

POST Commission Guidance as to M.G.L. Chapter 123, §§12(a) and 12(e) and the Use of Force

Section 12 of Chapter 123 of the Massachusetts General Laws governs the admission of an individual to a general or psychiatric hospital for psychiatric evaluation and a determination of the person's need for inpatient psychiatric treatment. Sections 12(a) and 12(e) identify the conditions under which an individual believed to have a mental illness may be brought against their will to a hospital or court for evaluation.

Section 12(a) provides that following an examination, certain appropriately qualified and licensed mental health professionals "may restrain or authorize the restraint of [a] person," or in an emergency when such a mental health professional is not available, a police officer may "restrain [a] person," when there is "reason to believe that a failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness."

Section 12(e) provides that if any person makes an "application to a district court justice or a justice of the juvenile court department for a 3-day commitment to a facility of a person with a mental illness if the failure to confine such person would cause a likelihood of serious harm," following a hearing, said justice "may issue a warrant for the apprehension and appearance before the court of the alleged person with a mental illness if in the court's judgment the condition or conduct of such person makes such action necessary or proper."

On October 1, 2021, the Peace Officer Standards and Training Commission promulgated 555 CMR 6.00, as required by M.G.L. c. 6E, §15(d), which provides regulations for the use of force by law enforcement officers.

The Commission has received questions regarding situations in which the involuntary restraint, apprehension and transport of a person, in effecting a hospitalization pursuant to either §12(a) or §12(e), requires law enforcement officers to use non-deadly force or deadly force to "effect the lawful . . . detention" of a person or "prevent imminent harm to a person." 555 CMR 6.04, 6.05.

In response, the Commission provides additional guidance.

In the view of the Commission, nothing in Section 12, in Chapter 6E of the General Laws, in Chapter 253 of the Acts of 2020, or in 555 CMR 6.00 prohibits law enforcement officers from using "necessary" and "proportionate" force when "de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances" in order to bring an individual against their will to a hospital for evaluation pursuant to §12(a) or §12(e).

Similarly, nothing in the General Laws or relevant regulations relieve law enforcement officers of the duty under §12(a) or §12(e) to effect, as required under the statute, a hospitalization of a person believed to have a mental illness when the likelihood of serious harm is to themselves, and not to others. The regulations in 555 CMR 6.00 do not allow officers to substitute their own judgement for those of licensed mental health professionals after a determination has been made under M.G.L. c.123, §12(a).