

**Showing Up for Racial Justice (SURJ) Montgomery County
Testimony on Bill 27-20, Police - Regulations - Use of Force Policy
July 7, 2020**

POSITION: SUPPORT WITH AMENDMENTS

Showing Up for Racial Justice (SURJ) Montgomery County, which represents over 2,600 members, **supports Bill 27-20 only if it is amended** as described below.

While SURJ thanks the Council for taking up this issue and thanks the lead sponsor for strengthening the bill prior to introduction, we do not believe the bill in its current form goes far enough to make a meaningful difference in lives of community members most affected by police violence, especially our Black and brown neighbors. To gain the support of SURJ, we require the following amendments proposed by the Silver Spring Justice Coalition (SSJC), of which SURJ is a member:

Modifications to Current Language

Amendment: Necessary means that a reasonable person (including members of the community and law enforcement officers) would objectively conclude, under the totality of the circumstances, that there was no alternative to the use of force.

-This amendment seeks to remove the “reasonable law enforcement perspective” from the analysis because it has historically been used as a shield behind which officers can escape liability; it is the view of the community member that should be the barometer of whether force is necessary.

Amendment: Neck restraint or carotid restraint is never permitted under any circumstance.

-Officers should never use this type of force; it is a form of torture and officers should, through proper training, be able to use less harmful tactics to gain physical control over someone if and when it is necessary.

Amendment: Shooting at a vehicle is never permitted unless the vehicle is being used as a weapon against the officer or another person.

-News reports abound with cases in which officers have endangered the lives, or taken the lives, of both the targets of their enforcement and innocent bystanders through this reckless and unnecessary use of force. It should be limited unless it is absolutely clear that the car is being driven towards the officer or another person with the intent to use the car as a weapon.

Amendment: Officer may not use deadly force unless all alternatives (not “all reasonable alternatives”) to the use of such force have been exhausted.

-The use of the word “reasonable” is another way in which officers are shielded from liability when using excessive force. Officers should have to employ all available

alternatives before using force; there should be no evaluation of whether the alternative was reasonable.

Amendment: Policy must include specific provisions governing the use of deadly force against specific classes of persons.

-The current bill only requires the policy to “protect vulnerable populations.” The bill should be amended so that each of these vulnerable populations is expressly considered within the use of force policy. The policy should state how the officer should adapt his or her conduct for each class of vulnerable people.

Amendment: The definition of reasonable alternatives, should become a definition of “alternatives.” Alternatives should include calling for the assistance of a mental health crisis unit where one exists.

-The use of the word “reasonable” is another way in which officers are shielded from liability when using excessive force. Officers should have to employ all available alternatives before using force; there should be no evaluation of whether the alternative was reasonable.

-The current list of alternatives does not include calling for the assistance of a mental health crisis unit; this is a necessary step that any officer should have to take prior to using force when the person they have encountered is in crisis.

Deletion

Remove subsection(d)(2): “The policy directive must not be construed to alter standards of civil or criminal liability” -This clause is confusing and may lead to attempts to argue that a violation of the MCPD use of force policy cannot be used as evidence in a civil or criminal proceeding.

Additions

Amendment: Use of deadly force is never permitted where the officer’s behavior created the need for the use of force.

-In so many instances, including the cases of Robert White and Finan Berhe, it was the officer’s actions that escalated the encounter and therefore gave the officer the alleged justification for using deadly force. This should not be permitted.

-In the PEACE Act recently introduced in the US House of Representatives, there is a subsection stating that it is not a defense to a charge of murder or manslaughter that the use of force was justified if the officer's own gross negligence led to the need to use force. While Bill 27-20 does not address criminal liability, similar language could be added to say that it is not a defense to an alleged violation of this policy that the use of force was justified if the officer's own gross negligence led to the need to use force.

[https://www.congress.gov/bill/116th-congress/house-](https://www.congress.gov/bill/116th-congress/house-bill/4359/text?q=%7B%22search%22%3A%5B%22hr4359%22%5D%7D&r=1&s=1)

[bill/4359/text?q=%7B%22search%22%3A%5B%22hr4359%22%5D%7D&r=1&s=1](https://www.congress.gov/bill/116th-congress/house-bill/4359/text?q=%7B%22search%22%3A%5B%22hr4359%22%5D%7D&r=1&s=1) -

Amendment: Add definition for “Striking” as used in 32.55(c)(3) .

-The term Strike can mean many things and must be defined to ensure that the prohibition on striking a restrained person is enforced.

Amendment: Policy must prohibit the execution of a “no knock” search warrant.

-No knock warrants are a common way in which police officers interact with members of the public using excessive violence. These warrants can have fatal consequences and frequently result in significant trauma to occupants of the home, regardless of whether or not they were personally suspected of any wrongdoing. This is how Breonna Taylor was killed and this is why Montgomery County is facing legal liability for the excessive use of force during the execution of a no-knock warrant at the Palmas family’s home. No knock warrants are not necessary and they endanger the lives of police and the public; they should be prohibited.

Amendment: Duty to intervene must include a duty to report any violations of the use of force policy.

-In order to adequately enforce any use of force policy and to maintain data regarding compliance, individual officers must have an obligation to report known violations. We appreciate that the bill currently contains an obligation to intervene and protections for those who do, but it is missing a significant piece without also including a duty to report.

Amendment: Policy must be created in consultation with members of the community via the Policing Advisory Commission or other transparent public process.

-The targets of police violence should have a say in the development of any policy meant to protect them. This Council created a Policing Advisory Commission and it or another community-involved process should be included in the development of any use of force policy.

Amendment: Less than lethal force should be defined and should include guidance regarding the proportionality of the force to the alleged offense and the degree of danger confronting the law enforcement officer.

-The bill as now written addresses only the use of deadly force. Given that most violence by police officers does not result in death, any policy that aims to keep the public safe must include guidance regarding the use of less-than-lethal force.