



Commonwealth of Massachusetts
Municipal Police Training Committee
“Training for Today, Planning for the Future”

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PUBLIC HEARING - USE OF FORCE REGULATIONS

Date: Friday, August 27, 2021

Time: 10:00AM-1:00PM

Place: Microsoft Teams (Virtual Meeting)

Call to Order

The hearing was called to order by Attorney John Melander at 10:05am.

Opening Remarks

Attorney John Melander:

“My name is John Melander and I am the Deputy General Counsel for the Executive Office of Public Safety and Security (EOPSS). On behalf of the Municipal Police Training Committee and the newly formed Peace Officer Standards and Training Commission, welcome to today’s virtual public hearing on proposed use of force regulations governing law enforcement officers here in the Commonwealth. Also present today from EOPSS is our legal analyst Don Boyd who will be keeping minutes and assisting me in conducting this virtual public hearing. Please also be aware that this hearing is being recorded via Microsoft Teams.

As many of you are probably aware, at the end of last year the Governor signed into law, “*An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth*,” as part of c. 253 of the Acts of 2020. The legislation, commonly referred to as “Police Reform,” brought forth sweeping changes governing how law enforcement officers are trained, perform their duties, and are held accountable. To this end, the legislation established the Peace Officer Standards and Training Commission, an independent, civilian majority Commission to oversee the certification process for law enforcement officers. The legislation requires the POSTC to work closely with the MPTC on several important issues, including the promulgation of use of force regulations. Specifically, section 15(d) of chapter 6E of our General Laws requires the POSTC and the MPTC to “jointly promulgate rules and regulations for the use of force by law enforcement officers,” consistent with sections 14 and 15 of chapter 6E. The POSTC was formally established, pursuant to the legislation, on July 1, 2021, and since that time has been working collaboratively with the MPTC to produce the draft regulation up for public comment today.

EOPSS has been accepting written comments on behalf of MPTC and POSTC since July 28, 2021. Today we will continue to receive any oral comments for those of you who wish to offer them, and we will also be accepting any written comments that you may wish to submit until 1 p.m. today.

If you intend to comment on the proposed use of force regulations today, please provide your full name to us utilizing the chat function. We will add these names to a list of individuals who have already requested speaking time. Please mute your audio unless it is your turn to speak. Mr. Boyd will unmute individuals when it is their time to offer comments. After my introductory remarks, we will call the list in the order in which requests were received, at which time the Reviewing Authority designee (my role today), will listen to your comments. Please note, we are present to listen to your oral statements and to accept whatever written submissions you may wish to provide, but we will not be answering any questions. Also, please limit your comments to approximately 5 minutes so that all who wish to be heard have an opportunity to speak. After we have called the names of everyone on the list, we will open comments to anyone else who may wish to speak but who was unable to make a request using the chat function. For

example, individuals who have called in via telephone. Additionally, if you need any technical assistance using Microsoft Teams, please let us know and we will be happy to offer assistance.

The MPTC and POSTC will have a senior-level manager assigned to the use of force regulation. This manager is the regulation's Reviewing Authority and it's his or her responsibility to monitor the application of the regulation. Reviewing Authorities are also responsible for annual reviews of the regulations under his/her charge to assess their effectiveness and to determine whether the regulation is meeting its purpose.

The Reviewing Authority for the use of force regulation on behalf of the MPTC is Andrea Nardone who is present for this virtual hearing. Andrea is the Director of Training for the MPTC. Attorney Lon Povich will be serving as the Reviewing Authority on behalf of POSTC, and Attorney Povich has also joined the hearing.

I would also like to recognize the many members of the MPTC and the POSTC who have joined today's hearing. The members of both groups have worked hard to produce this draft and they look forward to the public's input as they work to promulgate a final use of force regulation.

On behalf of MPTC and EOPSS, and the POSTC I would like to thank each of you for participating in the regulation process. The public comment period is integral to the establishment of effective regulations. Following the conclusion of this hearing, EOPSS will take the comments we have gathered in this process back to the MPTC and the POSTC for careful consideration and debate. Following final discussion and consensus between the MPTC and the POSTC we will publish the final version of the regulation into the Massachusetts Register, where they will be promulgated and become effective.

At this time, we will call the list and accept the public's comments on the proposed use of force regulation."

Public Comment

Bill Brooks, Norwood Police Chief:

Happy to see positive work resulting from the collaboration between the POST Commission and MPTC. The regulations are not only reasonable, but they are also largely reflective of what is being practiced by police departments in Massachusetts.

There are a few areas for reconsideration, with the first being in the area of non-deadly force. In particular, the area concerning those who are passively resistant which requires the officer use only the amount of force necessary while employing de-escalation tactics. The issue is the requirement to use summons over arrests where feasible. Currently, the majority of cases with our department are for summons rather than arrests and we feel that this is a productive strategy. However, we do not feel that this strategy belongs in a use of force regulation. Regulations should state what an officer shall and shall not do, this requirement of issuing a summons rather than arrest only states what an officer shall do. Our officers are faced with passive resistance every day and it is not reasonable to require officers to always issue a summons as required by this proposed section in the regulations. The discussion of summons vs arrests may be more appropriate in the context of in-service training or next year's legal update. Additionally, the qualifier of where reasonable is too low of a standard. We hope that you take a hard look at this area because it may encourage people to resist arrest.

The second area of concern is the issue of shooting at moving vehicles. We recognize that this scenario is rare, and my department has had a policy against it for years. The exemptions in the regulations, particularly in subsection one, pertains to when an individual is firing at the officer from the vehicle, and when the vehicle is being intentionally used as we have seen in some acts of terrorism. However, our concern is with subsection two which says that provided that the officers have not surrounded the vehicle on foot. Our concern is that there may be situations where officers approach the vehicle attempting to identify the driver before one of the exemptions may materialize. With that concern in mind, we believe that this section needs a second look. I have submitted written testimony to Attorney Melander as well. Thank you all for your work.

Attorney Oami Amarasingham, ACLU Deputy Legislative Director:

We appreciate the thoughtfulness of the proposal and we have submitted a written comment as well. We support all of the definitions, many of which are comprehensive which is appreciated. However, we wish to propose a couple additional definitions and standards to the regulations for clarification.

First, there appears to be two standards within the sections for use of deadly force, non-deadly force, and the duty to intervene. Those sections appear to have a necessary and proportional standard, along with an objectively reasonable standard to bring the situation under control. The police reform set the bar high with the necessary and proportional standard, where the objectively reasonable standard conflicts with the statute and causes confusion with its implementation. The only place appropriate for the objectively reasonable standard is when determining if the perspective for using force was necessary and proportional. For this reason, we suggest adding a definition to clarify when this objectively reasonable standard should and should not come into play.

Second, the language in the section of deadly force when shooting into moving vehicles is confusing and allows for some troubling situations where deadly force would be authorized. We recommend that the commission adhere to the guiding principles set forth by the police executive research forum. Within those principles is principle number eight, a prohibition on shooting into moving vehicles. The only exception to this prohibition is when a person within the moving vehicle is threatening deadly force through means other than the vehicle itself. There has been consideration for another exemption which would apply only when a mass casualty situation is possible, such as driving into a large crowd.

On the mass demonstration section, we strongly support the prohibition on kettling. As a general matter, we believe that the police response to mass protests should not involve militarized displays and police should never deploy indiscriminate weapons such as tear gas. Besides posing a risk to people's health and safety, use of such weapons violates their due process rights and seldom is the least restrictive means to address unlawful conduct. The city of Boston has recently passed an ordinance that regulates the use of kinetic impact projectiles and chemical crowd control agents and we urge the commission to look at that model. Statewide regulations should at least be as protective as the standards followed by the largest municipal police department. Additionally, it makes sense to have officers of the State Police follow the same standards as the Boston Police Department as both are often present together at mass gatherings. Regarding the definitions, we believe that the definition of kinetic impact projectiles should be used in place of rubber pellets as seen in the mass demonstration section.

We also support the general prohibition on K9 use for crowd control. However, the exemptions seem to swallow the general rule. We suggest additional clarifying language regarding when K9 use is appropriate.

Christopher Burns, Palmer Police Chief:

We have submitted written comments to the commission. Our concerns largely mirror those of Chief Brooks when it comes to the use of non-deadly force. Specifically, the second paragraph under the section for non-deadly force which states that an officer shall use only the amount of force necessary on an individual who is engaged in the use of passive resistance and shall use de-escalation tactics where feasible. The language regarding the use of summons over arrest should be listed within the use of de-escalation tactics definition where it would be more functional. Its present location implies that an officer shall issue a summons rather than arrest when met with passive resistance. As Chief Brooks mentioned, we currently issue summons over arrest about fifty percent of the time, and it should be done across the board in policing.

Additionally, the definition of passive resistance is not consistent with the MPTC use of force continuum. Specially, the perceived subject actions category where passive resistance is defined as citizen non-compliance offering no physical or mechanical energy enhancement toward the resistant effort. However, the current regulation definition adds the words "non-violent" and "does not pose an immediate threat to the public", which is not included on the MPTC definition, thus bringing active resistance into consideration. Therefore, the commission should take a second look at this definition.

Adjourn

Attorney Melander asked if anyone else wanted to be heard and after waiting a couple of minutes without any further requests to speak Attorney Melander adjourned the hearing at 10:32am.

