

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1090
Judiciary

(Delegate Acevero, *et al.*)

Law Enforcement – Complaints and Investigations and Use of Force
(Anton’s Law)

This bill (1) establishes circumstances under which a police officer is justified in using force and deadly force; (2) establishes that specified records related to a formal complaint of job-related misconduct made against a law enforcement officer are not personnel records for purposes of the Public Information Act (PIA) but authorizes a custodian to deny inspection of such records under specified conditions; (3) alters the Law Enforcement Officers’ Bill of Rights (LEOBR) by repealing specified requirements regarding investigations or interrogations by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal of the law enforcement officer; and (4) requires that the uniform citizen complaint process developed by the Maryland Police Training and Standards Commission (MPTSC) include a requirement that a complainant be provided with a specified investigatory file.

Fiscal Summary

State Effect: MPTSC can likely alter curriculum developed and training provided by the commission to meet the bill’s requirements using existing budgeted resources, as discussed below. It is assumed that State law enforcement agencies can implement the required policy with existing resources. Revenues are not affected.

Local Effect: It is assumed that local law enforcement agencies can implement the required policy with existing resources. Local 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 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 no more force than 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 police officer is *not* justified in using deadly force based solely on a belief that the person poses a risk of serious bodily injury or death to himself or herself.

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 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 reasonable de-escalation measures, as specified; and (3) whether conduct by the police officer increased the risk of a confrontation resulting in deadly force being used. 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.

The bill repeals the requirement in LEOBR that the investigating officer or interrogating officer be a sworn law enforcement officer or, if requested by the Governor, the Attorney General or a designee of the Attorney General, for an investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal. The bill also makes conforming changes.

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*.

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.

Maryland Police Training and Standards Commission

MPTSC, an independent commission within the Department of Public Safety and Correctional Services (DPSCS), 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.

MPTSC must develop a uniform citizen complaint process to be followed by each law enforcement agency. The uniform complaint process must be simple, require that a complainant be informed of the final disposition of the complainant’s complaint and any discipline imposed as a result, and be posted on the websites of MPTSC and each law enforcement agency.

Law Enforcement Officers’ Bill of Rights

LEOBR was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of 26 specified State and local agencies but does not extend to any correctional officers in the

State. LEOBR extends uniform protections to officers in two major components of the disciplinary process: (1) the conduct of internal investigations of complaints that may lead to a recommendation of disciplinary action against a police officer; and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined. LEOBR requirements are much more restrictive and time consuming than general State personnel requirements under Title 11 of the State Personnel and Pensions Article. Specifically, LEOBR delineates who can do the investigation, what management must disclose to the employee, and when and where the meeting can take place; it also limits the duration of the meeting.

Maryland's Public Information Act

PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Generally, a custodian *must* deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. PIA also generally requires denial of inspection of specified records, including personnel records; however, a custodian must allow inspection of personnel records by specified entities, including a person in interest.

A custodian *may*, subject to specified conditions, deny inspection of:

- records of investigations conducted by the Attorney General, a State's Attorney, a municipal or county attorney, a police department, or a sheriff;
- an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or
- records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a municipal or county attorney, a police department, a State or local correctional facility, or a sheriff.

A custodian may deny inspection of such records by a person in interest only to the extent that the inspection would (1) interfere with a valid and proper law enforcement proceeding; (2) deprive another person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source; (5) disclose an investigative technique or procedure; (6) prejudice an investigation; or (7) endanger the life or physical safety of an individual.

Background: Anton Black, a 19-year-old resident of Greensboro, Maryland, died while in police custody in September 2018. After his death, investigations revealed that the officer in the case, Thomas Webster, had multiple use-of-force reports and criminal charges while working in Delaware. The officer was found not guilty of the criminal charges and

resigned. In July 2019, MPTSC revoked his certification. While the Department of State Police has closed its investigation into Mr. Black's death, other law enforcement agencies have been asked to continue the investigation.

According to the Governor's Office of Crime Control and Prevention's 2018 [report](#), in calendar 2018, there were a total of 31 cases of civilian deaths involving law enforcement officers from 14 law enforcement agencies in Maryland. Of the 31 deaths, the Medical Examiner's Office classified 14 as homicide by law enforcement, 7 as suicide, 8 as accidental, 1 as from natural causes, and 1 from overdose. All 14 homicides by law enforcement involved the fatal shooting of the individual.

State Expenditures: MPTSC advises that the bill's provisions necessitate changes to the curriculum developed by MPTSC for police training schools and the training provided to law enforcement officers within DPSCS; thus, the commission advises that it needs one full-time curriculum developer and two full-time subject matter expert instructors at an estimated cost of at least \$200,000 annually. The Department of Legislative Services disagrees and advises that changes to the curriculum and training as necessitated by the bill can likely be handled with existing resources. The development of standards and curriculum by MPTSC and providing training to law enforcement officers is part of the function of MPTSC; this bill alone is not burdensome.

Additional Information

Prior Introductions: HB 1121 of 2019, a bill with similar provisions regarding the use of force, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: SB 1066 (Senator Carter) - Rules.

Information Source(s): Garrett and Montgomery counties; Maryland Association of Counties; City of Laurel; Maryland Municipal League; Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; Department of Budget and Management; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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