

## **Salisbury University Police Department**

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### CHAPTER 1 – LAW ENFORCEMENT ROLE AND AUTHORITY

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*The Directives in this chapter relate to the department's basic role and limits of authority, and use of force and weapons qualifications.*

#### **1.1 Law Enforcement Agency Role**

##### **1.1.1 Oath of Office**

All personnel, prior to assuming sworn status, will take and subsequently abide by an oath of office to bear true faith and allegiance to the United States of America and to the State of Maryland; Uphold and defend the Constitution of the United States and the Constitution of Maryland; obey orders of the Governor, the Board of Regents, and superior officers according to the rules and regulations of the agency.

The Oath of Office for all sworn officers will be administered by the Clerk of the Circuit Court for Wicomico County. Originals will be placed in the officer's personnel files and a copy forwarded to the officer.

Civilian employees do not have arrest powers and do not take an oath of office.

##### **1.1.2 Code of Ethics**

All sworn personnel shall abide by the Law Enforcement Code of Ethics, as published by the International Association of Chiefs of Police, which has been adopted as the general standard of conduct for the University Police Department. Ethics training, which will be either during formal classroom training, shift debriefing, computer-based or any other methods, will be held for all sworn and civilian personnel, at a minimum, every two years. Civilian employees are expected to abide by the same level of ethical integrity as sworn personnel.

#### **Law Enforcement Code of Ethics**

As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception; the weak against oppression or intimidation; and the peaceful against violence or disorder; and to respect the Constitutional Rights of all men to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint, and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear of favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. I know that I alone am responsible for my own standard of performance and take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession - law enforcement.

### **1.1.3 Criminal Justice and Social Diversion Programs**

The University Police Department encourages the support and utilization of social service agencies within our local area in order to divert juveniles out of the criminal justice system. These agencies include, but are not limited to:

1. Maryland Department of Social Services and Child Protective Services;
2. Wicomico County State Attorney's Office First Offender Program;
3. District Court of Maryland and Circuit Court for Wicomico County – Drug Court Program;
4. Maryland Department of Mental Health and Hygiene.

When investigating cases involving university students and/or juveniles, officers should recommend to offenders/offender's parents one of the above listed diversion program when appropriate. Service to the offender by one of these programs may be more beneficial in correcting the situation than utilizing formal handling through the court system.

In some instances, officers are faced with situations where an arrest and pre-arraignment confinement will not adequately address the problem. In these situations, officers may elect to exercise certain alternatives such as referral to a social service agency or the University's Office of Student Affairs and/or the Counseling Services. Examples include:

1. Mentally and emotionally disturbed persons;
2. Domestic situations where counseling may be appropriate;
3. Violations of the University's Code of Conduct Handbook, etc.

Members of the department work closely with representatives of each of the listed criminal justice/social diversion programs.

Refer to 1.2.6

### **1.1.4 Consular Notification and Access**

International law requires that law enforcement authorities of the United States extend certain privileges and immunities to members of foreign diplomatic missions and consular posts. Compliance with the duties imposed upon the arrest or detention of a foreign national, regardless of status, is necessary in order for the United States to expect reciprocity from other countries in which a U.S. citizen may be arrested or detained. The underlying principle is that law enforcement officers should treat a foreign national as they would expect a U.S. citizen to be treated if arrested or detained in another country.

The University Police Department shall ensure that all rights required under the laws and agreements be rendered to all diplomats, consular officers and foreign nationals. Information will be provided to foreign nationals who may be arrested or detained, and appropriate consular notifications shall be made as detailed in the *Consular Notification and Access Manual*; copies of which are located in the Squad Room and Sergeant's Office.

## **1.2 Limits of Authority**

### **1.2.1 Legally Mandated Authority and Responsibilities**

The purpose of this directive is to define the legally mandated authority, responsibilities and limitations for the enforcement of laws, to establish procedures for assuring compliance with constitutional requirements during criminal investigations, to set forth guidelines concerning the use of discretion by University Police Officers

and to define the authority, guidelines and circumstances when police officers should exercise alternatives to arrests and pre-trial confinement.

The University System of Maryland Police Force is established by Maryland Education Article 13-601. Criminal Procedures (CP) Article Title 2-101 and Article 41 Sec 4-201 enumerates the University Police Force as employing police officers who, in their official capacities, have the authority to make arrests and enforce the general criminal laws of the state. Additionally, University Police Officers have certain authorities under the Maryland Education Article 26-101 and 102 with regard to the enforcement of certain laws. See Appendix A at the end of this chapter.

Officers are issued and may carry firearms consistent with law and agency directives upon meeting the requirements of COMAR 12.04.01 and 12.04.02 as promulgated by the Maryland Police Training Commission. Officers are authorized to direct and/or regulate traffic consistent with Maryland Transportation Article 26-201, *et Seq* and agency directives.

#### A. **LAW OF ARREST**

The law of arrest in Maryland is in both common law and statutory form. The distinction in Maryland's law of arrest is between arrests for felonies and arrests for misdemeanors; the "less serious" crimes. Most crimes are identified by statute as being either a felony or misdemeanor.

In Maryland, police officers may arrest an individual without an arrest warrant when the officer has probable cause to believe that a felony has been committed or attempted, and that a specific individual or individuals committed the felony.

Arrests for misdemeanors must be made on the basis of an arrest warrant or personal knowledge of the officer, except for certain statutory misdemeanors, where a warrantless arrest is permitted under certain circumstances. In addition, arrests for certain serious misdemeanor traffic violations may be made on the basis of probable cause. See Section 26-202 of the Transportation Article (Maryland Vehicle Law), which is issued annually and available to each officer.

Relevant excerpts of Criminal Procedures Section 2-204 pertaining to the law of arrest are reprinted as Appendix A of this directive. Every sworn officer is issued an updated Digest of Criminal Laws once a year. This digest provides law enforcement officers with current laws pertaining to arrests, both with and without a warrant.

All sworn members of the department are governed by the following in the execution of their duties and responsibilities as law enforcement officers.

##### 1. **Arrest - Definition**

An arrest has been defined as "the detention of a known or suspected offender for the purpose of prosecuting him for a crime."

The court has said that there is an arrest only when there is a touching by the arrestor or when the arrestee is told that he is under arrest and submits. Where there is no touching, the intention of the arrestor and the understanding of the arrestee are determinative, for in order for there to be an arrest in such case, there must always be an intent on the part of the arrestee to submit. It is realized that there are circumstances, such as crowd control, where touching may take place, but without the intent to arrest.

Officers shall ensure in an arrest situation that there is a touching of the arrestee and that the arrestee is advised of the reason for arrest, whether the arrest is with or without a warrant.

2. Arrest - Probable Cause

The provisions of the law which define the circumstances under which an officer may arrest must be strictly observed. No person may be arrested or detained except under the authority of law. An arrest is authorized either by warrant, issued by competent authority, or without a warrant, under certain circumstances as set forth hereunder.

Probable cause to arrest exists where the facts and surrounding circumstances, of which the officer has reasonable trustworthy information, would justify a person of reasonable caution to believe that an offense has been committed and that the person to be arrested had committed it.

Probable cause requires a reasonable belief, based on reliable evidence, that the suspect has committed a crime. Probable cause must go beyond mere suspicion. However, it is less than absolute certainty. The lawfulness of an arrest is not affected by the fact that the arrested person may be later found to be innocent.

3. Arrest - With a Warrant

Arrest Warrant. When a warrant is placed in the hands of an officer, he is not bound to inquire into the particulars of the complaint, or whether any was made at all. If the warrant is in due form and issued by a person having a right to issue it, the duty of the officer is to execute it without further inquiry, and the warrant will protect him.

Life of Warrant - A warrant remains in force until it is returned; even if the accused has been arrested and escapes he may be taken again on the same warrant, if it has not been returned. A return is an official statement ("cepi" which means "I have taken") by an officer of what he has done in executing the command of the warrant. However, after a warrant has been returned, it has no validity.

Warrants in Blank are Void (not legal). A warrant must not be issued in blank with a view of later writing in the name of the defendant. Such warrants are absolutely void.

Authority to Alter a Warrant. No person, other than the issuing authority has the right to alter a warrant, because, if altered by a third party, it would not be the warrant issued by the authority who signed it.

Requisites of a Warrant. The warrant should be signed by the authority issuing it, set forth the time and place of making it, the charge or offense, and be directed to the proper police employee, requiring him to bring the accused either generally before any commissioner or judge of the city or county where issued or specifically before the authority issuing it. The full name, or if it be unknown, a statement of the fact and a description of the person to be arrested must be given, but a mere formal irregularity upon the face of the warrant will not render the officer liable who serves it.

Promptly upon his arrest, the defendant shall be given a copy of the warrant by the arresting officer.

4. Arrests Without a Warrant

A police officer may arrest without a warrant any person who commits, or attempts to commit, any felony or misdemeanor in the presence of, or within the view of, such officer.

A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the officer's presence or within the officer's view, may arrest without a warrant any person whom the officer may reasonably believe to have committed such offense.

A police officer may arrest a person without a warrant if the officer has probable cause to believe that a felony has been committed or attempted and that such person has committed or attempted to commit a felony whether or not in the officer's presence or view.

See Annotated Code of Maryland Title 2, Subtitle 2 section 2-202 "**Arrest without Warrants, Generally,**" and the "Digest of Criminal Laws" issued to all sworn personnel. (See Appendix B of this chapter.)

A police officer may not, without a warrant, arrest a person he accused of having committed a misdemeanor if the misdemeanor was not committed in his presence, subject to certain exceptions.

One exception allows an officer to arrest a party without a warrant for a misdemeanor that was not committed in his presence, providing the misdemeanor was committed in the presence of another police officer who promptly relays the information to the other officer, and the arrest is made within a reasonable time of the receipt of information relayed.

Another exception provides a police employee with authority to charge a person with a violation of any of the offenses enumerated in Section 26-202 (Vehicle Laws - Citation and Arrest) of the Transportation Article.

5. Arrest - Federal Violations

The Attorney General for the State of Maryland has rendered an opinion that municipal and state police officers only have the authority to arrest for Federal law violations in three situations. They are as follows:

- a. A police officer only has the authority to arrest as any ordinary citizen has. That is, if the violation amounts to a breach of the peace. An exact definition for breach of the peace has not been rendered.
- b. A police officer can arrest if a federal law amounting to a felony has been committed in the officer's presence.
- c. A police officer can arrest if there has been a federal felony violation committed and the officer has a reasonable belief that a person committed the violation.

It is best for the officer to contact the appropriate federal agency before invoking arrest powers.

6. Arrest - Policy

The law and procedures governing arrest are of major importance to the officer and to the community which he/she serves. There is no function of the law enforcement officer which concerns both groups more directly. Police employees of this agency should make a thorough study of this phase of law enforcement for two reasons:

- a. First, to ensure against criminal or civil liability for any improper action taken.
- b. Second, to properly perform the duties of the office to which they have been appointed.

Refer to 1.1.4 and 1.2.3 thru 1.2.5

B. Limits of Authority

1. Police Authority to Enforce Laws:

The University System of Maryland Police Force is established by Maryland Education Article 13-601. Criminal Procedures (CP) Article Title 2-101 and Article 41 Sec 4-201 enumerates the University Police Force as employing police officers who, in their official capacities, have the authority to make arrests and enforce the general criminal laws of the state.

2. Limitations on Police Authority:

Limitations on police authority are derived from statutes, federal, state and local judicial interpretation of laws, opinions of the Attorney General and States Attorney, departmental policies/rules and regulations, University policies and memorandums of understanding between the University Police Department and other local agencies.

3. The Fifth Amendment Right Against Self incrimination: Police Officers are often in doubt as to when or if they should advise an individual of his Miranda Warnings. While Miranda deals with in-custody interrogation, the question of when "custody" applies arises. Escobedo V. Illinois requires the giving of Miranda Warnings when the investigation focuses on a suspect or suspects and the interrogation reaches the accusatory stage. Since these two cases appear to contradict each other, a proper guideline for police officers to follow is to advise suspects of their Miranda Warnings in all felony and misdemeanor cases where the arrestee or defendant will be questioned.

- a. In order to achieve uniformity and ensure that individuals receive their Miranda Warnings, police officers will be issued cards with the Miranda Warnings and Waiver on them. When advising individuals of their rights, the card will be read aloud.
- b. After the Miranda rights have been read, understood, and the individual wishes to waive them, officers will have them sign the Waiver of Rights, SUPD form 001.

4. Police Limitations on Search and Seizure: The Fourth Amendment guarantees the right for people to be free from unreasonable searches and seizures of their homes, person, and things. The Supreme Court is constantly interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case. Additionally, an illegally conducted search invites civil suits under the Civil Rights Act. In order to ensure that citizen Fourth Amendment rights are protected, University Police Officers will obtain search warrants in all appropriate criminal cases except the following:

- a. Consent Searches - the consent must be voluntarily given by someone who has the authority to relinquish their right. When exercising a consent search, the officer will get a written relinquishment.
- b. Stop and Frisk is not an arrest; it is a "stop." The search is limited to a superficial patdown of the outer clothing for weapons. The Supreme Court in Terry V. Ohio said: "Would the facts warrant a man of reasonable caution in the belief the action taken was appropriate." However, the Supreme Court has held that in order to justify a "Terry Stop," an anonymous tip must not simply single out a particular person, but must provide reliable corroborative details about the assertion itself. The officer's suspicion that the defendant was carrying a weapon was not based on any personal observations, but solely on a tip made by an anonymous caller from an unknown location. The officers had "no information about the informant"; therefore, no means to test the informant's basis of knowledge or credibility.

When you observe unusual conduct which leads you to reasonably believe, in the light of your experience, that criminal activity may be in the process and that the individual may be armed and dangerous; when, in the course of investigating this suspicious behavior, you identify yourself as a police officer and make reasonable inquiries; and when in the initial stage of the inquiry you maintain reasonable fear for you're or others' safety, you may conduct a patdown of the outer clothing in an attempt to discover weapons. Weapons seized in such a patdown may be properly introduced in court as evidence.

- c. Moveable Motor Vehicle - Carroll v. United States establishes that automobiles can be searched without a warrant provided (1) there is probable cause to believe the contents of the vehicle violate the law, and (2) the vehicle would be gone before a search warrant could be obtained.
  - The mobility of motor vehicles often produces exigent circumstances.
  - A diminished expectation of privacy surrounds the automobile.
  - A car is used for transportation and not as a residence or repository of personal belongings.
  - The car's occupants and contents are in plain view.
  - Automobiles are necessarily highly regulated by the government.
- d. Emergency to save life or property - an emergency must exist, the primary motive is to protect property or people, and the area searched must be associated with the emergency.
- e. Plain View - the officer must be in a place where he has the legal right to be in order to discover and/or seize fruits/instrumentalities/ evidence/contraband. Any discovery must be inadvertent, and the property must be recognized as fruit/instrumentalities/evidence of a crime or contraband.
- f. Abandoned Property.
- g. Inventory of Vehicles.
  1. Motor vehicle exception; i.e., search incident to an arrest.
  2. Whenever circumstances cast doubt in the officer's mind he should contact his supervisor or the State's Attorney for further guidance.



- h. Incidental to Arrest - only the area within the immediate control of the person may be searched.
  - i. Exigent Circumstances - emergency search to prevent destruction/loss of evidence.
  - j. "Hot Pursuit."
5. Police Limitations Pertaining to Eyewitness Identification: Eyewitness identifications generally do not provide reliable evidence during criminal investigations. Consequently, the Supreme Court has addressed this issue in numerous cases and set forth guidelines to be followed when eyewitness identifications are solicited by police. Eyewitness identifications may take the following form:
- a. On-Scene Identification - One on one identification has been held constitutional so long as the period of time between the offense and the identification is brief. One to three hours may be considered a reasonable amount of time.
  - b. Live Line-ups: Line-ups should be conducted using persons having similar physical characteristics as the suspect. The accused has the right to have an attorney present during the line-up and the line-up may not take place until that attorney is present or subject has waived his right to an attorney. The attorney may not offer any suggestions etc., as to the conducting of the line-up, but may merely be present. All line-ups must be documented by the police as to date, time, place, name of participants and witnesses, and location of suspect/participants.
  - c. Photographic Line-ups/Arrays: In conducting photographic line-ups, the photos must depict persons displaying similar physical characteristics as the suspect. Simply showing an eyewitness a single photograph of the suspect has been ruled unconstitutional. As a general rule a photographic line-up containing 6-8 photos would be a reasonable action on the part of the police. Photographic line-ups/arrays will be conducted in accordance with Written Directive 42.2.11.
- Refer to 1.2.3 thru 1.2.5
6. Limitations on Police Authority by Local Courts: From time to time the local courts may limit police authority to enforce state statutes and local ordinances. These limitations include but are not limited to:
- a. The enforcement of certain parking ordinances.
  - b. The handling of juvenile offenders.
  - c. The issuance of summonses as opposed to arrests/incarceration.
7. Limitation on Police Authority by States Attorney: Occasionally, the States Attorney may issue opinions to the department which may impose limitations on the police. These areas include, but are not limited to:
- a. Prosecution of certain cases.
  - b. Extradition.
  - c. Enforcement of certain statutes pending opinions from the Attorney General's Office.

8. Limitations on Police Authority by University Officials: Limitations on Police Authority by the University of Maryland System's Board of Regents and Chief of Police: Limitations on police enforcement actions by the University or the Chief of Police include, but are not limited to:
  - a. Parking violations;
  - b. Student Conduct violations;
9. Changes in Laws/Interpretational Limitations.
  - a. Periodically, changes take place which may impose new limitations on police authority or remove or alter existing limitations. Normally, annual updates on such changes are provided to all personnel by the States Attorney. In case immediate changes in departmental operations are required, such information may be received verbally and confirmed in writing.
10. Limitations on Intelligence Activity.
  - a. Departmental intelligence gathering activities will be limited to that information concerning criminal conduct that relates to activities that present a threat to the university community.
  - b. Departmental personnel and equipment will only be used in conjunction with intelligence gathering activities, as defined above, in full compliance with all law, and only with the advance approval of the Chief of Police.
  - c. Intelligence information will be collected, utilized and processed as described in Chapter 43.

### **1.2.2 Legal Authority to Carry and Use Weapons**

The Maryland Education Article 13-601 establishes a University of Maryland Police force and officers have all of the powers of police officers in the state. The University of Maryland System Board of Regents adopted standards, qualifications and prerequisite for police officers including standards for performance of their duties.

Maryland legislation requires that law enforcement officers meet minimum standards to become statutorily certified as police officers. The regulations of the Maryland Police Training Commission (MPTC), COMAR 12-04.02, require that officers shall successfully complete the entrance level police training program which includes, in part, demonstrated proficiency in the use of weapons. State law does not exclude an officer from carrying his/her weapon nor specifically exempts officers from regulations which prohibit the carrying of weapons.

Maryland Education Article 13-601 grants express powers to officers of the University of Maryland System Police agencies to carry firearms consistent with law and agency directives upon meeting the requirements of COMAR 12-04.01 and 12-04.02 as promulgated by the MPTC. All University police officers will demonstrate proficiency with his/her firearm that has been authorized for use.

The common law recognized a privilege to use deadly force when attempting to arrest a fleeing felon, but not to apprehend a fleeing misdemeanor. Maryland is still subject to the common law, except where it has been changed or modified by legislative action (*Tennessee v. Garner*, 471 U.S. 1 [1985]). The Supreme Court decision in *Garner* established a national minimum standard governing police use of deadly force; "It is not better that all felony suspects die than that they escape."

Less than lethal weapons include the baton, chemical spray and flashlight. All officers shall receive the required training and demonstrate proficiency prior to using these types of less than lethal weapons.

Civilian employees (ie. security officers) are not certified law enforcement officers and are not authorized to carry or use firearms or any other less-than-lethal weapon while on duty.

### **1.2.3 Constitutional Requirements and Compliance**

The US Constitution guarantees every citizen certain safeguards from government intrusion into their lives. These safeguards have become the cornerstone for the application of criminal justice in America and have placed limitations on the authority of police to enforce the laws of the nation, state and local ordinances.

This directive establishes procedures for assuring compliance with constitutional requirements during criminal investigations to include interviews, including field interviews, interrogations and access to counsel.

**A. Field Interviews** – are an important point of contact for officers in preventing and investigating criminal activity. Field interviews and field interviewer's report serve as:

1. A Source of Information: The field inquiry is based on the principle that the opportunity to apprehend criminals and to prevent crime increases with the number and frequency of persons interviewed. One way a police officer can expand his power of observation is to develop sources of information from persons living or working within his patrol.
2. A Means of Identifying the Suspect: An on-view arrest is not always based upon the immediate recognition of a wanted criminal. Frequently, it is the action taken by a police officer who stops to question a person acting suspiciously. Information obtained during a field contact may also be used at a later date.
3. A Means of Obtaining Suspects or Witnesses: The value of reported field inquiries becomes very pronounced when a crime is committed and there are but a few investigative leads. The officer/investigator must then rely on the field interview reports to sift out pertinent information. A review of these reports will show if anyone had been questioned in the vicinity and at the approximate time of the crime; and
4. A Crime Preventative Tool: The aggressiveness of the patrol activity is brought to the attention of the criminal element. The criminal element can also observe the activities of the police and conclude that the possibility of escaping detection and apprehension is not favorable.

#### **Field Interview Procedures:**

Police officers may stop and detain individuals for the purpose of conducting a field interview only where reasonable suspicion of criminal activity is present. Reasonable suspicion must be more than a hunch or feeling, but need not meet the test for probable cause sufficient to make an arrest. The officer should be able to articulate specific facts which, when taken together with rational inferences, reasonably warrant the stop. Such facts may include, but are not limited to, the following:

1. The body language, behavior, and/or clothing of an individual suggest that he/she is part of, or is engaged in criminal activity. An example of suspicious clothing might be a heavy, long winter coat worn during a hot summer day.
2. The time is inappropriate for the suspect's presence in the area.
3. The suspect's presence in a neighborhood or location is suspicious.
4. The suspect is carrying a suspicious object(s).

5. The suspect's clothing bulges in a manner that suggests he/she is carrying a weapon.
6. The suspect is located in proximate time and place to an alleged crime.
7. The officer has knowledge of the suspect's prior criminal record or involvement in criminal activity.

Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate the stop if he/she has articulable, reasonable suspicion to do so. National origin, gender, sexual orientation, religious beliefs, or race alone shall never be used as justification for a detention. The following guidelines shall be followed when making an authorized stop to conduct a field interview:

1. When approaching the suspect(s) the officer shall clearly identify him/herself as a law enforcement officer. If not in uniform, this can be accomplished by announcing his/her identity and displaying departmental identification.
2. Officers should be courteous during the contact, but maintain caution and vigilance for furtive movements to retrieve weapons, conceal or discard contraband, or other suspicious actions.
3. Before approaching more than one suspect, individual officers should determine whether the circumstances warrant a request for backup assistance and whether the contact can and should be delayed until such assistance arrives.
4. Officers shall confine their questions to those concerning the suspect's identity, place of residence and other inquiries necessary to resolve the officer's suspicions. However, in no instance shall an officer detain a suspect longer than is reasonably necessary to dissipate their suspicion of criminal activity.
5. Field interviews are non-custodial. Officers are not required to give suspects Miranda warnings in order to conduct field interviews unless the detention rises to the level of custody and the questions are interrogative.

Individuals are not required, nor can they be compelled, to answer any questions posed during field interviews. Failure to respond to an officer's inquiries is not, in and of itself, sufficient grounds to make an arrest although it may provide sufficient justification for additional observation and investigation.

Officers shall ensure that any officer safety information is made available to all officers.

6. All information obtained during field interviews will be documented in the department's records management system as well as the proper completion of a written Field Interview Report (FIR) using a booklet which is issued to each officer. A copy of each completed FIR will be placed in the roll call book prior to the end of the officer's tour of duty in order for other officers and/or investigators to review the information which may concern suspicious persons or situations. In addition, information may be disseminated via email to keep all officers abreast of suspicious persons, vehicles, and activities.

### **Pat-Down Searches and Procedures:**

Not every field interview poses sufficient justification to perform a pat-down search. Police officers may perform a pat-down search of the outer garments of a suspect for weapons when the suspect has been stopped based on reasonable suspicion of criminal activity **and** when the officer can articulate a reasonable fear for his/her safety.

Reasonable Suspicion is defined as: less than probable cause, generally defined by the courts as a circumstance or collection of circumstances that would lead a trained, experienced officer to believe that criminal activity may be occurring.

Officers should consider the following threat indicators in establishing their justification to search. The existence of more than one of these factors may be required in order to support reasonable suspicion for the search. Some threat indicators include, but are not limited to:

1. Type of crime – particularly in crimes of violence when the use or threat of deadly weapons is involved; or drug activity where weapons are often carried by those involved in the illegal narcotics trade.
2. The body language and behavior of the suspect prior to and during the stop.
3. Visual indications which suggest that the suspect may be carrying a firearm or other weapon, such as shielding or covering an area in an unnatural way; or shapes or bulges in clothing that could reasonably be perceived as a weapon.
4. Prior knowledge of the suspect's use of force and/or propensity to carry deadly weapons.
5. More than one suspect must be managed by a single officer.
6. The time and the location, neighborhood, or area on campus where the stop takes place.

Whenever possible, pat-down searches should be performed by officers of the same gender as the suspect.

When reasonable suspicion exists to perform a pat-down search, it should be performed with due caution, restraint, and sensitivity. These searches are justified to protect the safety of officers and others, and may never be used randomly on individuals or groups of individuals, or as a pretext to obtain evidence. When justified, pat-down searches should be conducted in the following manner:

1. Whenever possible, pat-down searches should be conducted with at least two officers; one who performs the search, while the other provides protective cover.
2. Pat-down searches are to be performed in accordance with contemporary police training standards. If an officer is concerned for his/her safety and can articulate such, the suspect may be handcuffed prior to the pat-down for officer safety. This would fall under the guidelines of an investigative detention and should be as brief as possible. Should a weapon be visible, however, a more secure search position may be used, such as kneeling or the prone position. If an officer has a reasonable belief that a suspect may be armed, and can articulate a concern for officer safety or the safety of others (i.e. a BOLO that a suspect is armed and dangerous), they may immediately place the suspect in a position of disadvantage and handcuff the suspect prior to conducting a pat-down search.
3. In a pat-down search, officers are permitted only to externally feel the outer clothing of the suspect. Officers may not place their hands in pockets unless they feel an object that could reasonably be a weapon, such as a firearm, knife, club, or other similar item.

Refer to 1.2.4 and 1.2.5 (B) – Stop and Frisk

- B. Interrogations and
- C. Access to Counsel

**The Fifth Amendment Right Against Self incrimination:** "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. "

All officers shall thoroughly understand the constitutional and statutory provisions involved with an interrogation of suspects and/or detainees, in order to protect the rights of all. Officers must first advise a suspect of his/her constitutional rights as required by the US Supreme Court decision of *Miranda v. Arizona* (1966). Both **custody** and **interrogation** are necessary before the requirements of *Miranda* apply.

1. **Custody** – the test is: Under the totality of the circumstances would a reasonable person believe that their freedom of movement was deprived **in a significant way**. Factors used to determine custody are:
  - a. The site of the questioning.
  - b. The length of the interrogation.
  - c. The method used to summon the individual.
  - d. The number of officers involved during the questioning.
  - e. Time of day of the questioning.
  - f. Use of a weapon in the detention of a suspect.
  - g. Restraining a suspect to conduct a search.
  - h. Other procedures associated with the booking or arrest of an individual.
  - i. Isolation of the suspect.

All of these factors are used to determine whether a reasonable person would feel they are free to leave or to refuse to submit to questioning. Whenever there is a doubt about custodial interrogation, the suspect should be advised of his/her constitutional/*Miranda* rights.

Questioning at the police department does not automatically create custody. If the person voluntarily arrives at the police department, and is permitted freedom to leave when he or she desires, make phone calls, have reasonable requests honored, and is in no way coerced or forced to do anything, custody may not exist for the purposes of *Miranda*.

When *Miranda* warnings are not necessary:

- a. Before questioning a person who was merely a witness to a crime or who may know something about a crime but is not a suspect.
- b. Before questioning suspects who have not been deprived of their freedom in any significant way and realize that they are free to terminate the interview at any time.
- c. Before questioning a motorist stopped for a routine traffic offense.
- d. Before asking questions reasonably motivated by concern for public safety.
- e. Without express questioning or its functional equivalent, there is no "interrogation" within the meaning of *Miranda*, even though the suspect may be in custody.

## 2. Interrogation

Are the **questions, statements or actions** made by police likely to elicit incriminating remarks? Routine booking/processing questions do not require Miranda warnings. Police are under no duty to interrupt a volunteered statement and give the suspect Miranda warnings in order for the statement to be admissible in court.

A person who is in custody must be advised of his/her constitutional rights prior to any interrogation. Until such rights are given, no evidence obtained as a result of a custodial interrogation can be used against the person.

## 3. Miranda Rights

If a person is in custody and an interrogation takes place, the following Miranda rights will be given **prior** to any questioning:

- a. You have the right to remain silent;
- b. Anything you say can be used against you in a court of law;
- c. You have the right to talk with a lawyer and to have a lawyer present with you while you are being questioned;
- d. If you cannot afford to hire a lawyer, one will be appointed for you before any questioning, if you so desire.
- e. If you consent to answer questions now, without a lawyer present, you still have the right to stop answering at any time.

Officers shall advise suspects and detainees of their Miranda rights prior to any questioning. SUPD form 001 will be completed and, if waived by the suspect/detainee, his/her signature will be obtained on this form.

All officers are issued a Miranda rights card which will be carried on the officer's person at all times to facilitate advising suspects/detainees of their rights against self-incrimination. In all criminal case reports, officers will note in their narrative that Miranda rights were given and SUPD form 001 will be placed in the case file.

Refer to 42.2.1 – Preliminary Investigation Steps

## 4. Waiver and Assertion of Miranda Rights

It is incumbent upon a police officer to establish that a person has waived his/her Miranda rights, and that this waiver was made voluntarily, knowingly, and intelligently. No statements shall be obtained as a result of any promises, threats (coercion) or inducements.

The waiver of Miranda rights must be obtained in writing or the defendant's waiver must be recorded on SUPD form 001.

If a suspect only evokes right to remain silent and not to counsel, the police or suspect may re-initiate communications after a period of time, but a waiver must be obtained if custody and interrogation are present.

Once a suspect who is **in custody** asserts his/her **right to counsel**, questioning must immediately cease until counsel is present. In such a situation, the suspect may not be interrogated regarding any offense until counsel is **present**.

The following criteria must be met for a juvenile (aged 17 and under) to voluntarily and intelligently waive his/her right against self-incrimination and the right to counsel:

- a. He/she must be given the opportunity to consult with an adult *if requested*.
- b. That adult must be one who is generally interested in the welfare of the juvenile and completely independent from and disassociated with the prosecution (e.g. a parent, legal guardian, or an attorney representing the juvenile.)
- c. The independent interested adult must be informed and be aware of the rights guaranteed to the juvenile.
- d. There must be an opportunity, *if requested*, for the juvenile and the adult to privately discuss whether or not to provide a statement to the police.

Refer to 44.2.2 and 44.2.3 – Juvenile Custody Procedures

Police may not re-initiate interrogation after the suspect requests counsel unless the suspect, **without being prompted**, indicates that he/she wishes to discuss the case with the police. If after invoking his/her right to an attorney, a suspect indicates that he/she wishes to discuss the case, police may continue interrogation after obtaining a proper written waiver of Miranda rights.

Officers will not coerce or obtain involuntary confessions from persons suspected of criminal involvement.

## **5. Access to Counsel**

Suspects and detainees will be permitted to meet with their attorneys in department facilities consistent with constitutional, processing and detainee security measures. Attorneys and their suspect/detainee clients will be provided with privacy in order to confer. No video or audio recording will be activated.

## **6. Prompt Presentment of Arrestee Before Judicial Officer**

This Maryland Court of Appeals ruling requires immediate presentment of a defendant before a judicial officer subsequent to arrest. Presentment will be without unnecessary delay and within 24 hours. In all cases, the defendant will be promptly provided with his copy of charging documents. Presentment may be delayed for the following procedures:

- a. Completion of reports; and/or
- b. Identification processing.

Delays in taking a defendant before a Commissioner, for the purpose of interviews or line-ups may not render a confession inadmissible. Such delays, however, will be taken into consideration by the courts when considering the voluntariness of a confession.

## **7. Pretrial Publicity**

Employees of this department will make no statements to the public or the news media which would have the effect or prejudicing the right of a defendant to a fair trial.

Refer to 54.1.1

(Revised 03/01/2013)



## **8. Audio and Video Recordings of Interrogations**

The University Police Department maintains an interview room equipped with audio and video recording capabilities. All officers will be properly trained in the use of this equipment prior to its use. In all major criminal cases, officers shall ensure that interviews and/or interrogations are audio and video taped in their entirety. The audio and video recordings will be logged into evidence in accordance with departmental policy.

Refer to 42.2.2, 42.2.10 and 84.1.1(5)

### **1.2.4 Search and Seizure Without a Warrant**

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### **1.2.5 Arrests With or Without a Warrant**

The **Fourth Amendment to the United States Constitution** provides that “The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Although searches and seizures based on warrants are clearly preferred and a warrant should be obtained whenever there is sufficient time to do so, the practicalities of police work will not always permit such a procedure. Therefore, an officer may conduct a search and make a seizure under certain conditions even though a warrant has not been obtained:

1. A search incident to lawful arrest;
2. A search pursuant to consent;
3. A search in exigent or exceptional circumstances;
4. Motor Vehicle exception;
5. Plain View search;
6. Inventory searches;
7. “Stop and Frisk”

All officers of this department shall comply with the following guidelines and procedures in conducting searches that have not been reviewed and authorized by a judicial officer.

#### **A. Consent to Search**

A consent to search without a warrant may be given in writing or orally and is an abandonment of a constitutional right and therefore, will be closely scrutinized. Do not conduct a search by consent just to avoid obtaining a search warrant. The following considerations are to be satisfied:

1. Consent cannot be presumed from silence.
2. Consent is to be specifically and intelligently given. Factors used in determining voluntariness will be the suspect’s intelligence, education, and prior experience with the police.
3. Consent must be given freely, knowingly and voluntarily, free of any coercion, intimidation or threat. Officers must avoid even the appearance of intimidation or duress. Factors include whether a show of force has been, or is being made; if guns are drawn; if a large number of officers are present; and whether the suspect is in custody, handcuffed, etc.

4. Consent is to be given by a person who has immediate right of possession and control of the premises. If there is any doubt as to who has the immediate right of possession and control of the premises/property, then a search warrant should be obtained.
5. Consent is to be free of misrepresentation or fraud. A consent obtained by trick, duress, or misrepresentation voids the consent and makes evidence inadmissible.
6. Consent is to be obtained prior to search and after the police officers have identified themselves and have notified the suspect of his/her right to refuse.
7. Consent is to be limited to the area specified and such consent may be revoked at any time and the search will cease upon such revocation. Evidence found prior to revocation may be retained and used as a basis for immediate arrest or as probable cause for the issuance of an arrest or search warrant.

Written consent is not constitutionally required; however, it is extremely valuable in order to ensure that the search will be upheld under challenge at a suppression hearing. As such, all officers who obtain a voluntary consent for a search must complete SUPD form 004; obtaining the signature of the person legally authorized to give consent for the search. This form, completed in its entirety, will be placed in the SUPD case file whose case number is assigned and noted accordingly on form 004.

**B. Stop and Frisk**

In *Terry v. Ohio*, 392 US 1 (1968), the United States Supreme Court authorized law enforcement officers to perform “pat down” or “stop and frisk” searches. These warrantless searches are narrowly limited in scope to a search of the outer garments of a suspect for weapons. The initial stop must be based on reasonable suspicion and pat downs are permitted only where the officer is able to articulate a fear of a weapon that could cause harm to the officer or another person. Although circumstances may exist that justify a lawful detention, this does not in itself justify the additional intrusion of the “frisk” of the detainee. If during the course of a lawful detention conditions exist that lead the officer to believe the detainee may cause harm to the officer or others, the “frisk” would become a viable option. Following are some criteria that may form the basis for establishing justification for performing a pat-down search. Officers should note that these factors are not all-inclusive. There are other factors that could and should be considered. The existence of more than one of these factors may be required in order to support fear of a weapon to justify the search.

1. The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved.
2. More than one suspect must be handled by a single officer.
3. The hour of the day, and the location or neighborhood where the stop takes place.
4. Prior knowledge of the suspect’s use of force and/or propensity to carry deadly weapons.
5. The appearance and demeanor of the suspect.
6. Visual indications which suggest that the suspect is carrying a firearm or other deadly weapon.
7. The age and gender of the suspect. Whenever possible, pat-down searches should be performed by the officer of the same gender.

When reasonable suspicion exists to perform a pat-down search, it should be performed with due caution, restraint and sensitivity. These searches are justifiable and may only be performed to protect the safety of officers and others, and may never be used as a pretext for obtaining evidence. Under these circumstances, pat-down searches should be conducted in the following manner:

1. Whenever possible, pat-down searches should be conducted by at least two officers; one of whom performs the search while the other provides protective cover.

2. The frisk is only allowed as a search for weapons, not evidence. It is generally limited to a pat-down search of the outer garments of a suspect, but may be extended if there is a specific indication that a weapon may be located in a particular place. In the event a weapon or item that could have reasonably been a weapon is detected during the pat-down, the officer may reach into the area where the weapon is to retrieve it.
3. Because pat-down searches are cursory in nature, they should be performed with the suspect in a standing position or with hands placed against a stationary object and feet spread apart. Should a weapon be visually observed, however, a more secure search position may be used, such as the prone position.
4. If the suspect is carrying an object such as a handbag, briefcase, sack, or other item that may conceal a weapon, the officer should not open the item but instead pat the item for a weapon and place it out of reach of the suspect.
5. If the external feeling of the suspect's outer clothing fails to disclose evidence of a weapon, no further search may be made. If evidence of a weapon is present, an officer may retrieve the weapon only. If the item is a weapon and the possession of which is a crime, the officer may make an arrest of the suspect and complete a full custody search of the suspect.
6. In 1993, the United States Supreme Court in *Minnesota v. Dickerson*, 113 S. Ct. 2130, recognized the ability for police to seize items that may be contraband during a lawful "frisk" search. This search, also referred to as "the plain feel doctrine," was based on the premise that when an officer feels an item and immediately recognized it as contraband, it may be seized just as a weapon may be seized during a frisk.
7. If after conducting a detention/field interview there is no basis for making an arrest, the officer should document the justification for the detention and frisk, and include the facts of the interview, in the narrative of an incident report.

#### C. Warrantless Searches of Motor Vehicles

Searches of motor vehicles should be conducted in accordance with the following procedures:

1. Unoccupied vehicles located in a public place may be **seized** without a warrant and may be impounded while a warrant to **search** the vehicle is obtained.
2. Unoccupied vehicles located at a suspect's residence or similar "non-public" area may be **seized and searched only with a warrant**. If exigent circumstances exist, you may **seize** the vehicle without a warrant and hold it while a warrant to **search** is obtained.
3. For vehicles stopped on the highway where the occupant is present, the officer may visually inspect those portions of the vehicle which are exposed to public view. Incriminating evidence discovered may be seized pursuant to the "Plain View Search" doctrine. In order to protect the defendant's possessory interest in the property, the officer should ask the individual if he/she wishes to consent to an immediate search of the vehicle/items. If consent is given, SUPD form 004 will be completed.
  - a. A container within the vehicle, not exposed to public view, (**including glove box and trunk**) or which does not clearly indicate its contents, may be searched only with a warrant absent consent. In order to protect the defendant's possessory interest in the property, the officer should ask the individual if he/she wishes to consent to an immediate search of the items.

- b. If the officer possesses probable cause to search the vehicle and all containers, rather than one specific container, then the entire vehicle should be seized while a warrant to search is obtained. Again, in order to protect the defendant's possessory interest in the vehicle, the officer should ask the individual if he/she wishes to consent to an immediate search of the vehicle and its containers.

**D. Search Incident to an Arrest – (At the scene of a Crime)**

A police officer may search an arrested person, subject to the following conditions:

1. The full custodial arrest is lawful.
2. The search is conducted for the purposes of seizing fruits, instrumentalities, contraband, and other evidence of the crime for which the arrest was made, in order to prevent its destruction or concealment, or to remove any weapons or dangerous instrumentalities that the arrested person might use to resist arrest or affect his/her escape. *Chimel v. California*, 395 US 752 (1969).
3. The search is substantially contemporaneous with the arrest and conducted in the immediate vicinity of the arrest.
4. The search is limited in scope to the person, of the suspect, and the immediate surrounding area. Immediate surrounding area means that area from which the suspect can either obtain a weapon or destroy evidence. (Note: This does **not** apply to a motor vehicle where a **search warrant must be obtained** in order to search a motor vehicle unless articulable concerns for officer safety or for the preservation of evidence can be shown.)
5. A search may also be made of articles actually in possession of the arrested person and clothing worn at the time of the arrest if such a search is related to the offense for which the arrest was made.
6. An officer who makes an arrest for a traffic offense can only search the vehicle incident to that arrest if (1) at the time of the search the arrestee is unsecured and within arm's reach of the passenger compartment, or (2) it is reasonable to believe that **evidence related to the crime of arrest** is located within the passenger compartment (*Arizona v. Gant*.)
7. An officer conducting a search incident to an arrest (or by search warrant) may use a degree of force reasonably necessary to:
  - a. Protect him/herself and others present;
  - b. Prevent escape;
  - c. Prevent the destruction of evidence.
8. If a citation is issued for a misdemeanor, then the detention is not deemed an arrest for any purpose, which includes search incident to arrest.

**E. Search in Exigent Circumstances**

An officer may conduct a search without a warrant when he/she is faced with an emergency situation where delay would endanger him/herself or others, or result in immediate removal or destruction of evidence. This rule allows a search conducted without consent, without an arrest and without a search warrant. Exigent circumstances are those which present a "compelling need or immediate official action and a risk that the delay inherent in obtaining a warrant will present a substantial threat of imminent

danger to life or public safety.” State v. Theodosopoulos, 119 NH 573, 580 (1979). It is an emergency rule only and should not be relied upon in any case where there is time to get a warrant.

A warrant is always preferred and the emergencies justifying the exigent circumstances doctrine are very narrow and require the crime under investigation to be a serious offense. The emergency exception to the warrant requirement which allows police fearing destruction of evidence to enter the home of a suspect requires:

1. Clear evidence of probable cause of a serious offense;
2. A **high likelihood** that destruction of evidence will occur;
3. The minimal intrusion necessary to prevent destruction of the evidence;
4. Clear indication that the emergency was not subject to police manipulation.

(NOTE: When entering a building or residence in order to prevent the destruction of property, a search should not be conducted. Merely freeze the scene so that the evidence will not be destroyed and then immediately seek a search warrant.)

#### F. Inventory Searches

During booking, routine inventory searches of the person, his/her property, and where applicable, their vehicle, may be undertaken without a warrant. The justification for such routine searches is the legitimate interest in protecting the confinement area and the arrestee, and in facilitating the administrative handling of personal belongings during incarceration.

A lawful inventory search of a motor vehicle may be conducted without a warrant when the motor vehicle is lawfully impounded by the police if ownership is in question (**even if the vehicle is later found to have been involved in a crime, or evidence is found during the inventory search of a crime**). South Dakota v. Opperman, 428 US 364 (1976), US v. Abbott (04/19/84). An inventory search of motor vehicles must be non-investigatory, be designed to protect the interest of the property owner, the police, and society, and shall be limited to unlocked areas and/or containers, although a search may be conducted of the glove compartment and the trunk. If an officer has probable cause to obtain a search warrant prior to the inventory search, then he/she shall obtain one. If probable cause develops during the inventory search, the search shall cease and the officer shall apply for a search warrant.

#### G. Plain View Searches

In certain limited circumstances, a Law Enforcement Officer may make a warrantless seizure of objects in plain view. However, three conditions have to be met before the plain view doctrine is applicable:

1. The initial intrusion that afforded the view must have been lawful;
2. Discovery of the evidence must have been inadvertent;
3. The incriminating nature of the evidence must have been immediately apparent.

Whenever officers enter upon private premises in the official performance of their duties, they are lawfully present and therefore, anything that they observe in plain view that is subject to seizure may be seized without a warrant. In such cases, the usual requirements of search and seizure are not necessary because no “search” is conducted. It is also permissible for an officer to use a flashlight to make such observations. An observant officer, utilizing this “plain view” doctrine, can often be successful in recovering stolen property, illegal drugs, or weapons used or intended to be used in the commission of a crime. Areas such as streets or roadways may be searched without a warrant, but this does not include “curtilage” which is the immediate yard or out-buildings of a dwelling house. Also, where factors would lead a reasonable person to conclude that an area is private (i.e. barriers, no trespassing signs, fences), police entry is a search and a warrant is required.

#### **H. Abandonment**

1. When an individual voluntarily relinquishes control over property, then he/she no longer has an expectation of privacy to be protected by the Constitution and the property may be seized without a warrant.
2. When an expectation of privacy exists regarding the 4<sup>th</sup> amendment, an officer requires either a search warrant or a clearly delineated warrantless exception to “search” the area. If the officer can articulate a warrantless exception (i.e. consent to search, search incident to arrest, etc.), the need for a warrant no longer exists.
3. Certain actions or circumstances can diminish the expectation of privacy to the point where the police need not obtain a search warrant to “search.” An example would be denial of ownership when questioned about ownership, or throwing contraband out of a moving vehicle when pursued by the police.
4. The abandonment search is driven by this principle: Generally, a person has an expectation of privacy in their property when it is within their immediate control and the property is not readily available or visible. If the person having an expectation of privacy in an object were to physically or verbally disengage themselves from the object, a search of this object would not require a warrant.
5. A classic illustration is that of a vehicle being pursued by police, at which time a briefcase is thrown from the vehicle. The police officers may retrieve the case and search its contents without a search warrant pursuant to the “abandonment” exception.

#### **I. Search and Seizure With Warrants**

Refer to 43.1.5

### **1.2.5 Arrests With or Without A Warrant – Arrest Procedures**

#### **A. PROCESSING ARRESTEES**

1. The routine processing of detainees, arrested with or without a warrant, by the University Police Department will be conducted as follows:
  - a. Officers are responsible for maintaining security and custody of adult arrestees until custody is formally accepted by personnel at the Wicomico County Central Booking facility.
2. The agency’s temporary detention area may only be used to facilitate questioning, testing, or limited processing of detainees.
3. All full-custody adult arrests resulting in charges being filed against persons for any criminal offenses or traffic related offenses which carry a penalty of incarceration must be completely processed with the exception of arrests on other agency warrants, unless UPD officers serve the warrant on the arrestee and transports him/her to the Wicomico County Central Booking facility for formal charging and processing.

4. Persons charged as the result of full-custody traffic arrests, which will be transported to Wicomico County Central Booking facility, will be photographed and fingerprinted. Fingerprinting will involve completion of required FBI and MSP fingerprint cards/live-scan.
5. *If detainees are brought to SUPD headquarters*, arresting officers are responsible for documenting, on SUPD form 025 – Detainee Screening Record - , all information regarding any arrests (criminal, traffic, etc) which will be placed in the appropriate case file and, upon supervisory approval, will be forwarded to the Administrative Assistant for entry into the Records Management System and filed in Records Section.
6. Arresting officers are responsible for ensuring all arrest related documents, forms, reports, etc., are completed, approved, and submitted to appropriate Squad Supervisor prior to ending their tour of duty wherein arrests were made unless they receive specific authorization from supervisory or administrative personnel to delay the completion and submission of any of the above listed documents. This delay will only be the period of the next immediate working day of the officer (within 24-hour period since time of arrest). Officers will not fail to turn in reports beyond this period regardless of days off, leave, etc.

Refer to 42.1.3 – 42.1.4 – Preliminary Follow-up and Investigation: Required reports

7. Documentation necessary for detainee presentation before judicial officers must be completed to ensure compliance with Maryland Rule 4-212.
8. Whenever a foreign national is arrested or detained in the United States, the foreign national must be advised of the right of consular notification and access consistent with standard 1.1.4.

Refer to 44.2.2 – Juvenile Procedures

Refer to 82.1.2 – Juvenile Records

## **B. ADULT ARREST DOCUMENTATION**

1. Completed arrest related documentation contained in the Detainee Arrest Screening/Property Record form 025 will be forwarded to the Administrative Assistant, who handles the Records Section, via placing it in the appropriate case file after review by supervisory or administrative personnel. The arresting officer will complete and submit this form prior to ending his tour of duty.
  - a. Supervisory or administrative approval may be given to officers to delay submitting documentation based on exigent circumstances. Such instances of delay will be documented via e-mail to the Administrative Assistant and the Squad Supervisor and will contain estimated completion dates and times. (See A-6 above)
  - b. All relevant facts and circumstances relating to arrest related incidents will be included in agency reports related to the incidents.
  - c. Officers will complete the Arrest Log form 021 which is located in the Processing Room.
2. Officers arresting, but subsequently not charging, persons will cease the arrest processing sequence at that point where decisions are made not to file charges after consultation with the Wicomico County State Attorney's Office.
  - a. All arrest related documentation completed up to the point where the arrest processing sequence is terminated will be submitted to the Records Unit prominently marked VOID following report review and approval of supervisory or administrative approval. Records Unit personnel are responsible for ensuring such documentation is destroyed.

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- b. Reports of incidents wherein persons are arrested and released without charges being filed will contain facts and circumstances describing the incidents, how initial probable cause was established, and, if applicable, circumstances leading to diminishment of probable cause.

Refer to 44.2.2 – Juvenile Procedures

Refer to 82.1.2 and 82.3.6 - Records

**C. DETAINEE ARREST SCREENING/PROPERTY RECORD**

1. Detainees will be searched consistent with standard 70.1.1.
2. Arresting officers will ensure that the Detainee Arrest Screening/Property Record form 025 is completed for all detainees (adult and juvenile) brought into the agency's temporary detention area in order to record:
  - a. Arrest information (to include physical description of the arrestee, charges, documenting the reason, date and time in and out of the temporary detention area, etc);
  - b. Property held pending its return at time of release;
  - c. Visual observances, at a minimum, of < 15 minute intervals and more frequently as circumstances dictate (ie. under the influence of drugs/alcohol, suicidal, etc.)
  - d. Apparent physical condition of detainees, including but not limited to:
    - i. Current health;
    - ii. Medications currently being taken;
    - iii. Behavior, including state of consciousness and mental status; and
    - iv. Body deformities, trauma markings, bruises, lesions, jaundice, ease of movement, etc.
3. Security of detainees' property is the responsibility of arresting officer until the detainee is released or transferred to another holding facility. At this time, the detainee's property will be returned to him/her or transferred to an authorized representative of the holding facility.
4. This form will be placed in the case file and after supervisory review, the case file will be forwarded to the Administrative Assistant for filing into Records.

**D. FINGERPRINTING DETAINEES**

1. All adults and juveniles charged as adults who are arrested on criminal, non-traffic charges will be fingerprinted on FBI and MSP fingerprint cards. Juvenile fingerprint cards, along with a photograph, will be completed by the arresting officer who will submit both with the criminal/traffic case file which is forwarded to the Administrative Assistant/Records Section.
2. Central Booking correctional officers are responsible for ensuring required fingerprints, submitted to FBI and MSP, are completed for arrestees (adult/juveniles charged as adults, etc) processed at their facility.
3. Palm prints and major case prints will be taken at the direction of an investigator or supervisor and need not be taken from those persons routinely arrested. Upon completion of these types of prints, the investigator/officer will be responsible for submission of these prints to the appropriate agency (MSP, FBI, etc.)



## E. PHOTOGRAPHING DETAINEES

1. Arresting officers will ensure photographs of detainees are taken with digital cameras provided by the agency.
  - a. Photos will be taken against a neutral background when possible in order to facilitate use during photo lineups. This may be completed by bringing the detainee to the police department and photographing the detainee in the processing area OR the detainee may be photographed by UPD officers at Central Booking using a neutral wall.
  - b. Arrest related photographs taken at Central Booking by DOC personnel will ensure compliance with processing requirements.
  - c. Officers will ensure that all photographs taken of juvenile arrestees are submitted with the fingerprints cards; all of which will be placed in the case file.
2. Arrest related photographs to be taken are:
  - a. *One full face photo using the height measurement indicator, if detainee brought to SUPD; or*
  - b. *One full face photo taken against a neutral wall without the height indicator; and*
  - c. Others, as necessary, for the Investigations Unit.
3. Arresting officers may photograph scars, marks, tattoos, or other distinguishing features of detainees.
4. *All digital photographs taken by UPD officers will be saved in a designated folder on the University Police computer network "O:" drive. The image files or subfolders shall include the case number in the file or folder name to associate each photograph to a specific case. All digital photographs taken shall also be attached in the relevant module of the ARMS records system.*

Refer to 1.1.4 – Consular Notification and Access Requirements and

Refer to 1.2.1 – Law of Arrest

Refer to 1.2.6 (F) – Release of Arrestee

Refer to 44.2.2 – Juvenile Custody Procedures

Refer to Appendix B – Criminal Procedures

### 1.2.6 Alternatives to Arrest/Pre-arraignment Confinement/Pretrial Release

Under certain circumstances, police officers are faced with situations where an arrest or pre-arraignment confinement will not present an adequate solution to the problem. In these situations, officers may exercise discretion consistent with philosophy and goals of the department; pertinent laws; direction, supervision, and orders from supervisors; and, the sense of justice and fairness that would be expected by the ordinary, reasonable and prudent member of the community. Examples include:

- A. **Verbal/Written Warning** – Officers may use a verbal or written warning when, in their judgment, this level of intervention is all that is necessary to curtail and/or prevent a recurrence of the specific behavior. An example might be a warning for a minor motor vehicle violation, or a simple non-violent misdemeanor. This option may be restricted by the Supervisor in those areas of directed patrol or selective traffic enforcement requiring stricter attention to enforcement, or where community standards require formal charges.

(Revised 03/01/13)

- B. **Conflict Resolution** – In many instances, a problem can be identified by an officer that can be resolved with a little time, patience, and mutual understanding. It has been found that resolving conflict between disputants, complainants and the people/things that they complain about, and families far outweigh any possible benefits that are derived from the judicial system. Officers should be encouraged to use their discretion to make long-term solutions that are jointly agreeable between people. SU offers a Conflict Resolution program to which officers can refer individuals. Officers should be aware that this does not always work and court appearances are sometimes necessary.
- C. **First Offender Program** – The Wicomico County State's Attorney's Office and the Drug Court Program offers a first offender program designed to be an alternative to criminal adjudication. The program is designed to provide a means for the first time offender to repay the community for the transgression committed. Through this court alternative process, it is felt that the recidivism rate of first offenders will be reduced.

Referral to the program is at the sole discretion of the States' Attorney. Participation in the program is voluntary on the part of the offender.

- D. **University Judicial System** – For some offenses, such as noise violations or other violations of the Student Code of Conduct (excluding DUI and certain criminal offenses), an officer may choose, upon approval by the Squad Supervisor or Patrol Commander, to refer the offender to the university's Student Affairs Office (SAO) which is responsible for judicial hearings on campus for adjudication of the violation. The student will then be contacted by SAO for a hearing.

The University Judicial Affairs system may be used in conjunction with the Criminal Justice System, if appropriate. Decision-making should be guided by fairness, justice, and the department's educational mission.

All non-criminal cases involving University students are also addressed through the University's Student Code of Conduct.

- E. **Uniform Criminal Citation – Petty Offenses**

The State of Maryland Uniform Criminal Citation (Form DC/CR 45) is designed to provide a single format on which police officers may charge an adult offender with violations of certain petty misdemeanor criminal codes and statutes. This applies to both State and County codes. This citation may only be issued to adult violators (18 years or older). The Uniform Criminal Citation may be used as an alternative to a "custodial arrest."

**LIMITATIONS ON ISSUING THE UNIFORM CRIMINAL CITATION:**

A Uniform Criminal Citation may **NOT** be issued in any of the following situations:

1. To any juvenile offenders (under 18 years of age) – Uniform Criminal Citation for Juveniles
2. For any State or County "Civil Code" violation.
3. For any felony; or misdemeanor criminal offense that carries a penalty in excess of a \$500.00 fine and/or three months imprisonment.
4. Violations of the Maryland Transportation Article.
5. Parking violations.
6. When an officer has reason to believe that the recipient of a Uniform Criminal Citation will not appear in court as required.
7. When an adult refuses to sign a Uniform Criminal Citation.
8. When the defendant resides outside the State of Maryland. Proof of residency may include current driver's license, identification card, utility bills, etc.

## GUIDELINES FOR THE USE OF AN ADULT UNIFORM CRIMINAL CITATION

Maryland Rule 4-101 permits a police officer to utilize a citation in lieu of making an arrest for a petty offense. An officer who witnesses an adult violating one of the specified laws may issue the violator a "Uniform Criminal Citation," and then release the violator. The Criminal Citation allows the officer to use his/her discretion as to whether the defendant should be arrested or simply be issued a citation and allowed to leave, pending an appearance in court.

**All violations charged on the Uniform Criminal Citation are "MUST APPEAR" violations**, requiring a defendant to appear in court. There are no predetermined fines that a defendant can pay in lieu of going to court. The issuing officer does not set a trial date. The Courts will provide the trial date and summons the defendant and witnesses. A supply of the four-part forms will be supplied to each officer.

Upon completion of the DC/CR 45, the distribution of the form will be as follows:

White Copy - Court (Must be sent to Records along with the original Incident Report)

Green Copy - State Attorney's Office (Must be sent to Records along with the original Incident Report)

Yellow Copy – Defendant copy

Pink Copy – Agency copy

## CRIMINAL CHARGES

A listing of commonly used criminal offenses that may be charged on a Uniform Criminal Citation has been issued to each officer.

## MULTIPLE CITATIONS

If more than one Uniform Criminal Citation is issued to a defendant, the issuing officer must place the numbers of the related citation(s) in the "Related Citations" section of the form.

If an Adult Civil Citation is issued along with a Uniform Criminal Citation, the Civil Citation number must be placed on the Criminal Citation, and the Criminal Citation number placed on the Civil Citation.

If there is more than one defendant involved in one incident, the charging officer has the option to have all of the defendants stand trial separately or together. If the officer wants the defendants to stand trial together, the officer must place the numbers of the related citations in the "Related Citations" section of each defendant's citation.

## DISTRIBUTION OF COPIES

All copies of the Uniform Criminal Citation, except for the Defendant's Copy, are to be turned in to the Squad Supervisor, who will forward them to Records Section, before the end of the issuing officer's tour of duty. If the issuing officer wishes to retain a copy for his/her own records, a copy will be made prior to submitting all copies to the Squad Supervisor or Records.

## WRITTEN REPORT REQUIREMENTS

A written report must be submitted whenever a Uniform Criminal Citation is issued. Reports are to be turned in to a supervisor along with the citation copies, before the end of the officer's tour of duty. There are no exceptions to this standard.

On the rear of the "State's Attorney Copy" of the citation, there is a section to include the events surrounding the issuance of the citation. Because of the required police report that must be submitted with the citation, there is no need to complete this section of the citation.

## INCIDENT AND REPORT NUMBERS

The incident report (IR) number must be placed on each citation in the left margin. The incident report number must be written on the citation prior to it being issued to the defendant. The citation numbers must also be included in the incident report.

## VOIDING A CITATION

If an error is made in the completion of a Uniform Criminal Citation, it MAY NOT be destroyed. The citation must be sent back to Records with "VOID" written across it.

## COMPLETING THE UNIFORM CRIMINAL CITATION

The following guidelines are to be utilized when completing and issuing the Uniform Criminal Citation (Form DC/CR 45). It is important that the issuing officer print legibly when filling out the citation. If the citation is illegible, completed improperly, or incomplete, the Courts will return the citation to the officer to correct. Because the Uniform Criminal Citation is a Statement of Charges, any changes made in the document will necessitate the re-issuance of the citation to the defendant.

### 1. **Defendant's Information**

The defendant's full name, current address, date of birth, personal identifiers, and phone numbers are to be placed in this section.

### 2. **Related Citations**

All citation numbers (Criminal, Traffic, Statement of Charges, and Civil) that are issued to a defendant must be placed here. (See Section V of this Index Code for additional information.)

### 3. **Charges**

The date, time, location of the infraction and a brief "Statement of Facts" is to be entered in this section. Because this is a criminal charging document that is similar to a Statement of Charges, a Statement of Fact is used in lieu of the wording of the specific charge being placed.

- a. **Type of Violation Section** - The charging officer must check the appropriate block in front of the statutes/codes being enforced.
- b. **Document/Article Section** - The Article Section and CJIS Code (if applicable) of a particular statute/code are placed in this section. (See listing of Petty Offenses distributed to each officer.)
- c. **Penalty Section** - The maximum penalty for the violation being charged is entered in this section. None of the penalties are to exceed \$500.00 and/or three months in jail.

### 4. **Court Location & Trial Date**

- a. **Court Location** - The issuing officer must place the address of the District Court – 201 Baptist St, Salisbury, MD.
- b. **Trial Date** - Officers must check the box to the left of "WHEN NOTIFIED BY THE COURT."

5. **Defendant's Signature**

This charging document requires the defendant to sign the citation, acknowledging that he/she agrees to appear for trial when notified. If a defendant refuses to sign the citation, the officer must arrest the defendant and charge him/her on a Statement of Charges.

6. **Officer's Signature**

The charging officer must sign their name to the citation in this section. The officer must place the date the citation is issued next to his/her name. The officer must then provide the Agency Code (HZ), the Sub-Agency Code (SSU) and his/her assigned ID number.

7. **Witness Summons**

The witness summons section of the Uniform Criminal Citation is located on the back of the Court Copy. The same procedures are used when summoning a witness for a District Court case. The witnesses' name, address, city, state, zip code, and day and night phone numbers must be provided.

When summoning a witness who is a law enforcement officer of this agency (SUPD), the issuing officer need only write witness/officer's Agency Code, Sub-Agency Code and the officer's ID number in the spaces provided.

If the witness/officer is from another department or jurisdiction, the issuing officer must complete the entire witness section just as they would for a civilian witness.

If there is a need to summons more witnesses and the space is not available on the rear of the "Court Copy" of the citation, supplement the summons portion of the citation utilizing the standard District Court "Request for Witness Summons" form (DC/CR 92).

**F. Release of Arrestee By Officer**

If an arrest is made on probable cause and a further investigation reveals that the suspect is not involved in a particular crime, he or she can be released. This is done by continuing the investigation after an arrest, possibly by checking the suspect's alibi and determining that he or she is not involved. It is better to release this individual than have him remain in jail for several months knowing a conviction cannot be sustained. Remember, in the above situation the person is arrested and the arrest report is made, but the arrest report indicates the reason for release.

It shall be this Department's policy to contact the on-call Division Commander who will notify the Chief of Police prior to contacting the on-call State's Attorney and discuss the investigation with him/her. If he agrees, then the suspect can be released and a statement like the following can be made on the offense/arrest report.

"Based on further investigation and consultation with Assistant State's Attorney \_\_\_\_\_, the suspect was released at (time and date) by \_\_\_\_\_."

An important aspect to remember is that while this investigation is being conducted, the suspect's rights cannot be violated in regards to his right to be taken before a commissioner or a judge.

The University Police Department as a matter of routine complies fully with the Maryland Rules of Judicial Process concerning pre-trial release. Pre-trial release of an arrested person is governed by District Court of Maryland Rules.

### **1.2.7 Officer Discretion**

It is difficult for a police agency to make rules covering the infinite variety of situations faced by the individual officer. The employees of the University Police Department shall be issued a manual of written directives which will define the limits of individual authority and provide guidelines for the exercise of discretion. By establishing guidelines, the Police Department will provide for uniformity of decisions and actions and eliminate unnecessary discretion. The written directives enumerated in this manual are for this agency's use only and do not apply in any criminal or civil proceeding. Violations of law will form the basis for civil and criminal sanctions in a court of law. The exercise of discretion should always be compatible with the rule of law, departmental policy, and within the limits of the officer's authority as a sworn law enforcement officer.

With the exception of Departmental Directives, departmental policy generally gives officers factors or guidelines to consider in exercising their discretion. It is up to the individual officer to consider the relevant factors, the situation, and then, using knowledge previously gained, training, and good judgment, make appropriate decisions. An officer exercising such discretionary judgment will not normally be held to be totally wrong by a Supervisor/Commander, although the Supervisor/Commander may point out factual errors or other alternatives which might have been more appropriate. It is from this learning experience that an officer's discretion improves and develops.

The officer must decide if the use of discretion is "reasonable" for each particular circumstance. "Reasonableness" may be judged by answering such questions as:

- Is my department, the university and the law enforcement profession being properly served by the use of discretion in this instance?
- Does the use of discretion in this matter violate the department's Written Directives or the Law Enforcement Code of Ethics?
- Will the use of discretion in this circumstance leave me and my department open to public criticism?
- Will the use of discretion achieve the desired result?

The I.A.C.P. "Police Code of Conduct" says, in part, "Consistent and wise use of discretion, based on professional policing competence, will do much to preserve good relationships and regain the confidence of the public."

However, if you are in doubt, take the necessary legal action.

### **1.2.8 Strip and Body Cavity Searches**

Strip and body cavity searches are sometimes necessary for agency safety and security, or to seize evidence of criminal activity. These searches are highly intrusive and shall be conducted only with proper authority and justification, with due recognition and deference for the human dignity of those being searched and in accordance with the procedural guidelines for conducting such searches.

#### **Strip Searches**

A strip search is defined as any search of an individual that requires the removal or rearrangement of some or all clothing in order to permit the visual inspection of the individual's genitals, buttocks, female breasts or undergarments.

- A. Strip searches will only be conducted when an officer has probable cause to suspect that the individual accused is concealing weapons, contraband, or evidence. Probable cause may be based upon, but is not limited to, one or more of the following criteria:
1. The nature of the offense;
  2. The circumstances surrounding the arrest;
  3. The arrestee's criminal record, particularly past crimes of violence and drug offenses;
  4. The discovery of evidence in plain view or in the course of a search incident to the arrest;
  5. Detection of suspicious objects beneath the suspect's clothing during a search incident to arrest.

Authorization to conduct strip searches must first be obtained from a *Division Commander*, following a full evaluation of the facts. When time and circumstances permit, a search warrant will be obtained.

- B. The strip search will be conducted by an officer of the same gender as the accused being searched. If an officer of the specific gender is unavailable at this agency, an allied police agency will be contacted and assistance requested. At no time will a search be conducted by an officer of the opposite gender of the accused.

The search will be conducted in the restroom and another officer shall be available for assistance and to ensure that the search is conducted in accordance with this directive to ensure the privacy of the individual.

The accused will be instructed to remove all clothing except undergarments. The accused will then be instructed to lower his/her underpants for visual inspection. Accused females will be instructed to remove their bras. Accused persons will be instructed to replace their clothing immediately upon conclusion of the visual inspection. At no time will officers make manual contact with the accused during this search.

Should the accused become disorderly or combative, the search is no longer routine and the officer shall take appropriate action to control the situation.

- C. No photographs, video or audio recordings shall be made of the search. However, officers will complete a narrative within the incident report outlining the details and circumstances of the search to include at a minimum, the following:
1. The date, time, and location of the search;
  2. The name of the individual searched and the name of the officer(s) who conducted and were present during the search;
  3. The name of the supervisor authorizing the search;
  4. The basis for conducting the search; and
  5. A statement as to the results of the search.

### **Body Cavity Searches**

A body cavity search is defined as any search involving not only visual inspection, but the internal physical examination of body cavities (genital and anal cavities.)

The inspection of an individual's mouth shall not be considered a body cavity search. In the event that exigent circumstances arise where an individual places drugs or contraband in their mouth in an attempt to possibly endanger themselves or swallow evidence, it is not necessary that an officer obtain a search warrant prior to attempting retrieve the drugs or contraband.

(Revised 01/01/2014)

If the visual examination of an individual during a strip search and/or other information lead an officer to believe that a suspect is concealing a weapon, evidence or other contraband within a body cavity the following procedures will be followed:

- A. Body cavity searches will only be conducted under the authority of a search warrant. The officer will consult with a Division Commander, to determine whether probable cause exists to prepare a search warrant for a body cavity search.
  1. The following factors will be considered before approving an application for a search warrant:
    - a. The nature of the offense;
    - b. The circumstances surrounding the arrest;
    - c. The arrestee's criminal record, particularly past crimes of violence and drug offenses;
    - d. The discovery of evidence in plain view or in the course of a search incident to the arrest;
    - e. Detection of suspicious objects beneath the suspect's clothing during a search incident to arrest;
    - f. The specific factors giving rise to the belief that the item(s) sought are concealed in a body cavity.
  2. A body cavity search will only be conducted by or under the supervision of a physician licensed to practice medicine in the State of Maryland. The search will only be conducted in an approved medical facility (PRMC), out of public view and with due regard for the privacy of the individual.
- B. The search will be witnessed by an officer of the same gender as the accused being searched. That officer will immediately take custody of any evidence obtained during the search and will log it in accordance with Chapter 84.
- C. The officer witnessing the search will ensure it is documented in either an original, supplemental or follow-up report that details, at a minimum, the following:
  1. The date, time and location of the search as well as persons present during the search;
  2. The name of the individual searched;
  3. The names of the supervisor approving the search warrant, the judge authorizing the search warrant and the medical professional(s) conducting the actual search;
  4. The basis for conducting the search; and
  5. A statement as to the results of the search.

### **1.2.9 Biased Based Profiling**

Bias based profiling is the deliberate selection of individuals based solely on a common trait of the group. this includes, but is not limited to, race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group or any other identifiable group. It is illegal, unethical and contradicts the values and mission of the University and the agency; thereby a violation of policy.

- A. *Bias based profiling, which includes but is not limited to the following, is prohibited:*

- Traffic stops and Fieldcontacts/stops – stop and frisk
- Interview Techniques
- Search incidents
- Asset seizure and forfeiture efforts

(Revised 08/01/2015)



Officers shall focus on a person's conduct, actions or other specific suspect information. Officers must have reasonable suspicion supported by specific articulated facts that the person contacted regarding his/her activity, identification or location has been, is or is about to commit a crime or is currently presenting a threat to the safety of themselves or others.

*Officers who conduct each traffic stop will record required information in Delta Plus, a software program which captures date/time/location of stop, gender/race of the MV operator, reason for the stop, whether a search was conducted and the results of that search, outcome of the stop (warning, citation, etc.)*

*Squad Supervisors shall ensure that data entry is completed at the end of the officers' tour of duty. Entries into DeltaPlus are not required to be completed if the traffic stop results from:*

1. A checkpoint or roadblock stop;
  2. A stop of multiple vehicles due to traffic accident or emergency situation which requires the stopping of vehicles for public safety purposes; or
  3. A stop based on the use of radar, laser or other technology.
- B. *Officers shall receive annual training via in-service, shift briefings or other training methods in biased based profiling issues. Training shall consist of such issues to include the following:*
- |  |                                 |
|--|---------------------------------|
| 1. Legal issues/updates on traffic stops | 5. Diversity and Discrimination |
| 2. Interview Techniques                  | 6. Community Support/Concerns   |
| 3. Field contacts/stops – stop and frisk | 7. Asset seizure and forfeiture |
| 4. Search issues                         |                                 |
- C. If bias based profiling is determined to have occurred, corrective measures shall be taken in accordance with the policies and procedures contained in Chapter 26, and in accordance with the policy and procedures contained in Chapter 52 of the Written Directive Manual.
- D. *The Administrative Commander will conduct and document an annual review of the department's traffic stop data and practices to include citizen concerns as ascertained from community input, citizen complaints, etc, if any. This annual review will be forwarded to the Chief of Police.*
- E. *The DeltaPlus program is maintained by the Maryland State Police and all agency reporting requirements of the Governor's Office of Crime Control and Prevention through the Maryland Statistical Analysis Center will be handled by the Maryland State Police on an annual basis based upon traffic stop data entry completed by this agency.*

## **1.3 Use of Force**

### **1.3.1 Reasonable Force**

Use of force by agency personnel is limited to that which is reasonable and necessary to accomplish lawful objectives. Weapons approved for use by personnel are limited to issued handguns, chemical spray and batons. Shotguns and semi-automatic rifles are also available for officer's use upon completion of required training and demonstration of proficiency in accordance with the Maryland Police Training Commission's standards. Officers may repel force with force, using only that amount reasonably necessary to counter an attack or overcome resistance. Force may be used by officers when:

- A. Necessary to preserve the peace, prevent the commission of offenses, or prevent self-inflicted injuries;

*(Revised 08/01/2015)*

- B. Necessary to overcome resistance to lawful arrests, searches and seizures, and to prevent escapes from custody; or
- C. In self-defense or in defense of another against unlawful violations to their person or property.

The amount and degree of force which may be used will be determined by circumstances including, but not limited to:

- A. The nature of the offense;
- B. The behavior exhibited by subjects against whom force is to be used;
- C. Actions of third parties who may be present;
- D. Physical disparities against the officer; or
- E. The feasibility and availability of alternative actions.

Neither chemical spray nor physical force will be used in an attempt to prevent a suspect from swallowing evidence or to retrieve evidence that a suspect attempts to swallow. An attempt to manually remove an object from a suspect's mouth or throat, places both the suspect and officer at risk of injury. The officer will order the suspect to spit out the contraband and advise the suspect of the severe health consequences of swallowing objects or controlled dangerous substances. Persons in custody who swallow evidence will receive medical attention.

Officers acting alone may be required to resort to a much greater use of force than would be necessary if other officers were present. Therefore, unless immediate action is required, officers should call and wait for assistance when possible.

**In the application of any type or level of use of force, excluding those exceptions outlined in this policy, all sworn members shall comply with the agency's established Use of Force Continuum – Addendum C.**

### **1.3.2 Deadly Force**

Officers may only use deadly force when he/she reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in immediate danger or serious physical injury. Verbal warnings will be given, if feasible, before using deadly force.

Reasonable belief is defined as: when facts or circumstances the officer knows are such that they would cause an ordinary and prudent person to act or think in a similar way under similar circumstances. Serious physical injury is defined as: a bodily injury that creates a substantial risk of death, causes serious permanent disfigurement or results in long term loss or impairment of a function of any bodily limb or organ. If feasible is defined as: capable of being carried out if such a verbal warning does not endanger the life or serious physical injury to the officer or any other person in immediate danger.

Fleeing felons shall not be presumed to pose a threat to life unless circumstances demonstrate an immediate threat to wanton disregard for human life.

**In the application of any type or level of use of force, excluding those exceptions outlined in this policy, all sworn members shall comply with the agency's established Use of Force Continuum – Addendum C.**

### **1.3.3 Warning Shots**

Officers' firing of warning shots is strictly prohibited.

### 1.3.4 Authorized Less Lethal Weapons

All officers are issued less lethal weapons which shall be available for use when officers are on duty. These include *chemical spray and baton*. Officers shall use less lethal weapons, including the use of weaponless physical force, in a manner consistent with the provisions of this directive, in the following instances:

- To defend against a violent attack when the use of firearms would not be appropriate or advisable;
- To overcome a violent resistance of a suspect when making an arrest;
- To restrain a combative suspect who is already in custody.

Only that force necessary to control or restrain a suspect or prisoner to defend against an assault shall be used. Officers will not carry or utilize any other less lethal weapons unless authorized by the Chief of Police.

#### A. Baton

Every officer of the University Police Department is issued a baton which is secured on his/her duty belt in an authorized holster. The baton will be used as a tool for affecting the arrest of violent or combative persons where the degree of resistance exhibited by the offender is of such a magnitude that his/her arrest cannot otherwise be effected.

Appropriate training in the use of the baton will be demonstrated and documented prior to its use.

Refer to 1.3.4 ((E) Restricted areas of Impact.

#### B. Chemical Spray

Police officers have a limited choice of weapons when compelled to use force in apprehending arrested persons. In many cases, Officers have been injured attempting to subdue or restrain their adversaries because of the close contact involved. Chemical spray enables Officers to temporarily and humanely incapacitate unruly persons without the necessity of physical contact and undue violence. When an officer can achieve this without the necessity of resorting to other *less lethal* weapons, s/he will be more effective in accomplishing the mission and will create for the officer and the Department, a better public image.

Chemical spray is to be considered a weapon and will be used only as necessary and never for demonstrations, unless used for training purposes in the presence of the Training Officer or an instructor. Officers shall not disperse chemical spray randomly into a crowd. Use shall be restricted to instances when, if the Officer were not armed with this device, use of his/her baton would be justified. This device shall be used for subduing unarmed persons who are resisting arrest or persons who are armed with less-than-lethal weapons of opportunity.

The most important tactical aspect of Chemical Spray is that it permits the Officer to strike individual targets from a safe distance. The spray releases a shotgun pattern of heavy droplets of chemical irritant at an average distance of fifteen (15) feet under normal wind conditions. The canister should be pointed at the facial area and discharged in wide, sweeping motions to assure contact with the face. Pinpoint accuracy is not necessary due to the shotgun pattern of release of the propellant. One second bursts are most effective.

*(Revised 06/09/2016)*

Persons under the influence of drugs or alcohol may not be affected by the disabling properties of the chemical irritant. However, by maintaining the 15-foot range, there should be ample time to resort to other means to control the situation.

After a subject is subdued, an opportunity should be provided for washing and flushing the chemical irritant from the affected areas of the skin. Ordinarily, flushing the areas of the body so exposed with cold water constitutes adequate treatment. In cases of severe exposure, gentle flushing of the eyes is required. Salves, creams, or ointments shall not be applied to the skin until all traces of the chemical have been flushed away, as they could retard the treatment and aggravate the condition.

If the subject complains of continued effects of irritation after having flushed the affected areas of the body, he or she shall be transported to a hospital for medical treatment.

#### **C. Physical Force – Weaponless**

This physical force may include punches or kicks as necessary to the subject to accomplish lawful objectives which include action in defense of human life, including the officer's or any other person so endangered. The intent of this policy is to minimize the severity posed by obvious injuries or non-visible trauma associated with weaponless or hand-to-hand tactics.

#### **D. Restricted Areas of Impact**

1. *Batons and physical force* used for defensive purposes in an emergency situation shall be used against points of the body where the impact will immobilize the suspect but not cause permanent or fatal injury. Points of immobilization shall include:

- Upper arm
- Shoulder Above Clavicle
- Shouldertip
- Thigh
- Calf
- Pit of stomach

*The baton or physical force* will not be used to strike persons in the front of the throat, upper lip, bridge of the nose, back of the neck, back of the head and anywhere in the cranial area. Neck restraints are strictly prohibited.

2. In-service training for *less lethal* weapons shall occur at least biennially. The Administrative Commander will maintain documentation of training for each officer and all training will be held in officers' personnel files.

*(Revised 06/10/2016)*

### 1.3.5 Rendering Aid After Use of Force

If a subject complains or is obviously injured after the use of lethal or *less lethal* weapons, or other use of force measures as described in directive 1.3, the personnel involved in the application of force/incident shall ensure that the subject receives appropriate medical care. This care may consist of:

- A. Frequent observation of the subject to detect obvious changes in condition;
- B. Flushing chemical agents from the eyes;
- C. Applying first aid to the subject's minor injuries;
- D. Evaluation of the subject by paramedics or other medical professionals, in the case of life-threatening injuries. The subject shall be transported by the officer or by emergency medical personnel to the nearest medical facility (ie. Peninsula Regional Medical Center) in the following situations:
  - 1. If the injury is too serious to be treated by department personnel/paramedics and the injury appears to be life-threatening;
  - 2. If the subject complains of a condition not visually obvious and the subject is in apparent continued pain and discomfort;
  - 3. If the subject refuses medical treatment but the officer believes medical assistance is required;
  - 4. If the subject was injured prior to being placed in custody by department personnel.

If the subject is treated at a medical facility, the officer will remain with the subject; particularly if the subject has been placed under arrest. The officer will obtain the identity of the physician, the medical treatment received for the specific diagnosis and other pertinent information; all of which will be documented in the case report as well as the required Use of Force report (1.3.6 and 1.3.7)

### 1.3.6 Required Report – Use of Force

A written report will be submitted whenever an employee:

- A. Discharges a firearm, for other than training;
- B. Takes an action that results in, or is alleged to have resulted in, injury or death of another person;
- C. Applies force through the use of lethal or *less lethal* weapons;
- D. Applies force to destroy an animal which poses a threat to public safety or as a humanitarian measure where the animal is seriously injured; or
- E. Applied weaponless (empty hand control) physical force at a level as defined in the Use of Force continuum.

Any officer who, while either on duty or in an off duty status, intentionally or accidentally discharges his/her departmental issued firearm, other than for training or recreational purposes, shall submit a written detailed report, SUPD form 035, to the on-duty Supervisor before ending his/her tour of duty, or in the case of an off-duty officer, within an 8 hour period from the time of the incident or as directed by the officer's Division Commander. If the facts of the incident support a conclusion that the shot was the result of negligence, the officer shall undergo firearms recertification within a 7- day period of this determination.

Whenever an *employee(s)* takes an action that results in, or is alleged to have resulted in, injury or death of another person, applies force through the use of lethal or *less lethal* weapons, or applies weaponless physical force at a level in accordance with 1.3.4, or if a motor vehicle accident occurs involving an employee operating a departmental motor vehicle that results in the injury or death of another person, the *employee* will make a verbal report to his/her supervisor as soon as possible after the incident.

(Revised 07/11/2013)

A detailed written report, SUPD form 035, shall be completed within the tour of duty that the incident occurred. The Division Commander of the officer(s) involved may extend the deadline if extenuating circumstances exist. A written report will be submitted by all employees involved directly (uses force) or indirectly (witnesses the use of force/actions which prompted the use of force) in the incident/accident.

The written report shall contain, but not limited to, the following information:

- A synopsis of the incident beginning with the circumstances leading up to and culminating with the action taken by the *employee(s)*;
- Whether or not the subject was armed;
- The effectiveness of the equipment used;
- Any injury to the *employee(s)* before, during and after the action taken;
- The type of injury sustained by the subject and how it occurred;
- If appropriate medical aid was rendered; and
- The injured or deceased subject's full name, address, DOB, sex, and race, if available.

This written report will include the information outlined in directive 1.3.5.

Any employee who witnesses an injury or death by another departmental employee(s) shall submit a complete and detailed written report via the chain of command to his/her Division Commander, within that tour of duty during which the incident occurred. The Division Commander may extend the deadline if extenuating circumstances exist.

This directive, in the absence of injury or death, does not require reporting the following types of incidents:

- Pointing weapons;
- Using weaponless, hand-to-hand control techniques that have little or no chance of producing injuries when gaining control over or subduing non-compliant or resisting persons to include: physical touching, gripping, holding, frisking, handcuffing, pain compliance measures, pressure point applications, come-alongs, or other custodial procedures.

All reports will be computer generated or typewritten and will be routed to the Division Commander of the involved employee for review. If involved personnel are assigned to two or more divisions, the reports shall be routed to the *Field Operations* Commander.

A copy of all reports shall be routed to the Chief of Police and to the Administrative Commander who is responsible for an annual analysis report in accordance with 1.3.13.

### **1.3.7 Administrative Review of Use of Force Report**

The *Field Operations* Commander shall conduct a review of the required use of force reports, SUPD form 035, required in 1.3.6. Upon review of each report, the *Field Operations* Commander shall carefully examine the circumstances to ensure that all pertinent information is contained therein.

This examination shall include, but not be limited to, the following factors:

- A. The action was in conformance with the department's written directives as to policy, procedures and training.
- B. The action was justifiable but avoidable.
- C. The action of the employee was in conformance with the orders given by his/her supervisor at the time of the incident.

(Revised 02/01/2016)

- D. Any disciplinary action recommended by the employee's Commander shall be in accordance with department's Disciplinary Matrix.

The Field Operations Commander, upon the review and assessment of the use of force report, shall make written recommendations deemed necessary regarding any of the following:

- A. Remedial or Advanced Training;
- B. Operations Policy and Procedures;
- C. Post Incident Debriefing and/or Psychiatric Counseling;
- D. Supervisory Accountability;
- E. Evaluation and/or promotional criteria.

### **1.3.8 Use of Force – Employee Removal from Duty**

Any employee whose application of use of force results in a death or serious physical injury shall be removed from his/her duty assignment, pending an Administrative Review. The department shall also consider removing any employee(s) from their duty assignment who is involved in a critical or traumatic incident such as a motor vehicle crash involving the officer(s).

During any period of absence from their duty assignment, the department will provide, as necessary, post incident debriefing and/or counseling. If needed, the employee's family will also be provided with counseling.

### **1.3.9 Agency Authorized Weapons and Ammunition**

*and*

#### **1.3.10 Weapons Proficiency**

Only department issued weapons and ammunition are authorized for use by department personnel in law enforcement responsibilities on duty. Civilian personnel are not authorized to carry any weapons in the course of their duties. Personally owned weapons are not authorized for on duty use but may be authorized for off-duty use provided that all training and proficiency requirements are met. Officers who wish to carry a weapon for off-duty use must submit a request in writing to the Chief of Police. Less lethal weapons such as issued batons and chemical spray will not be carried off-duty.

- A. The exact specifications of all agency lethal and less lethal weapons, which shall be maintained by the Investigative/Support Services Commander and the Firearms Instructor, may vary however the following types of weapons are approved and issued for use:

1. Handgun – Glock 22 and Glock 23
2. Baton
3. Chemical Spray
4. Rifle – Bushmaster XM15 Carbine
5. Shotgun – Remington 870
6. Colt M16

Any change in specification for lethal and *less lethal* weapons must be approved by the Chief of Police prior to implementation or use.

- B. The exact type of ammunition may vary according to vendor availability. The specifications for department ammunition shall be maintained by all Firearms Instructors. Only department issued ammunition shall be utilized in department issued firearms *and approved off-duty firearms*.

*(Revised 06/09/2016)*

- C. All department authorized weapons intended for use by each employee in the performance of his/her duty shall be inspected at least semi-annually and approved for use by the agency's Firearms Instructor, prior to carrying the weapon. The Firearms Instructor will ensure that each employee demonstrates proficiency with his/her issued duty weapon and their approved off duty weapon.
- D. If during annual firearms training or during the line inspection process, an employee or the Firearms Instructor observes defective or unsafe firearms or ammunition, *or anytime a firearm is suspected of being unsafe*, the firearm will be removed from service until an armorer can *determine and* rectify the problem with the firearm. If defective or unsafe firearms are discovered during the inspection process, the officer to whom the firearm is issued and the officer's supervisor will submit a memo in writing to the Firearms Instructor and the Chief of Police outlining problems or defects with the firearm.
- E. Firearms Instructors will maintain an inventory file on each weapon approved by the department for official use. The inventory record, form #078, will include the type of weapon, description, identifying model, serial number and the identity of the officer to whom it is assigned.
- F. All officers who are assigned agency-owned firearms will be responsible for the safe and proper handling and storage of the weapon. Officers will not permit any other employee or person to handle their issued weapon with the exception of the Supervisor who conducts inspections and/or the Firearms Instructor. All weapons will be unloaded in a safe manner and secured in a locked compartment when not being worn.
- G. The carrying of firearms while off duty by authorized employees is discretionary. When off duty, officers shall carry their badge or Identification Card and, at the option of the officer, a firearm. If an officer elects to carry a firearm off duty, it must be department issued and/or authorized and be loaded with department issued ammunition. When the police officer is off duty and the operator or passenger in a marked departmental vehicle, he/she shall carry a department authorized firearm and ammunition. All officers shall use prudence and good judgment in the wearing of their off duty weapons while participating in any social activity where they may be consuming alcoholic beverages. Employees should be cognizant that the accidental display of a weapon in public may cause apprehension and could direct unfavorable comment toward the department. They shall make all reasonable efforts to assume the safety and security of all issued weapons both while on/off duty to ensure that the weapons are not made obtainable by other persons.
- H. Firearms shall be kept out of the public's reach and shall not be left unattended. An employee will not store or leave a loaded firearm in any location – on or off-duty – where access to the firearm may be gained *by any unauthorized person*. Firearms which have not been issued to personnel will remain locked and secured in the department's armory; accessible by the Field Operations Commander and Investigations/Support Services Commander.
- I. Officers may purchase at their own expense .40 S&W caliber Glock Safe Action pistol (model 22, 23 or 27) for use as an off-duty weapon. The pistol must have, at minimum, a 4.5 lbs weight of pull trigger; pistols that have been modified with any non-Glock trigger components, or modified with any connector or trigger spring to produce a trigger pull with a resistance of less than 4.5 lbs, are not authorized for off-duty use.

Officers requesting to carry a personally owned .40 S&W caliber Glock pistol must submit a request to the Investigations/Support Services Commander on SUPD form 112.

An officer's personally owned pistol must be inspected by the Department Firearms Instructor/Certified Glock Armorer before it can be approved for off-duty use.

***(Revised 06/09/2016)***



Before an officer is permitted to carry the pistol off-duty, the officer must meet MPTC qualification standards by qualifying on an approved "Secondary Weapon – Day" and "Secondary Weapon – Low Light" course of fire, with a score of 70% or better on each course of fire. The officer must purchase, at his/her own expense, the ammunition required to complete the qualification courses of fire. The ammunition must be manufactured in the United States and be of the same bullet weight as the approved duty ammunition. Upon successfully completing the qualification course of fire, the Firearms Instructor will issue the officer a number of Department approved rounds of ammunition sufficient to fill two magazines of the off-duty weapon. The only ammunition that can be carried in the off-duty weapon is the ammunition approved and issued by the department.

Once all inspection and training requirements are successfully met, the Investigations/Support Services Commander will submit the completed form 112 to the Chief for final approval. Once approved, the approval remains valid for 10 days after the next years' firearms qualification date scheduled for the requesting officer. A new request (form 112) must be submitted prior to the start of next year's firearms training and qualification date in order for the approval to remain in effect. If the officer fails to submit the request prior to the start of the next year's assigned firearms qualification session, the permission and approval to carry the pistol is rescinded effective on that date.

An officer who does not intend to qualify or carry the pistol off-duty beyond the approved period must submit a written memorandum to the Investigations/Support Services Commander.

The approval to carry the personally owned pistol off-duty may be rescinded by the Chief of Police or his designee at any time. An officer who has his/her police powers suspended for disciplinary or medical reasons is not authorized under this policy to carry the pistol off-duty.

- J. A firearm loading and unloading station is located in the Squad Room. The station is established to promote the safe loading and unloading of all handguns, shotguns and rifles within the Department.

Training of all sworn staff in the proper procedure to utilize the station shall be conducted annually by the firearms instructor.

Written instructions for both safe loading and safe unloading are posted at the loading/unloading station.

No firearm shall be loaded or unloaded on University property unless it is at the loading/unloading station and is done consistent with the provided training and posted written instructions.

\*The only exceptions to this policy is when unloading of a seized firearm is necessary in the field to render it safe and when a Department owned long gun must be loaded in the field in response to exigent critical incident (ie. response to an active shooter.)

*(Revised 01/01/2014)*

### **1.3.11 Firearms Qualification – Annual Requirement**

*and*

### **1.3.12 Annual Training – Use of Force Policies and Procedures**

In-service training for lethal weapons will occur annually and in-service training for *less lethal* weapons and other control techniques shall occur, at a minimum, every two years, as the use of both types of weapons are commensurate with the employee's job responsibilities.

All *employees* authorized to carry lethal and *less lethal* weapons described in directives 1.3.1 through 1.3.5 shall be issued copies of and be instructed in the use of force policies outlined in this chapter before being authorized to carry a weapon. All training, to include off-duty weapons, will be documented and placed in the *employee's* personnel file.

At least annually, all department personnel authorized to carry weapons shall receive in-service training on the agency's use of force policies and demonstrate proficiency with all approved lethal weapons that the employee is authorized to use. Qualification standards for firearms are determined by the Maryland Police Training Commission on an annual basis and can be found in MPTC's General Regulations, Title 12, Subtitle 04. Additionally:

- A. All firearms instruction and practice training such as, but not limited to, judgmental shooting or live fire training, etc will be monitored by a Maryland Police Training Commission certified Firearms Instructor.
- B. Annual training and firearms scores will be documented by the Firearms Instructor who will forward all scores and training to the Training Officer who will ensure all documentation is maintained in the employee's personnel file and forwarded annually to the Maryland Police Training Commission.
- C. Training with all authorized lethal and *less lethal* weapons is commensurate with the employee's job responsibility. *Any employee* who fails to satisfactorily demonstrate proficiency with any weapon will be required to complete a remedial training program established by the Department's certified weapons' instructor.

If the weapon is firearm, the *employee's* remedial training will be subject to the provisions of the MPTC which requires that an *employee* must successfully complete the appropriate training and firearms qualification for the issued weapon. The *employee* subject to remedial training must, within 30 days of the initial qualification attempt, attain qualification scores consistent with MPTC standards for the firearm.

An *employee* who fails to successfully complete the approved course(s) of fire shall be required to surrender his/her issued weapon to the agency and will be subject to disciplinary action.

If the weapon for which an *employee* cannot demonstrate proficiency is not a firearm (baton, OC spray, etc), the *employee* will not be permitted to carry the weapon until additional training is received and proficiency demonstrated to the appropriate certified instructor.

- D. In-service training for *less lethal* weapons shall occur at least biennially in accordance with directive 1.3.4.
- E. The Firearms Instructor shall ensure that all *employees* meet the qualification standards with any agency issued firearms they are authorized to use and the weapons are examined to ensure that they are safe for use.

(Revised 07/11/2013)

- F. A firearm determined to be unsafe and/or nonfunctional by the Firearms Instructor will be replaced and the *employee* must meet the firearms qualification standards with the replaced weapon before carrying it in the line of duty.
- G. At least annually, all department personnel authorized to carry firearms shall meet the qualification standards of the Maryland Police and Correctional Training Commissions (MPCTC).
- H. The use of neck restraints or similar compliance techniques is strictly prohibited. If the department should authorize a weaponless control technique believed to have the potential for serious injury, it shall be included in the annual in-service use of force curriculum; no such technique shall be used prior to the completion of documented training.

### **1.3.13 Annual Analysis – Use of Force Activities, Policies and Practices**

*Annually, the Administrative Commander will conduct a documented analysis of Use of Force reports/activities, policies and practices to determine if patterns or trends exist which may indicate training needs, equipment upgrades and/or policy modifications. This annual analysis, completed each January, will be forwarded to the Chief of Police and shall include:*

- A. *The number of incidents categorized by each type of report (firearms, less lethal weapons, etc.)*
- B. *The circumstances and disposition of each incident.*
- C. *Patterns that indicate additional training needs, equipment upgrades, policy modifications and agency practices which may be appropriate for officer safety.*

Refer to 1.3.6 and 1.3.7

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Edwin L. Lashley  
Chief of Police

*(Revised 01/01/2014)*

## APPENDIX A

### **§ 13-601. University of Maryland Police Force; campus security forces or building guards.**

(a) *Established.*- There is a University of Maryland Police Force.

(b) *Powers.*-

(1) A University of Maryland police officer is and has all the powers of a peace and police officer in this State.

(2) However, a University of Maryland police officer may exercise these powers only on property that is owned, leased, operated by, or under the control of the University of Maryland. The police officer may not exercise these powers on any other property unless:

(i) Engaged in fresh pursuit of a suspected offender;

(ii) Requested or authorized to do so by the chief executive officer or chief police officer of any county;

(iii) Necessary in order to facilitate the orderly flow of traffic to and from property owned, leased, operated by, or under the control of the University of Maryland; or

(iv) Ordered to do so by the Governor.

(c) *Standards and qualifications to be adopted by Board.*-

(1) In consultation with the Secretary of State Police and the Maryland Police Training Commission, the Board of Regents shall adopt standards, qualifications, and prerequisites of character, training, education, human and public relations, and experience for University of Maryland police officers, including standards for the performance of their duties.

(2) To the extent practicable, the Board shall adopt standards that are similar to the standards adopted for the Department of State Police.

(3) Standards adopted on or after July 1, 1975, on minimum hiring qualifications of University of Maryland police officers may not affect the status of any individual who was a qualified University of Maryland police officer on that date.

(d) *Rules and regulations of the Board.*- The Board of Regents shall adopt rules and regulations governing the operation and conduct of the University of Maryland Police Force and of University of Maryland police officers.

(e) *Campus security forces or building guards.*- The Board of Regents may authorize the presidents of the constituent institutions to make use of a campus security force or building guards in addition to a campus police force.

[An. Code 1957, art. 77A, § 15; 1978, ch. 22, § 2; 1988, ch. 246, § 2; 1994, ch. 165, § 3; ch. 166, § 3; 1995, ch. 3, § 2; 1996, ch. 10, § 16; 2001, ch. 331; 2003, ch. 21, § 7.]

## APPENDIX B

Excerpt of Criminal Procedures, Sections 2-202 through 2-205

### Criminal Procedure §2-202 Warrantless Arrests -- In General

(a) A police officer may arrest without a warrant a person who commits or attempts to commit a felony or misdemeanor in the presence or within the view of the police officer.

(b) A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the presence or within the view of the police officer may arrest without a warrant any person whom the police officer reasonably believes to have committed the crime.

(c) A police officer without a warrant may arrest a person if the police officer has probable cause to believe that a felony has been committed or attempted and the person has committed or attempted to commit the felony whether or not in the presence or within the view of the police officer.

### Criminal Procedure §2-203 Same -- Commission of Specified Crimes

(a) In general -- A police officer without a warrant may arrest a person if the police officer has probable cause to believe:

- (1) that the person has committed a crime listed in subsection (b) of the section; and
- (2) that unless the person is arrested immediately, the person:

- (i) may not be apprehended;
- (ii) may cause physical injury or property damage to another; or
- (iii) may tamper with, dispose of, or destroy evidence

(b) Specified crimes -- The crimes referred to in subsection (a)(1) of this section are:

- (1) manslaughter by vehicle or vessel under Sec. 2-209 of the Criminal Law Article;
- (2) malicious burning under Sec. 6-104 or Sec. 6-105 of the Criminal Law Article or an attempt to commit the crime;
- (3) malicious mischief under Sec. 6-301 of the Criminal Law Article or an attempt to commit the crime;
- (4) a theft crime where the value of the property or services stolen is less than \$500 under Sec. 7-104 or Sec. 7-105 of the Criminal Law Article or an attempt to commit the crime;
- (5) the crime of giving or causing to be given a false alarm of fire under Sec. 9-604 of the Criminal Law Article;
- (6) indecent exposure under Sec. 11-107 of the Criminal Law Article;
- (7) a crime that relates to controlled dangerous substances under Title 5 of the Criminal Law Article or an attempt to commit the crime;
- (8) the wearing, carrying, or transporting of a handgun under Sec. 4-203 or Sec. 4-204 of the Criminal Law Article;
- (9) carrying or wearing a concealed weapon under Sec. 4-101 of the Criminal Law Article; and
- (10) prostitution and related crimes under Title 11, Subtitle 3 of the Criminal Law Article.

### Criminal Procedure §2-204 Same -- For Domestic Abuse

(a) In general -- A police officer without a warrant may arrest a person if:

(1) the police officer has probable cause to believe that:

- (i) the person battered the person's spouse or another person with whom the person resides;
- (ii) there is evidence of physical injury; and

(iii) unless the person is arrested immediately, the person:

- \* may not be apprehended;
- \* may cause physical injury or property damage to another; or
- \* may tamper with, dispose of, or destroy evidence; and

(2) a report to the police was made within 48 hours of the alleged incident.

(b) Self-defense -- If the police officer has probable cause to believe that mutual battery occurred and arrest is necessary under subsection (a) of this Section, the police officer shall consider whether one of the persons acted in self-defense when determining whether to arrest the person whom the police officer believes to be the primary aggressor.

Criminal Procedure §2-205 Same -- For Stalking

A police officer without a warrant may arrest a person if:

(1) the police officer has probable cause to believe the person has engaged in stalking under Sec. 3-802 of the Criminal Law Article;

(2) there is credible evidence other than the statements of the alleged stalking victim to support the probable cause under item (1) of this section; and

(3) the police officer has reason to believe that the alleged stalking victim or another person is in danger of imminent bodily harm or death.

## **§ 26-101. Disturbing activities at school or college; molesting or threatening students.**

(a) *Willful disturbance of school activities prohibited.*- A person may not willfully disturb or otherwise willfully prevent the orderly conduct of the activities, administration, or classes of any institution of elementary, secondary, or higher education.

(b) *Molesting or threatening students or school personnel prohibited.*- A person may not molest or threaten with bodily harm any student, employee, administrator, agent, or any other individual who is lawfully:

(1) On the grounds or in the immediate vicinity of any institution of elementary, secondary, or higher education;

(2) On a school vehicle;

(3) At an activity sponsored by a school that is held off school property; or

(4) On property that is owned by a county board and is used for administrative or other purposes.

(c) *Threatening employee at home.*- A person may not threaten with bodily harm any employee of any institution of elementary, secondary, or higher education at home by any means, including in person, by telephone, or by electronic mail. This prohibition applies only to threats arising out of the scope of the employee's employment.

(d) *Injunction.*- In addition to the penalties provided in this section or in § [6-409 of the Criminal Law Article](#), on application by the governing board of any institution of elementary, secondary, or higher education, the circuit court of the county in which the institution is located may issue an injunction restraining any specific activities that violate this section.

(e) *Criminal penalty.*- Any person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,500, imprisonment not exceeding 6 months, or both.

[An. Code 1957, art. 27, § 123A; art. 77, § 96; 1978, ch. 22, § 2; 1998, ch. 21, § 9; 1999, chs. 561, 562; 2002, ch. 213, § 6.]

## **§ 26-102. Trespass on the grounds of a public institution of elementary, secondary, or higher education.**

(a) *"School resource officer" defined.*- In this section, "school resource officer" means a law enforcement officer as defined under § [3-101\(e\)](#) of the [Public Safety Article](#) who has been assigned to a school in accordance with a memorandum of understanding between the chief of a law enforcement agency as defined under § [3-101\(b\)](#) of the [Public Safety Article](#) and the local education agency.

(b) *Denial of access to school grounds.*- The governing board, president, superintendent, principal, or school resource officer of any public institution of elementary, secondary, or higher education, or a person designated in writing by the board or any of these persons, may deny access to the buildings or grounds of the institution to any other person who:

(1) Is not a bona fide, currently registered student, or staff or faculty member at the institution, and who does not have lawful business to pursue at the institution;

(2) Is a bona fide, currently registered student at the institution and has been suspended or expelled from the institution, for the duration of the suspension or expulsion; or

(3) Acts in a manner that disrupts or disturbs the normal educational functions of the institution.

(c) *Staff may demand identification.*- Administrative personnel, authorized employees of any public institution of elementary, secondary, or higher education, and persons designated in subsection (b) of this section may demand identification and evidence of qualification from any person who desires to use or enter the premises of the institution.

(d) *Agreement with law enforcement agencies.*- The governing board of any public institution of elementary, secondary, or higher education may enter into an agreement with appropriate law enforcement agencies to carry out the responsibilities of this section when:

(1) The institution is closed; or

(2) None of the persons designated in subsection (b) of this section are present in the buildings or on the grounds of the institution.

(e) *Penalty.*- A person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000, imprisonment not exceeding 6 months, or both if he:

(1) Trespasses on the grounds of any public institution of elementary, secondary, or higher education;

(2) Fails or refuses to leave the grounds of any of these institutions after being requested to do so by a person designated in subsection (b) of this section as being authorized to deny access to the buildings or grounds of the institution; or

(3) Willfully damages or defaces any building, furnishing, statue, monument, memorial, tree, shrub, grass, or flower on the grounds of any of these institutions.

[An. Code 1957, art. 27, § 577B; 1978, ch. 22, § 2; 1980, ch. 66; 1981, ch. 467; 1983, ch. 442; 1998, ch. 21, § 1; 2001, ch. 153; 2002, ch. 19, § 1; 2003, ch. 17.]



## APPENDIX C

### **Use of Force Continuum**

The University Police Department shall provide clear procedures to sworn members regarding the use of deadly force in the performance of their duties. The safety of innocent persons and officers is of paramount importance.

The use of *less lethal* weapons is classified as use of force and is governed in 1.3.4. As with any use of force, the officer is accountable to this agency for the use of any *less lethal* weapon. *Civilian personnel are not authorized to carry any weapons in the course of their duties.*

Only force reasonably necessary to defend a human life, effect an arrest or control a person shall be used by sworn officers of this department. The force used by an officer shall only be that which is necessary to overcome the resistance being offered by an offender and to affect lawful arrest.

All sworn personnel are issued copies of, and instructed in the agency's Use of Force procedures before carrying any firearm or other weapon. Additional training will be provided and or required as mandated by law, or a deemed necessary and/or appropriate by the Department.

An officer is justified in the use of any force which he/she has probable cause to believe is necessary to defend himself or herself or another from bodily harm while making the arrest. Deadly force is justified only when the officer has probable cause to believe that such force is necessary to prevent death or serious physical injury to himself or herself or another person, or the public in general, as set out hereinafter.

#### **DEFINITIONS**

Probable Cause – A set of facts or evidence that would lead a reasonably prudent officer to believe that a crime has been, is being or will be committed by a particular individual or individuals.

Note: Probable cause is often used as a short way of describing a set of facts or circumstances, but is actually a belief or understanding formed by an officer based on such facts and circumstances as are reasonably trustworthy when viewed objectively, based on what was known to the officer of the time.

Deadly Force – The use of force which is intended to, or likely to cause death or serious physical injury. For the purposes of this policy, deadly force will also include the intentional striking with a police motor vehicle.

Serious Physical Injury – Bodily injury which causes death, creates a substantial risk of death, serious or permanent disfigurement, or results in the long term or permanent impairment of an organ or limb.

Oleoresin Capsicum Spray – A form of spray intended to be deployed in or near a suspect's face or eyes to allow a police officer to gain control of the suspect.

#### **PROCEDURE**

##### **Level of Force Continuum:**

When the use of force is necessary and appropriate, officers shall, to the extent possible, use an escalating level of force and will not employ a more forceful measure unless it is determined that a lower level of force would not be adequate, or such level of force is attempted and actually found to be inadequate.

(Revised 07/11/2013)

- A. Level 1: Officers Presence – An officer’s appearance may be enough to dissuade some persons from engaging in resistive behavior. Factors which contribute to this level include perceptions of the officer’s attitude, ability and self confidence.
- B. Level 2: Verbal Direction – Dialogue used by an officer can serve to diffuse potentially violent confrontations. It is important to observe that this level concerns what an officer says and how he uses it. The factors involved in this level include the officer’s language, tone of voice, and confidence and/or posture and body language.
- C. Level 3: Empty Hand Control or Use of OC Spray – “Soft” techniques which have minimal chance of causing serious injury. These techniques include some pressure point control techniques and joint manipulations. “Hard” techniques are those that have a probability of causing serious injury. These techniques include punches and leg strikes. The use of OC spray is authorized if, in the opinion of the officer, the use of empty hand techniques would pose unnecessary risk of injury to the offender and/or the officer or if empty hand technique would be ineffective in gaining control of the offender.
- D. Level 4: Impact Weapon – An officer may need to resort to the use of an impact weapon to control resistive behavior. These “hard” techniques have a probability of causing injuries. These techniques include weapon strikes.
  - i. Impact Weapon – A weapon (*e.g. straight baton, collapsible baton*) which causes blunt trauma upon striking the soft tissue or skeletal frame of the human body to impair an individual’s mobility or motor functions.
- E. Level 5: Deadly Force – Deadly force can be realized through the application of a variety of measures. Although commonly related to an officer’s use of a firearm, lethal force can also be applied by use of severe hard empty hand control or hard intermediate weapon control techniques.

Note: It is not the intent of this part of this procedure to require officers to try each of the level options before escalating to the next. The circumstances of each situation will determine at which level an officer will start.

#### Deadly Force:

Officers may employ deadly force in the performance of their official duties only under the following circumstances:

- A. In self-defense, or to defend another person, who is being unlawfully attacked, from death or serious injury.
- B. To prevent the escape of a perpetrator, but only when all of the following conditions exist:
  - 1. Every other reasonable means of effecting the arrest have been exhausted; and
  - 2. To prevent the escape of a perpetrator, but only when all of the following conditions exist:
    - a. Every other reasonable means of effecting the arrest have been exhausted; and
    - b. The perpetrator is a known felon or officers have probable cause to believe the perpetrator committed a felony; and
    - c. The perpetrator actually used or threatened to use deadly force in the commission of the felony; and

**(Revised 06/09/2016)**

- d. Officers have reason to believe the felon poses an immediate and a significant threat of using deadly force against the officer or others if not immediately apprehended; and
  - e. Every reasonable consideration has been given to prevent inadvertent injury to innocent bystanders; and
  - f. Where feasible, officers have given notification of intent to use deadly force and the felon refuses to obey the order to halt.
- C. When feasible, before using deadly force, the officer will give a verbal warning.  
An example of such a warning would be an officer stating in a loud voice, "Police Officer, Stop"

Restrictions:

- 1. Discharge of a firearm from a moving vehicle is prohibited.
- 2. Warning shots are prohibited.
- 3. No shots will be fired into buildings or through doors, windows or other openings unless the situation becomes a matter of self-defense or in defense of other lives.
- 4. Officers may use deadly force to destroy an animal that represents a threat to public safety or as a humanitarian measure where the animal is seriously injured when the officer reasonably believes that deadly force can be used without harm to the officer or others. In the event of a domestic animal (cats, dogs), the Wicomico County Humane Society will be contacted to remove the animal. In the event of wildlife (deer, opossum), the Department of Natural Resources will be contacted to remove the animal.

Note: a *less lethal* weapon is another tool that can be used at the discretion of the officer when the decision is made that the use of force is necessary and reasonable under the circumstances.

Less Lethal Force:

- A. Officers are justified in the use of force they reasonably believe necessary to effect an arrest. They need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest.
- B. A *less lethal* weapon is not necessarily a replacement or substitute for other authorized weapons, devices and/or techniques and therefore should be used when, the of officer's opinion, it is the best choice of a weapon in a use of force situation.
- C. Officers are justified in the use of force against another when and insofar as the officer reasonably believes that such conduct is necessary to defend the officer or another person against the imminent use of unlawful force.
- D. Only the amount of force reasonably necessary to effect an arrest or control a person shall be used.
- E. Force shall not be used punitively and officers will always discontinue the use of force when the offender stops resisting.

(Revised 07/11/2013)

- F. A department issued and approved police baton, a friction lock baton, or Oleoresin Capsicum chemical agent are the only authorized *less lethal* weapons.

Note: Officers are prohibited from using or carrying blackjacks, saps, weighted gloves, or any other unauthorized weapons.

- G. The baton may also be used as a barricade or repelling device in crowd control situations, or a temporary restraining device.
- H. Officers will provide for appropriate medical attention to any subject injured as a result of an officer's use of physical force or *less lethal* weapon.
- I. Subjects injured as a result of an officer's use of physical force or a lethal or *less lethal* weapon will be responsible for the payment of their own medical expenses. Health care providers will be made aware of this at the time medical treatment is requested.

Use of Pepper-spray/OC Spray:

- A. Pepper-spray is considered to be a *less lethal* weapon.
  - 1. An officer need not attempt empty-hand control before using pepper-spray. The officer need only determine that empty-hand skill would not be sufficient or practical to safely and effectively place an offender under control.
  - 2. Pepper-spray is generally useful against drug abusers, emotionally disturbed persons, intoxicated persons, or violent individuals who have reduced sensitivity to pain as well as aggressive animals.
  - 3. Pepper-spray may be used to effect the removal of a person(s) from a locked vehicle who refuses to exit when lawfully ordered to do so by an officer.
  - 4. Pepper-spray may be released into a building to effect the removal of person(s) who refuse to voluntarily exit the building and may also be used when a forced exit is necessary.
  - 5. Officers should avoid the use of pepper-spray in situations where its use could reasonably cause panic (e.g. hospitals, dark crowded theaters, or similar situations).
- B. Officers who employ the use of pepper-spray should do so as a means of obtaining control of an individual and shall never be used for any unlawful purpose, and never as a means of dispensing punishment.
  - 1. Only that amount of pepper-spray reasonably needed to obtain control of an individual should be used. Once the desired results have been achieved, the officer will stop dispensing pepper-spray. Primary target areas of pepper-spray are the face and eyes.

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- C. Officers should consider the following, in addition to specific subjective factors, when deciding whether or not to use pepper-spray in a use of force situation:
1. Distance from the individual to be sprayed (generally recommended to be between 2 and 12 feet);
  2. Environmental conditions (e.g., wind, rain, snow, etc.);
  3. Potential hazards to the individual after being sprayed with pepper-spray that could cause injury (e.g., walking into traffic, falling off elevated surfaces or stairs, etc.);
  4. The presence of infants or small children. If infants are in the immediate area, the use of pepper-spray should be avoided, if possible.
- D. After spraying an individual with pepper-spray, and control of that person has been obtained, the officer will make reasonable efforts to allow the individual relief from the discomfort associated with the application of pepper-spray. Reasonable decontamination or relief efforts may include (as is practical under the circumstances of a situation);
1. Calming the individual, and having the subject lay in a prone position, if possible;
  2. Removing as much of the spray as possible. Copious amounts of water poured over the area will result in a majority of the foam running off. If no water is available, a towel or numerous paper towels can be used to wipe off as much foam as possible;
  3. Bio-Shield or other commercial decontaminates are highly effective on most OC sprays;
  4. Allowing the individual to remove contact lenses;
  5. Advising the individual not to rub affected areas or to apply any type of salve to affected areas;
  6. Summoning paramedics if the person complains of injury, or if the officer reasonably believes that the person needs medical attention.
- E. When an officer is attacked by an offender who is threatening the use of OC Spray (or any other chemical agent), the officer should try to avoid being sprayed. Should an officer need to use force on an individual who is threatening the use of OC Spray, such force should be as necessary and reasonable.

#### Use of Impact Weapons:

- A. Impact weapons are considered to be *less lethal* weapons.
1. An officer need not attempt empty-hand control or the use of OC Spray before using an impact weapon. The officer need only justify that empty-hand control or the use of OC Spray would not be sufficient or practical to safely and effectively place an individual under control.
- B. Officers who employ an impact weapon should do so with the intent to temporarily disable an individual and not to cause permanent injury or dispense punishment.
1. Primary targets of a strike from an impact weapon should be an individual's major muscle groups or limbs.
  2. Striking an individual with an impact weapon in the groin, any part of the body above the shoulders, or the back is permitted only in situations where deadly force would be justified.
- C. After striking an individual with an impact weapon, and control of the person has been obtained, the officer will afford the individual medical treatment should, in the officer's judgment, medical treatment be required or if requested by the person himself.

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- D. Impact weapons are permitted to be used for other lawful purposes during an officer's duties (e.g., gaining entry to vehicles, gaining entry into residences, destroying animals).
- E. If there is an emergency, other objects or equipment may be used as an impact weapon "of necessity" (e.g. flashlights, metal or plastic pipes, etc.).

Reports and Investigation:

Refer to 1.3.6, 1.3.7 and 1.3.13