March 2, 2020

WRITTEN TESTIMONY TO: Maryland House Judiciary Committee

RE: HB 166 Criminal Procedure - Law Enforcement Procedures - Use of Force

POSITION: Support HB 166

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I write in support of HB 166, which emphasizes necessity, proportionality, and de-escalation to guide police officers in the use of deadly force. I start by explaining the current state of the law. I then explain how HB 166 improves current law on police use of force.

Current Law on Police Use of Force (Two Tracks)

Police use of force in the United States is governed by (1) U.S. Supreme Court case law, and (2) state statutes and state case law interpreting those statutes. While there are many parallels between these two lines of authority, they are not one and the same. These two tracks separately control different kinds of legal actions. Understanding the difference between the two tracks Is important to understanding why HB 166 can and should be enacted, even though it arguably goes beyond what the U.S. Supreme Court currently requires and is more protective of civilian rights than the current standard.

State use of force statutes control in state criminal law prosecutions of police officers for murder, manslaughter, and other crimes of violence where the officer claims his use of force was justifiable. An officer's claim of justifiable use of force in a state criminal law prosecution is much like a civilian murder defendant's claim of self-defense. HB 166 seeks to clarify the circumstances under which a law enforcement officer is justified in using deadly and non-deadly force.[1]

In contrast, U.S. Supreme Court case law applies in §1983 civil rights actions brought by civilians against law enforcement officers for using excessive force to effectuate an arrest or other seizure of the person in violation of the Fourth Amendment.

State use of force statutes may differ from U.S. Supreme Court case law on what constitute excessive force and still be constitutional.[2] If a state does not have a use of force statute, it

[1] Since HB 166 spells out the circumstances under which a law enforcement officer's use of force is justifiable, it may be more appropriate to add it to the Substantive Criminal Law portion of the Maryland Criminal Code, near the section that deals with the defense of self-defense and defense of others, rather than the Criminal Procedure section.

[2] Contrary to common belief, state use of force statutes that contradict the holdings of U.S. Supreme Court case law on excessive force in the §1983 context are not unconstitutional by virtue of the fact that they diverge from

may, as does Maryland, apply U.S. Supreme Court case law on excessive force in its state criminal law prosecutions of law enforcement officers.

Overview of State Statutes on Police Use of Force

The vast majority of state statues on police use of force allow an officer to use force against a civilian if the officer reasonably believed such force was necessary to effectuate an arrest, prevent the escape of a felon, or protect the officer or others. These statutes do not separately require consideration of whether the officer's conduct was reasonable. By focusing on beliefs rather than actions, these statutes encourage the trier of fact to focus on whether the officer's fear of the suspect was reasonable. In cases involving victims of a particular race or ethnicity, stereotypes and implicit bias can have an influence on the jury and encourage a finding that an officer's belief in the need to use deadly force was reasonable. In addition, even though some of these statutes appear to require proportionality, if the statute allows an officer to use whatever force the officer believes is necessary to effectuate an arrest or prevent the escape of a fleeing felon, there is no proportionality requirement.

Overview of U.S. Supreme Court Case Law on Police Use of Force

The Supreme Court has issued many opinions on police use of force, but *Graham v. Connor* is its most cited authority on how courts should go about determining whether police use of force is excessive.[3] In *Graham v. Connor,* 490 U.S. 386 (1989), an African American man with diabetes

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Supreme Court case law. Chad Flanders & Joseph Welling, *Police Use of Deadly Force: State Statutes 30 Years After* Garner, 35 St. Louis U. Pub. L. Rev. 109, 121 (2015) (listing several states that retained the old common law rule that allowed police officers to use any amount of force, including deadly force, to effectuate the arrest of a fleeing felon even after the Supreme Court rejected the common law rule in *Tennessee v. Garner*). U.S. Supreme Court cases on excessive force govern in §1983 cases while state statutes govern in state prosecutions of police officers. Flanders & Welling, *supra* at 125-26 (explaining that "*Garner* involved the application of the standard within a federal civil rights statute, not in a state criminal prosecution").

[3] Two additional U.S. Supreme Court cases on police use of force are important to note. In *Tennessee v. Garner*, 471 U.S. 1 (1985), a police officer shot an African American teenager in the back of the head while the teen was attempting to flee from a house that had been broken into even though the officer was pretty sure the teenager was unarmed. In reviewing the case, the Supreme Court rejected the common law rule in effect in Tennessee at that time which permitted an officer to use whatever force was necessary, including deadly force, to effectuate the arrest of a fleeing felon. The Court held that only where the officer has probable cause to believe the suspect poses a threat of serious bodily harm, either to the officer or others, is it constitutionally reasonable to prevent escape by using deadly force. Additionally, the Court suggest that the officer should give some warning prior to using deadly force, if feasible. Many read *Tennessee v. Garner* as establishing two bright line rules regarding police use of force: (1) police cannot use deadly force to stop a fleeing felon unless they have probable cause to believe the individual poses a threat of serious bodily harm to the officer or others, and (2) the officer should give a warning, if feasible, prior to using deadly force against a fleeing felon.
In *Scott v. Harris*, 550 U.S. 372 (2007), Victor Harris, an African American who was rendered a quadriplegic after a police officer rammed his patrol car into the back of Harris' car, causing it to crash, sued the officer, arguing that the officer's actions were not reasonable since the officer did not have probable cause to believe Harris posed a threat of serious bodily injury to the officer or others as required under *Tennessee v. Garner*. The high-speed chase had taken place at night and there were very few cars on the road. The Supreme Court rejected Harris' attempt to have the Court follow its own precedent, explaining that *Tennessee v. Garner* was simply an application of Fourth

was handcuffed, shoved against the hood of his car after he asked the officers to check his wallet for a diabetes decal he carried, then thrown headfirst into the patrol car. Graham suffered a broken foot, cuts on his wrists, a bruised forehead, an injured shoulder, and a loud ringing in his right ear. He brought a lawsuit against the officers involved in the incident, alleging they used excessive force in violation of his constitutional rights.

The Supreme Court found that the lower courts erred in applying the Due Process Clause to assess Graham's claim and held that all civilian claims of excessive force by a law enforcement officer must be analyzed for reasonableness under the Fourth Amendment. The Court specified that in assessing reasonableness, courts should balance the individual's interests against the governmental interests and pay careful attention to the facts and circumstances of the case. The Court also noted that since an objective standard of reasonableness applies, an officer's actual intent is irrelevant. The Court stated that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the twenty-twenty vision of hindsight."[4] The Court also explained that an officer does not have to be correct in his assessment of the need to use force. An officer can be mistaken as long as his mistake was reasonable.[5] *Graham v. Connor* is understood as the current standard for assessing claims of excessive force.

A significant problem with the *Graham v. Connor* standard is that other than stating that "proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight," factors that are obviously relevant, the Court failed to provide meaningful guidance to judges and jurors trying to assess the reasonableness of the officer's use of force.[6]

House Bill 166

HB 166 takes the *Graham v. Connor* standard, which asks whether the police officer's use of force was objectively reasonable, and improves upon it by requiring the jury to consider, as part of the totality of the circumstances, three factors in deciding whether the officer's use of deadly force was reasonable or unreasonable. Like *Graham*, HB 166 specifies that the trier of fact

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Amendment reasonableness balancing and did not set forth a bright-line rule for police officers contemplating the use of deadly force against a fleeing felon. *Id.* at 382.

[4] *Id.* at 396.

[5] *Id.*

[6] As Professor Rachel Harmon, one of the Assistant Reporters to the American Law Institute's current Policing Project, has noted:

> *Graham* permits courts to consider any circumstance in determining whether force is reasonable without providing a standard for measuring relevance, it gives little instruction on how to weigh certain factors, and it apparently requires courts to consider the severity of the underlying crime in all cases, a circumstance that is sometimes irrelevant and misleading in determining whether force is reasonable.

Rachel Harmon, *When is Police Violence Justified?*, 102 NW. U. L. REV. 1119, 1120 (2008).

consider the reasonableness of the police officer's beliefs and actions from the perspective of a reasonable officer.[7] Like *Graham*, HB 166 does not require that the police officer be correct in his or her assessment of threat. An officer can be mistaken as long as that mistake is reasonable.[8]

HB 166, however, provides the trier of fact with more guidance than the *Graham v. Connor* standard and in so doing, seeks to encourage police officers in Maryland to act with more care when using deadly force against civilians. Additionally, in broadening the time frame the law considers relevant when assessing the reasonableness of an officer's use of deadly force, HB 166 seeks to influence police behavior before the moment in time when the officer is fearing for his or her life and about to pull the trigger.

Under HB 166, a police officer is justified in using deadly force if: (1) the police officer reasonably believed[9] that deadly force was necessary to protect the officer or another person from the threat of death or serious bodily harm, and (2) the police officer's actions were reasonable given the totality of the circumstances. HB 166 explicitly requires the trier of fact to consider the reasonableness of the officer's beliefs and actions in light of three factors. Below I outline the three factors listed in HB 166 that the trier of fact is required to consider in assessing the reasonableness of the officer's use of deadly force and why it makes sense to require such consideration.

<u>Did the suspect have or appear to have a deadly weapon and refuse to comply with a police order to drop it?</u>

First, HB 166 would require the trier of fact to consider whether the suspect had or appeared to have a deadly weapon and whether the individual refused to comply with a police officer's

[7] Unlike private civilians, police officers undergo extensive training, including training on threat perception, and as a general matter are more attuned than the average citizen to behaviors indicative of threat. Therefore, it makes sense to assess the reasonableness of an officer's beliefs and actions from the perspective of a reasonable officer in the defendant officer's shoes.

[8] Some might feel HB 166 does not go far enough in holding police officers accountable and that it should require police officers to be correct in their assessments of threat as recent use of force legislation in California does in saying that an officer is justified only if deadly force was actually necessary. HB 166 recognizes that police officers are fallible human beings who are often forced to make quick life-or-death decisions and cannot always be correct.

[9] An amendment to HB 166 has been offered to require a finding that the officer's belief in the need to use deadly force was both honest and reasonable. If an officer uses deadly force against a civilian to retaliate against the individual for exercising his First Amendment rights or for any other improper purpose and does not in fact believe the use of deadly force was necessary to protect the officer or others from the threat of death or serious bodily injury, that officer should not be found to have acted justifiably. The way the original draft of HB 166 reads, however, such an officer could be acquitted if the objective facts suggest a need to use deadly force to protect against a threat of death or serious bodily injury even if the officer did not honestly believe he needed to use deadly force to protect himself or others from the threat of death or serious bodily injury. If HB 166 were to be enacted as is, the Maryland courts could construe the words "reasonably believes" to include both an honest belief and a reasonable belief, but it would be more helpful if the legislative intent on whether HB 166 requires a finding of both honest and reasonable belief were clear, especially in light of the fact that the Supreme Court is of the view that in the Fourth Amendment context, the subjective beliefs of the officer are generally irrelevant.

order to drop the weapon.[10] If the suspect was unarmed or appeared to be unarmed, the use of deadly force upon that suspect would likely be considered unreasonable.[11] In contrast, if the suspect had or appeared to have a deadly weapon and refused to drop if after a police order to do so, then the officer's use of deadly force would more likely be considered reasonable. Recognizing that each case presents different facts, subsection (D)(1) does not dictate either of these findings, allowing the trier of fact to consider the totality of the circumstances in deciding whether or not the officer's use of force was reasonable.[12]

Did the officer engage in de-escalation measures prior to using deadly force?

Second, HB 166 would require consideration of whether the officer engaged in de-escalation measures prior to using deadly force in assessing the reasonableness of the officer's beliefs and actions. De-escalation measures designed to reduce the risk of loss of life include but are not limited to taking cover, waiting for backup, trying to calm the suspect, and using less lethal types of force prior to using deadly force, if such measures were feasible. [13]

In requiring consideration of whether the officer engaged in de-escalation measures, HB 166 seeks to encourage officers to engage in de-escalation measures. Many police chiefs have recognized the value of de-escalation training. Many police departments have incorporated de-escalation training in their internal policies and regulations.[14] The problem is that internal police policies and regulations do not have the force of law and are unenforceable. An enacted statute

[10] An amendment to HB 166 has been offered to eliminate this first factor since it is obviously relevant whether the deceased or injured person had a weapon and refused an order to drop it. This is a factor that the jury will likely consider on its own in assessing the reasonableness of the officer's use of deadly force, so it is unnecessary to tell the jury to consider this factor. Additionally, there was some opposition to this portion of the bill by legislators concerned that it would constrain the discretion of the officer when the bill was first introduced as HB 1121 in 2019. To eliminate such opposition and to streamline the bill, I suggest that this factor be removed from the legislation.

[11] Instead of directing the jury to find that an officer's use of deadly force was unreasonable anytime the injured or deceased individual was unarmed or appeared to be unarmed, HB 166 recognizes that even an unarmed individual can pose a threat of death or serious bodily injury to an officer. For example, an individual high on PCP might pose a threat of death or serious bodily injury to an officer even if unarmed.

[12] In *Tennessee v. Garner*, discussed above in footnote 2, the Supreme Court recognized the value of having police issue a warning prior to using deadly force, when feasible. Similarly, HB 166 seeks to encourage officers to issue a warning to a suspect with a deadly weapon prior to using deadly force upon that suspect but does not direct the jury to find that an officer's use of force is unreasonable if the officer failed to issue a warning. If it was not feasible for the officer to give a warning, the jury could find the officer's use of deadly force reasonable despite the lack of a warning.

[13] I recommend that the word "reasonable" at the end of section (D)(2) be changed to "feasible" to make clear that the trier of fact consider whether the police engaged in de-escalation measures *if such measures were feasible*. In other words, if de-escalation measures were not possible, then the failure to engage in de-escalation measures should not be held against the officer.

[14] Indeed, HB 166 is in harmony with the Baltimore Police Department's draft Use of Force Training Curriculum, which incorporates de-escalation training and mentions de-escalation 82 times. It is also in harmony with the Baltimore Police Department's Policy 1115 (published November 24, 2019), which provides that "Members *shall* use De-Escalation Techniques and tactics to reduce any threat or gain compliance to lawful commands without the Use of Force or with the lowest level of force possible." (Core Principles, n. 4) (emphasis added).

has far more potential to influence police behavior than an internal police regulation without the force of law.

If an officer did engage in de-escalation measures prior to using deadly force, this would be a factor weighing in favor of finding that the officer's use of force was reasonable. If de-escalation measures were feasible and the officer failed to engage in these measures, then this would weigh in favor of finding that the officer's use of deadly force was unreasonable. Subsection (D)(2), however, does not require a finding of reasonableness anytime an officer engages in de-escalation measures nor does it require a finding of unreasonableness if the officer did not engage in de-escalation. In recognition of the fact that every case will present different facts and circumstances, HB 166 leaves the ultimate decision as to reasonableness up to the trier of fact.

Did the officer's antecedent conduct increase the risk of a deadly confrontation?

Third, HB 166 requires the trier of fact to consider whether any antecedent conduct of the officer, that is prior to the use of deadly force, increased the risk of a deadly confrontation. Currently, there is a split in the lower courts over whether antecedent conduct may be considered by the trier of fact when assessing the reasonableness of an officer's use of force. Some courts have held that antecedent conduct of the officer should not be considered by the jury.[15] Other courts permit consideration of an officer's antecedent conduct, recognizing that such conduct is relevant to the reasonableness of the officer's conduct. These courts have noted that the fact finder assessing the reasonableness of an officer's use of deadly force need to consider the totality of the circumstances, and what the officer did or didn't do before using deadly force is simply part of the totality of the circumstances.

In 2017, the U.S. Supreme Court had the chance to weigh in on this question of whether antecedent conduct may be considered by the trier of fact assessing the reasonableness of an officer's use of deadly force in a §1983 civil rights action. Instead, in *County of Los Angeles v. Mendez*, the Court confined its decision to the constitutionality of the Ninth Circuit's provocation rule, a rule that rendered an otherwise reasonable use of force unreasonable if the officer intentionally or recklessly provoked the violent confrontation through an independent Fourth Amendment violation.[16] Importantly, the *Mendez* Court expressly declined to address

[15] Maryland courts appear to have sided with courts that disallow consideration of antecedent conduct. The Maryland legislature, through HB 166, can and should express its belief that what an officer does prior to the moment right before the shooting is relevant to the reasonableness of an officer's use of force.

[16] Rejecting the Ninth Circuit's provocation rule, the Court held that Graham v. Connor set forth the exclusive standard for analyzing whether the force used in making a seizure complies with the Fourth Amendment and that the Ninth Circuit's provocation rule was an unwarranted expansion of Graham v. Connor. County of Los Angeles v. Mendez, 581 U.S. ___ (2017). The Supreme Court vacated the judgment of the Court of Appeals and remanded the case for further proceedings consistent with its decision. On remand, the Ninth Circuit again upheld the $4 million verdict in favor of the couple that had sued the two Los Angeles Sheriff's Deputies on the ground that the deputies had violated the Fourth Amendment by entering the property without a warrant and without knocking and announcing their identity prior to entry. The deputies tried to appeal this ruling to the U.S. Supreme Court. The Supreme Court declined to grant cert, letting stand the $4 million verdict in favor of Mr. and Mrs. Mendez without

the question of whether the trier of fact can take into account unreasonable police conduct prior to the use of force. In an asterisked footnote, the Court stated:

> *Graham* commands that an officer's use of force be assessed for reasonableness under the "totality of the circumstances." On respondents' view, that means taking into account unreasonable police conduct prior to the use of force that foreseeably created the need to use it. We did not grant certiorari on that question, and the decision below did not address it. Accordingly, we decline to address it here.[17]

There are several reasons why juries should be allowed to consider the officer's antecedent conduct. First, what the officer did or did not do prior to using deadly force is simply a relevant factor in the totality of the circumstances. If the trier of fact has been instructed to assess the reasonableness of the officer's beliefs and actions in light of the totality of the circumstances, it should be allowed to consider what the officer did or didn't do prior to using deadly force, particularly if the officer's conduct increased the risk of a deadly confrontation. For example, if an officer jumps in front of a moving vehicle and then claims he shot the driver because he reasonably believed the driver posed a threat of death or serious bodily injury, the jury should be allowed to consider the fact that the officer created the risk of death by jumping in front of the vehicle.

Second, juries in civilian cases in which an individual is charged with murder, manslaughter or another crime of violence and claims he acted in self-defense are permitted to consider the conduct of the defendant preceding his use of deadly force, including anything the defendant did that might have increased the risk of a deadly confrontation. For example, during the 2013 murder trial of George Zimmerman, the man who shot and killed Trayvon Martin, the jury was allowed to consider the fact that Zimmerman ignored a 911 dispatcher's suggestion that he stay in his car and wait for police in assessing the reasonableness of Zimmerman's self-defense claim. Just as juries in civilian self-defense cases can consider the defendant's antecedent conduct, juries in officer-involved shooting cases should be allowed to consider antecedent conduct of the officer-defendant.

Third, jurors in officer involved shooting cases are allowed to consider the antecedent conduct of the victim (suspect) in assessing the reasonableness of the officer's use of force. If jurors can consider the antecedent conduct of the victim, they should be allowed to consider the antecedent conduct of the officer defendant as well. It is not fair to allow consideration of the victim's antecedent conduct and disallow consideration of the officer's preseizure conduct.

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comment. David G. Savage, *Supreme Court Let Stand $4 Million Verdict Against L.A. County Deputies in Shooting*, L.A. TIMES (Mar. 4, 2019).

[17] County of Los Angeles v. Mendez, 581 U.S. ___, n. * (2017).

Possible Objections to HB 166

HB 166 is likely to face objections from both the right and the left. Those who favor allowing law enforcement to have maximum discretion over when it is appropriate to use force against civilians may feel the bill goes too far in cabining the discretion of law enforcement officials to use deadly force. Those who feel law enforcement should have much less discretion to use force against civilians than they currently have may feel the bill does not go far enough.

HB 166 is not a radical change in current law, but it markedly improves current law by explicitly requiring jurors deciding cases in which a Maryland police officer has been charged with murder, manslaughter, or other crime of violence and claims justifiable use of force to consider whether the officer sought to use de-escalation measures prior to using deadly force. It also improves upon current law by explicitly broadening the time frame the law considers relevant when assessing the reasonableness of an officer's use of deadly force. Additionally, unlike other state use of force statutes, which focus solely on whether the officer's belief in the need to use deadly force was reasonable but do not consider the reasonableness of the officer's actions, HB 166 requires separate consideration of whether the officer's actions were reasonable.

Possible Objections to HB 166

Possible Objection 1: HB 166 Encourages Jurors to Second Guess Police Officers

One objection that might be lodged against HB 166 encourages jurors to engage in Monday night quarterbacking or second-guessing of police officers. My response to this objection is that jurors in all cases involving a claim of self-defense or defense of others, which is essentially the defense that an officer claiming justifiable force is asserting, engage in an after-the-fact assessment of the facts. In requiring jurors to consider whether the officer engaged in de-escalation measures, HB 166 simply asks jurors to take into account factors that are relevant to whether the officer's use of force was reasonable. Similarly, in requiring jurors to consider the officer's antecedent conduct, HB 166 simply asks jurors to broaden the time frame and consider the reasonableness of the officer's conduct in light of all of the relevant facts and circumstances.

To mitigate the possibility of unfair second-guessing, HB 166, like *Graham v. Connor*, specifies that the trier of fact consider the reasonableness of the officer's use of deadly force from the perspective of a reasonable officer in the defendant officer's shoes. This means that only the facts and circumstances known to the officer at the time are relevant. Information acquired after the fact is not relevant if the defendant officer did not know or have reason to know of such information at the time.

Those who favor increased restrictions on police use of force might object to having the trier of fact apply the perspective of the reasonable officer in the defendant officer's shoes at the time

of the incident. My response to this objection is that unlike private civilians, police officers undergo extensive training, including training on threat perception, and as a general matter are more attuned than the average citizen to behaviors indicative of threat. Therefore, it makes sense to assess the reasonableness of an officer's beliefs and actions from the perspective of a reasonable officer in the defendant officer's shoes.

Possible Objection2: The Model Legislation is Too Complicated and Will Confuse the Average Juror

A second objection that might be lodged against HB 166 is that it is too complicated and will confuse the average juror. HB 166 is not complicated. It tells the trier of fact that they must find two things before they can acquit the officer: (1) the officer reasonably believed that deadly force was necessary to protect the officer or another against a threat of death or serious bodily injury and (2) the officer's actions were reasonable under the totality of the circumstances. HB 166 then specifies that in assessing the reasonableness of the officer's beliefs and actions, the trier of fact shall consider three factors: (1) whether the victim had or appeared to have a weapon and refused an officer's order to drop it, (2) whether the officer engaged in de-escalation measures, and (3) any conduct by the officer increased the risk of a deadly confrontation.[18]

One problem with the Graham v. Connor standard and most use of force statutes is that they provide little to no guidance to jurors with regard to when an officer's use of force is reasonable, leaving it up to jurors to decide this difficult question on their own. HB 166 provides much-needed guidance to jurors in clear and simple language that the average layperson can understand.

Possible Objection 3: The Officer's Antecedent Conduct Should Not Be Considered Because the Supreme Court Has Foreclosed Such Consideration

Another possible objection to HB 166 is the argument that juries should not be allowed to consider the officer's conduct prior to the moment when the officer use deadly force since the Supreme Court has foreclosed such consideration. As discussed above, however, the Supreme Court has not foreclosed this argument. The Supreme Court had the chance to address this issue in *County of Los Angeles v. Mendez* in 2017 but declined to do so, ruling only on whether the Ninth Circuit's provocation rule was in compliance with the Fourth Amendment. The lower courts are split on this issue.

If the officer who used deadly force against a civilian, killing or severely injuring that civilian, took action or failed to act in a way that increased the likelihood of a deadly confrontation prior to the use of deadly force, this is a relevant factor in the totality of the circumstances that bears on the reasonableness of the officer's use of deadly force. In ordinary self-defense cases, we

[18] As mentioned above, I recommend that factor 1 be dropped to streamline the bill and make it even easier for jurors to understand.

allow the jury to consider the defendant's conduct before the use of deadly force in assessing the reasonableness of the defendant's claim of self-defense. There is no reason to treat the officer-defendant in a state criminal law prosecution any differently than the ordinary civilian-defendant in this regard. Additionally, in officer-involved shooting cases, we allow the jury to consider the conduct of the victim-suspect prior to the moment the officer used deadly force in assessing whether the officer's use of force was reasonable. It is only fair to allow the jury to consider the conduct of the officer-defendant prior to the moment the officer used deadly force as well.

Conclusion

Current law has proven inadequate to discourage police use of deadly force in many situations where it appears deadly force was not appropriate. HB 166 would go a long way towards shaping police culture by encouraging police officers to engage in the types of conduct many police chiefs recognize can help reduce the number of bad police shootings.