

SENATE No. 1362

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Barrett

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 to create uniform standards in use of force, increase transparency, and reduce harm.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/31/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/31/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/1/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/8/2019</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>2/21/2019</i>

SENATE No. 1362

By Mr. Barrett, a petition (accompanied by bill, Senate, No. 1362) of Michael J. Barrett, Patricia D. Jehlen, Mike Connolly, Julian Cyr and other members of the General Court for legislation to create uniform standards in use of force, increase transparency, and reduce harm. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

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

An Act to create uniform standards in use of force, increase transparency, and reduce harm.

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. Section 1 of chapter 124 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by adding the following subsections:-

3 (v) establish uniform minimum standards for state and county correctional facilities
4 regarding entrance of cell procedures. The standards shall establish the process for: (i) an
5 emergency entrance of cell procedure; and (ii) a planned entrance of cell procedure; provided
6 that a planned entrance of cell procedure shall include a twenty-four hour cooling off period
7 prior to any use of force whenever this would not place any person at risk of death or serious
8 bodily injury and shall include intervention by a qualified mental health professional, as defined
9 in section 1 of chapter 127, who shall actively seek to resolve the issue without use of force,
10 before a correctional officer enters the cell.

11 The standards shall instruct superintendents of all institutions under the jurisdiction of the
12 department of correction and the superintendents and keepers of jails and houses of correction
13 that an emergency entrance of cell procedure shall only be used when time is of the essence
14 where the failure to take immediate action would place a person in imminent risk of death or
15 serious bodily injury. The standards shall further instruct that if emergency entrance of cell is
16 being conducted because an inmate is attempting or committing suicide, chemical agents shall
17 not be used.

18 The standards shall require correctional officers to wear a personal audio-video recording
19 device attached to the officer's clothing, helmet, or sunglasses that is capable of capturing video
20 and audio recordings from the officer's point of view, which shall be activated during planned
21 entrance of cell procedures, emergency entrance of cell procedures and all other uses of force. A
22 correctional officer shall be prohibited from viewing or listening to any video or audio recording
23 prior to submitting a report regarding the use of force. All video recordings from all activated
24 personal audio-video recording devices, all fixed cameras and all handheld or other cameras
25 which captured any part of any use of force incident shall be made available to any involved
26 inmate to review upon their request and copies shall be provided to any person with the written
27 release of any involved inmate.

28 The standards shall detail acceptable equipment for use during a planned entrance of cell
29 procedure or an emergency entrance of cell procedure; provided that the standards shall prohibit
30 the use of kinetic impact weapons and law enforcement K-9s.

31 (w) establish uniform minimum standards for all state and county correctional facilities
32 governing the use of chemical agents. The standards shall: (i) identify all chemical agents which

33 are deemed an acceptable use of force; (ii) establish protocols for situations when chemical
34 agents may not be used, including but not limited to, on an inmate with intellectual disabilities,
35 respiratory illnesses, or cardiac disease; (iii) define the required authorization for staff prior to
36 the use of chemical agents, which shall include that whenever time permits mental health staff
37 must make every effort to speak to the inmate and affirm that the inmate does not have a
38 cognitive, psychiatric, or other disability or impairment inhibiting the inmate's ability to
39 understand or comply with staff orders; and (iv) establish protocols for decontamination of
40 inmates as soon as possible following exposure to each type of chemical agent identified
41 pursuant to clause (i), including but not limited to an opportunity for a shower and eye flush.

42 (x) establish uniform minimum standards for all state and county correctional facilities
43 governing the use of restraint chairs, including but not limited to the following: (i) a restraint
44 chair may only be used when it is the least restrictive means available to prevent substantial
45 threat of imminent harm; (ii) an inmate confined to a restraint chair must be checked by medical
46 staff and offered an opportunity to exercise at least every thirty minutes while in the restraint
47 chair; (iii) an inmate may not be confined to a restraint chair any longer than the restraint chair
48 remains the least restrictive means available to prevent substantial threat of imminent harm; (iv)
49 a restraint chair may never be utilized automatically following a use of force, and the substantial
50 threat of imminent harm that justifies use of the restraint chair must in all cases be documented
51 in writing, with copies of the documentation provided to the inmate upon request or to any other
52 person with release by the inmate.

53 (y) establish uniform minimum standards for all state and county correctional facilities
54 governing the use of law enforcement K-9s, including but not limited to the following: (i) K-9s
55 shall be under the control of their handlers at all times while on correctional facility property and

56 shall never be permitted to roam freely on correctional facility property; (ii) K-9s shall be used
57 only to search for contraband and to search for fleeing escapees, and only with prior approval by
58 the Commissioner, Sheriff, Superintendent, or designee; (iii) K-9s shall not be used in any use of
59 force situations, for monitoring inmate movement, or for routine internal patrol, except that K-9s
60 may be utilized if necessary as part of a coordinated response by a tactical team to a major
61 disturbance, defined as a riot situation or hostage situation where there is an immediate threat of
62 death or serious bodily injury; (iv) Inmates shall be removed from any area where K-9s are
63 conducting contraband searches, and all other reasonable efforts shall be made to minimize
64 inmate contact with K-9s; (v) If a K-9 bites or otherwise apprehends a person, the incident must
65 be documented in accordance with the correctional facility's use of force reporting requirements.
66 Color photographs must be taken of any injuries sustained and the photos must be preserved in
67 the original format for a period not less than ten years. All surveillance, handheld, body camera,
68 or other video recording from the area of the incident must be preserved for a period of not less
69 than ten years.

70 (z) establish uniform minimum standards for all state and county correctional facilities
71 regarding use of force data requiring, at a minimum, the following data to be collected and
72 provided to any person upon request as well as published, quarterly, on the agency's website: (i)
73 the number of incidents facility-wide, (ii) the number of incidents in restrictive housing, (iii) the
74 number of incidents during mental health watches, (iv) the number of incidents involving
75 inmates who are being treated for psychiatric disabilities, (v) the number of incidents by race of
76 involved inmates and by race of involved staff, (vi) the number of incidents resulting in injury to
77 the inmate, (vii) the number of incidents resulting in injury to staff, (viii) the number of incidents
78 involving use of chemical agents, (ix) the number of incidents involving use of restraint chair,

79 (x) the number of incidents involving use of any kinetic impact weapon, (xi) the number of
80 incidents involving K-9s, and (xii) the number of incidents involving any other use of force tool.
81 Each data point shall include a breakdown by planned use of force, spontaneous cell entry and
82 other use of force.

83 (aa) establish uniform minimum standards for transparency in use of force, including but
84 not limited to the following: (i) An inmate and the inmate's legally designated representative
85 shall have the right to obtain a copy of all records relating to any use of force incident involving
86 the inmate, including but not limited to written reports, investigations, video and audio
87 recordings, and photographs; (ii) All such records are also public records, except that records
88 access officers must redact the name and identifying information of any involved inmate before
89 providing the records to any requestor who is not the involved inmate or who does not have a
90 release from the involved inmate.