

HOUSE BILL 1309

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By: **Delegates D.M. Davis, Crutchfield, Acevero, W. Fisher, J. Lewis, and Shetty**
Introduced and read first time: February 7, 2020
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Law Enforcement Procedures – Use of Force**

3 FOR the purpose of prohibiting a certain police officer from using certain force against a
4 person who is handcuffed or restrained, subject to certain exceptions; establishing
5 certain requirements on the use of certain force by a police officer; requiring a police
6 officer to position a certain person in a certain manner; prohibiting a police officer
7 from using a certain weapon against a person, subject to certain exceptions;
8 prohibiting a police officer from using deadly force, subject to certain exceptions;
9 authorizing a police officer to use deadly force only under certain circumstances;
10 establishing that a certain person has the burden of proof in an action under this
11 Act; prohibiting a certain presumption in an action under this Act; defining certain
12 terms; and generally relating to use of force by police officers.

13 BY adding to

14 Article – Criminal Procedure

15 Section 2–501 through 2–505 to be under the new subtitle “Subtitle 5. Use of Force”

16 Annotated Code of Maryland

17 (2018 Replacement Volume and 2019 Supplement)

18 BY repealing and reenacting, without amendments,

19 Article – Public Safety

20 Section 3–207(a)(17)

21 Annotated Code of Maryland

22 (2018 Replacement Volume and 2019 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

24 That the Laws of Maryland read as follows:

25 **Article – Criminal Procedure**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SUBTITLE 5. USE OF FORCE.

2-501.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) (1) "ACTIVE RESISTANCE" MEANS MOVING TO AVOID DETENTION OR ARREST BY A POLICE OFFICER.

(2) "ACTIVE RESISTANCE" INCLUDES:

(I) ATTEMPTING TO LEAVE THE SCENE;

(II) FLEEING;

(III) HIDING FROM DETECTION BY A POLICE OFFICER;

(IV) PHYSICAL RESISTANCE AGAINST BEING HANDCUFFED OR RESTRAINED; AND

(V) PULLING AWAY FROM A POLICE OFFICER'S GRASP.

(3) "ACTIVE RESISTANCE" DOES NOT INCLUDE:

(I) ASSAULTING OR ATTEMPTING TO ASSAULT A POLICE OFFICER OR ANOTHER PERSON;

(II) VERBAL STATEMENTS;

(III) A PERSON'S REACTION TO PAIN CAUSED BY A POLICE OFFICER; OR

(IV) BRACING OR TENSING OF A PERSON'S BODY IN RESPONSE TO OR IN DEFENSE OF A POLICE OFFICER'S GRASP OR INFLICTION OF PAIN.

(C) "CRIME OF VIOLENCE" HAS THE MEANING STATED IN § 5-101 OF THE PUBLIC SAFETY ARTICLE.

(D) (1) "DEADLY FORCE" MEANS FORCE LIKELY OR INTENDED TO CREATE A SUBSTANTIAL RISK OF SERIOUS BODILY INJURY OR DEATH.

(2) "DEADLY FORCE" INCLUDES:

1 (I) THE DISCHARGE OF A WEAPON AT A PERSON;

2 (II) STRIKING A PERSON'S HEAD, NECK, STERNUM, SPINE,
3 GROIN, OR KIDNEYS WITH A HARD OBJECT;

4 (III) INTENTIONALLY STRIKING A PERSON'S HEAD AGAINST A
5 HARD OR FIXED OBJECT;

6 (IV) KNEE STRIKES OR KICKS TO A PERSON'S HEAD;

7 (V) KNEE DROPS AGAINST THE HEAD, NECK, OR TORSO OF A
8 PERSON IN A PRONE OR SUPINE POSITION;

9 (VI) STRIKES TO A PERSON'S THROAT;

10 (VII) CHOKEHOLDS OR NECK HOLDS;

11 (VIII) THE USE OF A LESS LETHAL WEAPON AT CLOSE RANGE
12 AGAINST THE HEAD, NECK, CHEST, OR BACK OF A PERSON; AND

13 (IX) THE USE OF ANY FORCE AGAINST A PERSON WHOSE HEALTH,
14 AGE, CONDITION, OR CIRCUMSTANCES MAKE IT LIKELY THAT DEATH OR SERIOUS
15 BODILY INJURY WILL OCCUR.

16 (E) "DEADLY WEAPON" MEANS AN OBJECT, USED OR INTENDED TO BE
17 USED, THAT IS LIKELY TO CAUSE SERIOUS BODILY INJURY OR DEATH.

18 (F) "IMPROVISED IMPACT WEAPON" MEANS A DEVICE OR AN OBJECT THAT
19 IS NOT APPROVED FOR USE BY A LAW ENFORCEMENT OFFICER.

20 (G) (1) "NONLETHAL FORCE" MEANS A LEVEL OF FORCE USED BY A
21 POLICE OFFICER THAT WHEN USED IS NOT LIKELY TO CAUSE DEATH OR SERIOUS
22 BODILY INJURY.

23 (2) "NONLETHAL FORCE" INCLUDES THE USE OF A WEAPON, OTHER
24 THAN A FIREARM, USED TO CONTROL A PERSON OR DEFEND A PERSON FROM HARM.

25 (H) (1) "PASSIVE RESISTANCE" MEANS FAILING TO COMPLY WITH A
26 POLICE OFFICER'S COMMANDS WITHOUT ATTEMPTING TO FLEE.

27 (2) "PASSIVE RESISTANCE" INCLUDES:

1 (I) A PERSON'S BODY BECOMING LIMP;

2 (II) STANDING STATIONARY AND REFUSING TO MOVE IN THE
3 DIRECTION OF A POLICE OFFICER'S COMMAND; AND

4 (III) VERBAL STATEMENTS OF AN INTENTION TO AVOID OR
5 PREVENT BEING TAKEN INTO CUSTODY.

6 (I) (1) "TOTALITY OF CIRCUMSTANCES" MEANS ALL OF THE FACTS AND
7 CIRCUMSTANCES SURROUNDING AN EVENT.

8 (2) "TOTALITY OF CIRCUMSTANCES" INCLUDES:

9 (I) WHETHER A CRIMINAL OFFENSE HAS OCCURRED;

10 (II) THE NATURE OF A CRIMINAL OFFENSE;

11 (III) THE SIZE AND STRENGTH OF AN ALLEGED OFFENDER;

12 (IV) THE NUMBER OF PERSONS INVOLVED IN A CRIMINAL
13 OFFENSE;

14 (V) THE POSSESSION OF A WEAPON BY A PERSON;

15 (VI) WHETHER A PERSON IS EXHIBITING SIGNS OF MENTAL
16 ILLNESS OR IS EXPERIENCING A BEHAVIORAL HEALTH CRISIS;

17 (VII) WHETHER A PERSON SUFFERS FROM A MEDICAL OR
18 BEHAVIORAL HEALTH DISABILITY, PHYSICAL OR HEARING IMPAIRMENT, IS
19 IMPAIRED BY ALCOHOL OR DRUG USE, OR IS NONCOMPLIANT DUE TO AN INABILITY
20 TO UNDERSTAND A LANGUAGE;

21 (VIII) THE AVAILABILITY OF NONLETHAL FORCE OPTIONS;

22 (IX) ENVIRONMENTAL FACTORS; AND

23 (X) THE AVAILABILITY OF SUPPORT AND SPECIALIZED UNITS.

24 **2-502.**

25 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A POLICE
26 OFFICER MAY NOT USE NONLETHAL FORCE AGAINST A PERSON WHO IS
27 HANDCUFFED OR RESTRAINED.

1 **(B) (1) A POLICE OFFICER MAY USE NONLETHAL FORCE AGAINST A**
2 **PERSON WHO IS HANDCUFFED OR RESTRAINED IN CIRCUMSTANCES WHERE THE**
3 **TOTALITY OF CIRCUMSTANCES INDICATE IT IS REASONABLE AND NECESSARY.**

4 **(2) A POLICE OFFICER WHO USES NONLETHAL FORCE AGAINST A**
5 **PERSON WHO IS HANDCUFFED OR RESTRAINED:**

6 **(I) SHALL INITIALLY USE THE LEAST AMOUNT OF PHYSICAL**
7 **FORCE THAT IS NECESSARY;**

8 **(II) MAY INCREASE THE AMOUNT OF FORCE AS NECESSARY TO**
9 **PREVENT INJURY OR A PERSON'S ESCAPE FROM LAWFUL CUSTODY; AND**

10 **(III) MAY NOT USE MORE FORCE THAN REASONABLY NECESSARY.**

11 **(C) A POLICE OFFICER MAY NOT USE ANY FORCE AGAINST A HANDCUFFED**
12 **OR RESTRAINED PERSON IF THE PERSON'S ACTIONS PRESENT ONLY A RISK OF**
13 **PROPERTY DAMAGE.**

14 **(D) A POLICE OFFICER SHALL POSITION A HANDCUFFED OR RESTRAINED**
15 **PERSON IN A SEATED POSITION OR PLACED ON THE PERSON'S SIDE.**

16 **2-503.**

17 **A POLICE OFFICER MAY NOT USE AN IMPROVISED IMPACT WEAPON AGAINST A**
18 **PERSON UNLESS:**

19 **(1) THE POLICE OFFICER LACKS AN AUTHORIZED BATON OR OTHER**
20 **NONLETHAL WEAPON; AND**

21 **(2) THE USE OF AN IMPROVISED IMPACT WEAPON IS REASONABLE**
22 **AND NECESSARY TO DEFEND AGAINST A PERSON DISPLAYING ACTIVE AGGRESSION**
23 **THAT IS LIKELY TO CAUSE IMMINENT SERIOUS BODILY INJURY OR DEATH.**

24 **2-504.**

25 **(A) A POLICE OFFICER MAY NOT USE DEADLY FORCE:**

26 **(1) AS A FORM OF PUNISHMENT;**

27 **(2) IN THE FORM OF DISCHARGING A FIREARM FOR THE PURPOSE OF**
28 **A WARNING;**

1 **(3) FOR THE SOLE PURPOSE OF INFLICTING PAIN TO GAIN**
2 **COMPLIANCE;**

3 **(4) TO SUBDUE A PERSON WHOSE ACTIONS ARE A THREAT ONLY TO**
4 **PROPERTY;**

5 **(5) AGAINST A PERSON WHOSE CONDUCT IS A THREAT ONLY TO THE**
6 **PERSON;**

7 **(6) AGAINST A PERSON WHO IS HANDCUFFED OR RESTRAINED;**

8 **(7) AGAINST A PERSON ENGAGING IN ONLY PASSIVE RESISTANCE OR**
9 **ACTIVE RESISTANCE, UNLESS:**

10 **(I) THE ACTIVE RESISTANCE INCLUDES POSSESSION OF A**
11 **DEADLY WEAPON; AND**

12 **(II) THE POLICE OFFICER REASONABLY BELIEVES SERIOUS**
13 **BODILY INJURY TO THE POLICE OFFICER OR ANOTHER IS IMMINENT;**

14 **(8) AGAINST A PERSON FLEEING THE PRESENCE OF A POLICE**
15 **OFFICER IF THE POLICE OFFICER KNOWS OR HAS A REASONABLE BELIEF THAT THE**
16 **PERSON DOES NOT POSSESS A DEADLY WEAPON;**

17 **(9) AGAINST A PERSON EXHIBITING SIGNS OF SERIOUS MENTAL**
18 **ILLNESS, UNLESS THE POLICE OFFICER HAS A REASONABLE BELIEF THAT THE**
19 **PERSON POSSESSES A DEADLY WEAPON;**

20 **(10) IF A POLICE OFFICER KNOWS OR REASONABLY SHOULD KNOW THE**
21 **PERSON DOES NOT POSSESS A FIREARM; OR**

22 **(11) DIRECTED AT A MOVING VEHICLE, EXCEPT:**

23 **(I) TO COUNTER AN IMMINENT THREAT OF SERIOUS BODILY**
24 **INJURY OR DEATH TO THE POLICE OFFICER OR ANOTHER PERSON BY A PERSON**
25 **INSIDE THE MOVING VEHICLE WHO IS USING A DEADLY WEAPON; OR**

26 **(II) 1. TO COUNTER A SITUATION WHERE THE VEHICLE IS**
27 **INTENTIONALLY BEING USED AS A DEADLY WEAPON AND ALL OTHER REASONABLE**
28 **MEANS OF DEFENSE HAVE BEEN EXHAUSTED OR ARE NOT PRESENT OR PRACTICAL;**
29 **AND**

1 **2. THE POLICE OFFICER HAS MADE ALL EFFORTS TO**
2 **AVOID BEING IN THE PATH OF THE MOVING VEHICLE.**

3 **(B) A POLICE OFFICER MAY USE DEADLY FORCE ONLY:**

4 **(1) AS A LAST RESORT;**

5 **(2) WHEN REASONABLE AND NECESSARY TO ACHIEVE A LEGITIMATE**
6 **POLICE OBJECTIVE;**

7 **(3) WHEN THE USE OF DEADLY FORCE IS PROPORTIONAL TO THE**
8 **DEGREE OF DANGER AND SERIOUSNESS OF THE OFFENSE;**

9 **(4) AFTER DE-ESCALATION TECHNIQUES HAVE BEEN EXHAUSTED;**

10 **(5) AFTER NONLETHAL FORCE HAS BEEN USED; OR**

11 **(6) IF A LEGITIMATE POLICE OBJECTIVE IS OTHERWISE UNABLE TO**
12 **BE ACHIEVED.**

13 **(C) A LEGITIMATE POLICE OBJECTIVE INCLUDES:**

14 **(1) TO PROTECT THE POLICE OFFICER OR ANOTHER PERSON FROM**
15 **THE IMMINENT THREAT OF SERIOUS BODILY INJURY OR DEATH;**

16 **(2) TO PREVENT THE IMMINENT COMMISSION OR CONTINUATION OF**
17 **A CRIME OF VIOLENCE THAT POSES AN IMMINENT THREAT OF SERIOUS BODILY**
18 **INJURY OR DEATH;**

19 **(3) TO ARREST A PERSON WHO IS RESISTING ORDERS LAWFULLY**
20 **ISSUED BY A POLICE OFFICER; AND**

21 **(4) TO PREVENT A PERSON'S ESCAPE FROM LAWFUL CUSTODY IF:**

22 **(I) THE PERSON PRESENTS AN IMMINENT THREAT OF SERIOUS**
23 **BODILY INJURY OR DEATH TO ANOTHER; AND**

24 **(II) THE PERSON IS RESISTING AN ORDER LAWFULLY ISSUED BY**
25 **A POLICE OFFICER.**

26 **2-505.**

27 **IN AN ACTION UNDER THIS SUBTITLE:**

