



Committee: PS
Committee Review: At a future date
Staff: Christine Wellons, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #UseofForce #PoliceReform

AGENDA ITEM #16
July 7, 2020
Public Hearing

SUBJECT

Expedited Bill 27-20, Police – Regulations – Use of Force Policy
Lead Sponsors: Councilmembers Jawando, Rice, Navarro, and Alborno
Co-Sponsors: Council Vice-President Hucker, Councilmember Riemer, Council President Katz and Councilmembers Friedson and Glass

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Public Hearing – no Council vote required

DESCRIPTION/ISSUE

Expedited Bill 27-20, Police – Regulations – Use of Force, would (1) require the Police Chief to adopt a use of force policy directive and (2) require the use of force policy to include certain minimum standards.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

This report contains:

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| Legislative Request Report | ©6 |

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MEMORANDUM

July 2, 2020

TO: County Council

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Expedited Bill 27-20, Police – Regulations – Use of Force Policy

PURPOSE: Public Hearing – no Council votes required

Expedited Bill 27-20, Police – Regulations – Use of Force Policy, sponsored by Lead Sponsors Councilmembers Jawando, Rice, Navarro, and Albornoz, and Co-Sponsors Council Vice-President Hucker, Councilmember Riemer, Council President Katz, and Councilmembers Friedson and Glass, was introduced on June 16, 2020.¹ A Public Safety Committee worksession is tentatively scheduled for July 9 at 9:30 a.m.

Bill 27-20 would (1) require the Police Chief to adopt a policy directive regarding the use of force; and (2) require the use of force policy to include certain minimum standards, including standards regarding the use of deadly force, the use of carotid and neck restraints, and required intervention by officers when another officer is violating law or policy. The minimum standards of the policy would not be subject to collective bargaining.

BACKGROUND

In response to the recent murder of George Floyd in Minneapolis and extensive data regarding racial disparities in police use of force throughout the nation, many state and local governments are examining potential legislative solutions and police reforms. In this vein, Bill 27-20 seeks to limit and ban certain practices that can contribute towards unnecessary deaths and serious bodily injury.

In the State of California, a law passed in 2019 prevents the use of deadly force except when necessary in defense of human life. In particular, California’s law states: “[A] peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person. (B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended....” (2019 Laws of California, Chapter 170).

Certain local police departments also have modified their policies regarding use of force. For example, police departments of Seattle and San Francisco have adopted such reforms as limiting use of deadly force to necessary situations and banning or limiting carotid restraints and

¹#UseofForce #PoliceReform

neck restraints. See San Francisco Police Department General Order 5.01; Seattle Police Department Manual, Title 8.

SPECIFICS OF THE BILL

Under Bill 27-20, the Police Chief would be required to issue a directive regarding police use of force. The policy directive would be required to meet certain minimum standards. The minimum standards would, among other things:

prohibit a member of the police from using deadly force, including a neck restraint or carotid restraint, against a person unless:

- (A) such force is necessary, as a last resort, to prevent imminent and serious bodily injury or death to the officer or another person;
- (B) the use of such forces creates no substantial risk of injury to a third person; and
- (C) reasonable alternatives to the use of such force have been exhausted....

The term “necessary” – as used in the bill’s prohibition against deadly force except when “necessary” to protect against an imminent threat of death or serious bodily injury – would be defined as follows:

Necessary means that another reasonable law enforcement officer would objectively conclude, under the totality of the circumstances, that there was no reasonable alternative to the use of force.

The term *reasonable alternatives* to the use of force would mean:

tactics and methods used by a law enforcement officer to effectuate an arrest that do not unreasonably increase the risk posed to the law enforcement officer or another person, including verbal communication, distance, warnings, deescalation 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.

Additional minimum standards of the policy would include a prohibition against striking a restrained individual, and a duty to stop another officer who is using excessive force. These minimum standards of the policy would not be subject to collective bargaining, and they would not affect standards of criminal liability or constitutional torts in courts of law.

POTENTIAL AMENDMENTS

At the Public Safety Committee worksession, tentatively scheduled for July 9, several potential amendments likely will be discussed, including amendments to:

- (1) prohibit no-knock warrants;

- (2) prohibit shooting at vehicles;
- (3) require written police guidelines for interacting with certain populations, including individuals with disabilities; and
- (4) prohibit neck restraints and carotid restraints in all circumstances.

This packet contains:

Expedited Bill 27-20
Legislative Request Report

Circle #

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Expedited Bill No. 27-20
Concerning: Police – Regulations – Use of Force Policy
Revised: 06/15/2020 Draft No. 8
Introduced: June 16, 2020
Expires: December 16, 2021
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. , Laws of Mont. Co.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Jawando, Rice, Navarro, and Alborno
Co-Sponsors: Council Vice-President Hucker, Councilmember Riemer,
Council President Katz, and Councilmembers Friedson and Glass

AN EXPEDITED ACT to:

- (1) require the Police Chief to adopt a policy directive regarding the use of force;
- (2) require the use of force policy to include certain minimum standards; and
- (3) generally amend the County law regarding use of force by members of the police and policing.

By adding

Montgomery County Code
Chapter 35, Police
Section 35-22

| | |
|------------------------------|------------------------------------------------------------|
| Boldface | <i>Heading or a defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland, approves the following act:

1 **Sec 1. Section 35-22 is added as follows:**

2 **35-22. Police use of force policy – minimum standards.**

3 (a) Definitions. In this Section, the following terms have the meanings
4 indicated.

5 Carotid restraint means a technique applied in an effort to control or
6 disable a subject by applying pressure to the carotid artery, the jugular
7 vein, or the neck with the purpose or effect of controlling a subject’s
8 movement or rendering a subject unconscious by constricting the flow
9 of blood to and from the brain.

10 Deadly force means force that creates a substantial risk of causing death
11 or serious bodily injury, including the discharge of a firearm, a carotid
12 restraint or neck restraint, and multiple discharges of an electronic
13 control weapon.

14 Deescalation tactics and techniques means proactive actions and
15 approaches used by a law enforcement officer to stabilize the situation
16 so that more time, options, and resources are available to gain a
17 person’s voluntary compliance and reduce or eliminate the need to use
18 force, including verbal persuasion, warnings, tactical techniques,
19 slowing down the pace of an incident, waiting out a subject, creating
20 distance between the officer and the threat, and requesting additional
21 resources to resolve the incident.

22 Necessary means that another reasonable law enforcement officer
23 would objectively conclude, under the totality of the circumstances,
24 that there was no reasonable alternative to the use of force.

25 Neck restraint means a technique involving the use of an arm, leg, or
26 other firm object to attempt to control or disable a subject by applying
27 pressure against the windpipe or the neck with the purpose or effect of
28 controlling a subject's movement or rendering a subject unconscious
29 by blocking the passage of air through the windpipe.

30 Reasonable alternatives means tactics and methods used by a law
31 enforcement officer to effectuate an arrest that do not unreasonably
32 increase the risk posed to the law enforcement officer or another person,
33 including verbal communication, distance, warnings, deescalation
34 tactics and techniques, tactical repositioning, and other tactics and
35 techniques intended to stabilize the situation and reduce the immediacy
36 of the risk so that more time, options, and resources can be called upon
37 to resolve the situation without the use of force. With respect to the use
38 of deadly force, such term includes the use of less lethal force.

39 Serious bodily injury means bodily injury that creates a substantial risk
40 of death, causes a serious, permanent disfigurement, or results in long
41 term loss or impairment of any bodily member or organ.

42 Totality of the circumstances means all credible facts known to the law
43 enforcement officer leading up to and at the time of the use of force,
44 including the actions of the person against whom the law enforcement
45 officer uses such force and the actions of the law enforcement officer.

46 (b) Use of force policy directive – required.

47 (1) The Police Chief must issue a policy directive that establishes the
48 permissible uses of force by members of the police.

- 49 (2) The directive must:
- 50 (A) prioritize the safety and dignity of every human life;
- 51 (B) promote fair and unbiased policing; and
- 52 (C) protect vulnerable populations, including individuals with
53 disabilities, children, elderly persons, pregnant women,
54 persons with limited English proficiency, individuals
55 without regard to sex, including gender identity or
56 orientation, and populations that are disproportionately
57 impacted by inequities.
- 58 (c) Minimum standards. The use of force policy directive required under
59 this Section must, at a minimum:
- 60 (1) comply with the Constitutions of the United States and the State
61 of Maryland;
- 62 (2) prohibit a member of the police from using deadly force,
63 including a neck restraint or carotid restraint, against a person
64 unless:
- 65 (A) such force is necessary, as a last resort, to prevent
66 imminent and serious bodily injury or death to the officer
67 or another person;
- 68 (B) the use of such forces creates no substantial risk of injury
69 to a third person; and
- 70 (C) reasonable alternatives to the use of such force have been
71 exhausted;
- 72 (3) prohibit a member of the police from striking a restrained

- 73 individual;
- 74 (4) require a member of the police to stop, or attempt to stop, another
- 75 officer who is using excessive force, violating the use of force
- 76 policy, or committing a crime; and
- 77 (5) protect a member of the police from retaliation or discipline for
- 78 taking action under paragraph (4).
- 79 (d) *Scope of directive.* The policy directive established under this Section:
- 80 (1) must dictate the conduct of members of the county police in the
- 81 performance of their duties; and
- 82 (2) must not be construed to alter standards of civil or criminal
- 83 liability.
- 84 (e) *Collective bargaining.* The minimum standards of the policy directive
- 85 under subsection (c) of this Section:
- 86 (1) must not be construed to be mandatory subjects of collective
- 87 bargaining under Section 33-80(a); and
- 88 (2) must be considered employer rights not subject to collective
- 89 bargaining under Section 33-80(b).

90 **Sec. 2. Expedited Effective Date.** The Council declares that this legislation

91 is necessary for the immediate protection of the public interest. This Act takes effect

92 on the date on which it becomes law.

93 **Sec. 3. Implementation.** The Police Chief must issue the use of force policy

94 required under this Act within 6 months after the effective date of the Act.

LEGISLATIVE REQUEST REPORT

Expedited Bill 27-20
Police – Regulations – Use of Force Policy

DESCRIPTION: Expedited Bill 27-20 would require the Police Chief to adopt a policy directive regarding the use of force; and require the use of force policy to include certain minimum standards

PROBLEM: Unnecessary use of force

GOALS AND OBJECTIVES: Set standards regarding the use of deadly force; the use of certain carotid and neck restraints; the striking of restrained individuals; and required intervention by officers who observe another officer violating law or policy.

COORDINATION: Police Department

FISCAL IMPACT: OMB

ECONOMIC IMPACT: OLO

EVALUATION: To be done.

EXPERIENCE ELSEWHERE: California, Seattle, San Francisco

SOURCE OF INFORMATION: Christine Wellons, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: Pursuant to personnel rules.