



**Testimony for the Montgomery County Council**  
**Expedited Bill 27-20, Police – Regulations – Use of Force Policy**

**July 7, 2020**

**FAVORABLE WITH AMENDMENTS**

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The ACLU of Maryland urges a favorable report on Expedited Bill 27-20, with the amendments advocated for by the Silver Spring Justice Coalition.

As the Council knows, Black Marylanders make up only 30% of the state population. Yet, nearly 70% of people who died in deadly police encounters between 2010-2014 in Maryland were Black. In 2015, that statistic actually increased to 81%, and 100% of those Black Marylanders who died were unarmed.<sup>1</sup>

Here in Montgomery County, African Americans make up 20% of the population. Yet, according to the Montgomery County Police Department's own report, in 2018, 55% of all persons who suffered use of force by members of the police department were African American.<sup>2</sup>

These statistics demonstrate a clear pattern of institutional racism and bias against Black County residents. Our communities are calling for greater accountability for law enforcement agencies to those Black and Brown communities most heavily policed.

**Montgomery County residents are protected only by the narrow, dated, and inadequate limits pronounced by the U.S. Supreme Court because there is no federal, state, or local statute governing use of force by law enforcement**

Although legislation has been introduced at both the federal and state level, there is currently no federal or state law governing the use of force by law enforcement in Maryland. In the absence of the successful passage of this legislation, there will continue to be no local Montgomery County law addressing the use of force.

<sup>1</sup> ACLU of Maryland Briefing Paper: Deaths in Police Encounters in Maryland, 2010-2014 (March 2015), available at [https://www.aclu-md.org/sites/default/files/legacy/files/md\\_deaths\\_in\\_police\\_encounters.pdf](https://www.aclu-md.org/sites/default/files/legacy/files/md_deaths_in_police_encounters.pdf).

<sup>2</sup> Annual Use of Force Report, Montgomery County (2018), available at [https://www.montgomerycountymd.gov/POL/Resources/Files/PDF/PDResources/Use%20of%20Force%20Report%202018\\_External\\_Final\\_0319.pdf](https://www.montgomerycountymd.gov/POL/Resources/Files/PDF/PDResources/Use%20of%20Force%20Report%202018_External_Final_0319.pdf)



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Maryland falls within the minority of states which do not have a statutory prohibition on the use of force. Only nine states in the country do not have such a law.<sup>3</sup> As a result, Marylanders, including Montgomery County residents, are protected from use of force by law enforcement only by the narrow, dated, and inadequate limits pronounced by the U.S. Supreme Court in the cases of *Graham v. Connor*, 490 U.S. 386 (1989) and *Tennessee v. Garner* 471 U.S. 1 (1985).

In *Graham*, the Court set forth a Fourth Amendment standard that applies to all uses of force, both lethal and non-lethal. The *Graham* standard permits officers to use whatever force is “objectively reasonable” in light of the facts and circumstances confronting them, regardless of the officer’s intentions, bias, and regardless of whether lesser force (or no force) could have been employed to address the threat.

In the case of *Garner*, the Court offered a specific, more detailed restriction that applies to the use of lethal force to prevent a suspect from fleeing. Under *Garner*, an officer may use lethal force only if it is necessary to prevent the suspect’s escape and “the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others.” *Tennessee v. Garner* 471 U.S. 1, 11 (1985). This latter requirement can be satisfied not only by the person’s actions at the time (such as threatening the officer with a weapon), but also by probable cause to believe the person has committed a crime involving the infliction or threatened infliction of serious physical harm. This standard for sanctioning lethal force is incredibly low.

The frequent incidents of force, including lethal force, here in Montgomery County clearly demonstrate the inadequacy of the current standards to both deter unnecessary force and to hold officers accountable when unnecessary force is used.

### **Force should only be used by law enforcement when necessary, not merely reasonable**

Law enforcement in Montgomery County and across the state should be permitted to use force only when necessary, not merely when force is

<sup>3</sup> States without a use of force law include Maryland, Massachusetts, Michigan, Montana, Ohio, South Carolina, Virginia, West Virginia, Wyoming.



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reasonable. The current Montgomery Police Department Use of Force Policy<sup>4</sup> reflects an adoption of the inadequate Supreme Court standard. Under Section III( D) of the policy:

III (D). Authorized Use of Deadly Force  
Officers may use deadly force to defend themselves or another person from what they reasonably believe is an imminent threat of death or serious physical injury. The United States Supreme Court has ruled that any use of deadly force must be objectively reasonable. This standard will be applied to all uses of deadly force regardless of whether or not a suspect is fleeing when an officer employs deadly force.

The reform proposed under Bill 27-20, to shift from the current reasonableness standard to a necessary standard, was codified at the state level last year in California (California Assembly Bill 392, 2019) and proposed under the Federal PEACE Act (HR 4359). This shift is gaining traction in other jurisdictions as leaders across the country realize that the current reasonableness standard has not served our communities, and especially Black residents, fairly.

Finally, we encourage the Council to incorporate language from the Federal PEACE Act (HR 4359) to disallow a law enforcement officer from evading discipline by invoking any defense related to the dangerousness of the threat when the officer created or exacerbated the threat.

We urge the Council to report favorably on HB 27-20 with the aforementioned amendments, and move Montgomery County toward a more just system of policing for our residents.

<sup>4</sup> Montgomery County Police Department, Use of Force ((Sept. 21, 2016), available at [https://www.montgomerycountymd.gov/POL/Resources/Files/PDF/Directives/100/FC131%20Use%20of%20Force\(1\).pdf](https://www.montgomerycountymd.gov/POL/Resources/Files/PDF/Directives/100/FC131%20Use%20of%20Force(1).pdf)