



Implementation of the 2020 Use of Force and No-Knock Warrant Law

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OLO Report 2024-13

EXECUTIVE SUMMARY

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The County Council enacted Bill 27-20, Police – Regulations-Use of Force Policy, on July 29, 2020. The law directs the Police Chief to issue department policies on use of force by MCPD officers, use of no-knock search warrants, and listed minimum standards that must be included in the policies. The Council directed the Office of Legislative Oversight (OLO) to prepare a report on the implementation of Bill 27-20. **OLO has found a high degree of consistency between the requirements of Bill 27-20 and MCPD use of force and no-knock warrant policies and practices.**

Use of Force Introduction

According to the U.S. Department of Justice (DOJ), National Institute of Justice (NIJ), there is no single, universally accepted definition of the term; “use of force,” in the context of policing. A Montgomery County Police Department (MCPD) report states that police use of forces includes physical tactics to control subjects, use of chemical agents, use of impact weapons, and use of firearms.

In recent years, many communities have revisited their police use of force policies with the goal of limiting and/or prohibiting practices that contribute to unnecessary deaths and serious bodily injury. The policy reviews came in response to overwhelming evidence demonstrating racial disparities in police use of force and following multiple incidents that resulted in deaths, culminating in the murder of George Floyd by a Minneapolis police officer in May 2020. MCPD revised its use force policy in 2022 to comply with the requirements and standards of Bill 27-20. MCPD expects to complete work on a further revision to the use of force policy later this calendar year.

Use of Force Policies and Standards

OLO compared the use of force policy standards included in Bill 27-20 with the corresponding text in the primary MCPD use of force policy. OLO found that the MCPD use of force policy substantially complies with the standards specified in the County Code regarding use of force on a restrained person, use of deadly force, use of deadly force on a fleeing person, the duty of a police officer to intervene in unauthorized use of force, shooting at or from a moving vehicle, and other standards.

OLO identified some MCPD policy provisions that vary to a degree from the standards of Bill 27-20. The bill prohibits use of neck or carotid restraints without condition while MCPD policy permits use of these restraints when “deadly force would be authorized.” The bill permits less lethal force “only after exhausting alternatives to the use of such force;” the MCPD policy does not include a similar statement, but indirectly applies a similar standard through the policy’s definition of “necessary” force.

The MCPD policy contains multiple provisions not addressed in Bill 27-20, including a requirement for police officers to de-escalate a conflict without using force, a requirement that police officers cease the use of force as soon as a person is under control or no longer poses an imminent threat, a prohibition against police officers firing warning shots, a restriction against police officers pointing a firearm at a person unless circumstances warrant use of deadly force, and a requirement that police officers sign a pledge affirming the sanctity of life. These and other policy provisions that are not explicitly mandated in the County Code and could be subject to collective bargaining.

Bill 27-20 requires that MCPD solicit comments and guidance on use of force from members of the public, particularly people from communities who have been adversely affected by police use of force. MCPD reports that it has received “no comments which would have been useful toward re-shaping our policy or training.”

Use of Force Data

The County Code mandates that MCPD maintain datasets on use of force incidents, including information about the race, gender, age, and ethnicity of those involved in the incident. MCPD policy requires police officers to self-report use of force incidents. MCPD supervisors and executive officers must review and approve use of force reports. The types of actions and occurrences considered by MCPD to be “use of force,” has expanded in recent years. In February 2022, MCPD began to require officers to report any instance of pointing a service weapon, taser, or pepper spray as a use of force incident. In July 2022, MCPD replaced the use of force reporting requirement for “force used to counteract a physical struggle” with the more expansive “intentional use of any physical effort(s).”

OLO examined MCPD use of force data. Some of the major findings of this examination include:

- The number of reported use of force incidents rose from 593 in 2021 to 1,722 in 2023, an increase of about 190%. However, the number of incidents were not measured the same way in 2021 and 2023. Data from 2021 cover uses of force under the previous, more limited definition of reportable incidents. Data from 2023 include incidents involving pointing of a weapon as well as incidents involving “intentional use of any physical effort,” both occurrences that previously were not reportable.
- Force applied by police officers’ hands comprised 71% of reportable use of force incidents in 2023. Pointing a firearm, taser, or pepper spray comprised 23% of reportable 2023 incidents.
- In 2023, about 58% of use of force incidents occurred while an officer attempted to make an arrest.
- In 2023, about 57% of use of force incidents involved Black civilians. Some incidents may have involved residents of other jurisdictions. Nonetheless, the proportion of Black residents subject to use of forces greatly exceeds the percentage of Black residents of the County.
- The ethnic and racial distribution of officers involved in 2023 use of force incidents nearly identically matches the demographic composition of sworn MCPD officers.
- The number of use of force complaints filed with MCPD dropped from 28 in 2019 to 14 in 2023.

Use of Force Best Practices and Guidelines

The Council directed OLO to examine new or different best practices related to use of force that have been identified since the law’s adoption. To a degree, the assessment of what is a proper use of force practice involves subjectivity. As a result, no single, universally accepted set of law enforcement use of force best practices and guidelines exists. Different organizations have developed different sets of use of force best practices and guidelines based on their own perspective and point of view. OLO presents three sets of use of force best practices and guidelines developed from three perspectives, that of government, the law enforcement community, and social justice advocates.

OLO found that provisions of the MCPD use of force policy correlate closely with the Maryland Police Training and Standards Commission best practices. OLO also found that the MCPD use of force policy directive generally is consistent with guidelines in *The National Consensus Policy and Discussion Paper on Use of Force* published by a group of law enforcement leadership and labor organizations. However, the National Consensus paper suggests that deadly force should not be used against persons whose actions are a threat only to themselves, a standard not explicitly stated in the MCPD policy.

Many provisions of the MCPD use of force policy are consistent with guidelines presented by the National Center for Policing Equity and the Policing Project. However, MCPD policy does not include several provisions suggested by these groups including those related to consideration of language barriers, persons not suspected of criminal conduct, solely verbal confrontations, persons whose actions are a threat only to themselves, shooting at a target not clearly in view, weapon strikes to the head, and off-leash canines.

No-Knock Warrants Introduction

A warrant is an order issued by a judge authorizing a law enforcement agency to arrest or detain a person or to search and seize private property. Maryland law defines a no-knock warrant as “a search warrant that authorizes the executing law enforcement officer to enter a building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose.”

The use of search warrants in general, and no-knock warrants in particular, has generated much controversy in recent years following a series of deadly incidents. In March 2020, officers from the Louisville Metro Police Department shot and killed Breonna Taylor, a 26-year-old Black woman, after breaking down the door to Ms. Taylor’s apartment while executing a search warrant for another person.

MCPD revised its search and seizure policy directive to comply with the standards and requirements of Bill 27-20. The revised policy includes the following statement: *Whenever it is necessary for officers to conduct search and seizure operations, the primary concern will be the rights, safety, and welfare of the community, citizens and the officers involved.*

No-Knock Warrant Policies and Standards

OLO compared the no-knock policy standards included in Bill 27-20 with the corresponding text in the primary MCPD search warrant policy. OLO found that the MCPD search warrant policy substantially complies with the standards specified in the County Code regarding officers eligible to participate in executing no-knock warrants, the knock and announce requirement absent exigent circumstances, risk mitigation, exceptions to the knock and announce requirement, and the prohibition against executing a no-knock warrant solely to preserve evidence.

The MCPD policy contains multiple search warrant provisions not addressed in Bill 27-20, including a requirement that a no-knock warrant be executed between 8:00 am and 7:00 pm absent exigent circumstances, utilization of "Warrant Threat Assessment Matrix" to identify risk factors involved in execution of a search warrant, a requirement that non-uniformed officers present at the search warrant wear clothing, badge, and name tag that identify them as police officers, and a requirement that, absent exigent circumstances, police officers allow a minimum of 20 seconds for occupant(s) of the residence to respond prior to forced entry.

No-Knock Warrant Data

The number of no-knock warrants executed by MCPD has fallen precipitously in recent year. According to MCPD, the most significant contributing factor to this reduction was the restriction against using no-knock warrants for certain crimes, most notably, narcotics investigations. Judicially approved search warrants, including no-knock warrants, identify a location for an authorized search; a warrant is not directed at particular individuals. Nonetheless, MCPD collects demographic data on individuals present at a search location at the time of warrant execution. Review of the demographic data reveals that:

- The total annual number of no-knock warrants executed by MCPD dropped from 128 in 2017 to nine in 2023. No-knock warrants as a percent of total warrants decreased from 63% in 2020 to 16% in 2023.
- Of the 53 persons present during MCPD no-knock warrant searches in 2023, all but one were Black or Hispanic.
- Ages of those present at no-knock warrants ranged from 73 to two years old during 2023; more than half of those present were of ages between 18 to 40 years.

Review of No-Knock Warrant Standards

The Council directed OLO to examine new or different best practices related to no-knock warrants that have been identified since the law's adoption. Scant recent literature exists on no-knock warrant "best practices." Rather, recent developments regarding no-knock warrants have focused on review of existing standards for approving and serving no-knock searches.

The U.S. Department of Justice (DOJ) recently revised no-knock warrant standards for Federal law enforcement agencies. OLO reviewed the DOJ standards and found that the MCPD search warrant policy closely correlates with the revised Federal policy.

OLO also examined a 2022 position statement issued by the National Tactical Officers Association (NTOA), a non-profit education and training organization supporting police tactical teams and other members of the law enforcement community. In that statement, NTOA concludes that little or no justification exists for no-knock warrants in light of risk and safety concerns associated with forced entry searches. In contrast, MCPD provided OLO with a statement asserting that no-knock warrants, when employed judiciously, increase safety for the public, occupants of the search location, and police officers.

OLO Discussion Questions

This report affords the County Council and the Executive Branch an opportunity to review the current status of MCPD use of force and no-knock warrant policies and practices and to consider what, if any, adjustments would be appropriate. To facilitate this review, OLO presents the following discussion questions for Councilmember consideration based on the findings of this report.

Discussion Question #1: *When the Council approved Bill 27-20, was its intent to allow use of carotid restraints under circumstances when other forms of deadly force would be authorized?*

Discussion Question #2: *Should MCPD add an explicit requirement in the use of force policy stating that police officers must exhaust alternatives before engaging in less lethal use of force?*

Discussion Question #3: How should the County engage community members in the on-going review of use of force policies and practices?

Discussion Question #4: Is current definition of a reportable use of force adequate and sufficient?

Discussion Question #5: Is it possible that any modifications to MCPD use of force policies or practices could address the racial disparity in use of force?

Discussion Question #6: Are current means for residents to file and monitor use of force complaints adequate and sufficient?

Discussion Question #7: What would be the advantages and disadvantages of modifying MCPD use of force policy to include provisions that:

- require officers consider language barriers when determining whether force is appropriate;
- prohibit use force to subdue a person who is not suspected of any criminal conduct;
- prohibit use of force against a person who confronts an officer solely verbally;
- prohibit officers from using deadly force solely to protect persons who pose a risk of harm only to themselves;
- prohibit shooting at a target that is not clearly in view;
- limit intentional weapon strikes to the head only to situations when deadly force is authorized;
- prohibit officers from conducting an off-leash deployment of a canine to apprehend a person who does not pose an imminent risk to a police officer or another person.

Discussion Question #8: What does the Council currently believe is the appropriate use for no-knock warrants?

Discussion Question #9: Is it possible that any modifications to MCPD no-knock warrant policies or practices could address the racial and ethnic disparities in those present during forced entry searches?

OLO Report 2024-13
Implementation of the 2020
Use of Force and No-Knock Warrant Law

Table of Contents

Executive Summary..... i

Table of Contents.....vi

1. Introduction 1

2. Overview – MCPD Policy Directives..... 8

3. Use of Force Policies, Standards, and Training..... 11

4. Use of Force Data..... 29

5. Use of Force Best Practices and Guidelines..... 47

6. No-Knock Warrant Policies, Standards, and Training..... 61

7. No-Knock Warrant Data..... 73

8. No-Knock Warrant Review of Standards 80

9. Discussion Questions 86

10. Executive Branch Comments 89

Appendices

A	Bill 27-20	A-1
B	MCPD Policy Directive, FC #131, Response to Resistance and Use of Force	B-1
C	MCPD Policy Directive, FC #714, Search and Seizure Warrants	C-1
D	MCPD Headquarters Memorandum 02-13, Lateral Vascular Neck Restraint	D-1
E	MCPD Use of Force Reporting Form	E-1
F	Maryland Police Training and Standards Commission Use of Force Best Practices	F-1
G	Policing Project Use of Force Guidelines	G-1
H	July 10, 2024 Letter from the Chief of Police	H-1
I	U.S. Department of Justice Memorandum, Chokeholds & Carotid Restraints; Knock and Announce Requirement	I-1
J	National Tactical Officers Association, No-Knock Warrant Service Position Statement	J-1

CHAPTER 1: INTRODUCTION

This introductory chapter describes the County Council’s assignment to OLO and presents background information on use of force and no-knock warrants in policing, as well as summaries of State and County laws and regulations relevant to use of force and no-knock warrant policies and practices.

Section A. The Assignment

On July 25, 2023, The Montgomery County Council approved the [Fiscal Year 2024 Work Program](#) for the Office of Legislative Oversight (OLO). The work program directed OLO to prepare a report on the implementation of County Council Expedited Bill 27-20 (hereafter, “Bill 27-20”) on the use of force and no-knock warrants by the Montgomery County Police Department (MCPD).

The Council enacted Bill 27-20, Police – Regulations-Use of Force Policy, on July 29, 2020. The law directs the Police Chief to issue department policies on use of force by MCPD officers, use of no-knock search warrants, and listed minimum standards that must be included in the policies. The law also requires an annual public report from the Police Chief on the use of no-knock search warrants in the County. The full text of Bill 27-20, as enacted, appears in Appendix A.

For this report, the Council requested the OLO report include:

- A discussion of the MCPD policies issued in compliance with the bill;
- Information about how MCPD trains officers based on the new policies and data on how many MCPD officers have undergone training;
- Data from the Police Chief’s annual reports issued since the law’s implementation; and
- Historic data on the use of force and use of no-knock warrants in the County, including available data since the law was adopted.

The Council further requested that, to the extent possible, the report examine whether new or different best practices related to use of force and no-knock warrants in policing have been identified since the law’s adoption.

The Office of Legislative Oversight has found a high degree of consistency between the requirements of Bill 27-20 and MCPD use of force and no-knock warrant policies and practices. This report affords the County Council and the Executive Branch an opportunity to review the current status of bill implementation and consider what, if any, adjustments would be appropriate.

Section B. Background – Use of Force in Policing

According to the U.S. Department of Justice (DOJ), National Institute of Justice (NIJ), there is no single, universally accepted definition of the term; “use of force,” in the context of policing.¹ The NIJ cites that the International Association of Chiefs of Police (IACP) describes use of force as the “amount of effort required by police to compel compliance by an unwilling subject.”²

In recent years, many communities have revisited their police use of force policies with the goal of limiting and/or prohibiting practices that contribute to unnecessary deaths and serious bodily injury. The policy reviews came in response to overwhelming evidence demonstrating racial disparities in police use of force and following multiple incidents that resulted in deaths, culminating in the murder of George Floyd by a Minneapolis police officer in May 2020. The [autopsy report](#) indicated that Mr. Floyd “became unresponsive while being restrained by law enforcement officers” and suffered multiple blunt force injuries and cardiopulmonary arrest. A subsequent [U.S. Department of Justice investigation of the Minneapolis Police Department](#) found:

... reasonable cause to believe that the City of Minneapolis and the Minneapolis Police Department [MPD] engage in a pattern or practice of conduct that deprives people of their rights under the Constitution and federal law:

- *MPD uses excessive force, including unjustified deadly force and other types of force.*
- *MPD unlawfully discriminates against Black and Native American people in its enforcement activities.*
- *MPD violates the rights of people engaged in protected speech.*
- *MPD and the City discriminate against people with behavioral health disabilities when responding to calls for assistance.*

In the aftermath of the George Floyd murder, the Council enacted Bill 27-20. Following the enactment of Bill 27-20, MCPD adopted a new use of force policy ([Function Code #131](#), see Appendix B). That policy defines the use of force as: “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.”

¹ United States Department of Justice, National Institute of Justice, [Overview of Police Use of Force](#), March 5, 2020.

² *Ibid.*

According to the 2023 MCPD Use of Force report, types of force used by police may include any of the following:

- *Physical control: This may include soft physical tactics to control subjects without injury, such as handcuffing or guiding a subject to another location. Hard physical control involves using physical force to subdue a subject.*
- *Chemical Agents: Pepper spray or tear gas, used to control a situation or subdue a subject resisting arrest.*
- *Impact Weapons: These include batons, tasers, or rubber bullets, which are designed to incapacitate a suspect without causing serious injury.*
- *Firearms: This is the most extreme force and should only be used as a last resort. Police officers may use deadly force to protect themselves or others when they perceive a threat of serious bodily harm or death.*

A detailed review of the provisions of the MCPD use of force policy directive appears in Chapter 3 of this report.

Section C. Background – No-Knock Warrants

Residents of the United States are afforded protection from unreasonable search and seizure. The Fourth Amendment to the U.S. Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Furthermore, Article 26 of the Constitution of Maryland Declaration of Rights prohibits “grievous and oppressive” searches:

That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

A warrant is an order issued by a judge authorizing a law enforcement agency to arrest or detain a person or to search and seize private property. Maryland law defines a no-knock warrant as “a search warrant that authorizes the executing law enforcement officer to enter a building, apartment, premises, place, or thing to be searched without giving notice of the

officer's authority or purpose.”³ No-knock searches often involve forced entry into the subject premises.

In a policy document known as Function Code 714 (see Appendix C), MCPD defines a no-knock warrant as “a search warrant that authorizes the executing law enforcement officer to enter a building, apartment, premises, place, or thing to be searched without knocking and announcing the officer's presence.”

The use of search warrants in general, and no-knock warrants in particular, has generated much controversy in recent years following a series of deadly incidents. In March 2020, officers from the Louisville Metro Police Department shot and killed Breonna Taylor, a 26-year-old Black woman, after breaking down the door to Ms. Taylor’s apartment while executing a search warrant for another person. A [U.S. Department of Justice investigation of the Louisville Metro Police Department and Louisville/Jefferson County Metro Government](#) found:

... that the Louisville Metro Police Department (LMPD) and the Louisville/Jefferson County Metro Government (Louisville Metro) engage in a pattern or practice of conduct that violates the U.S. Constitution and federal law.... Specifically, the Justice Department finds that LMPD:

- *Uses excessive force, including unjustified neck restraints and the unreasonable use of police dogs and tasers;*
- *Conducts searches based on invalid warrants;*
- *Unlawfully executes search warrants without knocking and announcing;*
- *Unlawfully stops, searches, detains, and arrests people during street enforcement activities, including traffic and pedestrian stops;*
- *Unlawfully discriminates against Black people in its enforcement activities;*
- *Violates the rights of people engaged in protected free speech critical of policing; and*
- *Along with Louisville Metro, discriminates against people with behavioral health disabilities when responding to them in crisis.*

By enacting Bill 27-20, the County Council modified the County’s no-knock warrant policy and standards. In response to Bill 27-20, MCPD revised its search and seizure policy directive (Function Code #714). The policy directive includes the following overview:

It is the policy of the Montgomery County Department of Police (MCPD) to utilize search warrants to further criminal investigations through the recovery of evidence. Search warrants can be utilized when probable cause has been established and after appropriate departmental and judicial review. Whenever it is necessary for officers to

³ [Criminal Procedure §1-203, \(a\)\(1\)](#)

conduct search and seizure operations, the primary concern will be the rights, safety, and welfare of the community, citizens and the officers involved.
(Function Code #714, Section II)

A detailed review of the provisions of the MCPD no-knock warrant policy directive appears in Chapter 6 of this report.

Section D. Other Relevant State and County Laws and Regulations

The focus of this OLO report is the implementation of Montgomery County Council Bill 27-20 that was enacted in 2020 and amended portions of the County Code that govern police activity related to use of force and no-knock warrants. However, the legal framework governing law enforcement in general, and use of force and search warrants in particular, extends beyond the sections of the County Code amended by Bill 27-20. This section identifies other Maryland and Montgomery County laws and regulations that effect police use of force and search warrant practices.

Montgomery County Council Bill 33-19: Enacted by the Council in 2022, [Bill 33-19, Police – Community Policing](#), established community policing guidelines requiring MCPD to, among other things, regularly engage in positive nonenforcement activities in the community; ensure cultural competency throughout the Department; recruit police officer candidates with ties to the County; increase community outreach initiatives; and train officers in de-escalation tactics. The bill further mandates that MCPD submit annual reports to the County Executive and County Council that provide data and information on the demographic composition of the police force, use of force incidents, officer suspensions, and community policing efforts.

Maryland Police Accountability Act of 2021: The Maryland Police Accountability Act of 2021, amended the [Maryland Public Safety Article, Title 3, Subtitle 1](#) to, among other things, repeal the Law Enforcement Officers’ Bill of Rights (LEOBR), establish a statewide accountability and discipline process for police officers (including establishment of “police accountability boards” in each county (see Chapter 3 of this report), establish higher education financial assistance programs for police officers, increase civil liability limits applicable to police misconduct lawsuits; and require reporting on special weapons and tactics (SWAT) team activity and use of force complaints. The Act further requires police officers to use body-worn cameras and establishes a duty to intervene if another officer uses excessive force.

Maryland Use of Force Statute: In 2021, the Maryland General Assembly amended the [Maryland Public Safety Article, Title 3, Subtitle 5, Section 3-524](#) to mandate that “a police officer may not use force against a person unless, under the totality of the circumstances, the force is necessary and proportional to (i) prevent an imminent threat of physical injury to a person; or (ii) effectuate a legitimate law enforcement objective.” The statute further requires a police officer to “cease the use of force as soon as: (i) the person on whom the force is used is under the police officer’s control; or no longer poses an imminent threat of physical injury or death to

the police officer or to another person; or (ii) the police officer determines that force will no longer accomplish a legitimate law enforcement objective.” The statute also requires police officers to de-escalate a conflict as circumstances allow; to intervene when another police officer uses unauthorized force; to render basic first aid and promptly request medical assistance to a person injured as a result of police action; and to fully document all use of force incidents. In addition, the statute mandates that every police officer sign a written statement “sanctity of life” pledge to “respect every human life and act with compassion toward others.”

Maryland House Bill 1023 (Enacted in 2022): In 2022, the Maryland General Assembly enacted [House Bill 1023](#) that, among other things, requires the Maryland Police Training and Standards Commission to issue annual reports on use of force complaints made against law enforcement officers and other serious officer-involved incidents that occurred in the State.

Maryland Regulations – No-Knock Warrants: The Code of Maryland Regulations, [Section 12.04.08.06](#), establishes minimum training standards for police officers who serve a no-knock search warrant. The regulation requires any police officer, prior to deployment in a no-knock warrant to complete training on topics including tactical response theory and concepts, operational planning, basic entry and search techniques, crisis negotiation, de-escalation skills and legal requirements (See Chapter 7 of this report).

Section E. Report Structure, Methodology, and Acknowledgements

This OLO report contains the following chapters:

- **Chapter 2, Overview – MCPD Policy Directives** describes the MCPD process for developing and approving policy directives, introduces the primary policies governing police use of force and no-knock warrants, and summarizes the relationship between MCPD policies and the collective bargaining process.
- **Chapter 3, Use of Force Policies, Standards, and Training** presents a comparison of the County Council use of force policy standards with the corresponding text in MCPD policy, enumerates provisions of the MCPD use of force policy not addressed in the County Code, includes a statement from MCPD regarding community input in policy development, and presents an overview of use of force training requirements and practices.
- **Chapter 4, Use of Force Data** explains how the definition of use of force has evolved in recent years and presents recent data on use of force incidents in Montgomery County.
- **Chapter 5, Use of Force Best Practices and Guideline** presents three sets of use of force best practices and guidelines developed from three perspectives, that of government, the law enforcement community, and social justice advocates.
- **Chapter 6, No-Knock Warrant Policies, Standards, and Training** compares the County Code no-knock warrant standards Code with the corresponding text in MCPD policy,

enumerates provisions of MCPD no-knock warrant policy not addressed in the County Code, and presents an overview of no-knock warrant training requirements and practices.

- **Chapter 7, No-Knock Warrant Data** presents data on search warrants and no-knock warrants served by MCPD in recent years.
- **Chapter 8, Review of No-Knock Warrant Standards** discusses a recent revision in U.S. Department of Justice no-knock warrant standards as well as a no-knock warrant position statement issued by an association serving law enforcement tactical teams and presents a statement from MCPD discussing the Department's perspective on the use of no-knock warrants.
- **Chapter 9, OLO Discussion Question** presents questions for Councilmember consideration based on the findings of this report.
- **Chapter 10, Executive Branch Comments** presents comments submitted by the Executive Branch regarding this report.

Methodology and Acknowledgements: To prepare this report, OLO gathered information through online research, document reviews, data analysis, and interviews with representatives of MCPD and the Office of the County Attorney. OLO received a significant level of cooperation from everyone involved in this study and greatly appreciates the information shared and the insights provided by all who participated. In particular, OLO thanks the following:

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CHAPTER 2: OVERVIEW - MCPD POLICY DIRECTIVES

MCPD policies are referred to as “directives” or “policy directives” and are codified in documents called “function codes.” Each policy has a unique function code (or “FC”) number. This chapter describes the MCPD process for developing and approving policy directives, introduces the primary policies governing police use of force and no-knock warrants, and summarizes the relationship between MCPD policies and the collective bargaining process.

MCPD Policy Directives – Key Takeaways

- MCPD has nearly completed work on a revised use of force policy directive. MCPD expects to finalize the new policy directive later this calendar year.
- When a provision of an MCPD policy directive conflicts with a provision of the collective bargaining agreement with the Fraternal Order of Police, the collective bargaining agreement is the controlling document. According to the Office of the County Attorney, no provisions of the MCPD use of force or search warrant policy directives currently are subject to modification by the collective bargaining agreement. However, components of both policy directives could potentially be a mandatory subject of bargaining.

Section A. Policy Directive Development and Approval Process

MCPD creates a new directive or amends an existing directive for multiple reasons including to comply with changes in law, to implement best practices, and to reflect process changes. The MCPD Policy and Planning Division coordinates the initial development of a draft directive based on input and guidance from internal subject matter experts. The Policy and Planning Division sends the draft directive to all MCPD Executive Officers and Assistant Chiefs for review and comment and then subsequently forwards the document to the Office of the County Attorney for legal review. In addition, the MCPD Professional Accountability Division reviews the draft policy directive for compliance with the relevant standards established by the Commission for Accreditation for Law Enforcement Agencies (CALEA). Upon completion of these reviews, MCPD transmits the draft directive to the Fraternal Order of Police (FOP). The FOP has the right to request a meeting to discuss the draft directive. Upon determination that the draft includes no bargainable provisions, the directive is then sent to the Police Chief for final approval and signature.

Maryland law requires law enforcement agencies to post official policies.¹ MCPD maintains a [“Department Policies” webpage](#) that includes links to most current policy directives. Consistent with State law, MCPD does not make public certain policies that would jeopardize operations or create a risk to public or officer safety.²

¹ [Public Safety Article, Section 3-515\(a\)\(1\)](#).

² [Public Safety Article, Section 3-515\(a\)\(2\)](#).

Section B. MCPD Policies Relating to Use of Force and No Knock Warrants

County Council Bill 27-20 established overarching objectives and standards relating to the use of force by County police officers as well as the execution of no-knock search warrants. The detailed implementation requirements including approved and prohibited practices, reporting mandates, and oversight structures are specified in MCPD policy directives. The primary policy directive governing use of force by police officers is FC #131. Chapter 3 of this report details the provisions of FC #131. **MCPD has notified OLO that it has nearly completed work on a new revision to FC #131. MCPD expects to finalize the new policy directive later this calendar year.** The full text of the current version of FC #131 appears in Appendix B.

The primary policy directive governing execution of no-knock warrants is [FC #714](#). Chapter 6 of this report details the provisions of FC #714. The full text of FC #714 appears in Appendix C.

Section C. Policy Directives and Collective Bargaining

The content of MCPD policies are subject to certain provisions or the County's [collective bargaining agreement \(CBA\) with the Fraternal Order of Police \(FOP\)](#). As stated in Article 61 of the CBA:

Prior to implementing new directives or rules, or proposed changes or amendments to directives or rules, the Employer shall notify the FOP. The primary subject of any new, changed, or amended directives or rules covered by the article shall not include matters currently addressed in the collective bargaining agreement, or matters proposed by the County and rejected by the FOP at the most recent term negotiations, or matters, the primary subject of which, were taken to mediation by the FOP at the most recent term negotiations ...³

The FOP may demand to bargain a provision of a new directive or rule or a change or amendment to a directive or rule...⁴

Most significantly, the CBA explicitly states that, in cases of conflict, the CBA overrides MCPD policy:

If a provision of a regulation, departmental directive or rule conflicts with a provision of the contract as described in this article, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law.⁵

Each MCPD policy directive, including those governing use of force and no-knock warrants, includes a preamble stating that the CBA controls in case of conflict with the policy. OLO asked

³ [Collective bargaining agreement with the Fraternal Order of Police](#), Article 61, Section A.

⁴ [Collective bargaining agreement with the Fraternal Order of Police](#), Article 61, Section B.

⁵ [Collective bargaining agreement with the Fraternal Order of Police](#), Article 61, Section C.

the Office of the County Attorney (OCA) whether any language in the current CBA currently modifies, or in any way affects, the implementation of any provision of the use of force and no-knock warrant policy directives. The OCA responded that, at present, no element of either policy directive is subject to modification by any CBA provision. However, the OCA stated that “the use of force and search warrant policies contain other component parts which go beyond the confines of the minimum standards required by the County Code and therefore could potentially be a mandatory subject of bargaining with the FOP and may not be excluded from bargaining under the current County law.”

CHAPTER 3: USE OF FORCE POLICIES, STANDARDS, AND TRAINING

This chapter presents a comparison of the use of force policy standards included in the County Code with the corresponding text in the primary MCPD use of force policy directive. The chapter also enumerates provisions of the MCPD use of force policy not addressed in the County Code. In addition, this chapter includes a statement from MCPD addressing how it responded to the requirement in the County Code that the Department solicit guidance from the community on how to modify the use of force policy. Finally, this chapter presents an overview of use of force training requirements and practices.

Use of Force Policies, Standards, and Training – Key Takeaways

- The MCPD use of force policy directive substantially complies with the standards specified in the County Code regarding use of force on a restrained person, use of deadly force, use of deadly force on a fleeing person, the duty of a police officer to intervene in unauthorized use of force, shooting at or from a moving vehicle, and other standards.
- The County Code prohibits use of neck or carotid restraints without condition. MCPD policy permits use of these restraints when “deadly force would be authorized.”
- The County Code permits less lethal force “only after exhausting alternatives to the use of such force;” the MCPD policy does not include a similar statement, but indirectly applies a similar standard through the policy’s definition of “necessary” force.
- The MCPD policy contains multiple provisions not addressed in the County Code, including a requirement for police officers to take steps to de-escalate a conflict without using force, a requirement that police officers cease the use of force as soon as a person is under control or no longer poses an imminent threat, a prohibition against police officers firing warning shots, a restriction against police officers pointing a firearm at a person unless circumstances warrant use of deadly force, and a requirement that police officers sign a pledge affirming the sanctity of life.
- The County Code requires that MCPD solicit comments and guidance on use of force from members of the public, particularly people from communities who have been adversely affected by police use of force. MCPD reports that it has received “no comments which would have been useful toward re-shaping our policy or training.”

Section A. Use of Force Standards – Comparison of County Code and MCPD Policy

Bill 27-20 amended the County Code to mandate that the Chief of Police issue a policy directive that establishes the permissible use of force by Montgomery County police officers. Section 35-22(b) specifies policy objectives, stating that the directive must:

- A. *prioritize the safety and dignity of every human life;*
- B. *promote fair and unbiased policing; and*
- C. *protect vulnerable populations, including individuals with disabilities, children, elderly persons, pregnant individuals, persons with limited English proficiency, individuals without regard to sex, including gender identity or orientation, individuals without regard to race, persons with mental or behavioral disabilities or impairments, and populations that are disproportionately impacted by inequities.*

The Code further enumerates ten “minimum standards” for implementing these objectives. The term, “minimum standards,” implies that the established MCPD use of force policy may include additional standards than those specified in the law.

In July 2022, MCPD finalized a revised “Response to Resistance and Use of Force” policy, referred to as FC (Function Code) #131. **Note: MCPD has notified OLO that it has nearly completed work on a new revision to FC #131. MCPD expects to finalize the new policy directive later this calendar year.**

In the following pages, OLO presents a comparison of the ten use of force policy standards included in the County Code with the corresponding text in the current version of FC #131. The full text of the current version of FC #131 appears in Appendix B.

1. Compliance with the Law

Both the County Code and MCPD policy require compliance with prevailing laws.

Compliance with the Law	
County Code	MCPD Policy
<p><i>The use of force policy directive ... must ... comply with the Constitutions of the United States and the State of Maryland. (§ 35-22(c)(2))</i></p>	<p><i>Officers may only use force when, under the totality of the circumstances, is necessary and proportional to prevent an imminent threat of physical injury to a person or effectuate a legitimate law enforcement objective. This authority is limited by the applicable laws of Montgomery County, the State of Maryland, federal law, the United States Constitution, and the provisions of this policy. (FC #131, I.E)</i></p>
<p>Comparison: The text of the County Code explicitly requires compliance with the Constitutions of the United States and the State of Maryland. The MCPD policy expands this standard to also require compliance with applicable County and State laws.</p>	

2. Use of Deadly Force

Both the County Code and MCPD policy define the term “deadly force” as “force that creates a substantial risk of causing death or serious bodily injury, including the discharge of a firearm, a carotid restraint, or a neck restraint.”

Use of Deadly Force	
County Code	MCPD Policy
<i>The use of force policy directive ... must ... prohibit a member of the police from using deadly force against a person unless: (a) such force is necessary, as a last resort, to prevent imminent and serious bodily injury or death to the officer or another person; and (b) the use of such force creates no substantial risk of injury to a third person. (§ 35-22(c)(2))</i>	<i>Officers may use deadly force if such force is necessary, as a last resort due to a lack of reasonable and safe alternatives, to defend themselves or another person from what they reasonably believe is an imminent threat of death or serious physical injury. Such force must not create substantial unnecessary risk of injury to a third person. (FC #131, III.M.1)</i>
<p>Comparison: The text of the County Code prohibits use of deadly force unless such force is necessary as a last resort to prevent imminent serious injury or death. The MCPD Policy further defines the term “last resort” as a situation where “a lack of reasonable and safe alternatives” exist.</p> <p>The County Code prohibits use of deadly force unless it would result in “no substantial risk” of injury to a third person. The text of the MCPD Policy prohibits use of deadly force if it would create “substantial unnecessary risk” of injury to a third person.</p>	

3. Use of Deadly Force on a Fleeing Person

Both the County Code and MCPD policy include additional qualifications regarding the use of deadly force against a fleeing person. The first two conditions in both the County Code and the MCPD policy for use of deadly force on a fleeing person are identical as the general conditions for use of deadly force. The third condition in the County Code and MCPD policy are specific to a fleeing person.

Use of Deadly Force on a Fleeing Person	
County Code	MCPD Policy
<p><i>The use of force policy directive ... must ... prohibit a member of the police from using deadly force against a fleeing person unless: (a) such force is necessary, as a last resort, to prevent imminent and serious bodily injury or death to the officer or another person; (b) the use of such force creates no substantial risk of injury to a third person; and (c) reasonable suspicion exists that the fleeing person committed a felony that threatened or resulted in death or serious bodily injury. (§ 35-22(c)(3))</i></p>	<p><i>Officers may only use deadly force against a fleeing person if: (a) such force is necessary, as a last resort due to a lack of reasonable and safe alternatives, to prevent imminent and serious bodily injury or death to the officer or another person (b) the use of force creates no substantial unnecessary risk of injury to a third person; and (c) probable cause exists that the fleeing person committed a felony that threatened or resulted in death of serious bodily injury. (FC #131, III.M.2)</i></p>
<p>Comparison: The text of the County Code prohibits use of deadly force unless such force is necessary as a last resort to prevent imminent serious injury or death. The MCPD policy further defines the term “last resort” as a situation where “a lack of reasonable and safe alternatives.”</p> <p>The County Code prohibits use of deadly force unless it would result in “no substantial risk” of injury to a third person. The text of the MCPD policy prohibits use of deadly force if it would create “substantial unnecessary risk” of injury to a third person.</p> <p>The text of the County Code requires “reasonable suspicion” that the fleeing person committed a felony; the MCPD policy modifies the requirement to “probable cause” that the fleeing person committed a felony. Probable cause is a higher legal standard than reasonable suspicion.</p>	

4. Use of Force on Restrained Individual

The MCPD policy on the use of force on a restrained individual is more expansive than the provision specified in the County Code.

Use of Force on Restrained Individual	
County Code	MCPD Policy
<p><i>The use of force policy directive ... must ... prohibit a member of the police from striking a restrained individual. (§ 35-22(c)(4))</i></p>	<p><i>Officers are prohibited from... striking a handcuffed/restrained individual, unless the individual poses an imminent threat of serious bodily injury or death to the officer(s) or another person. (FC #131, III.N.5)</i></p>
<p>Comparison: The MCPD policy adds a condition to the County Code-mandated prohibition against striking a restrained individual by adding the text: “unless the individual poses an imminent threat of serious bodily injury or death to the officer(s) or another person.”</p>	

5. Policy Violation Intervention and Reporting

The approval of Bill 27-20 amended the County Code to include a requirement for police officers to intervene in, and report violations of the County’s use of force policy.¹ The MCPD Use of Force policy (FC #131, adopted in July 2022) references “Rule 6” in another MCPD policy (FC #300). At the time of the adoption of FC #131, the following text appeared in FC #300:

Rule 6: ...It shall be the duty of every officer present at any scene where physical force is being applied to either stop, or attempt to stop, another officer when force is being inappropriately applied or is no longer required.

However, in May 2024, MCPD adopted a revised FC #300. The revised version of this policy no longer includes the above cited language. As mentioned in Chapter 2, MCPD has notified OLO that the Department is presently working on a revision to FC #131 and that the revised policy directive will address police officers’ duty to intervene.

Policy Violation Intervention and Reporting	
County Code	MCPD Policy
<i>The use of force policy directive ... must ... require a member of the police to stop, or attempt to stop, and to report to a supervisor, another officer who is using excessive force, violating the use of force policy, or committing a crime. (§ 35-22(c)(5))</i>	<i>Every officer has an obligation to ensure compliance, by themselves and others, with department directives and regulations, as well as all applicable laws. Officers must comply with the duty to intervene requirements of Function Code 300, Rule 6-Use of Force. (FC #131, VIII.K.1)</i> <i>Officers who intervene with another's actual force must report such intervention with their supervisor as soon as practical. (FC #131, VIII.K.2)</i>
<p>Comparison: The County Code explicitly calls on police officers to intervene when witnessing a violation of the use of force policy. The MCPD Use of Force Policy generally speaks to a requirement to comply with directives, regulations and laws and then references another policy document that once, but no longer, establishes a requirement to intervene.</p> <p>The County Code requires officers to report violations of the Use of Force policy without any qualification. The MCPD policy appears to limit the reporting requirement to instances when an officer actively intervenes in the incident.</p>	

¹ State law ([Public Safety Article, Section 3-524 \(e\)\(2\)](#)) requires police officers to “intervene to prevent or terminate the use of force by another police officer beyond what is authorized...”

6. Retaliation for Intervention

In both the County Code and MCPD policy, the provision regarding retaliation related to use of force violations is presented immediately following the provision establishing the requirement to intervene in such circumstances.

Retaliation for Intervention	
County Code	MCPD Policy
<i>The use of force policy directive ... must ... protect a member of the police from retaliation or discipline for taking action under paragraph (5). * (§ 35-22(c)(6))</i>	<i>Any officer who makes such a report is protected from retaliation consistent with department policy. (FC #131, VIII.K.3)</i>
Comparison: The County Code requires protection against retaliation for officers who broadly “take action” in cases of violation of the use of force standards. The MCPD policy offers protection against retaliation specifically for officers who report a violation of use of force standards but does not explicitly provide protection against retaliation for an act of intervention.	

* Paragraph (5) reads: “require a member of the police to stop, or attempt to stop, and to report to a supervisor, another officer who is using excessive force, violating the use of force policy, or committing a crime.”

7. Neck/Carotid Restraints

The County Code and MCPD policy include identical definitions for the terms “neck restraint force” and “carotid restraint.” A neck restraint is defined as a “technique involving the use of an arm, leg, or other firm object to attempt to control or disable a subject by applying pressure against the windpipe or the neck with the purpose or effect of controlling a subject's movement or rendering a subject unconscious by blocking the passage of air through the windpipe.” A carotid restraint is defined as a “technique applied in an effort to control or disable a subject by applying pressure to the carotid artery, the jugular vein, or the neck with the purpose or effect of controlling a subject’s movement or rendering a subject unconscious by constricting the flow of blood to and from the brain.”

Neck/Carotid Restraints	
County Code	MCPD Policy
<i>The use of force policy directive ... must ... prohibit a member of the police from using a neck restraint or a carotid restraint against an individual. (§ 35-22(c)(7))</i>	<i>Officers are prohibited from ... utilizing a neck or carotid restraint against an individual unless the use of deadly force would be authorized. (FC #131, III.N.1)</i>
Comparison: The County Code prohibits use of neck or carotid restraints without further conditions. MCPD policy would permit the use of these restraints when “the use of deadly force would be authorized.”	

8. Shooting from Moving Vehicle

Both the County Code and MCPD policy establish a standard for police officers shooting from a moving vehicle.

Shooting from Moving Vehicle	
County Code	MCPD Policy
<p><i>The use of force policy directive ... must ... prohibit a member of the police from shooting from a moving vehicle unless circumstances would authorize the use of deadly force. (§ 35-22(c)(8))</i></p>	<p><i>Officers are prohibited from ... shooting from a moving vehicle unless circumstances would authorize the use of deadly force. (FC #131, VIII.N.4)</i></p>
<p>Comparison: The County Code and MCPD policy include nearly identical language for this standard.</p>	

9. Shooting at Moving Vehicle

Both the County Code and MCPD policy establish a standard for police officers shooting at a moving vehicle.

Shooting at Moving Vehicle	
County Code	MCPD Policy
<p><i>The use of force policy directive ... must ... prohibit a member of the police from shooting at a moving vehicle unless the vehicle is being used as a weapon and the circumstances would authorize the use of deadly force. (§ 35-22(c)(9))</i></p>	<p><i>Officers are prohibited from ... shooting at a moving vehicle unless the vehicle is being used as a weapon and/or the circumstances would authorize the use of deadly force. (FC #131, VIII.N.2)</i></p> <p><i>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. (FC #131, VIII.N.3)</i></p>
<p>Comparison: The County Code and MCPD policy include nearly identical language for this standard. In addition, the MCPD policy introduces an additional requirement for police officers to attempt to move out of the path of a moving vehicle.</p>	

10. Use of Less Lethal Force

The County Code and MCPD policy include identical definitions for the term “less lethal use of force.” Less lethal use of force is defined by both as “any degree of force that is not likely to have lethal effect.”

Use of Less Lethal Force	
County Code	MCPD Policy
<p><i>The use of force policy directive ... must ... prohibit any less lethal force unless such less lethal force is necessary and proportional in order to effectuate an arrest of a person who the officer has probable cause to believe has committed a criminal offense, and only after exhausting alternatives to the use of such force. (§ 35-22(c)(10))</i></p>	<p><i>Less-Lethal force ... may be used if necessary and proportional in order to affect the constitutionally permissible detention of an individual. Examples of such constitutional detentions include, but are not limited to: (a) when the officer has probable cause to believe the individual has committed a criminal offense; (b) to effect an investigative detention; or (c) to effect service of an Emergency Evaluation Petition, Extreme Risk Protective Order, or other similar civil order. (FC #131, III.L.1)</i></p> <p><i>Force is necessary only if the officer has no other reasonable alternative(s) under the totality of the circumstances to prevent imminent physical harm or accomplish another legitimate law enforcement objective. When force is necessary, the use of force shall be used in a manner that avoids unnecessary injury or risk of injury to all persons involved. (FC #131, II.J)</i></p>
<p>Comparison: The County Code permits use of less lethal force as necessary and proportional to “effectuate an arrest of a person who the officer has probable cause to believe has committed a criminal offense.” The MCPD permits less lethal force “to affect the constitutionally permissible detention of an individual.” Further, the County Code permits less lethal force “only after exhausting alternatives to the use of such force;” the MCPD policy does not include a similar statement.</p> <p>Nonetheless, the definition of the term “necessary” included in the policy directive deems force necessary “only if the officer has no other reasonable alternative(s) under the totality of the circumstances to prevent imminent physical harm or accomplish another legitimate law enforcement objective.”² Although the mandate of the Code to exhaust alternative before using less lethal force is not stated directly in FC #131, the definition of the term “necessary” seems to apply this mandate – albeit indirectly - to the less lethal force standard in the policy directive.</p>	

² See February 25, 2022 Maryland Attorney General’s Opinion, [Police Officers – Use of Force Statute – Meaning of the Requirement that Force Used by Officers Must Be “Necessary” and “Proportional.”](#)

Section B. Use of Force – Additional Standards Included in MCPD Policy

The previous section of this report compared provisions of the MCPD use of force policy with the corresponding standards specified in the County Code. As previously mentioned, the County Code contains “minimum standards” for use of force, implying that the established MCPD policy may include additional standards than those specified in the law. In fact, the MCPD policy (FC #131) includes multiple provisions covering topics not addressed in the County Code. These provisions include (listed in order of appearance in FC #131):

- Requirement for police officers to take steps, when time, circumstances, and safety allow, to gain compliance and de-escalate a conflict without using physical force. (FC #131 III.C)
- Prohibition against police officers intentionally escalating a situation to create the need to use force. (FC #131 3.D)
- Statement that police officers are not required to jeopardize their own safety by pursuing alternatives that are not reasonable under the totality of the circumstances. (FC #131 III.E)
- Statement that police officers responding to an attack do not necessarily need to use the exact same type, degree, or amount of force as the subject. (FC #131 III.F)
- Prohibition against police officers using, or threatening to use, force (a) to resolve a situation more quickly, unless an extended delay would risk the safety of persons involved; (b) to punish or retaliate against a person; or (c) based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected classification. (FC #131 III.G)
- Requirement that police officers cease the use of force as soon as the person on whom the force is used (a) is under the police officer's control; (b) no longer poses an imminent threat of physical injury or death to the police officer or to another person; or (c) the officer determines that force will no longer accomplish a legitimate law enforcement objective. (FC #131 III.H)
- Statement that a person need not strike or attempt to strike a police officer to be considered a physical threat as long as the officer believes that the person is physically threatening and has the present ability to harm the officer or another person. (FC #131 III.I)
- Statement that MCPD relies on the police officer's judgment and discretion to employ necessary and proportional force “under the totality of the circumstances” for each situation. (FC #131 III.J)
- Statement that “the more immediate the threat and the more likely that the threat will result in death or serious bodily injury, the greater the level of force that may be necessary and proportional to counter it.” (FC #131 III.K)

- Requirement that, when practical, police officers must attempt to identify themselves as law enforcement officers and to state their intention to use deadly force before using a firearm or employing deadly force. (FC #131 III.M.3)
- Prohibition against police officers firing warning shots. (FC #131 III.N.6)
- Enumeration of factors for a police officer to consider in evaluating the necessity and proportionality of use of force based on the circumstances of an encounter (including, among other things, the seriousness of the crime, an immediate danger for the police officer or the community, the level of resistance by the subject, the risk of escape, and the presence of a hostile crowd). (FC #131 III.O)
- Statement that firearms may be drawn whenever officers reasonably fear for their safety or the safety of others. (FC #131 IV.A.1)
- Statement that police officers may only point a firearm at an individual when circumstances create a reasonable belief that use of deadly force may be immediately necessary. (FC #131 IV.A.2)
- Statement that unnecessary or premature drawing a weapon may limit an officer's force options, may unnecessarily escalate an encounter, and may result in an unwarranted or negligent discharge of the weapon. (FC #131 IV.A.3)
- Statement that, when possible, police officers should consider the presence of bystanders before discharging a firearm. (FC #131 IV.B.2)
- Statement that a conducted energy weapon (CEW, also known as a “taser”) is a “less-lethal” weapon; however, use of a CEW is considered a serious use of force. (FC #131 V.A)
- Requirement that a CEW may only be deployed when an officer is confronted with circumstances that present a risk of immediate danger to the officer or others. (FC #131 V.B)
- Requirement for police officers to immediately summon emergency medical assistance if the subject exhibits or complains of trouble breathing, becomes unresponsive, or exhibits reduced levels of consciousness. (FC #131 VII.C)
- Establishment of use of force reporting requirements. (FC #131 VIII)
- Establishment of Use of Force and Weapons Review Committee. (FC #131 IX)
- Establishment of training and certification requirements. (FC #131 X.A, B)
- Requirement that police officers sign a pledge affirming the sanctity of life. (FC #131 X.C)

Section C. Community Guidance on Use of Force Policy

In considering Bill 27-20, the Council's Public Safety Committee amended the draft bill to provide a channel for members of the public, particularly people from communities who have been adversely affected by police use of force, to provide guidance on how to modify MCPD policy. The full Council approved the Committee's amendment, adding the following text to the County Code.

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

- (1) the types of less lethal force and deadly force that are prohibited under this Section; and*
- (2) how a law enforcement officer may assess whether the use of force is appropriate and necessary, and how to use the least amount of force necessary, when interacting with all individuals, including:*
 - (A) pregnant individuals;*
 - (B) children and youth under age 21;*
 - (C) elderly persons;*
 - (D) persons with mental, behavioral, or physical disabilities or impairments;*
 - (E) persons experiencing perceptual or cognitive impairments due to use of alcohol, narcotics, hallucinogenic, or other drugs;*
 - (F) persons suffering from serious medical conditions; and*
 - (G) persons suffering from mental health concerns. (§ 35-22(g))*

OLO asked MCPD to describe how the Department solicited guidance from the groups listed in the County Code, to summarize what was learned from the solicited guidance, and to explain how any input received influenced MCPD policy. MCPD provided OLO with the following response:

implementing community feedback into our use of force training and policy has been a challenge. The department welcomes community feedback into any of our policies. However, implementing feedback into Use of Force has been a challenge. On at least one occasion, the department requested community feedback about our Use of Force policy. Unfortunately, we received no comments which would have been useful toward re-shaping our policy or training. Our Use of Force policy is predicated on constitutional law, case law, and Maryland state law, in addition to county code. These legal requirements are then used to shape our training and our policy. There remains little room for additional input which may be contrary to existing law. However, going forward, the department is initiating a process where every public facing policy on our website will have a feature where members of the community can provide feedback or ask questions.

Section D. Police Accountability Board Findings and Recommendations

As part of the Marland Police Accountability Act of 2021 (see Chapter 1 of this report), the General Assembly amended state law to mandate the creation of a “police accountability board” (PAB) in each county of the State. As detailed in the [Public Safety Article, Title 3, Section 3-102](#), the law charges the local governing body (in the case of Montgomery County, the County Council) with responsibility to establish and fund the operations of a local PAB. The duties of the PAB include, among other things, to receive complaints of police misconduct filed by members of the public and to review outcomes of disciplinary matters considered by charging committees. State law further requires each PAB to annually publish a report that “identifies any trends in the disciplinary process of police officers in the county; and makes recommendations on changes to policy that would improve police accountability in the county.”

The [most recent annual report](#) of the Montgomery County PAB was released in December 2023. That report discusses a series of community “Listening Sessions” sponsored by the PAB in the Spring of 2023. Regarding the MCPD use of force policy, the PAB annual report notes that:

A repeated theme in the sessions was the need for greater clarity and transparency around the county’s Use of Force Policy. One concern was that the County Council enacted a total ban on the use of chokeholds and strangleholds, but it is unclear whether MCPD is in adherence with this law. Numerous participants requested a clear statement of the policies around the types of force permitted, when they may be used, and the consequences for failure to comply with the policies.

In our session with Chief Jones, he noted that the County is utilizing the [Integrating Communications, Assessment, and Tactics](#) ICAT program for training on defusing situations and minimizing the need for force.

The PAB followed the above findings with the following recommendations:

The PAB recommends that the police department provides a clearer statement on the use of force policy that is publicly available, to include a statement on the use of or ban on chokeholds and strangleholds. The county should investigate whether the ICAT program is the most effective training on de-escalation, and whether additional options are available for consideration.

OLO asked MCPD to comment on the PAB recommendation. MCPD offered the following response:

In 2002, the Montgomery County Department of Police issued a Headquarters Memorandum on the “Lateral Vascular Neck Restraint”, which at the time was the only permitted use of force technique that involved the neck or throat area. In this memorandum, the department classified this tactic as deadly force, and that it was no

longer going to be taught at the training academy. Since then, the department has not taught any defensive tactic that involved “chokeholds” or “strangle holds”. This was again codified in a Headquarters Memorandum in 2020. County Code 35-22 further required the department to ban the use of a neck restraint in our use of force policy, which was done in 2021 and remains in the policy today. Intentionally placing an arm, leg, or solid object on a person’s neck or windpipe, with the intent of controlling movement or restricting air flow, is not allowed unless the use of deadly force would be permissible. Please refer to the Headquarters Memorandum that is included with this letter. [See Appendix D].

Reference ICAT, the department is consistently evaluating different training programs or concepts. ICAT remains one of the only de-escalation programs to be independently studied in an academic environment and found to be effective. Please refer to the following website for more information on ICAT (<https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9133.12574>). However, the department is also partnering with the Georgetown University Law Center’s ABLE program (Active Bystander for Law Enforcement). Georgetown will be doing a similar study on the effectiveness of their program and will be evaluating its effectiveness with the MCPD. Although ABLE is primarily a program focusing on officers and their duty to intervene with each other, there are also de-escalation elements. As a result of the Reimaging Public Safety initiative, the department has hired a Deputy Director of the Training and Education Division to serve as a curriculum developer. One of their responsibilities will be to consistently review available training programs, including de-escalation training programs, to ensure that the program of instruction being offered by the department remains at the cutting edge of the profession.

Section E. MCPD Policy on Use of Force Training

Bill 27-20 does not directly address police officer training regarding use of force. Nonetheless, police officers must be familiar with provisions of the law to properly abide by the legal standards established in the bill.

The primary MCPD policy directive on use of force (FC #131, see Appendix B) mandates that each police officer receive training on the MCPD use of force policy and “the importance of critical decision making and de-escalation.” The policy directive further mandates training related to “any pertinent legal updates related to use of force by police officers.” According to MCPD policy, only officers who have successfully completed specified training courses and any required annual recertification courses are authorized to carry and/or use any defensive tactic, protective instrument, less-lethal device, or firearm.

The most recent [collective bargaining agreement with the Fraternal Order of Police](#) requires MCPD to issue a taser to all sworn police officers whose assignments routinely involve public contact. Concurrent with implementation of this provision of the agreement, MCPD requires all police officers provided a taser to complete crisis intervention training.

Section F. MCPD Use of Force Training Practices

After Bill 27-20 became effective in August 2020, MCPD required every police officer (of every rank) in active duty status to complete training on the standards and requirements of the revised use of force policy. All active duty MCPD officers completed this training by May 2021.

Following revisions to State law in 2021 (including the Police Accountability Act and the modified Use of Force Statute, see Chapter 1, Section D of this report), MCPD conducted training to instruct police officers on the new requirements of State law. During that training, police officers signed the “Sanctity of Life” pledge mandated by the amended Use of Force Statute.

In 2022, MCPD held mandatory in-service training for sergeants on how to properly conduct use of force reviews consistent with State and County legal and policy requirements. In 2023, another mandatory in-service training instructed sergeants on method of use of force articulation³ and de-escalation. MCPD requires newly promoted sergeants to complete similar training courses.

All police officer candidates receive 36 hours of training on State and County use of force laws, policies and case law. Recruit training also includes scenario-based exercises as well as instruction on defensive tactics, crisis intervention, and use of less lethal techniques to defuse critical incidents.

³ The term “use of force articulation” refers to the description of the basis for the officer's belief that force was reasonably necessary under the particular circumstances.

CHAPTER 4: USE OF FORCE DATA

The County Code mandates that MCPD collect and maintain datasets on use of force incidents, including information about the race, gender, age, and ethnicity of those involved in the incident.¹ This chapter describes the MCPD use of force data reporting and collection processes, explains how the definition of the term “use of force” has evolved in recent years, and presents recent data on use of force incidents in Montgomery County.

Use of Force Data – Key Takeaways

- MCPD policy requires police officers to self-report use of force incidents. MCPD supervisors and executive officers must review and approve use of force reports.
- When a use of force incident involves one civilian, MCPD classifies the incident as a single event; when an incident results in force against multiple civilians, MCPD requires a separate use of force report for each civilian involved in the event.
- The types of actions and occurrences considered by MCPD to be “use of force,” has expanded in recent years. In February 2022, MCPD began to require officers to report any instance of pointing a service weapon, taser, or pepper spray as a use of force incident. In July 2022, MCPD replaced the use of force reporting requirement for “force used to counteract a physical struggle” with the more expansive “intentional use of any physical effort(s).”
- The number of reported use of force incidents rose from 593 in 2021 to 1,722 in 2023, an increase of about 190%. However, the number of use of force incidents were not measured the same way in 2021 and 2023. Data from 2021 cover uses of force under the previous, more limited definition of reportable incidents. Data from 2023 include incidents involving pointing of a weapon as well as incidents involving “intentional use of any physical effort,” both occurrences that were not reportable under the previous definition.
- Force applied by police officers’ hands comprised 71% of reportable use of force incidents in 2023. Pointing a firearm, taser, or pepper spray comprised 23% of reportable 2023 incidents.
- In 2023, about 58% of use of force incidents occurred while an officer attempted to make an arrest.
- In 2023, about 57% of use of force incidents involved Black civilians. Some incidents may have involved residents of other jurisdictions. Nonetheless, the proportion of Black residents subject to use of forces greatly exceeds the percentage of Black residents of the County.
- The ethnic and racial distribution of officers involved in 2023 use of force incidents nearly identically matches the demographic composition of sworn MCPD officers.
- The number of use of force complaints dropped from 28 in 2019 to 14 in 2023.

¹ [Montgomery County Code, 35-6A\(c\)\(3\)\(A\).](#)

Section A. Data Reporting

MCPD annually publishes and posts online a report on policing incidents involving use of force incidents in Montgomery County. The annual reports include data on use of force incidents disaggregated by time of day and day of the week, location, demographics, type of force used, and other variables. Much of the use of force data included in this OLO report are extracted from the annual MCPD reports.

Annual MCPD use of force reports from Calendar Year 2014 through Calendar Year 2023 are available online [here](#).

Section B. Data Collection Process

MCPD requires police officers to document use of force incidents in two ways. Police officers involved in a use of force incident must provide a narrative description of the event in an “incident report” and must also complete and submit a standardized use of force form (known as MCP37). As stated in the MCPD Use of Force policy directive (FC #131), “each officer who uses or observes a use of force as defined in this policy, is ordered to report the use of force accurately and completely ... by the end of their tour of duty.”²

When a use of force incident involves one civilian³, MCPD classifies the incident as a single event for reporting purposes even if multiple police officers engage with the civilian. When an incident results in force against multiple civilians, MCPD requires a separate use of force report for each civilian involved in the event.

The use of force form requires the police officer to provide information about the incident including:

- the location of the incident;
- the race, gender, age, height and weight of the civilian involved in the incident;
- the race, gender, age, height and weight of the police officer(s) involved in the incident;
- the type(s) of force used by the civilian involved in the incident;
- the type(s) of force used by the police officer(s) involved in the incident; and
- any injuries sustained by the civilian and/or by the officer(s) involved in the incident.

An example of a completed use of force form appears in Appendix E.

² For the purpose of this policy directive, the term “tour of duty” refers to the current shift worked by the police officer.

³ The annual MCPD Use of Force reports refer to a person other than a non-police officer who is involved in an incident as a “suspect.” For this report, OLO refers to these persons as “civilians.”

In most cases, the officer(s) involved in the use of force incident self-report the details of the event. However, an officer other than the one(s) involved in the incident must complete the documentation in cases involving use of deadly force, force that causes death or serious injury, or discharge of a firearm.⁴

Police officers must submit use of force forms to their supervisor. The supervisor must review the written documentation as well as body worn camera and mobile video system recordings. Following this stage of review, the supervisor may either return the use of force form to the police officer for correction and revision or may submit the documentation to “Executive Officers” (most commonly, a Lieutenant and a Commander) for final review. The Executive Officers may either approve the use of force form or, if deemed necessary, return the form for correction and revision.

Following approval of use of force form by the Executive Officers, the MCPD Policy and Planning Division receives the form. The Policy and Planning Division consolidates data from all approved forms and prepares statistical analysis of the data. MCPD publishes the data in the annual Use of Force reports.

Section C. Types of Actions and Occurrences Considered Use of Force

As discussed in Chapter 1 of this report, no universal definition exists for the term “use of force” in the context of policing. More significantly, there is no commonly accepted list of actions or occurrences that constitute use of force. The types of incidents characterized as use of force may vary among law enforcement agencies.

The types of actions and occurrences considered by MCPD to be “use of force,” has expanded in recent years. Prior to 2022, the MCPD definition included:

- Force used to counteract a physical struggle;
- Force which results in an injury, or a claim of injury, to an individual;
- Force applied using a protective instrument;
- Intentional or accidental discharge of a firearm (other than for authorized target practice);
- A canine deployment that inflicts injury; and
- An assault or ambush of an officer.

In response to the Council’s enactment of Bill 27-20 and [Bill 33-19](#) in 2020, MCPD adopted two significant modifications to how the Department measures use of force incidents. These

⁴ MCPD does not require officers to complete a use of force form when a firearm was discharged for training purposes or for the purpose of destroying seriously injured or aggressive wildlife.

modifications resulted in a large increase in the number of occurrences categorized as a use of force incident.

In February 2022, MCPD began to require officers to report any instance of pointing a service weapon, taser, or pepper spray as a use of force incident. Prior to this modification, a police officer's pointing of a service weapon, taser, or pepper spray at an individual without discharging the device would not have constituted a reportable use of force.

In July 2022, MCPD replaced the reporting requirement for "force used to counteract a physical struggle" with a more expansive use of force category. The new requirement mandates reporting of "the intentional use of any physical effort(s) by law enforcement other than compliant handcuffing or unresisted escorting to control, restrain, or place an individual in custody." Actions such as grasping the shoulder of an individual that previously would not have constituted a use of force under the "physical struggle" category became reportable under the "intentional use of any physical effort" standard.

Section D. Annual Use of Force Data⁵

This section presents data on the number of use of force incidents recorded by MCPD in 2023 and previous years, the types of force used by police officers, the types of force or resistance used by civilians, the events associated with the use of force, the police district in which use of force incidents occurred, and the race/ethnicity, age, and gender of civilians involved in use of force incidents.

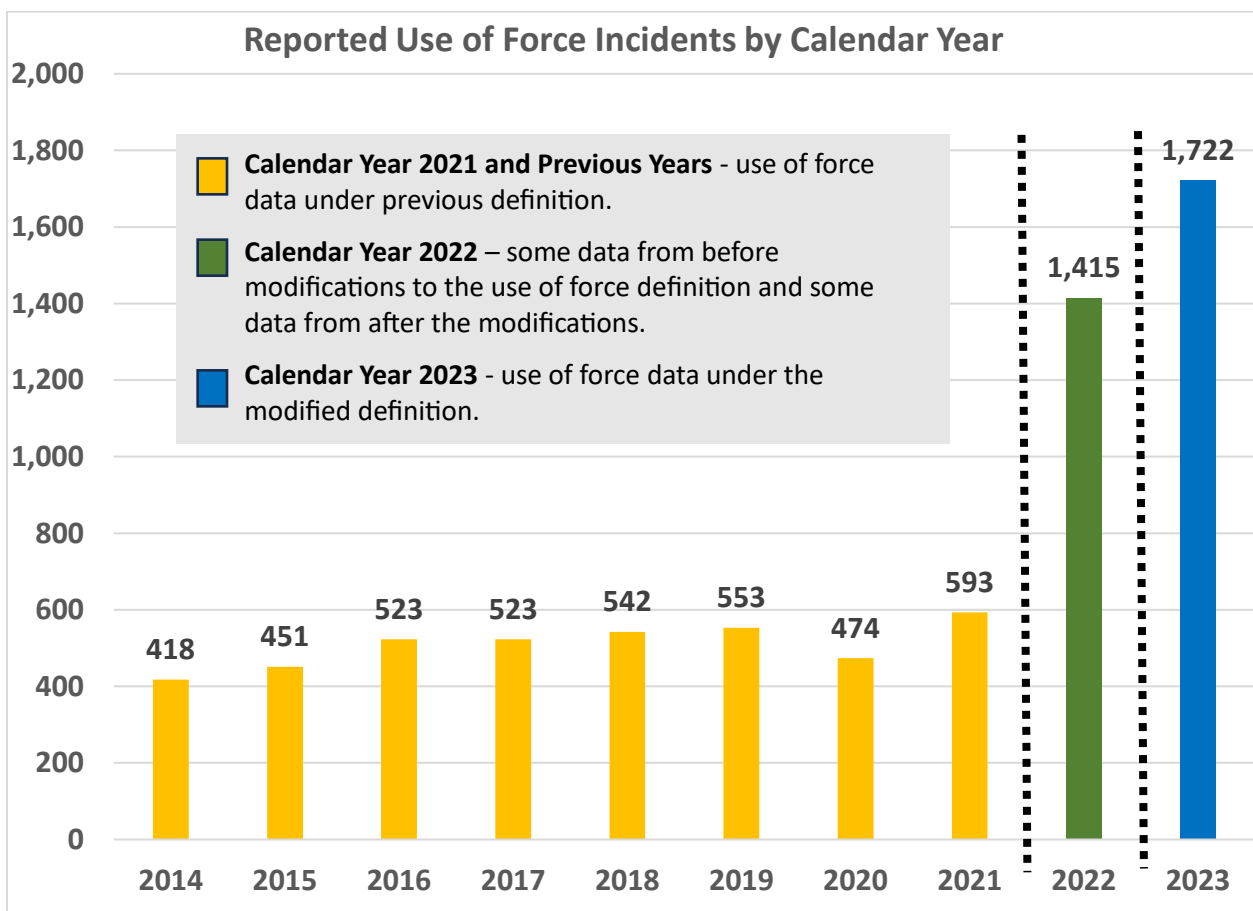
1. Annual Number Use of Force Incidents

As discussed in the previous section of this report, during 2022, MCPD significantly altered how the Department measures use of force incidents. These modifications resulted in a large increase in the number of occurrences categorized as a use of force incident. As a result of the changes in the type of actions and occurrences that constitute use of force, caution must be taken in drawing conclusions from longitudinal data comparing the number of MCPD use of force incidents in recent years. In presenting the total number of MCPD use of force incidents reported in recent years, OLO segments the data into three time frames:

⁵ All annual data presented in this report is for the calendar year.

- a. **Calendar Year 2021 and Previous Years** - Data from these years present use of force data under the previous definition.
- b. **Calendar Year 2022** – Data from this year include some data from before modifications to the use of force definition and some data from after the modifications.
- c. **Calendar Year 2023** - Data from 2023 present use of force data under the modified definition.

The chart below presents the number of use of force incidents reported by MCPD for Calendar Years 2014 through 2023.



The data show a rise in the number of reported use of force incidents from 593 in 2021 to 1,415 in 2022, an increase of about 140%. As detailed above, however, the number of use of force incidents were not measured the same way in 2021 and 2022. As an example, incidents involving pointing of a service weapon, taser, or pepper spray were not included in the 2021 data but did account for 503 of the use of force incidents in 2022 under the modified reporting requirements. In 2023, the first full year under the modified reporting requirements, MCPD recorded a total of 1,722 use of force incidents, a 22% increase from 2022. The MCPD Use of

Force report states that the “increase in use of force incidents in 2023 is consistent with the rise in criminal offenses.” MCPD data show the one measure of criminal offenses, arrests, increased by 12% from 2022 to 2023.

OLO notes that another likely cause of the 2023 increase is the timing of the 2022 modifications to the MCPD definition of use of force. The inclusion of pointing as a use of force occurred in February 2022, while the addition of the “intentional use of any physical effort” standard occurred in July 2022. Thus, 2023 was the first year of recording use of force incidents under the current definition for a full 12-month period.

In 2023, MCPD received 206,407 calls for service. As shown in the table below, about 3.8% of these calls resulted in an arrest while about 0.8% resulted in a reported use of force. The data show that 22% of arrests involved use of force.

2023 MCPD Arrests and Use of Force Incidents as a Percent of Calls for Service (206,407)		
	Number Reported	Percent of Calls for Service
Arrests	7,942	3.8%
Use of Force Incidents	1,722	0.8%

2. Types of Force Used by Police Officers

Use of force may occur in multiple forms. The 2023 MCPD Use of Force report contains data on eleven types of forced used by police officers:

- Hands
- Pointing a firearm
- Discharging a firearm
- Pointing a taser⁶
- Discharging a taser
- Pointing pepper spray⁷
- Discharging pepper spray

⁶ A taser, also known as a conducted energy weapon (CEW) or an electronic control weapon (ECW) is a weapon that transmits an electric shock that renders the targeted person unable to move for a period of time.

⁷ Pepper spray contains oleoresin capsicum that causes a burning sensation in the eyes and may produce temporary blindness.

- Expandable baton⁸
- Flashlight
- Canine
- Other (including use of feet, knees, or a vehicle)

A single use of force event may involve multiple types of force used by one or more officers. As a result, the tally of events recorded by each type of force exceeds the total number of use of force events recorded by MCPD.

The table below shows the number of 2023 use of force incidents by type of force used by the police officer. Force applied by police officers' hands comprised 71% of reportable use of force incidents in 2023. Pointing a firearm, taser, or pepper spray comprised 23% of reportable 2023 incidents.

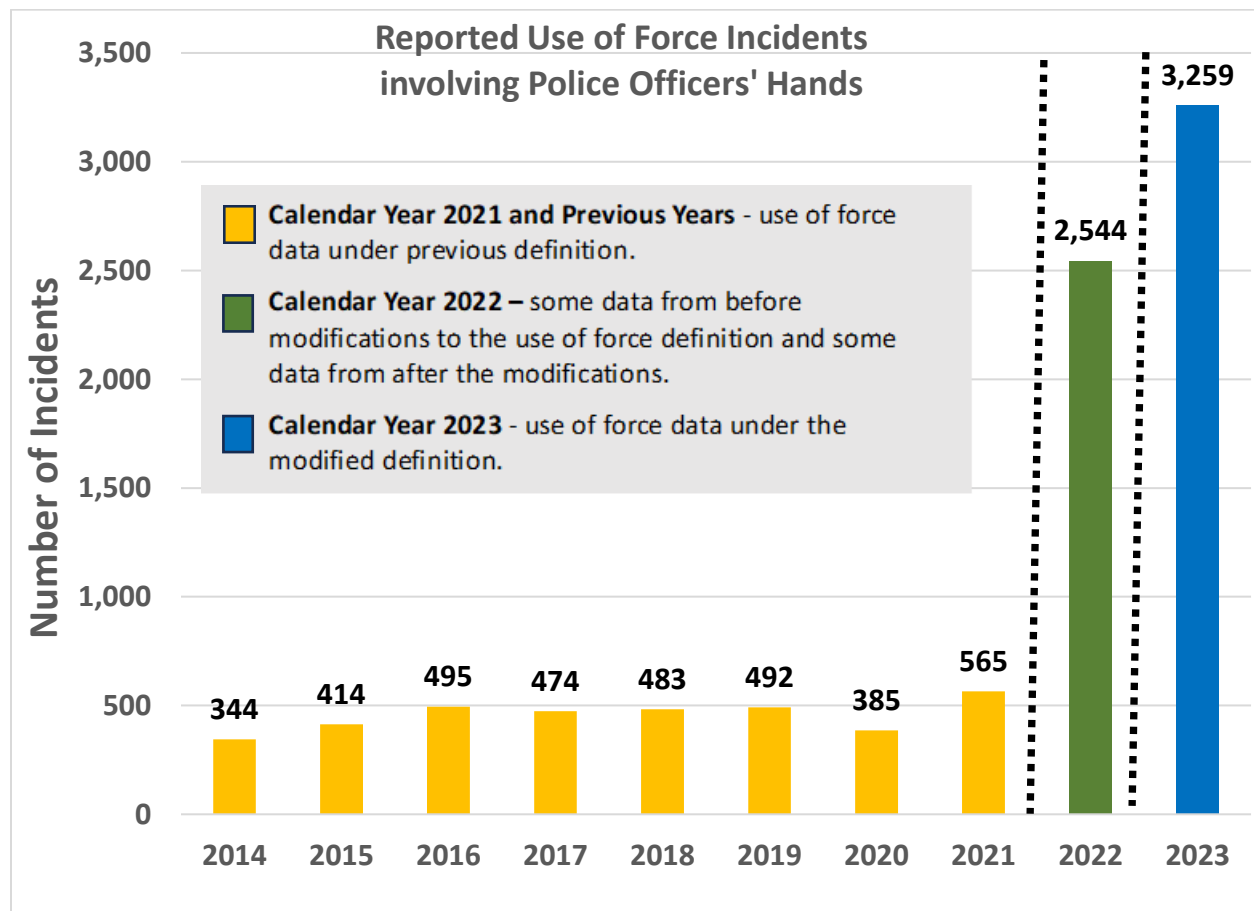
Number and Percent of 2023 Use of Force Incidents by Type of Force Used by Police Officers		
Type of Force	Number of Incidents	Percent of Total Incidents
Hands	3,259	71%
Pointing Firearm	981	21%
Discharging Firearm	1	<1%
Pointing Taser	144	3%
Discharging Taser	33	1%
Pointing Pepper Spray	14	<1%
Discharging Pepper Spray	9	<1%
Expandable Baton	5	<1%
Flashlight	1	<1%
Canine	5	<1%
Other	140	3%

As discussed in Section C of this chapter, MCPD modified its definition of use of force in 2022. These modifications affected the number of use of force incidents reported in the hands category and created three new categories: Pointing Firearm, Pointing Taser, and Pointing

⁸ Also known as an ASP baton.

Pepper Spray. The revised definition of use of force also impacted the “other” category as described below. The remaining categories were mostly unaffected by the modified definition.

The chart below depicts the number of incidents reported by MCPD that involved use of force by hands for each year from 2014 through 2023. The chart shows a large jump in incidents involving police officers’ hands in 2022. This increase corresponds with modification of the reporting requirement from “force used to counteract a physical struggle” to the more expansive “intentional use of any physical effort” standard described in Section C of this chapter. The sharp rise in use of force by means of hands continued into 2023, the first year of recording use of force incidents under the current definition for a full 12-month period.

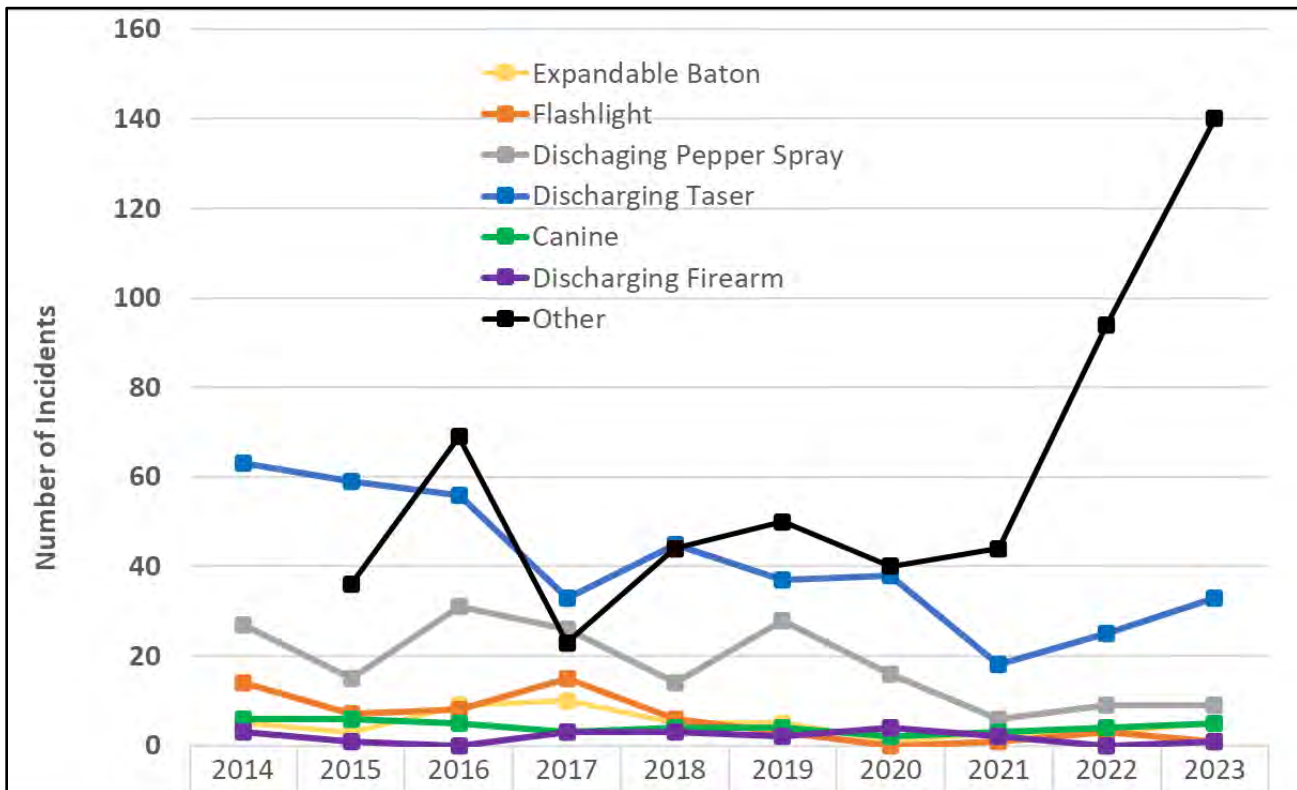


In 2022, MCPD began to consider the pointing, without discharge, of a firearm, taser, or pepper spray as a use of force incident. The table below displays the number of police officer pointing incidents reported by MCPD in 2022 and 2023, the only two completed years during which pointing without discharge was reportable as use of force. The data show decreases in firearm and pepper spray pointing incidents from 2022 to 2023 and an increase in the number of taser pointing incidents during the same time period.

Number of 2022 and 2023 Use of Force Incidents Involving Pointing by Police Officers		
Pointed Device	Number of 2022 Incidents	Number of 2023 Incidents
Firearm	1,024	981
Taser	100	144
Pepper Spray	18	14

Several MCPD categories for types of force used by police officers were not substantially altered by the 2022 modifications to the use of force definition. These categories include use of force involving an expandable baton, flashlight, canine, and other objects as well as discharge of a firearm, taser, or pepper spray. The table and chart below show the ten-year trends in police officer use of force incidents by the type of force.

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Expandable Baton	5	3	9	10	5	5	1	3	3	5
Flashlight	14	7	8	15	6	3	0	1	3	1
Discharging Pepper Spray	27	15	31	26	14	28	16	6	9	9
Discharging Taser	63	59	56	33	45	37	38	18	25	33
Canine	6	6	5	3	4	4	2	3	4	5
Discharging Firearm	3	1	0	3	3	2	4	2	0	1
Other		36	69	23	44	50	40	44	94	140



Most types of forces shown in the table and chart above decreased from 2014 through 2023. However, the “other” category experienced a marked increase from 2021 to 2023. The jump in “other” incidents is a result in higher recorded use of police officers’ knees in these incidents, likely a byproduct of the modification of the use of force reporting requirement from “force used to counteract a physical struggle” to the more expansive “intentional use of any physical effort” standard described in Section C of this chapter.

3. Types of Force and Resistance Used by Civilians

In some instances, police officers are the recipients of force used by civilians. MCPD reports that 304 (18%) of the 1,722 reported 2023 use of force incidents involved the assault of at least one police officer. As some incidents involve civilians assaulting multiple police officers, MCPD data show a total of 451 officers reported being assaulted during 2023.

The MCPD Use of Force report presents data on types of force and resistance used by civilians involved in use of force incidents reported in 2023. As shown in the table below, the largest category of force or resistance by civilians involved in these incidents was the use of hands and/or fists, comprising 57% of all incidents.

Number and Percent of 2023 Use of Force Incidents by Type of Force or Resistance Used by Civilians		
Type of Force or Resistance	Number of Incidents	Percent of Total Incidents
Hands/Fists	636	57%
Feet	182	16%
Fleeing	82	7%
Active Resistance ⁹	55	5%
Biting/Spitting	44	4%
Passive Resistance ¹⁰	31	3%
Legs/Kicking	29	3%
Vehicles	18	2%
Body Weight	16	1%
Knife	16	1%
Headbutting	3	<1%
Handgun	1	<1%

⁹ As stated in policy directive FC #131, MCPD defines the term “active resistance” as “any action or evasive movements a subject takes to avoid or physically counteract an officer’s attempts to detain or place them in custody, and/or take control. Active resistance may include but is not limited to pushing away, tensing arm muscles to avoid handcuffing, or pulling away from an officer who is using force in response to resistance in the lawful performance of their duties.”

¹⁰ As stated in policy directive FC #131, MCPD defines the term “passive resistance” as “a refusal by an unarmed person to comply with an officer’s verbal command or physical control techniques by non-active means. Examples include, but are not limited to, ignoring verbal instructions by failing to respond or move, linking arms, or going limp.”

For 2023, MCPD recorded a total of 1,113 occurrences of force or resistance by a civilian. Note, however, that multiple occurrences of force or resistance may be associated with a single use of force event recorded by MCPD. Furthermore, many recorded use of force incidents involve no force or resistance from a citizen. For example, an event during which a police officer points a weapon and the civilian surrenders peacefully would be recorded by MCPD as a use of force event (based on the police officer's pointing of a weapon) with no force or resistance offered by the civilian.

4. Event Associated with Use of Force

The 2023 MCPD Use of Force report includes a section entitled "Activity When Force in Response to Resistance was Used." MCPD policy directive [FC #131](#) defines the term "response to resistance" as:

Any action other than compliant handcuffing or unresisted escorting that an officer is required to use to compel compliance to arrest an individual suspected of committing a crime, temporarily detain an individual to complete an investigation, or to address an immediate threat to the safety of the public, law enforcement officers, or persons as a result of non-compliance with a legitimate law enforcement purpose.

MCPD records six categories of "response to resistance" events:

- Making arrests
- Serving emergency evaluation petitions¹¹
- Investigative detention
- Defending against assaults
- Traffic stops
- Other¹²

The table on the next page shows the distribution of 2023 use of force incidents by the primary event associated with the incident. In that year, about 58% of use of force incidents occurred while an officer attempted to make an arrest.

¹¹ As stated in MCPD Policy Directive FC #921, under Maryland law, police officers "can seek emergency evaluation of individuals whom they feel meet the established criteria. When an officer suspects an individual suffers a mental disorder and presents a danger to the life and safety of the individual or others, the officer will take the individual into custody and complete the Petition for Emergency Evaluation (and the accompanying procedures) as outlined in this directive."

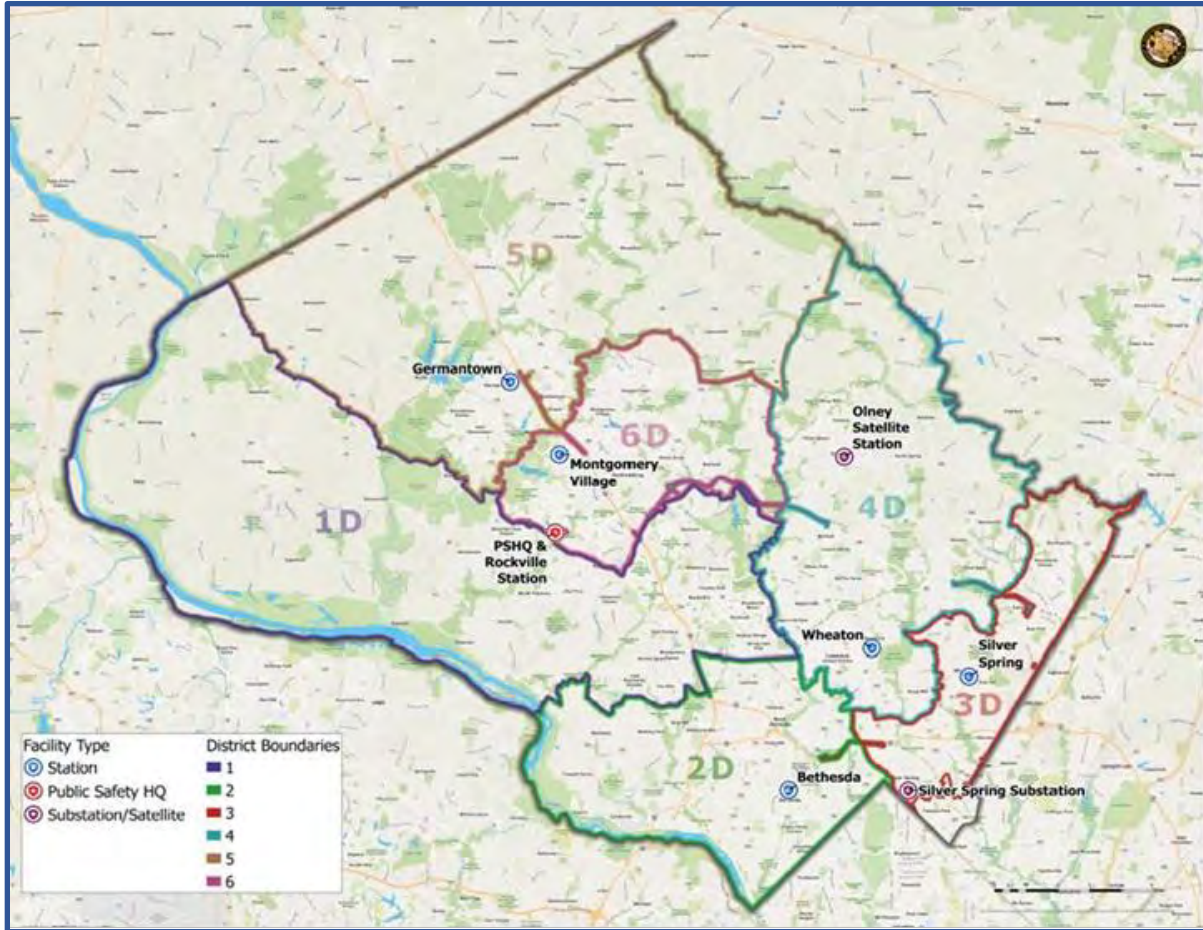
¹² According to the 2023 Use of Force Report, the "other" category includes demonstrations, search warrant service, transporting, tactical or special event operations, and other, including assisting a partner agency, such as Fire-Rescue or Hospital Security."

Number and Percent of 2023 Use of Force Incidents by Type of Event		
Event	Number of Incidents	Percent of Total Incidents
Making Arrests	1,001	58%
Serving Emergency Evaluation Petitions	384	22%
Investigative Detention	165	10%
Defending Against Assaults	37	2%
Traffic Stops	32	2%
Other	103	6%

5. Use of Force Incidents by Police District

MCPD geographically divides its patrol services into six police districts as depicted in the map below.

County Police Districts



For each use of force incident, MCPD records the district in which the incident occurred as shown in the table on the following page. MCPD patrol officers are assigned to specific districts. Note, however, that the data presented in the table represents the location of the use of force incident, not necessarily the district assignment of the officer(s) involved in the incident.

Number and Percent of 2023 Use of Force Incidents by MCPD District			
1 st District	Rockville	103	6%
2 nd District	Bethesda	178	10%
3 rd District	Silver Spring	536	31%
4 th District	Wheaton	397	23%
5 th District	Germantown	244	14%
6 th District	Montgomery Village	254	15%
Out of County		10	1%

The data show approximately 54% of 2023 use of force incidents occurred in two districts, Silver Spring (3rd) and Wheaton (4th).

6. Use of Force Incidents by Race and Ethnicity

In 2022, MCPD standardized the racial and ethnic classifications it uses to identify persons involved in use of force (and other) incidents to include six categories: White, Black, Hispanic, Asian-Pacific Islander, Native American and other.¹³ The table below presents the racial ethnic distribution of the civilians involved in 2023 MCPD reported use of force incidents.

Number and Percent of 2023 Use of Force Incidents by Race/Ethnicity of Civilian Involved			
Race/Ethnicity	Number of Incidents	Percent of Total Incidents	Percent of County Population ¹⁴
Black	977	57%	18%
Hispanic	423	25%	21%
White	248	14%	41%
Asian - Pacific Islander	46	3%	15%
Native American / Other	28	2%	5%

The data show 57% of 2023 use of force incidents involved Black civilians. Data are not available on the residency of civilians involved in MCPD use of force incidents; some reported incidents may have involved residents of other jurisdictions. Nonetheless, the proportion of Black civilians subject to use of force greatly exceeds the percentage of Black residents of the County.

¹³ In the 2023 MCPD Use of Force report, MCPD states: "It should be noted that these categories are not exhaustive and do not capture the diversity within and among different racial and ethnic groups. Some individuals may not identify with any of these or may identify with multiple categories."

¹⁴ 2020 Census

In many cases, a use of force incident involves multiple police officers. A total of 4,291 police officers were involved in the 1,722 use of force incidents reported in 2023. As shown in the table below, the ethnic and racial distribution of police officers involved in 2023 use of force incidents nearly identically matches the demographic composition of sworn MCPD officers.

Number and Percent of 2023 Use of Force Incidents by Race/Ethnicity of Police Officer Involved			
Race/Ethnicity	Number of Incidents	Percent of Total Incidents	Percent of Sworn MCPD Officers
White	3081	72%	74%
Black	538	13%	12%
Hispanic	461	11%	10%
Asian - Pacific Islander	210	5%	5%
Native American / Other	1	<1%	<1%

7. Use of Force Incidents by Civilian’s Age and Gender

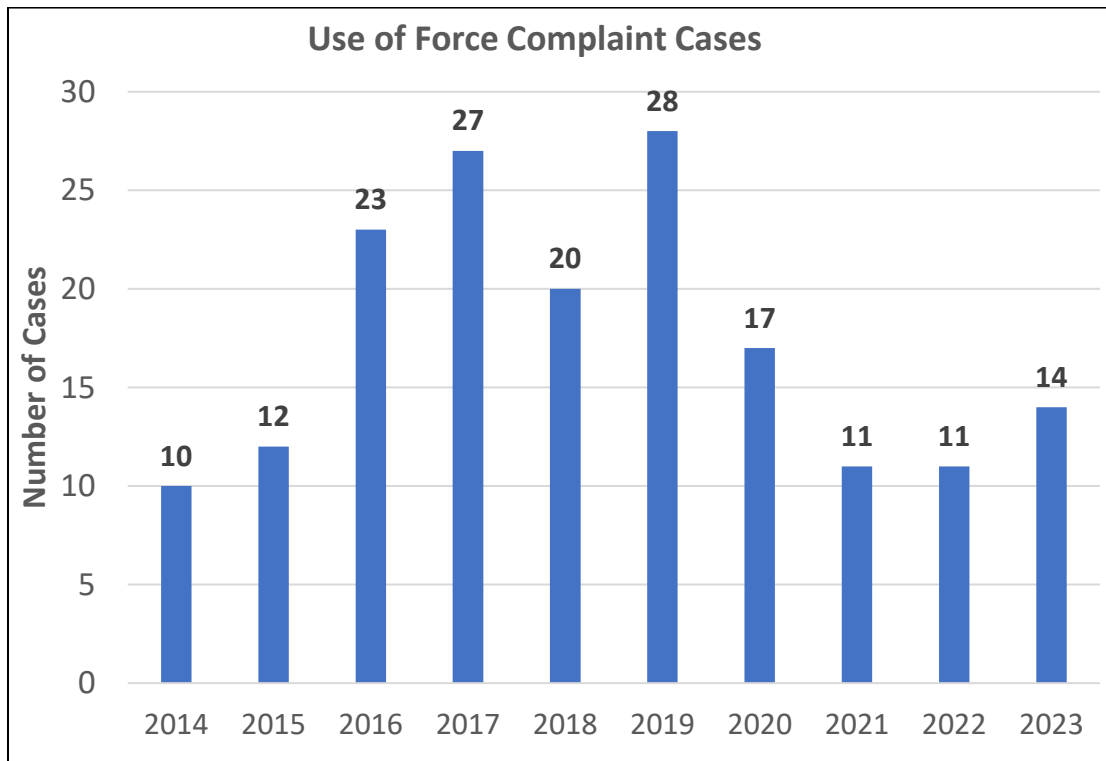
MCPD reports the age and gender of civilians involved in use of force incidents. As shown in the following two tables, persons in the 18 to 39 years comprised 58% of civilians involved in 2023 use of force incidents while males comprised 74% of civilians involved in those incidents.

Number and Percent of 2023 Use of Force Incidents by Age of Civilian Involved		
Age	Number of Incidents	Percent of Total Incidents
Under 18	375	22%
18 to 29	664	39%
30 to 39	329	19%
40 to 49	175	10%
50 and Older	138	8%
Unknown	40	2%

Number and Percent of 2023 Use of Force Incidents by Gender of Civilian Involved		
Gender ¹⁵	Number of Incidents	Percent of Total Incidents
Male	1,266	74%
Female	455	26%

8. Use of Force Complaints

County residents and others who believe a police officer improperly used force against them may file a complaint with MCPD Internal Affairs Division (IAD).¹⁶ IAD investigates allegations of misconduct involving police officers and civilian employees, including complaints of excessive force. As shown in the chart below, IAD reviewed 14 use of force complaint cases in 2023. These 14 cases involved a total of 18 allegations of excessive force; the number of allegations is greater than the number of cases as one complaint case may include multiple allegations.



The Montgomery County Police Accountability Board (PAB, see Chapter 3 of this report) is working with the County's Department of Technology & Enterprise Business Solutions (TEBS) to

¹⁵ The MCPD Use of Force reports states that “for reporting purposes, all persons (including transgender) are documented as the gender they were assigned at birth, as opposed to the gender to which they currently identify.”

¹⁶ Complaints may be filed online via the [MCPD website](#) or the [Police Accountability Board website](#).

develop a comprehensive dashboard designed to house, track, and display law enforcement complaint information. According to the [2023 PAB Annual Report](#), “the primary objective [of the dashboard] is to establish a robust system that allows for the tracking of trends in submitted complaints.” The PAB report further “recommends the deployment of a public version of the comprehensive dashboard on the PAB’s website ... following rigorous protocols to ensure anonymity and data aggregation.” The report states that “by making this resource openly accessible, we empower every resident to actively participate in the ongoing dialogue surrounding policing trends.”

Staff to the Police Accountability Board have informed OLO that work is ongoing to complete development of the dashboard.

CHAPTER 5: USE OF FORCE BEST PRACTICES AND GUIDELINES

As part of the approved [FY24 Work Program for the Office of Legislative Oversight](#), the County Council directed that “to the extent possible, the report will also examine whether new or different best practices related to use of force and no-knock warrants in policing have been identified since the law’s adoption.”

To a degree, the assessment of what is a proper use of force practice involves subjectivity. As a result, no single, universally accepted set of law enforcement use of force best practices and guidelines exists. Different organizations have developed different sets of use of force best practices and guidelines based on their own perspective and point of view. In the chapter, OLO presents three sets of use of force best practices and guidelines developed from three perspectives, that of government, the law enforcement community, and social justice advocates.

The final section of this chapter presents a statement from MCPD describing the Department’s perspective on the use of force.

Use of Force Best Practice and Guidelines – Key Takeaways

- Provisions of the MCPD use of force policy directive correlate closely with the Maryland Police Training and Standards Commission best practices.
- Provisions of the MCPD use of force policy directive generally are consistent with guidelines in *The National Consensus Policy and Discussion Paper on Use of Force* published by a group of law enforcement leadership and labor organizations. However, the National Consensus paper suggests that deadly force should not be used against persons whose actions are a threat only to themselves, a standard not explicitly stated in the MCPD policy.
- Many provisions of the MCPD use of force policy are consistent with guidelines presented by the National Center for Policing Equity and the Policing Project. However, MCPD policy does not include several provisions suggested by these groups including those related to consideration of language barriers, persons not suspected of criminal conduct, solely verbal confrontations, persons whose actions are a threat only to themselves, shooting at a target not clearly in view, weapon strikes to the head, and off-leash canines.
- In a statement on use of force, MCPD emphasizes how it trains police officers to de-escalate conflicts.

Section A. State of Maryland Use of Force Best Practices

Maryland law establishes the Maryland Police Training and Standards Commission (MPTSC) as an independent commission charged, among other things, with the responsibility to “to adopt and recommend a set of best practices and standards for use of force.”¹ In May 2022, two years following the County Council’s enactment of Bill 27-20, the MPTSC approved [best practices for law enforcement use of force policies](#). The full text of the MPTSC best practices document appears in Appendix F.

The MPTSC adopted 11 best practice “protocols and standards” for development of a use of force policy. In the following pages, OLO presents a comparison of the 11 MPTSC best practices with the corresponding text in the current version of the MCPD use of force policy directive ([FC #131](#)). As evident by the comparisons presented on the following pages, OLO finds that provisions of the MCPD use of force policy directive correlate closely with the MPTSC best practices.

¹ [Public Safety Article, Section 3-307 \(a\)\(19\)](#).

1. Necessary and Proportional Use Force	
MPTSC Best Practice	MCPD Policy
<p><i>An officer may only use force when, under the totality of the circumstances, the force is necessary and proportional to prevent imminent threat of physical injury to a person or to effectuate a legitimate law enforcement objective. Agencies can reference the Attorney General’s opinion 107OAG033 as issued on February 25, 2022.</i></p>	<p><i>Officers may only use force when under the totality of the circumstances, is necessary and proportional to prevent an imminent threat of physical injury to a person or effectuate a legitimate law enforcement objective. This authority is limited by the applicable laws of Montgomery County, the State of Maryland, federal law, the United States Constitution, and the provisions of this policy. (FC #131 I.E)</i></p>

2. De-escalation of Conflict	
MPTSC Best Practice	MCPD Policy
<p><i>Officers are encouraged to defuse rather than intensify confrontations with and between citizens. When time, circumstances, and safety permit, officers shall take steps to gain compliance and control a situation without using physical force.</i></p>	<p><i>Officers shall not intentionally escalate a situation or create the need to use force unless necessary to achieve a lawful purpose. The dynamics of any situation can quickly change which may cause the officer(s) to escalate or de-escalate the type, degree, and amount of necessary and proportional force they are using against an individual. (FC #131 III.D)</i></p>

3. Supervisory Review	
MPTSC Best Practice	MCPD Policy
<p><i>Each law enforcement agency is required to adopt a written policy requiring supervisory and command-level review of all Use of Force incidents.</i></p>	<p><i>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.</i></p> <p><i>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. (FC #131 VIII.H.1.a, b)</i></p> <p><i>Supervisors are required to notify the Duty Commander, or a District Executive of the district of occurrence during daytime hours Monday-Friday, of any of the above incidents. (FC #131 VIII.I.1)</i></p>

4. Sanctity of Life Pledge	
MPTSC Best Practice	MCPD Policy
<p><i>Each police officer is required to sign an affirmative sanctity of life pledge to respect every human life and act with compassion toward others. Each law enforcement agency should include in its policy the procedures for ensuring that each officer signs such a pledge and that the statement is retained by the agency.</i></p>	<p><i>Sworn Officers and Special Police Officers (SPOs) are ordered to sign an affirmative written sanctity of life pledge and a training completion affirmation stating that the officer/SPO understands and shall comply with the Maryland Use of Force Statute pursuant to Md. Public Safety Article 3-524. (FC #131 X.C.2)</i></p>

5. Avoiding Use of Force	
MPTSC Best Practice	MCPD Policy
<p><i>Each officer is required to take steps to gain compliance and de-escalate conflict without using physical force when time, circumstances and safety allow the officer to do so.</i></p>	<p><i>Officers will when time, circumstances, and safety allow, take steps to gain compliance and de-escalate conflict without using physical force. De-escalation may include slowing a situation down so that time, distance, cover, and assembling additional resources can be used to an officer's advantage to stabilize the situation and reduce the immediacy of the threat. (FC #131 III.C)</i></p>

6. Cessation of Force	
MPTSC Best Practice	MCPD Policy
<p><i>An officer is required to cease the Use of Force as soon as the person on whom the force is used is under the officer's control, the person no longer poses an imminent threat of physical injury or death to the officer or another person, or the officer determines the force will no longer accomplish a legitimate law enforcement objective.</i></p>	<p><i>Officers shall cease the use of force as soon as the person on whom the force is used: (1) is under the police officer's control; (2) no longer poses an imminent threat of physical injury or death to the police officer or to another person; or (3) the officer(s) determine that force will no longer accomplish a legitimate law enforcement objective. (FC #131 III.H)</i></p>

7. Duty to Intervene	
MPTSC Best Practice	MCPD Policy
<p><i>A police officer is required to intervene to prevent or terminate the Use of Force by another police officer beyond what is authorized under the Use of Force statute.</i></p>	<p><i>Every officer has an obligation to ensure compliance, by themselves and others, with department directives and regulations, as well as all applicable laws. Officers must comply with the duty to intervene requirements of Function Code 300, Rule 6 - Use of Force.² (FC #131 VIII.K.1)</i></p>

8. Rendering First Aid	
MPTSC Best Practice	MCPD Policy
<p><i>Each police officer is required to render basic first aid to a person injured as the result of police action and promptly request appropriate medical assistance.</i></p>	<p><i>Officers and supervisors shall provide and obtain medical treatment consistent with their training as soon as it is safe and practical for individuals: (1) who show signs of injury as a result of any use of force; (2) who request 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. (FC #131 VII.D)</i></p>

² MCPD policy references “Rule 6” in another MCPD policy (FC #300). At the time of the adoption of the use of force policy, the following text appeared in FC #300: “Rule 6: ...It shall be the duty of every officer present at any scene where physical force is being applied to either stop, or attempt to stop, another officer when force is being inappropriately applied or is no longer required.” However, in May 2024, MCPD adopted a revised FC #300. The revised version of this policy no longer includes the above cited language. MCPD has notified OLO that the Department is presently working on a revision to FC #131; the revised policy directive will address police officers’ duty to intervene.

9. Use of Force Documentation	
MPTSC Best Practice	MCPD Policy
<p><i>Each police officer is required to fully document all Use of Force incidents the officer observes or is involved in. The Use of Force policy needs to include an agency’s standardized reporting format.</i></p>	<p><i>All uses of force must be submitted on an MCP37 and be documented on an incident report. If multiple officers use force on an event, each officer's use of force must be articulable on its own merits.</i></p> <p><i>Each officer who uses or observes a use of force as defined in this policy, is ordered to report the use of force accurately and completely on an incident or supplemental report by the end of their tour of duty. (FC #131 VIII.A, B)</i></p>

10. Supervisory Response	
MPTSC Best Practice	MCPD Policy
<p><i>A police supervisor is required to respond to the scene of any incident during which a police officer used physical force and caused serious physical injury and gather and review all known video recordings of a Use of Force incident. Each Use of Force policy must set forth the procedures for determining which supervisor will respond to such incidents and the procedures for gathering and reviewing video recordings.</i></p>	<p><i>An on-scene officer will immediately notify an on-duty patrol supervisor of, and the on-duty supervisor will respond to: (a) all CEW deployments; (b) firearm discharges ...; (c) less-lethal device deployment; and (d) any use of force that results in any injury that requires first aid, medical treatment, or transportation to a medical facility, or in-custody death. (FC #131 VIII.I.1)</i></p> <p><i>In addition to the above notifications, supervisors shall also ... review any body worn camera system (BWCS) a11d mobile video system (MVS) recordings when officers are involved in a reportable response to resistance/use of force incident. Supervisors shall report potential violations of law or policy through their chain of command in accordance with departmental procedures. (FC #131 VIII.I.5)</i></p>

11. Training	
MPTSC Best Practice	MCPD Policy
<p><i>Each law enforcement agency’s Use of Force policy should set forth the training related to Use of Force that police officers are required to attend.</i></p>	<p><i>Each officer shall receive training on the agency's use of force policy, any pertinent legal updates, and the importance of critical decision making and de-escalation.</i></p> <p><i>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, less-lethal device, or firearm. (FC #131 X.A.1,2)</i></p>

Section B. National Consensus Policy and Discussion Paper on Use of Force

In July 2020, a group of law enforcement leadership and labor organizations published a revised version of a document called, the [National Consensus Policy and Discussion Paper on Use of Force](#).³ The stated purpose of the document is to provide law enforcement officers with guidelines for the use of less-lethal and deadly force. Nonetheless, the paper asserts that “it is not intended to be a national standard by which all agencies are held accountable, and agencies are not required to institute the Consensus Policy.

The National Consensus policy paper suggests many of the same use of force provisions as included in the MCPD use of force policy directive. Among the provisions common to the National Consensus policy paper and MCPD policy are those that require police officers to:

- Discontinue resistance when the incident is under control.
- Use only the minimal amount of force necessary to control the situation.
- Provide medical care to any individual with visible injuries, complains of being injured, or requests medical attention.
- Intervene to prevent or stop the use of excessive force by another officer.
- Document and investigate all use of force.
- Use de-escalation techniques and other alternatives before resorting to force.
- Allow an individual time and opportunity to submit to verbal commands before using force.
- Use less-lethal force when de-escalation techniques are not effective or appropriate.
- Not to fire at or from a moving vehicle except in cases where deadly force is authorized.
- Not use choke holds unless deadly force is authorized.
- Identify themselves and warn of their intent to use deadly force.

³ The organizations that collaborated to produce the document were the Association of State Criminal Investigative Agencies, the Commission on Accreditation for Law Enforcement Agencies, the Federal Law Enforcement Officers Association, the Fraternal Order of Police, the Hispanic American Police Command Officers Association, the International Association of Chiefs of Police, the International Association of Directors of Law Enforcement, the National Association of Black Law Enforcement Executives, the National Association of Women Law Enforcement Executives, and the National Tactical Officers Association.

Of note, the National Consensus guidelines include two suggested provision that differ from the MCPD use of force policy.

Persons Who Threaten Harm Solely to Themselves: The National Consensus paper includes the following guideline:

Deadly force should not be used against persons whose actions are a threat only to themselves or property.

The MCPD use of force policy directive contains no parallel text explicitly prohibiting against use of deadly force against a person whose actions are solely a threat to themselves or to property. In practice, use of deadly force to protect property effectively is prohibited by MCPD as protection of property is not listed as an authorized use of force (see FC #131, III.M). Authorized uses of force include defending the police officer or “another person” from imminent threat of death of serious injury. MCPD policy does not exclude cases of those who threaten harm to solely to themselves from the authorized uses of force.

Warning Shots: The National Consensus paper includes the following guideline that would permit police officers to fire warning shots under certain circumstances:

... a warning shot must have a defined target and shall not be fired unless (1) the use of deadly force is justified; (2) the warning shot will not pose a substantial risk of injury or death to the officer or others; and (3) the officer reasonably believes that the warning shot will reduce the possibility that deadly force will have to be used.

In contrast, the MCPD use of force policy directive explicitly prohibits firing warning shots without exception (FC #131, III.N.6).

Section C. Center for Policing Equity / NYU School of Law Policing Project

The Center of Policing Equity is a non-profit research institution that advocates for improved social justice in law enforcement. As stated on its [website](#), the Center’s researchers “gather and analyze data on behaviors within public safety systems and use those data to help communities achieve safer policing outcomes. Our goal is to make policing less racist, less deadly, and less omnipresent.”

The Center published a community toolkit titled “[Improving Use of Force Policy](#).” The community toolkit provides information on how to advocate for policies that reduce unnecessary and disparate use of force. The toolkit further directs readers to a set of [use of force guidelines prepared by the New York University School of Law Policing Project](#), most recently updated in August 2021. The complete list of Policing Project use of force guidelines appears in Appendix G.

The Policing Project guidelines suggests many of the same use of force provisions as included in the MCPD use of force policy directive. Current MCPD policy includes provisions that are substantially similar to the Policing Policy guidelines including:

- A requirement of necessity and proportionality before an officer uses force.
- A requirement of de-escalation strategies before the use of force commences.
- A prohibition on the use of force as retaliation.
- A requirement that officers reduce the degree of force used as a threat diminishes and stop using force once the subject no longer poses an imminent threat.
- A requirement that officers notify supervisors of any incident involving a reportable use of force.
- A prohibition against use of deadly force unless necessary to protect the officer or another from imminent death or serious injury or when the officer has probable cause to believe the person will try to kill another person if not immediately apprehended.
- A requirement that all uses of deadly force, whether intentional or unintentional, be immediately reported and investigated.
- A prohibition against firing warning shots.
- A prohibition against shooting at or from moving vehicles unless there is an imminent risk of death or serious injury.
- The classification of pointing a firearm at a person to be a reportable use of force.
- A prohibition against pointing firearms at a person unless the officers reasonably believe the situation may escalate to justify use of deadly force.
- A prohibition against maneuvers that may cut off blood or oxygen to a subject's head except when deadly force is allowed.
- A prohibition against using a taser on "high risk populations," including those who are pregnant, infirm, elderly, or small in size.
- A requirement that an officer intervene to prevent a fellow officer from using non-authorized force.
- A requirement to promptly render medical aid to injured persons.
- A requirement that all police officers complete instruction on legal standards for the use of force and de-escalation strategies.

Of note, the Policing Project guidelines include several standards not included in the MCPD use of force or other policies. These standards include the following:

Language Barriers: The Policing Project includes a guideline regarding the specific characteristics of a person that must be considered by an officer when determining whether use of force is appropriate:

Require that officers consider a person's specific characteristics, such as age, mental capacity, developmental disability, the influences of drugs or alcohol, and/or language barriers, when determining whether force is appropriate.

The MCPD use of force policy directive cites age, mental capacity, disability, and influences of drugs or alcohol as factors to consider but does not mention language barriers (see FC #131, III.O).

Person Not Suspected of Criminal Conduct: The Policing Project includes a guideline regarding use of force against a person not suspected of criminal conduct:

Prohibit use force to subdue a subject who is not suspected of any criminal conduct, unless necessary to protect an officer's or another person's safety.

MCPD policy requires police officers to consider the seriousness of a crime or suspected offense but does not explicitly prohibit use of force upon a person not suspected of a crime where an officer's or another person's safety is not endangered (see FC #131 III.O.2).

Verbal Confrontation: The Policing Project includes a guideline regarding use of force against a person not suspected of criminal conduct:

Prohibit use of force against a person who only verbally confronts officers and is not involved in criminal conduct.

MCPD policy does not prohibit use of force against a person who verbally confronts officers but is not involved in criminal conduct (see FC #131 III.A).

Persons Who Threaten Harm Solely to Themselves: Similar to the National Consensus paper, the Policing Project includes a guideline regarding use of force against persons who threaten harm solely to themselves:

Prohibit officers from using deadly force solely to protect property or against a person who poses a risk of harm only to themselves.

As mentioned in the previous section of this chapter, the MCPD use of force policy directive contains no parallel text explicitly prohibiting against use of deadly force against a person whose actions are solely a threat to themselves or to property. In practice, use of deadly

force to protect property effectively is prohibited by MCPD as protection of property is not listed as an authorized use of force (see FC #131, III.M). Authorized uses of force include defending the police officer or “another person” from imminent threat of death or serious injury. MCPD policy does not exclude cases of those who threaten harm to solely to themselves from the authorized uses of force.

Shooting at Target Not Clearly in View: The Policing Project includes a guideline regarding a police officer shooting at a target that is not in full view:

Prohibit shooting through a door, window, or in other circumstances in which the target is not clearly in view.

MCPD policy requires a police officer to exercise reasonable caution before discharging a firearm but does not explicitly prohibit shooting when the target is not clearly in view. (see FC #131 IV.B).

Weapon Strikes to the Head: The Policing Project includes a guideline regarding intentional weapon strikes to the head:

Limit intentional weapon strikes (such as with a baton) to the head to only those situations when deadly force is permitted.

MCPD policy prohibits striking a restrained person but does not explicitly limit strikes to the head to situations when deadly force is permitted. (see FC #131 III.N.5)

Off-Leash Canines: The Policing Project includes a guideline regarding the off-leash deployment of canines:

Prohibit officers from conducting an off-leash deployment of a canine to apprehend a person who does not pose an imminent risk of death or serious injury to the officer or another person.

MCPD policy does not mention, or explicitly prohibit, off-leash deployment of a canine to apprehend a person (see [FC #741](#) IV.A.5).⁴

⁴ Function Code 741 is the MCPD Canine Unit policy directive.

Section D. MCPD Statement on Use of Force

OLO invited MCPD to provide a statement regarding use of force in law enforcement. MCPD responded in a July 10 letter to OLO. The full text of the July 10 letter appears in Appendix H. The following is the complete statement in which MCPD emphasizes its training of police officers to de-escalate conflicts.

The department has consistently evaluated its use of force training and data collection. The decision to use force, and the level of force used, is one of the most critical decisions that a police officer will make. Most police officers will go their entire career without ever using deadly force. However, officers are routinely called upon to use some level of force, whether it be as simple as a control technique or the pointing of a weapon. The department is proud of the quality of training provided on our Use of Force policy, yet always looks to improve on how we operate. The department has provided quality and comprehensive de-escalation training to its' officers for several years. Every officer in the department has received an introductory course in ICAT (Integrating Communications, Assessment and Tactics), which is one of the only de-escalation programs to be independently assessed by an academic institution and shown to be effective. For three (3) years, every recruit class has received the entire forty-hour ICAT block of instruction. This course is meant to provide instruction on de-escalation tactics for situations involving subjects armed with a weapon other than a firearm. Starting in 2020, every forward-facing police officer (e.g. patrol, K9, etc.) was issued an ECW (taser). Beginning later this summer, the department will be issuing approximately 40 "Pepper Ball" launchers to patrol officers. This weapon platform, similar to a paintball gun, launches powdered irritant up to 150 feet. Both ECW's and Pepper Ball provide a less-lethal use of force option for officers. By providing the best equipment, training, and policy, the department feels it can manage to give officers the appropriate tools to do their job, while maintaining community safety and the dignity of those who they encounter.

Chapter 6: No-Knock Warrant Policies, Standards, and Training

This chapter compares the no-knock warrant standards included in the County Code with the corresponding text in the primary MCPD search warrant force policy directive. The chapter also enumerates provisions of MCPD no-knock warrant policy that are not addressed in the County Code.

This chapter presents an overview of no-knock warrant training requirements and practices.

No-Knock Warrant Policies, Standards, and Training – Key Takeaways

- The MCPD search warrant policy directive substantially complies with the standards specified in the County Code regarding officers eligible to participate in executing no-knock warrants, the knock and announce requirement absent exigent circumstances, risk mitigation, exceptions to the knock and announce requirement, and the prohibition against executing a no-knock warrant solely to preserve evidence.
- The MCPD policy contains multiple provisions not addressed in the County Code, including a requirement that a no-knock warrant be executed between 8:00 am and 7:00 pm absent exigent circumstances, utilization of "Warrant Threat Assessment Matrix" to identify risk factors involved in execution of a search warrant, a requirement that non-uniformed officers present at the search warrant wear clothing, badge, and name tag that identify them as police officers, and a requirement that, absent exigent circumstances, police officers allow a minimum of 20 seconds for occupant(s) of the residence to respond prior to forced entry.
- MCPD reports that every SWAT Team member has completed the requisite no-knock warrant training consistent with the standards set in Maryland regulations.

Section A. Overview of the Warrant Process

The Fourth Amendment to the U.S. Constitution affords residents of the United States from unreasonable search and seizure. In addition, [Article 26 of the Constitution of Maryland Declaration of Rights](#) prohibits "grievous and oppressive" searches.

A judge must determine the reasonableness of search and may issue a warrant, that is, an order authorizing a law enforcement agency to arrest or detain a person or to search and seize private property. Under Maryland law, a judge may approve a search warrant upon determination there is probable cause to believe that:

- a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within the territorial jurisdiction of the judge; or*
- property subject to seizure under the criminal laws of the State is on the person or in or on the building, apartment, premises, place, or thing.*¹

¹ [Criminal Procedure §1-203, \(a\)\(2\)](#)

To obtain a warrant, a police officer must prepare a warrant application as well as an affidavit outlining the probable cause. A warrant application must identify the location of the intended search. If the location to be searched is potentially occupiable (such as a residence or office), the officer also must complete a threat assessment form to determine the risk level of the warrant. The form is sent to the Special Weapons and Tactics (SWAT) Sergeant and to the Special Operations Division Executive Officer to determine if the warrant should be served by the SWAT Team.

A warrant application may request a search of devices such as cell phones, computers, and vehicle navigational systems. In addition, a warrant application may seek to extract information from non-physical locations such as cloud storage systems and social media accounts.

That warrant application and affidavit must be reviewed by the officer's supervisor and executive officer (Lieutenant or above). In some cases, for example those involving narcotics or human trafficking activity, an executive officer from the Special Investigations Division also reviews the application and affidavit to verify that no other superseding investigation is in progress.

In cases in which a police officer has reasonable suspicion to believe that without the authorization of a no-knock warrant, the life or safety of the executing officer or another person may be endangered, the officer must complete a no-knock search warrant application. The application, among other things, must include:

- A description of the evidence in support of the application.
- An explanation of the investigative activities that have been undertaken and the information that has been gathered to support the request for a no-knock warrant.
- An explanation of why the officer is unable to detain the suspect or search the premises using other, less invasive methods.
- A statement as to whether the search warrant can effectively be executed during daylight hours and, if not, what facts or circumstances preclude effective execution in daylight hours.
- A list of any additional occupants of the premises by age and gender, as well as an indication as to whether any individuals with cognitive or physical disabilities or pets reside at the premises, if known.

An application for a no-knock warrant must be reviewed and approved by the State's Attorney as well as MCPD supervisors.

Once approved by the supervisor and executive officer, the warrant application and affidavit are submitted to a Circuit Court or District Court judge for approval. If the judge approves the warrant, officers must serve the warrant within ten days.

Section B. No-Knock Warrant Standards – Comparison of County Code and MCPD Policy

Bill 27-20 amended the County Code to mandate the Chief of Police issue a policy directive that regulates the use of no-knock warrants. Section 35-22(d) specifies the policy directive must specify when a police officer may:

- A. seek or participate in the execution of no-knock warrants; or
- B. enter private premises without first knocking and announcing the member’s presence.

The Code further enumerates a series of “minimum standards” for implementing no-knock warrant policy. The term, “minimum standards,” implies that the established MCPD no-knock warrant policy may include additional standards than those specified in the law.

In October 2022, MCPD finalized a revised “Search and Seizure Warrants” policy, referred to as [Function Code \(FC\) #714](#). In the following pages, OLO presents a comparison of the no-knock warrant standards included in the County Code with corresponding text in the FC #714. The full text of FC #714 appears in Appendix C.

1. Officer Participation in Execution of No-Knock Warrant

Both the County Code and MCPD policy limit participation in the execution of no-knock warrants to members of the Special Weapons and Tactics (SWAT) team.

Officer Participation in Execution of No-Knock Warrant	
County Code	MCPD Policy
<p><i>The policy directive ... must, at a minimum, require that ... only an officer assigned to the Montgomery County Police Special Weapons and Tactics (SWAT) Team may participate in the execution of a no-knock warrant. (§ 35-22(e)(1))</i></p>	<p><i>An application for a "No Knock" Search Warrant can be made only if there is reasonable suspicion to believe that, without the authorization the life or safety of the executing officer or another person may be endangered and must include ... an acknowledgement that any police officer who will execute the search warrant have successfully completed the same training in breach and call-out entry procedures as SWAT team members. To comply with this requirement, the applicant will include the statement that "Per MCPD policy, only members of the Special Operations Division, Tactical Section (SWAT) team may execute a "No Knock" search warrant. All MCPD SWAT team members have been fully trained in breach and call-out entry procedures." (FC #714, VII.B.4)</i></p>
<p>Comparison: The County Code limits participation in no-knock warrants to officers assigned to the SWAT team. The MCPD policy expands this standard to require the application for the no-knock warrant explicitly acknowledge that only trained SWAT team members would participate in the execution of the warrant.</p>	

2. Knocking and Announcing Absent Exigent Circumstances

The County Code prohibits police officers, in most cases, from entering a private premise without first knocking on the door and announcing their presence. While Bill 27-20 allows for an exception to the knock and announce requirement for a search warrant in the case of “exigent circumstances,” the bill does not define the term. The MCPD policy includes a dictionary definition of exigent as “situations where there is a pressing or demanding need to take immediate action.” The [staff report for Bill 27-20](#) prepared by Council Legislative Attorney Christine Wellons states:

Under the exigent circumstances exception to the general rule that police must “knock and announce,” the U.S. Supreme Court has held that “exigent circumstances” exist when “police have a ‘reasonable suspicion’ that knocking and announcing would be dangerous, futile, or destructive to the purposes of the investigation.” U.S. v. Banks, 540 U.S. 31 (2003).

Knocking and Announcing Absent Exigent Circumstances	
County Code	MCPD Policy
<p><i>The policy ... must, at a minimum, require that ... a member of the police may not enter into private premises without first knocking and announcing the member’s presence unless exigent circumstances exist. (§ 35-22(e)(2)(A))</i></p>	<p><i>In executing a search and seizure warrant, unless there is an exception to the “Knock and Announce” requirement, officers will first announce their authority and purpose loudly enough to be heard and demand entrance. Absent exigent circumstances, officers must wait a minimum of 20 seconds before making entry. (FC #714, IV.A)</i></p> <p><i>A no-knock entry can be made at the discretion of the SWAT supervisor, regardless if the warrant applied for was a no-knock warrant, on-scene depending on the exigent circumstances (e.g., the life or safety of the executing officer or another person may be endangered) that present themselves at the time of the execution of the search and seizure warrant. (FC #714, VII.F)</i></p>
<p>Comparison: MCPD policy expands the standard in the Code by establishing a 20-second waiting period before entering the premises and including text describing one type of “exigent circumstance.”</p>	

3. Risk Mitigation

The County Code and MCPD policy require police officers who executed warrants to first consider methods other than no-knock entry to mitigate risks to all parties involved.

Risk Mitigation	
County Code	MCPD Policy
<p><i>The policy ... must, at a minimum, require that ... a member of the police may not enter into private premises without first knocking and announcing the member's presence unless ... other methods of serving a warrant, including methods which would mitigate risk, have been considered and have been determined to:</i></p> <ul style="list-style-type: none"> <i>i. pose unacceptable risk to the life or safety of executing officers or another person; or</i> <i>ii. be futile. (§ 35-22(e)(2)(B))</i> 	<p><i>In certain circumstances, officers may make entry into a private premise without knocking and announcing their presence. These circumstances are limited to a judicially approved "no-knock" warrant or times when exigent circumstances exist. Prior to making entry, other methods of serving the warrant, including methods that would mitigate risk, must be considered, and be determined to pose unacceptable risk to the life or safety of executing officers or another person or be futile. (FC #714, IX.M)</i></p>
<p>Comparison: MCPD policy closely resembles the standards set in the County Code.</p>	

4. Exceptions to Requirement to Knock and Announce

Both the County Code and MCPD policy specify exceptions to the knock and announce policy for execution of warrants.

Exceptions to the Requirement to Knock and Announce	
County Code	MCPD Policy
<p><i>The policy ... must, at a minimum, require that ... a member of the police may not enter into private premises without first knocking and announcing the member’s presence unless ... the crime being investigated is:</i></p> <ul style="list-style-type: none"> <i>i. a crime of violence as defined in Section 14-101(a) of the Criminal Law Article of the Maryland Code;</i> <i>ii. related to firearms possession;</i> <i>iii. related to a warrant obtained under Section 5-607 of the Public Safety Article of the Maryland Code;</i> <i>iv. related to child abuse;</i> <i>v. related to child pornography;</i> <i>vi. related to domestic violence; or</i> <i>vii. related to terrorism (§ 35-22(e)(2)(C))</i> 	<p><i>Officers may only seek a "knock and announce" exception when:</i></p> <ul style="list-style-type: none"> <i>1. the life or safety of the executing officer or another person may be endangered; and</i> <i>2. the investigation is a crime of violence as defined in Section 14-101(a) of the Criminal Law Article of the Maryland Code, which are abduction; arson in the first degree; kidnapping; manslaughter, except involuntary manslaughter mayhem; maiming, as previously proscribed under former Article 27, §§ 385 and 386 of the Code, murder; 1st and 2nd degree rape; robbery under § 3-402 or § 3-403 of the Maryland Code; carjacking; armed carjacking; use of a handgun in the commission of a felony or other crime of violence; an attempt to commit any of the crimes above; assault in the first degree; assault with intent to murder; assault with intent to rape; assault with intent to rob; assault with intent to commit a sexual offense in the first degree; and assault with intent to commit a sexual offense in the second degree.</i> <i>3. related to firearms possession;</i> <i>4. related to a warrant obtained under Section 5-607 of the Public Safety Article of the Maryland Code;</i> <i>5. related to child abuse;</i> <i>6. related to child pornography;</i> <i>7. related to domestic violence; or</i> <i>8. related to terrorism. (FC #714, VII.D)</i>
<p>Comparison: The MCPD policy includes all the knock and announce exceptions listed in the County Code but includes an additional exception for when the “the life or safety of the executing officer or another person may be endangered.” The MCPD policy further enumerates crimes of violence specified in Maryland law.</p>	

5. Reasonable Suspicion

In addition to the requirements for an exception to the knock and announce rule cited above, both the County Code and MCPD Policy add a further “reasonable suspicion” standard. The term “reasonable suspicion” is not defined in the County Code nor in MCPD policy.

Reasonable Suspicion	
County Code	MCPD Policy
<p><i>The policy ... must, at a minimum, require that ... a member of the police may not enter into private premises without first knocking and announcing the member’s presence unless ... at least one of the following factors is present:</i></p> <ul style="list-style-type: none"> <i>i. reasonable suspicion that a person is present at the location who has demonstrated a propensity for violence; or</i> <i>ii. reasonable suspicion that entry into the location has been fortified, is “booby trapped”, or has unique characteristics which would make knocking and announcing one’s presence inherently unsafe. (§ 35-22(e)(2)(D))</i> 	<p><i>[To seek a no knock warrant] at least one of the following factors must be present:</i></p> <ul style="list-style-type: none"> <i>1. reasonable suspicion that a person is present at the location who has demonstrated a propensity for violence; or</i> <i>2. reasonable suspicion that entry into the location has been fortified, is “booby trapped”, or has unique characteristics which would make knocking and announcing one’s presence inherently unsafe. (FC #714, VII.E)</i>
<p>Comparison: The MCPD policy incorporates the language of the County Code verbatim.</p>	

6. Use of No-Knock Warrants Solely to Preserve Evidence

In considering Bill 27-20, the Council’s Public Safety Committee amended the draft bill to prohibit execution of a no-knock warrant for the sole purpose of preventing the destruction of evidence. The full Council enacted the bill with the amended language. However, this prohibition against employing a no-knock warrant solely to preserve evidence does not explicitly appear in MCPD policy.

Use of No Knock Warrants Solely to Preserve Evidence	
County Code	MCPD Policy
<p><i>The policy ... must, at a minimum, require that a member of the police may not enter private premises without first knocking and announcing the member’s presence if the sole purpose of entering the premises is to prevent the destruction of evidence. (§ 35-22(e)(3))</i></p>	<p><i>It is the policy of the Montgomery County Department of Police (MCPD) to utilize search warrants to further criminal investigations through the recovery of evidence. Search warrants can be utilized when probable cause has been established and after appropriate departmental and judicial review. Whenever it is necessary for officers to conduct search and seizure operations, the primary concern will be the rights, safety, and welfare of the community, citizens and the officers involved. (FC #714, II)</i></p> <p><i>Officers may only see a “knock and announce” exceptions when: (1) the life or safety of the executing officer or another person may be endangered; and (2) the investigation is a crime of violence as defined in the Criminal Law Article of the Maryland Code. (FC #714, VII.D.1,2)</i></p>
<p>Comparison: The County Code explicitly prohibits MCPD from entering a premise for the sole purpose of preserving evidence without first knocking and announcing their presence. The MCPD policy does not explicitly include a parallel requirement. The text of FC #714 allows for execution of search warrants in general to recover evidence. However, the policy directive (FC #714, VII.D). also specifies the conditions necessary for a police officer to seek approval of a no-knock warrant; preservation of evidence is not included among the necessary conditions. Thus, in effect, MCPD policy prohibits execution of a no-knock warrant solely to preserve evidence.</p>	

Section C. No-Knock Warrants – Additional Standards Included in MCPD Policy

The previous section of this report compared provisions of the MCPD no-knock warrants policy with corresponding standards specified in the County Code. As previously mentioned, the County Code contains “minimum standards” for no-knock warrants, implying that the established MCPD policy may include additional standards than those specified in the law. In fact, the MCPD policy (FC #714) includes multiple provisions covering topics not addressed in the County Code. These provisions include (listed in order of appearance in FC #714):

- Requirement to document the circumstances that justify a no-knock warrant. (FC #714, VI.A.9)
- Requirement for police supervisor approval prior to applying for a judge’s approval or a no-knock warrant. (FC #714, VII.A)
- Requirement that a no-knock warrant be executed between 8:00 am and 7:00 pm absent exigent circumstances.² (FC #714, VII.B)
- Authorization for a no-knock entry at the discretion of the SWAT supervisor on-scene (depending on the exigent circumstances that present themselves at the time of warrant execution) whether or not the warrant approved by the judge was a no-knock warrant. (FC #714, VII.F)
- Utilization of "Warrant Threat Assessment Matrix" to identify risk factors involved in execution of a search warrant. Requirement for the police officer to request judicial and State's Attorney approval for a no-knock warrant when the Warrant Threat Assessment Matrix indicates a safety concern. (FC #714, VII.G)
- Requirement that only officers who verified the door description be authorized to identify the door for a no-knock entry. (FC #714, VII.G)
- Establishment of a no-knock review and approval process. (FC #714, VIII.C)
- Requirement that at least one uniformed police officer be present for the entirety of a no-knock warrant search. (FC #714, IX.D.2.a)
- Requirement that an investigative supervisor or senior investigator physically hand over the search warrant to a property representative. (FC #714, IX.D.2.b)
- Requirement that non-uniformed officers present at the search warrant wear clothing, badge, and name tag that identify them as police officers. (FC #714, IX.D.2.c)
- Requirement that, absent exigent circumstances, police officers allow a minimum of 20 seconds for occupant(s) of the residence to respond and open the door prior to making any forced entry.³ (FC #714, IX.N.2)

² The hours for no-knock execution are stipulated in State law, [Criminal Procedure Article, Section 1-203\(a\)\(3\)\(vi\)\(3\)](#).

³ The 20-second waiting period is required by State law, [Criminal Procedure Article, Section 1-203\(a\)\(8\)\(iv\)](#).

Section D. State Requirements for No-Knock Warrant Training

Bill 27-20 does not directly address police officer no-knock warrant training. Nonetheless, police officers must be familiar with provisions of the law to properly abide by the legal standards established in the bill. State regulations and set the requirements for no-knock warrant training.

As mentioned in Chapter 1 of this report, the Code of Maryland Regulations, [Section 12.04.08.06](#), establishes minimum training standards for police officers who serve a no-knock search warrant. The regulation requires any police officer, prior to deployment in a no-knock warrant, to complete 24 hours of training approved by the Maryland Police Training and Standards Commission. Commission-approved training must cover the following topics:

1. The purpose and intent of warrant service;
2. Tactical response theory and concepts;
3. Operational planning;
4. Basic entry and search techniques;
5. Crisis negotiation and de-escalation skills;
6. Legal requirements;
7. Problem solving situations in a scenario-based learning environment; and
8. Multi-agency, mutual aid warrant services procedures.

Section E. MCPD No-Knock Warrant Training Policy and Practices

Both the County Code (§ 35-22(e)(1)) and MCPD policy (FC #714, VII.B.4) stipulate that only members of the Special Operations Division, Tactical Support Section (also known as the “SWAT team”) may participate in the execution of a no-knock warrant. MCPD policy further states that “all MCPD SWAT team members have been fully trained in breach and call-out entry procedures.” The policy directive also requires that an application for a no-knock search warrant acknowledgement that any police officer who will execute the search warrant had successfully completed breach and call-out entry procedure training.

MCPD reports that every SWAT Team member has completed the requisite no-knock warrant training consistent with the standards set in Maryland regulations. New members of the SWAT team must successfully complete the same training before participating in the execution of a no-knock warrant. MCPD also requires Tactical Medics⁴ of the Emergency Services Unit to complete the State-mandated no-knock warrant training. As of July 2024, a total of 61 active County law enforcement officers (34 MCPD County Tactical Officers, 25 Emergency Services Unit

⁴ MCPD deploys Tactical Medics to high-risk incidents to provide on-scene medical treatment.

Officer and two County Sheriff Tactical Officers) had completed no-knock warrant training approved by the Maryland Police Training and Standards Commission.⁵

In 2021, MCPD held training for supervisors and other officers who submit or review applications for search warrants. This training covered updates to State law including provisions related to no-knock warrants. MCPD incorporates similar training as part of “basic investigator school” instruction for all new MCPD investigators.

The curriculum for police officer candidates includes instruction on the constitutional and statutory requirements of a search warrant. Candidates receive instruction on legal standards pertaining to the execution of search warrants including probable cause and the knock and announce requirement.

⁵ In addition, as of July 2024, one City of Rockville police officer completed the State-mandated training.

CHAPTER 7: NO-KNOCK WARRANT DATA

This chapter presents information on search warrant reporting requirements and the MCPD warrant data collection process. The chapter also presents data on the number of search warrants and no-knock warrants served by MCPD in recent years.

See Chapter 6 of this report for an overview of the search warrant application and approval process.

No-Knock Warrant Data – Key Takeaways

- The total annual number of no-knock warrants executed by MCPD dropped from 128 in 2017 to nine in 2023. No-knock warrants as a percent of total warrants decreased from 63% in 2020 to 16% in 2023. According to MCPD, the most significant contributing factor to these reductions was the restriction against using no-knock warrants for certain crimes, most notably, narcotics investigations.
- Of the 53 persons present during MCPD no-knock warrant searches in 2023, all but one were Black or Hispanic.
- Ages of those present at no-knock warrants ranged from 73 to two years old during 2023; more than half of those present were of ages between 18 to 40 years.

Section A. Reporting Requirements

[Section 3-508 of the Maryland Code, Public Safety Article](#) requires law enforcement agencies in the State that maintains a “SWAT team”¹ to submit biannual reports to the Governor's Office of Crime Prevention and Policy. State law defines a SWAT team as “a special unit composed of two or more police officers within a law enforcement agency trained to deal with unusually dangerous or violent situations and having special equipment and weapons, including rifles more powerful than those carried by regular police officers.” Within MCPD, the SWAT team within the Tactical Support Section of the Department’s Special Operations Division executes search warrants, including no-knock warrants.

As stipulated in State law, the mandated biannual reports must include:

- the number of times the SWAT team was activated and deployed in the previous six months;
- the location where the SWAT team was deployed for each activation;
- the reason for each activation and deployment of the SWAT team;
- the legal authority, including type of warrant, if any, for each activation and deployment of the SWAT team; and

¹ The acronym “SWAT” stands for “special weapons and tactics.”

- the result of each activation and deployment of the SWAT team, including:
 - the number of arrests made, if any;
 - whether property was seized;
 - whether a forcible entry was made;
 - whether a weapon was discharged by a SWAT team member; and
 - whether a person or domestic animal was injured or killed by a SWAT team member.

The Governor's Office of Crime Prevention and Policy compiles submissions from law enforcement agencies throughout Maryland and publishes an annual report on SWAT Team Deployment and No-Knock Search Warrants, available on the [Office's website](#).

Section B. Data Collection Process

MCPD SWAT team supervisors document search warrant information and statistics. For each executed search warrant, SWAT supervisors record (among other things):

- The type of search warrant (knock and announce or no-knock);
- The warrant issue and service dates;
- The location of the search;
- The court that authorized the search;
- The reason for the search;
- Whether the search involved forcible entry;
- Any property seized;
- Whether a firearm was discharged;
- The number of arrests; and
- The number of persons injured or killed.

The SWAT team maintains a search warrant database with the above information and regularly submits data to MCPD management and to the Governor's Office of Crime Prevention and Policy.

Section C. No-Knock Warrant Data²

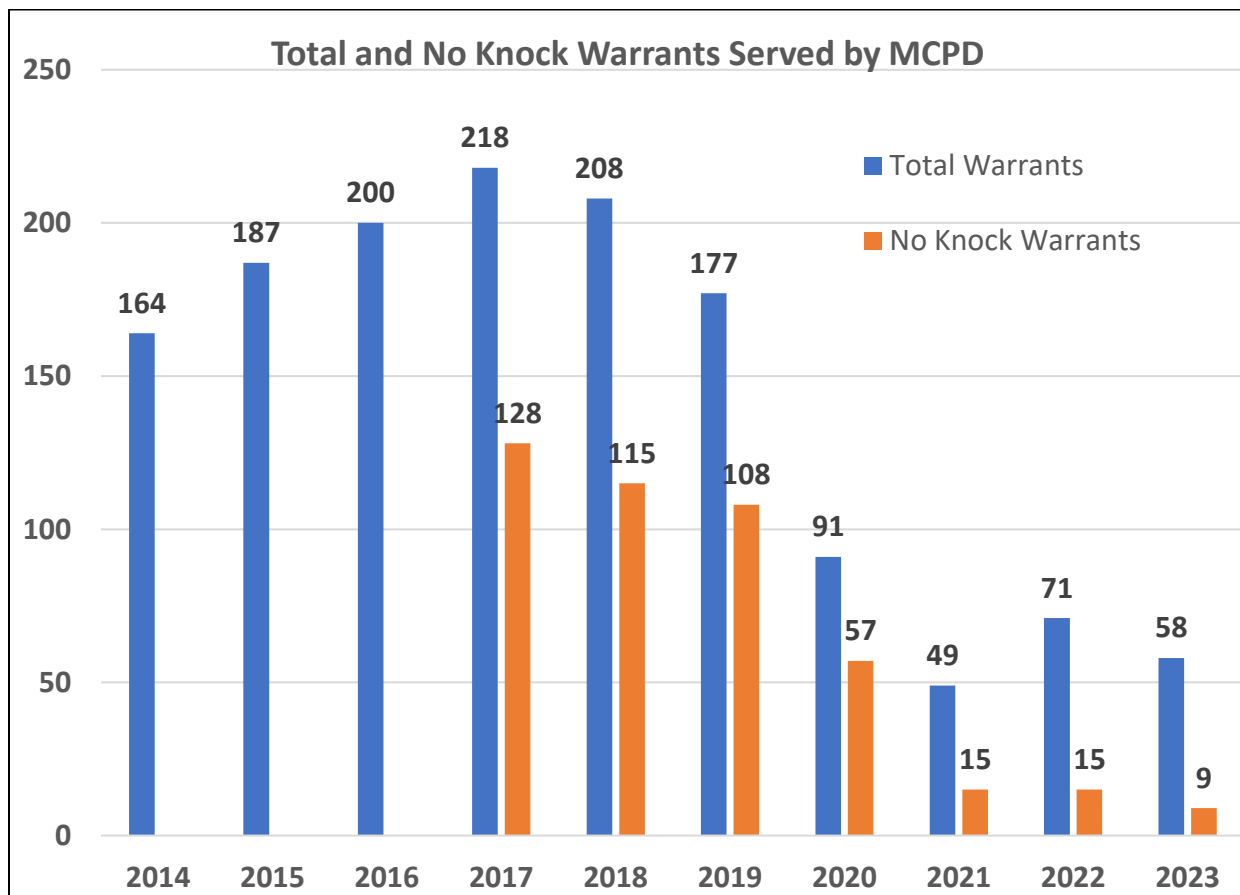
This section presents data on the number of search warrants and no-knock warrants served by MCPD in recent years, no-knock warrants as a percent of total search warrants and select demographics of civilians present at no-knock warrant locations.

1. Number of Search Warrants

MCPD maintains data on the number of search warrants and no-knock search warrants served by the Department. The table and chart on the following page display the number of total search warrants and no-knock search warrants served by MCPD for each calendar year over the past decade. The total annual number of no-knock warrants executed by MCPD plunged from 128 in 2017 to nine in 2023.

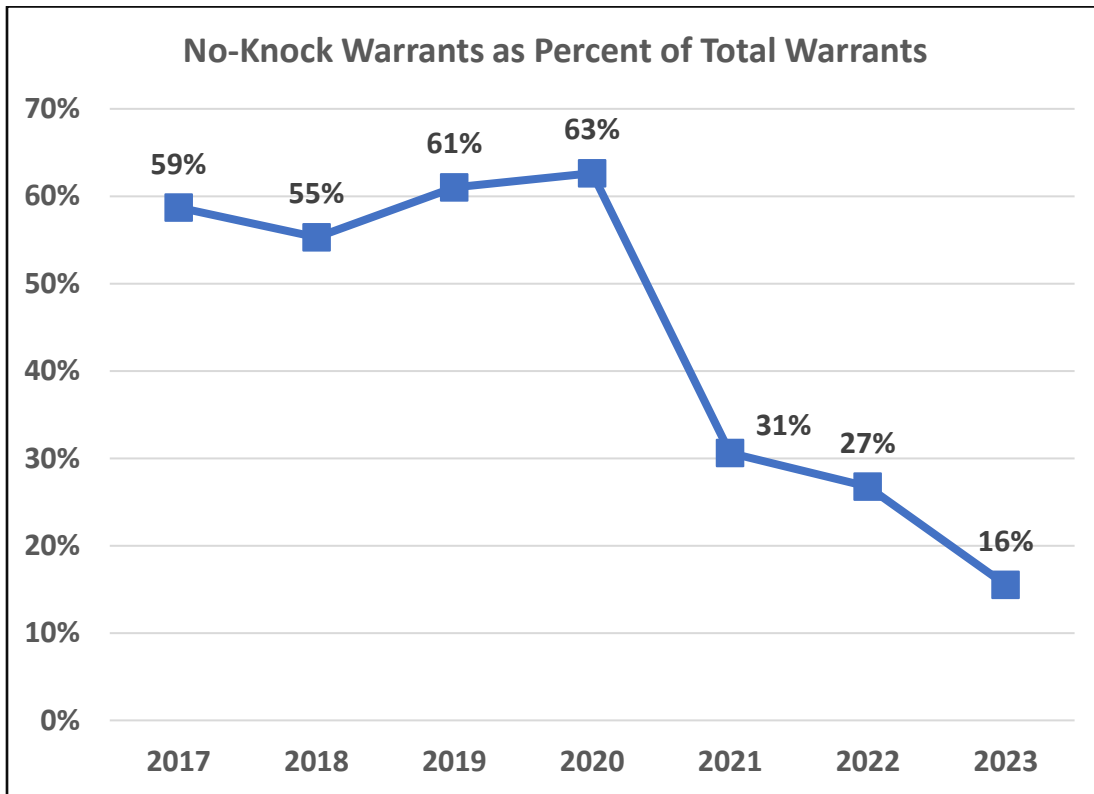
² All annual data presented in this report is for the calendar year.

Total and No-Knock Warrants Served by MCPD 2014 – 2023			
Calendar Year	Total Warrants	No-Knock Warrants	Percent No-Knock
2014	164	Not Available	--
2015	187	Not Available	--
2016	200	Not Available	--
2017	218	128	59%
2018	208	115	55%
2019	177	108	61%
2020	91	57	63%
2021	49	15	31%
2022	71	15	21%
2023	58	9	16%



2. No-Knock Warrants as Percent of Total Warrants

The data present in the previous subsection reveal a sharp drop in the number of total warrants and the number of no-knock warrants in recent years. Moreover, the number of no-knock warrants as a percent of total warrants have also decreased sharply, falling from a high of 63% in 2020 to 16% in 2023, as shown in the chart below.



OLO asked MCPD to describe the key factors that most affected the number of no-knock warrants being requested, approved and served. MCPD responded (bolded text added by MCPD):

*The most significant legal change that affected the utilization of no-knock warrants was the limitation where no-knock warrants could only be used for certain crimes. Prior to the enactment of 27-20, the department viewed no-knock warrant utilization through a multi-factored lens. Focus is given to the known or suspected occupants of the location where the search warrant was being served and is primarily **based on the specific crimes being investigated**; however, it also considers the occupants' criminal history, their propensity for being armed and/or their history of committing acts of violence. **The race and gender of any suspected occupant plays absolutely no role in determining whether a no-knock search warrant is applied for or utilized.***

There is a known correlation between narcotics traffickers, guns, and violence (Phillips MD. Assessing the Impact of Drug Use and Drug Selling on Violent Offending in a Panel

of Delinquent Youth. J Drug Issues. 2012 Jul;42(3):298-316), so many of the department's no-knock warrants served were in relation to narcotic distribution investigations. Of note, the department did not seek to serve no-knock warrants solely for the possession of narcotics, unless that warrant was part of a larger investigation related to an act of violence.

Presently, narcotics investigations are not one of the categories of investigations where no-knock warrants are permitted. For an officer to request a "no-knock" exception for a search warrant, the crime being investigated must be a crime of violence as defined in Section 14-101(a) of the Criminal Law Article of the Maryland code. In addition to the crime of violence requirement, the requesting officer must also have reasonable suspicion that a person is present at the location who has demonstrated a propensity for violence, or reasonable suspicion that entry into the location has been fortified, "booby-trapped", or has unique characteristics which would make knocking and announcing the officer's presence inherently unsafe.

3. Demographics of Civilians Present at No-Knock Warrant Locations

Judicially approved search warrants, including no-knock warrants, identify a location for an authorized search; a warrant is not directed at particular individuals. Nonetheless, MCPD collects demographic data on individuals present at a search location at the time of warrant execution. In a July 10, 2024 letter to OLO, MCPD provided data on the number of civilians present at no-knock warrant locations in recent years. The table on the following page presents information about the total number of civilians present during the nine no-knock warrants served by MCPD in 2023. The table also shows information on the gender, age, and race/ethnicity of civilians present during the execution of 2023 no-knock warrants. (See Appendix H for similar age and gender information for no-knock warrants from other years.)

Of the 53 persons present during MCPD no-knock warrant searches in 2023, a total of 32 were males and 21 females.

Ages of those present at no-knock warrants ranged from 73 to two years old during 2023. Greater than half of those present, a total of 29 people, were of ages between 18 to 40 years; 14 were under age 18 while 10 were over age 40.

All but one person present during a MCPD no-knock warrant in 2023 were Black or Hispanic. In providing the data to OLO, MCPD stated:

The police department reiterates the fact that [neither] race, nor ethnicity, play any role in whether a no-knock exception to the search warrant requirement is sought.

Number, Gender, and Ages of Civilian Occupants Involved in 2023 No-Knock Search Warrants			
Incident	Total Number of Occupants	Age and Race/Ethnicity of Male Occupants	Age and Race/Ethnicity of Female Occupants
#1	6	33 years/Black 28 years/Black	60 years/Black 36 years/Black 31 years/Black 19 years/Black
#2	2	24 years/Black	21 years/Black
#3	10	48 years/Black 32 years/Black 19 years/Black 18 years/Black 17 years/Black 14 years/Black	53 years/Black 23 years/Black 15 years/Black 13 years/Black
#4	10	73 years/Hispanic 23 years/Black 19 years/Hispanic 19 years/Hispanic 17 years/Hispanic 16 years/Hispanic 14 years/Hispanic	21 years/Hispanic 19 years/Hispanic 2 years/Black
#5	3	35 years/White 24 years/Hispanic	64 years/Hispanic
#6	8	45 years/Black 26 years/Black 18 years/Black 13 years/Black 13 years/Black	47 years/Black 23 years/Black 3 years/Black
#7	5	41 years/Hispanic 21 years/Black 14 years/Black	37 years/Hispanic 9 years/Hispanic
#8	3	23 years/Black	40 years/Black 25 years/Black
#9	6	44 years/Black 23 years/Black 22 years/Black 18 years/Black 15 years/Black	44 years/Black

CHAPTER 8: REVIEW OF NO-KNOCK WARRANT STANDARDS

As part of the approved [FY24 Work Program for the Office of Legislative Oversight](#), the County Council directed that “to the extent possible, the report will also examine whether new or different best practices related to use of force and no-knock warrants in policing have been identified since the law’s adoption.” Scant recent literature exists on no-knock warrant “best practices.” Rather, recent developments regarding no-knock warrants have focused on review of existing standards for approving and serving no-knock searches.

This chapter presents a brief overview of Federal no-knock warrant standards. The chapter further discusses a recent revision in U.S. Department of Justice no-knock warrant standards as well as a no-knock warrant position statement issued by an association serving law enforcement tactical teams. The final section of this chapter presents a statement from MCPD discussing the Department’s perspective on the use of no-knock warrants.

Review of No-Knock Warrant Standards – Key Takeaways

- Provisions of the MCPD search warrant policy directive correlate closely with the recently revised no-knock warrant policy of the U.S. Department of Justice.
- In 2022, the National Tactical Officers Association (NTOA) issued a position statement concluding that little or no justification exists for no-knock warrants in light of risk and safety concerns associated with forced entry searches.
- MCPD asserts that no-knock warrants, when employed judiciously, increase safety for the public, occupants of the search location, and police officers.

Section A. Overview of Federal No-Knock Standards

The fundamental standards for no-knock warrants emanate from the United States Constitution, Supreme Court decisions, and, in Maryland, legislation approved by the General Assembly. As discussed in Chapter 1 of this report, the Constitution affords residents protection from unreasonable search and seizure. Supreme Court decisions have established that law enforcement agents generally must knock, announce their identity and purpose, and wait a reasonable amount of time before entering a private dwelling to execute a search warrant. Nonetheless, the Court has identified situations in which law enforcement agents are not required to knock and announce including when circumstances present a threat of violence, when an officer has reason to believe that evidence would likely be destroyed if advance notice were given, or when knocking and announcing would be “futile.”¹

At a minimum, Federal, state, and local law enforcement agencies must abide by the standards established by the Supreme Court. However, in many cases, the governing entities overseeing a

¹ [Justia, US Supreme Court, Hudson v. Michigan 547 US 56 \(2006\)](#).

law enforcement agency may enact stricter standards for no-knock warrants such as occurred at the local level in the case of Montgomery County Council Bill 27-20 and at the Federal level in the case presented below.

Section B. Department of Justice No-Knock Policy Directive

In September 2021, the U.S. Department of Justice (DOJ) issued a [memorandum](#) revising the standards for no-knock warrants served by Federal law enforcement agencies. As stated by Deputy Attorney General Lisa Monaco:

In the wake of a number of recent tragedies, law enforcement around the nation is reexamining the way it engages with individuals who come into contact with the criminal justice system. The Department of Justice has undertaken a similar review and determined that the Department did not have consistent written policies across its law enforcement components ... on the use of "no knock" entries when executing a warrant... Because of the risk posed to both law enforcement and civilians during the execution of "no knock" warrants, it is important that this authority be exercised only in the most compelling circumstances.

The full text of the DOJ policy memorandum appears in Appendix I.

The revised DOJ policy includes the following provisions that go beyond the Constitutional requirements established by the Supreme Court. As detailed below, the MCPD no-knock search warrant policy contains similar provisions as the revised DOJ policy.

Imminent Threat: The revised DOJ policy limits application for a no-knock warrant to situations in which the law enforcement officer believes that knock and announce approach would create an imminent threat of violence:

An agent may seek judicial authorization to conduct a "no knock" entry only if that agent has reasonable grounds to believe at the time the warrant is sought that knocking and announcing the agent's presence would create an imminent threat of physical violence to the agent and/or another person.

The MCPD no-knock warrant policy directive requires police officers to use the Department's "Warrant Threat Assessment Matrix" to identify risk factors involved in execution of a search warrant. A police officer may only request judicial and State's Attorney approval for a no-knock warrant when the Warrant Threat Assessment Matrix indicates a safety concern (see FC #714, VII.G).

Change in Circumstances: The revised DOJ policy allows law enforcement agents to proceed with an approved no-knock warrant unless the agents learn that circumstances have changed:

Once judicial authorization is obtained, agents may proceed without "knocking and announcing" their presence unless they learn of acts that negate the circumstances that justified this exception to the "knock and announce" rule.

The MCPD no-knock warrant policy directive contains a similar, but not identical, provision as the DOJ regarding a change in circumstances. The MCPD policy requires police officers, prior to making a no-knock entry, to consider other methods of serving the warrant including methods that would mitigate risk without posing an unacceptable risk to the officers or another person (see FC #714, IX.M.2).

Exigent Circumstances: The revised DOJ policy allows law enforcement agents who have secured a knock and announce warrant to conduct a no-knock search only if "exigent circumstances" arise that could create an imminent threat of violence if the agents announce their presence:

If an agent did not anticipate the need for a "no knock" entry at the time the warrant was sought, the agent may conduct a "no knock" entry only if exigent circumstances arise at the scene such that knocking and announcing the agent's presence would create an imminent threat of physical violence to the agent and/or another person.

MCPD policy similarly permits a supervisor to authorize a no-knock entry for any approved search warrant if exigent circumstances pose a threat to life or safety at the time of warrant execution (see FC #714, VII.F).

Preservation of Evidence: The revised DOJ policy prohibits use of a no-knock search solely to prevent the destruction of evidence:

Because this policy limits "no knock" entries to instances where there is an imminent threat of physical violence, it is narrower than what is permitted by law - for example, agents must "knock and announce" even when they have reason to believe that doing so could result in the destruction of evidence. In setting the policy this way, the Department is limiting the use of higher-risk "no knock" entries to only those instances where physical safety is at stake at the time of entry.

As detailed in Chapter 6 of this report, the County Code, similar to the DOJ policy, explicitly prohibits no-knock entry for the sole purpose of preserving evidence. The MCPD policy directive does not explicitly include a parallel requirement. The text of FC #714 allows for execution of search warrants in general to recover evidence. However, the policy directive also specifies the conditions necessary for a police officer to seek approval of a no-knock warrant; preservation of evidence is not included among the necessary conditions. Thus, in effect, MCPD policy prohibits execution of a search warrant solely to preserve evidence. (see FC #714, VII.D).

Section C. National Tactical Officers Association Position Statement

The [National Tactical Officers Association](#) (NTOA) is a non-profit education and training organization supporting police tactical teams and other members of the law enforcement community. In February 2022, NTOA issued a [position statement](#) on no-knock warrants. In the statement, NTOA concludes that little or no justification exists for no-knock warrants in light of risk and safety concerns associated with forced entry searches.

No-knock search warrants, though well-intended, no longer pass the test of tactical science, risk mitigation practices, and liability-conscious decision-making...

Stealth entry, approach, breaching of the door, crossing the threshold, or other covert means of access only risk the following scenarios:

- *The misidentification by the occupants of the police as intruders;*
- *The compression of space and time negatively affects the ability to correctly interpret situations and the environment for both the police and occupants;*
- *The misidentification of intent on the part of occupants and the police;*
- *Police create an environment along with the suspect's intentional or unintentional actions requiring correct interpretation from both sides, which often does not occur, leading to an unfortunate tragedy.*

The NTOA's template for sound, defensible risk mitigation is straightforward. Consider all aspects of the mission, including the objective(s), intelligence and applicable legal constraints. Next, consider all of the tactical options at your disposal, and then using the safety priorities, select the safest alternative possible to accomplish your mission. Finally, have the flexibility to adjust to the circumstances (exigency) as they present themselves. The strategy and tactics developed on a search warrant should always speak to the safety priorities based on intelligence known to the officers. Applying tools and tactics that can be justified and supported by risk mitigation and the safety of all concerned within the environment is mandatory.

When considering the priority of safety and life, it is difficult, at best, to justify or defend no-knock warrant service. Lessons learned over many years and our desire not to repeat our past mistakes are the foundation for our position.

The full text of the NTOA no-knock warrant position statement appears in Appendix J.

Section D. MCPD Perspective on No-Knock Warrants

OLO invited MCPD to provide its perspective on the purpose and role of no-knock warrants. MCPD responded in a July 10 letter to OLO. The full text of the MCPD response appears in Appendix H. The following is an excerpt from the MCPD response in which the Department

asserts that no-knock warrants, when employed judiciously, increase safety for the public, occupants of the search location, and police officers (bolded text added by MCPD).

*The department recognizes that there are community concerns involving no-knock warrants. Even before the implementation of the county legislation, and certainly before recent changes to Maryland law, the department has treated no-knock exceptions to the knock and announce warrant requirement as a specialized tool - **only to be used in cases where the occupants of a location have a significant propensity for violence**. The department does not use no-knock warrants in instances where destruction of evidence is a factor. Although the use of no-knock warrants is under greater scrutiny, in these specific instances and based on the totality of the circumstances, executing a warrant without knocking and announcing is, in certain cases, the safest way to secure a location, preserve life, and prevent injury to all involved, including the occupants in the residence, or those who may be impacted by the warrant service.*

The main priority in the police department's mission is to safeguard life and property, as well as prevent and detect crime. In order to best achieve these goals, there are times when the department has to serve a search warrant at a location with the intent of arresting a subject or to locate evidence of a crime. Even in situations where the subject has a violent history and a propensity for violence, or threat of resistance is elevated, the department continually assesses the situation and attempts to utilize other, less invasive means to achieve its' goals. Alternatives are always considered to replace the need for seeking a no-knock warrant exception, however, there are instances in which the alternative solutions present more inherent danger to the public, suspect(s), co-habitants and/or occupants of the residence being searched, and officers serving the warrant.

The police department recognizes and understands the importance of strict adherence to the United States Constitution, in particular, the fourth amendment. Per department policy, an application for a no-knock exception may only be presented to a judge after it goes through several layers of review that considers the factors and circumstances that would justify seeking the no-knock exception.... All members of the department's tactical team are highly trained and have been fully trained in breach and call-out procedures, which increases safety and limits the probability of injury to all persons involved or impacted by the search warrant.

The utilization of no-knock search warrants as a police tool is done to increase the safety of the public, suspects, occupants of the residence in question, and the officers sent to serve the search warrant. This tactic increases the element of surprise, allows the team to secure the residence and occupants quickly, and reduces the amount of time a suspect, who is already under investigation for a crime of violence and has demonstrated a propensity for violence, has to arm themselves, barricade themselves, or take other occupants of the residence hostage.

Knock and announce search warrants comprise the overwhelming majority of search warrants currently being served in Montgomery County. There are inherent risks anytime a search warrant is served. A knock and announce search warrant creates time for occupants inside of the residence to think, plan, arm themselves, hide, barricade, or in a worst-case scenario, take hostages or engage in, or plan, an act of violence against members of the police department. The type of scenario described above has played out countless times with police departments across the United States. The Breonna Taylor tragedy is often considered a no-knock warrant gone awry and is portrayed as the worst-case scenario for a no-knock warrant. However, an in-depth review of the incident shows that the warrant was served as a knock and announce warrant, by an undertrained plain clothes narcotics unit (<https://louisville-police.org/DocumentCenter/View/1818/PIU-20-019-Investigative-Reports>). This tragedy is exactly the type of incident the department tries to avoid when it serves any search warrant. By using specially trained tactical officers to serve medium and high-risk search warrants, including no-knock warrants, the department is able to maximize the safety of the public, officers, and the suspect of the investigation....

... No-knock search warrants receive great attention regarding investigative measures taken and a thorough review by police supervisors, executives, State's Attorney's Office supervisors, and the State's Attorney of Montgomery County for approval prior to submission to a judge. Eliminating the ability for the police department to utilize this exception to the knock and announce requirement will result in officers utilizing more "surround and call-out" warrant services. This tactic requires the officers to contain the occupants inside the residence from positions outside and utilize loud amplifying acoustics to gain the attention of the occupants. This tactic has the likelihood of turning the warrant service into a barricade situation. This will provide time and opportunity for the suspect and occupants to decide whether they want to comply or remain barricaded inside. It should be noted that this creates the probability of innocent family members or other occupants becoming barricaded inside with the suspect while they are deciding what to do. As stated, the suspect/s involved in no-knock warrant scenarios are facing serious criminal charges that carry a significant prison sentence if convicted and have demonstrated a propensity for violence. These factors could result in the alleged suspect making irrational decisions and/or taking actions that would increase the likelihood of violence and/or injury.

CHAPTER 9: DISCUSSION QUESTIONS

Four years ago, the County Council approved Bill 27-20 that modified sections of the County Code related to police use of force and the execution of no-knock search warrants. In this report, the Office of Legislative Oversight (OLO) examines policies and practices adopted by the Montgomery County Police Department (MCPD) to implement the provisions of Bill 27-20.

Overall, OLO finds a high degree of consistency between the requirements of Bill 27-20 and MCPD use of force and no-knock warrant policies and practices.

This report affords the County Council and the Executive Branch an opportunity to review the current status of bill implementation and to consider what, if any, adjustments would be appropriate. To facilitate this review, OLO presents the following discussion questions for Councilmember consideration based on the findings of this report.

Use of Force Discussion Questions

1. The County Code prohibits use of neck or carotid restraints without condition. MCPD policy permits use of these restraints when deadly force would be authorized (see Chapter 3, Section A.7 of this report).

***Discussion Question #1:** When the Council approved Bill 27-20, was its intent to allow use of carotid restraints under circumstances when other forms of deadly force would be authorized?*

2. The County Code defines “less lethal use of force” as “any degree of force that is not likely to have lethal effect.” The County Code permits less lethal force “only after exhausting alternatives to the use of such force.” The MCPD use of force policy does not contain a similar statement, but indirectly applies a similar standard through the policy’s definition of “necessary” force. (see Chapter 3, Section A.10).

***Discussion Question #2:** Should MCPD add an explicit requirement in the use of force policy stating that police officers must exhaust alternatives before engaging in less lethal use of force?*

3. The County Code requires that MCPD solicit comments and guidance on use of force from members of the public, particularly people from communities who have been adversely affected by police use of force. MCPD reports that it has received “no comments which would have been useful toward re-shaping our policy or training” (see Chapter 3, Section C).

***Discussion Question #3:** How should the County engage community members in the on-going review of use of force policies and practices?*

4. The types of actions considered by MCPD to be “use of force,” has expanded in recent years. In February 2022, MCPD adopted a requirement that officers report any instance of pointing a service weapon, taser, or pepper spray as a use of force incident. In July 2022, MCPD replaced the use of force reporting requirement for “force used to counteract a physical struggle” with the more expansive “intentional use of any physical effort(s).” As a result of the more revised definition, the number of use of force incidents in 2023 greatly exceeded the number in previous years (see Chapter 4, Sections C and D).

Discussion Question #4: *Is current definition of a reportable use of force adequate and sufficient?*

5. MCPD data indicate that 57% of use of force incidents that occurred in 2023 involved Black civilians. Data are not available on the residency of civilians involved in MCPD use of force incidents; some reported incidents may involve residents of other jurisdictions. Nonetheless, the proportion of Black civilians subject to use of force greatly exceeds the percentage of Black residents of the County (see Chapter 4, Section D.6).

Discussion Question #5: *Is it possible that any modifications to MCPD use of force policies or practices could address the racial disparity in use of force?*

6. County residents and others who believe a police officer improperly used force against them may file a complaint with MCPD or with the Police Accountability Board (PAB). The PAB currently is working to develop a comprehensive dashboard designed to and make police complaint information readily available to the public. In 2023, MCPD received 14 use of force complaint cases involving a total of 18 allegations of excessive force (see Chapter 4, Section D.8).

Discussion Question #6: *Are current means for residents to file and monitor complaints adequate and sufficient?*

7. Provisions of the MCPD use of force policy correlate closely with the Maryland Police Training and Standards Commission best practices. In addition, many provisions of the MCPD use of force policy are consistent with guidelines proposed by organizations supporting the law enforcement community and by social justice advocates. However, some groups have suggested several use of force standards that are not part of current MCPD policy (see Chapter 4, Sections A, B, C).

Discussion Question #7: *What would be the advantages and disadvantages of modifying MCPD use of force policy to include provisions that:*

- *Require officers consider language barriers when determining whether force is appropriate.*

- *Prohibit use of force to subdue a person who is not suspected of any criminal conduct unless necessary to protect an officer's or another person's safety.*
- *Prohibit use of force against a person who confronts an officer solely verbally and is not involved in criminal conduct.*
- *Prohibit officers from using deadly force solely to protect persons who pose a risk of harm only to themselves.*
- *Prohibit shooting at a target that is not clearly in view.*
- *Limit intentional weapon strikes to the head only to situations when deadly force is authorized.*
- *Prohibit officers from conducting an off-leash deployment of a canine to apprehend a person who does not pose an imminent risk to a police officer or another person.*

No-Knock Warrant Discussion Questions

8. The total annual number of no-knock warrants executed by MCPD plunged from 128 in 2017 to nine in 2023. No-knock warrants as a percent of total warrants decreased from 63% in 2020 to 16% in 2023. According to MCPD, the most significant change contributing factor to the reduction was the legal restriction against using no-knock warrants for certain crimes, most notably, narcotics investigations (see Chapter 7, Section C). Provisions of the MCPD search warrant policy correlate closely with the recently revised no-knock warrant policy of the U.S. Department of Justice (see Chapter 8, Section B). Furthermore, MCPD asserts that no-knock warrants, when employed judiciously, increase safety for the public, occupants of the search location, and police officers (see Chapter 8, Section D). In contrast, the National Tactical Officers Association (NTOA) issued a position statement concluding that little or no justification exists for no-knock warrants in light of risk and safety concerns associated with forced entry searches (see Chapter 8, Section C).

Discussion Question #8: *What does the Council currently believe is the appropriate use for no-knock warrants?*

9. Of the 53 persons present during the nine MCPD no-knock warrant searches in 2023, all but one were Black or Hispanic. MCPD asserts that “the race and gender of any suspected occupant plays absolutely no role in determining whether a no-knock search warrant is applied for or utilized.”

Discussion Question #9: *Is it possible that any modifications to MCPD no-knock warrant policies or practices could address the racial and ethnic disparities in those present during forced entry searches?*

CHAPTER 10: EXECUTIVE BRANCH COMMENTS

The Office of Legislative Oversight (OLO) shared a final draft of this report with representatives of the Executive Branch of the Montgomery County Government. OLO appreciates the time taken by Executive Branch staff to review the draft report and to provide technical feedback. This final report incorporates technical corrections and feedback from Executive Branch staff.

The written comments received from Chief Executive Officer are attached beginning on the following page.



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

Richard S. Madaleno
Chief Administrative Officer

MEMORANDUM

August 30, 2024

TO: Chris Cihlar, Director
Office of Legislative Oversight

FROM: Richard S. Madaleno, Chief Administrative Officer *RSM*

SUBJECT: Draft OLO Report 2024-XX: *Implementation of the 2020 Use of Force Law and No-Knock Warrant Law*

Thank you for the opportunity to comment on the Office of Legislative Oversight's (OLO) Draft Report 2024-XX: *Implementation of the 2020 Use of Force Law and No-Knock Warrant Law*.

We recognize that the decision to use force is one of the most critical and important decisions a police officer has to make. Officers are entrusted with a great deal of responsibility to use force when necessary, including deadly force. As such, the department and the County carry a significant obligation to provide officers with the best and clearest guidance on when force is permissible, and the best and most relevant training on the best ways to use that force.

We would caution on relying solely on utilizing total county population as a benchmark for assessing the disproportionate impact on use of force (or any policing metric). The social science community has generally recognized the limitations of the utilization of census data in benchmarking, including "Fridell. By the numbers: A guide for analyzing race data from vehicle stops" and "S. Rice and M. White (eds.), 2010, Race, Ethnicity, and Policing: New and Essential Readings (NYU Press pp. 180-204)". Certainly, census benchmarking is one lens through which police contacts can be reviewed. However, policing and police contacts are not acts that occur randomly and without pattern, they are data driven and driven by calls for service.

Law enforcement interventions are focused in areas experiencing higher calls for service or reports of criminal activity. Unfortunately, the areas of the highest concentration of calls for service correspond to some of the County's more diverse census tracts. Furthermore, transportation in the National Capital Region is intentionally integrated. Therefore, many police

interactions will be with drivers or residents of neighboring jurisdictions like Prince George's County, the District of Columbia, or even traveling south from Baltimore. Obviously, the demographics of visitors or workers from across the State and region will not often mirror the resident population demographics of Montgomery County. This means that those subject to enforcement actions inherently won't strictly mirror the baseline demographics of the residents of the County. This is an important distinction, because as the OLO report indicates, at least 72% of the department's uses of force was predicated on an enforcement action. We would recommend comparing use of force data to a variety of different benchmarks to fully understand any possible disproportionate uses of force.

Discussion Question #1: *When the Council approved Bill 27-20, was its intent to allow use of carotid restraints under circumstances when other forms of deadly force would be authorized?*

CAO Response: When this legislation was being discussed at the work session stage, this was discussed as a concern on the part of the Montgomery County Police Department (MCPD). Although the Council understood the dynamic, they were reticent to add additional caveats or exceptions in the legislation. It should be noted, that if it is necessary to use deadly force, a carotid restraint would be less likely to cause death or serious bodily injury than other types of deadly force such as a firearm.

Discussion Question #2: *Should MCPD add an explicit requirement in the use of force policy stating that police officers must exhaust alternatives before engaging in less lethal use of force?*

CAO Response: The MCPD does not believe that this would be appropriate language. The idea of "exhaust alternatives" is akin to a "use of force continuum". These continuums were popular in the late 20th and early 21st centuries. However, as the concepts and legal requirements around use of force changed, best practices went away from continuums because they actually gave officers less options to deescalate. In their guide on use of force, the Police Executive Research Forum discourages the use of continuums when assessing the appropriateness of force.

Discussion Question #3: *How should the County engage community members in the ongoing review of use of force policies and practices?*

CAO Response: As indicated, this has been a challenge for the department. Chief Yamada is developing a process where community members can provide feedback to all department polices, not just those involving use of force. The hope is that this can elicit more feedback of value to the department.

Discussion Question #4: *Is current definition of a reportable use of force adequate and sufficient?*

CAO Response: The department believes that the current definition of reportable use of force exceeds established best practices in many jurisdictions that do not require reporting for the simple “pointing of weapons” or when encountering “non-compliance” to any degree when detaining an individual. Our department also reports every instance where an injury is “claimed”.

Discussion Question #5: *Is it possible that any modifications to MCPD use of force policies or practices could address the racial disparity in use of force?*

CAO Response: The department would caution against drawing the conclusion that use of force is disproportionate based on existing analysis. Each use of force is reviewed on its individual merits. Any use of force that is excessive, or outside of policy, is referred for investigation. Additionally, the department is clear that force may never be used against another person due to their race, ethnicity, gender, etc. The Executive Branch would recommend further analysis of the department’s use of force data against other benchmarks to determine what, if any, disparate outcomes exist in Use of Force. It is worth noting that our department has a remarkably low number of complaints associated with Use of Force. There are a number of ways that people can file complaints that do not involve the department directly such as: the State Attorney’s Office (SAO), the Police Accountability Board (PAB), and the Office of Legislative Oversight (OLO).

Discussion Question #6: *Are current means for residents to file and monitor complaints adequate and sufficient?*

CAO Response: Yes, there are a wide variety of ways that a person can file a complaint, including with the department or directly to the Police Accountability Board.

Discussion Question #7: *What would be the advantages and disadvantages of modifying MCPD use of force policy to include provisions that:*

- *Require officers consider language barriers when determining whether force is appropriate.*
- *Prohibit use force to subdue a person who is not suspected of any criminal conduct unless necessary to protect an officer’s or another person’s safety.*
- *Prohibit use of force against a person who confronts an officer solely verbally and is not involved in criminal conduct.*
- *Prohibit officers from using deadly force solely to protect persons who pose a risk of harm only to themselves.*
- *Prohibit shooting at a target that is not clearly in view.*
- *Limit intentional weapon strikes to the head only to situations when deadly force is authorized.*
- *Prohibit officers from conducting an off-leash deployment of a canine to apprehend a person who does not pose an imminent risk to a police officer or another person.*

CAO Response: In brief response to each:

- *Require officers consider language barriers when determining whether force is appropriate.*

Certainly, officers should consider language barriers when dealing with any witnesses, victims, or suspects. However, officers often are required to use force based on imperfect information and without the benefit of hindsight. It is often impossible for an officer to know or realize they are dealing with a person of limited English proficiency. It is often impossible for an officer to assess language proficiency when deciding about Use of Force during incidents that are often exigent in nature.

- *Prohibit use [of] force to subdue a person who is not suspected of any criminal conduct unless necessary to protect an officer's or another person's safety.*

Currently, officers are permitted to use force when trying to accomplish a legitimate law enforcement purpose. There are times when officers may need to use a necessary and proportionate level of force to conduct a legitimate purpose. For example, a person who is about to jump from a parking garage is not committing a crime and would not be a harm to anyone other than themselves. However, there is an expectation that an officer could use force (e.g. their hands) to restrain them from jumping if they are able.

- *Prohibit use of force against a person who confronts an officer solely verbally and is not involved in criminal conduct.*

Our current policy and training are very clear, if an encounter is only verbal, we attempt to de-escalate, and force is NOT authorized until appropriate criteria is met.

- *Prohibit officers from using deadly force solely to protect persons who pose a risk of harm only to themselves.*

Under our current policy, this would already be prohibited as deadly force can only be used when the risk of harm is to the officer or another person.

- *Prohibit shooting at a target that is not clearly in view.*

Most deadly force encounters occur within 7 feet, and the department is unsure of when a target would not be clearly in view. In training, officers are taught about the principles of marksmanship. Sight picture, sight alignment, etc. are taught in entry level training and reinforced over time.

- *Limit intentional weapon strikes to the head only to situations when deadly force is authorized.*

This is already consistent with the information provided officers in training.

- *Prohibit officers from conducting an off-leash deployment of a canine to apprehend a person who does not pose an imminent risk to a police officer or another person.*

The department considers patrol canines to be less-lethal tools, akin to a protective instrument.

Discussion Question #8: *What does the Council currently believe is the appropriate use for no-knock warrants?*

CAO Response: This discussion question was posed to the Council; however the Executive Branch would also refer to the department’s provided statement on the legitimate need to utilize, at times, no-knock search warrants.

Discussion Question #9: *Is it possible that any modifications to MCPD no-knock warrant policies or practices could address the racial and ethnic disparities in those present during forced entry searches?*

CAO Response: The department adamantly states that the race or ethnicity of the occupants of a location is **never** a factor in determining whether a warrant is to be sought as a “no-knock” warrant.

The Executive Branch appreciates the work of the OLO, particularly Aron Trombka, for this report. It is part of the vital discussion that surrounds this topic. The Montgomery County Police Department remains committed to transparency and to being a data-driven, evidence based, 21st century policing agency.

We look forward to discussing these items at the Council work session.

RM/my

cc: Fariba Kassiri, Deputy Chief Administrative Officer, Office of the County Executive
Earl Stoddard, Assistant Chief Administrative Officer, Office of the County Executive
Tricia Swanson, Director of Strategic Partnerships, Office of the County Executive
Marc Yamada, Chief of Police, Department of Police

OLO Report 2024-24

List of Appendices

- A Bill 27-20
- B MCPD Policy Directive, FC #131, Response to Resistance and Use of Force
- C MCPD Policy Directive, FC #714, Search and Seizure Warrants
- D MCPD Headquarters Memorandum 02-13, Lateral Vascular Neck Restraint
- E MCPD Use of Force Reporting Form
- F Maryland Police Training and Standards Commission Use of Force Best Practices
- G Policing Project Use of Force Guidelines
- H July 10, 2024 Letter from the Chief of Police
- I U.S. Department of Justice Memorandum, Chokeholds & Carotid Restraints; Knock and Announce Requirement
- J National Tactical Officers Association, No-Knock Warrant Service Position Statement

Expedited Bill No. 27-20
Concerning: Police – Regulations – Use of Force Policy
Revised: 07/29/2020 Draft No. 11
Introduced: June 16, 2020
Enacted: July 29, 2020
Executive: August 10, 2020
Effective: August 10, 2020
Sunset Date: None
Ch. 24, Laws of Mont. Co. 2020

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmembers Jawando, Rice, Navarro and Albornoz
Co-Sponsors: Council Vice-President Hucker, Councilmember Riemer, Council President Katz, and
Councilmembers Friedson and Glass

AN EXPEDITED ACT to:

- (1) require the Police Chief to adopt a policy directive regarding the use of force;
- (2) require the use of force policy to include certain minimum standards; and
- (3) generally amend the County law regarding use of force by members of the police and policing.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-80

By adding

Montgomery County Code
Chapter 35, Police
Section 35-22

Boldface	<i>Heading or a defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland, approves the following act. :

1 **Sec 1. Section 33-80 is amended and 35-22 is added as follows:**

2 **33-80. Collective bargaining.**

3 * * *

4 (c) ~~[[Exemption]]~~ Exemptions.

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

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

13 * * *

14 **35-22. Police use of force policy and no-knock warrant policy – minimum**
15 **standards.**

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

18 Alternatives means tactics and methods used by a law enforcement
19 officer to effectuate an arrest that do not unreasonably increase the risk
20 posed to the law enforcement officer or another person, including
21 verbal communication, distance, warnings, deescalation tactics and
22 techniques, tactical repositioning, and other tactics and techniques
23 intended to stabilize the situation and reduce the immediacy of the risk
24 so that more time, options, and resources can be called upon to resolve

25 the situation without the use of force. With respect to the use of deadly
26 force, such term includes the use of less lethal force.

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

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

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

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

46 Necessary means that another reasonable law enforcement officer
47 would objectively conclude, under the totality of the circumstances,
48 that there was no [[reasonable]] alternative to the use of force.

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

54 [[Reasonable alternatives means tactics and methods used by a law
55 enforcement officer to effectuate an arrest that do not unreasonably
56 increase the risk posed to the law enforcement officer or another person,
57 including verbal communication, distance, warnings, deescalation
58 tactics and techniques, tactical repositioning, and other tactics and
59 techniques intended to stabilize the situation and reduce the immediacy
60 of the risk so that more time, options, and resources can be called upon
61 to resolve the situation without the use of force. With respect to the use
62 of deadly force, such term includes the use of less lethal force.]]

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

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

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

71 Totality of the circumstances means all credible facts known to the law
72 enforcement officer leading up to and at the time of the use of force,

73 including the actions of the person against whom the law enforcement
74 officer uses such force and the actions of the law enforcement officer.

75 (b) Use of force policy directive – required.

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

78 (2) The directive must:

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

80 (B) promote fair and unbiased policing; and

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

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

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

93 (2) prohibit a member of the police from using deadly force[[,
94 including a neck restraint or carotid restraint,]] against a person
95 unless:

96 (A) such force is necessary, as a last resort, to prevent

- 97 imminent and serious bodily injury or death to the officer
98 or another person; and
99 (B) the use of such force creates no substantial risk of injury
100 to a third person; [[and
101 (C) reasonable alternatives to the use of such force have been
102 exhausted;]]
103 (3) prohibit a member of the police from using deadly force against
104 a fleeing person unless:
105 (A) such force is necessary, as a last resort, to prevent
106 imminent and serious bodily injury or death to the officer
107 or another person;
108 (B) the use of such force creates no substantial risk of injury
109 to a third person; and
110 (C) reasonable suspicion exists that the fleeing person
111 committed a felony that threatened or resulted in death or
112 serious bodily injury;
113 (4) prohibit a member of the police from striking a restrained
114 individual;
115 ~~[(4)]~~ (5) require a member of the police to stop, or attempt to stop,
116 and to report to a supervisor, another officer who is using
117 excessive force, violating the use of force policy, or committing
118 a crime; [[and]]
119 ~~[(5)]~~ (6) protect a member of the police from retaliation or
120 discipline for taking action under paragraph ~~[(4)]~~ (5);

- 121 (7) prohibit a member of the police from using a neck restraint or a
122 carotid restraint against an individual;
- 123 (8) prohibit a member of the police from shooting from a moving
124 vehicle unless circumstances would authorize the use of deadly
125 force;
- 126 (9) prohibit a member of the police from shooting at a moving
127 vehicle unless the vehicle is being used as a weapon and the
128 circumstances would authorize the use of deadly force; and
- 129 (10) prohibit any less lethal force unless such less lethal force is
130 necessary and proportional in order to effectuate an arrest of a
131 person who the officer has probable cause to believe has
132 committed a criminal offense, and only after exhausting
133 alternatives to the use of such force.
- 134 (d) *Policy directive regarding knocking and announcing entry into a*
135 *residence - required.* The Chief of Police must issue a policy directive
136 that regulates when a member of the police may:
- 137 (1) seek or participate in the execution of no-knock warrants; or
138 (2) enter private premises without first knocking and announcing the
139 member's presence.
- 140 (e) *Minimum requirements for policy directive regarding no-knock entries*
141 *into private premises.* The policy directive issued under subsection (d)
142 must, at a minimum, require that:
- 143 (1) only an officer assigned to the Montgomery County Police
144 Special Weapons and Tactics (SWAT) Team may participate in

- 145 the execution of a no-knock warrant;
- 146 (2) a member of the police may not enter into private premises
- 147 without first knocking and announcing the member's presence
- 148 unless:
- 149 (A) exigent circumstances exist;
- 150 (B) other methods of serving a warrant, including methods
- 151 which would mitigate risk, have been considered and have
- 152 been determined to:
- 153 i. pose unacceptable risk to the life or safety of
- 154 executing officers or another person; or
- 155 ii. be futile;
- 156 (C) the crime being investigated is:
- 157 i. a crime of violence as defined in Section 14-101(a)
- 158 of the Criminal Law Article of the Maryland Code;
- 159 ii. related to firearms possession;
- 160 iii. related to a warrant obtained under Section 5-607 of
- 161 the Public Safety Article of the Maryland Code;
- 162 iv. related to child abuse;
- 163 v. related to child pornography;
- 164 vi. related to domestic violence; or
- 165 vii. related to terrorism; and
- 166 (D) at least one of the following factors is present:
- 167 i. reasonable suspicion that a person is present at the
- 168 location who has demonstrated a propensity for

- 169 violence; or
- 170 ii. reasonable suspicion that entry into the location has
- 171 been fortified, is “booby trapped”, or has unique
- 172 characteristics which would make knocking and
- 173 announcing one’s presence inherently unsafe; and
- 174 (3) a member of the police may not enter private premises without
- 175 first knocking and announcing the member’s presence if the sole
- 176 purpose of entering the premises is to prevent the destruction of
- 177 evidence.
- 178 (f) The Chief of Police annually must provide a public report indicating
- 179 the number of no-knock search warrants served by the Montgomery
- 180 County Police SWAT team, including statistics on the number of
- 181 warrants served:
- 182 (1) on behalf of the Montgomery County Police Department; and
- 183 (2) on behalf of another agency at a location within Montgomery
- 184 County.
- 185 (g) The Chief of Police, in consultation with impacted persons, the Police
- 186 Advisory Commission, communities, and organizations, including
- 187 representatives of civil and human rights organizations, victims of
- 188 police use of force, and representatives of law enforcement
- 189 associations, must provide written guidance regarding:
- 190 (1) the types of less lethal force and deadly force that are prohibited
- 191 under this Section; and
- 192 (2) how a law enforcement officer may assess whether the use of

193 force is appropriate and necessary, and how to use the least
194 amount of force necessary, when interacting with all individuals,
195 including:

- 196 (A) pregnant individuals;
- 197 (B) children and youth under age 21;
- 198 (C) elderly persons;
- 199 (D) persons with mental, behavioral, or physical disabilities or
200 impairments;
- 201 (E) persons experiencing perceptual or cognitive impairments
202 due to use of alcohol, narcotics, hallucinogenic, or other
203 drugs;
- 204 (F) persons suffering from serious medical conditions; and
- 205 (G) persons suffering from mental health concerns.

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

- 208 (1) must dictate the conduct of members of the county police in the
209 performance of their duties; [(and)]
- 210 (2) must not be construed to alter standards of civil or criminal
211 liability;
- 212 (3) must not be construed to create private rights enforceable by any
213 person or individual; and
- 214 (4) must not be construed to alter state or federal rules of evidence.

215 [(e)] *Collective bargaining.* The minimum standards of the policy directive
216 under subsection (c) of this Section:


- 217 (1) must not be construed to be mandatory subjects of collective
218 bargaining under Section 33-80(a); and
219 (2) must be considered employer rights not subject to collective
220 bargaining under Section 33-80(b).]]

221 **Secs. [35-22] 35-23 – 35-26.** Repealed by 1979 L.M.C., ch. 6, § 2.

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

225 **Sec. 3. Implementation.** The Police Chief must issue the [[use of force
226 policy]] policies required under this Act, and the written guidance required under
227 this Act, within 6 months after the effective date of the Act.

Approved:



Sidney Katz, President, County Council
7/29/2020
Date

Approved:



Marc Elrich, County Executive
8/10/2020
Date

This is a correct copy of Council action.



Selena Mendy Singleton, Esq., Clerk of the Council
8/9/2020
Date



RESPONSE TO RESISTANCE AND USE OF FORCE

FC No.: 131

Date: 07-01-22

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).

Contents:

- I. Policy
 - II. Definitions
 - III. Force Options
 - IV. Firearms
 - V. ***Conducted Energy Weapons***
 - VI. Less-Lethal Devices
 - VII. Custody and Transport Responsibilities
 - VIII. Use of Force Reporting Requirements
 - IX. Use of Force and Weapons Review Committee
 - X. Training/Certification Requirements
 - XI. CALEA Standards
 - XII. Proponent Unit
 - XIII. Cancellation
 - XIV. Citations***
- Appendix A: Use of Force Report – MCP 37 Criteria for Use

I. Policy

- A. ***This policy establishes the manner in which all officers of the Montgomery County Department of Police (“MCPD”) may use force to achieve a legitimate law enforcement objective, when no other peaceful resolution exists, and the obligations officers have before, during, and after a use of force incident.***
- B. This policy recognizes that in certain situations, the use of force is unavoidable and there is no way to specify the exact amount or type of force to be applied in every possible situation. However, this policy serves as a guideline to all department personnel who respond every day to dynamic situations that are tense, uncertain, and rapidly evolving ***that require intervention to protect the lives of the officers or other persons.***
- C. The department respects the sanctity and dignity of every human life. The department is committed to accomplishing this mission with respect and a minimal reliance on the use of force, and by using de-escalation ***when feasible and safe to do so***, to safely resolve a situation without needing to resort to the use of force.
- D. 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.

- E. Officers may only use force *when under the totality of the circumstances, is necessary and proportional to prevent an imminent threat of physical injury to a person or effectuate a legitimate law enforcement objective. This authority is limited by the applicable laws of Montgomery County, the State of Maryland, federal law, the United States Constitution, and the provisions of this policy.*
- F. In determining the appropriate 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.
- G. The decision to employ any force, including the use of firearms, may be considered excessive by law and agency policy or both, if it knowingly exceeds a degree of force that was necessary **and proportional based** on the *totality of circumstances of the* specific situation.
- H. Use of force in response to resistance decisions are made under exceedingly varied scenarios and often on a split-second basis, **and 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.**

II. Definitions

- A. Active Resistance: Refers to any action or evasive movements a subject takes to avoid or physically counteract an officer's attempts to detain or place them in custody, and/or take control. Active resistance may include but is not limited to pushing away, tensing arm muscles to avoid handcuffing, or pulling away from an officer who is using force in response to resistance in the lawful performance of their duties.
- B. Alternatives: Tactics and methods used by a law enforcement officer to effectuate an arrest that do not unreasonably increase the risk posed to the law enforcement officer or another person, including verbal communication, distance, warnings, de-escalation tactics and techniques, tactical repositioning, and other tactics and techniques intended to stabilize the situation and reduce the immediacy of the risk so that more time, options, and resources can be called upon to resolve the situation with reduced, or without the, use of force. With respect to the use of deadly force, such term includes the use of less lethal force.¹
- C. Carotid Restraint: A technique applied in an effort to control or disable a subject by applying pressure to the carotid artery, the jugular vein, or the neck with the purpose or effect of controlling a subject's movement or rendering a subject unconscious by constricting the flow of blood to and from the brain.²
- D. De-escalation tactics and techniques: Proactive actions and approaches used by a law enforcement officer to stabilize the situation so that more time, options, and resources are available to gain a person's voluntary compliance and reduce or eliminate the need to use force, including verbal persuasion, warnings, tactical **repositioning** techniques, slowing down the pace of an incident, waiting out a subject, creating distance between the officer and the threat, and requesting additional resources to resolve the incident.³
- E. Deadly Force: Force that creates a substantial risk of causing death or serious bodily injury, including the discharge of a firearm, a carotid restraint, or a neck restraint.⁴
- F. Excited Delirium: *A state of extreme mental and physiological excitement, characterized by extreme agitation, hyperthermia, epiphora, hostility, exceptional strength, and endurance without fatigue.*
- G. Exigent: *Situations where there is a pressing or demanding need to take immediate action.*⁵
- H. Less Lethal Force: Any degree of force that is not likely to have a lethal effect.⁶

- I. Medical Treatment: A minimum of an on-scene response by a medically trained professional.
- J. ***Necessary: Force is necessary only if the officer has no other reasonable alternative(s) under the totality of the circumstances to prevent imminent physical harm or accomplish another legitimate law enforcement objective. When force is necessary, the use of force shall be used in a manner that avoids unnecessary injury or risk of injury to all persons involved.***⁷
- K. Neck restraint: A technique involving the use of an arm, leg, or other firm object to attempt to control or disable a subject by applying pressure against the windpipe or the neck with the purpose or effect of controlling a subject's movement or rendering a subject unconscious by blocking the passage of air through the windpipe.⁸
- L. ***Officers: For purposes of this policy, officers mean all sworn law enforcement personnel, and special police and security officers employed by the Security Services Division.***
- M. Passive Resistance: A refusal by an unarmed person to comply with an officer's verbal command or physical control techniques by non-active means. Examples include, but are not limited to, ignoring verbal instructions by failing to respond or move, linking arms, or going limp.
- N. 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.
- O. ***Proportional: The degree and amount of force that corresponds to, and is appropriate, in relation to the level of resistance or aggression facing the officer, or the objective that the officer is attempting to accomplish.***⁹
- P. Protective Instruments: ***Less-lethal*** 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 ***when other alternatives are unsuccessful in achieving a peaceful outcome.***
- Q. Response to Resistance: Any action other than compliant handcuffing or unresisted escorting that an officer is required to use to compel compliance to arrest an individual suspected of committing a crime, temporarily detain an individual to complete an investigation, or to address an immediate threat to the safety of the public, law enforcement officers, or persons as a result of non-compliance with a legitimate law enforcement purpose.
- R. Restrained Individual: An individual who is under control and is not actively resisting arrest by use of intentional force that threatens serious bodily injury.¹⁰
- S. Scene: The location(s) where force was utilized during an event.
- T. Serious Bodily Injury: Means bodily injury that creates a substantial risk of death, causes a serious, permanent disfigurement, or results in long term loss or impairment of any bodily member or organ.¹¹
- U. Striking: Hitting forcibly and deliberately with a weapon; a body part such as a hand, elbow, knee, or foot; or any other implement.¹²
- V. Totality of the circumstances: All credible facts known to the law enforcement officer leading up to and at the time of the use of force, including the actions of the person against whom the law enforcement officer uses such force and the actions of the law enforcement officer.¹³

- W. **Under control:** In custody and in restraints, to include handcuffs, and/or is calm and non-combative that it is clear and unambiguous that the subject is compliant.
- X. **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.*

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. All officers have a number of force options available to use in those situations where force is necessary **and proportional under the totality of the circumstances**. 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
 6. To overcome resistance directed at the officer or others
 7. To prevent physical harm to the officer or to another person
- C. **Officers will when time, circumstances, and safety allow, take steps to gain compliance and de-escalate conflict without using physical force. De-escalation may include slowing a situation down so that time, distance, cover, and assembling additional resources can be used to an officer's advantage to stabilize the situation and reduce the immediacy of the threat.**
- D. **Officers shall not intentionally escalate a situation or create the need to use force unless necessary to achieve a lawful purpose. The dynamics of any situation can quickly change which may cause the officer(s) to escalate or de-escalate the type, degree, and amount of necessary and proportional force they are using against an individual.**
- E. **Officers are not required to jeopardize their own safety by pursuing alternatives that are not reasonable under the totality of the circumstances—circumstances which are likely to include, among other things, the amount of time that the officer has to make a decision and the immediacy of the threat facing the officer.**
- F. **Officers responding to an attack do not necessarily need to use the exact same type, degree, or amount of force as a subject.**

- G. Officers may not use, or threaten to use, force for the following reasons:
1. To resolve a situation more quickly, unless the extended delay would risk the safety of the person involved, officers, or others, or would significantly interfere with other legitimate law enforcement objectives;
 2. To punish a person or to retaliate against them or to impose punishment;
 3. Based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected classification.
- H. *Officers shall cease the use of force as soon as the person on whom the force is used:*
1. *is under the police officer's control;*
 2. *no longer poses an imminent threat of physical injury or death to the police officer or to another person; or*
 3. *the officer(s) determine that force will no longer accomplish a legitimate law enforcement objective.*
- I. A person need not strike or attempt to strike an officer to be considered a physical threat (verbal threats, verbal defiance, physical stance, etc.) as long as an officer *believes* that the person is physically threatening and has the present ability to harm the officer or another *person*.
1. Examples of actions or observations that may lead an officer to believe that a person is a threat include, but are not limited to:
 - a. clenched fists;
 - b. displayed hostility or anger;
 - c. verbal threats;
 - d. aggressive stance;
 - e. non-compliance *with lawful commands*, and
 - f. furtive movements, among other things.
 2. Under the law, officers are not obligated to retreat when confronted with a threat.
- J. The department relies on the officer's judgment and discretion to employ necessary *and proportional* force under *the totality of the circumstances of each situation*.
- K. *The more immediate the threat and the more likely that the threat will result in death or serious bodily injury, the greater the level of force that may be necessary and proportional to counter it.*

L. Authorized Use of Less Lethal Force

1. Less-Lethal force, as defined herein, may be used if necessary and proportional in order to affect the constitutionally permissible detention of an individual. Examples of such constitutional detentions include, but are not limited to:
 - a. When the officer has probable cause to believe the individual has committed a criminal offense;
 - b. To effect an investigative detention; or
 - c. To effect service of an Emergency Evaluation Petition, Extreme Risk Protective Order, or other similar civil order.
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 *and equipment*, in exigent circumstances, officers are not prohibited from using *any weapons, means*, object, or instrument *at their disposal regardless of their training and/or the object's intended purpose*, in order to *defend* themselves or others as long as the *weapons, means*, object *or instrument* is used in accordance with this policy.

M. Authorized Use of Deadly Force

1. Officers may use deadly force if such force is necessary, as a last resort due to a lack of reasonable and safe alternatives, to defend themselves or another person from what they reasonably believe is an imminent threat of death or serious physical injury. Such force must not create substantial unnecessary risk of injury to a third person.
2. Officers may only use deadly force against a fleeing person if:
 - a. Such force is necessary, as a last resort due to a lack of reasonable and safe alternatives, to prevent imminent and serious bodily injury or death to the officer or another person;
 - b. The use of such force creates no substantial unnecessary risk of injury to a third person; and
 - c. **Probable cause** exists that the fleeing person committed a felony that threatened or resulted in death or serious bodily injury.
3. ***When practical, officers shall attempt to identify themselves as a law enforcement officer and state their intention to use deadly force before using a firearm or employing deadly force.***

N. Unauthorized Use of Force:

Officers are prohibited from the following *actions*:

1. Utilizing a neck or carotid restraint against an individual unless the use of deadly force would be authorized;
2. Shooting at a moving vehicle unless the vehicle is being used as a weapon and/or the circumstances would authorize the use of deadly force;

3. 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;
 4. Shooting from a moving vehicle unless circumstances would authorize the use of deadly force;
 5. Striking a *handcuffed*/restrained individual, ***unless the individual poses an imminent threat of serious bodily injury or death to the officer(s) or another person;*** or
 6. Firing warning shots.
- O. Factors to Consider when Employing Force in Response to Resistance:
1. ***The department relies on the officer's judgment and discretion to employ necessary and proportional force based on the totality of the circumstances of each encounter.***
 2. Factors to consider in ***the evaluation and articulation of the totality of the circumstances*** include, but ***are*** not limited to:
 - a. The seriousness of the crime or suspected offense;
 - b. Whether the subject was posing an immediate threat to officers or a danger to the community;
 - c. The level of threat or resistance presented by the subject;
 - d. The potential for injury to bystanders, officers, or subjects;
 - e. The risk or apparent attempt by the subject to escape;
 - f. Pre-assault indicators - The subject's actions and statements (as reasonably perceived by the officer at the time);
 - g. The time available to an officer to make a decision;
 - h. The training and experience of the officer;
 - i. The availability of and proximity or access to weapons by the subject;
 - j. Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion, and the number of officers available versus number of subjects;
 - k. Whether there is a hostile crowd present at the scene that threatens the safety of officers or others;***
 - l. Environmental factors such as night, day, snow, ice, terrain, etc.
 - m. Known or perceived physical disability and/or perceived abilities of the subject (e.g., known police fighter);
 - n. Previous violent or mental history of the subject known to the officer at the time;
 - o. Perception of the use of alcohol and/or drugs by the subject;

- p. Officer on the ground or other unfavorable position that could compromise the officer's safety and their ability to defend themselves and the safety of bystanders; and
- q. Any other exigent circumstances.

P. 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 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 a CEW. 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

- 1. Firearms may be drawn whenever officers reasonably fear for their safety or the safety of others.
- 2. ***Officers shall only point a firearm at an individual when circumstances create a reasonable belief that it may be immediately necessary for the officer to use deadly force. When the officer no longer reasonably believes that deadly force may be immediately necessary, the officer shall, as soon as practicable, secure or holster the firearm.***
- 3. ***Although the use of an officer's service weapon under the right circumstances can discourage resistance and ensure officer safety in potentially dangerous situations without the need to resort to actual force, unnecessarily or prematurely drawing a service weapon can limit an officer's force options in controlling a situation, unnecessarily escalate an encounter, and may result in an unwarranted or negligent discharge of the service weapon.***

B. Consideration of Backstop

- 1. When discharging a firearm for any reason, officers must exercise reasonable caution in order to avoid unnecessarily endangering the lives of bystanders.
- 2. When possible, officers should give consideration to background, bystanders, and *location prior to discharging a firearm.*

V. *Conducted Energy Weapons*

- A. A *conducted energy weapon (CEW)* is a less-lethal weapon, the deployment of which is a serious use of force.
- B. A *CEW* 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 *CEW*.
- C. Use of the *CEW* will be in accordance with the guidance set forth in the department's *Conducted Energy Weapons* policy (FC 133).

VI. *Less-Lethal Devices*

- A. Less-Lethal Devices are intended to provide a less-lethal use of force option with greater standoff distance than other protective instruments. Officers using these devices will be trained in their use, shall maintain any certifications as required, and shall utilize these devices consistent with the training provided.
- B. All officers who use these devices must ensure that any person struck with a projectile and in custody receives a prompt medical evaluation by emergency medical services and, if necessary, treatment at a hospital. Officers will request that the appropriate emergency medical service provider transport the person.
- C. If emergency medical *services* refuse to transport the person an on-scene supervisor will ensure the person is transported to the hospital by an officer, and the refusal is documented in an incident report. Photos of all injuries will be taken.

VII. *Custody and Transport Responsibilities***A. Important Considerations**

- 1. 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;
 - a. Excited Delirium
 - b. Alcohol or drug use/abuse
 - c. Obesity
 - d. Display of erratic/psychotic behavior
 - e. Incoherent speech
 - f. State of agitation
 - g. Subject intentionally injuring themselves
 - h. Subject disrobing or naked

2. 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, and the safety of the officers and bystanders is no longer at risk.
- 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 provide and obtain medical treatment consistent with their training as soon as it is safe and practical for individuals:

1. Who show signs of injury as a result of any use of force;
2. Who request 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).
 - b. ALS units carry medication which can assist in treating individuals suffering from excited or agitated delirium.
5. Who have been exposed to ***any less-lethal force option including a CEW, protective instrument, or projectile.***
6. ***If it becomes necessary for an officer to transport an individual directly to the closest available medical treatment facility based on exigent circumstances, officers shall immediately notify a supervisor for authorization to do so.***

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.
2. 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).

3. Tactical Medics will also document any refusal of medical treatment and/or transport according to Maryland Medical Protocols.
 4. 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.
 5. 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 *services* personnel meet the officers at a nearby location to assess the subject and render aid.

VIII. Use of Force Reporting Requirements

- A. All uses of force must be submitted on an MCP37 and be documented on an incident report. If multiple officers use force on an event, each officer's use of force must be articulable on its own merits.
- B. Each officer who uses *or observes a use of force as defined in this policy*, is ordered to report the use of force accurately and completely on an incident or supplemental report by the end of their tour of duty. Exceptions *to this requirement are when* an officer:
1. *Uses* Deadly force;
 2. *Uses* force that causes death or serious injury;
 3. Discharges their firearm in any other incident (other than destroying seriously injured or aggressive wildlife or in training), will not complete an incident report. Another officer will complete the incident report in these cases; or *is*
 4. *Injured or disabled and unable to do so.*
- C. 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 the intentional use of any physical effort(s), other than compliant handcuffing or unresisted escorting, are used in order to control, restrain, or place an individual in custody.*
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.
 8. ***Anytime a service weapon, CEW, and/or OC spray is pointed at an individual.***
 - a. ***In those incidents involving Tactical Section officers and Special Events Response Team (SERT) operations and tactics, the following exemption applies:***
 - i. ***the act of sweeping, scanning, or covering an area with a service weapon, CEW, or OC spray while trying to assess/identify potential threats does not constitute a documentable use of force for purposes of this policy;***
 - ii. ***documentation (i.e., MCP 37 and any required event/supplemental reports) is required when an individual is identified as a threat and any service weapon, CEW, or OC Spray is pointed at the individual in an attempt to gain his or her compliance; and***
 - iii. ***although other officers may find themselves in a rare situation similar to that described during Tactical Section and/or SERT operations, the Tactical Section and SERT exemption does not extend to those activities and a MCP 37 and applicable incident/supplement reports are required.***
- D. One Subject - One MCP 37
1. When multiple officers are involved in a response to resistance/use of force incident with one subject, it will be considered a single event for reporting purposes.
 2. Only one MCP 37 is needed unless more officers are involved than can be documented on a single MCP 37; in that case, additional MCP 37s must be completed ***referencing the same CR#***. However, each officer is involved in using force, and the force used by each officer, must be documented on the MCP37.
- E. Multiple Subjects - Multiple MCP 37s
1. When response to resistance/force is used against more than one subject in an incident, a separate MCP 37 must be completed for each subject.
 2. In those instances, where ***SERT*** tactics are used for crowd/riot control during mass disturbances/protests that involve a response to resistance/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.
- F. The MCP 37 will be completed prior to the end of the tour of duty and submitted to a supervisor, along with the required incident report and/or supplements. The report 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.
- G. The MCP 37 will be used administratively to evaluate response to resistance/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.

H. Officer's Responsibilities

1. In every circumstance described in Section VIII.C. above, officers are required to adhere to the following *requirements*:
 - a. 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.
 - b. 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.
 - c. The reporting officer(s) 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.

I. Supervisor's Responsibilities

1. An *on-scene officer* will immediately notify an on-duty patrol supervisor of, and the on-duty supervisor will respond to:
 - a. all *CEW* deployments;
 - b. firearm discharges (except for the humane destruction of non-domestic animals);
 - c. less-lethal device deployment; and
 - d. any use of force that results in any injury that requires first aid, medical treatment, or transportation to a medical facility, or in-custody death.

Note: Supervisors are required to notify the Duty Commander, or a District Executive of the district of occurrence during daytime hours Monday-Friday, of any of the above incidents.
2. 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 unintentional 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 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.

In addition to the above notifications, supervisors shall also:

- 3. Complete the MCP 37 if the officer is unable to complete it.
- 4. Review the submitted MCP 37 and any required supplements for accuracy and completeness.
- 5. Review any ***body worn camera system (BWCS) and mobile video system (MVS)*** recordings when officers are involved in a reportable response to resistance/use of force incident. Supervisors shall report potential violations of law or policy through their chain of command in accordance with departmental procedures.
- 6. Ensure that an incident report and any additional reports are completed and submitted if required.
- 7. In incidents involving 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.
- 8. Forward the MCP 37 and any required supplement reports to the bureau chief via the chain of command prior to the end of the tour of duty.
- 9. 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 IAD for review.
- 10. 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).
- 11. 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 ***policy***. The on-duty supervisor will ***ensure that an MCP 37 is completed and submitted which will automatically be routed to the off-duty officer's supervisor.***

I. Executive Responsibilities

- 1. Executives shall review all response to resistance/use of force incidents that occur under the executives' chain of command ***to ascertain compliance with applicable laws, regulations, and the requirements of this policy.*** This will include a review by the respective employee's bureau chief or designee.

2. Executives who observe a potential violation of law or policy shall report such violation to the Director, Internal Affairs Division. This review will include:
 - a. A review of all submitted MCP 37 and associated incident reports, to include any supplement reports.
 - b. A review of all BWCS and *MVS* footage of the incident.

K. Duty to Intervene

1. Every officer has an obligation to ensure compliance, by themselves and others, with department directives and regulations, as well as all applicable laws. Officers must comply with the duty to intervene requirements of Function Code 300, Rule 6 – *Use of Force*.
2. Officers who intervene with another's actual force must report such intervention with their supervisor as soon as practical.
3. Any officer who makes such a report is protected from retaliation consistent with department policy.

L. Unknown Cause Weapons Discharge

2. Whenever a weapons system, such as a firearm, *CEW*, or less-lethal device, discharges by unknown cause, officers are to notify their supervisor immediately. Supervisors are to:
 - a. Ensure medical treatment is provided to any injured parties as provided for by department policy,
 - b. Document any damage to department or civilian property.
 - c. Secure, and treat as evidence, the weapon system and accessories (to include holster) if applicable. Supervisors shall utilize the Crime Scene Unit if necessary.
 - d. Notify a district executive or Duty Commander and the Internal Affairs Division.
2. Contact the Director, Training and Education Division (TED). The Director, TED, or designee, will ensure that:
 - a. A replacement weapon system is provided for an officer.
 - b. The affected weapon system and its' related accessories are seized, treated as evidence, and examined by internal and, if necessary, external subject matter experts.
 - c. A thorough investigation is conducted, and report issued, highlighting the suspected cause of the unknown weapon discharge and, if necessary, recommendations to prevent a future occurrence.
 - d. The investigation shall be separate but cooperative and concurrent to any investigation conducted by the Internal Affairs Division. Such report shall be provided to the Chief of Police no later than 90 days after the unknown cause weapon discharge.

IX. **Use of Force and Weapons Review Committee**

- A. The Use of Force and Weapons Review Committee will ***be responsible for the following:***

1. Review *of any* use of force incidents referred by a bureau chief, as well as all in-custody deaths and intentional discharges of firearms by department personnel.
 2. Report the results of ~~this~~ *any* review, along with any conclusions or recommendations, to the Chief of Police, as requested.
 3. Focus on overall operations and procedures and not on individuals.
 4. 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. 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.
- C. The *Use of Force and Weapons Review* Committee will be comprised of:
1. At least two executive officers from the Patrol Services Bureau (PSB) - (one will be the administrative lieutenant of PSB);
 2. One executive officer from the Investigative Services Bureau;
 3. One executive officer from the Internal Affairs Division (IAD);
 4. One executive officer from the Field Services Bureau (FSB);
 5. The Executive Officer to the Chief of Police;
 6. The Director, Policy and Planning Division;
 7. A representative from the Office of the County Attorney; and
 8. The Director, Training and Education Division, who will serve as the chair of the committee.
- D. Bureau representatives will be appointed by their respective Bureau Chiefs.
- E. The committee will meet at least quarterly.
- F. The chair of the committee may create subcommittees as necessary.
- G. The Policy and Planning Division will be the *sole* repository for the MCP 37 and will provide annual reports to the committee and the FOP.
- H. The Policy and Planning Division will conduct an annual analysis of use of force activities, policies, and practices consistent with MCPD internal requirements and applicable CALEA standards. *The results of this analysis will be shared with Department executives and the Use of Force and Weapons Review Committee.*
- I. The department shall *comply with* all external *reporting requirements* as required by law.

X. Training/Certification Requirements**A. Authorization**

1. ***Each officer shall receive training on the agency's use of force policy, any pertinent legal updates, and the importance of critical decision making and de-escalation.***
2. 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, less-lethal device, or firearm.

B. Annual Certification

1. Each officer must certify annually with all approved firearms, less-lethal devices, and protective instruments that the officer is authorized to use.
2. Annual firearms certification must meet the standards of the Maryland Police *Standards* and Training Commission and department training standards.
3. Officers who attend, but fail to pass, handgun qualification shall receive remediation training as soon as possible and be provided an opportunity for additional qualification attempts. The Director, TED, shall notify the employee's respective Division Director of the failure and the need for additional remediation.
4. Failure to recertify annually on any firearm, less-lethal device, or protective instrument will withdraw from the officer the authorization to carry or utilize that force option.
5. In the case of the department-issued handgun, the weapon will be immediately turned over to range staff, and the officers' police powers suspended, until recertification is completed. In the case of all other department issued weapons (to include rifles, shotguns, protective instruments, or less-lethal devices), such equipment will be immediately turned in to a sworn academy staff member until recertification is completed.
6. Officers who fail to qualify with their off-duty handgun or personal purchase rifles are prohibited from carrying that weapon until qualified.
7. ***All use of force training, including remedial training, shall be properly documented.***

C. Use of Force Policies

1. Officers will be provided a copy of, and instruction in, the department's *response to resistance*/use of force policy prior to being authorized to carry any firearm or protective instrument.
2. ***Sworn Officers and Special Police Officers (SPOs) are ordered to sign an affirmative written sanctity of life pledge and a training completion affirmation stating that the officer/SPO understands and shall comply with the Maryland Use of Force Statute pursuant to Md. Public Safety Article 3-524.***

XI. CALEA Standards: 6th Edition, 1.2.10, 4.1.1 – 4.1.7**XII. Proponent Unit: Office of the Chief**

FC No.: 131
Date: 07-01-22

XIII. Cancellation: This *policy* cancels Function Code 131, effective date *05-17-21* and Headquarters Memorandum *22-01 dated 02-01-2022*.

XIV. Citations

1. *Montgomery County Code, Chapter 35-Police; Section 35-6A.*
2. *Montgomery County Code, Chapter 35-Police; Section 35-6A.*
3. *Montgomery County Code, Chapter 35-Police; Section 35-6A.*
4. *Montgomery County Code, Chapter 35-Police; Section 35-6A.*
5. *Merriam-Webster.com Dictionary. Merriam-Webster, <https://www.merriam-webster.com/dictionary/exigent>. Accessed 24 May 2022*
6. *Montgomery County Code, Chapter 35-Police; Section 35-6A.*
7. *Maryland Office of the Attorney General Opinion, Maryland Use of Force Statute, Memorandum to the Superintendent of the Maryland State Police dated February 25, 2022.*
8. *Montgomery County Code, Chapter 35-Police; Section 35-6A.*
9. *Maryland Office of the Attorney General Opinion, Maryland Use of Force Statute, Memorandum to the Superintendent of the Maryland State Police dated February 25, 2022.*
10. *Montgomery County Code, Chapter 35-Police; Section 6A.*
11. *Montgomery County Code, Chapter 35-Police; Section 6A.*
12. *Montgomery County Code, Chapter 35-Police; Section 6A.*
13. *Montgomery County Code, Chapter 35-Police; Section 6A.*



Marcus G. Jones
Chief of Police

B-18

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

**Appendix A
FC 131**

Incident	Instructions/Notifications	Reports Required
<ul style="list-style-type: none"> • <i>Anytime the intentional use of any physical effort(s), other than compliant handcuffing or unresisted escorting, are used in order to control, restrain, or place an individual in custody.</i> • 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 and supplement(s) forwarded via chain 	<ul style="list-style-type: none"> • Police report and supplement(s) 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
Unintentional 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
Unintentional 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 and supplement(s) forwarded via chain • Immediate notification of IAD and Homicide Section 	<ul style="list-style-type: none"> • Police report and supplement(s) 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 and supplement(s) forwarded via chain 	<ul style="list-style-type: none"> • Police report and supplement(s) 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

FC No.: 131

Date: 07-01-22

Incident	Instructions/Notifications	Reports Required
Canine (K-9) infliction of injury	• MCP 37 forwarded via chain	• Police report related to incident as required (MCP 37 referenced) • MCP 37 • MCP 741
<i>Pointing of a service weapon, CEW, or OC Spray at an individual</i>	• MCP 37 forwarded via chain	• <i>Police report and supplement(s) related to incident as required (MCP 37 referenced)</i> • <i>MCP 37</i>



SEARCH AND SEIZURE WARRANTS

FC No.: 714
Date: 10-27-22

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)

Contents:

- I. Purpose
- II. Policy
- III. Definitions
- IV. Legal Principles
- V. Search and Seizure Warrant Required
- VI. Application Requirements
- VII. Knock and Announce Exception ("No Knock" Warrant) Guidelines
- VIII. Procedure
- IX. Executing Search and Seizure Warrants
- X. Motion to Seal and Order to Seal Search and Seizure Warrant
- XI. Search and Seizure Warrants in Other Jurisdictions
- XII. CALEA Standards
- XIII. Proponent Unit
- XIV. Cancellation

I. Purpose

The purpose of this directive is to detail the responsibilities, procedures, and considerations regarding the applying for and execution of search warrants. The information provided is intended to result in a lawful search which will withstand the rigors of court, as well as uphold the rights of community members.

II. Policy

It is the policy of the Montgomery County Department of Police (MCPD) to utilize search warrants to further criminal investigations through the recovery of evidence. Search warrants can be utilized when probable cause has been established and after appropriate departmental and judicial review. Whenever it is necessary for officers to conduct search and seizure operations, the primary concern will be the rights, safety, and welfare of the community, citizens and the officers involved. Officers should periodically review Department Directives, Headquarters Memoranda, Information Bulletins, and Training Bulletins which establish boundaries for proper police conduct governing the method of entry before and during the search, as well as the search and seizure itself. Officers will follow all legal requirements regarding search warrants and will use the Warrant Threat Assessment Matrix (MCP 714) when coordinating the execution of the search warrant involving a structure or dwelling. In executing a search and seizure warrant where the premises are unoccupied, officers should seek entry in a way which will enable them to secure the premises once the search is complete. Unless otherwise impossible, officers will utilize the search warrant template and obtain search warrants electronically

This policy is binding on all MCPD employees regardless of any collateral jurisdiction the employee may hold.

III. Definitions

For purposes of this directive, the following terms have the meanings indicated.

- A. **Affiant**: *An officer who swears under oath that the information contained in an affidavit (statement of probable cause) is true.*
- B. **No-Knock Search Warrant**: *A search warrant that authorizes the executing law enforcement officer to enter a building, apartment, premises, place, or thing to be searched without knocking and announcing the officer's presence. Also referred to as the Knock and Announce Exception.*
- C. **Private Premises**: *For the purpose of this directive, a private location that is occupiable, but not necessarily occupied. Examples of this include, but are not limited to, residences, businesses, offices, or outbuildings.*
- D. **Search and Seizure Warrant**: *is an order, issued by the court, authorizing, and directing officers to search a specified person, premises, vehicle, or thing for items related to the commission of a crime.*
- E. **Search Warrant Coordinator**: *The affiant of the search warrant and/or the lead investigator. He or she is responsible for the coordination of the search warrant and completion of the MCP 714 "Warrant Threat Assessment Matrix", and the MCP 715 "Search Warrant Plan of Service" for all search warrants involving structures or dwellings. The Search Warrant Coordinator is also responsible for entering all search warrants into the MCPD Search Warrant Database.*
- F. **Search Warrant Database**: *The central repository for MCPD search warrant data. The search warrant database provides the department electronic search warrant deconfliction and data collection component. The Search Warrant Database does NOT replace the personal deconfliction methods with other investigative units as required by VIII.A.*
- G. **Search Warrant Team Supervisor**: *A designated MCPD officer of the rank of sergeant or above who will be present at the time of the execution of the search warrant and shall be the supervisor on scene for the duration of the search warrant. A senior responding officer may be assigned as the "Search Warrant Team Supervisor" if approved by an executive officer. The Search Warrant Team Supervisor is responsible for ensuring the search warrant is accurately entered into the MCPD Search Warrant Database within 10 days upon execution of the search warrant.*

IV. Legal Principles

- A. In executing a search and seizure warrant, unless there is an exception to the "Knock and Announce" requirement, officers will first announce their authority and purpose loudly enough to be heard and demand entrance. *Absent exigent circumstances, officers must wait a minimum of 20 seconds before making entry.*
- B. Force may be used to enter under the authority of a valid search and seizure warrant if the circumstances of the situation require such force.
- C. **Confidentiality/Release of Information**
 - 1. The fact that a search and seizure warrant has been applied for or issued shall not be made public until the search and seizure warrant has been executed. After the search and seizure warrant has been executed, the warrant, inventory, and other papers filed with the court clerk shall be confidential. Authority: Maryland Rule 4-601(h).

2. *Search and seizure warrants should not be released absent court order unless for the purposes of criminal discovery in the associated criminal case.*
3. As appropriate, officers will advise the Public Information *Office* of the names, addresses, and ages of adults arrested as the result of the execution of the search and seizure warrant; information concerning property contained in the inventory, individuals named in the search and seizure warrant, or other papers connected with the search and seizure warrant shall not be released by the officer, except the general nature of evidence may be released if deemed appropriate.

D. Inventory

An officer shall make and sign a written inventory of all property seized under a search warrant. At the time the search warrant is executed, a copy of the inventory together with a copy of the search warrant, application, and supporting affidavit, except an affidavit that has been sealed by order of court, shall be left with the person from whom the property is taken if the person is present or, if that person is not present, with the person apparently in charge of the premises from which the property is taken. If neither of those persons is present at the time the search warrant is executed, the copies shall be left in a conspicuous place at the premises from which the property is taken. The officer preparing the inventory shall verify it before completing the inventory. The search warrant team supervisor, or executive approved senior ranking officer, shall review the evidence seized to ensure it is noted on the inventory. Upon the expiration of the order sealing an affidavit, the affidavit shall be unsealed and delivered within 15 days to the person from whom the property was taken or, if that person is not present, the person apparently in charge of the premises from which the property was taken.

E. Return

The original of the search and seizure warrant, the MCP 560, "Search Warrant Inventory Report and Return," and the MCP 558, "Search Inventory," shall be returned to the issuing judge or duty judge, as promptly as possible and, in no event, longer than ten days from the date of execution, *consistent with Maryland law*.

F. Unexecuted Search and Seizure Warrants

A search and seizure warrant not served within **10 calendar** days of its issuance becomes void and shall not be served unless updated and reissued by a judge. *Unexecuted search warrants must be returned to the issuing judge or duty judge.*

V. Search and Seizure Warrant Required

- A. Officers conducting a search and seizure where any party has a reasonable expectation of privacy governed by the Fourth Amendment, in the person, place, vehicle, physical property or premises searched must have a search and seizure warrant or meet the criteria for one of the exceptions to the warrant requirement.
- B. This section does not prohibit, nor necessarily require, an officer from obtaining a search and seizure warrant if an exception to the warrant requirement exists. The court prefers searches and seizures conducted pursuant to warrants.

VI. Application Requirements

- A. The following are needed for the application and search and seizure warrant:
 1. Specifically identify the person, place, or thing to be searched. Confirm the information is current for the suspect or target with multiple sources, if possible (e.g., postal service, utility bills, *Motor Vehicle Administration* (MVA), criminal history, etc.).
 2. Specifically identify the person(s) or thing(s) to be seized.

3. Articulate the probable cause in the application.
4. Ensure that the person, place, or thing(s) to be searched and/or seized which is listed on the search and seizure warrant application matches the person, place, or thing(s) listed on the search and seizure warrant.
5. A detailed list of each specific item or information to be seized must be listed in both the application and search and seizure warrant.
6. Establish a connection between the crime, the location to be searched, and the items to be seized.
7. The application and search and seizure warrant must be supported by oath or affirmation. The officer should include the officer's experience, training, and/or expertise that would lead a reasonable officer to believe the evidence could be present.
8. The affiant will attempt, when practical, to corroborate all information provided in the application of probable cause whether personally obtained or obtained second hand.
9. If facts and circumstances supporting a "No-Knock Exception" exists (i.e., a crime as enumerated in *VII.D.1*, violent criminal history, firearms), ***all the above criteria must be met (refer to VII.D) and documented in the search warrant. A consultation with the Special Operations Division (SOD) is required. It must then be approved as outlined in XIII.C.***
10. The search and seizure warrant must be issued by a Maryland judge ***or Federal judge for federal investigations***. Search and seizure warrants to be served within Maryland, but outside of Montgomery County, must be issued by a District Court Judge ***or cross-designated Circuit Court Judge***. Search and seizure warrants to be served within Montgomery County may be issued by either a District Court or Circuit Court Judge.

11. Search Warrant Template

Officers will use the MCPD search warrant template as a standard guide when completing a search warrant. The search warrant template will be available on the Administrative Web Board.

NOTE: Investigators requiring a warrant in a jurisdiction outside of Maryland must contact law enforcement within that jurisdiction for further guidance.

VII. Knock and Announce Exception ("No-Knock" Warrant) Guidelines

A. An application for a "No Knock" Search Warrant may be made to a judge if approved in writing by a police supervisor, appropriate Investigative Services Bureau (ISB) executive and the Montgomery County State's Attorney's Office. A "No-Knock" search warrant cover page will be submitted with the search warrant application. This form can be located in PowerDMS and SharePoint.

B. Application

An application for a "No Knock" Search Warrant can be made only if there is reasonable suspicion to believe that, without the authorization the life or safety of the executing officer or another person may be endangered and must include:

- 1. A description of the evidence in support of the application.***
- 2. An explanation of the investigative activities that have been undertaken and the information that has been gathered to support the request for a No-Knock search warrant.***
- 3. An explanation of why the affiant is unable to detain the suspect or search the premises using other, less invasive methods.***
- 4. An acknowledgement that any police officer who will execute the search warrant have successfully completed the same training in breach and call-out entry procedures as SWAT team members. To comply with this requirement, the applicant will include the statement that "Per MCPD policy, only members of the Special Operations Division, Tactical Section (SWAT) team may execute a "No-Knock" search warrant. All MCPD SWAT team members have been fully trained in breach and call-out entry procedures".***

5. *A statement as to whether the search warrant can effectively be executed during daylight hours and, if not, what facts or circumstances preclude effective execution in daylight hours.*
 6. *A list of any additional occupants of the premises by age and gender, as well as an indication as to whether any individuals with cognitive or physical disabilities or pets reside at the premises, if known.*
- C. *A No-Knock search warrant shall be executed between 8:00 A.M. and 7:00 P.M. absent exigent circumstances.*
- D. Officers may only seek a "knock and announce" exception when:
1. *The life or safety of the executing officer or another person may be endangered; and*
 2. The investigation is a crime of violence as defined in Section 14-101(a) of the Criminal Law Article of the Maryland Code, which are:
 - abduction
 - arson in the first degree
 - kidnapping
 - manslaughter, except involuntary manslaughter
 - mayhem
 - maiming, as previously proscribed under former Article 27, §§ 385 and 386 of the Code
 - murder
 - *1st and 2nd degree* rape
 - robbery under § 3-402 or § 3-403 of the Maryland Code
 - carjacking
 - armed carjacking
 - use of a handgun in the commission of a felony or other crime of violence
 - an attempt to commit any of the crimes above
 - assault in the first degree
 - assault with intent to murder
 - assault with intent to rape
 - assault with intent to rob
 - assault with intent to commit a sexual offense in the first degree; and
 - assault with intent to commit a sexual offense in the second degree
 3. related to firearms possession;
 4. related to a warrant obtained under Section 5-607 of the Public Safety Article of the Maryland Code;
 5. related to child abuse;
 6. related to child pornography;
 7. related to domestic violence; or
 8. related to terrorism
- E. Additionally, at least one of the following factors must be present:
1. reasonable suspicion that a person is present at the location who has demonstrated a propensity for violence; or
 2. reasonable suspicion that entry into the location has been fortified, is "booby trapped", or has unique characteristics which would make knocking and announcing one's presence inherently unsafe.
- F. A no-knock entry can be made at the discretion of the *SWAT* supervisor, regardless if the warrant applied for was a no-knock warrant, on-scene depending on the exigent circumstances (e.g., the life or safety of the executing officer or another person may be endangered) that present themselves at the time of the execution of the search and seizure warrant. The justification for this type of entry will be documented in an incident or raid report by the *SWAT* supervisor who orders the no-knock entry.

- G. SWAT will execute all "No-Knock" search warrants, any search warrant in which the MCP 714 "Warrant Threat Assessment Matrix" risk factors direct the Search Warrant Coordinator to consult the SWAT Supervisor who deems it appropriate for *SWAT* to execute the search warrant, and any search and seizure warrant where special hazards exist. If information in the Warrant Threat Assessment Matrix indicates a safety concern to the SWAT supervisor making entry, the detective or officer will be directed go back to the judge *and State's Attorney* to request an exception to the "Knock and Announce" requirement. unless the additional information was discovered just prior to serving the warrant. The execution of such warrants will be at the discretion of the *SWAT* Sergeant, or designee. Only those officers who personally and physically verified the door description will be authorized to identify the door for an entry made by SWAT.

VIII. Procedure

A. Deconfliction

Any sworn law enforcement officer has the statutory ability to apply for a search and seizure warrant. Officers are required to obtain warrants prior to conducting searches when required by state law, or when required under judicial jurisprudence. However, officers should be aware that a search warrant and its application, unless sealed, may be subject to public inspection. Their service will likely ensure that the suspects in the investigation become aware of the existence of a law enforcement investigation. The department has investigative units, *allied agencies* and federal partners, that are involved in lengthy and complex investigations. A search warrant, while well intentioned, could unwittingly undermine years of investigative effort. *Deconfliction revolves around well-implemented and monitored participation in electronic event deconfliction (Search Warrant Database) as well as through continued personal coordination.* Prior to obtaining a search and seizure warrant for the following types of offenses, or if the investigation has a nexus to one of these offenses, officers must deconflict with the appropriate units:

1. Controlled Dangerous Substances — Special Investigations Division, Drug Enforcement Section
2. Human Trafficking - Special Investigations Division, Vice and Intelligence Unit
3. Prostitution - Special Investigations Division, Vice and Intelligence Unit
4. Organized Street Crime (Gang) - Special Investigations Division, Criminal Street Gang Unit
5. Firearms - Special Investigations Division, Firearms Investigation Unit

- B. Before an affidavit for a search and seizure warrant is presented to a district or circuit court judge, it will be reviewed by an executive officer to ensure there is, amongst other legal requirements, sufficient probable cause, lack of staleness, and that the address and items to be searched for are consistent throughout the document. An affidavit for a controlled dangerous substance search and seizure warrant will be reviewed by an executive officer through the Special Investigations Division (SID).

C. Knock and Announce Exception Review and Approval

1. *If an affidavit for a search and seizure warrant contains a No-Knock Exception, in addition to supervisory and appropriate ISB executive review, the officer must also have the warrant approved by the State's Attorney for Montgomery County.*
2. *The appropriate ISB executive will review and, if approved, contact the appropriate division chief of the State's Attorney's Office (SAO).*
3. *The appropriate SAO division chief will review, and if approved, will contact The State's Attorney for Montgomery County.*
4. *If approved in writing/electronically by the ISB division executive and The State's Attorney for Montgomery County, the applicant may proceed to judicial approval.*

D. Process of Submitting an Electronic Warrant for Judicial Review

1. During Business Hours:
 - a. For Circuit Court: During business hours, Officers shall contact the Montgomery County Circuit Court Assignment Office at (240) 777-9000. Officers shall inquire as to the name of the "Duty Judge" and his/her administrative aid. Officers shall then send an email to the duty judges administrative aid, with the search warrant as an attachment.
 - b. For District Court, officers are to contact the judges' administrative aids at (301)563-8870 (Rockville) or (301) 563-8520 (Silver Spring) and inquire as to the name of the "EEP Judge". Officers shall send an email to the EEP Judge with the warrant as an attachment.
2. Outside of business hours, officers are to contact the District Court Commissioner, who will provide the after-hours duty judge's name and email address.

E. MCP 714, "Warrant Threat Assessment Matrix."

The MCP 714 must be completed and given to the *investigative* supervisor to be reviewed, along with the search and seizure warrant *prior to the execution of the search warrant*. The MCP 714 will be used by every Search Warrant Coordinator to assess the risk factors related to all search warrants involving a structure or dwelling. In instances where the MCP 714 risk factors direct the Search Warrant Coordinator to consult with SOD, *the MCP 714 shall be forwarded to the SWAT supervisor as soon as practical for consultation to occur, and in all instances prior to the search warrant being submitted to the court for review. The completed MCP 714 should be maintained in the case file, uploaded into the database and sent to the SWAT supervisor regardless of whether a SWAT request is anticipated. The SWAT supervisor will review the MCP 714 and consult with SOD command prior to a determination being made as to SWAT's participation in the service of the search warrant.*

F. MCP 715, "Search Warrant Plan of Service"

The MCP 715, "Search Warrant Plan of Service," will be completed by the search warrant coordinator *prior to service of the search warrant*. Regardless of rank, the Search Warrant Coordinator will determine the assignments and responsibilities of participating officers and record the plan on an MCP 715. Upon completing the form, the Search Warrant Coordinator will submit the plan to an officer of the rank of sergeant or above for review. Only a reviewing sergeant or higher-ranking officer may alter the search warrant plan. The MCP 715 will be maintained in the case file. The MCP 715 is only required when searching a private premise (*refer to III.C*).

- G.** The execution of a search and seizure warrant will be documented in the relevant incident report or supplement report. *Once the search and seizure warrant has been executed, the supervisor of the requesting unit will ensure all required information is entered into the MCPD Search Warrant Database within 10 days upon execution of the search warrant.*

H. Seized Items/Evidence

1. Seized item(s)/evidence from an executed search and seizure warrant shall have the collector's initials, date, time, and location where item(s) was seized from on the search warrant inventory form.
2. Seized item(s)/evidence must be entered into the evidence/property tracking system pursuant to the provisions of Function Code 721 by the designated officer and/or the lead investigator to maintain chain of custody. If possible, have one officer designated for seizing and entering evidence.
3. When currency is seized, the on-scene supervisor will ensure that the seizure is verified by two officers and the procedures listed in Function Codes 721 and 722 are followed.
4. If evidence is discovered that may be associated with another crime (e.g. burglary, robbery, theft etc.) and not part of the scope of the initial warrant, the Search Warrant Coordinator or designee will notify the appropriate investigative unit. The contacted investigative unit will be responsible for applying for a separate warrant, which will be specific to the discovered evidence that was outside the scope of the initial warrant. Investigators WILL NOT take any evidence that is not listed in their specific search

warrant. The exception is CDS and other immediately apparent contraband, which is illegal to possess (example: sawed off shotgun, known prohibited person possessing a firearm, child pornography), however, a second warrant must *be* obtained in order to seize items associated with CDS, (example: U.S currency, documents etc), as they are not illegal items unto themselves.

IX. Executing Search and Seizure Warrants

- A. Any search or seizure executed under authority of a search and seizure warrant shall be made within *10* calendar days from the date of issuance. If the search and seizure warrant is to extend beyond the *10* days, a new search and seizure warrant must be obtained.
- B. The time of day/night for the execution of a search and seizure warrant shall be decided by the supervisor responsible for the officer obtaining the warrant. Consideration shall be given to officer safety, safety of the occupants, destruction or loss of evidence, and the seriousness of the crime. When deciding the best time to execute a search and seizure warrant, the following factors will be considered to maximize safety and ensure the success of the operation:
1. Historical experience with the success of search and seizure warrant executions based on the nature of alleged activities and patterns of behavior of those involved.
 2. Information, pre-raid surveillance, and undercover officer access.
 3. Supervisors will give due consideration to the potential for community concerns arising from the night/early morning entries, the presence of innocent family members in the residence, the history of members in the residence, and the drug involvement of the targeted individuals.
 4. When SWAT is utilized to execute a search and seizure warrant, the Search Warrant Coordinator and the SWAT coordinator will collaborate on the time of executing the warrant (*a no-knock search warrant shall be executed between 8:00 A.M. and 7:00 P.M. absent exigent circumstances*). The SWAT supervisor will be responsible for the strategies of serving the warrant.
- C. At *any premise that may be occupied*, a sergeant or an executive officer shall be present and shall coordinate the warrant service and will be designated as the "Search Warrant Team Supervisor".
- D. **Identification**
1. *While executing a search warrant, a police officer shall be clearly recognizable and identifiable as a police officer, wearing a uniform, badge, and tag bearing the name and identification number of the police officer.*
 2. *The subsequent requirements will be followed during the execution of a search warrant at any property. These requirements only pertain to the service of a knock and announce or no-knock search warrant in potentially occupied spaces (i.e.: residences, commercial establishments, etc.) and does not apply to the execution of a search warrant on an item secured by this law enforcement agency, or the execution of a search warrant pertaining to obtaining DNA or other legally obtainable bodily fluid:*
 - a. *A minimum of one uniformed officer will be present for the entirety of the search warrant service.*
 - b. *An investigative supervisor or senior investigator will physically hand over the search warrant to a property representative unless there is none present. The uniformed officer will be present during the interaction.*
 - c. *Any non-uniformed officer present at the search warrant will wear either:*
 - i. *Outer vest carrier with MCPD badge, name tag with last name and ID number, and "Police" displayed on the back of the carrier.*
 - ii. *Department issued uniform jacket with badge, name tag with last name and ID number, and "Police" displayed on the back of the jacket.*

E. Body Worn Camera (BWCS)

1. *The on-scene uniformed officer must have been issued a Patrol based BWCS and have completed all required BWCS training.*
2. *Pursuant to law, the uniformed officer must have their BWCS activated for the entire duration of time on the premises, to include the 20 second minimum waiting period for the knock and announce search warrant.*
3. *SWAT must have their SWAT BWCS activated consistent with FC 430.*
4. *Officers will operate their BWCS in accordance with policies established by FC 430 to include not intentionally recording undercover officers or confidential informants without their consent.*

F. The Search Warrant Team Supervisor will ensure that overall photographs are taken both prior to and following the search. The photographs will become part of the officer's case file and entered into evidence.

G. Upon completion of the search and seizure, a copy of the search and seizure warrant, the MCP 558, and the MCP 560, will be left at the premises, unless the warrant is sealed.

H. If the search warrant is sealed, the occupants of the premise shall be advised that the search warrant is sealed. Furthermore, it shall be explained that a sealed search warrant is a court order document, signed by a judge, which only requires the officers to leave a copy of the search warrant, not the affidavit, and the order to seal.

I. Once the execution of the search and a seizure warrant is complete and officers have left the premises, there will be no reentry on the strength of the warrant. Officers will conduct a sweep to ensure all police property and evidence are accounted for.

J. People who are not members of law enforcement (e.g., members of the media, ride-a-longs, etc.) may not accompany officers during the entry phase of the execution of search and seizure warrants. Non law enforcement personnel may be present during the search phase of the warrant with permission of an executive level officer. Non law enforcement personnel may only enter when the scene is secure and only when their presence will enhance the search/investigation efforts.

K. Notifications

1. When the search and seizure plan is formulated and approved, the Search Warrant Coordinator or designee will contact the executive officer (or duty commander if applicable) in whose district the search and seizure warrant service will occur and advise the executive officer of the specifics (e.g., time, location, purpose, agency involved, etc.).
2. Follow section **IX.L** for ECC notification.
3. Notify an SID supervisor if the search warrant is narcotics related.

L. ECC Notification

The Search Warrant Coordinator will notify the Emergency Communications Center (ECC) supervisor via telephone of the following:

1. The impending execution of a search warrant,
2. The designated communications car,
3. After entry has been made and the scene is secure, and
4. After all units clear the scene (this notification is made by the on-scene senior responding officer for investigative units),

M. Types of Entry

1. **Knock and Announce** — Prior to making entry into a private premise, officers must knock and announce their presence and intent to search the location. *Absent exigent circumstances*, officers must wait **a minimum of 20 seconds for the occupants of the residence to respond and open the door** before making entry. *The on-scene uniformed officer will document the knock-and-announce, as well as the 20 second wait, on their Patrol BWCS.* This type of entry will be utilized unless conditions for a no-knock entry exist.
2. **Knock and Announce Exception (“No Knock”)** - In certain circumstances, officers may make entry into a private premise without knocking and announcing *their* presence. These circumstances are limited to **a judicially approved “no-knock” warrant** or times when exigent circumstances exist. Prior to making entry, other methods of serving the warrant, including methods that would mitigate risk, must be considered, and be determined to pose unacceptable risk to the life or safety of executing officers or another person or be futile.

N. Method of Entry

1. **Non-Forced** - Involves a search and seizure warrant in which it is believed there is not a significant threat to officer *or public* safety. These entries will be made by knocking on the door, identifying the search team as police officers, and being allowed entry by the occupant of the *premises*. If a forced entry is needed, **officers shall allow a minimum of 20 seconds** prior to making any forced entry, unless an exigent circumstance presents itself.
2. **Forced - Circumstances in which an officer uses force to gain entry to a dwelling, structure, vehicle or other property.** *Absent exigent circumstances, officers shall allow a minimum of 20 seconds for* occupant(s) of the *residence to respond and open* the door prior to making any forced entry. This **method of entry** may include "No-Knock Search Warrant" entries (*refer to IX.M.2*).
3. **High Risk** - Involves a search and seizure warrant where there is reasonable belief that danger exists to the lives and safety of officers involved, the occupants of the place to be searched, or citizens in the immediate vicinity. These warrants will be served by or with the assistance of SWAT. When SWAT personnel are making entry, the SWAT team leader shall be in command. Once entry has been gained and the scene stabilized, SWAT personnel shall relinquish responsibility to the on-scene Search Warrant Team Supervisor and their personnel. SWAT will only remain on the premises of an already executed search warrant to provide security to the Search Warrant Team if requested to do so by the Search Warrant Team Supervisor.

O. Executing High Risk Search Warrants

The plan for the execution of a high-risk search warrant will be reviewed by an officer of the rank of sergeant or above **assigned to SOD**. Such review will address the following aspects of the plan:

1. Objective of the search warrant
2. Potential for danger
3. Characteristics of neighborhood in the raid area
4. Time of the search warrant execution.
5. Use of canine - the use of a canine unit is recommended because of their **controlled dangerous substances and firearms** detection capabilities and their usefulness if suspects have to be located or tracked
6. Special problems anticipated
7. The conformity of the search warrant and raid plan to all current statutory and case law
8. Criminal and CAD history checks
9. Additionally, reviewing **supervisors** should evaluate the plan in terms of the following logistical issues:
 - a. Communications with other units and agencies
 - b. Number of officers in the raiding party
 - c. Use of uniformed officers

- d. Adequacy of protective equipment
 - e. Alternative plans or modifications
 - f. Use of special equipment (e.g., means of identification, use of bullhorn, sledgehammer, battering rams, etc.)
 - g. Sufficiency of evidence retrieval capabilities (e.g., photography, voice recording, evidence containers, etc.)
 - h. Availability of processing support from PSB or other personnel should numerous arrests be made
10. The Search Warrant Coordinator will brief his/her respective supervisor on pertinent circumstances after the execution of the search warrant.

P. Search Warrant Database and Tracking System

To ensure proper reporting requirements:

1. *ALL search warrants must be entered into the database within 10 days of service of the warrant, database entry must be completed to include number of items seized, injuries to humans or pets, forced entry, arrests, etc. These are all required for mandated reporting.*
2. *In addition to premises, search warrants of all types must be entered into the database (phones, computers, email, DNA, vehicles, etc.) within 10 days of service.*
3. *The Search Warrant Coordinator (refer to II.E) is responsible for initial database entry prior to and after the execution of a search warrant.*
4. *Supervisors are responsible for ensuring compliance from Officers/Investigators.*
5. *The Search Warrant Supervisor will ensure the search warrant and all additional information is accurately entered into the MCPD Search Warrant Database within 10 days upon execution of the search warrant.*

Q. Supporting Outside Agencies

1. Officers from other Maryland jurisdictions may apply to a District Court Judge in their jurisdiction for a search and seizure warrant to be served in Montgomery County.
2. When another law enforcement agency requests MCP assistance with the execution of a search warrant, MCP's role will be supportive and generally not at the critical points of action. In the search warrant planning, an MCP officer will act as Search Warrant Coordinator and work with the on-scene supervisor of the requesting agency in assigning details and duties. When the plan is formulated, an officer of the rank of sergeant or above in the Search Warrant Coordinator's unit will review the plan and make changes deemed in the best interest of the mission.
3. After the entry, the Search Warrant Coordinator may assign officers as needed to accompany the other agency in conducting the search. When so assigned, the officers will be mindful of state and local violations of law and act as a liaison to the search party. Support personnel may assist the primary officers only at the direction of the Search Warrant Coordinator.

X. Motion to Seal and Order to Seal Search and Seizure Warrant

A. An affidavit may be sealed for 30 days if:

1. The investigation is ongoing and is likely to yield further information that could be used in prosecution, and
2. The failure to maintain confidentiality of the investigation would:
 - a. Jeopardize the use of information already obtained in the investigation,
 - b. Impair the continuation of the investigations, or
 - c. Jeopardize the safety of a source of information.
3. A motion to seal and an order to seal is completed. The motion to seal will be presented to and signed by an Assistant State's Attorney.

4. The Motion to Seal and Order to Seal will be presented to the judge with the search warrant application.
- B. If a judge finds good cause based on the information provided by law enforcement that the above listed factors still exist, one 30-day extension can be granted.
- C. After the sealing of the affidavit expires, the affidavit shall be:
1. Unsealed.
 2. Delivered, within 15 days, to:
 - a. The person from whom the property was taken, or
 - b. Another person apparently in control of the premises from where the property was taken.

XI. Search and Seizure Warrants in Other Jurisdictions

A search and seizure warrant application for any location in Maryland can be accepted by a Montgomery County District Court Judge for review and issuance. Officer(s) must ensure an officer from that jurisdiction is contacted and make every effort to have them present during the execution of a search and seizure warrant in another jurisdiction.

- XII. CALEA Standards:** *1.2.1, 1.2.3, 1.2.4, 1.2.5, 4.1.1, 26.1.1, 41.1.5, 41.2.4, 42.1.3, 43.1.1, 43.1.5, 46.1.1, 46.1.2, 46.1.3, 46.1.4, 46.1.5, 46.1.6, 54.1.3, 74.1.1, 82.2.1, 82.2.2, 83.2.4, 84.1.1.*

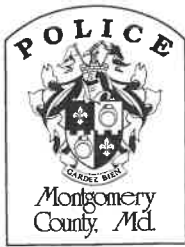
XIII. Proponent Unit: Investigative Services Bureau

XIV. Cancellation

This directive cancels Function Code 714, effective date *02-10-21, Training Bulletin 05-04 and Training Bulletin 21-03.*



Marcus G. Jones
Chief of Police



HEADQUARTERS MEMORANDUM 02-13

File With: FC 131

Distribution: All

Date: 12-27-02

Subject: Lateral Vascular Neck Restraint

FC 131, "Use of Force," identifies "Deadly Force" as any use of reasonable and necessary force which is intended to or likely to cause death or serious injury. The Lateral Vascular Neck Restraint has been identified as a defensive technique which is extremely difficult to apply correctly and one that, when applied incorrectly, is likely to cause serious injury or death. Additionally, this technique is no longer part of the program of defensive tactics instruction offered by the Training and Education Division.

The decision to exercise force at any level is based upon the threat posed by a subject. Additionally, the use of deadly force is not limited to firearms or defensive weapons. As you are aware, use of force decisions receive extreme levels of scrutiny and our accountability for these decisions is quite high. In recent years, our department has engaged in a process of assessment and evaluation designed to offer officers a variety of less-lethal responses to threats to include OC spray and the M26 Taser, among other options. The inclusion of these techniques is intended to broaden the spectrum of viable options that are readily available to resolve violent confrontations without the use of force that rises to the level of "deadly force."

As the process of assessment and evaluation continues, it is incumbent upon us to determine the effectiveness of techniques that are or have been offered by the department and continually update our policy and training to reflect determinations of effectiveness. **Accordingly, officers are advised that the use of the Lateral Vascular Neck Restraint is now considered deadly force.** Therefore it should only be used in extreme circumstances where deadly force would be justified.

Charles A. Moose, Ph.D.
Chief of Police

CAM:ksp



Department of Police
Montgomery County, Maryland

MCP 37

Use of Force Report

Date 06/03/2024 Time 1955 CR or Event # [REDACTED] Event Class 0441 - AGG ASSLT BEAT/INJ CTZN

Only Animal Supervisor on District 3D PRA 671 Location Colesville Road and Fenton Street, Silver Spring
Related Scene [REDACTED]

Suspect

Last Name Unknown First Name One

Race Black Sex Male Age Unknown Height 507 Weight 120

Impairment: Alcohol Drugs Possible Mental Illness

Subject Injuries: Bruise/Soreness Laceration/Abrasion Gunshot Bite
Broken Bone(s) CEW Marks Not Related to Police Use of Force

Other: None

Treated By: Decontamination First Aid Hospital Refused None

Officer

Officer ID [REDACTED] Yrs on Dept 4 District 3D Assignment 3D GEORGE 4

Race White Sex Male Age 25 Height 509 Weight 175

Officer Assaulted Ambushed Injured

Subj. Force Used Other (Aggressive and agitated towards officers affecting an arrest.) Ofc. Force Used CEW Pointed

Officer Injuries: Bruise/Soreness Laceration/Abrasion Gunshot Bite
Broken Bone(s) CEW Marks Not Related to Police Use of Force

Other: None

Treated By: Decontamination First Aid Hospital Refused None

De-Escalation:

Did the pointing of a service weapon, CEW or OC Spray successfully de-escalate the situation without the need to use any further reportable use of force option? Yes

Reason this form is being completed:

(Check all that apply.)

- A. The intentional use of any physical effort(s) by law enforcement other than compliant handcuffing or unresisted escorting in order to control, restrain, or place an individual in custody
- B. An individual is injured or claims injury
- C. Force applied by the use of a protective instrument
- D. Use of force involved a firearms discharge
- E. Use of force was a canine infliction of injury
- F. Accidental discharge of firearm

Activity Codes:

(Select one that best applies.)

- Arrest
- Defending Assault
- Demonstration
- EEP
- Investigative Detention

E-1

- G. Officer assaulted or ambushed
- H. Pointing CEW, service weapon, or OC spray at an individual

- Search Warrant
- SERT Operation
- SWAT Operation
- Traffic Stop
- Transporting
- Other:

Created 06/07/2024 17:17 Created By [REDACTED] Last Modified 06/07/2024 17:20 Last Modified By [REDACTED]

Review Date/Time	Reviewer	Result	Comments	User
06/07/2024 17:20	Originator	Submitted		[REDACTED]
06/09/2024 16:27	Supervisor	Accepted	Reviewed body worn camera footage for the Use of Force Report.	[REDACTED]
06/10/2024 08:21	Lieutenant	Accepted		[REDACTED]
06/14/2024 08:32	Commander	Accepted	BWC Reviewed	[REDACTED]
06/17/2024 13:24	Assistant Chief	Accepted		[REDACTED]

[✕ Back to List \(/UseOfForce/Report/Details/1872911d-77e5-49ad-8d03-f88dda4c798\)](#)

MPTSC Best Practices for Use of Force Policy & Training Development

In accordance with Public Safety Article § 3-207 (a) (19) and § 3-524, the Police Training and Standards Commission (PTSC) herein adopts and recommends a set of best practices and standards for Use of Force policy and training development by all law enforcement agencies and units. The PTSC also recommends consideration for inclusion of implicit bias training required by PSA § 3-207(k) in conjunction with Use of Force training. Each law enforcement agency or unit should consult its servicing legal office for specific advice when developing any Use of Force policy and training.

Protocols and Standards for Use of Force Policy Development

Title 3 of the Public Safety Article enumerates a number of requirements that must be adhered to by law enforcement agencies, supervisory and command staff, and police officers. Where indicated, the following subject areas must be included in all Use of Force policies. It is highly recommended that the remaining statutory mandates also be included in any Use of Force policy:

- 1) Use of Force. Each law enforcement agency's Use of Force policy should set forth the standard established by the Maryland Use of Force statute: An officer may only use force when, under the totality of the circumstances, the force is necessary and proportional to prevent imminent threat of physical injury to a person or to effectuate a legitimate law enforcement objective. Agencies can reference the Attorney General's opinion 107OAG033 as issued on February 25, 2022.
- 2) De-escalation of conflict. Each law enforcement agency is required to have a written de-escalation of conflict policy. This may be included in the agency's Use of Force policy. Officers are encouraged to defuse rather than intensify confrontations with and between citizens. When time, circumstances, and safety permit, officers shall take steps to gain compliance and control a situation without using physical force. Examples may include but are not limited to: the use of advisements, warnings, and persuasion; attempts to slow down or stabilize the situation so that more time, options and resources are available; officers should consider whether a subject's lack of compliance is a deliberate attempt to resist or is caused by an inability to comply.
- 3) Supervisory and command-level review. Each law enforcement agency is required to adopt a written policy requiring supervisory and command-level review of all Use of Force incidents.
- 4) Sanctity of life pledge. Each police officer is required to sign an affirmative sanctity of life pledge to respect every human life and act with compassion toward others. Each law enforcement agency should include in its policy the procedures for ensuring that each officer signs such a pledge and that the statement is retained by the agency.
- 5) Avoiding the Use of Force. Each officer is required to take steps to gain compliance and de-escalate conflict without using physical force when time, circumstances and safety allow the officer to do so. Each Use of Force policy should include provisions related to this requirement.
- 6) Cessation of Use of Force. An officer is required to cease the Use of Force as soon as the person on whom the force is used is under the officer's control, the person no longer poses an imminent threat of physical injury or death to the officer or another person, or the officer determines the force will no longer accomplish a legitimate law enforcement objective. This requirement should be included in the Use of Force policy.

7) Duty to intervene. A police officer is required to intervene to prevent or terminate the Use of Force by another police officer beyond what is authorized under the Use of Force statute. This mandate should be included in the Use of Force policy.

8) Basic first aid. Each police officer is required to render basic first aid to a person injured as the result of police action and promptly request appropriate medical assistance. The duty to care requirement should be included in the Use of Force policy.

9) Documentation of Use of Force incidents. Each police officer is required to fully document all Use of Force incidents the officer observes or is involved in. The Use of Force policy needs to include an agency's standardized reporting format.

10) Supervisory response. A police supervisor is required to respond to the scene of any incident during which a police officer used physical force and caused serious physical injury and gather and review all known video recordings of a Use of Force incident. Each Use of Force policy must set forth the procedures for determining which supervisor will respond to such incidents and the procedures for gathering and reviewing video recordings.

11) Training. Each law enforcement agency's Use of Force policy should set forth the training related to Use of Force that police officers are required to attend.

Identified Use of Force Training Concepts and Best Practices

Except where required by law, the following subject areas are recommended to be included in each law enforcement agency's training programs.

1) Drawing a firearm. All police officers are required to undergo training on when a police officer may or may not draw a firearm or point a firearm at a person.

2) Other enforcement options. All police officers are required to undergo training that includes enforcement options that are less likely to cause death or serious physical injury. Such training must include scenario-based training, de-escalation tactics and techniques, and reasonable alternatives intended to decrease physical injury. The training should focus on communication skills, crisis intervention techniques, minimizing force, and tactical repositioning. The training should also include techniques to demonstrate how an officer's actions may attempt to slow an incident down and think through a high-risk situation. Recognizing signs of individuals experiencing a mental health crisis should be included in the training.

3) Use of Force. All police officers are required to undergo and complete training on the Maryland Use of Force statute. Training discussions shall cover Public Safety Article § 3-524 Use of Force standards, explaining "under the totality of the circumstances the force is necessary and proportional". Officers must act within the scope of their duties as law enforcement officers. The purpose of any Use of Force is to gain control of a non-compliant, resistant or assaultive subject. Use of Force training topics must include:

- De-escalation tactics and techniques;
- When to draw/point a firearm at a person;
- Enforcement options that are less likely to cause death or serious physical injury;
- Reasonable alternatives to decrease physical injury; and
- Include judgment/decision making scenario-based training.

- 4) Training completion document. All police officers are required to sign a training completion document stating that the officer understands and shall comply with the Maryland Use of Force Statute.
- 5) Deadly Force. Defined as any force that is likely to cause death or serious physical injury. An officer may use deadly force to stop an imminent threat of death or serious physical injury to the officer or another person. Serious physical injury is an injury that creates a substantial risk of death or an injury that is a permanent or protracted impairment or disfigurement.
- 6) Less Lethal Force. 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. Officers issued less lethal weapons must be trained on those issued weapons.
- 7) Duty to intervene. Officers who have an opportunity to intervene in another officer’s excessive Use of Force must do so or risk potential liability, including criminal charges and civil rights violation based upon their failure to intervene. Agencies may likewise be liable where there is a custom or failure in training, supervision or discipline that leads to the constitutional violation.
- 8) Policy and legal review updates including criminal and constitutional standards. Training should consist of reviewing policy, criminal law and constitutional law surrounding the application and Use of Force, limitations and legal implications. It is crucial that law enforcement agencies develop clear and concise policies relative to Use of Force by their officers. It is equally important that officers be made familiar with Use of Force policies and standards through refresher courses and scenario-based training.
- 9) Shooting at or from moving vehicles. Each agency’s policy regarding shooting at vehicles will establish the requirements for this training component. Training should emphasize the inherent obstacles associated with shooting at or from a moving vehicle.

Other Related Mandates

Public Safety Article § 3-516 requires each law enforcement agency to establish a confidential and non-punitive early intervention system to identify police officers who are at risk of engaging in the use of excessive force. The agency must provide those officers with training, behavioral interventions, reassignments or other appropriate responses to reduce the risk of the use of excessive force.

Public Safety Article § 3-523 requires each law enforcement agency to provide a *voluntary* mental health consultation and *voluntary* counseling services to any police officer who is involved in an incident involving an accident resulting in a fatality.

Public Safety Article § 3-523 further requires each law enforcement agency to provide a *mandatory* mental health consultation and *voluntary* counseling services to any police officer who is involved in an incident involving a serious injury to the police officer, an officer-involved shooting, or any Use of Force resulting in a fatality or serious injury.



POLICE USE OF FORCE POLICY GUIDELINES

Updated August 2021

The Policing Project’s Use of Force Policy Guidelines outline best practices for police department policies regarding use of force. The resource is designed to provide guidance to police departments, community members, municipal leaders, and prosecutors looking to incorporate best practices into police department policy and officer training.

The original version of this document was developed in early 2019 as part of the Policing Project’s role in the [Working Group on Officer-Involved Fatalities](#) at the Institute for Innovation in Prosecution at John Jay College of Criminal Justice, and was included in the [Toolkit for Prosecutors and Communities to Address and Prevent Police-Involved Fatalities](#). The toolkit was the result of a year-long collaboration between family members, prosecutors, police chiefs, and law enforcement and policy experts, including the Policing Project.

The current Guidelines were updated in August 2021.

USE OF FORCE PRINCIPLES, GENERALLY

General standards officers must comply with before using force:

1. Do the Department's policies require necessity and proportionality before an officer uses force?
2. Do the Department's policies require the consideration of de-escalation strategies before the use of force commences?
3. Do the Department's policies require that each of an officer's decisions leading up to a use of force to be reasonable (not just the specific use of force at the particular moment that it was applied)?
4. Do the Department's policies require that officers consider a person's specific characteristics, such as age, mental capacity, developmental disability, the influences of drugs or alcohol, and/or language barriers, when determining whether force is appropriate?
5. Do the Department's policies require that officers consider the degree to which officers could accomplish their objective (e.g., arrest) at a later date or time without using force, in light of the severity of the suspected offense?

Circumstances in which use of force is prohibited:

6. Do the Department's policies prohibit use of force to subdue a subject(s) who is not suspected of any criminal conduct, unless necessary to protect an officer's or another person's safety?
7. Do the Department's policies prohibit use of force as retaliation?
8. Do the Department's policies prohibit use of force against a person who only verbally confronts officers and is not involved in criminal conduct?

Using less or no force when threat diminishes or subject is restrained:

9. Do the Department's policies prohibit use of force against a person who is handcuffed or otherwise restrained (because that person does not present a threat)?
10. Do the Department's policies require officers to reduce the degree of force used as a threat diminishes and stop using force once the subject is under control or no longer poses an imminent threat of serious injury to another?

Threatening to use force only when use of force is permissible:

11. Do the Department's policies prohibit officers from threatening to use force in any circumstance in which the officer is not authorized to use force under Department policy?

Duty to identify self as officer and provide clear verbal warning:

12. Do the Department's policies impose a duty on officers—when doing so would not place anyone at a significant risk of injury—to (a) identify themselves as officers and (b) provide a clear verbal warning of the officers' intent to use force, along with clear instructions about what is required to comply, before using force?

Reporting:

13. Do the Department's policies require that officers notify their immediate supervisor or other designated agency reporting entity of any incident involving a reportable use of force? "Reportable use of force" means any application of physical force (including pointing a firearm in the direction of a person or deploying a canine to assist in apprehending a person), other than physical contact used solely for facilitating custody of a compliant person, such as the application of handcuffs on a cooperative arrestee.
14. Do the Department's policies require immediate notification for any incident involving (a) the use of force that results in bodily injury; (b) the discharge of a firearm, whether intentional or unintentional, except in the context of training or qualification; or (c) the discharge of an electronic control weapon?

Discipline:

15. Do the Department's policies make clear that any time an officer uses force or fails to report force in violation of Department policy, the Department will discipline the officer, with the possibility of terminating the officer's employment?

GENERAL STANDARDS GOVERNING THE USE OF DEADLY FORCE

16. Do the Department's policies prohibit officers from using deadly force unless such force is (a) necessary to protect the officer or another from an imminent threat of death or serious injury or (b) used against a person whom the officer has probable cause to believe already killed or seriously injured another person and the officer has reason to believe the person will try to kill another person if not immediately apprehended?
17. Do the Department's policies prohibit officers from using deadly force solely to protect property or against a person who poses a risk of harm only to themselves?
18. Do the Department's policies require all uses of deadly force, whether intentional or unintentional, to be immediately reported and investigated?
19. Do the Department's policies require officers and Department personnel to secure the scene and preserve all evidence following an officer's use of deadly force?

FIREARMS SPECIFIC POLICIES

20. Do the Department's policies consider each firearm discharge as a separate use of force that must be specifically justified?
21. Do the Department's policies require officers to give a verbal warning and identify themselves as police officers before discharging a firearm, when possible?

22. Do the Department's policies prohibit officers from firing warning shots?
23. Do the Department's policies prohibit officers from shooting at or from moving vehicles unless there is an imminent risk of death or serious injury to an officer or another, and that risk cannot be avoided by other means, such as by avoiding the path of the vehicle?
24. Do the Department's policies consider pointing a firearm at a person to be a use of force?
25. Do the Department's policies prohibit officers from pointing firearms in the direction of a person unless the officers reasonably believe the situation may escalate to justify the use of deadly force?
26. Do the Department's policies prohibit shooting through a door, window, or in other circumstances in which the target is not clearly in view?

POLICIES FOR NON-FIREARMS USES OF FORCE

27. Do the Department's policies prohibit maneuvers that may cut off blood or oxygen to a subject's head (e.g., chokeholds, carotid-holds, strangleholds) except when deadly force is allowed?
28. Do the Department's policies prohibit techniques and modes of transport that run a substantial risk of positional asphyxia (e.g., putting a person prone on the ground while restrained)?
29. Do the Department's policies prohibit officers from using weapons to overcome passive or active resistance to effect an arrest of a person suspected only of a misdemeanor who (a) does not pose any risk of imminent harm to officers or others and (b) would not pose a risk of harm to others if not immediately apprehended?
30. Do the Department's ECW (Taser) policies prohibit use against certain "high risk populations," including those who are pregnant, infirm, elderly, or small in size?
31. Do the Department's policies limit intentional weapon strikes (such as with a baton) to the head to only those situations when deadly force is permitted?

POLICIES FOR USE OF CANINES

32. Do the Department's policies prohibit officers from deploying a canine against a person who is suspected only of a misdemeanor or other non-violent crime, including drug crimes?
33. Do the Department's policies prohibit officers from permitting a canine to bite a person unless the person poses an imminent risk of harm to the officer or to another person, and a lower degree of force would not eliminate the risk?

34. Do the Department's policies prohibit officers from conducting an off-leash deployment of a canine to apprehend a person who does not pose an imminent risk of death or serious injury to the officer or another person?
35. Do the Department's policies prohibit officers from deploying or displaying an apprehension canine in any manner at a protest, demonstration, march, or similar event?

POLICIES GOVERNING OFFICERS DUTIES TO INTERVENE, REPORT, AID, & PROVIDE ACCURATE AND TRUTHFUL INFORMATION

36. Do the Department's policies require that an officer intervene to prevent a use of force by a fellow officer when safe to do so and the observing officer knows or reasonably should know his or her fellow officer is using or is about to use force that is not authorized under the Department's policies?
37. Do the Department's policies require that an officer who witnesses another officer engage in what the observing officer knows or reasonably should know to be unauthorized force in violation of Department policy to report the use of force to the observing officer's immediate supervisor (or another designated reporting entity) as soon as possible?
38. Do the Department's policies make clear that officers have a duty to provide complete, accurate, and truthful information in all reports made in accord with the Department's use of force policies?
39. Do the Department's policies require officers to promptly render aid to injured subjects?
40. Do the Department's policies make clear that failure to intervene when the officer has a duty to intervene, failure to report when the officer has a duty to report, failure to promptly render aid when the officer has a duty to do so, and failure to provide complete, accurate, and truthful information will result in discipline, up to and including termination?

POLICIES FOR USE OF FORCE IN RESPONSE TO PROTESTS AND DEMONSTRATIONS

41. Do the Department's policies prohibit officers from discharging kinetic impact projectiles and other less-lethal weapons indiscriminately into a crowd or in a manner that targets the head, neck, pelvis, or groin?
42. Do the Department's policies ban using kinetic impact projectiles against a specific person in a crowd unless (a) such force is necessary to effect a lawful arrest or detention, prevent the destruction of property, prevent the person's entry into a secured area, or protect against imminent harm to the officer; and (b) the officers determine other less-lethal force options that would reduce the risk to bystanders are unavailable?

43. Before permitting an officer to use a chemical agent or irritant to disperse a crowd, do the Department's policies require that the Department's chief law enforcement officer determine that the protest or demonstration constitute an unlawful assembly and that use of force is necessary to disperse the crowd?
44. Before using chemical agents or irritants to disperse a crowd, do the Department's policies require the commanding officer at the scene to issue a clear order to disperse followed by sufficient time and space to allow compliance with the order?

TRAINING

45. Do the Department's policies require that all officers undergo introductory training on all of the above principles and policies?
46. Do the Department's policies require that all officers complete a course or courses of instruction on the following subjects on an annual basis: (a) legal standards for the use of force; and (b) verbal communication and de-escalation strategies, including tactical methods intended to stabilize the situation and reduce the immediacy of the threat (*e.g.*, distance, cover, requesting additional officers, etc.)?
47. Do the Department's policies require that all officers complete a course or courses of instruction on the following subjects at least every 2 years: (a) the duty to intervene, duty to report unauthorized force, and the duty to provide truthful information; and (b) skills and techniques for interacting respectfully and safely with people with intellectual or developmental disabilities or behavioral health issues, as well as individuals in crisis?



DEPARTMENT OF POLICE

Marc Elrich
County Executive

Marc R. Yamada
Chief of Police

July 10, 2024

Mr. Aron Trombka
Senior Legislative Analyst
Office of Legislative Oversight
Montgomery County Council

On behalf of Chief Yamada, the information in this letter is provided in response to your requests concerning the utilization of no-knock exceptions to the knock and announce requirements related to search and seizure warrants, and additional questions pertaining to police practices in general.

The Office of Legislative Oversight requested data on the number of no-knock search warrants served each year from 2014 through 2023, to include any supplemental information on the age, disability status, etc., of persons that were at the search location. Detailed information related to this information request is provided in Appendix I attached to this letter. Additionally, tactical team supervisors have changed throughout the period listed above, and the current tactical team supervisors are in the process of going through archived case files to obtain the requested detailed information from calendar years 2014 through 2019. These numbers will be provided at a later date.

<i>Calendar Year</i>	<i>Total Warrants</i>	<i>No Knock Warrants</i>
2014	164	Not known at time
2015	187	Not known at time
2016	200	Not known at time
2017	218	128
2018	208	115
2019	177	108
2020	91	57
2021	49	15
2022	71	15
2023	58	9
2024 -Through July	33	7

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The Office of Legislative Oversight requested a brief description of key changes in the law that most affected no-knock warrants being requested, approved and served. In response, the police department offers the most significant legal change that affected the utilization of no-knock warrants was the limitation where no-knock warrants could only be used for certain crimes. Prior to the enactment of 27-20, the department viewed no-knock warrant utilization through a multi-factored lens. Focus is given to the known or suspected occupants of the location where the search warrant was being served and is primarily **based on the specific crimes being investigated**; however, it also considers the occupants' criminal history, their propensity for being armed and/or their history of committing acts of violence. **The race and gender of any suspected occupant plays absolutely no role in determining whether a no-knock search warrant is applied for or utilized.**

There is a known correlation between narcotics traffickers, guns, and violence (Phillips MD. Assessing the Impact of Drug Use and Drug Selling on Violent Offending in a Panel of Delinquent Youth. J Drug Issues. 2012 Jul;42(3):298-316), so many of the department's no-knock warrants served were in relation to narcotic distribution investigations. Of note, the department did not seek to serve no-knock warrants solely for the possession of narcotics, unless that warrant was part of a larger investigation related to an act of violence.

Presently, narcotics investigations are not one of the categories of investigations where no-knock warrants are permitted. For an officer to request a "no-knock" exception for a search warrant, the crime being investigated must be a crime of violence as defined in Section 14-101(a) of the Criminal Law Article of the Maryland code. In addition to the crime of violence requirement, the requesting officer must also have reasonable suspicion that a person is present at the location who has demonstrated a propensity for violence, or reasonable suspicion that entry into the location has been fortified, "booby-trapped", or has unique characteristics which would make knocking and announcing the officer's presence inherently unsafe.

The Office of Legislative Oversight also requested a statement from the police department outlining the appropriate role, use, and potential benefits of no-knock warrants as a policing tool. In response, the department recognizes that there are community concerns involving no-knock warrants. Even before the implementation of the county legislation, and certainly before recent changes to Maryland law, the department has treated no-knock exceptions to the knock and announce warrant requirement as a specialized tool - **only to be used in cases where the occupants of a location have a significant propensity for violence.** The department does not use no-knock warrants in instances where destruction of evidence is a factor. Although the use of no-knock warrants is under greater scrutiny, in these specific instances and based on the totality of the circumstances, executing a warrant without knocking and announcing is, in certain cases, the safest way to secure a location, preserve life, and prevent injury to all involved, including the occupants in the residence, or those who may be impacted by the warrant service.

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H-2

The main priority in the police department's mission is to safeguard life and property, as well as prevent and detect crime. In order to best achieve these goals, there are times when the department has to serve a search warrant at a location with the intent of arresting a subject or to locate evidence of a crime. Even in situations where the subject has a violent history and a propensity for violence, or threat of resistance is elevated, the department continually assesses the situation and attempts to utilize other, less invasive means to achieve its' goals. Alternatives are always considered to replace the need for seeking a no-knock warrant exception, however, there are instances in which the alternative solutions present more inherent danger to the public, suspect(s), co-habitants and/or occupants of the residence being searched, and officers serving the warrant.

The police department recognizes and understands the importance of strict adherence to the United States Constitution, in particular, the fourth amendment. Per department policy, an application for a no-knock exception may only be presented to a judge after it goes through several layers of review that considers the factors and circumstances that would justify seeking the no-knock exception. The application of a no-knock search warrant is first reviewed by a police supervisor. After this review, the respective investigative services bureau executive reviews the warrant. If the application meets the requirements listed in the department's policy, and alternative methods are deemed unsafe or impractical, the executive officer presents the search warrant application to a member of the Montgomery County State's Attorney's Office. The respective attorney conducts their own independent review of the application, taking the safety factors and alternative methods into consideration. If the attorney agrees the no-knock exception should be applied for, it is then sent to the Montgomery County State's Attorney, John McCarthy. The State's Attorney for Montgomery County will then conduct an independent review of the application and either authorize or deny the application. If the no-knock exception is authorized by the State's Attorney for Montgomery County, the officer is notified and is permitted to take the application to a judge who will conduct an independent review and either authorize or deny the application for a no-knock exception. If the judge authorizes the no-knock exception to the knock and announce requirement, the police department only allows members of the tactical section (SWAT) to serve no-knock search warrants. All members of the department's tactical team are highly trained and have been fully trained in breach and call-out procedures, which increases safety and limits the probability of injury to all persons involved or impacted by the search warrant.

The utilization of no-knock search warrants as a police tool is done to increase the safety of the public, suspects, occupants of the residence in question, and the officers sent to serve the search warrant. This tactic increases the element of surprise, allows the team to secure the residence and occupants quickly, and reduces the amount of time a suspect, who is already under investigation for a crime of violence and has demonstrated a propensity for violence, has to arm themselves, barricade themselves, or take other occupants of the residence hostage.

Knock and announce search warrants comprise the overwhelming majority of search warrants currently being served in Montgomery County. There are inherent risks anytime a search warrant is served. A knock and announce search warrant creates time for occupants inside of the residence to think, plan, arm themselves, hide, barricade, or in a worst-case scenario, take

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H-3

hostages or engage in, or plan, an act of violence against members of the police department. The type of scenario described above has played out countless times with police departments across the United States. The Breonna Taylor tragedy is often considered a no-knock warrant gone awry and is portrayed as the worst-case scenario for a no-knock warrant. However, an in-depth review of the incident shows that the warrant was served as a knock and announce warrant, by an undertrained plain clothes narcotics unit (<https://louisville-police.org/DocumentCenter/View/1818/PIU-20-019-Investigative-Reports>). This tragedy is exactly the type of incident the department tries to avoid when it serves any search warrant. By using specially trained tactical officers to serve medium and high-risk search warrants, including no-knock warrants, the department is able to maximize the safety of the public, officers, and the suspect of the investigation.

The application for a no-knock warrant can only be made if there is reasonable suspicion to believe that, without the authorization, the life or safety of the executing officer or another person may be endangered and must include:

- A description of the evidence in support of the application.
- An explanation of the investigative activities that have been undertaken and the information that has been gathered to support the request for a no-knock search warrant exception.
- An explanation of why the affiant is unable to detain the suspect or search the premises using other, less invasive, methods.
- An acknowledgement that any police officer that will execute the search warrant has successfully completed the same training in breach and call-out entry procedures as SWAT team members. To comply with this requirement, the applicant will include the statement, “Per Montgomery County Police Department (MCPD) policy, only members of the Special Operations Division, Tactical Section (SWAT) team may execute a no-knock search warrant. All MCPD SWAT team members have been fully trained in breach and call-out procedures”.
- A statement as to whether the search warrant can effectively be executed during daylight hours, and, if not, what facts or circumstances preclude effective execution in daylight hours.
- A list of any additional occupants of the premises by age and gender, as well as an indication as to whether any individuals with cognitive or physical disabilities or pets reside at the premises, if known.

In addition, all affiants of search warrants must complete the warrant threat assessment matrix prior to submitting their application for a search warrant to a judge. Officers may only seek a knock and announce exception when:

- The life or safety of the executing officer or another person may be endangered; and

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H-4

• The investigation is a crime of violence as defined in Section 14-101(a) of the Criminal Law Article of the Maryland Code, which are:

- o Abduction
- o Arson in the first degree
- o Kidnapping
- o Manslaughter, except involuntary manslaughter
- o Mayhem
- o Maiming, as previously proscribed under former Article 27, 385 and 386 of the code
- o Murder
- o First and second degree rape
- o Robbery under 3-402 Or 3-403 of the Maryland Code
- o Carjacking
- o Armed carjacking
- o Use of a handgun in the commission of a felony or other crime of violence
- o An attempt to commit any of the following crimes:
 - First degree assault
 - Assault with intent to murder
 - Assault with intent to rape
 - Assault with intent to rob
 - Assault with intent to commit a sexual offense in the first degree; and
 - Assault with intent to commit a sexual offense in the second degree
- o Related to firearms possession;
- o Related to a warrant obtained under section 5-607 of the Public Safety Article of the Maryland Code
- o Related to child abuse
- o Related to child pornography
- o Related to domestic violence; or
- o Related to terrorism

In addition to these criminal offenses listed above, one of the following factors must also be present;

- Reasonable suspicion that a person is present at the location who has demonstrated a propensity for violence; or
- Reasonable suspicion that entry into the location has been fortified, is “booby trapped”, or has unique characteristics which would make knocking and announcing one’s presence inherently unsafe.

Based on the above information, no-knock search warrants receive great attention regarding investigative measures taken and a thorough review by police supervisors, executives, State’s Attorney’s Office supervisors, and the State’s Attorney of Montgomery County for approval prior to submission to a judge. Eliminating the ability for the police department to utilize this exception to the knock and announce requirement will result in officers utilizing more “surround and call-out” warrant services. This tactic requires the officers to contain the

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occupants inside the residence from positions outside and utilize loud amplifying acoustics to gain the attention of the occupants. This tactic has the likelihood of turning the warrant service into a barricade situation. This will provide time and opportunity for the suspect and occupants to decide whether they want to comply or remain barricaded inside. It should be noted that this creates the probability of innocent family members or other occupants becoming barricaded inside with the suspect while they are deciding what to do. As stated, the suspect/s involved in no-knock warrant scenarios are facing serious criminal charges that carry a significant prison sentence if convicted and have demonstrated a propensity for violence. These factors could result in the alleged suspect making irrational decisions and/or taking actions that would increase the likelihood of violence and/or injury.

In conjunction with the request for the department's response to the use of no-knock search warrants, the Office of Legislative Oversight also provided the opportunity for the department to offer a statement regarding use of force. The department has consistently evaluated its use of force training and data collection. The decision to use force, and the level of force used, is one of the most critical decisions that a police officer will make. Most police officers will go their entire career without ever using deadly force. However, officers are routinely called upon to use some level of force, whether it be as simple as a control technique or the pointing of a weapon. The department is proud of the quality of training provided on our Use of Force policy, yet always looks to improve on how we operate. The department has provided quality and comprehensive de-escalation training to its' officers for several years. Every officer in the department has received an introductory course in ICAT (Integrating Communications, Assessment and Tactics), which is one of the only de-escalation programs to be independently assessed by an academic institution and shown to be effective. For three (3) years, every recruit class has received the entire forty-hour ICAT block of instruction. This course is meant to provide instruction on de-escalation tactics for situations involving subjects armed with a weapon other than a firearm. Starting in 2020, every forward-facing police officer (e.g. patrol, K9, etc.) was issued an ECW (taser). Beginning later this summer, the department will be issuing approximately 40 "Pepper Ball" launchers to patrol officers. This weapon platform, similar to a paintball gun, launches powdered irritant up to 150 feet. Both ECW's and Pepper Ball provide a less-lethal use of force option for officers. By providing the best equipment, training, and policy, the department feels it can manage to give officers the appropriate tools to do their job, while maintaining community safety and the dignity of those who they encounter.

Information was requested pertaining to the number of officers who have received COMAR no-knock warrant training. As of this writing, sixty-two (62) people are certified in no-knock entries in compliance with COMAR Regulation Title 12 Subtitle 4 Chapter 08.04 Minimum Training Requirements for Special Tactical Response and 08.06 Minimum Training Standards for Police Officers Involved in a No-Knock Warrant Service. They are comprised of thirty-four (34) Montgomery County Tactical Officers, two (2) Montgomery County Sheriff Tactical Officers, one (1) Rockville City Officer and twenty-five (25) Emergency Services Unit Officers.

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The Office of Legislative Oversight requested information on how the police department collects data on the number of no-knock warrants served. Currently, the tactical team supervisors complete data entry into the search warrant database and provide updated numbers in order to comply with Public Safety § 3-508(B). The tactical team supervisors are responsible for documenting the following: Agency serving warrant, search warrant type (knock and announce, or no-knock), search warrant issue date, search warrant service date, County of service, municipality/city, zip code, authority, reason (crime), forcible entry, property seized, firearm discharged, number of arrests, number of animals injured/killed, injured/killed persons, officer injured. After this information is collected, it is placed in a spreadsheet and disseminated to the appropriate police department representatives that reports bi-annually to the appropriate stakeholders.

Lastly, the Office of Legislative Oversight requested a brief description of actions taken by the department to solicit guidance from outside stakeholders, to include the Police Advisory Commission, communities, impacted persons, victims of police use of force, representatives of law enforcement associations, as well as representatives of civil and human rights organizations to comply with the provisions set forth in Bill 27-20. The Office of Legislative Oversight is seeking actions taken, a summary of what was learned, and how any input received influenced department policy. In response, implementing community feedback into our use of force training and policy has been a challenge. The department welcomes community feedback into any of our policies. However, implementing feedback into Use of Force has been a challenge. On at least one occasion, the department requested community feedback about our Use of Force policy. Unfortunately, we received no comments which would have been useful toward re-shaping our policy or training. Our Use of Force policy is predicated on constitutional law, case law, and Maryland state law, in addition to county code. These legal requirements are then used to shape our training and our policy. There remains little room for additional input which may be contrary to existing law. However, going forward, the department is initiating a process where every public facing policy on our website will have a feature where members of the community can provide feedback or ask questions.

In conclusion, the police department thanks the Office of Legislative Oversight for providing the opportunity to respond in detail to the above questions and data requests. Thank you in advance for your time and commitment to reviewing the information.

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APPENDIX I:**2020:****Search Warrants: 91****No Knocks: 57****Occupants:**

1. 6 occupants (23 year old male, 39 year old female, 17 year old male, 24 year old male, 20 year old male, female refused to give DOB)
2. 8 occupants (45 year old male, 47 year old male, 8 year old female, 16 year old female, 12 year old female, 17 year old female, 21 year old male, 23 year old male)
3. 5 occupants (56 year old male, 27 year old male, 22 year old male, 39 year old male, 50 year old female)
4. 5 occupants (29 year old male, 27 year old female, 53 year old female, 3 year old male, 22 year old female)
5. 7 occupants (20 year old male, 19 year old male, 20 year old female, 15 year old female, 19 year old male, 58 year old female, 75 year old female)
6. 3 occupants (35 year old male, 56 year old female, 24 year old female)
7. 4 occupants (33 year old male, 37 year old male, 36 year old male, 66 year old male)
8. 2 occupants (38 year old female, 34 year old male)
9. 4 occupants (38 year old male, 8 year old male, 42 year old female, 10 year old female)
10. 4 occupants (41 year old female, 46 year old male, 14 year old male, 76 year old male)
11. 1 occupant (56 year old female)
12. 3 occupants (34 year old male, 22 year old female, 30 year old male)
13. 4 occupants (22 year old male, 42 year old female, 4 year old male, 8 year old female)
14. 1 occupant (37 year old male)
15. 2 occupants (42 year old male, 20 year old male)
16. 2 occupants (30 year old male, 22 year old female)
17. 3 occupants (22 year old male, 25 year old male, 24 year old female)
18. 6 occupants (24 year old male, 23 year old male, 75 year old female, 46 year old male, 46 year old female, 1 year old male)
19. 17 occupants (4 year old female, 15 year old female, 23 year old female, 23 year old male, 25 year old male, 19 year old male, 20 year old male, 25 year old male, 21 year old female, 20 year old male, 20 year old male, 43 year old male, 10 year old female, 8 year old female, 8 year old female, 49 year old female, 56 year old male)
20. 8 occupants (24 year old female, 22 year old female, 26 year old female, 7 year old male, 28 year old male, 27 year old female, 3 year old female, 39 year old male)
21. 7 occupants (55 year old female, 31 year old female, 6 year old male, 4 year old male, 7 year old female, 12 year old female, 21 year old male)
22. 2 occupants (59 year old male, 30 year old female)
23. 7 occupants (41 year old female, 21 year old male, 23 year old male, 21 year old female, 23 year old female, 18 year old male, 18 year old female)
24. 5 occupants (22 year old male, unknown aged male, unknown aged female, unknown aged female, unknown aged male)
25. 4 occupants (44 year old male, 12 year old male, 55 year old male, 41 year old female)
26. 6 occupants (40 year old male, 9 year old male, 31 year old female, 17 year old male, 21 year old male, 19 year old male)
27. 11 occupants (56 year old male, 74 year old female, 30 year old female, 2 year old male, 28 year old male, 9 year old male, 31 year old male, 27 year old female, 31 year old male, 35 year old male, 6 year old female)
28. 2 occupants (34 year old male, 34 year old female)
29. 3 occupants (36 year old female, 19 year old female, 21 year old male)
30. 2 occupants (21 year old female, 21 year old male)
31. 2 occupants (27 year old male, 24 year old female)
32. 5 occupants (75 year old male, 76 year old female, 51 year old female, 19 year old male, 25 year old male)
33. 4 occupants (55 year old male, 20 year old male, 30 year old female, 16 year old female)
34. 5 occupants (21 year old female, 21 year old male, 54 year old female, 62 year old male, 20 year old female)
35. 4 occupants (50 year old male, 19 year old male, 58 year old male, 23 year old male)
36. 3 occupants (41 year old female, 41 year old male, 19 year old female)

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- 37. 3 occupants (63 year old female, 39 year old female, 80 year old female)
- 38. 6 occupants (36 year old male, 20 year old female, 24 year old male, 27 year old female, 2 year old male, 9 year old male)
- 39. 3 occupants (18 year old male, 17 year old male, 55 year old female)
- 40. 2 occupants (37 year old male, 42 year old female)
- 41. 5 occupants (27 year old male, 21 year old male, 20 year old male, 21 year old male, 20 year old male)
- 42. 3 occupants (25 year old male, 41 year old male, 21 year old male)
- 43. 3 occupants (Unknown ages and gender)
- 44. 3 occupants (28 year old male, 60 year old female, unknown aged female)
- 45. 5 occupants (17 year old male, 47 year old female, 16 year old female, 8 year old female, 12 year old male)
- 46. 2 occupants (26 year old male, 26 year old female)
- 47. 5 occupants (34 year old female, 7 year old female, 40 year old male, 17 year old male, 32 year old male)
- 48. 6 occupants (21 year old female, 43 year old male, 22 year old female, 28 year old female, 54 year old female, 51 year old male)
- 49. 5 occupants (21 year old male, 23 year old female, 23 year old female, 25 year old female, 25 year old male)
- 50. 3 occupants (26 year old female, 26 year old male, 23 year old female)
- 51. 4 occupants (15 year old male, 64 year old female, 39 year old female, 7 month old female)
- 52. 8 occupants (30 year old male, 27 year old male, 25 year old male, 25 year old male, 27 year old female, 29 year old male, 27 year old female, 23 year old male)
- 53. 1 occupant (50 year old female)
- 54. 6 occupants (9 year old female, 64 year old male, 29 year old male, 51 year old female, 23 year old female, 3 year old female)
- 55. 5 occupants (48 year old male, 38 year old female, 17 year old male, 7 year old male, 9 year old male)
- 56. 9 occupants (11 year old male, 59 year old female, 10 year old male, 40 year old male, 32 year old female, 5 year old male, 2 year old male, 4 year old male, 3 year old male)
- 57. 1 occupant (22 year old male)

2021:

Search Warrants: 49

No Knocks: 15

Occupants:

- 1. 3 occupants (70 year old male, 65 year old male, 15 year old female)
- 2. 5 occupants (60 year old male, 57 year old female, 26 year old female, 20 year old male, 38 year old male)
- 3. 2 occupants (73 year old female, 34 year old male)
- 4. 1 occupant (25 year old male)
- 5. 3 occupants (19 year old male, 44 year old female, 19 year old male)
- 6. 11 occupants (6 year old female, 28 year old female, 31 year old male, 2 year old male, 23 year old female, 23 year old male, 57 year old male, 37 year old male, 7 year old male, 15 year old male, 13 year old male)
- 7. 1 occupant (49 year old male)
- 8. 6 occupants (27 year old female, 40 year old male, 57 year old male, 55 year old female, 28 year old female, 29 year old female)
- 9. 2 occupants (23 year old male, 23 year old female)
- 10. 2 occupants (Unknown names/ages 4/7/21)
- 11. 3 occupants (22 year old male, 20 year old female, 6 month old female)
- 12. 10 occupants (55 year old male, 24 year old male, 28 year old female, 12 year old female, 5 year old female, 7 year old female, 22 year old male, 21 year old female, 47 year old female, 55 year old male)
- 13. 1 occupant (32 year old male)
- 14. 6 occupants (30 year old female, 23 year old female, 5 month old male, 63 year old female, 75 year old male, 38 year old male)
- 15. 4 occupants (21 year old female, 1 year old female, 68 year old male, 20 year old male)

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2022:**Search Warrants: 71****No Knocks: 15****Occupants:**

1. 12 occupants (47 year old male, 3 year old male, 51 year old male, 23 year old male, 18 year old female, 54 year old male, 35 year old male, 28 year old female, 52 year old male, 55 year old male, 13 year old male, 36 year old male)
2. 2 occupants (31 year old male, 27 year old female)
3. 5 occupants (28 year old male, 55 year old female, 41 year old male, 16 year old female, 20 year old male)
4. 7 occupants (20 year old male, 16 year old male, 1 year old female, 17 year old female, 37 year old female, 15 year old female, 19 year old male)
5. 2 occupants (26 year old male, 16 year old female)
6. 3 occupants (23 year old male, 21 year old male, 20 year old male)
7. 2 occupants (23 year old female, 22 year old male)
8. 6 occupants (26 year old male, 25 year old male, 19 year old male, 26 year old male, 25 year old female, 31 year old female)
9. 4 occupants (27 year old male, 22 year old female, 1 year old female, 4 year old female)
10. 6 occupants (18 year old female, 19 year old male, 49 year old female, 10 year old female, 23 year old male, 17 year old female)
11. 6 occupants (21 year old male, 23 year old male, 22 year old male, 19 year old male, 20 year old male, 18 year old male)
12. 2 occupants (59 year old female, 23 year old male)
13. 6 occupants (23 year old male, 23 year old male, 16 year old female, 18 year old female, 21 year old male, 20 year old female)
14. 5 occupants (23 year old male, 19 year old male, 21 year old male, 23 year old male, 20 year old male)
15. 2 occupants (31 year old male, 26 year old female)

2023:**Search Warrants: 58****No Knocks: 9****Occupants:**

1. 6 occupants (33-year-old male, 28-year-old male, 60-year-old female, 36-year-old female, 19-year-old female, 31-year-old female)
2. 2 occupants (24-year-old male, 21-year-old female)
3. 10 occupants (19 year old male, 18 year old male, 32 year old male, 15 year old female, 23 year old female, 13 year old female, 48 year old male, 53 year old female, 17 year old male, 14 year old male)
4. 10 occupants (17 year old male, 73 year old male, 19 year old female, 19 year old male, 19 year old male, 14 year old male, 16 year old male, 23 year old male, 21 year old female, 2 year old female)
5. 3 occupants (24 year old male, 64 year old female, 35 year old male)
6. 8 occupants (26 year old male, 23 year old female, 3 year old female, 45 year old male, 47 year old female, 13 year old male, 18 year old male, 13 year old male)
7. 5 occupants (9 year old female, 37 year old female, 41 year old male, 14 year old male, 21 year old male)
8. 3 occupants (40 year old female, 25 year old female, 23 year old male)
9. 6 occupants (44 year old male, 44 year old female, 15 year old male, 18 year old male, 23 year old male, 22 year old male)

2024 (as of July 1):**Search Warrants: 33****No Knocks: 7****Occupants:**

1. 1 occupant (36 year old female)
2. 1 occupant (25 year old male)
3. 3 occupants (23 year old male, 18 year old male, 16 year old female)

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4. 7 occupants (32 year old female, 56 year old male, 49 year old male, 24 year old female, 25 year old male, 25 year old female, 37 year old male)
5. 2 occupants (37 year old male, 32 year old female)
6. 10 occupants (45 year old female, 21 year old female, 25 year old female, 23 year old male, 23 year old male, 21 year old male, 22 year old female, 43 year old male, 27 year old male, 27 year old female)
7. 5 occupants (26 year old male, 2 year old male, 1 year old female, 28 year old female, 56 year old male)

Office of the Chief of Police

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301-251-4850 TTY



U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

September 13, 2021

MEMORANDUM FOR ACTING DIRECTOR, BUREAU OF ALCOHOL, TOBACCO,
 FIREARMS & EXPLOSIVES
 ADMINISTRATOR, DRUG ENFORCEMENT
 ADMINISTRATION
 DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
 DIRECTOR, FEDERAL BUREAU OF PRISONS
 DIRECTOR, UNITED STATES MARSHALS SERVICE
 INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL
 HEADS OF LITIGATING COMPONENTS
 DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES
 ATTORNEYS
 UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL *Lin Moran*

SUBJECT: CHOKEHOLDS & CAROTID RESTRAINTS;
 KNOCK & ANNOUNCE REQUIREMENT

As members of federal law enforcement, we have a shared obligation to lead by example in a way that engenders the trust and confidence of the communities we serve. As part of that obligation, we are updating our Department of Justice policies on certain physical restraint techniques and on the execution of certain types of warrants.

In the wake of a number of recent tragedies, law enforcement around the nation is reexamining the way it engages with individuals who come into contact with the criminal justice system. The Department of Justice has undertaken a similar review and determined that the Department did not have consistent written policies across its law enforcement components on the use of “chokeholds” and the “carotid restraint” technique to subdue resisting suspects, or on the use of “no knock” entries when executing a warrant. Therefore, I am directing the Department’s law enforcement components to revise their policies to explicitly prohibit the use of chokeholds and the carotid restraint technique unless deadly force is authorized, and to limit the circumstances in which agents may seek to enter a dwelling pursuant to a warrant without complying with the “knock and announce” rule.

Chokeholds and Carotid Restraints

The use of certain physical restraint techniques – namely chokeholds and carotid restraints – by some law enforcement agencies to incapacitate a resisting suspect has too often led to tragedy. Chokeholds apply pressure to the throat or windpipe and restrict an individual’s ability to breathe. The carotid restraint technique restricts blood flow to the brain causing temporary unconsciousness. It is important that Department law enforcement components have an articulated policy in this area because these techniques are inherently dangerous.

It is a long-standing Department policy that “[l]aw enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.” Policy Statement Use of Deadly Force, Approved by the Attorney General July 1, 2004. Given the inherent dangerousness of chokeholds and carotid restraints, and based on feedback from our law enforcement components on these techniques, Department law enforcement agents and correctional officers are hereby prohibited from using a chokehold or a carotid restraint unless that standard of necessity for use of deadly force is satisfied. Accordingly, Department law enforcement components will revise their policies to reflect this guidance prohibiting the use of chokeholds or carotid restraints by Department law enforcement agents and correctional officers, including federal task force officers, unless deadly force is authorized. Component heads will also ensure that personnel receive notice of this policy and that it is appropriately incorporated into training.

“No Knock” Entries

Federal agents are generally required to “knock and announce” their identity, authority and purpose, and demand to enter before entry is made to execute a warrant in a private dwelling. U.S. Const., amend. IV; 18 U.S.C. § 3109; see Hudson v. Michigan, 547 U.S. 586 (2006). Once that announcement is made, agents must wait a reasonable amount of time based on the totality of the circumstances to permit the occupant to open the door before making entry into a dwelling. See United States v. Banks, 540 U.S. 31 (2003). The Supreme Court has recognized, however, that there are certain situations where it is not constitutionally necessary to “knock and announce” before entering a dwelling—namely, where the officer has reasonable grounds to believe that knocking and announcing would create a threat of physical violence, likely result in destruction of evidence, or be futile. See Hudson, 547 U.S. at 589-90. Because of the risk posed to both law enforcement and civilians during the execution of “no knock” warrants, it is important that this authority be exercised only in the most compelling circumstances.

Today, I am announcing that law enforcement agents of the Department of Justice, including federal task force officers, will limit the use of “no knock” entries in connection with the execution of a warrant in the following ways.

First, an agent may seek judicial authorization to conduct a “no knock” entry only if that agent has reasonable grounds to believe at the time the warrant is sought that knocking and announcing the agent’s presence would create an imminent threat of physical violence to the agent and/or another person. Prior to seeking judicial authorization for a “no knock” entry, an agent must first obtain approval from both the Criminal Chief of the relevant U.S. Attorney’s Office (or a Deputy Chief in a Main Justice litigating component) and an Assistant Special Agent in Charge or Chief Deputy Marshal in the district. Once judicial authorization is obtained, agents may proceed without “knocking and announcing” their presence unless they learn of facts that negate the circumstances that justified this exception to the “knock and announce” rule.

Second, if an agent did not anticipate the need for a “no knock” entry at the time the warrant was sought, the agent may conduct a “no knock” entry only if exigent circumstances arise at the scene such that knocking and announcing the agent’s presence would create an imminent threat of physical violence to the agent and/or another person. If the agent relies on this exigent-circumstances exception in executing the warrant, the agent shall immediately notify his/her Special Agent in Charge or United States Marshal and provide written notice to the United States Attorney or relevant Assistant Attorney General.

Because this policy limits “no knock” entries to instances where there is an imminent threat of physical violence, it is narrower than what is permitted by law – for example, agents must “knock and announce” even when they have reason to believe that doing so could result in the destruction of evidence. In setting the policy this way, the Department is limiting the use of higher-risk “no knock” entries to only those instances where physical safety is at stake at the time of entry. Should an exceptional circumstance arise (e.g., in a national security matter) where no imminent threat of physical violence is present but an agent believes the evidence is so significant, and the risk of its destruction so pronounced, that a “no knock” entry is warranted, judicial authorization for a “no knock” warrant can be sought if approval is first obtained from the head of the law enforcement component and the United States Attorney or relevant Assistant Attorney General, with notice provided to the Office of the Deputy Attorney General.

Policy Revisions by Department Law Enforcement Components

The Department's law enforcement components shall immediately revise their policies to reflect this guidance prohibiting the use of chokeholds and the carotid restraint technique unless deadly force is authorized, and limiting "no knock" entries. Law enforcement component heads shall also report quarterly to the Deputy Attorney General regarding the number of "no knock" entries their agency executed during the prior quarter.



NTOA POSITION STATEMENT

No-Knock Warrant Service

No-knock warrant service has been the subject of many discussions over the past 30 years. These conversations often result in vigorous and passionate debates, and more often than not end with an agreement to disagree. Recent high-profile incidents have refocused the spotlight on this issue, resulting in renewed scrutiny and making no-knock warrants a key issue in the police reform movement.

We at the NTOA have had this same experience and are intimately aware of the complexities of this topic. As experienced law enforcement professionals, we appreciate the challenges facing policing, and our intent is not to add to those difficulties.

We can all agree that there is no easy answer, but there is a *correct* answer: No-knock search warrants, though well-intended, no longer pass the test of tactical science, risk mitigation practices, and liability-conscious decision-making.

The NTOA's position on this is not new, nor is it a surrender to the forces of change. Still, we appreciate that this blunt and definitive statement is likely to cause angst and believe we must explain our reasoning.

The NTOA was created with a mission to help save lives through training, education and tactical excellence, and has been teaching and writing about the no-knock issue for years. This mission has not changed.

No-knock is a legal/judicial exception to the constitutional knock-and-announce requirement. No-knock warrants became popular within policing during the "War on Drugs" of the 1980s. The fact that those dealing in illegal narcotics were often armed and had criminal histories involving violence, coupled with the threat of evidence destruction, created a dangerous challenge for law enforcement. As a result, law enforcement adopted the tactics of surprise, speed, and "violence of action" (intimidation). Law enforcement *hoped* that this combination would quickly overwhelm any resistance and avoid injuries.

The no-knock exception was the critical element to the surprise component of the tactics. It wasn't long before no-knock became synonymous with dynamic entry/movement. Even today, the two terms are inextricably linked. The no-knock became a tactic used for many, if not most,

warrants during the 1980s and early to mid-1990s. More often than not, these missions were successful, sometimes despite ourselves. Unfortunately, we also began to notice a pattern of SWAT officers losing their lives or being seriously injured. Multiple incidents of loss of life forced the NTOA and many agencies to re-examine how we managed risk and to seek alternatives to the no-knock “tactic.”

For years, the NTOA has advocated for the priority of safety and life, which drives strategic decision-making and critical thinking for the development of operational plans and orders. Tactical leaders and supervisors create these plans daily while sending personnel into harm’s way. These safety priorities are well known to all of us, but as a reminder, they are:

1. Hostages/victims
2. Innocent bystanders
3. Public safety personnel (Police, EMS, Fire)
4. Suspect(s)
5. Drugs/evidence (Controlling objective)

Agencies initially used no-knock search warrants to protect the officer from violence and preserve evidence for the prosecution. Though the intent sounds reasonable and is noble in theory, the practice is flawed at its very core. Evidence is the controlling objective for most search warrants, which is the reason for the warrant’s planning and service. Though it is the controlling objective, we must apply sound risk mitigation principles to the problem to better serve the ultimate end state: “suspect(s) in custody and investigation to continue.” We understand the priorities of safety and life. We know from a critical thinking perspective how to build proper strategy to provide effective tactical resolution to the problem while maximizing safety.

For example, if the warrant is for the recovery of drugs, the no-knock warrant purpose is to preserve evidence. The safety priorities ensure the safety of the officers, innocent bystanders, and the suspect before preserving evidence. If the no-knock warrant is used based on the propensity of violence, this further violates the safety priorities. Stealth entry, approach, breaching of the door, crossing the threshold, or other covert means of access only risk the following scenarios:

- The misidentification by the occupants of the police as intruders;
- The compression of space and time negatively affects the ability to correctly interpret situations and the environment for both the police and occupants;
- The misidentification of intent on the part of occupants and the police;

- Police create an environment along with the suspect's intentional or unintentional actions requiring correct interpretation from both sides, which often does not occur, leading to an unfortunate tragedy.

The NTOA's template for sound, defensible risk mitigation is straightforward. Consider all aspects of the mission, including the objective(s), intelligence and applicable legal constraints. Next, consider all of the tactical options at your disposal, and then using the safety priorities, select the safest alternative possible to accomplish your mission. Finally, have the flexibility to adjust to the circumstances (exigency) as they present themselves.

The strategy and tactics developed on a search warrant should always speak to the safety priorities based on intelligence known to the officers. Applying tools and tactics that can be justified and supported by risk mitigation and the safety of all concerned within the environment is mandatory.

When considering the priority of safety and life, it is difficult, at best, to justify or defend no-knock warrant service. Lessons learned over many years and our desire not to repeat our past mistakes are the foundation for our position.

The NTOA has one overriding objective: to save lives. Thank you all for your service.