

## CHAPTER 51: USE OF FORCE

## I. POLICY

The use of force by law enforcement is a matter of critical concern to the public and the law enforcement community. Officers are involved on a daily basis in numerous and varied encounters with people, and when warranted to do so, may use force in carrying out their duties.

It is the policy of the Department that each incident involving the application of any degree of physical force upon the person of another must be evaluated based on the facts known to the officer at the time of the incident. The totality of the circumstances will be considered when reviewing use of force incidents.

Under no circumstances may the use of physical force be more than that which is necessary to achieve a lawful purpose. Officers are permitted to use only the amount of force that is objectively reasonable and necessary to protect themselves or others from what is reasonably believed to be a threat of death or bodily harm, to effectuate an arrest, or gain compliance with a lawful order. The use of verbal orders should be used to gain compliance. Whether the use of force is objectively reasonable shall be judged from the perspective of an officer at the time of the incident, based upon facts known or reasonably available to him or her.

Every member of the Police Department shall refrain from using force unnecessarily and shall prevent similar conduct by others. The use of excessive force will subject officers to discipline, possible criminal prosecution, or civil liability. The use of chokeholds and similar carotid holds by members of the Department is prohibited.

The use of reasonable physical force by officers is authorized in situations that cannot be otherwise controlled.

Any time an officer uses force, he or she shall ensure that appropriate medical treatment or first aid is provided to the subject of the force without unnecessary delay.

NOTE: For restrictions and prohibitions on the

use of specific weapons including Firearms, *See: VOL. II, CH. 52. WEAPONS.*

## II. CHECKLIST (N/A)

## III. DEFINITIONS

**Critical Firearm Discharge:** Any discharge of a firearm by a Cheverly Police Officer *with the exception of* range and training firings and discharges at animals for the purpose of humanely destroying them

**Force:** Any physical coercion used to effect, influence, or persuade a subject to comply with an order from an officer; the term shall include the use of chemical irritants and the deployment of canine, but shall not include ordinary, unresisted handcuffing or unresisted use of the Hobble strap

**Hard Personal Weapons:** Strike applied and intended to overcome a physical assault or active threat of assault upon the officer or another (a strike with a closed fist or a kick)

**Less Lethal Force:** Any force that is neither likely nor intended to cause death or serious physical injury

**Lethal Force:** Any force likely to cause death or serious physical injury, including, but not limited to, the use of a firearm

**Personal Weapon:** Any use of hands, elbows, knees, and feet to deliver strikes for the purpose of stunning or distracting a suspect to overcome resistance

**Reasonable Belief:** Facts or circumstances that an officer knows or should know, that cause a reasonable and prudent officer to act or think in a similar way under similar circumstances

**Serious Physical Injury:** Bodily injury that creates a substantial risk of death, causes serious permanent disfigurement, or results in long-term impairment of the functioning of the body

**Serious Use of Force:** Is an incident in which an officer's action resulted in:

- Death, or the likelihood of death

- Hospitalization
- A broken bone
- Loss of consciousness
- Serious disfigurement
- Disability
- All incidents where a person receives a bite from a police canine
- Firearms discharge directed at a person
- All Critical Firearm Discharges

**Soft Personal Weapons:** Strike applied to a nerve motor point as a stunning or distraction technique to cause a motor dysfunction and balance displacement in order to control a resistant subject (an open hand strike or knee strike to a nerve motor point)

#### IV. FORMS

- Commander's Information/Use of Force Report
- Continuation Report
- Incident Report

#### V. PROCEDURES

Officers may use force to:

- Effect an arrest
- Prevent escape
- Overcome resistance to a lawful order or action
- Protect others or themselves from bodily harm

##### 1. Use of Force Continuum Overview

The use of force continuum is designed to provide an overview and visual representation of the force options available to officers. It is a fluid instrument, which attempts to depict the dynamics of a confrontation. The continuum is only a guide and cannot take into consideration every possible situation that an officer may face.

Certain factors, when considered collectively, may influence an officer's determination of how much force to use to overcome a subject's resistance. Examples of factors include, but are not limited to:

- Officer/subject factors such as age, size,

strength, injury, exhaustion, and number of officers versus number of subjects

- Whether the subject is under the influence of drugs or alcohol
- Proximity to weapons
- Availability of other options
- Seriousness of the offense
- Exigent circumstances

It is important to note that an officer does not need to use the lowest level of force on the continuum when the officer can articulate that a higher level of force was reasonable. This continuum should be viewed as a sliding scale, not a ladder. An officer may use force at any level on the continuum, provided that the force selected is objectively reasonable.

##### 2. Tactical Options

###### *Engagement*

Whenever possible, officers should use communication skills to attempt to control situations. Verbal communication is essential throughout the arrest process to deescalate the situation. Distance gives an officer more time to evaluate and react appropriately to a threat. An officer should continually reassess his or her options throughout an incident and take into account that high-risk incidents are fluid and continually changing. An officer should look for indicators of imminent assault. An officer should consider using cover and concealment when it is available and movement (dynamic cover) when it is not. Whenever possible, subjects should be allowed to submit to arrest before force is used.

###### *Disengagement*

Rushing in to make an immediate apprehension is not always necessary or appropriate. Frequently, such action reduces an officer's range of available options. Methods of tactical disengagement include, but are not limited to:

- Area containment
- Surveillance
- Waiting out a subject
- Summoning reinforcements
- Requesting specialized units

### 3. Use of Force Continuum

#### *Subject's Actions*

Conduct observed or intentions reasonably perceived by the officer.

- Cooperative or Compliant:** Complies with verbal commands or other directions
- Passive or Non-responsive:** 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
- Aggression:** Physical assault, or active threat of assault, upon the officer or another
- Life Threatening Assault:** An attack or threat to attack wherein an officer reasonably believes that the assault will result in serious physical injury or death

#### *Officer's Actions*

Conduct designed to overcome resistance through force that is objectively reasonable and necessary to achieve a lawful objective. When possible, the subject should be allowed to submit to arrest before force is used.

- No Force Necessary:** (Uniformed Officer or Identifiable Off-Duty or Plain Clothes Officer) Command presence including the display of authority as a peace officer, and non-verbal communication such as body language and manner of approach; verbal direction includes statements and commands given to the subject
- Low Level Control (Escort Techniques):** Low Level Control includes escort techniques used to remove a non-cooperative subject; for example, open hand escort to direct movement
- Intermediate Level of Control (Chemical agents, ECD, Pressure Points, Joint Manipulation, and Control Holds):** Includes the use of Departmentally issued chemical agents, the E.C.D., and the use of

approved pressure points, joint control holds, and takedowns; it may also include soft personal weapons strikes used to stun or distract prior to applying control holds; the use of soft personal weapons in this instance is not a means intended to defeat resistance, but rather to gain control; for example, an open hand strike to the upper torso or a knee strike to nerve motor point in the leg for the purpose of stunning and distracting a subject in order to apply a control hold

- High Level of Control:** Includes the use of hard personal weapon strikes, Departmentally issued tactical baton, less lethal launchers, and a police canine; the use of hard personal weapons strikes in this instance is intended to overcome a subject's aggressive resistance when necessary to gain control; for example, a closed fist strike or kick delivered to neutralize an active assault on an officer
- Lethal Force:** Includes the use of a firearm or any force which has a reasonable likelihood of causing death or serious physical injury, officers may only use lethal force when they have an objectively reasonable belief the suspect poses an imminent threat of death or serious physical injury to the officer or another person

### 4. Lethal Force

Officers may only use lethal force when they have an objectively reasonable belief that the suspect poses an imminent threat of death or serious physical injury to the officer or to another person.

A decision to use lethal force can only be justified by facts known to the officer at the time the decision is made. Facts unknown to the officer, no matter how compelling, cannot be considered in subsequent investigations, reviews, or hearings.

Any firearm discharge directed toward a human or animal is lethal force. Firearms shall not be discharged when less than lethal force would suffice.

A verbal warning shall be given before the use of lethal force wherever possible. Except as noted in this section, firearms may only be discharged in defense of self or others when:

- The officer reasonably believes that the subject poses an imminent threat of death or serious physical injury to himself or herself or to another person
- No reasonable alternative for apprehending a fleeing subject exists and the officer has probable cause to believe that the person has committed a felony involving the infliction or threatened infliction of serious injury or death and escape of the person would pose an imminent threat of death or serious injury to the officer or to another person

Firearms may be discharged at a vehicle when:

- The occupants of the vehicle are threatening or using deadly force by a means other than the vehicle and innocent persons would not be unduly jeopardized by the officer's action
- The vehicle is operated in a manner which may cause serious injury or death to another person or to an officer and there is no cover available  
*(Officers should avoid placing themselves in situations where vehicles may strike them)*

Firearms may be used to destroy seriously injured animals or those posing an imminent threat to human safety. Also, *See: VOL. II, CH. 52.*  
**WEAPONS.**

#### **5. Commander's Information/Use of Force Report**

Any officer who uses force, including the discharge of OC Spray, shall immediately notify a supervisor. This notification may be made by telephone if a supervisor is not on his/her current tour of duty. However, if the use causes serious injury or hospitalization, the supervisor shall respond to the appropriate scene. Officers shall also notify a supervisor upon receipt of an allegation of **excessive force**. *See: VOL. I CH. 4.*  
**COMPLAINTS.**

All officers who use force must complete each applicable portion of the Commander's Information/Use of Force Report prior to the end of their tour of duty and forward the original to their supervisor.

#### **6. Use of Force Incidents**

Use of force incidents shall be quickly stabilized, injured persons cared for, and the appropriate reports documenting the incident completed.

##### ***Officer's Responsibilities***

Upon a use of force, the officer(s) on the scene shall:

- Ensure the situation has been stabilized and all parties are safe
- Ensure that all involved officers and subjects are examined for injuries
- Ensure that the subject is interviewed for complaints of pain
- Ensure medical attention is provided to those in need
- Ensure that transport from the scene is arranged for any arrestees
- Ensure that a supervisor is notified from the scene of the incident
- Complete a Commander's Information/Use of Force Report.

For those incidents that involve the discharge of OC Spray, the involved officer shall additionally document:

- The basis for the discharge
- The justification provided for the level of force used
- The duration of the discharge
- An estimate of the distance at which the discharge occurred

##### ***Supervisor's Responsibility***

If notified of a use of force incident that does not require the response of a supervisor, the supervisor shall:

- Instruct the officer to document the incident on a Commander's Information/Use of Force Report, including the name of the supervisor contacted, date/time of the notification, and a list all officers and/or witnesses present
- Ensure that a copy of the Commander's Information/Use of Force Report is received and reviewed
- Schedule an informal review of the incident

with the involved officer(s) on his/her next schedule tour of duty

- Brief the Patrol Commander on the use of force and review

When a use of force involves any of the following, a supervisor shall respond:

- Death, or the likelihood of death
- Hospitalization
- A broken bone
- Loss of consciousness
- Serious disfigurement
- Disability
- All incidents where a person receives a bite from a police canine
- All incidents where OC Spray was deployed on a handcuffed subject
- Firearms discharges directed at a person

In the cases noted above, the supervisor shall:

- Respond immediately to the scene
- Request a member of the Investigative Section to take appropriate photographs, recover any evidence of a crime or inappropriate use of force, and any victim/witness statements as may be necessary
- Personally interview the victim(s) and any witnesses that are available
- Advise the victim(s) or witnesses of the complaint procedures, if applicable
- Ensure that a Commander's Information/Use of Force Report is completed. If the officer(s) involved in the use of force incident is injured or incapacitated, personally document the incident on a Commander's Information/Use of Force Report
- For injuries sustained due to a discharge of firearms, contact the PGPD Homicide for investigation of the incident per the current MOU between the CPD and PGPD for jurisdictional police services.
- Personally contact the Patrol Commander, or the Chief of Police, as appropriate. A formal review shall be conducted later.

## 7. Use of Force Review

The use of force review is an administrative procedure intended to assess:

- Whether or not officers are properly trained in use of force techniques
- Whether or not the techniques, if properly executed, were effective
- If the use of force was within Departmental guidelines

Use of force reviews are not investigations, and in no way diminish the rights established by the Law Enforcement Officers' Bill of Rights.

Supervisors shall conduct a review of each use of force incident when:

- An officer under their supervision takes action resulting in or alleged to have resulted in injury of a person whether intentional or accidental
- An officer strikes a person
- An officer employs approved pressure points, joint control holds, or takedowns
- An officer uses a firearm, tactical baton, chemical agent, E.C.D., less-lethal launcher.  
**See: VOL. II, CH. 52. WEAPONS and VOL. I, CH. 17. EQUIPMENT**

A use of force review is not required when:

- A full custody arrest is made without the use of force and transport occurs, but the subject is released without being charged, i.e. handcuffed and released
- An individual is handcuffed for officer safety and released
- An officer points a weapon at an individual
- An officer employs an escort technique
- An officer utilizes the Hobble strap without the use of force

Handcuff and release incidents shall be documented on an Incident Report that details the circumstances of the incident. The use of the Hobble strap shall also be documented on an Incident Report.

### *Documenting the Use of Force*

Supervisors will review, evaluate, and document each use of force incident, and will prepare a Use of Force CIR. The Use of Force CIR will include a precise description of the facts and circumstances that either justify or fail to justify

the officer's conduct. As part of this review, the supervisor will evaluate the basis for the use of force, and determine whether or not the officer's actions were within CPD policy.

Any supervisor who witnesses or approves the involved officer's use of force is prohibited from conducting the use of force review. Under these circumstances, a supervisor of equal rank or above will be responsible for completing the review. Supervisors involved in use of force incidents shall not sign and approve their own use of force reports. The officer that conducts the use of force review shall approve these reports.

The review shall be completed within 7 days of the incident and shall include:

- Statements obtained from all civilian witnesses, when feasible
- Statements obtained from all Departmental employees who witnessed the incident
- The identity of all officers who were involved in the incident or were on the scene when it occurred
- All reports which indicate whether an injury occurred, whether medical care was provided, and whether the subject refused medical treatment
- Photographs or videotapes taken of the incident or of injuries, before and after cleaning and treatment
- The original use of force reports submitted by each officer who used force
- Any other relevant documents or observations

If an officer working secondary employment is involved in a use of force incident, a supervisor shall follow the same steps outlined above. If the incident occurs outside the Town, the supervisor shall liaison with the appropriate law enforcement, if such response is necessary. While conducting the use of force review, the supervisor shall critically evaluate all information obtained. If the supervisor becomes aware of facts that he or she believes indicate the need for an internal investigation, the supervisor shall stop his or her review and contact the Patrol Commander of the Chief of Police, as appropriate. This shall be done to prevent any potential violation of the provisions of the Law Enforcement Officers' Bill

of Rights, which could negatively impact the officer or the Department.

Based on the review, the supervisor shall conclude whether or not the use of force was justified and within Departmental policy. This conclusion shall be based on the totality of the circumstances, Departmental policy, and training.

#### ***Command Review — Concurrence or Non-Concurrence***

Upon completion of the review, the Use of Force CIR, all Use of Force Reports, the Incident Report, witness statements, and any other relevant documents shall be forwarded to the Chief of Police for review. At any point during the Chief's review, questions that clarify the officer's actions may be directed to the Chief.

#### **8. Animals**

Where an officer discharges a firearm for the purpose of humanely destroying an injured animal, no use of force review shall be conducted. The involved officer shall complete an Incident Report, CIR, and a Use of Force Report including the Discharge of Firearms portion.

If an officer destroys an animal for any other purpose, a use of force review shall be conducted. The involved officer shall complete a Use of Force Report including the Discharge of Firearms portion. ***See: VOL. II, CH. 3. ANIMAL COMPLAINTS.***

#### **9. Civil Disturbances & Barricades**

During civil disturbances and barricades, force that is used at the direction of the on scene commander shall be documented on a single Use of Force Report. The supervisor present when force is used shall be responsible for completing any the reports and conduct the use of force review.

Officers who independently use force while involved in a civil disturbance incident or a barricade without the authorization of the on-scene commander will complete a Use of Force Report and a supervisor not involved in the incident shall conduct the review.

## VI. GOVERNING LEGISLATION & REFERENCE

### This General Order addresses:

- Memorandum of Understanding (MOU) between Prince George's County and the Town of Cheverly for Jurisdictional Police Services (July 2008).

### Governing Legislation:

- Graham v. Connor
- Tennessee v. Garner

### *Graham vs. Connor (490 U.S. 386, 109 S. Ca 1865)*

In *Graham v. Connor*, the U.S. Supreme Court determined 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 told that 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 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*

The case was appealed to the U.S. Supreme Court. The Supreme Court determined that 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 U.S. 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 is 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 U.S. 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 U.S. 1, 105 S. Cir 1694)***

In this case, the United States 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.

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 to 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.

Please type in Use of Force Continuum from Special Order Same Chapter

**CHAPTER 52: WEAPONS****I. POLICY**

Employees are responsible for the security and proper maintenance of all Departmental weapons issued to them. Supervisors shall ensure compliance with required maintenance schedules. Employees shall not use Departmental weapons improperly.

The Department will ensure that sufficient less lethal alternatives are available to all patrol officers.

Use of any weapon in this directive may require a use of force review. *See: VOL. II, CH. 51. USE OF FORCE.*

**II. CHECKLIST (N/A)****III. DEFINITIONS**

**ASP Tactical Baton:** An expandable metal baton manufactured by Armament Systems and Procedures, Inc. (ASP) Baton; either Model F26 or F21, or authorized substitute as approved by the Chief of Police.

**Authorized Firearm:** Any firearm that has been inspected and approved by the Patrol Commander to be carried on or off duty; this includes alternate duty handguns, off duty handguns, personal shotguns, and long guns

**Child:** In accordance with Maryland Code Section 4-104 (dealing with handguns), an individual under the age of 16

**Current Qualification:** An individual is qualified if they have successfully completed Departmental and MPCTC approved firearm courses within the preceding year

**Departmental Firearm:** A Departmentally owned or controlled firearm issued to an officer

**Duty-Loaded Condition:** When an authorized firearm has one round chambered and magazine is filled to capacity

**Firearm:** Any firearm, excluding antique firearms

as defined in Maryland Code Section 4-201

**Less Lethal Weapon:** Chemical agents, O.C., E.C.D., impact weapons, and less lethal launchers

**Locked Container:** A safe, lockbox, drawer, or closet, secured by a lock

**OC Device:** Issued aerosol canister that delivers oleoresin capsicum as either a spray or foam

**On duty Firearm:** A firearm authorized for on duty use

**Safe Condition:** When a firearm is unloaded and the ammunition is in a separate location, and is not accessible to minors or unauthorized persons

**IV. FORMS**

Firearms Inspection Form

**V. PROCEDURES****1. Less-Lethal Weapons**

Less lethal weapons include chemical agents, O.C., electronic control devices or conducted energy weapons, impact weapons, and less lethal launchers. Prior to being issued, all less-lethal weapons must be inspected and approved by a CPD member that has been certified as an instructor for the weapon to be inspected.

No officer shall carry or possess any less-lethal weapon until they have successfully completed required Departmental training in the use of the weapon.

Any officer discovering a defect in any less-lethal weapon shall notify a supervisor who shall put the weapon out of service pending repair and re-inspection.

**2. Oleoresin Capsicum**

Oleoresin capsicum (O.C.) is an organically based, non-flammable, less-lethal weapon containing pepper, which causes no known permanent aftereffects. It shall be contained within its own holster.

OC is an intermediate-level force option designed to aid officers in controlling actively resisting subjects.

The OC device shall not be worn or carried out of its holster or where the wearing of firearms is prohibited, such as in the secure areas of police facilities.

OC Spray may be used only when verbal commands and other techniques would be ineffective, such as:

- When necessary to defend the officer or others from physical harm
- To effect an arrest of a resisting suspect or to prevent the escape of that subject
- When lower levels of force would be ineffective or inappropriate and arrest of the subject is the officer's objective

Officers shall limit the use of OC to those cases in which force is necessary to protect the officer, subject, or another from physical harm, or is necessary to make an arrest.

Officers shall issue a verbal warning that OC will be used unless doing so would present a danger to the officer or others.

When feasible, the officer will defer using OC for a reasonable amount of time to allow the subject to comply with the warning. The officer should aim the canister directly at the face and upper torso of the subject from a distance of 4-to-6 feet. A one-second spray shall be followed by an evaluation of the subject and his or her movements. The officer shall give verbal commands and advise the subject to follow instructions so that decontamination can take place.

Officers are prohibited from using OC Spray in passive civil demonstrations or in crowded areas where innocent people may be affected, such as hospitals or nursing homes where an individual's health may be endangered, unless all other alternatives have been exhausted.

Plainclothes officers, whether on or off duty, may carry OC at their discretion. The device shall not be visible when carried by officers in plainclothes.

The Patrol Commander is responsible for the issuance and accountability of the duty issue aerosol OC devices, and for accounting for the ammunition used in pepper-ball and FN 303 launchers.

When necessary, OC canisters shall be replaced to ensure that there is enough OC for multiple deployments in subsequent incidents.

### ***Duties Following Discharge of Oleoresin Capsicum***

While most persons will exhibit an inability to function normally after being exposed, officers must use caution when approaching such persons within the first 30-60 seconds after exposure.

After deploying OC, officers should allow at least five seconds for the mist to dissipate, and then give specific commands to the subject. Exposed subjects shall be instructed to breathe normally, and shall be closely monitored for the first 30-45 minutes.

If normal breathing does not resume after five minutes, or if all symptoms do not dissipate within 30-45 minutes, medical aid shall be requested. The following shall be closely monitored after being exposed:

- Obese individuals with medical conditions such as diabetes or heart trouble
- The elderly
- Those impaired by alcohol or drugs
- Those with chronic respiratory problems such as asthma

Officers shall immediately call for medical assistance when an exposed individual:

- Becomes incoherent
- Hyperventilates
- Loses consciousness
- Stops breathing
- Turns pale

Officers shall notify medical personnel that the person was exposed to OC.

Additionally, officers shall request medical assistance for subjects exposed to OC Spray when

they complain of continued effects after having been de-contaminated or they have a pre-existing medical condition such as asthma, emphysema, bronchitis, or a heart ailment, that may be aggravated by the OC Spray.

### ***Handcuffing***

Officers shall use caution when attempting to handcuff an individual exposed to a chemical agent. After handcuffing, officers shall not place the individual on their back or stomach. Doing so may prevent normal breathing and cause positional asphyxia that may lead to death.

Officers shall remove a subject exposed to OC Spray from a face down position as soon as it is safe to do so.

Subjects shall be seat-belted and transported in an upright position. Officers shall follow directives outlined in **VOL. II, CH. 4. ARREST, TRANSPORT & PROCESSING.**

OC Spray may be used on a restrained subject only, when without the use of OC Spray, the subject or another person is likely to suffer injury or the subject may escape.

### ***Decontamination***

Absent exceptional circumstances, officers will decontaminate every subject exposed to OC within twenty minutes of the application of the Spray.

Officers shall not attempt to decontaminate an individual when their safety would be unduly jeopardized. The person shall be exposed to fresh air (when feasible) and cool water shall be used to flush their eyes. Officers may carry water in their vehicles for decontamination purposes.

No individual who has been exposed to a chemical agent shall be left unattended unless he or she can function without assistance or is transferred to the custody of another law enforcement agency or hospital. Officers shall notify those accepting custody of the exposure and whether or not there were any complications.

### **3. Electronic Control Devices (ECD)**

The ECD or conducted energy weapon, such as the Taser<sup>™</sup>, are an intermediate-level force option designed to aid officers in controlling actively resisting subjects. With proper use, it may reduce the risk of injury to officers and subjects.

The ECD can be deployed in one of two modes – probe mode or touch/stun mode. Probe mode is intended to incapacitate an individual; touch/stun mode is used for pain compliance.

The ECD may be used:

- To control a dangerous or violent subject when lethal force does not appear to be justified
- When attempts to control the subject by other tactics have been ineffective
- When there is reasonable expectation that it is unsafe for officers to approach within reach of the subject
- When the suspect is displaying active resistance
- When lesser force options are ineffective
- When the subject poses a threat from a distance and attempts to close on the officer, placing the officer at risk of injury

The ECD shall not be deployed on individuals who may have been exposed to an alcohol-based, or other flammable, OC spray. Additionally, officers shall consider the reasonableness of deploying the ECD when the subject is a child, a woman known to be pregnant, or an individual with a known heart condition.

The ECD shall be issued to and used only by those who have completed the Department's ECD Training Program and who are currently certified in ECD use by the Maryland Police and Correctional Training Commissions (MPCTC).

The ECD launches two probes up to a distance of 25 feet from a replaceable cartridge. When the probes make contact with a target, electrical current is transmitted along the wires and into the body of the individual; it may be effective through up to two inches of clothing.

The ECD is programmed to dispense five-seconds of electrical current. The probes and wires should not be touched during this time. Officers should be

careful to not step on or trip over the wires. The ECD shall be deployed the least number of times necessary to obtain compliance.

Individuals who have been subjected directly to the ECD or the probes shall immediately be transported to a medical care facility for evaluation and treatment. Officers shall transport the individual unless on-scene medical personnel deem transport by ambulance more appropriate.

Officers shall advise medical personnel that the individual has been subjected to the ECD, providing the approximate time that it occurred. If the probes have penetrated the skin, the injuries shall be brought to the attention of medical personnel. Only medical personnel may remove the probes if embedded in the skin.

Officers shall obtain a hospital discharge form from the attending physician before transporting the arrestee to a processing facility.

Anytime an officer discharges the ECD to immobilize an individual by discharging the cartridge or making direct contact with an individual utilizing the Touch/Stun method, he or she will deliver the ECD to the ECD control officer along with a copy of the corresponding Commander's Information/Use of Force Report.

The ECD control officer shall be a certified ECD instructor selected by the Patrol Commander. Verification of date, time, and number of discharge(s) will be downloaded from the ECD and will be included as part of the deployment evaluation routinely conducted anytime the ECD is discharged.

The ECD control officer shall document testing of the ECD on the Department's ECD testing log. Supervisors shall document accidental discharges of the ECD on a CIR. For intentional deployments of the ECD, **See: VOL. II. CH. 51. USE OF FORCE, Use of Force Reviews.**

#### 4. **Impact Weapons**

The authorized expandable tactical baton (ASP) and FN 303™ launcher may be used when the use of less force would be impractical or unsafe. These weapons may be used:

- To repel force or threat of force
- To arrest a person whose actions demonstrate aggression

#### ***Expandable Tactical Baton — ASP***

The tactical baton is a high-level force option used by officers to defend themselves or others from physical assault or threatened assault by a subject exhibiting aggressive behavior.

Officers shall carry either the Armament Systems and Procedures, Inc. (ASP) baton Model F26 on their equipment belt while in uniform or Model F21 when assigned to the Investigative Section or in a plainclothes assignment.

The F26 has a black two-piece, telescoping steel alloy shaft. The F26 has a closed length of 9.5 inches; a maximum expanded length of 25.6 inches, and weighs 20 ounces. The ASP baton shall be worn in the issued scabbard. The scabbard shall be of plain black plastic.

The F21 has a black two-piece, telescoping steel alloy shaft. The F21 has a closed length of 7.7 inches; a maximum expanded length of 20¼ inches, and weighs 16.3 ounces.

#### ***Baton Modifications & Accessories***

No modifications or adjustments of any kind shall be made to any ASP baton without prior written approval from the Patrol Commander.

Following modification, a supervisor shall inspect the baton before it is authorized for use by any officer. Supervisors shall ensure ASP batons conform to requirements in this section.

#### ***Blackjacks Prohibited***

The use or possession of blackjacks is prohibited.

#### 5. **Less-Lethal FN 303™ Launcher**

Less-lethal launchers are a high-level force option when directed at an individual. Using less-lethal launchers for the delivery of chemical agents when impact with the subject is not intended is an intermediate level force option. Using less-lethal

launchers to break windows or remove obstacles to line of sight when impact with a subject is not intended is not a use of force.

Launchers are extended range impact weapons capable of delivering the following projectile payloads:

- Oleoresin Capsicum (OC)
- Permanent and washable marking paint

These launchers may be used:

- To control a dangerous or violent subject when deadly force does not appear to be justified or necessary
- There is a reasonable expectation that it is unsafe for officers to approach within contact range of the subject
- When necessary to defend the officer or others from force or the threat of force that could cause injury to any person
- To effect an arrest of a person whose actions demonstrate aggression
- When it would be unsafe or impractical to approach a person to deploy a chemical agent from a canister or to use the tactical baton
- When a higher level of force may be justified, but an opportunity exists to use a less-lethal launcher before other options are deployed
- When lower levels of force would be ineffective or inappropriate and arrest is the officer's objective
- During a civil disturbance, with supervisory approval, to assist in the arrest of subjects threatening physical violence or committing acts that may cause injury to others; a dispersal warning shall be given over a public address system prior to deployment

A supervisor shall respond to any scene where a less-lethal launcher has been requested or deployed.

Any incident involving the discharge of a less-lethal launcher constitutes a use of force and requires a use of force review. ***See: VOL. II, CH. 51. USE OF FORCE, Use of Force Reviews.***

Any person struck by a less-lethal projectile shall be transported to a medical facility for evaluation and treatment. Transportation to a medical facility

will be by police transport.

Officers shall advise medical personnel that a less-lethal projectile has struck the individual, providing the approximate time that it occurred. Officers shall obtain a hospital discharge form from the emergency room physician before transporting the arrestee to a processing facility.

## 6. **Lethal Force**

Officers may only use lethal force when they have an objectively reasonable belief that the suspect poses an imminent threat of death or serious physical injury to the officer or to another person.

A decision to use lethal force can only be justified by facts known to the officer at the time the decision is made. Facts unknown to the officer, no matter how compelling, cannot be considered in subsequent investigations, reviews, or hearings. ***See: VOL. II, CH. 51. USE OF FORCE.***

## 7. **Firearms**

Officers shall be armed with an issued or authorized off duty firearm and possess their badge and identification card while traveling in the Town. Firearms shall not be carried where prohibited by law. Only authorized firearms may be used when taking police action, unless the officer is confronted by an emergency and an authorized firearm is not available.

Unless operationally necessary, firearms shall be concealed at all times from public view when officers are not in uniform.

Officers are responsible for the safe handling, cleanliness, and security of all assigned firearms. They shall exercise caution when handling firearms.

Any firearm discharge directed toward a human or animal is lethal force. Firearms shall not be discharged when less than lethal force would suffice.

A verbal warning shall be given before use of lethal force whenever possible. Except as noted in this section, firearms may only be discharged in defense of self or others when:

- The officer reasonably believes that the subject poses an imminent threat of death or serious physical injury to himself or herself or to another person
- No reasonable alternative for apprehending a fleeing subject exists and the officer has probable cause to believe that the person has committed a felony escape of the person would pose an imminent threat of death or serious injury to the officer or to another person

Firearms may be discharged at a vehicle when:

- The occupants of the vehicle are threatening or using deadly force by a means other than the vehicle and innocent persons would not be unduly jeopardized by the officer's action
- The vehicle is operated in a manner which may cause serious injury or death to another person or to an officer and there is no cover available (officers should avoid placing themselves in situations where vehicles may strike them)

Firearms may also be discharged at public or private ranges for target shooting. When such activity results in injury or any unusual incident, the officer shall immediately notify PSC.

Firearms may be used to destroy seriously injured animals or those posing an imminent threat to human safety. **See: VOL. II, CH. 51. USE OF FORCE.**

#### ***Use of Firearms Prohibited***

The use of firearms is prohibited:

- Outside the Town solely for the purpose of apprehension
- To discharge warning shots
- When less force could reasonably be used
- When innocent persons would be unduly endangered

#### ***Display of Firearm Prohibited***

The display of a firearm is not lethal force. An officer shall not display or draw any firearm unless he or she reasonably believes that he or she may

have to employ lethal force.

An officer may draw his or her firearm when he or she believes that doing so will provide a tactical advantage. Officers shall not use a firearm to threaten or intimidate anyone unless the use is tactically necessary. Officers shall promptly reholster, conceal, or store firearms when the threat has ended. Officers shall not draw, dry fire, or display a firearm in public except for official use.

#### ***Firearms & Intoxicants***

Officers shall not be armed when under the influence of alcoholic beverages or medication that may render them incapable of effectively using a firearm.

#### ***On Duty Firearm***

On duty officers shall carry one of the following issued weapons in a duty-loaded condition:

- Issued Glock .40 Model 22
- Issued Glock .40 Model 23
- Issued Smith & Wesson Model M&P 15A
- Issued Mossberg 12 Gauge Model 590

All officers shall be armed and carry their badge with identification card unless:

- Prohibited by law or procedure
- Within a controlled area without public access
- In a duty status prohibiting being armed

Nothing in this directive is intended to prohibit procedures established by a supervisor during a covert operation.

On duty officers working in plainclothes shall conceal the weapon at all times. The only exception to this is when it is operationally necessary or impractical to do so.

#### ***On Duty Long Guns***

Only officers trained with rifles are authorized to use them, and absent an emergency, only with authorization of the Patrol Commander. Qualified officers may use authorized shotguns. **See: #10 Personal Long Guns & Shotgun Program.**

***Off Duty Firearms***

Off duty firearms must be:

- Semiautomatic
- 9mm or .40 caliber
- Have a minimum magazine capacity of seven rounds
- Have a double-action firing mechanism
- If capable of firing in single action, have an external de-cocking mechanism
- Any firearm permitted to be carried on duty

Any firearm to be carried off duty shall be approved by the Patrol Commander.

Officers shall qualify annually at day and night fire with their authorized off duty firearms. The Department's firearms instructor(s) or the Patrol Commander shall document the make, model, and serial number of each firearm.

If an authorized off duty firearm becomes unavailable or the officer fails to qualify with the weapon, he or she must carry his or her issued firearm pending availability or qualification.

Ammunition for off duty firearm qualification shall be purchased at the expense of the officer.

***Exceptions to Off Duty Firearm Requirements***

When circumstances render the carrying of a firearm impractical, it shall be secured in a readily available place, protected from public access. Officers are not required to be armed when traveling outside the Town except when they are operating a Departmental vehicle.

***Alterations or Repairs to Firearms***

A Departmental armorer or range instructor shall perform the routine repairs of Departmental firearms.

Only issued magazines may be used with Departmental handguns. For alternate duty handguns, only the manufacturer's magazines shall be used.

The following grips are authorized for use with

issued firearms:

- Glock plastic grips (standard with issued weapon)
- Smith & Wesson grips (standard with issued weapon)

All other grip modifications are prohibited. Any alteration to the operating mechanism of any authorized firearm requires written approval from the Patrol Commander.

***Storage Requirements***

When any Departmentally-issued firearm or off duty firearm is not in the immediate possession of an officer, to include within his or her residence, the officer shall ensure that the weapon is:

- Secured in an appropriate locked container
- Secured with a commercial gun lock or other locking device that renders the firearm incapable of being fired
- Rendered safe and maintained in a secure location as defined in this chapter

***Firearm Safety, Exceptions***

*(Annotated Code of Md., Criminal Law, Section 4-104)*

Except as noted below, an individual may not store or leave a loaded firearm in any location where the individual knows, or should know, that an unsupervised child can gain access to it.

Exceptions:

- A child's access to a firearm is supervised by a person 18 years of age or older
- A child's access to a firearm is a result of an unlawful entry
- A firearm is in the possession or control of a law enforcement officer while the officer is engaged in official duties
- A child has a certificate of firearm and hunter safety as established in Section 10-301.1 of the Natural Resources Article

***Firearms & Ammunition in Vehicles***

This subsection does not apply to firearms or ammunition recovered in the line of duty. For

procedures dealing with the proper handling of property and evidence, *See: VOL. II, CH. 41. PROPERTY & EVIDENCE.*

Authorized long guns and shotguns (including ammunition) shall be stored in the trunks of Departmental vehicles while officers authorized to carry such weapons are on duty and/or traveling to or returning from a CPD facility. At all other times, these weapons shall be secured at the officer's home or a CPD facility.

All other authorized firearms and ammunition may be temporarily stored in the trunk of a Departmental or personal vehicle when wearing the firearm would be impractical. No firearm will be left in view in any unattended vehicle except those equipped with an authorized in-car shotgun rack. Ammunition shall not be left in view in any unattended vehicle.

## 8. Ammunition

### *On Duty*

When on duty, officers shall only use issued and supplied ammunition in any authorized firearm.

### *Off Duty*

The following ammunition shall not be used in authorized firearms:

- Ammunition with explosive (percussion) heads, designed to explode on impact
- Ammunition with fluid-filled cavities
- Armor-piercing ammunition (steel or tungsten core bullet with full metal jacket)
- Frangible or shot-filled

Other factory-jacketed ammunition may be used. Officers may consult the Patrol Commander regarding the acceptability of ammunition. All ammunition for departmentally-owned weapons will be supplied by the CPD. Ammunition for approved off-duty weapons will be supplied by the individual officer.

## 9. Firearms Range

The CPD utilizes PGPD range facilities. The Director, PGPD Weapons and Survival Skills, has

complete discretion regarding weapon safety and range operations. The Director may prohibit officers from any or all activities at the Range. All persons using the Range are under the functional supervision of the Director.

Failure of CPD officers to report and successfully complete any firearms training when ordered to do so shall subject the officer to administrative and/or disciplinary action, with a maximum penalty of dismissal.

### *Qualification*

No officer shall carry any firearm, on or off duty, with which he or she is not currently qualified.

Officers shall qualify with their authorized firearm(s) annually at day and night fire.

Sidearm qualification classifications:

Master	99.0-100
Expert	95.0-98.9
Sharpshooter	85.0-94.9
Marksman	75.0-84.9

Shotguns & Long guns simply require a score of 80% or better to qualify.

When an officer fails to qualify either day or night fire with his or her authorized firearm after three attempts on the same qualification date, and has no apparent physical impairment, the Patrol Commander or his or her designee shall:

- Notify the officer in writing that his or her police powers are suspended
- Send a copy to the Chief of Police
- Take custody of all issued firearms, badge and Departmental vehicle (the officer retains his or her identification card)
- Arrange transportation for the officer
- Temporarily reassign the officer pending remedial training

Suspension under these circumstances is not a disciplinary action. It is an administrative action intended to limit officers' potential involvement in situations where their lack of firearm proficiency may endanger themselves or others.

The officer must undergo a course of instruction prescribed by the Patrol Commander and retest with a minimum qualification score to return to full duty.

If the inability to qualify is the result of a physical impairment, a determination shall be made as to the duration of the impairment. If temporary, the officer shall be placed in a non-contact assignment until the impairment is corrected and the officer qualifies. If the impairment is long-term or permanent, the Patrol Commander shall ensure that the officer receives a fitness for duty examination.

An officer unable to qualify after remedial training shall remain in the non-contact assignment with their police powers suspended. If the Patrol Commander determines that continued remedial training will not result in successful qualification, he or she shall forward a memorandum with documentation of the remedial training program to the Chief of Police. The Chief of Police shall determine whether or not the officer has lost a bona fide occupational qualification and take the appropriate action.

#### **10. Personal Long Gun & Shotgun Program**

Only long guns with the same specifications as the Smith & Wesson MP15A may be carried by CPD officers and only upon approval of the Patrol Commander.

Authorized personal shotguns are 12-gauge, with 18" or 20" barrels. The Patrol Commander shall determine the suitability of a given shotgun for use.

Officers who are qualified may carry both a shotgun and a long gun and all weapons shall be locked in a departmentally-owned vehicle only. When carrying a long gun or shotgun in their issued vehicle, officers shall not leave the vehicle unlocked or unattended with the keys in the ignition. Neither of these weapons shall be left in the trunk after completion of a tour of duty. Permanent storage of either weapon in vehicles is prohibited.

Departmental and personal long guns and shotguns shall not be left in the officer's vehicle after

completion of a tour of duty. Permanent storage of personal weapons in vehicles is prohibited. When off duty, personal shotguns and long guns shall be removed from the issued officer's vehicle, secured with a locking device, and stored in a location where they cannot be accessed or removed by any person other than the officer.

Situations in which the deployment of a long gun may be appropriate include, but are not limited to:

- When a suspect is armed with a high-powered weapon or wearing body armor
- An active-shooter incident
- Barricades and hostage incidents

Officers shall only carry shotguns during situations that may require their use. Officers shall not deploy both a long gun and a shotgun simultaneously. Neither weapon shall be carried on routine calls for service nor routine traffic stops.

#### ***Inspections***

No personal long gun or shotgun shall be authorized for Departmental use before inspection by the Armorer. The Armorer must inspect personal long guns and shotguns annually. All participants are responsible for submitting their weapons to the Armorer for inspection during qualification. Only long guns and shotguns with a valid inspection may be carried.

Supervisors shall conduct monthly inspections of all long guns and shotguns carried by their officers. The inspections shall be documented on the Firearms Inspection Report.

#### ***Maintenance & Repair of Personally Owned Shotguns & Long Guns***

Officers are responsible for routine maintenance and repair of their long guns and shotguns. Following all maintenance or repairs (except routine cleaning or lubrication), the weapons must be submitted to the Armorer for inspection.

#### ***Modifications & Accessories on Personally Owned Long Guns***

The following are mandatory:

- Plain nylon sling (may not hold ammunition)
- Elastic stock magazine holder

The following is authorized:

- Any manufactured lighting system that attaches to the long gun

The following are prohibited:

- Any sight system other than the factory sights, such as optical, laser, hologram, aim point, and leaf sights
- Any modifications that alter the physical or mechanical characteristics of the long gun.

#### ***Modification & Accessories on Personally Owned Shotguns***

The following are authorized:

- Any full-length stock
- Elastic stock ammunition sleeves
- Extended magazines
- Five shell carrier that attaches to receiver
- Plain slings (may not hold ammunition)
- Any manufactured lighting system that attaches to the shotgun

The following are prohibited:

- Folding stocks
- Any sight system other than the factory sights, such as optical, laser, hologram, or aim point sights
- Any modifications that alter the physical or mechanical characteristics of the shotgun

#### ***Shotgun Procedures***

Shotgun-qualified officers shall ensure that:

- When not in use, the shotgun is locked in a Departmental vehicle trunk
- Only issued duty ammunition is used in shotguns
- While on duty, the shotgun remains in car-safe condition; chamber empty, dry-fired with safety on, magazine loaded to full capacity, unless loaded for immediate use

- The shotgun is unloaded only through the loading port; shells shall not be racked through the action
- The shotgun is unloaded with the action open and safety on before it is returned to storage

Each officer qualified with a personally owned shotgun will be issued five rounds of duty ammunition at the range.

#### ***Long Gun Procedures***

Long gun-qualified officers shall ensure that:

- The long gun is locked in a Departmental vehicle trunk
- Only issued duty ammunition will be used in long guns
- The long gun remains in car-safe condition; safety on, no rounds loaded in the chamber, bolt closed, and magazine inserted.
- The magazine is fully loaded (15 rounds) and locked in the magazine well

#### ***Defective Departmental Weapons***

Officers discovering a defective Departmental long gun, shotgun, or handgun shall notify a supervisor, conspicuously tag the weapon, and place it in a safe location within a CPD facility. Supervisors shall ensure that the weapon is safely stored and notify the Patrol Commander using a CIR.

The Patrol Commander shall arrange for delivery of the weapon to the Armorer and also arrange for the use of an alternative weapon for the involved officer.

#### ***Qualification***

Officers must successfully complete the Department's day and night fire qualification course annually in order to carry a long gun or shotgun.

Supervisors shall ensure that any officer carrying a long gun or shotgun is currently qualified for that weapon.

#### **VI. GOVERNING LEGISLATION & REFERENCE**

**Governing Legislation:**

- Tennessee v. Garner  
(*Tennessee vs. Garner*, 471 U.S. 1, 105 S.Ct. 1694)

In this case, the United States 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.

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.

**CHAPTER 53: WEATHER RELATED EMERGENCIES****I. POLICY**

Weather related emergencies can have a negative impact on police services. The Department's goal is to avert or minimize the effects of inclement weather on the level of police service in the Town.

**II. CHECKLIST (N/A)****III. DEFINITIONS (N/A)****IV. FORMS (N/A)****V. PROCEDURES**

Only a CPD supervisor may declare a weather emergency. Before such an event, the supervisor should consult with the Public Works Director to ascertain road conditions and the Town's deployment of snow removal equipment.

**1. Employee Work Status**

All sworn Departmental personnel are essential employees. They shall report to work as scheduled during weather-related emergencies unless otherwise directed by a supervisor.

Civilian employees shall attempt to report to report to work as well. If this is impossible due to impassable road conditions or severe inclement weather, civilian employees shall immediately notify a supervisor for further instructions.

**2. Supervisor Responsibilities**

The Patrol Commander shall establish procedures for, and all supervisors shall be knowledgeable of, the following:

- Emergency notification procedures for the call-out of off-duty personnel
- Deployment of personnel during a weather related emergency
- Vehicles or equipment that are available for use during a weather related emergency
- Procedures to ensure that vehicles parked at police facilities are moved before snow removal

**3. Implementation of Signal 26**

When weather conditions deteriorate making routine patrol hazardous, a supervisor may initiate a Signal 26 in the Town. Absent the presence of a supervisor, the CPD shall assume a Signal 26 when the PSC broadcast same for the PGPD District I area.

Officers shall continue to respond to emergency calls for service during a Signal 26.

***Supervisor's Responsibilities***

During a Signal 26, supervisors shall:

- Assign at least one officer or SRT investigator to take reports over the telephone
- Temporarily reassign SRT investigators to supplement patrol officers until normal operations are resumed, if necessary

***Signal 26 Cancellation***

A supervisor may cancel a Signal 26 for the Town. Absent the presence of a supervisor, the CPD will recognize the cancellation of Signal 26 when the PSC announces same for the PGPD District I area.

**VI. GOVERNING LEGISLATION & REFERENCE****General Legislation:**

**CHAPTER 54: WORKPLACE  
DISTURBANCES**

**I. POLICY**

The Town of Cheverly recognizes the need for a violence-free environment for all Town employees and visitors. The Town will not tolerate violence in the workplace and is committed to maintaining an environment free of all forms of violence, threats of violence, and all forms of intimidation and criminal harassment. The Department's goal with respect to these incidents is the protection of life and property.

**II. CHECKLIST (N/A)**

**III. DEFINITIONS**

**Town Employee:** Any person elected or appointed to, or employed by, the Town or any Town agency, board, commission, or similar entity, whether or not paid in whole or in part with Town funds

**Workplace:** Any location where a Town employee is working or assigned

**Workplace Disturbance:** Any incident involving violence, threat of violence, intimidation, or criminal harassment directed at any Town employee that occurs at a workplace

**IV. FORMS**

- Incident Report
- Commander's Information Report

**V. PROCEDURES**

Town government officials who anticipate a disturbance shall be referred to the Patrol Commander. The Patrol Commander's name and telephone number shall be provided to the official making the request.

All calls involving workplace disturbances require an on-scene response.

**1. Patrol Officer's Responsibilities**

All incidents of workplace violence shall be

documented on an Incident Report. The report shall be titled, "WORKPLACE DISTURBANCE." The SPECIAL STUDIES block shall be coded "20."

A Commander's Information Report shall be completed for all incidents of workplace violence.

Supervisors shall ensure that all workplace disturbances are properly investigated and documented.

**2. Commander's Responsibilities**

Supervisors from other Town components may request Departmental assistance for anticipated workplace disturbances. The Patrol Commander shall comply with these requests and decide the number of officers, attire, and level of response.

**VI. GOVERNING LEGISLATION &  
REFERENCE**

**CHAPTER 55: WEARABLE BODY CAMERA****I. PURPOSE**

The general use of the Wearable Body Camera (WBC) is to enhance police services to the Cheverly community by accurately documenting by video and audio events, actions, conditions and statements made during citizen contacts, traffic stops, arrests, searches, and calls for police service. In addition to these general services, there are also specific purposes as outlined below:

1. To capture crimes in-progress, whether perpetrated against the officer or the community, and to maintain this capture as evidence for court presentation.
2. To accurately document crime scenes, the discovery of evidentiary items and to accurately represent the actions of the police pursuant to investigation.
3. To aid in the documentation of victim, witness, suspect, or accused statements pursuant to an on-scene response and/or to document advice of rights, if applicable.
4. To act as a deterrent for purposes of officer safety when a potential suspect or accused should reasonably know his or her actions and statements would be recorded.
5. To reduce unreasonable or false complaints made against officers during the course of their police duties.
6. To serve as a training mechanism to ensure the courtesy and professionalism of all Cheverly police officers.

**II. CHECKLIST (N/A)****III. DEFINITIONS**

**Wearable Video Camera:** The VIEVU Wearable Video Camera, Model PVR-LE2, with low light capability.

**VERIPATROL Software:** Secure video file management system that reads and stores video files downloaded from the wearable cameras.

**One-Party Consent:** Where at least one party (e.g., police officer wearing the WBC) consents to the interception and recording of oral communication.

**Two-Party Consent** – Where all parties to a communication must consent to the interception and recording of oral communication.

**IV. FORMS**

- Commanders Log/Use of Force Report
- Incident Report

**V. PROCEDURES****1. Operational Readiness**

The care of the issued WBC is the responsibility of the officer. The camera will be operated and maintained according to the manufacturer's instructions and recommendations.

Each officer operating a WBC will ensure that the camera is operational (e.g. the camera turns on, the battery is charged and operational, and the camera is firmly secured to the police uniform) at the start and periodically through each shift. Officers will immediately bring to the attention of their immediate supervisor any malfunctioning WBC. Arrangements will be made to repair/replace the WBC, as soon as possible.

The WBC has a number of red, green or amber lights indicating various stages of readiness. These lights indicate recording and USB connections as noted below:

**Recording**

- Blinking Green Light:** Camera is recording video and audio.
- Blinking Red Light:** Camera is low on battery power or memory is almost full. Camera is recording video and audio.
- Solid Red:** Camera is not recording. Battery is out of power or memory is full.

**Connected to the USB Cable**

- Solid Red:** Battery is charging. Lens cover is closed.
- Solid Amber:** Camera is ready to communicate with computer for video download or assigning. Lens cover is open.

The WBC will be positioned on the outer clothing

of the officer and placed within the upper torso/ chest area (e.g. pen pocket, tie or center of shirt/ ballistic vest).

## 2. Scope of Use

Officers utilizing a WBC will, at the beginning of a police contact or as soon as feasible, announce their identity as police officers and notify persons that the contact is being both audibly and visually recorded. Where consent is required, such consent will be obtained and recorded immediately or the WBC will be deactivated. The WBC will be utilized, pursuant to 2. Criteria of Use above, during all enforcement or investigative contacts to include, but not limited to:

- All calls for service.
- Traffic stops and citizens contacts.
- Consensual encounters.
- On-view events.
- Search warrants.
- Secondary Employment
- Special assignments, when directed to by the highest ranking officer in charge.
- Investigative stops.
- On scene interviews.

Recording such contacts shall be the rule not the exception.

## 3. Recording

Officers will activate their WBC prior to making contact with a citizen in any of the incidents listed in **Section 2. Criteria for Use** above.

- As noted previously, officers will identify themselves as police officers and notify persons that the contact is being both audibly and visually recorded. Officers will seek consent for continued use of the WBC when necessary. Consent granted to one officer utilizing a WBC shall be deemed as consent given to all officers present with a WBC.
- Once activated, the recording will not be intentionally terminated until the conclusion of the incident or until the other parties have left the scene (this includes the recording of statements). If such termination occurs, the officer with the WBC must demonstrate

compelling reasons (e.g., withdrawal of consent, privacy issues). Failure to comply with this procedure may result in disciplinary action.

- Additional arriving units to a scene will begin recording as soon as practical, and continue to record until the completion of the incident, or until other parties left the scene (this includes recording of statement).
- Officers are responsible for ensuring that all video and audio recordings from a WBC are downloaded as soon as possible after the WBC recording memory becomes full (See 6. Data Management). Failure to comply with this procedure may result in disciplinary action.
- Officers will not attempt to erase, reuse, alter or destroy in any manner any audio and/or video recorded on a WBC.

## 4. Restricted Use

Any use of the WBC audio/video for any purpose other than official law enforcement business is a violation of this policy. Non-law enforcement business can include, but is not limited to:

- Covertly recording other law enforcement personnel
- Recording any communications with a supervisor, council member, or other government employee
- Personal use of the WBC
- Recording a conversation that the officer is not party to, unless the officer is handling a law enforcement incident and is in a lawful position when the recording occurs.

The WBC audio/video will not ordinarily be activated/used without consent inside places where a reasonable expectation of privacy exists, such as in private homes, dressing rooms, and/ or restrooms.

Officers will not use the WBC audio/video to record a particular person based solely on the person's race, color, age, sex, marital status, sexual orientation, gender identity, creed religion, ancestry, national origin or disability.

The WBC will not be used to record confidential informants or undercover officers.

### 5. Reporting

When the WBC is used in any investigation or during a police contact, this fact will be documented on any citation and/or report prepared regarding the contact. The use of a WBC, or the non-use when consent is not obtained, will be normally recorded on an Incident Report or other initial report form.

When an initial form is not completed, but the officer feels that a recording should be reviewed by a supervisor, a Commanders Log will be submitted. Supervisors will make random inspection of all video/audio files for compliance with Departmental rules and policy.

### 6. Data Management

WBC recordings will only be downloaded by a supervisor and only to a computer specifically designed for WBC download and storage, operated and maintained by the Town of Cheverly.

The designated agency system administrator will be contacted by the officer to copy any data that is deemed to be of evidentiary value on a media storage device (e.g. CD-ROM, flash drive, etc.) and entered into evidence.

Data will not be released to another criminal justice agency for trial or other reason without having a duplicate copy made and returned to safe storage.

Data will not be released to any outside non-criminal justice entity, regardless of the content, without explicit authority from the Chief of Police or their designee. Request for data made under the Maryland Public Information Act will be immediately directed to the Town Clerk and the Chief of Police.

Digital copies for purposes not associated with the investigation or prosecution of a violation of law will only be made and or created subject to one of the following:

- Permission from the Chief of Police or their

designee; or

- As required by court order.

### 7. Retention

The Department will archive recordings according to the following schedule:

- Recordings that are not evidence – 4 years.
- Recordings that are evidence – 5 years
- Recordings capturing evidence in a homicide – 75 years

### 8. Administrative Sanctions

Failure to comply with any section of this General Order when required to so may result in disciplinary action.

## VI. GOVERNING LEGISLATION & REFERENCE

### **Governing Legislation:**

- Maryland Criminal Law Article

### **Reference:**

-