

## **AN ACT REGULATING THE USE OF FORCE BY LAW ENFORCEMENT OFFICERS<sup>1</sup>**

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### **SECTION I: DEFINITIONS**

The following definitions apply to the entire statute:

- (1) “Physical force” is any intentional touching by a body part or by the intentional application of a tool, technique, or weapon to a person’s body.
- (2) “Reportable use of force” means any application of physical force, other than physical contact used solely for facilitating custody of a compliant person, such as the application of handcuffs on a cooperative arrestee. Reportable use of force includes a threat of force by pointing a firearm at or in the direction of a person, other than in the context of training or qualification. Reportable use of force also includes the deployment of a canine to assist in effecting a detention or arrest.

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- (3) “Deadly force” is physical force that, under the circumstances as they reasonably appear, is substantially likely to result in serious bodily injury or death to the person against whom it is used.
- (4) “Serious bodily injury” means bodily injury that results in a permanent disfigurement, extreme physical pain, loss or impairment of a bodily function, limb or organ, or a significant risk of death. Examples of serious bodily injury include: broken bones, closed head injuries, loss of consciousness, as well as any other injuries that could result in death or disfigurement.
- (5) Information required under this statute is “publicly available” if:
  - (a) it is posted conspicuously on the reporting agency’s website, or
  - (b) if the agency does not maintain a website, and employs fewer than [10] full-time sworn officers, if the document is made available upon request, within 5 days of when a request is made, and at no cost to the requesting party.
- (6) “Political subdivision” means any county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law, that has a police department or a sheriff’s department.

## **SECTION II: AUTHORIZED USE OF PHYSICAL FORCE BY LAW ENFORCEMENT OFFICERS**

*Many states, to the extent that they address officer use of force at all, do so only as a defense to criminal liability. Yet there are a variety of circumstances in which an officer’s use of force may be excessive, thereby justifying civil liability or discipline, but in which criminal liability may nevertheless be inappropriate. For example, because of the criminal law’s emphasis on culpability, justification statutes necessarily must take into account an officer’s subjective beliefs—even if they turn out to be mistaken (and sometimes even unreasonable).*

*As a result, states that have defined permissible force solely in reference to that which is not criminal have tended to end up with statutes that are both overly permissive and insufficiently detailed. In addition, by defining authorized force solely as that which is not criminal, existing law has at times led to confusion about the precise scope of agency liability for excessive—but perhaps not criminally excessive—force.*

*For this reason, our statute begins by making clear when force is lawful for the purposes of civil liability, discipline, and decertification—and addresses defenses to criminal liability separately.*

*This portion of the statute also emphasizes the fact that officers are authorized to exercise force only on behalf of agencies that employ them—and that agencies have an obligation to provide appropriate guidance to officers on when force is appropriate.*

- (1) For the purposes of this Section:

- (a) The following are “lawful objectives” that may justify the use or attempted use of force:
    - (i) protect against imminent harm to themselves or others;
    - (ii) to effect an arrest or detention that the officer reasonably believes is lawful;
    - (iii) to prevent an escape of a person from custody;
    - (iv) to carry out a search that the officer reasonably believes is lawful;
    - (v) to prevent the person’s entry into a secured area; and
    - (vi) to prevent the destruction of evidence or property.
  - (b) Physical force is “necessary” when there are no reasonable alternative means to effect the lawful objective and avoid the use of force, including non-force tactics or techniques that are intended to stabilize the situation and reduce the immediacy of the threat, such as distance, cover, containment, tactical repositioning, requesting additional officers, and surveillance; verbal communication or de-escalation; and the deployment of specialized equipment or resources, such as officers trained in crisis intervention, or mental health professionals. An alternative to the use of physical force may be a reasonable alternative even if it extends the overall duration of the interaction.
  - (c) A threat is “imminent” when the person who poses the threat reasonably appears to have the present ability, opportunity, and intent to immediately inflict injury.
  - (d) “Passive resistance” means behavior that is unresponsive to verbal or other direction from an officer. Passive resistance may include verbal statements indicating a refusal to comply.
  - (e) “Active resistance” means behavior intended to avoid physical control or arrest by creating distance between the person and the officer or officer’s reach. Active resistance includes but is not limited to evasive movement of the arm, flailing arms, and attempts to leave the scene or flee from custody.
- (2) A law enforcement officer is authorized to use or attempt to use force only when:
- (a) it is necessary to accomplish a lawful objective;
  - (b) the degree of force used or attempted is no greater than necessary to accomplish the lawful objective; and
  - (c) both the decision to use force and the degree of force used are objectively reasonable under a totality of the circumstances.

- (3) The reasonableness of an officer's use or attempted use of force shall be determined based on the totality of the encounter between the officer and the person against whom force was used, including:
- (a) the extent of any resistance, including whether the resistance is passive or active;
  - (b) the severity of the threat, if any, posed to the officer or others;
  - (c) whether the officer engaged in de-escalation measures or non-force tactics to reduce the immediacy of the threat, if such measures were feasible;
  - (d) whether the officer engaged in any actions that substantially increased the likelihood that the use of force would be necessary; and
  - (e) when force is used to effect an arrest, carry out a search or seizure, or prevent the destruction of property, the severity of the suspected offense or property damage at issue, and the degree to which the law enforcement objective could be achieved at a later date or time without substantially impairing the government's interest in the search, arrest, or detention.
- (4) A law enforcement officer shall reduce the degree of force used as the threat diminishes and cease the use of force as soon as:
- (a) The person on whom force is used is under the officer's control or no longer poses an imminent threat of serious physical injury or death to the officer or another person; or
  - (b) The officer determines that the injury that is likely to result from the continued application of force is no longer reasonable in relation to the legitimate law enforcement objective.
- (5) Unless doing so would place the officer or others at a significant risk of injury, an officer must, prior to using force:
- (a) identify him or herself as a law enforcement officer, and
  - (b) provide a clear verbal warning of the officer's intent to use physical force, along with clear instructions about what is required to comply, with sufficient time for the instructions to be observed.
- (6) An officer may not threaten to use physical force in any circumstance in which the officer would not in fact be authorized to use physical force under the statute.
- (7) After [X date], and except as otherwise authorized by state law, a law enforcement officer is not authorized to use or attempt to use physical force under this statute unless the officer

is employed by an agency that has adopted a written, publicly available use of force policy that:

- (a) incorporates the standards articulated in Sections I through III, and
- (b) requires officers to utilize de-escalation techniques, crisis intervention tactics, and other reasonable alternatives to force when it is feasible to do so.

The political subdivision that employs the law enforcement officer shall be liable for any damages caused by an officer's unauthorized use of force in violation of this subsection. Violation of this subsection shall not be a basis for either criminal or civil liability against the officer.

*[Note: Subsection 7 makes clear that officers are only authorized to use force as members of law enforcement agencies, and that agencies have an obligation to oversee officers' use of force by, at a minimum, adopting policies that are consistent with the requirements outlined here. An agency that fails to adopt the requisite policies would be liable for any damages caused by an officers' use of force—even if force would otherwise have been lawful had the agency had the requisite policies in place.]*

- (8) No later than [x date], the [State Peace Officer Standards and Training Board, "POST Board"] shall develop a model use of force policy that is consistent with the requirements of this statute, and shall obtain public comment on the policy in the manner prescribed under the [rulemaking provisions of the State Administrative Procedures Act].

### **SECTION III: AUTHORIZED USE OF DEADLY FORCE BY LAW ENFORCEMENT OFFICERS**

- (1) For the purposes of this section:

- (a) Deadly force is "necessary" when there are no reasonable alternative means to effect the lawful objective and avoid the use of deadly force, including the use of less-lethal force alternatives, non-force tactics or techniques that are intended to stabilize the situation and reduce the immediacy of the threat, such as distance, cover, containment, tactical repositioning, requesting additional officers, and surveillance; verbal communication or de-escalation; and the deployment of specialized equipment or resources, such as officers trained in crisis intervention, or mental health professionals. An alternative to the use of deadly force may be a reasonable alternative even if it extends the overall duration of the interaction.
- (b) A threat is "imminent" when the person who poses the threat reasonably appears to have the present ability, opportunity, and intent to immediately inflict serious bodily injury.

- (2) A law enforcement officer may use or attempt to use deadly force only when it is:

(a) necessary to protect the officer or another from an imminent threat of death or serious bodily injury;

(b) necessary to effect an arrest when:

(i) there is probable cause to believe that the person has committed an offense involving death or serious bodily injury, and the officer has reason to believe the person would cause death or serious bodily injury to another if not immediately apprehended; and

(ii) the officer's use of deadly force does not create a significant risk of serious bodily injury to any persons other than the person against whom the deadly force is directed.

*Note: The felony flight rule proposed above imposes four limitations: force must be necessary to apprehend the person, there must be probable cause to believe that the person committed an offense involving death or serious bodily injury, and there must be reason to believe (i.e. some articulable factual basis) that the person would cause death or serious bodily injury to someone else if not immediately apprehended, and the use of deadly force must not create a significant risk of injury to any other person.*

(3) The reasonableness of an officer's use or attempted use of deadly force shall be determined based on the totality of the encounter between the officer and the person against whom deadly force was used, including:

(a) whether the officer engaged in de-escalation measures, non-force tactics, or less-lethal alternatives to reduce the immediacy of the threat, if such measures were feasible; and

(b) whether the officer engaged in any actions that substantially increased the likelihood that the use of deadly force would be necessary.

(4) Deadly force may not be used:

(a) solely to protect property;

(b) against a person who poses a risk of harm only to themselves.

(5) Unless doing so would place the officer or others at a significant risk of serious bodily injury, an officer must, prior to using deadly force:

(a) identify themselves as a law enforcement officer, and

- (b) provide a clear verbal warning of the officer's intent to use deadly force, along with clear instructions about what is required to comply, with sufficient time for the warning to be observed.
- (6) An officer may not threaten to use deadly force in any circumstance in which the officer would not in fact be authorized to use deadly force under this statute.

#### **SECTION IV: LIMITATIONS ON THE USE OF SPECIFIC WEAPONS AND TECHNIQUES BY LAW ENFORCEMENT OFFICERS**

- (1) For the purposes of this Section:

- (a) "Less-lethal weapon" means any apprehension or restraint tool, other than handcuffs, which, when used as intended, is less likely to cause death or serious bodily injury than a conventional lethal weapon such as a firearm. Less-lethal weapons include but are not limited to: electronic control weapons, tear gas, chemical spray, kinetic impact projectiles, batons, and other striking devices.
- (b) "Chokehold" means any maneuver that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain.
- (c) "Canine deployment" means any situation in which a canine is used in an attempt to locate or apprehend a person suspected of a criminal offense, whether or not the person actually is located or apprehended. This includes all instances in which a canine is removed from the police car, or when a person sought gives up immediately after an announcement is made that if they do not surrender, the canine will be released. A canine deployment does not include the on-leash use of a canine to search for a missing person or for physical evidence, or to identify the presence a weapon or contraband.

- (2) A law enforcement agency may not issue a less-lethal weapon to any officer employed by the agency unless:

- (a) the agency has adopted a written, publicly available policy that incorporates the standards articulated in this section, and provides clear and specific guidance to officers on the circumstances and manner in which the weapon may be discharged or used;
- (b) the officer has been trained on the use of the weapon, has demonstrated knowledge of the legal and policy limitations on the use of the weapon, and has demonstrated proficiency in its use.

- (3) The [State POST] shall develop minimum standards for training officers in the use of less-lethal weapons that are commonly issued to officers in the State, and for assessing an officer's proficiency in their use. The [State POST] shall assess on an annual basis whether additional standards are necessary to address newly developed less-lethal weapons.

- (4) A law enforcement officer may not use a weapon to overcome passive or active resistance in order to effect an arrest of a person who is suspected only of a [misdemeanor / level of misdemeanor], and:
- (a) does not pose any imminent risk of harm to the officer or others; and
  - (b) would not, in light of the facts and circumstances known to the officer at the time pose a risk of harm to others if not immediately apprehended.
- (5) A law enforcement officer may not:
- (a) deploy a canine to assist in effecting an arrest or detention of a person who is suspected only of a misdemeanor or other non-violent crime or infraction, including drug crimes;
  - (b) permit a canine to bite a person unless the person poses an imminent risk of harm to the officer or to another person, and a lower degree of force would not be reasonably expected to eliminate the imminent risk;
  - (c) conduct an off-leash deployment of a canine to apprehend a person who does not pose an imminent threat of death or serious bodily to the officer or to another person, other than the person subject to apprehension;
  - (d) deploy or display an apprehension canine in any manner at a protest, demonstration, march, or similar event.
- (6) A law enforcement officer may not point a firearm at or in the direction of a person unless the officer reasonably believes that the situation may escalate to justify the use of deadly force. Each law enforcement agency shall, as part of its written, publicly available use of force policy, provide additional guidance to officers on the circumstances in which they are permitted to either unholster a firearm or point it in the direction of a person.
- (7) A law enforcement officer may not:
- (a) fire at or into a moving vehicle unless there is an imminent risk of death or serious bodily injury to an officer or another, and that risk cannot be avoided through other means, including by avoiding the path of the vehicle.
  - (b) use a chokehold unless deadly force is authorized;
  - (c) transport a person in a prone (i.e. face down) position;
  - (d) restrain a person in a prone position any longer than necessary to properly secure the person. Any law enforcement officer who has placed a person in a prone position must move the person into a recovery position on their side, sitting, or standing as soon as the person has been properly secured to facilitate breathing.



## **SECTION V: USE OF FORCE IN RESPONSE TO PROTESTS AND DEMONSTRATIONS**

- (1) In response to a protest or demonstration, a law enforcement agency and any person acting on behalf of the law enforcement agency may not:
  - (a) Discharge kinetic impact projectiles or other non- or less-lethal projectiles in a manner that targets the head, neck, pelvis, or groin;
  - (b) Discharge kinetic impact projectiles or other non- or less-lethal projectiles indiscriminately into a crowd;
  - (c) Use a kinetic impact projectile against a specific person in a crowd unless:
    - (i) such force is necessary to effect a lawful arrest or detention, to prevent the destruction of property, to prevent the person's entry into a secured area, or to protect against imminent harm to the officer; and
    - (ii) the officer determines that other less-lethal force options that would reduce the risk to bystanders are unavailable, or would result in a significant risk of injury to the officer or others.
  - (d) Use targeted physical force against a specific person, such as a strike, kick, or use of a baton or other impact weapon, unless such force is necessary to effect a lawful arrest or detention, to prevent the destruction of property, to prevent the person's entry into a secured area, or to protect against imminent harm to officers or others.
- (2) In response to a protest or demonstration, a law enforcement agency or any person acting on behalf of a law enforcement agency may not use chemical agents or irritants to disperse a crowd unless:
  - (a) the chief law enforcement officer in the jurisdiction or their designee has determined that the protest or demonstration constitutes an unlawful assembly and that the use of force is necessary to disperse the crowd; and
  - (b) the commanding officer at the scene or their designee has issued an order to disperse, in a sufficient manner to ensure that the order is heard, followed by sufficient time and space to allow compliance with the order.

## **SECTION VI: DUTY TO INTERVENE**

- (1) A law enforcement officer who knows or reasonably should know that another officer is using or is about to use unauthorized force in violation of this statute shall have a duty to intervene immediately to prevent the use of unauthorized force, provided that the officer has the ability and opportunity to do so, and a reasonable person would believe that the intervention can be accomplished safely.

- (2) Each agency shall as part of its use of force policy make clear that failure to intervene in violation of this statute shall result in discipline, up to and including termination.
- (3) Optional: An officer who knows or is aware of a substantial risk that another officer is using or is about to use unauthorized force in violation of the statute, and has the ability and opportunity to intervene safely but fails to do so, commits a misdemeanor.

*Note: the proposed criminal liability standard would require subjective awareness of the risk that unauthorized force is being used, as opposed to the affirmative duty which uses the objective “reasonably should know” standard*

## **SECTION VII: DUTY TO REPORT**

- (1) A law enforcement officer who witnesses another officer engage in what the reporting officer knows or reasonably should know to be unauthorized force in violation of this statute shall report such use of force to the reporting officer’s immediate supervisor or other designated reporting entity as soon as reasonably possible, and no later than 24 hours after the incident.
- (2) Each agency shall, as part of its use of force policy, make clear that failure to report an unauthorized use of force by another member of the agency shall result in discipline, up to and including termination.

## **SECTION VIII: USE OF FORCE TRAINING**

- (1) The [State Peace Officer Standards and Training Board, “POST Board”] shall develop minimum requirements for both introductory and in-service training of law enforcement officers on the use of force that address, at a minimum, the subjects set forth in subsections (2) through (4).
- (2) Introductory training for all law enforcement officers shall include all of the following:
  - (a) the impact of police uses of force on individuals, on communities, and on community perceptions of law enforcement;
  - (b) the legal standards for the use of force;
  - (c) the duty to intervene, duty to report unauthorized force, and the duty to provide truthful information;
  - (d) verbal communication and de-escalation strategies, as well as tactical methods intended to stabilize the situation and reduce the immediacy of the threat, such as distance, cover, containment, tactical repositioning, requesting additional officers, and surveillance;

- (e) scenario-based training that incorporates principles of de-escalation and force avoidance so that de-escalation tactics and less-lethal force options are part of the decision-making process leading up to the consideration of deadly force;
  - (f) proficient use of physical control techniques that can reduce the need for more serious force options;
  - (g) skills and techniques for interacting respectfully and safely with people with intellectual or developmental disabilities or behavioral health issues, as well as individuals in crisis.
  - (h) the use of force requirements established in Sections II, III, IV, and V of this statute.
- (3) The standards shall require officers to complete a course or courses of instruction on the following subjects on an annual basis:
- (a) legal standards for the use of force;
  - (b) verbal communication and de-escalation strategies, as well as tactical methods intended to stabilize the situation and reduce the immediacy of the threat, such as distance, cover, containment, tactical repositioning, requesting additional officers, and surveillance.
- (4) The standards shall require officers to complete a course or courses of instruction on the following subjects every 2 years:
- (a) the duty to intervene, duty to report unauthorized force, and the duty to provide truthful information;
  - (b) skills and techniques for interacting respectfully and safely with people with intellectual or developmental disabilities or behavioral health issues, as well as individuals in crisis.

## **SECTION IX: RECORDKEEPING AND REPORTING**

- (1) For the purposes of this Section, “reportable use of force” means any application of physical force, other than physical contact used solely for facilitating custody of a compliant person, such as the application of handcuffs on a cooperative arrestee. Reportable use of force includes a threat of force by pointing a firearm at or in the direction of a person, other than in the context of training or qualification. Reportable use of force also includes the deployment of a canine to assist in apprehending a person.
- (2) Each law enforcement agency shall maintain a policy requiring officers to notify their immediate supervisor or other designated agency reporting entity of any incident involving a reportable use of force.
- (3) The policy shall require immediate notification for any incident involving:

- (a) the use of force that results in bodily injury;
  - (b) the discharge of a firearm, whether intentional or unintentional, except in the context of training or qualification;
  - (c) the discharge of an electronic control weapon;
- (4) Notification of all other reportable use of force incidents shall be made as soon as is practically feasible, and no later than the end of the shift during which the incident occurred.
- (5) The policy shall require that for each incident involving a reportable use of force, either the officer or another member of the agency shall prepare a report that includes, at a minimum:
- (a) The date, time, and location of the incident;
  - (b) The reason for initial contact with the person against whom reportable force was used, and, if the initial contact was due to unlawful activity, the most serious offense the person was suspected of;
  - (c) The names of all law enforcement officers and witnesses present;
  - (d) The name, if known, of each person against whom force is used;
  - (e) The perceived sex, race, and age of each person against whom force is used;
  - (f) Whether the person against whom force is used appeared to be experiencing a mental or other behavioral health crisis;
  - (g) For each application of force, the type of force that was used;
  - (h) The nature of the injuries that the person or others sustained, if any;
  - (i) Whether the person against whom force was directed was armed, and if so, the type of weapon;
  - (j) Any actions on the part of the person against whom force was used that led to the officer's decision to use force;
  - (k) Any efforts to de-escalate the situation, or minimize or avoid the use of force;
  - (l) Any efforts to render medical aid if injury was sustained.

- (6) The agency policy shall make clear that failure to provide the required notification, as well as any substantial omissions or misrepresentations in the required reports, will result in discipline, up to and including termination.
- (7) Each law enforcement agency shall [annually / quarterly] furnish to the [State Reporting Agency], in a manner defined and prescribed by the [State Reporting Agency], a report of all instances when a law enforcement officer employed by that agency is involved in:
  - (a) An incident involving the use of force that results in death, serious bodily injury, or any other injury requiring medical treatment or evaluation;
  - (b) An incident involving the pointing of a firearm in the direction of another person, except in the context of a training or qualification session;
  - (c) An incident involving the discharge of a firearm, whether intentional or unintentional, except in the context of a training or qualification session.
  - (d) Any incident involving the use of a weapon against a person;
  - (e) An incident involving the use of force by a person against a law enforcement officer that results in injury.
- (8) For each incident described in subsection (7), the agency shall provide, in a machine-readable format:
  - (a) The date, time, and location of the incident;
  - (b) The unique identification number of the officer(s) who used force;
  - (c) Reason for initial contact with the person, and, if the initial contact was due to unlawful activity, the most serious offense the person was suspected of;
  - (d) The perceived gender, race, and age of each person against whom force is used;
  - (e) Whether the person against whom force is used appeared to be experiencing a mental or other behavioral health crisis;
  - (f) The type of force that was used;
  - (g) The nature of the injuries that the person or others sustained, if any;
  - (h) Whether the person against whom force was directed was armed, and if so, the type of weapon;
  - (i) Any actions on the part of the person against whom force was used that led to the officer's decision to use force;

- (9) The [State Reporting Agency] shall make this information public on the agency website, in an analyzable, machine-readable format, classified by law enforcement jurisdiction.

## **SECTION X: DUTY TO PROVIDE TRUTHFUL INFORMATION**

- (1) A law enforcement officer shall have a duty to provide complete, accurate, and truthful information in all reports required under this statute.
- (2) Each agency shall as part of its use of force policy make clear that failure to provide complete, accurate, and truthful information shall result in discipline, up to and including termination.

## **SECTION XI: USE OF FORCE INVESTIGATIONS**

- (1) For the purposes of this Section:

- (a) “reportable use of force” means any application of physical force, other than physical contact used solely for facilitating custody of a compliant person, such as the application of handcuffs on a cooperative arrestee. Reportable use of force includes a threat of force by pointing a firearm at or in the direction of a person, other than in the context of training or qualification. Reportable use of force also includes the deployment of a canine to assist in apprehending a person.
- (b) “Critical incident” means:
- (i) Any incident involving the use of force by a law enforcement officer that results in death [or serious bodily injury];
  - (ii) Any in-custody death.
- (c) “Complaint” means any allegation of unauthorized or otherwise inappropriate use of force by a law enforcement officer against a member of the public;
- (d) “Police oversight agency” means any agency, board, or commission created by a political subdivision to accept and review complaints against law enforcement officers employed by the political subdivision;
- (e) A complaint is “received” by a law enforcement agency or police oversight agency if it is submitted to the agency in accordance with the agency’s publicly available procedures for filing a complaint. A complaint that otherwise complies with the agency’s procedures but is either submitted anonymously or is not signed by the complainant is considered “received” for the purposes of this statute.

- (2) Each law enforcement agency shall establish written, publicly available policies and procedures for investigating each incident involving a reportable use of force by a law

enforcement officer employed by that agency, as well as any complaint filed by a member of the public involving an allegation of unauthorized force.

- (3) The [POST Board / State Investigative Agency] shall, by [X date], promulgate additional guidance on the conduct of internal agency investigations of reportable use of force incidents.
- (4) With respect to complaints brought by members of the public, the policies and procedures required under subsection (2) shall address at a minimum:
  - (a) the process for submitting and accepting complaints;
  - (b) procedures for interviewing the complainant; and
  - (c) the process for providing periodic updates to the complainant as to the status of the investigation, and informing the complainant of the outcome of the investigation at its conclusion.
- (5) Any police oversight agency that is authorized to receive complaints from members of the public shall develop written, publicly available policies and procedures that are consistent with the requirements of subsection (3).
- (6) In the event of a critical incident:
  - (a) The law enforcement personnel from the jurisdiction in which the incident occurred must immediately secure the scene and preserve all evidence, in accordance with the guidance issued by the [State Attorney General's Office / designated state investigative agency, hereafter "State Investigative Agency"];
  - (b) The chief law enforcement officer of the agency or their designee must immediately notify the [State Investigative Agency], as well as the prosecutor for the county in which the incident occurred.

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*[Note: The states that have authorized independent investigations of critical incidents have adopted a variety of models. Some authorize the Attorney General's Office to investigate the incident. Others require the appointment of an independent team of investigators, none of whom may come from the agency that employed the officer. Two options are outlined below.]*

*Option 1:*

- (7) The [State Investigative Agency] shall appoint a team of at least 2 investigators, one of whom is the lead investigator. The lead investigator shall be a person certified by the [POST Board as a Lead Homicide Investigator / as having the requisite experience in conducting homicide investigations]. No investigator involved in the investigation may be employed by the law enforcement agency that employs any officer involved in the critical

incident. The investigative team shall promptly and thoroughly investigate the critical incident to determine whether the actions of the officer or officers involved were authorized under this statute.

- (8) All law enforcement agencies shall fully cooperate with and promptly respond to requests for information from the investigative team.

*Option 2:*

- (7) The [State Investigative Agency] shall promptly and thoroughly investigate the critical incident to determine whether the actions of the officer or officers involved were authorized under this statute.

- (8) All law enforcement agencies shall fully cooperate with and promptly respond to requests for information from the [State Investigative Agency]

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- (9) Upon completion of the investigation, the [investigative team / State Investigative Agency] shall produce a complete report of its findings, and shall transmit the report to the State Attorney General's Office, the prosecutor for the county in which the critical incident occurred, and to the [POST Board].

- (10) If the [county prosecutor / state's attorney for the county] determines that there is no basis to prosecute the law enforcement officer involved in the critical incident, or the law enforcement officer is not otherwise charged or indicted within [1 year] of when the report described in subsection (9) is transmitted, the [investigative team / State Investigative Agency] shall publicly release the report.

## **SECTION XII: ENFORCEMENT MECHANISMS**

- (1) The [State Attorney General's office] shall have the authority to investigate whether any law enforcement agency, or officers acting on behalf of a law enforcement agency, have engaged in a pattern or practice of unauthorized force in violation of this statute, or a pattern or practice of non-compliance with the various duties and obligations established under this statute.
- (2) Whenever the Attorney General has reasonable cause to believe that a law enforcement agency or officers acting on behalf of a law enforcement agency have engaged in a pattern or practice of unauthorized force in violation of this statute, or a pattern or practice of non-compliance with the various duties and obligations established under this statute, the Attorney general may bring a civil action to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.



- (3) Any law enforcement officer who uses unauthorized force against any person in violation of this statute shall be liable in an action at law for any injuries that result from the unauthorized use of force.
- (4) Any person who resides within the jurisdiction of a law enforcement agency may bring a civil action against the agency to obtain appropriate equitable and declaratory relief to enforce the policymaking, reporting, and disclosure requirements outlined in Sections II, IV, IX, and XI.
  - (a) In any action brought under this subsection, a prevailing plaintiff shall be entitled to reasonable attorney's fees and costs.
  - (b) No action may be commenced under this subsection unless the plaintiff has provided written notice of the alleged violation to the agency at least 60 days prior to filing suit, in a manner that is reasonably calculated to enable the agency to cure the alleged violation.
- (5) In order to be eligible to receive any state law enforcement funding or any state-administered federal grant, a law enforcement agency must certify that it complied with all of the requirements set forth under this statute in the previous calendar year.

### **SECTION XIII: JUSTIFICATION DEFENSES**

*The proposed justification defense mirrors some of the core aspects of the civil liability standard, including principles of necessity and proportionality. However, the justification defense incorporates the officer's subjective beliefs as to the necessity of force. In order for a use of force to be completely justified, the officer's belief as to the necessity of force must be objectively reasonable. In the case of a homicide charge, however, an officer who genuinely but unreasonably believes in the necessity of force may assert an "imperfect" self defense—that is, the officer may be found guilty of manslaughter but not murder. The justification defenses also dispense with some of the finer-grained requirements articulated in Section 2, though they may still be incorporated into the overall reasonableness analysis.*

- (1) The defenses outlined in this Section apply only in criminal cases, and should not be used in other contexts, including in determining a law enforcement officer's civil liability, or in deciding whether the officer should face discipline, or whether the officer's certification should be revoked.
- (2) A law enforcement officer may not rely on any public authority defense for the use of force other than what is outlined in this Section, but may rely on the justification defense outlined in [Section \_\_\_, general self-defense] when using physical force or deadly force in self-defense.
- (3) For the purposes of this Section:

- (a) Physical force is “necessary” when there are no reasonable alternative means to effect the lawful objective and avoid the use of force, including non-force tactics or techniques that are intended to stabilize the situation and reduce the immediacy of the threat, such as distance, cover, containment, tactical repositioning, requesting additional officers, and surveillance; verbal communication or de-escalation; and the deployment of specialized equipment or resources, such as officers trained in crisis intervention, or mental health professionals. An alternative to the use of physical force may be a reasonable alternative even if it extends the overall duration of the interaction.
  - (b) Deadly force is “necessary” when there are no reasonable alternative means to effect the lawful objective and avoid the use of deadly force, including the use of less-lethal force alternatives, non-force tactics or techniques that are intended to stabilize the situation and reduce the immediacy of the threat, such as distance, cover, containment, tactical repositioning, requesting additional officers, and surveillance; verbal communication or de-escalation; and the deployment of specialized equipment or resources, such as officers trained in crisis intervention, or mental health professionals. An alternative to the use of deadly force may be a reasonable alternative even if it extends the overall duration of the interaction.
- (4) A law enforcement officer is justified using physical force against another when the officer reasonably believes that the use and degree of force is necessary:
- (a) to effect a lawful arrest or detention, to prevent an escape of a person from custody, to carry out a lawful search, to prevent the destruction of property, or, in the context of a protest or demonstration, to prevent a person from entering a secured area; or
  - (b) to protect against imminent harm to the officer or others.
- (5) A law enforcement officer is justified in using deadly force against another person when the officer reasonably believes that the use of deadly force is:
- (a) necessary to protect the officer or another from an imminent threat of death or serious bodily injury;
  - (b) necessary to effect an arrest when:
    - (i) there is probable cause to believe that the person has committed an offense involving death or serious bodily injury, and the officer has reason to believe the person would cause death or serious bodily injury to another if not immediately apprehended; and
    - (ii) the officer’s use of deadly force does not create a significant risk of serious bodily injury to any persons other than the person against whom the deadly force is directed.
- (6) A law enforcement officer is not justified in using deadly force:

- (a) solely to protect property;
  - (b) against a person who poses a risk only to themselves.
- (7) The reasonableness of the officer's beliefs, both with respect to the decision to use force, and the degree of force used, shall be evaluated from the perspective of a reasonable officer in the same situation, based on a totality of the circumstances known to or perceived by the officer at the time.
- (8) An officer who genuinely but unreasonably believes that deadly force is necessary under the circumstances shall be found not guilty of murder.