

A photograph of several police officers in riot gear, including helmets with visors and shields, standing in a line. They are wearing blue uniforms. The background shows green trees and a brick wall.

BACKGROUNDER

COSPONSOR HR 4359: THE POLICE EXERCISING ABSOLUTE CARE WITH EVERYONE ACT OF 2019 (PEACE ACT)

JUNE 2020

APPROXIMATELY 1,000 PEOPLE ARE FATALLY SHOT & KILLED ANNUALLY BY POLICE

BLACK PEOPLE REPRESENT 12.7% OF THE POPULATION, BUT 23% OF THOSE KILLED BY POLICING USING FIREARMS IN 2019¹

BLACK PEOPLE WERE KILLED BY POLICE AT MORE THAN TWICE THE RATE FOR WHITE PEOPLE FROM 2015-2019.²

1 IN 1,000 BLACK MEN WILL BE KILLED BY POLICE IN THE US IN THEIR LIFETIME, PARTICULARLY BETWEEN AGES 20-35 YEARS OLD³

0 STATES IN THE USA HAVE STATUTES ON THE USE OF LETHAL FORCE THAT COMPLY WITH INTERNATIONAL LAW AND STANDARDS.

THE PROBLEM

The horrific, videotaped killing of George Floyd, a 46-year old Black man who died after a white police officer in Minneapolis, Minnesota kept his knee on George Floyd's neck for nearly nine minutes, sparked widespread protests across the US seeking accountability and systemic change for this issue that has plagued Black people in the US for over 400 years.

Approximately 1,000 people are killed by police every year in the United States. The Washington Post reported that police shot and killed 1,003 people in 2019, though the actual number may be higher. The federal government does not collect this data, despite enactment of the Death in Custody Reporting Act in 2014 requiring this data to be collected, disaggregated and published annually. International law and standards require that

force is only used when necessary and proportionate and that lethal force be reserved as a last resort, against an imminent threat of death or serious injury, and after exhausting all other methods.

However, US laws on the use of force and lethal force are far too permissive, resulting in human rights violations and deaths. A person's right to survive an interaction with law enforcement should not be dependent on where they live. A more restrictive national standard is needed to limit law enforcement use of force to prevent families from being devastated by this violence and provide for accountability when police use of force is excessive or unlawful.

**AMNESTY
INTERNATIONAL**



RightsNow!

1 <https://www.washingtonpost.com/graphics/2019/national/police-shootings-2019/>
2. <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>
3. <https://www.pnas.org/content/116/34/16793>

BACKGROUND

Amnesty International has worked on policing issues in the USA since the “Rights for All” Campaign¹ in the late 1990’s. However, the death of Mike Brown in Ferguson, Missouri in 2014 and the resulting report² on his death and the policing of protests helped illustrate how Missouri’s use of lethal force statute did not comply with international law and standards nor with US Constitutional law standards. AIUSA set out on reviewing the use of lethal force statutes for all 50 states and Washington, DC, where they exist.

Amnesty International’s 2015 Deadly Force Report³ found that all 50 states and the District of Columbia failed to meet international law and standards for the use of lethal force by police. Nine states and Washington DC have not even enacted laws on use of lethal force by law enforcement officers. Congress must enact a federal standard to ensure that a person’s right to survive a police encounter does not depend on the color of their skin or where they live. A more restrictive national standard is urgently needed to protect our rights such as the right to survive an interaction with law enforcement, the right to be safe, the right to be free from discrimination and the right to equal protection of the law.

CASE STUDY: TAMIR RICE

Tamir Rice, a 12 year old Black child, was playing with a toy gun in a park in Cleveland, Ohio in 2014. An emergency call was made during which the caller raised concern that someone was pointing a gun at members of the public. The caller twice stated that the gun was “probably fake” and that the individual was “probably a juvenile”. An edited recording of the subsequent Cleveland Police Dispatch call suggests that the information regarding Tamir Rice’s youth and the likelihood that the gun was not a real firearm was not relayed to the responding officers. The video footage of the incident shows Rice was shot as a Cleveland Police officer opens the car door immediately after the patrol car pulled up within a few feet of Tamir Rice.

It was later confirmed by the Cleveland Police Department that Rice had been in possession of a toy gun. Shortly after the fatal shooting, Cleveland Police Department issued statements which were not consistent with the evidence presented in video and cellular phone footage which was made public. A grand jury failed to indict the officer.

How the PEACE Act could apply to this case:

Under the PEACE use of force standard, the police who responded to the emergency call would have been incentivized to keep more distance from Tamir Rice when they drove up to the park so that they could have first seen for themselves that he was a juvenile and only had a toy gun. Instead, they pulled up within 10 feet of him⁴, which would have made it difficult to take cover, or use verbal persuasion or other tactics suggested by the police department’s use-of-force policy, had Tamir Rice resisted compliance. Instead of attempting to talk to Tamir Rice first, a police officer killed this 12-year-old boy within two seconds of arriving at the park. Under the totality of the circumstances as written in the PEACE Act, in this case the officers’ actions leading up to the use of force incident would be considered, which goes beyond the purview of the current national standard, as interpreted by the US Supreme Court in *Graham v. Connor* and *Tennessee v. Garner*, which would apply given that Ohio lacks a state use of force by police law.

1 <https://www.amnesty.org/en/documents/AMR51/035/1998/en/>

2 <https://www.amnestyusa.org/wp-content/uploads/2017/04/onthestreetsofamericaamnestyinternational.pdf>

3 https://www.amnestyusa.org/wp-content/uploads/2015/06/aiusa_deadlyforcereportjune2015-1.pdf

4 <https://www.nytimes.com/2015/01/23/us/in-tamir-rice-shooting-in-cleveland-many-errors-by-police-then-a-fatal-one.html>

BILL SUMMARY

The PEACE Act, (HR 4359¹), was introduced in the House on 17 September 2019 by Reps. Ro Khanna (CA – 17) and Lacy Clay (MO – 1). The bill is currently being debated in the House of Representatives as a part of the George Floyd Justice in Policing Act introduced in the House and Senate on June 8. The PEACE Act would:

- Only permit lethal force by federal officers when necessary to prevent loss of life and serious bodily injury. Additionally, it would only permit less-than-lethal force when necessary and proportional.
- This act also directs the Attorney General to create guidance on the use of lethal force and less-than-lethal force on vulnerable populations including pregnant women, young people, elderly people, people with disabilities, and others.
- It also limits states and localities from receiving Byrne Justice Assistance Grant funds from the US Department of Justice for the years in which their use of force by police statutes are dissimilar to that outlined in the bill.

CONGRESSIONAL TARGETS

US House of Representatives:

- Rep. Karen Bass (D-CA-37)(Congressional Black Caucus Chair)
- Rep. James "Jim" Clyburn (D-SC-6) (Democratic party Whip)
- Rep. Val Demings (D-FL-10) (former law enforcement)
- Rep. Hakeem Jeffries (D-NY-08)
- Rep. Cedric Richmond (D-LA-02)
- Rep. Lucy McBath (D-GA-6)
- Rep. Tom McClintock (R-CA-04)(supports bipartisan legislation supported by Amnesty to end qualified immunity doctrine)

US Senate²:

- Sen. Tim Scott (R-SC) (lead author of GOP lead policing proposal)
- Sen. Lindsey Graham (R-SC) (Judiciary Committee Chair)
- Sen. Chuck Schumer (D-NY) (Senate Minority leader)
- Sen. Mitt Romney (R-UT) (attended Black Lives Matter protest with faith community in DC)
- Sen. Mike Lee (R-UT) (previously engaged with bipartisan criminal justice reform)
- Sen. Chuck Grassley (R-IA)
- Sen. Ben Sasse (R-NE)
- Sen. Joe Manchin (D- WV)
- Sen. Kyrsten Sinema (D-AZ)

¹ <https://www.congress.gov/bill/116th-congress/house-bill/4359?q=%7B%22search%22%3A%5B%22HR+4359%22%5D%7D&r=1&s=1>

² Bill not yet introduced in the Senate

POSSIBLE CHALLENGES AND COUNTERARGUMENTS:

Police already have lethal force policies that already limit it to a last resort and at the highest end of the force continuum, so these bills are unnecessarily.

Response: This is correct, however violations of policies only lead to internal review and, if anything, professional discipline, such as retraining, losing vacation days or, at most, being fired. We need legal guidelines for officers' use of force, including lethal force, and legal accountability when those limits are crossed.

Federal law enforcement makes up such a small number of law enforcement agencies nationwide. Wouldn't this activism be better spent on focusing on the hundreds of thousands of local and state law enforcement officers' use of force and the state laws that apply to them?

Response: While there are approximately 100,000¹ federal law enforcement officers in comparison to the more than a million state and local law enforcement officers – several federal agencies received scrutiny for their excessive force complaints and lethal force incidents² with little accountability³, such as US Customs and Border Protection. The PEACE Act would specifically hold those agents and officers to a higher standard and provide accountability. While AIUSA continues to work for change at the state level, the PEACE Act has a provision that would deny states federal funding if they do not enact laws that meet this federal standard set out in the bill.

Isn't there more that needs to be done besides just focusing on use of force, including lethal force, at the federal level?

Response: We see these changes as part of the solution, not the end of the fight to eliminate systemic racism in our policing. We know not everyone will agree, but we believe passing these reforms, now, means immediate change and a platform from which to work for more. The primary obligation of law enforcement is to protect life. While additional measures are needed to address issues around racial profiling, the use of chokeholds and the militarization of the police, to name just a few, reform of our use of force and lethal force statutes gets to the heart of holding police accountable for uncounted

1 <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6708>

2 <https://www.theguardian.com/us-news/2018/may/02/fatal-encounters-97-deaths-point-to-pattern-of-border-agent-violence-across-america>

3 <https://www.americanimmigrationcouncil.org/research/still-no-action-taken-complaints-against-border-patrol-agents-continue-go-unanswered>