



USE OF FORCE

FC No.: 131

Date: 09-21-16

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

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Appendix A: Use of Force Report-Criteria for Use

I. Policy

- A. The need to use force, whether deadly or non-deadly, is one of the most demanding and critical decisions that a law enforcement officer must make. ***The department respects the sanctity of every human life.*** There are situations when an officer is forced to make the irreversible decision of whether or not to use deadly or non-deadly force. Such a decision can have a powerful and possibly harmful effect on the officer, the department, and the community. The purpose of this policy is to provide guidance to aid ***officers*** in the exercise of that decision.
- B. Officers may only use force which is objectively reasonable to make an arrest, an investigatory stop/detention or other seizure, or in the performance of their lawful duties, to protect themselves or others from personal attack, physical resistance, harm, or death. The decision to exercise force must be based upon the circumstances that the officer reasonably believes to exist. In determining the appropriate level of force to be used by an officer, the nature of the threat or resistance faced or perceived by the officer as compared to the force employed should be considered. Factors to be considered in assessing the level of force to be used include, but are not limited to the following:
 - 1. the severity of the crime at issue,
 - 2. whether the subject poses an imminent threat to the safety of the officers or others, and
 - 3. whether the subject is actively resisting arrest, or the subject is attempting to evade arrest by flight.***The reasonableness of force used by an officer will be analyzed based on the totality of the circumstances at the time the force was used.***
- C. All officers have a number of force options available to use in those situations where force is objectively reasonable. Examples may include but are not limited to:
 - 1. Subduing or arresting a physically assaultive person
 - 2. Instances that reasonably threaten the safety of an officer or other person
 - 3. Stopping a person who is attempting to flee or escape a lawful detention or arrest

4. When directing, controlling, or escorting resistive or physically uncooperative persons
5. Other situations where persons who are being placed into custody are non-compliant or resistant to lawful orders

II. Definitions

- A. ***Active Resistance***: occurs when a subject takes action and/or uses evasive movements that attempt to physically counteract or defeat an officer's attempt to detain a subject or place them in custody and take control, and which may create a potential risk of bodily harm to the officer, subject, and/or other persons. Examples include, but are not limited to, pulling away from the officer, breaking officer's grip and/or control, or fleeing arrest.
- B. **Deadly Force**: Any use of force which is intended to or likely to cause a substantial risk of death or serious physical injury.
- C. **Less Lethal Force**: Any use of force other than that which is considered deadly force.
- D. **Medical Treatment**: A minimum of an on-scene response by MCFRS.
- E. **Objectively Reasonable Force**: That level of force which is appropriate when analyzed from the perspective of a reasonable officer *on the scene* possessing the same information and faced with the same circumstances as the officer who actually utilized the force. ***The objective reasonableness of a particular use of force is not analyzed with hindsight, but will take into account the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations.***
- F. **Passive Resistance**: A refusal by an unarmed person to comply with an officer's verbal command or physical control techniques *by non-violent actions*. Examples include, but are not limited to, ignoring verbal instructions by failing to respond or move, linking arms, or going limp.
- G. **Probable Cause**: Facts and circumstances that would lead a reasonable person to believe that a crime has been committed and a particular individual has committed that crime.
- H. **Protective Instruments**: Devices or tools authorized by the department that are intended to protect the officer or others or to affect an arrest, investigative stop/detention, or seizure. These include the expandable baton, electronic control *weapons*, OC Aerosol, flashlight, and kinetic energy /12-gauge impact projectiles.
- I. **Scene**: The location(s) where force was utilized during an event.
- J. **Serious Physical Injury**: 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.

III. Force Options

- A. An officer may encounter situations that require not only the officer's presence, but some form of verbal or non-verbal communication. This communication may take the form of providing information, giving commands, physical gestures, or directions, asking or answering questions, conducting interviews, etc. It may also take the form of issuing specific instructions to individuals or groups, dealing with arguments, verbal assaults, or threats, handling disputes, disagreements, etc. The department recognizes that some situations require the application of force.

- B. A person need not strike or attempt to strike an officer to be considered a physical threat as long as an officer has an objectively reasonable belief (verbal threats, verbal defiance, physical stance, etc.) that the person is physically threatening and has the present ability to harm the officer or another. Examples of actions or observations that may lead an officer to believe that a person is a threat include, but are not limited to, clenched fists, displayed hostility or anger, verbal threats, aggressive stance, non-compliance, and furtive movements, among other things. Under the law, officers are not obligated to retreat when confronted with a threat. The department relies on the officer's judgment and discretion to employ objectively reasonable force under each unique circumstance.
- C. Authorized Use of *Less Lethal* Force
1. *Less Lethal* force, as defined herein, may be used to effect arrests, to safely make or maintain an investigative detention or seizure, or to protect officers or others from personal *harm*, physical resistance, or injury, provided the force applied is reasonable based upon the immediate circumstances confronting the officer at the time.
 2. *Less Lethal* force may involve the use of defensive tactics (hands/body) and/or protective instruments.
 3. Although the department issues authorized protective instruments, in exigent circumstances, officers are not prohibited from using another object or instrument in order to protect themselves or others as long as the object is used in accordance with the limitations on force contained in this policy.
- 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.
- E. Destruction of Animals
1. Humane Destruction of Injured Animals
Officers may discharge their firearms to destroy injured animals when no other reasonable alternative exists. Factors taken into account must include backstop, location, *bystanders*, etc. When an animal is destroyed, officers must complete the MCP 37, "Use of Force Report," in accordance with Appendix A. An incident report will be completed for the destruction of injured domestic animals (cats, dogs, cattle, horses, etc.). An incident report is not required for the humane destruction of non-domestic animals (deer, raccoons, and other wildlife). Officers/Animal Services Division (ASD) will attempt to locate the owner of a destroyed domestic animal.
 2. Destruction of Dangerous or Vicious Animals
If an officer destroys a dangerous or vicious animal (domestic or non-domestic) that presents a threat to the safety of the officer or another, an incident report documenting the incident shall be completed in addition to the MCP 37. This includes attempted destruction by firearm. Officers who are confronted by dangerous animals are encouraged to consider the use of non-firearm alternatives, to include an *ECW*. An MCP 37 is required in cases where an officer uses a protective instrument against a dangerous or vicious domestic animal.

IV. Firearms

- A. Drawing a Firearm
Firearms may be drawn whenever officers reasonably fear for their safety or the safety of others.
- B. Consideration of Backstop
When discharging a firearm for any reason, officers must exercise reasonable caution in order to avoid unnecessarily endangering the lives of bystanders. When possible, officers should give consideration to background, bystanders, and location.

C. Prohibitions

1. Warning shots are prohibited.
2. Officers are prohibited from intentionally placing themselves in the path of a moving vehicle where an officer's use of deadly force would be the probable outcome. When confronted by an oncoming vehicle, officers will move out of its path, if possible, rather than fire at the vehicle.
3. Officers are prohibited from shooting at or from moving vehicles unless the circumstances would authorize the use of deadly force.

V. **Electronic Control Weapons**

- A. *An electronic control weapon (ECW) is a less lethal weapon, the deployment of which is a serious use of force. A ECW may only be deployed when an officer is confronted with circumstances that present a risk of immediate danger to the officer or others that is likely to be mitigated by use of the ECW. Use of the ECW will be in accordance with the guidance set forth in the departments Electronic Control Weapons Policy (FC 133).*

VI. **12 Gauge Impact Projectiles**

- A. The 12 gauge impact projectiles are intended to provide a less-lethal use of force option with greater standoff distance than other protective instruments.
- B. All officers who use this system must ensure that any person struck with the projectile and in custody receives a prompt medical evaluation at a hospital. Officers will request that Montgomery County Fire Rescue Services transport the person. If MCFR refuses to transport the person an on-scene supervisor will ensure the person is transported to the hospital by an officer. Photos of all injuries will be taken.

VII. **Custody and Transport Responsibilities**

A. Important Considerations

Officers must be mindful of certain indicators and/or conditions when detaining or arresting a person. The following conditions and/or indicators may potentially contribute to sudden unexpected death following extreme physical exertion and/or restraint;

1. Excited Delirium: State of extreme mental and physiological excitement, characterized by extreme agitation, hyperthermia, euphoria, hostility, exceptional strength, and endurance without fatigue.
2. Alcohol or drug use/abuse
3. Obesity
4. Display of erratic/psychotic behavior
5. Incoherent speech
6. State of agitation
7. Subject intentionally injuring themselves
8. Subject disrobing or naked

Officers must recognize these factors and closely monitor a subject in custody in the aftermath of a struggle when one or more of the above indicators are present and the scene is secure.

- B. Officers must take appropriate measures so that the individual being transported is able to breathe without restriction and if possible should lay the subject on their side or seated in an upright position. Officers *must* avoid transporting subjects in a face-down position whenever possible.

C. Medical Emergencies

1. Officers must immediately summon emergency medical assistance if the subject exhibits or complains of trouble breathing, becomes unresponsive, exhibits reduced levels of consciousness, or if in the officer's opinion the subject requires evaluation or medical treatment.

2. *Officers shall render medical aid, consistent with their training, as soon as practical and safe to do so.*

D. Medical Treatment

Officers and supervisors shall obtain medical treatment as soon as practical for individuals:

1. Who show signs of injury as a result of any use of force.
2. Who complain of injury as a result of any use of force and the person requests medical attention.
3. When the officer or supervisor reasonably believes an individual is in need of medical attention as a result of any use of force.
4. Who show obvious signs that chemical restraint may be necessary.
 - a. Officers must specifically request an Advanced Life Support Unit (ALS). ALS units carry medication which can assist in treating individuals suffering from excited or agitated delirium.
5. Who have been exposed to an *ECW* (MCFRS Ambulance medical is an appropriate level of care; hospital/emergency medical center visit *may not be* required.)

E. Tactical Medics

1. *Tactical Medics of the Emergency Services Unit (ESU) will meet the requirement of on-scene medical treatment, when deployed with the Tactical Section on high risk incidents such as raids, Emergency Response Team (ERT) incidents, and other Tactical Section Operations. During the course of these operations, Tactical Medics may perform initial treatment and evaluation of injured or ill persons in accordance with Maryland Medical Protocols established by the Maryland Institute for Emergency Medical Services Systems (MIEMSS). Tactical Medics will also document any refusal of medical treatment and/or transport according to Maryland Medical Protocols. If a higher level of medical care or transport to a medical facility is required, the Tactical Medic will facilitate requesting any additional medical resources.*
2. *Decentralized Tactical Medics working in their primary duty assignment (not supporting the Tactical Section) will summons on-scene medical assistance for individuals who require medical treatment as the result of any use of force.*

F. Medical treatment will not be refused for any individual who requests it.

G. If safety circumstances reasonably dictate moving the subject to another location, officers may have emergency medical personnel meet the officers at a nearby location to assess the subject and render aid.

VIII. Use of Force Reporting Requirements

A. When to Report Use of Force or Firearms Discharge

The MCP 37 will be completed in the following circumstances (refer to Appendix A):

1. Anytime force is used to counteract a physical struggle.
2. Following the use of any force which results in an injury to an individual.
3. When an individual claims to have been injured as a result of use of force.
4. Whenever force is applied using a protective instrument.
5. Whenever a firearm is discharged other than authorized target practice.
6. Whenever a department canine inflicts injury on any subject or suspect in conjunction with a *canine deployment*.
7. Anytime an officer is assaulted or ambushed.

B. One Subject - One MCP 37

When multiple officers are involved in a use of force incident with one subject, it will be considered a single event for reporting purposes. Only one MCP 37 is needed unless more officers are involved than can be captured on a single MCP 37; in that case, additional MCP 37s must be completed.

C. Multiple Subjects - Multiple MCP 37s

When force is used against more than one subject in an incident, an MCP 37 must be completed for each subject.

D. *In those instances, where SERT tactics are used for crowd/riot control during mass disturbances/protests that involve a use of force against multiple subjects whose identities cannot be established, a single MCP 37 will be completed that includes basic known information (e.g., date, time, CR number, location, type of force used, reason, etc.). Additional details related to the incident, including the circumstances and nature of the force used, will be documented in the incident report.*

E. The MCP 37 will be completed prior to the end of the tour of duty. It will be forwarded, via the chain of command, to the bureau chief who, after review, will forward it to the Policy and Planning Division. No copies of the MCP 37 will be maintained other than those kept by the Policy and Planning Division.

F. The MCP 37 will be used administratively to evaluate use of force department-wide and will not be used by the Internal Affairs Division (IAD) in any subsequent investigation. An annual report summarizing the data from these forms will be made to the Use of Force and Weapons Review Committee, which, after review, will report its analysis and any recommendations to the Chief of Police.

G. Officer's Responsibilities

In every circumstance described in section VIII.A. above, officers are required to adhere to the following:

1. On-duty officers must immediately report the incident to their on-duty supervisor. Off-duty officers must immediately report the incident to an on-duty supervisor in the district of occurrence.
2. Officers will complete or provide information for the completion of an incident report(s), charging document(s), and/or the MCP 37. If the officer involved in the use of force does not complete some or all of the required documentation, then the reporting officer must ensure the information is accurately recorded. The reporting officer will identify the source of the information in the required documentation. If it is investigatively necessary to keep the source out of the required documentation then the identity of the source will be maintained on notes in the officer's and/or detective's case file.

H. Supervisor's Responsibilities

An ECC supervisor will immediately notify an on-duty patrol supervisor of, and the on-duty supervisor will respond to, all *ECW* deployments, firearm discharges (except for the humane destruction of non-domestic animals), 12 gauge impact projectiles, and any use of force that results in serious bodily injury or in-custody death. Supervisors are required to notify the Duty Commander, or the District Commander of the district of occurrence during daytime hours Monday-Friday, of any of the above incidents.

1. Notifications: Supervisors are required to make the below notifications in the circumstances described regardless of whether the involved employee is on or off-duty.
 - a. Homicide Section: Immediately notify a Homicide Section supervisor in the following instances:
 - i. All intentional firearm discharges by an employee, whether injuries occur or not, with the exception of authorized range practice or the destruction of dangerous or injured animals.
 - ii. All accidental firearm discharges by an employee that result in an injury to anyone, including the involved officer.
 - iii. All incidents where an individual sustains life-threatening injury as a result of police action.
 - b. Internal Affairs Division (IAD): Immediately notify IAD in the following instances:
 - i. All intentional and accidental firearm discharges involving departmental firearms and authorized off-duty firearms, regardless of injury (except range practice or the *humane* destruction of *non-domestic* animals).
 - ii. Any range practice or destruction of an animal incident resulting in injury.
 - iii. Any use of force incident resulting in death or serious injury requiring the immediate hospitalization of a person in police custody.

- iv. Any other event or situation as may be deemed necessary after consultation with an executive officer.
- c. Training and Education Division (TED): Notify the TED to provide a replacement firearm, as appropriate.
2. Complete the MCP 37 if the officer is unable to complete it.
3. Review the submitted MCP 37 for accuracy and completeness.
4. ***Review the BWCS recording when an officer is involved in a reportable use of force incident.***
5. Ensure that an incident report and any additional reports are completed and submitted if required.
6. In incidents involving intentional or accidental firearms discharges (except for authorized range practice or for the purpose of destroying animals), the supervisor will complete the MCP 37. In the section for supervisor's comments, the supervisor will indicate that the incident is under investigation and not provide any judgment about the circumstances.
7. Forward the MCP 37 to the bureau chief via the chain of command prior to the end of the tour of duty.
8. In instances where force was used to destroy a dangerous animal (domestic or non-domestic) that presented a threat to the safety of the officer or anyone else, supervisors will forward a copy of the incident report through the chain of command to their respective bureau chief. The bureau chief will, in turn, forward copies of the incident report to the ASD and IAD for review.
9. Remove any officer from line duty who has been involved in any use of force that results in death or serious physical injury and refer them to the department's Traumatic Incident Program in accordance with that program's guidelines. (See FC 310, "Administrative Leave" and Appendix O of the FOP Collective Bargaining Agreement)
10. On-duty supervisors in the district of occurrence will ensure that off-duty officers involved in reportable use of force events fulfill the requirements of this directive. The on-duty supervisor will complete the supervisor's section of the MCP 37 and forward it, along with a copy, to the officer's assigned supervisor.

IX. Use of Force and Weapons Review Committee

- A. The Use of Force and Weapons Review Committee will review ***use of force incidents referred by a bureau chief, as well as*** all in custody deaths and intentional discharge of firearms by department personnel, and report the results of this review, along with any conclusions or recommendations, to the Chief of Police, as requested. The committee will focus on overall operations and procedures and not on individuals. In addition, the committee will periodically evaluate the list of authorized departmental firearms and protective instruments and, in coordination with the Joint Health and Safety Committee, make recommendations concerning approval, adoption, and required training/certification.
- B. The committee will be comprised of at least two executive officers from the Patrol Services Bureau (one will be the administrative lieutenant of PSB), one executive officer from the Investigative Services Bureau, (as determined by the Assistant Chief, ISB), one executive officer from IAD, the Director, Policy and Planning Division, and the Director, Training and Education Division, who will serve as the chair. The committee will meet three times a year.
- C. The Policy and Planning Division will be the repository for the MCP 37 and will provide annual reports to the committee and the FOP. Information for the committee will be provided by the Policy and Planning Division. Recommendations from the committee will be forwarded to the Labor-Management Relations Committee.
- D. ***The Policy and Planning Division will conduct an annual analysis of use of force activities, policies, and practices.***

X. Training/Certification Requirements

A. Authorization

Only officers who have successfully completed specified training courses and any required recertification courses as determined by the department are authorized to carry and/or use any defensive tactic, protective instrument, or firearm.

B. Annual Certification

Each officer must certify annually with all approved firearms and protective instruments that the officer is authorized to use. Annual firearms certification must meet the standards of the Maryland Police and Corrections Training Commission and department training standards. Failure to recertify annually on any firearm or protective instrument will withdraw from the officer the authorization to carry or utilize that force option. In the case of department-issued firearms, the firearm will be immediately turned over to range staff until recertification is completed. In the case of department issued protective instruments, such equipment will be immediately turned in to a sworn academy staff member until recertification is completed.

C. Use of Force Policies

Officers will be provided a copy of, and instruction in, the department's use of force policy prior to being authorized to carry any firearm or protective instrument.

D. Documentation/Administration

The Director, TED, is responsible for the maintenance of certification records, approval lists for protective instruments and defensive tactics, training materials, and approved lesson plans.

E. Defensive Tactics

Original training in defensive tactics occurs during Entry Level Training. Retraining occurs during In-Service Training every year. The number of hours of training dedicated to defensive tactics will be determined by the Director, TED, who will maintain course descriptions and a list of approved defensive tactics.

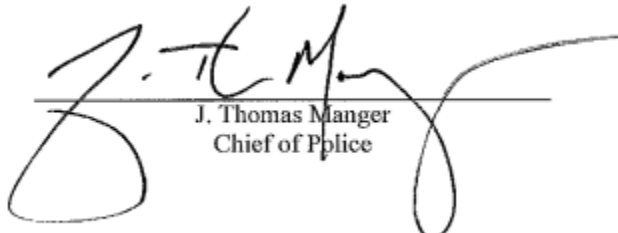
XI. **CALEA Standards:** 1.3.1 through 1.3.13 *and* 82.3.5

XII. **Proponent Unit:** Office of the Chief

XIII. **Cancellation:** This directive cancels Function Code 131, effective date *03-10-14* and Headquarters Memoranda *14-01 and 14-03*.

XIV. **Disclaimer**

This directive is for department use only and does not apply in any criminal or civil proceeding. This department policy should not be construed as the creation of a higher legal standard of safety or care in a legal proceeding relating to third party claims. Violations of this directive will only form the basis for departmental administrative sanctions.



J. Thomas Manger
Chief of Police

**Use of Force Report – MCP 37
Criteria for Use**

**Appendix A
FC 131**

Incident	Instructions/Notifications	Reports Required
<ul style="list-style-type: none"> • Force used to counteract a physical struggle • When injury occurs from use of force • When injury is claimed to have occurred from use of force • Use of a protective instrument 	<ul style="list-style-type: none"> • MCP 37 forwarded via chain 	<ul style="list-style-type: none"> • Police report related to incident as required (MCP 37 referenced) • MCP 37
Intentional discharge of firearm – other than authorized target practice and destruction of animals	<ul style="list-style-type: none"> • MCP 37 forwarded via chain • Immediate notification of IAD and Homicide Section 	<ul style="list-style-type: none"> • Police report related to incident as required (firearm discharge referenced) • MCP 37
Accidental discharge of firearm <u>with</u> injuries	<ul style="list-style-type: none"> • MCP 37 forwarded via chain • Immediate notification of IAD and Homicide Section 	<ul style="list-style-type: none"> • Police report related to incident as required (firearm discharge referenced) • MCP 37
Accidental discharge of firearm <u>without</u> injuries	<ul style="list-style-type: none"> • MCP 37 forwarded via chain • Immediate notification of IAD 	<ul style="list-style-type: none"> • Police report related to incident as required (firearm discharge referenced) • MCP 37
Incident resulting in death or serious injury	<ul style="list-style-type: none"> • MCP 37 forwarded via chain • Immediate notification of IAD and Homicide Section 	<ul style="list-style-type: none"> • Police report related to incident as required (firearm discharge referenced) • MCP 37
Use of force against a police officer (police officer assaulted/ambushed)	<ul style="list-style-type: none"> • MCP 37 forwarded via chain 	<ul style="list-style-type: none"> • Police report related to incident as required (MCP 37 referenced) • MCP 37
Destruction of a non-domestic animal	MCP 37 forwarded to Policy and Planning Division (direct from supervisor via unit commander)	<ul style="list-style-type: none"> • No police report • No CR # (event # required) • MCP 37 only
Destruction of a domestic animal (including attempted destruction by firearm)	<ul style="list-style-type: none"> • MCP 37 forwarded via chain 	<ul style="list-style-type: none"> • Police report related to incident as required (MCP 37 referenced) • MCP 37
Destruction of a dangerous/vicious animal (including attempted destruction by firearm)	<ul style="list-style-type: none"> • MCP 37 forwarded via chain 	<ul style="list-style-type: none"> • Police report related to incident as required (MCP 37 referenced) • MCP 37
Canine (K-9) infliction of injury	<ul style="list-style-type: none"> • MCP 37 forwarded via chain 	<ul style="list-style-type: none"> • Police report related to incident as required (MCP 37 referenced) • MCP 37 • MCP 741