



Boston Medical Center Department of Public Safety



Friday, August 27, 2021

Deputy General Counsel John H. Melander, Jr.
Executive Office of Public Safety and Security
One Ashburton Place, Room 2133
Boston, MA 02108.

Dear Deputy General Counsel Melander,

I am writing to you today concerning the draft regulations governing the use of force by Commonwealth law enforcement officers. As a law enforcement officer in the Hospital sector, some of our concerns are unique in comparison to other agencies. One particular area that we are unique is that our sworn front-line officers have dual roles/functions where they perform the responsibilities of a Public Safety Officer (Security Officer) while also having the function of being a Police Officer. Some tasks that the officer may have include patient safety searches and patient restraints. This is different from most agencies, to include College, Municipal and State Police. The restraints are a medical procedure that have to be ordered by a physician. To enact that restraint may require the use of non-lethal force on the part of the officer. Currently, the language use of non-lethal force on page 4 includes: "effect the lawful arrest or detention of a person." I believe the "lawful... detention of a person" needs to be defined, particularly when it comes to medical detentions. This will need to include warrants of apprehension, such as MGL 123, Section 12s (Application for an Authorization of Temporary Involuntary Hospitalization).

The officers at both Campus Police and Hospital Police agencies also have a different function as they are also agents of the Institution as opposed to strictly governmental agents in regards to police powers. The Jury Instructions for Self-Defense Cases includes language where "A person may use reasonable force, but not deadly force, to remove a trespasser from his property after the trespasser has been requested to leave and refused to do so." Prior to the suggest CMR, as an agent of the Institution, the Campus Police Officer could use reasonable non-lethal force to remove a trespasser, without having to either arrest the individual or seek court action against the individual. Obviously, this would depend on the level of resistance and actions of the person being removed. The Officer would still have to document the incident and have the use of force reviewed by a superior. With the new proposed CMR, the Campus/Hospital Officer would not have this option, instead once de-escalation tactics have been attempted and failed, the Officer would only have the option to arrest for Trespassing. While not agents of the Institution, Municipal Officers may have previously non-lethal force to remove a trespasser at restaurant/bar/retail establishment without arresting or charging the individual. The current wording of the Non-Lethal force does not allow for this. The officer's only option, after attempts at de-escalation, would be to arrest or charge the individual.

I suggest some additions to the first paragraph in the Xx Use of Non-Deadly force section. The suggestions include:



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- Adding the word “reasonable” or “reasonably” before each use of the word “necessary.” The standard for use of force for self-defense jury instructions uses the term “reasonably necessary” throughout. The CMR for use of force for police officers should not be different.
- Add a 5th reason to the 1st paragraph on page 4. The paragraph should state: “(v) to overcome an impediment to a response to an emergency (e.g. persons obstructing the police from responding to a need for assistance).” An officer may be put in a situation where they would have to move a person out of their immediate path in order to respond to an emergency.
- Moving the phrase/sentence “including issuing a summons instead of executing an arrest where feasible” from the 2nd paragraph on page 4 to the “De-escalation Tactics” definition paragraph on page 2. This should be considered an overall technique for de-escalation and should not be attached solely to passive resistance. I do not believe that telling a person that they will be summoned to court when refusing to leave an establishment will change the direction of the situation.
- Add a paragraph after the 6th paragraph on page 4, which would state the following: “An officer shall not use force to retrieve an object that a suspect has swallowed. If the officer believes that an individual has swallowed a controlled substance, the officer shall notify their dispatch of their belief and request EMS or transport the subject to the Emergency Department.” This would give guidance to officers in situations where they may believe that a suspect swallowed contraband and may try to take an immediate action to force the individual to regurgitate the item. This would turn the situation into a medical incident requiring the assistance of a physician to evaluate the person.

Thank you for your attention to this matter.

Sincerely,

Alexander O'Leary

Lt. Alexander O'Leary
Boston Medical Center Public Safety