



ADVISORY COMMISSION ON POLICING

August 14, 2025

Chief Marc R. Yamada
Montgomery County Police Department
J. Thomas Manger Public Safety Headquarters
100 Edison Park Drive Gaithersburg, MD 20878

Re: Recommendations for Revising FC 131, Response to Resistance and Use of Force

Dear Chief Yamada:

The Advisory Commission on Policing (ACP) welcomes your initiative to revise outdated department policies and applauds your willingness to incorporate public input. In that spirit, we offer the following comments and suggestions regarding FC-131.ⁱ

FC-131 was updated in 2022, and some of its revisions were modified in response to Montgomery County efforts to align local policing with the County's aspirations for racial equity and social justice.ⁱⁱ For example, the policy notes that force is to be used "*when no other peaceful resolution exists*," and the paragraphs on drawing a firearm are particularly clear and on point. We also welcome Headquarters Memorandum 25-02, indicating that MCPD policy will be adjusted to reflect the determination of the Maryland Institute for Emergency Medical Services Systems that the term "Excited Delirium" is no longer considered valid or clinically appropriate.ⁱⁱⁱ The term has no place in a Use of Force policy, as it is a widely rejected pseudoscientific diagnosis that has typically been used to suggest that preventable in-custody deaths are inevitable outcomes.^{iv}

However, FC-131 contains parts that need to be aligned more closely with the expectations of the community and provide clearer guidance that helps police officers to better safeguard the community and themselves. An overarching concern is that portions of this policy grant excessive leeway to officers for the use of force under tense and difficult circumstances. For example, it explicitly allows shooting from a vehicle, as well as disregarding training, under certain circumstances. Organizational policy articulates expectations and establishes parameters of behavior for its members. But humans are not infallible and, cognizant that even high-performing individuals may exceed guidelines unintentionally or by mistake, prudent organizations err on the side of caution. Other parts of FC-131 omit broader public safety considerations or de-emphasize "de-escalation" in a manner that undermines the credibility of the department's embrace of Community Policing, list factors for consideration without explaining how they should affect an officer's

calculus, or are vague or contradictory. To help you remedy these defects, we offer the following specific comments and suggestions

MAJOR CONCERNS

Section I. Policy: This foundational section must clarify that the department, as well as the community, rely on the officer's judgment and discretion to employ force proportionally and with the safety of the public in mind, when necessary, under the totality of the circumstances of each situation. This section should also underscore a clear expectation that *"a police officer shall intervene to prevent or terminate the use of force by another police officer beyond what is objectively reasonable under the circumstances,"* as required in the Maryland Police Accountability Act.^v Currently, FC-131 has no requirement to intervene, and the only mention of intervention is in Section VIII, Reporting Requirements. Omission of this fundamental duty would undermine the department's Community Policing efforts.^{vi}

Section III. Force Options

Paragraph A: Must convey the clear expectation that, while some situations may require the application of force, an officer should prioritize other alternatives, such as communication, persuasion, and de-escalation, whenever possible.^{vii} Also, when force is necessary, officers are expected to leverage training, judgment and experience to resolve the situation with the least amount of force necessary to protect themselves and others.

Paragraph D: Needs to make clear that, while officers may need to use force or escalate the level of force to handle a dynamic situation, they shall not create the need to use of force or intentionally escalate a situation. The current text suggests a misunderstanding of "de-escalation," and we cannot conceive a lawful purpose for intentionally escalating a situation.^{viii}

Paragraph I: While the actions and observations listed in subparagraph 1 might be indicators of a state of mind, medical condition, or potential physical threat, the policy needs to make clear that these observable behaviors do not by themselves justify the use of force.

Paragraph L, Authorized Use of Less Lethal Force: Delete the words *"regardless of their training."* Explicitly enabling officers to disregard training, even under exigent circumstances is problematic because it undermines the importance of Police Academy and in-service training. It opens the door to the perception that adherence to training is optional, and could lead to inconsistent actions by patrol officers, compromising safety or potentially making situations worse, creating an avenue for officers to avoid disciplinary action or prosecution, and increasing the county government's tort liability risk.

Subparagraph 4: The high-risk tactic of shooting from a vehicle must be prohibited unless patrol officers receive specialized training and are tested for qualification. Even so, we remain highly skeptical that the potential benefits would outweigh the risks, even in circumstances that would justify the use of deadly force. Among the likely consequences that the department must consider before allowing this high risk tactic include: the extreme difficulty of aiming and shooting accurately from a moving vehicle; the investment of time and resources on training for an the extremely remote likelihood of such a scenario; the risk of injuring or killing innocent bystanders; the risk of officer losing control of the vehicle, resulting in serious injury to the officer and bystanders; and the potential for an increase the county government's tort liability risk.

Section VI, Less-Lethal Devices: This section should be revised to make clear that, as noted above, less lethal devices can cause death or serious injury under certain circumstances. The current text implies that less lethal weapons are non-lethal, which is a grave misconception that invites unsafe outcomes.^{ix}

Headquarters Memorandum 24-01, Use of Force Involving Trained Police Patrol Canines: Should be revised to explicitly acknowledge that, as with other less than lethal weapons and uses of force, a trained canine can cause severe injury or death under certain conditions. Canine officers must be cognizant that even trained police canines have the capability to kill or maim and cannot be controlled to the same degree as other less than lethal weapons, especially when there is a significant distance between canine and handler, or when the canine is out of the handler's sight.^x

OTHER COMMENTS/SUGGESTIONS:

Section I. Policy

Paragraph A: Contains vague language about obligations and should be revised to track closely with the Maryland Police Accountability Act (MPAA) to emphasizes up front that: *"A police officer may only use the force that is objectively reasonable and appears to be necessary under the circumstances in response to the threat or resistance by another person."*^{xi}

Paragraph C: Replace *"when feasible and safe to do so"* with *"whenever possible"* or *"absent exigent conditions."* De-escalation has been prioritized by the State of Maryland, County leaders and the community, and MCPD needs to make clear the expectation that *"de-escalation"* is the preferred means of resolving a tense situation.^{xii} *"Feasibility"* is not defined in the policy and subject to misinterpretation, while *"safe to do so"* is unnecessary as it immediately precedes *"to safely resolve a situation."* The double qualifiers de-emphasize de-escalation as a useful police tactic and echo the false argument that de-escalation and other alternatives to force are inherently dangerous to officers. Evidence from multiple studies and real-world implementation suggests that de-escalation

techniques can significantly reduce use-of-force incidents, leading to fewer injuries for both civilians and officers.^{xiii}

Paragraph H: The text in this paragraph is more appropriate in Section III, Force Options, paragraph O, Factors to Consider when Employing Force. Also it should be modified to include reasonable expectations as to what officers should know or consider in deciding whether and what force to use, e.g., situational awareness, etc. For example, should officers not be expected to consider the possibility that the use of force in front of an already hostile crowd could further inflame an already tense situation?^{xiv} While use of force decisions may have to be made fast and under trying circumstances, the phrase “*officers are not expected to possess all knowledge of every aspect of the interaction, or to act at the time of the interaction as if they had the benefit of perfect hindsight*” combined with the omission of any expectation as to what an officer should know or consider could be interpreted as intended to facilitate excuses for a *post facto* review of an officer’s use of force.

Section II. Definitions

Paragraph G: Rewrite the definition of Exigent Circumstances to more closely track with *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984), such as the definition of exigent circumstances used by the International Association of Police Chiefs (IACP): “*those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.*”^{xv}

Paragraph H: Less Lethal Force: Rewrite as force that is neither likely nor intended to cause serious injury or death, which tracks closely with the text of the MPAA.^{xvi}

Paragraph O Proportional: This definition should track more closely with the Maryland Attorney General’s clarification of the principle of proportionality in the use of force by police.^{xvii} Also, the current wording in FC-131 implicitly allows the use of force for a purpose other than a legitimate law enforcement objective.

Paragraph P Protective Instruments: Recommend a revision that tracks closely with the Maryland Police and Correctional Training Commissions (MPCTC) Best Practices for Use of Force Policy & Training.^{xviii} Also, the term “*protective instruments*” is a confusing euphemism, which would normally be understood to mean instruments designed to protect the officer from threat, such as Protective Body Armor or helmets. Use “*less lethal weapons*” instead of “*protective instruments.*”

Section III. Force Options

Paragraph M, Authorized Use of Deadly Force: Replace “when practical” in subparagraph 3 with “absent exigent circumstances.” Practicality is not defined in FC-131 and is subject to

misinterpretation, whereas exigent circumstances is a well-established concept in law enforcement that is included in the definitions section of FC-131.^{xix}

Paragraph N, Unauthorized Use of Force: Subparagraph 2: Should make clear that an officer may not discharge a firearm at a moving vehicle unless: (1) a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or (2) the vehicle is operated in a manner that threatens to cause death or serious physical injury to the officer or others, and no other objectively reasonable means of defense appear to exist, which includes moving out of the path of the vehicle. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle, which is rarely effective in stopping the vehicle, and a disabled vehicle could careen out of control and endanger bystanders.^{xx}

Paragraph O, Factors to Consider when Employing Force: Subparagraph 2 belongs more properly in training manuals. However, if it were to remain in the policy, at a minimum it should be revised to provide a list of prioritized factors that officers should consider and how each factor should weigh on officers' calculus. For example, officers should be clearly instructed to consider the likelihood that a use of force could further inflame an already hostile crowd.^{xxi} The current list of 18 factors, including "*any other exigent circumstances*" to be considered during "*the evaluation and articulation of the totality of circumstances of each encounter*," lacks any guidance as to how an officer is expected to interpret or respond to these circumstances and, as currently written, could be interpreted as aiding an officer's *post facto* justification for the use of force.

Section IV, Firearms, Paragraph B:

Subparagraph 1: Delete the words "*reasonable*" and "*unnecessarily*." Caution is what the officer must exercise, and it is up to supervisors and reviewers to determine if the degree of caution was reasonable. We have trouble conceiving a practical situation in which an officer must intentionally endanger the lives of others. Such implied scenarios are highly speculative and are more appropriate for training than policy. In the context of policy, they echo the "warrior" mindset, in which enforcement of the law is prioritized over the safety of bystanders and other members of the community.^{xxii}

Delete "*when possible*" from subparagraph 2 or replace "*should*" with "*must*." The combination of two weak qualifiers unnecessarily dilutes the requirement that officers exercise caution to avoid endangering bystanders, as well as the importance of situational awareness.

We hope that our contributions help you align policy FC-131 more closely with the needs and expectations of our community and provide the practical guidance to help our police officers serve our community and safeguard themselves and others. Feel free to contact our commission if you have any questions or need any clarification.

Sincerely,

Rev. Brian Bellamy
Chair, Advisory Commission on Policing,

Cc: County Council
Police Accountability Board

ⁱ See: FC 131 Policy on Response to Resistance and Use of Force (FC-131) <https://www.montgomerycountymd.gov/pol/Resources/Files/PDF/Directives/100/FC131.pdf>, <https://www.montgomerycountymd.gov/pol/Resources/Files/PDF/Directives/0100/HQM%2024-01.pdf>, and <https://www.montgomerycountymd.gov/pol/Resources/Files/PDF/Directives/0100/HQM%2024-01.pdf>

ⁱⁱ See Reimagining Public Safety Task Force (RPSTF) report at <https://www.montgomerycountymd.gov/rps/Resources/Files/reports/rps-task-force-recommendations-report.pdf>, Police Accountability Act (PAA) at <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0670/?ys=2021rs> And Effective Law Enforcement for All (ELEFA) at <https://www.montgomerycountymd.gov/rps/Resources/Files/reports/ELEFA-MCPD-FullReport-v7.pdf>

ⁱⁱⁱ See Headquarters Memo 25-02, Excited Delirium References dated July 28, 2025, at https://www.montgomerycountymd.gov/pol/Resources/Files/PDF/Directives/0100/HQ%20Memo%2025-02%20Excited%20Delirium%20References_2.pdf

^{iv} See American College of Medical Toxicology, Position Statement: End the Use of the Term “Excited Delirium,” May 1, 2023 at https://www.acmt.net/wp-content/uploads/2023/05/PS_230501_End-the-Use-of-the-Term-Excited-Delirium.pdf

^v Maryland Code, Public Safety, Use of Force, § 3-524 (e)(2) at [https://govt.westlaw.com/mdc/Document/N6CC3C7A0C7DA11EB88F8EE2420A80AB2?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/N6CC3C7A0C7DA11EB88F8EE2420A80AB2?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)), as well as Section 3-524(c)(3)(ii) Maryland Police Reform and Accountability Act of 2021 at <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0670/?ys=2021rs>

^{vi} For a definition of Community Policing, see <https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-p136-pub.pdf>.

^{vii} See paragraph 3 under section “Identified Use of Force Training Concepts and Best Practices” in MPTSC Best Practices for Use of Force Policy & Training Development, Maryland Police and Correctional Training Commissions (MPCTC), dated May 4, 2022, at https://mpctc.dpscs.maryland.gov/pdf/UOF_Best_Practices.pdf

^{viii} See Montgomery County Code, Chapter 35-Police; Section 35-6A(b)(5), as well as “DE-ESCALATION: Guidelines for how to begin evaluating your agency’s de-escalation practices” by IACP, September 2020, p. 1 at <https://www.theiacp.org/sites/default/files/Research%20Center/Combined%20v3.pdf>

^{ix} See Reese Dunklin et. al, “Why did more than 1,000 people die after police subdued them with force that isn’t meant to kill?” Associated Press, March 28, 2024, <https://apnews.com/article/associated-press-investigation-deaths-policeencounters-02881a2bd3fbeb1fc31af9208bb0e310>, as well as Reuters, “A Reuters Examination of 1,081 Deaths involving Tasers,” 2019, <https://www.reuters.com/investigates/special-report/usa-taser-database/>

^x In *Robinette vs. Brown* an Appeals Court found in a narrow decision that deadly force was not used in a specific case in which a police dog killed a suspect, noting that “*the mere recognition that a law enforcement tool is dangerous does not suffice as proof that the tool is an instrument of deadly force.*” See: <https://law.resource.org/pub/us/case/reporter/F2/854/854.F2d.909.86-6135.html> Though rare, fatal attacks by police canines have been documented. See Polsky, Richard H., in *Dog Bite/Animal Behavior Expert*

Witness at <https://www.dogexpert.com/police-k9-fatal-dog-attacks/#:~:text=Four%20cases%20are%20noted%20in,resulting%20in%20a%20quick%20death> See also Brown, Melissa, “Joseph Pettaway death: Rare in U.S. for police dogs to kill,” The Montgomery Advertiser, July 31, 2018, at <https://www.montgomeryadvertiser.com/story/news/crime/2018/07/31/how-many-times-has-k-9-police-dog-killed-suspect-country-montgomery-joseph-pettaway-death-one-few/849017002/>

^{xi} Page 17 Police Accountability Act (PAA) at: <https://mgaleg.maryland.gov/2021RS/bills/hb/hb0670f.pdf>

^{xii} See paragraph 6 under section “Identified Use of Force Training Concepts and Best Practices” in MPTSC Best Practices for Use of Force Policy & Training Development, Maryland Police and Correctional Training Commissions (MPCTC), dated May 4, 2022, at https://mpctc.dpscs.maryland.gov/pdf/UOF_Best_Practices.pdf

^{xiii} The MPAA requires MCPD to develop its own de-escalation policy, and we see the language in the MPAA as reflecting minimum requirements, while FC-131 should meet the higher expectations of the community. See “De-Escalation in Everyday Police Operations” in Police Chief Magazine, International Association of Chiefs of Police (IACP), <https://www.policechiefmagazine.org/de-escalation-everyday-police-ops/#:~:text=8, police%20officers%20and%20community%20members>, as well as National Consensus Policy and Discussion Paper on Use of Force, IACP, revised 2020, p. 3, paragraph IV B De-Escalation at https://www.theiacp.org/sites/default/files/2020-07/National_Consensus_Policy_On_Use_Of_Force%2007102020%20v3.pdf

^{xiv} “Proportionality requires officers to consider if they are using only the level of force necessary to mitigate the threat, and whether there is another, less injurious option available that will safely and effectively achieve the same objective. Proportionality also requires officers to consider how their actions will be viewed by their own agencies and by the general public, given the circumstances. This does not mean that officers, at the exact moment they have determined that a use of force is necessary to mitigate a threat, should suddenly stop and consider how the public might react. Rather, it is meant to be one factor that officers should consider long before that moment, and throughout their decision-making on what an appropriate and proportional response would be.” Page p. 38 of “Guiding Principles on the Use of Force” in Critical Issues in Policing Series, Police Executive Research Forum at <https://www.lexipol.com/resources/blog/responses-common-arguments-police-use-deadly-force/>

^{xv} See National Consensus Policy and Discussion Paper on Use of Force, IACP, revised 2020, p. 11: *Exigent circumstances are “those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.”*

^{xvi} Maryland Police and Corrections Training Commissions defines Less Lethal Force as “Officers may be issued less lethal weapons that may assist them in controlling resistant or assaultive behavior. “Less lethal weapons” are those weapons that are expected to create less risk of causing serious injury or death, such as, ECD, OC Spray.” See Identified Use of Force Training Concepts and Best Practices in MPTSC Best Practices for Use of Force Policy & Training Development, May 4, 2022, at https://mpctc.dpscs.maryland.gov/pdf/UOF_Best_Practices.pdf

^{xvii} See Frosh, David, Attorney General of Maryland, “Police Officers – Use of Force Statute – Meaning of The Requirement That Force Used by Officers Must be ‘Necessary’ and ‘Proportional’ February 25, 2022, at <https://www.marylandattorneygeneral.gov/Opinions%20Documents/2022/107oag033.pdf>: “...even when the use of some force is necessary, the degree and amount of force must be ‘proportional,’ that is, it must correspond to, and be appropriate in light of, the severity of the threat or resistance confronting the officer or the objective that the officer aims to achieve. Put another way, an officer may use no more force than is reasonably required under the circumstances to prevent an imminent threat of physical injury to a person or to effectuate another legitimate law enforcement objective. Third, the proportionality requirement further prohibits an officer from using force if the harm that is likely to result from that degree and amount of force is too severe in relation to the value of the interest that the officer seeks to protect. For example, even if deadly force is the only feasible way to prevent the mere destruction of a piece of property, an officer may not use such force, because the harm likely to result is not proportional to the officer’s legitimate interest in protecting property. Instead, an officer may use lethal force only in response to an apparent imminent threat of death or serious bodily injury to a person.”

^{xviii} See paragraph 6, Identified Use of Force Training Concepts and Best Practices in MPTSC Best Practices for Use of Force Policy & Training Development, May 4, 2022, at https://mpctc.dpscs.maryland.gov/pdf/UOF_Best_Practices.pdf

^{xix} See endnote xv above for a definition of exigent circumstances.

^{xx} Wallentine, Ken, “Officer Not Entitled to Qualified Immunity for Shooting into Car,” in Lexipol, February 21, 2021, <https://www.lexipol.com/resources/blog/officer-not-entitled-to-qualified-immunity-for-shooting-into-car/#:~:text=In%202014%2C%20the%20Supreme%20Court,emphasis%20added>) See also Griffiths, David “Police vs. Cars,” pp 56-58,60,62-63,64 in Police: The Law Enforcement Magazine, Volume: 29, Issue: 6, Dated: June 2005, at <https://www.policemag.com/patrol/article/15349384/cops-vs-cars>

^{xxi} See endnote xiv above.

^{xxii} See p. 231 in Stoughton, Seth, “Law Enforcement’s “Warrior” Problem” in 6 Harvard Law Review Forum, Volume 128, Issue 6, April 2015 at <https://harvardlawreview.org/forum/vol-128/law-enforcements-warrior-problem/> *“Both Warriors and Guardians seek to protect the communities they serve, of course, but the guardian mindset takes both a broader view and a longer view of how to achieve that goal. Put simply, the guardian mindset prioritizes service over crimefighting, and it values the dynamics of short-term encounters as a way to create long-term relationships. As a result, it instructs officers that their interactions with community members must be more than legally justified, they must also be empowering, fair, respectful, and considerate. The guardian mindset emphasizes communication over commands, cooperation over compliance, and legitimacy over authority. And in the use-of-force context, the Guardian emphasizes patience and restraint over control, stability over action.”*