle if appropriate under the campus agency's inventory policy or make alternative arrangements to have the vehicle removed at a later time; or resolve the issue in any other satisfactory manner.

Arrest or a complaint application in these situations is strongly discouraged.

*Note:* SSPOs at state institutions may issue a citation for any civil infraction (e.g., unregistered, equipment defect) that comes to light.

***If SSPOs charge a suspect with a motor vehicle crime, they should make every effort to have the defendant served with a citation.***

- **For SSPOs from state colleges and universities.** They may issue the appropriate citation at the time and place of the violation. Citation books may be provided to them by their chief.<sup>7</sup>
- **For private SSPOs.** The registry of motor vehicles does not issue citation books to chiefs from private educational institutions. Therefore, in the event that private SSPOs arrest an individual for a motor vehicle crime, citation service may be accomplished by:
  - ***The campus chief obtaining citations from the municipal chief where the campus is located.*** This may be accomplished through a memorandum of understanding (MOU) or by an informal policy.<sup>8</sup> The campus chief would then supply a citation through the OIC in the limited cases where an arrest was made for a motor vehicle crime. See Attachment A (suggested language for MOU).
  - ***The campus agency notifying the municipal department with concurrent jurisdiction either at the time of the arrest or in court prior to arraignment.*** Municipal police officers may issue citations on behalf of private SSPOs who make motor vehicle arrests or seek criminal complaints.<sup>9</sup> This may be done at the time of the motor vehicle stop or shortly after. It may also be done prior to arraignment in court by a police prosecutor from the municipal department. If the citation will not be served until the defendant appears in court, the SSPO should inform him or her of that fact at the time of arrest.
  - ***The campus agency notifying the state police either at the time of arrest or in court prior to arraignment.*** The same authority mentioned above applies to the state police.

- **Arrest or a complaint application should not be delayed or avoided because a citation is not immediately available.** The essential requirement is that SSPOs inform the motorist about the violation and document that fact in an incident report.<sup>10, 11</sup>
- **Proper post-arrest procedures.** In addition, SSPOs must ensure that all post-arrest procedures are properly conducted – e.g., medical attention (if necessary); thorough search incident to arrest; vehicle inventory and tow; booking process at station; and, in the case of OUI, notification of G.L. c. 263, § 5A rights, and breathalyzer refusal or valid test. If a campus agency does not have a breathalyzer, arrangements should be made with a municipal department or state police barracks.

***Smeaton jurisdiction:*** All SSPOs may conduct law enforcement activities on public ways routinely “used” by their employing institution. SSPOs have law enforcement authority on streets that members of the campus community routinely use in order to directly reach property and facilities owned or occupied by their institution.<sup>12</sup> This is referred to as *Smeaton jurisdiction* because it is derived from the SJC’s decision in *Comm. v. Smeaton*, 465 Mass. 752 (2013).

- **Routinely patrolled public ways.** In short, if SSPOs routinely patrol a street to get to campus facilities to perform public safety functions on behalf of their institution, they may investigate and enforce any crimes -- including motor vehicle offenses -- that might be occurring there.
- **Non-routine travel routes.** However, SSPOs should *not* conduct law enforcement activities on public ways that connect clearly different campus locations to each other. For example, Northeastern University SSPOs could stop a vehicle on the public way known as Huntington Avenue, which is adjacent to its main campus. However, if Northeastern SSPOs drove from their Boston campus to the College President’s house and conference center in Wellesley, they should not conduct vehicle stops along the way. This is not their normal patrol route, so they should not engage in law enforcement activities (unless justified by some other legal basis – e.g., transferred authority).

*Note:* The authority to patrol public ways and engage in enforcement stems from an SSPO’s appointment under G.L. c. 22C, § 63. No Massachusetts appellate court has authorized criminal or civil motor vehicle enforcement on public ways pursuant to other appointment statutes for campus officers – such as G.L. c. 75, § 32A (University of Massachusetts) or G.L. c. 15A, § 22 and G.L. c. 73, § 18 (state universities and community colleges).<sup>13</sup>

***Young jurisdiction: All SSPOs may conduct law enforcement activities off campus – even beyond roads owned, occupied or used by their institution – in certain limited instances.*** *Young jurisdiction* refers to the rule established in the case of *Young v. Boston University*, 64 Mass. App. Ct. 586 (2005), which allowed SSPOs to arrest an individual “outside the area which [they] are entrusted to protect, in order to ‘keep the peace and preserve order’ within that area.”<sup>14</sup>

In short, SSPOs may assert authority beyond the lands or structures owned, used or occupied by their institution when they are:

- **In the environment near campus; and**
- **Attempting to protect people who are affiliated with the campus community, or likely to be visiting or leaving the campus.**

This extended jurisdiction applies when SSPOs determine that a particular student or member of the campus community might be in danger without their intervention. What constitutes the environment near campus has not been specifically defined by an appellate court, so SSPOs should use their commonsense.

<sup>1</sup> G.L. c. 22C, § 63 reads: “The colonel may, upon such reasonable terms and conditions as may be prescribed by him, at the request of an officer of a college, university, other educational institution or hospital licensed pursuant to section fifty-one of chapter one hundred and eleven, appoint employees of such college, university, other educational institution or hospital as special state police officers. Such special state police officers shall serve for three years, subject to removal by the colonel, and they shall have the same power to make arrests as regular police officers for any criminal offense committed in or upon lands or structures owned, used or occupied by such college, university, or other institution or hospital. Each application for appointment as a special state police officer or a renewal thereof shall be accompanied by a fee, the amount of which shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven. The colonel may promulgate such rules and regulations as may be necessary to ensure proper standards of skill. Said rules and regulations shall conform to the provisions of chapter thirty A.”

<sup>2</sup> *Comm. v. Smeaton*, 465 Mass. 752 (2013).

<sup>3</sup> In the *Smeaton* case, Officer John Wagner, a Special State Police Officer (SSPO) appointed under G.L. c. 22C, § 63, was in a marked cruiser at 1:30 a.m. at the intersection of three public ways in Northampton – Elm, West and Main Street -- next to Smith College. He observed an SUV, driven by Steven Smeaton, speeding on Main Street. Smeaton did not slow down as he turned left onto West Street. He just missed a pedestrian in the crosswalk and, with tires squealing, drove onto the sidewalk and grass in front of an administrative building owned by the college.

Officer Wagner pursued Smeaton past several buildings, a power plant, a parking garage (open 24 hours a day), and athletic facilities owned or occupied by the college along West Street. There were also private buildings that did not belong to Smith. Officer Wagner radioed Northampton Police. He then stopped Smeaton’s SUV. While he conducted a threshold inquiry, Northampton Police arrived and arrested the defendant for OUI and reckless operation. The municipal officer also issued a citation for a “marked lanes violation” based on information supplied by Officer Wagner.

According to the SJC, Officer Wagner was justified in stopping the vehicle and, had he chosen to do so, arresting the defendant for two reasons: (1) Since the street where Wagner made the stop was routinely “used” by Smith College members, it was within SSPO jurisdiction under the language of 22C, § 63; and (2) Wagner’s stop occurred in the vicinity of Smith College and concerned a breach of the peace that might harm people affiliated with the college – a reason approved in *Young v. Boston University*, 64 Mass. App. Ct. 586 (2005).

<sup>4</sup> *Comm. v. Mullen*, 40 Mass. App. Ct. 404 (1996) (SSPOs at private institutions do not have the power to stop vehicles for CMVIs). In contrast, G.L. c. 90C, § 2A grants to SSPOs at state colleges and universities the authority to issue citations for CMVIs – provided they have undergone certain mandated training. For more information, see Memoranda of William E. McVey, Deputy General Counsel of Mass DOT (dated September 21, 2006 and November 7, 2012).

<sup>5</sup> *Comm. v. Starr*, 55 Mass. App. Ct. 590 (2002). However, *Starr* noted that officers may not check for license plate information if they are motivated by an occupant’s race or ethnicity.

<sup>6</sup> *Comm. v. Hernandez*, 456 Mass. 528 (2010) (SSPOs observed the defendant filling his gas tank at a station near campus and ran his plate for no particular reason; the court disapproved the officers’ decision to run the plate and then follow the defendant onto a highway to conduct a traffic stop and arrest for a default warrant). It is possible to interpret *Comm. v. Smeaton*, discussed in notes 2 and 3, as allowing campus officers to randomly run plates on public ways connecting campus facilities, and to take action on the

basis of the information obtained about the status of the owner. However, MACLEA feels that this is inconsistent with the spirit of the SJC's opinion and would also adversely affect the relationship between campus law enforcement and municipal agencies so vital to public safety. It is largely unnecessary, in their efforts to ensure campus safety, for SSPOs to troll public ways for unlicensed motorists by randomly running plates of the vehicles that are operating properly. That is why random plate queries should be limited to those vehicles actually operating on the grounds of the institution.

<sup>7</sup> G.L. c. 90C, § 2.

<sup>8</sup> The obvious implication of *Comm. v. Smeaton*, 465 Mass. 752 (2013) is that private campus agencies will issue citations given that they are empowered to enforce motor vehicle crimes on public ways. Also see *Comm. v. Baez*, 42 Mass. App. Ct. 565 (1997) (deputy sheriffs have authority to issue citations for motor vehicle offenses, even though registry does not issue citation books to sheriffs; Appeals Court said the source of the citation was not an issue it would consider because the citation itself was properly issued).

<sup>9</sup> G.L. c. 90C, § 3(B) (officer may issue citation based on information from a secondary source, including another officer or citizen). Interestingly, in the *Smeaton* case, the Northampton officer who made the arrest also issued a citation to the defendant for reckless driving *and* a marked lanes violation based solely on SSPO Wagner's observations.

<sup>10</sup> In *Comm. v. Kenney*, 55 Mass. App. Ct. 514 (2002), the officer's failure to issue a citation in a timely fashion was excused because the purposes of the law, G.L. c. 90C, § 2, had been fulfilled. First, citation service is intended to prevent the "fixing" of traffic tickets. Second, it ensures that the motorist is aware of the nature of the offense.

<sup>11</sup> There is even support for the proposition that a citation is unnecessary in a case where a private SSPO makes an arrest or applies for a complaint. Since the citation procedure in G.L. Chapter 90C is limited to municipal officers, state troopers, MBTA officers, certain designated special officers, and campus officers from state institutions, private SSPOs are exempt from its coverage. Since citizens may initiate the complaint process for motor vehicle offenses without complying with the citation process, it stands to reason that private SSPOs may do the same. See G.L. c. 90C, §§ 1 (definition of "police officer" for citation process does not include private SSPOs); 2 (citation process only mandated for "police officers" - as defined in 90C, § 1); and 4 (citizens may apply for a criminal complaint concerning any motor vehicle crime). *Comm. v. Steadward*, 43 Mass. App. Ct. 271 (1997).

<sup>12</sup> As the *Smeaton* decision pointed out, § 63 does not require that an institution's "use" of particular "lands or structures" (including roads) be exclusive. Rather, the term "use" covers any public way that intersects a campus or provides access to areas on campus. According to the SJC: "Section 63 does not . . . confine the power of arrest to any geographic or spatial area, so long as the criminal offense was committed on land or structures owned, used or occupied by the college."

<sup>13</sup> G.L. c. 75, § 32A pertains to campus officers within the UMass system. It states that university police officers may enforce criminal, parking and vehicle violations "throughout university property." Community college and state university officers are appointed by the board of trustees pursuant to G.L. c. 15A, § 22 and given criminal, parking and vehicle enforcement power "throughout the property of the institution." This language is repeated in G.L. c. 73, § 18.

These appointment statutes do not have the same language as G.L. c. 22C, § 63 – which grants authority on property “owned, used, or occupied” by the university or college (emphasis added). The word “used” was largely the basis for the *Smeaton* decision. Therefore, if state campus agencies wish to engage in criminal and traffic enforcement on public ways that connect and adjoin campus facilities, ideally they should seek dual appointment under their authorizing statute (Chapter 75 or 15A) and the overall police power statute of G.L. c. 22C, § 63.

<sup>14</sup> *Comm. v. Smeaton*, 465 Mass. 752 (2013) also preserved the rule first announced in *Young v. Boston University* in 2005. The environment includes “those areas where students, faculty, and visitors might be exposed to danger from the type of conduct exhibited [by the suspect].” The erratic driving by Steven Smeaton was just the type of conduct that posed a threat to the safety of those who might frequent the campus. *Young v. Boston University*, 64 Mass. App. Ct. 586 (2005) (alumni of college violated a restraining order, obtained by a student, on campus; police arrested him near campus over an hour later). Also see *Comm. v. Mottola*, 10 Mass. App. Ct. 775 (1980) (MBTA transit police could engage in an investigation and arrest off their property in Boston, because it related to the protection of an MBTA passenger). Compare with *Comm. v. Baez*, 42 Mass. App. Ct. 565, 570 (1997) (driving without a valid license not considered a breach of peace; so leaving campus to pursue that situation would not be justified).



## **Attachment A**

### **SUGGESTED LANGUAGE for a**

### **MEMORANDUM OF UNDERSTANDING**

### **CONCERNING *SMEATON* JURISDICTION**

In this Memorandum of Understanding (MOU), Chief [Insert name] of the [Insert the name of the municipal police department] (hereinafter “Municipal Chief”) and Chief [Insert name] of the [Insert the name of the campus police department] (hereinafter “Campus Chief”) agree on the following:

- The primary function of campus police officers is to provide public safety services in the facilities and on the grounds and roadways of their employing institution.
- The primary function of municipal officers is to provide public safety services throughout their municipality, including traffic enforcement on all public ways and areas of public access.
- Both campus and municipal officers should work together cooperatively whenever possible, especially when officer safety is threatened.
- *Comm. v. Smeaton*, 465 Mass. 752 (2013) (hereinafter *Smeaton*) enables campus police officers appointed under G.L. c. 22C, § 63 to:
  - Patrol public ways that members of the campus community routinely use in order to directly reach property and facilities owned or occupied by their institution (hereinafter “normal patrol area”);
  - Engage in a traffic stop in this normal patrol area when possessing a reasonable suspicion of criminal conduct, including motor vehicle crimes; and
  - Arrest any offenders based on probable cause.
- When in their normal patrol area, campus officers may stop a motor vehicle based on a reasonable suspicion of criminal conduct, or may contact dispatch and request that a municipal police officer perform the stop. The municipal department may independently decide whether to conduct a traffic stop based on a report from a campus agency.

- If they choose to conduct a vehicle stop in their normal patrol area, campus police officers may:
  - Arrest any offender upon probable cause;
  - Apply for a criminal complaint;
  - Pursue some other appropriate and documented intervention (e.g., refer for administrative consequences, counseled release, diversion, etc.); or
  - Request the assistance of a municipal police officer, who may then decide to arrest the offender, apply for a criminal complaint, or engage in some other intervention. A municipal officer may decline to take legal action on a stop initiated by a campus officer.
- For campus officers who decide to arrest an individual (or apply for a complaint) for a motor vehicle crime in their normal patrol area, the Municipal Chief will implement this MOU by:
  - Providing a numbered citation book to the Campus Chief, who will then authorize the Campus Officer in Charge (OIC) on any shift to issue a citation for the limited purposes specified here<sup>1, 2</sup>; *and/or*
  - Authorizing all municipal officers within the department to complete a citation based on information provided by campus officers at the scene, which is permitted by G.L. c. 90C, § 3(B); *and/or*
  - Authorizing the municipal police prosecutor or designee to complete a citation based on information provided by campus officers at court, which is permitted by G.L. c. 90C, § 3(B).

Agreed to this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

[Insert signature lines for both the Municipal and Campus Chief]

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<sup>1</sup> Providing citations is justified by *Comm. v. Smeaton*, 465 Mass. 752 (2013). Since *Smeaton* empowers campus officers to enforce motor vehicle crimes on public ways, it must also expect that those officers will have a means of citation service. See *Comm. v. Baez*, 42 Mass. App. Ct. 565 (1997) (Appeals Court said that the source of the citation was not an issue it would consider because the citation itself was properly issued; this logic applies to campus officers).

<sup>2</sup> The Campus OIC is responsible for seeing that the citation is properly filled out and submitted to the court. Moreover, the OIC is responsible for ensuring that the audit sheet is filled out properly.

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