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Xx CMR xx: USE OF FORCE BY LAW ENFORCEMENT OFFICERS

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xx: Purpose and Scope

Purpose. The purpose of xx CMR xx is to establish rules governing the use of force by law enforcement officers.

Scope. xx CMR xx applies to all law enforcement officers as defined in M.G.L. c. 6E, §1.

Xx: Authorization

XX CMR xx is promulgated pursuant to M.G.L. c. 6E, § 15(d) requiring the Peace Officer Standards and Training Commission and the Municipal Police Training Committee to jointly promulgate rules and regulations governing the use of force by law enforcement officers.

Xx: Definitions

Chokehold. The use of a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of a law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow with the intent of or with the result of causing serious bodily injury, unconsciousness, or death.

Commission. The Massachusetts Peace Officer Standards and Training Commission as established in M.G.L. c. 6E, §2.

Committee. The Municipal Police Training Committee as established in M.G.L. c. 6, § 116.

Deadly Force. Physical force that can reasonably be expected to cause death or serious ~~bodily~~ physical injury.

De-escalation Tactics. Proactive actions, ~~and~~ approaches and negotiations used by an officer to stabilize a law enforcement situation so that more time, options and resources are available to gain a person's voluntary compliance and to reduce or eliminate the need to use force including, but not limited to, verbal persuasion, ~~Crisis Intervention Training (CIT) strategies~~, warnings, slowing down the pace of an incident, waiting out a person, and requesting additional resources to resolve the incident, including, but not limited to, calling in medical or licensed mental health professionals, as defined in subsection (a) of section 51½ of chapter 111, to address a potential medical or mental health crisis.

Department/Police Department/Law Enforcement Agency/Agency. (i) A state, county, municipal or district law enforcement agency, including, but not limited to: a city, town or district police department, the office of environmental law enforcement, the University of Massachusetts police department, the department of the state police, the Massachusetts Port Authority police department, also known as the Port of Boston Authority police department, and the Massachusetts Bay Transportation Authority police department; (ii) a ~~S~~sheriff's ~~Office~~department in its performance of police duties and functions; or (iii) a public or private college, university or other educational institution or hospital police department.

Electronic Control Weapon (ECW)/Conducted Energy Devices (CEDs). A portable device or weapon, regardless of whether it passes an electrical shock by means of a dart or projectile via a wire lead, from which an electrical current, impulse, wave or beam that is designed to incapacitate temporarily by causing neuromuscular incapacitation or pain so that an officer can regain and maintain control of the subject.

Force. The amount of physical effort, however slight, required by ~~law enforcement~~police to compel compliance by an unwilling individual.

Kettling. Confinement or corralling by law enforcement of a group of demonstrators or protesters in a small area without any means of egress as a method of crowd control, management, or restraint.

Law enforcement officer/officer. Any officer of an agency, including the head of the agency; a special state police officer appointed pursuant to section 58 or section 63 of chapter 22C; a special sheriff appointed pursuant to section 4 of chapter 37 performing police duties and functions; a deputy sheriff appointed pursuant to section 3 of said

chapter 37 performing police duties and functions; a constable executing an arrest for any reason; or any other special, reserve, or intermittent police officer.

Non-deadly force. Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.

Officer-involved serious bodily injury or death. Any event during which an officer:

- (i) discharges a weapon, as defined in section 121 of chapter 140, actually or proximately causing serious bodily injury or death to another;
- (ii) discharges any stun gun as defined in said section 121 of said chapter 140, actually or proximately causing serious bodily injury or death to another;
- (iii) uses a chokehold, in violation of M.G.L. c. 6E, §14(c), actually or proximately causing injury or death of another; except where lethal force is needed to prevent a person from causing serious bodily injury or death to the officer and or others.
- (iv) discharges tear gas or other chemical weapon, actually or proximately causing serious bodily injury or death of another;
- (v) discharges rubber pellets from a propulsion device, actually or proximately causing serious bodily injury or death of another;
- (vi) deploys a K9dog, actually or proximately causing serious bodily injury or death of another;
- (vii) uses deadly force, actually or proximately causing serious bodily injury or death of another;
- (viii) fails to intervene, as required by M.G.L. c. 6E, §15, to prevent the use of excessive or prohibited force by another officer who actually or proximately causes serious bodily injury or death of another; or
- (ix) engages in a physical altercation with a person who sustains serious bodily injury or requests or receives medical care as a result.

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Passive resistance. ~~An individual who is non-compliant with officer commands that is non-violent and does not pose an immediate threat to the officer or the public.~~ Non-violent opposition to authority, a refusal to cooperate with lawful commands or legal requirements.

Commented [CLSH1]: Passive resistance is still a threat. Please see the proposed new language.

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Serious Bodily Injury. Bodily injury that results in: (i) permanent disfigurement; (ii) protracted loss or impairment of a bodily function, limb, or organ; or (iii) a substantial risk of death.

Tear Gas or Other Chemical Weapons (“CW”). Any weapon that contains chemical compounds that temporarily make people unable to function by causing irritation to the eyes, mouth, throat, lungs, and skin, or that otherwise restrain a person by causing pain. This shall not include oleoresin capsicum (“OC”) spray.

Xx Use of Non-Deadly Force

A law enforcement officer shall not use force upon another 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: (i) effect the lawful arrest or detention of a person; (ii) prevent the escape from custody; (iii) prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm, while protecting the safety of the officer or others; or (iv) defend against an individual who initiates force against an officer.

A law enforcement officer shall use only the amount of force necessary against an individual who is engaged in passive resistance to effect the lawful arrest or detention of said individual and shall use de-escalation tactics where feasible, including issuing a summons instead of executing an arrest where feasible.

Physically escorting or handcuffing an individual ~~who is compliant with minimal or no resistance~~ does not constitute a use of force for purposes of this section. Use of force does include the pointing of a firearm, ECW, ECD, ~~or CW~~ or the use of an impact instrument at-on an individual and the use of OC spray on an individual or directed toward an individual.

Officers shall ~~ensure always provide~~ appropriate medical response ~~to individuals is provided to those~~ who are exhibiting signs of or complaining of injury or illness following a non-deadly use of force when safe and tactically feasible.

All law enforcement officers shall be properly trained and certified in the use of any less-~~than~~-lethal weapons before being authorized to carry or use such force options.

A law enforcement officer shall not intentionally sit, kneel, or stand on an individual’s chest, neck, or spine, and shall not force an individual to lie on their stomach, except temporarily to regain and maintain control and apply restraints. A law enforcement officer shall not obstruct the airway or limit the breathing of any individual, nor shall a law enforcement officer restrict oxygen or blood flow to an individual’s head or neck. An individual placed on their stomach during restraint should be moved into a recovery position or seated position as soon as practicable.

Commented [CLSH2]: The sentence was reworded to address the intent of the provision without putting officers in a position of providing medical care “shall provide appropriate medical response” beyond their First Responder training.

Xx Use of Deadly Force

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, provided:

- (1) The officer uses only the amount of force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others;
- (2) The imminent harm poses an imminent danger of death or serious bodily injury to the officer or another person;
- (3) The officer attempts ~~as many~~ de-escalation tactics that are feasible under the circumstances, including utilizing barriers where feasible.

A law enforcement officer shall not ~~obstruct use a chokehold or other tactics that restrict or obstruct~~ an individual's breathing, ~~or~~ oxygen or blood flow ~~to an individual's head or neck with the exception where lethal force is needed to prevent a person from causing serious bodily injury or death to the officer and or others.~~ A law enforcement officer shall not be trained to use a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow.

~~An officer may not use deadly force against a person who poses only a danger to themselves.~~

A law enforcement officer shall not discharge any firearm into or at a moving motor vehicle unless, based on the totality of the circumstances, including the risk of safety to other persons in the area, such discharge is objectively reasonable, necessary to prevent imminent harm to a person and the discharge is proportionate to the threat of imminent harm; provided, the following conditions exist:

- 1) (i) A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or ii) the vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted or are not present or practical, which includes moving out of the path of the vehicle;
- 2) Officers have not positioned themselves in such a way as to create a likelihood of being struck by an occupied vehicle (e.g., surrounding a vehicle at close proximity while dismounted);
- 3) The officer is not firing strictly to disable the vehicle; and
- 4) The circumstances provide a high probability of stopping or striking the intended target.

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Commented [CLSH3]: We cannot criminalize the preservation of or defense of life.

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Commented [CLSH4]: This statement is concerning. If the individual has a weapon (i.e. gun) they could seem to be pointing the weapon at themselves, and then very quickly use it on the officer responding. Or, if an individual is clearly going to kill themselves, should we not use deadly force to save their lives (distinguishing this example from suicide by cop)

A law enforcement officer shall not use deadly force at any point in time when there is no longer an objectively reasonable belief that an individual currently and actively poses an immediate threat of serious bodily harm or death, even if deadly force would have been justified at an earlier point in time.

Where feasible based on the totality of the circumstances, officers shall verbally identify themselves as law enforcement officers (specifying the specific agency)~~police officers~~ and issue some warning before using deadly force.

Officers shall ~~ensure always provide~~ appropriate medical response is provided to an individual following a use of deadly force when safe and tactically feasible.

Xx Duty to Intervene

A law enforcement officer present and observing another officer using or attempting to use 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 observed officer's use of unnecessary or unreasonable force, regardless of the rank of the officer so observed, unless intervening would result in imminent harm to the officer or another identifiable individual.

The failure of a law enforcement officer to intervene as set forth herein may subject the officer to de-certification by the Commission.

Xx Use of Force Reporting

Law enforcement agencies shall develop and implement a policy and procedure for reporting the use of force. Such policy shall mandate reporting such incidents including but not limited to officer-involved injuries or deaths as described herein, and include the use of a standard use of force reporting form as approved by the Committee and the Commission which shall be completed by any officer who uses force.

Law enforcement agencies shall report to the National Use of Force Data Collection Database when actions by a law enforcement officer resulted in the death or serious bodily injury of an individual, or when a law enforcement officer, in the absence of death or serious bodily injury, discharged a firearm at or in the direction of a person.

Law enforcement agencies are not required to report the discharge of a firearm during training or qualification exercises, or for the purposes of animal destruction/euthanasia where necessary.

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.

An officer who knowingly makes an untruthful statement concerning a material fact or knowingly omits a material fact from a use of force report may be subject to decertification.

Law enforcement agencies shall develop and implement a policy and procedure for law enforcement personnel, including but not limited to law enforcement officers, to report abuse by other law enforcement personnel, including but not limited to law enforcement officers, without fear of retaliation or actual retaliation.

Any harassment, intimidation, or retaliation against any officer who either intervened to prevent or stop an excessive force incident or made, intended to make, or is required to make a report regarding the witnessed excessive force incident shall be reported immediately to an appropriate supervisor and will not be tolerated. Any such actions may result in decertification.

All use of force reports shall be retained and maintained by the law enforcement agency/department/office and are subject to discovery and access through the Massachusetts Public Records Law MGL c. 66.

Xx Mass Demonstrations, Crowd Management, and Reporting

Law Enforcement agencies~~A police department~~ shall establish plans to avoid and to de-escalate potential or actual conflict between officers and mass demonstration participants. When the law enforcement agency~~a police department~~ obtains advance knowledge of a planned mass demonstration within the agency's~~police department's~~ jurisdiction, the law enforcement agency~~police department~~ shall diligently attempt in good faith to: (i) communicate with organizers of the event before the event occurs in an effort to establish reliable channels of communication between officers and event participants, and (ii) discuss and establish logistical plans to avoid or, if necessary, to de-escalate potential or actual conflict between law enforcement officers and mass demonstration participants.

The agency~~department~~ shall designate an officer in charge of de-escalation planning and communication to carry out the above plans within the department.

A law enforcement officer shall not discharge or order the discharge of tear gas or any other chemical weapon, discharge or order the discharge of rubber pellets from a propulsion device or order the release of a K9~~dog~~ to control or influence a person's behavior unless: (i) de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances; and (ii) the measures used are necessary to prevent imminent harm and the foreseeable harm inflicted by the tear gas or the chemical weapon, rubber pellets or K9~~dog~~ is proportionate to the threat of imminent harm.

If a law enforcement officer utilizes or orders the use of rubber bullets, CEDs, CWs, ECWs, or a **K9dog** against a crowd, the law enforcement officer's appointing agency shall file a report with the Commission detailing all of the measures that were taken in advance of the event to reduce the probability of disorder and all de-escalation tactics and other measures that were taken at the time of the event to de-escalate tensions and avoid the necessity of using said weapons, including a detailed justification of why use of said weapons was objectively reasonable.

K9Canines should not be deployed for crowd control, restraint, or management of peaceful demonstrations—but may be deployed for crowd control, restraint, or management of peaceful demonstrations in isolated circumstances related to bomb detection, pursuit of suspects in buildings, and related situations.

The use of Kettling as a means of crowd control, crowd management, or crowd restraint is prohibited.

xx Investigation when Use of Force Results in a Death or Serious Bodily Injury

Law enforcement agencies shall develop and implement a policy and procedure for reporting a use of force that results in a death or serious bodily injury.

Whenever an officer uses force that results in a death or serious bodily injury, the Officer-in-Charge shall immediately notify the agency head or their designee. The agency shall conduct an investigation according to their policies and protocols.

If the use of force involved a weapon, the agency head or their designee shall secure the weapon or weapons used for examination and maintain the appropriate chain of custody protocols.

Xx Use of Force Training

The Committee shall develop and periodically deliver use of force training to law enforcement officers consistent with these Regulations, including, but not limited to: (i) de-escalation tactics; (ii) handling emergencies involving **individuals with mentally illness individuals**; (iii) responding to mass gatherings; (iv) cultural competency; (v) progression of force; and (vi) lawful use of force techniques and equipment on a schedule to be determined by the Committee.

The Commission and the Committee shall jointly develop a model use of force policy. All law enforcement agencies shall have a written use of force policy consistent with the model policy and the agency's particular mission; provided, however, that an agency's use of force policy shall comply with xx CMR xx and all relevant state and federal laws.

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