



State of Maryland
Department of State Police
Government Affairs Section
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POSITION ON PROPOSED LEGISLATION

DATE: March 3, 2020

BILL NUMBER: House Bill 166 **POSITION:** Letter of Information

BILL TITLE: Criminal Procedure – Law Enforcement Procedures – Use of Force

REVIEW AND ANALYSIS:

This legislation seeks to define the circumstances under which a police officer may use force. This legislation also requires a trier of facts to consider the actions a police officer took leading up to the use of force and if the officer escalated the situation.

Under current law, Police use of force is subject to the reasonableness requirement of the Fourth Amendment. In *Graham v. Connor*, the Supreme Court held that determining the "reasonableness" of a seizure "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake.

Situations that police officers find themselves in change very quickly and often times without warning. This legislation seeks a trier of facts to determine if the police officer engaged in de-escalation measures, including taking cover, waiting for backup, trying to calm the person or using less lethal forms of force.

In an ideal world there would be no need for use of force and citizens would comply with all requests made by law enforcement. But we know this is not the case. For varied reasons citizens do not comply with the police. By the very nature of committing a crime, they are likely not to comply. Citizens involved in criminal activity have a self-preservation response to flight or fight. In many occasions this response is explosive and immediate. A police officer is not always in a position to wait for backup or taking cover. The urgency of the situation requires an immediate response to stop the risk of the criminal or protect innocent lives.

This legislation also asks the trier of facts to determine if the police officer's increased the risk of confrontation that resulted in force being used. In an agitated state, the mere presence of a police officer may increase the possibility of a use of force encounter, but the police officer cannot leave to ensure this possibility does not occur.

For these reasons, the Maryland Department of State Police urges the Committee to give House Bill 166 an unfavorable report.