

Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the objectively reasonable use of force. While there is no single way to specify the exact amount or type of objectively reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Conducted Energy Device policies.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Duty - a moral or legal obligation to act.

Objectively reasonable - that an officer's actions were reasonable in light of the facts and circumstances confronting the officer, without regard to the underlying intent or motivation.

Pain compliance techniques - the use of painful stimulus to control or direct a person. The purpose is to direct the actions of the subject and to this end, the pain is lessened or removed when compliance is achieved.

Use of force continuum - a standard that provides law enforcement officers with guidelines as to how much force may be used against a resisting subject in a given situation.

Passive resistance - Uncooperative when taken into custody or fails to respond to verbal commands or other directions.

Active resistance - Physically evasive movements to defeat the officer's attempt at control, to include bracing, tensing, pushing or verbally signaling an intention not to be taken into or retained in custody, provided that the intent to resist has been clearly manifested.

Force - The application of physical techniques or tactics, chemical agents or weapons to another person used to effect, influence or persuade a subject to comply with an order from an officer. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

Imminent - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

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Totality of the circumstances - All facts and circumstances known to the officer at the time, taken as a whole, including the conduct of the officer and the subject leading up to the use of force.

300.2 POLICY

The sanctity of human life is the cornerstone of policing. The men and women of The Riverdale Park Police Department affirm, uphold, support, embrace and embody this ideal. Officers are vested with the authority to use objectively reasonable force to protect the public welfare. The application of deadly force is a measure to be employed only in the most extreme circumstances and all lesser means of force have failed or could not be reasonably employed.

De-escalation is a fundamental part of our practice and is included in our curriculum for both basic and annual in-service training. This training takes place in the classroom as well as during interactive, scenario-based training exercises. Crisis Intervention Training (CIT) on recognizing those experiencing a mental health crisis, emphasizing appropriate de-escalation techniques, is taught in basic and annual in-service training. This training is most effective when officers are provided with an understanding of cultural context.

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use objectively reasonable force in carrying out their duties. The use of excessive force will subject officers to discipline, possible criminal prosecution or civil liability.

Officers must have an understanding of, and true appreciation for, their statutory authority and constitutional limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

300.2.1 DUTY TO INTERCEDE AND REPORT

Any officer present and observing another law enforcement officer or a member using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force (Md. Code PS § 3-524).

Any officer who observes another law enforcement officer or a member use force that is potentially beyond that which is objectively reasonable under the circumstances should report these observations to a supervisor as soon as feasible (Md. Code PS § 3-524).

300.3 USE OF FORCE

Officers shall use only that amount of force that is objectively reasonable given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying objectively reasonable force.

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The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

Officers will use those weapons issued or authorized by the department. It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

300.3.1 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit.

These factors include but are not limited to:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of suspected drug or alcohol use.
- (e) The individual's mental state or capacity.
- (f) The individual's ability to understand and comply with officer commands.
- (g) Proximity of weapons or dangerous improvised devices.
- (h) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- (i) The availability of other reasonable and feasible options and their possible effectiveness.
- (j) Seriousness of the suspected offense or reason for contact with the individual.
- (k) Training and experience of the officer.
- (l) Potential for injury to officers, suspects, and others.
- (m) Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.

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- (n) The risk and reasonably foreseeable consequences of escape.
- (o) The apparent need for immediate control of the individual or a prompt resolution of the situation.
- (p) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (q) Prior contacts with the individual or awareness of any propensity for violence, mental impairment and/or history of drug use.
- (r) Any other exigent circumstances.

300.3.2 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a passively or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the individual can comply with the direction or orders of the officer.
- (c) Whether the individual has been given sufficient opportunity to comply.
- (d) Training and experience of the officer.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.3 USE OF FORCE TO SEIZE EVIDENCE

Officers may use objectively reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband.

In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Riverdale Park Police Department for this specific purpose.

300.3.4 ALTERNATIVE TACTICS – DE-ESCALATION

When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion) (Md. Code PS § 3-524).

300.3.5 MARYLAND USE OF FORCE STATUTE

Officers may use reasonable force against a person to prevent an imminent threat of physical injury or to effectuate a legitimate law enforcement objective, provided that the force used under

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the totality of the circumstances reasonably appears necessary and proportional (Md. Code PS § 3-524).

Officers should cease the use of force as soon as the person is under control or no longer poses an imminent threat of physical injury or death, or the force will no longer reasonably accomplish a legitimate law enforcement objective (Md. Code PS § 3-524).

300.4 DEADLY FORCE APPLICATIONS

Use of deadly force is justified in the following circumstances:

- (a) Officers may use deadly force to protect themselves or others from what they reasonably believe is an imminent threat of death or serious bodily injury.
- (b) Officers may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the individual is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible. Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:
 - 1. The individual has a weapon or is attempting to access one and it is reasonable to believe the individual intends to use it against the officer or another.
 - 2. The individual is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the individual intends to do so.
- (c) The use of choke holds and similar carotid holds by members of The Department is prohibited unless the use of deadly force is allowed by law.

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Officers should avoid placing themselves in front of a moving or approaching vehicle. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others. Officers shall not shoot at any part of a vehicle solely in an attempt to disable the vehicle.

300.5 REPORTING THE USE OF FORCE

Any use of force shall be documented promptly, completely and accurately in an appropriate report. The officer will articulate the factors perceived and why they believed the use of force was reasonable under the circumstances. For purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms.

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300.5.1 REPORTING DEADLINE

Any use of force by a member of this department shall be documented as required by state law and as directed in the Report Preparation Policy (Md. Code PS § 3-514; Md. Code PS § 3-524).

300.6 MEDICAL CONSIDERATIONS

Once it is reasonably safe to do so, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious (Md. Code PS § 3-524). Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically assessed. Individuals should not be placed on their stomachs for an extended period, as this could impair their ability to breathe.

Based upon the officer's initial assessment of the nature and extent of the individual's injuries, medical assistance may consist of examination by an emergency medical services provider or medical personnel at a hospital or jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and imperviousness to pain, or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away.

See the Medical Aid and Response Policy for additional guidelines.

300.7 SUPERVISOR RESPONSIBILITIES

A supervisor should respond to a reported application of force resulting in visible injury, if reasonably available. When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.

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- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the individual upon whom force was applied. If this interview is conducted without the individual having voluntarily waived his/her *Miranda* rights, the following shall apply:
 - 1. The content of the interview should not be summarized or included in any related criminal charges.
 - 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 - 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas.
 - 1. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the individual may pursue civil litigation.
 - 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
 - 2. Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy noncompliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.7.1 SHIFT SUPERVISOR RESPONSIBILITY

The Shift Supervisor shall review each use of force by any personnel within the Shift Supervisor's command to ensure compliance with this policy and to address any training issues (Md. Code PS § 3-524).

The Shift Supervisor or other appropriate supervisor should respond to the scene and gather and review all known video recordings in any incident where a use of force by an officer is reasonably believed to have caused serious physical injury as defined by Md. Code CR § 3-201 (Md. Code PS § 3-524).

300.8 TRAINING

Officers will receive statutorily mandated training on this policy and demonstrate their knowledge and understanding via training bulletins and annual in-service training.

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Subject to available resources, officers should receive periodic training on:

Guidelines regarding vulnerable populations, including but not limited to children, elderly, pregnant persons, and individuals with physical, mental, or intellectual disabilities.

De-escalation tactics, including alternatives to force.

300.9 GOVERNING CASE LAW

Graham vs. Connor (490 US 386, 109 S.Ct. 1865)

In *Graham vs. Connor*, the US Supreme Court determined the standard to be used to judge constitutional claims of excessive force brought by citizens against police officers.

Facts of the case

On November 12, 1984, Graham, a diabetic, asked Berry, a friend, to drive him to a convenience store to purchase orange juice to prevent the onset of an insulin reaction. Upon entering the store and seeing the number of people ahead of him, Graham hurried out and asked Berry to drive him to a friend's house instead.

Connor, a city police officer, became suspicious after seeing Graham hastily enter and leave the store. Connor followed the car Graham was riding in and made an investigatory stop. Although Graham was suffering from an insulin reaction, Officer Connor ordered both men to wait while he investigated what had happened in the store.

Backup officers arrived on the scene, handcuffed Graham, ignoring attempts to explain and treat his condition. During the encounter, Graham sustained multiple injuries. He was released when Connor learned that nothing had happened in the store.

Graham filed a law suit against all the officers involved, alleging the use of excessive force in making the investigatory stop.

Court review of the case

During the trial, the District Court considered the following four factors in determining whether the officers used excessive force:

- The need for the application of force
- The relationship between the need and the amount of force that was used
- The extent of the injury inflicted
- Whether the force was applied in a good faith effort to maintain and restore discipline, or maliciously and sadistically for the purpose of causing harm

Using the above factors, the District Court found that the amount of force used was appropriate under the circumstances. The Fourth Circuit Court of Appeals heard the appeal from the District Court and agreed with the District Court's decision.

Supreme Court Decision

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The case was appealed to the US Supreme Court. The Supreme Court determined that the allegations of excessive force by law enforcement officers - deadly or not - during an arrest, investigatory stop, or other seizure of a citizen should be analyzed under the Fourth Amendment.

According to the US Supreme Court, the "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the benefit of hindsight. This "reasonableness" must include the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and rapidly changing - about the amount of force that is necessary in a particular situation. Thus, the test used by the District Court was incompatible with a proper analysis under the Fourth Amendment.

The proper analysis is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, regardless of their underlying motive or intent.

The test of "reasonableness" under the Fourth Amendment cannot be precisely defined. However, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime, whether the suspect posed an immediate threat to officers or citizens, and whether the suspect actively resisted arrest or attempted to flee.

In sum, the US Supreme Court determined that an officer's good intentions will not make an unreasonable use of force constitutional, nor will an officer's bad intentions make a Fourth Amendment violation out of a reasonable use of force.

Tennessee vs. Garner (471 US 1, 105 S. Ct. 1694)

In this case, the United State Supreme Court held that officers cannot resort to deadly force unless they have probable cause to believe that the suspect has committed a felony and poses an immediate and significant threat to the safety of the officer, or a danger to the community at large. The Court affirmed the Court of Appeals decision limiting the use of deadly force to apprehend a fleeing felon.

Facts of the case

On October 3, 1974, a Memphis, Tennessee police officer and his partner were dispatched to a call for a prowler inside a residence. Upon arriving on the scene, a neighbor advised that someone was breaking in to the house next door. As his partner radioed for assistance, the officer went to the back of the house where he heard the door slam and saw someone running across the backyard.

The suspect stopped at a six-foot chain link fence at the edge of the yard. With the aid of a flashlight, the officer could see the suspect's face and hands. he saw no signs of a weapon, and though not certain, was "reasonably sure" that the suspect was unarmed. While the suspect was crouched at the base of the fence, the officer ordered him to stop. When the officer took a few steps toward the suspect, he started climbing the fence.

The officer was convinced that the suspect would elude capture if he got over the fence, so the officer shot the suspect. The suspect was taken to a hospital where he died on the operating table. Ten dollars and a purse taken from the house were found on his body.

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In using deadly force to prevent escape, the officer was acting under the authority of a Tennessee statute and following department policy.

The Memphis Police Department's Firearms Review Board and Grand Jury reviewed this incident and neither took any action.

Court Review of the Case

The suspect's father took the matter into the Federal District Court seeking damages for the violation of the suspect's constitutional rights. The claims were dismissed in the United States District Court.

The Court of Appeals reversed and remanded the decision. It held that the killing of a fleeing suspect is a "seizure" under the Fourth Amendment, and the use of deadly force to prevent escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable.

The Tennessee statute did not adequately limit the use of deadly force because it failed to distinguish between felonies of different magnitudes.

Supreme Court Decision

The U.S. Supreme Court held that apprehension by the use of deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement.

To determine whether such a seizure is reasonable, the suspect's rights must be balanced against the police department's need make an arrest and enforce laws. This balancing process stipulates that, even though there is probable cause to seize a suspect, an officer may not always do so by killing him. The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is unreasonable under the Constitution.

The Supreme Court went on to say that while burglary is a serious crime, the officer in this case could not reasonably have believed that the suspect – unarmed, young, and of a thin build – posed any threat. The Court further held that the fact that an unarmed suspect burglarized a dwelling at night does not automatically mean he is dangerous.

The Supreme Court affirmed the decision of the Court of Appeals on March 27, 1985.