



EASTHAMPTON POLICE DEPARTMENT		Department Manual: Policy No. 1.06
Subject: <u>Policy: Reporting Abuse, Excessive Force, or Misconduct by Law Enforcement Personnel</u>		
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: Statutory: AN ACT RELATIVE TO JUSTICE, EQUITY AND ACCOUNTABILITY IN LAW ENFORCEMENT IN THE COMMONWEALTH;		GENERAL ORDER
 <i>IACP Model Policy: Retaliatory Conduct (June 2020)</i>		
Effective Date: October 25, 2021 Ref. NEW Use of Force Regulations 550 CMR 6.00 M.G.L. Chapter 6E §§14,15	Issuing Authority <i>Robert J. Alberti</i> Robert J. Alberti Chief of Police	

I. PURPOSE

Pursuant to **550 CMR 6.07; M.G.L c. 6E §15 (c)**, all "[l]aw 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." [Emphasis Added].

In the interest of maintaining a harmonious workplace environment, it shall be both the purpose and intention of this policy to complement the high level of departmental integrity, transparency and accountability that exists. Further, such policy shall serve to continue to avoid any potential hostile or harassing treatment of fellow employees/officers by requiring the mandatory reporting of all serious infractions of departmental policy, procedure, or rules as well as the violation of any local, state or federal laws allegedly committed by any law enforcement officer and by prohibiting

any type of retaliatory conduct or action against any employees who make such reports pertaining to allegations of misconduct or illegal activity.

II. POLICY

The Easthampton Police Department strictly prohibits any type of retaliatory conduct against or interference with any employee who either reports, assists, or seeks to report breaches of department policy, procedures, or rules and/or violations of local, state or federal law allegedly committed by a law enforcement officer. In addition, such employees who report abuse, misconduct, excessive force, or violations of the law, allegedly committed by other law enforcement personnel, shall do so without fear of retaliation or actual retaliation.

III. DEFINITIONS

Affirmative Duty: The personal responsibility and obligation of an employee to report wrongdoing or prohibited conduct — rather than to provide such information only when requested to do so.

False Report: A report that is not made in good faith and is based on information that is known or reasonably likely to be inaccurate; intentionally or negligently ignores exculpatory or mitigating information; or is made with the purpose of harassing or wrongly incriminating another employee.

Good Faith Report: A report that provides allegations concerning an employee who is reasonably believed to have purposely committed a serious violation of departmental policy, procedures, rules, or laws.

Public Disclosures: Statements made to the media or information entered in any forum that is available to the public—such as social media websites—that provides information that is critical of this department, its personnel, or both.

Retaliatory Conduct: Conduct or action designed to serve as retribution against an employee who, in good faith, has reported or otherwise provided information regarding misconduct against another employee.

- In the context of this policy, retaliatory conduct includes any deliberate, purposeful actions or failures to act directed against employees that cause or that could reasonably be expected to cause physical harm, property damage, significant emotional stress, or other serious negative effect on another employee; designed to ridicule or embarrass; or could seriously impair the efficiency, safety, or effectiveness of that employee, this department, or both.
- Such conduct may take many forms, including but not limited to bullying; persistent offensive comments, threats, or intimidation; false accusations;

isolation; ostracism; posting of secure or personal information on the Internet; or acts that malign or disparage an individual's reputation.

Serious Acts of Misconduct: A deliberate act or failure to act that could reasonably form the basis for significant disciplinary action against an employee. Such disciplinary action is usually in the form of suspension, reduction in rank, reassignment/transfer, termination or other separation from employment.

IV. DUTY TO: INTERVENE / REPORT / WRITTEN REPORT

(a) An 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.¹

(b) 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.²

(c) A law enforcement agency shall develop and implement a policy and procedure for law enforcement personnel to report abuse by other law enforcement personnel without fear of retaliation or actual retaliation.³

(d) The failure of a law enforcement officer to intervene as set forth herein may subject the officer to de-certification by the Commission.⁴

V. PROCEDURES

A. Duty to Report Misconduct:

1. All employees of this department have an affirmative duty to report all serious acts of misconduct both verbally to a Supervisor and in writing. Failure to report shall result in corrective or disciplinary action.

2. Serious acts of misconduct should be reported to the complaining employee's immediate supervisor. If the supervisor is suspected of

¹ M.G.L. Chapter 6E Section 15 (a); 550 CMR 6.06

² M.G.L. Chapter 6E Section 15 (b)

³ M.G.L. Chapter 6E Section 15 (c); 550 CMR 6.06

⁴ 550 CMR 6.06

involvement in the misconduct, the report should be made to the next higher-ranking employee in the department's chain of command.

3. In situations involving highly egregious offenses or illegality that may have serious or broader implications, a complaint may be made directly to the chief executive officer. Examples include, but are not limited to, broad-based corruption, conspiracy among employees, or offenses involving or including high-ranking officers or members of government.

4. All employees have an affirmative duty to cooperate fully during the investigation of any allegation of employee misconduct whether conducted by this department or another authorized authority.⁵

B. Retaliatory Conduct:

1. Retaliatory actions against employees who make good faith complaints or disclosures of misconduct against another employee are strictly prohibited. Such acts will form the basis for charges of misconduct, resulting in serious disciplinary action. Any complaint of retaliatory conduct shall be submitted to the complaining employee's supervisor. If the supervisor is the subject of, or is involved in the complaint, an employee shall submit the complaint to the next higher-ranking employee in the chain of command. Such complaints shall thereafter be submitted to the Internal Affairs Unit.

2. Additionally, any employee who has been subjected to any form of retaliatory conduct by fellow employee is strongly encouraged to seek assistance through peer counseling or other services, as available from this department's employee assistance program or additional services offered by the City of Easthampton's Human Resources Department.

C. Public Disclosures and Legal Remedies:

1. This policy does not limit an employee's right to make public disclosures that are deemed to be of public concern and are thus protected by the First Amendment. Please remember that protection of speech regarding employment has certain limitations, so employees are encouraged to consult with the IBPO Legal Counsel and/or the Chief of Police on work-related speech and dissemination of information prior to making such public disclosures.

2. This policy in no way limits the right of employees to file complaints or grievances, both within or outside governmental authorities or to initiate appropriate legal action. Individuals taking such actions are afforded the same protections against retaliatory conduct as other employees.

⁵ See Policy No. 4.01 Internal Investigation Policy

D. Prevention of Misconduct:

1. Prevention of serious employee misconduct and promotion of a principled and effective work environment free of harassment and hostility requires that all employees abide by this policy.

2. First-line supervisors bear an important responsibility to ensure that all employees under their supervision fully understand the importance of adherence to all departmental policies, procedures, and rules and that they understand the department's commitment to ensuring employee compliance with the provisions of Chapter 253 of the Acts of 2020 (e.g., Police Reform Legislation). First-line supervisors shall also monitor their officers and provide any support to those who are directly impacted by any such potential retaliatory conduct.

3. The Police Captain and the FTO Supervisors shall ensure that employees are thoroughly familiar with the provisions of this policy by ensuring timely discussions at Shift Roll Call Briefings as well as during Annual In-Service Training.

550 CMR: MUNICIPAL POLICE TRAINING COMMITTEE

550 CMR 6.00: USE OF FORCE BY LAW ENFORCEMENT OFFICERS

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6.01: Purpose and Scope

(1) Purpose. The purpose of 550 CMR 6.00 is to establish rules governing the use of force by law enforcement officers. 550 CMR 6.00 is promulgated 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.

(2) Scope. 550 CMR 6.00 applies to all law enforcement officers as defined in M.G.L. c. 6E, § 1.

6.02: Authorization

550 CMR 6.00 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.

6.03: 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 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 physical injury.

De-escalation Tactics. Proactive actions and approaches 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, 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 M.G.L. c. 111, § 51½(a), to address a potential medical or mental health crisis. De-escalation shall include, but is not limited to, issuing a summons instead of executing an arrest where feasible

Department/Police Department/Law Enforcement Agency/Agency.

- (a) 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;

6.03: continued

- (b) a sheriff's department in its performance of police duties and functions; or
- (c) a public or private college, university or other educational institution or hospital police department.

Dog. For the purposes herein, shall also refer to a K-9, canine or police dog.

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 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 M.G.L. c. 140, § 58 or 63; a special sheriff appointed pursuant to M.G.L. c. 37, § 4, performing police duties and functions; a deputy sheriff appointed pursuant to M.G.L. c. 37, § 3 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 Injury or Death. Any event during which an officer:

- (a) discharges a weapon, or stun gun, as defined in M.G.L. c. 140, § 121, actually or proximately causing injury or death to another;
- (b) discharges any stun gun as defined in said M.G.L. c. 140, § 121 actually or proximately causing injury or death to another;
- (c) uses a chokehold, in violation of M.G.L. c. 6E, § 14(c), actually or proximately causing injury or death of another;
- (d) discharges tear gas or other chemical weapon, actually or proximately causing injury or death of another;
- (e) discharges rubber pellets from a propulsion device, actually or proximately causing injury or death of another;
- (f) deploys a dog, actually or proximately causing injury or death of another;
- (g) uses deadly force, actually or proximately causing injury or death of another;
- (h) 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 injury or death of another; or
- (i) engages in a physical altercation with a person who sustains serious bodily injury or requests or receives medical care as a result.

Passive Resistance. An individual who is noncompliant with officer commands that is nonviolent and does not pose an immediate threat to the officer or the public.

Serious Bodily Injury. Bodily injury that results in:

- (a) permanent disfigurement;
- (b) protracted loss or impairment of a bodily function, limb, or organ; or
- (c) 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.

6.04: Use of Non-deadly Force

- (1) 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 and proportionate to:
 - (a) effect the lawful arrest or detention of a person;
 - (b) prevent the escape from custody;
 - (c) 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
 - (d) defend against an individual who initiates force against an officer.
- (2) 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.
- (3) Physically escorting or handcuffing an individual with minimal or no resistance does not constitute a use of force for purposes of 550 CMR 6.03. Use of force does include the pointing of a firearm, ECW, CED or CW at an individual and the use of OC spray on an individual or directed toward an individual.
- (4) Officers shall always provide appropriate medical response to individuals who are exhibiting signs of or complaining of injury or illness following a non-deadly use of force when safe and tactically feasible.
- (5) All law enforcement officers shall be properly trained and certified in the use of any less-lethal weapons before being authorized to carry or use such force options.
- (6) Except to temporarily gain, regain or maintain control of an individual and apply restraints, 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.
- (7) 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.

6.05: Use of Deadly Force

- (1) 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, and;
 - (a) The imminent harm poses an imminent danger of death or serious bodily injury to the officer or another person;
 - (b) The officer attempts as many de-escalation tactics that are feasible under the circumstances, including utilizing barriers where feasible; and
 - (c) The officer uses only the amount of force that is objectively reasonable.
- (2) A law enforcement officer shall not 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. 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.
- (3) An officer may not use deadly force against a person who poses only a danger to themselves.
- (4) 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; and only if the following conditions exist:

6.05: continued

(a) A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or 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;

(b) Officers have not intentionally 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);

(c) The officer is not firing strictly to disable the vehicle; and

(d) The circumstances provide a high probability of stopping or striking the intended target.

(5) 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.

(6) Where feasible based on the totality of the circumstances, officers shall verbally identify themselves as police officers and issue some warning before using deadly force.

(7) Officers shall always provide appropriate medical response to an individual following a use of deadly force when safe and tactically feasible.

6.06: 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 in 550 CMR 6.05 may subject the officer to de-certification by the Commission.

6.07: Use of Force Reporting

(1) 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 in 550 CMR 6.00, 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

6.07: continued

- (6) 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.
- (7) 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.
- (8) All use of force reports shall be retained and maintained by the law enforcement agency/department and are subject to discovery and access through the Massachusetts Public Records Law M.G.L. c. 66.

6.08: Mass Demonstrations, Crowd Management, and Reporting

- (1) A police department shall establish plans to avoid and to de-escalate potential or actual conflict between officers and mass demonstration participants. When a police department obtains advance knowledge of a planned mass demonstration within the police department's jurisdiction, the police department shall diligently attempt in good faith to:
 - (a) 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
 - (b) 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.
- (2) The department shall designate an officer in charge of de-escalation planning and communication to carry out the above plans within the department.
- (3) 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 a kinetic impact device or rubber pellets from a propulsion device or order the release of a dog to control or influence a person's behavior unless:
 - (a) de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances; and
 - (b) the measures used are necessary to prevent imminent harm and the foreseeable harm inflicted by the tear gas or the chemical weapon, kinetic impact device, rubber pellets or dog is proportionate to the threat of imminent harm.
- (4) If a law enforcement officer utilizes or orders the use of kinetic impact devices, rubber bullets, CEDs, CWs, ECWs, or a dog 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.
- (5) Canines should not be utilized 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. Utilization does not include circumstances in which the canine remains on a short lead in close proximity to the handler and is well behind the line of contact between law enforcement and civilian personnel.
- (6) The use of Kettling as a means of crowd control, crowd management, or crowd restraint is prohibited.

550 CMR: MUNICIPAL POLICE TRAINING COMMITTEE

6.09: 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.

6.10: Use of Force Training

(1) The Committee shall develop and periodically deliver use of force training to law enforcement officers consistent with 550 CMR 6.00 including, but not limited to:

- (a) de-escalation tactics;
- (b) handling emergencies involving individuals with mental illness;
- (c) responding to mass gatherings;
- (d) cultural competency;
- (e) progression of force; and
- (f) lawful use of force techniques and equipment on a schedule to be determined by the Committee.

(2) 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 550 CMR 6.00 and all relevant state and federal laws.

REGULATORY AUTHORITY

555 CMR 6.00: M.G.L. c. 6E, § 15(d).