

12.1 POLICY LIMITATIONS:

The rules, policies, and procedures found in Chapter 12 are for departmental use only and do not apply in any criminal or civil proceeding. The departmental policies should not be construed as a creation of higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of these rules, policies, or procedures will only form the basis for departmental administrative sanctions.

12.2 GENERAL GUIDELINES FOR USE OF FORCE:

- .1 Officers shall use objectively reasonable force options to effect lawful objectives. The objective reasonableness shall be based on facts and circumstances known to the officer at the time. In choosing and employing force options, officers shall follow all Hagerstown Police Department Rules and Regulations and Departmentally approved training (except as described in section 12.4.5). Any use of force beyond objectively reasonable force shall be defined as excessive force. (NOTE: According to Maryland case law, the term excessive force is synonymous with the term brutality within the meaning of §3-104 of the Public Safety Article. Baltimore City Police Dept. v Andrew, 318 MD3, 566 A.2d 755 (1989).
- .2 When officers are attempting to control a person or persons, they shall, whenever feasible, use verbally commands to direct the subject(s) until the subject either has complied and/or is under control.
- .3 After any use of force, officers shall render first aid to any injured persons and see that they are offered necessary medical treatment.
- .4 Once restrained, a person against whom force has been used to overcome resistance should be moved to a position where respiration is not impaired. If necessary, restraints should be adjusted so as not to impair respiration.
- .5 Persons suspected of mental illness and/or substance abuse, against whom force has been used or can reasonably be anticipated as likely, are to be transported by ambulance to the hospital as soon as possible for medical examination. As soon as officers suspect they are or will be dealing with such persons, they are to call for an ambulance. This may be as early as in a call for service as the initial dispatch. Examples of behaviors fitting this category of persons include the following:
 - aggressive, erratic, or irrational behavior
 - disorientation
 - extreme combativeness
 - inappropriately clothed, or ripping off their clothes
 - pain tolerance
 - abnormally fast breathing
 - sweating
 - agitation
 - tactile hyperthermia
 - police noncompliance
 - lack of tiring
 - unusual strength
- .6 While primarily designed to cover incidents involving sworn personnel, the procedures in this chapter shall also apply to any member acting in his/her official capacity as an HPD employee.

12.3 USE OF FORCE MODEL

- .1 The Use of Force Model is intended to help identify and clarify various force options available to officers, and the circumstances under which those options may be used. The model consists of five levels of "Reasonable Officer's Perception" and corresponding "Reasonable Officer's Response". The Model enables officers to quickly categorize a suspect's actions and determine acceptable corresponding responses.
- .2 REASONABLE OFFICER'S PERCEPTION - This is defined as the perception an ordinary and prudent person would form if given the same conditions, facts, circumstances, training, and experience confronting the officer. The Model describes reasonable officer perceptions that are specific to each level.
- .3 REASONABLE OFFICER'S RESPONSE - These are the descriptions of approved officer responses for each corresponding perception.

4. STUN TECHNIQUE - This is a weaponless strike applied to the body with an objectively reasonable amount of force designed to distract and/or gain control of a subject to achieve a lawful purpose.
- .5 The five levels of reasonable officer's perception and reasonable officer's response, as shown on the Use of Force Model, are as follows:

LEVEL 1

REASONABLE OFFICER'S PERCEPTION: COMPLIANT--The officer's reasonable perception is that the subject freely complies with legitimate officer commands and directions.

REASONABLE OFFICER'S RESPONSE: COOPERATIVE CONTROLS-- These include officer presence, verbal communications, and proper application of restraint devices.

The following cooperative controls are approved as a reasonable response to a cooperative subject:

- Verbal controls.
- Compliant subject escort.
- Compliant subject handcuffing techniques.

LEVEL 2

REASONABLE OFFICER'S PERCEPTION: RESISTANT (PASSIVE)--The officer reasonably perceives that the subject's noncompliance is passive, with the subject offering no physical or mechanical energy enhancement toward the noncompliance effort. The subject does not follow verbal commands but does not try to get away or otherwise resist physical arrest. An example would be a person who goes limp and does not assist in his/her removal, such as an intoxicated subject or a passive protester.

REASONABLE OFFICER'S RESPONSE: CONTACT CONTROLS-- Tactical maneuvers to gain control through hands on techniques designed primarily to guide, support, or direct the subject. They would include techniques requiring leverage, strategic support, and stabilization such as lifting, carrying, guiding, etc. Because the reasonable perception is a passive resistant subject, pain compliance techniques are not an option at this level.

The following contact controls are approved as a reasonable response to a resistant (passive):

- Lifting and carrying the subject by two or more officers.
- Use of stretcher or similar carrying device.

LEVEL 3

REASONABLE OFFICER'S PERCEPTION: RESISTANT (ACTIVE)--The officer reasonably perceives that the subject is directing or is about to direct his physical strength and energy in achieving and/or maintaining a posture of noncompliance, effectively preventing or interfering with the officer's execution of any legal duty. Examples include (but are not limited to) backing and/or running away, stiffening the arms, holding onto a stationary object, or when the officer has developed probable cause that the subject is attempting to destroy evidence.

REASONABLE OFFICER'S RESPONSE: COMPLIANCE TECHNIQUES--The officer must now employ sufficient counter force to overcome this resistance and remain increasingly vigilant for more aggressive behavior. At this stage the force forms could include techniques of pain compliance, temporary distraction, joint manipulations, etc.

The following compliance techniques are approved as a reasonable response to a resistant (active) subject:

- O. C. Spray.
- Baton blocks and control techniques (e.g. arm locks, wrist drags, and combinations).
- Weaponless defense blocks and control techniques (e.g. non-compliant escort, arm bar takedown, front wristlock, rear wristlock, pressure points, etc.).
- Weaponless defense striking techniques to green areas in order to break a suspect's hold.
- K-9 (according to K-9 training).
- Stinger Spike Strips (for vehicle pursuits).
- Stun techniques applied to appropriate areas of the body under the conditions and/or circumstances.
- Taser.

LEVEL 4

REASONABLE OFFICER'S PERCEPTION: ASSAULTIVE (BODILY HARM)--The officer reasonably perceives that the subject is displaying active, hostile non-compliance, culminating in an attack or threat of attack which would result in bodily harm to the officer or others. Examples include (but are not limited to) actual or realistic threat of grabbing, grappling with, wrestling with, or striking the officer. However, the scope and severity of the attack would support the reasonable assumption that the actions of the attacker would not result in death or serious bodily harm to the officer or others.

REASONABLE OFFICER'S RESPONSE: DEFENSIVE TACTICS--The officer is justified in taking appropriate steps to immediately cease the assaultive action and gain and maintain control of the subject. Force alternatives could include baton or weaponless strikes, take downs, etc.

The following defensive tactics are approved as a reasonable response:

- Baton blocking and striking techniques (e.g. chops, jabs, spins) to yellow areas*.

LEVEL 5

REASONABLE OFFICER'S PERCEPTION: ASSAULTIVE (SERIOUS BODILY HARM/DEATH):

1. The officer reasonably perceives that the subject is displaying active, hostile non-compliance, culminating in an attack or threat of imminent attack which would result in death or serious bodily injury to the officer or others, or;
2. The suspect is fleeing and officer has probable cause to believe the suspect has committed a violent felony and poses a threat of imminent serious physical harm, either to the officer or others, if he escapes.

Serious bodily injury is defined as a bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement, or results in long-term loss or impairment of the function of any bodily member or organ.

REASONABLE OFFICER'S RESPONSE: DEADLY FORCE--Absolute and immediate tactics must be deployed to stop the lethal threat and secure conclusive control. Force options could include those leading to permanent debilitation or even death.

The following deadly force options are approved:

- Firearm.
- Roadblocks (moving or stationary).
- Baton techniques to red* areas.

In the case of a fleeing felon as described above, a warning must be given, if feasible, before deadly force is used, and no other reasonable means would be available to effect the arrest.

*NOTE: Green, yellow, and red areas refer to the points of the body described in the Monadnock PR-24 and MEB training courses, and noted on the Monadnock Baton Chart.

12.4 FACTORS IN CHOOSING FORCE OPTIONS

.1 Although specific force options are listed in each level on the Use of Force Model, a number of factors are to be taken into consideration when formulating a reasonable perception and response. The same consideration is to be taken during any post-incident review. Factors supporting an officer's reasonable perception and response include (but are not necessarily limited to):

- Size of suspect compared to officer
- Number of officers versus suspects
- Known skill level of suspect versus officer
- Age of officer versus suspect
- Fatigue
- Officer/suspect physical impairment (i.e. arthritis, prosthetics, etc.)
- Suspect's impairment by mental health problems and/or substance abuse.
- Suspect's proximity to weapons.
- Imminent danger due to external factors

- .2 The force model should not be viewed as a continuum, that is officers facing a particular level of resistance are not required to first respond with force options from lower levels. Officers may go directly to any of the response options that correspond to the same level of their reasonable perception. Officers may, if appropriate, attempt to use a lower level enforcement elective.
- .3 Each level of the Force Model provides officers with multiple options to use when responding to a reasonably perceived threat. Because officers' decisions are often made in circumstances that are stressful and ever changing, officers are not required to determine the least intrusive measure of force within an appropriate response level.
- .4 The arrows above the perception and response sections of the model represent the ability and responsibility of the officer to raise, stabilize, or lower his/her reasonable response in unison with changes in his/her reasonable perception of the threat. In other words, officers will move in either direction, i.e., increasing or decreasing their use of force immediately and in unison with their reasonable perception of the subject's actions toward the officer or third party.
- .5 Although a particular use of force situation may call for a response at one level, officers may take action to prepare for a higher level of force if they reasonably believe that a higher threat level is likely. For example, while taking an armed robbery suspect into custody, an officer may have his/her weapon drawn and pointed at the suspect, even though the suspect is being compliant.
- .6 The fact that approved force options have been listed does not preclude officers from employing any tactic which would accomplish the same purpose provided such tactics have the same reasonableness based on the level of reasonable perception.
- .7 Once a resisting subject is restrained, officers must be cognizant of a reduced threat level and choose objectively reasonable force options accordingly.

12.5 USE OF FORCE FORM

- .1 Employees applying physical force will complete a Departmental Use of Force form in the following use of force situations:
 - .1 After the physical application of any weapon to another person. Weapons do not include personal weapons (i.e. hands, feet, knees, elbows, etc.), or handcuffs.
 - .2 When an employee takes an action that results in or is alleged to have resulted in an injury or death to another person,
 - .3 When the circumstance would suggest to a reasonable person that a connection exists between the employee's action and an injury or death to another person (e.g. temporal proximity).
 - .4 Anytime the spike system, roadblocks (fixed or moving), or forcible stopping is used to terminate a pursuit pursuant to 17.6.10.9.
 - .5 Anytime the employee is injured while using force against another person.
- .2 One form will be completed for each suspect against whom the above described force is applied. If more than one employee uses the above described force against a suspect, each employee needs to complete a form. Additionally, employees present shall complete the narrative portion of the form when an injury occurs or is alleged as a result of a use of force. When doing so, employees are to put their name and the incident number in the header portion, and describe their involvement and observations in the narrative section. Reviewing supervisors and IA Administrator are to enter their names in the footer portion.
- .3 Completed Use of Force forms shall be reviewed by the supervisor of the officer(s) involved or, in the case of a civilian, by an on-duty sworn supervisor. The supervisor will forward the original to the Internal Affairs Administrator for review. After review, the Internal Affairs Administrator will note same on the report and forward a copy to the Chief, Captains, and employee's Division Lieutenant. The original form will be filed in the IA Office.

12.6 ADMINISTRATIVE REVIEW OF USE OF FORCE INCIDENTS:

- .1 ALL reported uses of force will be reviewed by the Internal Affairs Administrator to determine whether departmental rules, policies, or procedures were violated. If the Internal Affairs Administrator discovers that departmental rules, policies, or procedures were violated, he/she shall take appropriate action in accordance with departmental procedure. Additionally, any supervisor reviewing the report may provide input to the Internal Affairs Administrator regarding compliance or non-compliance with departmental rules, policies, or procedures.
- .2 For the purpose of reviewing use of force situations, the reasonableness of an officer's particular use of force shall be judged from the perspective of a reasonable officer on the scene in light of the facts and circumstances confronting him or her, rather than with the 20/20 vision of hindsight.
- .3 Annually, a supervisory staff member assigned by the Chief of Police will review use of force incidents to ascertain training and policy needs, and report its findings to the Chief and the appropriate units or persons for resolution (e.g. Firearms Staff, baton instructors, self-defense instructors, etc.).

12.7 RESERVED**12.8 REMOVAL FROM ASSIGNMENT**

- .1 An officer shall be reassigned to a non-line-duty assignment with pay (after completing all investigative requirements) whenever any of the following occurs:
 - .1 When an officer's action(s) or use of force results in, or is alleged to have resulted in, the death of anyone.
 - .2 When an officer discharges a firearm intentionally in the line of duty under any circumstances unless exempted pursuant to section 13.14.2 of these Rules and Regulations.
 - .3 When the circumstance would suggest to a reasonable person that a connection exists between the employee's action and a serious injury or death to another person (e.g. temporal proximity).
- .2 The officer will remain on administrative reassignment until an investigation and decision has been made to the satisfaction of the Chief of Police.
- .3 All officers directly involved in fatal incidents involving use of deadly force (not only the officer whose actions resulted in the death) will be scheduled within five days of the incident for debriefing with a psychologist or other qualified mental health care professional. This debriefing will be provided at the department's expense, and is mandatory. The mental health care professional shall not be one the Department uses for fitness for duty evaluations. All communications between the officer and the health care professional are confidential and are not subject to review by the Department.
- .4 In addition to the debriefing described above, six months after an incident, officers will be scheduled for a debriefing with the mental health care professional the Department uses for fitness for duty evaluations. The purpose for this is to identify signs of post traumatic stress disorder which can surface months after an incident, and to identify appropriate assistance for affected employees.

12.9 PERSONNEL REVIEW OF EXCESSIVE FORCE COMPLAINTS

Each time an excessive force complaint, or a complaint of misconduct relating to the use of force, is received by this Department on one of its sworn members, the Internal Affairs Administrator shall review the employee's disciplinary record for prior complaints. For every two complaints received within any twelve month period after **September 7, 2001**, the following procedures shall be initiated.

- .1 The officer's entire employment record, including all disciplinary files, will be reviewed by a mental health professional selected by the Department. Based on his/her review of the employment records, the mental health professional will make a recommendation as to whether or not further evaluation of the officer is indicated.

- .2 If further evaluation is indicated, the officer will be scheduled for a fitness for duty evaluation, also with a mental health professional selected by the Department. The purpose for that evaluation will be to arrive at one of the following conclusions:
 - The officer is fit for duty with no further action necessary -- The officer will return to duty with no restrictions.
 - The officer is currently unfit for full duty.
 - The officer is fit for duty with additional counseling required -- The officer will return to duty and will be required to attend additional counseling as recommended by the health care professional. The source of the counseling may be selected by the officer. The officer will provide to the Department's mental health professional proof of attendance at, and completion of, the counseling. Failure to do so shall be considered unsatisfactory performance.
- .3 All communications between the officer and the mental health professional are confidential. **The only information that will be provided to the Police Department will be the mental health professional's conclusions as to fitness for duty, and notification of compliance with additional counseling requirements.** The same information may be provided to the Human Resources Department when an adverse employment action is being contemplated.
- .4 No psychological/psychiatric information will be transmitted to the Police Department or the Human Resources Department, and the notifications described in 12.9.3 will be securely maintained in the Administrative Offices, separate from other personnel records.
- .5 The Department's sole interest with regard to the above procedure is protecting the well-being of its employees, and the public it serves. It is also recognition of the stressful nature of police work.

Hagerstown Police Department USE OF FORCE MODEL

OFFICER'S REASONABLE PERCEPTION				
<p style="text-align: center;">COMPLIANT</p> <p>The subject freely complies with legitimate officer commands and directions.</p>	<p style="text-align: center;">PASSIVE RESISTANT</p> <p>Noncompliance is passive, with the subject offering no physical or mechanical energy enhancement toward the noncompliance effort. The subject does not follow verbal commands but does not try to get away or otherwise resist physical arrest.</p> <p>An example would be a person who goes limp and does not assist in his/her removal, such as an intoxicated subject or a passive protester.</p>	<p style="text-align: center;">ACTIVE RESISTANT</p> <p>The subject is using, or is about to use his/her physical strength and energy in achieving or maintaining a posture of noncompliance, effectively preventing or interfering with the officer's execution of any legal duty.</p> <p>Examples include (but are not limited to) backing and/or running away, stiffening the arms, or holding onto a stationary object, stiffening to keep from being placed in a cruiser, or when the officer has developed probable cause that the subject is attempting to destroy evidence.</p>	<p style="text-align: center;">ASSAULTIVE (BODILY HARM)</p> <p>The subject is displaying active, hostile non-compliance, culminating in attack or threat of imminent attack which would result in bodily harm to the officer or others.</p> <p>Examples include (but are not limited to) actual or a realistic threat of grabbing, grappling with, wrestling with, or striking the officer. 4</p> <p>The scope and severity of the attack <u>would not</u> result in death or serious bodily harm.</p>	<p style="text-align: center;">ASSAULTIVE (SERIOUS PHYSICAL INJURY)</p> <p>The subject is displaying active, hostile non-compliance, culminating in attack or threat of imminent attack which would result in death or serious bodily injury to the officer or others;</p> <p style="text-align: center;">or</p> <p>The suspect is fleeing and the officer has probable cause to believe the suspect has committed a violent felony and poses a threat of imminent serious physical harm, either to the officer or others if he escapes.</p>
OFFICER'S REASONABLE RESPONSE				
<p style="text-align: center;">COOPERATIVE CONTROLS</p> <ul style="list-style-type: none"> • Verbal controls. • Compliant subject escort. • Compliant subject handcuffing techniques. 	<p style="text-align: center;">CONTACT CONTROLS</p> <ul style="list-style-type: none"> • Lifting and carrying the subject by two or more officers. • Use of stretcher or similar carrying device. 	<p style="text-align: center;">COMPLIANCE TECHNIQUES</p> <ul style="list-style-type: none"> • O. C. Spray. • Baton blocks and control techniques (e.g. arm locks, wrist drags, and combinations). • Weaponless defense blocks and control techniques (e.g. non-compliant escort, arm bar takedown, front wristlock, rear wristlock, pressure points, etc.). • Stun Techniques applied to appropriate areas of the body based on the conditions and/or circumstances. • K-9 (according to K-9 training). • Taser 	<p style="text-align: center;">DEFENSIVE TACTICS</p> <ul style="list-style-type: none"> • Baton blocking and striking techniques (e.g. chops, jabs, spins) to yellow areas*. 	<p style="text-align: center;">DEADLY FORCE</p> <ul style="list-style-type: none"> • Firearm. • Roadblocks (moving or stationary). • Baton techniques to red* areas. <p><i>In the case of a fleeing felon as described above, a warning must be given if feasible before deadly force is used.</i></p> <p><i>Serious bodily injury is defined as a bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement, or results in long-term loss or impairment of the function of any bodily member or organ.</i></p>

*According to the Monadnock Baton Chart