

HOUSE BILL 139

E4, E1, D3

(PRE-FILED)

1lr1355
CF 1lr1297

By: **Delegates D.M. Davis, Bartlett, Crutchfield, W. Fisher, and Smith**

Requested: October 30, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Law Enforcement Officers – Use of Force**

3 FOR the purpose of authorizing a person to seek certain relief for use of force by a law
4 enforcement officer under certain circumstances by filing a civil action with a certain
5 court; providing that a certain person is not precluded from pursuing a certain legal
6 remedy under certain circumstances; authorizing the Attorney General to file a civil
7 action for certain relief under certain circumstances; providing for the use of force by
8 a certain law enforcement officer; providing for the use of lethal force by a certain
9 law enforcement officer; providing that a law enforcement officer who uses lethal
10 force against a person in a manner inconsistent with a certain provision of this Act
11 may be charged with certain crimes; requiring each local law enforcement agency to
12 establish, maintain, and implement certain policies and guidance for law
13 enforcement agencies on or before a certain date; requiring each local law
14 enforcement agency to include in its annual budget funds for a certain purpose on or
15 before a certain date; requiring a local law enforcement agency to post on its public
16 website certain data on or before a certain date and every 6 months thereafter;
17 requiring the Attorney General to annually review a certain sample of certain
18 policies enacted by local law enforcement agencies beginning on or before a certain
19 date; providing that certain local law enforcement agencies may not receive certain
20 funds under certain circumstances; requiring the Attorney General to make certain
21 notifications under certain circumstances; defining certain terms; and generally
22 relating to the use of force by law enforcement officers.

23 BY adding to

24 Article – Courts and Judicial Proceedings

25 Section 3-2201 to be under the new subtitle “Subtitle 22. Excessive Force by Law
26 Enforcement Officers”

27 Annotated Code of Maryland

28 (2020 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Criminal Law
3 Section 10–801 to be under the new subtitle “Subtitle 8. Improper Use of Force by
4 Law Enforcement Officers”
5 Annotated Code of Maryland
6 (2012 Replacement Volume and 2020 Supplement)

7 BY adding to
8 Article – Public Safety
9 Section 3–523
10 Annotated Code of Maryland
11 (2018 Replacement Volume and 2020 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
13 That the Laws of Maryland read as follows:

14 **Article – Courts and Judicial Proceedings**

15 **SUBTITLE 22. EXCESSIVE FORCE BY LAW ENFORCEMENT OFFICERS.**

16 **3–2201.**

17 (A) A PERSON MAY SEEK RELIEF BY FILING WITH ANY COURT OF
18 COMPETENT JURISDICTION A CIVIL ACTION FOR THE USE OF FORCE BY A LAW
19 ENFORCEMENT OFFICER IN A MANNER INCONSISTENT WITH § 10–801 OF THE
20 CRIMINAL LAW ARTICLE.

21 (B) A PERSON IS NOT LIMITED TO OR PRECLUDED FROM PURSUING ANY
22 OTHER LEGAL REMEDY BY PROCEEDING UNDER THIS SUBTITLE.

23 (C) THE ATTORNEY GENERAL MAY FILE A CIVIL ACTION FOR SUCH
24 DECLARATORY OR INJUNCTIVE RELIEF AS IS NECESSARY TO REMEDY ANY
25 UNLAWFUL USE OF FORCE.

26 **Article – Criminal Law**

27 **SUBTITLE 8. IMPROPER USE OF FORCE BY LAW ENFORCEMENT OFFICERS.**

28 **10–801.**

29 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
30 INDICATED.

31 (2) “DE–ESCALATION TACTICS AND TECHNIQUES” MEAN PROACTIVE
32 ACTIONS AND APPROACHES USED BY A LAW ENFORCEMENT OFFICER TO STABILIZE

1 A SITUATION SO THAT MORE TIME, OPTIONS, AND RESOURCES ARE AVAILABLE TO
2 GAIN A PERSON'S VOLUNTARY COMPLIANCE AND REDUCE OR ELIMINATE THE NEED
3 TO USE FORCE, INCLUDING:

4 (I) VERBAL PERSUASION;

5 (II) TACTICAL TECHNIQUES;

6 (III) SLOWING DOWN THE PACE OF AN INCIDENT;

7 (IV) WAITING OUT A SUSPECT;

8 (V) CREATING DISTANCE BETWEEN THE OFFICER AND THE
9 PERSON;

10 (VI) REQUESTING ADDITIONAL RESOURCES TO RESOLVE AN
11 INCIDENT;

12 (VII) ALLOWING A PERSON TO MOVE ABOUT IF IT IS SAFE TO DO
13 SO; AND

14 (VIII) ALLOWING A PERSON THE OPPORTUNITY TO MAKE
15 STATEMENTS OR ASK QUESTIONS.

16 (3) (I) "IMMINENT THREAT" MEANS, WHEN BASED ON THE
17 TOTALITY OF THE CIRCUMSTANCES, A REASONABLE LAW ENFORCEMENT OFFICER
18 WITH EXPERIENCE AND TRAINING IN THE USE OF FORCE OR LETHAL FORCE IN THE
19 SAME SITUATION WOULD BELIEVE THAT A PERSON HAS THE PRESENT ABILITY,
20 OPPORTUNITY, AND APPARENT INTENT TO CAUSE IMMEDIATE DEATH OR PHYSICAL
21 INJURY TO THE OFFICER OR ANOTHER PERSON, AND FROM APPEARANCES, MUST BE
22 INSTANTLY CONFRONTED AND ADDRESSED TO PREVENT DEATH OF OR PHYSICAL
23 INJURY TO THE OFFICER OR ANOTHER PERSON.

24 (II) "IMMINENT THREAT" DOES NOT INCLUDE THE MERE FEAR
25 OF FUTURE HARM, NO MATTER HOW GREAT THE FEAR AND NO MATTER HOW GREAT
26 THE LIKELIHOOD OF THE THREAT.

27 (4) "LAW ENFORCEMENT OFFICER" HAS THE MEANING STATED IN §
28 1-202 OF THE PUBLIC SAFETY ARTICLE.

29 (5) (I) "LETHAL FORCE" MEANS ANY FORCE THAT CREATES A
30 SUBSTANTIAL RISK OF DEATH OR SERIOUS PHYSICAL INJURY, WHETHER OR NOT
31 INTENDED TO CAUSE DEATH OR SERIOUS PHYSICAL INJURY.

(II) "LETHAL FORCE" INCLUDES:

1. THE DISCHARGE OF A FIREARM AT A PERSON;

2. A STRIKE TO A PERSON'S HEAD, NECK, STERNUM, SPINE, GROIN, OR KIDNEYS USING ANY HARD OBJECT;

3. A STRIKE TO A PERSON'S HEAD AGAINST A HARD, FIXED OBJECT;

4. A KICK OR STRIKE TO A PERSON'S HEAD USING A KNEE OR FOOT;

5. A STRIKE TO A PERSON'S THROAT;

6. A KNEE-DROP ON THE HEAD, NECK, OR TORSO OF A PERSON IN A PRONE OR SUPINE POSITION;

7. A MANEUVER THAT RESTRICTS BLOOD OR OXYGEN FLOW TO THE BRAIN, INCLUDING CHOKEHOLDS, STRANGLEHOLDS, NECK RESTRAINTS, NECK-HOLDS, AND CAROTID ARTERY RESTRAINTS;

8. ANY CONTACT WITH THE NECK THAT MAY INHIBIT BREATHING OR BLOOD FLOW, OR THAT APPLIES PRESSURE TO THE FRONT, SIDE, OR BACK OF THE NECK;

9. THE DISCHARGE OF A LESS-LETHAL KINETIC IMPACT PROJECTILE LAUNCHER AT A PERSON'S HEAD, NECK, CHEST, OR BACK; AND

10. MORE THAN ONE DISCHARGE OF AN ELECTRONIC CONTROL DEVICE ON A PERSON.

(6) "NECESSARY FORCE" MEANS THAT ANOTHER REASONABLE LAW ENFORCEMENT OFFICER WITH EXPERIENCE AND TRAINING IN THE USE OF FORCE OR LETHAL FORCE WOULD OBJECTIVELY CONCLUDE, UNDER THE TOTALITY OF THE CIRCUMSTANCES, THAT THERE WAS NO REASONABLE ALTERNATIVE TO THE USE OF THE DEGREE OR LEVEL OF FORCE.

(7) "PROPORTIONAL" MEANS NOT EXCESSIVE IN RELATION TO A DIRECT AND LEGITIMATE LAW ENFORCEMENT OBJECTIVE.

(8) "REASONABLE ALTERNATIVES" MEANS TACTICS AND METHODS

1 USED BY A LAW ENFORCEMENT OFFICER TO EFFECTUATE A STOP, A DETENTION, OR
2 AN ARREST THAT DO NOT INCREASE THE RISK OF PHYSICAL INJURY POSED TO THE
3 LAW ENFORCEMENT OFFICER OR ANOTHER PERSON, INCLUDING:

4 (I) VERBAL COMMUNICATION;

5 (II) PHYSICAL DISTANCE;

6 (III) WARNINGS;

7 (IV) DE-ESCALATION TACTICS AND TECHNIQUES;

8 (V) TACTICAL REPOSITIONING;

9 (VI) OTHER ACTIONS INTENDED TO STABILIZE A SITUATION AND
10 REDUCE THE IMMEDIACY OF RISK; AND

11 (VII) AS AN ALTERNATIVE TO LETHAL FORCE, USE OF FORCE
12 THAT IS NOT LETHAL FORCE.

13 (9) "TOTALITY OF THE CIRCUMSTANCES" MEANS ALL CREDIBLE
14 FACTS KNOWN TO A LAW ENFORCEMENT OFFICER, OR THAT COULD HAVE BEEN
15 ASCERTAINED BY THE OFFICER THROUGH VISUAL OBSERVATION, TOUCH, OR
16 AUDIBLE MECHANISMS UNDER THE CIRCUMSTANCES CONFRONTING THE OFFICER
17 LEADING UP TO AND AT THE TIME OF THE USE OF FORCE, INCLUDING:

18 (I) ACTIONS OF A PERSON AGAINST WHOM THE LAW
19 ENFORCEMENT OFFICER USES SUCH FORCE; AND

20 (II) ACTIONS OF THE LAW ENFORCEMENT OFFICER.

21 (B) (1) A LAW ENFORCEMENT OFFICER MAY NOT USE FORCE AGAINST A
22 PERSON UNLESS THE FORCE IS NECESSARY FORCE AND PROPORTIONAL TO:

23 (I) PREVENT AN IMMINENT THREAT OF PHYSICAL INJURY TO A
24 PERSON; OR

25 (II) EFFECTUATE AN ARREST OF A PERSON WHO THE OFFICER
26 HAS PROBABLE CAUSE TO BELIEVE HAS COMMITTED A CRIMINAL OFFENSE, TAKING
27 INTO CONSIDERATION THE SERIOUSNESS OF THE UNDERLYING OFFENSE.

28 (2) (I) A LAW ENFORCEMENT OFFICER MAY USE FORCE ONLY
29 AFTER EXHAUSTING REASONABLE ALTERNATIVES TO THE USE OF FORCE, AND ONLY

1 UNTIL THE USE OF FORCE ACCOMPLISHES A LEGITIMATE LAW ENFORCEMENT
2 OBJECTIVE.

3 (II) A LAW ENFORCEMENT OFFICER SHALL CEASE THE USE OF
4 FORCE AS SOON AS:

5 1. THE PERSON ON WHOM FORCE IS USED:

6 A. IS UNDER THE OFFICER'S CONTROL; OR

7 B. NO LONGER POSES AN IMMINENT THREAT OF SERIOUS
8 PHYSICAL INJURY OR DEATH TO THE OFFICER OR TO ANOTHER PERSON; OR

9 2. THE OFFICER DETERMINES THAT FORCE WILL NO
10 LONGER ACCOMPLISH, OR IS NO LONGER REASONABLE AND PROPORTIONAL TO
11 ACCOMPLISH, A LEGITIMATE LAW ENFORCEMENT OBJECTIVE.

12 (3) EACH APPLICATION OF FORCE SHALL BE EVALUATED
13 INDEPENDENTLY AS A SEPARATE USE OF FORCE TO BE SEPARATELY JUSTIFIED AS
14 LAWFUL UNDER THE PROVISIONS OF THIS SECTION.

15 (C) A LAW ENFORCEMENT OFFICER MAY NOT USE LETHAL FORCE AGAINST
16 A PERSON UNLESS:

17 (1) LETHAL NECESSARY FORCE IS USED AS A LAST RESORT TO
18 PREVENT IMMINENT THREAT OF DEATH OR SERIOUS PHYSICAL INJURY TO THE
19 OFFICER OR ANOTHER PERSON;

20 (2) THE USE OF LETHAL FORCE PRESENTS NO SUBSTANTIAL RISK OF
21 INJURY TO A THIRD PERSON; AND

22 (3) ALL REASONABLE ALTERNATIVES TO THE USE OF LETHAL FORCE
23 HAVE BEEN EXHAUSTED.

24 (D) (1) A LAW ENFORCEMENT OFFICER WHO USES LETHAL FORCE
25 AGAINST A PERSON IN A MANNER INCONSISTENT WITH THIS SECTION THAT RESULTS
26 IN DEATH MAY BE CHARGED WITH MANSLAUGHTER OR MURDER UNDER TITLE 2,
27 SUBTITLE 2 OF THIS ARTICLE.

28 (2) A LAW ENFORCEMENT OFFICER WHO USES LETHAL FORCE
29 AGAINST A PERSON IN A MANNER INCONSISTENT WITH THIS SECTION AND WHICH
30 DOES NOT RESULT IN DEATH MAY BE CHARGED WITH RECKLESS ENDANGERMENT
31 OR ASSAULT UNDER TITLE 3, SUBTITLE 2 OF THIS ARTICLE.

Article – Public Safety

3–523.

(A) IN THIS SECTION, “LOCAL LAW ENFORCEMENT AGENCY” HAS THE MEANING STATED IN § 3–505 OF THIS SUBTITLE.

(B) ON OR BEFORE JULY 1, 2022, IN CONSULTATION WITH THE OFFICE OF THE ATTORNEY GENERAL, IMPACTED PERSONS, COMMUNITIES, AND ORGANIZATIONS INCLUDING REPRESENTATIVES OF CIVIL AND HUMAN RIGHTS ORGANIZATIONS, VICTIMS OF POLICE VIOLENCE, AND REPRESENTATIVES OF LAW ENFORCEMENT AGENCIES, EACH LOCAL LAW ENFORCEMENT AGENCY SHALL ESTABLISH, MAINTAIN, AND IMPLEMENT POLICIES AND GUIDANCE FOR LAW ENFORCEMENT AGENCIES ON:

(1) PROHIBITED ACTIONS UNDER § 10–801 OF THE CRIMINAL LAW ARTICLE;

(2) PRINCIPLES REGARDING USE OF FORCE, INCLUDING:

(I) ENCOURAGING OFFICERS TO RESOLVE INCIDENTS WITHOUT USING FORCE;

(II) USING TACTICS THAT DO NOT ESCALATE AN ENCOUNTER;

(III) CONTINUALLY ASSESSING THE CIRCUMSTANCES TO IMMEDIATELY DECREASE THE LEVEL OF FORCE AND CEASE ALL FORCE AS SOON AS POSSIBLE;

(IV) USING FORCE IN A MANNER THAT AVOIDS UNNECESSARY INJURY OR RISK OF INJURY;

(V) ASSESSING WHETHER THE USE OF FORCE IS APPROPRIATE AND NECESSARY;

(VI) UNLESS A REASONABLE OFFICER WOULD CONSIDER IT TO BE UNSAFE TO DO SO UNDER THE TOTALITY OF THE CIRCUMSTANCES, REQUIRING AN OFFICER TO IDENTIFY HIMSELF OR HERSELF AND ISSUE A VERBAL WARNING TO THE PERSON WHOM THE OFFICER SEEKS TO STOP, DETAIL, OR APPREHEND THAT:

1. REQUESTS THAT THE PERSON OBEY THE OFFICER;

AND

1 **2. NOTIFIES THE PERSON THAT THE OFFICER MAY USE**
2 **FORCE AGAINST THE PERSON TO EFFECTUATE A STOP, DETENTION, OR ARREST OF**
3 **THE PERSON;**

4 **(VII) REQUIRING OFFICERS TO INTERVENE TO PREVENT OR STOP**
5 **ANY OFFICER FROM IMPROPERLY USING FORCE, AND REPORT TO A SUPERVISOR**
6 **WHEN ANOTHER OFFICER IMPROPERLY USES FORCE; AND**

7 **(VIII) USING THE LEAST AMOUNT OF FORCE POSSIBLE WHEN**
8 **INTERACTING WITH:**

9 **1. PREGNANT PERSONS;**

10 **2. CHILDREN AND YOUTH UNDER THE AGE OF 26 YEARS;**

11 **3. ELDERLY PERSONS;**

12 **4. PERSONS WITH MENTAL, BEHAVIORAL,**
13 **DEVELOPMENTAL, INTELLECTUAL, OR PHYSICAL DISABILITIES OR IMPAIRMENTS;**

14 **5. PERSONS EXPERIENCING PERCEPTUAL OR**
15 **COGNITIVE IMPAIRMENTS DUE TO USE OF ALCOHOL, NARCOTICS, HALLUCINOGENS,**
16 **OR OTHER DRUGS;**

17 **6. PERSONS SUFFERING FROM A SERIOUS MEDICAL**
18 **CONDITION;**

19 **7. PERSONS OF COLOR;**

20 **8. PERSONS WITH LIMITED ENGLISH PROFICIENCY; AND**

21 **9. PERSONS WHO MAY POSSESS KNIVES OR EDGED OR**
22 **BLUNT WEAPONS;**

23 **(3) PROHIBITING THE DISCHARGE OF A FIREARM FROM OR AT A**
24 **MOVING VEHICLE UNLESS A PERSON INSIDE THE VEHICLE IS USING OR**
25 **THREATENING LETHAL FORCE BY MEANS OTHER THAN THE USE OF THE VEHICLE;**

26 **(4) REQUIRING OFFICERS, WHO ARE PROPERLY TRAINED, TO**
27 **PROMPTLY PROVIDE OR OTHERWISE PROMPTLY PROCURE MEDICAL ASSISTANCE**
28 **FOR A PERSON INJURED IN A USE OF FORCE INCIDENT UNLESS A REASONABLE**
29 **OFFICER WOULD CONSIDER IT UNSAFE TO DO SO UNDER THE TOTALITY OF THE**

1 CIRCUMSTANCES;

2 (5) PROTECTING OFFICERS FROM RETALIATION OR DISCIPLINE FOR:

3 (I) INTERVENING TO PREVENT THE IMPROPER USE OF FORCE
4 BY ANOTHER OFFICER; AND

5 (II) REPORTING THE IMPROPER USE OF FORCE BY ANOTHER
6 OFFICER; AND

7 (6) REQUIRING EACH LAW ENFORCEMENT AGENCY TO DOCUMENT
8 ALL USES OF FORCE, INVESTIGATE USES OF FORCE, ASSESS WHETHER THE USE OF
9 FORCE IS NECESSARY AND CONSISTENT WITH STATE LAW, AND REVIEW USE OF
10 FORCE INVESTIGATIONS.

11 (C) ON OR BEFORE JULY 1, 2022, EACH LOCAL LAW ENFORCEMENT AGENCY
12 SHALL INCLUDE IN ITS ANNUAL BUDGET FUNDS FOR TRAINING AND ASSESSMENT OF
13 TRAINING, INCLUDING ASSESSMENTS OF SUPERVISORS REINFORCING TRAINING IN
14 REAL WORLD SCENARIOS.

15 (D) ON OR BEFORE DECEMBER 31, 2021, AND EVERY 6 MONTHS
16 THEREAFTER, EACH LOCAL LAW ENFORCEMENT AGENCY SHALL POST, ON THE
17 PUBLIC WEBSITE FOR THE AGENCY, DATA REGARDING USE OF FORCE BY EACH
18 OFFICER EMPLOYED BY THE LOCAL LAW ENFORCEMENT AGENCY, DISAGGREGATED
19 BY THE RACE, AGE, SEX, GENDER, ETHNICITY, COLOR, NATIONAL ORIGIN, RELIGION,
20 AND DISABILITY OF THE INDIVIDUALS ON WHOM FORCE WAS USED.

21 (E) (1) ON OR BEFORE DECEMBER 31, 2021, AND EACH YEAR
22 THEREAFTER, THE ATTORNEY GENERAL SHALL REVIEW A REPRESENTATIVE
23 SAMPLE OF THE POLICIES ENACTED BY LOCAL LAW ENFORCEMENT AGENCIES
24 RELATING TO USE OF FORCE AND THE INTERNAL FILES OF LAW ENFORCEMENT
25 AGENCIES TO DETERMINE COMPLIANCE WITH THIS SECTION.

26 (2) IF THE ATTORNEY GENERAL DETERMINES THAT A LOCAL LAW
27 ENFORCEMENT AGENCY HAS NOT COMPLIED WITH THIS SECTION:

28 (I) THE ATTORNEY GENERAL SHALL NOTIFY THE EXECUTIVE
29 DIRECTOR OF THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND
30 VICTIM SERVICES AND THE COMPTROLLER; AND

31 (II) THE LOCAL LAW ENFORCEMENT AGENCY MAY NOT RECEIVE
32 FUNDS ADMINISTERED THROUGH THE STATE AID FOR POLICE PROTECTION FUND
33 UNDER TITLE 4, SUBTITLE 5 OF THIS ARTICLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2021.