

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

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>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>Liz Miranda</i>	<i>5th Suffolk</i>	
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>6/11/2020</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>6/11/2020</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>6/11/2020</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>6/11/2020</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>6/11/2020</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>6/11/2020</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>6/11/2020</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>6/11/2020</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>6/11/2020</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>6/11/2020</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>6/11/2020</i>
<i>James T. Welch</i>	<i>Hampden</i>	<i>6/11/2020</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>6/11/2020</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>6/11/2020</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>6/11/2020</i>

<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>6/12/2020</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>6/12/2020</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>6/12/2020</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>6/12/2020</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>6/12/2020</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>6/12/2020</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>6/12/2020</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>6/15/2020</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>6/15/2020</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>6/16/2020</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>6/16/2020</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>6/16/2020</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>6/18/2020</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>6/18/2020</i>

SENATE No.

By Ms. Creem, a petition (accompanied by bill) (subject to Joint Rule 12) of Cynthia Stone Creem, Liz Miranda, Rebecca L. Rausch, Harriette L. Chandler and other members of the General Court for legislation relative to saving black lives and transforming public safety. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**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:-

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

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

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

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

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

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

33 “Serious bodily injury”, bodily injury that results in: (i) permanent disfigurement, (ii)
34 protracted loss or impairment of a bodily function, limb or organ or (iii) a substantial risk of
35 death.

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

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

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

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

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

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

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

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

86 (1) the total number of officer-involved injuries or deaths;

87 (2) the number of officer-involved injuries or deaths reported by each law enforcement
88 agency;

89 (3) the entirety of data reported using the uniform protocol; and

90 (4) any operational, policy, regulatory, or legislative recommendations to reduce the
91 number and seriousness of officer-involved injuries or deaths.

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

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

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

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

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

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

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

116 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

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

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

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

180 (c) No law enforcement officer shall use deadly physical force upon another person
181 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

264 SECTION 8. Not later than 60 days after the effective date of this act, the attorney
265 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.