



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

House Bill 670-Police Reform and Accountability Act of 2021
Judiciary Committee – February 9, 2021
SUPPORT WITH AMENDMENTS

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club (WDC)** for the 2021 legislative session. WDC is one of the largest and most active Democratic Clubs in our County with hundreds of politically active women and men, including many elected officials.

WDC urges the passage of HB670-Police Reform and Accountability Act of 2021 with the amendments noted in this testimony. This bill represents comprehensive reform of policing in Maryland. WDC commends Speaker Adrienne Jones for this bold legislation, and we also commend Del. Vanessa Atterbeary for her leadership of the Work Group to Address Police Reform and Accountability in Maryland. Although we are proposing some amendments to HB670, we strongly support most of the provisions in this legislation.

1. Amendment to No-Knock Warrant Provisions.

WDC respectfully proposes that this Committee amend the Criminal Procedure Article Section 1-203 to eliminate no-knock warrants entirely.

No-knock warrants authorize law enforcement officers to enter a private property without the prior notification or consent of the occupant(s). Between the years of 2010 and 2016, no-knock warrants accounted for approximately 80 civilian deaths nationwide.¹ In Maryland, two-thirds of all SWAT deployments involved forcible entry between the years of 2010 and 2014, according to a report released by the Governor's Office of Crime Control and Prevention.² SWAT team members discharged firearms 99 times, resulting in 9 people being killed and 95 people injured.³ These numbers may not seem significantly high next to mortality rates associated with other causes, but when race is taken into account, the numbers are alarming.

The Prince George's County Police Department, which serves the largest population of Black people in Maryland, accounted for one-fourth of the state's total number of SWAT team deployments in 2014.⁴ The majority of the deployments were activated to seize illegal drugs and other contraband which will be prohibited under HB670 and should reduce the number of injuries and deaths resulting from the use of no-knock warrants. However, WDC is concerned that allowing no-knock warrants at all will continue

¹ <https://github.com/newsdev/nyt-forcible-entry/blob/master/nyt-forcible-entry-deaths-2010-2016.csv>

² <http://goccp.maryland.gov/wp-content/uploads/swat-report-fy2014.pdf>

³ Ibid.

⁴ Ibid.



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the disproportionate loss of life to which Black Marylanders are subject. The ACLU of Maryland reported that the number of unarmed Blacks who died while encountering police exceeded the total number of all whites who died (33 and 30 people respectively), despite making up only 29% of the state's total population.⁵

Despite the use of body cameras and increased media coverage, racial disparity in victims of police killings has not improved since 2015.⁶ Last year, the killing of Breonna Taylor – a Black woman fatally shot by police officers during the execution of a no-knock search warrant in Louisville, Kentucky – sparked nationwide protests and public outcry for police reform. Currently, Oregon, Florida, and Virginia are the only states to have outlawed no-knock warrants. We urge this Committee to vote to have Maryland join them.

2. Amendments to Composition of Maryland Police Training and Standards Commission

WDC respectfully suggests the following changes to the composition of the Maryland Police Training and Standards Commission (MPTSC) as described in proposed Article 3-203:

- Add one representative each from the Maryland Municipal League and the Maryland Association of Counties. WDC is suggesting this change because the new disciplinary process set forth in SB670 represents significant change from the current, ineffective system of police accountability and therefore will require support and cooperation from local government. A time-honored principle of change management is to involve and receive buy-in from those affected by the change. We believe that representation of local elected officials on the MPTSC will help ensure the eventual success of the changes proposed in HB670.
- Add a representative of the Maryland Chapter of the National Association of Black Law Enforcement Executives (NOBLE). The Commission would be strengthened by adding this diversity and expertise to its roster.
- Add a representative from an institution of higher education with expertise in police training and education. While the proposed legislation adds an expert in police standards, we think that adding an expert in police training is important because training is a crucial part of changes called for in HB670.
- Consider reducing the number of public representatives without relationships to law enforcement from nine as proposed in HB670 to four or five. In looking at the makeup of 10 randomly selected state police training and standards commissions (CA, CT, MI, FL, IL, MN, NJ, OR, TX), the number of public members ranged from zero (IL) to five (CT). It might be wise, given the need to train members of the public who would serve on the MPTSC, to reduce the number to four or five and revisit the issue in two years.

⁵ Ibid.

⁶ <https://news.yale.edu/2020/10/27/racial-disparity-police-shootings-unchanged-over-5-years>



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WDC also respectfully suggests an amendment to proposed Article 3-207, which requires the MPTSC to develop an implicit bias test and training. Tests and training on implicit bias already exist and it may be more efficient for the MPTSC to use an existing, validated test and training program and adapt it to meet Maryland's needs.

3. Amendments to Use of Force Provisions

WDC is pleased to see the recommendations of the House Work Group regarding the accountability for violations of the use of force statute incorporated in HB670. These changes are long overdue. Overall, WDC believes that the Use of Force provisions in SB670 will bring about a significant reduction in the unwarranted use of force by law enforcement. However, WDC respectfully suggests that the Committee amend proposed Section 3-523 of the Criminal Article in several respects.

First, WDC suggests amending the language of subsection (C)(2) to permit the use of force only when, "under the totality of the circumstances, there is no alternative to the use of the degree or level of force and all other alternatives to the use of force have been exhausted." Furthermore, officers should be required to cease using force when the suspect is under the officer's control and poses no threat to the officer's or any third party's safety.

Second, the standard in HB670 currently permits the use of force "that is objectively reasonable and appears to be necessary under the circumstances in response to the threat or resistance by another person." We believe this standard leaves too much discretion in the hands of law enforcement, and the "objectively reasonable" standard has not resulted in accountability for use of excessive force.

The fundamental problem with the "objectively reasonable" standard is that it judges the reasonableness of the use of force *solely* from the point of view of the "reasonable" officer on the scene. We have difficulty defining who is the "objectively reasonable" officer. Are they the officers in *Graham v. Conner*⁷, the U.S. Supreme Court case from which the standard derived? Those "objectively reasonable" officers injured and denied medical help to a victim in a diabetic crisis who did nothing more than enter and leave a convenience store quickly rather than wait in a long line to purchase a product containing glucose. Are they the officers who idly watched George Floyd and Eric Garner beg for their lives? The multitude of Americans protesting police violence tell us that an officer's view of what is objectively reasonable is not what Americans think is objectively reasonable. The legal standard for deciding when the use of force is necessary (and not just "appears" to be necessary) should incorporate more than just the officer's perspective.

Second, WDC also suggests that any standard for judging whether use of force was unlawful needs to examine the race of the victim and the officer, the past record of use of force of the officer, any evidence of racial bias on the part of the officer, the racial culture within the law enforcement agency, the percentage of Black people and people of color who are victims of unnecessary force in relation to their

⁷ 490 US 386 (1989).



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percentage in the overall population, whether the officer has undergone racial bias training and evaluation for racial bias, and other factors that would provide evidence of individual and structural racism motivating the use of force. It is simply not adequate to look solely at the immediate time frame around the use of force.

The law cannot, and should not, ignore the reality that a disproportionate number of the victims of police use of force are Black, and unfortunately, our structurally racist criminal system makes use of force against Black people too often seem reasonable. As Georgetown University Law Professor Paul Butler wrote, “what happens in places like Ferguson, Missouri, and Baltimore, Maryland, where the police routinely harass and discriminate against African-Americans, is not a flaw in the criminal justice system. [They] are examples of how the system [of structural racism and racial subordination] are *supposed* to work.”⁸

For the same reasons as are noted above with respect to the use of force, WDC also requests amendment of subsection (C)(3)(II) to require a law enforcement officer to intervene to prevent or terminate the use of force by another officer beyond what is “necessary” rather than what is “objectively reasonable” under the circumstances.

4. Written De-Escalation Policy

WDC suggests amending HB670 to more clearly define the tactics and techniques that law enforcement agencies are required to include in the “written de-escalation of force policy” required by subsection (C)(5)(I). Similarly, subsection (C)(3)(I) should require law enforcement officers to use de-escalation tactics proactively in every situation unless there is an imminent threat of harm to the officer or a third person. The purpose behind de-escalation is to create “the time, circumstances, and safety” to gain compliance and avoid the need to use force.

WDC also respectfully suggests broadening subsection (C)(9) to prohibit additional uses of potentially deadly force including:

- Shooting a suspect without prior verbal warning
- Kicking or striking a person in the head, neck, sternum, spine, groin, or kidneys using any hard object
- Kneeling on the head, neck, or torso, of a person in a prone or supine position
- Using multiple discharges of an electronic control devices on the same individual
- Using force on an individual who has been handcuffed and subdued

5. Misdemeanor Criminal Liability

The penalties for violation of the proposed use of force statute are much less severe than the criminal liability that civilians would face for possibly less intentional and less culpable conduct. Under HB670, the

⁸ Paul Butler, *Chokehold: Policing Black Men*, 6 (2017)



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consequence of a law enforcement officer's knowing and willful violation of the requirements of this use of force law is misdemeanor liability, even if the knowing and willful violation of the law results in the death of an individual at the hands of law enforcement. The statute calls for an even less severe misdemeanor penalty for reckless violation of the use of force law, even though that recklessness could likewise have resulted in a loss of life. By contrast, under Maryland's current felony murder statute, individuals—including juveniles—may be charged with first-degree murder and sentenced to life imprisonment (possibly without parole) for a killing that they did not intend, did not commit, and may have had no opportunity to prevent. The state cannot have it both ways. Since WDC opposes overincarceration, we would support misdemeanor liability for law enforcement officers under SB670, but only if this Committee also abolishes felony murder altogether and reduces criminal liability across the Criminal Code to create parity of punishment between civilians and law enforcement officers.

In addition, WDC respectfully suggests that HB670 include provisions specifically reserving all other legal remedies that may be available to injured parties.

6. Repeal and Replacement of the Law Enforcement Officers' Bill of Rights (LEOBR)

WDC joins more than 90 Maryland organizations in calling for the repeal and replacement of the Law Enforcement Officers' Bill of Rights (LEOBR).

Maryland has been in turmoil, and many Marylanders have been in despair, over the systemic racism in our public safety system – a system that fails to hold law enforcement personnel and their agencies accountable for the injury and death of Black people. This must stop. We call for a new, uniform, fair, and transparent law enforcement disciplinary process, to be adopted by all jurisdictions in the State. Such a process will begin to reestablish the trust that must exist in a democracy, between law enforcement and ALL residents. The very act of repealing LEOBR, which sets law enforcement officers apart from, and above, all other Maryland residents is a first step on the road to rebuilding that trust.

In creating a new system of reporting, investigating, and acting on law enforcement misconduct, as described in HB670, the state is placing law enforcement officers on the same footing as their fellow civil servants. The proposed legislation does not take rights away from law enforcement officers that their fellow civil servants enjoy. This legislation sets up an open process, which the bill sponsors, advocates, and many law enforcement executives believe will usher in a new era in Maryland policing—an era in which all are treated fairly and equitably, and which creates trust in law enforcement to keep our communities safe. We recognize that there may be unforeseen problems with this new system of law enforcement accountability. Lawmakers, mayors, county executives, police chiefs, sheriffs, and communities must be open to rethinking and remaking the process if it does not always work as intended.

As Delegate Vanessa Atterbeary, Chair of the House Work Group on Police Reform and Accountability said on August 27, 2020, “[C]hange is a comin’. I can’t sit here and say how change is coming because I don’t know that, but change is a comin’.” We now know how the Work Group and Speaker Adrienne Jones envision that change, and we hope the Committee will support the repeal of LEOBR and implementation the replacement disciplinary process for Maryland’s law enforcement officers proposed in HB670.



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WDC stands firmly with civic leaders, advocacy groups, and policymakers across the state of Maryland in calling for policy change around law enforcement and excessive use of force. For too long the justice system's pursuit of law and order has failed to function in a manner that prioritizes the preservation of life for all our residents.

We ask for your support for HB670 and strongly urge a favorable Committee report with the amendments suggested in this testimony.

Respectfully,

Diana Conway
President