



# INDEPENDENT INVESTIGATIONS DIVISION

Report Concerning the Police-Involved Fatal Incident in  
Frederick County on March 4, 2023

August 9, 2023

**Report of the Independent Investigations Division of the  
Maryland Office of the Attorney General Concerning the  
Officer-Involved Death of Joseph Sherrill on March 4, 2023**

Pursuant to Md. Code, State Gov't § 6-602, the Office of the Attorney General's Independent Investigations Division (the "IID") provides this report to Frederick County State's Attorney Charles Smith regarding the officer-involved shooting of Joseph Sherrill.

The IID is charged with "investigat[ing] all police-involved incidents that result in the death of a civilian or injuries that are likely to result in the death of a civilian" and "[w]ithin 15 days after completing an investigation ... transmit[ting] a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter." Md. Code, State Gov't § 6-602(c)(1), (e)(1). The IID completed its investigation on July 31, 2023, the day it received the autopsy report from the Maryland Office of the Chief Medical Examiner. This report is now being provided to the Frederick County State's Attorney on August 9, 2023.

**I. Introduction**

On March 4, 2023, at approximately 6:20 p.m., Frederick Police Department ("FPD") officers were dispatched to an apartment complex in the 1500 block of N. East Street in Frederick to locate Joseph Scott Sherrill, who had an open warrant for an alleged violation of probation and was believed to be at that location. Officers went to the apartment where they believed him to be located and spoke with Mr. Sherrill's wife, [REDACTED] who denied that her husband was inside the apartment. After several minutes, she opened the door, and three FPD officers entered the apartment. Inside the apartment, Officer Andrew Coady found Mr. Sherrill crouching in an open bedroom closet and holding a knife. Officers Coady, Robert Hess, and Fahad Mirza began speaking with Mr. Sherrill, commanding him to "drop the knife," while backing away from him into the apartment's living room. Mr. Sherrill then moved towards Officer Mirza with the knife held out in front of him. At that point, Officers Mirza and Hess discharged their firearms, striking Mr. Sherrill. Officers immediately called for emergency medical services and provided aid until paramedics arrived. Mr. Sherrill was pronounced dead on scene.

This report details the IID's investigative findings based on an examination of the shooting scene as well as a review of body-worn camera footage; computer-aided dispatch records; police radio transmissions, recordings, and reports; interviews with civilian and law enforcement witnesses, report from the Office of the Chief Medical Examiner, and firearms analysis. All materials reviewed in this investigation are being provided to the Frederick County State's Attorney's Office with this report and are listed in Appendix A.

This report also includes an analysis of Maryland law that could be relevant in a fatal police-involved shooting of this nature. The IID considered the elements of possible criminal charges, relevant departmental policies, and Maryland case law to assess whether any charge could be supported by the facts of this incident. Because the Frederick County State's Attorney's

Office—not the Attorney General’s Office—retains prosecution authority in this case, this report does not make any recommendations as to whether any offices should or should not be charged.<sup>1</sup>

## II. Factual Findings

The FPD officers present on scene were all wearing departmentally issued body-worn cameras, which were activated. Unless otherwise noted, the factual findings presented below are based on a review of that body-worn camera footage.

### A. Call for Service

On Saturday, March 4, 2023, FPD received a call from the Harford County Sheriff’s Office requesting their help in locating Joseph Sherrill and serving him with an open bench warrant that had been issued on February 23, 2023, by the Harford County Circuit Court for an alleged violation of probation.<sup>2</sup> According to phone calls that were captured on a recorded telephone line, the Harford County Sheriff’s Office became aware of this warrant from a Harford County Assistant State’s Attorney, who told them she had been contacted by the mother of Mr. Sherrill’s children and was concerned about returning her children to him, in part, because of this open warrant. The Harford County Sheriff’s Office confirmed that the violation of probation warrant was active and contacted FPD to request they send officers to attempt to serve Mr. Sherrill with the warrant at his apartment, which was located in Frederick. FPD also confirmed that Mr. Sherrill had an unserved criminal summons from Frederick County District Court for a charge of second degree assault.<sup>3</sup> At 6:32 p.m., FPD dispatched officers to Mr. Sherrill’s apartment.

### B. Initial Contact with ██████████ at Apartment Door

At 6:38 p.m., Officers Coady and Mirza arrived at ██████ North East Street in Frederick, a three-story garden-style apartment building, located within a community of similar buildings. The two officers entered the common door to the building and walked up the stairs to the third-floor landing, which had two separate apartments situated side-by-side. Mr. Sherrill’s apartment, apartment █████ was on the left. As officers reached the third floor, several individuals walked out of apartment █████ which was to the immediate right of apartment █████ One of these individuals can be heard on body-worn camera telling Officer Coady that he saw a man enter apartment █████ about 15 to 20 minutes before officers arrived.

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<sup>1</sup> On May 16, 2023, Governor Moore signed legislation that expands the IID’s purview to include the sole authority, where appropriate, to prosecute police-involved incidents that result in the death of an individual or injuries that are likely to result in the death of an individual. This new authority is effective for incidents occurring on or after October 1, 2023. For incidents occurring before that date, the local State’s Attorney retains sole prosecution authority.

<sup>2</sup> Mr. Sherrill was on supervised probation for a 2019 conviction of fourth degree burglary.

<sup>3</sup> The criminal summons was for an assault ██████████ that was alleged to have occurred on February 7, 2023, at Mr. Sherrill’s apartment in Frederick. This case was the basis of Mr. Sherrill’s alleged violation of probation.



*Image 1. Still frame from Officer Mirza’s body-worn camera footage depicting the outside of the apartment building.*



*Image 2. Still frame from Officer Mirza’s body-worn camera footage showing the third floor landing. Apartment [REDACTED] is on the left; apartment [REDACTED] is on the right.*

As occupants of apartment [REDACTED] walked down the steps and exited the building, Officer Coady knocked on the door to apartment [REDACTED] and announced, “it’s Frederick Police.” Officer Mirza was standing to Officer Coady’s right and a third officer, Officer Hess, had also arrived at the location and stood behind Officers Coady and Mirza on the steps leading up to the third floor landing.

At 6:41 p.m., a woman who was later identified as [REDACTED] Mr. Sherrill's wife, opened the front door slightly, leaving only a few inches of open space. Officer Coady said, "what's going on," and then immediately asked, "why is that in front of the door," referring to two dumbbells that were on the floor inside the apartment and by the door. [REDACTED] responded by saying it was because she had an "ex parte" [protective order] against Mr. Sherrill and that she always keeps "that" in front of her apartment door.<sup>4</sup> Officer Coady asked [REDACTED] if Mr. Sherrill was inside the apartment, and she said he was not presently at the apartment and that he had not been at the apartment a prior night when she claimed FPD officers were also called to respond.

Officer Coady then asked [REDACTED] if officers could enter the apartment to see if Mr. Sherrill was inside. [REDACTED] continued to deny that Mr. Sherrill was inside and refused to allow officers to enter her apartment. [REDACTED] then provided officers with two potential locations where she claimed Mr. Sherrill could be and provided a name of who he might be with and a description of that person's car. As the conversation continued at the door, [REDACTED] kept denying that Mr. Sherrill was inside the apartment and refused to allow officers to enter.

At 6:45 p.m., Officer Coady told [REDACTED] that if he found out Mr. Sherrill was inside the apartment and she was lying to him, he would arrest her. When [REDACTED] said she was okay with that, Officer Coady said, "Perfect. Alright, so you guys both can go to jail." [REDACTED] then said she was not going to argue with the officers and that Mr. Sherrill was not inside. One final time, Officer Coady said, "well then let us come in and take a look." [REDACTED] sighed and said, "I don't understand what you . . ." and her voice trailed off. She then said, "watch out, dog," and appeared to be holding the dog back. She then shut the door, and Officers Coady, Mirza and Hess remained on the landing. Six seconds after shutting the door, [REDACTED] opened the door all the way and held her dog back from the officers, leading them into the apartment at 6:45:55 p.m.

### C. Entry into the Apartment and Locating Mr. Sherrill

Officer Coady entered the apartment first, immediately followed by Officers Mirza and Hess. At 6:46:03 p.m., while standing in the living room, Officer Coady yelled, "Joseph, if you are here, let us know now." Officer Coady then turned left and walked down a short hallway. He entered a bedroom containing children's furniture that was directly in front of him. The bedroom lights were off, but Officer Coady used a flashlight to look around the room. After a few seconds, he walked out of that room and into a second bedroom that was adjacent to the first. In this bedroom, the lights and a television were on. There was a bed to Officer Coady's left, and to his right was a closet, which had folding doors that were open. Officer Coady used the flashlight to illuminate part of the open closet, and then turned to his left to scan the rest of the room, before turning back to the closet. At 6:46:36 p.m., an individual later identified as Mr. Sherrill could be seen on body-worn camera footage crouching in the bedroom closet, with Officer Coady standing a couple of feet in front of him.

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<sup>4</sup> A review of Maryland Judiciary records by IID investigators did not show the existence of a protective order in place between Mr. and [REDACTED]



*Image 3. Still frame from Officer Coady's body-worn camera footage depicting Mr. Sherrill crouching inside the closet. On the footage, he can be seen manipulating something in his hands.*

At 6:46:37 p.m., Officer Coady said, “let me see your hands, come on,” and then “put the . . . drop the knife.” Mr. Sherrill, while still crouching inside the closet said, “nope,” while appearing to unfold a knife and stand up and walk out of the closet, standing face-to-face with Officer Coady with a few feet in between the two. At 6:46:42 p.m., Officer Coady said, “drop the knife” three times while backing out of the bedroom. Mr. Sherrill said, “you’re gonna have to shoot me.” Officer Coady continued to tell Mr. Sherrill to “drop the knife” while backing into the hallway.

At the same time Mr. Sherrill said “you’re gonna have to shoot me,” [REDACTED] walked in between Mr. Sherrill and Officer Coady and said “no.” Officer Coady continued to tell Mr. Sherrill to “drop the knife,” while he pulled [REDACTED] out of the bedroom with his left hand by the hood of the hooded sweatshirt she was wearing. At this point, his firearm was drawn in his right hand. [REDACTED] pushed Officer Coady off of her and yelled, “don’t.” Officer Coady told [REDACTED] to “get out of the way” as he continued to pull her into the hallway and back up. Behind Officer Coady was Officer Hess who had his firearm drawn in his right hand. Behind Officer Hess was Officer Mirza, who had his firearm unholstered.<sup>5</sup> At 6:46:50, Officer Coady radioed for “more units.”

Now standing in the hallway, [REDACTED] again pushed Officer Coady away from her, and the officers continued to tell her to move. At 6:46:53 p.m., Officer Coady pulled [REDACTED]

<sup>5</sup> As noted above, when Officer Coady first entered the apartment, Officers Mirza and Hess entered behind him. When Officer Coady went to the left, Officers Mirza and Hess went to the right, looking in the living room, kitchen, and a front bedroom.

forward and into the living room by her arm. ██████ yelled “stop touching me” three times, while Officer Coady moved her a few feet away and toward the foyer of the apartment, where ██████ fell to the ground.

#### D. The Shooting

At 6:47:00 p.m., Officers Coady and Hess were with ██████ near the foyer. Officer Mirza was in the living room, directly facing Mr. Sherrill, who was standing in the bedroom door frame with the right half of his body in the hallway. Officers continued to tell Mr. Sherrill to drop the knife. One second later, Officer Mirza raised his firearm and pointed it at Mr. Sherrill. Officers continued telling Mr. Sherrill to drop the knife, and he said, “I’m not going to jail.”

At 6:47:06 p.m., Mr. Sherrill took two sips from a bottle (later determined to be a Gatorade bottle) and then placed the bottle on the ground. At 6:47:13 p.m., he moved down the hallway and into the living room with a knife in his left hand. Officers continued their commands to drop the knife, but Mr. Sherrill very quickly advanced toward Officer Mirza.



*Image 4. Still frame from Officer Hess’s body-worn camera footage depicting Mr. Sherrill moving from the hallway toward Officer Mirza who is standing out of frame to Officer Hess’s right. Mr. Sherrill is holding a knife in his left hand (in red circle). Officer Coady and ██████ also out of frame, are off to Officer Hess’s left.*



*Image 5. Still frame from Officer Mirza's body-worn camera footage depicting Mr. Sherrill moving toward Officer Mirza with a knife in his left hand the moment before Officer Mirza first fired. Officer Coady is to the far left and Officer Hess is to his right.*



*Image 6. Still frame from Officer Mirza's body-worn camera footage at the moment Officer Mirza first fired.*

As Mr. Sherrill advanced toward Officer Mirza, Officer Mirza fired his handgun, appearing to strike Mr. Sherrill's body. A split second after Officer Mirza first fired, Officer Hess fired his handgun at Mr. Sherrill, also appearing to strike him. Over three seconds—from

6:47:16 p.m. to 6:47:19 p.m.—Officer Mirza appeared to fire his gun five times in rapid succession, and Officer Hess appeared to fire his gun four times in rapid succession.<sup>6</sup> Mr. Sherrill fell face forward to the ground near a coffee table with a knife still in his hand. Throughout this entire time, officers continued to tell Mr. Sherrill to drop the knife.

#### E. After the Shooting

At 6:47:28 p.m., an officer radioed “shots fired,” and Officer Coady approached Mr. Sherrill, who was lying on the floor. Officers Mirza and Hess remained in their positions with their guns drawn and pointed at Mr. Sherrill. Five seconds later, Officer Coady yelled to FPD Corporal Sean Carpenter, who was walking up the stairs to the third floor landing at the time of the shooting and had just entered the apartment, to call for emergency medical services. Cpl. Carpenter immediately radioed “start EMS.” Officer Coady confirmed the knife was secure and told officers to put on gloves and move the coffee table. Officers placed Mr. Sherrill on his back.

Officer Coady then left the apartment and went to his patrol car to retrieve a first aid kit. While he was gone, Officer Hess checked Mr. Sherrill’s pulse and cut open his shirt and began looking for entrance and exit wounds from the bullets. At one point, Mr. Sherrill gasped for air, and Officer Hess told him to “hang tight, buddy,” while continuing to check for wounds. Officer Coady returned [REDACTED] [REDACTED] [REDACTED] until paramedics arrived and took over resuscitation efforts. At 7:09 p.m., a paramedic pronounced Mr. Sherrill dead.

Once the scene was secured, Maryland State Police (“MSP”) personnel began a search of the apartment pursuant to a signed Search and Seizure Warrant. Crime scene technicians collected evidence, including the knife Mr. Sherrill was holding and various projectiles.

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<sup>6</sup> In addition to what is visible on available body-worn camera footage, this number of shots is corroborated by the firearms analysis performed by the Maryland State Police.



Image 7. MSP crime scene photograph depicting the knife (in red circle).

#### F. Civilian Witness Statements

1. ██████████

After the shooting, ██████████ was driven to a FPD facility to be interviewed. She was seated in an interview room that was video recorded. Prior to IID investigators arriving ██████████ made a series of spontaneous statements to an FPD detective who was monitoring the interview room and was not otherwise involved with the shooting. She told the detective that Mr. Sherrill was “shot from behind” and that he was “walking away” at the time. She said, “I watched what happened; he was walking away. He had his phone in his hand, and he dropped it.” She also told the detective that, “[he] was walking away and you [the police] still shot him.” ██████████ added, “He definitely didn’t have a weapon, he had a phone,” and “He had nothing but a cell phone.”

When IID investigators arrived at FPD to interview her, ██████████ asked to go outside to smoke a cigarette. While outside with IID investigators, ██████████ spoke briefly with them. This conversation was not recorded. She said that several officers arrived at her house earlier that evening in an effort to locate Mr. Sherrill. ██████████ told investigators that the officers entered the apartment and shot Mr. Sherrill in the back while he was holding a cell phone. ██████████ then declined to speak with investigators further and walked back to the apartment. In the days following the shooting, ██████████ declined through her counsel to participate in an additional interview with IID investigators.

The description of events that ██████ provided to both FPD and the IID are inconsistent with the body-worn camera footage and the physical evidence recovered from the apartment.

## 2. Anonymous Witness

On March 8, 2023, IID investigators met with a witness who wished for their identity to remain confidential for fear of reprisal. That individual was present at the apartment complex when officers entered the building. According to this witness, an FPD officer (later identified to be Officer Coady) asked this witness if there was a man inside apartment ██████ and the witness confirmed that they saw a man get grocery bags from a car in the apartment complex parking lot and enter that apartment approximately 15 to 20 minutes before officers arrived.

## G. Law Enforcement Statements

All subjects of criminal investigations—including police officers—have a right under the Fifth Amendment not to make any statement. That right also applies to written statements. Thus, if a statement is directly ordered, the result of threat, or otherwise compelled (*i.e.*, not voluntary), it cannot be used against an officer in a criminal investigation and should not be considered by criminal investigators. *Garrity v. State of N.J.*, 385 U.S. 493 (1967) (holding that officers’ statements made under threat of termination were involuntary); *Department of Public Safety and Correctional Services v. Shockley*, 142 Md. App. 312, 325 (2002) (“the dispositive issue is whether [the supervisor] **demand**ed that the appellee answer the questions”) (emphasis in original).

Under Maryland law effective July 1, 2022, a police officer must “fully document all use of force incidents that the officer observed or was involved in.” Public Safety § 3-524(e)(4). The law does not provide further guidance about what “fully document” means. FPD’s Use of Force Policy requires that use of force incidents be “documented” specifically relating to the force used against the officer and any tactics utilized to overcome the resistance. The policy specifically requires the officer complete a Use of Force BlueTeam entry.<sup>7</sup> See Appendix B.

Officers Hess and Mirza declined to be interviewed by IID investigators. Further, neither officer completed a use of force report or statement relating to this incident. The IID spoke with the FPD Internal Affairs Lieutenant who indicated that the officers were not ordered by their command staff to complete the use of force report because of concerns that such an order would violate the officer’s Fifth Amendment protections.

## 1. Officer Andrew Coady

Through his legal counsel, Officer Coady declined to be interviewed by IID investigators, citing his Fifth Amendment right to not make any statement. Although the IID did not consider Officer Coady a subject officer for purposes of its investigation, the IID could not dispute Officer

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<sup>7</sup> BlueTeam is a web-based data entry software for Use of Force reports, submissions, and review.

Coady's claim of potential criminal jeopardy, however speculative this claim is. Further, because the Frederick County State's Attorney's Office retains prosecution authority in this case and would not confer immunity on Officer Coady, the IID was unable to compel a statement.

## 2. Corporal Sean Carpenter

FPD Corporal Sean Carpenter was interviewed by MSP and IID investigators on March 16, 2023. His account was generally consistent with what is depicted on Cpl. Carpenter's body-worn camera footage.

He told investigators that he was aware that officers were dispatched to the apartment complex to look for Mr. Sherrill in reference to a probation violation warrant. He estimated that the patrol units were on scene at the apartment complex for 10 to 15 minutes before he arrived. Based on prior experience with the Sherrill family, Cpl. Carpenter thought "there would probably be some use of force taking him into custody."

Once at the apartment building, Cpl. Carpenter said he heard Officer Coady radio for additional units and that Mr. Sherrill had been located in a bedroom with a knife in his hands. Cpl. Carpenter said he paused on the second-floor landing before he went up the stairs. He said he heard the gunshots before he reached apartment [REDACTED]. Cpl. Carpenter said he did not see the shooting and radioed for emergency medical services to respond prior to entering the apartment.

Inside the apartment, Cpl. Carpenter said Mr. Sherrill was on the ground, and Officers Hess and Mirza had their guns drawn. He said Officer Coady began rendering medical aid and then Officer Hess took over. Cpl. Carpenter said he observed a silver folding pocketknife on the floor in the apartment in close proximity to Mr. Sherrill's body. Officer Coady told Cpl. Carpenter, "Yep, that's the one that he had," in reference to the knife on the floor. Cpl. Carpenter added that he heard [REDACTED] say, "He didn't have a knife or a gun on him, and y'all shot him."

Cpl. Carpenter said he asked the three officers which of them had fired their weapons. Cpl. Carpenter said Officer Hess indicated that he did, and Cpl. Carpenter told him to go outside. Cpl. Carpenter said that Officer Mirza made no verbal statement but that he also exited the apartment.

## H. Medical Examination

Mr. Sherrill's autopsy was performed on March 5, 2023, by Babatunde Stokes, M.D., an assistant medical examiner with the Maryland Office of the Chief Medical Examiner. On July 31, 2023, the IID received a copy of Dr. Stokes' final autopsy report. Dr. Stokes determined that Mr. Sherrill suffered from seven gunshot wounds, causing injuries to his heart, right lung, liver, pancreas, and small and large bowels. Dr. Stokes recovered projectiles from five of the seven gunshot wounds, and those projectiles were submitted as evidence to MSP for forensic analysis. Dr. Stokes concluded that Mr. Sherrill's cause of death was multiple gunshot wounds, and the

manner of death was homicide.<sup>8</sup>

Standard post-mortem toxicology testing on Mr. Sherrill revealed the presence of fentanyl and amphetamine.

### I. Firearm Analysis

Crime scene technicians from MSP recovered the firearms that were discharged by Officer Hess and Officer Mirza. The two firearms were tested by the MSP Forensic Sciences Division, where a firearms examiner concluded that both firearms were operable and capable of firing.

Crime scene technicians also recovered a number of 9 mm caliber cartridge cases from the apartment's living room where the shooting took place and projectiles that had struck the hallway wall and kitchen partition. Five of these cartridge cases were identified as having been fired from Officer Mirza's gun.<sup>9</sup> Four of these cartridge cases were identified as having been fired from Officer Hess's gun.

As noted above, four fired bullets and one fired bullet fragment were recovered from Mr. Sherrill's body at autopsy. Two of the fired bullets and the one fired bullet fragment were identified as having been fired from Officer Mirza's gun. Two of the fired bullets were identified as having been fired from Officer Hess's gun.

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<sup>8</sup> Manner of death is a classification used to define whether a death is from intentional causes, unintentional causes, natural causes, or undetermined causes. The Office of the Chief Medical Examiner of Maryland uses five categories of manner of death: natural, accident, suicide, homicide, and undetermined. "Homicide" applies when death results from a volitional act committed by another person to cause fear, harm, or death. This term is not a legal determination; rather, it is largely used to assist in the collection of public health statistics. *A Guide for Manner of Death Classification*, First Edition, National Association of Medical Examiners, February 2002.

<sup>9</sup> MSP defines "identification" as "Agreement of all discernible class characteristics and sufficient agreement of a combination of individual characteristics where the extent of agreement exceeds that which can occur in the comparison of toolmarks made by different firearms/tools and is consistent with the agreement demonstrated by toolmarks known to have been produced by the same tool/firearm." Notwithstanding the availability of this expert opinion in this case, the State may be limited in the firearms testimony it could offer at trial. Last month, in *Abruquah v. State*, the Maryland Supreme Court analyzed the admissibility of a firearm examiner's expert testimony in light of the Court's adoption in 2020 of the *Daubert-Rochkind* standard, which now governs the admissibility of all expert testimony in Maryland trial courts. No. 10, Sept. Term, 2022 (Md. Jun. 20, 2023). The Court found that while firearms identification is generally reliable and can help a factfinder identify whether patterns and markings on "unknown" bullets or cartridges "are consistent or inconsistent with those on bullets or cartridges known to have been fired from a particular firearm," a firearm examiner may not be able to testify to "results linking a particular unknown bullet to a particular known firearm." The ruling in *Abruquah* was based on the record that was established in that particular trial; namely the reports, studies, and testimony admitted into evidence before the circuit court. It remains possible that the expert opinion provided by the MSP firearms examiner in this case would be admissible under *Daubert-Rochkind* if a different record was established in line with the *Abruquah* ruling.

### **III. Involved Parties' Backgrounds**

As part of its standard investigative practice, the IID obtained information regarding the involved parties' criminal histories. To the extent it exists, any criminal history is being provided to the State's Attorney's Office with this report. The IID also obtained the internal affairs records and relevant training records for the two involved officers.

Mr. Joseph Sherrill was a 44-year-old white man who lived in Frederick, Maryland.

Officer Robert Hess is a white man who was 31 years old at the time of the shooting. He has been employed by FPD since September 2016 and serves in the patrol division. Officer Hess has had two disciplinary or internal affairs complaints or investigations, both of which were resolved at intake with no action taken. The IID received these two case files by FPD and determined they were not relevant to the IID investigation.

Officer Fahad Mirza is an Asian man who was at 33 years old the time of the shooting. He has been employed by FPD since July 2022 and serves in the patrol division. Officer Mirza was field training at the time of the shooting. Officer Mirza has no disciplinary or internal affairs complaints or investigations.

### **IV. Applicable Policies**

FPD has the following policies on use of force, including the use of deadly force. The complete policies are attached to this report as Appendix B.

#### **A. Use of Force (General Order 705.04):**

“It is the policy of the Frederick Police Department that its members will employ only force that is objectively reasonable when necessary to accomplish lawful objectives. In accordance with case law, the “reasonableness” of the force used will be a major factor in any review as to the propriety of any use of force (whether constructive or actual), as well as whether the force was appropriately applied and in accordance with training. With the understanding that use of force incidents are extremely fluid, dynamic, and oftentimes violent encounters, it is the policy of the Frederick Police Department that its members will attempt to de-escalate prior to using force when it is safe to do so and there is not an imminent threat of death or serious bodily injury to the officer(s) or a third party.”

#### **B. Use of Firearms (General Order 720.20):**

“Officers may only justify use of a firearm by facts known at the time a decision to use a firearm is made. Facts unknown, no matter how compelling, cannot be considered later when determining if the use of a firearm was justified.”

### C. Use of Deadly Force (General Order 720.25):

“An officer may discharge a firearm or use or attempt to use deadly force in the performance of his police duties, either on- or off-duty, ONLY in the following circumstances:

1. In self-defense from death or serious bodily injury when nothing less than deadly force is adequate to ensure his safety.
2. In defense of another person from death or serious bodily injury when nothing less than deadly force is adequate to ensure his safety.”

## V. Applicable Law and Analysis

On March 22, 2023, Frederick County State’s Attorney Smith notified the IID via letter that he was declining prosecution in this matter. He wrote, “[M]y office has concluded that the use of deadly force by Officer Robert Hess and Officer Faha[d] Mirza against Joseph Sherrill was necessary and proportional and thus legally justified under Maryland [law] according to the standard established by the United States Supreme Court in *Graham v. Connor*.”

The legislative intent in creating the IID was that an independent investigation be conducted and completed before any prosecution decision is made by the local State’s Attorney. Notwithstanding this preemptive declination, the IID is bound by statute to provide this report, which includes the analysis below of Maryland statutes that could be relevant in a fatal shooting of this nature. This section presents the elements of each possible criminal charge, analyzes these elements, and reviews any potential defenses in light of the factual findings discussed above.

### A. Excessive Force

Effective July 1, 2022, the Maryland Use of Force Statute makes it a crime for officers to intentionally use force that is not, “under the totality of the circumstances . . . necessary and proportional to: (i) prevent an imminent threat of physical injury to a person; or (ii) effectuate a legitimate law enforcement objective.” Public Safety § 3-524(d)(1). The statute also requires that “when time, circumstances, and safety allow, [officers shall] take steps to gain compliance and de-escalate conflict without using physical force.” Public Safety § 3-524(e)(1).

To prove excessive force, the State must prove: (1) that the defendant was a police officer;<sup>10</sup> (2) that the defendant used force against Mr. Sherrill; (3) that the force used was not necessary and proportional to prevent an imminent threat of physical injury to the defendant, another person, or to effectuate a legitimate law enforcement objective; (4) that the defendant intended to use such force; and (5) that the use of force resulted in serious bodily injury or death to Mr. Sherrill. MPJI-Cr 4:36 Unlawful Use of Force by a Police Officer, MPJI-Cr 4:36 (2d ed. 2022). In determining whether the defendant’s use of force was necessary and proportional, the factfinder should consider all the surrounding circumstances. *Id.*

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<sup>10</sup> A “police officer” includes any police officer as defined in Public Safety § 3-201 or a special police officer as defined in Public Safety §3-301. Public Safety § 3-524(b)(3)(i), (ii).

Before the Use of Force Statute was enacted, Maryland had no specific crime punishing officers' use of excessive force. Instead, officers could be charged with the same crimes as any civilian, including force-related crimes such as murder, manslaughter, and assault. Officers could not be convicted of these offenses if they had acted reasonably; that is, if they acted as a reasonable officer would given the circumstances. Now, with the Use of Force Statute, officers may still face these traditional charges, but they may also face the specific charge of using excessive force if the force they used was not necessary and proportional given the totality of the circumstances.

The third element of the jury instruction requires the State to prove that the force used by the officer was not necessary and proportional to prevent an imminent threat of physical injury to any officer, other individuals, or to effectuate a legitimate law enforcement objective. Public Safety § 3-524(d)(1). The terms “necessary” and “proportional” are not defined by statute or by Maryland caselaw. However, an [opinion](#) issued by the Office of the Attorney General concluded that the “necessary and proportional” standard “involves three core principles”:

First, the use of force is not “necessary” unless there is no reasonable alternative to using force that, under the circumstances would safely and effectively achieve the same legitimate ends. Second, even when the use of some force is necessary, the degree and amount of force must correspond to, and be appropriate in light of, the objective that the officer aims to achieve. Third, the proportionality requirement further prohibits an officer from using force if the harm likely to result is too severe in relation to the value of the interest that the officer seeks to protect.

107 Md. Op. Att’y Gen. 33, 66 (Feb. 25, 2022) (emphasis added).

As mentioned above, the statute also provides that the use of necessary and proportional force may be appropriate to “prevent an imminent threat of physical injury to a person” or to “effectuate a legitimate law enforcement objective.” Public Safety § 3-524(d)(1)(i), (ii). “Imminent” is defined as “likely to occur at any moment; impending.” *Howell v. State*, 465 Md. 548, 564 n. 15 (2019).<sup>11</sup> Officers must have probable cause to believe that an individual poses such an imminent threat. *Estate of Blair*, 469 Md. at 23. Probable cause “means something less than ‘more likely than not.’” *Whittington v. State*, 474 Md. 1, 41 n. 29 (2021) (quoting *Freeman v. State*, 249 Md. App. 269, 301 (2021)).

The Use of Force Statute does not define “legitimate law enforcement objective,” but other sections of the Public Safety Article provide some guidance. For example, Section 3-701 defines “legitimate law enforcement objective” as “the detection, investigation, deterrence, or prevention of crime, or the apprehension and prosecution of a suspected criminal.” Public Safety § 3-701(a)(7); *see also* Public Safety § 3-509(a)(8) (defining a “legitimate law enforcement

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<sup>11</sup> “Imminent” differs from “immediate,” which means “occurring or accomplished without lapse of time; instant; of or relating to the present moment.” *Howell*, 465 Md. at 564 n. 15. However, imminence still requires a reasonable degree of proximity and specificity; a threat that may occur “sometime in the future” is not imminent. *Madrid v. State*, 474 Md. 273, 339 (2021).

purpose” as “the investigation, detection, or analysis of a crime or a violation of the Maryland vehicle laws or the operation of terrorist or missing or endangered person searches or alerts”).

The Use of Force Statute specifically provides that an officer must cease the use of force when either of the above conditions is no longer met, or when the target of the force is under the officer’s control. Physical restraint is not a prerequisite to “control.” *Michigan v. Long*, 463 U.S. 1032, 1051 (1983) (“During any investigative detention [*i.e.*, a *Terry* stop], the suspect is ‘in the control’ of the officers in the sense that he may be briefly detained against his will.”) (cleaned up). An individual who is complying with an officer’s commands without physical restraint is under the officer’s control because the officer has a “directing influence” over them. *See Bryant v. State*, 229 Md. 531, 537 (1962) (citations omitted) (applying dictionary definitions of “control,” *i.e.*, “to exercise restraining or directing influence over”); *cf. Bailey v. State*, 412 Md. 349, 371 (2010) (“Although the display of force often involves placing the individual who is seized in handcuffs, application of handcuffs is not a necessary element of an arrest.”); *Henderson v. State*, 89 Md. App. 19, 23 (1991) (suspect was not seized where he “was neither under the physical control of the officers, nor was he acquiescing to their authority”).

The fourth element of the jury instruction requires that the officer intended to use such force. While it is possible the General Assembly meant only that the officer’s actions must have been intentional, it is more likely the General Assembly meant to require that the officer knew the level of force that would have been permissible and intentionally crossed that threshold. The Office of the Attorney General’s Opinions Division stated in a January 18, 2023, advice letter to the Prince George’s County State’s Attorney’s Office that this latter interpretation was better supported by the plain language of the statute.<sup>12</sup> [Letter](#) of Assistant Attorney General Rachel A. Simmons to State’s Attorney Aisha N. Braveboy, Prince George’s County State’s Attorney’s Office (Jan. 18, 2023).

The fifth element of the jury instruction requires that the use of force resulted in serious bodily injury or death to Mr. Sherrill. “Serious bodily injury” is not defined in this statute, but a definition for “serious physical injury” is provided. Public Safety § 3-524(b)(4). “Serious physical injury” is injury that “(1) creates a substantial risk of death; or (2) causes permanent and protracted serious disfigurement, loss of the function of any bodily member or organ, or impairment of the function of any bodily member or organ.” Public Safety § 3-201(d).

There is no dispute that Officers Hess and Mirza were acting in their capacity as police officers when they fired their weapons at Mr. Sherrill. Nor is there any dispute that the officers’ bullets struck Mr. Sherrill and caused his death. The remaining questions for the factfinder are whether the officers intentionally used excessive force and whether the use of force was necessary and proportional to counteract an imminent threat to another individual or pursuant to a legitimate law enforcement objective.

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<sup>12</sup> The Opinions Division is a unit within the Office of the Attorney General that is responsible for answering significant legal questions involving Maryland law or other law that governs the actions of Maryland public officials. The Division issues both formal opinions and less formal advice letters; neither serves as binding precedent, though they may be used as persuasive authority.

To secure a conviction, the State would have to prove any officer's force intentionally exceeded that which was necessary and proportional. Regarding necessity, officers entered the apartment only after ██████ relented and opened the door for them, holding back her dog and leading them inside. Once inside the apartment, Officer Coady quickly located Mr. Sherrill in the closet with a knife in his hand, which he appeared to be unfolding. Officer Coady tried to end any confrontation by immediately telling Mr. Sherrill to drop the knife, to which Mr. Sherrill replied, "nope." Mr. Sherrill walked out of the closet still holding the knife, walking toward Officer Coady who continued to tell him to drop the knife as he backed into the hallway. Mr. Sherrill escalated the confrontation by telling Officer Coady, "You're gonna have to shoot me." As Officer Coady continued to retreat, ██████ moved in between Officer Coady and Mr. Sherrill, and Officer Coady forcibly pulled her away, continuing to create as much physical distance as possible inside the apartment between not only all three officers and Mr. Sherrill but also between ██████ who remained inside the apartment, and Mr. Sherrill. Once in the living room area, Mr. Sherrill was still not complying with the officers' commands to drop the knife, and he advanced directly toward Officer Mirza with the knife blade exposed. Regarding proportionality, as noted above, officers attempted de-escalation tactics to gain compliance from Mr. Sherrill, including numerous verbal commands and creating as much distance as was possible between themselves and Mr. Sherrill. But, given Mr. Sherrill's statements to officers expressing his intent (*i.e.*, "You're gonna have to shoot me," "I'm not going to jail") and his continued possession of a deadly weapon, a factfinder would consider that as he advanced toward the officers, he posed a significant threat of serious bodily injury or death to them. Further, any less lethal response by these officers would likely not be sufficient to counter the level of immediate deadly force presented by Mr. Sherrill.

## B. Homicide Charges

Criminal Law § 2-204 states: "A murder that is not in the first degree under § 2-201 of this subtitle is in the second degree." Intentional second-degree murder differs from first-degree murder in that it is not "willful, deliberate, and premeditated." MPJI-Cr 4:17.2 Homicide—First Degree Premeditated Murder, Second Degree Specific Intent Murder and Voluntary Manslaughter (Perfect/Imperfect Self-Defense and Perfect/Imperfect Defense of Habitation), MPJI-Cr 4:17.2 (2d ed. 2021). It is, however, a killing conducted with "either the intent to kill or the intent to inflict such serious bodily harm that death would be the likely result." *Id.*

To prove intentional second-degree murder, the State must establish: "(1) that the defendant caused the death of Mr. Sherrill; (2) that the defendant engaged in the deadly conduct either with the intent to kill or with the intent to inflict such serious bodily harm that death would be the likely result; (3) that the killing was not justified; and (4) that there were no mitigating circumstances." *Id.* Second-degree murder and voluntary manslaughter require the State prove a specific intent to kill. *Chisum v. State*, 227 Md. App. 118, 135-36 (2016). But, "[i]f a man voluntarily and wil[l]fully does an act, the natural consequences of which is to cause another's death, an intent to kill may be inferred from the doing of the act." *Lindsay v. State*, 8 Md. App. 100, 105 (1969); *see also Chisum*, 227 Md. App. at 133, 136.

Intentional second-degree murder may be reduced to voluntary manslaughter if a defendant acted pursuant to a partial self-defense, partial defense of others, or law enforcement

justification. Manslaughter is a common law crime in Maryland. *Bowers v. State*, 227 Md. App. 310, 314 (2016). To prove voluntary manslaughter, the State must prove that the defendant: (1) caused the death of the decedent; and (2) intended to kill the decedent. MPJI-Cr 4:17.2; MPJI-Cr 4:17.3. The State must also disprove complete self-defense or complete defense of others, as discussed in the section below.

Self-defense is one possible justification or mitigating circumstance. Self-defense may be either complete (*i.e.*, the use of deadly force was completely justified) or partial (*i.e.*, the use of deadly force was partially, but not completely, justified). Complete self-defense exists where: (1) the defendant was not the aggressor; (2) the defendant actually believed that [he was] in immediate or imminent danger of death or serious bodily harm; (3) the defendant's belief was reasonable; and (4) the defendant used no more force than was reasonably necessary to defend [himself] in light of the threatened or actual force. MPJI-Cr 4:17.2; *see also Porter v. State*, 455 Md. 220, 234-36 (2017). Partial self-defense exists where the first two of these elements are present, but the defendant either unreasonably believed danger to be imminent or unreasonably believed the amount of force he used was necessary. MPJI-Cr 4:17.2. If the defendant acted in complete self-defense, no charge is appropriate. *Id.* If the defendant acted in partial self-defense, the appropriate charge is voluntary manslaughter rather than second-degree murder. *Id.*

Defense of others is an additional possible justification or mitigating circumstance. Complete defense of others exists where: “(1) the defendant actually believed that the person [he was] defending was in immediate or imminent danger of death or serious bodily harm; (2) the defendant's belief was reasonable; (3) the defendant used no more force than was reasonably necessary in light of the threatened or actual force; and (4) the defendant's purpose in using force was to aid the person [he was] defending.” MPJI-Cr 4:17.3 Homicide—First Degree Premeditated Murder, Second Degree Specific Intent Murder and Voluntary Manslaughter (Perfect/Imperfect Defense of Others), MPJI-Cr 4:17.3 (2d ed. 2021). Partial defense of others exists where the defendant actually, though unreasonably, believed that the person defended was in immediate or imminent danger of death or serious bodily harm, even though a reasonable person would not have so believed; or the defendant used greater force than a reasonable person would have used, but the defendant actually, though unreasonably, believed that the force used was necessary. *Id.* If the defendant acted in complete defense of others, no charge is appropriate. MPJI-Cr 4:17.3. If the defendant acted in partial defense of others, the appropriate charge is voluntary manslaughter rather than second-degree murder. *Id.*

Another possible defense is law-enforcement justification. This defense provides that an officer may use “that force necessary to discharge his official duties” and “[i]n so doing, he is not liable civilly or criminally for the assault or battery that may result, including, if necessary, the use of deadly force.” *Wilson v. State*, 87 Md. App. 512, 519-20 (1991). The rationale for this justification is that officers' duties are “markedly different” from those of ordinary citizens, requiring that officers “threaten deadly force on a regular basis.” *Koushall v. State*, 249 Md. App. 717, 728-29 (2021), *aff'd*, No. 13, Sept. Term, 2021 (Md. Feb. 3, 2022).

For any of these defenses—self-defense, defense of others, or law-enforcement justification—the reasonableness of the officers' actions “must be evaluated not from the perspective of a reasonable civilian but rather from the perspective of a reasonable police officer

similarly situated.” *State v. Albrecht*, 336 Md. 475, 501 (1994). A court will consider “the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *State v. Pagotto*, 361 Md. 528, 555 (2000) (quoting *Graham v. Connor*, 490 U.S. 386, 397 (1989)). To reasonably use deadly force, an officer must have “probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others.” *Estate of Blair by Blair v. Austin*, 469 Md. 1, 23-24 (2020) (quoting *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)). If an officer used more force than was reasonably necessary, “the privilege is lost.” *French v. Hines*, 182 Md. App. 201, 265-66 (2008).

When analyzing the reasonableness of an officer’s actions, the United State Supreme Court and Maryland appellate courts have looked to the surrounding circumstances. “Determining whether the [level of] 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.” *Randall v. Peaco*, 175 Md.App. 320, 331 (2010) (citing *Graham*, 490 U.S. at 396). “The test of reasonableness under the Fourth Amendment [...] requires careful attention to the facts and circumstances of each 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.” *Id.* However, “an objectively reasonable officer would use deadly force *only* when threatened with serious physical harm.” *Estate of Blair by Blair*, 469 Md. at 24 (emphasis in original). Violations of departmental policy are one “factor to be considered in determining the reasonableness of police conduct.” *Pagotto*, 361 Md. at 557 (citations omitted).

There has not yet been any judicial analysis of how the Maryland Use of Force Statute, discussed above, affects the applicability of this common law reasonableness analysis as it pertains to these three defenses. The Use of Force Statute, as detailed above, provides that officers may only use necessary and proportional force. It is possible that the new “necessary and proportional” standard supplants reasonableness as the benchmark against which officers’ conduct should be measured. But it is also possible that the new standard applies only to the new excessive force offense created by the Maryland Use of Force Statute, leaving reasonableness as the appropriate standard for other offenses. The Office of the Attorney General’s Opinions Division concluded that this latter interpretation is more likely for several reasons, including the fact that the General Assembly did not express an intent to supersede the existing reasonableness standard for offenses other than the newly created excessive force crime. [Letter](#) of Assistant Attorney General Rachel A. Simonsen to State’s Attorney Aisha N. Braveboy, Prince George’s County State’s Attorney’s Office (Jan. 18, 2023).

The Opinions Division noted, however, that necessity and proportionality may still be salient factors in the reasonableness determination because the new standard has now been incorporated into law enforcement policies and training statewide. *Id.* The advice letter states: “Maryland’s appellate courts have often considered an officer’s compliance with police department policies or training guidelines when assessing the reasonableness of the officer’s use of force.” *Id.* (citing *Koushall*, 479 Md. at 152, 156 & n.11 (non-compliance with departmental policy “highlight[ed] the [officer’s] unreasonable use of force under the circumstances”);

*Albrecht*, 336 Md. at 477-78, 487, 502-03 (noting that “the record [was] replete with evidence . . . that [the officer] did not comply with . . . departmental guidelines, procedures or practices” and, thus, did not act as “act as a reasonable police officer under the circumstances” but, rather acted “in a grossly negligent and reckless manner”); *Pagotto*, 361 Md. at 550-53 (considering three departmental guidelines about how to approach a suspect when analyzing convictions for involuntary manslaughter or reckless endangerment)).

In this case, a factfinder would need to determine whether Officer Mirza had a claim of complete self-defense and whether Officer Hess had a claim of defense of others. In making this determination, a factfinder would likely consider the same facts as applied in the Excessive Force analysis above. For Officer Mirza, this would include that he could not retreat from his position inside the apartment living room and that Mr. Sherrill was not complying with any order to drop the knife, instead advancing directly toward Officer Mirza from several feet away. For Officer Hess, given his position inside the apartment, a factfinder would consider the serious and immediate danger that Mr. Sherrill posed to Officer Mirza but also the threat he posed to [REDACTED] who remained inside the apartment during the encounter.

### C. Other Charges

There are additional potential charges that are not discussed further because they would merge with the homicide charges discussed above. Those charges include: first-degree assault, *Sifrit v. State*, 383 Md. 116, 137 (2004); and reckless endangerment, *Williams v. State*, 100 Md. App. 468, 490-91 (1994). The analysis of these charges would parallel that of the charges above.

There are also other charges which could not be proven unless the State proved one of the charges above as a requisite predicate offense. Those charges include: use of a firearm in the commission of a crime of violence, Criminal Law § 4-204(b); and misconduct in office, a common law offense. Specifically, regarding misconduct in office, there is also no evidence the officers acted with “a sense of depravity, perversion, or taint” necessary to establish the required corrupt intent. *Sewell v. State*, 329 Md. App. 571, 604 (2018) (citation omitted).

## VI. Conclusion

This report has presented factual findings and legal analysis relevant to the officer-involved death of Joseph Sherrill that occurred on March 4, 2023, in Frederick, Maryland. Please contact the IID if further investigation or analysis is required.

## Appendices

### **Appendix A – Materials Reviewed**

911 Calls (1 item)  
Body-Worn Camera Video (15 recordings and 23 audit logs)  
CAD Reports (8 items)  
Civilian Witness Statements (3 recordings and 4 photographs)  
Communications Audio (461 recordings)  
Dash Cam Video (6 recordings)  
Decedent Documents (6 items)  
Departmental Policies (10 items)  
IA History and Training Records (260 items and 3 videos)  
Lab Reports (5 items)  
MSP Reports (7 items)  
OAG Reports (11 items)  
OCME (1 autopsy report with cover letter, 56 photographs)  
Officer Witness Statements (1 recording)  
Photographs (330 photos, 384 audit logs, and 1 case media log)  
Search Warrants (2 items)  
Subpoena (2 items)

*All materials reviewed have been shared with the Frederick County State's Attorney's Office via a secure filesharing service.*

### **Appendix B – Relevant Frederick County Departmental Policies**

See attached policies.

**Appendix B**  
Relevant Frederick Police  
Departmental Policies

## FREDERICK POLICE DEPARTMENT GENERAL ORDER

**Section 07:** Force, Detention and Arrest  
**Topic:** USE OF FORCE  
**Approved:** 06/29/22  
**Review:** Annually in March by the Professional Services Division Commander  
**Supersedes:** General Order 705 dated 01/05/22

**Order Number:** 705  
**Issued by:** Chief of Police

### .01 PURPOSE:

To provide guidelines to sworn personnel regarding the application of various types of force utilized by officers to gain compliance or accomplish legitimate law enforcement goals. In addition, this Order will explain policies and procedures regarding the reporting of force incidents.

### .02 CROSS-REF:

G.O. [435](#), "Canine Unit"  
G.O. [706](#) "De-Escalation"  
G.O. [710](#), "Non-Lethal Force"  
G.O. [712](#), "Less-Lethal Force: Impact Weapons"  
G.O. [720](#), "Deadly Force Guidelines and Investigations"  
G.O. [773](#), "Sick or Injured Prisoners"  
G.O. [1422](#), "Jurisdiction"  
G.O. [1610](#), "Complaints and Internal Investigations"

### .03 DISCUSSION:

The Department recognizes that it has a responsibility to control the application of physical force by its officers to ensure that force is used in conformance with existing professional standards and within limits permitted by law. In addition, the Department must ensure that the use of force by its members is properly documented and that there is a complete, thorough, and objective supervisory and command review of the incident to ensure compliance with existing departmental policies and procedures.

### .04 POLICY:

It is the policy of the Frederick Police Department that its members will employ only force that is **objectively reasonable when necessary** to accomplish lawful objectives. In accordance with case law, the "reasonableness" of the force used will be a major factor in any review as to the propriety of any use of force (whether constructive or actual), as well as whether the force was appropriately applied and in accordance with training. With the understanding that use of force incidents are extremely fluid, dynamic, and oftentimes violent encounters, it is the policy of the Frederick Police Department that its members will attempt to de-escalate prior to using force when it is safe to do so and there is not an imminent threat of death or serious bodily injury to the officer(s) or a third party.

It is also the policy of the Department that its members will document, in writing, all incidents in which physical force above a certain defined level, and in some cases "constructive force," in a Use of Force BlueTeam Entry. The Department will monitor, review, evaluate and investigate in accordance with this order the amount of force used by its members in the performance of their duties. Use of Force BlueTeam entries will be analyzed and evaluated by supervisors and command members of the agency to determine the appropriateness of the force used, including whether the force used was a tactic/technique recognized, accepted, and/or taught by the Department. Based upon this supervisory and command review, a determination will be made whether the force used, as reported and affirmed by any review, was objectively reasonable and appropriate, or whether it was inappropriate and/or excessive. In cases where a determination is made that the force used was inappropriate and/or excessive, the Department will decide whether remedial training and/or administrative action is warranted.

## .05 DEFINITIONS:

**APPROPRIATE FORCE:** The amount of force, which under the totality of the circumstances is necessary and proportional to prevent an imminent threat of physical injury to a person or to effectuate a legitimate law enforcement objective, using established departmental and/or judicially accepted standards. Appropriate Force must be commensurate with the actual or potential threat posed based upon the articulable facts of a given situation, in keeping with the policies and procedures of the Department, and recognized by the courts as objectively reasonable.

**BLUETEAM:** The web based data entry software for Use of Force reports, submissions and review. BlueTeam Use of Force software is composed of two sections:

- A. **BLUETEAM USE OF FORCE ENTRY:** Initial use of force entry completed by officer(s) who utilized reportable force during the incident.
- B. **BLUETEAM USE OF FORCE REVIEW:** Electronic review of a BlueTeam use of force entry by Supervisors/Commanders within the applicable chain of command.

**DEADLY FORCE:** Physical force, which, by its application, causes death or has a high probability of causing death or serious physical injury.

### **DE-ESCALATION:**

- A. **Pre-Incident:** Taking action or communicating during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat faced by the officer 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 the force necessary. Examples of pre-incident de-escalation actions include, but are not limited to: tactical use of cover, use of tactical verbal communication strategies, etc.
- B. **Post-Incident:** Taking action to communicate and professionally stabilize a situation after a use of force. Examples of post-incident de-escalation actions include, but are not limited to: placing the person on which force was used into a recovery position, maintaining an open airway, establishing a professional rapport, application of immediate life-saving first aid techniques when it is safe to do so, immediate summoning emergency medical personnel (if necessary), etc.

**EMPTY-HAND CONTROL:** Any weaponless control or technique performed with empty or open hands, such as control holds, joint locks and manipulation, pressure points, take downs and the intentional moving (pushing) of an uncooperative person, as well as instinctive weaponless control techniques used to gain control of a resistant subject. **Empty-hand control does not include any strikes or active use of personal weapons (feet, fists, elbows, knees, etc.) or the mere application of handcuffs.**

**EXCESSIVE FORCE:** Physical force that is grossly disproportionate to the actual or potential threat posed by an individual, and exceeds the amount of force that a reasonable, trained police officer would deem permissible to apply in a given situation. The application of excessive force either causes or may potentially cause injury to an individual.

**EXIGENT CIRCUMSTANCES:** Those circumstances that would cause a reasonable officer to believe that a particular action is necessary to prevent physical harm to self or others, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement duties.

**FORCE:** The amount of effort used by a police officer to gain compliance from a subject while acting in his official capacity, whether on or off duty. This definition includes both physical force and "constructive force" (presence, commands, pointing a firearm, etc.).

**IMMINENT:** Likely to happen without delay; impending; threatening.

**INAPPROPRIATE FORCE:** A higher level of force than a reasonable, trained police officer would utilize or deem permissible to apply in a given situation using established departmental and/or judicially accepted standards.

**LIGHT-HANDED CONTROL:** Any minimal physical hand contact used by an officer to guide, direct or steer an individual in a given direction.

**NECESSARY:** Force is only necessary if there is no reasonable alternative to using force, that under the totality of the circumstances, would safely and effectively achieve the same legitimate ends.

**NON-DEADLY FORCE:** Physical force, which by its application, is not intended to cause and/or has a low probability of causing death or serious physical injury.

**OBJECTIVELY REASONABLE:** The determination that the necessity for using force and the level of force used is based upon the officer's evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used.

**PROPORTIONAL:** The degree and amount of force must correspond to, and be appropriate in light of, the severity of the threat or resistance confronting the officer or the objective that the officer aims to achieve. Officers are prohibited from using force if the harm that is likely to result from that degree and amount of force is too severe in relation to the value of the interest that the officer seeks to protect.

**REASONABLE BELIEF:** Believing that a given fact or combination of facts exist, and that the circumstances which are known, or should be known, are such as to cause a reasonable person to believe so.

**REPORTABLE FORCE:** Those types of force that the Department requires to be documented in a Use of Force Report as outlined in this General Order (Sections .35 and .40)

**SERIOUS PHYSICAL INJURY:** An injury that causes major disfigurement, severe tissue damage, broken bones, internal organ injury, or permanent paralysis.

**.10 LEGAL STANDARD:**

This Order is for departmental use only and does not alter any criminal or civil standard of care. The Department's policy and procedures should not be construed as creating a greater or higher legal standard of safety or duty of care in an evidentiary sense with respect to third party claims. Violations of this Order will only form the basis for departmental administrative sanctions.

**.15 AUTHORIZATION TO USE FORCE:**

1. The Department authorizes its sworn personnel to use **APPROPRIATE** force under specific conditions:
  - A. To defend from an imminent threat of physical injury or the use of physical force by another;
  - B. To defend a third party from an imminent threat of physical injury or the use of physical force by another;
  - C. To affect the lawful arrest of a non-compliant individual and/or to prevent a suspect's escape from police custody;
  - D. To secure and maintain control of an arrestee while detained or in police custody,

- E. To effectuate a legally permitted law enforcement activity such as the execution of a search and seizure warrant or the service of an emergency petition, etc.
2. The department understands that an officer's PERCEPTIONS are an essential element in the decision to use force. **Nothing in this Order is intended to infer that an officer or third party must actually be physically attacked or suffer injury prior to the use of appropriate force.** Appropriate force may be used as stated above in response to perceived imminent danger or a threat, provided that the perceived danger/threat or reason the force was necessary can be articulated, and is a threat/necessity to which a reasonable, trained police officer would likewise respond.
3. When assessing the need to use force and the appropriate level of force to use, personnel will consider all relevant information, including, but not limited to, the following:
  - A. The nature, extent, and imminence of the threat or the perceived threat to the officer and/or third party by the individual(s);
  - B. The severity of the crime or incident;
  - C. The threat level posed or perceived to be posed by the individual(s);
  - D. The effectiveness of available de-escalation techniques prior to the use of physical force when it is safe to do so
  - E. Any attempt made by the individual to evade arrest by flight;
  - F. The availability of, and benefit of, other options and/or tactics;
  - G. The skill level of the particular officer in various tactics/techniques;
  - H. The danger to innocent bystanders; and,
  - I. The established General Orders and training guidelines of the Department.
4. The force used in any incident must be appropriate as defined in this Order. **Personnel are expressly prohibited from using inappropriate or excessive force.** Force used by sworn members of the Department will be evaluated by supervisors and command staff to ensure that it was appropriate and objectively reasonable. Personnel using force deemed to be either inappropriate or excessive may be subject to remedial training and/or administrative action.
5. A Police Officer shall cease any use of force as soon as the person whom the force is used:
  - A. Is under the officer's control; or
  - B. No longer poses an imminent threat of physical injury or death to the Police Officer or another person; or
  - C. The Police Officer determines that the force will no longer accomplish a legitimate law enforcement objective
6. Officers of the Frederick Police Department have a duty to intervene to prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so. Officers are required to report such occurrences to his/her immediate supervisor

immediately and when it is safe to do so.

7. All personnel authorized to carry various deadly and non-deadly weapons will be trained in the proper application of force and the contents of this Order prior to being permitted to carry such weapons. After initial academy training, personnel must show proficiency in the use of agency authorized weapons and knowledge in the use of force policies annually during In-Service which will be documented in accordance with established training guidelines, or, for weapons specifically addressed in their own general order or standard operating procedure, as described in that G.O. or S.O.P.
8. Police Officers shall undergo training on when a Police Officer may or may not draw a firearm or point a firearm at a person. Training will also include less lethal options for force when applicable. Training will include scenario based training and de-escalation tactics.
9. Definitions of conditional terms, such as those for necessary, proportional, serious physical injury, or similar terms used to qualify this directive, shall be included and reviewed during annual in-service training.
10. Officers should be cognizant that the concept of necessary and proportional includes circumstances earlier in the interaction between the officer and involved individual. The concept of necessary and proportional takes into account whether the officer unnecessarily escalated the situation, which may have contributed to the need for force.

#### **.25 TYPES OF FORCE PROHIBITED:**

1. The Department recognizes that in a truly violent confrontation or struggle during which an officer is unable to use the tactics and/or equipment provided because of the circumstances, he may have to deviate from the limits placed on him as to the methods and/or manner in which force may be applied in order to fend off death or serious physical injury. In its training and in this Order, the Department acknowledges and teaches that should an officer become involved in a violent confrontation in which established tactics and authorized equipment are ineffective or unavailable for use **AND** there is the likelihood of serious injury to the officer or another, he may have to resort to instinctive survival tactics to preserve his life or the life of another. Such tactics may involve the use of other physical objects, which are at hand as defensive weapons in lieu of authorized equipment or may involve the use of tactics not recognized by the Department under other circumstances. Personnel are cautioned that the use of any tactic/technique must consider the welfare and safety of innocent bystanders and will always be judged by the Department using the standard of objectively reasonable/appropriate force as defined in this Order.
2. However, barring such imminent threat to an officer's safety or the safety of a third party, the Department expressly **prohibits** the following tactics/techniques to be used by personnel:
  - A. The deliberate placement of body weight on any portion of the spinal column or airway;
  - B. Strangle or choke holds which restrict the ability of an individual to breathe or restrict the flow of blood to the brain;
  - C. Intentional, direct blows to the head;
  - D. Dragging an individual along the ground, floor, or stairs; and,
  - E. Binding an arrestee's hands and feet together (commonly known as "hog tying").

### .30 AUTHORIZED EQUIPMENT:

1. The Department issues various items of defensive equipment and restraining devices for use by its personnel. The Department recognizes that before a device can be used in the field it must be evaluated to ensure that it meets its performance criteria. Likewise, the Department will not issue or authorize for use devices that it concludes fall short of accepted professional standards. At present, the Department has issued, or has available and authorized for use by all sworn personnel, the following restraining devices, lethal and less-lethal equipment:
  - A. Glock 9mm semi-automatic firearm;
  - B. Handcuffs;
  - C. O.C. spray;
  - D. Expandable baton;
  - E. Flex cuffs, restraining straps and hobble restraints;
  - F. Riot shields and batons.
  - G. Spit Shields
  - H. Vehicle Prisoner Containment Modules (PCM)
2. Other sworn personnel who are specially trained may also be issued, and utilize under permitted conditions, additional equipment such as Tasers, shotguns, carbines, and SRT weapons, including "bean bag" rounds.
3. Personnel are prohibited from carrying, displaying and/or using any weapon, control device or other equipment which may be considered an offensive or defensive weapon while on-duty or engaged in secondary employment which has not been expressly approved by the Chief of Police or his designee. Officers will use only those weapons, to include ammunition, for which they have been trained and are qualified to use by the Department. (Exception: officers may carry a small folding type knife with a blade not exceeding four (4) inches for non-offensive purposes.)
4. Off-duty personnel who carry other weapons or control devices, which are neither approved nor issued by the Department, should carefully weigh their own personal liability should such devices be used.
5. Specialized equipment purchased and authorized by the Department for its Special Response Team is governed by standard operating procedures within that Division.

### .35 USE OF FORCE REPORTING REQUIREMENTS:

1. In documenting any use of force, officers will report **specifically** what threat level or force was used against them or another and **detail** what tactics/techniques were utilized to overcome the resistance. Whenever practical, appropriate terminology shall be used to explain tactics/techniques and specific areas of the body affected.
2. The mere touching or handcuffing of an individual being placed under arrest, the use of light handed control to guide or direct an individual, or the **display** of weapons such as O.C. spray, baton, or handgun (without pointing) will not normally require written documentation.

3. Specifically, the Department **requires** that any officer who uses force under any of the following circumstances will complete a Use of Force BlueTeam entry as follows:

A. BlueTeam Use of Force Entry:

- (1) Uses any force which causes any visible or apparent physical injury **or** **complaint** of injury, **or** which results in medical treatment for the individual or the officer;
- (2) Uses any object, including but not limited to, a hand, fist, or foot, to strike or attempt to strike a blow to a subject, to include baton strikes and blocks;
- (3) Uses force in such a way as to cause a subject to suffer a blow to the head, even if that blow to the head is accidental;
- (4) Uses O.C. Spray or any other chemical agent;
- (5) Discharges a firearm under circumstances that require a Use of Force Report per [General Order 720, "Deadly Force Guidelines and Investigations,"](#) i.e., discharge of a firearm at an individual regardless of whether the person is actually struck;
- (6) Utilizes a canine for a physical apprehension (refer to [G.O. 435, "Canine Unit"](#));
- (7) Uses force during or after which a subject loses consciousness.
- (8) Uses any empty-hand control technique that does not cause injury or complaint of injury to the officer or the subject the force is applied to and does not result in medical treatment for subject or officer; or
- (9) Points a firearm at any person, or
- (10) Uses a baton as part of a control hold; for example, to remove an arrestee's hands from under their body.

Exception 1: A BlueTeam Entry for "intentional moving (pushing) of an uncooperative person" is required only when the person on whom the force is used is arrested, injured, or otherwise easily identified. In all other circumstances under which an uncooperative person is intentionally moved (pushed), an Incident Report will be completed, with a copy forwarded to the Professional Services Division (PSD).

Exception 2: The pointing of weapons by the Special Response Team (SRT) may be reported either on a BlueTeam Entry or by documenting such use in an SRT "After Action Report" that is forwarded to the Commander PSD with all required statistical information.

4. A supervisor has the discretion to require that an officer complete a BlueTeam Entry if that supervisor believes it is in the best interest of the Department, the officer, and/or the public, to do so.

5. All employees are required to immediately report to a supervisor when another employee is using or has used force that appears, from an objectively reasonable standard, to be inappropriate or excessive.

#### **.40 HIGH RISK STOPS/BUILDING SEARCHES:**

As stated above, the **pointing** of a firearm at any individual will require a BlueTeam Entry . In instances where a High Risk Stop, whether involving a vehicle or a pedestrian, has been made and a firearm has been **POINTED AT** an individual(s), the officer initiating the stop will be required to submit a BlueTeam Entry in addition to any required Incident Report. In instances where the only reportable force used is the pointing of a firearm, one officer will complete the report detailing all officers involved who pointed firearms and all subjects who had weapons pointed at them. This procedure will also be followed if a firearm is pointed at any individual during a building search.

#### **.45 OFF-DUTY ACTION:**

1. While off-duty and out of uniform, officers should refrain from taking overt police action except under circumstances that threaten life and/or seriously threaten public safety. Before taking overt police action while off-duty and out of uniform, officers will carefully consider the risk to themselves and to others that may be caused by a sudden confrontation with criminals, suspects or other law enforcement officers who may not readily identify them as police officers. Dependent on the circumstances posed by the threat, off-duty personnel who take overt action will **visually and verbally** identify themselves as law enforcement officers as soon as appropriate and practical. Officers will attempt to seek the assistance of on-duty personnel if possible prior to initiating overt action dependent on the circumstances of the situation and in every case immediately after the situation has stabilized.
2. Under circumstances that do not require immediate police intervention, officers who are off-duty and out of uniform will request the presence of an on-duty officer. Prior to the on-duty Officer's arrival, the off-duty officer will monitor the situation until the on-duty officer arrives, and intervene only when necessary.
3. Any force that is used by an officer during an incident that occurs while he is off-duty will be reported in accordance with this Order.

#### **.50 MEDICAL TREATMENT OF INJURED PERSONS:**

1. While the objective of any force application by an officer is not to inflict injury, but rather to control or obtain compliance from a subject, the Department recognizes that injuries may result from the application of force. Additionally, the Department realizes that discomfort and/or the complaint of pain can be by-products of certain techniques (pain compliance, O.C. spray, etc.) and that this type of discomfort may initially be interpreted by the individual as an actual injury. Supervisors and officers are occasionally called upon to determine whether an individual's complaint of pain is merely discomfort or is, in fact, an injury that requires medical treatment. The Department relies on the good judgment of its supervisors to distinguish between the two. However, in the event that any person complains of injury and requests medical attention, **medical attention will be sought for the person.**
2. In some instances, a subject may refuse medical treatment following a use of force incident. Should this occur, the supervisor will document the refusal in his report of the incident. If the injury appears to be more serious than first aid would treat, the subject will be transported to a medical facility and evaluated by medical personnel.
3. In the event that an individual is injured or complains of being injured during the application of force and/or during an arrest, the officer using the force and/or making the arrest will promptly notify his supervisor or the on-duty supervisor. If the injury is obvious to the officer on the scene, medical treatment will be obtained immediately.
4. The type of treatment, the location of the treatment, and the name of the medical professional providing the treatment will be documented in the Use of Force Report.

Visible injuries and those areas where the subject complains of injury will be photographed. Copies of pertinent medical reports will also be submitted with the Use of Force Report if available. If circumstances warrant, supervisors may confer with medical personnel and include their observations in the report.

5. The treatment and reporting of injuries to an officer(s) will be handled in accordance with existing procedures and will, in addition, be documented in the Use of Force Report, and photographed.

**.55 NOTIFICATION OF SUPERVISOR:**

1. Any officer who uses force as outlined in this Order will notify his immediate supervisor as soon as possible after the incident has occurred if the immediate supervisor is working. If the officer's immediate supervisor is unavailable or if the incident occurred while the officer is off-duty, then the on-duty Patrol Division supervisor will be notified.
2. In the event that the officer who utilized the force is injured during the encounter, the supervisor assuming control of the situation will determine, through medical consultation, whether the officer's injuries preclude him from completing BlueTeam Entry. If the injuries preclude the completion of the report, the supervisor will determine the essential facts of the incident and submit an administrative memo to his Division Commander giving as much detail as possible. The supervisor will ensure that a follow up BlueTeam Entry is completed by the officer as soon as practical after he is released from medical care.

**.60 SUPERVISOR RESPONSIBILITIES CONCERNING USE OF FORCE INCIDENT:**

**FOR PURPOSES OF THIS ORDER A SUPERVISOR WILL BE CONSIDERED ANY OFFICER OF THE RANK OF CORPORAL OR ABOVE.**

1. In instances where force requiring the completion of BlueTeam Use of Force entry has been used, a supervisor who has been contacted will be responsible for gathering information concerning the incident including what event(s) precipitated the use of force and the names of those persons who could provide pertinent information about the incident. The supervisor will then conduct a thorough review into the incident. The supervisor's review **must** include, but not be limited to:
  - A. Identifying and interviewing police witnesses (all statements by witnesses are discoverable for any criminal prosecution related to the incident and should be documented in a supplement);
  - B. Identifying and interviewing, if appropriate, employees and civilian witnesses identified who possess pertinent and relevant information about the incident;  
**NOTE:** If the supervisor does not respond to the scene (due to the movement of the subject from the area or due to other operational reason), other officers present will gather this information and forward it to the supervisor for follow-up.
  - C. Observing the condition and demeanor of the arrestee and questioning him if necessary as to the **facts** of the use of force incident;
  - D. Ensuring the arrestee/detainee is photographed, regardless if they have or claim injury (this excludes the pointing of a CEW or firearm);
  - E. Ensuring that any and all injuries (or claimed injuries) to an injured officer are photographed;

- F. That the officer documents **specifically** what threat level or force was used against them or another and **detail** what tactics/techniques were utilized to overcome the resistance in an incident report/probable cause statement/incident supplements and that all documentation is entered into BlueTeam.
- G. Ensuring that any additional evidence or items needed to complete the administrative review are secured and/or processed, such as all body worn camera and other miscellaneous recordings of the incident; and,
- H. Obtaining, if applicable and available, any pertinent medical reports for any individual injured during the incident.

NOTE: The reviewing supervisor will have had no involvement in the use of force, either by application of force or in authorizing its use by others. In all such cases, an uninvolved supervisor or command member will conduct the review of the incident. The involved supervisor will contact another on-duty supervisor of equal or greater rank or an on-duty or on-call command officer, who will handle the initial review of the incident.

- 2. The findings of a supervisor's review of the incident will be reported by him during the supervisor's written report of the incident.

**.65 SUPERVISOR RESPONSE TO SCENE:**

- 1. The presence of a supervisor at the scene of a force incident not only reinforces support for the officer(s) involved in the incident, but also assures the public that the Department views force incidents seriously and worthy of supervisory attention. By responding to the scene of a force incident as soon as possible after it has occurred, a supervisor will be better able to determine the circumstances which led to the use of force, to identify any witnesses who may be able to provide relevant and pertinent information about the incident and to safeguard and/or process evidence which may be critical to any subsequent review into the event.
- 2. While the Department relies on each supervisor to use good judgment and common sense to determine whether he is needed at the scene of a use of force incident, and expects him to respond if available, the following incidents will **require** the presence of a supervisor as soon as possible after the incident has occurred:
  - A. Police involved shootings;
  - B. The discharge of a police firearm other than for training purposes or to kill an injured animal;
  - C. Serious injury to an officer or suspect;
  - D. Any force incident where either an officer or suspect loses consciousness; and,
  - E. Any situation that is unstable and requires continued police intervention.
- 3. In other instances involving the use of force by an officer, a supervisor will need to weigh the situation against other operational needs to determine if his presence is needed/appropriate. Instances in which an arrest has been made, the arrestee removed from the scene without further incident and the situation has been resolved, may not warrant the presence of a supervisor on the scene. In cases where a supervisor determines that his presence is not needed at the scene or circumstances prevent a timely arrival, he will note this fact during the supervisor review of the incident.

**.70 THE USE OF FORCE REPORT:**

1. The BlueTeam Use of Force entries have been designed to provide an accurate, detailed account of a police use of force incident. BlueTeam utilizes one (1) use of force entry form for all use of force incidents. The officer utilizing force will complete a BlueTeam Use of Force entry. Supervisors/Commanders within the affected officers' chain of command will complete a BlueTeam Use of Force review.
2. BlueTeam Use of Force Entry
  - A. As stated in Sections .35 and .40, a BlueTeam Use of Force entry must be completed by any officer who uses any reportable force, or who is otherwise directed to do so by a supervisor. This report will include information identifying the officer and suspect and a series of check-off boxes to summarize the incident. The Officer will complete an incident report narrative setting out **in detail** the circumstances that resulted in force being used. This may be done in the Statement of Probable Cause if it is an essential element of criminal charges. Officers are required to specifically describe the resistance and/or force used against them by a subject as well as what force was used to overcome the resistance and accomplish their lawful purpose. NOTE: A recitation of the elements of any criminal charges are not required on the BlueTeam Use of Force entry unless they have a bearing on the justification for the use of force. **A PDF copy of the incident report will be electronically attached to all BlueTeam Use of Force entries.** A copy of other department or court paperwork may be electronically attached to any BlueTeam Use of Force entry, as appropriate.
  - B. In the event that multiple officers use force requiring a BlueTeam Use of Force entry against a single subject, each officer will submit a BlueTeam Use of Force entry detailing only the specific force they used during the incident. If a single officer uses force requiring a BlueTeam Use of Force entry on multiple subjects during a single incident, one BlueTeam Use of Force entry can be created with all involved parties listed.
  - C. The only exception to this reporting procedure will be if the only force used is the pointing of a firearm at an individual(s). In that case, the officer who initiates the stop will complete the BlueTeam Use of Force entry, detailing which officers pointed firearms and identifying all subjects at whom firearms were pointed. If additional force is used in the incident, the officer(s) who used the additional force will be required to complete the appropriate reporting. **Identification of all subjects on which force was used MUST include the full name, race, ethnicity, sex, and date of birth, as available.**
  - D. In an effort to allow for adequate time to complete associated paperwork and review any body worn camera footage associated with the incident, all Blue Teams Use of Force entries will be submitted to the supervisor responsible for the review by the conclusion of the second working day after the incident, unless extraordinary circumstances prevent the timely completion of the Blue Teams Use of Force entry AND the Division Commander approves the delay beyond two working days. Every effort will be made to complete all Blue Teams Use of Force entries by the completion of the shift during which the use of force incident occurred, to include utilization of any overlap periods between shifts, reassignment of calls, etc. if possible. Leads reports concerning the use of force incident will need to be completed prior to the end of the shift in which the use of force incident occurred.
3. SUPERVISORY/COMMAND REVIEW
  - A. If officers from more than one squad or division are involved in an incident

requiring the completion of a BlueTeam Use of Force entry, the supervisor of the individual who initiated the incident will be responsible for conducting the review into the incident and completing the required reports. In the event that there is a question as to which officer initiated the incident, the supervisor of the officer who used the highest level of force will be responsible for conducting the initial BlueTeam Use of Force review.

- B. It is the goal of the Department to conclude each use of force review as expeditiously as possible after an incident. All BlueTeam Use of Force reviews will be submitted from the supervisor for command review within twenty-four (24) hours of the event's occurrence unless specifically granted an extension from a command officer. In all cases where the force used was above "Active Countermeasures," and in other cases as appropriate, supervisors will notify an on-duty command officer of a use of force incident and verbally report pertinent details prior to the completion of the official reports.
- C. In certain circumstances, a supervisor from another squad or division may complete the BlueTeam Use of Force review, if, for example, an incident occurs just prior to the end of the last day of a squad rotation. In this situation, both supervisors will communicate and agree upon who is responsible for completing the supervisor's review.
- D. Once supervisory review is completed, the review will be submitted to the Division Commander. Command personnel, generally up to the Deputy Chief, are afforded the opportunity to review and evaluate each BlueTeam Use of Force entry involving their personnel.
- E. Division Commanders who receive a BlueTeam Use of Force review will review the report, note their conclusions and remarks, if appropriate, and forward the report to the Deputy Chief.
- F. If, during the review process, a supervisory or command member believes that a BlueTeam Use of Force entry is incomplete or lacks pertinent/relevant information, it will be returned for additional documentation/investigation prior to submission further up the chain of command.
- G. If, during the review process, a supervisory or command member believes that an officer submitting a BlueTeam Use of Force entry was involved in a critical incident and may need follow up, the supervisory or command member will follow guidelines enumerated in G.O. 1915 "Employee Assistance Program". Supervisory and command members of those officers will ensure that proper follow up is conducted with the officers and any necessary adjustment to duty status is made to ensure the welfare of the officer is being monitored.
- H. The Chief of Police will review all BlueTeam Use of Force entries involving the use of Tasers, impact weapons or firearms, as well as any incident where serious physical injury is involved, or any person incurs a canine bite. The Chief may, at his/her discretion, review any other use of force report.
- I. All BlueTeam Use of Force entries will, after review by the chain of command, be electronically sent to PSD. In the event an allegation of inappropriate/excessive force is made that a Use of Force reports deals with, the report will be immediately sent to PSD.

#### 4. BlueTeam Use of Force Review

- A. The supervisor and command members responsible for evaluating the use of force incident will complete a BlueTeam Use of Force Review. It will be the responsibility of the supervisor to document all witnesses, both civilian and police, to the incident. In addition, the supervisor will list and document any injuries to either officers or civilians during the incident. The supervisor will also document and comment on his observations of the subject, if applicable.
- B. The supervisor responsible for evaluating the incident will also complete a narrative as part of his report. This narrative will include:
  - (1) Documentation of the supervisor's direct observations of the incident, if present;
  - (2) A summary of injuries sustained (or injuries claimed) by any person involved in the incident;
  - (3) Identification of any witnesses to the incident, both officers and civilians;
  - (4) A **detailed** summary of any witness statements from both officers and civilians, if any;
  - (5) A summary of any contact with the subject of the use of force incident detailing his behavior, demeanor, or any statements made;
  - (6) Any other pertinent information about the incident that may be needed to form a judgment of the propriety of the force used; and,
  - (7) A conclusion as to the appropriateness/ reasonableness of the force used and adherence to Departmental policy.

**NOTE:** In the event that multiple officers are involved in the same use of force incident, supervisors are only required to complete one BlueTeam Use of Force Review for the entire incident.

- C. Following the supervisor's review of the use of force incident, they will report their findings and recommendations, as appropriate, via the BlueTeam Use of Force review. If the supervisor finds that a use of force was inappropriate and/or excessive for any reason, they will comment as to the reason prior to forwarding the report up the chain of command.

**.75 FINDINGS/RECOMMENDATIONS:**

- 1. All documented uses of force are subject to supervisory and command review. During the review process of each use of force incident by either first line supervisors or command, a conclusion regarding the appropriateness or inappropriateness of the force used must be made using all relevant facts that have come to light during the review.
- 2. If a determination is made that a particular use of force by an officer was excessive and/or inappropriate, supervisory and/or command personnel will document the reason for their decision in a memo and attach it to the report.
- 3. Should supervisory or command review result in a conclusion that inappropriate and/or excessive force may have been used and administrative/disciplinary action is warranted, the matter will be processed as an internal investigation per [G.O. 1620](#), "Discipline."
- 4. Conclusions of the force used in an incident will be made in part on whether the tactic(s) and/or technique(s) is recognized, accepted, sanctioned, or taught by the Department

during its training and on the circumstances of the entire incident. In most instances, first line supervisors and command will recognize a particular tactic or technique used in a situation from their own departmental training and will be able to make a judgment regarding the force used in a given situation. Should, however, any question regarding a tactic or technique arise during the review process, the sergeant of the Training Section and/or the Defensive Tactics Coordinator, will be called upon to provide a written response to any question or concern. This response will be included as part of the completed Use of Force Report forwarded up the chain of command.

**.80 RETENTION OF REPORTS:**

Once the Office of the Chief completes the review and evaluation, the BlueTeam Use of Force Entry/Review will be sent to the PSD and a copy sent to the Training Section. PSD will be responsible for the maintenance of these reports and their retention for a period of five years, with statistical data retained for 10 years, in accordance with the City of Frederick Records Retention Policy.

**.85 STATISTICAL ANALYSIS:**

The PSD will prepare an annual statistical analysis of uses of force for the Chief of Police during the first quarter of the succeeding year, and other use of force analysis as requested. The analysis will include any training, policy, or equipment issues that may need to be brought to the attention of the command staff.

**.90 SUMMARY OF ACTION:**

Type of Force	Report Required	Supervisor Notified
Pointing Firearm (No discharge)	Yes BlueTeam Use of Force Entry	No
Pointing Taser (no probe deployment or drive stun)	Yes BlueTeam Use of Force Entry	No
Empty-Hand Control: Includes control holds, pain compliance, take-downs, pressure points, and the intentional pushing/shoving of an uncooperative person	Yes BlueTeam Use of Force Entry	Yes - As soon as practical if no injury  Immediately if there are any injuries
O.C. Spray, Chemical Agents, Irritants	Yes BlueTeam Use of Force Entry	Yes - immediately
Strikes, kicks and Canine apprehension	Yes BlueTeam Use of Force Entry	Yes- Immediately
Impact Weapons, including bean bag rounds	Yes BlueTeam Use of Force Entry	Yes- Immediately
Taser	Yes BlueTeam Use of Force Entry	Yes- Immediately
Firearms/Deadly Force	Yes BlueTeam Use of Force Entry	Yes- Immediately

# FREDERICK POLICE DEPARTMENT GENERAL ORDER

**Section 7:** Force, Detention, and Arrest  
**Topic:** DEADLY FORCE GUIDELINES  
AND INVESTIGATIONS

**Order Number:** 720  
**Issued by:** Chief of Police

**Approved:** 03/28/23  
**Review:** Annually in September by Professional Services Commander  
**Supersedes:** G.O. 720 dated 07/20/22

## **.01 PURPOSE:**

To set guidelines for the use of deadly force by sworn personnel and to specify procedures for incidents in which deadly force was used or attempted, and incidents in which sworn personnel have discharged their firearms.

## **.02 CROSS-REF:**

G.O. [705](#), "Use of Force"  
G.O. [710](#), "Less-Lethal Force – Chemical Agent Weapons"  
G.O. 850, "Employee Involved Death Investigations"  
G.O. [965](#), "Vehicles: Pursuits"  
G.O. [962](#), "Vehicles: Emergency Operation"  
G.O. [920](#), "Firearms Regulations"  
G.O. [1732](#), "Firearms Qualification"  
Form CID-007, Preliminary Report of Investigation  
"Notification Protocols for the Independent Investigations Division" (Attachment A)  
"Media Response Procedures for the Independent Investigations Division" (Attachment B)  
"Evidence Collection, Storage, and Analysis Protocols for the Independent Investigations Division" (Attachment C)

## **.03 DISCUSSION:**

The value of human life is immeasurable in our society. The manner in which the police officer uses force may have a bearing upon the ability of the Department to effectively achieve its mission. The decision to employ deadly force is the most difficult choice a police officer may ever make and therefore must occupy a primary place in a police department's policies, training, and practices.

While the use of deadly force is most commonly associated with the discharge of a firearm, it is not limited to such weapons, but may also include other "less than lethal" protection instruments issued by the Department, such as the expandable baton, or any other means used by an officer.

## **.04 POLICY:**

It is the policy of the Frederick Police Department that officers use prudence and restraint in exercising their authority to use deadly force and will do so only when necessary to accomplish lawful objectives. Officers should discharge their firearm or use or attempt to use deadly force only when it is necessary to protect life or when it is the only effective means to apprehend an individual who poses a significant threat of death or serious bodily injury to officers or citizens.

The Department will ensure that a neutral, impartial and thorough investigation of deadly force incidents is conducted. Such investigation will be conducted in all incidents in which an officer discharges a firearm (except under the exclusions listed in Section .50.3) and in all incidents involving the actual or attempted use of deadly force, regardless of the weapon(s) used. The purpose of this investigation will be to determine whether there are legal, policy, training, weapon/equipment, or discipline issues that need to be addressed.

At the same time the Department will be supportive of each officer involved in the critical incident by acknowledging the trauma related to the incident and responding positively to the stress with which

the officer will need to cope with throughout the investigation. Any officer involved in a use of force or whose actions result in death or serious physical injury will be removed from active duty and placed in an administrative position or on "Administrative Leave" in order to cope with the situation as deemed appropriate by the Office of the Chief.

While some of the verbiage of this order addresses the use of firearms, there may be occasions where deadly force may be applied or attempted through the use of other weapons or means. The allowances and prohibitions for the use of firearms in this order, as well as investigative procedures and requirements, apply to other weapons or methods used to apply or attempt to apply deadly force as well.

**.05 DEFINITIONS:**

**DEADLY FORCE:** Physical force which by its application causes death or has a high probability of causing death or serious physical injury.

**SERIOUS PHYSICAL INJURY:** An injury that causes major disfigurement, severe tissue damage, broken bones, internal organ injury or permanent paralysis.

**.10 LEGAL STANDARD:**

This order is for departmental use only and shall not alter any criminal or civil standard of care. The Department's policy and procedures should not be construed as a creation of a greater or higher legal standard of safety or duty of care in an evidentiary sense with respect to third party claims. Violations of this Order will only form the basis for departmental administrative sanctions.

**.20 USE OF FIREARMS:**

1. Officers will be ever mindful of their duty to perform their police mission, using only that force necessary to carry out their responsibilities effectively and safely. **Officers may only justify use of a firearm by facts known at the time a decision to use a firearm is made.** Facts unknown, no matter how compelling, cannot be considered later when determining if the use of a firearm was justified.
2. All reasonable considerations must be given to prevent inadvertent injury to innocent bystanders.
3. Officers will communicate to a suspect their identity, purpose, and intention to fire, unless circumstances are such that the suspect already knows their identity, or due to special tactical considerations where the announcement of identity jeopardizes the safety of the officer or citizen. Officers in plain clothes and/or off-duty are not as recognizable as those officers in uniform; therefore, they should make every **reasonable** attempt to identify themselves prior to using deadly force.

**.25 USE OF DEADLY FORCE:**

An officer may discharge a firearm or use or attempt to use deadly force in the performance of his police duties, either on- or off-duty, **ONLY** in the following circumstances:

1. In self defense from death or serious bodily injury when nothing less than deadly force is adequate to ensure his safety.
2. In defense of another person from death or serious bodily injury when nothing less than deadly force is adequate to ensure his safety.
3. To apprehend or prevent the escape of a suspected felon, **only** if the officer has probable cause to **believe** that if not immediately apprehended the suspect poses a significant threat of death or serious bodily injury to any person.

4. To kill a dangerous animal, or to humanely destroy a badly injured animal to relieve it from further suffering, when no other appropriate means exist.
5. To call for assistance or to sound an alarm only in an extreme emergency, and when no other appropriate means exist.
6. During qualification and/or training at the Department's or any other approved range, and under the supervision of a firearms instructor or line safety officer. This applies to Department-issued firearms only.

**.30 FLEEING FELON GUIDELINES:**

Prior to using deadly force against a fleeing felon, **ALL SIX (6) CONSIDERATIONS MUST BE MET:**

1. All other reasonable means to apprehend or prevent the escape of the felon have been exhausted;
2. The suspect is a known felon or there is probable cause to believe a felony was committed;
3. Deadly force was used or threatened to be used during the commission of the crime;
4. The officer believes that deadly force would be used again if the suspect is not immediately apprehended;
5. Every reasonable consideration has been given to prevent inadvertent injury to innocent bystanders; AND
6. Where feasible/reasonable, a warning has been given as to the officer's intent, and the felon refuses to stop.

**.40 WHEN FIREARMS/DEADLY FORCE WILL NOT BE USED:**

Firearms will not be discharged and deadly force will not be used under circumstances not in compliance with this Order and the law. Examples of prohibited discharge of firearms are, but are not necessarily limited to, the following:

1. An officer will never fire at any person who is attempting to avoid apprehension for committing a misdemeanor.
2. An officer will not fire a warning shot at any time or under any circumstances.
3. An officer will not fire from a moving vehicle, while riding on a bicycle, or while running on foot. This does not prohibit controlled firing while moving tactically.
4. An officer will not fire at a moving vehicle unless it is self defense or defense of another person, as defined in Section .25.1 and .25.2 of this order, or unless directly authorized by a supervisor or command officer.

**.50 INVESTIGATION REQUIRED:**

1. All firearms discharges and uses or attempted uses of deadly force must be reported, investigated, reviewed, and forwarded to the Chief of Police in accordance with this Order, regardless of location or duty status. The initial report will be submitted prior to the end of the tour of duty in which the discharge occurred (see Section .60.2I of this order).
2. Deadly force incidents are most commonly associated with the use of firearms; however,

officers may, as a last resort, utilize some other means which they intend as deadly force in self defense or defense of another. These incidents require the same type of investigation and reporting as those that involve firearms discharges.

3. EXCEPTIONS:

- A. Shots discharged by accident, *which are not an attempted use of deadly force and do not result in injury*, will be investigated and documented by the officer's supervisor. The supervisor will notify the Commander of Professional Services, who will evaluate a course of action. The supervisor's report will be submitted through the chain of command to the Deputy Chief with a copy to PSD. After evaluation, the incident may be investigated further.
- B. Shots fired in the necessary dispatch of a dangerous or injured animal (Refer to Section .80 of this order).
- C. Where no injury, death, or complaint of property damage results during:
  - (1) an authorized training session;
  - (2) lawful hunting with off-duty firearm while off-duty; or,
  - (3) target practice with a personally owned firearm while off-duty.

**.60 INVESTIGATIVE PROCEDURES- GENERAL**

1. OFFICER USING OR ATTEMPTING TO USE DEADLY FORCE WILL:

- A. Notify his supervisor or the On-Duty Supervisor immediately.  
NOTE: If the officer using or attempting to use deadly force is a supervisor, he will relinquish control of the scene upon the arrival of another supervisor on the scene, regardless of rank and even if inferior in rank to the involved supervisor.
- B. Notify Communications to dispatch medical personnel.
- C. Submit any weapons used, including ammunition, to the Criminal Investigation Division (CID) or PSD investigator upon request.
- D. Not discuss the incident, except to provide a supervisor with a brief account of what occurred, or write any statements or complete any administrative reports until after discussion with the CID or PSD investigator conducting the investigation.
- E. Complete a Blue Team Use of Force Entry as specified in General Order 705, unless granted an extension due to exigent circumstances.

2. OFFICER'S SUPERVISOR OR ON-DUTY PATROL SUPERVISOR WILL:

- A. Report to and ensure the scene is secure; evidence (including police vehicle and equipment) is preserved in its original position/condition; and witnesses are available for interviews by investigators. If necessary, provide emotional support and physical first aid.
- B. Advise Communications to make the following notifications:
  - (1) Chief of Police;

- (2) Deputy Chief;
  - (3) Division Commander;
  - (4) CID, to include the CID Commander;
  - (5) PSD Commander;
  - (6) On-Call Crime Scene Unit member;
- C. Ascertain a brief account of what occurred from the officer(s) involved. The supervisor will **not** conduct any formal administrative interviews of the officer(s) involved. An overview of what occurred will allow the supervisor to brief others, i.e., command personnel, arriving at the scene and ensure appropriate crime scene processing.
- D. Arrange for a prompt escort to headquarters for those officers involved. If more than one officer is involved, they will be separated but not isolated. The escort officer should not be involved in the incident and he will not question the involved officer(s). He will remain with the involved officer(s) to provide support as needed until relieved by a CID or PSD investigator.
- E. Notify promptly and personally, or permit the involved officer(s) to contact, his or her family prior to any media release or coverage. The Departmental Chaplain will be made available to any involved officer(s) or their families. A member of the Executive Board of the Fraternal Order of Police, FSK Lodge #91, will be notified of the incident as soon as possible.
- F. The involved officer's unit supervisor or on-duty patrol sergeant or corporal will complete the initial offense report, provided neither was involved in the incident.
- G. Advise the involved officer(s) that he may experience the symptoms of post shooting trauma and that the Department will be making arrangements for him to meet with appropriate professional personnel. The supervisor may also encourage the officer to seek consultation with the Employee Assistance Program or another professional person of the officer's choosing.
- H. Ensure the Issuance of a replacement firearm as appropriate, in conjunction with the CID/PSD investigators.
3. CRIMINAL INVESTIGATIONS DIVISION and PROFESSIONAL SERVICES DIVISION WILL:
- A. **As soon as possible a member of the Criminal Investigations Division will notify the Independent Investigative Unit within the Office of the Attorney General regarding the incident.** The Commanders of the Criminal Investigations Division and the Professional Services Division will cooperate and receive direction from the Independent Investigative Unit within the Office of the Attorney General before proceeding. Refer to the following attachments to this order:
- (1) Notification Protocols for the Independent Investigations Division,
  - (2) Media Response Procedures for the Independent Investigations Division, and

(3) Evidence Collection, Storage, and Analysis Protocols for the Independent Investigations Division.

- B. Coordinate and conduct a thorough investigation of all incidents involving any officers where deadly force was attempted or applied in The City of Frederick. CID will generally be responsible for ensuring all aspects of a preliminary and follow-up investigation are handled to include the processing of the crime scene, interviewing of non-departmental witnesses, and placing of criminal charges if appropriate. PSD will interview all departmental witnesses and ensure that personnel involved followed departmental policies and procedures. Every reasonable attempt should be made to minimize the number of times the involved officer(s) is interviewed and is required to repeat his or her description of the incident. (In the case of incidents occurring outside of the City, PSD will conduct an internal investigation in conjunction with any criminal investigation being conducted by the governing jurisdiction.)
  - C. Explain to the officer(s) what will happen administratively. In the case of uses of force that result in injury or death or other appropriate circumstances, advise the officer(s) involved that they will be placed on administrative leave or assigned to administrative duties pending an administrative review of the incident. Officers will be advised that they are expected to cooperate fully with the investigation. Administrative leave is authorized at the direction of the Office of the Chief of Police, who will determine its duration in each case. An officer placed on Administrative Leave will be responsible for advising his Division Commander of his whereabouts so contact may be made when necessary. Administrative leave is not to be confused with suspension, as no punitive intent is involved.
  - D. Take custody of the firearm(s) from the involved officer(s), as well as ammunition in his or her possession, and explain that a replacement will be issued as soon as is practical. *At no time will the officer's firearm be taken in the presence of the suspect or news media. The firearm will be unloaded and rendered safe by or at the direction of the investigator.*
  - E. Review all written statements/reports by members and witnesses.
  - F. Initiate criminal charges, if warranted, after consultation with the State's Attorneys Office (CID).
  - G. Submit a complete administrative report of the investigation to the Chief of Police through proper channels (PSD).
  - H. CID will prepare a "Preliminary Report of Investigation" (FPD Form CID-007) for the Chief of Police, which will be completed and submitted via the chain of command by 1700 hours on the next business day following the incident by the assigned investigator or other investigator as directed by the CID Commander.
  - I. The CID and PSD Commanders will periodically apprise the Office of the Chief of the progress of all investigations (criminal and administrative) pertaining to the deadly force incident. Professional Services will conduct an administrative review of the circumstances of the incident and report its findings to the Chief of Police.
4. DIVISION COMMANDERS WILL:
- A. Brief, in cooperation with other Division Commanders, all other members of the Department about the incident. This will prevent the officer(s) from being

bombarded with questions and rumors will be held in check.

- B. Ensure that the on-call member of the States Attorney's Office, as well as the on-call Department Chaplain, is notified as conditions of the incident warrant.
  - C. Ensure that follow-up medical and emotional support to the involved officer(s) is provided.
  - D. Make arrangements, through the Personnel Unit, for the involved officer(s) to attend a meeting with a psychologist or psychiatrist selected by the Department prior to returning to his or her current assignment.
  - E. If necessary, locate, identify and inform the owner of any damaged property.
5. DEPUTY CHIEF WILL:
- A. Ensure that there is a determination of whether to place the officer(s) on administrative leave or in an administrative assignment.
  - B. After final submission of all investigative reports, make a determination if there are policy, training, weapon/equipment issues which should be addressed, and if appropriate, ensure that corrective action is instituted.

**.70 INVESTIGATIVE PROCEDURE- UNINTENTIONAL DISCHARGES:**

- 1. Follow previous applicable procedures as outlined in Section .60 of this Order.
- 2. OFFICER'S SUPERVISOR OR ON-DUTY PATROL SUPERVISOR:
  - A. Respond to the location where the discharge occurred if possible/feasible. Obtain the firearm in question and transport same to headquarters to be secured. If the discharge occurred in another state or outside the City, the jurisdiction conducting the investigation may take custody of the firearm as part of its investigation, depending on that agency's procedures.
  - B. Immediately instruct the officer involved that their departmental authority to carry that type of firearm (e.g., handgun, shotgun, etc.) is **suspended**. Firearms suspension will remain in effect until the firearm is determined to be functioning properly and the officer's knowledge of the firearm has been demonstrated.
  - C. Ensure the firearm is transported to the Firearms Range for examination by an armorer on the next regularly scheduled work day, provided the firearm is not in the custody of another agency.
  - D. Obtain dates and times from the firearms coordinator for the officer involved, only when a mechanical defect is not found, to report to the Firearms Range to receive remedial training and demonstrate their knowledge of safe weapon handling. In most cases, this should be the officer's next regularly scheduled work day.
  - E. Review the incident/administrative report submitted by the officer involved.

**.80 DISCHARGE OF FIREARMS- ANIMAL CASES:**

- 1. OFFICER:
  - A. In cases of an injured domestic animal, make reasonable attempts to contact the

animal's owner or animal control before using the discretion to humanely destroy the animal to relieve its suffering.

- B. Weigh the totality of the circumstances against the potential hazards associated with a firearm discharge.
  - C. Advise their supervisor of all relevant factors known (e.g., lighting, traffic, background, etc.).
  - D. Obtain supervisory approval.
  - E. If practical, recover the spent casing(s) and dispose of it with supervisory approval after it is determined that it has no evidentiary value.
2. OFFICER'S SUPERVISOR OR ON-DUTY PATROL SUPERVISOR:
- A. When practical, respond to the scene prior to granting approval.
  - B. Review the report submitted by the officer.
  - C. Ensure the Issuance of a replacement round(s).

**.85 POST-INCIDENT PROCEDURES:**

The following events are to occur prior to the return of an involved officer to full duty after a use or attempted use of deadly force incident:

- 1. The officer will be required to participate in a post-incident psychoeducational wellness debriefing with the Department psychologist within 4 days of the incident, if possible. The Department psychologist will only report that the officer attended.
- 2. The Preliminary Report of Investigation will be submitted to the Chief of Police by the CID, with a preliminary conclusion that no criminal charges against the officer are anticipated; and
- 3. The Chief of Police approves the officer's return to full duty.