



DRAFT -9-25-2020 – PROPOSED MODEL LANGUAGE – **NOT LAW YET**

(Note: Contributing authors, ACLU Maryland, Casa Maryland, Amnesty International and others)

LIMITING POLICE USE OF FORCE

Article – Public Safety

SECTION ONE

3-203.

(a) In this section, the following words have the meanings indicated:

- (1) “Law Enforcement Officer” has the meaning stated in §1-202 of the Public Safety Article.
- (2) “Reasonable alternatives” means tactics and methods used by a law enforcement officer to effectuate an arrest that do not increase the risk posed to the law enforcement officer or another person, including verbal communication, distance, warnings, de-escalation tactics and techniques, tactical repositioning, and other tactics and techniques intended to stabilize the situation and reduce the immediacy of the risk so that more time, options, and resources can be called upon to resolve the situation without the use of force. With respect to the use of deadly force, such term includes the use of less lethal force.
- (3) “De-escalation tactics and techniques” mean proactive actions and approaches used by a law enforcement officer to stabilize the situation so that more time, options, and resources are available to gain a person’s voluntary compliance and reduce or eliminate the need to use force, including verbal persuasion, warnings, tactical techniques, slowing down the pace of an incident, waiting out a subject, creating distance between the officer and the threat, requesting additional resources to resolve the incident, permitting a person to move about when safe, and permitting a person the opportunity to make statements or ask questions.
- (4) “Necessary” means that another reasonable person with experience and training in the use of deadly 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.
- (5) “Totality of the circumstances” means all facts known or that should have been known to the law enforcement officer, or could have been ascertained by the officer through visual observation, touch, or audible mechanisms under the circumstances confronting the officer at all times



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leading up to and at the time of the use of force, including the actions of the person against whom the law enforcement officer uses such force, which would cause an ordinary and prudent person with experience and training in the use of force to act or think in a similar way.

- (6) “Imminent” means when, based on the totality of the circumstances, a reasonable person with experience and training in the use of deadly force in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An imminent threat is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the threat, but one that, from appearances, must be instantly confronted and addressed.
- (b) A law enforcement officer may not use force unless force is necessary and proportional to effectuate an arrest of a person who the officer has probable cause to believe has committed a criminal offense, taking into consideration the seriousness of the underlying offense, and only after exhausting alternatives to the use of such force.
- (c) When safe to do so, a law enforcement officer must identify themselves and issue a verbal warning to the person the law enforcement officers seek to apprehend, which warning includes:
- (1) a request that the person surrender to the law enforcement officer; and
 - (2) notifies the person that the law enforcement officer may use force against the person to effectuate an arrest of the person.
- (d) A law enforcement officer shall intervene to prevent or stop any law enforcement officer from conducting any act that violates this subsection, and report to a supervisor when another officer violates this subsection.
- (e) A law enforcement officer shall promptly provide, if properly trained, or otherwise promptly procure medical assistance for a person injured in a use of force incident, when safe and reasonable to do so.
- (f) Under this subsection, each application of force shall be evaluated independently as a separate use of force to be separately justified as objectively necessary and proportional.
- (g) It is not a defense to a charge under this section that the use of force was justified when a law enforcement officer



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- (1) Uses force inconsistently with the provisions of this section; or
- (2) Acts intentionally, negligently, or recklessly in contributing to the need for the use of such force.

3-209.

- (A) A person charged with a crime under § 3-202, § 3-203, § 3-204, or § 3-203 of this subtitle, who is not a law enforcement officer in the performance of an official duty, may assert any judicially recognized defense.
- (B) A law enforcement officer in the performance of an official duty charged with a crime under § 3-202, § 3-203, § 3-204, or § 3-203 of this subtitle may assert any defense recognized in § 3-203.

(1) The Attorney General may bring a civil action in an appropriate circuit court for such declaratory or injunctive relief as is necessary to carry out this subsection.

(2) A person who is aggrieved by a violation of this section may bring a civil action in an appropriate circuit court.

3-401.

(a) In this section, the following words have the meaning indicated.

- (1) “Law Enforcement Officer” has the meaning stated in §1-202 of the Public Safety Article.
- (2) “Lethal force” means any force that creates a substantial risk of causing death or serious physical injury, **and causes death**, whether the law enforcement officer intended to cause death or serious physical injury or not. Lethal force includes, but is not limited to:
 - i. The discharge of a firearm in the direction of a person;
 - ii. Strikes with any hard object such as a baton, flashlight, radio, weapon stock/handle, or improvised impact weapon to the head, neck, sternum, spine, groin, or kidneys;
 - iii. Intentionally striking a person’s head against a hard, fixed object such as a roadway, concrete floor, wall, or iron bars;
 - iv. Knee strikes or kicks to a person’s head;
 - v. Any strikes to a person’s throat;
 - vi. Knee drops against a prone or supine person’s head, neck, or torso;



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- vii. a maneuver that restricts blood or oxygen flow to the brain, including chokeholds, strangleholds, neck restraints, neckholds, and carotid artery restraints; and any contact with the neck that may inhibit breathing or bloodflow, or that applies pressure to the front, side, or back of the neck.
- viii. Shooting someone in the head, neck, chest, or back, with a less-lethal launcher at close range;
- ix. Multiple discharges of electronic control weapons;
- x. The use of any force on a person whose health, age, condition, or circumstances make it likely death or serious physical injury will result.

(3) “Reasonable alternatives” has the meaning stated in § 3-203 of the Public Safety article.

(4) “De-escalation tactics and techniques” has the meaning stated in § 3-203 of the Public Safety article.

(5) “Necessary” has the meaning stated in § 3-203 of the Public Safety article.

(6) “Totality of the circumstances” has the meaning stated in § 3-203 of the Public Safety article.

(7) “Imminent” has the meaning stated in § 3-203 of the Public Safety article.

3-402.

(a) A law enforcement officer may not use lethal force against a person unless:

- (1) Such force is necessary, as a last resort, to prevent imminent and serious physical injury or death to the officer or another person;
- (2) The use of force presents no substantial risk of injury to a third person; and
- (3) All reasonable alternatives have been exhausted before engaging in the use of lethal force.
- (4)



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- (b) A law enforcement officer may not discharge a firearm from or at a moving vehicle unless a person inside the vehicle is using or threatening lethal force by means other than the vehicle itself.
- (c) When safe to do so, a law enforcement officer must identify themselves and issue a verbal warning to the person the law enforcement officers seek to apprehend, which warning includes:
 - (1) a request that the person surrender to the law enforcement officer;
 - (2) and notifies the person that the law enforcement officer may use lethal force against the person to effectuate an arrest of the person.
- (d) A law enforcement officer shall intervene to prevent or stop any law enforcement officer from conducting any act that violates this subsection, and report to a supervisor when another officer violates this subsection.
- (e) Under this subsection, each application of lethal force shall be evaluated independently, as a separate use of lethal force to be separately justified as objectively necessary and proportional.
- (f) Under this subsection, if it is determined that a law enforcement officer unreasonably believed someone to be in apparent imminent threat, the police officer's belief, although unreasonable, may be partial mitigation against the police officer's liability for first degree murder such that the police officer may be convicted of second degree murder.
- (g) If a law enforcement officer believes that an assailant or a potential assailant has a firearm or other deadly weapon and it is later discovered that the assailant or potential assailant has no deadly weapon, then the absence of a deadly weapon shall be evidence that the police officer lacked reasonable grounds for the belief that an imminent threat existed, such that the absence of such circumstance may be evidence of malice aforethought on a charge of murder if a police officer kills an individual.
- (h)
- (i) It is not a defense to a charge under this section that the use of lethal force was justified when a law enforcement officer:
 - (1) Uses lethal force inconsistently with the provisions of this section; or
 - (2) Acts intentionally, negligently, or recklessly in contributing to the need for the use of lethal force.



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- (j) The Attorney General may bring a civil action in an appropriate circuit court for such declaratory or injunctive relief as is necessary to carry out this section.
- (k) A person who is aggrieved by a violation of this section may bring a civil action in an appropriate circuit court.

Subtitle 8

3-803. **BURDEN OF PROOF.**

(a) In a civil proceeding, a law enforcement officer has the burden of presenting evidence other than his or her testimony and other than expert testimony on the issue of whether the police officer acted reasonably when the law enforcement officer used force of any kind during his or her work as a police officer, which evidence shall be reviewed by a jury, unless the parties in a civil proceeding agree to a bench trial.

(b) In a criminal proceeding against a law enforcement officer's use of force, the state shall present expert testimony and other proof on the issue of whether a police officer acted reasonably when a law enforcement officer used force of any kind during his or her work as a police officer.

(c) In a civil proceeding, a plaintiff or other complainant suing a police officer, the state, a county, a municipality, or other lawfully authorized entity shall present expert testimony and other proof on the issue of whether the enforcement officer acted reasonably when he or she used force of any kind during his or her work as a police officer, which evidence shall be reviewed by a jury, unless the parties in the civil proceeding agree to a bench trial.

SECTION TWO

1. By July 1, 2021, each local law enforcement agency, as defined in §3-505 of the Public Safety Article, shall, in consultation with the Attorney General, impacted persons, communities, or organizations including representatives of civil and human rights organizations or victims of police violence, enact, maintain and implement policies and guidance for:
 - (1) Limiting use of force against:

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- a. Pregnant persons;
 - b. Children and youth under age 26;
 - c. Elderly persons;
 - d. Persons with mental, behavioral, developmental, intellectual, or physical disabilities or impairments;
 - e. Persons experiencing perceptual or cognitive impairments due to use of alcohol, narcotics, hallucinogens, or other drugs;
 - f. Persons suffering from a serious medical condition;
 - g. Black people and people of color;
 - h. Persons with limited English proficiency; and
 - i. Persons who may be armed with knives or objects with sharp edges (?); and
- (2) Protecting officers from retaliation or discipline for taking action under §3-203(d) or §3-402(d).
2. Annually, the Attorney General shall randomly review the policies enacted under this provision and the internal files of law enforcement agencies to determine compliance with this section.
 3. Law enforcement agencies found to be out of compliance with this section shall not be eligible for funds administered through the State Aid for Police Protection (SAPP) formula grant.