

**MEMORANDUM**

March 1, 2023

**TO:** Public Safety Committee  
**FROM:** Susan J. Farag, Legislative Analyst  
**SUBJECT:** Briefing: Use of Force  
**PURPOSE:** Briefing – No Vote Expected

Today the Committee will receive a briefing Police use of force. Those expected to brief the Committee include:

Chief Marcus Jones, Montgomery County Police Department (MCPD)  
Assistant Chief Darren Francke, Management Services Bureau  
Captain Ian Clark, Director, Training Academy  
Captain Stacey Flynn, Director, Policy and Planning Division  
Lt. Brendan Johnston, Use of Force Trainer

**Background**

While the excessive use of force – a violation of either policy or law – is always wrong, recent police reform conversations and policy/law changes focus on ways to reduce the need to use force even when force may be appropriate. Advocates and policy makers continue to strive to make policing safer for the community, particularly for communities of color, who have historically been subject to disproportionate uses of force.

Police, like civilians, have the right to use appropriate force to defend themselves or another. Moreover, police also have the right to use force to effectuate a legitimate law enforcement objective, such as making an arrest or otherwise maintaining public safety. Nationally, police use of force is rare. In a recent federal survey, of the 54 million people who had any type of contact with police in 2020, about two percent indicate that police either threatened to or did use force.<sup>1</sup> Among those who reported that force or a threat of force was used, there are

---

<sup>1</sup> [Contacts Between Police and the Public, 2020](#). Force includes residents whom police threatened with force, handcuffed, pushed or grabbed, hit or kicked, used chemical or pepper spray, used an electroshock weapon, pointed or fired a gun, or used another type of physical force.

racial, gender, and age disparities in the self-reported encounter data, with overrepresentation for males, Black residents, Hispanic/Latino residents, and individuals between the ages of 18 and 24.

***Recent policy and legal changes:*** In 2020, the Council passed a bill to that limits lawful uses of force through internal police department policy changes. Bill 27-20<sup>2</sup> required the Police Chief to issue a new use of force policy that:

- Prioritizes the safety and dignity of every human life; promotes fair and unbiased policing, and protects vulnerable populations;
- Prohibits a member of the police from using *deadly force* unless such force is necessary as a last resort to prevent imminent and serious bodily injury or death to the officer or another person, and the use of force creates no substantial risk of injury to a third person.
- Prohibits an officer from striking a restrained individual;
- Prohibits an officer from using a neck or carotid restraint;
- Prohibits an officer from using force against a fleeing suspect under certain circumstances;
- Prohibits firing a weapon from a moving vehicle, or at a moving vehicle under certain circumstances;
- Prohibits the use of *less lethal force* unless it is necessary and proportional in order to effectuate arrest and only after exhausting alternatives.
- Requires an officer to stop another officer from using excessive force, violating this policy, or committing a crime;

This policy change did not change the “reasonable officer” standard under *Graham v. Connor*,<sup>3</sup> but it does make officers who violate the policy subject to internal discipline.

In addition to these use of force changes, Bill 45-20<sup>4</sup> adds more reporting requirements for the use of force data, which now must include incidents where officers pointed service weapon, taser, or pepper spray at an individual.

In 2021, the Maryland General Assembly passed The Maryland Police Accountability Act of 2021<sup>5</sup> which created a new use of force standard for all police in the State. The new standard:

- Requires Each police officer to sign an affirmative written sanctity of life pledge;
- Prohibits a police officer from using force unless, “under the totality of the circumstances,” the force is “necessary and proportional” to prevent imminent threat of physical injure or to effectuate a legitimate law enforcement objective.
- Requires an officer to cease the use of force when practicable;
- Requires an officer to intervene if another officer is using excessive force;
- Requires de-escalation when possible; and
- Specifies certain training and reporting requirements.

---

<sup>2</sup> [Bill 27-20E – Police - Regulations - Use of Force Policy](#)

<sup>3</sup> [Graham v. Connor, 490 U.S. 386 \(1989\)](#)

<sup>4</sup> [Bill 45-20 – Police – Community Policing - Data](#)

<sup>5</sup> [Chapter 60 of 2021](#)

## Data

The following data provides a basic overview of departmental uses of force within the context of departmental staffing and workload as well as context about what types of situation force is used, by whom, on whom, and injuries. There is also data about use of force complaints and outcomes.

Use of Force Data					
Data Point	2018	2019	2020	2021	2022*
# Filled Officer Positions	1,285	1,295	1,290	1,235	1,181
Calls for Service	219,162	211,259	185,973	187,620	193,306
Total Arrests	18,592	16,536	**	**	**
Uses of Force	542	553	474	593	1,415
Force Used During Arrest	363	387	279	273	692
Force Used During EEP	107	88	129	227	347
Force Used Defending Against Assault	28	39	35	29	40
Suspect Injury	293	297	234	221	244
Officer Injury	234	157	132	117	147
Use of Force Complaints	21	27	19	11	11
Sustained Use of Force Complaints***	2	2	0	0	0

\*Preliminary Data

\*\* Not available at the time staff report went to print

\*\*\*Accessed from Data Montgomery [Internal Affairs](#) dataset on 2/28/23.

**Council staff strongly cautions against making year-to-year comparisons between 2020, 2021, and 2022.** County use of force policy changed on May 17, 2021 and then again under State law requirements on July 1, 2022. As mentioned above, Bill 45-20 required that the pointing of any lethal or less lethal instrument be counted in use of force statistics. That reporting began in 2022, and recorded uses of force significantly increased as a result. To further complicate the data, in 2021 Chief Jones implemented ICAT<sup>6</sup> training, a de-escalation training framework that has been shown to decrease the frequency with which force is used. Therefore, these three years of data do not reflect consistent training and record keeping and should not be used for comparative purposes without specifically accounting for those factors.

MCPD Use of Force Demographic Data - Subjects					
	2018	2019	2020	2021	2022
Asian Subject	7	11	7	15	21
Black Subject	298	314	252	325	846
Hispanic Subject	98	104	92	114	288
White Subject	139	112	101	126	222
Male Subject	432	439	372	425	1,070
Female Subject	110	123	102	166	340

<sup>6</sup> [ICAT Training Program](#), Police Executive Research Forum

MCPD Use of Force Demographic Data - Officers					
	2018	2019	2020	2021	2022
Asian Officer	23	28	25	29	74
Black Officer	68	55	48	63	140
Hispanic Officer	36	54	54	77	139
White Officer	415	416	346	424	1,062
Male Officer	475	508	409	498	1,247
Female Officer	67	45	65	95	168

**Data Challenges:** The threshold issue for any police encounter data analysis is to determine the benchmark that most closely measures the at-risk population. For example, use of force analyses that benchmark force against police contact may show different outcomes than force data measured against arrests. Additionally, there are multiple situational factors, such as subject resistance or the presence of weapons, that influence officer use of force. Studies that use multi-variate analysis and multiple benchmarks to better isolate at-risk populations can provide a better understanding of what factors may be changed within police operations, training, and policy to help reduce uses of force while still maintaining scene safety. Fairfax County Police just underwent such a study,<sup>7</sup> which examines multiple data sets, and provides specific recommendations for policy changes.

## ICAT De-escalation Training

De-escalation is a best practice both for officer and subject safety. In 2021, Chief Jones implemented ICAT de-escalation training program within the department, beginning with recruit classes. While de-escalation training programs have proliferated in the last several years, there has been little research to demonstrate efficacy. To date, ICAT this is the only evidence-based de-escalation program studied that shows significant decreases in the uses of force, as well as officer and subject injuries.<sup>8</sup>

ICAT is designed to address unarmed individuals, or those who are armed with weapons other than firearms. It is also designed to address people who may be experiencing a mental health crisis.

## Discussion Issues

1. The Department recently created a force training unit in the Police Academy. The Committee may wish to better understand the benefits of this new unit and how it delivers better (or more training) to recruits and officers during in-service training.
2. Have all officers been trained with ICAT?
3. The number of confiscated firearms has increased dramatically over the past two years. Is there any correlation between more guns on the street and the need or choice to use force?
4. Chief Jones implemented a [Duty to Intervene Policy](#) in 2020. County Bill 27-20 also required that officers intervene if another officer was using excessive force. The State also

<sup>7</sup> [An Investigation of the Use of Force by the Fairfax County Police Department](#) (July 2021)

<sup>8</sup> [Examining the Impact of Integrating Communications, Assessment, and Tactics \(ICAT\) De-escalation Training for the Louisville Metro Police Department: Initial Findings](#) Reissued December 9, 2022.

mandated this in 2021. Has this policy changed over time? If so, how? And how does the Department train recruits and officers to fulfill this duty?

5. MCPD advises that of the 1,415 uses of force in 2022, 503 were pointing weapons at subjects. Can MCPD break down the 503 incidents by weapon type? If an officer also uses the weapon, is that counted or tracked separately?
6. What is the status of the Department's new Records Management System? Will the new RMS be able to collect and track use of force data?

**This staff report contains:**

MCPD Use of Force and ICAT PowerPoint

**Circle #**

1-20



Montgomery County Council

# Public Safety Committee



Introduction to

# Use of Force

# What is a Use of Force?

- Use of Force – The intentional use of any weapon, instrument, device, means, or physical effort(s) by law enforcement **other than compliant handcuffing or unresisted escorting**, in response to the action or inaction of an individual in order to control, restrain, or overcome the resistance of an individual(s) to gain compliance, control, or custody. (FC 131 II.X.)



# When can an officer use force?

- Officers may only use force when **under the totality of the circumstances**, it is **necessary and proportional** to prevent an imminent threat of physical injury to a person or effectuate a legitimate law enforcement objective. (FC 131 I.E.)
- This authority is limited by the applicable laws of Montgomery County, the State of Maryland, federal law, the United States Constitution, and MCPD policy.

# History and Changes

## Graham vs. Connor (1989) (Current Federal Standard)

- The original use of force standard was established by the United States' Supreme Court in 1989.
- *"The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation."* Pp. 490 U. S. 396-397
- The standard looks at:
  - Was the force objectively reasonable
  - From the perspective of a "reasonable officer"
  - At the moment force was used
  - Without the benefit of hindsight 20/20
  - SIRF Factors

# History and Changes

## Montgomery County Bill 27-20 (2020)

- Required MCPD policy must:
  - Prioritize the safety and dignity of every human life
  - Promote fair and unbiased policing; and
  - Protect vulnerable populations
- Set minimum standards for use of force:
  - Comply with Constitution of US and MD
  - Prohibited deadly force unless it is necessary, as a last resort, and creates no substantial risk of injury to a third person
  - Prohibited striking a restrained individual
  - Added duty to intervene if another officer is using excessive force or committing a crime
  - Prohibited neck or carotid restraints
  - Prohibited less lethal force unless necessary and proportional after exhausting alternatives

# History and Changes

## Montgomery County Bill 45-20 (2021)

- Required MCPD to report information to the Executive and County Council
- One of these requirements includes the pointing of a service weapon, taser, or pepper spray at an individual
- This is now documented as a use of force
- A significant increase of use of force reporting should be expected in 2022 due to this change

# History and Changes

## Maryland Public Safety Article § 3-524 (D) (I) (2022)

- A police officer may not use force against a person unless, under the totality of the circumstances, the force is necessary and proportional to:
  - Prevent an imminent threat of physical injury to a person; or
  - Effectuate a legitimate law enforcement objective
- A police officer shall cease the use of force as soon as:
  - 1. The person is under the officer's control; or
    - No longer poses an imminent threat of physical injury or death to the police officer or another person
  - 2. The Police Officer determines that force will no longer accomplish a legitimate law enforcement objective.
- A POLICE OFFICER MAY NOT INTENTIONALLY VIOLATE THE ABOVE RESULTING IN SERIOUS PHYSICAL INJURY OR DEATH. (10-YEAR MISDEMEANOR)

# History and Changes

## Maryland Public Safety Article § 3-524 (D) (I) (2022)

- When time, circumstances, and safety allow, take steps to gain compliance and de-escalate conflict without using physical force
- Intervene to prevent or terminate the use of force by another police officer beyond what is authorized
- Render first aid and promptly request appropriate medical assistance
- Fully document all use of force incidents that the officer *observed* or was involved in

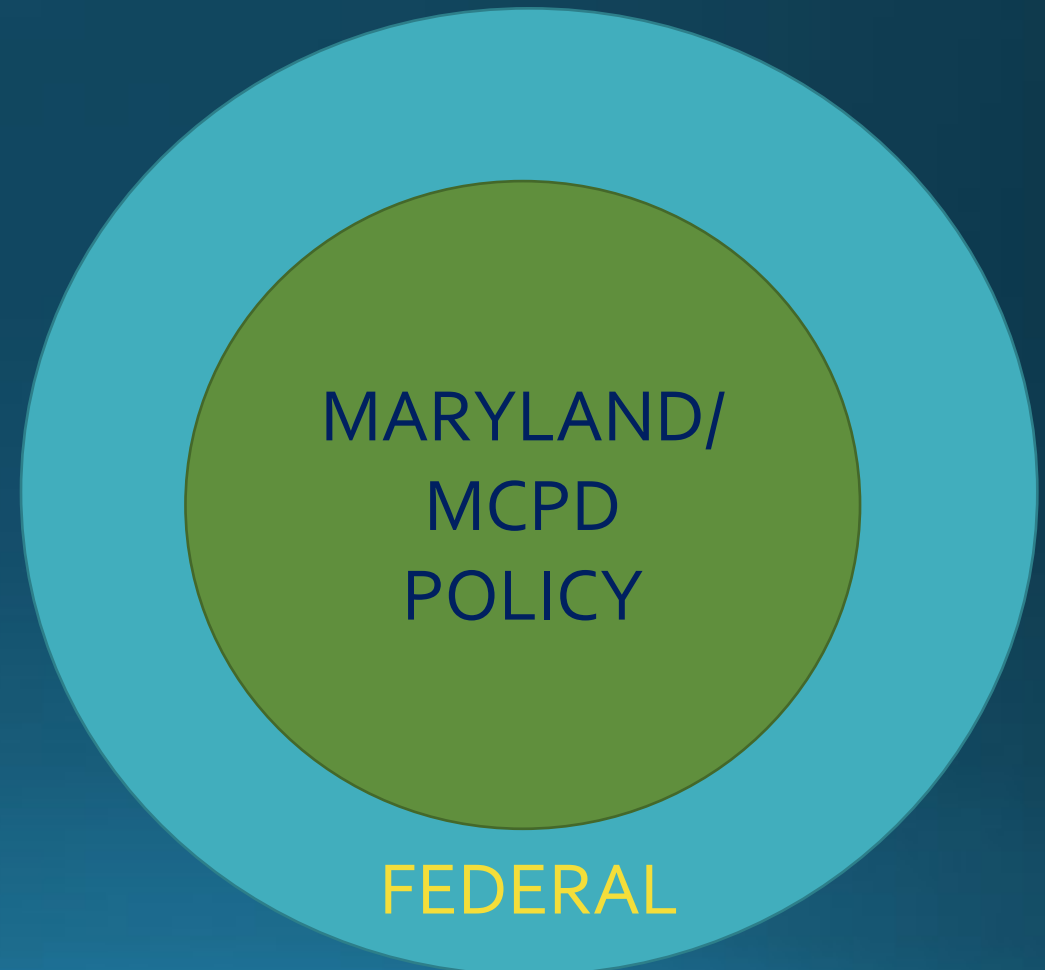
# History and Changes

## Maryland Public Safety Article § 3-524 (D) (I) (2022)

- A Police Officer Shall Undergo Training
  - on when they may or may not draw a firearm, point a firearm at a person, and options that are less likely to cause death or serious physical injury, including:
    - Scenario-based training
    - De-escalation tactics and techniques
    - Reasonable alternatives to decrease physical injury

# Current Use of Force Standards

- Montgomery County Policy and State of Maryland require force to be necessary and proportional
- United States Constitution (4<sup>th</sup> Amendment) requires force to be objectively reasonable





QUESTIONS???



De-escalation Training

# Introduction to ICAT



- ICAT Focus
  - Patrol Response
  - Non-firearm incidents
  - Integration of crisis recognition, communications, and tactics
  - Officer safety and wellness (physical, emotional, and legal)



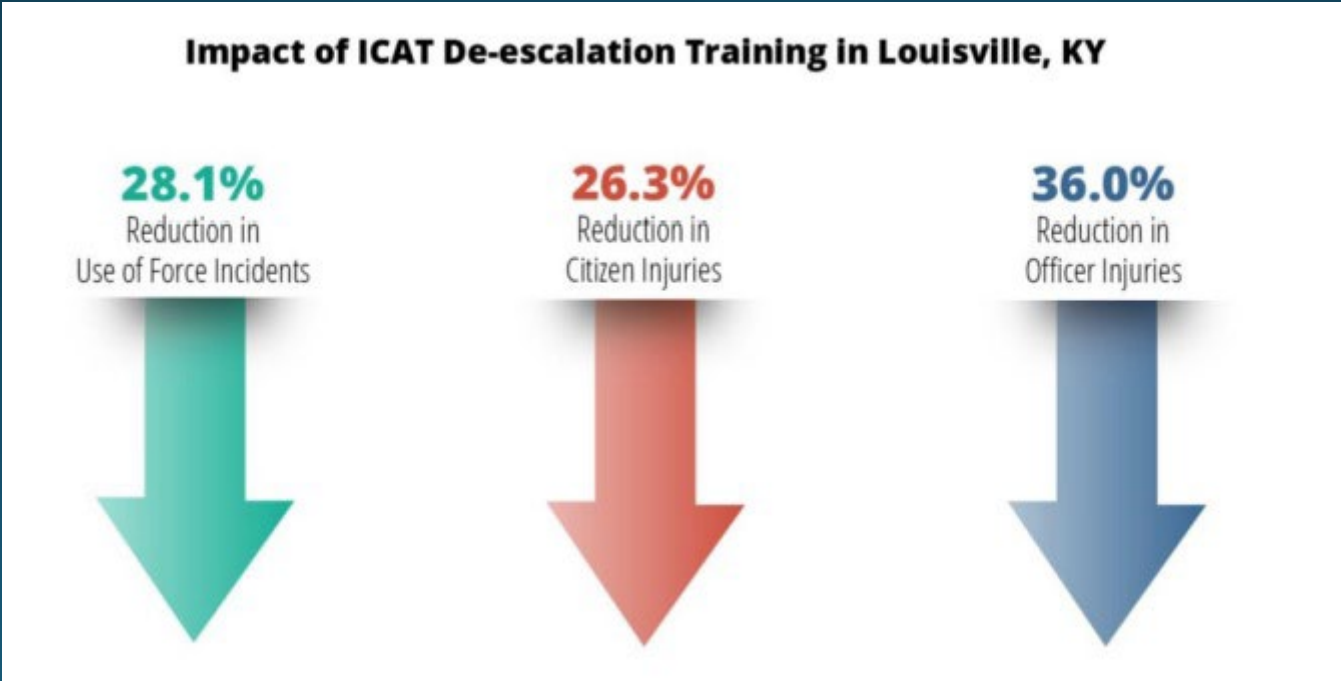


## How ICAT was Developed

- 60+ Representatives
  - Working police officers of all ranks
- 35+ Organizations
  - City, county, state, federal, and international law enforcement agencies from 18 states, DC, and UK
- Reviewed policy, procedure, training, and the critical decision-making model utilized in the UK



# University of Cincinnati Center for Police Research and Policy (2020)





## What does ICAT do?

- Integrates skills we already use and applies them to **non-firearm** critical incidents
- Skills already in use:
  - Critical Decision Making
  - Crisis Recognition
  - Tactical Communications
  - Operational Tactics
  - Scenario-Based Training



## ICAT is NOT

- Telling officers to walk away from or ignore danger
- Trying to put officers in an unwinnable situation
- Telling officers they can't use force – including lethal force – when necessary and proportional
- Limiting options for officers (ICAT is about increasing options and enhancing safety)



## De-escalation = Options

- Options are impacted by Time, Circumstances, and Safety
- Some situations present the necessity to use deadly force immediately, and the options to verbally de-escalate or use a less lethal force option is not available
- ICAT training promotes using basic skills and tactics to preemptively set up police response to mitigate officers from being exposed to the immediate need for deadly force
- Ex. Person armed with a knife in a room alone





QUESTIONS???