

SENATE No. 1541

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 the use of force within correctional institutions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>2/26/2021</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/26/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/19/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>8/19/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>8/19/2021</i>

SENATE No. 1541

By Mr. Barrett, a petition (accompanied by bill, Senate, No. 1541) of Michael J. Barrett, Christopher Hendricks, Mary S. Keefe and Joanne M. Comerford for legislation to create uniform standards in use of force, increase transparency, and reduce harm. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1362 OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act to create uniform standards in the use of force within correctional institutions.

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. Chapter 127 of the General Laws, as appearing in the 2018 Official Edition,
2 is hereby amended by adding the following subsections.

3 Section 170. Definitions.

4 The following definitions shall apply to Sections 170 through 170B:

5 “Chokehold”, the use of a lateral vascular neck restraint, carotid restraint or other action
6 that involves the placement of any part of a correctional officer’s body on or around a person’s
7 neck in a manner that limits the person’s breathing or blood flow with the intent of or with the
8 result of causing bodily injury, unconsciousness or death.

9 “De-escalation tactics and techniques”, proactive actions and approaches used by a
10 correctional officer to stabilize a situation so that more time, options and resources are available
11 to gain an incarcerated person’s voluntary compliance and to reduce or eliminate the need to use
12 force, including, but not limited to, verbal persuasion, warnings, slowing down the pace of an
13 incident, waiting out a person, creating distance between the correctional officer and a threat and
14 requesting additional resources to resolve the incident, including but not limited to calling in
15 medical or mental health professionals to address a potential medical or mental health crisis.

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

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

23 “Totality of the circumstances”, the entire duration of an interaction between correction
24 officers and a victim of force, from the first contact through the conclusion of the incident,
25 including consideration of contextual factors the officer knew or should have known during such
26 interaction, including, but not limited to: (i) whether the officer’s conduct during the interaction
27 contributed to the risk of imminent harm to an identifiable person by the victim of force; (ii)
28 whether the officer attempted de-escalation tactics and techniques during the interaction; (iii)
29 whether a waiting or cooling off period could have prevented the use of force; (iv) whether the
30 officer made reasonable accommodations in light of the victim of force’s physical disability,

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

38 Section 170A. Minimum standards for use of force in all state prisons, jails, houses of
39 correction, or other correctional facilities.

40 Section 170A(a) No correctional officer shall use physical force upon another person
41 unless they have employed de-escalation tactics and techniques and, based on the totality of the
42 circumstances, such force is proportionate and necessary to: (i) prevent the escape from custody
43 of an incarcerated person or (ii) prevent imminent harm to an identifiable person, where the
44 amount of force used is proportional to the threat of imminent harm to the identifiable person.

45 (b) No correctional officer shall use a chokehold against any incarcerated person.

46 (c) All planned entrance of cell procedures shall include a de-escalation period prior to
47 any use of force whenever this would not place any person at risk of imminent harm. The de-
48 escalation period shall include assessment by a qualified medical/mental health professional, as
49 defined in section 1 of chapter 127, to determine whether the incarcerated person is capable of
50 understanding and complying with orders and/or whether mental health or other intervention
51 could assist to avoid use of force. The de-escalation period shall also include intervention by any
52 qualified staff person who shall (1) actively seek to resolve the issue without use of force, (2)

consider whether a cooling off period may assist in avoiding use of force, and (3) make recommendations to supervisory staff regarding how force could be avoided. Before any correctional officer enters the cell, supervisory staff shall implement any and all recommendations made to avoid use of force, unless implementation of such recommendations would place any person at risk of harm.

(d) Emergency entrance of cell procedures shall only be used when time is of the essence where the failure to take immediate action would place a person at risk of imminent harm. If emergency entrance of cell is being conducted because an incarcerated person is attempting or committing suicide, chemical agents shall not be used.

(e) Correctional officers shall wear a personal audio-video recording device attached to the officer's clothing, helmet, or sunglasses that is capable of capturing video and audio recordings from the officer's point of view, which shall be activated during planned entrance of cell procedures, emergency entrance of cell procedures and all other uses of force. Any officer who fails to activate their body camera prior to a use of force shall be subject to disciplinary action, up to and including termination. There shall also be handheld video recording of all planned uses of force and all other uses of force where time permits video equipment to be obtained, and shall be recorded from the best angle available that captures the incident in its entirety. A correctional officer shall be prohibited from viewing or listening to any video or audio recording prior to submitting a report regarding the use of force. All video recordings from all activated personal audio-video recording devices, all fixed cameras and all handheld or other cameras which captured any part of any use of force incident shall be made available to any involved incarcerated person to review upon their request and copies shall be provided to any person with the written release of any involved incarcerated person.

(f) Kinetic impact weapons and law enforcement K9s shall be prohibited in any planned or emergency entrance of cell.

(g) Chemical agents shall be prohibited for use against any person with intellectual disabilities, respiratory illnesses, or cardiac disease. Prior to the use of chemical agents, unless it would place a person at risk of imminent harm, mental health staff must make every effort to speak to the incarcerated person and affirm that they do not have a cognitive, psychiatric, or other disability or impairment inhibiting their ability to understand or comply with staff orders. Whenever chemical agents are used, all incarcerated people who have been exposed shall be offered decontamination as soon as possible, including but not limited to an opportunity for a shower and eye flush.

(h) A restraint chair shall only be used when it is the least restrictive means available to prevent threat of imminent harm. An incarcerated person confined to a restraint chair shall be checked by medical staff and offered an opportunity to exercise at least every thirty minutes while in the restraint chair. An incarcerated person shall not be confined to a restraint chair any longer than the restraint chair remains the least restrictive means available to prevent a threat of imminent harm. A restraint chair shall never be utilized automatically following a use of force, must be authorized in each instance by the Superintendent or designee, and the threat of imminent harm that justifies use of the restraint chair shall in all cases be documented in writing, with copies of the documentation provided to the incarcerated person upon request or to any other person with release by the incarcerated person.

(i) K-9s shall be under the control of their handlers at all times while on correctional facility property and shall never be permitted to roam freely on correctional facility property. K-

9s shall be used only to search for contraband and to search for fleeing escapees, and only with prior approval by the Commissioner, Sheriff, Superintendent, or designee. K-9s shall not be used in any use of force situations, for monitoring movement, or for routine internal patrol, except that K-9s may be utilized if necessary as part of a coordinated response by a tactical team to a major disturbance, defined as a riot situation or hostage situation where there is an immediate threat of imminent harm. Incarcerated people shall be removed from any area where K-9s are conducting contraband searches, and all other reasonable efforts shall be made to minimize contact incarcerated people have with K-9s. If a K-9 bites or otherwise apprehends a person, the incident must be documented in accordance with the correctional facility's use of force reporting requirements. Color photographs must be taken of any injuries sustained and the photos must be preserved in the original format for a period not less than ten years. All surveillance, handheld, body camera, or other video recording from the area of the incident must be preserved for a period of not less than ten years.

(j) Kinetic impact weapons may be used only if necessary, as part of a coordinated response by a tactical team to a major disturbance, defined as a riot situation or hostage situation, where there is an immediate threat of imminent harm.

(j) All incarcerated persons 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 violation of this section shall be a per se violation of sections 11H and 11I of chapter 12.

Section 170B. Transparency and data requirements for use of force in all state prisons, county jails, houses of correction, or other correctional facilities.

(a) The following data regarding use of force at all correctional facilities shall be collected and provided to any person upon request as well as published, quarterly, on the agency's website and provided quarterly to the General Court, the Attorney General, the Governor, and the commission established under Section 103 of Chapter 253 of the Acts of 2020 to review and recommend clear limitations on the use of physical force by state and county correction officers and juvenile detention officers: (i) the number of incidents facility-wide, (ii) the number of incidents in restrictive housing or other segregated confinement, (iii) the number of incidents during mental health watches, (iv) the number of incidents involving incarcerated people who are being treated for psychiatric disabilities, (v) the number of incidents by race of involved incarcerated people and by race of involved staff, (vi) the number of incidents resulting in injury to an incarcerated person, (vii) the number of incidents resulting in injury to staff, (viii) the number of incidents where any incarcerated person had to be treated at an outside hospital, as well as an accounting of the injuries that required treatment, (ix) the number of incidents where correctional or any other staff person had to be treated at an outside hospital, as well as an accounting of the injuries that required treatment (x) the number of incidents involving use of chemical agents, (xi) the number of incidents involving use of restraint chair, (xii) the number of incidents involving use of any kinetic impact weapon, (xiii) the number of incidents involving K-9s, (xiv) the number of incidents involving any other use of force tool. Each data point shall include a breakdown by planned use of force, spontaneous cell entry and other use of force.

(b) The following data regarding use of force complaints, investigations, and outcomes at all correctional facilities shall be collected and provided to any person upon request as well as published, quarterly, on the agency's website and provided quarterly to the General Court, the Attorney General, the Governor, and the commission established under Section 103 of Chapter

142 253 of the Acts of 2020 : (i) the number of grievances and other complaints alleging that
143 excessive force was used against an incarcerated person, (ii) the number of investigations
144 conducted by internal affairs related to use of force and an accounting of the outcomes of those
145 investigations, including all findings and all resulting discipline, (iii) a list of all officers,
146 including their current employment status and position, who have been found to have used
147 excessive use of force, and (iv) a list of all officers, including their current employment status
148 and position, who have been found to have lied or been otherwise not fully truthful and
149 cooperative in the course of an investigation related to use of force.

150 (c) An incarcerated person and/or their legally designated representative shall have the
151 right to obtain a copy of all records relating to any use of force incident involving the
152 incarcerated person, including but not limited to written reports, investigations, video and audio
153 recordings, and photographs. All such records are also public records, except that records access
154 officers must redact the name and identifying information of any involved incarcerated person
155 before providing the records to any requestor who is not the involved incarcerated person who
156 does not have a release from them.