



OFFICE OF THE COUNTY SHERIFF
Montgomery County, Maryland
Darren M. Popkin, Sheriff
GENERAL OPERATIONAL PROCEDURES



<u>Subject:</u>	<u>Number:</u>	<u>Effective Date:</u>
Use of Force	3.01	07/01/22

Policy: The decision to use force, whether deadly or non-deadly, is one of the most crucial and demanding decisions that a deputy may be called upon to make. Though use of force incidents occur infrequently, situations may arise when a deputy must make the irreversible decision of whether or not to use deadly or non-deadly force. This decision, perhaps the most far reaching of any decision a deputy may be called upon to make can have a powerful and possibly harmful effect on the deputy, the Office, and the community. The decision to use force is that of the deputy and cannot be made by the Office; however, the Office must provide guidelines to aid in the exercise of that decision.

It is the policy of the Sheriff’s Office that deputies are permitted to use only that force which is *necessary and proportional* to perform their duties or to protect themselves or others from personal attack, physical resistance, harm or death. *Deputies may not use force against a person unless, under the totality of the circumstances, the force is reasonable, necessary and proportional to prevent an imminent threat of physical injury to a person or to accomplish a legitimate law enforcement objective. The decision to use force requires careful attention and continual assessment of the situation, threats, options, and risks, with the goal of resolving the encounter peacefully.*

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I. Definitions

- A. Sanctity of life – It is the policy of the Sheriff’s Office that all employees hold the highest regard for the sanctity of human life, dignity, and liberty of all persons. All uses of force must be reasonable based upon the circumstances of the incident. The use of deadly force will only be used by deputies when reasonable to protect the safety and lives of others, or themselves.

- B. ***Use of Force***: - Any physical strike or contact of a person; any intentional or attempted physical strike or contact of a person which does not yield the desired effect; any use of a protective instrument or intentional canine bite; any significant physical contact or action that restricts the movement of a person.
- The term includes discharge of a firearm, use of chemical agents, use of impact weapons, use of an electronic control weapon, use of a violent prisoner restraining device, taking a subject to the ground, and any physical contact that includes control techniques. The term does not include a deputy's mere presence, verbal commands, escorting, or handcuffing a person with minimal or no resistance.*
- C. ***Deadly Force*** - Any use of force, which is intended to or likely to, cause death or serious physical injury. The use of deadly force is not limited to firearms, but also includes protective instruments, or any other means including hands, used by a deputy. Deadly force will only be used by deputies to protect the safety and lives of others, or themselves.
- D. ***Objectively Reasonable Force*** – The level of force that is deemed appropriate when analyzed from the perspective of a reasonable deputy possessing the same information and faced with the same circumstances as the deputy who actually utilized the force.
- E. ***Reasonable, Necessary, and Proportional Force*** – Each use of force will undergo an administrative review to determine if the force used was reasonable, necessary, and proportional given the circumstances that were known or should have been known at the time that the force was used.
- (1) ***Reasonable***: A deputy uses reasonable force when they utilize only that force which is required to perform a law enforcement purpose.
 - (2) ***Necessary***: Force is necessary only when no reasonably effective alternative exists. When force is necessary, it must be used in a manner that avoids unnecessary injury or risk of injury.
 - (3) ***Proportional***: Proportionality measures whether the force used is rationally related to the law enforcement objective, or the level of resistance or aggression confronting the deputy.
- F. ***Duty to Intervene*** – All deputies have a duty to intervene to prevent or stop the use of force by another law enforcement officer beyond what is authorized by law, if they have a reasonable opportunity and ability for intervention. All deputies must immediately report such incidents to a supervisor.
- G. ***Protective Instrument*** - Any device, authorized by the office, and utilized by a deputy to apply force to another individual, e.g. O.C. spray, expandable baton, flashlight, electronic control device (ECD), etc.
- H. ***Reasonable Belief*** - Facts or circumstances a deputy knows, or should know, which would cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

- I. **Totality of the Circumstances:** - *consists of all facts and circumstances surrounding any event that are known or reasonably should have been known at the time. The facts and circumstances may include, but are not limited to: whether an offense has occurred; the nature of the offense; the seriousness of the offense; the size and strength of the subject; the number of subjects; the availability of weapons; whether the subject is exhibiting signs of mental illness or is experiencing a behavioral health crisis; whether the person suffers from a medical or behavioral health disability, physical or hearing impairment, is impaired by alcohol or drug use, or may be non-compliant due to a language barrier; other force options; availability of non-force options including tactical repositioning, moving to cover, or other de-escalation techniques; environmental factors such as backdrop; and the availability of backup and specialized units.*
- J. **Resistance:** - *Deputies may face the following types of resistance to lawful orders:*
- (1) *Active Resistance - When a person moves to avoid detention or arrest but does not attack or attempt to attack the deputy or another person. Attempting to leave the scene, fleeing, hiding from detection, physical resistance to being handcuffed, or pulling away from the deputy's grasp are all examples of active resistance.*
 - (2) *Passive Resistance - When a non-assaultive person fails to comply with a deputy's commands without attempting to flee. Examples include, but are not limited to, going limp, refusing to speak, standing stationary and not moving after being given a lawful direction, and/or verbally signaling an intention to avoid being taken into custody.*
- K. **Assaultive Behavior:** – *Any intentional physical action taken by an individual which is likely to cause immediate physical harm or danger to a deputy or others.*
- L. **Serious Physical Injury** - *An injury that creates a substantial risk of death; causes serious permanent disfigurement; or results in long-term loss or impairment of any bodily member or organ.*

II. **Use of Force**

- A. Deputies may only use force which is ***necessary and proportional*** to make an arrest, an investigatory stop 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 deputy reasonably believes to exist. In determining the appropriate level of force to be used by a deputy, the nature of the threat or resistance faced or perceived by the deputy 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:
- (1) Whether the subject poses an imminent threat to the safety of the deputies or others.
 - (2) Whether the subject is actively resisting a lawful arrest, or the subject is attempting to evade a lawful arrest by flight.
 - (3) The severity of the crime or suspected offense.

- B. A person need not strike or attempt to strike a deputy to be considered a physical threat as long as a deputy has a reasonable belief that the person is physically threatening and has the present ability to harm the deputy or another. Examples of actions or observations that may lead a deputy 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. Under the law, deputies are not obligated to retreat when confronted with a threat.
- C. The Sheriff's Office recognizes that some situations require the application of force and relies on the deputy's judgment and discretion to employ *reasonable, necessary and proportional* force under each unique circumstance.
- D. If time, circumstances and safety permit, deputies should attempt to gain compliance through de-escalation as opposed to the use of physical force. De-escalation could slow down or stabilize encounters to allow for more resources or options to better resolve the conflict. Examples of de-escalation techniques include but are not limited to the use of advisements, warning, or persuasion.
- E. It is the duty of every deputy to prevent another law enforcement officer from using force unreasonably. Any deputy observing a use of force which is clearly beyond that which is *necessary and proportional* under the circumstances must intervene and prevent the use of unreasonable force. Any deputy who observes another law enforcement officer using unreasonable force must promptly report these observations to a supervisor when practical and safe to do so.
- F. Deputies may encounter situations that require not only the deputy's presence, but also some form of verbal or non-verbal communication. This communication may take the form of providing information, giving commands or direction, physical gestures etc.
- G. *Necessary and proportional* force may be used to effect arrests, to safely make or maintain an investigative detention or seizure, or to protect deputies or others from personal attack, physical resistance, or injury, provided the force applied is reasonable based upon the circumstances confronting the deputy at the time.
- H. The Sheriff's Office authorizes protective instruments for deputies, however, in exigent circumstances, deputies may use other objects or instruments in order to protect themselves or others when used within the scope of *necessary and proportional* force.
- I. Due to the potential for severe injury the use of the "Lateral Vascular Neck Restraint" or any similar neck restraint, designed to temporarily immobilize individuals, is prohibited as an acceptable use of non-deadly force.
- J. Choke holds or any similar technique restricting the intake of oxygen for the purpose of gaining control of a subject is prohibited as an acceptable use of non-deadly force.

III. Authorized Use of Deadly Force

- A. Deputies may use deadly force *only when the deputy reasonably believes the action is in defense of any human life in imminent danger of death or serious bodily injury.*
- B. *Deputies must not use deadly force unless de-escalation and less-lethal force options have been tried and failed, or are not safe based on the totality of circumstances.*
- C. *The use of deadly force will always be a last resort.*
- D. Foreign Jurisdiction

Any area outside the State of Maryland is a foreign jurisdiction. When deputies are in foreign jurisdictions, deputies may only carry or wear a weapon, whether on or off duty in compliance with the laws of that jurisdiction, federal law and office regulations. In foreign jurisdictions, the use of deadly force is permissible only in defense against an attack that may result in death or serious bodily injury to the deputy, other law enforcement personnel or to bystanders.

IV. Firearms

- A. Deputies are prohibited from engaging in horseplay with firearms.
- B. Warning shots are prohibited.
- C. Firearms may be drawn when a deputy has reasonable fear for their safety or the safety of others. Firearms may not be arbitrarily pointed at a person or persons. Reasonable caution must be used when utilizing a firearm. When possible, deputies must consider the backstop and location of any bystanders before discharging a firearm to avoid endangering the lives of innocent people.
- D. Firearms must not be discharged at or from a moving vehicle unless the circumstances would authorize the use of deadly force.
 - (1) Deputies must not intentionally position themselves in front of an oncoming vehicle where the use of deadly force would likely be the most probable outcome.
 - (2) When confronted by an oncoming vehicle, deputies must move out of its path, if possible, rather than discharging a firearm at it or any of its occupants.
 - (3) Additionally, shots fired from or at a moving vehicle are discouraged for the following reasons:
 - (a) There is an obvious danger to persons in the area if the driver should lose control of the vehicle.
 - (b) Such shots are usually ineffective and cannot be depended upon to stop a moving vehicle.

- E. The following procedures must be used to report and investigate every incident of firearms discharge by a deputy except for range practice, ballistic examinations or destruction of a dangerous or injured animal. Whenever a deputy discharges their firearm either accidentally or intentionally, they must immediately:
- (1) Notify the Public Safety Communications Center (PSCC) of the incident and location.
 - (2) Determine the physical condition of any injured person and request that Montgomery County Fire and Rescue Service (MCFRS) respond to render first aid.
 - (3) Unless injured, the deputy must remain at the scene until the arrival of the appropriate investigators. However, if the circumstances are such that the continued presence of the deputy at the scene may cause a dangerous situation to develop (i.e. violent crowd), the ranking deputy or police officer at the scene has the discretion to instruct the deputy to respond to another, more appropriate location.
 - (4) The deputy must protect their weapon for examination and submit the weapon to the appropriate investigator.
 - (a) The deputy must holster their firearm and leave it holstered.
 - (b) When asked to submit the firearm to the investigator, the deputy will leave the firearm holstered and submit the entire duty belt to the investigator.
 - (5) The deputy should not discuss the case with anyone except:
 - (a) Supervisory and assigned investigative personnel.
 - (b) The assigned States Attorney.
 - (c) The deputy's attorney, psychologist, clergy or spouse.
 - (d) The deputy's union representative.
- F. The deputy must be available at all reasonable times for official interviews and statements regarding the case and is subject to recall to duty at any time.

V. Medical Care

- A. Deputies must be mindful of certain indicators or conditions when detaining or arresting a person. The following conditions or indicators may potentially contribute to sudden unexpected death following extreme physical exertion or restraint. Deputies must recognize these factors and closely monitor anyone after a use of force when any of these factors or indicators are observed.

- (1) Excited Delirium, a sudden onset with symptoms of bizarre and/or aggressive behavior, shouting, paranoia, panic, violence toward others, unexpected physical strength, and hyperthermia.
 - (2) Alcohol or drug use or abuse.
 - (3) Obesity.
 - (4) Display of erratic or psychotic behavior.
 - (5) Incoherent speech.
 - (6) State of agitation.
 - (7) Intentionally injuring themselves.
 - (8) Disrobing or naked.
- B. Deputies must take appropriate measures so that the individual involved in the use of force is able to breathe without restriction and if possible, should lay the subject on their side or seated in an upright position. Deputies should avoid transporting subjects in a face-down position whenever possible.
- C. Deputies must obtain medical treatment as soon as practical for any individual who:
- (1) Complains of any injury as a result of any use of force.
 - (2) Shows signs of any injury as a result of any use of force by a deputy.
 - (3) A deputy or supervisor believes is in need of medical treatment as a result of any use of force.
 - (4) Complains or exhibits trouble breathing.
 - (5) Exhibits reduced levels of consciousness or becomes unresponsive.
 - (6) Shows signs of excited delirium.
 - (a) Deputies must specifically request that an Advanced Life Support Unit (ALS) respond.
 - (b) ALS units carry medication such as Haldol or Ketamine, which can assist in treating individuals suffering from excited delirium.
 - (7) Has been exposed to an electronic control device (ECD) and the probes have impacted a sensitive area such as the eyes, face, breast, throat, neck, groin or probes that are deeply embedded in any body part.

VI. Dangerous/Injured Animals

- A. The killing of an animal is justified in the following circumstances:
 - (1) For self-defense.
 - (2) To prevent physical harm to the deputy or another person.
 - (3) When the animal is so badly injured that humanity requires its relief from further suffering.
- B. If practical, deputies must notify the Public Safety Communications Center (PSCC) prior to the discharge of the firearm.
- C. Deputies must attempt to locate the owner of a destroyed domestic animal if they are not present.
- D. Deputies must request that the Public Safety Communications Center (PSCC) notify the appropriate agency to respond and remove the animal's remains.

VII. Reporting and Investigating Responsibility

- A. Required Reports
 - (1) Deputies must complete and submit an Incident Report (MCSO9) and a Use of Force Report (MCSO2) prior to the end of their tour of duty in the following circumstances:
 - (a) Any time force is used to counteract physical resistance.
 - (b) Any force that results in an injury or death of an individual or whenever an individual claims an injury as a result of the amount of force used.
 - (c) Whenever force is applied by the use of a protective instrument.
 - (d) Whenever a firearm is discharged other than for range practice or ballistic examinations.
 - (e) Whenever an office canine inflicts injury to any person.
 - (2) Whenever the use of force is used on more than one individual during an incident, a Use of Force Report (MCSO2) must be completed for each individual.
 - (3) If a use of force incident involves more than one deputy, it is the responsibility of the senior-ranking deputy involved in the incident to complete and submit the required reports. However, at the discretion of a supervisor, each deputy involved in the incident may be required to submit separate reports.

- (4) The section supervisor, duty commander or the highest-ranking deputy on duty must ensure that the involved deputy completes and submits all required reports, prior to the end of the deputy's tour of duty. If the deputy is injured to such an extent that they are physically unable to complete the required reports, the section supervisor, duty commander or the highest-ranking deputy on duty must assist in the completion of the required reports.
- (5) Off-duty deputies involved in a reportable use of force incident must immediately, after clearing from the incident scene, contact their section lieutenant, duty commander or the highest ranking deputy on duty and provide a detailed account of the incident. The section supervisor, duty commander or the highest ranking deputy on duty will determine whether or not the deputy will immediately report to the Sheriff's Office to complete the required reports based on the seriousness of the incident and the practicality of reporting to the Office. If the deputy is not required to report to the Office, the deputy will report to their section supervisor on their next scheduled workday and complete the Incident Report (MCSO9) and Use of Force Report (MCSO2).
- (6) Any instance whereby any employee was required to intervene and halt the use of force by another law enforcement officer, the intervening employee must notify their section supervisor or the highest ranking deputy on duty, and complete an incident report (MCSO9) before the end of their tour of duty.

B. Notifications

- (1) Deputies must promptly notify the Sheriff's Office of any use of force that results in death or injury requiring medical attention and any firearm discharge except for authorized range practice.
- (2) During normal business hours, notification must be made to the deputy's section supervisor. The section supervisor is responsible for notifying the following individuals of the incident:
 - (a) Division Captain.
 - (b) Office of Professional Responsibility (OPR.)
 - (c) Chief Deputy.
 - (d) Sheriff.
- (3) During the evening or weekends, notification must be made to the duty commander or highest-ranking deputy on duty. This deputy is responsible for contacting the following individuals and notifying them of the incident:
 - (a) Involved deputy's section supervisor.
 - (b) Division Captain.
 - (c) Office of Professional Responsibility (OPR).

- (d) Chief Deputy.
 - (e) Sheriff.
- (4) The section supervisor, duty commander, or the highest-ranking deputy on duty must notify the Montgomery County Department of Police, Homicide and Sex Section, after a firearm discharge occurs in the following circumstances:
- (a) All intentional firearm discharges by a deputy, whether injuries occur or not, with the exception of range practice, ballistic examinations or for the purpose of destroying a dangerous or injured animal.
 - (b) All accidental firearm discharges by a deputy that results in injury or death to any person.

C. ***Highest ranking on-duty deputy's responsibilities***

The ***highest ranking on-duty deputy*** must respond immediately to any incident when a deputy assigned ***under their command*** is injured, shoots another person, or when the action of the deputy results in the death or ***serious*** injury of another person and must:

- (1) Direct at least one deputy to secure the scene.
- (2) Direct at least one deputy to remain with the involved deputy to ensure their personal safety and well being. No questioning concerning the incident is to be initiated with the involved deputy.
- (3) If the involved deputy was injured and taken to an emergency facility, send a supervisor to the emergency facility to act as a liaison between emergency facility staff and the Sheriff's Office.
- (4) Conduct a preliminary field investigation.
- (5) Render command assistance to the assigned investigator(s).
- (6) Ensure the involved deputy has a scheduled appointment with the Occupation Medical Section and is referred to the Employee Assistance Program.
- (7) ***A division commander or section supervisor must place any deputy involved in a deadly force incident on administrative leave in accordance with General Orders/Operational Procedure 2.12, Administrative Leave, upon completion of their preliminary report of the incident. The Captain must explain to the deputy that this leave is without loss of pay or benefits, that it is pending the results of the investigation and that the assignment to administrative leave does not imply or indicate that the deputy has acted improperly.***
- (8) Submit a detailed written report of the field investigation to the Sheriff with copies to the Chief Deputy and the Office of Professional Responsibility.

D. Office of Professional Responsibility Responsibilities (OPR)

A representative from OPR must respond to any incident where a deputy is seriously injured, shoots another person, or when the action of the deputy results in the death or injury requiring hospitalization of another person. OPR must conduct an *administrative investigation* into all serious incidents involving deputies, parallel to any criminal investigation, to determine whether the actions were within policy, contrary to policy, or accidental. OPR must prepare and submit a detailed report of findings to the Sheriff.

VIII. Review of Use of Force Incidents

A. The involved deputy's section supervisor, division captain, the Chief Deputy and Sheriff must conduct a review of all Use of Force Reports.

(1) The Lieutenant and Captain must complete the comment section of the report as to whether there are any policy, training, weapon, equipment, or discipline issues that should be addressed.

(2) The Chief Deputy and Sheriff must initial and date the report after reviewing the report and comments of the Lieutenant and Captain.

(3) The Chief Deputy is responsible for maintaining all Use of Force Reports.

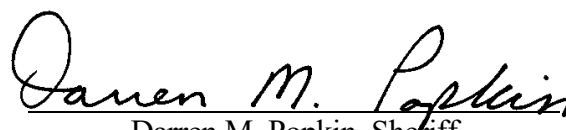
B. Annually, the Chief Deputy must conduct an analysis of all use of force incidents occurring during the preceding year. After reviewing the reported facts, circumstances, and if appropriate, any findings of the OPR, the Chief Deputy must submit a written report to the Sheriff detailing any trends or patterns that could indicate a need for additional training, equipment upgrades or policy modification.

C. If trends or patterns are identified regarding the use of unreasonable force, the personnel early warning system may be implemented pursuant to MCSO General Orders/Personnel Procedures 2.17.A – Personnel Early Warning System.

IX. Cancellation

This directive cancels and replaces General Operational Procedures 3.01, Effective Date: **10/05/20**.

AUTHORITY:



Darren M. Popkin, Sheriff

07/01/2022