

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 50

(Senator Carter)

Judicial Proceedings

Criminal Procedure - Police Officers - Duty to Intervene

This bill establishes a duty for a police officer to intervene. Specifically, it requires a police officer to make a reasonable attempt to stop or prevent the use of “excessive force” if the police officer knows or reasonably should know that another police officer is using or intends to use excessive force. The bill establishes a criminal penalty for a police officer who knowingly and willfully violates the duty to intervene; it also establishes a related civil cause of action. Finally, the bill establishes requirements for police training regarding the bill’s duty to intervene.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s criminal penalty provision. The bill’s provisions relating to the civil cause of action and training are not anticipated to materially affect State finances.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill’s criminal penalty provision. The bill’s provisions relating to the civil cause of action and training are not anticipated to materially affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: “Excessive force” is defined as force that, under the totality of the circumstances, is objectively unreasonable.

A police officer who knowingly and willfully violates the duty to intervene is guilty of a misdemeanor and on conviction is subject to a maximum penalty of five years imprisonment and/or a \$10,000 fine. Additionally, a person who is injured as a result of a violation of the duty to intervene has a civil cause of action against the violating police officer.

The bill requires the Maryland Police Training and Standards Commission (MPTSC) to require that the curriculum and minimum courses of study for police training conducted by the State and each county and municipal police training school include training on the bill's duty to intervene. The training must be provided at entrance-level police training and at least every two years for in-service level police training.

Current Law:

Use of Force

Each law enforcement agency must require a police officer who is involved in a use of force incident in the line of duty to file an incident report regarding the use of force by the end of the officer's shift unless the officer is disabled.

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, under the Fourth Amendment, 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 Maryland 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*.

Police Officer Training

Chapter 519 of 2016 reconstituted the former Police Training Commission as MPTSC, an independent commission within the Department of Public Safety and Correctional Services. MPTSC operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. In consultation and cooperation with various entities, it also sets minimum qualifications for instructors and certifies qualified instructors for approved training schools.

MPTSC certifies persons as police officers who have met commission standards, including submission to a criminal history records check and a specified psychological consultation. An individual who is not satisfactorily trained in the 12-month probationary period may not be employed as a police officer, and a police officer may not serve after certification has been revoked, suspended, or allowed to lapse.

MPTSC requirements include, among other things, the adoption and recommendation of best practices and standards for use of force and that the curriculum and minimum courses of study include special training, attention to, and study of the application of antidiscrimination and use of force de-escalation training at entrance-level police training and at least every two years for in-service level police training conducted by the State and each county and municipal police training school.

Definition of “Police Officer” Under § 3-201 of the Public Safety Article

“Police officer” means an individual who is authorized to enforce the general criminal laws of the State and is a member of one of several specified law enforcement agencies.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Howard and Prince George’s counties; City of Havre de Grace; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Maryland State’s Attorneys’ Association; Department of Public Safety and Correctional Services; Department of State Police; Office of the Public Defender; Department of Legislative Services

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Analysis by: Amber R. Gundlach

Direct Inquiries to:
(410) 946-5510
(301) 970-5510