

Expedited Bill No. 27-20
Concerning: Police – Regulations – Use of Force Policy
Revised: 07/29/2020 Draft No. 11
Introduced: June 16, 2020
Enacted: July 29, 2020
Executive: _____
Effective: _____
Sunset Date: None
Ch. , Laws of Mont. Co.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: 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 amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-80

By adding

Montgomery County Code
Chapter 35, Police
Section 35-22

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or a defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

1 **Sec 1. Section 33-80 is amended and 35-22 is added as follows:**

2 **33-80. Collective bargaining.**

3 * * *

4 (c) ~~[[Exemption]]~~ Exemptions.

5 (1) Nothing contained in this article shall be construed to limit the
6 discretion of the employer voluntarily to discuss with the
7 representatives of its employees any matter concerning the
8 employer’s exercise of any of the enumerated rights set forth in
9 subsection 33-80(b) above, but such matters shall not be subject
10 to bargaining.

11 (2) The minimum standards of the policies adopted by the Police
12 Chief under Section 35-22 must not be subject to bargaining.

13 * * *

14 **35-22. Police use of force policy and no-knock warrant policy – minimum**
15 **standards.**

16 (a) Definitions. In this Section, the following terms have the meanings
17 indicated.

18 Alternatives means tactics and methods used by a law enforcement
19 officer to effectuate an arrest that do not unreasonably increase the risk
20 posed to the law enforcement officer or another person, including
21 verbal communication, distance, warnings, deescalation tactics and
22 techniques, tactical repositioning, and other tactics and techniques
23 intended to stabilize the situation and reduce the immediacy of the risk
24 so that more time, options, and resources can be called upon to resolve

25 the situation without the use of force. With respect to the use of deadly
26 force, such term includes the use of less lethal force.

27 Carotid restraint means a technique applied in an effort to control or
28 disable a subject by applying pressure to the carotid artery, the jugular
29 vein, or the neck with the purpose or effect of controlling a subject's
30 movement or rendering a subject unconscious by constricting the flow
31 of blood to and from the brain.

32 Deadly force means force that creates a substantial risk of causing death
33 or serious bodily injury, including the discharge of a firearm, a carotid
34 restraint, or a neck restraint[, and multiple discharges of an electronic
35 control weapon]].

36 Deescalation tactics and techniques means proactive actions and
37 approaches used by a law enforcement officer to stabilize the situation
38 so that more time, options, and resources are available to gain a
39 person's voluntary compliance and reduce or eliminate the need to use
40 force, including verbal persuasion, warnings, tactical techniques,
41 slowing down the pace of an incident, waiting out a subject, creating
42 distance between the officer and the threat, and requesting additional
43 resources to resolve the incident.

44 Less lethal force means any degree of force that is not likely to have
45 lethal effect.

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

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

54 [[Reasonable alternatives means tactics and methods used by a law
55 enforcement officer to effectuate an arrest that do not unreasonably
56 increase the risk posed to the law enforcement officer or another person,
57 including verbal communication, distance, warnings, deescalation
58 tactics and techniques, tactical repositioning, and other tactics and
59 techniques intended to stabilize the situation and reduce the immediacy
60 of the risk so that more time, options, and resources can be called upon
61 to resolve the situation without the use of force. With respect to the use
62 of deadly force, such term includes the use of less lethal force.]]

63 Restrained individual means an individual who is under control and is
64 not actively resisting arrest by use of intentional force that threatens
65 serious bodily injury.

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

69 Striking means hitting forcibly and deliberately with: a weapon; a body
70 part such as a hand, elbow, knee, or foot; or any other implement.

71 Totality of the circumstances means all credible facts known to the law
72 enforcement officer leading up to and at the time of the use of force,

73 including the actions of the person against whom the law enforcement
74 officer uses such force and the actions of the law enforcement officer.

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

76 (1) The Police Chief must issue a policy directive that establishes the
77 permissible use of force by members of the police.

78 (2) The directive must:

79 (A) prioritize the safety and dignity of every human life;

80 (B) promote fair and unbiased policing; and

81 (C) protect vulnerable populations, including individuals with
82 disabilities, children, elderly persons, pregnant [[women]]
83 individuals, persons with limited English proficiency,
84 individuals without regard to sex, including gender
85 identity or orientation, individuals without regard to race,
86 persons with mental or behavioral disabilities or
87 impairments, and populations that are disproportionately
88 impacted by inequities.

89 (c) Minimum standards for use of force policy. The use of force policy
90 directive required under this Section must, at a minimum:

91 (1) comply with the Constitutions of the United States and the State
92 of Maryland;

93 (2) prohibit a member of the police from using deadly force[[,
94 including a neck restraint or carotid restraint,]] against a person
95 unless:

96 (A) such force is necessary, as a last resort, to prevent

- 97 imminent and serious bodily injury or death to the officer
98 or another person; and
- 99 (B) the use of such force creates no substantial risk of injury
100 to a third person; [[and
101 (C) reasonable alternatives to the use of such force have been
102 exhausted;]]
- 103 (3) prohibit a member of the police from using deadly force against
104 a fleeing person unless:
- 105 (A) such force is necessary, as a last resort, to prevent
106 imminent and serious bodily injury or death to the officer
107 or another person;
- 108 (B) the use of such force creates no substantial risk of injury
109 to a third person; and
- 110 (C) reasonable suspicion exists that the fleeing person
111 committed a felony that threatened or resulted in death or
112 serious bodily injury;
- 113 (4) prohibit a member of the police from striking a restrained
114 individual;
- 115 [[(4)] (5) require a member of the police to stop, or attempt to stop,
116 and to report to a supervisor, another officer who is using
117 excessive force, violating the use of force policy, or committing
118 a crime; [[and]]
- 119 [[(5)] (6) protect a member of the police from retaliation or
120 discipline for taking action under paragraph [[(4)] (5);

- 121 (7) prohibit a member of the police from using a neck restraint or a
122 carotid restraint against an individual;
- 123 (8) prohibit a member of the police from shooting from a moving
124 vehicle unless circumstances would authorize the use of deadly
125 force;
- 126 (9) prohibit a member of the police from shooting at a moving
127 vehicle unless the vehicle is being used as a weapon and the
128 circumstances would authorize the use of deadly force; and
- 129 (10) prohibit any less lethal force unless such less lethal force is
130 necessary and proportional in order to effectuate an arrest of a
131 person who the officer has probable cause to believe has
132 committed a criminal offense, and only after exhausting
133 alternatives to the use of such force.
- 134 (d) *Policy directive regarding knocking and announcing entry into a*
135 *residence - required.* The Chief of Police must issue a policy directive
136 that regulates when a member of the police may:
- 137 (1) seek or participate in the execution of no-knock warrants; or
138 (2) enter private premises without first knocking and announcing the
139 member's presence.
- 140 (e) *Minimum requirements for policy directive regarding no-knock entries*
141 *into private premises.* The policy directive issued under subsection (d)
142 must, at a minimum, require that:
- 143 (1) only an officer assigned to the Montgomery County Police
144 Special Weapons and Tactics (SWAT) Team may participate in

- 145 the execution of a no-knock warrant;
- 146 (2) a member of the police may not enter into private premises
- 147 without first knocking and announcing the member's presence
- 148 unless:
- 149 (A) exigent circumstances exist;
- 150 (B) other methods of serving a warrant, including methods
- 151 which would mitigate risk, have been considered and have
- 152 been determined to:
- 153 i. pose unacceptable risk to the life or safety of
- 154 executing officers or another person; or
- 155 ii. be futile;
- 156 (C) the crime being investigated is:
- 157 i. a crime of violence as defined in Section 14-101(a)
- 158 of the Criminal Law Article of the Maryland Code;
- 159 ii. related to firearms possession;
- 160 iii. related to a warrant obtained under Section 5-607 of
- 161 the Public Safety Article of the Maryland Code;
- 162 iv. related to child abuse;
- 163 v. related to child pornography;
- 164 vi. related to domestic violence; or
- 165 vii. related to terrorism; and
- 166 (D) at least one of the following factors is present:
- 167 i. reasonable suspicion that a person is present at the
- 168 location who has demonstrated a propensity for

- 169 violence; or
- 170 ii. reasonable suspicion that entry into the location has
- 171 been fortified, is “booby trapped”, or has unique
- 172 characteristics which would make knocking and
- 173 announcing one’s presence inherently unsafe; and
- 174 (3) a member of the police may not enter private premises without
- 175 first knocking and announcing the member’s presence if the sole
- 176 purpose of entering the premises is to prevent the destruction of
- 177 evidence.
- 178 (f) The Chief of Police annually must provide a public report indicating
- 179 the number of no-knock search warrants served by the Montgomery
- 180 County Police SWAT team, including statistics on the number of
- 181 warrants served:
- 182 (1) on behalf of the Montgomery County Police Department; and
- 183 (2) on behalf of another agency at a location within Montgomery
- 184 County.
- 185 (g) The Chief of Police, in consultation with impacted persons, the Police
- 186 Advisory Commission, communities, and organizations, including
- 187 representatives of civil and human rights organizations, victims of
- 188 police use of force, and representatives of law enforcement
- 189 associations, must provide written guidance regarding:
- 190 (1) the types of less lethal force and deadly force that are prohibited
- 191 under this Section; and
- 192 (2) how a law enforcement officer may assess whether the use of

193 force is appropriate and necessary, and how to use the least
194 amount of force necessary, when interacting with all individuals,
195 including:

- 196 (A) pregnant individuals;
- 197 (B) children and youth under age 21;
- 198 (C) elderly persons;
- 199 (D) persons with mental, behavioral, or physical disabilities or
200 impairments;
- 201 (E) persons experiencing perceptual or cognitive impairments
202 due to use of alcohol, narcotics, hallucinogenic, or other
203 drugs;
- 204 (F) persons suffering from serious medical conditions; and
- 205 (G) persons suffering from mental health concerns.

206 [(d)] (h) *Scope of directive.* The policy [(directive)] directives established
207 under this Section:

- 208 (1) must dictate the conduct of members of the county police in the
209 performance of their duties; [(and)]
- 210 (2) must not be construed to alter standards of civil or criminal
211 liability;
- 212 (3) must not be construed to create private rights enforceable by any
213 person or individual; and
- 214 (4) must not be construed to alter state or federal rules of evidence.

215 [(e)] *Collective bargaining.* The minimum standards of the policy directive
216 under subsection (c) of this Section:


- 217 (1) must not be construed to be mandatory subjects of collective
218 bargaining under Section 33-80(a); and
219 (2) must be considered employer rights not subject to collective
220 bargaining under Section 33-80(b).]]

221 **Secs. [35-22] 35-23 – 35-26.** Repealed by 1979 L.M.C., ch. 6, § 2.

222 **Sec. 2. Expedited Effective Date.** The Council declares that this legislation
223 is necessary for the immediate protection of the public interest. This Act takes effect
224 on the date on which it becomes law.

225 **Sec. 3. Implementation.** The Police Chief must issue the [[use of force
226 policy]] policies required under this Act, and the written guidance required under
227 this Act, within 6 months after the effective date of the Act.

Approved:



Sidney Katz, President, County Council 7/29/2020
Date

Approved:

Marc Elrich, County Executive Date

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council Date