



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).

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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

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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

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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**.

J. 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*:

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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

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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

Use of Force Report – MCP 37
Criteria for Use

Appendix A
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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

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Incident	Instructions/Notifications	Reports Required
Canine (K-9) infliction of injury	<ul style="list-style-type: none">• MCP 37 forwarded via chain	<ul style="list-style-type: none">• Police report related to incident as required (MCP 37 referenced)• MCP 37• MCP 741
<i>Pointing of a service weapon, CEW, or OC Spray at an individual</i>	<ul style="list-style-type: none">• <i>MCP 37 forwarded via chain</i>	<ul style="list-style-type: none">• <i>Police report and supplement(s) related to incident as required (MCP 37 referenced)</i>• <i>MCP 37</i>