



POLICIES AND PROCEDURES

MONTGOMERY COUNTY DIVISION OF FIRE AND RESCUE SERVICES

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TITLE

USE OF FORCE


DIVISION CHIEF APPROVAL

PURPOSE:

- 1.0 To provide administrative and operational guidelines and restrictions concerning the use of force in any form by Fire and Explosive Investigators.

APPLICABILITY:

- 2.0 This policy applies to all DFRS Personnel who have been appointed as Assistant or Special Assistant State Fire Marshals-Investigators with delegated arrest powers. Anytime the term "Investigator" is used herein, it will refer to personnel with delegated arrest powers.

- 2.1  This policy was developed in cooperation with the International Association of Fire Fighters, Local 1664.

BACKGROUND:

- 3.0 The need to use force, whether deadly or non-deadly, is one of the most demanding and critical decisions that an Investigator must make. There are, however, situations when an Investigator must make the irreversible decision of whether or not to use deadly or non-deadly force. Such a decision can have a powerful and possibly harmful effect on the Investigator, the Division, and the community. Recognizing that the Division cannot make the decision, the Division must, however, provide some guidance to aid in the exercise of that decision.

It is the policy of this Division to allow its Investigators to use only that force which is reasonable and necessary to effect an arrest or protect themselves or others from personal attack, physical resistance, harm, or death. The decision to exercise force of any level must be based upon the circumstances that the Investigator reasonably believes to exist. The decision to use such force is better predicated upon the danger posed by a subject confronted by the Investigator than one based upon the general nature or category of an offense. Policy based upon immediate danger can be clearer and more concise when considering the use of deadly and/or non-deadly force.



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While the use of deadly force is most commonly associated with firearms, it is not limited to such weapons, but may include other so-called non-deadly protective instruments issued by the division such as expandable batons, OC spray, flashlights, or any other means (to include hands) used by an Investigator.

DEFINITIONS:

- 4.0 Deadly Force – Any use of reasonable and necessary force, which is intended to, or likely to, cause death or serious physical injury.
- 4.1 Division of Fire and Rescue Services (DFRS) – The Division of the Montgomery County Fire and Rescue Service consisting of career employees and volunteers. The DFRS shares with the Local Fire and Rescue Departments the direct responsibility for providing fire suppression and emergency medical services.
- 4.2 Fire/Explosive Duty Officer – Investigator supervisor assigned to assist the on duty shift Investigators.
- 4.3 Fire/Explosive Investigator – A member of the DFRS, charged with the responsibility of investigating fires and explosions. This includes the Fire Administrator, Fire Marshal, Division Chiefs, Bureau Chiefs, Assistant Fire Marshal of Investigations and Internal Affairs Officers.
- 4.4 Non–Deadly Force – Any use of reasonable and necessary force (other than that which is considered deadly force) which is applied to effect an arrest or to protect the Investigator or others from personal attack, physical resistance, harm or death.
- 4.5 Probable/Reasonable 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.
- 4.6 Protective Instrument – Any device, authorized by the Division and used by an Investigator, to apply force to another individual, e.g. OC spray, expandable baton, flashlight, etc.



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- 4.7 Serious Physical Injury – Bodily injury that creates a substantial risk of death, causes a serious, permanent disfigurement, or results in long term loss or impairment of any bodily member or organ.

PROCEDURES:

5.0 USE OF FORCE:

Levels of Force – The Division recognizes four levels of force that may be applied by Investigators during the performance of their official duties. These are:

- A. Communication/Verbal Control/Presence: In the daily performance of official duties, an Investigator's presence represents an authorized government authority. Situations that an Investigator encounters may require not only the Investigator's presence, but frequently some form of verbal or non-verbal communication. This communication may take the form of providing information, giving commands, asking or answering questions, physical gestures, conducting interviews, etc. It may also take the form of issuing specific instructions to individuals or groups. In the event that presence, communication, or verbal control is not sufficient to protect, control, or arrest then the Investigator is justified to use reasonable and necessary force from the appropriate higher level options.
- B. Physical Force: A situation between an Investigator and an individual, or individuals, may escalate to physical force. Physical force applied by Investigators may range from the slightest touching to the infliction of severe injury. Physical force entails the use of any and/or all-human body parts, such as head, teeth, shoulders, arms, hands, knees, feet, etc. In the event that physical force is not sufficient to protect, control or arrest, then the Investigator is justified to use reasonable and necessary force from the appropriate higher level options.



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- C. Protective Instruments: The use of verbal communication or physical force to control a situation which does not produce the desired effect, may necessitate that the Investigator employ a protective instrument in accordance with the established procedure and predicated in the section on Non-Deadly Force. In the event that protective instruments are not sufficient to protect, control or arrest, then the Investigator is justified to use other appropriate reasonable and necessary force.
- D. Deadly Force: This is the use of firearms, protective instruments, or other force options which is intended to, or likely to, cause death or serious physical injury. Deadly force will only be used in accordance with the procedures described in the section Authorized Use of Deadly Force.
- E. While it is the expressed policy of the Division that Investigators use the least amount of force possible, options are not predicated on a strict hierarchical sequence, nor must the Investigator always elect to start at the lowest level. The Investigator must evaluate the immediate circumstances and select the appropriate level of force to those particular circumstances. The level of force being used against the Investigator and the immediate potential for death or serious physical injury to the Investigator or innocent bystanders and/or victims are the primary factors upon which Investigators should base their decision to use force of any level.
- 5.1 AUTHORIZED USE OF DEADLY FORCE
- A. Defense of Self or Another: Investigators may use deadly force to defend themselves or another person from what they have reasonable cause to perceive as an immediate threat of death or serious physical injury.



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- B: Fleeing Felon: Investigators may use deadly force to apprehend a fleeing felon **only** when they have reasonable cause to believe the suspect fleeing poses an immediate threat of death or serious physical injury to themselves or others, **or** Investigators may use deadly force to apprehend a fleeing felon when there is probable cause to believe the crime committed was a felony of a violent type (one which involved the infliction of serious physical injury or death), **and** there is probable cause to believe the person fleeing committed the crime or the person fleeing escaped while being in legal custody as a suspect in a felony of a violent type, **and** failure to immediately apprehend the person may place the Investigator, another law enforcement officer, or the public in immediate danger of death or serious physical injury.

The Investigator's decision to use deadly force against a fleeing felon will be judged by the reasonableness of the Investigator's actions given the facts and circumstances available to the Investigator at the time the force is employed. The incident will be judged more so on the circumstances of the immediate situation presented to the Investigator than on the type of crime committed.

5.2 NON-DEADLY FORCE

Non-deadly force, as defined herein, may be used to effect arrests or to protect Investigators or others from personal attack, physical resistance, or injury, provided the force chosen is not excessive based upon the immediate circumstances of the confrontation. Non-deadly force may involve the use of protective instruments or defense tactics (hands/body).

Use of any force, which is intended to, or likely to, cause death or serious physical injury, will be governed by the use of deadly force requirements. The selection of the protective instrument option does not preclude an Investigator from using an object or instrument to protect the Investigator or others which may not have been necessarily designed for such use or one with which the Investigator was not trained or certified, as long as the object is used in accordance with the limitations on force contained in this policy.



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5.3 OTHER

The discharge of firearms to destroy dangerous/injured animals where no other alternatives are reasonably available is authorized. This action requires the completion of the "Use of Force Report".

An Investigator may utilize deadly force in foreign jurisdictions **only** to defend the Investigator or another person from what the Investigator has reasonable cause to perceive as an immediate threat of death or serious physical injury.

Firearms may be drawn whenever Investigators have reason to fear for their safety or the safety of others.

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

5.4 PROHIBITED USE

Warning shots are prohibited.

Shots fired from or at moving vehicles are prohibited unless the circumstances would authorize the use of deadly force. Investigators will not intentionally place themselves in a position in front of an oncoming vehicle where use of deadly force would likely be the probable outcome. When confronted by an oncoming vehicle, Investigators will move out of its path, if possible, rather than fire at the vehicle.

5.5 MEDICAL CARE

A. All Investigators will be required to initiate and obtain medical care as soon as possible or practical for individuals:

1. Who show signs of any injury as a result of any use of force.
2. Who complain of any injury as a result of any use of force.



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3. Who become unconscious either during or following any use of force, or
4. When the Investigator reasonably believes an individual is in need of medical attention as a result of any use of force.
5. Investigators will immediately notify the Investigation Duty Officer of all injuries complained of or sustained by subjects following any use of force.

5.6 USE OF FORCE REPORTING REQUIREMENTS

- A. The Use of Force Report will be completed in the following circumstances:
 1. Any time force is used to counteract a physical struggle.
 2. Following use of force which results in an injury to an individual.
 3. When the individual claims an injury as a result of the amount of force used.
 4. Whenever force is applied by the use of a protective instrument.
 5. Whenever a firearm is discharged other than authorized target practice.
 6. Whenever a Division canine inflicts injury to any subject or suspect in conjunction with a search, arrest attempt, or apprehension.
- B. A Use of Force Report is **not** needed in those instances of accidental firearm discharges or in those instances where a firearm is displayed to assure Investigator safety.
- C. The report will be completed prior to the end of the shift regardless of whether or not the Investigator is injured, an event report is filed or a criminal charge is pending. It will be forwarded, via the chain of command to the Chief of DFRS who will conduct a review of the incident.



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5.7 REPORTING RESPONSIBILITY

A. INVESTIGATORS RESPONSIBILITY

1. Investigators will report immediately to the Investigation Duty Officer any use of force which meets the reporting requirements above.
2. Investigators will report any firearm discharge except for any authorized range practice.
3. Investigators will complete or provide information for the completion of event reports, charging documents and the Use of Force Report. (ATTACHMENT FMO-005)
4. Investigators will complete any other reporting requirements.
5. Off-duty investigators involved in a reportable use of force incident will immediately report the event to the investigation duty officer and be responsible to file the Use of Force Report.

B. INVESTIGATION DUTY OFFICER RESPONSIBILITY

1. Review the Use of Force Report by the Investigator for completeness.
2. Complete the Use of Force report if the Investigator is unable to complete it.
3. Complete the Duty Officer's section of the Use of Force Report.
4. Forward the report to the Chief of DFRS via the chain of command prior to the end of the shift.
5. Immediately notify the Fire Marshal, Assistant Fire Marshal Investigations and the Internal Affairs Officer of all firearm discharges (whether accidental or intentional) by Investigators, regardless of whether the involved Investigator is on or off duty.



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6. In intentional shootings only, the Investigation Duty Officer will complete the entire Use of Force Report providing the statement of facts. In the Duty Officer section the Duty Officer will indicate that the incident is under investigation and not provide any judgment about the circumstances. The exception to this is authorized range practice or for the purpose of destroying animals.
7. Coordinate all activities of the incident with the Montgomery County Police or local law enforcement agencies.
8. Ensure that the Investigator fulfills all other reporting requirements.
9. Remove the Investigators from official duty who have been involved in any use of force that results in death or serious physical injury and refer all investigators involved to the DFRS Employee Support Program.

5.8 TRAINING/CERTIFICATION REQUIREMENTS

The authorization to carry and/or use any defensive tactic, protective instrument, or firearm is granted by the Division to Investigators based upon completion of specified training courses and a certified weapons instructor has monitored demonstrated competency under hands on testing procedures. The certification of weapons and protective instruments, as well as training in the use of force policy will be conducted annually.

The Maryland Police Training Commission establishes the minimum training and qualification requirements for firearms. All Investigators must receive a copy of, and be instructed in, the Divisions use of force policy prior to being authorized to carry any weapons.

Each Investigator must certify annually with all approved weapons that the Investigator is authorized to use. Failure to recertify annually on any protective instrument or every two years on defensive tactics will withdraw from the Investigator the authorization to carry or use that force option. In the case of issued equipment, such equipment will be turned in to the Assistant Fire Marshal Investigations until rectification is completed.



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A handwritten signature in black ink, appearing to be "R. S.", written over the "DIVISION CHIEF APPROVAL" text.

The Fire and Explosive Investigation Section Training Coordinator, is designated as responsible for the maintenance of certification records, approval lists for protective devices, defensive tactics and training materials.

5.9 DISCLAIMER

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

CANCELLATION

6.0 This policy cancels Use of Deadly Force policy Number 1110 dated April 12, 1989.

ATTACHMENT

7.0 Use of Force Report (FMO-005)