



# Maryland Chiefs of Police Association Maryland Sheriffs' Association



## MEMORANDUM

TO: The Honorable Luke Clippinger, Chairman, and  
Members of the Judiciary Committee

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee  
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee  
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 15, 2021

RE: **HB 956 Criminal Procedure – Law Enforcement Procedures – Use of Force**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE HB 956**. This bill seeks to impose on Maryland law enforcement officers substantial restrictions on their authority to use force of any kind and far exceeds constitutional standards. These restrictions are untenable and risk the safety of both officers and suspects. When given due consideration to the limits of human performance and the dynamics of a force encounter, it is apparent that this topic is not appropriate for legislation but should continue to be controlled by case law.

The bill sets out a confusing and convoluted set of limitations that are not only unreasonable but are virtually impossible to understand. Not only are the standards contrary to the law established by the United States Supreme Court, but the bill is also so internally contradictory one cannot discern what the proposed limitations are.

For instance, this bill limits an officer's use of any type of force to situations in which he (1) has *probable cause* to believe a person has committed or is about to commit a crime *and* (2) to prevent escape *or* to prevent the commission of a crime. Officers frequently are required to use force in situations other than those covered in the bill. Officers may have to use force to take a person to an emergency facility for an emergency mental health evaluation. Officers are also required to serve court-issued arrest and search warrants and body attachments that may require the use of force.

The bill layers on further restrictions that the force use be reasonably "proportionate" and reasonably "necessary" when (1) making an arrest (2) preventing escape and (3) obtaining compliance – this third event not being authorized in the first section of the bill. Confusion abounds.

Moreover, the standards of “necessary and proportional” are subjective standards that are impossible for an officer to measure with foresight. Judging an officer’s action with hindsight is specifically prohibited by the Supreme Court and is imminently unfair to officers, obstructing their ability to defend themselves and protect the public. Moreover, for public safety officers must use not “proportional” force but greater force than the suspect in order to overcome an attack from a suspect or gain control to prevent escape.

The bill further goes beyond Supreme Court law by requiring that the officer exhaust all other means of action before using deadly force. The law requires that the use of force be *reasonable* as determined by a reasonable officer at the time force was used, in consideration of the circumstances known to the officer at the time. The “totality of the circumstances” review required under this bill makes an officer responsible for information he did not know, and frequently could not have known.

These restrictions and threat of second-guessing significantly hamper the officer’s ability to defend himself or others and to safely control a suspect. Having to stop and consider these elements, which exceed constitutional standards, will cause officers to hesitate under critical conditions. Hesitation allows a dangerous suspect to act against the officer and this bill would limit the officer’s authority to react. And, to preserve public safety, he must react quickly – having to make critical decisions under highly dangerous, stressful conditions. There are no such limitations placed on the suspect. For example, a recent study of prone suspects by the Force Science Institute revealed that even when prone on the ground, suspects can move and assault an officer in an average of .52 seconds – less than a second.

Federal law enforcement officers who work closely with State and local officers will not be subject to these restrictions, and confusion about “who is allowed to do what” during critical, dangerous situations has the potential for disaster.

If enacted, this bill will require extensive changes to training standards, agency policies and expensive implementation, including re-training of over 16,000 Maryland law enforcement officers. The training will be difficult to design and administer considering the contradictions between State statutory and federal law, the standards of which have withstood the test of time.

Finally, this proposed statute would be subject to abuse as it would empower criminal defendants to make misconduct complaints against the arresting officers to damage the credibility of that officer or set the groundwork for a baseless civil suit for perceived technical violations of the statute. Because this bill is confusing and draconian, it has the potential to create a flood of litigation.

For these reasons, MCPA and MSA OPPOSE HB 956 and urge an UNFAVORABLE report.