

National Police Accountability Project  
A Project of the National Lawyers Guild

August 24, 2021

Via Email: [john.melander@mass.gov](mailto:john.melander@mass.gov)  
John H. Melander, Jr.,  
Deputy General Counsel  
Executive Office of Public Safety and Security  
One Ashburton Place, Room 2133,  
Boston, MA 02108

**Re: 550 C.M.R. 6.00: Use of Force by Law Enforcement Officers**

Dear Members of the Municipal Police Training Committee and Peace Officers Standards and Training Commission,

The National Police Accountability Project (“NPAP”) is a nonprofit organization dedicated to holding law enforcement and corrections officers accountable to constitutional and professional standards. NPAP has approximately six hundred attorney members across the United States and twenty members based in Massachusetts. While our members primarily focus on getting justice for victims of police misconduct after the abuse has inflicted, NPAP is equally committed to reforms that will prevent violence before it occurs. We strongly urge the adoption of stricter use of force restrictions and generally support the proposed regulations subject to the following recommended changes.

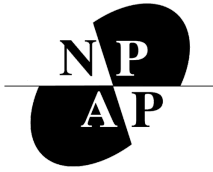
Use of Deadly Force: Discharge Firearm into Moving Vehicle

The current proposed regulation limiting deadly use of force against individuals in moving vehicles provides that: “A law enforcement officer shall not discharge any firearm into or at a moving motor vehicle unless, based on the totality of the circumstances, such discharge is necessary to prevent imminent harm to a person and is objectively reasonable.”<sup>1</sup>

This regulation gives officers broad discretion to use a form of deadly force that creates a high risk of danger to individuals in the vehicle, bystanders, and other drivers. Police policy experts have acknowledged the unique dangers created by an officer when they shoot into a moving vehicle and have accordingly recommended

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<sup>1</sup> Proposed Regulations, p. 5



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strict prohibitions on the tactic. The International Association of Chiefs of Police (IACP) explained “the use of firearms under such conditions often presents an unacceptable risk to innocent bystanders... should the driver be wounded or killed by shots fired, the vehicle will almost certainly proceed out of control and could become a serious threat to officers and others in the area.”<sup>2</sup> The Police Executive Research Forum and Police Foundation echoed concerns that shooting into a vehicle will cause the driver to lose control, creating a hazard for pedestrians, officers, and other vehicles.<sup>3</sup> Shooting at vehicles also creates a heightened risk that bullets will ricochet and hit a bystander.<sup>4</sup> In addition to the risks created to officers and bystanders, shooting into a vehicle is extremely dangerous to the individuals inside as they are not only facing an injury from the shooting but a potential collision as well.

The potential harm is not hypothetical. There are many documented instances of police officers injuring or killing a bystander by shooting into their vehicle.<sup>5</sup> Court cases provide similar evidence that these shootings result in serious injuries and fatalities to drivers suspected of crimes.<sup>6</sup>

In light of these risks, experts have recommended policies that: (1) ban officers from shooting into a vehicle unless a person in the vehicle is threatening an officer or other person with deadly harm *by a means other than a vehicle*; and (2) require a police officer to remove themselves from the path of an oncoming vehicle.<sup>7</sup>

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<sup>2</sup> *Use of Force, Concepts and Issue Paper*, International Association of Chiefs of Police Law Enforcement Policy Center, February 2006, <https://s3.documentcloud.org/documents/2303827/useofforcepaper.pdf>

<sup>3</sup> John P. Gross, *Unguided Missiles: Why the Supreme Court Should Prohibit Police Officers from Shooting at Moving Vehicles*, 163 U. Pa. L. Rev. Online 135, 140 (2016)

<sup>4</sup> Jon Swaine et al., *Moving Targets*, GUARDIAN (Sept. 1, 2015), <http://www.theguardian.com/us-news/2015/sep/01/moving-targets-police-shootings-vehicles-the-counted>

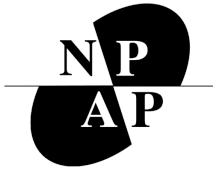
<sup>5</sup> See *Eg. Family speaks after innocent bystander killed by man fleeing Detroit police*, Jan. 19, 2020, (a man shot while fleeing police lost control of vehicle and struck bystander, killing him)

<https://www.clickondetroit.com/news/local/2020/01/20/family-speaks-after-innocent-bystander-killed-by-man-fleeing-detroit-police/>; Richard Winton and Solomon Moore, *Proposed LAPD Rule Would Limit Firing at Moving Cars*, Feb. 11, 2005,

<https://www.clickondetroit.com/news/local/2020/01/20/family-speaks-after-innocent-bystander-killed-by-man-fleeing-detroit-police/> (police officers shot and killed 13 year old while shooting into vehicle); *Rucker v. Harford County, Md.*, 946 F.2d 278, 280 (4th Cir. 1991)(an officer shot a bystander in an attempt to shoot into a fleeing vehicle driven by a carjacking suspect);

<sup>6</sup> See *Eg. Mullinex v. Luna*, 577 U.S. 7 (2015)(driver who was fleeing officers after he refused to be arrested on an outstanding warrant died after officer shot into his vehicle from an overpass); *Torres v. Madrid*, 141 S. Ct. 989 (2021); *Stoddard-Nunez v. City of Hayward*, 2020 U.S. App. LEXIS 18351 (9th Cir. 2020)(passenger of vehicle killed while fleeing police).

<sup>7</sup> See *Eg. IACP Model Policy on Use of Force*, 2006



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Most modern police policies incorporate these requirements, including Boston prior to recent changes.<sup>8</sup>

The current proposed regulation vests officers with too much discretion and tacitly authorizes use of force in a variety of situations where shooting would cause more harm than it would prevent. A fleeing vehicle will often drive over the speed limit, accelerate or stop abruptly, or use maneuvers that violate traffic laws, and therefore conceivably present a risk of harm to other drivers. Thus, the current standard offers law enforcement officers little guidance on when they should discharge their weapon. Moreover, the current standard permits an officer to use force when the risk of harm to themselves could be avoided. Specifically, an officer standing in the path of a vehicle attempting to flee is technically at risk for harm even though that harm could be abated by stepping out of the way. NPAP is aware that this regulation is set to mirror state statute. However, the statute sets a minimum standard and this rulemaking process presents an opportunity to strengthen protections against excessive uses of force.

We recommend that the regulation be amended as follows:

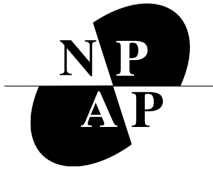
A law enforcement officer shall not discharge any firearm into or at a moving motor vehicle unless, ~~based on the totality of the circumstances, such discharge is necessary to prevent imminent harm to a person and is objectively reasonable~~ **a person in the vehicle is immediately threatening the officer or another identifiable person by deadly force by a means other than the vehicle. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants.**

## Use of Force Reporting: Mandatory Reporting Policy

The proposed regulations require law enforcement agencies to report use of force incidents on a standard reporting form provided by the Committee and Commission. While NPAP does not have a suggested amendment to the regulation, we strongly urge that the form include a field for the race or perceived race of the individual against whom force was apply. Collecting information about race or perceived race

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<sup>8</sup> David Graham, *Why Do Police Keep Shooting Into Moving Cars*, The Atlantic, May 21, 2021, <https://www.theatlantic.com/ideas/archive/2021/05/andrew-brown-police-shootings-moving-vehicles/618938/>; See also, Boston Police Department Rules and Procedures, Rule 303, § 8 (2003), <https://static1.squarespace.com/static/5086f19ce4b0ad16ff15598d/t/52af5f30e4b0dbce9d22a80d/1387224880253/Rule+303.pdf>



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is critical to identify, understand, and ultimately correct racial disparities in law enforcement use of force incidents.<sup>9</sup>

In sum, NPAP supports the adoption of many the proposed regulations but strongly urges this body to amend the rule on shooting into or at a moving vehicle. The danger created by this tactic is too great for officers to be governed by an unclear standard that is out of step with the majority of police agency policies and best practice guidance. We also appreciate this opportunity to register our support for the creation of a use of force report that requires officers to identify race or perceived race of the individual.

Thank you for your consideration and please do not hesitate to contact us if you seek additional information.

Sincerely,

Lauren Bonds  
Legal Director  
National Police Accountability Project

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<sup>9</sup> See *Eg.* Civilian Rights Coalition Letter to House and Senate Leadership on Federal Policing, June 1, 2020, [https://www.naacpldf.org/wp-content/uploads/Coalition\\_Letter\\_to\\_House\\_and\\_Senate\\_Leadership\\_on\\_Federal\\_Policing\\_Priorities\\_Final\\_6.1.20.pdf](https://www.naacpldf.org/wp-content/uploads/Coalition_Letter_to_House_and_Senate_Leadership_on_Federal_Policing_Priorities_Final_6.1.20.pdf)