



**Testimony for the House Judiciary Committee
February 9, 2021**

HB 139 – Law Enforcement Officers – Use of Force

FAVORABLE

JOSEPH SPIELBERGER
PUBLIC POLICY COUNSEL

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
JOHN HENDERSON
PRESIDENT

DANA VICKERS SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

The ACLU of Maryland supports HB 139 to establish a statewide use of force policy for law enforcement officers. We are united in solidarity with more than 90 organizations representing hundreds of thousands of Maryland residents, and victims, survivors, and families of those who have been killed or harmed by police violence.

This bill intends to:

- (1) raise the legal standard from “objectively reasonable” under *Graham v. Connor*¹ and *Garner v. Tennessee*,² to authorize police officers to use force only when it is *necessary*, as a last resort;
- (2) require judging the lawfulness of use of force based on the totality of the circumstances, including the officer’s behavior and whether the officer contributed to the need to use force;
- (3) ensure a civil right of action for victims of unlawful force;
- (4) clearly define terms such as “lethal force” to include chokeholds and other specific tactics; and
- (5) establish new training, reporting, and compliance requirements.

This bill will hold both officers and departments accountable for unlawful force, and change the culture of policing so that officers serve our communities in deference to Constitutional rights and the preservation of every human life, while upholding the dignity and humanity of those they are sworn to protect. Without meaningful accountability, officers have little incentive to follow the law and improve these practices, which jeopardizes public safety everywhere.

Race disparities have been widely documented in every aspect of policing, from stops and searches³ to use of force.⁴ In Baltimore City,

¹ 490 U.S. 386 (1989).

² 471 U.S. 1 (1985).

³ The Stanford Open Policing Project. *Findings*. <https://openpolicing.stanford.edu/findings>

⁴ Frank Edwards, Hedwig Lee, & Michael Esposito. (2019, August 19). *Risk of being killed by police use of force in the United States by age, race-ethnicity, and sex*. Pnas.org.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Maryland

91% of police use of force is directed toward Black residents.⁵ Statewide, 63% of people in Maryland killed by police are Black, which is indeed the *highest percentage of any state in the country*.⁶

In Prince George's County, William Green was shot seven times and killed by an officer while sitting in the police car with his hands cuffed behind his back, while the officer was already being investigated for a prior shooting. The abject cruelty manifested here has time and time again robbed Black communities across Maryland of fathers and mothers, sons and daughters, brothers and sisters, grandparents, neighbors, and cherished friends. The recent protests and demonstrations nationwide that have etched the names of George Floyd, Breonna Taylor, and others into our collective memory represent the outpouring of profound grief and righteous anger at the relentless, uninterrupted cycle of police violence and brutality toward Black people.

The gross disparities in treatment at the hands of police of white and Black people – compare the responses to Black Lives Matter protests versus the violent uprising at the U.S. Capitol – show us that it is indeed possible for officers to respond better, to police differently, in ways that minimize harm and the loss of human life. In fact, analysis of use of force data provided from the Baltimore Police Department shows that officers cited (1) self-defense, (2) defense of others, or (3) to make an arrest as the reason why force was used less than 16% of the time,⁷ suggesting that officers primarily use force when it is not necessary. Officers have a *choice* in how they respond, and we must ensure that they have the tools they need to make safer choices.

Black residents and activists have been working on police reform for decades, and have cried out in front of this committee for real and lasting change. And despite the very best efforts of some legislators on this committee, meaningful change has been wanting.

<https://www.pnas.org/content/116/34/16793>. Roland G. Fryer, Jr. (2016, July). *Analysis of racial differences in police use of force*. Law.yale.edu.

https://law.yale.edu/sites/default/files/area/workshop/leo/leo16_fryer.pdf

⁵ Analysis of data provided by the Baltimore Police Department to Code for America for the years 2015-2019. <https://projectcomport.org>.

⁶ Mapping Police Violence. <http://mappingpoliceviolence.org>

⁷ Analysis of data provided by the Baltimore Police Department to Code for America.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Maryland

In her 1891 speech to the National Council of Women of America, Frances Harper stated,

“A government which can protect and defend its citizens from wrong and outrage and does not is vicious. A government which would do it and cannot is weak; and where human life is insecure through either weakness or viciousness in the administration of law, there must be a lack of justice, and where this is wanting nothing can make up the deficiency.”⁸

The unfathomable loss of life has left gaping wounds across our state, wounds that can never fully heal. However, in passing this bill which creates one of the best standards in the country, Maryland will at least start to bind those wounds, to honor the countless lives lost and the survivors still living, and to protect generations to come.

We know the facts, the data, and the personal experiences of so many across our state. We now have the *obligation* to act courageously, and not settle for anything less than for what this moment calls.

The ACLU-MD urges this committee to act courageously and issue a favorable report on HB 139.

⁸ Shirley Wilson Logan. *With pen and voice: A critical anthology of Nineteenth Century African-American Women*. Southern Illinois University Press (1985).