



Judiciary Committee
House Office Building
6 Bladen Street, Room 101
Annapolis, MD 21401

**Testimony on HB0139
Law Enforcement Officer – Use of Force**

Position: Favorable

February 5, 2021

Dear **Chairman Clippenger and Members of the Judiciary Committee:**

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on HB0139. My name is Stanford Fraser and I am an Assistant Public Defender with the Maryland Office of the Public Defender. I have been an Assistant Public Defender for about four years. I support this bill because having a standard use of force law for law enforcement is key to keeping Marylanders safe and holding police officers accountable.

The Fourth Amendment provides “the right of the people to be secure in their persons, houses, papers, and effects, from unreasonable searches and seizures, shall not be violated[.]”¹ The provision is most well-known for its applicability in searches, but the Supreme Court has also recognized that a law enforcement officer’s application of force during a stop or arrest can

¹ U.S. Const. amend. IV.

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constitute a seizure, and is within the meaning of the provision.² Further, the Fourth Amendment protects citizens from the right to be free from the use of excessive force during seizures.³

However, this is just the Constitutional minimum – this is a floor, not a ceiling. The vast majority of states have enacted a law enforcement use of force statute that bolster the constitutional minimum and specifically define when force should be used.⁴ Maryland is one of only nine states that does not have a law on the use of force.⁵ It is clear that Maryland is lagging behind the rest of the country in creating legislation that addresses excessive force used in police interactions with Marylanders.

Moreover, we must incorporate lessons learned not just from this past year’s civil movements to end police brutality, but from the decades of brutal police tactics used on incidents happening within communities in Maryland. We have seen time and time again that the framework currently in place is not sufficient to hold law enforcement officers accountable for their actions. In 1964, two deaths resulting from police brutality enraged Marylanders, resulting in promises for

² *Graham v. Connor*, 490 U.S. 386, 388 (1989); *Tennessee v. Garner*, 471 U.S. 1, 7–9 (1985).

³ *Id.*

⁴ Michael A. Foster, *Police Use of Force: Overview and Considerations for Congress*, Congressional Research Service (Jul. 2020), <https://fas.org/sgp/crs/misc/LSB10516.pdf>; See also Amnesty International, *Deadly Force: Police Use of Lethal Force in the United States*, Amnesty Intl. (Jun. 2015), https://www.amnestyusa.org/files/aiusa_deadlyforcereportjune2015.pdf. According to a report by Amnesty International, Maryland is one of only nine states that have no laws on use of lethal force by law enforcement officers. *Id.*, at 7.

⁵ Amnesty International, *Deadly Force: Police Use of Lethal Force in the United States*, Amnesty Intl. (Jun. 2015), https://www.amnestyusa.org/files/aiusa_deadlyforcereportjune2015.pdf; Rachel Baye, *Maryland Lawmakers Consider Restricting Police Use of Deadly Force*, WYPR (Feb. 5, 2021), <https://www.wypr.org/post/maryland-lawmakers-consider-restricting-police-use-deadly-force>.

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police reform to address police brutality.⁶ From 2010-2015, at least 130 people died after police encounters – one of those encounters being Freddie Gray.⁷ Despite promises for police reform following the untimely death of Freddie Gray in Baltimore,⁸ there is little evidence that Maryland police departments are transforming their processes to address the systemic need for reform, transparency, and accountability to stop the use of excessive force.⁹

A police officer's duty is to protect and serve their communities in Maryland. The preservation of every life should be the highest priority for each officer while serving. Police officers should “only use the amount of force necessary to mitigate an incident, make an arrest, or protect themselves from harm,” including basic verbal restraint and de-escalation techniques.¹⁰ The use of force should be an officer's last option, and only used when absolutely necessary to restore safety when other tactics have failed.¹¹ Police officers should preserve the lives and dignity

⁶ Kevin Rector, *Promises of change after Freddie Gray's death echo the past*, Balt. Sun (Apr. 16, 2016), <https://www.baltimoresun.com/news/crime/bs-md-ci-gray-changes-echo-20160416-story.html>. “In late June, a 44-year-old black man named Louis C. Petty died of head injuries he suffered in a scuffle with police after officers responded to a minor traffic accident A grand jury ultimately cleared [the officers].” *Id.*

⁷ Cf. American Civil Liberties Union of Maryland, *Briefing Paper on Deaths in Police Encounters in Maryland 2010-2014* (Mar. 2015), https://www.aclu-md.org/sites/default/files/legacy/files/md_deaths_in_police_encounters.pdf (stating at least 109 people died in police encounters in Maryland between 2010-2014); with American Civil Liberties Union, *ACLU Update: At Least 21 People Died in Police Custody in Maryland in 2015*, ACLU (Mar. 15, 2016), <https://www.aclu.org/press-releases/aclu-update-least-21-people-died-police-custody-maryland-2015> (stating at least 21 people died in police custody in Maryland in 2015).

⁸ Kevin Rector, *Promises of change after Freddie Gray's death echo the past*, Balt. Sun (Apr. 16, 2016), <https://www.baltimoresun.com/news/crime/bs-md-ci-gray-changes-echo-20160416-story.html>.

⁹ American Civil Liberties Union, *ACLU Update: At Least 21 People Died in Police Custody in Maryland in 2015*, ACLU (Mar. 15, 2016), <https://www.aclu.org/press-releases/aclu-update-least-21-people-died-police-custody-maryland-2015>.

¹⁰ National Institute of Justice, *Overview of Police Use of Force*, Dept. of Justice (Aug. 6, 2019), <https://nij.ojp.gov/topics/articles/overview-police-use-force#:~:text=Amount%20of%20Force%20Used,themselves%20or%20others%20from%20harm.&text=Use%20of%20force%20is%20an,when%20other%20practices%20are%20ineffective.>

¹¹ *Id.*

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of all people they serve. This law is imperative in holding police officers accountable and encouraging police officers to exercise restraint in encounters with every Marylander. If an officer cannot do their job without exercising an unnecessary amount of force during the course of the duty, it is in the public's best interest to ensure that officer is held accountable.

For these reasons, the Maryland Office of the Public Defender urges a favorable report on HB0139.

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