

# Metropolitan Police Academy



## 5.1 Use of Force Overview

## Introduction

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

Officers may be confronted with situations that require split-second decisions regarding the use of force. This training will provide the officer with the knowledge and skills to assist in making critical decisions about proper force utilization and suspect control. De-escalation techniques will be learned in later lessons but will be discussed here 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 the Metropolitan Police Department, 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 the performance of your duties is authorized. However, use of 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 his or her 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 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 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

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

The MPD use of force framework is the core of the department's use of force training and provides members with an organized way of making decisions about how they shall act in situations that may involve 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 that de-escalation techniques are used whenever feasible, that force is only used when necessary, and that the amount of force used is proportionate to the situation that the member encounters.

## **5.1.2 Describe the terminology for use of force from GO 901.07**

### **Deadly Force**

This is the use of force likely or intended to create a substantial risk of serious bodily injury or death.

### **Deadly Weapon**

A deadly weapon is 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 death or serious bodily injury.

### **De-escalation**

De-escalation means 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 that 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**

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

### **Neck Restraint**

A neck restraint occurs from the use of any body part or object to attempt to control or disable a person. It involves applying pressure against the person's neck, including the trachea or carotid artery, with the purpose, intent, or effect of controlling or restricting the person's movement or restricting their blood flow or breathing.

**NOTE: It shall be unlawful for members to apply a neck restraint**, as well as any member to observe another member apply 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.

In the event that a member applies or observes a neck restraint of any kind, he or she shall immediately render first aid on the person on whom the neck restraint was applied, and then immediately request emergency medical services and notify his or her official. (DC Code § 5-125.03(a)(2)).

### **Objective Reasonableness**

This is a standard requiring 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.

### **Preponderance of the Evidence**

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

### **Probable Cause**

As noted earlier, probable cause is 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**

This type of bodily injury is 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**

Serious use of force means actions taken by members that include:

- Firearms discharges (except negligent discharges that are determined to be misconduct by IAD and discharges at animals);
- Actions resulting in death or serious bodily injury;
- Use of neck restraints or techniques intended to restrict a subject's ability to breathe;
- 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 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 a FIR prior to the end of their shift.

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

**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 an adaptation of 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:

- **OC Spray**  
Oleoresin Capsicum (OC) spray is a compound that causes swelling and irritates the eyes causing tears, pain, and even cause temporary blindness. It may be used in riot control, crowd control, and personal self-defense situations. Members of the Metropolitan Police Department 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 who is 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**  
This is a friction locking expandable baton that can be easily carried and is readily accessible on an officer's duty belt.
- **40mm Extended Impact Weapon**  
This is a device capable of firing a 40mm sponge projectile (either marking or non-marking) at a high velocity for the purpose of temporarily incapacitating an aggressive, non-compliant subject.
- **Electronic Control Device (ECD)**  
This device 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**

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 or 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, and members should 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 of these situations will require the member to be tactful and determine what, if any, use 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 that is 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 a variety of force options and should use the training technique that most applies 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, his or her 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 in relation to the amount of resistance offered by the subject. As the subject offers less resistance, the member *shall* lower the amount or type of force used. Conversely, if resistance escalates, members are authorized to respond in an objectively reasonable manner.

### **Authorized Use of Deadly Force**

Members *shall not* use deadly force against a person:

- unless the member 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,
- and 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.

**NOTE:** This does not mean that the officer must go through every level of force prior to 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, create anxiety on the part of subjects, and may result in an unwarranted or negligent discharge of the firearm.

### **Warning to Subject**

If feasible, the member shall identify his- or herself 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 the use of deadly force presents no substantial risk of injury to innocent persons. Members shall not discharge their weapon:

- 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 purposes of this lesson, a moving vehicle is not considered deadly force except when it is reasonable to believe that the moving vehicle is being used to ram or attempt to ram a crowd of people with the intent to inflict fatal injuries. Members shall, as a rule, 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) in order to move the person's wrists into a position that allows the subject to be placed in handcuffs.

Handcuffs are uncomfortable and even with proper application can pinch or scratch someone. 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 effectively bring an incident or person under control. Any officer who violates



the provisions of this policy 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.

- **Neck Restraints**

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

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

- **Positional Asphyxia**

Members shall place a subject in a position that does not block his or her ability to breathe once the situation is under control and the subject is placed in a custodial restraint. A member shall not place a subject on his or her stomach for an extended period of time. Members need to 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 in order 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 follow strict accordance with **GO – 901.07** 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.

## **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 diabetic who asked his friend to drive him to a local store to purchase some orange juice to counteract the onset of an insulin reaction. Upon entering the store and seeing a number of 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 got out of the car, ran around it twice, and finally sat down on the curb where he passed out briefly. Graham's friend told the officer that Graham was simply suffering from a "sugar reaction." Back up officers arrived on the scene. One of the officers 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 then lifted Graham up from behind, carrying him over to the friend's car and placing him face down on the hood. 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 course of 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. The US Supreme Court, however, vacated the order and remanded the case for trial, concluding the incorrect legal standard was applied by the lower court.

### **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 circumstances that are tense, uncertain, and rapidly evolving.

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.

**General Order 901.07** 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.

# Metropolitan Police Department

## Decision-making Model



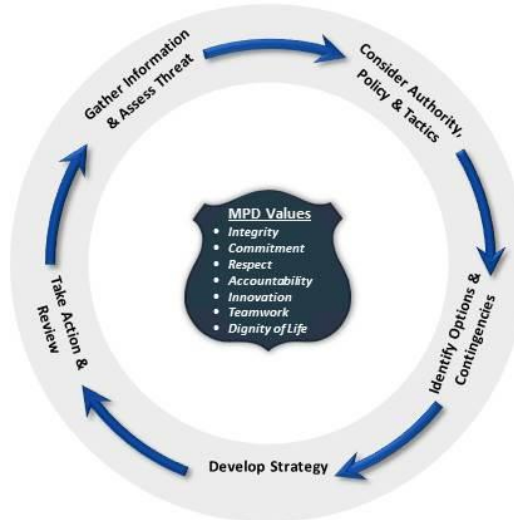
The goal of **every** encounter is  
**Voluntary Compliance!**

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.*

Threat Assessment Observation should include the subject's:

- *Emotional state.*
- *Resistive Tension.*
- *Early warning signs.*
- *Pre-attack postures or Gestures.*
- *Access to a Weapon.*
- *Apparent willingness to sustain injury.*



### 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 upon the situation and the actions of the subject in response to the member. Responses may progress from the member's physical presence at the scene up 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. The officer may rely upon a variety of tools in response to his/her perception of the risk.
- **Tactics**  
Tactics incorporate these 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 produce the effective application of 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 in order to minimize the potential for an assault, the quickness with which an officer uses his/her 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 in an effort to make a decision, to the best of his or her 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 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 and complainants, as well as suspects, and dictates the decisions ultimately made by the officer 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 given altercation. It is therefore 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 in accordance with MPD policy. An officer, though, must use only the minimum amount of force necessary. Remember that an officer's actions in the midst of violent turmoil are often judged long afterward in a calm and distant environment.

### **Threat Assessment Observations**

What factors help the officer perceive danger? The evaluation of a situation 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 size of the officer as it relates to the size of the subject.
- Strength – The strength of the officer as it relates to the strength of the subject.
- Skill level – The skill of the officer as it relates to each of these factors.
- Injury/Exhaustion – Whether the officer or subject have sustained injury or have reached exhaustion and how that may affect the confrontation.
- Number of officers and subjects – The number of officers verses the number of subjects involved.

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

An officer does not have to attempt every force option before resorting to the use of deadly force. However, the officer must demonstrate that he or she acted in accordance with MPD policy, ensure that de-escalation techniques are used whenever feasible, that force is only used when necessary, and that the amount of force used is proportionate to the situation that the member encounters.

**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 police situation or answering a call for service must recognize and immediately identify those areas which 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's response to the suspect's perceived behavior must be guided by the principles of officer safety and control.

**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 he or she wants 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 that are repeated in a clear authoritative voice throughout the entire application of force will help the subject understand what the officer wants him or her 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 response, 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 very complex issue: the justification for the use of force. Members must understand that there is no set order or sequence that 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 prior to resorting to the highest level. However, the officer must demonstrate that he or she acted in accordance with MPD policy which ensures that de-

escalation techniques are used whenever feasible, that force is only used when necessary, and that 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 increase in 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 him or her 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 such 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 perceives the situation as escalating and the level of noncompliance is increasing in volatility. The officer can use compliance techniques and physical control tactics in response to gain control. The actions of the officer 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
- Wrist locks
- Use of ASP baton to conduct wrist lock
- 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 towards 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 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 forcibly render the subject into submission; 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 him- or herself 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 counter measures *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 is in need of 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

Liability of law enforcement officers, whether civil or criminal, may be an issue of concern at any time throughout an officer's career. One type of liability is what is called bystander liability.

An officer may be held civilly or criminally liable for standing by and failing to intervene during the violation of a suspect's clearly 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 even 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 in the situation, but merely stood by and did nothing 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 who is 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 nothing to seek its prevention.
- **Duty** - There is a duty borne by police officers that is associated with the protection of the constitutional rights of community members.

### Court Decisions

- *Byrd v. Brishke, 466 F.2d 6 (7<sup>th</sup> 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 who were present during an unconstitutional acts can be held liable.
- *U.S. v. Reese, 2 F.3d 870 (9<sup>th</sup> 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 (9<sup>th</sup> 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 the constitutional rights of a suspect or other citizens. 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 then immediately respond to the scene. Supervisors and the watch commander will then take the necessary steps to report and document the use of force by the member or 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 what were formerly known as a Use of Force Incident Report (UFIR) and a 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.

Prior to the end of the member’s shift, a 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 wrist lock

A 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 a FIR, a member 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 do something 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 was happening on scene.

### **Body Worn Cameras (BWC)**

The body worn camera 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 to promote and ensure department transparency. When an officer activates his or her body camera, he or she is less likely to be perceived as concealing his or her actions. However, if that same officer is equipped with a camera and does not activate it, he or she will likely be viewed as having something to hide. That officer could even be accused of deliberately trying to cover up his or her actions.

Body cameras are a powerful tool and are here to stay. While interacting with the public, it is especially important to always remember to activate your camera immediately when you receive a call for service or whenever you self-initiate any field activities. This will protect you and your fellow officers as well as provide a valuable resource if your actions are called in to question.

Members *may not review* their BWC recordings or BWC recordings that have been shared with them to assist in initial report writing. However, after an initial report is completed, members may view their BWC or another member's BWC thereafter, including, but not limited to when doing the following:

- Papering a case
- Preparing an affidavit for a warrant
- Providing a statement
- Completing any supplemental report

**EO 20-044** provides that **initial reports** are those reports completed by members in response to calls for service or self-initiated police action that are submitted prior to the end of their shift to document their response to an event. Initial reports include, but are not limited to, reports completed in Mark43 (e.g., Incident/Offense Report, Arrest Report, Traffic Crash Report, Missing Person Report), NOI, Arrestee's Illness/Injury Report, FD-12s, and Force Incident Reports.

**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 in combination with the circumstances of an arrest, members can apply the principles associated with the application of 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.