

GENERAL ORDER
FAIRFAX COUNTY POLICE DEPARTMENT
SUBJECT: USE OF FORCE NUMBER: 540.1
CANCELS ORDER DATED: 4-1-12 DATE: 1-1-13

I. PURPOSE

The purpose of this policy is to establish guidelines and reporting requirements for the use of force by members of the Fairfax County Police Department.

II. POLICY

It is the policy of the Police Department that force is used only to the extent reasonably necessary to defend oneself or another, to control a person during an investigative detention or mental detention, and to effect arrest. In all situations, medical assistance shall be provided to any person who is obviously injured, alleges an injury, or requests medical assistance.

III. DEFINITIONS

A. Use of Force: Any physical contact above the level of a “guiding” or “escort” hold between an officer and another person, or the use of lethal or non-lethal weapons, which further the officer’s intent to establish or maintain control or custody or to defend themselves or another person.

B. Reasonable Use of Force: The use of any force – deadly or not – in the course of an arrest, investigatory stop, or other seizure that is “reasonable” in light of the facts and circumstances confronting the officer, without regard to the officer’s underlying intent or motivations and weighs the actions of the officer against the rights of the subject, in light of the circumstance surrounding the event.

Comment [MS1]: Where is this defined. In Graham v. Connor the US Supreme Court defined the “objective reasonableness standard.”

Comment [MS2]: Part of US Customs & Border Protection UOF

C. Deadly Force: Any level of force that is likely to cause death or serious injury. Non-deadly force that results in death or injuries that are deemed to be lifethreatening shall be investigated as a use of deadly force.

D. Less-Lethal Force: Force which may result in death or serious injury. When properly used, less-lethal weapons significantly reduce the probability of such outcomes.

E. Non-Deadly Force: Force which is not intended to cause death or serious injury. The use of any instrument or technique to deploy non-deadly force may constitute deadly force depending on the totality of circumstances.

Comment [MS3]: Why does FCPD have both

F. Excessive Force: Any force which is determined not reasonably necessary.

G. Vehicle Incident: A police vehicle is used to immobilize or make contact with another vehicle, object, or person as a direct result of the intentional actions of the operating officer. The Precision Immobilization Technique shall not be

considered a vehicle incident for investigation and documentation purposes. A vehicle incident is considered non-deadly force.

H. Precision Immobilization Technique (PIT): The intentional act of using a police vehicle to physically force a fleeing vehicle from a course of travel in order to stop it. The Precision Immobilization Technique is a specific, technical maneuver that requires advanced practical training prior to use. The use of the Precision Immobilization Technique is considered non-deadly force.

I. Institutional Integrity: The condition whereby order is maintained in a detention facility. The use of force instruments or techniques may be used in a detention facility to prevent the following:

- Violations of law.
- Threatened assault on others.
- Attempted or threatened suicide.
- Failure of prisoners to respond to lawful commands to do any acts which are necessary for safety concerns of the facility.

J. Medical Treatment: Any action taken by Emergency Medical Service (EMS), Department personnel approved by the Office of the Medical Director (OMD), or medical facility personnel to physically mend an injury (e.g., dress a wound, stitches, etc.) resulting from the use of force or accidental injury. Routine decontamination does not constitute medical treatment. Medical treatment for a pre-existing injury or condition shall be documented on an Incident Report in I/LEADS, unless the use of force further compounds the pre-existing injury or condition.

K. Serious Injury: An injury which creates a substantial risk of death, disfigurement, prolonged hospitalization, impairment of the functions of any bodily organ or limb, or any injury that medical personnel deem to be potentially life threatening.

Comment [MS4]: How is deadly force a proportional response to this threat?

Comment [MS5]: How will FCPD officer know this?

IV. REGULATIONS

A. Deadly Force

Deadly force shall not be used unless it is reasonably necessary. It shall be the officer's belief based on the totality of circumstances known to the officer at the time that imminent threat of death or serious injury to any person exists and that all other methods of force to control the subject(s) would be or have already proven to be ineffective. Any use of deadly force which is not reasonably necessary in view of the circumstances confronting the officer is prohibited.

Comment [MS6]: Does listing deadly force first send a message that it's the first or preferred choice? Why not list the least UOF and build up? This would show officers the logical progress and reinforce the highlighted policy below: "and that all other methods of force...."

Comment [MS7]: Where is this defined? This is the sole instance of "methods."

Comment [MS8]: Why does use of deadly force have less restrictions than OC (p. 12), CEW (p. 13, and roadblock (p. 18)? There are no clear steps leading up to deadly force that have been or would be ineffective.

In any situation where an officer is otherwise acting lawfully, the use of deadly force is justified in the defense of the officer's life or other person's life. Also, the use of deadly force is justified in protecting the officer or public from serious injury.

Comment [MS9]: How does this help the officer?

Deadly force shall not be employed to apprehend a fleeing misdemeanor.
Deadly force may be used to apprehend a fleeing felon if: all other means to effect an arrest have been exhausted, the officer has probable cause to believe that the suspect committed a heinous crime, and the felon's escape poses a imminent threat of serious injury or death to the officer or to others.

When effecting any lawful arrest, conducting an investigative detention, or while taking a mentally disturbed person into custody, only the amount of force which is reasonably necessary to ensure safe custody or overcome resistance to arrest or detention is justified. If during the course of a lawful arrest or custodial situation officers are met with resistance to the extent that the officer reasonably believes that death or serious injury will occur to any person the use of deadly force to overcome such resistance is justified.

Firearms:

1. Only ammunition and firearms issued or authorized by the Police Department shall be used on duty or carried in an off-duty capacity. This does not apply to lawful firearms related off-duty activities (e.g., hunting or recreational shooting).

2. If feasible, when using a firearm for the purpose of deadly force, officers shall give the verbal warning, "Police, don't move!" prior to using deadly force. The pointing of a firearm in response to the actions of a subject to establish control and gain compliance shall be considered non-deadly use of force.

3. Officers shall not fire warning shots under any circumstances.

4. Discharging a firearm at a moving vehicle and/or its occupants is prohibited unless the circumstances would authorize the use of deadly force. Officers on foot shall not intentionally place themselves in the path of an oncoming vehicle where the use of deadly force would likely be the probable outcome. When confronted by an oncoming vehicle, officers shall attempt to move out of its path, if possible, rather than discharging a firearm at the vehicle or its occupants.

5. Discharging a firearm from a moving vehicle shall be prohibited unless it is necessary in the immediate defense of the life of the officer or another person.

6. Officers shall exercise caution at all times and in any place when handling or displaying firearms. Except for official purposes (e.g., training, securing, cleaning, etc.) firearms shall not be handled or displayed. Firearms, whether loaded or unloaded, shall not be aimed at any person except as necessary in the line of duty.

Comment [MS10]: Where is this defined?

Comment [MS11]: Per p. 5 D5b of CBP UOF.

Comment [MS12]: All three elements must be met?

Comment [MS13]: How is this defined? Can the mentally disturbed be arrested on that basis or is probable cause that they've committed a crime required?

Comment [MS14]: So, a School Resource Officer could shoot a student that he's ostensibly there to protect?

Comment [MS15]: Why not negotiate, persuade, warn, or disengage?

Comment [MS16]: How does subject know this a warning just before deadly force? Why not be clear & say: "Police, don't move or I'll shoot!"?

Comment [MS17]: Per p. 1 #8 of CBP UOF, "If a particular situation allows for the issuance of a verbal warning, the officer/agent:
a. Should have a reasonable basis to believe that the subject can comprehend and comply with the warning; and
b. Allow sufficient time between the warning and the use of force to give the subject a reasonable opportunity to voluntarily comply with the warning."

Comment [MS18]: Does this contradict the first line of #2, i.e., "deadly force."

Comment [MS19]: Does this include a boat & FCPD maritime unit? Per p. 4 par. 7 CBP UOF, "Firearms shall not be fired solely to disable motor vehicles, vessels, aircraft or other conveyances. The only exception is that Authorized Officers/Agents, when conducting maritime law enforcement operations, may use specifically authorized firearms and ammunition to disable moving vessels or other maritime conveyances."

Comment [MS20]: Per p. 4 par. 6b CBP UOF, "Deadly force shall not be employed to apprehend a fleeing misdemeanor."

Comment [MS21]: Vague. If this is a reference to par. IVA "Deadly force shall not be employed to apprehend a fleeing misdemeanor..." why not move it here for clarity? Otherwise, what are the circumstances?

7. Officers shall not leave Department-issued or other approved firearms unsecured. This shall apply to on-duty and off-duty situations.

8. When an officer is otherwise justified in using deadly force, the officer shall not use deadly force recklessly or in such a manner that injury or death to an innocent bystander is likely.

9. Employees shall immediately inform their supervisor if they discharge a firearm in the following circumstances:

- Intentionally discharge a firearm on duty or off duty. This does not apply to authorized training exercises or lawful firearms related off-duty activities (e.g., hunting or recreational shooting).
- Unintentionally discharge a firearm on duty or off duty. This does not apply to authorized training exercises.
- These circumstances shall be immediately reported by the supervisor to the employees' respective commander and the duty officer.

B. Reporting the Use of Deadly Force and Investigation of Injuries

1. Officers who use deadly force shall immediately inform an on-duty supervisor or DPSC of the incident. The responding supervisor shall notify the employee's commander or the duty officer of the deadly force incident.

2. Unintentional firearm discharges, not resulting in death or injury to any person, that occur on or off duty and not during an approved training exercise, will usually be investigated by an on-duty supervisor. If a person is endangered by the unintentional discharge, the on-duty supervisor shall notify the Internal Affairs Bureau commander who will make a determination on the investigating authority. The investigating supervisor shall document the findings in an administrative investigation.

3. Unintentional firearm discharges, not resulting in death or injury to any person, that occur during approved training exercises, will be investigated at the direction of the bureau commander who is responsible for the entity conducting the approved training exercise.

4. All intentional and all unintentional firearm discharges that result in injury or death and occur in Fairfax County will be investigated by the Major Crimes Division in coordination with the Internal Affairs Bureau or at the direction of the Chief of Police by an agency outside the Department. All intentional and all unintentional firearm discharges that result in injury or death and occur outside of Fairfax County will be investigated by the Internal Affairs Bureau in cooperation with the appropriate jurisdiction.

5. Any officer who uses force that results in serious injury or death to any

Comment [MS22]: Why do both investigate? How is "coordination" defined? Are these two investigations running in parallel, together, or sequentially? Per "[Fairfax County Police Administrative Investigation Process](#)" flowchart on Ad Hoc Cmte site, "CIB & IAB Conduct Joint Investigation."

person, or who intentionally discharges a firearm other than a firearm loaded with less-lethal munitions, or who unintentionally discharges a firearm that results in injury, shall be placed on administrative leave in accordance with General Order 301, X, Internal Investigations, by a designee of the Internal Affairs Bureau.

Comment [MS23]: What is the number of this General Order?

Comment [MS24]: A General Order by this name isn't posted on Ad Hoc Cmte website.

6. Crimes associated with the incident will be investigated by the entity normally charged with that responsibility, unless the Chief, Deputy Chief, Internal Affairs Bureau commander, or the Criminal Investigations Bureau commander determines a different response is appropriate. The officer shall not be responsible for the investigation and subsequent arrest of the perpetrator; unless immediate action by the officer is necessary.

Comment [MS25]: How is this defined?

7. The need to obtain comprehensive statements from all involved officers and witnesses is paramount. As soon as practical and following an initial review of all available information, the officer(s) who deployed deadly force or was directly involved with the deployment will be interviewed by a Major Crimes Division detective. Internal Affairs Bureau staff shall not be present during these interviews.

a. Officers are normally required to answer questions regarding their duties, but they are not compelled to answer questions put forth by Major Crimes Division detectives since their actions could constitute a violation of the law. Refusal to answer questions will not result in disciplinary action; however, all answers given must comply with Regulation 201.21, Truthfulness.

b. A separate statement from the officer(s) directly involved will be taken by the Internal Affairs Bureau detective following the completion of the criminal investigation.

c. To expedite the information gathering process, members of the Major Crimes Division, the Internal Affairs Bureau, or other entities deemed appropriate by the Major Crimes Division commander may assist in the interviews of any officers who did not use deadly force and witnessed the incident under investigation.

8. The officers involved should maintain custody of their equipment, (e.g., their weapon, holster and gun belt). This equipment shall be removed from the officers by the Crime Scene Section at the direction of a Major Crimes Division detective on their arrival. However, should there be a concern for public safety or the officers' inability to maintain custody due to injury or emotional state, a responding supervisor should take possession of the officers' equipment. The supervisor shall not tamper with the weapon, except to make it safe by de-cocking or engaging any safety mechanism. The supervisor shall turn the equipment over to the Crime Scene Section and then

document in a supplement the condition of the weapon and any action taken.

9. The Department response and procedures for the investigation of deadly force deployment shall be governed by SOP 12-045, Investigation of Deadly Force Deployment.

C. Deadly Force Against Animals

1. Officers may use deadly force to destroy a non-domesticated injured animal or any suspected rabid animal. Deadly force may be used against any animal that is attacking or threatening to attack an officer, another person, or a domestic animal.

2. When possible, force should be used progressively by officers to protect themselves, another person, or a domestic animal from an attacking animal. Alternatives to deadly force may include striking instruments, Oleoresin Capsicum, Conducted Energy Weapons, physical barriers, or catch poles. Non-deadly force strategies should be developed to establish control over domesticated animals when planning operations.

3. In any situation where an officer is otherwise justified in using deadly force against an animal, the officer shall not use deadly force recklessly or in any place or under any circumstances where injury or death to any person is likely. Officers who discharge a firearm toward an animal shall immediately inform their supervisor of the incident.

4. Prior to destroying an injured domesticated animal, an animal control officer shall be notified. The animal control officer will make the determination of responding or provide guidance for the care and transport of the animal. Arrangements should be made to transport the injured animal to a veterinary facility for treatment. Field euthanasia of a domesticated animal should only be performed by an animal control officer or veterinarian. A reasonable effort to contact the animal's owner and obtain consent must be made.

5. If destruction of a domestic or non-domestic animal is necessary, the officer shall advise the supervisor of his intentions. The officer shall then clear the area of spectators and use the utmost caution to destroy the animal.

D. Reporting the Use of Deadly Force Against Animals

1. The use of deadly force against a non-domesticated animal (e.g., attacking, suspected rabid, or injured) or an injured domesticated animal, that does not result in death or injury to any person and regardless of the animal's death or injury, shall be documented on an Incident Report in I/LEADS. A copy of the report shall be forwarded to the Internal Affairs Bureau through the appropriate commander.

2. The use of deadly force against any attacking domesticated animal that results in an animal's wounding or death shall be investigated by the Internal Affairs Bureau. The use of deadly force against any domesticated animal that does not result in death or injury to any person and does not result in an animal's wounding or death, shall be administratively investigated

by a first line supervisor. A copy of the administrative investigation shall be forwarded to the Internal Affairs Bureau through the appropriate commander.

E. Less-Lethal Force

Extended Range Kinetic Energy Impact Projectile:

1. Only kinetic energy impact projectiles issued by the Police Department shall be used by officers who are trained and certified by the Fairfax County Criminal Justice Academy to use the Kinetic Energy weapon.

2. Kinetic energy impact projectiles are designed to provide a less-lethal alternative when the use of deadly force is not immediately necessary. However, the use of kinetic energy impact projectiles may not always be appropriate and should not be considered if not readily available and a delay in action would be detrimental to the situation.

3. Kinetic energy impact projectiles may be used to resolve potentially violent situations, thereby reducing the likelihood of serious injury or death to oneself or to other persons. Kinetic energy impact projectiles will only be used when the following conditions exist:

- There is reasonable belief it is unsafe for officers to approach.
- Immediate action is necessary or circumstances (e.g., flammable liquids, etc.) preclude the use of a CEW.
- The subject has an immediate ability to utilize force that is likely to cause death or serious injury.

4. Instances where the use or availability of a kinetic energy impact projectile may be effective would include, but are not limited to:

- A subject who is armed with a weapon other than a firearm.
- A violent subject who is under the influence of drugs or alcohol.
- A subject who is threatening serious injury to himself and is armed with a weapon that makes it unsafe for the officers to approach.

5. Requests for a kinetic energy projectile operator may be made by any police officer or supervisor through the DPSC. The use of the kinetic energy impact projectile will be at the discretion of the operator once on the scene.

6. It shall be the responsibility of the operator to visually and physically inspect the shotgun and munitions to insure that only the appropriate projectiles are used for deployment. Whenever practical, a second officer will inspect the shotgun to assure the weapon is unloaded of shotgun ammunition prior to loading the kinetic energy impact projectiles.

7. All perimeter units within the immediate area shall be advised, either by radio or direct verbal contact, that kinetic energy impact projectiles may be deployed, and advised again once they have been used.

8. Kinetic energy impact projectiles should be used from behind cover or at a safe distance from the target. A cover officer shall be in position to engage the subject with deadly force if necessary.

9. When circumstances permit, operators should aim for the subject's shoulders, arms, abdomen, or thighs. Intentional impact to the head, neck, or chest shall be avoided unless deadly force is intended.

10. The subject shall be taken to a medical facility for examination after having been impacted with a kinetic energy impact projectile.

F. Reporting the Use of Less-Lethal Force and Investigation of Injuries

1. Officers who use less-lethal force shall immediately inform an on-duty supervisor or DPSC of the use of force incident. The notified supervisor or DPSC shall notify the employee's commander or the duty officer of the less lethal force incident.

2. All less-lethal force incidents will be investigated by the Internal Affairs Bureau. The Major Crimes Division will share joint investigative responsibilities for those less-lethal force incidents that result in serious injury or death.

3. Any officer who uses less-lethal force which results in serious injury or death to a person shall be placed on administrative leave by a designee of the Internal Affairs Bureau and in accordance with General Order 301, X. Internal Investigations.

4. The involved officer's weapon used in the less-lethal force incident will be taken into custody by the first non-involved supervisor once the scene is stabilized. The supervisor taking custody of the items is responsible for the preservation of all equipment and will personally deliver items to a member of the Crime Scene Section. Weapons involved will not be opened, unloaded or tampered with in any manner, except to render it safe for handling by engaging any safety mechanism.

G. Non-Deadly Use of Force

Instances where the use of non-deadly force may be effective would include, but not be limited to:

- Effecting an investigative stop or arrest.
- Preventing escape from lawful custody.
- Defending oneself or another person from injury or assault.
- Establishing custody for a temporary detention order.
- Restoring institutional integrity in a detention facility.

Officers may use the force reasonably necessary (e.g., moderate pressure to stop, turn, or guide a subject) to conduct an investigative stop without converting the stop into an arrest. Increased levels of force may be used if it is reasonable under the circumstances. See General Order 540.2,

V. Investigative Stop, Frisk and Search Beyond the Person, for detailed procedures regarding investigative stops.

Voluntary field contacts may be utilized by an officer who wants to speak to someone or obtain a person's identification. Officers may not use any force to conduct a voluntary field contact. See General Order 540.2, IV. Voluntary Field Contacts, for detailed procedures regarding voluntary stops. Only that level of non-deadly force reasonably necessary (e.g., physical control techniques, pointing a firearm, striking with a baton or other instrument, discharging OC, a CEW, PepperBall System, or utilizing a vehicle to intercept another vehicle, etc.) to establish control and gain compliance shall be used in response to opposing force. Officers shall escalate or de-escalate their use of force in direct response to the opposing person's actions. Officers who use non-deadly force on persons exhibiting symptoms of mental health crisis or drug intoxication should give particular consideration that these persons may be experiencing or are at an increased risk of developing excited delirium. Excited delirium should be strongly suspected in subjects who exhibit extreme paranoia, bizarre physical symptoms (profuse sweating, foaming at the mouth, seizures, shaking, inability to breath, etc.), violent resistance to arrest, little or no reaction to pain, unusual strength, and/or extreme aggression toward objects (particularly glass). Excited delirium is a potentially fatal acute medical illness. Subjects who are exhibiting signs or symptoms of excited delirium shall be evaluated at a medical facility.

Handcuffed persons resisting arrest or assaulting officers present a unique use of force decision. Officers may use only that amount of force reasonably necessary to ensure safe custody or to overcome the person's resistance to a lawful arrest. Striking instruments, OC, and the CEW shall not be used on a handcuffed person unless the person continues to pose a threat to the officer, to others, to the person himself and/or other force alternatives have been ineffective or deemed unacceptable for the situation.

Comment [MS26]: What are these?

Non-deadly strategies may also be used against an animal that is attacking or threatening to attack a person or another animal. Instruments of non-deadly force (e.g. striking instruments, chemical agents, or CEW) are intended to reduce the likelihood of serious injury or death to the animal and to provide a more humane and less traumatic conclusion to the incident.

1. Baton (Striking Instruments)

a. Batons shall be issued or approved in accordance with SOP 04-002 Police Uniforms, Personal Equipment and Civilian Clothing. Only those batons issued or authorized by the Fairfax County Police Department shall be used by Department employees.

b. The baton may be used to strike the subject in designated target areas of the body (e.g., torso, legs, and arms). Whenever possible, intentional strikes to the subject's head, kidneys or groin shall be avoided except in situations when deadly force is justified.

Comment [MS27]: Why not listed under IV. A Deadly Force?

c. The baton may be used as a lever to induce sufficient pressure to cause

the subject to cease aggressive action. Utilization of the baton, flashlight, or other instrument in a manner constituting a choke hold is prohibited except when deadly force is justified.

Comment [MS28]: Why not listed under IV. A Deadly Force?

d. The baton may be used to block strikes or attempted strikes initiated by the subject and directed at an officer or other person.

e. Due to the dangers associated with an unintentional discharge, using a firearm as a striking instrument shall be avoided except as a last resort.

2. Oleoresin Capsicum (OC)

a. Only those Oleoresin Capsicum dispensers issued by the Police Department shall be used by Department employees.

b. OC should be directed at the subject's face and ideally not at the eyes when closer than three feet. This is due to the potential risk of injury and damage to the eyes from the pressure of the propellant.

c. Officers may use OC to resolve potentially violent situations thereby reducing the likelihood of injury to oneself or to other persons. Instances where OC may be effective would include, but are not limited to:

- When it is reasonably necessary to accomplish or overcome resistance to a lawful arrest.
- Prevent escape from custody.
- Defend against assault.
- Establish custody of a mentally disturbed person.
- Restore institutional integrity in a detention facility.

d. Prior to utilizing OC, officers should consider the totality of the circumstances and give particular consideration to its use on persons who are at risk for adverse reaction to OC. This may include persons:

- Who are known to be or who appear morbidly obese.
- Who are known to have respiratory ailments (e.g., bronchitis, asthma, emphysema, etc.).

Persons who have been exposed to OC and who are morbidly obese or have complaints or symptoms of respiratory ailments shall be decontaminated by EMS personnel. This will allow EMS personnel to assess the subject for any adverse reaction to OC product.

e. Officers are responsible for decontaminating subjects in their custody who have been exposed to OC. Persons inadvertently exposed to OC will be provided with medical attention, on request. Officers may choose to decontaminate subjects themselves or request EMS personnel to assist

with the decontamination. Decontamination should be administered with water poured over the bridge of the nose so that it floods both eyes. Particular care should be given to persons wearing contact lenses.

f. Officers shall ensure that persons exposed to OC, especially those who are very obese or who have respiratory ailments, are restrained or transported in a manner which does not constrict their body position since these persons have a greater risk for positional asphyxiation.

3. Conducted Energy Weapon (CEW)

Conducted Energy Weapons are designed to offer the police officer an alternative to physical force in many situations. The use of the CEW is regulated by SOP 06-025.

a. Only those Conducted Energy Weapons issued by the Fairfax County Police Department shall be used by officers who are trained by the Fairfax County Criminal Justice Academy to use the CEW.

b. The CEW is designed to offer the police officer an alternative to physical force in many situations. However, use of the CEW is not always appropriate and should not be considered if not readily available and delay in action could be detrimental to the situation. Conducted Energy Weapons should be used as a weapon of need, not a tool of convenience, and officers should not rely on the CEW in situations where more effective or appropriate alternatives are available.

c. Requests for a CEW and operator may be made by any police officer or supervisor through the Department of Public Safety Communications.

d. A CEW may be used to resolve potentially violent situations when an officer reasonably believes any of the following conditions exist:

- Deadly force does not appear to be immediately necessary.
- Attempts to gain compliance by verbal commands or physical control are likely to be ineffective or have been ineffective in the situation.
- There is a reasonable expectation that it will be unsafe for officers to approach within the contact range of the person.

e. Instances where the use or availability of a CEW (with the probes or in drive stun mode) may be effective would include, but are not limited to:

- Subjects who have made active movements to avoid physical control.
- Service of Mental Detention Orders on persons believed to be violent.
- Apprehension of subjects armed with weapons other than firearms.
- Preplanned warrant service with potentially violent subjects.
- Apprehension of violent persons under the influence of drugs/alcohol.
- Detention of persons threatening suicide or injury to themselves.

f. Prior to utilizing the, CEW officers should consider the totality of the circumstances and the surrounding environment (e.g., persons standing in water, on a ledge, building, or bridge) which may place some individuals at risk of secondary injuries when incapacitated by the CEW. Officers must have an elevated level of justification prior to using the CEW on:

- Children.
- Elderly persons.
- Females known to be pregnant.
- Persons who are known to be at a higher risk for serious injury.

Comment [MS29]: How is this defined? This is the only use of the phrase in this General Order

g. In circumstance where subjects have been exposed to combustible vapors or flammable liquids, the CEW should not be utilized unless there are no other alternatives immediately available.

h. Officers who have received CEW training may remove CEW probes embedded in a subject's clothing or skin. Officers shall not remove probes if the subject objects or the probes are embedded in the subject's face, spine, genitals, buttocks, or in a woman's breast. In these instances, the subject shall be transported to a medical facility for CEW probe removal.

i. Officers shall ensure that persons exposed to the CEW are restrained and transported in a manner which does not constrict their body position as this may contribute to positional asphyxiation.

j. All subjects who have been exposed to CEW application, excluding drive stun, should be considered for medical evaluation by rescue personnel in the field or at a medical facility. This consideration should be based upon the circumstances surrounding the CEW use, to include:

- Symptoms of excited delirium.
- Admitted or known serious medical condition.
- Prolonged physical exertion, such as actively resisting or fighting.

4. PepperBall System

a. Only those PepperBall Systems issued by the Fairfax County Police Department shall be used by officers who are trained by the Fairfax County Criminal Justice Academy to use the PepperBall System.

b. The PepperBall System is designed to provide an alternative to physical force. However, the use of the PepperBall System may not always be appropriate and should not be considered if not readily available and a delay in action could be detrimental to the situation.

c. Requests for the PepperBall System and operator may be made by any police officer or supervisor through the Department of Public Safety Communications.

d. The use of the PepperBall System will be at the discretion of the system operator once on the scene.

e. The PepperBall System may be used to resolve potentially violent situations thereby reducing the likelihood of serious injury or death to persons. The PepperBall System may be used when an officer reasonably believes any of the following conditions exist:

- Deadly force does not appear to be immediately necessary.
- Attempts to gain compliance by verbal commands or physical control are likely to be ineffective or have been ineffective in the situation.
- There is a reasonable expectation that it will be unsafe for officers to approach within the contact range of the person.

f. Instances where the use or availability of the PepperBall System may be effective would include, but are not limited to:

- Subjects who have made active movements to avoid physical control.
- Service of Mental Detention Orders on persons believed to be violent.
- Apprehension of subjects armed with weapons other than firearms.
- Preplanned warrant service with potentially violent subjects.
- Apprehension of violent persons under the influence of drugs/alcohol.
- Detention of persons threatening suicide or injury to themselves.
- Riot control or an unlawful assembly.
- Restoring institutional integrity in a detention facility.

g. The PepperBall System shall not be used on the following individuals, except in circumstances where the safety of the officer or public outweighs the potential risk to the suspect:

- Children.
- Elderly persons.
- Persons with known respiratory ailments.
- Persons with known heart related ailments.
- Females known to be pregnant.

h. When practical and prior to deploying the PepperBall System, officers should attempt to use verbal commands to gain compliance. When deploying the PepperBall System, one officer shall be dedicated to the PepperBall gun and a second officer should be on scene to take control of the subject.

i. When circumstances permit, operators should aim at the subject's torso or center of mass. Intentional impact to the head, neck, spine, groin, and breast area of females shall be avoided unless deadly force is intended.

j. Officers are responsible for decontaminating subjects in their custody who have been exposed to the PAVA powder (Capasaicin II). Persons

inadvertently hit with a projectile fired from a PepperBall System or affected by the PAVA powder shall also be provided proper medical attention as required or on request. Officers may choose to decontaminate subjects themselves or request EMS personnel assist with the decontamination. Decontamination should be administered with water poured over the bridge of the nose so that it floods both eyes. Particular care should be given to persons wearing contact lenses.

k. Persons who have been exposed to the PepperBall PAVA powder and who are morbidly obese or have complaints or symptoms of respiratory ailments (e.g., bronchitis, asthma, emphysema, etc.) shall be decontaminated by EMS personnel. This will allow EMS personnel to assess the subject for any adverse reaction to the PAVA powder.

l. Officers shall ensure that persons exposed to PAVA powder, especially those who are very obese or who have respiratory ailments, are restrained or transported in a manner which does not constrict their body position since these persons have a greater risk for positional asphyxiation.

5. Vehicle Incident

Due to the potential dangers associated with vehicle collisions, the use of police vehicles to immobilize or make intentional contact with another vehicle, object, or person should be avoided except in the following circumstances:

a. Tactical Vehicular Intercepts (TVI) conducted by personnel assigned to OCN, the Fugitive Squad, or SWAT, and utilized in accordance with the training and procedures established for these specialized units. OCN, the Fugitive Squad, or SWAT supervisors will have supervisory responsibility to investigate tactical intercepts.

b. Vehicle maneuvers used to box-in or trap a vehicle (e.g., rolling roadblocks, pinning suspect vehicle in place, etc.), and slow its rate of speed so as to affect a safe forced stop may be conducted to minimize the risk of injury or damage to property. These maneuvers should be considered when it is likely to terminate an incident, which if permitted to continue, would place others at risk of injury or death.

c. Stationary roadblocks used to block or immobilize another vehicle may be authorized by a supervisor and must take into account the risk of injury or death to any person. Stationary roadblocks are regulated by General Order 501.1 Operation of Police Vehicles.

6. Precision Immobilization Technique (PIT)

a. When a fleeing vehicle must be stopped immediately to safeguard life, only officers who have been trained and certified by the Fairfax County Criminal Justice Academy may utilize the Precision Immobilization Technique.

b. The decision to utilize the Precision Immobilization Technique must take into account the safety of bystanders and the risk of serious injury to the occupant(s) of the fleeing vehicle and to the involved police officer(s).

c. The use of the PIT shall be investigated as an administrative investigation by an on-duty supervisor. In the event of death or serious injury to the occupants, officers, or bystanders, the investigation will be conducted by the Internal Affairs Bureau with the assistance of the Crash Reconstruction Unit. This is in accordance with General Order 540.1 Section IV., H. Reporting the Non-Deadly Use of Force and Investigation of Injuries. The Internal Affairs Bureau will also investigate the use of the PIT that occurs in any jurisdiction outside the boundaries of Fairfax County.

d. When possible, the duty officer shall respond to the scene of any PIT to review with the affected first-line supervisor the circumstances surrounding the PIT. It shall be the responsibility of the duty officer to consider the totality of the event and determine from this whether the PIT should be investigated by a first-line supervisor or the Internal Affairs Bureau. Factors to be considered in this determination include, but are not limited to:

- The extent and number of injuries.
- The extent of damage to vehicles or property.
- Injuries to persons or damage to property of persons not involved in the PIT.
- Level of affected first line involvement that limits their ability to conduct the investigation.

H. Reporting the Non-Deadly Use of Force and Investigation of Injuries

1. Officers who use non-deadly force shall immediately inform their on-duty supervisor of the use of force incident. Unless circumstances exist which prohibit the notified supervisor from responding, the supervisor shall respond to the scene of any use of force incident where injury results, or a vehicle, CEW, or PepperBall System is utilized. The notified supervisor shall review the circumstances surrounding the use of force incident and notify the duty officer or appropriate commander of the occurrence of:

a. Any non-deadly use of force, accidental injury, or any other situation resulting in serious injury or death to any person.

b. Any medical treatment provided by EMS, Department personnel approved

by OMD, or medical facility resulting from the non-deadly use of force, accidental injury, or any other situation resulting in medical treatment to any person.

c. Any use of the Precision Immobilization Technique (PIT).

2. The duty officer or the appropriate commander will determine if an injury is to be designated a serious injury. This determination will be based, in part, on information from medical personnel. At the earliest opportunity, the duty officer or commander will notify the appropriate bureau commanders of all injuries designated serious.

3. The on-duty supervisor shall ensure that the use of all non-deadly force is documented on an Incident Report in I/LEADS. Self-inflicted and/or accidental injuries and all non-deadly force that involves the complaint of injury or medical treatment shall be documented in I/LEADS on a Use of Force Supplement, and investigated as follows:

a. Serious injury or death to any person resulting from the use of non-deadly force, self-inflicted and/or accidental injury, or any other situation:

- Investigative Authority: The Major Crimes Division and the Internal Affairs Bureau.
- Investigative Format: CIB Criminal Investigation and Internal Affairs Bureau Administrative Investigation.
- Documentation Review: The commander of the Internal Affairs Bureau shall review the administrative investigation and forward the investigation to the appropriate bureau commander.

b. Medical treatment for non-serious injuries, provided by medical facility personnel resulting from the use of non-deadly force, self-inflicted and/or accidental injury, or any other situation to any person:

- Investigative Authority: The on-duty supervisor.
- Investigative Format: Administrative investigation and a Use of Force Supplement in I/LEADS detailing the incident, describing the type of force used, extent of injuries, and type of medical treatment provided.
- Documentation Review: The on-duty supervisor shall review all investigation reports and forward copies of the incident reports and administrative investigation to the division commander for approval and subsequent forwarding to the appropriate bureau commander and the Internal Affairs commander.

c. Medical treatment for non-serious injuries provided by EMS personnel, Department personnel approved by OMD, or refusal of treatment by any person who has obvious non-serious injuries or alleges a non-serious injury resulting from the use of non-deadly force, self-inflicted and/or accidental injury, or any other situation:

- Investigative Authority: The on-duty supervisor or above.

- Investigative Format: Use of Force Supplement in I/LEADS detailing the incident, describing the type of force used, extent of injuries observed or the complaint of injuries, and the fact that medical treatment was administered or refused by the injured person.
- Documentation Review: The on-duty supervisor shall review all investigation reports and forward copies to the division commander for approval and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs Bureau commander.

4. The on-duty supervisor shall ensure that the use of all non-deadly force that does not involve the complaint of injury or medical treatment shall be documented and investigated as follows:

a. Use of non-deadly force which involves striking a person, discharging a chemical agent or CEW, or utilizing a vehicle to contact a vehicle or person, to include use of the PIT:

- Investigative Authority: The on-duty supervisor or above.
- Investigative Format: Use of Force Supplement in I/LEADS detailing
- the incident, describing the type of force used, the fact that no injuries
- were observed or the fact that no complaint of injuries were made.
- Documentation Review: The on-duty supervisor shall review all

investigation reports and forward a copy to the division commander for approval and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs Bureau commander.

b. Use of non-deadly force which involves pointing a firearm in response to the actions of a subject, physical control techniques to establish control and gain compliance, or vehicle incident techniques that do not involve contact with a person or object:

- Investigative Authority: The on-duty supervisor or above.
- Investigative Format: Incident Report completed by the involved officer, detailing the incident, describing the type of force used, the fact that no injuries were observed or the fact that no complaint of injuries were made.
- Documentation Review: The on-duty supervisor shall review all investigation reports and forward a copy to the division commander for concurrence and subsequent forwarding to the appropriate bureau commander and to the Internal Affairs Bureau commander.

V. Use of Force Reporting by Type of Force Employed and Injury / Treatment

Striking, Kicking, Hitting, OC

Less-Lethal

Ripp Hobble

Comment [MS30]: Could repeated use of any of the following UOF techniques suggest anger management issues? Only the first requires Supervisor Administrative Investigation.

Comment [MS31]: Why aren't these categorized as less-lethal or non-deadly force? How are they defined? When can they be employed?

Comment [MS32]: Why is this the only UOF other than deadly UOF on humans that results in IAB Administrative Investigation?

Comment [MS33]: Why isn't this categorized as less-lethal or non-deadly force? How is it defined? When can it be employed?

Take to Ground

Comment [MS34]: Why isn't this categorized as less-lethal or non-deadly force? How is it defined? When can it be employed?

Handcuffing Minor Force Used

Comment [MS35]: Can there be handcuffing MAJOR force used?

Pointing Firearm

Pressure Points

Comment [MS36]: Why isn't this categorized as less-lethal or non-deadly force? How is it defined? When can it be employed?

VI. USE OF FORCE MODEL

Figure on p. 25

VII. TRAINING

All sworn officers shall receive training and demonstrate proficiency in the use of all authorized weapons before carrying them. The Director of the Criminal Justice Academy shall maintain an authorized list of weapons approved by the Chief of Police to be used for deadly and non-deadly force. Officers shall qualify with all issued firearms on an annual basis to comply with the mandates established by the Virginia Department of Criminal Justice Services. Additionally, all officers shall undergo refresher training and qualification (if applicable) at least biennially for any authorized weapons other than firearms.

Comment [MS37]: What constitutes "proficiency"?

Comment [MS38]: What constitutes a weapon?

Comment [MS39]: There is no requirement for training on: judgmental use of force CIT de-escalation

Comment [MS40]: What criteria apply to FCPD? Per p. 2 of CBP UOF:

In determining whether a use of force is "objectively reasonable" an Authorized Officer/Agent must give careful attention to the totality of facts and circumstances of each particular case, including:

- a. Whether the subject poses an imminent threat to the safety of the officer/agent or others;
- b. The severity of the crime at issue;
- c. Whether the subject is actively resisting seizure or attempting to evade arrest by flight; [NB the Supreme Court outlined a non-exhaustive list of factors (a-c) for balancing an individual's rights vs. an officer's.]
- d. Whether the circumstances are tense, uncertain and rapidly evolving; and
- e. The foreseeable risk of injury to involved subjects and others.

From POLICE Magazine, 10/27/14, article "Understanding Graham v. Connor": "According to retired LAPD Capt. Greg Meyer, a POLICE Advisory Board member and noted use-of-force expert, the officer's assessment of the suspect becomes very important in a Graham analysis. Height and weight? Weapons? Demeanor? Verbal threats? Intoxication? Prior knowledge of suspect's history? These are among the many factors that you should remember to include in the reporting."

VIII. LEGAL REFERENCE

A. The U. S. Supreme Court 1989 case of *Graham v. Connor* defined the "Objective Reasonableness Standard." The "reasonableness" of a particular use of force must be judged from the "objective" standard of a "reasonable" officer on the scene, and it must take into allowance the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

B. The U. S. Supreme Court in the 1985 case of *Tennessee v. Garner* defined the deadly use force to prevent escape of a fleeing felon.

C. Code of Virginia, Section 37.2-810 permits officers to lawfully go to or be sent beyond the territorial limits of the county, city, or town in which they serve to any point in the Commonwealth for the purpose of executing any order for temporary detention.

D. Code of Virginia, Section 18.2-312, permits the lawful use of tear gas or other gases by police officers or other peace officers in the proper performance of their duties, or by any person or persons in the protection of person, life, or property.

Comment [MS41]: Why isn't this categorized as less-lethal or non-deadly force? How is it defined? When can it be employed?

IX. ACCREDITATION STANDARDS REFERENCE

VLEPSC

ADM OPR

05.01 18.02 01.10

05.02 18.03 06.01 08.04

05.03 18.04 06.02

GENERAL ORDER

FAIRFAX COUNTY POLICE DEPARTMENT

SUBJECT: USE OF FORCE

CANCELS ORDER DATED: 4-1-12

06.01 08.01

08.02

NUMBER:

DATE:

540.1

1-1-13

This General Order becomes effective January 1, 2013, and rescinds all previous rules and regulations pertaining to the subject.

ISSUED BY: Chief of Police

APPROVED BY: County Executive