

**HOUSE . . . . . No.****The Commonwealth of Massachusetts**

PRESENTED BY:

***Liz Miranda and Cynthia Stone Creem****To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to saving Black lives and transforming public safety.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Liz Miranda</i>	<i>5th Suffolk</i>
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Peter Capano</i>	<i>11th Essex</i>
<i>Maria Duaime Robinson</i>	<i>6th Middlesex</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>

<i>Natalie M. Blais</i>	<i>1st Franklin</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>
<i>Gerard J. Cassidy</i>	<i>9th Plymouth</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Joan Meschino</i>	<i>3rd Plymouth</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>

<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Carlos González</i>	<i>10th Hampden</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>

# HOUSE . . . . . No.

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By Representative Miranda of Boston and Senator Creem, a joint petition (subject to Joint Rule 12) of Liz Miranda, Cynthia Stone Creem and others for legislation to address public safety issues including the use and reporting of physical force including choke holds, so-called, by law enforcement officers and the use of warrants and electronic weapons. Public Safety and Homeland Security.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-First General Court  
(2019-2020)  
\_\_\_\_\_

An Act relative to saving Black lives and transforming public safety.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for emergency relief to save Black lives, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Clause twenty-sixth of section 7 of chapter 4 of the General Laws, as  
2     appearing in the 2018 Official Edition, is hereby amended by striking out subclause (c) and  
3     inserting in place thereof the following subclause:-

4           (c) personnel and medical files or information; also any other materials or data relating to  
5     a specifically named individual, the disclosure of which may constitute an unwarranted invasion  
6     of personal privacy; provided however, that records describing the disposition of law  
7     enforcement misconduct investigations shall not be exempt from disclosure.

8           SECTION 2. Said chapter 12 is hereby further amended by adding the following section:-

Section 35. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Deadly weapon", a firearm or any object manifestly designed, made or adapted for the purpose of inflicting death or serious bodily injury; or any object that, in the manner of its use, is capable of causing death or serious bodily injury.

"Law enforcement agency", the department of the state police, a police department, regional law enforcement council, cooperative, joint task force, an entity with employees duly and properly authorized to enforce the laws of the commonwealth or any other entity that employs law enforcement officers.

"Law enforcement officer" or "officer", an employee or agent of a law enforcement agency, a sheriff or deputy sheriff, a parole officer of the parole department, a state department of correction officer, a county corrections officer, a campus police officer employed by a public or private university, college or community college, any person appointed as a special state police officer pursuant to section 63 of chapter 22C or any other officer appointed pursuant to any general or special law having the power to take custody of another person.

"Officer-involved injury or death", any event during which a law enforcement officer: (i) discharges a firearm, as defined by section 121 of chapter 140, actually or proximately causing injury or death to another; (ii) discharges any stun gun as defined by said section 121 of said chapter 140, actually or proximately causing injury or death to another; (iii) uses a choke hold, as defined in section 1 of chapter 147A, discharges tear gas or other chemical weapon, discharges rubber pellets from a propulsion device, or attacks a person using a dog, actually or proximately causing injury or death of a person; or (iv) engages in a physical altercation with a

member of the public who sustains serious bodily injury or requests or receives medical care as a result.

“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.

(b) The attorney general shall create a uniform protocol for any law enforcement agency to report officer-involved injuries or deaths. The uniform protocol shall require a report of the following information regarding each incident: (1) the reporting law enforcement agency; (2) date of the incident; (3) location of the incident; (4) age, gender, race and ethnicity of each officer involved; (5) the age, gender, race and ethnicity of each injured or deceased person involved, if known; and, if unknown, a description of the inquiry undertaken to ascertain that information; (6) whether the person was injured, received emergency medical care, was hospitalized, or died as a result of the incident; (7) a description of the injuries sustained by each injured person; (8) whether and in what manner each injured or deceased person used, exhibited or possessed a deadly weapon during the incident; (9) whether each injured or deceased person exhibited signs or symptoms of mental illness or impairment at the time of the incident; (10) whether an officer involved attempted to call medical or mental health professionals to the scene during the incident; (11) whether each officer involved was on duty during the incident; (12) whether each officer involved was in uniform during the incident; (13) a description of the physical force used by each officer during the incident; (14) a description of the de-escalation tactics and techniques, as defined in section 1 of chapter 147A, used by each officer involved during the incident; (15) for each officer present, a description of all attempts to intervene to prevent the use of unreasonable physical force during the incident; and (16) whether the incident

occurred during or as a result of: (i) an emergency call or request for assistance, and a description of the facts and circumstances; (ii) the execution of a warrant or other enforcement action; or (iii) a hostage-taking, a barricade, or other emergency situation.

(c) Not later than 30 days after an officer-involved injury or death, the law enforcement agency employing the officer involved in the incident shall complete and submit to the attorney general a report using the uniform protocol. If the agency maintains a website, the agency shall post the report online upon submission to the attorney general.

Not later than 5 days after receiving a report, the attorney general shall post the report on its website.

If no officer-involved injuries or deaths have occurred during a quarterly period, the agency shall submit a no incident report to the attorney general, in a manner prescribed by the attorney general. The quarterly periods shall be: (i) January 1 to March 31, inclusive; (ii) April 1 to June 30, inclusive; (iii) July 1 to September 30, inclusive; and (iv) October 1 to December 31, inclusive.

(d) The attorney general shall investigate the use of physical force in all incidents that result in emergency medical care, hospitalization, or death. Within 90 days of the incident, the attorney general shall determine whether physical force was justified pursuant to section 2 of chapter 147A; provided, that a conclusion by the attorney general pursuant to this subsection that force was justified shall not be admissible or have any preclusive effect in any civil or criminal proceeding; provided further that an investigation by the attorney general shall not preclude any other elected official or public body from conducting an investigation of an officer-involved injury or death.

(e) A law enforcement agency that fails to comply with subsection (c) shall be ineligible to apply for grants administered by any state agency. The attorney general shall notify the secretary of public safety and security detailing the reasons for an agency's ineligibility and shall afford the agency an opportunity prior to any such notification to contest a finding that the agency did not comply with subsection (c). The attorney general shall notify the secretary of public safety and security promptly when an agency demonstrates renewed compliance for a period of 3 consecutive months and the agency's eligibility to apply for grant funding shall be restored.

(f) The attorney general shall prepare an annual report regarding all officer-involved injuries or deaths that occurred during the preceding fiscal year. The report shall include:

- (1) the total number of officer-involved injuries or deaths;
- (2) the number of officer-involved injuries or deaths reported by each law enforcement agency;
- (3) the entirety of data reported using the uniform protocol; and
- (4) any operational, policy, regulatory, or legislative recommendations to reduce the number and seriousness of officer-involved injuries or deaths.

(g) On or before September 30 of each year, the attorney general shall submit the report to the governor, the secretary of public safety and security, the clerks of the house of representatives and the senate, the joint committee on the judiciary, the joint committee on public safety and homeland security, the commissioner of public health, the municipal police training committee and the Massachusetts Chiefs of Police Association Incorporated. On or before



September 30 of each year, the attorney general shall post the report on the website of the attorney general's office.

SECTION 3. Section 1 of chapter 111 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after the definition of "Inland waters" the following definition: -

"Law-enforcement-related injuries and deaths", injuries and deaths caused by law enforcement or corrections officers, whether employed by the commonwealth, a county, a municipality or other public or private entity, and occupational fatalities of law enforcement or corrections officers.

SECTION 4. Said chapter 111 is hereby further amended by inserting after section 6D, as so appearing, the following section:-

Section 6E. The department shall collect and report data on injuries dangerous to the public health, including law-enforcement-related injuries and deaths. The commissioner shall promulgate regulations concerning law-enforcement-related injuries and deaths. Regulations shall include, but not be limited to, protocols and procedures for the reporting of law-enforcement-related injuries and deaths to the department by physicians and other licensed health care professionals.

SECTION 5. The General Laws are hereby amended by inserting after chapter 147 the following chapter:-

Chapter 147A. Regulation of Physical Force by Law Enforcement Officers

117           Section 1. As used in this chapter, the following words shall, unless the context clearly  
118 requires otherwise, have the following meanings:-

119           “Choke hold”, the use of the lateral vascular neck restraint, carotid restraint, choke hold,  
120 neck hold or any other action that involves placing any part of an officer’s body on or around a  
121 person’s neck.

122           “Deadly physical force”, physical force which can be reasonably expected to cause death  
123 or serious physical injury.

124           “De-escalation tactics and techniques”, proactive actions and approaches used by a law  
125 enforcement officer to stabilize a law enforcement situation so that more time, options and  
126 resources are available to gain a person’s voluntary compliance and to reduce or eliminate the  
127 need to use force, including, but not limited to, verbal persuasion, warnings, slowing down the  
128 pace of an incident, waiting out a person, creating distance between the law enforcement officer  
129 and a threat and requesting additional resources to resolve the incident, including but not limited  
130 to calling in medical or mental health professionals to address a potential medical or mental  
131 health crisis.

132           “Imminent harm”, when a person creating a risk has the present ability, opportunity and  
133 apparent intent to immediately cause serious physical injury or death; provided, that imminent  
134 harm shall not be merely a fear of future harm, but is a risk that, based on the information  
135 available at the time, must be instantly confronted and addressed.

136           “Law enforcement agency”, the department of the state police, a police department,  
137 regional law enforcement council, cooperative or other joint task force, an entity with employees

138 duly and properly authorized to enforce the laws of the commonwealth or any other entity that  
139 employs law enforcement officers.

140 “Law enforcement officer” or “officer”, an employee or agent of a law enforcement  
141 agency, a sheriff or deputy sheriff, a parole officer of the parole department, a state department  
142 of correction officer, a county corrections officer, a campus police officer employed by a public  
143 or private university, college or community college, any person appointed as a special state  
144 police officer pursuant to section 63 of chapter 22C or any other officer appointed pursuant to  
145 any general or special law having the power to take custody of another person.

146 “Necessary”, when, after all available alternatives have been exhausted, no available,  
147 effective alternative was known or should have been known to a reasonable person in the  
148 circumstances, without regard to the subjective beliefs of the law enforcement officer.

149 “Totality of the circumstances”, the entire duration of an interaction between law  
150 enforcement officers and a victim of force, from the first contact through the conclusion of the  
151 incident, including consideration of contextual factors the law enforcement officer knew or  
152 should have known during such interaction, including, but not limited to: (i) whether the law  
153 enforcement officer’s conduct during the interaction contributed to the risk of imminent harm to  
154 an identifiable person by the victim of force; (ii) whether the law enforcement officer attempted  
155 de-escalation tactics and techniques during the interaction; (iii) whether the law enforcement  
156 officer failed to identify as a law enforcement officer to the victim of force; (iv) whether an  
157 arrest could have been effected at a later time with a lower risk to the safety of the public or to  
158 the victim of force; (v) whether the law enforcement officer made reasonable accommodations in  
159 light of the victim of force’s physical disability, mental illness, developmental or neurological

condition or disability, drug interactions, linguistic limitations, then-existing mental, emotional or physical condition or other characteristics that may have interfered with the victim of force's ability to cooperate or comply with a law enforcement officer's instructions; (vi) whether the law enforcement officer failed to call in a medical or mental health professional in response to a potential medical or mental health crises; (vii) whether the law enforcement officer gave any warnings to the victim of force before undertaking a use of force or other escalation; and (viii) whether the law enforcement officer exacerbated the injury sustained by the victim of force by subsequent actions.

Section 2. (a) All persons in the commonwealth shall have a right, including for purposes of sections 11H and 11I of chapter 12, against the use of force prohibited by this section. A violation of this section shall be a per se violation of sections 11H and 11I of chapter 12.

(b) No law enforcement officer shall use physical force upon another person unless they have employed de-escalation tactics and techniques and, based on the totality of the circumstances, such force is proportionate and necessary to: (i) effect an arrest of a person whom the law enforcement officer has probable cause to believe has committed an offense, unless the law enforcement officer knows the arrest is unauthorized; (ii) prevent the escape from custody of a person whom the law enforcement officer has probable cause to believe has committed an offense, unless the law enforcement officer knows that the custody is unauthorized; or (iii) prevent imminent harm to an identifiable person, where the amount of force used is proportional to the threat of imminent harm to the identifiable person.

(c) No law enforcement officer shall use deadly physical force upon another person unless they have employed de-escalation tactics and techniques and, based on the totality of the

182 circumstances, such force is necessary to prevent imminent harm to an identifiable person and  
183 the amount of force used is proportional to the threat of imminent harm to an identifiable person.

184 (d) No law enforcement officer shall take actions, other than a use of force, which  
185 actually or proximately cause the death of a person within 24 hours of the victim's interaction  
186 with a law enforcement officer unless they have employed de-escalation tactics and techniques  
187 and, based on the totality of the circumstances, such actions were necessary to effect a legitimate,  
188 lawful law enforcement purpose and the actions were proportional to such legitimate, lawful law  
189 enforcement purposes.

190 (e) No law enforcement officer shall discharge any firearm into or at a fleeing motor  
191 vehicle, unless, based on the totality of the circumstances and after employing de-escalation  
192 tactics and techniques, such discharge is necessary to prevent imminent harm to an identifiable  
193 person and the discharge is proportional to the threat of imminent harm to an identifiable person.  
194 For purposes of this section, use of the vehicle itself shall not be imminent harm.

195 (f) No law enforcement officer shall intentionally position their body or vehicle in front  
196 of a fleeing motor vehicle, unless such action is a tactic approved by the law enforcement agency  
197 that employs the officer. A law enforcement officer moving into or remaining in the path of a  
198 moving vehicle, whether deliberate or inadvertent, shall not be justification of discharging a  
199 firearm at the vehicle or any of its occupants or any other use of physical or deadly physical  
200 force. A law enforcement officer in the path of an approaching vehicle shall attempt to move to a  
201 position of safety rather than discharging any firearm at the vehicle or any of the occupants of  
202 the vehicle.

(g) No law enforcement officer shall use a choke hold, discharge tear gas or other chemical weapon, discharge rubber pellets from a propulsion device or attack a person using a dog.

(h) Notwithstanding the standards described above in subsections (a) through (f), an otherwise objectively reasonable use of force shall be unlawful if it is motivated in substantial part by anger, malice, retaliation or any other intent unrelated to a law enforcement purpose.

(i) Upon a finding by a court, the attorney general or the titular head of a law enforcement agency that a law enforcement officer used physical force in violation of this section, the law enforcement officer shall be immediately disciplined and, depending on the seriousness of the violation, may be decommissioned and terminated from their position. Upon a finding by a court, the attorney general or the titular head of any law enforcement agency that a law enforcement officer used physical force, including deadly physical force, in violation of this section, which resulted in serious bodily injury or death, or that the law enforcement officer violated subsection (g), the law enforcement officer shall be immediately decommissioned, terminated from their position and disqualified from future employment as a law enforcement officer in the commonwealth.

Section 3. (a) Any officer present and observing another officer using physical force, including deadly physical force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances shall intercede to prevent the use of unreasonable force, unless interceding would result in imminent harm to the officer or another identifiable individual.

(b) An officer who observes another officer using physical force, including deadly physical force, beyond that which is necessary or objectively reasonable based on the totality of

the circumstances shall report the incident to their direct supervisor as soon as reasonably possible, but no later than the end of the officer's shift. The officer shall prepare a detailed written statement describing the incident consistent with the uniform protocols set forth in section 35 of chapter 12. The officer's written statement shall be included in the supervisor's report.

(c) All persons in the commonwealth shall have a right to the intervention of officers in the circumstances described in this section. Any officer who had a duty to intervene and failed to do so shall be disciplined, and, depending on the seriousness of the violation, may be decommissioned and terminated from their position. Any officer who had a duty to intervene and failed to do so may be held liable, under sections 11H and 11I of chapter 12, jointly and severally with any officer who used unreasonable force for any injuries or death caused by such officer's unreasonable use of force.

Section 4. (a) Every law enforcement agency shall adopt a policy regarding the use of force by its officers.

(b) The use of force policy shall address, but not be limited to, each of the following:

(i) required procedures for de-escalation tactics and techniques before using or increasing the use of force;

(ii) procedures to determine the appropriate level of force be used in particular situations (with examples);

(iii) a ban on the use of choke holds, the discharge of tear gas or other chemical weapons, the discharge of rubber pellets from a propulsion device, or attacking a person using a dog;

(iv) required procedures for issuing warnings prior to discharging a firearm as defined by section 121 of chapter 140 or discharging a stun gun, as defined in said section 121 of said chapter 140;

(v) clear limits on the use of force pursuant to section 2, ensuring that less than deadly physical force is used only to the extent that it is proportionate and the minimum level of force necessary to achieve its lawful objective, and that deadly physical force is only used as a last resort when necessary to defend against imminent threats to human life;

(vi) the duty of officers to intervene pursuant to section 3; and

(vii) comprehensive reporting protocols pursuant to section 35 of chapter 12.

SECTION 6. Chapter 276 of the General Laws is hereby amended by inserting after section 2C, as appearing in the 2018 Official Edition, the following section:-

Section 2D. (a) A police officer executing a search warrant shall knock and announce their presence and purpose before forcibly entering a residence.

(b) An officer shall not dispense with the requirement of subsection (a) under any circumstances.

(c) Evidence seized or obtained shall be inadmissible if subsequent judicial review determines that the officers did not comply with subsection (a).

SECTION 7. Chapter 170 of the acts of 2004 is hereby amended by striking out section 2.

SECTION 8. Not later than 60 days after the effective date of this act, the attorney general shall create the reporting forms required pursuant to section 35 of said chapter 12.



266           SECTION 9. Not later than 90 days after the effective date of this act, a law enforcement  
267 agency, as defined in section 35 of chapter 12 of the General Laws, shall begin collecting  
268 information regarding all officer-involved injuries or deaths pursuant to subsection (c) of said  
269 section 35.

270           SECTION 10. Not later than 90 days after the effective date of this act, the titular head of  
271 each law enforcement agency shall publish the use of force policy required by section 4 of  
272 chapter 147A of the General Laws in a location that is accessible to the public, and in a  
273 conspicuous place on the agency's website, if any.