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HOUSE DEMOCRATIC POLICY COMMITTEE

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 @PADemPolicy

House of Representatives
COMMONWEALTH OF PENNSYLVANIA

HOUSE DEMOCRATIC POLICY COMMITTEE HEARING

Topic: Use of Police Force
Hawkins Village – Rankin, PA
August 27, 2019

AGENDA

- 2:00 p.m. Welcome and Opening Remarks
- 2:10 p.m. Michelle Kenney, Mother of Antwon Rose
2:15 p.m. *Questions & Answers*
- 2:20 p.m. Tim Komoroski, Millvale Police Chief
2:25 p.m. *Questions & Answers*
- 2:30 p.m. Panel One:
 - Brandi Fisher, President, Alliance for Police Accountability
 - Tim Stevens, Chairman/CEO, B-PEP
 - Jasiri X, Co-Founder, 1Hood
- 3:20 p.m. *Questions & Answers*
- 3:40 p.m. Panel Two:
 - Karen McLellan, Member, Citizen Police Review Board
 - Elizabeth Randol, Legislative Director, ACLU-PA
 - La'Tasha Mayes, Founder/Executive Director, New Voices Pittsburgh
- 4:10 p.m. *Questions & Answers*
- 4:30 p.m. Closing Remarks

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House Co-Sponsorship Memoranda

House of Representatives Session of 2019 - 2020 Regular Session

MEMORANDUM

Posted: March 29, 2019 10:05 AM
From: [Representative Summer Lee](#) and [Rep. Ed Gainey](#)
To: All House members
Subject: Law Enforcement Deadly Use of Force

On June 19, 2018, 17-year-old Antwon Rose II was shot in the back and killed by East Pittsburgh police officer Michael Rosfeld. He was unarmed, afraid, and fleeing. Despite the clear facts of the case, the officer was acquitted of the murder charge in a ruling that exposed a major flaw in the Pennsylvania police use of force law.

Under current law [Title 18](#), an officer can deploy deadly force on a fleeing person who possesses a deadly weapon - whether or not that person indicates a threat to life or a desire to inflict a serious bodily injury. This can lead to death for possessing a firearm without any intent to use it at all. Additionally, the mere fear of a weapon has resulted in the murder of civilians who were unarmed.

Our legislation seeks to eliminate effectuating an arrest as a justification for the use of deadly force. Instead, our proposal would mandate that de-escalation and non-lethal force options be exhausted prior to lethal force being deployed and that lethal force only be used and justified to prevent imminent threat to life.

Our police officers must be able to exercise restraint and good judgment as they are tasked and sworn to protect and serve the people. Providing proper training, instituting morally sound legislation, and shifting the approach from aggressive and fear-based policing to life preservation and de-escalation of threats will elevate the professional conduct of officers, decrease the amount of injury and loss of life, and provide a mechanism for justice in the event of unnecessary use of force. Please join me in supporting this vital legislation as we improve professional standards while improving the safety of our communities, and upholding equity and justice for all.

 Introduced as [HB1664](#)

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1664 Session of
2019

INTRODUCED BY LEE, GAINEY, KINSEY, FRANKEL, FIEDLER, RABB,
A. DAVIS, KIRKLAND, YOUNGBLOOD, HILL-EVANS, McCLINTON,
KENYATTA, WEBSTER, BULLOCK, DAVIDSON, INNAMORATO, HARRIS,
OTTEN, WHEATLEY, CEPHAS, SIMS, D. MILLER, JOHNSON-HARRELL AND
KOSIEROWSKI, JUNE 24, 2019

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 24, 2019

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in general principles of
3 justification, further providing for use of force in law
4 enforcement.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 508(a) of Title 18 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 508. Use of force in law enforcement.

10 (a) Peace officer's use of force in making arrest.--

11 [(1)] A peace officer, or any person whom he has summoned
12 or directed to assist him, need not retreat or desist from
13 efforts to make a lawful arrest because of resistance or
14 threatened resistance to the arrest. He is justified in the
15 use of [any] reasonable force which he believes to be
16 necessary to effect the arrest and of [any] reasonable force
17 which he believes to be necessary to defend himself or

1 another from bodily harm while making the arrest. However, he
2 is justified in using deadly force only when he reasonably
3 believes that such force is necessary to [prevent death or
4 serious bodily injury to himself or such other person, or
5 when he believes both that:

6 (i) such force is necessary to prevent the arrest
7 from being defeated by resistance or escape; and

8 (ii) the person to be arrested has committed or
9 attempted a forcible felony or is attempting to escape
10 and possesses a deadly weapon, or otherwise indicates
11 that he will endanger human life or inflict serious
12 bodily injury unless arrested without delay.

13 (2) A peace officer making an arrest pursuant to an
14 invalid warrant is justified in the use of any force which he
15 would be justified in using if the warrant were valid, unless
16 he knows that the warrant is invalid.] protect himself or
17 another from imminent death, serious bodily injury,
18 kidnapping or sexual intercourse compelled by force or
19 threat.

20 * * *

21 Section 2. This act shall take effect in 60 days.

PENNSYLVANIA STATE POLICE TESTIMONY

HB 1664

HOUSE DEMOCRATIC POLICY COMMITTEE

AUGUST 27, 2019



PREPARED BY

CAPTAIN BETH A. READLER

DIRECTOR, POLICY AND LEGISLATIVE AFFAIRS OFFICE

Good afternoon, Chairman Sturla, Vice Chairman Bizzarro, and members of the House Democratic Policy Committee. On behalf of the Pennsylvania State Police (PSP), I appreciate the opportunity to provide written testimony today on House Bill 1664.

According to the bill's sponsor, House Bill 1644 appears to originate from a sentiment that police officers are too often unjust in their application of deadly force and the current statute does not adequately hold police officers accountable for inappropriate behavior.

The bill amends Section 508 (a) relating to Use of Force in Law Enforcement. It retains current provisions which provide that "a peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest."

House Bill 1664 recommends the inclusion of the term "reasonable" instead of "any" when describing the force that may be used to effect arrests or when a peace officer believes it to be necessary to defend himself or others from bodily harm while effecting an arrest. PSP considers this language change to be unnecessary since Title 18, Section 501 already defines "believes" or "belief" as "reasonably believes" or a "reasonable belief".

The sponsor of the bill claimed that police officers are currently authorized to utilize deadly force on a fleeing person who merely possesses a deadly weapon, such as a firearm, regardless of any expressed intent to use it in a manner threatening to life or the infliction of serious bodily injury of another. It has been asserted that simply the fear of a weapon has led to the deaths of unarmed individuals.

The PSP believes this interpretation to be flawed. The current statute is clear that an individual must pose a threat of death or serious bodily injury to a peace officer or another person in order for the peace officer to be authorized to apply the use of deadly force upon the individual.

House Bill 1664 would remove current provisions related to a peace officer's use of deadly force that are consistent with the United States Supreme Court decisions contained in *Tennessee v. Garner* and *Graham v. Connor* that permit such force when necessary to prevent an arrest from being defeated by resistance or escape **and** where the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.

Another portion of House Bill 1664 which the PSP believes is problematic is that it repeals all language related to a peace officer's use of necessary force pursuant to the service of an invalid warrant. Peace officers are required to rely upon information provided by others and may not have an opportunity to inspect an arrest warrant prior to its service. We feel it would be unreasonable to deem an officer's use of necessary force in these instances as unjust for the sole reason that the warrant was invalid, even though the officer may have acted under the assumption the warrant was valid.

House Bill 1664 provides that a peace officer would be justified in the use of deadly force only when he reasonably believes that such force is necessary to "protect himself or another from imminent death, serious bodily injury, kidnapping, or sexual intercourse compelled by force or threat." The quoted language is taken verbatim from Title 18, Section 505, which addresses the authorized use of force afforded to private

citizens for self-protection. PSP believes that due to the nature of police work, it would be highly irresponsible to hold a police officer to the same justification standards that apply to a private citizen's authorized use of force application. Furthermore, this standard would not be in accord with those already established in *Tennessee v. Garner*.

The Pennsylvania State Police does not believe House Bill 1664 will provide citizens with further protections. Instead, House Bill 1664 appears to be based on a flawed interpretation of the existing statute governing use of deadly force for peace officers and would limit an officer's use of deadly force to that currently authorized to private citizens in defense of oneself. Recent events in Philadelphia highlight the dangerous nature of police work and an ability for officers to exercise restraint and good judgment. To limit our authorized application of deadly force in the proposed manner would place peace officers in greater danger than they already accept on a daily basis in the performance of their duties to protect the citizens of this Commonwealth.

It is for these reasons that the Pennsylvania State Police cannot support House Bill 1664, but we would be more than willing to continue to engage in discussions with members of the General Assembly on matters that would increase public trust with the law enforcement community.

Pennsylvania Chiefs of Police Association

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Scott Bohn
Chairman
Chief of Police
West Chester Borough

Albert Walker
President
Chief of Police
Hanover Township

John English
1st Vice President
Chief of Police
Edgeworth Borough



David Steffen
2nd Vice President
Chief of Police
Northern Lancaster
County Regional

Fred Harran
3rd Vice President
Director of Public Safety
Bensalem Township

Royce Engler
4th Vice President
Chief of Police
Wright Township

William Richendrfer
Secretary – 2020
Chief of Police
South Centre Township

Joseph C. Blackburn
Executive Director

David DiSanti
Treasurer-2020
Chief of Police
Town of McCandless

August 13, 2019

Mr. Jim Dawes
Executive Director
House Democratic Policy Committee
Mike Sturla, Chairman
414 Main Capitol Building
Harrisburg, PA

Dear Mr. Dawes:

Thank you for the opportunity to comment on the proposed changes to Title 18, section 508, amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in general principles of justification, further providing for use of force in law enforcement.

As the primary agency representing law enforcement executives in Pennsylvania, the Pennsylvania Chiefs of Police Association is working tirelessly to foster the delivery of professional, high quality, community-based police services in the Commonwealth.

We believe two key elements to achieving this goal are training and policy . We have concerns on the wording of the amendments contained within House Bill No. 1664, Session of 2019, having been referred to the Committee on the Judiciary, June 24, 2019.

In order to fully understand the impact of the proposed changes, the framework of existing case law must be applied to the constitutional use of force. The United States Supreme Court has provided several rulings which provide a “bright line” for police conduct in the use and application of force. Two of the most impactful cases in establishing the “reasonableness standard” are identified as:

Ken Truver – 2022
Chief of Police
Castle Shannon Borough

James Sabath–2022
Chief of Police
Newtown Borough

Thomas Gross – 2022
Chief of Police (Ret.)
York Area Regional Police

Larry Palmer – 2022
Chief of Police
Palmer Township

Mark Toomey – 2021
Chief of Police
Upper Providence Township

James Adams – 2021
Chief of Police
Upper Allen Township

Michael Vogel – 2021
Chief of Police
Allegheny County Housing
Authority

Jason Loper - 2022
Chief of Police
Fairview Township

Tim Trently - 2022
Chief of Police
Archbald Borough

David Splain - 2022
Chief of Police
Nether Providence Township

U.S. Supreme Court *Graham v. Connor*, 490 U.S. 386 (1989) *Graham v. Connor* No. 87-6571 Argued February 21, 1989 Decided May 15, 1989 490 U.S. 386 -Held: All claims that law enforcement officials have used excessive force -- deadly or not -- in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are properly analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under a substantive due process standard.

The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

U.S. Supreme Court *Tennessee v. Garner*, 471 U.S. 1 (1985) *Tennessee v. Garner* No. 83-1035 Argued October 30, 1984 Decided March 27, 1985* 471 U.S. 1 -Held: The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against, as in this case, an apparently unarmed, non-dangerous fleeing suspect; such force may not be used unless necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

Apprehension by the use of deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement. To determine whether such a seizure is reasonable, the extent of the intrusion on the suspect's rights under that Amendment must be balanced against the governmental interests in effective law enforcement. This balancing process demonstrates that, notwithstanding probable cause to seize a suspect, an officer may not always do so by killing him. The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable.

An area of concern is training and re-training requirements and impacts. Professional police service delivery requires specific policy provisions followed by development of comprehensive training designed to instill policy requirements, understanding of case law, and clear understandings of the requirements embedded within the policy.

The policy development process is critical to law enforcement in providing outcomes that are consistent with the law, best practices, and assurance of meeting community standards and expectations. The Pennsylvania Chiefs of Police Association strongly supports this essential aspect of professional law enforcement.

The existing policy standard presents an absolute requirement for those agencies seeking accreditation by the Pennsylvania Law Enforcement Accreditation Commission (PLEAC) that the exact wording under the standard as it applies contain:

- A written directive stating that a "peace officer" (law enforcement officer) as defined in Chapter 5 of the Pennsylvania Crimes Code (18 Pa. C.S.A. §501) shall only utilize deadly force when reasonable and justified to effect lawful objectives in conformance to the provisions of the Pennsylvania Crimes Code, other Pennsylvania statutory provisions, and Pennsylvania and Federal Court decisions. Narrative: Section 508, Subsection (a) of the Pennsylvania Crimes Code (18 Pa.C.S.A.), provides provisions for the lawful and justified use of deadly force by a "peace officer". The use of force and deadly force may also be justified under the provisions of Section 505, "Use of force in self-protection" and Section 506, "Use of force for the protection of other persons" of the Pennsylvania Crimes Code.
- The issue of the utilization of force and deadly force by law enforcement officers is continually being addressed in Pennsylvania and Federal court decisions. It is vitally important that every law enforcement agency have a clearly defined and easily understood policy, which complies with the law, regarding the use of deadly force by its law enforcement officers.

We appreciate the committee seeking comments on the amendment and therefore allowing us the opportunity to voice our concerns surrounding H.B. 1664 as it presents. We strongly support efforts to assure police agencies have use of force policies and have developed and implemented the PLEAC Law enforcement accreditation program as the pathway to clear policy requirements.

Accreditation is a progressive and time-proven way of helping institutions evaluate and improve their overall performance. The cornerstone of this strategy lies in the promulgation of standards containing a clear statement of professional objectives. Participating administrators then conduct a thorough analysis to determine how existing operations can be adapted to meet these objectives. When the procedures are in place, a team of independent professionals is assigned to verify that all applicable standards have been successfully implemented. The process culminates with a decision by an authoritative body that the institution is worthy of accreditation.

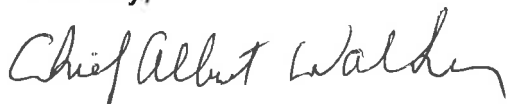
The Pennsylvania Law Enforcement Accreditation Program was designed and developed by professional law enforcement executives to provide a reasonable and cost-effective plan for the professionalization of law enforcement agencies within the Commonwealth. The underlying philosophy of the program is to have a user-friendly undertaking for the departments that will result in a "success" oriented outcome.

The Pennsylvania Chiefs of Police Association introduced the Pennsylvania Law Enforcement Accreditation Program to the Commonwealth in July 2001. Since then, over 300 agencies have enrolled and 117 agencies currently have attained accredited status. While this is an impressive number of agencies, it sadly represents approximately ten percent of the total number of agencies in the Commonwealth. The good news is that this provides guidance to over 17,301 law enforcement professionals

in the Commonwealth. We respectfully suggest that efforts to require critical policy development by law enforcement agencies occur to minimize, reduce, and eliminate the failures we have identified.

Thank you for the opportunity to comment. We remain open to engaging with the committee to offer our perspective to legislators and we are available to discuss the issues we have highlighted in this response or other topics covered by the act while it is being finalized.

Sincerely,



Chief Albert Walker
President
Pennsylvania Chiefs of Police Association



Joseph C. Blackburn
Executive Director
Pennsylvania Chiefs of Police Association

**Statement of the Fraternal Order of Police, PA State Lodge
Before Pennsylvania House Democratic Policy Committee
August 27, 2019 – Use of Police Force**

This statement is submitted by the Fraternal Order of Police, Pennsylvania State Lodge, on behalf of over 40,000 law enforcement officers and their families throughout the Commonwealth of Pennsylvania.

First, we would like to extend our thanks to Democratic Policy Committee members for your work on matters of concern to Pennsylvania's Police Officers. Second, considering the nature of this meeting, we offer general comments on the stated topic of "Use of Police Force," as opposed to commenting on any specific piece of legislation.

As the Committee members know (or should know), Pennsylvania is fortunate in that our police officers routinely exercise restraint and good judgment as they are tasked and sworn to protect and serve the people, oftentimes at great risk to their own personal safety. Because of the restraint and good judgment of our officers, Pennsylvania has among the lowest rates of police shooting deaths in the entire county, ranking 43rd out of 50 states in deadly shootings per 100,000 population.

Pennsylvania's record of success reflects in part the stability in the laws governing police uses of force. Title 18's police use-of-force standards have remained consistent for decades, and they have accurately reflected the standards handed down by the U.S. Supreme Court in the seminal 1980's decisions of *Tennessee v. Garner* (1985) and *Graham v. O'Connor* (1989). In *Graham v. Connor* (1989), the Court unanimously rejected the notion that we use "20/20 hindsight" in reviewing force decisions, instead instructing that the "reasonableness of a use of force must be judged from the perspective of a reasonable officer on the scene, *and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.*"

Police officers in our Commonwealth have trained to the standards set by the Supreme Court and reflected in Title 18 *for decades*. And the result is that Pennsylvania has one of the lowest rates of deadly police shootings in the country. Any legislation intended to "move the target" by setting new and possibly unconstitutional legal standards for police uses of force risks upsetting a system that has worked successfully for Pennsylvanians for many years. Because of this, the PA FOP opposes any legislation that will disrupt the longstanding legal rules governing police use of force.

While Pennsylvania's extraordinary record of successful policing is something to be celebrated and appreciated, this does not mean that we cannot improve on our mission. The Pennsylvania FOP has long-supported legislative initiatives to fund enhanced training for our police departments, and we will continue to do so. Police departments throughout our Commonwealth regularly train officers on issues related to life preservation and de-escalation of threats, increasing professional conduct of officers, decreasing injury and loss of life. But we can and should do more. Let's build on our record of success.

The PA FOP supports efforts to fund and to enhance professional training and standards while improving the safety of our communities, and upholding equity and justice for all. We look forward to continuing to partner with other stakeholders in legislative efforts to provide the best police services possible to Pennsylvania's citizens. Thank you for your continued support for the men and women in Pennsylvania's law enforcement community.



Hearing on Use of Force
House Democratic Policy Committee
August 27, 2019

Thank you for the opportunity to submit testimony related to use of force and officer involved shootings.

At the outset, we must first acknowledge the important and vital work by our police and the dangers they face every day. We need look no further than the recent shootings of six officers in Philadelphia, shootings that thankfully did not result in anyone's death or serious injury. This is the kind of danger so many officers face — officers who are often outgunned or are facing dangerous circumstances, such as responding to domestic violence situations. Nationally, there have been more than 70 line of duty deaths so far this year, and many more have been injured. Few of us literally put our lives on the line every day, and for those who do, like the police, we owe them enormous gratitude and admiration.

At the same time, we must acknowledge that there are a few within the rank and file who are less worthy of our admiration because they have violated the law, used excessive force, lied, or otherwise impugned the public trust. These few not only damage their own reputations, but they undermine public trust in law enforcement and do great harm to the brave and dedicated officers who risk their lives every day.

Moreover, we are well aware that some view police more suspiciously and believe that people of color are unfairly targeted, stopped, detained or arrested. Some also contend that police are too quick to shoot and must de-escalate more.

Law enforcement cannot ignore these serious criticisms and concerns. Whether we agree on particular policy proposals, it is incumbent on law enforcement to first acknowledge these serious criticisms and concerns and respond thoughtfully. When law enforcement is viewed negatively in particular communities, everyone suffers, and public safety and justice are diminished.

To that end, in November, 2016, the PDAA released a series of best practice recommendations related to officer-involved shootings. The PDAA recommended that officer-involved shootings be investigated by an independent police agency and that the local district attorney should provide the public with a written report following the completion of the investigation. The guidelines are believed to be the first statewide guidelines for prosecutors produced in the United States. Recognizing that officer-involved shootings are traumatic and complex, it is our duty to ensure that any police-related shooting is thoroughly reviewed in a manner that is objective and fair for everyone involved. Having an investigation led by an entity not affiliated with the shooting reassures the public that the investigation was conducted without bias or direct connection to the officer(s) involved. The recommendations do recognize that in some jurisdictions, particularly those in rural areas, it may not be possible to secure an outside department, and therefore that the district attorney must use his or her discretion to customize the process to fit the needs and resources of the individual counties.

We also recommend consideration of the following:

Officers should be trained to use de-escalation tactics in order to reduce the occurrences of use of force, including helping their fellow officers to avoid using unnecessary force. The Municipal Police Officers Education and Training Commission (MPOETC) could coordinate these efforts, and perhaps the Commonwealth could provide grant money to local departments to implement such training or further sustain it where it already exists. De-escalation training should not be something officers do only once. It should be a regular and repeated part of every officer's training.

Because training is an integral part of improving policing practices, we would be remiss if we did not acknowledge how difficult that is for some departments. There are nearly 1,200 municipal police departments in Pennsylvania, some of which are part-time with one or two officers on duty. To that end, the regionalization of police departments should be encouraged and incentivized by the state. With a regional force, more officers are freed for patrol because administrative functions are consolidated, and purchasing and administrative duplications are reduced or eliminated. Because of its size, a regional force makes it easier to ensure officers receive the training they need.

Consideration should also be given to requiring departments hiring new police officers to contact any prior police department for whom the applicant worked. The applicant could be required to list each prior department of employment. Pennsylvania already has similar requirements for teachers. When hiring an officer, a department should have all available prior employment information at its disposal.

With regard to amending use of force standards, the PDAA cannot support the legislation as written. We are concerned that completely eliminating the ability for an officer to use deadly force against a felon who is fleeing will have negative consequences both in terms of officer safety and in apprehending dangerous suspects. If the law were to be changed, we would, of course, enforce it – just as we enforce the law as currently written. With regard to adding the word or a derivate of “reasonable” in other parts of the use of force law, we would only point out that in the definition section of the statute, the “reasonable” element is built in where it modifies “belief.”

Every use of deadly force case is a tragedy, and no law enforcement officer wants to be in a position where deadly force is required. The analysis must recognize that officers regularly face dangerous circumstances that may require making quick, difficult decisions related to use of force and that the law comports with Supreme Court caselaw requiring that the officer employing deadly force have a reasonable belief either that (1) such force is necessary to prevent death or serious bodily injury; or (2) is necessary to prevent an escape of a suspect who has committed a forcible felony, is armed with a deadly weapon, or has threatened to inflict death or serious bodily injury.

With that said, the existing statute is hardly the model of clarity. In fact, it appears that “or” means “and” in some cases and vice-versa, and the phrase “endanger human life” is vague as

well. And the accompanying jury instruction carries forward the lack of clarity and, in fact, does not adequately explain in what circumstances a police officer is justified in using force or what defense elements must be disproven.

Thank you for the opportunity to submit our testimony on this difficult, but important topic. We look forward to continuing examining these issues with you and all the relevant stakeholders.