

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 956
Judiciary

(Delegate Washington)

Criminal Procedure - Law Enforcement Procedures - Use of Force

This bill establishes circumstances under which a police officer is justified in (1) using force against a person; (2) using deadly force against a person, and (3) using deadly force directed at a moving vehicle. In addition, the bill establishes what a trier of fact must consider when assessing whether the police officer's beliefs and actions were reasonable. Further, the bill prohibits a police officer from using a choke hold, neck hold, stranglehold, or any other restraint of the carotid artery, with specified exceptions, and establishes a related duty to intervene, as specified.

Fiscal Summary

State Effect: While most State agencies with law enforcement units can implement the bill with existing budgeted resources, State expenditures (multiple fund types) may increase minimally for some State law enforcement agencies to the extent the bill requires additional training that results in overtime costs. The bill does not materially affect the workload of the Judiciary. Revenues are not affected.

Local Effect: Potential minimal increase in local expenditures for some local law enforcement agencies; the bill does not materially affect the workload of the circuit courts. 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 or is about to commit 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 force that is reasonably proportionate to the threat posed by the person and no more force than reasonably necessary to effectuate an arrest, prevent the person's escape from lawful custody, or obtain the person's compliance with a lawful order.

A police officer is justified in using deadly force if (1) the police officer actually and reasonably believes that deadly force is immediately necessary to protect the police officer or another person from the threat of serious bodily injury or death; (2) the police officer's actions are reasonable given the totality of the circumstances; and (3) all other reasonable means of defense have been exhausted.

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 police officer engaged in de-escalation measures, as specified, and (2) whether any conduct by the police officer increased the risk of a confrontation.

A police officer may not use a choke hold, neck hold, stranglehold, or any other restraint of the carotid artery except to counter an imminent threat of serious bodily injury or death to the police officer. A police officer who knows or reasonably should know that another police officer is using or intends to use a restraint of a person's carotid artery must make a reasonable attempt to intervene to terminate or prevent the other police officer's use of the restraint.

A police officer may use deadly force directed at a moving vehicle only (1) to counter an imminent threat of serious bodily injury or death to the police officer or another person by a person inside the motor vehicle; (2) if all other reasonable means of defense have been exhausted; and (3) if the police officer has made reasonable efforts to avoid being in the path of the moving vehicle.

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 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*.

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.

Additional Information

Prior Introductions: HB 166 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. 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; City of College Park; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Morgan State University; University System of Maryland; Office of the Public Defender; Department of General Services; Department of Natural Resources; Department of Public

Safety and Correctional Services; Department of Transportation; Department of
Legislative Services

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