

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 166
Judiciary

(Delegate Washington, *et al.*)

Criminal Procedure - Law Enforcement Procedures - Use of Force

This bill establishes circumstances under which a police officer is justified in using force and deadly force. It also establishes what a trier of fact must consider when assessing whether the police officer's beliefs and actions were reasonable.

Fiscal Summary

State Effect: The bill does not materially affect the workload of the Judiciary or State law enforcement agencies. Revenues are not affected.

Local Effect: The bill does not materially affect the workload of the circuit courts or local law enforcement agencies. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A police officer is justified in using force against a person if:

- (1) there is probable cause to believe that the person committed a crime, and the force is used to prevent the person's escape from lawful custody or (2) the force is used to prevent the commission of a crime; and
- the police officer uses no more force than reasonably necessary to effectuate an arrest.

A police officer is justified in using deadly force if the police officer reasonably believes that deadly force is necessary to protect the police officer or another person from the threat of serious bodily injury or death and the police officer's actions are reasonable given the totality of the circumstances.

When assessing whether the police officer's beliefs and actions were reasonable, a trier of fact must, as part of the totality of circumstances, consider (1) whether the injured or deceased person possessed or appeared to possess a deadly weapon or an object that could be used as a deadly weapon and refused to comply with a police officer's order, as specified; (2) whether the police officer engaged in de-escalation measures, as specified, prior to the use of deadly force, if such measures were reasonable; and (3) whether any conduct by the police officer increased the risk of a confrontation resulting in deadly force being used. A trier of fact must consider the reasonableness of the defendant police officer's beliefs and actions from the perspective of a reasonable police officer.

"Deadly force" means force likely or intended to create a substantial risk of serious bodily injury or death. "Deadly weapon" means an object, used or intended to be used, that is likely to cause serious bodily injury or death.

Current Law: Common law allowed police officers to use any force necessary to effectuate a felony arrest; however, in *Tennessee v. Garner*, 471 U.S. 1 (1985), the U.S. Supreme Court held that when a law enforcement officer is pursuing a fleeing suspect, the officer may not use deadly force to prevent escape unless "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." In *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court expanded its definition to include the "objective reasonableness" standard. The court held that the Fourth Amendment "reasonableness" inquiry is "whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation." In *Randall v. Peaco*, 175 Md. App. 320 (2007), the Court of Special Appeals applied principles of the *Graham* case and stated that the test for determining the objective reasonableness of an officer's conduct for purposes of deciding a claim of excessive force brought under the State constitution is the test the Supreme Court announced in *Graham*.

Manslaughter is a common law offense. The meanings accorded to involuntary and voluntary manslaughter are judicially determined and based on case law. Manslaughter is distinguished from murder by the absence of malice aforethought, express or implied. The absence of intention to kill or to commit any unlawful act, which might reasonably produce death or great bodily harm, is generally the distinguishing factor between voluntary and

involuntary manslaughter. A person who commits manslaughter is guilty of a felony and subject to maximum penalties of (1) imprisonment for 10 years or (2) imprisonment in a local correctional facility for 2 years and/or a fine of \$500.

The Maryland Police Training and Standards Commission (MPTSC), an independent commission within the Department of Public Safety and Correctional Services, operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. Pursuant to MPTSC standards, the curriculum and minimum courses of study must include use of force de-escalation training, as specified. This requirement applies to in-service level police training every two years and entrance-level training conducted by the State and each county and municipal police training school. In addition, MPTSC has the power and duty to adopt and recommend a set of best practices and standards for the use of force.

According to the Governor's Office of Crime Control and Prevention's 2018 [report](#), in calendar 2018, there were a total of 31 cases of civilian deaths involving law enforcement officers from 14 law enforcement agencies in Maryland. Of the 31 deaths, the Medical Examiner's Office classified 14 as homicide by law enforcement, 7 as suicide, 8 as accidental, 1 as from natural causes, and 1 from overdose. All 14 homicides by law enforcement involved the fatal shooting of the individual.

Additional Information

Prior Introductions: HB 1121 of 2019, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Harford, Montgomery, and Wicomico counties; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; Governor's Office of Crime Control and Prevention; Department of Legislative Services

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