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

The County Council for Montgomery County, Maryland, approves the following act.:
Sec 1. Section 33-80 is amended and 35-22 is added as follows:

33-80. Collective bargaining.

    * * *

(c) [[Exemption]] Exemptions.

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

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

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

Alternatives means 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.  

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

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

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

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

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

[[Reasonable alternatives means 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.]]

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

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

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

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

(b) Use of force policy directive – required.

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

(2) The directive must:

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

(B) promote fair and unbiased policing; and

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

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

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

(2) 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; and

(B) the use of such force creates no substantial risk of injury to a third person; ][and

(C) reasonable alternatives to the use of such force have been exhausted;]

(3) prohibit a member of the police from using deadly force against a fleeing 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 force creates no substantial risk of injury to a third person; and

(C) reasonable suspicion exists that the fleeing person committed a felony that threatened or resulted in death or serious bodily injury;

(4) prohibit a member of the police from striking a restrained individual;

[(4)] (5) require a member of the police to stop, or attempt to stop, and to report to a supervisor, another officer who is using excessive force, violating the use of force policy, or committing a crime; ][and]]

[(5)] (6) protect a member of the police from retaliation or discipline for taking action under paragraph [(4)] (5);
(7) prohibit a member of the police from using a neck restraint or a carotid restraint against an individual;

(8) prohibit a member of the police from shooting from a moving vehicle unless circumstances would authorize the use of deadly force;

(9) prohibit a member of the police from shooting at a moving vehicle unless the vehicle is being used as a weapon and the circumstances would authorize the use of deadly force; and

(10) prohibit any less lethal force unless such less lethal force is necessary and proportional in order to effectuate an arrest of a person who the officer has probable cause to believe has committed a criminal offense, and only after exhausting alternatives to the use of such force.

(d) **Policy directive regarding knocking and announcing entry into a residence - required.** The Chief of Police must issue a policy directive that regulates when a member of the police may:

(1) seek or participate in the execution of no-knock warrants; or

(2) enter private premises without first knocking and announcing the member’s presence.

(e) **Minimum requirements for policy directive regarding no-knock entries into private premises.** The policy directive issued under subsection (d) must, at a minimum, require that:

(1) only an officer assigned to the Montgomery County Police Special Weapons and Tactics (SWAT) Team may participate in
the execution of a no-knock warrant;

(2) a member of the police may not enter into private premises without first knocking and announcing the member’s presence unless:

(A) exigent circumstances exist;

(B) other methods of serving a warrant, including methods which would mitigate risk, have been considered and have been determined to:

i. pose unacceptable risk to the life or safety of executing officers or another person; or

ii. be futile;

(C) the crime being investigated is:

i. a crime of violence as defined in Section 14-101(a) of the Criminal Law Article of the Maryland Code;

ii. related to firearms possession;

iii. related to a warrant obtained under Section 5-607 of the Public Safety Article of the Maryland Code;

iv. related to child abuse;

v. related to child pornography;

vi. related to domestic violence; or

vii. related to terrorism; and

(D) at least one of the following factors is present:

i. reasonable suspicion that a person is present at the location who has demonstrated a propensity for
expedited bill no. 27-20

violation; or

ii. reasonable suspicion that entry into the location has
been fortified, is “booby trapped”, or has unique
characteristics which would make knocking and
announcing one’s presence inherently unsafe; and

(3) a member of the police may not enter private premises without
first knocking and announcing the member’s presence if the sole
purpose of entering the premises is to prevent the destruction of
evidence.

(f) The Chief of Police annually must provide a public report indicating
the number of no-knock search warrants served by the Montgomery
County Police SWAT team, including statistics on the number of
warrants served:

(1) on behalf of the Montgomery County Police Department; and
(2) on behalf of another agency at a location within Montgomery
County.

(g) The Chief of Police, in consultation with impacted persons, the Police
Advisory Commission, communities, and organizations, including
representatives of civil and human rights organizations, victims of
police use of force, and representatives of law enforcement
associations, must provide written guidance regarding:

(1) the types of less lethal force and deadly force that are prohibited
under this Section; and
(2) how a law enforcement officer may assess whether the use of
force is appropriate and necessary, and how to use the least amount of force necessary, when interacting with all individuals, including:

(A) pregnant individuals;

(B) children and youth under age 21;

(C) elderly persons;

(D) persons with mental, behavioral, or physical disabilities or impairments;

(E) persons experiencing perceptual or cognitive impairments due to use of alcohol, narcotics, hallucinogenic, or other drugs;

(F) persons suffering from serious medical conditions; and

(G) persons suffering from mental health concerns.

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

(1) must dictate the conduct of members of the county police in the performance of their duties; [[and]]

(2) must not be construed to alter standards of civil or criminal liability;

(3) must not be construed to create private rights enforceable by any person or individual; and

(4) must not be construed to alter state or federal rules of evidence.

[(e) Collective bargaining. The minimum standards of the policy directive under subsection (c) of this Section:}
must not be construed to be mandatory subjects of collective bargaining under Section 33-80(a); and
(2) must be considered employer rights not subject to collective bargaining under Section 33-80(b).


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

Sec. 3. Implementation. The Police Chief must issue the policies required under this Act, and the written guidance required under this Act, within 6 months after the effective date of the Act.
Approved:

Sidney Katz, President, County Council

7/29/2020

Approved:

Marc Elrich, County Executive

8/10/2020

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council

8/9/2020