

Metropolitan Police Academy



5.1 Use of Force Overview

December 18, 2023

Introduction

The Metropolitan Police Department (MPD) recognizes the value of life. The safety and protection of the public require a measured response that balances an officer's authority to use force and the dignity of human life.

Officers will be required to make split-second decisions regarding the use of force. This training will give the officer the knowledge and skills to make critical decisions about proper force utilization and suspect control. De-escalation techniques will be learned later but will be introduced in this lesson as another tool to use whenever feasible.

5.1.1 Identify the source of the authority for using force

The Authority to Use Force

As a member of MPD, you are authorized to use force, as necessary, in the accomplishment of your duties. Limitations on officers' authority to use force comes from three sources:

1. **DC Code**

DC Code § 5-123.02 states that "Any officer who uses unnecessary or wanton severity in arresting or imprisoning any person shall be deemed guilty of assault and battery, and, upon conviction, punished therefore." This means that as a sworn Metropolitan Police Officer, the use of necessary force in performing your duties is authorized. However, using unnecessary or wanton severity in arresting someone could result in criminal sanctions against you.

2. **DC Municipal Regulations**

DCMR Title 6A Section 207.1 states that, "It is the policy of the Metropolitan Police Department that each member of the department shall in all cases use only the minimum amount of force which is consistent with the accomplishment of their mission and shall exhaust every other reasonable means of apprehension or defense before resorting to the use of firearms."

3. **MPD Policy**

GO 901.07 (Use of Force) states that, "Members of the Metropolitan Police Department (MPD) shall value and preserve the sanctity of human life at all times, especially when lawfully exercising the use of force. In situations where the use of force is justified, the utmost restraint should be exercised. Members shall minimize the force that is used while protecting the lives of members and other persons, and continuously reassess the perceived threat in order to select the reasonable use of force response that is proportional to the threat faced by him, her, or others." Use of force is authorized to accomplish the following law enforcement objectives:

- To affect lawful law enforcement objectives (e.g., arrest, detention, search)
- To overcome resistance directed at the member or others
- To prevent physical harm to the member or to others (including intervening in a suicide or other attempt to self-inflict injury)
- To protect the member or a third party from unlawful force
- To prevent property damage or loss

This lesson applies to all sworn and trained professional staff members and establishes procedures for members who use force, whether on- or off-duty.

The MPD's Use of Force Framework is the core of the department's "Use of Force" training. It provides members with an organized way of making decisions about how to proceed in situations involving potential uses of force. While it is not possible to entirely replace judgment and discretion with detailed policy provisions, this lesson is intended to ensure de-escalation techniques are used whenever feasible, force is only used when necessary, and the amount of force used is proportionate to the situation the member encounters.

5.1.2 Describe the terminology for use of force

Asphyxiating Restraints

The use of any body part or object by a law enforcement officer against a person with the purpose, intent, or effect of controlling or restricting the person's airway or severely restricting the person's breathing, except in cases where the law enforcement officer is acting in good faith to provide medical care or treatment, such as by providing cardiopulmonary resuscitation, or the placement of a person by a law enforcement officer in a position in which that person's airway is restricted.

Deadly Force

Any force that is likely or intended to cause serious bodily injury or death.

Deadly Weapon

Any object, other than a body part or stationary object, that in the manner of its actual, attempted, or threatened use is likely to cause serious bodily injury or death.

De-escalation

Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in necessary force. Techniques may include verbal persuasion, warnings, slowing down the pace of an incident, and tactical repositioning.

Less Lethal Weapon

Type of weapon deployed with the intent or purpose of nullifying a threat without causing death (e.g., ECD, OC spray, ASP baton).

Neck Restraint

Use of any body part or object by a law enforcement officer to apply pressure against a person's neck, including the trachea, carotid artery, or jugular vein, with the purpose, intent, or effect of controlling or restricting the person's movement, blood flow or breathing. Neck restraints are prohibited restraint techniques.

NOTE: It shall be unlawful for members to apply a neck restraint, and for any member to observe another member applying a neck restraint and not immediately render first aid or request emergency medical services. Any member who violates this provision shall be fined up to \$25,000 or incarcerated for up to ten (10) years or both.

If a member applies or observes a neck restraint of any kind, they shall immediately render first aid on the person to whom the neck restraint was applied, immediately request emergency medical services, and notify their official. (DC Code § 5-125.03(a)(2)).

Objective Reasonableness

This standard requires that the reasonableness of a particular use of force must be judged from the perspective of a reasonable law enforcement officer on the scene in light of the totality of the circumstances confronting the member.

The Preponderance of Evidence

As noted previously, this is a standard of proof in administrative investigations, meaning there is evidence that it is more likely than not that an event occurred, and the accused is the one who committed the act.

Probable Cause

A set of facts, circumstances, and/or reliable information that would lead a reasonable and prudent police officer to believe that a crime is being committed, has been committed, or is about to be committed by a certain person.

Serious Bodily Injury

An extreme physical pain, illness, or impairment of physical condition, including physical injury that involves a substantial risk of death; protracted and obvious disfigurement; protracted loss or impairment of the function of a bodily member or organ; or protracted loss of consciousness.

Serious Use of Force

Actions by members including:

- Firearms discharges (except negligent discharges determined to be misconduct by the Internal Affairs Division (IAD) and discharges at animals);
- Those resulting in death or a serious bodily injury;
- Use of asphyxiating restraints or neck restraints;
- MPD canine bites (except bites determined to be misconduct by IAD); and
- Head strikes with a hard object.

Use of Force

Any physical coercion used to affect, influence, or persuade an individual to comply with an order from a member is considered a use of force.

The following actions are designated **Use of Force Investigation Incidents**, and members must complete a Force Incident Report (FIR) immediately following the event:

- Deadly force
- Serious use of force
- Strike
- ASP strike
- Shield deployment resulting in injury or complaint of pain or injury
- Mountain bike strike
- ECD deployment (excluding negligent discharges determined to be misconduct by IAD)

- 40mm extended impact weapon deployment (excluding negligent discharges determined to be misconduct by IAD)
- Firearm discharges (excluding negligent discharges determined to be misconduct by IAD)
- Use of force indicating potential criminal conduct by the member
- Use of force resulting in visible injury
- Use of force resulting in complaint of injury or pain

The following actions are designated **Use of Force Supervisory Review Incidents** as long as the use of force does not result in injury or a complaint of injury or pain. Members must complete an FIR before the end of their shift.

- Takedowns
- Drawing and pointing a firearm at or in the direction of another person
- OC spray deployment
- ASP baton arm extraction
- ASP baton wristlock

NOTE: Minor injury or discomfort resulting from the application and general wearing of handcuffs is not, in and of itself, an injury due to use of force.

Use of Force Framework

The Use of Force Framework is the decision-making model specifically applicable to situations potentially resulting in the use of force. The Use of Force Framework contains four categories of perceived threats and responses, all of which are fluid, dynamic, and non-sequential. The Use of Force Framework allows officers to determine which action or actions are objectively reasonable and proportional, given the perceived threat.

5.1.3 Identify less lethal use of force options

Less Lethal Weapons

These are weapons deployed with the intent or purpose of nullifying a threat without causing death. These include but are not limited to:

- **Oleoresin Capsicum (OC Spray)**
OC spray is a compound that causes swelling and irritates the eyes, causing tears, pain, and even temporary blindness. OC spray may be used in riot control, crowd control, and personal self-defense situations. Members of MPD are currently issued an MK-4 sized dispenser of OC spray to carry on patrol. It is intended to be used as a compliance technique for a subject actively resisting. Two additional sizes are deployed by MPD, the MK-9 and MK-46, which are much larger and used only for crowd control during riotous situations.
- **ASP Friction-Lock Baton**
The ASP is a friction-locking expandable baton that can be easily carried and readily accessible on an officer's duty belt.
- **40mm Extended Impact Weapon**

The Extended Impact Weapon is a device capable of firing a 40mm sponge projectile (either marking or non-marking) at a high velocity temporarily incapacitating an aggressive, non-compliant subject.

- **Electronic Control Device (ECD)**

The ECD is designed primarily to discharge electrical charges into a subject that will cause involuntary muscle contractions and override the subject's voluntary motor responses. ECDs are also called Conducted Energy Devices (CEDs), Energy Conducting Devices (ECDs), Electronic Control Weapons (ECWs), and TASERS®.

When should a member use or request a standoff distance weapon? An officer may confront a situation that may escalate to a point where control of a subject is necessary to accomplish one or more law enforcement objectives. In these cases, approaching within reach of the subject presents a risk of harm to the member(s). One tactical option is the use of a less lethal weapon (OC spray, ECD, 40mm) that allows for compliance and control to be generated from a standoff distance.

Using less than lethal force options can be beneficial in many situations subject to the **Use of Force Factors** (See: pages 5 & 9), especially when a risk of harm to a member or another person exists.

5.1.4 Understand the department's policy on use of force

Departmental Guidelines

According to GO-901.07 (Use of Force), "Members of the Metropolitan Police Department shall value and preserve the sanctity of human life at all times, especially when lawfully exercising the use of force. In situations where the use of force is justified, the utmost restraint should be exercised. Members shall minimize the force that is used while protecting the lives of members and other persons, and continuously reassess the perceived threat in order to select the reasonable use of force response that is proportional to the threat faced by him, her, or others."

Use of Force Principles

Members may only use force that is objectively reasonable and needed to accomplish the following law enforcement objectives:

- To effect lawful law enforcement objectives (e.g., arrest, detention, search).
- To overcome resistance directed at the member or others.
- To prevent physical harm to the member or to another person (including intervening in a suicide or other attempt to self-inflict injury).
- To protect the member or a third party from unlawful force.
- To prevent property damage or loss.

Members shall not use or threaten to use force for the following reasons:

- To punish a person or retaliate against a person for past conduct.
- To force compliance with a member's request unless that request is necessary to preserve a member, public safety, or criminal adjudication.
- Based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

De-escalation and Generating Voluntary Compliance

Members should always attempt to diffuse any situation by using de-escalation techniques. This includes giving advice, verbal warnings, and tactical communications. Members should also consider why the subject is not cooperating. Is there an obvious medical condition, mental impairment, physical limitation, developmental disability, language barrier, drug use, or behavior crisis involved? Each situation will require the member to be tactful and determine what, if any, use of force is necessary.

When circumstances permit, using de-escalation techniques and generating voluntary compliance may help to resolve a situation without force. This means members should only use the amount of force proportionate to the circumstance.

Use of Force Factors that can determine the amount of force needed include, but are not limited to:

- The risk of harm presented by the subject.
- The risk of harm to the member or innocent subjects by using force.
- The seriousness of the law enforcement objective.
- Whether further de-escalation techniques are feasible, including the time available to a member to decide, and whether additional time could be gained through tactical means.
- Mental or physical disability, medical condition, and other physical and mental characteristics.
- Whether there are other exigent or emergency circumstances.

Members are trained in various force techniques and should use the training technique that is most applicable to the situation. Sound judgment and appropriate exercise of discretion should be the foundation of every member's decision-making process. Members need to constantly reevaluate the situation and circumstances, and continue to respond proportionately.

Proportionate Response

A proportionate response requires members to:

- Assess the level of threat or resistance presented by the suspect, the imminence of danger, the suspect's mental capacity, their access to weapons, agency policies, and available options (e.g., calling upon other members with specialized training).
- Initiate the proportionate and objectively reasonable force response to overcome resistance.
- Modify their level of force to the amount of resistance the subject offers. As the subject offers less resistance, the member shall lower the amount or type of force used. Conversely, members are authorized to respond objectively and reasonably if resistance escalates.

Members shall not use deadly force against a person unless the member actually and reasonably believes that deadly force is immediately necessary to protect the member or another person (other than the subject of the use of deadly force) from the threat of serious bodily injury or death, the member's actions are reasonable given the totality of the circumstances, and all other options have been exhausted or do not reasonably lend themselves to the circumstances.

- a. In any grand jury, criminal, delinquency, or civil proceeding where a member's use of deadly force is a material issue, the trier of fact will consider the reasonableness of the member's belief and actions from the perspective of a reasonable law enforcement officer and the totality of the circumstances, which will include:
 - 1) Whether the subject of the use of deadly force possessed or appeared to possess a deadly weapon and refused to comply with the member's lawful order to surrender an object believed to be a deadly weapon before the member used deadly force;

- 2) Whether the law enforcement officer or another law enforcement officer in close proximity engaged in reasonable de-escalation measures before the use of deadly force, including taking cover, requesting support from available mental health, behavioral health, or social workers, waiting for backup, trying to calm the subject of the use of force, or, if feasible, using non-deadly force before the use of deadly force; and
- 3) Whether any conduct by the member before using deadly force unreasonably increased the risk of a confrontation, resulting in deadly force being used.

NOTE: This does not mean that the officer must go through every level of force before resorting to deadly force. In some situations, the officer may have to use lethal force as a starting point in resolving an incident without using any other force options.

Displaying a Firearm

Members shall only display a firearm when certain circumstances occur. Unholstering and/or pointing a firearm are tactics that shall be used with great caution.

Members shall only point a firearm at a subject when circumstances create a reasonable belief that it may be immediately necessary for the member to use deadly force.

When the member no longer reasonably believes that deadly force may be immediately necessary, the member shall, as soon as practicable, secure or holster the firearm.

Tactical Considerations with Unholstered Firearms

The presence of a member's firearm, under the right circumstances, can discourage resistance and ensure member safety in potentially dangerous situations without the need to resort to actual force.

Unnecessarily or prematurely drawing a firearm, however, can limit a member's options in controlling a situation, cause the subject to become anxious, and may result in an unwarranted or negligent discharge of the firearm.

Warning to Subject

If feasible, the member shall identify themselves as a law enforcement officer and state the intention to shoot before using a firearm.

Use of Firearm

To the greatest extent possible, a member shall ensure that using deadly force presents no substantial risk of injury to innocent persons. Members shall not discharge their weapons:

- Into a crowd.
- As a signal for help.
- As a warning shot.

Members shall not discharge their firearms, either at or from a moving vehicle, unless deadly force is being used against the member, another person, or a crowd of people with the intent to inflict fatal injuries. For the purposes of this lesson, a moving vehicle is not considered deadly force except when it is reasonable to believe the moving vehicle is being used to ram or attempt to ram a crowd of people with the intent to inflict fatal injuries. As a rule, members shall avoid tactics that could place them in a position where a vehicle could be used against them.

Specific Precautions

- **Handcuffs**

You will learn how to apply and use handcuffs later in your training. Members may need to use hand controls (force) to move the person's wrists into a position that allows the subject to be placed in handcuffs.

Handcuffs are uncomfortable and can pinch or scratch someone even with proper application. This in itself is not a use of force. It should be noted if the subject complains about the use of handcuffs, and a supervisor will investigate the complaint.

NOTE: Members shall not use force against a subject in handcuffs unless the subject is actively assaulting, attempting to escape police custody, resisting a member's efforts to maintain custody or control over the subject, or actively spitting on a member. In these cases, members shall limit their force response to the minimum amount of force that is consistent with the Use of Force Framework and MPD policy that an objectively reasonable officer would use in light of the circumstances to bring an incident or person under control effectively. Any officer violating this policy's provisions shall be fined no more than the amount set forth in § 22-3571.01 or incarcerated for no more than ten (10) years, or both.

Prohibited Restraint Techniques – Neck Restraints and Asphyxiating Restraints

- **Neck Restraints and Asphyxiating Restraints**

Neck restraints and asphyxiating restraints are not an authorized use of force and are unlawful.

If a member applies or observes a prohibited restraint technique of any kind, they shall immediately render or cause to be rendered first aid on the person to whom the neck restraint was applied, or immediately request emergency medical services for the person to whom the neck restraint was applied. The member shall also notify their official. (DC Code § 5-125.03(a)(2)).

- **Positional Asphyxia**

Once the situation is under control, members shall place the subject in a custodial restraint that does not block their ability to breathe. A member shall not place the subject on their stomach for an extended time. Members should watch for signs of difficulty breathing or any other life-threatening symptoms. In such cases, members must seek medical assistance immediately and contact an official to direct another means of custody, if applicable.

- **Spitting**

Members may use control holds and tactical takedowns to gain control over a subject who is spitting on the member or others. Members may also use limited pressure to turn a subject's face away from the member to prevent the suspect from spitting directly at the member. Members may wish to don their personal protective equipment (PPE) for additional protection. Spit sock hoods may also be used on a subject who is actively spitting or when there is a reasonable belief that the subject will spit on others. Members shall strictly follow **GO-RAR-901.07 (Use of Force)** when gaining control of a spitting subject.

NOTE: The pressure applied to turn a subject's face must not rise to the level of a strike and must be consistent with neck restraint restrictions. No other type of force is authorized to be used in response to spitting.

- **Hair Holds**

Recent cases brought before the Office of Police Complaints (OPC) have highlighted members' use of "hair holds" on subjects during use of force situations, specifically as a compliance technique on a subject offering active resistance or below. The use of hair holds by members to overcome minimal levels of resistance from a subject has been deemed excessive by OPC.

Certain circumstances may arise where a member's use of a hair hold would be reasonable and proportionate to the threat level presented by a subject, and where other force options are not available or feasible. In these rare and exigent circumstances, a member may grab or pull a subject's hair when they are struggling to gain control, **and the subject is assaulting the member or others (minimum threat level of a Threatening Assailant on the Use of Force Framework).**

It is important to remember that all uses of force must be objectively reasonable and proportionate to the threat, and members must be able to articulate their actions.

5.1.5 Apply the concept of objective reasonableness in use of force as defined by Supreme Court cases

The concept of objective reasonableness was introduced on page 6. To provide further guidance, we now examine the concept in greater detail.

Standards on Governing the Use of Force - The Reasonableness Test

Graham v. Connor, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed. 2d 443 (1989).

Facts of the case

Graham was a person with diabetes, who asked his friend to drive him to a local store to purchase some orange juice to counteract an insulin reaction. Upon entering the store and seeing several people ahead of him, Graham hurried out and asked his friend to drive him to another friend's house. Officer Connor, a local police officer, became suspicious after seeing Graham hastily enter and leave the store. The officer followed the car and made an investigative stop, ordering the pair to wait until he found out what happened in the store.

Graham exited the car, ran around it twice, and finally sat down on the curb, where he briefly passed out. Graham's friend told the officer that Graham was suffering from a "sugar reaction." When backup officers arrived on the scene, one rolled Graham over on the sidewalk and handcuffed his hands tightly behind his back, ignoring the friend's pleas to get him some sugar. Another officer on the scene stated, "I've seen a lot of people with sugar diabetes, but they never acted like this. Ain't nothing wrong with ... he's drunk. Lock [him] up."

Several officers lifted Graham from behind, carried him over to the friend's car, and placed him face down onto the hood. After regaining consciousness, Graham asked the officers to check his wallet for a diabetic decal that he carried. The officers, however, told him to "shut up" and shoved his face down against the hood of the car. Four officers then grabbed Graham and threw him headfirst into the police car. A friend of Graham's brought some orange juice to the car, but the officers refused to let him have any of it. Finally, Officer Connor received a report that Graham had done nothing wrong at the store; the officers then drove Graham home and released him.

Injuries sustained by Graham during the encounter included a broken foot, cuts on the wrists, a bruised forehead, and an injured shoulder. Graham also claimed to have developed a loud ringing in his right ear. He filed a federal civil rights action pursuant to 42 U.S.C. 1983 alleging the use of excessive force and making an investigatory stop in violation of the Fourth Amendment.

During the federal civil trial, the defendants moved for a directed verdict (a request that the case be decided in their favor, which would stop the jury trial) at the close of the plaintiff's case in chief. In ruling on the motion, the District Court determined that the amount of force used by the officers was appropriate under the circumstances and granted the defendant's motion for a directed verdict. The Fourth Circuit Court of Appeals affirmed the judgment, ruling that the District Court had applied the correct legal standard in assessing the excessive force claim. However, the US Supreme Court vacated the order and remanded the case for trial, concluding the lower court applied the incorrect legal standard.

The Supreme Court's Ruling

The Court specifically rejected the notion that all excessive force claims under Section 1983 are governed by a single standard, stating:

- A court must first identify "the specific constitutional right allegedly infringed by the challenged application of force."
- "Seizure" triggering Fourth Amendment protection occurs when peace officers have "by means of physical force or show of authority in some way restrained the liberty of a citizen."
- "Determining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake" paying "careful attention to the facts and circumstances of the particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."
- "[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation."

The Objective Reasonableness Test

According to the Court, the reasonableness of a particular use of force must be judged from the perspective of *a reasonable officer on the scene*, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. (490 U. S. 396-9.)

Factors considered by the Court in determining reasonableness:

- The facts and circumstances of a particular case;

- The severity of the crime at issue;
- Whether the suspect poses an immediate threat to the safety of the officers or others; and
- Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Objective reasonableness includes an allowance for time available to make decisions in as much as officers are often forced to make split-second judgments in tense, uncertain, and rapidly evolving circumstances.

Reasonableness is judged from the perspective of a reasonable officer on the scene without the 20/20 vision of hindsight (meaning the ability to look in the past to see what you’ve done wrong).

Not every push or shove, even if it may later seem unnecessary while you are in the peace of a judge’s chambers, violates the Fourth Amendment.

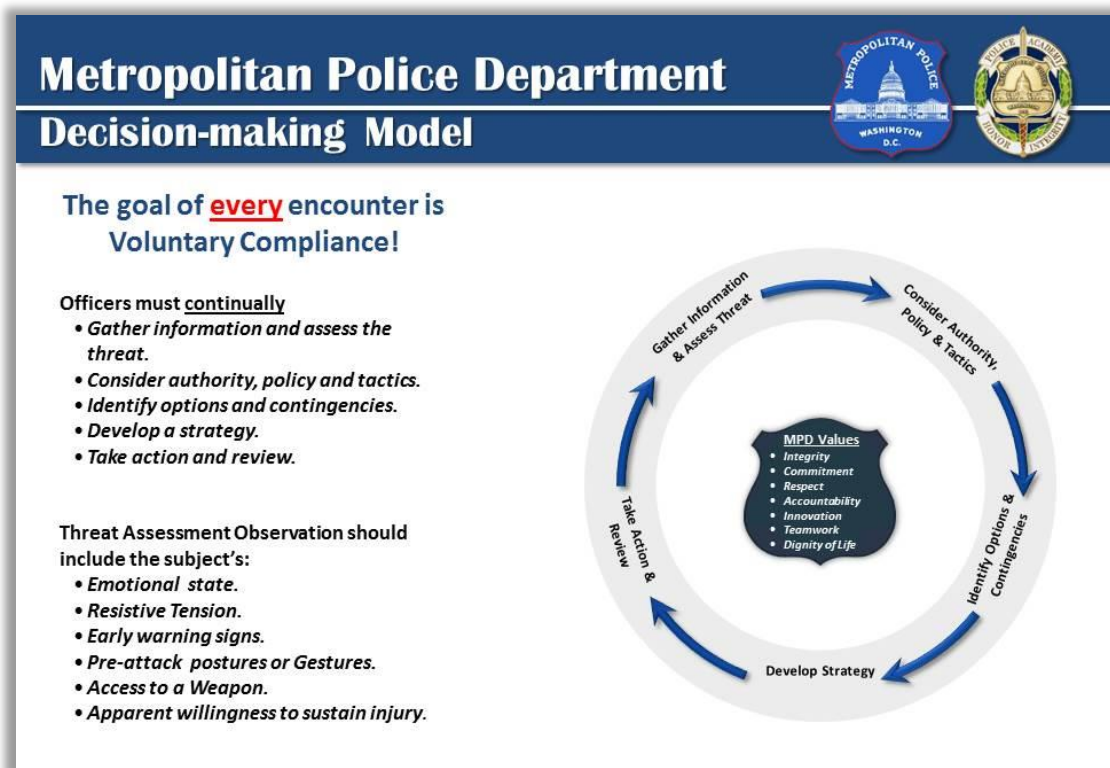
Evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force, nor will an officer’s good intentions make an objectively unreasonable use of force constitutional.

GO-RAR-901.07 (Use of Force) adopts this standard: “Objective reasonableness – the standard requiring the reasonableness of a particular use of force must be judged from the perspective of a reasonable member on the scene in light of the facts and circumstances confronting the member.”

5.1.6 Understand the Use of Force Framework

The Decision-making Model

The MPD decision-making model is depicted in detail on the next page.



The Use of Force Framework

The Use of Force Framework is an adaptation of the decision-making model. It is specifically applicable to situations potentially resulting in the use of force. The Use of Force Framework contains four categories of perceived threats and responses, all of which are fluid, dynamic, and non-sequential. The Use of Force Framework allows officers to determine which action or actions are objectively reasonable and proportional, given the perceived threat.

The Use of Force Framework is a training model that supports a reasonable escalation and de-escalation of applied force. It is a guideline for proportional responses to the action and level of resistance demonstrated by a subject.

The level of response is based on the situation and the subject's actions in response to the member. Responses may progress from the member's physical presence at the scene, to the application of deadly force.

Each time an officer encounters a situation where the possibility of violence or resistance to lawful arrest is present, that officer must, if possible, attempt to de-escalate the situation. This is done through advice, warning, verbal persuasion, tactical communication, and/or other de-escalation techniques. Members must attempt to de-escalate use of force situations whenever feasible.

Metropolitan Police Department Use of Force Framework



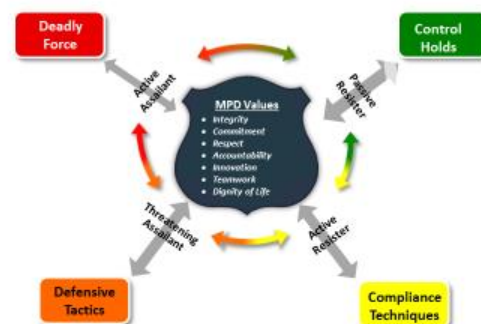
The goal of **every** encounter is Voluntary Compliance!

Officers must **continually**

- Gather information and assess the threat.
- Consider authority, policy and tactics.
- Identify options and contingencies.
- Develop a strategy.
- Take action and review.

Resistance and response are dynamic. The subject's behavior and the use of force to control it may escalate or de-escalate during any given altercation until complete control of the subject is achieved.

Immediately summon emergency medical assistance and render first aid as soon as the scene is safe.



5.1.7 Understand the elements of action and assessment

Action and Assessment

The application of force encompasses three main elements of action and assessment:

- **Tools**
Tools include procedures, behavioral perspectives, and defensive equipment such as OC spray, a baton, and a firearm. Officers may rely upon various tools in response to their perception of the risk.
- **Tactics**
Tactics incorporate the previously mentioned tools into strategies to accomplish an arrest, such as keeping the subject's hands visible at all times, maintaining cover or concealment during an initial approach, utilizing OC spray to control active resistance, etc. De-escalation through communication, as well as distance, are tactics that should be considered.
- **Timing**
Timing is the correlation of tools and tactics to effectively apply the appropriate level of force required to establish and maintain lawful control. Effective use of timing is seen when an officer applies handcuffs during an arrest to minimize the potential risk for an assault, quickly exerts their baton to defend against an assault, etc.

Totality of the Circumstances – (Reference Lesson 4.1 – Criminal Law)

The totality of the circumstances is a concept involving the examination of all evidence and information available to the officer to make a decision, to the best of their ability, as to what exactly happened, who is involved, and whether there is enough proof (probable cause) to make an arrest, conduct a search, or obtain a warrant, or enough proof (reasonable articulable suspicion) to conduct a stop or a protective pat down. This includes the sources of the information and the credibility of the sources when acting on a tip. Information should be corroborated as much as possible, especially when you do not have enough information about the source to evaluate the veracity or reliability of the source or informant.

The totality of the circumstances is the product of an analysis of all the information obtained during a preliminary investigation. It involves the credibility of witnesses, complainants, and suspects and dictates the decisions the officer makes handling a scene.

Resistance and response are dynamic. The subject's behavior and the use of force to control it may escalate or de-escalate during any altercation. Therefore, it is important to understand that the suspect's behavior may not incrementally escalate or de-escalate in a linear sequence. An officer's use of force may need to start at any option, depending on what is objectively reasonable and according to MPD policy. An officer must use only the minimum amount of force necessary. Remember that an officer's actions amid violent turmoil are often judged long after, in a calm and distant environment.

Threat Assessment Observations

What factors help the officer perceive danger? A situational evaluation should include the subject's emotional state, resistive tension, early warning signs, pre-attack postures or gestures, access to weapons, apparent willingness to sustain injury, and non-compliance with a lawful order or request.

5.1.8 Identify the significance of officer/subject factors (totality of the circumstances)

Officer / Subject Factors

Officers should evaluate the significance of various factors that both the officer and the subject bring to the encounter and how those factors might influence the outcome.

This evaluation should include:

- Size – The officer's size as it relates to the size of the subject.
- Strength – The officer's strength as it relates to the strength of the subject.
- Skill level – The officer's skill as it relates to each of these factors.
- Injury/Exhaustion – Whether the officer or subject has sustained injury or reached exhaustion, and how that may affect the confrontation.
- Number of officers and subjects – The number of officers versus the number of subjects involved.

A law enforcement officer must understand that no set sequence of events applies to the force options available. The force option may escalate or change the situation in seconds.

An officer does not have to attempt every force option before resorting to deadly force. However, the officer must demonstrate that they acted according to MPD policy, used de-escalation techniques whenever feasible, force was used only when necessary, and that the amount of force used was proportionate to the situation the member encountered.

NOTE: An officer's application of force must be reasonable at the time it is applied. As a suspect escalates or de-escalates resistance or assault, the officer's force options must escalate or de-escalate appropriately in response.

Officers must be aware of and use effective positioning and cover when approaching or encountering subjects. They must maintain a tactical advantage with respect to their location. Officers in every situation or answering a call for service must recognize and immediately identify those areas that would provide cover from a hostile attack.

Officer Safety and Control

The focus of an officer's encounter should be primarily on the perceived actions of the suspect. Can the officer articulate suspicious or possibly confrontational behavior by the suspect? The officer safety and control principles must guide the officer's response to the suspect's perceived behavior.

NOTE: Verbal threats of violence alone do not justify the use of physical force; however, when combined with physical actions such as a fighting stance, clenching of fists, stepping towards the officer, or pulling away, verbal threats might indicate a potential use of force situation.

Goal of Voluntary Compliance

An officer should clearly and effectively communicate to a suspect regarding what they want the subject to do. Just as verbal communication sends a message to the subject, so too does the use of physical force. When applying force, a subject may go into survival mode and not accurately understand what to do.

Simple, clear commands repeated in a clear, authoritative voice throughout the entire application of force will help the subject understand what the officer wants them to do.

Use of Force

The use of physical force by members of the Metropolitan Police Department is limited to the following objectives:

- To effect lawful law enforcement objectives (e.g., arrest, detention, search)
- To overcome resistance directed at the member or others
- To prevent physical harm to the member or another person (including intervening in a suicide or other attempts to self-inflict injury)
- To protect the member or a third party from unlawful force
- To prevent property damage or loss

Use of Force Framework Levels

As noted above, the Use of Force Framework contains four categories of perceived threats and responses, all of which are fluid, dynamic, and non-sequential. The Use of Force Framework shown on page 13 represents MPD's illustration to assist members in gauging the appropriateness of the application of force.

It is important to understand that this framework is a starting point for discussing a complex issue: the justification for using force. Members must understand that no set order or sequence applies to the Use of Force Framework.

The force options may range from officer presence all the way to lethal force in a matter of seconds. An officer does not have to attempt every force option before resorting to the highest level. However, the officer must demonstrate that they acted according to MPD policy, which ensures that de-escalation techniques are used whenever feasible, that force is only used when necessary, and the amount of force used is proportionate to the situation that the member encounters.

Passive Resister

A passive resister denotes a situation where the subject displays a low level of noncompliant behavior by offering no physical or mechanical energy. Generally, this type of subject does not respond to an officer's request or commands and may be argumentative.

In such encounters, the officer at this level perceives an increased risk and must develop a plan and act tactically. The officer can deploy certain low-level tactics in response until control or cooperation is achieved.

Appropriate responses within this level are the following **Control Holds**:

- Soft, empty hand to maintain control
- Leaning on a subject's legs to hold them down
- Firm grip and escorting

Active Resister

An active resister signals the need for increased officer alertness due to a recognized danger. At this level, the subject is uncooperative and will not comply with the member's requests or commands. The subject exhibits physical and mechanical defiance or behaves in a way that causes the member to believe that the subject may be armed with a weapon. This includes such actions as bracing, tensing, pushing, verbally

signaling an intention not to be taken into or retained in custody, and evasive movement intended to defeat a member's attempt at control.

The officer recognizes the situation is escalating, and the level of noncompliance is increasing in volatility, they can use compliance techniques and physical control tactics to gain control. The officer's actions may cause the subject pain but will not generally cause injury.

Appropriate responses within this level include the following **Compliance Techniques**:

- Control holds (noted above)
- Joint locks
- OC Spray
- Solo and team takedowns
- Wristlocks
- Use of ASP baton to conduct wristlock
- ASP baton arm extractions
- Use of patrol shield to pin down a subject

Threatening Assailant

At this level of the framework, there is an assessment of imminent bodily harm to the officer or others, which can include an actual or attempted assault on the officer. The officer may direct energy and tactics toward self-defense in response.

The perception of danger at this level has accelerated for the officer, and there is a more directed focus on officer safety and defense. The subject has gone beyond the level of single non-cooperativeness and is actively and aggressively assaulting (e.g., striking or kicking) the member, his- or herself, or others, or the threat of an aggressive assault is imminent. The subject has demonstrated a lack of concern for the member's safety; however, the subject does not pose an imminent threat of death or serious bodily injury to the member or others.

All force options other than deadly force are available to an officer in response. Although a range of force options are generally available, members shall adhere to policy requirements governing the use of specific force options and less lethal weapons. Defensive tactics can be employed to render the subject into submission forcibly; however, defensive tactics at this level are not likely or designed to cause death or serious bodily injury.

Appropriate responses within this level include the following **Defensive Tactics**:

- ASP baton strikes
- Striking and blocking techniques
- Mountain bike as an impact weapon
- Electronic control devices (ECDs)
- 40mm extended impact weapons

Active Assailant

This level of the framework represents a subject who poses an imminent danger of death or serious bodily injury to an officer or others. An officer must maintain the highest level of risk assessment and be prepared to use survival skills and lethal force in this situation.

A subject's action is life-threatening when it reasonably appears necessary for the officer to protect themselves or others, other than the subject from an immediate threat of death or serious bodily injury.

When the officer perceives that the subject poses an imminent danger of death or serious physical injury to the officer or another person, immediate countermeasures must be used to stop the threat.

All force options are available at this level, though deadly force shall only be used if the member reasonably believes that deadly force is immediately necessary to protect the member or another person other than the subject from the threat of serious bodily injury or death, the member's actions are reasonable given the totality of the circumstances, and all other options have been exhausted or do not reasonably lend themselves to the circumstances. Examples of force in response by an officer at this level include the use of a firearm or a strike to the head with a hard object.

NOTE: When any force response is employed, members shall:

- Conduct a visual and verbal check of the subject to ascertain whether the subject needs medical care.
- Summon medical assistance immediately if a person is injured, complains of pain, or demonstrates life-threatening symptoms as established in **GO-PCA-502.07 (Medical Treatment and Hospitalization of Prisoners)**.
- Render first aid as soon as the scene is safe.

5.1.9 Apply the concept of bystander liability (ABLE)

Bystander Liability and Culpability

Civil or criminal law enforcement officers may be concerned about liability issues throughout their careers. One type of liability is called bystander liability.

An officer may be held civilly or criminally liable for standing by and failing to intervene while violating a suspect's established constitutional rights. MPD policy requires officers to report any use of force incident in which they observe another member utilizing excessive force or engaging in any type of misconduct. Failure to intervene and/or report may lead to administrative sanctions, fines, or jail time.

Types of Constitutional Rights Violations:

- **Compelled Confession** – the use of force to extract a confession.
- **Warrantless Search** – when the officer knows or should have known that a warrant is required.
- **Unlawful Arrest** – when there is no probable cause to justify taking a subject into custody.
- **Excessive Use of Force** – when an officer knows or should have known that there is no necessity for the level of force used.

Any of the above examples may result in civil or criminal liability, even if you did not physically participate but merely stood by and did not intervene to stop the clear violation of the subject's constitutional rights.

Legal Theory

The main legal theory of bystander liability is conspiracy combined with duty, including the duty to keep a person in custody free from harm.

- **Conspiracy** - Courts have ruled that acquiescence can amount to a conspiracy agreement between all officers present when the bystander officer watches as an open breach of the law occurs and does not intervene to seek its prevention.
- **Duty** - There is a duty borne by police officers associated with protecting the constitutional rights of community members.

Court Decisions

- *Byrd v. Brishke*, 466 F.2d 6 (7th Cir. 1972)
A police officer who fails to intervene to prevent a constitutional violation by other police officers may also be personally liable for civil damages. The Seventh Circuit Court of Appeals held that both supervisory and non-supervisory officers present during an unconstitutional act can be held liable.
- *U.S. v. Reese*, 2 F.3d 870 (9th Cir. 1993)
The Ninth Circuit Court of Appeals held that a police sergeant who stood by and failed to prevent other officers from beating suspects may also be convicted of federal criminal civil rights violations.
- *U.S. v. Koon* 34 F.3d 1416 (9th Cir. 1994)
As a result of the Rodney King beating by Los Angeles officers, the Ninth Circuit Court of Appeals ruled that "...a person in official custody has a right to be free from harm inflicted by third persons, and ... an official who willfully subjects a custodial subject to a deprivation of that right is subject to criminal liability."

In light of the above court decisions, police officers have a duty to intercede when their fellow officers violate a suspect's or other citizen's constitutional rights. Mere inaction may not protect the bystander officer.

Courts have recognized that intervening to stop a constitutional violation may be a defense to both civil and criminal liability if a realistic opportunity to prevent the violation existed at the time of the intervention.

5.1.10 Explain the Department's use of force reporting requirements (Force Incident Report – FIR)

Notifications and On-Scene Responses

Once members have used any use of force tactic, they need to notify an official, and supervisors will immediately respond to the scene. Supervisors and the watch commander will take the necessary steps to report and document the use of force by members.

Reporting Requirements

A **Force Incident Report (FIR)** shall be filled out for all Use of Force Supervisory Review Incidents and Use of Force Investigation Incidents. The FIR is a single document that replaces the Use of Force Incident Report (UFIR) and Reportable Incident Form (RIF). Charging information will be automatically uploaded into the FIR, provided the Mark43 arrest report is complete. Once completed, the watch commander will review the FIR.

Before the end of the member's shift, an FIR must be completed for **Use of Force Supervisory Review Incidents** involving:

- Takedowns
- Drawing and pointing a firearm at or in the direction of another person
- OC spray deployment
- ASP baton arm extraction
- ASP baton wristlock

An FIR must be completed immediately after the event for the following **Use of Force Investigation Incidents**:

- Strike
- ASP strike
- Shield deployment resulting in injury or complaint of pain or injury
- Mountain bike strike
- ECD deployment (excluding negligent discharges determined to be misconduct by IAD)
- 40mm extended impact weapon deployment (excluding negligent discharges determined to be misconduct by IAD)
- Firearm discharge (excluding negligent discharges determined to be misconduct by IAD)
- Deadly force
- Serious use of force
- Use of force indicating potential criminal conduct
- Use of force resulting in visible injury
- Use of force resulting in complaint of injury or pain

Exception: When control holds are used, and there is no injury or complaint of pain or injury.

When completing an FIR, members should articulate the events as accurately and coherently as possible. Members should also articulate when they used de-escalation tactics and why they didn't implement techniques to help keep the situation calm (e.g., that a particular force option was not feasible at the time). Members need to document as much detail as possible in their narratives to help officials understand what happened on the scene.

Body Worn Cameras (BWC)

The BWC is one of the department's most important tools to help document a member's patrol activities. This tool is particularly useful in use of force investigations. After a use of force, one of the first questions asked by the department, the media, and activist groups is, "Was the officer wearing a body camera?"

A body camera program helps promote and ensure department transparency. When officers activate their body cameras, they are less likely to be perceived as concealing their actions. However, if that same officer is equipped with a camera and does not activate it, they will likely be viewed as having something to hide. That officer could even be accused of deliberately trying to cover up their actions.

Body cameras are a powerful tool and are here to stay. While interacting with the public, it is especially important to remember to activate your camera immediately when you receive a service call or whenever you self-initiate any field activities. This will not only protect you and your fellow officers and provide a valuable resource if your actions are questioned.

Members are reminded that they shall not review their BWC recordings and BWC recordings that have been shared with them to assist in initial report writing. Initial reports are those written in response to calls for service or self-initiated police actions that document an event (e.g., records management system reports, notices of infraction, arrestee injury/illness reports, FD-12s, and force incident reports).

Members are reminded that they may view BWC recordings after the initial report is complete and when writing subsequent reports, to include, but not be limited to, assisting with testifying in court, preparing supplemental reports, providing a statement, training, debriefing, completing case management documentation (including initial case resumes), and when they are the subject of criminal or administrative investigations according to GO-SPT-302.13 (Body Worn Camera Program). When writing subsequent reports, members shall indicate whether the member viewed BWC footage before writing the subsequent report and specify what BWC footage the member viewed.

NOTE: The above is the information that General Counsel provides to officials during legal training.

Summary

The Use of Force Framework is a tool designed to give members a path to follow to determine a proportional application of force appropriate to a subject's actions. With a complete understanding of the Use of Force Framework components and the circumstances of an arrest, members can apply the principles associated with applying force. Members have the option of escalating, de-escalating, disengaging, or maintaining a level of appropriate force until complete control of the subject is gained. Members, however, must consider what an objectively reasonable law enforcement officer would do under similar circumstances.

References

GO 901.07	Use of Force	04/27/2023
GO 901.04	Less Lethal Weapons	01/01/2022
GO 302.13	Body Worn Cameras	12/18/2023
GO 502.07	Medical Treatment and Hospitalization of Prisoners.	04/01/2014