

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1309

(Delegate D.M. Davis, *et al.*)

Judiciary

Criminal Procedure - Law Enforcement Procedures - Use of Force

This bill prohibits a police officer from using the following types of force, with specified exceptions and/or subject to specified criteria: (1) deadly force; (2) nonlethal force against a person who is handcuffed or restrained; and (3) use of an improvised impact weapon against a person. The prosecution in a criminal proceeding or the plaintiff in a civil proceeding has the burden of proving that a police officer has violated the bill’s provisions, and a police officer may not be presumed to have acted reasonably or in a manner that was necessary.

Fiscal Summary

State Effect: General fund expenditures increase by \$125,500 in FY 2021 to accommodate changes to law enforcement training. FY 2022 and 2023 expenditures reflect ongoing costs. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	125,500	106,300	27,300	0	0
Net Effect	(\$125,500)	(\$106,300)	(\$27,300)	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local expenditures may increase to implement training on the bill’s requirements. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Deadly Force

“Deadly force” means force likely or intended to create a substantial risk of serious bodily injury or death, including specified acts.

A police officer *may not* use deadly force under specified circumstances, including (1) as a form of punishment or for the sole purpose of inflicting pain to gain compliance; (2) to fire a warning shot; (3) against a person who only poses a threat to property or himself or herself; (4) against a person who is handcuffed or restrained; (5) against a person engaging in only passive resistance or active resistance, as defined under the bill, unless specified exceptions are present; (6) against a person fleeing the presence of a police officer if the police officer knows or has a reasonable belief that the person does not possess a deadly weapon; (7) against a person exhibiting signs of serious mental illness, unless the police officer has a reasonable belief that the person possesses a deadly weapon; (8) if a police officer knows or reasonably should know the person does not possess a firearm; or (9) directed at a moving vehicle, except under specified circumstances.

However, a police officer *may* use deadly force (1) as a last resort; (2) when reasonable and necessary to achieve a legitimate police objective, as specified in the bill; (3) when the use of deadly force is proportional to the degree of danger and seriousness of the offense; (4) after de-escalation techniques have been exhausted; (5) after nonlethal force has been used; or (6) if a legitimate police objective is otherwise unable to be achieved.

Nonlethal Force Against a Person Who Is Handcuffed or Restrained

“Nonlethal force” is a level of force used by a police officer that is not likely to cause death or serious bodily injury, including the use of a weapon, other than a firearm, to control a person or defend a person from harm.

A police officer *may not* use nonlethal force against a person who is handcuffed or restrained, unless the totality of circumstances indicate it is reasonable and necessary. However, a police officer who uses nonlethal force under these circumstances must first use the least amount of physical force that is necessary and may increase the amount of force as necessary to prevent injury or escape from lawful custody. Regardless, the officer may not use more force than is reasonably necessary.

A police officer *may not* use *any* force against a handcuffed or restrained person if the person’s actions only pose a risk of property damage.

Use of an Improvised Impact Weapon

An “improvised impact weapon” is a device or object that is not approved for use by a law enforcement officer.

A police officer may not use an improvised impact weapon against a person unless the officer lacks an authorized baton or other nonlethal weapon and use of the improvised impact weapon is reasonable and necessary to defend the officer against a person displaying active aggression that is likely to cause imminent serious bodily injury or death.

Current Law/Background: 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 (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.

According to a [report](#) by the Governor’s Office of Crime Prevention, Youth, and Victim Services, 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: While MPTSC currently develops, administers, and certifies use of force training, the bill’s provisions make extensive changes that require redevelopment of the curriculum. Accordingly, general fund expenditures for DPSCS increase by \$125,537 in fiscal 2021. This estimate reflects the cost of hiring two contractual employees to develop a new curriculum and assist in administering trainings. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. This estimate assumes a July 1, 2020 hiring date in anticipation of the bill’s changes to use of force taking effect October 1, 2020. This estimate also assumes that the need for curriculum developers attributable to the bill concludes on October 1, 2022, when existing staff can continue to administer the new training curriculum.

Contractual Positions	2
Salaries and Fringe Benefits	\$114,487
Operating Expenses	<u>11,050</u>
Total FY 2021 State Expenditures	\$125,537

Future year expenditures reflect salaries with annual increases and employee turnover and ongoing operating expenses through termination of the contractual employees.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

It is assumed that State law enforcement agencies can implement the bill’s changes with existing budgeted resources.

Local Expenditures: Local expenditures may increase to implement the bill, depending on training responsibilities and existing resources in the local jurisdiction. For example, Baltimore County advises that training-related expenses associated with the bill total \$152,740 in fiscal 2021 and \$142,740 every two years thereafter (current law imposes a two-year training cycle). However, Garrett County and the City of Laurel do not anticipate a fiscal impact from the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore, Garrett, and Montgomery counties; City of Laurel; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; University System of Maryland; Morgan State University; Department of General Services; Department of Public Safety and Correctional Services; Department of State Police; Governor's Office of Crime Prevention, Youth, and Victim Services; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2020
an/jkb

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510