

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1121
Judiciary

(Delegates Washington and Barron)

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 and establishes factors which a trier of fact must consider as part of the totality of the circumstances when assessing whether the police officer's beliefs and actions were reasonable. If a police officer acted with an honest but unreasonable belief in the need to use deadly force, the police officer must be found not guilty of murder but guilty of voluntary manslaughter.

Fiscal Summary

State Effect: Minimal increase in general and special fund expenditures for State law enforcement agencies to update and conduct any additional training needed under the bill. Revenues are not affected.

Local Effect: Minimal increase in local government expenditures for local law enforcement agencies to update and conduct any additional training needed under the bill. Revenues are not affected.

Small Business Effect: None.

Analysis

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

- there is probable cause to believe that the person committed a crime and (1) 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 what is 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.

A trier of fact must consider, as part of the totality of the circumstances, when assessing whether the police officer's beliefs and actions were reasonable: (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. The reasonableness of the defendant police officer's beliefs and actions must be considered from the perspective of a reasonable police officer.

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."

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. MPTSC requirements include, among other things, for 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, 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. 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 2017 [report](#), in calendar 2017, there were a total of 32 cases of civilian deaths involving law enforcement officers from 11 law enforcement agencies in Maryland. Of the 32 deaths, the Medical Examiner's Office classified 13 as homicide by law enforcement, 9 as suicide, 9 as accidental death, and 1 as undetermined. All 13 homicides by law enforcement involved the fatal shooting of the individual.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Maryland Association of Counties; cities of Bowie and Takoma Park; Maryland Municipal League; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - March 12, 2019
an/kdm

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