

# EXECUTIVE ORDER



**DISTRICT OF COLUMBIA**

<b>Subject:</b>	<b>Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020</b>
<b>Number</b>	<b>EO-20-044</b>
<b>Effective Date</b>	<b>July 30, 2020</b>
<b>Rescinds:</b>	EO-20-041 (Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020), Issued July 22, 2020
<b>Related to:</b>	GO-PER-120.25 (Processing Complaints Against Metropolitan Police Department Members) GO-SPT-302.13 (Body-Worn Camera Program) GO-RAR-901.07 (Use of Force) GO-RAR-901.09 (Use of Force Review Board) SOP-16-01 (Handling First Amendment Assemblies and Mass Demonstrations)

The purpose of this executive order is to inform members of the enactment of the *Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020*. The changes will become effective no later than July 22, 2020. Among the provisions of the law are new requirements that must be met for an officer to use deadly force, a new definition for what constitutes a neck restraint, and a prohibition against members’ reviewing body-worn camera (BWC) recordings prior to completing initial reports. **Members must ensure they review this executive order immediately to ensure compliance with the requirements of the new law.**

The law also contains new requirements for conducting consent searches which will go into effect August 15, 2020. Additional guidance and training on those new requirements will be issued separately in the coming weeks.

A)	<p><b><i>Use of Force</i></b> <i>The new law codifies requirements for the use of deadly force and are largely consistent with existing MPD policy.</i></p>
Prohibits	<p>1. A law enforcement officer shall not use <b><u>deadly force</u></b> against a person unless:</p> <ul style="list-style-type: none"> <li>a. The law enforcement officer reasonably believes that deadly force is immediately necessary to protect the law enforcement officer or another person, other than the subject of the use of deadly force, from the threat of serious bodily injury or death;</li> <li>b. The law enforcement officer’s actions are reasonable, given the totality of the circumstances; <b><u>and</u></b></li> <li>c. All other options have been exhausted or do not reasonably lend themselves to the circumstances.</li> </ul>
New Definitions	<p>2. Definitions</p> <ul style="list-style-type: none"> <li>a. “Deadly force” means any force that is likely or intended to cause serious bodily injury or death.</li> </ul>

	<p>b. “Deadly weapon” means any object, other than a body part or stationary object that in the manner of its actual, attempted, or threatened use is likely to cause serious bodily injury or death.</p> <p>c. “Serious bodily injury” means extreme physical pain, illness, or impairment of physical condition, including physical injury, that involves:                  (i) a substantial risk of death; (ii) protracted and obvious disfigurement; (iii) protracted loss or impairment of the function of a bodily member or organ; or (iv) protracted loss of consciousness.</p>
<p>B)</p> <p>New Definition</p> <p>Prohibits</p> <p>Penalty</p> <p>Reference</p>	<p><b>Neck Restraints</b>  <i>Neck restraints continue to be prohibited consistent with existing MPD policy. However, the law provides a new definition for what constitutes a neck restraint.</i></p> <p>1. “Neck restraint” means the use of any body part or object to attempt to control or disable a person by applying pressure against the person’s neck, including the trachea or carotid artery, with the purpose, intent, or effect of controlling or restricting the person’s movement or restricting their blood flow or breathing.</p> <p>2. It shall be unlawful for:                  a. Any law enforcement officer or special police officer (“officer”) to apply a neck restraint; and                  b. Any officer who applies a neck restraint and any officer who is able to observe another officer’s application of a neck restraint to fail to:                      i. Immediately render, or cause to be rendered, first aid on the person on whom the neck restraint was applied; or                      ii. Immediately request emergency medical services for the person on whom the neck restraint was applied.</p> <p>Any officer who violates the provisions shall be fined up to \$25,000, or incarcerated for no more than 10 years, or both.</p> <p>DC Official Code § 5-125.01 <i>et seq.</i>, DC Official Code § 22-3571.01</p>
<p>C)</p> <p><b><u>Need to Know</u></b></p>	<p><b>Body-Worn Camera</b>  <i>The law prohibits members from reviewing BWC recordings to assist in initial report writing and provides new requirements for the release of BWC recordings related to officer-involved deaths and serious uses of force.</i></p> <p>1. <b><u>Members shall not review their BWC recordings or BWC recordings that have been shared with them to assist in initial report writing.</u></b></p> <p>a. Initial reports are those reports completed by members in response to calls for service or self-initiated police action that are submitted prior to the end of their shift to document their response to an event including,</p>

but not limited to, initial reports completed in Cobalt (e.g., Incident/Offense Report, Arrest Report, Traffic Crash Report, Missing Person Report), Notices of Infraction, PD Forms 313 (Arrestee's Injury/Illness Report), FD-12s, and Force Incident Reports.

- b. Members may review BWC recordings as part of follow-up investigations and activities including, but not limited to, preparing Supplement Reports in Cobalt, preparing for papering or court appearances, preparing affidavits for search or arrest warrants, completing forcible entry documentation, and detectives and investigators who are completing their case management documentation including their initial case resumes.
- c. Supervisors shall review BWC recordings when reviewing and approving Part I arrest reports. Supervisors shall review the BWC footage of the member completing the report and any additional BWC footage as reasonably necessary to ensure consistency between the BWC footage and the arrest report.

**2. Notwithstanding any other law, the Mayor:**

- a. **Shall, within 5 business days after an officer-involved death or the serious use of force, publicly release the names and body-worn camera recordings of all officers who committed the officer-involved death or serious use of force;** and
  - b. Shall, by August 15, 2020, publicly release the names and body-worn camera recordings of all officers who have committed an officer-involved death since the Body-Worn Camera Program was launched on October 1, 2014.
  - c. May, on a case-by-case basis in matters of significant public interest and after consultation with the Chief of Police, the United States Attorney's Office for the District of Columbia, and the Office of the Attorney General, publicly release any other body-worn camera recordings that may not otherwise be releasable pursuant to a FOIA request.
3. Notwithstanding any other law, within 5 business days after a request from the Chairperson of the Council Committee with jurisdiction over the Metropolitan Police Department, the Department shall provide unredacted copies of the requested BWC recordings to the Chairperson. BWC recordings in the possession of the Council shall not be publicly disclosed by the Chairperson or the Council.

Members are reminded that a **serious use of force** is defined as actions by members including:

	<table border="1"> <thead> <tr> <th colspan="2" data-bbox="397 180 1464 212" style="text-align: center;"><b>Serious Use of Force</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="397 212 430 243">a.</td> <td data-bbox="430 212 1464 275">All firearm discharges by a member with the exception of range and training incidents, and discharges at animals;</td> </tr> <tr> <td data-bbox="397 275 430 306">b.</td> <td data-bbox="430 275 1464 306">All uses of force by a member resulting in a serious physical injury;</td> </tr> <tr> <td data-bbox="397 306 430 338">c.</td> <td data-bbox="430 306 1464 338">All head strikes with an impact weapon;</td> </tr> <tr> <td data-bbox="397 338 430 432">d.</td> <td data-bbox="430 338 1464 432">All uses of force by a member resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ;</td> </tr> <tr> <td data-bbox="397 432 430 464">e.</td> <td data-bbox="430 432 1464 464">All incidents where a person receives a bite from an MPD canine;</td> </tr> <tr> <td data-bbox="397 464 430 527">f.</td> <td data-bbox="430 464 1464 527">All uses of force by an MPD member involving the use of neck restraints or techniques intended to restrict a subject's ability to breathe; and</td> </tr> <tr> <td data-bbox="397 527 430 558">g.</td> <td data-bbox="430 527 1464 558">All other uses of force by a member resulting in a death.</td> </tr> </tbody> </table> <p data-bbox="397 579 1464 726"><b><u>Under the new law, within 5 business days after an officer-involved death or the serious use of force, the Mayor is required to publicly release the names and body-worn camera recordings of all officers who committed the officer-involved death or serious use of force.</u></b></p> <p data-bbox="203 758 349 789">Reference</p> <p data-bbox="397 758 1429 831">DC Official Code § 5-116.33; DCMR 24-3900.9-10; DCMR 24-3901.2 and 4; and DCMR 24-3999.1</p>	<b>Serious Use of Force</b>		a.	All firearm discharges by a member with the exception of range and training incidents, and discharges at animals;	b.	All uses of force by a member resulting in a serious physical injury;	c.	All head strikes with an impact weapon;	d.	All uses of force by a member resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ;	e.	All incidents where a person receives a bite from an MPD canine;	f.	All uses of force by an MPD member involving the use of neck restraints or techniques intended to restrict a subject's ability to breathe; and	g.	All other uses of force by a member resulting in a death.
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<p data-bbox="203 867 235 898">D)</p> <p data-bbox="203 940 316 1003">Need to Know</p> <p data-bbox="203 1255 349 1287">Reference</p>	<p data-bbox="397 867 1437 898"><b><i>Expansion of Office of Police Complaints (OPC) Investigative Authority</i></b></p> <p data-bbox="397 940 1464 1213">The OPC can now initiate an investigation if OPC discovers evidence of abuse or misuse of police powers that was not alleged by the complainant in the complaint including, but not limited to, instances where an officer fails to (i) intervene in or subsequently report an officer using excessive force or engaging in any type of misconduct, or (ii) immediately report to their supervisor any violations of the rules and regulations of the MPD committed by any other MPD officer, and each instance of their use of force or a use of force committed by another MPD officer.</p> <p data-bbox="397 1255 755 1287">DC Official Code § 5-1107</p>																
<p data-bbox="203 1325 235 1356">E)</p>	<p data-bbox="397 1325 625 1356"><b><i>Repealed Laws</i></b></p> <p data-bbox="397 1398 933 1430"><i>The following laws have been repealed.</i></p> <ol style="list-style-type: none"> <li data-bbox="397 1461 1464 1745"> <p data-bbox="397 1461 1209 1493"><b>1. Failure to Arrest Crime (DC Official Code § 5-115.03)</b></p> <p data-bbox="446 1503 1464 1745">“If any member of the police force shall neglect making any arrest for an offense against the laws of the United States committed in his presence, he shall be deemed guilty of a misdemeanor and shall be punishable by imprisonment in the District Jail or Penitentiary not exceeding 2 years, or by a fine not exceeding \$500. A member of the police force who deals with an individual in accordance with § 24-604(b) shall not be considered as having violated this section.”</p> </li> <li data-bbox="397 1776 1464 1923"> <p data-bbox="397 1776 1364 1808"><b>2. Anti-Mask Law (DC Official Code § 22-3312 et seq.; 22-3312.03)</b></p> <p data-bbox="446 1818 1464 1923">Wearing any mask, hood, or device whereby any portion of the face is hidden, concealed, or covered as to conceal the identity of the wearer is no longer illegal.</p> </li> </ol>																

<p>F)</p>	<p><b><i>Additional Provisions</i></b>  <i>Listed below is a summary of other key provisions of the law. Members may review a complete copy of the law at: <a href="https://lms.dccouncil.us/">https://lms.dccouncil.us/</a>.</i></p> <ol style="list-style-type: none"> <li>1. <b><u>Disciplinary Reforms</u></b>                      The chief of police may increase the recommended disciplinary penalty of a trial board.</li> <li>2. <b><u>Expansion of Mandatory Continuing Education</u></b>                      The law codifies several requirements already covered in training including that members receive training on racism, white supremacy, limiting use of force and de-escalation, neck restraints, consent searches, and duty to intervene.</li> <li>3. <b><u>Expansion of Police Complaints Board (PCB)</u></b>                      The Police Complaints Board will be expanded from 5 members to 9. No members shall be affiliated with any law enforcement agency to include MPD.</li> <li>4. <b><u>Expansion of Use of Force Review Board</u></b>                      The Use of Force Review Board will be expanded to include the following voting members: Executive Director of the OPC, three civilian members appointed by the Mayor, and two civilian members appointed by the DC Council.</li> <li>5. <b><u>Identification Requirements of MPD Officers During First Amendment Assembly as Local Law Enforcement</u></b>                      During a First Amendment assembly, the uniforms and helmets of officers policing the assembly shall prominently identify the officers' affiliation with local law enforcement.</li> <li>6. <b><u>Limitations on the Use of Internationally Banned Chemical Weapons, Riot Gear, and Less-Lethal Projectiles</u></b>                      Outlines requirements for First Amendment assemblies including, but not limited to: (i) no officers in riot gear may be deployed unless there is an immediate risk to officers of significant bodily injury; (ii) the deployment of officers in riot gear may not be used as a tactic to disperse First Amendment assemblies, and (iii) chemical irritants and less-lethal projectiles shall not be used by MPD to disperse First Amendment assemblies.</li> <li>7. <b><u>Assault on a Police Officer (APO)</u></b>                      APO is now a jury demandable offense.</li> </ol> <p>References 6A DCMR 1001.5 (Repealed); DC Official Code § 5-107.01 <i>et seq.</i>; DC Official Code § 5-1101 <i>et seq.</i>; DC Official Code § 1-523.01(e); DC Official Code § 5-331.09; D.C. Official Code § 5-331.01 <i>et seq.</i>; DC Official Code § 16-705(b)(1)</p>
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The emergency legislation will be replaced by temporary legislation at a later date. Members will be notified of any changes at that time.

To the extent that provisions in this executive order conflict with existing directives, the provisions set forth in this executive order shall prevail.

A handwritten signature in black ink, appearing to read 'Peter Newsham', with a long horizontal flourish extending to the right.

Peter Newsham  
Chief of Police

PN:KDO:MOC:JC