



February 5, 2021

Delegate Luke Clippinger
Chair

Delegate Vanessa Atterbeary
Vice Chair

Maryland Senate: Judicial Proceeding Committee

Re: Amnesty International USA Statement for February 9 Bill Hearing: Law Enforcement Officers – Use of Force, HB 139

Amnesty International USA¹ respectfully submits this statement to the record, in connection with the above referenced hearing before the House of Delegates Judiciary Committee, and asks that this statement be submitted as part of the official hearing record.

Each year police kill over 1,000 people in the USA. Between 2013 and 2020, 144 people were killed by police in Maryland, 87 of them Black. In these years, Black people accounted for 29% of the state's population and 60% of the people killed by police². Maryland remains one of nine states in the US including Washington, DC without a deadly use of force by police statute³. This means that Maryland Courts apply US Supreme Court cases defining the minimal constitutional limits of police use of force, *Graham v. Connor* 490 U.S.386 (1989) and *Tennessee v. Garner* 471 U.S. 1 (1985). While *Graham's* "reasonableness" standard is commonplace and widely accepted by law enforcement, Amnesty International believes these limits set by the Court are too permissive and do not meet the US obligations under international law on the use of force and firearms by police.

We believe that HB 139 makes significant improvements upon that foundation, by limiting the use of force unless it is necessary as a last resort, under the totality of the circumstances, after de-escalation and other reasonable alternatives have been exhausted. The bill also provides for civil remedies to the use of excessive force by law enforcement, makes clear the difference between an actual immediate threat and a fear of an immediate threat, and calls on officers to intervene if they know excessive force is being used by other officers. For these and the reasons below, Amnesty International supports passage of HB 139.

While it should be welcomed that HB 139 requires that force be limited to "unless necessary", what is more significant is how this legislation incorporates the international standard of necessity into its language. The bill gets much closer to addressing the three core components of necessity: that force be assessed on the basis of whether it is qualitative, quantitative and temporal. This translates to whether force is needed at all, whether force used is proportional in relation to a changing or diminishing threat, and that force be stopped once the legitimate law enforcement objective is achieved. We mark this as significant progress to limit the use of unnecessary force under the rubric of international standards for law enforcement use of force.

¹ Amnesty International is a global movement of more than ten million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. We have hundreds of thousands of supporters, members and activists in the U.S. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

² Mapping Police Violence, State Comparison Tool. <https://mappingpoliceviolence.org/states>

³ Amnesty International, Deadly Force: Police use of lethal force in the United States, 2015, www.amnestyusa.org/wpcontent/uploads/2015/06/aiusa_deadlyforcereportjune2015-1.pdf

Under the definition of totality of the circumstances the bill adds consideration for the actions of the officer and subject leading up to and during the use of force encounter. This is extremely important to inoculate incidents where officers may, out of reckless actions, create a situation requiring the use of force. While critics of this provision will claim that this violates the Constitutional standards set by *Graham v Connor* and that a court must not decide whether these incidents are justified based on the benefit of hindsight – these arguments, do not take into account similar changes already enacted into use of force laws in other states and the wider movement to restrict the use of force and lethal force of law enforcement by state legislatures. In 2019, California enacted AB 392, the California Act to Save Lives, that defines totality of the circumstances in the same way as in HB 139. In October 2020 Vermont passed a use of force law that also incorporates some of these elements, and we see them cropping up in proposals around the country during the 2021-2022 state legislative session, including in Washington and New Mexico. These components of HB 139 bring important clarity to, and even expand upon the floor set by *Graham* and are in keeping with trends seen in states around the nation to statutorily limit the use of force by law enforcement.

Protecting the public and maintaining officer safety are not at odds with one another. Police departments that have placed more restrictive use of force policies in place have seen a decrease in the number of people killed without risking officer safety, while continuing to reduce crime and gaining public trust. In 2011, the Seattle Police Department, under a consent decree with the US Department of Justice, restricted its department policy on use of force given recommendations emphasizing de-escalation. A 2017 Seattle Police Monitor report⁴ found that following implementation, police use of force decreased, as did crime, without an increase in officer injury. While use of force policies play an important role in providing guidance to law enforcement, they do not provide accountability for the unlawful use of force. It is therefore imperative that the Maryland Legislature take this opportunity to enact a more restrictive, consistent legal standard throughout the entire state that strives to meet the international standards to prevent the unnecessary use of force and hold officers accountable when they exceed those restrictions and facilitate redress when officers' actions violate a person's human rights.

Based on the points raised in this testimony, Amnesty International supports HB 139 and urges this committee to pass this important piece of legislation.

Should you have any questions, please email Senior Advocate, Criminal Justice Program, Kristina Roth at kroth@aiusa.org or (202) 945- 2021.

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⁴ Ninth Systemic Assessment: Use of Force . Seattle Police Monitor , Apr. 2017, [static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/58e6a753ff7c50ebbad126f8/1491511130661/Ninth Systemic Assessment--Use of Force--FINAL.pdf](https://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/58e6a753ff7c50ebbad126f8/1491511130661/Ninth+Systemic+Assessment--Use+of+Force--FINAL.pdf).